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## PIPA Update



By: [Jason Kully](#)

As previously reported in Workwise, on November 15, 2013, the Alberta *Personal Information Protection Act* (the "Act"), was declared invalid on constitutional grounds by the Supreme Court of Canada (the "SCC") in the case of *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401 (UFCW)*, 2013 SCC 62.

The SCC found that the *Act* violated the freedom of expression protected by the *Canadian Charter of Rights and Freedoms* because it restricted a union's ability to collect, use, or disclose personal information during a lawful strike, as well as for other legitimate labour relations purposes, and because it did not include a mechanism by which a union's *Charter* protected right to freedom of expression could be balanced with the privacy interests protected by the *Act*.

The SCC declared the entire act invalid, finding that it was not appropriate to pick and choose among various judicial amendments that would make the Act compliant with the *Charter* given its "comprehensive and integrated structure". The SCC suspended the declaration of invalidity for a 12 month period to allow the Alberta legislature to amend the *Act*.

This suspension of invalidity was set to expire on November 15, 2014 but it was extended for an additional six months at the Alberta government's request. On November 18, 2014, the Alberta government introduced Bill 3, the *Personal Information Protection Amendment Act* ("Bill 3"). Bill 3 introduces an exception to the requirement for consent for the collection, use, and disclosure of personal information by a trade union in limited circumstances related to a labour relations matter. This exception is subject to all of the following conditions being met:

1. The collection, use or disclosure of personal information is for the purpose of informing or persuading the public about a matter of significant public interest or importance relating to a labour relations dispute involving the trade union;
2. The collection, use or disclosure is reasonably necessary for that purpose; and
3. It is reasonable to collect, use or disclose the personal information without consent for that

purpose, taking into consideration all relevant circumstances, including the nature and sensitivity of the information.

Bill 3 also includes regulation-making powers which allow the Lieutenant Governor in Council to make regulations respecting the collection, use, or disclosure of personal information by trade unions.

According to Jill Clayton, Alberta's Information and Privacy Commissioner, the amendments contained in Bill 3 address the issues raised by the SCC. The amendments seek to balance a union's right to freedom of expression with an individual's privacy interest by requiring that the matter involving the trade union be one of "significant public interest or importance relating to a labour relations dispute" and by including a specific consideration of the "nature and sensitivity" of the personal information.

Bill 3 passed its Third Reading in the Alberta Legislative Assembly on December 1, 2014 and received Royal Assent on December 17, 2014.

The amendments to the *Act* are limited in scope to unions and labour relations activity. For employers and employees, it is "business as usual" as all privacy rights and obligations identified in the *Act* will continue to operate as they have in the past.

However, more significant amendments or changes to the *Act* may be on the horizon. Starting no later than July 1, 2015, a special committee of the Legislative Assembly will begin a comprehensive review of the *Act*.

Field Law will continue to provide updates as the special committee begins its review of the *Act*.

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