

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2010-002**

November 10, 2010

**LAFARGE CANADA INC.**

Case File Number P1156

**Office URL:** <http://www.oipc.ab.ca>

**Summary:** The Complainant alleged that Lafarge Canada Inc. (“the Organization”) used and/or disclosed his personal information in contravention of the *Personal Information Protection Act* (“PIPA”). The Complainant alleged that the Organization told its employees and other individuals, that he was dismissed for failing a drug and alcohol test.

The Adjudicator held that the Organization shared the Complainant’s personal information with its employees and with other individuals. The Adjudicator also held that the Organization did not obtain the Complainant’s consent in accordance with section 8 of the Act before using and/or disclosing the information and did not have authority to use and/or disclose the information without consent under sections 17 and 20. In addition, the Adjudicator held that the Organization did not have the authority to use and/or disclose the information without consent under sections 18 and 21. The Adjudicator held that although the information consisted of personal employee information that related to the Complainant’s employment relationship with the Organization and that the use and/or disclosures were reasonable, the Organization had not provided the Complainant with reasonable notification of the use and/or disclosures as required by sections 18 and 21.

**Statutes Cited:** AB: *Personal Information Protection Act*, S.A. 2003, c.P-6.5, ss. 1(j), 1(k), 7, 7(1), 8, 8(1), 8(3), 16(1), 16(2), 17, 17(i), 18, 18(2)(c), 19(1), 19(2), 20, 20(g), 21, 21(2)(c), 52

**Authorities Cited:** AB: Orders: P2006-006, P2006-007, P2009-011, P2009-012

## **I. BACKGROUND**

[para 1] On November 4, 2008, the Complainant, who was an employee of the Organization, took a random drug and alcohol test which was administered by an outside contractor on behalf of the Organization. The Complainant's test showed positive. The Complainant alleged that the Organization told its employees and other individuals, that he was dismissed for failing the test. The Complainant states that this use and/or these disclosures were in contravention of PIPA.

[para 2] On November 21, 2008, the Complainant requested that this Office investigate the alleged use and/or disclosures. Mediation was authorized but did not resolve the issue.

[para 3] On July 20, 2009, the Complainant requested that the Information and Privacy Commissioner conduct an inquiry into the matter.

[para 4] During the inquiry, the Organization and the Complainant each submitted an initial submission and a rebuttal submission.

[para 5] After a review of these submissions, I wrote to the Complainant and to the Organization and provided them a further opportunity to provide sworn affidavits and a further submission to this Office. Both the Complainant and the Organization provided further information which was exchanged between the parties. I note that both the Complainant and the Organization provided letters which were signed and, in some instances, witnessed and/or signed before a Commissioner for Oaths. However, many of these letters were not sworn affidavits made under oath.

[para 6] This Order proceeds on the basis of PIPA as it existed prior to the amendments to PIPA coming into force on May 1, 2010.

## **II. ISSUES**

[para 7] The inquiry notice identified five issues regarding the Organization's alleged use and disclosure of the Complainant's personal information.

[para 8] The Act distinguishes between the "use" and the "disclosure" of information that an organization has collected. In this inquiry, a question has arisen as to when information that has been collected by an organization and subsequently transferred either internally or externally should be characterized as a "use" of the information or a "disclosure" of the information.

[para 9] In my view, an organization’s internal transfer of information is a “use” where the information is transferred within the organization to another person or sector for the same purpose for which it is collected. In coming to this conclusion, I took into account that information within an organization is generally not collected by an individual, but rather by or, on behalf of, a part of an organization that requires the information.

[para 10] Conversely, I find that the transfer of information is a “disclosure” when the information is transferred outside an organization or when it is transferred within the organization to another person or sector for a purpose different from the one for which it was originally collected. This is particularly true in situations where the internal transfer of information within an organization is not for any institutional purpose.

[para 11] In accordance with the foregoing discussion, I find that the information transfers within the Organization in this inquiry could, arguably, be either a use or a disclosure depending on whether the information was transferred for the same or for a different purpose. However, as will be seen below, the result of the transfer of this information is the same whether the transfer is characterized as a use or as a disclosure. I therefore find that it is not necessary to decide which of the characterizations is more appropriate in this inquiry. In this inquiry I will address the alleged transfers of information within the Organization as both a use and a disclosure.

[para 12] I will address the following issues as part of my discussion as to whether the Organization had the authority to disclose the personal information:

1. Did the Organization disclose “personal information” of the Complainant as defined in PIPA section 1(k)?
2. Did the Organization disclose the “personal information” in contravention of, or in compliance with, section 7(1) of PIPA? In particular,
  - A. Did the Organization have the authority to disclose the Complainant’s personal information without consent, as permitted by section 20 of PIPA?
  - B. Did the Organization have the authority to disclose the information without consent, because the information was the Complainant’s “personal employee information” as the term is defined in PIPA section 1(j), and the terms of section 21 were met?
3. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant’s consent in accordance with section 8 of the Act before disclosing the information?
4. If the Organization had the authority to disclose the personal information under section 20 but not under section 21, did it disclose the information contrary to, or in accordance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?

5. If the Organization had the authority to disclose the personal information under section 20 but not under section 21, did it disclose the information contrary to, or in accordance with section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?

[para 13] I will address the following issues as part of my discussion as to whether the Organization had the authority to use the personal information:

1. Did the Organization use “personal information” of the Complainant as defined in PIPA section 1(k)?
2. Did the Organization use the “personal information” in contravention of, or in compliance with, section 7(1) of PIPA? In particular,
  - A. Did the Organization have the authority to use the Complainant’s personal information without consent, as permitted by section 17 of PIPA?
  - B. Did the Organization have the authority to use the information without consent, because the information was the Complainant’s “personal employee information” as the term is defined in PIPA section 1(j), and the terms of section 18 were met?
3. If the Organization did not have the authority to use the information without consent, did the Organization obtain the Complainant’s consent in accordance with section 8 of the Act before using the information?
4. If the Organization had the authority to use the personal information under section 17, but not under section 18, did it use the information contrary to, or in accordance with, section 16(1) of PIPA (use for purposes that are reasonable)?
5. If the Organization had the authority to use the personal information under section 17 but not under section 18, did it use the information contrary to, or in accordance with, section 16(2) of PIPA (use to the extent reasonable for meeting the purposes)?

### **III. DISCUSSION**

#### **DISCLOSURE OF PERSONAL INFORMATION**

##### **A. Did the Organization disclose “personal information” of the Complainant as defined in PIPA section 1(k)?**

[para 14] “Personal information” is defined in section 1(k) of PIPA:

*I In this Act,*

...

*(k) “personal information” means information about an identifiable individual;*

[para 15] The Complainant alleges that several employees of the Organization disclosed his personal information. The Complainant alleges that the Health and Safety Officer for the Cold Lake Operation (the “Health and Safety Officer), one of the Organization’s Supervisors (the “Supervisor”), the Batchman at the Bonnyville Plant (the “Batchman”), the Batchman/Foreman ( the “Foreman”) as well as other employees disclosed his personal information. In this order I will refer to the various employees of the Organization by their title (as outlined in the Organization’s submissions).

### **1. Alleged Disclosures by Health and Safety Officer**

[para 16] The Complainant alleges that Health and Safety Officer disclosed his personal information to the Foreman, the Supervisor, the General Manager and to several other Organization employees.

[para 17] After a review of the information and evidence before me, I find that Health and Safety Officer disclosed the Complainant’s personal information to the Organization’s Foreman. The Organization confirms that the Health and Safety Officer met with the Complainant and the Foreman on November 4, 2008. The Organization states that the Foreman was asked to attend the meeting as a witness. The Organization states that at that meeting, the Health and Safety Officer told the Complainant that his drug and alcohol test result showed positive and began to tell the Complainant about the process that the Organization would follow. I find that the Health and Safety Officer, by including the Foreman in that meeting, disclosed the Complainant’s personal information to the Foreman. However, I do not find that Health and Safety Officer disclosed, to the Foreman, the nature of the substance for which the Complainant tested positive. There is insufficient evidence before me to find that the Health and Safety Officer disclosed this information.

[para 18] I also find that on November 4, 2008, the Health and Safety Officer disclosed the Complainant’s personal information to the Supervisor. The Organization confirms that the Health and Safety Officer told the Supervisor that the Complainant was suspended and would not be available to work until further notice. However, I do not find that the Health and Safety Officer told the Supervisor the reason for the Complainant’s suspension. There is insufficient evidence before me that the Health and Safety Officer disclosed this information.

[para 19] Lastly I find that the Health and Safety Officer disclosed the Complainant’s personal information to the General Manager. The Complainant states that on November 11, 2008, the Health and Safety Officer met with the Complainant and with the General Manager. The Complainant states that during this meeting the Health and Safety Officer discussed the Complainant’s suspension. The Organization also confirms that the General Manager was informed of “ongoing matters” which suggests that, at the very least, the General Manager was informed of the Complainant’s suspension.

[para 20] However, I find that there is insufficient evidence that the Health and Safety Officer disclosed the Complainant’s personal information to other employees. The Complainant alleged that the Health and Safety Officer disclosed his personal information to an employee identified as “Larry J” and to other unnamed employees. The Complainant did not, however, provide a sworn statement made under oath in

support of his allegations. In addition, the Complainant has not provided further details regarding the alleged disclosures including the full name of “Larry J.”, the identity of the other unnamed employees and the date upon which these disclosures allegedly occurred. As Adjudicator, I must base my determination of an issue on the information and evidence before me. I cannot simply accept the allegations of a complainant without sufficient evidence to support those allegations.

## **2. Alleged Disclosures by the Supervisor**

[para 21] The Complainant alleges that a Supervisor within the Organization disclosed his personal information to a driver for the Organization’s Cold Lake plant (the “Driver”) on or about November 4, 2008, and to several contractors on an unspecified date(s).

[para 22] After a review of the information and evidence before me, I find that the Supervisor disclosed the Complainant’s personal information to several outside contractors. I find that the Supervisor told the contractors that the Complainant would not be at work for awhile. In coming to this determination, I took into account the Organization’s submission which confirms that the Supervisor made these disclosures. However, I do not find that the Supervisor disclosed, to the contractors, the results of the Complainant’s drug and alcohol test. There is insufficient evidence to support this allegation.

[para 23] I also find that there is insufficient evidence that the Supervisor disclosed the Complainant’s personal information to a Driver for the Organization. Although the Complainant submitted a letter written by the Driver, this letter was not supported by a sworn statement made under oath. As I previously mentioned in this Order, as Adjudicator, I must base my determination of an issue on the information and evidence before me. I cannot simply accept the allegations of a complainant without sufficient evidence to support those allegations.

## **3. Alleged Disclosures by the Batchman**

[para 24] The Complainant alleges that the Batchman disclosed the Complainant’s personal information to an employee of Superior Concrete Pumping (“Superior Concrete”). The Complainant alleges that the Batchman told a Superior Concrete employee that the Organization dismissed the Complainant for failing a drug and alcohol test. The information before me indicates that Superior Concrete is a customer of the Organization.

[para 25] After a review of the information and evidence before me, I find that the Batchman disclosed, to several Superior Concrete employees, that the Complainant was no longer employed with the Organization. The Organization’s submission and the Batchman’s sworn affidavit confirm that the Batchman made these disclosures.

[para 26] However, I do not find that the Batchman disclosed, to the Superior Concrete employees, that the Complainant was dismissed for failing a drug and alcohol test. There is insufficient evidence before me to support that allegation.

#### **4. Alleged Disclosures by the Foreman**

[para 27] The Complainant alleges that the Organization's Foreman disclosed the Complainant's personal information to two Superior Concrete employees. The Complainant alleges that the Foreman told these individuals that the Complainant was dismissed for failing a drug and alcohol test.

[para 28] I find that there is insufficient evidence that the Foreman disclosed this information to the Superior Concrete employees. Although the Complainant provided a letter from one of those employees which states that he heard the Foreman say that the Complainant was dismissed for failing a drug and alcohol test, this letter contains a bare assertion that is not supported by a sworn affidavit made under oath. Furthermore, the letter does not contain sufficient details surrounding the disclosure, it does not specify to whom the comment was made nor the date on which the disclosure occurred. I am not prepared to find that the Foreman made the alleged disclosure. I find that I do not have sufficient evidence to come to that conclusion.

#### **5. Alleged Disclosures by other Employees of the Organization**

[para 29] The Complainant alleges that, on November 6, 2008, two employees of the Organization identified as "Louis (Luis) C" and "Larry J" disclosed, to an employee of Superior Concrete, that the Complainant was or would be dismissed for failing a drug and alcohol test. After a review of the information and evidence before me, I find that there is insufficient evidence that these two individuals disclosed this information to the Superior Concrete employee.

[para 30] Although the Complainant provided a letter from the Superior Concrete employee that alleges that both of these individuals disclosed this information to him, the letter contains a bare assertion and is not supported by a sworn statement made under oath. I also note that the letter does not provide several important details about the alleged disclosure such as the last names of the two individuals who made the disclosures. Given the foregoing, I am not prepared to find that this disclosure occurred. I find that I do not have sufficient evidence to come to that conclusion.

[para 31] The Complainant also states that several unnamed employees of the Organization disclosed this same information to an employee of a company identified as "Triton". I similarly find that there is insufficient evidence that this disclosure occurred. The Complainant does not identify the individual who disclosed the information, the date of the disclosure, nor did he provide the last name of this Triton employee. Furthermore, the Complainant does not provide any evidence from the Triton employee who was the alleged recipient of the disclosure.

#### **B. Did the Organization disclose the "personal information" in contravention of, or in compliance with, section 7(1) of PIPA?**

##### **1. Did the Organization have the authority to disclose the Complainant's personal information without consent, as permitted by section 20 of PIPA?**

[para 32] Section 20 states that an organization may disclose personal information about an individual without the consent of the individual if one or more of the enumerated criteria under section 20 are fulfilled.

[para 33] After a review of section 20, I find that the disclosures made by the Organization in this inquiry do not fulfill the criteria under section 20. Although section 20(g) states that an organization may disclose personal information if the disclosure of information is necessary to respond to an emergency that threatens the life, health or security of an individual or the public, there is insufficient evidence and information that the requirements of this subsection or other subsections within section 20 are fulfilled. In this regard I note that neither the Organization nor the Complainant addressed section 20 in their submissions.

**2. Did the Organization have the authority to disclose the information without consent, because the information was the Complainant's "personal employee information" as the term is defined in PIPA section 1(j), and the terms of section 21 were met?**

[para 34] Section 21 reads:

*21(1) Notwithstanding anything in this Act other than subsection (2), an organization may disclose personal employee information about an individual without consent of the individual if*

*(a) the individual is or was an employee of the organization, or*

*(b) the disclosure of the information is for the purpose of recruiting a potential employee.*

*(2) An organization shall not disclose personal information about an individual under subsection (1) without the consent of the individual unless*

*(a) the disclosure is reasonable for the purposes for which the information is being disclosed,*

*(b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and*

*(c) in the case of an individual who is an employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that the information is going to be disclosed and of the purposes for which the information is going to be disclosed.*

*(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to disclose personal information under section 20.*

[para 35] Section 21 of PIPA states that an Organization may disclose an individual's "personal employee information" without consent if the following four criteria are fulfilled:

(i) the information consists of "personal employee information";

(ii) the disclosure is reasonable for the purposes for which the information is disclosed;

(iii) the information consists only of information related to the employment or volunteer work relationship of the individual; and

(iv) if the individual is a current employee, the organization must provide the individual with reasonable notification that the personal employee information is going to be disclosed and the purposes for the disclosure.

**a. Was the information “personal employee information”?**

[para 36] Section 1(j) defines “personal employee information”:

*1 In this Act,*

...

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

*(i) an employment relationship, or*

*(ii) a volunteer work relationship*

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

[para 37] I note that although section 1(j) refers to an employee or potential employee, previous Orders have held that information of former employees can still be personal employee information (Orders P2006-006, P2006-007 and P2009-012).

**i. Was the Complainant’s personal employee information disclosed to the Foreman, Supervisor and General Manager?**

[para 38] In this inquiry, I found that the Organization disclosed the Complainant’s personal information to several individuals. I found that on November 4, 2008, the Health and Safety Officer disclosed to the Foreman that the Complainant’s drug and alcohol test showed positive and the process that the Organization intended to follow in response to these test results. I also found that on that same date that the Health and Safety Officer disclosed to the Supervisor that the Complainant had been suspended, and that on November 11, 2008, disclosed that same information to the General Manager. I find that the Health and Safety Officer’s disclosure to each of these individuals of the Complainant’s suspension and, in one case, the reasons therefor, consisted of the Complainant’s personal employee information.

[para 39] I find that the Complainant, at the time of these disclosures, was a current employee of the Organization. There is insufficient information before me as to whether the Organization dismissed the Complainant and, if so, the date of the dismissal. However, the information before me shows that on November 12, 2008, the Complainant signed a "Conditions for Employment" form which outlined the conditions the Complainant would have to meet for continued employment. It therefore follows that the Complainant was still an employee up until November 12, 2008. This means that the Health and Safety Officer’s disclosure to the Foreman and to the Supervisor on November 4, 2008 and to the General Manager on November 11, 2008 occurred while the Complainant was still an employee of the Organization.

[para 40] I also find that the Health and Safety Officer's disclosure to these individuals was made solely to manage an employment relationship between the Organization and the Complainant. I find that the Health and Safety Officer made these limited disclosures in order to inform individuals who were either part of management or, in supervisory positions, of a human resources issue regarding the Complainant's employment status. I find that these disclosures were required to manage the employment relationship between the Organization and the Complainant.

[para 41] In this regard, I make no comment as to whether the Organization's collection of the drug and alcohol test results were reasonably necessary to determine whether the Complainant had fulfilled his conditions of employment and/or whether the test results were proper grounds on which to suspend the Complainant. My decision in this inquiry is more limited in scope. The Organization in this inquiry had made a decision to conduct the drug and alcohol tests. I find that given this decision, regardless of the propriety of the collection of the information and its use in making the suspension decision, it was reasonably necessary for the Organization to convey, as part of managing the employment relationship, the Complainant's positive test results and the resulting suspension, with varying degrees of detail or no detail, to those individuals who were either in management or in supervisory positions within the Organization.

ii. Was the Complainant's personal employee information disclosed to the Contractors and to Superior Concrete Employees?

[para 42] In this inquiry I found that the Supervisor for the Organization disclosed, on unspecified dates, to several contractors, that the Complainant would be absent from work. I also found that the Batchman disclosed, on unspecified dates, to Superior Concrete employees that the Complainant was no longer employed. After a review of information and evidence before me, I find that Organization's disclosure to the each of these individuals consisted of the Complainant's personal employee information.

[para 43] I find that at the time of the Supervisor's disclosure to the contractors and the Batchman's disclosure to the Superior Concrete employees, the Complainant was either a current or former employee.

[para 44] I also find that the Organization's disclosure to these individuals was made solely to manage an employment relationship between the Organization and the Complainant. In my view it is reasonable for an organization to disclose to its contractors and to its customers whether an employee is absent or currently working for that organization, particularly in situations where those contractors and customers may previously have had contact with or, worked with, that employee. I find that these disclosures are part of and, required to, manage an employment relationship. To find otherwise would result in a situation where an organization could not inform its contractors and customers as to who is currently employed with, or representing, the organization. This would be an unworkable result.

**b. Were the disclosures reasonable?**

[para 45] In Orders P2009-011 and P2009-012, the Adjudicator held that for a disclosure to be reasonable, the purpose of the disclosure must be reasonable and the disclosure must be reasonable for the purpose.

[para 46] In this inquiry I found that the Health and Safety Officer's disclosures to the Foreman, Supervisor and General Manager were made in order to inform individuals who were either in management or in supervisory positions, of a human resources issue regarding the Complainant's employment status. I find that the purpose of these disclosures was reasonable. I find that it was reasonable for the Organization to inform its management and those in supervisory positions of the Complainant's suspension and, in one case, the reason for that suspension. I also find that the disclosures were reasonable for that purpose. There is no evidence before me that Health and Safety Officer disclosed any other personal employee information to these individuals.

[para 47] In this inquiry I also found that the Organization disclosed to several contractors and Superior Concrete employees that the Complainant would be absent from work or that he was no longer employed. As previously mentioned, in my view it is reasonable for an Organization to disclose, to its contractors and customers, whether an employee is absent or currently employed by that organization. I find that these types of disclosures are necessary for an organization to function and carry on its business. I find that this is a reasonable purpose for disclosure. I also find that the disclosure was reasonable for the purpose. There is no evidence before me that the Organization disclosed any other personal employee information to these individuals.

**c. Did the information relate to the employment or volunteer work relationship of the individual?**

[para 48] For the reasons previously mentioned in this Order, I find that the Organization's disclosure to the Foreman, the Supervisor, the General Manager, contractors and to the Superior Concrete employees consisted of information related to the Complainant's employment status. I find that this information related to Complainant's employment relationship with the Organization.

**d. Did the Organization provide the Complainant with reasonable notification?**

[para 49] Section 21(2)(c) requires that an organization provide a current employee, prior to disclosing that information, with reasonable notification that personal information about the employee is going to be disclosed and purposes for which the information is going to be disclosed.

[para 50] In this Order I found that the Complainant was an employee until at least November 12, 2008. This means that the Health and Safety Officer's disclosure to the Foreman and Supervisor on November 4, 2008 and to the General Manager on November 11, 2008 occurred while the Complainant was still an employee of the Organization. As such, section 21(2)(c) required the Organization to provide the Complainant with reasonable notification prior to these disclosures.

[para 51] After a review of the information and evidence before me, I find that the Organization did not provide the Complainant with reasonable notification. There is no evidence that the Health and Safety Officer notified the Complainant of the pending disclosure to the Foreman, to the Supervisor and to the General Manager. There is also no evidence that the Health and Safety Officer notified the Complainant of the purposes for which this information would be disclosed. I also note that if the Supervisor's disclosures to the contractors and the Batchman's disclosures to the Superior Concrete

employees were made while the Complainant was a current employee there is similarly no evidence that the Organization notified the Complainant of the disclosures and the purposes for which the disclosures would be made, as required by section 21(2)(c). I note that if the Organization had, in fact, provided the Complainant with notification, it failed to include that information in its submissions. I find that the Organization did not fulfill the requirements for reasonable notification under section 21(2)(c).

[para 52] Although I question the practicality of requiring a health and safety officer to give reasonable notice to an employee before disclosing this type of information to the employee's supervisor or to management, in this order, I am bound by the reasonable notification requirements set out section 21(2)(c) of PIPA. However, it is important to note that the amount of reasonable notification in these types of circumstances will depend on the type of information to be disclosed. For example, if an employee fails a drug and alcohol test and must be removed from employment duties, in my view, an Organization would only need to provide a brief period of reasonable notification. In those circumstances an organization's health and safety officer could inform an employee's supervisors and/ or management staff immediately after giving an employee notice. There may also be situations where it is necessary for an organization to disclose an employee's personal employee information in order to respond to an emergency that threatens the life, health or security of an individual or the public. In those situations, the organization would be authorized, under section 20(g) of PIPA, to disclose the personal employee information without reasonable notification.

[para 53] Lastly, an organization also has the option of obtaining an employee's consent at the inception of the employee's employment, pursuant to the requirements of section 8 of PIPA, to disclose this type of information. The consent requirements under section 8 will be addressed later in this order.

#### **e. Summary**

[para 54] I find that the Organization disclosed the Complainant's personal employee information to the Foreman, the Supervisor, the General Manager, to contractors and to Superior Concrete employees. I also find that the information that was disclosed related to the employment relationship of the Complainant and the Organization and that the disclosures were reasonable. However, I find that the Organization did not provide the Complainant with reasonable notification of the disclosures to the Foreman, Supervisor, General Manager and arguably to the contractors and Superior Concrete employees. As such, I find that the Organization did not fulfill the requirements of section 21 and therefore did not have the authority, under that section, to disclose that personal employee information of the Complainant.

### **3. If the Organization did not have the authority to disclose the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before disclosing the information?**

[para 55] Section 8 states that an individual may consent to the disclosure of his or her personal information either in writing, orally or through deemed consent. Section 8(3) also states that an organization may disclose personal information about an individual if the organization gives the individual the required notice. Section 8 reads:

*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.*

*(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 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) 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 of image or a reproduction of the consent in paper form.*

[para 56] After a review of the evidence and information before me, I find that the Complainant did not provide the Organization with either written or oral consent to disclose his personal information. There is insufficient evidence and information before me that the Complainant provided the Organization with this consent. I also find that the Complainant did not provide the Organization with deemed consent. Although the Organization alleges that the Complainant disclosed, to other employees of the Organization, that he had been suspended and/or dismissed for failing a drug and alcohol test, there is insufficient evidence and information that the Complainant disclosed this

information to those employees for the purpose of providing the Organization with deemed consent to further disseminate this information. In addition, I find that the Organization did not provide the Complainant with notice under section 8(3). There is insufficient evidence before me that the requirements of section 8(3) are fulfilled.

**4. If the Organization had the authority to disclose the personal information under section 20 but not under section 21, did it disclose the information contrary to, or in accordance with, section 19(1) of PIPA (disclosure for purposes that are reasonable)?**

[para 57] I have found that the Organization did not have the authority to disclose the Complainant's personal information under section 20. As such, I will not address whether the Organization disclosed the information contrary to, or in accordance with, section 19(1) of PIPA.

**5. If the Organization had the authority to disclose the personal information under section 20 but not under section 21, did it disclose the information contrary to, or in accordance with section 19(2) of PIPA (disclosure to the extent reasonable for meeting the purposes)?**

[para 58] I have found that the Organization did not have the authority to disclose the Complainant's personal information under section 20. As such, I will not address whether the Organization disclosed the information contrary to, or in accordance with, section 19(2) of PIPA.

## **USE OF PERSONAL INFORMATION**

[para 59] In this Order, I addressed the Organization's transfers of information as "disclosures". In that regard, I found that the Organization disclosed the Complainant's personal information to several individuals within the Organization. I found that on November 4, 2008, the Health and Safety Officer disclosed to the Foreman of the Organization that the Complainant's drug and alcohol test showed positive and the process that the Organization intended to follow to address the positive test result. I also found that on that same date, November 4, 2008, that the Health and Safety Officer disclosed to the Supervisor that the Complainant had been suspended, and on November 11, 2008, disclosed that same information to the General Manager.

[para 60] As previously mentioned, these disclosures that occurred within the Organization could arguably also be considered a "use" of personal information. I will therefore now address whether the Organization also had the authority to use this information under PIPA.

**A. Did the Organization use "personal information" of the Complainant as defined in PIPA section 1(k)?**

[para 61] Personal information is defined in section 1(k) of PIPA as "information about an identifiable individual". In this Order I found that the Health and Safety Officer informed the Foreman, the Supervisor and the General Manager that the Complainant's drug and alcohol test showed positive and informed them of the Complainant's

suspension from work. I find that this information is the Complainant's personal information.

**B. Did the Organization use the “personal information” in contravention of, or in compliance with, section 7(1) of PIPA? In particular,**

**1. Did the Organization have the authority to use the Complainant's personal information without consent, as permitted by section 17 of PIPA?**

[para 62] Section 17 states that an organization may use personal information about an individual without the consent of the individual if one or more of the enumerated criteria under section 17 are fulfilled. After a review of section 17, I find that the Organization's use of the information does not fulfill the criteria under section 17. Although section 17(i) states that an organization may use personal information if the use of information is necessary to respond to an emergency that threatens the life, health or security of an individual or the public, there is insufficient evidence and information that the requirements of this subsection or other subsections within section 17 are fulfilled. In this regard I note that neither the Organization nor the Complainant addressed section 17 in their submissions.

**2. Did the Organization have the authority to use the information without consent, because the information was the Complainant's “personal employee information” as the term is defined in PIPA section 1(j), and the terms of section 18 were met?**

[para 63] Section 18 reads:

*18(1) Notwithstanding anything in this Act other than subsection (2), an organization may use personal employee information about an individual without the consent of the individual if*

*(a) the individual is an employee of the organization, or*

*(b) the use of the information is for the purpose of recruiting a potential employee.*

*(2) An organization shall not use personal information about an individual under subsection (1) without the consent of the individual unless*

*(a) the use is reasonable for the purposes for which the information is being used,*

*(b) the information consists only of information that is related to the employment or volunteer work relationship of the individual, and*

*(c) in the case of an individual who is an employee of the organization, the organization has, before using the information, provided the individual with reasonable notification that the information is going to be used and of the purposes for which the information is going to be used.*

*(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to use personal information under section 17.*

[para 64] Section 18 of PIPA states that an Organization may use an individual's personal employee information without consent if the following four criteria are fulfilled:

- (i) the information consists of "personal employee information";
- (ii) the use is reasonable for the purpose for which the information is used;
- (iii) the information consists only of information that is related to the employment or volunteer work relationship of the individual; and
- (iv) if the individual is a current employee, the organization must provide the individual with reasonable notification that the personal employee information is going to be used and the purposes for the use.

**a. Is the information "personal employee information"?**

[para 65] The term "personal employee information" is defined in section 1(j) of PIPA. For the reasons previously given in this Order, I find that the information that Health and Safety Officer provided to the Foreman, the Supervisor and the General Manager consisted of the Complainant's personal employee information.

**b. Was the use reasonable?**

[para 66] I find that the Health and Safety Officer shared the Complainant's personal employee information with the Foreman, Supervisor and the General Manager in order to inform individuals who were either in management or supervisory positions of a human resources issue regarding the Complainant's employment status. I find that this use was reasonable. I find that it is reasonable for an organization to inform its management and those in supervisory positions of an employee's suspension and the reasons for that suspension. I also find that the use of the personal employee information was reasonable for the purpose. There is no evidence before me that the Health and Safety Officer provided any other personal employee information of the Complainant to these individuals.

**c. Does the information relate to the employment or volunteer work relationship of the individual?**

[para 67] I find that the Health and Safety Officer told the Foreman, Supervisor and General Manager information that related to the Complainant's employment status. I find that the information relates to the Complainant's employment relationship with the Organization.

**d. Did the Organization provide the Complainant with reasonable notification?**

[para 68] Section 18(2)(c) requires an organization to provide a current employee with reasonable notification that the organization is going to use personal information about the employee and the purposes for which the information is going to be used. I do not find that the Organization provided the Complainant with reasonable notification. There is no evidence before me that the Health and Safety Officer notified the Complainant that it intended to use the Complainant's personal information nor the purposes for which the information would be used. I find that the Organization did not fulfill the reasonable notification requirements under section 18(2)(c).

[para 69] However, as previously mentioned in my order, what constitutes reasonable notification will depend on the circumstances and, in particular, the type of information that is going to be used. For example, where an employee fails a drug and alcohol test and must be removed from employment duties, reasonable notification would span a very short period of time. In my view, in those circumstances, an employee's supervisors could be informed immediately after the employee was notified. There may also be situations where it is necessary for an organization to use this type of personal employee information in order to respond to an emergency that threatens the life, health or security of an individual or the public. In those situations, the organization's use of the information without reasonable notification would be authorized under section 17(i) of PIPA.

[para 70] Lastly, I note that an organization also has the option of obtaining an employee's consent at the inception of the employee's employment, pursuant to the requirements of section 8 of PIPA, to use this type of information.

**e. Summary**

[para 71] I find that the Organization used the Complainant's personal employment information. I also find that the information related to the employment relationship between the Complainant and the Organization and that the use of the information was reasonable. However, I find that the Organization did not provide the Complainant with reasonable notification. As such, I find that the Organization did not fulfill the requirements of section 18 and therefore did not have the authority under that section to use the personal employee information of the Complainant.

**3. If the Organization did not have the authority to use the information without consent, did the Organization obtain the Complainant's consent in accordance with section 8 of the Act before using the information?**

[para 72] I find that the Complainant did not provide the Organization with either written or oral consent to use his personal information. I also find that the Complainant did not provide the Organization with deemed consent nor did the Organization provide the Complainant with notice under section 8(3). There is insufficient evidence before me that the Complainant provided the Organization with consent, deemed consent or that the section 8(3) requirements were fulfilled.

**4. If the Organization had the authority to use the personal information under section 17, but not under section 18, did it use the information contrary to, or in accordance with, section 16(1) of PIPA (use for purposes that are reasonable)?**

[para 73] I have found that the Organization did not have the authority to use the Complainant's personal information under section 17. As such, I will not address whether the Organization used the information contrary to or in accordance with, section 16(1) of PIPA.

**5. If the Organization had the authority to use the personal information under section 17 but not under section 18, did it use the information contrary to, or in accordance with section 16(2) of PIPA (use to the extent reasonable for meeting the purposes)?**

[para 74] I have found that the Organization did not have the authority to use the Complainant's personal information under section 17. As such, I will not address whether the Organization used the information contrary to or in accordance with, section 16(2) of PIPA.

**IV. ORDER**

[para 75] I make the following order under section 52 of PIPA:

[para 76] I order the Organization to cease using and/or disclosing the Complainant's personal employee information in contravention of sections 7, 18 and 21 of PIPA.

[para 77] I impose the following term on the Organization:

The Organization is to ensure that it does not use and/or disclose personal employee information of the Complainant that it is not authorized to use and/or disclose by ensuring that its employees are made aware of the Organization's obligations under sections 7, 18 and 21 of PIPA. In particular, the Organization is to ensure that its employees are made aware of the Organization's obligations to provide reasonable notification to an employee before using and/or disclosing the employee's personal employee information under sections 18(2)(c) and 21(2)(c).

[para 78] I further order the Organization to notify me in writing, within 50 days of receiving a copy of this Order, that it has complied with this Order.

Lisa McAmmond  
Adjudicator