Supreme Court Of Canada Declares The Alberta Personal Information Protection Act To Be Unconstitutional

On November 15, 2013, the Supreme Court of Canada issued a significant decision that declared the Alberta *Personal Information Protection Act* to be unconstitutional.

In Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401, 2013 SCC 62, the SCC examined the nature and boundaries of picketing, as well as the role that privacy legislation plays in video surveillance during the course of a labour dispute.

At issue were the privacy rights created by Personal Information Protection Act (PIPA) and the right to free expression, which is constitutionally enshrined as section 2(b) of the *Canadian Charter of Rights and Freedoms* (Charter). The SCC upheld the Alberta Court of Appeal decision and found that the United Food and Commercial Workers (UFCW) was entitled to make and distribute recorded images of people crossing a picket line because of the Charter, which superseded an individual's privacy rights under PIPA.

The SCC also held that PIPA was unconstitutional, and that the protection of privacy rights granted under PIPA could not be equated to being constitutional in nature. The SCC specifically held that PIPA was overly broad and the infringement on UFCW's freedom of expression was not saved by section 1 of the Charter, as the infringement was not a reasonable limit prescribed by law:

[32] In our view, the legislation violates s. 2(b) because its impact on freedom of expression in the labour context is disproportionate and the infringement is not justified under s.1.

…

[37] *PIPA* imposes restrictions on a union's ability to communicate and persuade the public of its cause, impairing its ability to use one of its most effective bargaining strategies in the course of a lawful strike. In our view, this infringement of the right to freedom of expression is disproportionate to the government's objective of providing individuals with control over personal information that they expose by crossing a picketline.

[38] This conclusion does not require that we condone all of the Union's activities. The breadth of *PIPA*'s restrictions makes it unnecessary to examine the precise expressive activity at issue in this case. It is enough to note that, like privacy, freedom of expression is not an absolute value and both the nature of the privacy interests implicated and the nature of the expression must be considered in striking an appropriate balance. To the extent that *PIPA* restricted the Union's collection, use and disclosure of personal information for legitimate labour relations purposes, the Act violates s. 2(b) of the Charter and cannot be justified under s. 1.

As the provisions in the British Columbia, Manitoba, and federal privacy legislations are "substantively similar" to the Alberta PIPA, this decision will likely impact the interpretation of those legislations. As such, amendments to the British Columbia, Manitoba, and federal privacy legislations are likely forth coming. It should be noted that the SCC suspended the declaration of invalidity for 12 months to give the Alberta legislature time to amend the legislation.

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