

**ALBERTA  
INFORMATION AND PRIVACY COMMISSIONER**

**Report of an Investigation Concerning  
the Disclosure and Safeguarding of Personal Information**

**February 12, 2007**

**Wilson Banwell Human Solutions Inc.**

**Investigation Report #P2007-IR-001**

**I. INTRODUCTION**

[1] In March 2006, the Office of the Information and Privacy Commissioner of Alberta (“OIPC”) received a complaint alleging that Wilson Banwell Human Solutions Inc. (“Wilson Banwell”) disclosed personal information in contravention of the *Personal Information Protection Act* (“PIPA”). The Complainant also alleged that Wilson Banwell may have failed to safeguard his personal information.

**II. JURISDICTION**

[2] PIPA applies to provincially-regulated private sector organizations in Alberta. The Act sets out the provisions under which organizations may collect, use or disclose personal information, and also imposes a duty on organizations to implement reasonable safeguards to protect personal information from unauthorized access, disclosure, etc.

[3] The Information and Privacy Commissioner has jurisdiction in this case because Wilson Banwell is an “organization” as defined in section 1(i) of PIPA, operating in the province of Alberta.

[4] In response to this complaint, the Commissioner authorized me to investigate. This report sets out my findings and recommendations.

### **III. INVESTIGATION AND BACKGROUND**

[5] In investigating this matter, I initially spoke with the Complainant, as well as the Privacy Officer for Wilson Banwell. I reviewed Wilson Banwell's privacy policies, "Informed Consent and Authorization" form for the Employee and Family Assistance Program ("EFAP"), and "Release of Information" form. Wilson Banwell conducted its own internal investigation of the Complainant's allegations, and I reviewed their findings.

[6] I spoke with representatives from the Complainant's Employer, including the Privacy Officer, as well as a Safety Officer.

[7] The Complainant is a member of a trade union, and I spoke with the Union's Business Agent.

[8] I discussed this matter and exchanged correspondence with the Privacy Officer and also the President of Construction Labour Relations – An Alberta Association ("CLR"). I also reviewed the contract between CLR and Wilson Banwell.

[9] In June 2005, the Complainant was involved in an on-the-job incident, which led to a request that he take a drug test. The results came back positive indicating the presence of marijuana in his system. In accordance with his Employer's policy, he was referred to a Wilson Banwell office in Edmonton for a "return to work" assessment. Wilson Banwell provides counselling and assessment services as part of its EFAP.

[10] The Complainant attended at Wilson Banwell on June 24, 2005, and an assessment was completed by a Chartered Psychologist employed there.

[11] The Complainant signed an "Informed Consent and Authorization" form, which explained that the Wilson Banwell EFAP program "is designed to help you to evaluate your situation, and to develop an appropriate course of action to help you to resolve your difficulties." The authorization also stated:

*All personal information and data are treated with utmost confidentiality. Only anonymous statistical data are transmitted by Wilson Banwell to your organization [i.e. your employer]. Making use of the EFAP services cannot, in any way, influence your reputation, job security or possibilities of promotion. If need be, your written consent is required for any information to be disclosed to a third party ...*

[12] The Complainant signed a “Release of Information Form,” authorizing the release of “assessment / treatment summaries” to his Employer for “return to work” purposes. The Complainant stated he understood Wilson Banwell would report back to his Employer only any recommendations arising from the assessment.

[13] A few days after the assessment was completed, the Complainant contacted his Employer. He was told that no information had yet been received from Wilson Banwell.

[14] The Complainant then contacted Wilson Banwell, and was told that information had been faxed to his Union. The Complainant requested Wilson Banwell report the information to his Employer.

[15] Shortly thereafter, the Complainant followed up with his Employer and found that information had been received from Wilson Banwell. However, the Complainant was disturbed to learn that a three-page “Confidential Report” had been provided, instead of just the “recommendations” he had understood would be disclosed.

[16] After learning of the extent of information provided to both his Union and Employer, the Complainant submitted a complaint to the College of Alberta Psychologists. He eventually received correspondence stating that the College’s investigation was complete and had resulted in “an informal resolution to the concerns identified by means of a voluntary undertaking entered into by the psychologist.”

[17] The Complainant was not satisfied with this resolution, and submitted a complaint to the OIPC. His specific concerns were that:

- Wilson Banwell disclosed more information than was required to both his Employer and Union, including personal information about the Complainant’s wife, and details of a previous, personal use of the EFAP program;
- His sensitive personal information was disclosed via fax transmission, and as such may have been exposed to risk of unauthorized disclosure and/or access.

#### **IV. ISSUES**

[18] 1. Did Wilson Banwell disclose the Complainant’s personal information in contravention of PIPA?

2. Did Wilson Banwell make reasonable security arrangements to protect the Complainant’s personal information which was transmitted by fax?

3. Which organization is responsible for the disclosure of the Complainant's information?

## **V. ANALYSIS**

### **1. Did Wilson Banwell disclose the Complainant's personal information in contravention of PIPA?**

[19] I reviewed the report sent by the Psychologist to the Complainant's Employer and Union. The report provides a summary of the clinical interview the Psychologist conducted with the Complainant, as well as details of a previous visit the Complainant had made to Wilson Banwell when he was accompanied by his wife. Some personal information the Complainant's wife provided during that previous visit was also reported. The third page of the report also included five recommendations made by the Psychologist.

[20] Section 1(k) of PIPA defines "personal information" as "information about an identifiable individual." The information contained in the Psychologist's report is information about the Complainant and his wife, and is clearly personal information under the Act.

[21] "Personal employee information" is a subset of personal information under the Act and is defined in section 1(j) of PIPA as follows:

(1)(j) "personal employee information" means, in respect of an individual who is an employee or a potential employee, personal information reasonably required by an organization that is collected, used or disclosed solely for the purposes of establishing, managing or terminating

(i) an employment relationship, or

(ii) a volunteer work relationship

between the organization and the individual but does not include personal information about the individual that is unrelated to that relationship.

[22] Personal employee information can be collected, used and disclosed without consent, provided this is done in accordance with specific provisions of the Act.

[23] In determining whether the information at issue in this case is personal employee information, I first considered that the Complainant was referred to Wilson Banwell by his Employer for a purpose related to managing the employment relationship. He had been involved in two work-site vehicle incidents and was asked to take a drug and alcohol test. After failing the test,

he was referred to Wilson Banwell for a return to work assessment. Given these circumstances, it would be reasonable for Wilson Banwell to report back to his Employer information that was required to facilitate the Complainant's return to work.

[24] However, the personal information that is of primary concern to the Complainant is not related to the Psychologist's recommendations and information to facilitate his return to work. Instead, the Complainant is concerned that the report to his Employer included detailed notes from the clinical interview conducted by the Psychologist, as well as information about a previous visit the Complainant made to Wilson Banwell. The previous visit was not due to a referral by his Employer, but was instead an appointment made by the Complainant for the purpose of addressing personal matters unrelated to his employment. The report also included personal information about the Complainant's wife.

[25] Confidentiality is a key component of any EFAP service. Eligible employees can avail themselves of counselling, advisory and referral services for a myriad of issues including bereavement, stress, marital or family difficulties, anger management, financial matters, etc. Employees use these services with the understanding that their visit will remain confidential. Personal information will not be reported back to their employer in any identifiable manner. Wilson Banwell's website states the following protections are in place to help ensure that employers will not be aware of an individual employee's use of EFAP services:

- *services delivered away from work site*
- *appointments scheduled to avoid coworker contact*
- *after-hours appointments available*
- *billing and statistical reports retain anonymity*
- *no employer access to individual records*
- *third party audits*
- *counsellors abide by regulated confidentiality guidelines*

[26] When the Complainant first visited Wilson Banwell he was not referred by his Employer, and the appointment was not for employment-related matters. Wilson Banwell did not report details of this visit to the Complainant's Employer, and there was no reason why it should. Information collected from this first appointment was not related to "establishing, managing or terminating" the employment relationship between the Complainant and his Employer. As such, it does not qualify as "personal employee information" as defined in section 1(j) of PIPA. This is also true of the personal information of the Complainant's wife (which was also included in the Psychologist's report), which cannot be "personal employee information" it was in no way related to establishing, managing or terminating an employment relationship.

[27] Despite the fact the Complainant's second visit to Wilson Banwell was the result of an Employer referral, the Psychologist's detailed notes from his clinical interview with the Complainant do not qualify as "personal employee information" either. The Complainant's Employer confirmed that, after referring an employee for a return to work assessment, all the Employer needs to know is whether the employee is ready for work, not ready for work, or ready for work subject to specific conditions or accommodations. The Employer did not need to know the detailed information that was collected in order to arrive at the return to work recommendations; such information might include personal information about the individual that is unrelated to employment.

[28] Accordingly, I find that, other than the recommendations made by the Psychologist, the Complainant's personal information from his clinical interview with the Psychologist does not qualify as personal employee information under PIPA. This detailed information was not "reasonably required" by the Complainant's Employer for purposes of managing the employment relationship. Further, by definition, personal employee information "does not include personal information about the individual that is unrelated to that [employment] relationship."

[29] Although I have found that the personal information at issue in this matter does not qualify as personal employee information under the Act, I have already determined it is "personal information" under section 1(k), and thus the provisions of PIPA apply.

### **Disclosure to the Complainant's Employer**

[30] Section 7 of PIPA is relevant, and reads as follows:

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual ...

(d) disclose that information unless the individual consents to the disclosure of that information.

[31] The Complainant signed a "Release of Information" form authorizing Wilson Banwell to disclose "assessment / treatment summaries" to his Employer. This was in accordance with Wilson Banwell's "Informed Consent and Authorization" form which states:

*All personal information and data are treated with utmost confidentiality. Only anonymous statistical data are transmitted by WILSON BANWELL to your organization. Making use of the EFAP services cannot, in any way, influence your reputation, job security or possibilities of promotion. If need be, your written consent is required for any information to be disclosed to a third party (i.e. physician, past clinician, etc.).*

[32] The Complainant believed that the “assessment / treatment summaries” referred to on the “Release of Information” form included only any recommendations arising from his assessment, and not full details of his clinical interview, previous visits, etc.

[33] Wilson Banwell explained that the Psychologist’s report provided to the Complainant’s Employer included “only that material that was presented to him by [the Complainant] in the interview and that which he deemed relevant to forming the recommendations.” It is not clear from Wilson Banwell’s statement whether the Organization believed the “Release of Information” form authorized disclosure of all information contained in the Psychologist’s report. In my opinion, the inclusion of the word “summaries” suggests that the form was not intended to authorize disclosure of the entire report, but rather a paraphrased version, or only an excerpted portion of the report.

[34] Nonetheless, there is no dispute that the Complainant signed a consent form authorizing the disclosure of some personal information to his Employer. As such, section 19 of PIPA applies. This section states:

19(1) An organization may disclose personal information only for purposes that are reasonable.

(2) Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is disclosed. [my emphasis]

[35] The consent signed by the Complainant authorized the release of personal information for “return to work” purposes.

[36] The Complainant’s Employer stated that it is common practice to receive information from Wilson Banwell after an employee has been referred for a return to work assessment. I have already noted above that the Employer reported that it needs to know whether the employee is ready for work, not ready for work, or ready for work subject to specific conditions or accommodations. Given this, I am of the opinion that Wilson Banwell disclosed the Complainant’s personal information to his Employer for reasonable purposes related to facilitating the Complainant’s return to work.

[37] However, the Complainant’s Employer also reported that in this case, they were “very surprised” to receive as much detailed information as they did regarding the Psychologist’s assessment. The Employer commented that this “was not common practice at all” and that typically a psychologist would report only any recommendations for further follow-up or required referrals.

[38] In reviewing the amount and type of information disclosed, I am of the same opinion. It was not necessary for the Psychologist to report details about the Complainant's clinical visit, previous visit regarding personal matters, or the personal information of the Complainant's wife. None of this information was necessary to facilitate the Complainant's return to the workplace. Instead, as confirmed by the Employer, all that was required was information as to whether the Complainant was able to return to work and, if so, if any accommodations that needed to be made.

[39] Accordingly, it is my opinion that Wilson Banwell contravened section 19(2) of PIPA when its Psychologist disclosed to the Complainant's Employer more personal information than was reasonably required for the purpose of facilitating the Complainant's return to work. I note that the Employer returned its copy of the Psychologist's report to the Complainant.

### **Disclosure to the Complainant's Union**

[40] In addition to providing a copy of the Psychologist's report to the Complainant's Employer, the Psychologist also provided the report to the Complainant's Union Business Agent. However, unlike the situation described above, Wilson Banwell reported that "A Release of Information was not requested from [the Complainant] with respect to the ... report sent to the Union." Instead, the Psychologist that provided the service "claims to have notified [the Complainant] verbally that a copy of the report would be sent to the Union."

[41] Wilson Banwell did not provide any clinical notes or other evidence to support this claim. As the Psychologist himself is no longer employed by Wilson Banwell, it was not possible to interview him with respect to this matter. The Complainant maintains that no verbal consent was requested or given. I do note that Wilson Banwell's "Informed Consent and Authorization" form for its EFAP explicitly states that a written consent is required for release of information. However, in this case, I cannot conclusively determine whether (verbal) consent was obtained.

[42] Despite this, I considered whether Wilson Banwell's disclosure to the Union was compliant with section 19 of PIPA. As noted above, this section of the Act requires that any disclosure of personal information be for "purposes that are reasonable" and "only to the extent that is reasonable for meeting the purpose."

[43] Wilson Banwell reported that it ...

*... has a contract with Construction Labor Relations ... to provide their Employee and Family Assistance Program ... Among the services provided are counselling and assessment with respect to the application of*

*Construction and Labor Relations' Drug Policy. ... Under the established protocols for referrals under the above policy, reports are sent to the union as the purchaser and in relation to any safety-sensitive positions and potential drug or alcohol addictions.*

[44] Although Wilson Banwell stated that “reports are sent to the union as the purchaser” of EFAP services, I note that there is no contract between the Union and Wilson Banwell. Instead, there is a contract between Construction Labour Relations – An Alberta Association (“CLR”) and Wilson Banwell, which clearly identifies CLR as the “Purchaser” of services offered by Wilson Banwell, “the Contractor”. Even if the Union was the purchaser of Wilson Banwell’s services, I am not convinced that this would necessitate disclosure of the entire Psychologist’s report to the Union.

[45] My discussion with the Union Business Agent who received the report confirms this position. The Business Agent reported that the Union often receives information from Wilson Banwell; however, they do not receive as much detailed information as was included in the report concerning the Complainant.

[46] The Union representative reported that, after receiving the Psychologist’s report concerning the Complainant, he contacted Wilson Banwell to advise them that the Union did not require that much information. As with the Complainant’s Employer, the Union returned its copy of the report to the Complainant.

[47] In summary, given the facts as set out above, I am unable to make a finding as to whether Wilson Banwell disclosed the Complainant’s personal information to the Union with or without consent. Nonetheless, even assuming for discussion purposes only that consent was obtained, I conclude that the disclosure contravened section 19(1) of PIPA in that it was not for “reasonable purposes.” Wilson Banwell reported disclosing information because “the Union is the purchaser of the service.” I cannot find this to be a reasonable purpose, given that the Union did not purchase the services in this case. Even if the Union had purchased the services, this fact alone would not establish a “reasonable purpose” for disclosing the Complainant’s personal information to the Union.

[48] Further, even if one assumes for discussion purposes only that Wilson Banwell had a reasonable purpose for disclosing the Complainant’s personal information to the Union, it was not in my judgement reasonable for it to disclose the three-page Psychologist’s report. As in my analysis above of Wilson Banwell’s disclosure to the Complainant’s Employer, the Union did not require detailed information of the Complainant’s clinical interview, past personal visit, or personal information of the Complainant’s wife. Accordingly, I find that

Wilson Banwell contravened both sections 19(1) and 19(2) of PIPA when its Psychologist disclosed his report to the Complainant's Union.

**2. Did Wilson Banwell make reasonable security arrangements to protect the Complainant's personal information which was transmitted by fax?**

[49] In my initial discussion with the Complainant, he reported his concern that, in both the disclosure to the Union and his Employer, the Psychologist's report was transmitted by fax. The Complainant clearly is concerned that sending personal information by fax raises certain risks to privacy and confidentiality in that information may be sent to the wrong number, or may be sent to a non-confidential fax machine where it might be retrieved by an unauthorized individual.

[50] Section 34 of PIPA states:

34 An organization must protect personal information that is in its custody or under its control by making reasonable security arrangements against such risks as unauthorized access, collection, use, disclosure, copying, modification, disposal or destruction.

[51] Appendix G of Wilson Banwell's Privacy Policy outlines the Organization's Privacy Standards of Behavior. The document provides guidelines for staff in protecting and securing personal information and states that "No Client information is to be transferred by non-encrypted e-mail or unsecured fax."

[52] I reviewed the faxed documents as received by the Union and the Complainant's Employer. In both cases, a fax cover sheet was used, which clearly stated the contents were "CONFIDENTIAL". The cover sheet also included a written notice that the contents of the fax might include information that is "confidential and personal under applicable Personal Privacy legislation and the policies of Wilson Banwell." The notice prohibits unauthorized use, dissemination, disclosure or copying and requests the receiver notify the sender and destroy all copies if the fax has been received in error.

[53] The Union's Business Agent confirmed that it was his understanding that Wilson Banwell will not fax client information unless it has been confirmed that an authorized individual is available to receive it. In this case, he could not recall whether a telephone call had been made, but was of the opinion the fax had been sent in accordance with established protocols, and had not been accessed by any unauthorized individuals.

[54] The Complainant's Employer also confirmed that the Psychologist's report was received on a confidential fax machine that was not accessible by unauthorized individuals.

[55] I find that there is no evidence that the Complainant’s personal information was accessed by any unauthorized individuals or sent in contravention of Wilson Banwell’s established protocols. Further, I am of the opinion that Wilson Banwell’s security standards provide reasonable safeguards against such risks. Accordingly, I find there was no contravention of section 34 of PIPA.<sup>1</sup>

### **3. Which organization is responsible for complying with the Act in this case?**

[56] Wilson Banwell provides counselling and assessment services as part of its Employee and Family Assistance Program. In this case, Wilson Banwell’s services were provided under a service contract with Construction Labour Relations – An Alberta Association (“CLR”). CLR explained that the Association “is composed of member contractors. These members pay a per hour worked assessment [fee] to CLR to fund Wilson Banwell when the member’s employees engage in the services of Wilson Banwell.” The Complainant’s Employer is one such contractor member of CLR.

[57] As already noted above, Wilson Banwell is an “organization” under PIPA as defined in section 1(i) of the Act. However, CLR is a “non-profit organization” as defined in section 56(1)(b) of PIPA, which reads as follows:

- 56(1)(b) “non-profit organization” means an organization
- (i) that is incorporated under the *Societies Act* or the *Agricultural Societies Act* or that is registered under Part 9 of the *Companies Act* ...

[58] CLR is incorporated under the *Societies Act*, and thereby qualifies as a non-profit organization under PIPA.

[59] As a non-profit organization, PIPA applies to CLR’s activities, but in a limited way. Specifically, section 56 of the Act states:

- 56(1) In this section,
- (a) “commercial activity” means
    - (i) any transaction, act or conduct, or
    - (ii) any regular course of conduct,

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<sup>1</sup> Guidelines to assist public bodies, custodians, and private sector organizations in developing protocols to reduce the risk of accidentally disclosing personal information when using a fax machine are available on the OIPC website at [www.oipc.ab.ca/ims/client/upload/Guidelines\\_on\\_Facsimile\\_Transmission.pdf](http://www.oipc.ab.ca/ims/client/upload/Guidelines_on_Facsimile_Transmission.pdf)

that is of a commercial character ...

56(3) This Act applies to a non-profit organization in the case of personal information that is collected, used or disclosed by the non-profit organization in connection with any commercial activity carried out by the non-profit organization.

[60] The activity in question here is CLR's contract with Wilson Banwell under which the latter provides EFAP services to employees of CLR member contractors. In determining whether this activity is of a commercial nature, I considered the following questions as set out in *Information Sheet 1: Non-Profit Organizations*, published by Alberta Government Services, Access and Privacy Branch:<sup>2</sup>

1. *Is the activity conducted for the purpose of fund-raising for charitable purposes (rather than to raise funds for regular operations or non-charitable purposes)?*
2. *Is the activity financially supported by the activities of the organization or operated on a cost recovery basis (rather than intended to make a profit to be used to support other activities)?*
3. *Is the activity one that tends to be provided only by the government or non-profit sector (rather than by private sector businesses)?*
4. *Is the primary purpose of the activity to provide a public benefit (rather than benefit individual participants or clients)?*
5. *Does the activity involve consideration by one party (rather than consideration for both parties)?*

[61] In this case, the activity in question is not carried out for fund-raising or charitable purposes, and is not provided on a cost recovery basis. Instead, CLR has contracted with Wilson Banwell - a for-profit organization offering an EFAP program that includes counselling and assessment services. Although these same services may be provided by government or non-profit organizations, they are also commonly offered by other for-profit organizations similar to Wilson Banwell. The services provided are not intended to provide a public benefit, but are rather for the benefit of individual clients (employees of contractor members of CLR). Consideration flows two ways: Wilson Banwell provides services in exchange for a fee paid by CLR.

[62] Having considered the above, I find that the activity in question is a "commercial activity" under section 56(1)(a) of PIPA. Therefore, pursuant to

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<sup>2</sup> Available on-line at <http://www.psp.gov.ab.ca/index.cfm?page=resources/NonProfit.html>

section 56(3), the provisions of PIPA apply to personal information collected, used or disclosed under the service contract between CLR and Wilson Banwell.

[63] As such, section 5 of PIPA is relevant, which states:

5 (1) An organization is responsible for personal information that is in its custody or under its control.

(2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.

...

(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person's responsibilities or obligations under this Act.

[64] These sections of the Act were discussed in Investigation Report #P2005-IR-005 previously issued by this Office. Paragraph 40 of that report reads as follows:

*Subsection 5(2) of PIPA establishes that an organization remains accountable for its contractors' and agents' compliance with the Act. Further, subsection 5(6) affirms that a person or agent retained by an organization, whether under contract or otherwise, is not relieved of its own responsibilities or obligations because it has been retained by another organization. The end result is there can be accountability on the part of both principal and agent, organization and contractor.*

[65] CLR submitted that under its agreement with Wilson Banwell, CLR has no accountability for Wilson Banwell's compliance with PIPA. CLR stated it "never had in its custody or control personal information exchanged during Wilson Banwell's service to its clients," and further:

*No personal information gathered by the EFAP was requested by CLR, nor is such information ever shared with CLR, nor should it be. CLR has no ability to supervise the delivery of those services, in the way, for example, a client receives reports instructs legal counsel [sic] ... CLR has no opportunity to review any of the reports the EFAP issued in respect to its assessments. Policies and practices are in place to ensure no such exchange takes place.*

*If an onus was ever placed on the purchasers of EFAP services to oversee and supervise the delivery of those services, it would be fatal to any EFAP program.*

*Moreover, our review of the Act suggests that it would be an offence for us to require, or for Wilson Banwell to share with CLR, the personal information acquired by Wilson Banwell in the delivery of its services. There is no consent for us to receive the information, nor is it necessary as a purchaser of EFAP service, for us to have such personal information.*

[66] In a subsequent submission, CLR disputed that it is an organization that engages the services of a person within the meaning of section 5(2) of PIPA. CLR stated:

*The contract between Wilson Banwell and CLR sets out the conditions under which the employee user of Wilson Banwell Services will contract with the Wilson Banwell organization to provide services. In our submission, the user then has the terms of a contract pre-established. The payment of those services has been earned by the user of the services by agreeing to accept an offer of employment from, or becoming employed by, the member or participating contractor or a series of such contractors.*

*(...)*

*In our submission, the user of the services has entered into the contract with Wilson Banwell. CLR has not contracted with Wilson Banwell to collect personal information. That is only done by the user contracting with Wilson Banwell.*

[67] I will first consider CLR's assertion that it is not responsible for personal information collected by Wilson Banwell because CLR has neither custody nor control of that information. Section 5(1) of PIPA says that an "organization is responsible for personal information that is in its custody or under its control."

[68] I agree with CLR that it is both appropriate and necessary that CLR not have custody of, or access to, personal information acquired by Wilson Banwell in the delivery of its services. CLR does not have expertise in providing EFAP counselling or assessment services, and has no reasonable purpose for accessing identifiable personal information of Wilson Banwell's clients. Instead, CLR should, and does, rely on the professional expertise of Wilson Banwell in providing counselling and assessment services to users.

[69] However, although CLR does not, and will not, have custody (physical possession) of the personal information, it still has some measure of control – including an ability under contract to:

- restrict or regulate use of the information (to provision of contracted services only),
- require compliance with applicable privacy laws,

- require the development and maintenance of certain policies and procedures,
- provide for a third party audit of service delivery, with audit results (not personal information) reported back to the purchaser
- terminate the agreement where a service provider has not complied with laws, regulations or expected standards of service delivery.

[70] In fact, the contract between CLR and Wilson Banwell specifically includes provisions:

- Requiring that the professional services be provided by or under the supervision of a qualified and properly accredited Psychologist. Services must conform to the Codes of Ethics of the Canadian Psychological Association and the College of Alberta Psychologists, or any body having jurisdiction over Psychologists.
- Ensuring that Wilson Banwell does not disclose or divulge any user information where such action conflicts with the Code of Ethics of the Canadian Psychological Association, or any provincial body having jurisdiction over Psychologists.
- Acknowledging that the governing law of the agreement is the law of Alberta (including any federal laws as are applicable, and presumably provincial privacy law as well).
- Requiring that Wilson Banwell provide quarterly reports to CLR, including utilization data but excluding names of users, case histories, and treatment details.
- Requiring Wilson Banwell provide names and identity numbers of consenting users to an auditor. This to be done on a quarterly basis unless otherwise specified by CLR, who is also responsible for costs associated with audits of the Contractor's service. Completed "Client Evaluation Forms" are to be returned by clients directly to CLR's auditor.
- Granting CLR the ability to terminate the agreement in the event Wilson Banwell breaches the terms of the contract, or for any reason with enough written notice.

[71] Given the above, it is my opinion that CLR has some measure of control over how Wilson Banwell collects, uses and discloses personal information when providing services to individuals under its contract with CLR. In my judgement, CLR has exercised its control in a diligent manner considering the nature of the service contract and the confidentiality of the service being provided.

[72] I next considered CLR's assertion that it is not an "organization that engages the services of a person within the meaning of section 5(2) of PIPA" and that "CLR has not contracted with Wilson Banwell to collect personal information. That is only done by the user contracting with Wilson Banwell."

[73] After reviewing the contract between CLR and Wilson Banwell, I rejected this argument for the following reasons:

- The Contract clearly identifies CLR as “the Purchaser” of services provided by Wilson Banwell, “the Contractor”
- The preamble to the Contract states “WHEREAS the Purchaser wishes to have certain services performed, and the Contractor has agreed to provide those services as described in this agreement.”
- “Professional services” is defined in Part 1 of the Contract and includes:
  - i) *Psychological assessments*
  - ii) *Short term therapy inclusive of therapy and counseling for problems related to marriage, family, drugs, alcohol, job related stress, general stress, depression and personal habit disorders; the intent is to assist members and their families in the resolution of problems*<sup>3</sup>

As this description indicates, collection, use and disclosure of personal information is necessary to most if not all of the services that CLR has contracted Wilson Banwell to provide to individuals.

- Services are provided to entitled “Users” – defined as “any member family unit entitled pursuant to the present agreement to be a user of the professional services.” The Contract entitles CLR to provide Wilson Banwell with user eligibility criteria.

[74] An individual employee may be a third party beneficiary under the agreement between CLR and Wilson Banwell. However, this does not affect or somehow absolve the contractual obligations of CLR and Wilson Banwell - the two organizations that negotiated and agreed to the terms and conditions of the contract.

[75] Given the above, it is my opinion that CLR is clearly an organization that has engaged the services of a person (Wilson Banwell) within the meaning of section 5(2) of PIPA. As such, CLR has some responsibility for ensuring Wilson Banwell provides those services in a manner that is compliant with PIPA. I have already expressed my opinion that CLR has done so in a diligent manner.

[76] I also note that section 5(6) of the Act goes on to state:

(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person’s responsibilities or obligations under this Act.

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<sup>3</sup> Appendix A of the contract describes the services provided under the EFAP in significantly more detail.

[77] Accordingly, despite CLR having some accountability in this matter, Wilson Banwell also has full responsibilities and obligations as an organization under the Act and arguably a heavier responsibility given its professional expertise in providing EFAP services, duty to abide by professional codes, and direct responsibility for ensuring its employees follow requirements under PIPA when collecting, using and disclosing personal information.

## **VI. CONCLUSION**

[78] Overall, it is my opinion that Wilson Banwell has been diligent in meeting its myriad responsibilities under PIPA. The Organization clearly recognizes the privacy considerations associated with providing an EFAP service and has developed comprehensive and articulate privacy policies addressing collection, use and disclosure of personal information, notification of purpose, consent protocols, and information security. These policies and procedures have been clearly communicated to Wilson Banwell's staff and I am impressed with the Organization's diligence and thoroughness in this regard.

[79] Nonetheless, despite having this framework in place, contraventions of the Act may still occur, and in this case I have found that Wilson Banwell contravened section 19(2) of PIPA when its Psychologist disclosed more personal information than was necessary to the Complainant's Employer for the purpose of facilitating the Complainant's return to work.

[80] I also found that Wilson Banwell contravened sections 19(1) and (2) of the Act when the Psychologist disclosed the Complainant's personal information to the Union for purposes that were not reasonable, and to an extent that was not reasonable.

[81] It is my opinion that Wilson Banwell's security standards provide reasonable safeguards against risks that may be associated with transmitting personal information by fax. There was no evidence that the Complainant's personal information was accessed by any unauthorized individuals or faxed in contravention of the Organization's established protocols. Accordingly, I found there was no contravention of section 34 of PIPA.

[82] Finally, I found that CLR has some accountability pursuant to sections 5(1) and 5(2) of PIPA for ensuring that its contracted service provider, Wilson Banwell, is compliant with PIPA. It is my opinion that CLR has done so in a diligent manner and to a high standard.

## **VII. RECOMMENDATIONS**

[83] Given the above comments, I make the following recommendations to Wilson Banwell:

1. Revise the “Release of Information” form to clarify exactly what is meant by “assessment/treatment summaries” – that is, what information will be disclosed to a client’s employer e.g. recommendations only, excerpts from the report, a summary of the report, etc.
2. Remind all staff of the Organization’s policies respecting written consent, and the requirement to disclose only the least amount of information necessary for reasonable purposes.

[84] Wilson Banwell agreed to implement these recommendations.

[85] I had no recommendations to make to CLR. However, at their request, I met with CLR representatives to discuss measures to further strengthen the privacy provisions included in CLR’s contract with Wilson Banwell.

[86] I now consider this matter resolved, and have closed my file.

Jill Clayton, Senior Portfolio Officer  
Office of the Information and Privacy Commissioner