

MICHEL ST-PIERRE
Complainant

v

GINETTE DEMERS DION
Respondent

DECISION

THE COMPLAINT

The complainant blames the respondent for having refused to consider his application to rent a flat on March 27, 2001, because he did not disclose his social insurance number.

THE INVESTIGATION

The Commission d'accès à l'information du Québec (the Commission) has investigative powers under Section 81 of the *Act respecting the protection of personal information in the private sector*¹ (the Act):

81. The Commission may, on its own initiative or following a complaint by an interested person, inquire into or entrust a person with inquiring into any matter relating to the protection of personal information as well as into the practices of a person who carries on an enterprise and who collects, holds, uses or communicates such information to third persons. For such purpose, any person authorized by the Commission to make inquiries may
- (1) enter, at any reasonable time, the facilities of an enterprise carried on by a person collecting, holding, using or communicating personal information to third persons;
 - (2) examine and make copies of any personal information of whatever form.

DECISION

The document entitled, "Rental Offer," signed by the complainant on March 27, 2001, (Exhibit P-1) shows the respondent requires his social insurance number. On February 5, 2002, the Commission sends to the respondent for the first time a copy of the complaint containing the complainant's allegations and asks her to forward her comments by February 26, at the latest. Since the respondent did not reply, the Commission sent a

¹ R.S.Q., c P-39.1

letter on March 8, 2002, informing her the case would be referred to the competent authorities who would decide how to deal with the said case.

On March 26, the respondent replied to the Commission in a letter as follows:

[...]

However, I have reminded all my janitors, following our conversation, that prospective tenants were not obliged to reveal their social insurance number when they fill the rental application. They are free to disclose it or not, and we do not refuse to rent them the flat if they don't give it. (Exhibit I-1)

The respondent, therefore, did not deny having required from her potential tenant on March 27, 2001, the disclosure of his social insurance number.

The Commission, having examined the parties' observations, has come to a decision.

Section 5 of the Act stipulates that:

5. Any person collecting personal information to establish a file on another person or to record personal information in such a file may collect only the information necessary for the object of the file.
Such information must be collected by lawful means.

This section spells out two obligations to be respected by the person who establishes a file on another person. First, the information must be necessary for the object of the file and, secondly, this information must be collected by lawful means.

On the other hand, Section 9 of the Act stipulates that:

9. No person may refuse to respond to a request for goods or services or to a request relating to employment by reason of the applicant's refusal to disclose personal information, except where:
 - (1) collection of that information is necessary for the conclusion or performance of a contract;
 - (2) collection of that information is authorized by law;
or
 - (3) there are reasonable grounds to believe that the request is not lawful.

In case of doubt, personal information is considered to be non-necessary.

The Commission also believes it is important to mention Section 237 of the *Income Tax Act*,² which deals specifically with the conditions of use of the social insurance number:

² C.S. 2000, c. 19

237. (1) Every individual (other than a trust) who was resident or employed in Canada at any time in a taxation year and who files a return of income under Part I for the year, or in respect of whom an information return is to be made by a person pursuant to a regulation made under paragraph 221(1)(d), shall,
- (a) on or before the first day of February of the year immediately following the year for which the return of income is filed, or
 - (b) within 15 days after the individual is requested by the person to provide his Social Insurance Number, apply to the Minister of Human Resources Development in prescribed form and manner for the assignment to the individual of a Social Insurance Number unless the individual has previously been assigned, or made application to be assigned, a Social Insurance Number.
- (1.1) Every person and partnership shall provide
- (a) in the case of an individual (other than a trust), the individual's Social Insurance Number, and
 - (b) in any other case, the person's or partnership's business number in any return filed under this Act or, at the request of any person required to make an information return pursuant to this Act or the regulations requiring either number, to that person.
- (2) For the purposes of this Act and the regulations, a person required to make an information return requiring a Social Insurance Number or a business number of a person or partnership
- (a) shall make a reasonable effort to obtain the number from the person or partnership; and
 - (b) shall not knowingly use, communicate or allow to be communicated, otherwise than as required or authorized under this Act or a regulation, the number without the written consent of the person or partnership.

[...]

(Emphasis added)

This legislative provision shows the legislator wanted to make sure that disclosure of the social insurance number could only be required under the terms expressly indicated.

In the light of Section 237 quoted above, the Commission finds that the collection of this information is only required for tax purposes and that it was not required as part of the respondent's functions. The latter owns an apartment building.

Furthermore, as part of a program to inform citizens, the Commission recently published a "Contact" sheet entitled, *The lease and the protection of personal information. Of principles and limits to be respected.*

The Commission stresses that the exchange of personal information between a landlord and a prospective tenant must take place in the respect of privacy. It also states that an enterprise cannot require from another person certain personal information such as

the social insurance number, especially when this requirement does not meet the use criteria prescribed by Section 237 of the *Income Tax Act*.

In addition, Section 27 of the *Québec Civil Code* states that:

Every person who establishes a file on another person shall have a serious and legitimate reason for doing so. He may gather only information which is relevant to the stated objective of the file, and may not, without the consent of the person concerned or authorization by law, communicate such information to third persons or use it for purposes that are inconsistent with the purposes for which the file was established. In addition, he may not, when establishing or using the file, otherwise invade the privacy or damage the reputation of the person concerned.

In the case under consideration, the evidence shows that the complainant was in no way compelled to disclose his social insurance number to meet the requirements of the respondent. This confidential information was not essential to the exercise of the latter's functions. The respondent is not an institution offering tax-related services.

The evidence also shows that, for the rental of the flat coveted by the complainant, as appears in Exhibit P-1, the respondent gave him no other choice but to disclose the said number. The complainant refused to comply with this requirement, his application was turned down by the respondent, and this, in contravention of the above-mentioned legislative provisions.

However, the Commission takes into account the letter sent by the respondent on March 26, 2002, (Exhibit I-1 quoted above), according to which prospective tenants will no longer be required to disclose their social insurance number when they want to rent a flat. Yet, the respondent allows the collection of this information on an optional basis.

The Commission feels the above-mentioned legislative provisions in this matter are clear. The social insurance number is disclosed only for tax purposes. The respondent, therefore, has no right to refer to it, even on an optional basis.

FOR THESE REASONS, THE COMMISSION:

DECLARES the complaint justified;

ORDERS the respondent not to require from prospective tenants, for the purpose of renting a flat, their social insurance number, and this, even on an optional basis, and

NOTIFIES the respondent that she cannot keep the said information for the reasons mentioned above.

CHRISTIANE CONSTANT
Commissioner

JENNIFER STODDART
Commissioner

HÉLÈNE GRENIER
Commissioner

Montreal, April 16, 2002