

ALBERTA

**OFFICE OF THE INFORMATION AND PRIVACY
COMMISSIONER**

ORDER P2006-010

February 14, 2008

BISTRO ENTERPRISES LTD.

Case File Number P0264

Office URL: www.oipc.ab.ca

Summary: The Complainant complained that Bistro Enterprises Ltd. (“Bistro”) and the administrator of the estate of the deceased shareholder of Bistro (the “Administrator”) disclosed the Complainant’s personal information without his consent, contrary to the *Personal Information Protection Act* (the “Act”). The Commissioner found that the Administrator was not acting as an “employee” of Bistro at the time of the alleged disclosure, the alleged disclosure was not a disclosure by Bistro, and therefore the Act did not apply to Bistro in these circumstances. The Commissioner also found that the Administrator was not an “organization” as defined by the Act, because the Administrator was not acting in a “commercial capacity” at the time of the alleged disclosure. Since the Act applies only to an “organization”, the Act did not apply to the Administrator.

Statutes Cited: *Administration of Estates Act*, R.S.A. 2000, c. A-2, ss. 1(a), 1(g), 60(1), 61(1); *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25; *Interpretation Act*, R.S.A. 2000, c. I-8, s. 10; *Personal Information Protection Act*, S.A. 2003, c. P-6.5, ss. 1(d), 1(e), 1(i), 1(i)(v), 1(k), 3, 4(1), 4(3)(a), 5(2), 48(2), 52; 56, 56(1)(a), 56(1)(b); 56(2), 56(3).

Order Cited: AB: Order 98-013.

Cases Cited: *Russell v. Town and Country Bank* (1888), 13 App. Cas. 418; *Slozka v. Commodity Carriers Inc.*, 2003 ABPC 24.

Authorities Cited: *Black's Law Dictionary*, Eighth Edition; *Concise Oxford Dictionary*, Ninth Edition; Ruth Sullivan, *Sullivan and Driedger on the Construction of Statutes*, Fourth Edition (Markham, Ontario: Butterworths, 2002).

I. BACKGROUND

[para 1] Bistro Enterprises Ltd. (“Bistro”) operated a restaurant. The individual who is the Complainant in this inquiry was employed by Bistro from approximately 2000 to October 2004.

[para 2] Bistro is registered in the Alberta Corporate Registration System as an Alberta corporation.

[para 3] The Alberta Corporate Registration System also shows that an individual holds 100 per cent of the voting shares of Bistro as administrator of the estate of the deceased shareholder of Bistro. The Court of Queen’s Bench of Alberta (the “Court”) appointed the individual as administrator of the deceased shareholder’s estate (the “Administrator”), effective October 31, 2004. The Administrator is also registered in the Alberta Corporate Registration System as a director of Bistro.

[para 4] Prior to October 31, 2004, the Complainant’s father was administrator of the deceased shareholder’s estate. As administrator, the Complainant’s father managed the restaurant. The Court order appointing the Administrator removed the Complainant’s father as administrator of the deceased shareholder’s estate.

[para 5] The Complainant’s father applied to the Court for compensation for administering the estate, and for legal costs incurred in his attempt to remain as administrator of the estate. In the Court proceeding to oppose the application for compensation (the “Court proceeding”), the Administrator filed affidavits of three restaurant staff. Those affidavits contained, among other things, the Complainant’s name and information about the Complainant’s duties as an employee of Bistro, his pay, his hours of work and observations about the Complainant when he was an employee of Bistro. The Administrator also filed his own affidavit, which contained more detailed information about the Complainant.

[para 6] In the Court proceeding, the Complainant also filed an affidavit. The Complainant obtained the affidavits of two restaurant staff and the Administrator. The Complainant also obtained a document entitled *Material for preparing Affidavits from employees of [the restaurant]* (the “Material for Affidavits”). It is dated January 7, 2005

and is signed by several of the restaurant staff. The Administrator has signed as witness to the restaurant staff's signatures. The document contains much of the same information about the Complainant that appears in affidavits of the three restaurant staff, namely, the Complainant's name and information about the Complainant's duties as an employee of the Organization, his pay and his hours of work, as well as observations about the Complainant when he was an employee of Bistro.

[para 7] The Complainant complained to my Office that Bistro and the Administrator disclosed his personal information to restaurant staff without his consent, contrary to the *Personal Information Protection Act* (the "Act").

[para 8] Mediation by my Office did not resolve the Complainant's issues, which proceeded to a written inquiry under the Act.

[para 9] For this inquiry, my Office named Bistro as the "organization", defined by section 1(i)(i) of the Act to include a corporation. In this Order, I will refer to Bistro as the "Organization". Nevertheless, this inquiry must determine whether Bistro as an "organization" disclosed the Complainant's personal information through an "employee", as defined by section 1(e) of the Act.

[para 10] Because the complaint was also against the Administrator, my Office named the Administrator as the "Affected Party" in this inquiry, as provided by section 48(2) of the Act. In this Order, I will refer to the Administrator as the "Affected Party". Nevertheless, this inquiry must determine whether the Administrator was acting as an "employee" of the Organization, as an "organization", or in some other capacity at the time he is alleged to have disclosed the Complainant's personal information.

II. RECORDS AT ISSUE

[para 11] As this case involves a complaint about disclosure of personal information, there are no records directly at issue.

III. ISSUES

[para 12] The Notice of Inquiry set out the following issues for the inquiry:

A. Did the Affected Party, who is alleged to be representing the Organization, disclose the Complainant's personal information when the Affected Party was acting as an "employee" of the Organization, as defined by section 1(e) of the Act?

B. If the Affected Party was not acting as an employee of the Organization, did the Affected Party disclose the Complainant's personal information when the Affected Party was acting as an "organization", as defined by section 1(i)(v) of the Act?

(individual acting in a commercial capacity), or acting in a personal capacity as set out in section 1(i) of the Act?

[para 13] I have jurisdiction under the Act to decide whether an “organization”, as defined by section 1(i) of the Act, has disclosed an individual’s “personal information”, as defined by section 1(k). Consequently, in this inquiry, I must decide whether the Organization, through the Affected Party as “employee”, disclosed the Complainant’s personal information, or whether the Affected Party, as an “organization” himself, disclosed the Complainant’s personal information. As stated in the Notice of Inquiry, my decisions concerning those issues, as set out above, will determine whether I have jurisdiction to reconvene the inquiry to decide other issues under the Act.

IV. DISCUSSION OF THE ISSUES

ISSUE A: Did the Affected Party, who is alleged to be representing the Organization, disclose the Complainant’s personal information when the Affected Party was acting as an “employee” of the Organization, as defined by section 1(e) of the Act?

[para 14] The Complainant alleges that the Affected Party disclosed his personal information to restaurant staff of the Organization. In his written submission, the Complainant says that the Material for Affidavits contains his personal information that restaurant staff could not possibly have knowledge of without accessing confidential payroll records. He claims that, before the Affected Party requested sworn affidavits from restaurant staff, the Affected Party disclosed his personal information to restaurant staff to “...condition them to sign the official affidavit and in an effort to tarnish opinions of [the Complainant] and [his] family.”

[para 15] The Complainant says that the Affected Party was acting as an “employee” of the Organization when the Affected Party is alleged to have disclosed his personal information to restaurant staff.

[para 16] As evidence for the inquiry, the Complainant provided the following: Material for Affidavits; the affidavits of two restaurant staff, dated February 11, 2005 and February 22, 2005, respectively, which were filed in the Court proceeding on March 7, 2005; and his own affidavit, dated November 15, 2005, which was filed in the Court proceeding on November 18, 2005.

[para 17] The Affected Party maintains that, at all times, he was acting as administrator of the deceased shareholder’s estate, and not as an employee of the Organization. He says that, when he swore his affidavit to oppose the Complainant’s father’s application for compensation, he did so in his capacity as administrator, and when he interviewed the employees of the Organization to gather information for his affidavit, he also did so in his capacity as administrator.

[para 18] In their joint written submission, the Organization and the Affected Party state:

As part of his investigation into the actions of [the Complainant's father] while he was administrator, and for the sole purpose of resisting [the Complainant's father's] application for further compensation from the Estate, the Affected Party interviewed employees of the Organization in regards to the conduct of [the Affected Party's father]...

From the interviews, the Affected Party learned [information about the Complainant].

...

At all times the Affected Party has acted in his personal capacity as the Administrator of the Estate and has discharged the fiduciary obligations he owes to the beneficiary of the Estate. The disclosure of information that was identifiable to the Complainant by the Affected Party did not occur while the Affected Party was acting as an employee of the Organization nor was the Affected Party acting as an organization at the time. Further, the disclosure was necessary for the purposes of the legal proceedings instigated by the Complainant's father.

[para 19] The Affected Party's affidavit filed in the Court proceeding states:

7.1 As Administrator, I have conducted a cursory review of receipts, invoices, bank statements and other documents relevant to the Restaurant. There is [sic] approximately 50 boxes of paperwork in storage. I have only had time to review 4 boxes. I have also conducted numerous interviews with the staff of the restaurant...

7.4 ...I am advised by the Restaurant staff of the following:...

[para 20] As evidence for the inquiry, the Organization and the Affected Party provided the following: the Court order appointing the Affected Party as administrator of the deceased shareholder's estate, effective October 31, 2004; the Affected Party's affidavit, dated March 5, 2005, which was filed in the Court proceeding on March 7, 2005; the affidavits of three restaurant staff, dated February 11, 2005 (two affidavits) and February 22, 2005 (one affidavit), which were filed in the Court proceeding on March 7, 2005; excerpts from the examinations for discovery of the three restaurant staff who filed affidavits; and an Alberta Corporation Registration System search of the Organization.

[para 21] The evidence is that the Affected Party is a director of the Organization. In the joint written submission of the Organization and the Affected Party, the Affected Party says that he became a director of the Organization subsequent to his appointment as administrator of the deceased shareholder's estate. The Alberta Corporate Registration System search lists a November 3, 2004 filing date for a change of director/shareholder of the Organization, which is subsequent to the Affected Party's appointment as administrator.

[para 22] The Act defines "employee", as follows:

I In this Act,

...

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

(i) as an apprentice, volunteer, participant or student, or

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

[para 23] If the Affected Party was acting as an “employee” of the Organization at the time that the Affected Party is alleged to have disclosed the Complainant’s personal information, the Organization would be responsible for that employee’s compliance with the Act, as provided by section 5(2) of the Act, which reads:

5(2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person’s compliance with this Act.

[para 24] I will first decide whether the Affected Party was acting in the capacity as administrator of an estate or as an “employee” of the Organization at the time he is alleged to have disclosed the Complainant’s personal information.

[para 25] Besides reviewing the evidence provided by the Affected Party and the Complainant, I also reviewed the *Administration of Estates Act*, R.S.A. 2000, c. A-2. The following provisions of the *Administration of Estates Act* are relevant:

1 In this Act,

...

(a) “administration” means letters of administration of the property of a deceased person, whether with or without the will annexed and whether granted for general, special or limited purposes;

...

(g) “legal representative” means an executor, an administrator, a judicial trustee of the estate of a deceased person, a guardian of a minor, a trustee of a minor’s estate or a trustee of a minor’s property appointed by order under the Minors’ Property Act;...

60(1) A legal representative of an estate may apply by notice of motion for the opinion, advice or direction of a judge of the Court of Queen’s Bench on any question respecting the management or administration of the estate.

61(1) A judge may at any time by an order fix and give directions respecting the remuneration and compensation to be granted to a legal representative.

[para 26] Section 1(a) of the *Administration of Estates Act* says that “administration” means letters of administration of the property of a deceased person.

[para 27] The Court order appoints the Affected Party as the administrator of the estate of the deceased shareholder of Bistro. The Affected Party says that the major asset of the estate is shares in the Organization, which operates the restaurant. On the evidence, I find that the Affected Party is administering the property of a deceased person, as provided by section 1(a) of the *Administration of Estates Act*.

[para 28] An “administrator” under the *Administration of Estates Act* is a “legal representative”, as provided by section 1(g). A legal representative may apply to the Court of Queen’s Bench for advice and direction, as provided by section 60(1). A judge may fix and give directions concerning compensation to a legal representative, as provided by section 61(1).

[para 29] The affidavit that the Affected Party filed in Court contains a heading entitled “Procedure – Application for advice and direction”. The affidavit requests that the Court provide direction to the Affected Party, as administrator, concerning access to records and concerning steps to take in relation to certain issues involving the Complainant’s father. The affidavit also asks the Court to dismiss the Complainant’s father’s application for compensation.

[para 30] Briefly summarized, the evidence is that the Affected Party was appointed administrator of the estate of the deceased shareholder of Bistro and subsequently became a director of the Organization as part of his role as administrator. A little more than two months elapsed from the date that the Affected Party was appointed administrator to the date that restaurant staff signed the Material for Affidavits. The affidavits of the three restaurant staff contain much the same information that appears in the Material for Affidavits. The affidavits of the three restaurant staff were filed in the Court proceeding, which involves the Affected Party as administrator under the *Administration of Estates Act*. In his affidavit filed in the Court proceeding, the Affected Party deposed that he reviewed records of the Organization and interviewed staff in his capacity as administrator.

[para 31] On the evidence, I find that the Affected Party was acting as administrator of the deceased shareholder’s estate at the time he is alleged to have disclosed the Complainant’s personal information to restaurant staff. When acting as administrator, the Affected Party was not acting as an “employee” of the Organization, as the Affected Party was not employed by the Organization and was not otherwise performing a service for or in relation to or in connection with the Organization under a contract or agency relationship with the Organization, as set out in section 1(e) of the Act.

[para 32] Having found that the Affected Party was acting as administrator, I find that the Affected Party was not acting as director of the Organization at the time he is alleged to have disclosed the Complainant’s personal information to restaurant staff. Therefore, I do not find it necessary to decide whether, as a director of the Organization, the Affected Party was acting as an “employee” of the Organization or otherwise acting in a representative capacity on behalf of the Organization.

[para 33] Since the Affected Party was not acting as an “employee” of the Organization, the Organization is not responsible for the Affected Party’s alleged disclosure of the Complainant’s personal information, the alleged disclosure is not a disclosure by the Organization, and the Act does not apply to the Organization in these circumstances.

ISSUE B: If the Affected Party was not acting as an employee of the Organization, did the Affected Party disclose the Complainant’s personal information when the Affected Party was acting as an “organization”, as defined by section 1(i)(v) of the Act (individual acting in a commercial capacity), or acting in a personal capacity as set out in section 1(i) of the Act?

1. General

[para 34] The relevant provision of the Act is section 1(i), which reads:

1 In this Act,

...

(i) “organization” includes

(i) a corporation,

(ii) an unincorporated association,

(iii) a trade union as defined in the Labour Relations Code,

(iv) a partnership as defined in the Partnership Act, and

(v) an individual acting in a commercial capacity,

but does not include an individual acting in a personal or domestic capacity;...

[para 35] The Act applies to an “organization”. The use of the word “includes” in the definition of “organization” means that “organization” is not limited to those organizations listed under the definition. There could be organizations other than those listed.

2. Was the Affected Party acting in a “personal capacity”?

[para 36] An individual who acts in a “personal capacity” or “domestic capacity” does not fall within the definition of “organization”. The Act does not apply to that individual because the definition of “organization” specifically does not include an individual acting in a personal or domestic capacity.

[para 37] Furthermore, section 4(3)(a) of the Act provides:

4(3) This Act does not apply to the following:

(a) the collection, use or disclosure of personal information if the collection, use or disclosure, as the case may be, is for personal or domestic purposes of the individual and for no other purpose.

[para 38] “Domestic” is defined in section 1(d) of the Act to mean related to home or family. Although there is no issue about whether the Affected Party, an individual, was acting in a domestic capacity when he is alleged to have disclosed the Complainant’s personal information, I find that he was not acting in a domestic capacity.

[para 39] “Personal capacity” is not defined in the Act. However, those words may be contrasted with “commercial capacity”. “Personal capacity” does not encompass an individual who is acting in a “commercial capacity” since such an individual is an “organization”, as provided by section 1(i)(v) of the Act.

[para 40] The words “personal capacity” in section 1(i) should be read within the context of section 4(3)(a) of the Act. It is clear from section 1(i) and section 4(3)(a) that the Legislature intended that the Act would not apply to an individual acting in a personal capacity, or to the collection, use or disclosure of personal information by that individual for personal purposes of the individual.

[para 41] Therefore, I must consider whether the Affected Party’s alleged disclosure of personal information was for a personal purpose of the Affected Party.

[para 42] I have found that the Affected Party was acting as administrator of the deceased shareholder’s estate. Any alleged disclosure of personal information was not for the personal purpose of the Affected Party, since he was acting in relation to the estate as the legal representative of the estate. Therefore, I find that the Affected Party was not acting in a “personal capacity” when he is alleged to have disclosed the Complainant’s personal information.

[para 43] Although the Affected Party was acting as legal representative of the estate, the issue of whether the estate of a deceased individual is an “organization” under the Act is not before me in this inquiry, and I will not decide that issue.

3. Was the Affected Party acting in a “commercial capacity”?

[para 44] I have found that the Affected Party, as administrator, was acting as legal representative of the deceased shareholder’s estate at the time that he is alleged to have disclosed the Complainant’s personal information. Was the Affected Party acting in a “commercial capacity” at that time?

[para 45] An individual who acts in a “commercial capacity” is an “organization”, as provided by section 1(i)(v) of the Act. Section 4(1) of the Act makes that individual subject to the Act:

4(1) Except as provided in this Act and subject to the regulations, this Act applies to every organization and in respect of all personal information.

[para 46] However, the Act does not define what it means to be acting in a “commercial capacity”. I must first decide what that phrase means.

[para 47] Ruth Sullivan in *Sullivan and Driedger on the Construction of Statutes*, Fourth Edition (Markham, Ontario: Butterworths, 2002), describes the modern principle of statutory interpretation at page 1, as follows:

Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context, in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

[para 48] Following this principle, I must consider what acting in a “commercial capacity” means in the context of the Act, taking into consideration the scheme of the Act, the object or purpose of the Act and the intention of the Legislature.

[para 49] The scheme of the Act is that it applies to all “organizations”, as defined by the Act. Except as discussed below, the definitions of “organization” do not require a “commercial” aspect before those organizations can be subject to the Act. Section 4(1) of the Act also makes it clear that the Act applies to all organizations, even if there is no “commercial” aspect.

[para 50] So all “organizations” are subject to the Act, with no requirement to consider whether anything they do is “commercial” (except as discussed below). Such a broad interpretation of the application of the Act is in keeping with the object or purpose of the Act, which is set out in section 3, as follows:

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

[para 51] Such a broad interpretation is also in keeping with section 10 of the *Interpretation Act*, R.S.A. 2000, c. I-8, which requires that an enactment be construed as being remedial and be given the fair, large and liberal construction and interpretation that best ensures the attainment of its objects.

[para 52] There are two exceptions in the Act that do require a “commercial” aspect for the Act to apply to the organization:

(i) The Act applies to an individual acting in a “commercial capacity”. That individual is an “organization” under the Act (section 1(1)(v)). Otherwise, the Act does not apply to an individual who is acting in a personal or domestic capacity (section 1(i)), and it does not apply to the collection, use and disclosure of personal information by the individual for personal or domestic purposes (section 4(3)(a));

(ii) The Act applies to a non-profit organization, as defined in section 56(1)(b) of the Act, when a non-profit organization collects, uses or discloses personal information in connection with any “commercial activity” carried out by it (section 56(3)). Otherwise, the Act does not apply to a non-profit organization or to any personal information in the custody or under the control of a non-profit organization (section 56(2)).

[para 53] The only place in the Act that defines what is “commercial” is contained in section 56(1)(a) of the Act, which deals with non-profit organizations and which defines “commercial activity” for that section, as follows:

56(1) In this section,

(a) “commercial activity” means

(i) any transaction, act or conduct, or

(ii) any regular course of conduct,

that is of a commercial character, and without restricting the generality of the foregoing, includes the following:

(iii) the selling, bartering or leasing of membership lists or of donor or other fund-raising lists;

(iv) the operation of a private school or an early childhood services program as defined in the School Act;

(v) the operation of a private college as defined in the Post-secondary Learning Act;...

[para 54] Section 1(1)(v) uses the phrase “commercial capacity”, but does not define it. Section 56(1)(a) uses the phrase “commercial activity”, but does define it. The common word in both those provisions is “commercial”. It is possible to interpret “acting in a commercial capacity” to mean a “commercial activity” carried out by the individual. Did the Legislature intend that the definition of “commercial activity” in section 56(1)(a) be used to interpret “commercial capacity” in section 1(i)(v)?

[para 55] In Order 98-013, the former Commissioner considered a similar issue under the *Freedom of Information and Protection of Privacy Act* (the “FOIP Act”). In

that case, the phrase “non-arm’s length transaction” appeared in two separate provisions of the FOIP Act. The phrase was defined for the purposes of one provision, but not for the other provision.

[para 56] The applicant in Order 98-013 argued that the same meaning should be given to the phrase in both places in the FOIP Act. The public body argued that the definition was provided specifically to define which records were subject to the FOIP Act. The definition did not specify how the term was to be defined for the other provision, and that it therefore must be given “another more usual meaning” in that provision.

[para 57] The former Commissioner agreed with the public body. He found that, had the Legislature wanted the definition to apply to both provisions of the FOIP Act, it would have said so, or it would not have limited the definition to one provision. The former Commissioner turned to dictionary meanings and the common law for defining the term in the provision of the FOIP Act in which it was not defined.

[para 58] In this case, I am considering the meaning of “commercial capacity” and whether the definition of “commercial activity” can be used to define “commercial capacity”. For the same reasons as in Order 98-013, I conclude that it cannot. The Legislature not only confined the definition of “commercial activity” to section 56, but also used different words in section 56(1)(a) and section 1(i)(v).

[para 59] Since there is nothing further in the Act to assist me, I turn to dictionary definitions and the common law to determine “another more usual meaning” for section 1(i)(v).

[para 60] The Concise Oxford Dictionary, Ninth Edition, defines “commercial” as having profit as a primary aim, among other things. In its ordinary sense, “commercial” in section 1(i)(v) would encompass but, for reasons discussed below, would not be limited to, the notion of having profit as a primary aim.

[para 61] In *Slozka v. Commodity Carriers Inc.*, 2003 ABPC 24, the Alberta Provincial Court reviewed the case law on the meaning of “profit”. The Provincial Court said that, although the meaning to be given to the word profit was to be determined in each case on the individual facts and circumstances of the case being considered, the general meaning attributable to the word “profit” or “profits” by previous court decisions, such as *Russell v. Town and Country Bank* (1888), 13 App. Cas. 418, included the following:

Profits, I read on authority to be the whole of the incomings of a concern after deducting the whole of the expenses of earning them – that is, what is gained by the trade.

...

The profit of a trade or business is the surplus by which the receipts from the trade or business exceed the expenditure necessary for the purpose of earning those receipts.

[para 62] What was the Affected Party's primary aim in undertaking the activity of administering the estate, within the context of the particular facts and circumstances of the case?

[para 63] The Affected Party's affidavit that he filed in the Court proceeding sets out the circumstances under which he became administrator. The Affected Party deposed that the beneficiary of the estate approached the Affected Party to assist in removing the Complainant's father as administrator of the estate and closing the estate. The Affected Party, who knew the Complainant's father, said that he did not want to become involved, but he later agreed to assist the beneficiary because he thought that the matter could be resolved by a meeting between him and the Complainant's father.

[para 64] On these facts, I find that the Affected Party's primary aim was not to make a profit, but to assist the beneficiary of the estate.

[para 65] As provided by the *Administration of Estates Act*, an administrator may receive remuneration or compensation for administering an estate. However, in my view, receiving such remuneration or compensation, or the ability to receive it, is not in itself determinative of whether an individual's primary aim is to make a profit.

[para 66] Furthermore, there is no evidence before me that the Affected Party received compensation for acting as administrator. The Affected Party's submission states that "The Affected Party is doing so [acting as administrator] as a favour towards the beneficiary of the Estate and has no commercial interest whatsoever in the Organization or benefit from his Administration of the Estate in any way." The submission also states that the Affected Party does not receive any compensation or benefits for acting as a director of the Organization.

[para 67] However, I do not think that the meaning of "commercial" in "commercial capacity" can be confined to only having profit as a primary aim. The stated purpose of the Act set out in section 3 would not support such a narrow interpretation. Furthermore, the words "individual acting in a commercial capacity" in their entire context, in their grammatical and ordinary sense, would support a broader interpretation.

[para 68] The Legislature did not use the words "sole proprietorship" in section 1(i)(v) (it could have done so if it had wished), and I would also not confine the words "individual acting in a commercial capacity" to an individual carrying on business as a sole proprietorship. However, I do think that the words of section 1(i)(v) can include a sole proprietorship. I would contrast that method of an individual's carrying on business with an individual's carrying on business as a partnership or as a corporation. Partnerships and corporations are organizations under the Act.

[para 69] Is there any evidence that the Affected Party was carrying on business as a sole proprietorship?

[para 70] Black's Law Dictionary, Eighth Edition, defines "sole proprietorship" as a business in which one person owns all the assets, owes all the liabilities, and operates in his or her personal capacity.

[para 71] In his capacity as administrator of the estate, the Affected Party is engaged in activities, the purpose of which is to wind up the estate. The more immediate activity relevant to this case is to oppose the previous administrator's application for compensation. There is no evidence that the Affected Party is in the business of administering estates. The evidence is that the Affected Party agreed to administer the estate as a favour to the beneficiary. In the normal course, the Affected Party does not act as an administrator of estates. Consequently, I find that the Affected Party was not carrying on business as a sole proprietorship.

[para 72] The facts of this case do not lead me to further interpret the meaning of "individual acting in a commercial capacity", so as to apply that interpretation to the facts.

[para 73] I find that the Affected Party was not acting in a commercial capacity at the time he is alleged to have disclosed the Complainant's personal information. Therefore, the Affected Party was not an "organization" for the purposes of section 1(i)(v) of the Act, and the Act does not apply to the Affected Party.

[para 74] Since the Act does not apply, I do not have jurisdiction to consider any of the issues that the Complainant raises under the Act.

V. ORDER

[para 75] I make the following Order under section 52 of the Act.

[para 76] I find that the Affected Party was not acting as an "employee" of the Organization at the time that the Affected Party is alleged to have disclosed the Complainant's personal information to restaurant staff. Therefore, the alleged disclosure was not a disclosure by the Organization, and the Act does not apply to the Organization in these circumstances.

[para 77] I find that the Affected Party was not acting in a personal capacity or a domestic capacity at the time that the Affected Party is alleged to have disclosed the Complainant's personal information to restaurant staff.

[para 78] I find that the Affected Party was not acting in a commercial capacity at the time that the Affected Party is alleged to have disclosed the Complainant's personal information to restaurant staff. Therefore, the Affected Party is not an "organization", and the Act does not apply to the Affected Party.

[para 79] Since the Act does not apply, I do not have jurisdiction to consider any of the issues that the Complainant raises under the Act.

Frank Work, Q.C.
Information and Privacy Commissioner