IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Economical Mutual Insurance Company v. British Columbia (Information and Privacy Commissioner),* 2013 BCSC 903

Date: 20130522
Docket: S113483
Registry: Vancouver

In the Matter of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 (as amended)

And in the Matter of the *Personal Information Protection Act*, SBC 2003, c. 63

And in the Matter of Order No. P11-02 of the Information and Privacy Commissioner for British Columbia

Between:

Economical Mutual Insurance Company

Petitioner

And

Information and Privacy Commissioner of British Columbia and Alfred Hughes

Respondents

And

B.C. Freedom of Information and Privacy Association

Intervenor

Before: The Honourable Mr. Justice Goepel

On judicial review from Order No. P11-02 of a delegate of the Information and Privacy Commissioner for British Columbia dated May 6, 2011

Reasons for Judgment

Counsel for the Petitioner:	L. Novakowski D. Curtis
Counsel for the Respondent, Information and Privacy Commissioner of British Columbia:	A.R. Westmacott
Counsel for the Intervenor:	J. McArthur A. Piercy
Place and Date of Hearing:	Vancouver, B.C. January 22-23, 2013
Place and Date of Judgment:	Vancouver, B.C. May 22, 2013

INTRODUCTION

[1] Insurance companies use an insured's Canadian Property Loss Score ("CPLS") as a tool to assist in making underwriting decisions concerning homeowner policies of insurance. The CPLS is a number derived from selected items of information in an individual's credit report using a particular statistical tool. The CPLS has been determined to be statistically valid and a useful predicator of future risk of loss.

[2] Alfred Hughes (the Complainant") and his wife had a homeowner's insurance policy with Economical Mutual Insurance Company ("Economical"). When they applied in 2009 to renew the policy, Economical collected his CPLS score and used it in making its underwriting decision concerning renewal of his policy. When the Complainant learned that Economical had obtained certain information from his credit record, he complained to the Information and Privacy Commissioner for B.C. (the "Commissioner") that he had not consented to Economical obtaining this information.

[3] The complaint ultimately led to an inquiry conducted by a delegate of the Commissioner ("the Delegate") pursuant to the *Personal Information Protection Act*, S.B.C. 2003, c. 63 (the *"Act*"). On May 6, 2011, the Delegate issued written reasons. The Delegate found that Economical's collection of the CPLS was for a reasonable purpose but held that Economical had not given the Complainant proper notice of its purpose for collecting the credit information. The Delegate made a number of orders that applied not just to the Complainant, but to all of Economical's policyholders (the "Orders").

[4] Economical now seeks to set aside the Orders except as they pertain to the Complainant.

[5] The Complainant did not participate in this proceeding. The B.C. Freedom of Information and Privacy Association ("FIPA") applied for and was given intervenor status and actively defended the decision of the Delegate.

LEGISLATIVE FRAMEWORK

[6] The *Act* regulates the protection of personal information in the private sector. It came into force on January 1, 2004. Section 2 describes the purpose of the *Act*:

> 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 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.

[7] The *Act* applies to those private sector organizations that fall under the definition of "organization" in s. 1. Insurance companies such as Economical fall within the definition and are subject to the provisions of *the Act*. The specific sections of the *Act* in issue in the inquiry were ss. 6, 7, 8, 10 and 11. Those sections are reproduced in Appendix "A".

[8] Section 6 provides that an organization must not collect, use or disclose personal information unless it has the express or implied consent of the individual who the information is about or the *Act* otherwise authorizes the collection, use or disclosure of the information.

[9] Section 7 sets out the rules regarding the meaning of consent. It sets out certain rules around when consent will have been validly provided.

[10] Section 8 sets out the circumstances in which consent will be implied for the purposes of the *Act*.

[11] Section 10 sets out that before collecting personal information an organization must disclose to the individual verbally or in writing the purpose for the collection of the information.

[12] Section 11 provides an overarching requirement of reasonableness in respect of any collection of personal information. An organization may only collect personal information for purposes a reasonable person would consider appropriate in the circumstances.

[13] Part 10 of the *Act* sets out the role of the Commissioner. Pursuant to s. 36, the Commissioner is responsible for monitoring how the *Act* is administered and given the power, regardless of whether a complaint is received, to initiate investigations and audits to ensure compliance with the *Act*. Pursuant to s. 43(1) the Commissioner may delegate any of her duties, powers, or functions.

[14] Part 11 of the *Act* deals with reviews and orders. Section 46(2) provides that an individual may make a complaint to the Commissioner. Section 48(2) authorizes the Commissioner to provide copies of complaints to any person the Commissioner considers appropriate. Section 49 gives the Commissioner jurisdiction to attempt to resolve complaints through mediation. If the matter is not settled or mediated, s. 50(1) of the *Act* provides that the Commissioner may conduct an inquiry.

[15] The scope of the inquiry is set out in s. 50(1). That section provides:

> **50** (1) If a matter is not referred to a mediator or is not settled under section 49, the commissioner may conduct an inquiry and decide all questions of fact and law arising in the course of the inquiry.

[16] Pursuant to s. 50(3) the individual who complained, the organization concerned and any person given a copy of the complaint must be given the opportunity to make representations during the inquiry.

[17] Sections 52(1), 52(3) and 52(4) set out the Commissioner's remedial jurisdiction following an inquiry. Those sections read as follows:

> **52** (1) On completing an inquiry under section 50, the commissioner must dispose of the issues by making an order under this section.
>
> ...
>
> (3) If the inquiry is into a matter not described in subsection (2), the commissioner may, by order, do one or more of the following:
>
> (a) confirm that a duty imposed under this Act has been performed or require that a duty imposed under this Act be performed;
>
> (b) confirm or reduce the extension of a time limit under section 31;
>
> (c) confirm, excuse or reduce a fee, or order a refund, in the appropriate circumstances;
>
> (d) confirm a decision not to correct personal information or specify how personal information is to be corrected;

> (e) require an organization to stop collecting, using or disclosing personal information in contravention of this Act, or confirm a decision of an organization to collect, use or disclose personal information;
>
> (f) require an organization to destroy personal information collected in contravention of this Act.
>
> (4) The commissioner may specify any terms or conditions in an order made under this section.

[18] Pursuant to s. 53 an organization must comply with an order unless an application for judicial review is brought. If an application for judicial review is brought, the order is stayed until the court orders otherwise.

[19] Pursuant to s. 56 an organization commits an offence if it fails to comply with an order made under the *Act*. An organization that commits an offence is liable to a fine of not more than $100,000.

FACTUAL BACKGROUND

[20] The Complainant and his wife made an application for homeowner's insurance to the Federation Insurance Company of Canada ("Federation") on or about June 11, 2003. The Complainant and his spouse were both named as applicants and information about both was provided on the application form. The form was only signed by the Complainant's wife.

[21] The application was made on the standard Centre for Study of Insurance Operations ("CSIO") form. CSIO creates and maintains standard forms that are used by most insurers and brokers, either exclusively by the insurance company or as an accepted alternative to a company's proprietary application form.

[22] The information under the heading "Disclosure" on the CSIO application form included the following statement, which became a term of the insurance contract when Federation approved the application:

> The applicants agree that reports containing personal, credit, factual record, premium payment or claims history information may be sought or exchanged in connection with this application for insurance or renewal, extension, variation or cancellation thereof.

The CSIO form is dated October 1996 and will be referred to hereafter as the 1996 CSIO form.

[23] Federation issued a homeowner's policy to the Complainant and his spouse. Economical subsequently purchased Federation. As policies issued by Federation came up for renewal in 2007-08, Economical provided renewal policyholders with notice that Federation policies were now being underwritten by Economical and Economical was now their insurance provider.

[24] In September 2008, the Complainant's home was burglarized. The Complainant and his wife gave notice to Economical of a claim and Economical subsequently confirmed receipt of the claim and provided a proof of loss form. A proof of loss was ultimately filed and the claim settled in November 2009.

[25] In 2009, the policy came up for renewal. Economical's general practice is to automatically renew homeowner policies. However, where a claim has been made under a policy, the policy is sent for manual review by an underwriter prior to renewal. The manual underwriting review allows the underwriter to assess the risks associated with renewal of a particular policy using Economical's internal underwriting guidelines.

[26] In circumstances where the renewal of a homeowner's policy is manually assessed by an underwriter because a claim was made, one of the factors Economical's underwriters consider under its guidelines is the insured's CPLS. If the CPLS is less than a particular amount, renewal will not be offered.

[27] Economical obtains a CPLS about an individual by sending an inquiry about the individual to Equifax Canada Inc. ("Equifax"), a credit reporting agency that is in the business of providing credit information about consumers to its clients. Equifax extracts data from an individual's credit record and from that data calculates an individual's CPLS based on a proprietary formula. Equifax then provide the CPLS score to the insurer.

[28] Economical received the Complainant's CPLS from Equifax and ultimately, through application of its underwriting guidelines, decided to renew the policy.

[29] In or around April 2009, the Complainant learned that someone had inquired into his credit. He contacted the credit agency and learned that Economical had made the inquiry. The Complainant subsequently complained to Economical. Economical advised the Complainant that the Complainant had consented to the collection of his CPLS score at the time of the initial application for insurance in 2003 when his wife had signed the 1996 CSIO form.

THE INQUIRY

[30] The Complainant was not satisfied with this response and filed a complaint with the Commissioner alleging that Economical's inquiry into his credit history breached his privacy. The Commissioner gave notice of the complaint to Economical and several other organizations who ultimately intervened in the proceeding. When the complaint was not resolved through mediation, the Commissioner's office on November 9, 2010, issued a notice of written inquiry (the "Notice"). The Notice identified the issues as follows:

> 1. Issues – At the inquiry, the Information and Privacy Commissioner or her delegate will consider whether the organization was authorized by PIPA to collect the complainant's credit information to assess risk prior to providing him with homeowner's insurance.

[31] On November 16, 2012, Economical objected to the Notice on the basis that it included issues that were potentially outside the factual context of the complaint and suggested a restatement of the issues as follows:

> At the inquiry, the Information and Privacy Commissioner, or her delegate, will consider, in the circumstances of the complainant having made a claim under the policy, prior to the policy coming up for renewal, in order for the organization to determine whether to renew the policy, was the organization authorized by PIPA to collect the complainant's credit score.

[32] On November 17, 2012, the Commissioner replied to Economical's letter of November 16, and advised that its objections were noted and would be considered by the Commissioner, or her delegate, with its submissions.

[33] The Notice was sent to Economical, the Complainant, and seven associations that were granted intervenor status. The intervenors included FIPA, Equifax, Insurance Bureau of Canada, TransUnion of Canada Inc., the Insurance Brokers Association of B.C. (the "IBABC"), the Consumers Council of Canada and the Canadian Association of Direct Response Insurers. On November 23, 2010, the Commissioner's office emailed the parties and intervenors to advise that the Notice neglected to specify that ss. 6, 7, 8, 10 and 11 of the *Act* were in issue.

[34] Economical in its submissions and supporting affidavits took the position that it had given notice of the collection and the Complainant had consented to the collection of the Complainant's credit information through the 1996 CSIO form and its privacy policies. Economical provided detailed submissions and evidence on the tools used for underwriting, the use of CPLS scores, alternates to using credit scoring tools such as CPLS, their underwriting guidelines and the predictive power of credit scores.

[35] All seven of the intervenors filed submissions. Most of the submissions centred on whether the purposes for which the CPLS scores are collected were reasonable. This was a matter of great import to the insurance industry as the evidence indicated that most insurers collect and rely on such information.

[36] Economical did not file any evidence concerning consents received from other policyholders. The IBABC in its submission provided copies of the 2003 and 2008 CSIO forms. Those forms contained different language than the 1996 CSIO form.

DECISION OF THE DELEGATE

[37] On March 4, 2011, the Commissioner appointed the Delegate to conduct the inquiry. The evidence at the inquiry was limited to written submissions and affidavits. There was no oral hearing.

[38] On May 6, 2011, the Delegate released her decision (the "Reasons"). She found that Economical had complied with some of the provisions of the *Act* that were

at issue in the inquiry, but had not complied with others. In regard to s. 11, she found that Economical's collection of the CPLS score was reasonable. She further held that Economical could properly require applicants for insurance to consent to the collection of a credit score for the purpose of assessing future risk of loss as a condition of supplying homeowner's insurance because this did not go beyond what was necessary for the purpose of providing homeowner's insurance within the meaning of s. 7(2).

[39] The Delegate then went on to consider whether Economical had given the Complainant adequate notice of its purpose for collecting his CPLS or credit score as required by ss. 6, 7(1) and 10(1)(a). In considering this issue she focused on the wording of the 1996 CSIO form. She concluded that the language used in the 1996 CSIO form did not adequately inform the Complainant and his spouse that their credit information would be collected for the purpose of underwriting or assessing future risk of loss. At para. 115 she concluded her discussion on the adequacy of the notice as follows:

> In order to satisfy the notice requirements in ss. 7(1) and 10(1)(a) of PIPA, individuals must be informed that their credit information may be collected for the purpose of *assessing future risk of loss* in underwriting the policy. Without this information, it is not reasonable to expect that a consumer would understand how Economical actually uses this information and therefore could not meaningfully consent to its collection for this purpose.
>
> [Emphasis in original]

[40] She held that after the proclamation into force of the *Act* on January 1, 2004, Economical was required to provide individuals with adequate notice of its purpose in collecting their CPLS before it collected such information. She concluded they had not and that the disclosure statement on the 1996 CSIO form completed by the Complainant and his wife did not satisfy the disclosure requirements of the *Act*.

[41] In reaching her decision, the Delegate noted that it is useful to see how CSIO had revised its standard disclosure statement on homeowner insurance application forms since the *Act* and other privacy laws had been enacted. After quoting the language of the 2008 CSIO form she noted at para. 103 of the Reasons that the question of the sufficiency of the 2008 form as disclosure of the purposes for

collecting personal information was not before her. She suggested that the 2008 form was evidence that after the date the *Act* came into force, CSIO considered that its standard statement should expressly refer to obtaining credit information for, among other things, the purpose of underwriting.

[42] Having concluded that Economical did not disclose to the Complainant the purpose of the collection of his personal information, the Delegate held that she need not determine whether the Complainant had in fact expressly consented to the collection of the personal information because absent proper disclosure any consent was vitiated. This issue would have required a determination of whether or not the Complainant's spouse was acting as his agent when she signed the 1996 CSIO form.

[43] The Delegate set out her findings at para. 129 of the Reasons:

> I have made the following findings:
>
> a) Economical's collection of the Complainant's CPLS or credit score was for a purpose that a reasonable person would consider appropriate under s. 11. Economical did not disclose that purpose to the Complainant as required by ss. 11(a) and 10(1).
>
> b) Economical can require consent to collection of a credit score for the purpose of assessing future risk of loss as a condition of supplying homeowner's insurance because this does not go beyond what is "necessary" for the purpose of providing homeowner's insurance within the meaning of s. 7(2).
>
> c) There was no deemed consent under s. 8.
>
> d) Economical did not give the Complainant adequate notice of its purpose for collecting his CPLS or credit score under ss. 6, 7(1) and 10(1)(a).

[44] The Delegate then made the Orders that are the subject of this application. The parties were not given the opportunity to make submissions in regard to any orders that should follow from the Delegate's findings.

[45] The Orders commence at para. 130:

> [130] For the reasons set out above, pursuant to s. 52(3)(e), I require Economical to cease collecting and using personal information in contravention of PIPA.

> [131] Pursuant to s. 52(3)(a), I require Economical to provide all home insurance policyholders who have not been provided with adequate notice, and all present and future applicants for home insurance, with notice that a credit score based on their credit information may be obtained for the purpose of assessing future risk of loss in connection with underwriting their policies. It must provide this notice before collecting any credit score based on their credit information for this purpose.
>
> [132] As conditions under s. 52(4), I specify the following:
>
> a) Economical must review the consents it has obtained from home insurance policyholders since PIPA came into force on January 1, 2004 and ascertain whether these individuals have been provided with notice that a credit score based on their credit information may be obtained for the purpose of assessing future risk of loss in connection with underwriting their policies.
>
> b) Economical must submit the notice it intends to provide to home insurance policyholders who have not been provided with adequate notice, and present and future applicants, in accordance with para. 131 to me for review and approval five business days before the deadline set out in (c) below, that is on or before June 13, 2011.
>
> c) Economical must provide me with proof that it has complied with my orders and these conditions within 30 days of the date of this decision, as PIPA defines day, that is on or before June 20, 2011.
>
> [133] Once Economical has provided adequate notice in accordance with para. 131, and has obtained consent from affected individuals in accordance with PIPA, it may resume collecting and using credit scores for the purpose specified in the notice.

THE PETITION

[46] Economical now seeks relief pursuant to the *Judicial Review Procedure Act*, R.S.B.C 1996, c. 241 ("*JRPA*"). It does not challenge the Delegate's finding that the Complainant was not provided adequate notice of its purpose in collecting his CPLS score before it collected such information. It does however challenge the Orders. It submits that in making the Orders the Delegate erred by:

(a) violating the rules of procedural fairness;

(b) basing the Orders on a misinterpretation of the remedial provisions of the *Act*; and

(c) making orders that did not have any evidentiary basis.

[47] Economical submits that the Orders not only violate the rules of procedural fairness and are unauthorized by the *Act*, but they will impose a hardship and costs on hundreds of brokers in British Columbia who are the ones who will actually have to carry out significant aspects of the Orders.

[48] Economical submits that the appropriate remedy in response to these errors is to quash the Orders, except as they apply to the Complainant.

STANDARD OF REVIEW

[49] A determination of the standard of review must be determined on the basis of the common law as the *Administrative Tribunals Act*, S.B.C. 2004, c. 45, does not apply to the decision of the Delegate: *Sochowski v. British Columbia (Information and Privacy Commissioner)*, 2008 BCSC 1390 at para. 29.

[50] In *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190 [*Dunsmuir*], the majority addressed the proper method by which to determine the appropriate standard of review. At para. 62, Bastarache and LeBel JJ. stated:

> ... the process of judicial review involves two steps. First, courts ascertain whether the jurisprudence has already determined in a satisfactory manner the degree of deference to be accorded with regard to a particular category of question. Second, where the first inquiry proves unfruitful, courts must proceed to an analysis of the factors making it possible to identify the proper standard of review.

[51] In this case, counsel agreed that questions concerning procedural fairness are to be determined on a correctness standard. In *Dunsmuir*, Binnie J. held in concurring reasons at para. 129:

> ... a fair procedure is said to be the handmaiden of justice. Accordingly, procedural limits are placed on administrative bodies by statute and the common law. These include the requirements of "procedural fairness", which will vary with the type of decision maker and the type of decision under review. On such matters, as well, the courts have the final say. The need for such procedural safeguards is obvious. Nobody should have his or her rights, interests or privileges adversely dealt with by an unjust process.

[52] The parties also concur that the issues concerning the interpretation of the remedial provisions of the *Act* are to be reviewed on a reasonableness standard. In *Dunsmuir*, the Court reformulated the reasonableness test at para. 47:

> Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain questions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[53] Where the parties differ in relation to the standard of review applicable in this case is in regard to the characterizations of the question that the Court must answer. Economical characterizes the initial question as one of procedural fairness attracting a correctness standard because the Delegate allegedly made orders that were outside the scope of the inquiry. The Commissioner and FIPA submit that although Economical has framed separate grounds of review, the grounds of review overlap and relate to one particular issue, being whether the Delegate erred in her interpretation of the *Act* by making the order she did on the evidence before her.

[54] The Commissioner and FIPA submit that the gravamen of Economical's complaint is that the Delegate misapplied her authority under the *Act* when she issued the orders requiring Economical to comply with the *Act* in relation to all of its policyholders based on findings that it had not complied with the requirements of ss. 6, 7, and 10(1)(a) of the *Act* in relation to the Complainant. They submit that the Orders flowed from the Delegate's findings that Economical had not complied with the requirements of the *Act* and that the proper characterization of the question, then, is not whether there was a breach of procedural fairness in relation to the process leading up to the issuance of the Orders but rather whether the Delegate erred in her interpretation and/or application of her remedial authority under the *Act.*

They submit that this is in fact a challenge to the scope of the decision made by the Delegate interpreting and applying her remedial authority to issue orders to ensure compliance with the *Act*. They submit that these categories of questions involve the interpretation and application of the Delegate's home statute, questions of facts and questions of discretion and policy, all of which attract a reasonableness standard of review.

[55] The factors that are looked at in determining the requirements of procedural fairness may overlap with the factors considered in determining the reasonableness of the decision. In *C.U.P.E. v. Ontario (Minister of Labour)*, 2003 SCC 29 at para. 102, [2003] 1 S.C.R. 539 [*C.U.P.E.*], the Court noted:

> The content of procedural fairness goes to the manner in which the Minister went about making his decision, whereas the standard of review is applied to the end product of his deliberations.

[56] While there may be difficulty in attempting to keep separate the different lines of inquiry and the lines of inquiry may have certain common factors, it is important that the Court keep the inquiries separate as the object of the court's inquiry in each case is separate (*C.U.P.E.* at para. 103). I will separately review the grounds of procedural fairness and the reasonableness of the decision.

ADMISSION OF AFFIDAVIT EVIDENCE

[57] Before turning to the substance of the parties' submissions, it is first necessary to determine the admissibility of the affidavits of Catherine Coulsen, sworn May 24, 2011, (the "Coulsen Affidavit") and Dan Little, sworn June 23, 2012, (the "Little Affidavit") that Economical has filed in support of its submissions. Both affidavits were sworn following the release of the Reasons and did not form part of the record before the Delegate.

[58] The Coulsen Affidavit is directed to the practical difficulties and hardship that the implementation of the Orders would cause. The affidavit points out that most individuals apply for insurance through an insurance broker and that Economical has thousands of individual policy applications in hundreds of insurance brokers' offices

throughout British Columbia. The hard copy of the policy application is kept in the broker's office. In cases when a broker submits a paper form application, the copy is stored for a period of two years and then destroyed. It is the broker, not Economical, who keeps the hard copy of the applications.

[59] The affidavit suggests that in order to comply with the Orders, Economical will have to ask hundreds of insurance brokers to go through all of their individual files, and find the applications from January 1, 2004 onward that pertain to Economical. The affidavit points out that most brokers only keep their files for seven years which means that some of the files from January 1, 2004 onward will have already been destroyed.

[60] The Little Affidavit provides particulars concerning a case that was heard by the Office of the Privacy Commissioner of Canada (the "OPC"). That case arose from a complaint brought against Equifax and Economical concerning several issues similar to those in this proceeding. The Little Affidavit sets out that that case led to a negotiated resolution pursuant to which Economical agreed, effective May 26, 2012, that all new applicants for insurance would be provided with notice explaining how Economical collects and uses personal information including CPLS scores. With regard to existing British Columbia policyholders, they will be provided with a copy of the same notice when their policies are up for renewal. The process of sending out the notices was to commence July 19, 2012. As a result, by July 18, 2013, all of Economical's British Columbia policyholders will have been provided with a copy of the notice.

[61] The proposed notice is attached as an exhibit to the Little Affidavit. The notice sets out that Economical uses information received from consumer credit reporting agencies to assist in underwriting decisions.

[62] Extraneous evidence is, generally speaking, not admissible on a judicial review: *SELI Canada Inc. v. Construction and Specialized Workers' Union, Local 1611*, 2011 BCCA 353 at para. 79. Such evidence may be admissible to show a lack of jurisdiction or a denial of natural justice*: Evans Forest Products Ltd. v. British*

Columbia (Chief Forester), [1995] B.C.J. No. 729 (S.C.) at para. 4; *Karbalaeiali v. British Columbia (Deputy Solicitor General),* 2006 BCSC 13 at paras. 53-54.

[63] In *Kinexus Bioinformatics Corp. v. Asad*, 2010 BCSC 33, Wedge J. observed at para. 17:

> The court's power to admit evidence beyond the record of proceeding must be exercised sparingly, and only in an exceptional case. Such evidence may be admissible for the limited purpose of showing a lack of jurisdiction or a denial of natural justice. In *Ross,* Silverman J. said the following at paras. 26-27 after reviewing the relevant case law:
>
> > [26] The general rule with respect to the admissibility of extrinsic material is that it is, except in very special circumstances, inadmissible. This is because a judicial review is a review of a decision on the tribunal's record of proceedings. It is that very record which is the subject of the judicial review. Affidavit material describing evidence not before the tribunal or attaching documents that were not before the decision-maker is not part of that record and is generally inadmissible on judicial review. ...
> >
> > [27] There are, however, exceptions to the general rule where extrinsic evidence may sometimes be admissible. For example, it may be admissible for the limited purpose of showing a lack of a jurisdiction or a denial of natural justice. In circumstances where the grounds for judicial review are a breach of natural justice or procedural fairness, the petitioner may be entitled to adduce new evidence. However, the new evidence must be both relevant and necessary before it will be admissible[.]
>
> ...

[64] In this case Economical submits that the Coulsen Affidavit is admissible because it speaks to the issue of procedural fairness. It submits if Economical had known that the Delegate was intending to make orders of such broad scope such evidence could have been placed before the Delegate which might have impacted on the remedy portion of the decision.

[65] With regard to the Little Affidavit, Economical submits that it should be admitted because it provides information that may be of importance to the Court in determining the appropriate remedy if the Orders are set aside or modified.

[66] FIPA opposes the introduction of the affidavits. It submits that the Coulsen Affidavit consists of evidence that Economical could have submitted at the inquiry. It submits it is questionable what relevance such evidence would have had before the

Delegate. It submits that the Little Affidavit is not admissible because it concerns Economical's post-hearing conduct. It cites in support of that proposition *Canadian Union of Public Employees, Local 2404 v. Grand Bay – Westfield (Town)*, 2006 NBCA 115 at para. 8 [*Grand Bay-Westfield*].

[67] In *Grand Bay-Westfield* the party seeking judicial review had allegedly threatened a witness some time following the contested hearing. The purpose of the affidavit was to suggest to the court that it should deny any remedy to that party because of the alleged bad conduct. The court concluded that the affidavit was not admissible because the alleged misconduct was not relevant to the judicial review application.

[68] I find that both affidavits are admissible on this review. The Coulsen Affidavit gives context and substance to Economical's procedural fairness submissions. The Little Affidavit may have some import in determining the appropriate remedies if I conclude that the decision of the Delegate in whole or in part should be set aside. *Grand Bay-Westfield* is clearly distinguishable. In that case, the court did not admit the affidavit because the post-hearing conduct was not relevant to the judicial review application. In this case I find the post-hearing evidence may be relevant and the Little Affidavit is accordingly admissible.

PROCEDURAL FAIRNESS

A. Overview

[69] A duty of procedural fairness lies on every public authority making an administrative decision which affects the rights, privileges or interests of a party: *Cardinal v. Director of Kent Institution*, [1985] 2 S.C.R. 643 at 653, 24 DLR (4th) 44. The nature and extent of the duty is variable and its content must be decided in the specific context of each case: *Moreau Berube v. New Brunswick (Judicial Council)*, 2002 SCC 11 at para. 75, [2002] 1 S.C.R. 249.

[70] In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817 at para. 28, the Court described the values underlying the duty of procedural fairness as follows:

> ... The values underlying the duty of procedural fairness relate to the principle that the individual or individuals affected should have the opportunity to present their case fully and fairly, and have decisions affecting their rights, interests, or privileges made using a fair, impartial, and open process, appropriate to the statutory, institutional, and social context of the decision.

B. Alleged Breaches of Procedural Fairness

[71] Economical submits that by making Orders which apply to all home insurance policyholders, the Delegate breached the rules of procedural fairness. It submits that the inquiry was limited to the complaint of Mr. Hughes. The Notice was expressed in terms of Mr. Hughes' privacy rights. It made no reference to any other policyholders or a broader class of complainants.

[72] The evidence tendered at the inquiry focussed on two issues. The first concerned whether or not it was reasonable for insurers to collect CPLS scores. This was a question of great importance both to Economical and to the insurance industry as a whole. It was the subject of detailed and voluminous submissions from Economical and the intervenors. As noted, the Delegate ultimately resolved this question in favour of Economical.

[73] The second question concerned whether or not Mr. Hughes had in fact consented to the obtaining of his CPLS score. This issue had two separate components. The first was whether the consent found in the 1996 CSIO form provided adequate notice of Economical's purpose for collecting the CPLS score. The second was whether Mr. Hughes was bound by the consent which had been signed by his wife.

[74] The Delegate found that the consent did not provide adequate notice. In light of that finding she did not find it necessary to determine whether the Complainant's wife had acted as his agent for the purpose of giving consent.

[75] Having concluded that the consent did not provide adequate notice to Mr. Hughes, the Delegate then issued the Orders that required Economical to review all consents they had obtained from home insurance policyholders since the *Act* came into force on January 1, 2004, and ascertain whether those individuals had been provided with notice that their credit score may be obtained. She further ordered that Economical provide all homeowner insurance policyholders that had not been provided with adequate notice, notice of that fact.

[76] Economical submits that the Orders turned an individual complaint into a broad based inquiry into all of Economical's privacy practices. It submits that this was unfair because it was outside the scope of the inquiry as defined in the Notice. It says in the circumstances Economical was denied natural justice because the Orders went well beyond the scope of the Notice that initiated the Inquiry.

[77] FIPA submits that Economical was fully aware that the Delegate had to make an order upon completion of the inquiry and that any such order might provide a remedy under s. 52(3). It submits there was ample opportunity for Economical to make submissions with respect to remedy and that Economical made a tactical decision not to make such submissions or provide evidence of consents obtained from other policyholders. It says Economical now seeks to rely on evidence, some of which was available to it at the time of the hearing, and arguments with respect of the remedy that it could have made, despite knowing that the Delegate could make an order pursuant to s. 52(3) of the *Act* and might apply terms and conditions on that order pursuant to s. 52(4). It submits, regardless of any deficiency in the Notice, Economical had the opportunity to make full and detailed submissions on the question of remedy and failed to do so.

DISCUSSION RE PROCEDURAL FAIRNESS

[78] The Notice set out the issues before the Delegate. The issue was whether Economical was authorized to collect the Complainant's credit information.

[79] In the Reasons the Delegate acknowledged that the Notice delineated the scope of the Inquiry. She said at paras. 19 and 20:

> The purpose of stating the issue in a Notice of Inquiry is simply to give the parties notice of the scope of the inquiry so that they can present relevant evidence and make useful submissions. That occurred in this case and the Notice served its purpose. The parties' evidence and submissions address the issue and present relevant evidence. There is no need to amend the Notice.
>
> Similarly, the Fact Report is not a complete or conclusive recital of all facts. It is the Investigator's summary of the basic facts and provides some context for the issues. However, the adjudicator's factual findings must be based on the evidence before her. The participants in this inquiry tendered evidence and, as set out below, my findings of fact are based on that evidence. There is no need to amend the Fact Report at this time.

[80] The Notice generated voluminous submissions by Economical and the intervenors in regard to the collection of CPLS scores and whether insurers should be entitled to collect such information. The resolution of that question was fundamental to determining the complaint. If the Delegate had concluded that insurers were not entitled to collect such information, the issue of whether or not the Complainant had in fact consented to the collection of the information would be of no import.

[81] While the insurer's right to collect the information raised a general question applicable to all policyholders, the consent issue did not. The consent issue was focussed on the particular consent that the Complainant had given. It did not raise the issues of the consents that other policyholders may have given and no evidence was led concerning such consents.

[82] Economical was entitled to know in advance of the hearing if other consents were in issue so it could consider whether to lead evidence concerning such consents. In *Alberta (Human Rights & Citizenship Commission) v. Kellogg Brown & Root (Canada) Co.*, 2007 ABCA 426, the issue before a Human Rights Panel was whether an individual had suffered discrimination under Alberta's Human Rights legislation because of a company's hiring policy that required all persons seeking non-unionized positions to take and pass a post-offer/pre-employment drug test

before they would be hired. The issue as to whether the company drug policy discriminated against any drug-addicted prospective employees generally was raised by the complaint. In discussing this issue, the court said at para. 41:

> In advance of any hearing, the party complained against must know who it has to defend its actions against. Thus, if a complaint is meant to represent a broad class of individuals, that must be made reasonably clear in the complaint. In this case, KBR could only reasonably conclude that it was defending its actions as they related to Chiasson and not to drug-dependent persons generally. Had it been otherwise, KBR would have structured its defences accordingly.

[83] Those comments apply with equal force in this case. Based on the notice, Economical had no reason to believe that consents it obtained from other policyholders were in issue.

[84] In *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396, the court discussed procedural fairness in the context of an administrative law hearing. It said at para. 65:

> Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it. In some circumstances, a tribunal's decision to address an issue not raised by the parties may constitute a denial of procedural fairness -- see, for example, *MacNeil v. Nova Scotia (Workers' Compensation Board)*, 2001 NSCA 3, 189 N.S.R. (2d) 310.

[85] A party is entitled to know the case it has to meet. Deciding an issue on a point on which the parties have not had a reasonable opportunity to present submissions breaches the rules of procedural fairness: *Amacon Property Management Services Inc. v. Dutt*, 2008 BCSC 889 at paras. 27-36.

[86] *Gavrilko v. The College of Dental Surgeons of British Columbia*, 2004 BCSC 1506, concerned a disciplinary hearing. In the course of the hearing neither party addressed the possibility that the tribunal would revoke the member's license to practice thus depriving him of his livelihood. The tribunal did revoke the license. The

member appealed, citing the principle *audi alteram partem.* Williamson J. discussed that principle at para. 20:

> There can be no doubt that the Panel here had the jurisdiction to cancel the appellant's registration. But where a Panel decides, in the face of submissions from both parties that suspension is appropriate, that they will cancel an appellant's registration and thereby deny him his professional livelihood, fairness dictates they should so inform counsel and give them the opportunity to be heard.

[87] In this case, the Delegate made the Orders without giving the parties the opportunity to make submissions on those remedies in light of the conclusions that she had reached. The remedies were in regard to consents that had not been in issue in the inquiry. In the circumstances of this case, to do so rendered the process unfair and breached the rules of procedural fairness.

[88] The Coulsen Affidavit gives some context to this finding. The Delegate has ordered Economical to review the consents it has obtained from all home insurance policyholders since the *Act* came into force on January 1, 2004, to ascertain whether these individuals had been provided with notice that a credit score based on their credit information may be obtained for the purpose of assessing future risk of loss. It is clear from the Coulsen Affidavit that Economical does not have in its possession copies of those consents to the extent that the consents are found on applications that were obtained from brokers throughout the province. The Coulsen Affidavit indicates that considerable cost will be involved in attempting to comply with the terms of the Orders. Whether the Delegate would have made the Orders if aware of the practical difficulties in carrying out the Orders is of course a matter of pure speculation.

[89] I find that the Delegate breached the duty of procedural fairness when she imposed remedies in regard to consents that were not in issue in the Inquiry and when she failed to give Economical the opportunity to make submissions on those remedies.

[90] I should note that this conclusion may well have been different if the Delegate had found that insurers were not entitled to collect CPLS scores. If the Delegate had

reached such a conclusion then an order prohibiting the collection of such scores from all policyholders may well have been appropriate. It would not have raised procedural fairness issues because Economical and the intervenors had made submissions on that question.

WERE THE ORDERS REASONABLE?

[91] The question for determination under this heading is whether the Delegate erred in her interpretation and/or application of her remedial authority under the *Act*. This question involves the interpretation and application of the Delegate's home statute which attracts a reasonableness standard of review. The authorities have made clear that a tribunal's interpretation of its home statute is to be afforded deference.

[92] That said the Delegate's decision has to be considered in the context of the statutory scheme in question. As previously discussed, the Notice limited the inquiry to the obtaining of information from the Complainant without consent. The Orders, however, encompassed all policyholders.

[93] In its submissions, FIPA submits that having been found in violation of the *Act* with respect to the Complainant, it is incumbent on Economical to ensure that it is not in violation with respect to any of its other policyholders. It notes that the Delegate did not require Economical to provide notice to all its policyholders, only to those policyholders with respect to whom Economical has not obtained consents. It submits the ability to make such an order is in harmony with the purposes of the *Act*, in particular on its focus on protecting the public. It says the Commissioner cannot turn a blind eye to a proven contravention of the *Act*.

[94] FIPA submits that the general powers of the Commissioner as set out in s. 36 grant the Commissioner the power to ensure that the *Act's* purposes are achieved and to make orders as set out in s. 52(3) "whether or not a review is requested".

[95] FIPA acknowledges that the evidence was not sufficient to allow the Delegate to conclude that Economical had contravened the *Act* with respect to its other

policyholders. Rather, the evidence established that Economical had violated the *Act* with respect to at least one of its policyholders and, as such, the Delegate was entitled to draft an order to ensure that Economical would be responsible for remedying comparable contraventions of the *Act*.

[96] There are several flaws with that line of reasoning. The Inquiry was held under Part 11 of the *Act*. Part 11 deals with individual complaints. Section 36 is found in Part 10 of *the Act* and deals with the Commissioner's general powers. While the Commissioner has the power under s. 36 to initiate its own inquiry and make orders if it does so, that is not the process that was followed in this case. This was an inquiry brought under Part 11 of *the Act*. Such inquiries are based on a complaint made by an individual.

[97] While s. 50(1) authorizes the Commissioner to decide all questions of fact and law arising in the course of the inquiry, it does not provide an overriding authority to decide facts and issues that are not before the inquiry. In making her decision, the Delegate had to confine her orders to the ambit of the question before her: *Rio Tinto Alcan Inc. v. Carrier Sekani Tribal Council*, 2010 SCC 43, [2010] 2 S.C.R. 650.

[98] Pursuant to s. 52(1), the Delegate had to dispose of the issues by making an order under s. 52. Section 52(4) gives the Delegate the power to specify any terms or conditions in an order made under s. 52. That provision, however, does not provide the Delegate with an unlimited unfettered jurisdiction to make any order that she wishes. In *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2006 SCC 4, [2006] 1 S.C.R. 140, the Supreme Court of Canada at para. 46, while discussing similar provisions in the statute at issue in that case, said:

> ... These provisions on their own are vague and open-ended. It would be absurd to allow the Board an unfettered discretion to attach any condition it wishes to an order it makes. ...

[99] Any order made by the Delegate must arise from the issues set out in the Notice. In this case, that was the complaint made by the Complainant. In resolving

the complaint the Delegate had to first determine whether insurers were allowed to collect CPLS scores. If that question had been answered in the negative, an order prohibiting Economical from collecting such scores from any policyholder may well have been reasonable and would have been in response to a specific issue that was raised before the Delegate.

[100] The consent issue, however, does not lend itself to a blanket order. Consents are individual in nature. While the Delegate found that the 1996 CSIO form did not provide adequate notice, there was evidence before the Delegate that the 1996 CSIO form had been replaced in 2003 and subsequently again in 2008. The 2003 and 2008 forms read as follows:

> 2003 I have provided personal information in this document and otherwise and I may in the future provide further personal information. Some of this personal information may include, but is not limited to, my credit information and claims history. I authorize my broker or insurance company to collect, use and disclose any of this personal information, subject to the law and to my broker's or insurance company's policy regarding personal information for the purposes of communicating with me, processing my application for insurance and underwriting my policies, evaluating claims detecting and preventing fraud and analyzing business results. I confirm that all individuals whose personal information is contained in this document have authorized that I agree to the above on their behalf.
>
> 2008 I have provided personal information in this document and otherwise (e.g., by telephone) and I may in the future provide further personal information and/or any policy issued as a consequence of this application. Some of this personal information may include, but is not limited to, my credit information and claims history. I authorize my broker or the insurer to collect, use and disclose any of this personal information, subject to my broker's or the insurer's policy regarding personal information, for the purposes of communicating with me, assessing my application for insurance and underwriting my policies, evaluating claims, detecting and preventing fraud, analyzing my broker or the insurer's business results such as evaluating claims results and setting insurance rates, and when otherwise permitted to required by law. If I apply for a premium payment plan, I also authorize the broker and the insurer to obtain and use my credit report for that purpose. I declare that all individuals whose personal information is contained in this document have authorized me to agree to the above on their behalf. I may obtain a copy of or ask questions about my broker's and the insurer's personal information policies by contacting their respective privacy officers.

[101] I note that both the 2003 and 2008 forms indicate, albeit in different language, that credit information will be used for the purpose of underwriting policy applications. The Delegate acknowledged in her reasons that CSIO had revised its standard disclosure statements since the *Act* and other privacy laws had been enacted. Although she quoted the 2008 form in its entirety, she held the question of the sufficiency of the 2008 CSIO form as disclosure of the purposes for collecting personal information was not before her and she did not determine that question.

[102] The effect of the Orders, however, is that Economical must now determine whether the 2003 and 2008 CSO forms provide adequate notice.

[103] At paragraph 132 of the Reasons Economical is ordered to review all consents it has obtained from home insurance policyholders since the *Act* came into force and ascertain whether these individuals have been provided with notice that a credit score based on their credit information may be obtained for the purpose of assessing future risk of loss in connection with underwriting their policies. Economical then must provide all home insurance policyholders who it ascertains have not been provided with adequate notice with notice that a credit score may be obtained for the purpose of assessing future risk of loss.

[104] The remedies formulated by the Delegate are entitled to deference if they fall within a range of possible acceptable outcomes which are defensible in respect of the facts and law. For the reasons that follow, I find that the Orders do not fall within the range of possible acceptable outcomes.

[105] The Orders require Economical to determine whether or not individual policyholders have been provided with proper notice. There is nothing in the legislation that allows the delegation of such a decision to an organization whose conduct is the subject matter of the inquiry. Economical is not qualified to make such a decision.

[106] Whether an individual has been given adequate notice is a question of law or possibly mixed fact and law. It requires an interpretation of the *Act* and the

documents that constitute the notice. It may require consideration of factual issues, if, for example, the insurance application was, as in the case of the Complainant, signed by but one of several insureds.

[107] In attempting to determine whether consents had been granted, Economical would not be a detached observer. It has a vested outcome in the decision. It cannot be ignored that Economical believed that the 1996 CSIO form provided adequate notice.

[108] Economical is not the only party who is concerned with the validity of the notice found in the 2003 and 2008 CSIO forms. Those forms are used throughout the industry. Organizations such as FIPA undoubtedly have a perspective on whether the forms are adequate. The Orders provide no mechanism by which the views of other parties can be canvassed.

[109] The *Act* mandates that questions of notice and adequacy of consents are to be determined by the Commissioner or her delegate. The *Act* provides a mechanism by which interested parties can make representations. Persons dissatisfied by the decision can challenge it under the *JRPA*.

[110] The sufficiency or otherwise of consents obtained by Economical since the *Act* came into force are matters for the Commissioner. There is no legal basis to delegate that decision to Economical.

[111] The ability of Economical to carry out the Orders is a matter of no small import. Pursuant to s. 56 of *the Act* it is an offence subject to a fine of not more than $100,000 to fail to comply with an order. In *Gurtins v. Goyert*, 2008 BCCA 196, the court stressed the importance of clarity in court orders. It said at para. 15:

> The rule of law requires that court orders be obeyed. Accordingly, it is of paramount importance that persons who are subject to court orders be able to readily determine their obligations and responsibilities. They do this by having regard to what is on the face of the formal order setting out what they are required to do, or refrain from doing. As stated in *Arlidge, Eady & Smith on Contempt* (London: Sweet & Maxwell, 2005) (at para. 12-55), "[a]n order should be clear in its terms and should not require the person to whom it is

> addressed to cross-refer to other material in order to ascertain his precise obligation".

[112] Those comments apply with equal force to orders made by an administrative tribunal. An Order requiring a party to do some act it is not capable of doing is not reasonable.

[113] The Orders further fail the reasonableness test because the remedy is not one that properly followed from the inquiry. In *Moore v. British Columbia (Education)*, 2012 SCC 61, the Supreme Court of Canada cautioned that the remedy arising from an administrative tribunal must flow from the claim. It said at para. 64:

> But the remedy must flow from the claim. In this case, the claim was made on behalf of Jeffrey, and the evidence giving concrete support to the claim all centred on him. While the Tribunal was certainly entitled to consider systemic evidence in order to determine whether Jeffrey had suffered discrimination, it was unnecessary for it to hold an extensive inquiry into the precise format of the provincial funding mechanism or the entire provincial administration of special education in order to determine whether *Jeffrey* was discriminated against. The Tribunal, with great respect, is an adjudicator of the particular claim that is before it, not a Royal Commission.
>
> [my emphasis]

[114] Having determined that Economical had the right to collect CPLS scores, the Delegate then had to determine whether the 1996 CSIO form adequately disclosed the purpose for collecting the Complaint's credit information. Having concluded it did not, the Delegate had to then determine the appropriate remedy. The remedy had to relate to the issues before the Delegate. Those issues did not include notice to or consents given by other policyholders. An order requiring that Economical review all policies to determine whether consents had been given was outside the scope of the inquiry and the Orders were not within the range of possible outcomes.

[115] I find that the Orders are not reasonable and must be set aside.

SUMMARY

[116] In conclusion, therefore, I have found that the Orders must be set aside. The Delegate breached the rules of procedural fairness and the Orders were not reasonable.

[117] The purpose of the Orders was to ensure that Economical's policyholders obtained notice of the use of CPLS scores. As a result of the settlement made with the OPC, all new applicants for insurance now receive such notice and all policies that are up for renewal will have received such notice by July 2013. In these circumstances, I find that the public interest in relation to the privacy rights of Economical's individual policyholders has been protected and in these unique circumstances there is no need to send this matter back to the Delegate to reconsider the question of remedy.

[118] To the extent that the Commissioner may have ongoing concerns regarding the consents used by insurers to obtain CPLS scores, nothing in these reasons would prevent the Commissioner from initiating an investigation under s. 36 of the *Act* into the insurers practises and making such orders on the conclusion of her investigation as she deems appropriate.

[119] The petition is allowed. As per the parties' submissions there will be no order for costs.

"R.B.T. Goepel J."

_____

The Honourable Mr. Justice Richard B.T. Goepel

APPENDIX "A"

6 (1) An organization must not

(a) collect personal information about an individual,

(b) use personal information about an individual, or

(c) disclose personal information about an individual.

(2) Subsection (1) does not apply if

(a) the individual gives consent to the collection, use or disclosure,

(b) this Act authorizes the collection, use or disclosure without the consent of the individual, or

(c) this Act deems the collection, use or disclosure to be consented to by the individual.

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.

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

(3) If an organization attempts to obtain consent for collecting, using or disclosing personal information by

(a) providing false or misleading information respecting the collection, use or disclosure of the information, or

(b) using deceptive or misleading practices

any consent provided in those circumstances is not validly given.

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.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information for the purpose of his or her enrollment or coverage under an insurance, pension, benefit or similar plan, policy or contract if he or she

(a) is a beneficiary or has an interest as an insured under the plan, policy or contract, and

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

(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.

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.

(2) On or before collecting personal information about an individual from another organization without the consent of the individual, an organization must provide the other organization with sufficient information regarding the purpose of the collection to allow that other organization to determine whether the disclosure would be in accordance with this Act.

(3) This section does not apply to a collection described in section 8 (1) or (2).

11 Subject to this Act, an organization may collect 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), or

(b) are otherwise permitted under this Act.