

The Interplay Between Privacy Rights And Charter Freedoms



On November 15, 2013, the Supreme Court of Canada released reasons in *Alberta (Information and Privacy Commissioner) v United Food and Commercial Workers, Local 401*, 2013 SCC 62. The case addressed the union's right to collect and use videotaped and still images of individuals who had crossed a picket line during a lawful strike.

An adjudicator had initially ordered the union to stop collecting and using the recordings in response to privacy complaints. The adjudicator's order was overturned in a Queen's Bench decision that was subsequently affirmed on appeal. The Court of Appeal held that the significant stifling of expression that resulted from the order was not justified to protect the very low expectations of privacy at issue in the circumstances. It granted the union a constitutional exemption from the application of the *Personal Information Protection Act*.

The Supreme Court went further and struck down the legislation in its entirety. The Supreme Court held that the harmful impact of the legislation on freedom of expression in the labour context was disproportionate to the government's objective of providing individuals with control over personal information that they exposed by crossing a picket line. The infringement was not justified under s.1 of the *Charter of Rights and Freedoms*. The Alberta government was given a year's grace period to come up with constitutionally compliant legislation.

In a September 22, 2014 letter to the Alberta Premier, the Information and Privacy Commissioner expressed concern about the impending expiry of the deadline, in light of the prorogation of the legislature on September 18 with no new session to begin until November 17.

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