ALBERTA OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

Report of an Investigation into the Collection and Disclosure of Personal Information

January 7, 2008

Alberta Motor Association Insurance Company Investigation Report P2008-IR-001

I. INTRODUCTION

- [1] Two individuals ("the Complainants") submitted complaints to the Information and Privacy Commissioner alleging that the Alberta Motor Association Insurance Company ("AMA" or "the Organization"), improperly collected and disclosed their personal information. The Complainants, who are married and have their property insured by the AMA, maintained that the Organization did so in the course of settling their insurance claim following a house fire.
- [2] In response to this complaint, the Information and Privacy Commissioner ("the Commissioner") elected to conduct an investigation to determine whether the Organization's activities represented a contravention of the *Personal Information Protection Act* ("PIPA" or "the Act").

II. JURISDICTION

- [3] PIPA applies to provincially-regulated private sector organizations operating in Alberta, including the AMA. PIPA sets out the provisions under which organizations may *collect*, *use*, or *disclose* personal information.
- [4] Section 36 of the Act empowers the Commissioner to conduct investigations to ensure compliance with any provision of PIPA and make recommendations to organizations regarding their obligations.
- [5] The Commissioner has jurisdiction in this case because the AMA is an "organization", as defined in section 1(i) of the Act, and operates in Alberta.

[6] Pursuant to section 49 of PIPA, the Commissioner authorized me to investigate this matter. This report outlines my findings and recommendations, which may be made public according to section 38(6) of the Act.

III. BACKGROUND & INVESTIGATION

[7] For the purposes of this investigation, I spoke with one of the Complainants and reviewed the documentation that both Complainants submitted to me in relation to their insurance claim. I also met with representatives of the AMA and reviewed their written submission and supporting documents provided in response to this complaint. Finally, I communicated with the husband's bankruptcy trustee and the AMA's agent, an independent adjuster who originally obtained consent from the Complainants.

The Complaint

- [8] The Complainants in this matter, a husband and wife who are now separated, reported that they have property insurance with the AMA and in December 2006 made a claim for a house fire they experienced. Prior to this, the husband had declared bankruptcy which was being managed by a bankruptcy and insolvency trustee ("the Trustee").
- [9] According to the Complainants, they advised the AMA that they prohibited the Organization from having any contact or communication with either the Trustee or a specifically named individual (who was later determined to be a civil judgement creditor). This direction was given on more than one occasion. The Complainants maintained that the AMA disclosed personal information about the existence of the insurance claim and related dollar amount to the Trustee, despite their express wishes to the contrary. They also alleged that this information was disclosed to an individual to whom they did not want the information provided (a civil judgement creditor).
- [10] According to the Complainants, prior to the fire, all of the husband's assets were sold to the wife, who is not the bankrupt. Therefore, the Complainants contended that the Trustee had no interest in the insurance claim since any proceeds from the AMA for the fire claim would have to be paid to the wife.
- [11] The Complainants also alleged that the AMA was preparing to disclose the wife's personal information her Proof of Loss and Schedule of Loss forms for the fire claim to the husband's Trustee. Among other things, these documents itemized all of the wife's possessions that had been lost in the fire. Again, the husband's possessions had all been sold to the wife so that these forms only documented the wife's personal information, and in the Complainants' view, the Trustee would not have interest in it.
- [12] Finally, the Complainants maintained that the AMA collected their personal information without consent from retailers, the previous owner of their home, their employers, the wife's mother, and possibly other relatives. The

information collected was related to the value of the property and purchases, as well as employment and income verification.

Response to the Complaint

- [13] The AMA confirmed that the Complainants' property is insured with the Organization and a claim was submitted for the contents of their home and the rebuilding of their house as a result of a fire in December 2006. Two months prior to their house fire, the Complainants had also submitted an insurance claim for a sewer back-up in their house that caused flooding in the basement. The Complainants had claimed damage to their basement and belongings stored there through the AMA insurance policy.
- [14] At the time of the fire claim, the sewer damage claim had not yet been resolved since, according to the AMA, the Complainants had submitted improper invoices and had made some suspicious claims. Evidence was provided to demonstrate these concerns (eventually sufficient evidence was uncovered by the AMA to support its denial of the Complainants' sewer damage claim). Under these particular circumstances, and given the two claims in less than two months and large amount of loss, the AMA decided to initiate an investigation to detect possible insurance fraud.
- [15] For the purposes of the investigation, the AMA first collected publicly available information in January 2007 which revealed that the husband had assigned himself into bankruptcy in February 2006 and he would not be fully discharged from bankruptcy until March 2008. The AMA also discovered that the husband had a civil judgement against him in excess of \$75,000. The Complainants' financial situation reinforced grounds for the AMA to investigate, since such circumstances can sometimes be an indicator for fraud.
- [16] With respect to the collection of the Complainants' personal information from retailers, the previous owner of their home, employers, the wife's mother, and other relatives, the AMA acknowledged that it had collected personal information about the Complainants from these sources, among others, though the only relative contacted was the wife's mother. The information was collected with the husband's written consent immediately following the fire, though the AMA maintains his consent was not required in many cases. The AMA argued that section 14(d), (e) and (h) of PIPA releases the Organization from consent requirements under certain circumstances (the arguments pertaining to these exceptions to consent will be discussed in the sections that follow). The purpose for the collection was related to verifying the value of the Complainant's possessions and house fixtures, testing the veracity of invoices submitted, and verifying employment. Some of this information was volunteered by the Complainants.
- [17] The financial information collected had significance beyond the investigation since, pursuant to the Canadian *Bankruptcy and Insolvency Act*¹, a bankruptcy trustee would usually be legally entitled to any insurance monies

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¹ Bankruptcy and Insolvency Act, R.S.C. 1985, c. B-3

paid out. The AMA acknowledged and provided documentation to demonstrate that the Complainants had indeed objected to the AMA having any communication with the Trustee or civil judgement creditor. However, the AMA believed it had a legal obligation to disclose the fact that a claim had been made to the Trustee since insurance money could legally be payable to the Trustee. Therefore, such disclosure was made. Ordinarily, the Organization stated it would never contact an insured's civil judgement creditor and the AMA acknowledged that this was very unusual. In this case, the AMA believed that contacting the husband's civil judgement creditor could offer evidence to support a motivation for fraud. In order to contact this creditor, disclosure of the existence of an insurance claim investigation was necessary to introduce the purpose for contact.

- [18] The Organization provided me with evidence to support the fact that after learning of the claim, the Trustee confirmed its legal interest in the insurance monies and wanted to be kept apprised of the claim's progress. After contacting the civil judgement creditor, the creditor also sent a garnishee summons in August 2007 to obtain any of the husband's insurance proceeds directly from AMA.
- [19] The AMA advised that its concerns were heightened when the wife made the claim for the replacement cost of the contents of the Complainants' home. Her claim was for 90% of the \$300,000 value of the home's contents and declared that the property all belonged to her and the children. The husband, however, did not make a claim for any amount. This again raised the AMA's suspicions about whether the husband was attempting to avoid obligations to the Trustee and creditor and whether the Complainants' intention was to generate income because of concerns about the husband's debt.
- [20] The AMA acknowledged that on a second occasion, it disclosed to the Trustee that almost all of the money for the claim for the contents of the home would be paid to the wife. The Organization represented that this was done in accordance with the *Bankruptcy and Insolvency Act*, and section 20(b) of PIPA permits a disclosure pursuant to another statute. The AMA's disclosure would ensure that it adhered to the law and would not be in a position of paying money out to the wife only to learn that it had to recover the money from her or pay out a second amount to the Trustee.
- [21] On learning the above, the Trustee advised the AMA that it sought to establish whether or not the claim was legitimate, in accordance with its duties under the *Bankruptcy and Insolvency Act*. There was concern that the disproportionate claim was a tactic to direct insurance payout away from the husband to subvert the Trustee's entitlement to the funds. The Trustee, therefore, requested the Schedule of Loss itemizing the wife's possessions (a third disclosure to the Trustee). The Organization had not, at the time this complaint was made, disclosed the wife's completed Schedule of Loss to the Trustee, as requested. The AMA requested that the Trustee obtain a court order. Such an order has since been obtained.

IV. ISSUES

- [22] The issues to be examined in this report are as follows:
 - (a) Did the Organization require the consent of the Complainants, in accordance with section 7(1)(a) and (b) of PIPA, in order to collect their personal information?
 - (b) Did the Organization require the consent of the Complainants, pursuant to section 7(1)(d) of PIPA, in order to disclose their personal information?

V. ANALYSIS

- (a) Did the Organization require the consent of the Complainants, in accordance with section 7(1)(a) and (b) of PIPA, in order to collect their personal information?
- [23] Section 1(k) of PIPA broadly defines personal information to mean "information about an identifiable individual." From my review of the personal information collected (and disclosed) by the AMA, I find the information names the Complainants and is about them. It therefore qualifies as the Complainant's personal information under section 1(k) of PIPA. As such, the provisions of PIPA apply to the AMA's collection, use and disclosure of this information.
- [24] Section 7(1)(a) and (b) of the Act requires organizations to obtain consent from individuals prior to collecting their personal information:
 - 7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,
 - (a) collect that information unless the individual consents to the collection of that information.
 - (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source...

The exceptions to the general requirement to obtain consent in order to collect personal information are laid out in section 14 of PIPA. If one of the exceptions to consent applies, an organization may collect personal information from sources other than the individual whom the personal information is about according to section 12.

- [25] The Complainants alleged that the Organization collected their personal information without proper authority under the Act. They maintained that the AMA collected information from retailers, the previous owner of their home, their employers, the wife's mother, and other relatives. The information collected appeared to be related to the value of property that was claimed, as well as income information.
- [26] The AMA acknowledged that it collected information about the Complainants' claim from these and other sources such as the civil judgement

creditor. However, the AMA had, through its agent, obtained the husband's express consent to do so. The consent form stated the following:

In order to facilitate the administration of the above policy, and particularly the claims process, I authorize AMA and [adjuster] and their authorized representatives to collect, use and disclose personal information as permitted by law and for the purposes necessary to investigate and settle claims, detect and prevent fraud, validate information provided, and exchange information with other property and casualty insurance companies, adjusters, assessors, valuators and other insurance related services or information providers, as dictated by prudent insurance industry practices.

Another form signed by the husband stated:

The Insurer may make such investigations of the occurrence and claims arising there from as it deems necessary.

- [27] Notwithstanding the consent referred to above, the AMA also stated that in the present case, it had grounds to collect personal information pertaining to both Complainants without consent. Prior to the fire claim, the Complainants had made a claim for damage caused by a sewer back-up in their basement. The AMA had suspicions that receipts submitted for reimbursement for that claim were fraudulent. The extent of damage claimed by the Complainants in that incident also appeared questionable to the AMA. Examples of this were provided to me. Within two months, and prior to settlement of the first claim, the Complainants submitted a second claim for the fire. The husband had also voluntarily revealed some information to the AMA about his bankruptcy and civil judgement creditor. Under these circumstances, the AMA believed that there were reasonable grounds to initiate an investigation to detect insurance fraud.
- [28] The AMA first relied on publicly available information to pursue its investigation. These public sources confirmed that one of the Complainants, the husband, had assigned himself into bankruptcy in February 2006 from which he would not be discharged until March 2008. The Organization also determined that the husband had a civil judgement for almost \$77,000 awarded against him. This reinforced grounds to continue investigating given that financial circumstances such as these could, in some cases, suggest a motive for insurance fraud.
- [29] Under section 14 of PIPA, consent is not required to collect personal information, if, among other exceptions, information is publicly available:
 - 14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable...
 - (e) the information is publicly available;

The term "publicly available" is defined in section 7 of the PIPA Regulation. Section 7(c) of the PIPA regulation states that:

7 For the purposes of sections 14(e), 17(e) and 20(j) of the Act, personal information does not come within the meaning of "the information is publicly available" except in the following circumstances...

(c) the personal information is contained in a registry that is
 (i) a Government registry, or
 (ii) a non-governmental registry,

but only if the collection, use or disclosure of the information relates directly to the purpose for which the information appears in the registry and that purpose is an established purpose of the registry;

- [30] The information pertaining to the bankruptcy and civil judgement award was collected by the AMA from the Personal Property Registry, a public registry maintained by Alberta Registries. The generally accepted purpose for the registry is to enable a party to determine whether an individual is subject to any encumbrances and if money is about to be paid out to an individual, to ensure no one else has priority over the funds. I therefore find that the AMA did not require the consent of the husband to collect this personal information, pursuant to section 14(e) of the Act. That is to say, consent was not required under section 7(1)(a) since the information was publicly available.
- [31] Another exception to the requirement to obtain consent to collect personal information under PIPA relates to whether the purpose for the collection is for an investigation or legal proceeding:

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable...

(d) the collection of the information is reasonable for the purposes of an investigation or a legal proceeding.

The definition of investigation in PIPA is:

- 1(f) "investigation" means an investigation related to
 - (i) a breach of agreement,
 - (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or
 - (iii) circumstances or conduct that may result in a remedy or relief being available at law,

if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation;

- [32] I find that the AMA also had authority to collect the husband's personal information from the Personal Property Registry for the purpose of its investigation under section 14(d) of PIPA, even though section 14(e) already applied. If fraud were proven, it could result in a remedy available at law for the AMA, as described in section 1(f)(iii) cited above. Specifically, the claim could be denied, as permitted by the *Insurance Act*. In my view, it was reasonable for the AMA to conduct an investigation in these circumstances given some of the Organization's suspicions.
- [33] The Complainants also alleged that the AMA collected their personal information from retailers, their employers and relatives, as well as the previous owner of their home. The AMA stated that these were not the only sources from which it collected the Complainants' personal information, as has been

mentioned. According to the Organization, express consent was obtained from the husband even though consent was not required as the collection related to the investigation, again pursuant to section 14(d) of PIPA. The AMA indicated that the investigation related to the possibility of insurance fraud, for which reasonable grounds existed.

- [34] The AMA stated it needed to verify the Complainants' income for which compensation was being sought for lost work time. In the case of the husband, the AMA contacted his employer directly, and the wife provided her employment information to the AMA herself. This is consistent with the fact that only the husband's written consent to collect personal information had been obtained. The AMA also contacted retailers in order to ensure that receipts provided by the Complainants for goods they claimed had been lost in the fire were valid. By contacting these retailers, the AMA determined that some of the receipts which were submitted by the Complainants were fraudulent. Similarly, the wife's mother was contacted in order to collect information about the value of Persian rugs which had been destroyed. This was at the wife's suggestion, in other words, with her verbal consent. Finally, the previous owner of the home was contacted in order to verify development and the kind of fixtures in the home which were being claimed as lost.
- [35] Although some of the activities described above may have been required for the purposes of the fraud investigation, I find that some relate more to standard claims adjustment. For example, income verification and valuation of the wife's Persian rugs would likely be a part of the normal claims procedure. Claims adjusters likely undertake these activities prior to reimbursing a claimant, as this is simply due diligence on the part of any insurer, even when fraud is *not* contemplated. Of course, in the present case, consent was obtained for this purpose by the AMA, in compliance with section 7(1)(a) and (b) of the Act. The AMA had the wife's verbal consent to contact her mother and the husband's written consent.
- [36] In my view, every insurance claim is not itself a fraud investigation that would invoke section 14(d) of PIPA. In other words, every exaggerated claim of damage or loss does not require an investigation. A fraud investigation must meet the definition of investigation set out in section 1(f) of PIPA. In my discussions with the AMA, this point was fully accepted. It is important to make this distinction since, in my view, normal insurance claims adjustment activity does not constitute an investigation under PIPA for which consent can be avoided.
- [37] Contacting previous owners to obtain photos of house fixtures and property development and determining whether retail receipts were valid is characteristic of an investigation as defined in section 1(f) of PIPA. Such an activity suggests that there are concerns regarding the reliability of an insured which must be carefully examined. In this case, I find that the AMA's concerns were reasonable and that the circumstances necessitated an investigation beyond standard claims adjustment. I find that the AMA did not require the consent of the Complainants (though it was obtained from the husband), to collect personal information from retailers and the previous owner, since the

information was collected for an investigation pursuant to section 14(d) of the Act. Section 549 of Alberta's *Insurance Act*² states, in part:

FRAUD 7 Any fraud or wilfully false statement in a statutory declaration in relation to any of the above particulars, shall vitiate the claim of the person making the declaration

Thus, if the AMA's investigation found evidence of fraud with respect to property claimed on the Proof of Loss and related schedules, a "remedy or relief being available at law" would be to refuse to pay the claim. In my opinion, the information gathered revealed to the AMA that the Complainants were under financial pressure in terms of the husband's bankruptcy and creditor and, taken with the suspicions pertaining to the sewer flood claim, it was reasonable to conduct an investigation in the circumstances.

(b) Did the Organization require the consent of the Complainants, pursuant to section 7(1)(d) of PIPA, in order to disclose their personal information?

[38] Section 7(1)(d) of the Act requires the following:

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.

The exceptions to the general requirement for organizations to obtain consent in order to disclose personal information are laid out in section 20 of PIPA. The AMA relied on section 20(b), (j) and (m) to authorize its disclosure, as will be discussed.

[39] The Complainants argued that they directed the AMA not to have any contact with a particular individual (the civil judgement creditor) or with the Trustee. Thus, the husband's written consent obtained by the independent adjuster for collection, use and disclosure of his personal information could not be relied on here. The Complainants gave specific instructions not to disclose any of their personal information in these cases. This was done on a few occasions in writing. In one case, the wife wrote to the AMA stating:

Please make note, as I am insured under your policy regardless of if I am on your declaration page. I will not allow my name and my kids name [sic] and my contents or my proof of loss to be in any way sent to [Trustee].

The husband also wrote:

There is to be no contact with [judgement creditor] or [the Trustee]...

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² Insurance Act, R.S.A. 2000, c. I-3

- [40] Beyond these instructions, the Complainants also contended that since the wife was not the bankrupt, the AMA could not disclose her personal information to the Trustee. Despite this, and their directions, the Complainants alleged that the AMA disclosed their personal information to the Trustee and the civil judgement creditor.
- [41] The AMA acknowledged that on more than one occasion the Complainants objected to the AMA communicating with the Trustee or the civil judgement creditor. The AMA argued that it had a legal obligation to disclose the fact that a claim had been made against the husband's policy because the Organization was accountable for making any of the husband's proceeds payable to the Trustee, in accordance with the *Bankruptcy and Insolvency Act*. The civil judgement creditor was contacted through his counsel and disclosure was limited to the fact that an insurance claim existed. This disclosure was necessary to explain the need to gather information for the Organization's investigation; in other words, the reason for making contact. I will first address the disclosure issues as they relate to the creditor.

Disclosure for the Purposes of an Investigation or Legal Proceeding

- [42] Earlier I found that the AMA had cause to conduct an investigation which allowed the Organization to collect the Complainants' personal information without consent, pursuant to section 14(d) of PIPA. In order to collect information from the creditor, the AMA had to disclose the fact that the AMA was conducting said investigation with respect to a claim. I find that this was authorized under section 20(m) of the Act. It states:
 - 20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:
 - (m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding.

I also considered whether section 20(m) of PIPA might apply in the case of a legal proceeding. The definition of "legal proceeding" may be found in section 1(g) of PIPA, which reads:

- 1(g) "legal proceeding" means a civil, criminal or administrative proceeding that is related to
 - (i) a breach of an agreement,
 - (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or
 - (iii) a remedy available at law;
- [43] The creditor and the husband were involved in a civil legal proceeding for which there was a resulting "remedy available at law" to the creditor. The creditor could issue a garnishee summons under Part 8 of the *Civil Enforcement Act.* I also noted section 4(5) of PIPA, which states:
 - 4(5) This Act is not to be applied so as to...
 - (b) limit the information available by law to a party to a legal proceeding...

- [44] Thus, PIPA could not be applied in a manner that restricted disclosure of information to the civil judgement creditor that would affect his enforcement of the civil judgement award. PIPA was not intended to assist individuals in avoiding any obligations to creditors stemming from legal proceedings. The *Civil Enforcement Act* allows enforcement creditors to seize property or cash bound by a writ of enforcement even from third parties by means of garnishment. In fact, in response to the limited information disclosed by the AMA, the creditor did issue a garnishee summons to the Organization for any claim money available to the husband. It should be noted, however, that section 70(1) of the *Bankruptcy and Insolvency Act* gives precedence to the Trustee over any garnishments.
- [45] I will now turn to the AMA's disclosure of the Complainants' personal information to the Trustee. Once the Trustee learned about the insurance claim, it advised the AMA as follows:

We understand the bankrupt holds house insurance through your organization and has made a claim under his insurance policy for a fire that caused severe damage to his house. We formally notify you that pursuant to section 67 of the Bankruptcy and Insolvency Act, the bankrupt's one half interest in the property located at... vests with the Trustee....

In another letter, the Trustee also stated to the AMA:

Please put us on notice if any proceeds should become available as a result of this policy. We require a projected statement of accounting for the payout of funds with regards to this policy and that no monies should be paid to the bankrupt without consent of the Trustee.

[46] The AMA was therefore in a position wherein the Complainants prohibited disclosure of any information to the Trustee, while the Trustee was demanding more information. Eventually, the Organization disclosed more personal information in writing to the Trustee: that the AMA intended to pay out a claim for damaged and destroyed contents of the Complainant's home; that the husband indicated that the vast majority of possessions were the property of his wife and children and payments should be made to them, and that this amounted to 90% of the approximate \$300,000 claim. In its letter to the Trustee, which was copied to the Complainants, and in response to this complaint, the AMA relied on sections 20(b), (j), and (m) of PIPA as authorizing this disclosure.

[47] Section 20 of PIPA states, in part:

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable...

- (b) the disclosure of the information is pursuant to a statute or regulation of Alberta or Canada that authorizes or requires the disclosure...
- (j) the information is publicly available...
- (m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding...

[48] I will first examine each of these three arguments in succession as they relate to the AMA's disclosure to the Trustee, having already disposed of the issue related to the creditor. After examination of these three arguments, I will examine another disclosure incident that occurred during the course of this investigation in which the AMA was preparing to disclose the wife's Proof of Loss and Schedule of Loss to the Trustee in response to a court order. Finally, I will address whether withdrawal or variance of consent by the Complainants could be entertained by the AMA.

Disclosure Pursuant to a Statute

[49] In accordance with section 20(b) of the Act, an organization may disclose personal information without the consent of the individual if the disclosure is authorized by other legislation. In the present case, the federal *Bankruptcy and Insolvency Act* is the relevant statute. The Organization cited section 19(3), 24(2), 163(2) and 164(1) of the *Bankruptcy and Insolvency Act* as being applicable. Essentially, the first three sections state:

- a trustee must verify the bankrupt's statement of affairs;
- insurance monies with respect to a bankrupt are payable directly to the trustee; and
- a court order may be obtained to require examination of relevant persons under oath and production of documents for the trustee.

The last section cited by the AMA, 164(1) of the *Bankruptcy and Insolvency Act*, states:

164 (1) Where a person has, or is believed or suspected to have, in his possession or power any of the property of the bankrupt, or any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property, or showing that he is indebted to the bankrupt, he may be required by the trustee to produce the book, document or paper for the information of the trustee, or to deliver to him any property of the bankrupt in his possession..

[50] The Complainants maintained that since the wife was not the bankrupt, information pertaining to her in particular could not be disclosed to the Trustee without her consent. The AMA responded by citing *Bawolin v. Wood-Layton*³, which established that a trustee is entitled to the finance-related documents of not only the bankrupt, but also of a third party, provided there is a rational connection between the two:

The plaintiff argues that ss. 161-167 of the Bankruptcy and Insolvency Act limit the trustee's power to an investigation of the affairs of the bankrupt, and that the trustee has no power to investigate the personal financial affairs of a person other than the bankrupt.

Section 164(1) gives the trustee power to require any person who has, or is believed or suspected to have, "any book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property" to produce the book, document or paper. Section 164(3) provides for the examination of that person in relation to the documents.

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³ Bawolin v. Wood-Layton, 2005 SKQB 365, 15 C.B.R. (5th) 172

Section 164(2) provides for the examination of that person in relation to documents that he or she has failed to produce.

Section 167 further provides: "Any person being examined is bound to answer all questions relating to the business or property of the bankrupt, to the causes of his bankruptcy and the disposition of his property."

The breadth of these provisions contemplates the circumstances of this case. The trustee suspects that the plaintiff has documents relating to the bankrupt, his dealings or property. That entitles the trustee to require the plaintiff to produce such documents, in the cause of the trustee investigating the affairs of the bankrupt [Bawolin v. Wood-Layton, 2005 SKSQ 365, 15 C.B.R. (5th) 172].

- [51] Bawolin v. Wood-Layton offers the court's interpretation of a trustee's broad purview as set out in sections 164 and 167 of the Bankruptcy and Insolvency Act. In my view, an obvious connection exists between the financial affairs of a husband and wife, despite the Complainants' contention that all of the husband's assets had been sold to his wife. It would be incumbent on the Trustee to examine documents to this effect.
- [52] I am satisfied that the AMA was not required to obtain the Complainants' consent as required by section 7(1)(d) of PIPA to disclose their personal information to the Trustee. The disclosure was pursuant to a federal statute and section 20(b) of PIPA authorized the disclosure. My opinion is supported by the Assistant Privacy Commissioner of Canada, who, in similar circumstances, decided that:

...the information in that file constituted a "book, document or paper of any kind relating in whole or in part to the bankrupt, his dealings or property" and the trustee was therefore within its power under subsection 164(1) to compel the production of the information. Although the information related in part to the complainant, it also related in part to the bankrupt who held the mortgage [PIPEDA Case Summary #336].

Disclosure When Information is Publicly Available

- [53] In accordance with section 20(j) of PIPA, an organization may disclose personal information without the consent of the individual if the information is publicly available. In the present case, the AMA suggested that, since the dollar amount of the Complainant's insurance claim was published in a newspaper, consent was not required to disclose the information to the Trustee.
- [54] With respect to newspapers being publicly available, the PIPA Regulation states:
 - 7 For the purposes of sections 14(e), 17(e) and 20(j) of the Act, personal information does not come within the meaning of "the information is publicly available" except in the following circumstances...
 - (e) the personal information is contained in a publication, including, but not limited to, a magazine, book or **newspaper**, whether in printed or electronic form, but only if
 - (i) the publication is available to the public, and
 - (ii) it is reasonable to assume that the individual that the information is about provided that information [emphasis added].

- [55] Before the AMA's disclosure to the Trustee, an article had appeared in the Complainants' town newspaper in which some dollar figures pertaining to the claim were quoted, reportedly from the husband. The article described the husband's experience with the AMA and contained many quotes attributed to him. However, I note that these figures (\$495,000 to replace home, insurance coverage of \$225,000) were not the same as that which was disclosed to the Trustee (\$300,000 claim pay out). Neither was the fact that 90% of the insurance money would be paid to the wife discussed in the newspaper article.
- [56] I therefore find that section 20(j) of the Act did not authorize the AMA to disclose to the Trustee the amount of the claim or to whom claim money would be paid. Instead, section 20(j) could only apply to disclosure of the fact the Complainants experienced a fire, that a claim was made to the AMA, and other facts specifically cited in the article. However, I have already found that consent was not required pursuant to section 20(b) of PIPA and that the Organization acted in compliance with PIPA.

Disclosure Reasonable for the Purposes of an Investigation

- [57] In accordance with section 20(m) of PIPA, an organization may disclose personal information without the consent of the individual if the disclosure is reasonable for the purposes of an investigation. The AMA argued that two investigations requiring disclosure were underway: one by the AMA and the other by the Trustee.
- [58] Section 24(2) of the *Bankruptcy and Insolvency Act* requires an insurer to direct a bankrupt's claims proceeds to a Trustee:
 - 24(2) All insurance covering property of the bankrupt in force at the date of the bankruptcy shall in the event of loss suffered, without any notice to the insurer or other action on the part of the trustee and notwithstanding any statute or rule of law or contract or provision to a contrary effect, become payable immediately to the trustee as if the name of the trustee were written in the policy or contract of insurance as that of the insured or as if no change of title or ownership had come about and the trustee were the insured.

The AMA argued that in the event that the Organization paid the entire claim out to the wife, when in fact some was owed to the husband and was therefore payable to the Trustee, the AMA may have been required to either recover the money from the wife or make a second payment to the Trustee. Therefore, according to the AMA, it was necessary to determine how the money ought to be paid out. I am not satisfied that examining an organization's legal obligations in itself represents an investigation into the contravention of an enactment pursuant to section 20(m). Neither do I find that the AMA's internal investigation into the possibility of insurance fraud is relevant here. The AMA had a legal obligation to determine to whom money was owed, which exists independent of an investigation into the veracity of the fire claim. I do not find that assessing and evaluating a legal obligation in itself constitutes an investigation as contemplated by PIPA. More to the point, it was not necessary for the AMA to disclose the Complainants' personal information in pursuit of determining a legal obligation.

- [59] I am satisfied, however, that the Trustee was conducting an investigation into the husband's affairs in accordance with the *Bankruptcy and Insolvency Act*, thereby enabling the AMA to invoke section 20(m) of the Act in disclosing his personal information without consent.
- The wife was claiming most of the \$300,000 related to the fire, whereas, the husband was claiming practically nothing. This could appear to be a tactic to prevent the Trustee from intercepting the insurance money, since only the husband was the bankrupt. However, section 91(1) of the Bankruptcy and Insolvency Act renders settlement of property by the bankrupt - including to a spouse - void. If the wife acquired proceeds from the bankrupt through a void agreement, those proceeds become the property of the Trustee under section 98(1) and, according to section 98(2) of the Bankruptcy and Insolvency Act, are recoverable by the Trustee. Fraudulent disposition of the bankrupt's property before or after the date of the initial bankruptcy event is an offence under section 198(1)(a) of the Bankruptcy and Insolvency Act. This activity would compel the Trustee in this case to investigate, as the Trustee confirmed to me. Any efforts by the Complainants to subvert the Trustee's claim to insurance money would also be significant since, as an insurer, the AMA has an obligation under section 24(2) of the Bankruptcy and Insolvency Act to turn money over that is legally owed to the Trustee.
- [61] I find that the AMA was authorized to disclose information about the Complainant's fire claim to the Trustee for the purposes of the Trustee's investigation into the affairs of the husband, pursuant to the *Bankruptcy and Insolvency Act*, which also states:
 - 19(3) The trustee **shall** verify the bankrupt's statement of affairs.
 - 158 A bankrupt shall...
 - (b) deliver to the trustee all books, records, documents, writings and papers including, without restricting the generality of the foregoing, title papers, insurance policies and tax records and returns and copies thereof in any way relating to his property or affairs...
 - (n.1) inform the trustee of any material change in the bankrupt's financial situation...
- [62] The AMA stated it had cause to believe, under these circumstances, that the Trustee may not have been aware of the fire claim and that proceeds stemming from the claim were being paid to the wife rather than the husband, and therefore the Trustee. In the context of the sections of the *Bankruptcy and Insolvency Act* discussed, the Trustee is obligated to verify whether the sale of property by the husband to the wife and paying the full claim to the wife was voidable by law. The AMA stated a potential contravention of an enactment would necessitate an investigation by the Trustee, besides which, the Trustee has an obligation to verify the husband's statement of affairs. I accept this argument and agree that the Trustee's written correspondence to the AMA demonstrated that an investigation was underway in response to this concern [see quote from Trustee below].

[63] I find that in accordance with section 20(m) of the Act, the Organization did not require the consent of the Complainants to disclose their personal information to the Trustee. This is in addition to section 20(b) of PIPA which also authorized the AMA's disclosure pursuant to another statute. The Organization therefore acted in compliance with PIPA.

Disclosure in Compliance with an Order

[64] Although my analysis reveals that the Organization had authority to disclose the Complainants' personal information to the Trustee, the AMA nonetheless requested that the Trustee obtain a court order to collect more detailed information it later demanded, including the wife's Proof of Loss and Schedule of Loss. The latter document itemized the property being claimed. The Trustee's stated interest in this information lay in:

...investigating the proof of loss claim made in this matter by either [the husband] or his spouse and children. The principle concern of the Trustee is that [the husband] swore in his Statement of Affairs that his home furnishings were held jointly with his spouse... As you can appreciate, when a party uses the term "joint" the legal position at least starts at a 50-50 assumption. The Trustee is attempting to evaluate whether [the husband] has that 50% interest in the property and accordingly it has a statutorily mandated obligation to investigate the proof of loss claim made by the family in relation to this matter.

- [65] The AMA requested the Trustee obtain a court order for disclosure of this information because the Complainants alleged that such a disclosure would be contrary to PIPA, particularly since the Schedule of Loss was the wife's purported personal information in which the Trustee did not have any interest. On September 19, 2007, the Alberta Court of Queen's Bench issued an order that required the AMA to provide the Trustee with the Proof of Loss and Schedule of Loss related to *both* Complainants.
- [66] Section 20(e) of PIPA allows an organization to disclose personal information without consent for the purposes of complying with a court order:
 - 20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:
 - (e) the disclosure of the information is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;
- [67] I find that the disclosure of the Proof of Loss and Schedule of Loss by the AMA was in compliance with PIPA as section 20(e) applied and consent was not required.
- [68] To the extent that the Complainants' prohibition against the AMA having contact with the Trustee or civil judgement creditor could be considered a withdrawal or variance of consent that is permitted under section 9(1) of PIPA, I find that the AMA was not required to heed any variance of consent in this case. Since I have found that the AMA had particular legal obligations which did not even require the Complainant's consent under PIPA, any variance in consent by

the Complainants would not have to be observed according to section 9(5) of PIPA, which states:

9(5) If withdrawing or varying a consent would frustrate the performance of a legal obligation, any withdrawal or variation of the consent does not, unless otherwise agreed to by the parties who are subject to the legal obligation, operate to the extent that the withdrawal or variation would frustrate the performance of the legal obligation owed between those parties...

VI. SUMMARY OF FINDINGS

- [69] In this investigation, I have found the following:
 - The AMA obtained written consent (through its agent) from the husband to collect, use and disclose his personal information for the purposes of investigating and settling the claim and detecting fraud. This consent was in accordance with section 7(1)(a) of PIPA.
 - Despite consent obtained, the AMA did not require the consent of the husband to collect information about his bankruptcy and civil judgement since the collection was for the purposes of an investigation and the information was publicly available. This is in compliance with section 14(d) and (e) of the Act.
 - Despite the consent obtained, the Organization did not require the consent from the husband to collect information from retailers to confirm validity of receipts or from the previous owner of the house since collection of this personal information was for an investigation, pursuant to section 14(d) of the Act.
 - The Complainants' consent was required for the AMA to collect income and employment verification and the value of the Persian rug claimed since this relates to standard claims adjudication. Written consent was obtained by the AMA from the husband in accordance with section 7(1)(d) of PIPA. Consent was also obtained from the wife who provided her employment information herself and referred the Organization to her mother.
 - The AMA could disclose information about the existence of the claim to the husband's civil judgement creditor because it was gathering information from him for the purposes of an investigation. Also, PIPA cannot be applied so as to limit information available to a party to a legal proceeding according to section 4(5)(b).
 - The AMA did not require the consent of the Complainants to disclose information about their claim to the Trustee, since the disclosure was pursuant to the *Bankruptcy and Insolvency Act*. Section 20(b) of PIPA permits disclosure of personal information without consent when authorized or required by federal or provincial legislation.
 - The AMA could *not* have disclosed this same information under section 20(j) without consent since, although some information was publicly available in a newspaper, the information actually disclosed by the AMA to the Trustee had not been made public.
 - The AMA did not require the consent of the Complainants to disclose information about the claim to the Trustee, since the disclosure was for

- the purposes of an investigation by the Trustee, pursuant to section 20(m) of PIPA and PIPA's definition of investigation.
- The AMA did not require the consent of the wife to disclose her Proof of Loss and related schedules to the Trustee, since the disclosure was for the purposes of adhering to a court order, pursuant to section 20(e) of PIPA. I am satisfied that a court order would not be necessary under these circumstances since section 20(m) and (b) also applied.
- Where consent is not required, consent by the Complainants could not be withdrawn according to section 9(1) of the Act. Furthermore, pursuant to section 9(5) of PIPA, withdrawal of consent is not permissible when it would frustrate a legal obligation.
- [70] I am persuaded that the husband had no capacity to dictate to the AMA how any property was managed and how claims proceeds should be paid. Section 71 of the *Bankruptcy and Insolvency Act* is clear that "a bankrupt ceases to have any capacity to dispose of or otherwise deal with their property."
- [71] Since I found that the AMA did not contravene PIPA, I made no recommendations to the Organization with respect to this complaint. The AMA and the Complainants accepted these findings.
- [72] This matter is considered resolved and is now closed.

VII. CONCLUSIONS

- [73] Insurance companies require consent from policyholders to adjust claims because this activity requires collection, use and disclosure of personal information. Individuals cannot refuse consent for reasonable collection, use or disclosure and still expect their claims to proceed. However, standard claims adjustment by an insurer does not, in each and every case, constitute an "investigation" for the purposes of PIPA. When there are reasonable grounds to initiate an investigation because the insurer believes the insured may be violating an agreement, contravening a statute, or because his or her conduct may result in a legal remedy available to the insurer, consent is not required. It is therefore important for insurance companies to document when and why standard claims adjustment has escalated to an investigation.
- [74] Insurance companies also have statutory obligations to trustees who may be managing the financial affairs of the insured. Consent is not required to disclose personal information reasonably required for compliance with the *Bankruptcy and Insolvency Act* or to cooperate with a trustee's investigation, despite the insured's wishes.

Preeti Adhopia Portfolio Officer