

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2023-05

April 5, 2023

TD INSURANCE MELOCHE MONNEX

Case File Number 010267

Office URL: www.oipc.ab.ca

Summary: An individual made a complaint under the *Personal Information Protection Act* (PIPA) alleging that TD Insurance Meloche Monnex (the Organization) required insurance claimants to consent to the collection, use and/or disclosure of personal information beyond what was necessary to process the claim, in contravention of section 7(2) of PIPA.

The Adjudicator found that, for the most part, the Organization was in compliance with the Act. However, the Adjudicator was unable to determine whether some of the collections, uses and/or disclosures were necessary within the terms of section 7(2) of the Act. She ordered the Organization to review its consent practices in view of the guidance and discussion set out in the Order.

Statutes Cited: AB: *Insurance Act*, R.S.A. 2000 c. I-3, s. 803, *Personal Information Protection Act* S.A. 2003, c. P-6.5, ss. 7, 13, 52;

Authorities Cited: AB: Orders P2009-004, P2012-10, P2012-11, P2014-06, P2016-07, P2018-03, P2021-01, P2021-06

Cases Cited: AB: *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94

I. BACKGROUND

[para 1] The Complainant filed a complaint alleging that TD Insurance Meloche Monnex (TD Insurance or the Organization) was in violation of section 7(2) of the *Personal Information Protection Act* (PIPA) by requiring consent to disclosure of more personal information than is necessary to provide its insurance services.

[para 2] The Complainant was injured in a motor vehicle accident. He was seeking treatment for injuries to which he was statutorily entitled under the Alberta Diagnostic and Treatment Protocols Regulation (the DTPR). These are commonly referred to as “Section B” or “no fault” insurance benefits. The Complainant states that the Organization asked him to fill out/agree to an additional consent form entitled “Written Consent and Notice”, notwithstanding that he had filled out the prescribed insurance form that is used when an accident benefit is being claimed and which sets out consent to collect personal information for that claim (Form AB-1).

[para 3] The Complainant refused to sign the TD consent form on the basis that the consent sought was overly broad.

[para 4] The Commissioner authorized a senior information and privacy manager to investigate and attempt to settle the matter. The Complainant subsequently requested an inquiry.

II. ISSUES

[para 5] The issue set out in the Notice of Inquiry by the adjudicator previously assigned to this inquiry is as follows:

Did the Organization, as a condition of supplying a product or service, require the Complainant to consent to the collection of their personal information beyond what is necessary to provide the product or service, contrary to section 7(2) of the Act?

[para 6] After reviewing the parties’ submissions, it became clear that this issue didn’t fully address the issue raised by the Complainant in his complaint. As stated above, the Complainant refused to provide consent for the Organization to collect personal information as requested by the Organization. The Complainant acknowledges that the Organization agreed to waive any additional consent to process the Complainant’s claim.

[para 7] However, the Complainant’s complaint to this office raised a concern that the Organization continues to require other claimants to consent to the collection of more personal information than is necessary to process claims.

[para 8] Under the Act, a complaint can be made about a particular collection, use or disclosure of personal information in contravention of the Act (section 36(2)(e)); a complaint can also be made regarding whether an organization is in compliance with the Act (section 36(2)(f)). This latter type of complaint has led to inquiries into an organization’s general practices (see Orders P2009-004, P2016-07, P2021-01). The

Complainant's complaint and his request for inquiry both raise concerns about the Organization's practices, rather than merely his own particular circumstance.

[para 9] As such, by letter dated January 6, 2023, I added the following issue to this inquiry:

Does the Organization require individuals to consent to the collection, use or disclosure of personal information beyond what is necessary to provide the product or service, in contravention of section 7(2) of the Act?

[para 10] In my letter to the parties, I also explained that it may also be relevant to review how the Organization informs claimants about what they are being asked to consent to. I said:

For example, it is possible that there may be a disconnect between what claimants (including the Complainant) believe they are being asked to consent to, and what they *are* being asked to consent to, when making a claim. Therefore, I have questions about the Organization's notification practices, as they relate to the claims process.

Section 13(1) of the Act requires organizations to inform individuals of the purposes for which their personal information is being collected. It also requires an organization to identify a contact person to answer questions an individual may have about the collection of their personal information. This notification requirement ensures an individual is able to provide informed consent. In this way, the notification and consent rules in the Act are interconnected.

[para 11] As such, I also added the following issue to the inquiry:

Are the Organization's notification practices in compliance with section 13(1) of the Act?

[para 12] This issue relates to the notification provided to claimants with respect to the collection of their personal information when making a claim.

III. DISCUSSION OF ISSUES

[para 13] In their submissions, the parties both refer to various insurance forms, such as the AB-1 form. Before considering the issues for the inquiry it is helpful to provide some background regarding these forms.

[para 14] Section 803 of the *Insurance Act*, R.S.A. 2000 c. I-3, states that any forms established by the Minister for the purpose of that *Act* or any regulations of that *Act* must be used for the purposes of the Act and regulations.

[para 15] There are forms for all accident benefit claims, including those under the Alberta Diagnostic and Treatment Protocols Regulation (the DTPR). My understanding is that these forms must be used when making a claim for any accident benefits under the DTPR or Automobile Insurance Accident Benefits Regulation.

[para 16] Bulletin 01-2017¹ issued by Treasury Board and Finance provides a helpful summary of the various forms prescribed by the Superintendent of Insurance under the *Insurance Act*. It states:

Form Number	Form Name	Who Completes the Form
AB-1	Notice of Loss and Proof of Claim	Completed by claimant
AB-1A	Claim for Disability Benefits	Completed by physician
AB-2	Treatment Plan	Completed by Primary Health Care Practitioner (PHCP)
AB-3	Progress Report	Completed by PHCP at request of insurer
AB-4	Concluding Report	Completed by PHCP who provided treatment and completed form AB-2 or has completed the majority of treatment visits
AB-5	Referral to an Injury Management Consultant	Completed by PHCP who is requesting the consult
MI-1	Request for an Assessment by a Certified Examiner	Completed by the applicant – either the claimant or insurer
MI-2	Application to the Superintendent of Insurance to Select a Certified Examiner	Completed by the applicant – either the claimant or insurer
MI-3	Certified Examiner Prescribe Form for Providing an Opinion	Completed by the Certified Examiner

[para 17] The form used by the Complainant in this case is the AB-1 form.

[para 18] The Organization states that the legislated insurance forms do not apply to some claims, such as Auto Property Damage claims or Casualty claims. In addition to his accident benefit claim, the Complainant had also made a property damage claim.

Did the Organization, as a condition of supplying a product or service, require the Complainant to consent to the collection of their personal information beyond what is necessary to provide the product or service, contrary to section 7(2) of the Act?

[para 19] Section 7(2) of the Act states:

7(2) An organization shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or disclosure of personal information about an individual beyond what is necessary to provide the product or service.

[para 20] The Complainant states that he has (or had, at the relevant time) auto insurance with the Organization. The Complainant was in a collision in 2018, and made a

¹ <https://open.alberta.ca/dataset/80b795f6-c781-4268-9da2-f21e1d3cc338/resource/7c7fa1f0-ccbb-49c4-8fe0-a04f1f2a82ac/download/superintendent-of-insurance-2017-01-bulletin.pdf>

claim with the Organization regarding that collision. The Complainant states that a passenger in his vehicle was also covered by Complainant's insurance, and the Complainant made a claim on the passenger's behalf as well.

[para 21] The Complainant also states that he acted as a representative for a third party with respect to another claim in 2019. That 2019 claim appears unrelated to the claim made by the Complainant in 2018.

[para 22] With respect to his own claim, the Complainant initiated the claim by phone. The Organization employee who took the call played a pre-recorded consent script during that call. The Complainant initially provided his consent in response to the script, but did not answer all of the employee's questions. After that call, the Complainant revoked the consent he had provided in that call, by letter dated July 29, 2018.

[para 23] I understand from the Complainant's submissions that the Organization informed the Complainant that it could not proceed when he withdrew his consent following the phone call with the Organization representative. I have copies of emails between the Organization and Complainant, where the Organization informed the Complainant that it could not proceed without consent, and the Complainant asked for clarification.

[para 24] The Organization's submissions indicate that the Organization understood the Complainant to have withdrawn all consent to the collection, use and disclosure of his personal information. Without consent to any collection, use or disclosure, the Organization could not proceed.

[para 25] According to the Organization's consent script (reproduced at paragraphs 42-44, below) and the Organization's submissions, where a claim is only for an accident benefit to which the forms under the *Insurance Act* relate, a claimant need only complete the form for the claim to be processed; additional consent to collect, use or disclose personal information is not required.

[para 26] The Organization provided me with a copy of the transcript of the Complainant's call to the Organization, initiating his claim (dated July 7, 2018). The Organization also provided me with a copy of the Complainant's AB-1 form, dated July 10, 2018, as well as a copy of the Complainant's letter to the Organization revoking all consent (July 29, 2018).

[para 27] It may be the case that the Complainant intended in his July 29 letter to revoke consent to any collection, use and disclosure of his personal information outside of the consent provided in the AB-1 form. From the Organization's submissions, it appears that the Organization understood the Complainant to revoke all consent, including the consent provided in the AB-1 form. It may be the Complainant and Organization misunderstood each other on this point, in the subsequent conversations between the Complainant and Organization regarding what the Organization was requiring consent for.

[para 28] In any event, by letter dated August 14, 2018, the Complainant provided the Organization with his consent to the collection, use and disclosure of identified personal information for the purpose of processing his claim. The Organization agreed to process the Complainant's claim on the basis of this narrowed consent.

[para 29] Given the above, while the Organization may have initially asked the Complainant to provide consent to the collection, use and/or disclosure of personal information beyond what was necessary to process his claim, the Organization ultimately processed the claim on the basis of the narrower consent provided by the Complainant. As such, the Organization ultimately did not require consent beyond what was necessary, for the purposes of section 7(2) of the Act.

Does the Organization require individuals to consent to the collection, use or disclosure of personal information beyond what is necessary to provide the product or service, in contravention of section 7(2) of the Act?

[para 30] While the Complainant acknowledges that the Organization ultimately did not require him to provide consent to the collection, use and/or disclosure of personal information beyond what was necessary to process his claim, he argues that the Organization still routinely requires claimants to consent to more than what is necessary, as a general practice.

[para 31] The Complainant argues that the only consent that is needed to process his claim is the consent set out in the Notice of Loss and Proof of Claim form (Form AB-1) under the DTPR. The Complainant states that any additional consent required by the Organization is more than what is needed to process the claim, and is therefore a contravention of section 7(2) of the Act.

[para 32] The Alberta Court of Appeal discussed the application of section 7(2) in *Leon's Furniture Ltd. v. Alberta (Information and Privacy Commissioner)*, 2011 ABCA 94. The Court's analysis was subsequently discussed in several Orders.

[para 33] For example, in Order P2012-10, the Director of Adjudication considered whether it was reasonable for car rental companies to make and retain copies of customers' drivers' licenses before allowing the customer to rent a vehicle. She made the following comments regarding section 7(2) (at paras. 14-22):

Section 7(2) was the subject of extensive commentary in the decisions of the Alberta Court of Queen's Bench and the Alberta Court of Appeal in appeals of the decision of the Adjudicator in Order P2008-004.

To explain, all three levels of decision in the Leon's case discussed whether the collection of information had to be "necessary" or whether it only had to be "reasonable". The Adjudicator, whose decision was upheld by the Court of Queen's Bench, thought that section 7(2) requires that the information collection be shown to be "necessary". In contrast, the Court of Appeal thought that the legislation required that the purpose (in that

case of preventing fraud) be necessary, but that the means used to achieve the necessary purpose needed only to be reasonable. The Court said:

If there is a risk of fraud, it is necessary to have policies in place to prevent fraud, and to assist in the detection of those responsible when fraud occurs. So long as those necessary policies are "reasonable" they are unobjectionable. While the adjudicator adopted this definition, she did not accept that the recording of driver's licence numbers was reasonably necessary to prevent fraud.

As well, the Leon's case dealt, at all levels, with the related idea that section 7(2) imports the notion that there must be no less privacy-intrusive means for achieving an organizational goal before the information can be required by the authority of the provision. The Adjudicator disapproved of the recording of driver's licences because she thought there were means of preventing fraud that did not involve collecting and retaining the licence number information. She also did not see how collecting and retaining the information could help prevent fraud or apprehend fraudsters. The Court of Appeal rejected the idea that only the least privacy-intrusive means for achieving the goal could be sustained; rather, it regarded any reasonable means as acceptable. The Court also regarded the collection and retention of this information as a reasonable way to prevent and detect fraud.

In my view, in the context in which the goal to be achieved is to deter or apprehend fraudsters or thieves relative to the goods or services, the necessity test is met where:

1. The goal of preventing or apprehending fraud or theft is necessary in the circumstances, and
2. The collection of the information provides a means that is of significant utility for achieving this goal.

Thus, assuming the goal is reasonable, even if it is the case that there are other means available by which perpetrators could be apprehended which do not involve collection of this information (and thus which do not involve an intrusion on privacy of this type), as long as the information collection provides an important means for finding thieves or deterring them, it is, in my view, "necessary" to collect that information.

This point is similar to a conclusion reached in Order F2008-029 in which it was held that "necessary" in the context of section 41(b) of the *Freedom of Information and Protection of Privacy Act* is met where disclosure of information gives law enforcement officers a means of achieving law enforcement objectives that would be unavailable without that disclosure. That order stated:

In the context of section 41(b), I find that "necessary" does not mean "indispensable" - in other words it does not mean that the CPS [the Calgary Police Service] could not possibly perform its duties without disclosing the information. Rather, it is sufficient to meet the test that the disclosure permits the CPS a means by which they may achieve their objectives of preserving the peace and enforcing the law that would be unavailable without it. If the CPS was unable to convey this information, the [domestic violence] caseworkers would be less effective in taking measures that would help to bring about the desired goals. Because such disclosures enable the caseworkers to achieve the same goals as the

CPS has under its statutory mandate, the disclosure of the information by the CPS also meets the first part of the test under section 41(b).

Thus, even if the appropriate test for collecting the information is that collection is necessary for achieving the goal, in my view, the test of *necessity* is met where the collection is reasonable *in the sense that* it provides an important and effective method for achieving the goal.

Similarly, while I believe the “no less privacy intrusive means available” test is useful in some contexts, I do not believe it applies to the comparison of law enforcement mechanisms each of which is effective. If one mechanism can reasonably be expected to be effective in a given case, it is not necessary to examine whether other means of law enforcement exist which might, depending on unknown future variables or circumstances, also be effective. If, for example, the possession by law enforcement officials of the facial image of a thief allows them to employ measures that are a significant means for locating such persons, the requirement of “necessity” is satisfied, in my view, even though there is a possibility that such a person could be apprehended through other means.

In saying this, I recognize that it is not only thieves but all persons renting vehicles that are required to give photocopies of their driver’s licences. In my view, to justify the infringement of privacy of many for the sake of apprehending only the few, it is necessary to determine not only whether the means for achieving the goal is likely to be significantly effective, but, as already stated above, also whether the goal is a *necessary* one in the circumstances. All levels of decision makers in the Leon’s case agreed that this is one of the components of the test.

I turn to applying these tests to the present case. First, is it necessary for car rental companies to put in place measures that deter or help to apprehend persons who would steal or have stolen the cars they have rented? Second, is collection of the images on driver’s licences a measure that is of significant utility for achieving these goals?

[para 34] While the issue in this case does not relate to drivers’ licenses or car rental agencies, I find the above analysis helpful.

[para 35] In Order P2012-11, the adjudicator cited Order P2012-10 in discussing “reluctant consent” versus voluntary consent. She said (at paras. 44-47):

Section 7(2) is a prohibition against organizations’ requiring consent except where the collection, use, or disclosure of information is necessary for providing a product or service. In my view, this provision may also be cited in support of an organization’s collection, use and disclosure of the required information in that, where the information is given over (even if reluctantly) or its use or disclosure is agreed to (again, even if reluctantly) as long as the collection, use, or disclosure is necessary to provide the product or service, it is permissible. In Order P2012-10, the Adjudicator stated:

...I note that, in my view, it is implicit from section 7(2) that if an organization meets the requirements for requiring information to be given over that are set out in that section, the organization will be permitted to collect, use and disclose the information to the extent that doing these things is necessary for providing the

product or service. It might be useful to have additional words in the provision that explicitly say this, given the potential for confusion where reluctant (rather than voluntary) consent may be involved.

(Order P2012-10 at para 13)

I note that the discussion just quoted is premised on the complainant's having provided the information for a particular purpose when required to do so. It is important to clarify that simply meeting the requirement that the information be necessary is not enough to make the provision operate as an exception to the prohibition against collection, use and disclosure in the absence of consent. Even if an organization actually needs information to provide a product or service, it may not collect, use, or disclose the information unless the individual whose information it is has been engaged in the transaction and has, at a minimum, reluctantly given over the information, or reluctantly agreed to its use or disclosure. Thus, for example, an organization that has an individual's information from another source may not use it for the purpose of providing a product or service, even if it is necessary for it to do so, without engaging the individual on the subject and obtaining agreement. Similarly, an organization may not surreptitiously collect the information and then use or disclose it in such circumstances. If it cannot engage the individual in the transaction and obtain the information with their (albeit reluctant) consent, the organization's only option is to refuse to provide the product or service.

The concept of "reluctant consent" was discussed by the Court of Appeal in the case of *Leon's Furniture Limited v. The Information and Privacy Commissioner of Alberta*, wherein Justice Slatter discussed the meaning of section 7(2) of the Act and stated:

This provision imposes a prohibition on unnecessary contractual terms requiring the disclosure of personal information, but it does provide for what might be called "reluctant consent". The individual does not really want to provide the personal information, but does want to take advantage of the products or services that are available if the information is provided. The *Act* allows an organization to refuse to contract except on the basis that personal information will be provided, so long as that condition of the contract is reasonably necessary...

(*Leon's Furniture Limited v. The Information and Privacy Commissioner of Alberta* 2011 ABCA 94 at para 44)

It is not clear from the language of section 7(2) whether the "consent" referred to therein is consent within the terms of section 8 of the Act. However, section 8 appears to contemplate consent to which the giver is agreeable – in contrast to "reluctant consent" which is given because the information is required by an organization before a product or service will be provided, but which is given only for this reason and contrary to the wishes of the giver otherwise. The idea of "requiring consent" as set out in section 7(2) seems to include, and indeed may be largely directed at, this type of "reluctant consent". In my view, section 7(2) permits consent within the terms of section 7(1) to be "reluctant consent" - it need not be the type of voluntary consent contemplated in section 8. As long as the information is necessary to provide the product or service, such consent will meet the requirement for consent under section 7(1) of the Act nevertheless.

[para 36] I agree with the analyses above. An organization can require an individual to consent to the collection, use and/or disclosure of their personal information, if that collection, use or disclosure is reasonably necessary to fulfill the stated purpose. The purpose of the collection, use or disclosure must be necessary but the manner by which the organization meets that purpose need only be reasonable. In other words, the organization is not required to find the least privacy-intrusive means to meet the purpose so long as the means are reasonable.

[para 37] Two questions must be answered then: Are the Organization's purposes for which consent is requested to collect, use and/or disclose personal information necessary for the service it is providing (in this case, processing auto claims)? If yes, are the methods used by the Organization reasonable to meet that purpose?

Are the Organization's purposes for which consent is requested to collect, use and/or disclose personal information necessary for the service it is providing (in this case, processing auto claims)?

[para 38] To answer this question is it helpful to review the Organization's claim process and the consent it asks claimants to provide in that process.

[para 39] The Organization provided links to its Privacy Code and Privacy Agreement, both of which are available on the Organization's website. The Agreement refers to and incorporates the Code. The Organization states that the Agreement and Code are brought to the attention of individuals prior to their obtaining insurance from the Organization. Policy holders are reminded of the Policy and Code annually with renewal materials.

[para 40] With respect to claims, the Organization states that there are three ways a claim is made: online via the Organization's mobile app; by phone (as was the case with the Complainant); and when the Organization receives a Notice of Loss form (the AB-1 form).

[para 41] When a claim is initiated via the mobile app, the Organization's Privacy Agreement is brought to the attention of the claimant, with a link to the Agreement provided. A claimant must agree to the Agreement to continue with the claim.

[para 42] The Organization states that most claims are initiated by phone. The Organization provided a portion of its Claims Consent Procedure – Privacy and Digital Disclosure document. This document appears to instruct employees how to obtain consent from a claimant over the phone. The consent script is pre-recorded, and the employee plays this recording for the claimant. At the end of the script, the employee asks if the claimant agrees to provide their consent. The script states:

Please listen carefully. Your Advisor can answer questions at the end of this message. In compliance with Privacy legislation, TD Insurance requires your consent for the purpose of assessing, monitoring and quality assurance of your claim. We may collect from, use and exchange information depending on the type of claim which may include financial and medical information with:

- Other insurers
- Financial and/or commercial institutions, including credit agencies
- Agencies that collect data on risks and losses
- Law enforcement or crime prevention agencies
- Our representatives or agents or advisors
- Other individuals or organizations having information related to the claim

Rest assured that your personal information will remain confidential.
Do we have your consent?

Press 1 if you agree, press 2 if you have any questions or disagree, Press 8 if you wish to hear the statement again.

[para 43] If the claimant does not provide consent, the Procedure states:

- If no, informs the customer that their decline/withdraw could mean their claim settlement may be delayed
- Requests the deny/withdraw to be confirmed in writing
- Contacts the Group Manager or designate if there are any concerns with the decline or withdrawal

Note:

The Group Manager or designate may refer the file for further investigation to the:

- Privacy Officer and/or
- SIU

[para 44] The Procedure also clearly sets out rules for Alberta residents; namely, that claims can be settled without the claimant consenting to the above, if the claimant completes the legislated insurance forms. It states:

Note:

Alberta Region only:

- Notwithstanding the above, if an insured and/or claimant denies or withdraws verbal consent in a file however, completes a legislated/mandatory insurance form such as AB-1, AB-1a, AB-2, MI-1 or MI-2, the: Claim cannot be denied based on lack of verbal consent and the claim settlement shall not be delayed for this. The insured and/or claimant is required to provide TDI with a completed (signed) legislated/mandatory insurance form which includes consent for the processing of the AB component of the claim
- Exemption below applies to the processing of the AB component of the claim only

Exemption:

In section 2.1, How Claims Privacy Consent is secured, step 2 of the process, noting information may also be collected, used and/or disclosed without consent under the Exemptions provided under provincial legislation.

[para 45] The partial copy of the Procedure provided by the Organization does not include section 2.1, referenced above. It is not entirely clear what the information under the “Exemption” heading means; possibly claimants are informed that their personal information may also be collected, used and or disclosed without consent where permitted by law.

[para 46] The Organization states that its consent script sets out the purposes for the collection, use and disclosure of personal information; namely, for “assessing, monitoring and quality assurance of your claim.” It states that “each activity included in the consent is a potentially applicable tool that is important and effective in achieving these stated purposes” (initial, at page 2).

[para 47] The Organization also has a Written Notice and Consent form that states:

Written Consent

In compliance with Privacy legislation, we require your consent for the purpose of assessing, monitoring and quality assurance of your claim. We may collect from, use and exchange information depending on the type of claim which may include financial and medical information with:

- Other insurers
- Financial and/or commercial institutions. Including credit agencies
- Agencies that collect data on risks and losses
- Law enforcement or crime prevention agencies
- Our representatives, agents or advisors
- Other individuals or organizations having information relating to the claim

Rest assured that your personal information will remain confidential.
Do we have your consent?

[para 48] The Organization states that this written consent form is not usually used when a claimant initiates a claim by phone. It states (December 6, 2022 submission):

When a claim is initiated over the phone, TDI does not generally provide, or require individuals to sign, the Written Consent and Notice form. In this case, it was provided to the Complainant in August 2018 so that he would have the consent language in writing and be able to identify the specific elements of the consent with which he had concerns. Instead of identifying his specific concerns, the Complainant submitted his complaint along with the form to the OIPC. Normally, this form is only used when a party who needs to provide consent is met in person, and consent has not already been verbally obtained and documented; by TDI field task advisors when they take statements over the phone or in person; or when TDI needs to obtain information and documents from third parties that require written consents to do so. This form is not used for Accident Benefits and Bodily Injury claims at all.

[para 49] Regarding the purposes for collection, the Organization states (initial submission, at page 4):

The types of information and groups with which TDI needs to exchange information depend on three primary factors. First, it depends on the types of claims that are being opened. For example, administration of a PD claim typically does not require an individual's health information, but usually requires coordination with an auto repair shop, rental car company, tow truck company and/or an agent to conduct an appraisal of the damage. The second factor is the circumstances of the claimant. For example, if a claimant has overlapping coverage with another insurer, TDI may need to contact that insurer to determine which policy takes precedence. The third factor is the circumstances of the accident. For example, where police attended the scene of an accident, TDI may need to obtain information from law enforcement.

[para 50] The Complainant expressed concern that the terms 'assessing', 'monitoring' and 'quality assurance' can be interpreted quite broadly.

[para 51] The Organization provided greater detail with respect to the scope of "assessing, monitoring and quality assurance of your claim." It states (initial submission, at pages 9-10):

The Consent seeks to obtain consent "for the purpose of assessing, monitoring and quality assurance of your claim." These purposes are directly tied to providing a national claims intake and administration service. It is reasonable for an insurer, during the claims intake process and going forward, to:

- assess the individual's claim, including the basis for the claim and the individual's entitlement to benefits;
- monitor the claim as it is administered, such as the delivery of benefits; and
- conduct quality assurance on the claim, such as determining and mitigating the risk of fraud or error, ensure compliance with internal procedures and applicable laws, and ensuring good claims handling (e.g. monitoring of the time it takes from opening to closing the claims process so we can improve the experience and process for customers).

[para 52] In its rebuttal submission, the Organization clarified that (at page 4):

The Consent only has the three specified purposes of claim assessment, monitoring and quality assurance; this is not "any purpose." As shown in TDI's initial submissions, the Consent's stated purposes mean exactly what they say. For example, the Consent's purposes do not include marketing and promotional purposes, hiring, assessing eligibility for additional insurance, or collecting on debts.

[para 53] I understand the Complainant's concerns about the possible breadth of the terms used by the Organization. However, the clarified purposes provided by the Organization all appear to be reasonably necessary for the purpose of processing claims. As stated above, "necessary" does not mean "indispensable." In my view, the purposes identified by the Organization are necessary to fulfill its obligations when processing auto claims.

[para 54] The remaining question is whether the means used by the Organization to meet these purposes are reasonable.

Are the methods used by the Organization reasonable to meet its stated purposes?

[para 55] I will begin by considering accident benefit claims, for which there are prescribed forms.

[para 56] When making a claim for accident benefits under auto insurance, my understanding from the *Insurance Act*, the regulations under that *Act*, and the publications of Treasury Board and Finance, is that such claims must be made using the prescribed forms. The AB-1 form is the form used by the Complainant to make his accident benefit claim. From a brief review of the forms, it appears that the AB-1 form is the form primarily used to initiate an accident benefit claim. The other forms appear to apply further in the claim process.

[para 57] The AB-1 form is filled out by the claimant when making an accident benefit claim as a result of an auto accident. The form contains a page-long privacy notice, informing claimants:

- Your Primary Health Care Practitioner or dentist will need to collect personal information from you and from other health service providers and will need to use and disclose your personal information to provide you with appropriate diagnosis, treatment and care.
- The insurance company and its agents will need to collect, use and disclose personal information from you, your Primary Health Care Practitioner, and other health service providers concerning the accident, your injuries, any pre-existing conditions that may impede your recovery progress, the amount of treatment and care provided to you, and any assessments of your injuries and indications as to your treatment progress in order to facilitate contact with your, to determine your eligibility for accident and/or disability income benefits, and to administer your claim.

Under applicable privacy legislation, it is necessary to obtain your consent to authorize the sharing of your personal information as specified above. The legislation also regulates how Primary Health Care Practitioners, dentists, other health service providers, and insurance companies can use and disclose your information once they have it. Parts 5 and 6 of form AB-1 will ask for your consent or that of your Authorized Representative. Refusal to provide your authorization and consent could result in an inability to provide you with the treatment and care you require (if not covered by Alberta Health Care Insurance) and may result in an inability for the insurance company to process your claim, in whole or in part.

Your Primary Health Care Practitioner, dentist or other health service provider and the insurance company will retain and rely on a copy of your consent for the period of time that your treatment and care is ongoing and your claim is active. You may revoke your consent at any time in writing to your Primary Health Care Practitioner or dentist and the insurance company or any other person to whom you give consent, subject to continuing

legal obligations. If you have any questions concerning the collection, use or disclosure of your personal information, please ask your Primary Health Care Practitioner, dentist, or your insurance claims representative or adjuster.

[para 58] The Organization argues that it is authorized to ask claimants to consent to the collection, use or disclosure of personal information in addition to the consent obtained via the prescribed forms. It states (initial at page 13):

TDI is not prevented from asking claimants to provide their consent to additional, necessary uses of their personal information during the claims intake and administration process. Nothing in the Alberta *Insurance Act*, the *Diagnostic and Treatment Protocols Regulation* or the *Automobile Accident Insurance Benefits Regulations* prohibits an insurer from obtaining additional consents required to administer a claim. The AB-1 form does not monopolize permissible consent, particularly when the TDI Consent can streamline the consent process for multiple claims and limit the steps required before TDI can begin processing a claim.

[para 59] It is not clear whether the Organization means to argue that it is permitted to obtain consent to collect, use and disclose personal information *in addition to* the consent obtained via the prescribed forms, or whether the Organization is arguing that it can obtain consent in a manner other than using the form.

[para 60] As stated above, the use of the prescribed forms appear to be mandatory. Therefore, my understanding is that the Organization cannot substitute the consent obtained via the prescribed forms with its own process. Therefore, I understand the Organization's argument to be that it is permitted to obtain consent to collect, use and disclose personal information *in addition to* the consent obtained via the prescribed forms. This appears consistent with following statement in the Organization's December 6, 2022 submission:

The majority of TDI auto claims are submitted over the phone. TDI describes this process at length in prior submissions. Where a claimant declines to provide consent over the phone, TDI will still proceed with processing a claim where one or more forms (including but not limited to the AB-1, AB-2, MI-1 and MI-2 forms) have been completed and submitted by the claimant. Where a claimant declines to provide consent and does not intend to submit an AB-1 form, the matter is escalated to a supervisor.

[para 61] The Organization's submissions state that if a claimant provides a completed prescribed form, the Organization can complete the claim without requiring additional consent to collect, use or disclose personal information. This applies only if there is a prescribed form for that claim (as the Organization states, there are no prescribed forms for property damage claims).

[para 62] The Complainant argues that this means that any additional consent required by the Organization contravenes section 7(2) of the Act.

[para 63] The Organization's own submissions, including the consent script for claims made via phone (reproduced above), indicate that an accident benefit claim can proceed

with only the prescribed forms and no additional consent from the claimant. In other words, the consent obtained via the mandatory prescribed forms is sufficient to meet the purpose of processing a claimant's accident benefit claim under auto insurance in Alberta. Given this, it is not clear how any additional collection, use or disclosure of personal information for which the Organization requires a claimant to consent can be characterized as *necessary* to provide the service (process the claim). Therefore, if the Organization is *requiring* a claimant to consent to the collection, use or disclosure of personal information in addition to the consent obtained via the prescribed form, then this would appear to contravene section 7(2).

[para 64] That said, the Organization is not completely prohibited from asking a claimant to consent to additional collection, use or disclosure of their personal information; however, this cannot be mandatory for providing the service. In other words, a claimant must be able to refuse to provide that additional consent.

[para 65] Further, unless a claim is initiated by the receipt of a prescribed form, the Organization will need to collect personal information from a claimant in order to assess the claim being made. Even where a claim is initiated by way of a completed AB-1 form, the Organization may need to ensure that there isn't *also* a related property damage claim that must be processed, or may need to clarify information provided in the form. To make these determinations, it is reasonable for the Organization to ask a range of questions. It is also reasonable for the Organization to identify the type of personal information that may be collected, used and disclosed and the bodies with whom information may be shared, depending on the type of claim being made.

[para 66] In saying this, it is important to note – as the Organization has itself stated – that PIPA places limits on the personal information that can be collected, used and disclosed for a particular purpose, even when consent is obtained.

[para 67] Sections 11(1), 16(1), and 19(1) of PIPA state that an organization may collect, use and disclose personal information only for purposes that are reasonable. Sections 11(2), 16(2) and 19(2) state that where an organization collects, uses or discloses personal information, it may do so only to the extent reasonable for meeting the stated purpose. These provisions apply whether the organization is collecting, using and disclosing personal information with consent, or in circumstances in which consent is not required (as set out in sections 14, 17 and 20).

[para 68] With respect to the issues in this inquiry, what this means is that the Organization can obtain consent to share information with financial institutions and health services providers, but if the claim is only a property damage claim (with no injuries) then it likely would not be reasonable for the Organization to share information with health services providers whether or not consent is obtained.

[para 69] For example, Order P2014-06 addresses a situation in which an insurer hired an organization to investigate an automobile accident. The organization obtained written consent from the complainant to collect medical information about the complainant.

However, the organization had requested the complainant's complete medical chart from his physician, which included information about the complainant's medical condition from 70 years prior, and which had no bearing on the complainant's current claim to the insurer. Therefore, the collection of that information was found to be unreasonable for the organization's purposes, regardless of the complainant's consent.

[para 70] This addresses the Complainant's concerns that "[r]equiring *every* claimant to provide the consent possibly required from *any* claimant is overbroad" (rebuttal submission, at page 2). In essence, PIPA imposes a limit onto any consent obtained by an organization in Alberta.

[para 71] The Complainant argues that questions like "is everyone ok" asked by the Organization's representative over the phone can be used in litigation against the claimant. In this case, the Complainant appears to have been particularly concerned because both parties involved in the accident were insured by the Organization and the Complainant expressed concern that the Complainant's statements could have been used by the Organization against the Complainant and in favour of the other individual involved in the accident.

[para 72] In its submissions, the Organization agrees that subsequently using personal information collected for a claim for a later purpose of litigation is a new purpose, to which the consent doesn't apply. It states (rebuttal submission, at page 4):

Use of claimants' information in litigation involving third party claims is clearly outside the purposes of claim assessment, monitoring and quality assurance, and therefore not included in the Consent. TDI does not use a claimant's information which was obtained in the course of adjusting his or her accident benefit claim in the defence of a third party claim by that claimant without either the consent of the claimant or a court order. It's possible that this entire process could have been avoided had he simply asked whether this was the case.

[para 73] It is also the case that PIPA permits the collection, use or disclosure of personal information without consent, for the purpose of an investigation or legal proceeding (sections 14(d), 17(d) and 20(m), respectively).

[para 74] Lastly, as argued by the Organization, there do not appear to be prescribed forms for property damage claims. Therefore, when a claimant makes a property damage claim, alone or along with an accident benefit claim, the Organization must obtain consent for any collection, use or disclosure of personal information in relation to that claim.

[para 75] Therefore, there are situations in which the Organization needs to collect, use and/or disclose personal information to process claims for which there are no prescribed forms. I will consider whether the collections, uses and disclosures identified by the Organization are reasonable for that purpose.

[para 76] The Organization provided examples of situations in which personal information may be exchanged with other organizations when processing a claim (initial, at pages 10-11):

Group	Examples of activities furthering purposes
Other insurers	<ul style="list-style-type: none"> • Where a claimant has overlapping insurance, TDI may communicate with the other insurer as part of the claims assessment process to determine which insurer is primarily liable. Also, there may be communication between insurers to detect, investigate and suppress fraud.
Financial and/or commercial institutions, including credit agencies	<ul style="list-style-type: none"> • TDI may confirm or coordinate claim payments with an insured’s financial institution
Agencies that collect data on risks and losses	<ul style="list-style-type: none"> • As part of its quality assurance practices, TDI uses insurance industry databases to analyze and verify information provided by a claimant (such as previous policies and claims), against information contained in the database
Law enforcement or crime prevention agencies	<ul style="list-style-type: none"> • TDI may contact a law enforcement agency to obtain an accident report or other pertinent information as part of assessing or monitoring a claim. • Where a security guard witnessed or was called to the scene of an accident, TDI may verify details of an accident as part of assessing a claim.
Our representatives, agents or advisors	<ul style="list-style-type: none"> • TDI shares information with its representatives and agents to provide benefits to which an insured is entitled. For example, TDI may use an agent to assist in assessing the damage to a vehicle.
Other individuals or organizations having information relating to the claim	<ul style="list-style-type: none"> • As part of its assessment and quality assurance processes, TDI contacts witnesses to collect and verify information related to an accident. • TDI exchanges information with rental car companies to assist an insured in obtaining access to a vehicle following an accident.

[para 77] In its December 6, 2022 submission, the Organization provided additional purposes for some of the categories above. With respect to “financial and/or commercial institutions, including credit agencies”, the Organization added the following purposes:

TDI exchanges information with lienholders (such as banks and finance companies) on automobiles or other property where such property has been damaged. TDI will also exchange information with financial institutions to confirm costs or loss of income following an injury, as well as to investigate potential fraud.

[para 78] With respect to “agencies that collect data on risks and losses”, the Organization added the following explanation:

TDI obtains information from the Insurance Bureau of Canada and MIB Group Inc. as part of processing claims and confirming the existence of other relevant (and potentially overlapping or duplicative) claims or coverage, and whether the claimant has a history of fraudulent claims.

[para 79] The Organization also states that its claim process is used across Canada, and is designed to comply with the various laws that apply in the different jurisdictions. It states (initial submission, at page 12):

This requires the inclusion of certain elements that may not be strictly required in Alberta. For example, where TDI requires no consent to collect or disclose personal information in the case of an investigation under PIPA sections 14(d) or 20(m), TDI may still need to include it in the Consent because parallel exceptions are narrower in other jurisdictions. Moreover, the inclusion of potential collection, use and disclosure that is permitted without consent enhances TDI's transparency about its personal information handling practices.

[para 80] In my January 6, 2023 letter to the parties, I asked the Organization the following questions:

In its December 6 response, the Organization listed other bodies with which it exchanges claimants' information and/or other purposes for exchanging personal information (for example, in section C of that response). This inquiry is focussed on what the Organization requires a claimant to consent to when making a claim, and the notification provided to claimants when collecting personal information for a claim. Does the Organization require a claimant to consent to these additional exchanges of personal information as set out in section C, when making a claim? If so, how are claimants notified of these exchanges/purposes?

[para 81] The Organization responded (January 30, 2023 submission):

TDI was providing this information to further supplement the information provided in Table 1 of its Initial Submissions. Table 1 lists each group TDI may have to exchange information with identified in the Consent, and provides details on the specific activities involved. TDI therefore generally requires consent to these actions to the extent that the circumstances of the claim indicate the action is or may be necessary to fulfil the purposes of claim assessment, monitoring and quality assurance.

...

Each example above is an activity that is necessary for TDI in the general intake and administration of auto insurance claims.

[para 82] The Organization reiterated the information provided in its previous submission regarding exchanges of information with financial and/or commercial institutions, and agencies that collect data on risks and losses.

[para 83] The Organization provided links to standardized policy endorsements provided by the Alberta Superintendent of Insurance, to support its argument regarding lienholders². In some situations, a lienholder, mortgagee or assignee may have a financial interest in a claim payout.

² A policy endorsement is essentially a change to an insurance policy to adjust coverage; for example, adding optional coverage or purchasing extra coverage for particular belongings.

[para 84] However, the Organization did not provide any additional explanation regarding an exchange of personal information for the purpose of confirming costs or loss of income. It is not clear in what situations this would be undertaken. Presumably when claiming a particular cost or loss of income, the claimant has to provide support for that claim. In other contexts, proof of income is usually provided with a copy of a recent pay stub. This would usually be collected directly from the individual the information is about. The Organization has not provided any explanation as to why it would need to exchange information with financial institutions in order to confirm costs or loss of income. It is also not clear how the Organization could do this without written consent, given the sensitivity of personal financial information.

[para 85] Possibly the Organization confirms claimed costs or losses with a financial institution in circumstances where it needs to conduct an investigation (e.g. where fraud may be suspected). In such circumstances, the Organization may be authorized to collect, use and/or disclose personal information without consent (see sections 14(1)(d), 17(1)(d) and 20(1)(m)).

[para 86] Without knowing why the Organization exchanges information with financial institutions for this purpose, I cannot make a finding regarding whether it is reasonable to do so to meet the Organization's stated purposes.

[para 87] Similarly, I do not have sufficient information regarding information exchanged with agencies that collect data on risks and losses. The Organization states that it obtains information from the Insurance Bureau of Canada and MIB Group Inc. to confirm "the existence of other relevant (and potentially overlapping or duplicative) claims or coverage, and whether the claimant has a history of fraudulent claims."

[para 88] Section 20(1)(n) authorizes the disclosure of personal information without consent for the purposes of protecting against or preventing fraud. In 2010 it was amended to specifically list the Insurance Bureau of Canada as a body that conducts fraud prevention. The provision stated:

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:

...

(n) the disclosure of the information is for the purposes of protecting against, or for the prevention, detection or suppression of, fraud, and the information is disclosed to or by

(i) an organization that is permitted or otherwise empowered or recognized to carry out any of those purposes under

(A) a statute of Alberta or of Canada or of another province of Canada,

(B) a regulation of Alberta, a regulation of Canada or similar subordinate legislation of another province of Canada that, if enacted in Alberta, would constitute a regulation of Alberta, or

(C) an order made by a Minister under a statute or regulation referred to in paragraph (A) or (B),

(ii) Investigative Services, a division of the Insurance Bureau of Canada, or

(iii) the Canadian Bankers Association, Bank Crime Prevention and Investigation Office;

[para 89] The purpose of this amendment was explained in the Final Report of the Select Special Personal Information Protection Act Review Committee; this legislative committee conducted a review of PIPA in 2007 and made recommendations for amendments. Regarding the Insurance Bureau of Canada, the Report states (at page 19):

... Second, the Government proposed to clarify that the exception for fraud prevention applies to two national organizations whose ability to carry out fraud prevention investigative activities is not found in legislation.

...

The Committee supported amending the Act to more clearly provide certain organizations with the powers needed to carry out fraud prevention activities. The Committee recommended:

That the exception to consent for fraud prevention be amended to delete the current provision for market manipulation and unfair trading practices, and also that the exception be amended to expressly permit the disclosure of personal information by or to designated organizations – namely, the Insurance Bureau of Canada’s Investigative Services and the Bank Crime Prevention and Investigation Office of the Canadian Bankers Association – for the purpose of fraud prevention.

[para 90] In 2022 this provision was again amended, removing the reference to the Investigative Services division of the Insurance Bureau of Canada, and replacing it with Équité Association. A media release from the Insurance Bureau of Canada dated September 27, 2021 states that its Investigative Services division was transferred to Équité Association, which is a non-profit organization “committed to reducing insurance crime”³. The media release states that the transfer would be effective October 1, 2021.

[para 91] The reference to the Insurance Bureau of Canada in the Organization’s Privacy Agreement appears to relate to the investigative services that organization used to perform, for fraud detection and prevention purposes. If so, the Organization had authority to exchange personal information with that organization for fraud detection and prevention purposes without having to obtain the consent of its clients, prior to the 2022 amendment. That said, it is a good practice to inform clients of this exchange of personal

³ <http://www.ibc.ca/bc/resources/media-centre/media-releases/ibc-transfers-its-investigative-services-to-equite>

information even if consent is not required, if doing so would not undermine the purpose for which the information is being collected or exchanged.

[para 92] Since the 2021 transfer of the investigative service, insurers would be exchanging personal information for fraud detection and prevention purposes with Équité Association and not the Insurance Bureau of Canada. Assuming the reference to the Insurance Bureau of Canada in the Organization's Privacy Agreement refers to the exchange for fraud detection and prevention, then it should likely be updated to refer to Équité Association.

[para 93] If the reference to the Insurance Bureau of Canada in the Organization's Privacy Agreement relates to something other than the investigative services that organization used to perform for fraud detection and prevention purposes, the Organization has not explained what it does relate to. If the Organization exchanges personal information with the Insurance Bureau of Canada for another purpose, then I cannot make a finding regarding whether it is reasonable without first knowing that purpose.

[para 94] MIB Group Inc. is not an organization listed in PIPA with which the Organization can exchange personal information without consent for fraud detection and prevention. Unless another provision in PIPA that permits this exchange without consent applies (including where the exchange without consent is authorized by another enactment), the Organization must obtain a claimant's consent for this exchange.

[para 95] The Organization did not explain what MIB Group Inc. is. MIB Group Inc. has a website, which states that members have access to "exclusive data and insights for risk assessment and fraud detection." According to its website, MIB Group Inc. services relate to life and health insurance. As such, it appears to be irrelevant to auto insurance claims. It appears that the Organization offers insurance products other than auto insurance products; possibly the reference to MIB Group Inc. is meant to be in relation to those other products. However, the Organization did not provide greater detail regarding the exchange of personal information with this body in response to my January 6, 2023 questions on this point.

[para 96] As such, I cannot assume that the Organization does not exchange personal information when processing auto claims with MIB Group Inc. It is also possible that this body offers some sort of services for auto claims as well, especially if they involve injury claims.

[para 97] MIB Group's website describes its services in its Consumer Privacy Policy as follows⁴:

MIB member companies report limited information (sometimes described as a "brief report") to MIB that is significant to underwriting an application for life, health, disability income, critical illness or long-term care insurance. The reports, if any, are brief

⁴ https://www.mib.com/privacy_policy.html

summaries of one or more medical conditions or other conditions (typically hazardous avocations and adverse driving records, as further explained below) that are reported by the member company in a proprietary and highly confidential coded format by other member insurance companies in the underwriting process.

[para 98] On the basis of this explanation, it appears that MIB Group Inc. collects medical information of insurance claimants and applicants. The Consumer Privacy Policy also states that it obtains express consent from the insurance applicant before collecting or disclosing personal information of that applicant. It states:

MIB Group, Inc. ("MIB") is a membership corporation owned by approximately 400 member life and health insurance companies in the United States, Canada and Caribbean region. MIB's core business (known as MIB's Underwriting Services or the MIB Checking Service) is sometimes described as an "information exchange" because MIB members contribute underwriting data (including personal information) about insurance applicants to the MIB database that may be useful to other members that later search the database. Both the contribution and retrieval of personal information to and from MIB are done with the express authorization of the insurance applicant.

[para 99] As stated, I do not know if the Organization exchanges personal information with MIB Group Inc. in relation to auto claims, or why it would be reasonable to do so when the Organization is authorized to exchange information with Équité Association without consent for the same purpose (fraud detection and prevention).

[para 100] In *Leon's*, the Court emphasized that the Commissioner cannot find the collection of personal information by an organization to be unreasonable for the sole reason that there may be other ways to fulfill the stated purpose. However, the information the Organization purports to share with financial institutions and MIB Group Inc. is potentially quite sensitive information: personal financial information and medical information. What is reasonable will always depend on the circumstances of each case; the standard may be higher when the information at issue is particularly sensitive.

[para 101] It is possible that these exchanges of information are reasonable to fulfill the Organization's purposes; however, the Organization's submissions are inadequate for me to make that finding. In other words, I cannot conclude that it is reasonable for the Organization to exchange information with financial institutions for the purpose of confirming costs or loss of income, to exchange information with the Insurance Bureau of Canada (if it still does), or to exchange information with MIB Group (if it does) when processing auto claims, because the reasons for doing so are not clear.

[para 102] I will therefore order the Organization to review its practices in this regard, and identify what collections, uses and disclosures a claimant is required to provide consent to, in order to process the auto claim. The Organization should do this for the different types of auto claims (i.e. where there are and are not prescribed forms for those claims). The Organization should identify any collections, uses or disclosures that are not required to complete a claim, and determine whether it is reasonable to ask for consent to those additional collections, uses or disclosures. It should also ensure that there is a

process by which claimants can refuse to provide consent to these additional collections, uses and disclosures.

Are the Organization's notification practices in compliance with section 13(1) of the Act?

[para 103] Section 13 of PIPA requires organizations to notify individuals of the collection of personal information in certain circumstances. The relevant provisions state:

13(1) Before or at the time of collecting personal information about an individual from the individual, an organization must notify that individual in writing or orally

(a) as to the purposes for which the information is collected, and

(b) of the name or position name or title of a person who is able to answer on behalf of the organization the individual's questions about the collection.

...

(4) Subsection (1) does not apply to the collection of personal information that is carried out pursuant to section 8(2).

[para 104] Section 8 of PIPA sets out the manner in which organizations can obtain consent from individuals. It states:

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

(a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and

(b) it is reasonable that a person would voluntarily provide that information.

(2.1) If an individual consents to the disclosure of personal information about the individual by one organization to another organization for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal information for the particular purpose by that other organization.

(2.2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for the purpose of the individual's enrolment in or coverage under an insurance policy, pension plan or benefit plan or a policy, plan or contract that provides for a similar type of coverage or benefit if the individual

(a) has an interest in or derives a benefit from that policy, plan or contract, and

(b) is not the applicant for the policy, plan or contract.

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

(a) the organization

- (i) *provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and*
- (ii) *with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,*
- (b) *the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and*
- (c) *having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).*
- (4) *Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.*
- (5) *Consent in writing may be given or otherwise transmitted by electronic means to an organization if the organization receiving that transmittal produces or is able at any time to produce a printed copy or image or a reproduction of the consent in paper form.*

[para 105] As mentioned above, the Organization provided links to its Privacy Code and Privacy Agreement, both of which are available on the Organization’s website. The Agreement refers to and incorporates the Code. The Organization states that the Agreement and Code are brought to the attention of individuals prior to their obtaining insurance from the Organization. Policy holders are reminded of the Policy and Code annually with renewal materials.

[para 106] When a claim is initiated via the mobile app, the Organization’s Privacy Agreement is brought to the attention of the claimant, with a link to the Agreement provided. A claimant must agree to the Agreement to continue with the claim.

[para 107] Regarding the notice provided to claimants over the phone, the Organization states (January 30, 2023 submission, at page 16):

The purposes of “assessing, monitoring and quality assurance” of a claim are clearly identified in the Consent. This meets the requirements of section 13(1)(a).

While TDI does not require reference to the Privacy Agreement and Code over the phone, the requirements of section 13(1)(b) are nevertheless met by the TDI representative. Section 13(1)(b) only requires that the organization provide a “name or position name or title of a person who is able to answer on behalf of the organization the individual’s questions about the collection.” The provision does not prohibit the contact from being able to answer other questions about a given process as well. This is consistent with the approach taken by the Alberta Superintendent of Insurance on the AB-1 form, which simply instructs the claimant to contact their insurance representative or adjuster. Further, the provision does not stipulate that the word “collection” must be used in the notice.

When claims are submitted over the phone, the TDI representative introduces themselves by their name. The representative is able to answer, or arrange to have answered, any questions about the claims process. This includes questions about the collection of the claimant's information. When the Consent is presented to the claimant, the representative is clearly available to answer any questions throughout the call. If the claimant does not agree to the Consent for any reason (i.e., the claimant takes any action or inaction other than answering "yes"), the representative will ask the claimant if they have any questions or concerns and seek to address them.

The representative is also required to ask the claimant if they have any questions about the claim submission process – a process that inherently involves the collection of personal information. Claimants know they can – and they often do – ask questions about privacy and the collection of their information. TDI ensures the proper training and other resources are in place so that these questions are answered. The representative also provides the claimant with a phone number in case they have any questions about the claims submission process later.

By introducing themselves in person and expressly asking them whether they have any questions about the process, TDI provides notice that is far more meaningful and that better achieves the provision's and PIPA's goals than most written notices could be, because claimants have the ability to ask questions and receive answers immediately. TDI's approach in this regard also helps simplify what can be a very stressful process for claimants because it provides one contact for all of the claimant's questions.

[para 108] The Organization also argues that it is not required to provide notice to claimants, by virtue of sections 8(2) and 13(4). It states (January 30, 2023 submission, at page 17):

While TDI ensures all claimants receive appropriate notice, this is not required by virtue of PIPA sections 8(2) and 13(4). Section 13(4) stipulates that the notice requirements of section 13(1) do not apply when consent is deemed under section 8(2). Section 8(2) says that an individual is deemed to consent to the collection of information when the individual, (a) voluntarily provides the information to the organization for a particular purpose, and (b) it is reasonable that a person would voluntarily provide this information.

The conditions of section 8(2) are met here. Regardless of stream, claimants (including the Complainant) provide information voluntarily to TDI for the purpose of having their claims processed. It is entirely reasonable that a person would voluntarily provide such information because they want to be reimbursed for their claim(s), and TDI is only collecting the information for the purpose of processing the claimant's particular claims. While section 8(2)(a) says "the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose," the provision cannot reasonably be interpreted to mean that section 8(2) cannot apply where the individual has also provided their consent in writing or orally under section 8(1). Rather, the phrase "without actually giving a consent referred to in subsection (1)," simply means even if an individual does not provide their consent orally or in writing, consent can still be deemed when personal information is provided voluntarily under this provision. This is consistent with the purpose of section 8(2), which is to recognize "acquiescence" when personal information is given voluntarily and for reasonable purposes.

[para 109] Section 8(2), reproduced above, deems an individual to consent to the collection, use or disclosure of personal information where the individual provided the information to the Organization for that purpose. This provision applies where the purpose for the collection, use or disclosure is sufficiently obvious at the time the individual provides the information such that it is apparent without having to be stated outright.

[para 110] Section 8(2) has been considered in past Orders. For example, Order P2018-03 considered a situation in which an individual's actions at a property were caught on the property manager's overt video surveillance system, and used to investigate a complaint about the individual's actions. It was determined that the existence of the video surveillance and its purpose (to investigate incidents that occur on the property) were obvious to the individual at the time of his actions. He was therefore deemed to have consented to the collection and use of his information by the organization, for the purpose of the investigation. However, the organization subsequently disclosed the information to the individual's employer. The Order finds that the Complainant could not be deemed to have consented to this disclosure; the suggestion that this disclosure was a purpose obvious to the individual at the time of his actions was found to be an undue strain of the scope of section 8(2) (at para. 26).

[para 111] Section 8(2)(b) limits the circumstances in which the provision can be relied on for consent, to situations in which it would be reasonable for the individual to voluntarily provide the information.

[para 112] In Order P2021-06, the adjudicator found that medical information provided by the complainant was too sensitive for the organization to rely on deemed consent. He found (at para. 75):

Regarding his personal family and medical information, I find that the Complainant cannot be deemed to have consented to collection or use of it. While the Complainant provided the information, apparently reluctantly, it is not reasonable that the Complainant would voluntarily provide the information that he did as required by section 8(2)(b). Here, I reiterate that the personal family and medical information provided by the Complainant was, as I earlier described, "extraordinarily sensitive." It is conceivable that in other circumstances, involving less sensitive personal information, it may be reasonable for an individual to voluntarily provide personal information in order to make a compassionate case for loan (or other service).

[para 113] I agree with the above analysis. In this case, the Organization provided a transcript of the call made by the Complainant to initiate his claim. The Organization representative who spoke with the Complainant asked questions about pre-existing medical conditions, which the Complainant did not answer at the time. Such information can obviously be quite sensitive. Further, the Organization's submissions state that it also exchanges information with financial institutions, which is also likely sensitive information.

[para 114] Section 8(2) may apply to the collection of some information for claims, such as information about a claimant's vehicle. It may be the case that for simple claims, the information collected is such that it would be appropriate to rely on section 8(2) for consent. But as a general practice, given the wide variety of information about a claimant that could foreseeably be collected, it is not appropriate to rely solely on section 8(2) for consent.

[para 115] Given this, I find that, as a general practice, the Organization is required to provide notice when collecting personal information directly from a claimant as set out in section 13(1).

[para 116] The Organization's Privacy Agreement and Privacy Code appear to apply to all of the Organization's products and services, which are not limited to auto insurance. These documents set out the purposes for which personal information may be collected, used and disclosed, and the bodies with whom personal information may be exchanged.

[para 117] In my view, these documents are sufficient to fulfill the Organization's obligations under section 13(1)(a).

[para 118] With respect to claims initiated over the phone, I have discussed the script used by representatives to notify claimants over the phone. For ease I will repeat the script here:

Please listen carefully. Your Advisor can answer questions at the end of this message. In compliance with Privacy legislation, TD Insurance requires your consent for the purpose of assessing, monitoring and quality assurance of your claim. We may collect from, use and exchange information depending on the type of claim which may include financial and medical information with:

- Other insurers
- Financial and/or commercial institutions, including credit agencies
- Agencies that collect data on risks and losses
- Law enforcement or crime prevention agencies
- Our representatives or agents or advisors
- Other individuals or organizations having information related to the claim

Rest assured that your personal information will remain confidential.

Do we have your consent?

Press 1 if you agree, press 2 if you have any questions or disagree, Press 8 if you wish to hear the statement again.

[para 119] It is understandable that the consent script is less detailed than the content of the Privacy Agreement and Code. In my view, it is adequate to meet the requirements of section 13(1)(a). However, it is unclear why the script does not direct claimants to the Agreement or Code, the same way that the mobile app does.

[para 120] With respect to the Organization's obligation to provide the position name or title of a person who is able to answer questions about the Organization's collection of personal information, the Privacy Agreement and Code provide various ways that individuals can obtain more information about the Organization's privacy practices. In my view, this is adequate to meet the obligation in section 13(1)(b).

[para 121] The phone script advises the claimant that they can ask questions following the consent script. This is also adequate to meet the obligations in section 13(1)(b). However, this is not helpful to the claimant once the call has ended. The Organization has repeatedly made the point in its submissions that the claims process is often a stressful process for the claimant. It makes this point in support of its arguments that its consent process should be as seamless as possible. However, it also seems likely that a claimant might not be primarily concerned with, or be paying much attention to, the consent script played by the representative when making a claim by phone. It seems entirely possible that a claimant may have questions after the call is over. If the claimant is told about the Privacy Agreement and Code available online, the claimant could review those documents at a later time.

[para 122] The Organization may consider amending its consent script to alert claimants to the Privacy Agreement and Code available online.

[para 123] I find that the Organization has met its obligations under section 13(1).

IV. ORDER

[para 124] I make this Order under section 52 of the Act.

[para 125] I find that the Organization has met its obligations under section 13(1).

[para 126] I order the Organization to review its consent practices, as discussed at paragraph 102 of this Order, taking into account the discussions and guidance provided in this Order.

[para 127] I further order the Organization to notify me and the Complainant in writing, within 50 days of its receipt of a copy of this Order, that it has complied with my Order.

Amanda Swanek
Adjudicator