

A photograph of a multi-story brick building with a vertical sign that reads "FIELD LAW". The building has several windows and a fire escape on the side.

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## **Supreme Court of Canada Declares Alberta's Personal Information Protection Act Unconstitutional**

By [Anne Côté](#) and [Marc Yu](#)

The Supreme Court of Canada (SCC) has declared the Alberta *Personal Information Protection and Privacy Act* (PIPA) unconstitutional in its entirety in the UFCW case: <http://canlii.ca/t/g1vf6>. This will have far-reaching effects for organizations subject to PIPA, which now must be re-drafted, and for those organizations subject to other Canadian privacy legislation which is susceptible to similar challenges.

During a strike, the Union videotaped and photographed individuals crossing the picket line. An Adjudicator with the Alberta Information and Privacy Commissioner determined the use and disclosure of the information was not authorized under PIPA. On review, the Alberta Court of Queen's Bench found PIPA violated the Union's freedom of expression rights under the *Charter of Rights and Freedoms* (*Charter*). [See [Field Law's previous article Alberta Court Declares PIPA Sections to be Unconstitutional in Picketing Matter for a more detailed outline.](#)] The Alberta Court of Appeal dismissed an appeal and granted the Union a constitutional exemption from PIPA.

The SCC dismissed the appeal, and focused not only on labour relations issues, but also more broadly on whether PIPA properly balanced the protection of personal information with freedom of expression. The Court declared that PIPA did not strike the proper balance and declared that "the *Charter* infringement is too high a price to pay for the benefit of the law". As a result, the SCC agreed that PIPA violated the *Charter* and the violation was not justified under the *Charter's* saving provision.

The SCC declared PIPA unconstitutional in its entirety, but, as is common, suspended the declaration of invalidity for a period of 12 months in order to provide time for legislative amendments.

### **What does the decision mean for organizations governed by PIPA?**

Since the SCC suspended the declaration of invalidity for a period of 12 months, PIPA continues to apply to all organizations that are currently governed by PIPA, for the next year. However, given the SCC's findings, we recommend the following:

- Organizations should continue to follow the principles set out in PIPA while it remains in force.
- Organizations should continue to monitor the status of PIPA, or any new legislation that is enacted to replace it.
- Assuming new legislation is enacted, organizations should carefully review the new legislation to determine whether it applies to them, and the impact of the amended legislation.
- Organizations that are subject to proceedings involving the Office of the Information and Privacy Commissioner are advised to seek legal advice regarding whether the SCC's decision impacts the proceedings. This is especially important if the organization is the subject of a complaint alleging that the organization has collected, used or disclosed personal information in a manner that is contrary to PIPA.



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