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Alberta Introduces Amendments to PIPA

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Bill Commented On: [Bill 3, Personal Information Amendment Act](#), 3rd Sess, 28th Leg, Alberta, 2014

On November 15, 2013, the Supreme Court of Canada held in *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, [2013 SCC 62](#) (*AIPC v UFCW*) that *Personal Information Protection Act*, SA 2003, c. P-6.5 (*PIPA*) and *Personal Information Protection Act Regulation*, [Alta Reg 366/2003](#) (*PIPAR*) violated section 2(b) of the *Charter of Rights and Freedoms*, as they limited a union's ability to collect, use, or disclose personal information in a lawful strike (See Linda McKay-Panos' [post on the decision](#)). In oral argument, the Attorney-General of Alberta and the Information and Privacy Commissioner indicated that, if they were unsuccessful, they would prefer to have the entire legislation struck down to allow the legislature to re-consider *PIPA* as a whole. Acknowledging the comprehensive and integrated structure of *PIPA*, the Supreme Court declared it invalid but suspended the declaration of invalidity for a year to give the Alberta legislature ample time to make the necessary amendments (*AIPC v UFCW* at paras 40-41).

In an [open letter](#) dated September 22, 2014, Information and Privacy Commissioner, Jill Clayton, expressed concerns about the effect of the delayed start to the legislative session on the status of *PIPA*. The third session was set to open November 17, 2014, two days after *PIPA* was scheduled to lapse. In particular, she noted:

If *PIPA* is allowed to lapse, Alberta's citizens and businesses will lose the unique benefits afforded by the legislation, including: mandatory breach reporting and notification to affected individuals, local enforcement without court involvement, and protection for the access and privacy rights of employees of provincially-regulated private sector businesses.

In response to this letter, Premier Prentice filed a motion to extend the suspension of invalidity in the Supreme Court. On October 30, 2014, the Supreme Court granted the Alberta government a 6-month extension to amend *PIPA* (see [here](#) at page 1778). As a result, *PIPA* remains valid until May 2015. The Alberta legislature, however, did not wait until the expiry of the extension before introducing an amendment to *PIPA*. On December 1, 2014, Bill 3, *Personal Information Amendment Act*, 3rd Sess, 28th Leg, Alberta, 2014 passed Third Reading.

Amendments to *PIPA*

Bill 3 introduces significant changes to *PIPA* in relation to trade unions engaged in a labour dispute. It allows trade unions to collect, use, and disclose personal information about an individual without his or her consent if two conditions are satisfied. First, the collection, use, or disclosure of information must be reasonably necessary for the purpose of informing or convincing the public about an important public interest issue in a labour relations dispute. Second, it must be reasonable to collect, use, or disclose personal information without consent after taking into account all relevant circumstances, including the nature and sensitivity of the information (See ss. 14.1(1), 17.1(1) and 20.1(1)). These changes appear to be made in response to the Supreme Court's ruling in *AIPC v UFCW*.

Commentary

Bill 3 essentially removed the blanket prohibition against the collection, use, and disclosure of personal information without consent. This narrow amendment attempts to balance the union's right to freedom of expression with privacy interests protected by *PIPA*. While such amendments will make notable changes concerning trade unions in a labour dispute, this is far from a dramatic overhaul of our privacy legislation. During the debates in the legislature, opposition MLAs expressed doubts about whether Bill 3 actually addresses the whole spirit of the Supreme Court decision. For example, they expressed concerns about the limits of the application of the Bill to disclosure of personal information during labour disputes, and not in the context of other union activities (e.g., social justice contexts) (See: [Alberta, Legislative Assembly, Hansard, 28th Leg, 3rd Sess, No 10e \(1 December 2014\) at 259-265 \(David Eggen, Kent Hehr, Deron Biliious, Brian Mason and Rachel Notley\)](#)). It remains to be seen whether or not the Alberta government will introduce broader and more comprehensive changes to *PIPA* that will accommodate not only the freedom of expression of unions in a labour dispute but the interests of other social and political groups as well.

Now that Alberta has taken the lead in amending *PIPA* to make it consistent with the *Charter*, it will be interesting to see how and when the federal government and other provinces with similar privacy legislation will follow suit.

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