No Dice: Supreme Court Declares Alberta Privacy Law Unconstitutional In Palace Casino Case

written by vickyp | November 27, 2013

In a landmark ruling, the Supreme Court of Canada has declared Alberta's Personal Information Protection Act (PIPA) to be invalid in its entirety, finding that it infringes the freedom of expression guaranteed by the *Canadian Charter of Rights and Freedoms* by limiting the ability of labour unions to videotape and photograph individuals crossing a picket line.

The declaration of invalidity is suspended for a period of 12 months to give the legislature time to decide how best to make the law constitutional. In light of the "comprehensive and integrated structure" of the law, the Court decided to strike PIPA down in its entirety, rather than declare as invalid particular provisions.

The Court's ruling was made in the case of Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401,which iscommonly referenced as the "Palace Casino" case, as the case arose in the context of a labour dispute between the management and employees of an Edmonton casino of that name.

As we noted in a previous post, the case considered complaints made by individuals who were videotaped by the union as they crossed the picket line in front of the casino. Like other Canadian private sector privacy laws, Alberta's PIPA generally requires the consent of individuals for the collection, use and disclosure of their personal information, including videotaped images of identifiable individuals. The union, which did not obtain such consent, videotaped and photographed the picket lines in order to publicize the images of individuals crossing the lines. An Adjudicator for the Information and Privacy Commissioner of Alberta found that the union had contravened the Act, and ordered the union to stop such collection and destroy any personal information obtained in breach of the Act.

The judgement focuses in particular on the breadth of PIPA, which the Court found limits the non-consensual collection, use and disclosure of personal information without regard for the nature of the information, or the purpose or context for its

collection, use or disclosure. It is this approach, which the court found "deems virtually all personal information to be protected regardless of context," which resulted in a finding of a Charter violation, since PIPA excludes any mechanisms by which a union's constitutional right to freedom of expression may be balanced with the privacy interests protected by the Act.

Moreover, the Court noted that picketing represents a particularly crucial form of expression, and that the restrictions imposed by the statute impaired the ability of the union to communicate with and persuade the public, one of its most effective bargaining strategies in the course of a lawful strike. As a result, the Court found that the infringement of the freedom of expression was not justified under s. 1 of the Charter.

The ruling will have significant implications for other private sector privacy laws in Canada, and particularly with the existing provincial privacy laws in British Columbia, Québec and Manitoba (although the latter is not yet in force). Implications for the federal law, the Personal Information Protection and Electronic Documents Act, which applies in the remaining provinces, are less clear, since the federal applies to the collection of personal information from the public only in the course of commercial activities, which would not appear to include the activities of a union during a labour dispute.

Article by David B. Elder

Stikeman Elliott LLP