

November 2013

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## Supreme Court of Canada Declares Alberta Privacy Legislation Invalid

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The Supreme Court of Canada today issued its much anticipated decision in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401*, 2013 SCC 62, a decision which addresses the balancing of privacy rights with the rights of freedom of expression under the *Canadian Charter of Rights and Freedoms*.

The case arose from a lengthy strike in 2006 by members of the UFCW at the Palace Casino located in Edmonton Alberta. During the course of the strike, both the Union and a security company hired by Palace Casino videotaped and photographed activity on the picket line. The Union posted signs warning that images of persons crossing the picket line would be posted on a website called [www.casinoscabs.ca](http://www.casinoscabs.ca). Although the Union never posted the images on the website, it did create posters, leaflets and other materials using images of a senior executive of the casino.

Several individuals whose images were recorded at the picket line complained to the Alberta Office of the Information and Privacy Commissioner that the Union had collected, used or disclosed their personal information without consent and in violation of the Alberta *Personal Information Protection Act* (“PIPA”). The adjudicator appointed by the Alberta Privacy Commissioner agreed. On judicial review, the Court of Queen’s Bench found that PIPA violated the Union’s rights to freedom of expression under section 2(b) of the Charter. The Alberta Court of Appeal concurred.



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In its decision, the Supreme Court of Canada considered first whether PIPA violated section 2(b) of the Charter by restricting a union's ability to collect, use or disclose personal information during a lawful strike and second, if section 2(b) was violated, whether the infringement was justified and saved under section 1 of the Charter. In the first part of its analysis, the Court considered the broad scope of PIPA and its general rule that limits an organization's ability to collect, use or disclose personal information without consent. Although PIPA provides for a number of exceptions to this general rule, none of the exceptions would allow a union to collect, use or disclose personal information for the purposes of advancing its interests in a labour dispute, activities which engage the freedom of expression rights under the Charter. As a result, the Court concluded that PIPA restricts freedom of expression in a manner contrary to the Charter.

The Court then considered whether the limitations imposed by PIPA would nevertheless be justified under section 1 of the Charter. The importance of privacy legislation in a modern society was recognized by the Court and characterized as "quasi-constitutional" because of privacy's fundamental role in preserving a free and democratic society. However, despite the importance of privacy interests, the Court found that PIPA has no mechanism for balancing a union's right to freedom of expression with the right to protect personal information. The Court has long recognized the fundamental importance of freedom of expression in the context of labour disputes and of picketing as a crucial form of that expression. The infringement of a union's freedom of expression by PIPA, in particular a union's ability to communicate with the public during the course of a lawful strike, was found to be disproportionate to the government's objective of providing individuals control over personal information that they might disclose by their act of crossing a picket line. The limitations imposed by PIPA on freedom of expression rights were not justified under section 1 and PIPA was found to be unconstitutional.

The Court declared PIPA to be invalid but has suspended the declaration for a period of 12 months to allow the legislature time to determine how to amend the legislation to be constitutional. The Government of Alberta must therefore amend PIPA by November 14, 2014 or have no privacy legislation in effect.

This decision will likely be welcomed by unions as another decision of the Supreme Court of Canada which recognizes the importance of freedoms associated with union activity, particularly in the context of labour disputes. The Court did not find it necessary to consider each of the Union's activities to reach its conclusion but noted that freedom of expression and privacy are not absolute values and both the nature of the privacy interests implicated by the activity and the nature of the expression to be protected must be considered in order to strike an appropriate balance.

BC's *Personal Information Protection Act* is substantially similar to the Alberta PIPA. Given this decision, BC's legislation could also be successfully challenged as being unconstitutional. We will keep you informed of developments.

To view the decision, [click here](#)

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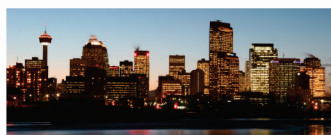
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