

**ALBERTA**

**OFFICE OF THE INFORMATION AND PRIVACY  
COMMISSIONER**

**ORDER P2018-06**

September 14, 2018

**IDEAL HOUSING COOPERATIVE LTD.**

Case File Number 000691

**Office URL:** [www.oipc.ab.ca](http://www.oipc.ab.ca)

**Summary:** The Complainant made a complaint to the Commissioner under the *Personal Information Protection Act* (PIPA) that the Ideal Housing Cooperative (the Organization) had used and disclosed her personal information in contravention of PIPA when it included her personal information in an investigation report and when it provided information in that report to members of the Organization. She also complained that the Organization had disclosed her personal information in contravention of PIPA when it included information from its investigation in a reference to a housing federation for which the Complainant was seeking to be a director and provided the opinion that the Complainant was an unsuitable candidate for the reasons referred to in the investigation.

The Adjudicator found that the Organization had used the Complainant's personal information to conduct the investigation, create the investigation report, and to share details of the investigation with the Organization's members. The Adjudicator found that the Organization was not required to obtain consent to do so, as these uses of personal information were for purposes falling within the terms of section 17(d) of PIPA. The Adjudicator found that the uses of the Complainant's personal information complied with section 16.

The Adjudicator found that the Organization's disclosure of the Complainant's personal information to the Canadian Housing Federation (CHF), while not made with consent, was authorized by section 21(2) of PIPA, which enables an organization to provide a reference to another organization. The Adjudicator determined that a broad interpretation

of section 21(2) was required to ensure that the Organization could provide its members' opinion on a matter affecting the Organization.

The Adjudicator found the Organization's disclosure to the housing federation complied with section 19.

**Statutes Cited: AB:** *Personal Information Protection Act* S.A. 2003, c. P-6.5 ss. 1, 3, 7, 8, 16, 17, 19, 20, 21, 52; *Cooperatives Act*, S.A. 2001, c. C-28.1 ss. 2, 80, 85, 361, 388

**Authority Cited: AB:** Order P2015-07

**Cases Cited:** *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110; *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 SCR 983

## I. BACKGROUND

[para 1] On March 25, 2015, the Complainant, a former member of the board of directors of the Ideal Housing Cooperative Ltd. (the Organization) made a complainant to the Commissioner that the Organization had disclosed her personal information in contravention of the *Personal Information Protection Act* (PIPA). She stated:

Prior to my removal from the Board of Directors of Ideal Housing Cooperative Ltd.; I received a 200 page "Outcome of Investigation" document from the Board of Directors of Ideal Housing Cooperative Ltd. In the document I received, there are names and alleged breaches listed against four other members of Ideal Housing Cooperative. Three of these members were not aware that they were being investigated by this Board of Directors, or that they were listed in my document as having committed multiple breaches. The fourth member did not know he was being investigated until he received an "Outcome of Investigation" document at the same time I did; and his document was very similar in content to the one I received. His document contains alleged breaches against me and the three other members listed in my document. I believe a potential privacy breach may have occurred by this Board of Directors in that they named other people (first and last names) in the two documents; and accused these members of breaches, without these members having any knowledge that they were being accused in a document distributed to others.

Additionally, both "Outcome of Investigation" documents contain information regarding CASA Housing Services and name an employee of CASA Housing Services. There are details listed in the "Outcome of Investigation" documents around alleged issues the Board of Directors of Ideal Housing Cooperative Ltd. has with the performance of services of the CASA employee.

After removing me from the Board of Directors of Ideal Housing Cooperative, the five remaining Directors held a public meeting of the general membership of the cooperative on January 5, 2015 to inform them of the alleged breaches against [me] and the other member who received the 200 page document. Thirty-two out of thirty-nine member units were represented at this meeting.

At that meeting, the general membership questioned the alleged breaches and requested a copy of the investigation documents. The Board of Directors subsequently requested myself and the other members provide written consent so that the Board of Directors of Ideal Housing Cooperative Ltd. could distribute documents related to our removal from the Board to the general membership of the cooperative (39 member units).

The other member and I provided written consent based on separate consent [documents] we drafted up after the January 5, 2015 meeting. In the document, dated January 20, 2015, I have clearly stated that the Board of Directors of Ideal Housing Cooperative Ltd. did not have my permission to distribute any information regarding this investigation to anyone other than the members of Ideal Housing Cooperative; and any distribution of information external to Ideal Housing Cooperative Ltd. would require my express written consent [...]

[para 2] The Complainant also asserted that a disclosure of her personal information took place when the board of directors of the Organization sent an email to representatives of the Co-operative Housing Federation of Canada (CHF). Attached to this email was a letter informing CHF that the Organization would not complete a form confirming that the Complainant was a candidate in good standing, on the basis that “she had been investigated and found guilty of numerous and egregious breaches of Ideal Housing Cooperative Ltd.’s Bylaws, the *Cooperatives Act*, the Ethical Conduct Agreement and Confidentiality Agreement of which the General Membership is aware.<sup>1</sup>”

[para 3] To summarize, the Complainant complained about two discrete actions: the sharing of information about her conduct in the “Outcome of Investigation” document with the Organization’s members, and the disclosure to CHF that the Organization considered the Complainant to be guilty of offences under the *Cooperatives Act* R.S.A. 2000.

[para 4] The Commissioner authorized a senior information and privacy manager to mediate a settlement of the matter, if possible. The parties were unable to settle the matter at the conclusion of this process and the Complainant requested an inquiry.

[para 5] In her request for inquiry, the Complainant stated that she was seeking an inquiry in relation to the following issues:

ISSUE #1

Re: Page 2 of 5 of the Summary of Investigation Letter:

Complaint #1: Email to CHF

“The Organization submitted the following, which [the Senior Information & Privacy Manager] [...] summarized:

In the opinion of our legal counsel, her asking us to provide them with information on her behalf is an official [waiving] of her right to privacy as she asked us for the information and the letter of explanation, which we provided to the parties as requested by her in writing and verbally during a board meeting.

- Although we were always within our right to advise CHF of her removal from the Board, and therefore her authority to act on our behalf, we did not do so until she made the formal request for the information as we are trying to respect her privacy.
- We only provided information required to respond to her request.

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<sup>1</sup> The Complainant had applied to become a director of CHF; CHF required that a “Confirmation of Good Standing form for Candidates” be completed as a prerequisite for becoming a candidate.

- When asked by CHF for further information, we informed CHF that they would need to ask [the Complainant] for further CHF. [sic]”

The following statement, from above, is untrue: “as requested by her in writing and verbally during a board meeting.”

See Ideal Housing Cooperative Ltd. Open Meeting Minutes from March 10, 2015 (Attachment #2) and April 14, 2015 (Attachment #3). There is nothing in the Open Meeting minutes to support the Organizations statement above.

At the March 10, 2015 Open meeting I verbally inquired as to the status of the Confirmation in Good Standing form, and was told at that meeting that the Board will be discussing the form in the In-Camera meeting, immediately following the Open meeting. [...] was at March 10, 2015 meeting and can confirm this.

Since I was not on the Board of Directors for the Organization at that time, I do not have access to the in-camera meeting minutes from March 10, 2015 or April 14, 2015 to support if any discussion occurred in the In-camera meetings.

I attach the April 14, 2015 Open Meeting minutes only to show that my inquiry at the March 20, 2015 Open Meeting was included in the minute and not amended as being missed, in the April 14, 2015 Open Meeting minutes. See emails (Attachment #4) from myself to the Board of Directors (February 26, 2015, March 3, 2015, and, lastly March 16, 2015 at 11:06 am) requesting an update to the Board signing of the Confirmation in Good Standing Form for Candidates for CHFC Director (Attachment #5).

The Board of Directors never responded back to me through email or any other manner, until the Board issued an email (Attachment #6) and letter to CHFC (Attachment #7) the evening of March 16, 2015 at 6:54pm; of which I received in hard copy, later in the evening of March 16, 2015 as well as a letter addressed to me from the Board of Directors (Attachment #7).

Note: The Email to CHFC above was sent by [a member]. The letter addressed to CHFC in the email is signed by [another member]; the letter I received is signed by [the member referred to in the previous sentence].

## ISSUE #2 - CONFIRMATION OF GOOD STANDING - NACHA BOARD

Almost 2 months later, the Board of Directors of Ideal Housing Cooperative signed a Confirmation of Good Standing for me to be on the Board of Directors for the Northern Alberta Co-operative Housing Association (NACHA).

See email (Attachment #8) from myself, requesting the Board of Directors to sign a Confirmation of Good Standing for the Northern Alberta Cooperative Housing Federation (NACHA); I was voted onto the Board of Directors of NACHA at NACHA’s AGM on May 2, 2015. NACHA is a local Federation for Edmonton & Northern Alberta Housing Cooperatives, providing education, resources, training, lobbying, etc for housing cooperatives and their Boards of Directors (similar to what CHFC does).

See attached signed Confirmation of Good Standing of Candidates for the Board of Directors (Attachment #9); signed by [...] (Treasurer) and [...] (Director at Large) of Ideal Housing Cooperative, dated May 26, 2015.

I question why the Board of Directors of Ideal Housing Cooperative would not sign the CHFC Confirmation of Good Standing, and yet, almost 2 months later sign the NACHA Confirmation of Good Standing? Nothing changed in my co-op regarding my status of being a Member in Good Standing between March and May 2015.

I believe the actions of this Board were malicious, and with the intent to disrepute my integrity and good reputation I had with CHFC, NACHA, and the Regional Director at that time, [...]; this is further supported by information provided in Issue #2 above. The actions of the Board of Directors of Ideal Housing Cooperative from November 2014 to present date have negatively affected myself and many members within this Cooperative; not only with their privacy breaches.

Any future opportunities I may have with volunteering on other Boards is tainted based on the actions of this Board. I am unable to claim any Board volunteer experience within my own Cooperative; as I can't be guaranteed that this board won't take future action to disrepute my integrity and good reputation.

### ISSUE #3

Re: Page 2 of 5 of the Summary of Investigation Letter:

“Re: Complaint #2: Investigation Report

The Investigation Report, dated November 26, 2014, contains the Complainant's name, along with details about the investigation into allegations against the Complainant. [I, the Senior Information & Privacy Manager] have reviewed the report and it is my view that the information at issue is not personal information, but is instead personal employee information. PIPA defines personal employee information as:

- (i) ‘personal employee information’ means, in respect of an individual who is a potential, current or former employee of an organization, personal information reasonably required by the organization for the purposes of
  - (i) establishing, managing or terminating an employment or volunteer-work relationship,
  - or
  - (ii) managing a post-employment or post-volunteer-work relationship between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;”

In November 2014, I received a 200 page ‘Outcome of Investigation’ (Attachment #10) document from the Board of Directors of Ideal Housing Cooperative Ltd. In the document I received, there are names and information about four other members of Ideal Housing Cooperative. Only 1 person, [...], was on the Board of Directors with me in October/November 2014 when this ‘investigation’ was being done against us.

These 3 non-Board members [...] were not aware at that time that they were being investigated by the Board of Directors. These three members being investigated were former Board members, and were not on the Board of Directors of the cooperative during the time this ‘investigation’ was being done.

The 3 non-Board members and [a board member] did not have any prior knowledge that they were going to be identified in the Outcome of Investigation document I received from the Board of Directors.

In return, I had no prior knowledge that I was going to be listed in [a board member's] Outcome of Investigation document; or any subsequent documents issued in February 2015 to 2 of the former Board Members.

I do not believe myself and [the other board member] had any right to know that an investigation was being conducted against former board members; and that the privacy of these 3 former board members was breached.

[para 6] In her request for inquiry, the Complainant raised issues about the timing of the Organization's completion of forms regarding her standing within the Organization and complains that she cannot rely on her board experience with the Organization as it will not provide her with a good reference. She also expressed concern that the Organization may disclose information portraying her in a bad light in the future, further jeopardizing her ability to serve on boards.

[para 7] With regard to the first aspect of this complaint – that the Complainant cannot rely on the Organization to provide her with a favorable reference – PIPA does not contain any provisions *requiring* organizations to complete references for individuals. The purpose of PIPA is set out in section 3. It states:

3 The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of an individual to have his or her personal information protected and the need of organizations to collect, use or disclose personal information for purposes that are reasonable.

[para 8] PIPA is intended to balance the need to protect personal information with the need of an organization to collect, use, or disclose personal information for reasonable purposes. PIPA permits an organization to provide a reference in certain circumstances; however, PIPA is not intended to enable an individual to require an organization to provide references about the individual. There are, accordingly, no provisions in PIPA with that effect. I therefore lack jurisdiction to address this issue.

[para 9] The Complainant's request for inquiry also indicates that she is seeking an inquiry on behalf of other board members or former board members whose information was contained in the report and provided to the members of the Organization without first obtaining their consent.

[para 10] I will not address the issues the Complainant raises regarding the personal information of the other board members and former board members, as the other board members are the most appropriate parties to bring complaints if they believe that their rights under PIPA have been infringed.

[para 11] The Complainant also requests an inquiry in relation to her complaint regarding the inclusion of her personal information in the report and the sharing of some of this information with members of the Organization without her consent. She also seeks an inquiry in relation to the Organization's disclosure of information about her to the CHF. I have jurisdiction to address these issues and I will address them below.

[para 12] The notice of inquiry issued by this office sets the issues in terms of "disclosure" of the Complainant's personal information, or alternatively, disclosure of the Complainant's "personal employee information". However, an aspect of the Complainant's complaint in relation to the report, as set out in her request for inquiry, is

the fact that her personal information appears in the report and that she was not notified in advance that her personal information would appear in the report and be provided to members of the Organization. This is a complaint regarding the Organization's *use* of her personal information without her consent. I say this because the Complainant indicates the Organization did not release its report outside the Organization but provided information from it only to members.

[para 13] As the Organization's submissions address the purposes for which the Complainant's personal information was used, and as the relevant exceptions for which personal information may be used and disclosed are similar, I have decided to add the question of whether the Organization used the Complainant's personal information in contravention of PIPA to the inquiry.

[para 14] To summarize, the complaint regarding the inclusion and sharing of the Complainant's information in the report within the organization is a complaint regarding the use of personal information, and the complaint regarding the Organization's communications with CHF is one of unauthorized disclosure.

## **II. ISSUES**

**Issue A: Did the Organization use the Complainant's personal information in contravention of section 7 of PIPA?**

**Issue B: Did the Organization comply with section 16 (limitations on use) when it used the Complainant's personal information?**

**Issue C: Did the Organization disclose the personal information of the Complainant in contravention of section 7 of PIPA?**

**Issue D: Did the Organization comply with section 19 (limits on disclosure) when it disclosed the Complainant's personal information?**

## **III. DISCUSSION OF ISSUES**

**Issue A: Did the Organization use the Complainant's personal information in contravention of section 7 of PIPA?**

[para 15] As noted in the background portion of this order, there are two discrete components to the Complainant's complaint regarding use of her personal information. The first action is the Organization's inclusion of the Complainant's information in an investigation report and the second is sharing information from the report with members of the Organization.

[para 16] Section 7 of PIPA imposes an obligation on an organization to obtain consent prior to collecting, using, or disclosing personal information. The relevant provisions state:

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

*[...]*

*(c) use that information unless the individual consents to the use of that information, or*

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

*[...]*

*(3) An individual may give a consent subject to any reasonable terms, conditions or qualifications established, set, approved by or otherwise acceptable to the individual.*

Section 7(1) requires an organization to obtain consent prior to using personal information, except in the situation where PIPA provides otherwise. With regard to the use of personal information, section 17 of PIPA contains an exhaustive list of circumstances in which an organization may use personal information without consent.

[para 17] In answering the question of whether the Organization's use of the Complainant's personal information was in compliance with section 7 of PIPA, I will first consider whether the information that is the subject of the complaint is personal information. If the information is personal information, I will then consider whether section 17 authorizes its use without the Complainant's consent. If not, I will then consider whether the Organization obtained consent to use the Complainant's personal information.

*The framework in which the Organization operates*

[para 18] The Organization in this case is a housing cooperative within the terms of the *Cooperatives Act*. The organizational structure of the Organization and the legal framework in which it operates are relevant to the question of whether it used or disclosed the Complainant's personal information in accordance with PIPA. I have therefore decided to preface this analysis with a discussion of the legislation governing cooperatives and the effect of this legislation on a cooperative's structure.

[para 19] A cooperative is an organization incorporated under the *Cooperatives Act* for the purpose of conducting business on a cooperative basis. Section 2 of the *Cooperatives Act* explains how cooperative businesses operate. It states, in part:

*2(1) For the purposes of this Act, a cooperative is organized and operated, and carries on business, on a cooperative basis if*

(a) *membership is available to persons who can use the services of the cooperative and who are willing and able to accept the responsibilities of and abide by the terms of membership,*

(b) *each member or delegate has only one vote,*

(c) *no member or delegate may vote by proxy,*

(d) *interest on any member loan is limited to a maximum rate fixed in the articles,*

(e) *dividends on any membership share are limited to the maximum rate fixed in the articles,*

(f) *to the extent feasible, members provide the capital required by the cooperative,*

(g) *surplus funds arising from the cooperative's operations are used*

*(i) to develop its business,*

*(ii) to provide or improve common services to members,*

*(iii) to provide for reserves or the payment of interest on member loans or dividends on shares,*

*(iv) for community welfare or the propagation of cooperative enterprises, or*

*(v) as a distribution among its members as a patronage return,*

*and*

(h) *it provides education on the principles of cooperative enterprises.*

[para 20] A housing cooperative, such as the Organization, is, in addition to being subject to the general provisions in the *Cooperatives Act*, subject to the housing cooperative provisions in that Act. Under section 388 of the *Cooperatives Act*, the articles of a housing cooperative, such as the Organization, must provide that the primary object of the cooperative is to “carry on business as a non-profit continuing housing cooperative or non-profit home ownership cooperative and to provide housing or housing-related facilities to its members together with ancillary services and facilities”.

[para 21] Members of a housing cooperative act cooperatively to achieve the shared goal of providing housing and housing-related facilities to all members. Together, the

individual members of a cooperative form the cooperative. A board of directors of the cooperative is elected by the members of the cooperative and is tasked with making decisions, including legally binding decisions, on behalf of the cooperative. The actions of the board of directors are the actions of the cooperative and its members.

[para 22] The *Cooperatives Act* contains standards of conduct for the directors of cooperatives. One such provision is section 80 of the *Cooperatives Act*, which imposes a mandatory duty on the director of a cooperative to disclose interests in a matter. This provision states, in part:

*80(1) A director or officer must, in accordance with this Division, disclose to the cooperative the nature and extent of any interest that the director or officer has in a material contract or transaction, or a proposed material contract or transaction, with the cooperative, and any material change to any such interest, if the director or officer*

*(a) is a party to the contract or transaction,*

*(b) is a director or officer, or an individual acting in a similar capacity, of a party to the contract or transaction, or*

*(c) has a material interest in a party to the contract or transaction.*

*[...]*

*(3) The director or officer must make the disclosure in writing to the cooperative or request to have it entered in the minutes of a meeting of directors.*

[para 23] Section 85(1) of the *Cooperatives Act* requires a director who has a conflict of interest referred to in section 80 of that Act not to be present when the matter for which the director has a conflict is put to a vote. This provision states:

*85(1) A director who is interested in a contract or transaction or proposed contract or proposed transaction referred to in section 80(1) may not be present for the vote or vote on any resolution to approve the contract or transaction.*

Under section 361 of the *Cooperatives Act*, it is an offence to contravene the requirements of section 80.

*Did the Organization use the Complainant's personal information when the investigation report into her conduct was distributed to members of the Organization?*

[para 24] In answering this question, I must first determine what “personal information” means within the context of PIPA. I will then consider whether the

Organization used or disclosed the Complainant’s personal information in the circumstances in which the Complainant alleges.

[para 25] Section 1(1)(k) defines “personal information” within the terms of PIPA. It states:

*1(1) In this Act,*

*(k) “personal information” means information about an identifiable individual [...]*

[para 26] Past orders of this office have held that personal information “about an identifiable individual” refers to an individual acting in a personal, rather than a “representative” capacity. The Adjudicator in Order P2015-07 reviewed these orders and stated:

“Personal information” is defined in section 1(1)(k) of the Act as “information about an identifiable individual.” The Organization argues that the information it disclosed about the Complainant is not his personal information but rather is information about the Complainant as an organization. The Organization states that the information in the email about the Complainant is about membership and grazing allotments, which is about a business; it states that grazing allotments are granted to agricultural businesses.

Previous orders of this Office have stated that information about individuals acting in a professional capacity (information about work duties) is not personal information within the meaning of the Act, unless it has a personal dimension. In Order P2006-005 former Commissioner Work stated:

In Order P2006-004, I considered the meaning of “personal information about an individual” within the meaning of the Act:

The Act defines “personal information” as “information about an identifiable individual”. In my view, “about” in the context of this phrase is a highly significant restrictive modifier. “About an applicant” is a much narrower idea than “related to an [applicant]”. Information that is generated or collected in consequence of a complaint or some other action on the part of or associated with an applicant – and that is therefore connected to them in some way – is not necessarily “about” that person.

In Order P2012-08, the adjudicator considered whether information about an organization can also be personal information about an individual such that PIPA would apply. She said (at paras. 16, 18-19):

The question becomes whether information about an individual acting in a commercial capacity, or an individual acting as a representative of a corporation, such as a director, is personal information within the terms of section 1(1)(k).

...

If information about an individual acting solely in a commercial capacity, or solely in a capacity as a representative of an organization, is to be interpreted as personal information, then this interpretation would have the effect of protecting information rights of some, but not all, organizations. An organization collecting the business information of sole proprietors or single shareholder corporations would arguably be required to comply with PIPA when they do so, even though it would not be necessary to do so in the case of a larger organization. Such a result would appear to be entirely

arbitrary, given that both small and large organizations may conduct the same business and be required to furnish the same kinds of information to other organizations. In my view, the better approach is to consider that information that is about an individual acting solely in the individual's capacity as a representative of an organization, or in a commercial capacity is not personal information for the purposes of section 1(1)(k). In saying this, I do not mean that information about an individual acting in a commercial capacity is never personal information. If such information appears in the context of information about the individual in a personal capacity, such as the case where an individual is subjected to disciplinary proceedings arising from actions taken in a representative capacity, then the information may be personal information within the terms of section 1(1)(k). However, information that is solely about an individual acting in a commercial or representative capacity in circumstances where the information lacks a personal dimension, will not fall within section 1(1)(k).

I agree with the above analyses. In this case, the information at issue is information contained in an email and is about outstanding fees owed to the Organization. The email speaks in terms of outstanding fees owed by the Complainant; however, the Organization's arguments indicate that these fees are owed by the Complainant's agricultural operation, rather than by the Complainant as an individual.

[...]

[...] The Organization's claim that the information about the Complainant's past membership with the grazing reserve is about the Complainant's agricultural business is supported by section 105 of the *Public Lands Act*, cited above. The Complainant had an opportunity to rebut this claim, by explaining how the status of the payment of dues by his agricultural operation could be said to have a personal dimension or be his personal information, but did not. The Complainant's name is his personal information in some contexts; however, when it appears in the course of his doing business as a farm or ranch operator, absent some particular circumstance giving it a personal dimension, it is not information *about him* and is therefore not his personal information in that context. The information about membership fees owed or paid by his agricultural business is also not personal information about the Complainant unless some personal aspect is shown. Therefore, PIPA does not govern the collection, use or disclosure of that information.

As I have found that the information disclosed by the Organization is not the Complainant's personal information within the terms of section 1 of the Act, and therefore PIPA does not apply to that disclosure, I do not need to consider the remaining issues set out in this inquiry.

[para 27] In the foregoing order, the Adjudicator concluded that the information at issue in that case was information about the complainant as a representative of an organization, and was therefore about the organization he represented, rather than about the complainant as an individual. She decided, accordingly, that PIPA did not apply to the collection, use, and disclosure of the information that was the subject of the complaint.

[para 28] In the present case, the information about the Complainant that was used to prepare the report is information about her actions as a director of the Organization. The report documents an investigation conducted by legal counsel as to whether specific members of the board of directors, including the Complainant, had contravened the conflict of interest provisions of the *Cooperatives Act* (sections 80 and 85, cited above) when they voted on various motions and contracts. Legal counsel concluded that they had, and detailed the motions in which he considered the members to have been in

conflict. The report also contains his assessment, based on the minutes, as to whether the conduct of various directors, including the Complainant, met the standards of the Organization's bylaws and the *Cooperatives Act*. Further, he concluded that the directors did not comply with the terms of section 80 of the *Cooperatives Act*, which requires a director to disclose a conflict of interest to the members of the cooperative.

[para 29] Past orders of this office have held that information about an organization's representative will be personal information if it has a personal dimension, such as when the information is about the representative acting as an individual citizen and has personal consequences for the representative in that capacity. In *Edmonton (City) v Alberta (Information and Privacy Commissioner)*, 2016 ABCA 110, the Alberta Court of Appeal considered this approach, under both the FOIP Act, and PIPA, to be reasonable. The court said:

In general terms, there is some universality to the conclusion in *Leon's Furniture* that personal information has to be essentially "about a person", and not "about an object", even though most objects or properties have some relationship with persons. As the adjudicator recognized, this concept underlies the definitions in both the *FOIPP Act* and the *Personal Information Protection Act*. It was, however, reasonable for the adjudicator to observe that the line between the two is imprecise. Where the information related to property, but also had a "personal dimension", it might sometimes properly be characterized as "personal information". In this case, the essence of the request was for complaints and opinions expressed about Ms. McCloskey. The adjudicator's conclusion (at paras. 49-51) that this type of request was "personal", relating directly as it did to the conduct of the citizen, was one that was available on the facts and the law.

[para 30] The Organization explains the purpose of the investigation it conducted:

The Board of the Corporation was in the process of reviewing/investigating allegations of misconduct of a number of then current and past Board members;

The relationship with the Complainant and the Board was already strained and the matters under investigation would mean that the acrimony would likely only get worse. As such, the Board engaged the services of legal counsel to assist in ensuring an objective review of issues and matters as well as to ensure that any processes undertaken by the Board would be in accordance with the principles of natural justice and procedural fairness, and in compliance with relevant legislation.

[para 31] The Organization explains the information that was provided from the report to members of the Organization:

The Board called a special general meeting (the "General Meeting") to advise the members of the Corporation that, pursuant to the Cooperative Act and the Bylaws, two (2) members were removed from the Board, including the Complainant. While the notification did explain the generic reason for removal, it did not provide any details as to what those offences / breaches were.

[...]

The General Meeting took place on January 5, 2015.

At the General Meeting, the corporate members had questions that could not be answered, as the Board decided that the specifics of the information contained in the Report was not required for the purpose of the General Meeting and would not be provided without consent of the Complainant.

At the General Meeting, the Complainant stated that she would be prepared to provide written consent for the Report to be released.

On January 20, 2015, the Complainant provided written consent.

[...]

On January 9, 2015, the Board provided to the Complainant its own form of Consent for her signature.

On January 29, 2015, the Complainant sent an email to the Board asking when the information per the Report would be going out to [members] and requested a copy of everything that was sent to corporate members.

On January 30, 2015, a letter was sent to members who were eager to receive more information related to the removal of the Complainant.

[...]

On February 1, 2015, the Complainant retracted her consent.

[...]

Given that the consent was no longer provided to the Board, neither the Report nor the information found therein was disclosed to corporate members. That is, the members would have to inquire directly with the Complainant for information beyond that which had been provided.

[para 32] According to the Organization, its board hired a lawyer to conduct an investigation to determine whether the Organization was in compliance with the *Cooperatives Act* in the manner in which the board made decisions. The lawyer prepared a report at the conclusion of the investigation and provided it to the Board. The report contained information about the Complainant with regard to activities outside the cooperative and concluded that she had voted on matters in which she was in conflict. The Board reviewed the report, voted to remove the Complainant from the Board, and then provided general, but not specific, details from the report to members to explain why the Complainant had been removed from the Board.

[para 33] I find that the personal information in the report is not only about the Complainant as a representative of the Organization, but is also about her as an identifiable individual or citizen, given that the report contains information about her activities outside the Organization i.e. being a member of another board. Further, the information exchanged by the Board to members of the Organization was that the Complainant had been removed from the board for having violated the *Cooperatives Act* and the Organization's bylaws. This information is also about the Complainant as an identifiable individual, in addition to being about her actions in a representative capacity.

*If the Organization used the Complainant’s personal information, was it required to obtain her consent prior to using it?*

[para 34] As I have found that the Organization used the Complainant’s personal information when it had the report prepared, when it reviewed it, and when it provided information from the investigation report to members of the Organization, I must now answer the question of whether it was required to obtain the Complainant’s consent prior to doing these things.

[para 35] The Organization argues:

The Board is authorised to disclose the investigation report (the “Report”) to Board members who are responsible for reviewing the conduct [of] their peers in accordance with the [Cooperatives] Act and the Corporation’s bylaws (the “Bylaws”). In the circumstances, disclosure to Board members is permitted pursuant to s. 20(m) of PIPA.

[para 36] Section 17 of PIPA authorizes an organization to use personal information without consent in particular circumstances. It states, in part:

*17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable:*

*(d) the use of the information is reasonable for the purposes of an investigation or a legal proceeding [...]*

[para 37] Section 1(1)(f) of PIPA defines the term “investigation” for the purposes of the Act. It states:

*1(1) In this Act,*

*(f) “investigation” means an investigation related to*

*(i) a breach of agreement,*

*(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*

*(iii) circumstances or conduct that may result in a remedy or relief being available at law,*

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

[para 38] Section 1(1)(g) of PIPA defines “legal proceeding”. This provision provides:

*1(1) In this Act,*

*(g) “legal proceeding” means a civil, criminal or administrative proceeding that is related to*

*(i) a breach of an agreement*

*(ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or*

*(iii) a remedy available at law [...]*

[para 39] As noted above, section 17(1)(d) authorizes an organization to use personal information for the purposes of an investigation. In my view, learning the results of the investigation and the legal significance of those results is encompassed by section 17(1)(d). It would defy common sense to suggest that the members of a cooperative may hire a lawyer to conduct an investigation on their behalf and prepare a report of the investigation for them, but may not learn the results of the investigation or the details of any legal advice developed for their benefit, without the consent of any identifiable individuals referred to in the report or the advice.

[para 40] If the Organization had the authority to conduct the investigation, then its members had the authority to review the results of the investigation. As noted above, section 80 of the *Cooperatives Act* requires a director to disclose to the cooperative the nature and extent of any interest it has in particular transactions. When a statute imposes a duty on one party to do something for another party, such as to disclose information about conflicts to it, a corresponding right arises in the other party to receive or obtain that information. In essence, the Organization has a right under section 80 of the *Cooperatives Act* to receive information from its directors regarding their actual or potential conflicts. It follows from the nature of this right that the Organization also has the power to enforce it, through an investigation as to whether its directors have met their duties to the Organization. Any use of personal information contained in the report to determine whether its directors were meeting their duties to the Organization was therefore authorized by section 17(d) and the Organization did not require consent to use the personal information contained in the report.

[para 41] The board in this case used some of the Complainant’s personal information from the report to make a decision as to whether the Complainant should continue to be a board member. It then informed the Organization’s members of the outcome of the investigation and the report, and the decision it made to remove the Complainant from the board. As noted above, the board’s decision to communicate information from the report is a subject of the Complainant’s complaint.

[para 42] The board decided to limit the information it would provide members. While PIPA would not prevent the board from providing the full report to members, I

accept that the board made the decision to limit information in accordance with its judgement and the Organization's bylaws, as it is empowered to do.

[para 43] Neither the *Cooperatives Act* nor PIPA has provisions expressly authorizing an organization to use or disclose personal information without consent when doing so is reasonable for the purposes of board governance or managing a cooperative. In my view, providing the reasons for removing a board member to the members of the organization the board member represented may be necessary in some cases for the purposes of effectively managing a cooperative organization. Nevertheless, the absence of a provision in the *Cooperatives Act* that would authorize the use of personal information for this purpose does not harm the Organization's case, here. I find that section 17(d) of PIPA authorized the Organization's use of the Complainant's personal information when the board communicated the Complainant's personal information from the report to the Organization's members to inform members of the steps the Organization had taken on behalf of the members regarding the Complainant and the reasons for them.

[para 44] The investigation was one falling within the terms of section 1(f)(ii) as the investigation was established to determine whether the Organization was in compliance with the *Cooperatives Act* with regard to the activities of its board of directors.

[para 45] For the reasons above, I find that when the Organization included the Complainant's personal information in the investigation report and provided some information from the report to its members, these uses were authorized by section 17(d). As an organization is not required to obtain consent to use personal information when the use is authorized by section 17(d), I conclude that the Organization did not contravene section 7 of PIPA when it used her personal information.

**Issue B: Did the Organization comply with section 16 (limitations on use) when it used the Complainant's personal information?**

[para 46] Section 16 of PIPA requires organizations to use personal information only for reasonable purposes and to use only the personal information that is necessary for meeting a reasonable purpose. It states:

*16(1) An organization may use personal information only for purposes that are reasonable.*

*(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.*

[para 47] Section 2 of PIPA explains what is meant by "reasonable" when this term is used in the Act. It states:

*2 Where in this Act anything or any matter*

(a) *is described, characterized or referred to as reasonable or unreasonable, or*

(b) *is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,*

*the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.*

[para 48] I have already found that the Organization’s purpose in using the Complainant’s personal information was for the purposes of ensuring compliance with its governing legislation and for the purpose of effectively governing the Organization. From the evidence before me, I conclude that the Organization used only the information it considered necessary for meeting these purposes.

[para 49] I find that the Organization’s purposes in using the Complainant’s personal information were reasonable and that it used only the information it considered necessary for meeting those purposes. I find that the Organization’s use of the Complainant’s personal information was in compliance with section 16 of PIPA.

**Issue C: Did the Organization disclose the personal information of the Complainant in contravention of section 7 of PIPA?**

[para 50] As discussed in the background, above, the Complainant also complains that a disclosure of her personal information took place when the board of directors of the Organization sent an email to representatives of the Co-operative Housing Federation of Canada (CHF). Attached to this email was a letter informing the CHF that the Organization would not complete a form confirming that the Complainant was a candidate in good standing, on the basis that “she [had been] investigated and found guilty of numerous and egregious breaches of Ideal Housing Cooperative Ltd.’s Bylaws, the *Cooperatives Act*, the Ethical Conduct Agreement and Confidentiality Agreement of which the General Membership is aware.”<sup>2</sup>

[para 51] The form that the CHF required to be completed states:

For purposes of this declaration, I understand that “good standing” means all of the following:

- That the Candidate does not owe money to any housing co-operative other than:
  - their current month’s housing charges
  - scheduled future payments to purchase shares, their member deposit or member loan
  - any other amount not exceeding one month’s occupancy charges and for which a repayment agreement with the co-op is in place

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<sup>2</sup> The Complainant had applied to become a board member of CHF; CHF required that a “Confirmation of Good Standing form for Candidates” be completed as a prerequisite for becoming a candidate.

- any other payments that they have agreed to make to the co-op
- That the Candidate does not owe money to any other organization that is a member of CHF Canada;
- That the Candidate has no outstanding notices from the housing cooperative in which they live that says that they are breaking the by-laws of the co-op or their occupancy agreement

During the term served by the Candidate on CHF Canada’s Board, Ontario Council, or Finance and Audit Committee, the CHF Canada Member will notify CHF immediately if the Candidate is no longer a member in good standing or no longer an officer, director or employee of the CHF Canada Member.

[para 52] The form requested confirmation that the Complainant was a member of the Organization in good standing and to confirm whether or not she owed money or had any outstanding notices regarding breaking bylaws. The form did not ask the Organization to provide its views as to the suitability of the Complainant as a board member. The Organization stated that the Complainant had been removed from the Board of Directors “after being investigated and found guilty of numerous and egregious breaches of Ideal Housing Cooperative Ltd.’s Bylaws, the Cooperatives Act, the Ethical Conduct Agreement and Confidentiality Agreement of which the General Membership is aware.” Organization provided its views regarding the Complainant’s suitability.

[para 53] I find that the information that was disclosed about the Complainant was her personal information, as it conveys information about her as an identifiable individual, in addition to her actions as a representative of the Organization.

[para 54] Cited above, section 7 of PIPA prohibits an organization from disclosing personal information without consent, unless the Act provides otherwise.

[para 55] Section 8 of PIPA establishes the form consent is to take. The relevant provisions state:

*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.*

*[...]*

*(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).*

[para 56] The form the Complainant requested that the Organization complete does not contain the Complainant's consent to disclose her personal information. Further, the Complainant cannot be said to have provided her personal information to the Organization so that it could be disclosed to CHF. The Organization did not provide notice of its intent to disclose the personal information it did to CHF. As a result, the Organization lacked consent to disclose the Complainant's personal information to CHF, for even the information confirming that she was a member in good standing.

[para 57] Section 20 of PIPA authorizes an organization to disclose personal information without the consent of the individual the information is about. I am unable to identify a provision of section 20 that would authorize the disclosure that was made to the CHF.

[para 58] There is clearly a need for organizations to provide and obtain candid references for individuals in circumstances where an individual would not necessarily

consent to the collection or disclosure of personal information. To that end, section 21 of PIPA states:

*21(1) An organization may disclose personal employee information about an individual without the consent of the individual if*

*(a) the information is disclosed solely for the purposes of*

*(i) establishing, managing or terminating an employment or volunteer-work relationship, or*

*(ii) managing a post-employment or post-volunteer-work relationship,*

*between the organization and the individual,*

*(b) it is reasonable to disclose the information for the particular purpose for which it is being disclosed, and*

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

*(2) An organization may disclose personal information about an individual who is a current or former employee of the organization to a potential or current employer of the individual without the consent of the individual if*

*(a) the personal information that is being disclosed was collected by the organization as personal employee information, and*

*(b) the disclosure is reasonable for the purpose of assisting that employer to determine the individual's eligibility or suitability for a position with that employer.*

*(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 59] Section 1(1)(j) of PIPA states:

*1(1) In this Act,*

*(j) "personal employee information" means, in respect of an individual who is a potential, current or former employee of an*

*organization, personal information reasonably required by the organization for the purposes of*

*(i) establishing, managing or terminating an employment or volunteer-work relationship, or*

*(ii) managing a post-employment or post-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 60] Section 1(1)(e) of PIPA defines the term “employee” for the purposes of the Act in the following way:

*(e) “employee” means an individual employed by an organization and includes an individual who performs a service for or in relation to or in connection with an organization*

*(i) as a partner or a director, officer or other office-holder of the organization,*

*(i.1) as an apprentice, volunteer, participant or student, or*

*(ii) under a contract or an agency relationship with the organization;*

[para 61] Section 1(1)(e) of PIPA establishes that the Legislature does not use the term “employee” to refer to an employee at common law. Rather, the term “employee” includes a partner or director, office-holder, apprentice, volunteer, participant, student, contractor or agent of an organization, all of which are entities that would not normally be considered “employees” at common law.

[para 62] I turn now to the question of whether section 21(2) authorizes the disclosure to CHF in this case.

[para 63] The Complainant was a director of the Organization and this role would make her an “employee” of the Organization within the terms of PIPA. Further, the information that was disclosed to the CHF was information gathered by the Organization as part of the process of managing and terminating the Complainant’s role as director. As a result, the information that was disclosed was “personal employee information” within the terms of section 1(1)(j).

[para 64] Section 21(2) authorizes an organization to disclose personal information to a potential or current employer without consent, provided that the personal information was originally collected as personal employee information.

[para 65] PIPA does not define the terms “employer” or “employment”, as it does “employee”. As a result, an argument could be made that these terms maintain their common law definitions. However, to deem someone such as a director, student, or volunteer, an “employee,” must necessarily result in deeming the relationship between the director, student, or volunteer to be an employment relationship and the organization to be an employer. There would be no purpose in deeming an entity that is not an employee to be an employee if the relationship between the entity and the organization is not also deemed to be an employment relationship. This is because it is the nature of the relationship between an entity and an organization that determines whether the entity is an employee or not. This point was made by the Supreme Court of Canada in *671122 Ontario Ltd. v. Sagaz Industries Canada Inc.*, [2001] 2 SCR 983, where the Court said:

In my opinion, there is no one conclusive test which can be universally applied to determine whether a person is an employee or an independent contractor. Lord Denning stated in *Stevenson Jordan, supra*, that it may be impossible to give a precise definition of the distinction (p. 111) and, similarly, Fleming observed that “no single test seems to yield an invariably clear and acceptable answer to the many variables of ever changing employment relations . . .” (p. 416). Further, I agree with MacGuigan J.A. in *Wiebe Door*, at p. 563, citing Atiyah, *supra*, at p. 38, that what must always occur is a search for the total relationship of the parties [my emphasis]:

[I]t is exceedingly doubtful whether the search for a formula in the nature of a single test for identifying a contract of service any longer serves a useful purpose.... The most that can profitably be done is to examine all the possible factors which have been referred to in these cases as bearing on the nature of the relationship between the parties concerned. Clearly not all of these factors will be relevant in all cases, or have the same weight in all cases. Equally clearly no magic formula can be propounded for determining which factors should, in any given case, be treated as the determining ones.

[para 66] If a determination that an individual is an employee is to be made by analyzing the relationship between the employee and an organization, then deeming an individual who is not an employee to be one, must necessarily result in the relationship between the individual and the organization being deemed to be an employment relationship. Moreover, if an individual is deemed to be an employee, then the organization for which the individual acts or provides services must necessarily be deemed to be an employer.

[para 67] Within the context of PIPA, the Complainant and the Organization are deemed to be a former employee and former employer, respectively. The question becomes whether CHF would also be deemed to be an employer within the terms of section 21(2)(b). On the facts before me, it is not entirely clear what the relationship between the Complainant and CHF would be.

[para 68] The Complainant sought to be a candidate to be a director on the CHF Board of Directors. To do so, it was necessary for her to obtain the confirmation of the Organization that she was a member in good standing. It is arguable that seeking to qualify to be a candidate to run for the Board of Directors is not the same thing as being a prospective director. Further, it is difficult to determine whether the relationship between the CHF Board and the Complainant, which is not an employment relationship, is the kind of relationship that would be deemed to be an employment relationship under section 1 of PIPA. However, the general intent of section 21(2)(b) appears to be to enable organizations to provide references to other organizations who are considering entering a similar kind of legal relationship with an individual that the organization had with the individual. If that is the purpose and function of section 21(2)(b), then it would appear that the disclosure of information to CHF is authorized by section 21(2)(b).

[para 69] While finding that section 21(2)(b) authorizes the disclosure of the Complainant's personal information might be viewed as an artificial or strained result, I note that the alternative would be to find that the Organization was not authorized to provide its candid opinion regarding a matter affecting it – that is, the makeup of a board of directors of an organization of which the Organization was a member. As discussed above, the Organization is a housing cooperative – a group of individuals who act cooperatively to provide housing services for all members. As a result, its statement to the CHF may be considered a statement made on behalf of its individual members.

[para 70] If I were to find that the Organization was prohibited from speaking candidly on a matter that was important to it and its members, such as the suitability of a candidate on a board of which the Organization is a member, I would be finding that the Organization and its members could not express their opinions on a matter of importance to them. However, it is possible to avoid that result by concluding that the Legislature intended “an employer” within the terms of section 21(2) to include “an organization approving an individual to run as a candidate for its board”.

[para 71] To conclude, I find that the disclosure to CHF was authorized by section 21(2) of PIPA and was therefore not in contravention of section 7.

**Issue D: Did the Organization comply with section 19 (limits on disclosure) when it disclosed the Complainant's personal information?**

[para 72] Like section 16, above, section 19 of PIPA requires an organization to disclose personal information for purposes that are reasonable and limits an organization to disclosing only the personal information that is necessary for meeting those reasonable purposes. Section 19 states:

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

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

[para 73] I have already found that the Organization disclosed the Complainant's personal information to CHF in order to assist CHF to determine whether the Complainant would be a suitable candidate for its board of directors. In my view, this purpose is reasonable, given that the Complainant asked the Organization to complete the form, and given that the Organization is a member of CHF.

[para 74] The Complainant takes issue with the Organization's decision to provide details of her removal from the Organization's board and to provide an opinion regarding her suitability as a candidate, as she does not interpret the form she asked the Organization to complete as asking for this information. She argues that the Organization disclosed more of her personal information than was necessary for meeting its purpose.

[para 75] Section 21(2) of PIPA authorizes an organization to disclose information that is reasonable to assist an organization to determine the suitability of a candidate. As the Act authorizes disclosure for this purpose, I conclude that this purpose is reasonable, and disclosing the information an organization considers necessary for meeting this purpose is also reasonable.

[para 76] In this case, the Organization disclosed the information it considered necessary to enable CHF to make a determination regarding the Complainant's suitability. The CHF did not necessarily require all the information the Organization provided (although the form could be interpreted as doing so); however, this does not mean that the Organization provided more information than was necessary for meeting its purpose. Rather, the Organization decided that it would comment on suitability from a broader perspective and the information it provided served this purpose. To put the point differently, even though the Organization provided more information than may have been required, the information it provided was reasonable for the purpose of commenting on suitability. In saying this, I do not mean to say that the Complainant was suitable or unsuitable. I mean only that the Organization is authorized to provide personal information regarding suitability, and that the information it disclosed reasonably served this purpose.

#### **IV. ORDER**

[para 77] I make this Order under section 52 of PIPA.

[para 78] I confirm that the Organization did not fail to meet its duties to the Complainant under PIPA.

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Teresa Cunningham  
Adjudicator