

## Labour and Employment Law Bulletin

### PRE-EMPLOYMENT CREDIT CHECK BREACHED PRIVACY RIGHTS

The Office of the Information and Privacy Commissioner of Alberta has recently found that an employer who conducted pre-employment credit checks of applicants for the position of retail sales associate had breached the requirements of the Alberta *Personal Information Protection Act* (“PIPA”).

The employer, Mark’s Work Wearhouse Ltd. (“MWW”) was concerned about the incidence of in-store theft and fraud and had implemented a requirement of a pre-employment credit check for the position of sales associate. The credit check was intended to achieve two purposes: (1) assess how applicants would handle the financial responsibilities and tasks of a sales associate and (2) assess whether applicants had a probable risk of in-store theft or fraud. The initial credit check was performed by a third party. If an applicant was identified as high risk, then the applicant’s credit history was examined by MWW’s Manager of Customer Service, Safety and Security to determine whether the applicant was an acceptable hire.

The complainant had seven years of retail experience when he applied for a sales associate position with MWW. His credit check results identified him as a high risk and he was asked to provide an explanation for his poor credit rating and how he was resolving his credit problems. The job applicant subsequently complained to the Office of the Information and Privacy Commissioner of Alberta that the collection of his credit information was not reasonable given the job requirements of a sales associate.

The officer who investigated the complaint found that MWW had not established that it was reasonably necessary to collect the personal credit history information for the purposes of establishing or managing the employment relationship. In particular, the type of information in a

credit report was not reasonably required to assess an applicant's ability to perform the duties of sales associate or to assess whether he was likely to commit in-store theft or fraud.

Personal information must be collected only for a purpose that a reasonable person would consider appropriate in the circumstances. (The requirement is the same under British Columbia's PIPA.) Given that MWW had not established any reasonable connection between collecting the personal credit history of applicants for the position of sales associate and its stated purposes, the officer concluded that collection of the personal credit history was not reasonable in the circumstances.

The Officer recommended that MWW cease collecting personal credit records of applicants during the hiring process and MWW implemented that recommendation.

This decision is instructive for employers who perform credit checks as part of the hiring process in Alberta or British Columbia (both of which have privacy legislation) or for federally regulated employers. Before collecting personal credit information, an organization should determine the purposes which the credit information is intended to achieve, assess whether the credit information will actually achieve those purposes, and consider whether there are any less privacy intrusive means for achieving the organization's purposes. In the hiring process, personal credit information should only be collected from job applicants if an employer can establish that such information is reasonably necessary to measure ability to do the job. For most, if not all positions, privacy commissioners are unlikely to find that personal credit checks are a reasonable means of establishing a candidate's ability to handle the financial responsibilities of a job or of measuring the probability that a candidate will commit theft or fraud.

*Investigation Report P2010-IR-001*, Office of the Information and Privacy Commissioner of Alberta (2010).



If you have any questions regarding this Law Bulletin, please contact a member of the Labour and Employment Group.

### Key Contacts

- **Patricia Gallivan, Q.C.**  
P: 604.631.6718  
E: [pgallivan@lawsonlundell.com](mailto:pgallivan@lawsonlundell.com)
- **Rob Sider**  
P: 604.631.6722  
E: [rsider@lawsonlundell.com](mailto:rsider@lawsonlundell.com)
- **Paul Smith**  
P: 867.669.5532  
E: [psmith@lawsonlundell.com](mailto:psmith@lawsonlundell.com)

### Team Members

Name	Phone	Email
Deborah Cushing	604.631.9282	<a href="mailto:dcushing@lawsonlundell.com">dcushing@lawsonlundell.com</a>
Patricia Gallivan, Q.C.	604.631.6718	<a href="mailto:pgallivan@lawsonlundell.com">pgallivan@lawsonlundell.com</a>
Sarah Kay	867.669.5523	<a href="mailto:skay@lawsonlundell.com">skay@lawsonlundell.com</a>
(M.J.) Peggy O'Brien	604.631.9201	<a href="mailto:pobrien@lawsonlundell.com">pobrien@lawsonlundell.com</a>
Walter Rilkoﬀ	604.631.6719	<a href="mailto:wrilkoﬀ@lawsonlundell.com">wrilkoﬀ@lawsonlundell.com</a>
Rob Sider	604.631.6722	<a href="mailto:rsider@lawsonlundell.com">rsider@lawsonlundell.com</a>
Nicole Skuggedal	604.631.6795	<a href="mailto:nskuggedal@lawsonlundell.com">nskuggedal@lawsonlundell.com</a>
Paul Smith	867.669.5532	<a href="mailto:psmith@lawsonlundell.com">psmith@lawsonlundell.com</a>

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