



Order P23-08

**Local 891, International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada**

Elizabeth Barker  
Director of Adjudication

August 21, 2023

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**Summary:** An individual complained that the organization used, disclosed and failed to protect her personal information contrary to the *Personal Information Protection Act* (PIPA). The organization disputed these allegations and argued that if its use or disclosure of the individual's personal information is found to be unreasonable under either ss. 14 or 17 PIPA, those provisions unjustifiably infringe its freedom of expression and freedom of association under ss. 2(b) and 2(d) of the *Canadian Charter of Rights and Freedoms* (*Charter*). The adjudicator found that PIPA authorized the organization, in part, to use but not disclose the individual's personal information, but the organization had not complied with its duty under s. 34 to make reasonable security arrangements to protect the personal information. Finally, the adjudicator decided there was no need to decide the *Charter* issue because she did not find the organization failed to comply with ss. 14 or 17 of PIPA.

**Statutes Considered:** *Personal Information Protection Act*, ss. 1 definitions, 6(1), 6(2)(a), 6(2)(b), 6(2)(c), 7(1), 8(1), 8(3), 10(1), 14, 14(c), 15(1)(c), 17, 18(1)(c), 52(3)(e). *Canadian Charter of Rights and Freedoms*, ss. 1, 2(b) and 2(d).

## INTRODUCTION

[1] This inquiry decides a complaint under the *Personal Information Protection Act* (PIPA) made against Local 891 of the International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States and Canada (IATSE). The complainant is a former elected official of Local 891. She complained to the Office of the Information and Privacy Commissioner (OIPC) that Local 891 used and disclosed her personal information contrary to PIPA. Her complaint relates to what Local 891 did following its investigation into her use of a business credit card.

Mediation by the OIPC did not resolve the matter and it proceeded to inquiry. The OIPC issued a fact report and a notice of inquiry, and the complainant and Local 891 provided written submissions.

### ***Preliminary Matters***

#### *Charter issue*

[2] Local 891's reply to the complainant's initial submission introduced a new issue that was not included in the OIPC's fact report or notice of inquiry. Local 891 said that if the Commissioner finds its use or disclosure of the complainant's personal information is unreasonable under either ss. 14 or 17 PIPA, those provisions unjustifiably infringe Local 891's freedom of expression and freedom of association under ss. 2(b) and 2(d) of the *Canadian Charter of Rights and Freedoms* (*Charter*).

[3] Although Local 891 did not request the OIPC's prior consent to add this issue into the inquiry, the complainant did not object. Ultimately, I decided it was appropriate to add this issue.

[4] Local 891 notified the provincial and federal attorney generals of the *Charter* issue as required by the *Constitutional Questions Act*.<sup>1</sup> Local 891's Notice of Constitutional Question said:

Section 14 of the *Personal Information Protection Act*, S.B.C. 2003, c. 63 (PIPA), and, in the alternative, section 17 of PIPA, must be interpreted in such a manner as to take into account the constitutional rights of freedom of expression and freedom of association under sections 2(b) and 2(d) of the *Charter of Rights and Freedoms* respectively. If the Organization's use, or alternatively disclosure, of the Applicant's personal information is found to be unreasonable under either section 14 or 17 of PIPA, the Organization says those sections unjustifiably infringe the aforesaid *Charter* rights and are thus unconstitutional and inapplicable in the Inquiry.

[5] Only BC's Ministry of Attorney General (AGBC) chose to participate in the inquiry and speak to the *Charter* issue.<sup>2</sup>

[6] The OIPC's notice of inquiry was subsequently revised to mirror the language in the Notice of Constitutional Question and the submission phase of the inquiry resumed.

[7] During the course of my deliberations, I noticed that Local 891 argued in a peripheral way that any finding that it contravened s. 15(1)(c) would also

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<sup>1</sup> *Constitutional Questions Act* RSBC 1996 c 68.

<sup>2</sup> The OIPC subsequently provided notice to the AGBC under s. 48 of PIPA and invited it to make submissions.

unjustifiably infringe its *Charter* rights.<sup>3</sup> I will not consider this new issue as it was not set out as an issue in the Notice of Constitutional Question and the AGBC's submissions do not address it. I will only consider and decide the *Charter* issue in the Notice of Constitutional Question.

*Complaint about failure to correct personal information, s. 24*

[8] The complainant's initial submission raises an issue that is not mentioned as an issue in the OIPC's fact report or notice of inquiry. She says that Local 891 refused to correct terminology that falsely implied that she was investigated for, or committed, fraud; specifically, the minutes of the Local's grip department meeting refers to the investigation report into her credit card use as a "Credit card fraud report".<sup>4</sup> She also says that Local 891 failed to respond adequately, or at all, to what members were saying about her. In particular, it did not correct rumours and baseless accusations that she had misused funds and committed theft or fraud.<sup>5</sup>

[9] While she does not expressly say so, I understand this to be a complaint that Local 891 failed to comply with its duties under s. 24 of PIPA. Section 24 of PIPA provides individuals with a right to request an organization correct the individual's personal information under the control of the organization, and it sets out steps the organization must take in response.

[10] There is no indication that the complainant advised the OIPC that s. 24 was missing as an issue in the OIPC's fact report for this case.<sup>6</sup> The OIPC investigator specifically invited the parties to contact her if they had any questions or concerns with the fact report. The complainant also did not request permission to add s. 24 into the inquiry after she received the notice of inquiry.

[11] I can see no sound reason to add s. 24 into the inquiry at this late point and I decline to do so. I will not consider that aspect of what the complainant says any further.

## **DISCUSSION**

### **ISSUES**

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<sup>3</sup> I assume Local 891 meant this argument to include s. 18(1)(c) because it said its submissions with respect to use also apply to disclosure. (Local 891's initial submission Part IV at paras. 14 and 49.)

<sup>4</sup> Complainant's complaint at para. 35(a) and appendix N. The minutes describe the investigation report (an object) but do not mention the complainant by name or title, so it is questionable that it is even personal information.

<sup>5</sup> Complainant's complaint at para. 33.

<sup>6</sup> The complainant was represented by legal counsel throughout the proceedings.

[12] The issues to be decided in this inquiry are as follows:<sup>7</sup>

1. Did PIPA authorize Local 891 to disclose and/or use the complainant's personal information?
2. Did Local 891 meet its obligations under s. 34 of PIPA to protect the complainant's personal information?
3. Would a decision that Local 891 failed to comply with ss. 14 and 17 of PIPA unjustifiably infringe ss. 2(b) and 2(d) of the *Charter*?

[13] PIPA does not say who has the burden of proof for the first two issues. That being said, it is clearly in the interests of all parties to provide argument and evidence to support their positions.<sup>8</sup> As for the *Charter* issue, the initial burden is on Local 891 to demonstrate a *Charter* freedom or right has been infringed. If so, the onus shifts to the AGBC to prove that the infringing measure is justified under s. 1 of the *Charter*.<sup>9</sup>

### **Background Facts**<sup>10</sup>

[14] Local 891 represents technicians and artists who work in the film and television industry in BC, and its business is carried out by officers, officials, trustees and department chairs, all of whom are elected by the general membership. The Local also employs staff who are members of a different union.

[15] Amongst other things, Local 891's purposes are to "achieve, by organization, collective bargaining and mutual endeavour the improvement of the social, economic and working conditions of the members of Local 891."<sup>11</sup>

[16] At the time of the events described below, the complainant was an elected, full-time, paid official of the Local.

[17] Local 891 holds quarterly general membership meetings to discuss its business. Decisions of its executive board and executive committee may be overturned by a two thirds majority vote of the membership at a general meeting.<sup>12</sup>

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<sup>7</sup> For the sake of clarity, this wording is slightly different than the wording in the revised notice of inquiry, but it does not alter the issues.

<sup>8</sup> Order P22-05, 2022 BCIPC 49 (CanLII) at para. 11.

<sup>9</sup> The framework for the s. 1 analysis was set out by the Supreme Court of Canada in *R v Oakes*, 1986 CanLII 46 (SCC).

<sup>10</sup> The facts are based on my review of the submissions and evidence of the complainant and Local 891. As far as I can see the parties do not disagree that these events took place and any disagreements are about nuances that I find are irrelevant to the FIPPA issues to be decided.

<sup>11</sup> Local 891's August 2, 2022 submission Part I para. 5.

<sup>12</sup> Managing Director's affidavit at para. 10 citing Article 3.2 of Local 891's constitution.

[18] The Local's constitution and bylaws have provisions regarding discipline. The Local's members can hold fellow members to account by preferring a charge and requesting that a trial board be instituted.<sup>13</sup>

[19] Local 891's assets are derived from dues paid by its members and investment returns on those dues.<sup>14</sup>

[20] In mid 2017, Local 891's audit committee commenced an investigation into the complainant's use of a business credit card for personal expenditures. The investigation was conducted by the treasurer and a controller contracted through a chartered accountancy firm.

[21] The minutes of a June 2017 executive committee meeting record that the complainant voluntarily told the approximately three dozen meeting attendees that it was her credit card use that was under investigation. Those minutes were subsequently shared at a general membership meeting where there was discussion about why the issue was not caught earlier and the complainant explained that the nature of her work required her to put personal charges on her union credit card.<sup>15</sup>

[22] In November 2018, the Local's managing director provided the complainant a draft of the investigation report into the credit card matter and discussed it with her.<sup>16</sup> After receiving her comments a subsequent draft report was generated.

[23] Prior to the report being finalized, the complainant participated in a December 17, 2018 executive committee meeting where the executive board decided that members of the executive committee would be allowed to view the report but only by appointment at the union hall.<sup>17</sup> The board decided the new, incoming president would be given a chance to review the report before any information about it was released to the general membership.

[24] In approximately January 2019, the draft report was leaked to a union member. The identity of the person who received the draft was apparently discovered but not the identity of the person who leaked it.

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<sup>13</sup> Managing Director's affidavit at para. 19 citing Article 11.2 of Local 891's constitution.

<sup>14</sup> Managing Directors affidavit at para. 5.

<sup>15</sup> The executive meeting minutes are dated June 26, 2017 and the general membership meeting took place on July 30, 2017 (President's affidavit, exhibits A, B and C).

<sup>16</sup> Managing Director's affidavit at para. 32.

<sup>17</sup> Complainant's complaint, Appendix D (Minutes of the December 17, 2018 Executive Committee Meeting).

[25] The final version of the investigation report is dated January 9, 2019 (Final Report).<sup>18</sup>

[26] On January 24, 2019, the executive board posted an e-bulletin about the Final Report as well as access to the Final Report on Local 891's internal website (member login required).

[27] The complainant attended a general membership meeting on January 27, 2019, during which the Final Report was discussed and there were calls for her to resign and for charges to be laid against her under the Local's procedures.<sup>19</sup> Copies of the Final Report were available at the back of the room for meeting attendees. The January 27, 2019 meeting minutes were later made available to the general membership.

[28] On January 28, 2019, the complainant told Local 891's president that the Local's staff, who were members of a different union, were able to login in to the internal website and access the Final Report and they were talking about it. She wrote: "by posting to the website, the Unifor staff have been privy to and read the 891 business of the local Investigation report regarding [me] and have revealed personal information about me. This is a breach of our constitution to extend the internal privacy of our business to our local to outside the body of our membership and the IATSE International."<sup>20</sup> The president indicated he was previously unaware of staff having access, and he would discuss it with the Managing Director.

[29] After the Final Report was made available on the internal website, there was discussion amongst members and staff about its contents.<sup>21</sup>

[30] On January 31, 2019, Local 891's president posted a notice on the website informing the membership that due to concerns raised about some of the content of the Final Report, it had been removed from the internal website pending further review.<sup>22</sup>

[31] On September 25, 2019, the president emailed a letter to Local 891 members saying that the Final Report would not be re-released. He explained the Final Report contained personal information which should not be disclosed beyond its writer and the executive board and any ongoing release may result in liability under PIPA.<sup>23</sup>

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<sup>18</sup> Complainant's complaint, Appendix W. Local 891's August 2, 2022 submission at para. 60.

<sup>19</sup> Complainant's complaint, Appendix J (Minutes of January 27, 2019 General Membership Meeting).

<sup>20</sup> Complainant's complaint, Appendix E.

<sup>21</sup> Complainant's complaint, Appendices E and M.

<sup>22</sup> Complainant's complaint, Appendix L.

<sup>23</sup> Complainant's complaint, Appendix O.

[32] In late 2019, the complainant ran for re-election. During the election campaign, an unknown person left copies of the Final Report at Local 891 production sites where members could see it.<sup>24</sup> The Local's members also were communicating amongst themselves about the complainant, the executive and how the Final Report and credit card issue had been handled.<sup>25</sup> In addition, an online news site posted an article about union malfeasance that identified the complainant by name and referenced details from the Final Report and the president's September 25, 2019 letter.<sup>26</sup> Local 891 members shared the article amongst themselves and discussed the complainant and the Final Report.

[33] The complainant was unsuccessful during the December 2019 election and lost her position.

[34] On January 30, 2020, the complainant made the complaint that is the subject of this inquiry.

### ***The Complaints***

[35] The complainant alleges Local 891's used and disclosed her personal information contrary to PIPA and it also failed to protect her personal information.<sup>27</sup>

#### ***Complaint about use and/or disclosure***

[36] The complainant alleges that Local 891 used and/or disclosed her personal information contrary to PIPA in the following ways:

1. An unknown person leaked a draft of the report to a member of Local 891.<sup>28</sup>
2. Local 891 posted the Final Report on the Local's internal website for one week during which Local 891's members and Local 891's staff could access it (login required).<sup>29</sup>
3. The minutes of the January 27, 2019 general membership meeting contained information about the complainant and were distributed to the general membership.<sup>30</sup>
4. The president emailed a letter on September 25, 2019 to the general membership explaining why the Final Report would not be reposted on

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<sup>24</sup> Complainant's complaint at para. 50(e).

<sup>25</sup> Complainant's complaint at para. 33, 40, 41 and examples at multiple appendices of her complaint.

<sup>26</sup> Complainant's complaint, Appendix S.

<sup>27</sup> She does not complain that the *collection* of her personal information contravened PIPA.

<sup>28</sup> Complainant's complaint at para. 50(a).

<sup>29</sup> Complainant's complaint at paras. 50(b) and 54.

<sup>30</sup> Complainant's complaint at para. 50(c).

the internal website. This letter contained information about the complainant.<sup>31</sup>

5. An unknown person left copies of the Final Report at Local 891 production sites where members were working.<sup>32</sup>
6. An unknown person leaked information about the Final Report and/or a copy of the Final Report to an online news site.<sup>33</sup>

*Complaint about failure to protect personal information, s. 34 – the “leaks”*

[37] The complainant alleges Local 891 breached s. 34 by failing to take reasonable security precautions to prevent the following events:<sup>34</sup>

1. An unknown person leaked the draft report to a member of the Local;
2. An unknown person left copies of the Final Report at Local 891 production sites; and
3. An unknown person leaked information about the Final Report and/or a copy of the Final Report to an online news site.

[38] For ease of reference, I will refer to these three incidents as the “leaks”.

[39] Before assessing whether specific provisions of PIPA authorized Local 891 to use or disclose the complainant’s personal information, I first need to decide the following questions:

- Does PIPA apply to Local 891?
- Did Local 891 commit the leaks?
- Is the information at issue personal information?
- Did Local 891 use or disclose the complainant’s personal information?

***Does PIPA apply to Local 891?***

[40] The purpose of PIPA is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.<sup>35</sup>

[41] PIPA only applies to “organizations”, which s. 1 defines as including a “trade union”.

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<sup>31</sup> Complainant’s complaint at para. 50(d).

<sup>32</sup> Complainant’s complaint at para. 50(e).

<sup>33</sup> Complainant’s complaint at para. 50(f).

<sup>34</sup> Complainant’s complaint at paras. 50(a), (e), (f).

<sup>35</sup> PIPA’s purposes are set out in s. 2.



[42] Local 891 says that it is a trade union under the *Labour Relations Code*<sup>36</sup> and it does not dispute that it is an organization under PIPA.

[43] I am satisfied that Local 891 is a trade union and for that reason it is an organization under PIPA and PIPA applies to it.

***Did Local 891 commit the leaks?***

[44] Three of the events complained about were surreptitious. Specifically, a draft version of the report was leaked to a member of the Local, copies of the Final Report were left at the Local's production sites, and information about the Final Report and/or a copy of it were leaked to an online news site. The complainant speculates these were the actions of someone on the executive board, the executive committee, the audit committee or a staff person. Local 891 does not say who it thinks was responsible.

[45] I am satisfied based on my review of the materials in this inquiry that the unknown individual(s) could only have gained access to the leaked information because they were members or staff of Local 891. There is nothing to suggest that anyone outside the organization could have gained access to the information and caused these leaks.<sup>37</sup>

[46] It is apparent that the information at issue was in Local 891's custody and under its control. No one argued otherwise. PIPA holds organizations responsible for the personal information in their custody and under their control. Section 34, which will be discussed in more detail below, imposes a duty on organizations to protect personal information in their custody or under their control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification, disposal or similar risks.

[47] For those reasons, when discussing and analyzing the leaks below, I consider the "leaker" to have been Local 891.

***Is the information at issue personal information?***

[48] PIPA governs the collection, use and disclosure of personal information by organizations. Section 1 of PIPA provides the following definitions explaining what personal information means:

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<sup>36</sup> Section 1 of the *Labour Relations Code*, RSBC 1996 c 244 defines the term "trade union".

<sup>37</sup> No one argued, and there was insufficient information, to conclude that these individuals were acting solely for personal or domestic purposes such that s. 3(2)(a) applied. Section 3(2)(a) says that PIPA does not apply to the collection, use or disclosure of personal information, if the collection, use or disclosure is for the personal or domestic purposes of the individual who is collecting, using or disclosing the personal information and for no other purpose.

"personal information" means information about an identifiable individual and includes employee personal information but does not include

- (a) contact information, or
- (b) work product information;

"employee personal information" means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;

"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;

"work product information" means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.

[49] I have reviewed the documents the complainant complains about to see if they contain her personal information. They identify her by name, title and describe her actions. Although I was not provided a copy of the draft report, I am satisfied that it contains the same kind of information about the complainant as the Final Report. The information that identifies the complainant is clearly not "contact information" or "work product information". Therefore, I find that it is her personal information.<sup>38</sup>

[50] I also do not think that the information is "employee personal information" because the complainant was not an employee of the Local. The evidence before me shows that she was an elected official. In addition, Local 891 did not assert that the information at issue was employee personal information and it did not rely on ss. 16 and 19, which govern the use and disclosure of employee personal information.

***Did Local 891 use or disclose the complainant's personal information?***

[51] The complainant alleges that Local 891 both used and disclosed her personal information in contravention of PIPA. However, Local 891 submits that there was no *disclosure* of personal information because there is no evidence that it communicated the complainant's personal information "outside the

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<sup>38</sup> The records also contain other peoples' personal information.

membership.”<sup>39</sup> Instead, it says, the complaint is properly viewed as one about the *use* of personal information.<sup>40</sup>

[52] In support, Local 891 cites Order P2018-07<sup>41</sup> from Alberta’s Office of the Information and Privacy Commissioner (Alberta IPC). In that case, an individual complained that a trade union had not met its duty to fairly represent him when it refused to pursue his grievance. At a meeting of the union’s members, the union’s president provided details about the individual and his complaint. The individual complained to the Alberta IPC that this was an unauthorized disclosure of his personal information. The adjudicator found that what had occurred was a use of personal information, not a disclosure. The adjudicator reasoned that the union’s board and its members are both part of the same organization and there was no suggestion the information was shared outside the membership of the union.

[53] In reply, the complainant says that the distinction between use and disclosure in the present case is purely academic as “there are no material differences in the provisions dealing with ‘use’ and ‘disclosure’ that are at issue in this Complaint.”<sup>42</sup> She adds that this is not the first time Local 891 has argued before the OIPC that providing personal information within the organization is a use and not a disclosure. She says that an OIPC investigator did not accept that argument during an investigation of a complaint made by another person against Local 891.<sup>43</sup>

### *Analysis and findings*

[54] PIPA does not define the terms “disclosure” or “use”, nor have the OIPC’s past orders explained the differences between these two concepts. Order P06-03 is most on point where former Commissioner Loukidelis raised, but did not resolve, the differences between the two terms.<sup>44</sup> In that case, the manager of a bar told two employees that a third employee had complained about the cleanliness of the bar. Former Commissioner Loukidelis said that because the notice of inquiry stated the issue was about disclosure, for discussion purposes, he would not consider if what occurred constituted a use. He said, “I will leave for another day consideration of whether such circumstances involve a disclosure or a use of employee personal information (or perhaps both).”<sup>45</sup>

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<sup>39</sup> Local 891’s August 2, 2022 submission at IV para. 13.

<sup>40</sup> Local 891’s August 2, 2022 submission at IV paras. 9-14. In the alternative, it submits that if the OIPC finds that what occurred was a disclosure then what Local 891 says about use also applies to disclosure.

<sup>41</sup> *Canadian Energy Workers’ Association (Re)*, 2018 CanLII 116083 (AB OIPC) at paras. 6-7.

<sup>42</sup> Complainant’s August 16, 2022 submission at para 9.

<sup>43</sup> Complainant’s August 16, 2022 submission at para. 9(b) referring to OIPC file F19-79131. The complainant did not provide a copy of the OIPC investigator’s opinion letter in that case.

<sup>44</sup> Order P06-03, *Tally-Ho Motor Inn, Re*, 2006 CanLII 32981 (BC IPC).

<sup>45</sup> *Ibid*, at para. 11.

[55] Other BC orders have not said whether it is a use or a disclosure when an organization provides personal information to only those within the organization. They were focussed solely on deciding the issues as they were framed by the complainant. When a complainant complained about disclosure, that was what was stated in the notice of inquiry and adjudicated.<sup>46</sup> If the complaint was about collection and use, those were the issues decided.<sup>47</sup>

[56] In my view, only the provision of the complainant's personal information to the online news site was a disclosure. It was a disclosure because someone in Local 891 gave the complainant's personal information to an outside entity. The other events the complainant complains about were uses of her personal information because the information stayed within the organization and did not go beyond Local 891's members and its staff. I include the copies of the Final Report left at Local 891's production sites as there was no evidence that anyone except members had access.

[57] The Alberta IPC has issued several orders under Alberta's *Personal Information Protection Act*<sup>48</sup> that are persuasive and bolster my finding that what occurred here was a use, not a disclosure. The Alberta orders found that a disclosure occurs when an organization makes information available or releases the information to an outside entity such as another organization.<sup>49</sup> Order P2018-07, cited above by Local 891, is one such order. Another is Order 2018-06 where a housing cooperative provided its members with a board member's personal information obtained during a conflict-of-interest investigation. The adjudicator concluded this was a use and not a disclosure because the organization did not release the information outside the organization.<sup>50</sup> Similarly, in Order P2013-09, a case involving the Legal Aid Society of Alberta, the adjudicator found that the complainant's personal information was shared only within the organization, so it was a use, not a disclosure.<sup>51</sup>

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<sup>46</sup> Order P06-06, *Tsatsu Shores Homeowners Corporation (Re)*, 2006 CanLII 42695 (BC IPC); Order P07-02, *655369 B.C. Ltd. (Re)*, 2007 CanLII 52751 (BC IPC); Order P21-02, *British Columbia (Strata owners) (Re)*, 2021 BCIPC 10 (CanLII).

<sup>47</sup> Order P22-08, *Bellevue West Building Management Ltd. (Re)*, 2022 BCIPC 74 (CanLII); Order P21-06, *Owners, Strata Plan BCS1964 (Icon 1 and 2) (Re)*, 2021 BCIPC 35; Order P20-04, *Teck Coal Limited (Re)*, 2020 BCIPC 24 (CanLII); Order P20-02, *Courtenay-Alberni Riding Association of the New Democratic Party of Canada (Re)*, 2020 BCIPC 11 (CanLII); Order P13-02, *ThyssenKrupp Elevator (Canada) Limited (Re)*, 2013 BCIPC 24 (CanLII); Order P13-01, *Kone Inc (Re)*, 2013 BCIPC 23 (CanLII); Order P12-01, *Schindler Elevator Corporation (Re)*, 2012 BCIPC 25 (CanLII); Order P11-02 *Economical Mutual Insurance Company (Re)*, 2011 BCIPC 16 (CanLII); Order P09-02, *Shoal Point Strata Council (Re)*, 2009 CanLII 67292 (BC IPC).

<sup>48</sup> *Personal Information Protection Act*, SA 2003, c. P-6.5.

<sup>49</sup> Order P2007-011, *Barry Lycka Professional Corporation (Re)*, 2008 CanLII 88798 (AB OIPC) at paras. 55 and 63.

<sup>50</sup> Order P2018-06 (Re), 2018 CanLII 89513 (AB OIPC) at paras. 12-14.

<sup>51</sup> Order P2013-09 *Legal Aid Society of Alberta (Re)*, 2013 CanLII 88079 (AB OIPC) at para. 37.

[58] I have considered what the complaint says about how an OIPC investigator in another case rejected Local 891's argument that what took place in that other case was a disclosure. Although she does not say so directly, I understand her to mean that I should do the same. However, I am not bound by an investigator's opinion based a different set of facts in a different case. I have made my decision based on the facts in this case.

[59] In summary, I am satisfied that there was only one disclosure in this case, and it occurred when the complainant's personal information was provided to the online news site. The balance of what occurred were uses of her personal information within the organization.

## **Section 6**

[60] PIPA provides for both the right of individuals to protect their personal information and for the legitimate need of organizations to collect, use, and disclose personal information. Section 6(2) states that an organization may only collect, use, or disclose personal information about an individual in the following circumstances:

- The individual gives consent to the collection, use or disclosure, s. 6(2)(a). This is often referred to as "express" or "explicit" consent.
- PIPA authorizes the collection, use or disclosure without the consent of the individual, s. 6(2)(b).
- PIPA deems the collection, use or disclosure to be consented to by the individual, s. 6(2)(c). This is often referred to as "deemed", "implicit" or "implied consent."

[61] Local 891 submits that its use and disclosure of the complainant's personal information complied with all three of the above provisions.<sup>52</sup> I will first consider what Local 891 says about express and deemed consent before turning to whether PIPA permitted use or disclosure without consent.

### *Local 891's submissions on express and deemed consent*

[62] Local 891 says the complainant "explicitly and implicitly consented to disclosure of the Report to the membership" and Local 891 "obtained meaningful consent."<sup>53</sup> It provides the following explanations and evidence to support its position that it had both express and deemed consent to do what it did:

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<sup>52</sup> Although Local 891's submissions are framed in terms of "use", it explains that those submissions apply equally to "disclosure" (Local 891's initial submission Part IV at para. 14).

<sup>53</sup> Local 891's August 2, 2022 submission, Part IV at para. 22 and Part V at para. 68 and Part IV at para. 18.

- a) In an April 13, 2017 email to the Local's executive, the complainant said:

I have no secrets and I really don't care what is brought up about me before the general membership. You see, I am not a politician and don't feel compelled to evade the truth or cover things up. I am actually transparent and accountable for my actions and take my lumps if warranted. I waive my privacy with respect to enlightening the membership at the GM anything [sic] the President feels is necessary that they should know about me. Let's not hide behind privacy if there is something so egregious being kept from the membership. Maybe if we get everything out in the open we can move forward.<sup>54</sup>

- b) At the June 26, 2017 executive committee meeting when the treasurer reported that a credit card had been suspended for financial irregularities and an investigation was underway, the complainant voluntarily admitted it was hers.<sup>55</sup> She also did not object at the time to this being reflected in the meeting's minutes, which were provided to the general membership at the July 30, 2017 general membership meeting.<sup>56</sup>
- c) At the July 30, 2017 general membership meeting the complainant did not object to discussion of the investigation into her credit card use.<sup>57</sup> Local 891's president says the complainant did not object to the meeting Agenda stating that she "confirms the credit card with recently imposed restrictions belonged to her", and she raised the Final Report at the meeting and participated in the discussion about it. The complainant also did not object to the minutes of the meeting identifying her as the subject of the credit card report. The minutes were part of the agenda for, and adopted at, the October 29, 2017 general membership meeting.<sup>58</sup>
- d) The complainant "had notice that the personal information contained in the Report was to be used internally within Local 891's membership for internal governance and accountability purposes."<sup>59</sup>

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<sup>54</sup> Managing Director's affidavit, exhibit E (complainant's April 13, 2017 email).

<sup>55</sup> Local 891's August 2, 2022 submission, Part IV, para 21(b); Managing Director's affidavit at para. 36, exhibit H (June 26, 2017 minutes of executive committee meeting).

<sup>56</sup> Local 891's August 2, 2022 submission, Part IV, para 21(c); Managing Director's affidavit at para. 37, exhibit I.

<sup>57</sup> Local 891's August 2, 2022 submission, Part IV, para 21(d).

<sup>58</sup> Local 891's August 2, 2022 submission, Part IV, para 21(d); Local 891 president's affidavit at paras. 10-15. The minutes of these meeting are at exhibits C and E of his affidavit.

<sup>59</sup> Local 891's August 2, 2022 submission Part IV at para 29.

- e) Local 891's Managing Director communicated with the complainant in November 2018 when the investigation was being concluded and they discussed a certain detail, which she said she did not want referenced in the Final Report. This suggested to him that she was aware that the Final Report would be communicated to the membership, and he says, "At no point did she advise me that she did not consent to the communication of the Report to the membership."<sup>60</sup>
- f) At the December 17, 2018 executive committee meeting, which the complainant attended, the audit committee advised that it had determined the Final Report must be shared with the membership because of the complainant's fiduciary role. It was also decided that the recently elected, incoming president should get to review the Final Report before it was released to the membership.<sup>61</sup>
- g) The complainant emailed the chair of the audit committee on December 21, 2018 to say:

While I have no issue in addressing the final outcome with General membership, and as it was discussed at the Ecom Monday night [...] the Audit committee felt strongly the members should have the report [...] I am concerned that by creating curiosity and suspicion by alluding to some wrong doing in 2016/2017 other than delinquent receipts and a breach of the policy by utilizing the credit card, to [...] for reasons beyond my control at that time creates a lot of needless gossip. And, when I do finally clarify for the membership there will be far more to be concerned about by 891 membership than my activity from 2008/2009 and anomalies in 2011 and 2015, and if you would like to have a meeting with me prior to that happening at the January general meeting so you aren't blindsided, I would be amenable to discussing".<sup>62</sup>

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<sup>60</sup> Local 891's August 2, 2022 submission, Part IV, para. 21(f) and 37; Managing Director's affidavit at para. 32, referring to exhibit D.

<sup>61</sup> Local 891's August 2, 2022 submission, Part IV, para 40; Managing Director's affidavit at para. 38, exhibit J.

<sup>62</sup> Local 891's August 2, 2022 submission, Part IV, para. 21(g); Managing Director's affidavit exhibit F.

- h) When the complainant emailed the president about the leak of the draft report she said, “I certainly have nothing to hide from our membership [...]”.<sup>63</sup>
- i) At the January 27, 2019 general membership meeting, the members discussed the Final Report and whether the complainant should resign. The complainant addressed the meeting and chose to disclose “details of her personal issues and extenuating circumstances.”<sup>64</sup>
- j) The complainant’s election campaign materials spoke of the investigation into her credit card use and she also openly invited members to contact her to discuss it if they wished to do so.<sup>65</sup>
- k) The complainant had been in her role for 12 years and she was familiar with the union’s constitution and processes. Local 891 says that there is nothing in her inquiry materials to show “she failed to understand the Union’s inner workings, including its practice of communicating with its members.”<sup>66</sup>
- l) There was implied consent under s. 8(3) because the complainant had a reasonable opportunity to decline to have her information communicated to the membership, but she did not do so.<sup>67</sup>

*Complainant’s submissions on express and deemed consent*

[63] The complainant says that she never consented explicitly or implicitly to the release of Final Report to Local 891’s membership and staff, and she did not waive her right to privacy.<sup>68</sup> She says she did not even realize the Final Report was going to be given to the membership until the December 17, 2018 executive committee meeting, so any statement she made prior to that date “cannot possibly be taken as evidence of prior express consent.”<sup>69</sup>

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<sup>63</sup> Local 891’s August 2, 2022 submission, Part IV, para. 21(h); Managing Director’s affidavit at para. 35, exhibit G.

<sup>64</sup> Managing Director’s affidavit at para. 44.

<sup>65</sup> Local 891’s August 2, 2022 submission Part II, para. 64; Managing Director’s affidavit, exhibit T.

<sup>66</sup> Local 891’s August 2, 2022 submission at IV, paras.18- 20.

<sup>67</sup> Local 891’s August 2, 2022 submission, Part IV, para. 22. Local 891 wrote 7(3) in its submission. It later explained that was a typo and it meant s. 8(3) (April 19, 2023 email to OIPC registrar copied to other parties).

<sup>68</sup> Complainant’s complaint at para. 55 and August 16, 2022 reply at para. 10.

<sup>69</sup> Complainant’s August 16, 2022 submission at para. 10(b). She says December 17, 2020, which I believe is a typo as the only executive meeting mentioned that took place on December 17 was in 2018.



[64] The complainant acknowledges she said that she had no issue addressing the final outcome of the investigation with the membership and that she had nothing to hide. However, she argues those statements “did not expressly authorize the Organization to disclose the detailed and highly sensitive information about all her historic non-business credit card use to the membership and staff of the Organization”<sup>70</sup>

[65] She also says that deemed consent under s. 8(1) does not apply because she did not voluntarily provide the information as required under s. 8(1)(b). Because the context was an investigation, she says, the information was gathered without consent.<sup>71</sup>

***Express consent and ss. 7(1) and 10(1)***

For an organization to prove it obtained valid express consent under s. 6(2)(a), the organization must establish it provided the individual with a clear statement, either verbally or in writing, of the purpose for collection, use or disclosure of the individual's personal information on or before collecting it. There must then be evidence that the individual voluntarily provided an active gesture or statement of agreement, not refusal.<sup>72</sup>

[66] Further, on the matter of consent, s. 7(1) says:

7 (1) An individual has not given consent under this Act to an organization unless

- (a) the organization has provided the individual with the information required under section 10 (1), and
- (b) the individual's consent is provided in accordance with this Act.

[67] Section 10(1) says:

10 (1) On or before collecting personal information about an individual from the individual, an organization must disclose to the individual verbally or in writing

- (a) the purposes for the collection of the information, and
- (b) on request by the individual, the position name or title and the contact information for an officer or employee of the organization who is able to answer the individual's questions about the collection.

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<sup>70</sup> Complainant's August 16, 2022 submission at para 10(c).

<sup>71</sup> Complainant's August 16, 2022 submission at para. 10(d). She did not, however, complain that the collection contravened PIPA.

<sup>72</sup> OIPC Investigation Report F19-01, *Full Disclosure: Political parties, campaign data, and voter consent*, 2019 BCIPC 07 (CanLII) at 2.1.1.

[68] I find that Local 891 has not provided adequate evidence or explanation establishing when and how it provided the complainant with a clear verbal or written statement about the purposes for the collection, use and disclosure of her personal information in the way ss. 7(1) and 10(1) require.

[69] In addition, Local 891 has not provided evidence of when and how the complainant provided the purported express consent. Local 891's argument that the complainant surely understood what was going to happen with her personal information because of her extensive union experience, and yet she did not explicitly refuse her consent, does not suffice. The absence of evidence that the complainant explicitly refused her consent is not, as Local 891 suggests, sufficient to establish consent for the purposes of ss. 7(1) and 10(1). Rather, there must be evidence of a voluntary, unambiguous, active gesture or statement of agreement. In other words, there must be a clear indication of the individual's acceptance.

[70] In conclusion, I find that Local 891 has not established that the complainant gave her express consent for the uses and the one disclosure (i.e., to the online news site) of her personal information.

### ***Deemed consent, s. 8***

[71] Section 8 provides several ways in which an individual will be deemed to have given consent. Sections 8(1) and 8(3) are relevant in this inquiry.

#### ***Section 8(1)***

[72] Section 8(1) states as follows:

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

(a) at the time the consent is deemed to be given, the purpose would be considered to be obvious to a reasonable person, and

(b) the individual voluntarily provides the personal information to the organization for that purpose. [emphasis added]

[73] Although Local 891 quotes s. 8(1), it does not actually say that it is relying on it or how it applies in this case. The complainant says that s. 8(1) cannot apply because she did not voluntarily provide her personal information during the investigation. Given the inherent power imbalance of such an investigation, and absent any explanation from Local 891, it seems highly unlikely that she had any choice in the matter. I am not persuaded that the complainant voluntarily provided her personal information to Local 891 under s. 8(1)(b). Therefore, I find

that Local 891 has not established that s. 8(1) deems the complainant to have consented.

*Section 8(3)*

[74] Section 8(3) sets out another type of deemed or implicit consent. It applies in the situation where the purpose for the collection, use and disclosure needs to be specified by way of a notice because the purpose is not obvious, as it is when s. 8(1) applies.

8 (3) An organization may collect, use or disclose personal information about an individual for specified purposes if

(a) the organization provides the individual with a notice, in a form the individual can reasonably be considered to understand, that it intends to collect, use or disclose the individual's personal information for those purposes,

(b) the organization gives the individual a reasonable opportunity to decline within a reasonable time to have his or her personal information collected, used or disclosed for those purposes,

(c) the individual does not decline, within the time allowed under paragraph (b), the proposed collection, use or disclosure, and

(d) the collection, use or disclosure of personal information is reasonable having regard to the sensitivity of the personal information in the circumstances.

(4) Subsection (1) does not authorize an organization to collect, use or disclose personal information for a different purpose than the purpose to which that subsection applies.

[75] Local 891 says the following about the purpose for its use of the complainant's personal information:

- The complainant “had notice that the personal information contained in the Report was to be used internally within Local 891’s membership for internal governance and accountability purposes.”<sup>73</sup>
- “[...] while some of the information could be considered sensitive, [the complainant] was an elected official, who had a fiduciary obligation to Local 891[...] She had the position [...] by being elected by the members. Members needed to have sufficient information about her activities and

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<sup>73</sup> Local 891's August 2, 2022 submission Part IV, para 29.

conduct in order to be making informed decision about whether to re-elect her [...]”.<sup>74</sup>

- Members have the right to press charges against other members under the Local’s constitution and bylaws, so they are entitled to information in order to exercise their rights.<sup>75</sup>

[76] It also says:

Unions must be able to hold members in elected fiduciary positions accountable. The preservation of union dues and internal policing of union expenditures is integrally linked to Local 891’s ability to engage in effective bargaining. Moreover, as [the complainant] was, on her own account, responsible for ‘all [duties] involving Local 891 members, as well as all other collective agreement issues’. All of these factors necessitate an informed electorate and justify the internal communication of the Report.<sup>76</sup>

[77] As I understand it, the complainant does not take issue with the Local’s assertion that investigating her credit card use and reporting the results to the Local’s membership was for the purpose of internal governance and accountability. What she disagrees with is the nature and amount of information in the Final Report that was revealed to Local 891 members and staff.<sup>77</sup> For instance, she says the Final Report mischaracterized what occurred and her responses to the allegations.<sup>78</sup> She also disagrees with the level of detail provided about her personal expenditures and the fact the information predates the time period she believed should have been investigated.<sup>79</sup>

[78] Based on the parties’ submissions and evidence, I can clearly see that Local 891 had two specific purposes for using the complainant’s personal information, both of which clearly relate to the broader purpose of the Local’s internal governance and accountability to its members. The first purpose was to investigate her use of a union credit card. The second was to inform the Local’s members of the results of the investigation, so they could understand how their membership dues were being managed by the officials elected to act on their behalf.

[79] I am satisfied that notice in a form the complainant could reasonably be expected to understand under s. 8(3)(a) was provided for both purposes. When she was told that her credit card use was going to be investigated that was sufficient notice of the first purpose, and the complainant does not suggest

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<sup>74</sup> Local 891’s August 2, 2022 submission Part IV, para 26.

<sup>75</sup> Local 891’s August 2, 2022 submission Part IV, paras 27 and 69.

<sup>76</sup> Local 891’s August 2, 2022 submission Part IV, para 41.

<sup>77</sup> Complainant’s August 16, 2022 submission at para. 11(b).

<sup>78</sup> Complainant’s complaint at para. 28.

<sup>79</sup> Complainant’s complaint at para. 28.

otherwise. It is also apparent that she received notice of the second purpose when she attended the December 17, 2018 executive meeting where she says she learned that an unredacted copy of Final Report and details about her credit card use would be communicated to the entire membership.<sup>80</sup>

[80] However, I am not persuaded s. 8(3)(b) applies. Local 891’s arguments and evidence do not explain how the complainant had any control or realistic possibility of opting-out or preventing her personal information being used by Local 891 for either purpose. Thus, I do not see how she can be said to have had a reasonable opportunity to decline to have her personal information used for the purposes of investigating her credit card use and communicating the results to her fellow members.

[81] I make a similar finding regarding the other uses and the single disclosure. I received no explanation about the purposes of the leak of the draft report, the leak of the Final Report to production sites, staff having access to the Final Report and the leak to the online news site. There was no evidence about what motivated those particular uses and disclosure, so I cannot draw any conclusions about their purposes. Further, there is no indication the complainant received anything remotely resembling notice under s. 8(3)(a) that her personal information would be used or disclosed like that - or given a reasonable opportunity, under s. 8(3)(b), to decline to have her personal information used or disclosed in those ways.

[82] As ss. 8(3)(a) and (b) are not met for any of the uses and disclosure of the complainant’s personal information, it is not necessary to go on to decide if ss. 8(3)(c) and (d) apply. All parts of s. 8(3) must be met for it to apply. In summary, I find that Local 891 has not established that s. 8(3) deemed the complaint to have consented to the use and disclosure of her personal information.

### ***Section 15(1)(c) - Use authorized without consent***

[83] Local 891 also says that it was authorized under s. 15(1)(c) to use the complainant’s personal information without her consent for the purposes of the investigation into her credit card use.<sup>81</sup>

[84] Section 15(1)(c) says:

15(1) An organization may use personal information about an individual without the consent of the individual, if

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<sup>80</sup> Complainant’s August 16, 2022 affidavit at para 5(b). I conclude her use of “2020” is a typo and was meant to be “2018”, which is what she consistently used elsewhere in her materials.

<sup>81</sup> Local 891’s August 2, 2022 submission, Part IV at para. 45.

(c) it is reasonable to expect that the use with the consent of the individual would compromise an investigation or proceeding and the use is reasonable for purposes related to an investigation or a proceeding,

[85] PIPA defines “investigation” as follows:

“investigation” means an investigation related to

- (a) a breach of an agreement,
- (b) a contravention of an enactment of Canada or a province,
- (c) a circumstance or conduct that may result in a remedy or relief being available under an enactment, under the common law or in equity,
- (d) the prevention of fraud, or
- (e) trading in a security as defined in section 1 of the *Securities Act* if the investigation is conducted by or on behalf of an organization recognized by the British Columbia Securities Commission to be appropriate for carrying out investigations of trading in securities,

if it is reasonable to believe that the breach, contravention, circumstance, conduct, fraud or improper trading practice in question may occur or may have occurred;

*Local 891’s submission about s. 15(1)(c)*

[86] Local 891 submits the following about the application of s. 15(1)(c):

Local 891 says that the use was reasonable for the purposes of the investigation into the credit card use [...]

Local 891 collected personal information for the purposes of an investigation. That provision includes providing the results of the investigation to Local 891’s members, after its conclusion. Otherwise, unless [the complainant] consented, the members would not be able to find out the results of the investigation.

Since informing the members of the results of the investigation was reasonable for the purpose of the investigation, Local 891 says that the without consent provision for the use of personal information applies in this case.<sup>82</sup>

[87] Local 891 once again cites Alberta Order P2018-07 in support. In that case, the adjudicator considered s. 17(d) of Alberta’s PIPA. Section 17(d) says that an organization may use personal information without consent if “the use of the information is reasonable for the purposes of an investigation or a legal proceeding”. The Alberta adjudicator found that s. 17(d) applied when a union

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<sup>82</sup> Local 891’s August 2, 2022 submission part IV at paras. 45-48.

provided an individual's personal information to union members when reporting on the results of an investigation it had conducted, and legal proceedings it was responding to, on behalf of its members. The Alberta adjudicator said:

In my view, the phrase “for the purposes of an investigation or a legal proceeding” is not intended to capture only that information used in the course of conducting an investigation or a proceeding, but also includes providing the results of the investigation or proceeding to the organization's members and representatives, after its conclusion. In other words, sharing the results of an investigation or legal proceeding with an organization's members and representatives is a purpose of conducting an investigation or legal proceedings. ...

I find that the Organization used the Complainant's personal information for the purpose of informing its members as to the outcome of an investigation and legal proceeding it had conducted on behalf of the members, and its reasons for conducting the legal proceeding in the way that it did. I find that this use of personal information without consent is authorized by section 17(d) of PIPA.<sup>83</sup>

*Complainant's submission about s. 15(1)(c)*

[88] The complainant challenges Local 891's reliance on Alberta Order P2018-07. She says that case is distinguishable on its facts because it was about legal proceedings taken against the union, which is not the case here, and the personal information was verbally disclosed and not as detailed as what is in the Final Report.<sup>84</sup>

[89] The complainant also says that in the present case, after the investigation was concluded and the Final Report provided to Local 891's audit committee and the executive board, a decision was made to take no disciplinary action against her. Thus, there was no need to provide the entire Final Report including her personal information to the entire membership of the Local.<sup>85</sup>

*Analysis and findings*

[90] In the present case, I am satisfied that the investigation Local 891 undertook meets item (d) of PIPA's definition of “investigation” because it was clearly about the prevention of fraud.

[91] Further, I find that the phrase “for the purposes of an investigation” in s. 15(1)(c) includes the act of providing the results of the investigation to the

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<sup>83</sup>Order P2018-07, *Canadian Energy Workers' Association (Re)*, 2018 CanLII 116083 (AB OIPC) at paras. 17 and 19.

<sup>84</sup> Complainant's August 16, 2022 submission at para. 12(a).

<sup>85</sup> Complainant's August 16, 2022 submission at para. 12(b).

organization's members and representatives. In that sense, I agree with the approach taken in Alberta Order 2018-07. I have no difficulty concluding that Local 891's investigation into the complainant's personal use of a work credit card was conducted on behalf of Local 891's members. The members' dues fund the Local's activities and the credit card the complainant was using. In my view, it would be untenable to conclude that Local 891 could investigate a matter on behalf of its members but then not be able to tell them the findings or results of that investigation.

[92] I am also satisfied that it was reasonable for Local 891 to expect that use with consent would have compromised the investigation. The complainant disagrees with what the Final Report says about her conduct and responses to the allegations as well as the fact that it reveals historical details of her personal use of the credit card dating back many years. In my view, requiring the complainant's consent to report the results of the investigation to the Local's members - or requiring her consent regarding which particular details she would allow to be reported and how they would be characterized - would have compromised the investigation. It would have given the person whose conduct was under investigation the ability to control or censor the investigation and what Local 891's members could be told about it. I am satisfied that requiring consent for what was communicated to the members about the investigation would have compromised the investigation.

[93] However, deciding if Local 891 complied with s. 15(1)(c) also requires that the use of the complainant's personal information was reasonable for purposes related to an investigation or proceeding. In the circumstances of this case, that means I need to consider the particular personal information that was shared with the membership.

[94] Local 891 says that its members needed to have sufficient information about the complainant's activities and conduct in order to make informed decisions about her role in the organization. The complainant argues that Local 891 shared an unnecessary and unreasonable level of detail with the membership. Specifically, she asserts that it was not necessary to provide itemized details about the nature of her personal expenditures or provide specifics dating back ten years.<sup>86</sup>

[95] I have carefully considered the nature and amount of the complainant's personal information in the Final Report, the minutes of the January 27, 2019 general membership meeting, and the president's September 25, 2019 letter. Based on that review, I am satisfied that it was reasonable for Local 891 to share most of those specifics with its membership for the purposes of informing them of the results of the investigation. That includes the historical information dating

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<sup>86</sup> Complainant's complaint at para. 28.



back to 2008 contained in the Final Report, which would be important context for the members to have about how long the problem had been going on.

[96] In coming to this decision, I also considered the context in which the complainant's personal information was shared. The complainant was accountable to the members who elected her to represent their interests and their dues funded the credit card she used. The information Local 891 shared with its members allowed them to understand exactly what had been going on and for how long. It also allowed the members to hold the complainant to account for using Local 891's resources to advance her own interests, rather than theirs.

[97] Further, contrary to what the complainant asserts, I do not find the personal information to be sensitive. It merely reveals details of her spending. The only detail about the specifics of the complainant's spending that would be considered sensitive is a detail she already shared openly with her former and present colleagues, staff and many members before the Final Report was issued.<sup>87</sup> Thus, I conclude that the one sensitive detail was already widely known before the Final Report was issued.

[98] However, I find it was not reasonable for Local 891 to include the detailed itemized lists of the complainant's spending/repayments in the Final Report. The Final Report already contained sufficient, more broadly expressed information about the total amount of her personal spending each year, the total amounts repaid, the types of businesses where she made purchases and whether (and when) she signed the Local's credit card policy. The fact that the complainant spent X number of dollars at a particular store on a particular date was, in my view, an unreasonable level of specificity about her activities and not reasonably needed to inform the membership about the investigation. Local 891's submissions and evidence do not adequately explain why this particular level of detail was necessary to share with its members for the purposes of fostering the Local's internal governance.

[99] Local 891 has also not explained what the purposes were for the leak of the draft report, the leak of copies of the Final Report at production sites and giving staff access to the Final Report. Thus, I am not satisfied that using the complainant's personal information in those ways was reasonable for purposes related to the investigation.

[100] In conclusion, I find that Local 891 has failed to prove that s. 15(1)(c) applies to its use of the complainant's personal information in the detailed spending/repayments lists in the Final Report, the leak of the draft report, the leak of the Final Report to production sites and staff having access to the Final Report. Local 891 did not establish that those particular uses were reasonable for purposes related to the investigation. Given that Local 891 has not proven that it

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<sup>87</sup> Complainant's complaint, appendix C.

had express consent, deemed consent or authorization under s. 15(1)(c) to use the complainant's personal information in those particular ways, I find those particular uses contravene s. 6 of PIPA.

[101] However, I find that Local 891 has established that s. 15(1)(c) applies to its use of the complainant's personal information in the minutes of the January 27, 2019 general membership meeting, in the president's September 25, 2019 letter and in the Final Report (with the exception of the detailed spending/repayment lists). As Local 891 has proven s. 15(1)(c) authorized those specific uses without consent, it follows that those uses complied with s. 6(2)(b) of PIPA.

#### **Section 14 - Purpose of use**

[102] Local 891 has an additional obligation regarding the personal information it has established was used in compliance with s. 6. It must also establish that the use complied with s. 14. Therefore, I will consider whether Local 891 complied with s. 14 when it used the complainant's personal information in the minutes of the January 27, 2019 general membership meeting, in the president's September 25, 2019 letter and in the Final Report (minus the detailed spending/repayment lists which contravened s. 6).

[103] No purpose would be served by considering if the requirements of s. 14 are met for the uses that I found above in paragraph 100 contravened s. 6, so I will not do so.

[104] Section 14 says:

14 Subject to this Act, an organization may use personal information only for purposes that a reasonable person would consider appropriate in the circumstances and that

- (a) fulfill the purposes that the organization discloses under section 10 (1),
- (b) for information collected before this Act comes into force, fulfill the purposes for which it was collected, or
- (c) are otherwise permitted under this Act.

[105] Section 14 is about whether the purpose for the use is appropriate in the circumstances. The standard is an objective one. It requires considering whether the hypothetical reasonable person, knowing the purpose for the use and the surrounding circumstances would consider the purpose to be appropriate.

[106] Local 891 submits that its use of the complainant's personal information complies with s. 14 of PIPA.<sup>88</sup> It says it used the complainant's personal information for internal governance and accountability purposes within Local 891's membership. It asserts that the complainant was an elected official with a fiduciary obligation to Local 891 and its members also needed to have information about her activities and conduct to decide whether to re-elect her or press charges under the Local's constitution and bylaws.<sup>89</sup>

[107] The complainant does not take issue with the Local 891's assertion that the purpose of investigating her credit card use and reporting the results to Local's membership was for internal governance and accountability.<sup>90</sup>

[108] Having considered the parties' submissions and evidence, I am satisfied that Local 891 used the complainant's personal information in the minutes of the January 27, 2019 general membership meeting, in the president's September 25, 2019 letter and in the Final Report (minus the detailed lists) for the purpose of internal governance and accountability. In my view, a reasonable person would consider those specific uses of the complainant's personal information for that purpose to be appropriate in the circumstances.

[109] Further, because I found above in paragraph 101 that those three specific uses were permitted under s. 6(2)(b) of the Act, the conditions of s. 14(c) are met as well.

[110] In summary, I find that the requirements of s. 14 are met regarding Local 891's use of the complainant's personal information in the minutes of the January 27, 2019 general membership meeting, in the president's September 25, 2019 letter and in the Final Report (minus the detailed spending/repayment lists).

### ***Section 18(1)(c) - Disclosure authorized without consent***

[111] Section 18(1)(c) is the mirror provision to s. 15(1)(c) except it relates to disclosure. Local 891 did not make any submissions about s. 18(1)(c). Nonetheless, I will consider it because Local 891 said that its submissions about use also apply to disclosure.

[112] As previously mentioned, the leak to the online news site was the only disclosure of personal information in this case. I find that s. 18(1)(c) does not apply for the same reasons s. 15(1)(c) does not apply to the leaks that were uses of personal information. There is simply insufficient information for me to determine what the purpose was for the disclosure of the complainant's personal

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<sup>88</sup> Local 891's August 2, 2022 submission, Part IV at para. 29.

<sup>89</sup> Local 891's August 2, 2022 submission Part IV, para 26, 27 and 69.

<sup>90</sup> Rather, she disputes that the purpose of union governance and accountability necessitated using the certain types and amounts of information that she disagreed with.

information to the online news site, let alone that the disclosure was reasonable for purposes related to an investigation or proceeding.

### ***Section 17 - Purpose of disclosure***

[113] Section 17 is identical to s. 14 except it applies to disclosure of personal information, not use. I found that the disclosure to the online news site contravened s. 6. For that reason, it is not necessary to decide if the requirements of s. 17 are met for that disclosure, and I will make no decision about that.

### ***Summary of findings regarding use and disclosure***

[114] I found that Local 891 has not established that it had express consent under s. 6(2)(a) or deemed consent under s. 6(2)(c) to use the complainant's personal information.

[115] However, Local 891 has established that its use of the complainant's personal information in the minutes of the January 27, 2019 general membership meeting, in the president's September 25, 2019 letter and in the Final Report (minus the detailed spending/repayment lists) was authorized under s. 15(1)(c). Thus, I found those uses complied with s. 6(b). I also found that they complied with s. 14.

[116] However, Local 891 has not established that the following uses of the complainant's personal information complied with s. 6: the detailed itemized lists of spending/repayments in the Final Report, the leak of the draft report, the leak of the Final Report to production sites and staff having access to the Final Report. I found that those particular uses contravened s. 6 and it was not necessary to decide if they complied with s. 14.

[117] Regarding the one disclosure in this case, which was the leak of the complainant's personal information to the online news site, Local 891 has not shown that it had express consent under s. 6(2)(a) or deemed consent under s. 6(2)(c) to disclose the complainant's personal information. Local 891 also has not established the disclosure was authorized without consent under s. 18(1)(c). I concluded that the disclosure contravened s. 6 and it was not necessary to decide if it complied with s. 17.

### ***Protection of personal information, s. 34***

[118] Section 34 states that an organization must protect personal information in its custody or under its control by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure, copying, modification, disposal or similar risks.

[119] Section 34 does not require perfection and it is not prescriptive. It recognizes that because situations vary the measures needed to protect personal information will also vary. The reasonableness of security measures and their implementation need to be measured by whether they are objectively diligent and prudent in all of the circumstances.<sup>91</sup>

[120] The complainant alleges Local 891 failed to take reasonable security precautions to prevent the three leaks of her personal information, which occurred when the draft report was given to a member of the Local, copies of the Final Report were left at the Local's production sites and the Final Report, or information about it, was given to an online news site. The complainant does not dispute that Local 891 used Adobe Pro's security features to try and prevent downloading, copying and printing, but she says Local 891 "was aware that the privacy settings on the Final Report would not prevent people from copying it and distributing it."<sup>92</sup>

[121] Local 891 does not dispute that the three leaks occurred. Rather, it submits that it met its obligation under section 34 to take reasonable steps to secure the personal information.<sup>93</sup>

[122] When Local 891 learned about the leak of the draft report, it says it "took objectively diligent and prudent measures".<sup>94</sup> The Managing Director says that Local 891 "investigated and determined that none of the executive committee who had been provided with a copy of the draft report had emailed it from their email box; all were asked and denied sharing it."<sup>95</sup> Local 891 figured out who received the draft report and sent a letter informing her that the Local needed to protect the information from being shared with non-members and she may face legal action or charges under the Local's constitution for her actions. The letter instructed her to destroy her copy of the draft report, stop posting about the matter on social media and advise anyone she had shared the draft with, to do the same.<sup>96</sup>

[123] Regarding how it provided the Final Report to its members, Local 891 says that it "limited the ability to copy the Report when it communicated to its membership, and used reasonable security arrangements to protect from unauthorized access and use."<sup>97</sup> The Managing Director says:

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<sup>91</sup> These principles are found in *Investigation Report F06-01: Sale of Provincial Government Computer Tapes Containing Personal Information*, 2006 CanLII 13536 (BC IPC) at paras. 49-50. Also: Order P17-01, 2017 BCIPC 05 at para 62.

<sup>92</sup> Complainant's complaint at para. 57.

<sup>93</sup> Local 891's August 2, 2022 submission Part IV at para. 51.

<sup>94</sup> Local 891's August 2, 2022 submission Part IV at para. 52.

<sup>95</sup> Managing Director's affidavit at para. 39.

<sup>96</sup> Managing Director's affidavit at para 40 and exhibit K.

<sup>97</sup> Local 891's August 2, 2022 submission Part IV at para. 55.

Local 891 used the security features of Adobe Pro to release the Report to the membership via Local 891's internal website. The Adobe version of the Report could not be copied and pasted, downloaded, saved or printed. The Report was accessible to the membership from January 24 to January 31, 2019 following which Local 891 removed it from its website.<sup>98</sup>

[124] Local 891 says it “followed appropriate policies and practices when it shared the information with its members and reminded them of the obligations of confidentiality.”<sup>99</sup> Local 891 says that the e-bulletin that accompanied the Final Report when it was first posted on the internal website said the following:

IATSE Local 891 conducted an investigation into the use of a corporate credit card assigned to the [complainant's position title] for business use. As a matter of financial transparency and a fiduciary responsibility to the membership, the final report, in its entirety, is now available on the IATSE Local 891 website here. [member login required]. We would encourage anyone with questions to attend the General Membership meeting on Sunday January 27, 2019. This report is strictly confidential within the membership of IATSE Local 891.<sup>100</sup>

[125] After the Final Report was removed from the Local's internal website, the president explained in his September 25, 2019 letter to members that the Final Report would not be re-released and would only be available to its writers and the executive board. He said, “Ongoing release of information from the report may result in liability under the BC Personal Information Protection Act, and charges can be laid.”<sup>101</sup> Local 891 does not explain what charges it means, but I understand this to be a reference to charges under its constitution and bylaws.

[126] Regarding the leak to the online news site, Local 891 only says that it “was not obligated to deal with an external news source, which was out of its control, publishing an article with respect to the Report, where such reporting was covered by the journalistic exception under section 3(2)(b) of PIPA.”<sup>102</sup>

[127] As for the leak that resulted in copies of the Final Report being left at production sites, Local 891 merely says that the complainant and her staff retrieved the copies.<sup>103</sup>

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<sup>98</sup> Managing Director's affidavit at para. 42 and Local 891's initial submission, Part II at para. 45 and.

<sup>99</sup> Local 891's August 2, 2022 submission Part IV at para. 51.

<sup>100</sup> Local 891's August 2, 2022 submission at Background Facts, para. 46. The complainant did not dispute that this is what the e-bulletin said.

<sup>101</sup> Complainant's complaint, appendix P (president's September 25, 2019 letter to members).

<sup>102</sup> Local 891's August 2, 2022 submission Part IV at para. 53. Section 3(3)(b) states that PIPA does not apply if the collection, use or disclosure of personal information is for journalistic, artistic or literary purposes and for no other purpose.

<sup>103</sup> Local 891's August 2, 2022 submission Part IV at para. 54.

[128] I accept Local 891's evidence that it took the measures it described to protect personal information in its custody and under its control. However, what I find is missing here is evidence that it employed any of the most elementary security measures that one would expect of an organization. For instance, presumably Local 891 had both electronic and paper copies of the draft and Final Report, but it does not say where they were kept and who had access to them. I do not know if Local 891 kept the reports in a locked cabinet or office or in a restricted or password-protected area of its computer system. These would have been obvious and reasonable measures for Local 891 to take to prevent unauthorized access and distribution of the complainant's personal information. In addition, Local 891 did not demonstrate that it has a privacy management program or policy, nor did it say if it provides privacy training and education to its staff and members.

[129] Absent evidence about those most basic security measures, I am not satisfied that Local 891 complied with s. 34 by making reasonable security arrangements to prevent unauthorized access, collection, use, disclosure or similar risks to the complainant's personal information.

[130] On a related note, ss. 4 and 5 of PIPA require organizations to develop and follow policies and practices that are necessary to meet their obligations under PIPA and to designate individuals who are responsible for the organization's PIPA compliance. There was no evidence presented in this inquiry that Local 891 has complied with those requirements. If Local 891 has not already done so, I recommend it take immediate steps to develop and implement a privacy management program or policy, including privacy education or training for its members and staff and review its administrative, physical, and technological safeguards to ensure they are reasonable and effective for protecting the personal information in its custody and under its control. Those recommended measures are an important step towards preventing the types of leaks that occurred in this case.

## **CHARTER ISSUE**

[131] Local 891 submits that any decision that it contravened ss. 14 and/or 17 of PIPA would unjustifiably infringe its freedom of expression and association under ss. 2(b) and 2(d) of the *Charter*.

[132] I find that it is not necessary to consider, or make any decision about, Local 891's *Charter* arguments because I did not find that it contravened ss. 14 or 17 of PIPA.

## **CONCLUSION**

[133] Section 52(3) of PIPA is the source of remedial authority in this case. For the reasons provided above, pursuant to s. 52(3), I make the following orders:

1. I confirm that PIPA authorized Local 891 to use and distribute to its members the complainant's personal information in the minutes of the January 27, 2019 general membership meeting, in the president's September 25, 2019 letter and in the Final Report, with the exception of its detailed spending/repayment lists.
2. I require that Local 891 comply with its duty under s. 34 of PIPA to make reasonable security arrangements to protect the complainant's personal information from unauthorized access, collection, use, disclosure, copying, modification, disposal or similar risks.

[134] I decline to make any order under s. 52(3) requiring Local 891 to stop using or disclosing the complainant's personal information in the ways that I found PIPA did not authorize. That is because those uses and the disclosure took place several years ago and there is no indication that they are ongoing.

August 21, 2023

**ORIGINAL SIGNED BY**

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Elizabeth Barker, Director of Adjudication

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