

Unions Freedom of Expression Outweighs Employee Privacy According to Supreme Court of Canada

In its decision in *Alberta (Information Privacy Commissioner) v. United Food and Commercial Workers, Local 401* the Supreme Court of Canada struck down Alberta's Personal Information Protection Act (PIPA). In the case, the court found that a union's collective right to freedom of expression under the Charter of Rights and Freedoms outweighed the rights of individuals whose personal information was collected, used and disclosed without consent.

Facts

During lawful picketing, the union photographed individuals crossing the picket line, including the Company's executives. The union then used some of the photos in posters and other union materials.

A privacy complaint was then brought by the individuals captured in these photos. The adjudicator appointed by the Office of the Information and Privacy Commissioner found that the union's collection, use and disclosure was for an 'expressive purpose' (i.e. promoting the purpose of the strike) but that the union had nonetheless violated PIPA because there was no exemption that would protect the union's expressive purpose. The union was ordered to stop the practice.

On judicial review and subsequent appeal to the Court of Appeal, the union argued that PIPA was unconstitutional since it violated its charter right to freedom of expression. The Alberta Court of Appeal decided to grant the union a constitutional exemption from the application to PIPA (as opposed to ruling that PIPA was unconstitutional and should be struck down). The Office of the Information and Privacy Commissioner appealed the decision to the Supreme Court of Canada.

The Decision

While the Court acknowledged that PIPA was directed towards a pressing and substantial purpose - providing individuals with some control over their personal information - it concluded that the restrictions were disproportionate to its objectives. In the Court's view, the union's right to freedom of expression was infringed by PIPA and that it could not be justified. The Court's primary issue was that PIPA totally prevented the union from collecting, using and disclosing personal information to advance its interests in their labour action.

Given the Court's findings, PIPA was found to be unconstitutional and therefore invalid. The impact, however, of this decision is somewhat muted

since the Court decided to give the Alberta government 12 months to make the legislation constitutional. Accordingly, there is still personal privacy legislation in Alberta that applies to employment information, but it is likely to be changed in a significant way within the next 12 months. On a broader scale, this decision is also likely to impact both British Columbia and Manitoba, given both provinces have similar legislation to Alberta.

If you have any questions about this topic or privacy law in the employment context, please do not hesitate to contact e2r Solutions®.

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