ALBERTA

OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

ORDER P2021-03

March 26, 2021

GENERAL TEAMSTERS, LOCAL UNION No. 362

Case File Number 009163

Office URL: www.oipc.ab.ca

Summary: A member of the General Teamsters, Local Union No. 362 (the Organization) complained to the Commissioner that the Organization had collected her social insurance number, contrary to the *Personal Information Protection Act* (PIPA).

The Adjudicator found that the social insurance number was collected in accordance with the collective agreement between the Complainant's employer and the Organization. The Adjudicator found that the Organization was acting as a certified bargaining agent for a bargaining unit in the federal sector when it collected the information and found that it was not an organization to which PIPA applied, for that reason.

The Organization argued that PIPA was of no force of effect. The adjudicator declined to decide the issue on the basis that the *Administrative Procedures and Jurisdiction Act* prevented her from deciding the issue and because the Organization was not subject to PIPA and therefore lacked standing to challenge its status.

Statutes Cited: AB: *Personal Information Protection Act*, S.A. 2003 c. P-6.5 ss. 14, 17*; Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c A-3, ss. 11, 12; Designation of Constitutional Decision Makers Regulation, Alta Reg 69/2006 **CA:** *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5; Organizations in the Province of Alberta Exemption Order SOR/2004-219; *Canada Labour Code*, R.S.C. 1985, c. L-2, ss. 56 and 57

Cases Cited: *Securiguard Services Limited*, 2005 CIRB 342 (CanLII); *Syndicat des agents de sécurité Garda, Section CPI-CSN v. Garda Canada Security Corporation*, 2011 FCA 302; *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC), [1995] 2 SCR 929; *Ecuyer v. Aéroports de Montréal*, 2003 FCT 573 (CanLII); in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers*, Local 401, 2013 SCC 62 (CanLII), [2013] 3 SCR 733

1. BACKGROUND

[para 1] The Complainant complained to the Commissioner that General Teamsters, Local Union No. 362 collected her social insurance number in contravention of the *Personal Information Protection Act*. She stated:

> On behalf of all Members of Teamsters Local 362, I filed a complaint regarding (the Teamsters collection and use of our SIN's.
>
> They have stated different reasons as to why they need our SIN's but the big ones seem to be;
> 1) for identification purposes and
> 2) for income purposes.
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> - When we are hired, we are given "Application for Membership" cards. There is a line allotted for your SIN but it does not tell a person what the information will be specifically used for and it was discovered that if the Member chooses not to provide their SIN […], the Union would still get it via the Employer (Garda). Not only do some employees feel duped by this but it was a surprise that our sensitive personal information is used for identification purposes by the Teamsters nor do we have any idea on how this info is being safe guarded.
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> - When I first filed this complaint, we were in the early stages of bargaining a new Collective Agreement (CA). It has since been accepted by both sides but this is still an ongoing point of contention. This ruling may not be able to affect the current practice but it would certainly be a tool for the next negotiations for a new CA to have it removed.
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> - Deduction of Union Dues. The Union states that the Employer will, at the time of making each remittance hereunder to the Secretary-Treasurer of the Union, update the Union's Pre-Billing statement showing all monthly dues submitted for Members along with current address, postal code, date of hire and Social Insurance Number. We see no reason as to why our SIN needs to be included in these statements. There is other information provided on the statement that could be used for cross referencing if 2 employees happen to have the same name. The Union could assign their own unique numbers to its Members for identification purposes.
>
> Additionally, we have not found or seen a valid reason as to why the Union needs individual [SINs] for income purposes. We do not pay our dues individually, they are collected by our Employer and submitted collectively on our behalf to the Teamsters. We the Members never receive monies or benefits directly from the Union. We pay them. This is no different that the dues you pay to the Legion to be a Member or your Membership dues to Costco or to AMA to be a Member of their auto club. When you pay money to a business, they never request your SIN for CRA purposes. The Union is a business and I pay them to be part of it. In the event they did get audited, Garda could easily provide CRA with whatever info was required, without giving out individual's SIN (to the Teamsters). Costco does not come back to [its] Members for their [SINs] if they get audited.

[para 2] The Commissioner authorized a senior information and privacy manager to investigate and attempt to mediate the matter. At the conclusion of this process, the Complainant requested an inquiry.

[para 3] In its submissions, the Organization argued that PIPA is no longer in force, as it was struck down by the Supreme Court of Canada. I have added this issue to the inquiry.

II. ISSUES

ISSUE A: Is the Organization an organization subject to the *Personal Information Protection Act*?

ISSUE B: Did the Organization collect, use, or disclose the Complainant's personal information?

ISSUE C: Did the Organization collect, use, or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

ISSUE D: Did the Organization use the information contrary to, or in accordance with, sections 16(1) and (2) of PIPA?

ISSUE E: Is PIPA in force?

III. DISCUSSION OF ISSUES

ISSUE A: Is the Organization an organization subject to the *Personal Information Protection Act*?

[para 4] The Organization argues that it is not subject to PIPA, as it is a federal work, undertaking, or business. The Organizations in the Province of Alberta Exemption Order SOR/2004-219 (the Order), which is an Order in Council made by the Governor General, establishes that organizations in Canada are subject to the *Personal Information Protection and Electronic Documents Act* (PIPEDA) when they collect, use, or disclose personal information, unless they collect, use, or disclose personal information within Alberta. The Order states:

> *1 An organization, other than a federal work, undertaking or business, to which the Personal Information Protection Act, S.A. 2003, c. P-6.5, of the Province of Alberta, applies is exempt from the application of Part 1 of the Personal Information Protection and Electronic Documents Act, in respect of the collection, use and disclosure of personal information that occurs within the Province of Alberta.*

The Order excludes federal works, undertakings, and businesses from PIPA. Federal works, undertakings, and businesses remain subject to PIPEDA. While the Organization's collection of the Complainant's personal information took place in Alberta, if the Organization is a federal work, undertaking, or business, the Organization is subject to PIPEDA and not PIPA.

[para 5] The Organization is a bargaining agent representing a bargaining unit of airport security guards at the Edmonton International Airport. The Organization argues:

> Local 362 is the certified bargaining agent for a group of employees of Garda at the Edmonton International Airport (copy enclosed). The certification is granted by the Canada Industrial Relations Board (Board) under the auspices of the [*Canada Labour Code*, RSC 1985, c L-2] and operates in Alberta under federal jurisdiction. […]
>
> In essence Local 362, on behalf of the employees covered by the certification of Garda, has the exclusive authority in law to negotiate collective agreements setting out the terms and conditions of employment under which all the said employees work.

The Organization's position is that the group of employees for which it is bargaining agent work in a federal work or undertaking: the provision of airport security services. The Organization points to the fact that the bargaining unit was certified by the Canada Industrial Relations Board (CIRB) under the *Canada Labour Code*, and not the Alberta *Labour Relations Code.* I infer from this argument that it considers its function as bargaining agent to the bargaining unit to fall within federal jurisdiction.

[para 6] For the reasons that follow, I agree with the Organization that it is not an organization subject to PIPA when it acts as bargaining agent for the Complainant's bargaining unit.

[para 7] In *Securiguard Services Limited*, 2005 CIRB 342 (CanLII) the CIRB found that security guards who patrolled the perimeter of an airport performed services that formed an integral part of a federal work or undertaking. It concluded the bargaining unit fell within federal jurisdiction, reasoning:

> Constitutional jurisdiction over labour relations comes within the exclusive jurisdiction of the province, pursuant to section 92(13) of the *Constitution Act, 1867*. The presumption in favour of provincial jurisdiction was first stated in *Toronto Electric Com's* v. *Snider et al.*, 1925 CanLII 331 (UK JCPC), [1925] 2 D.L.R. 5 (P.C.) and reiterated thereafter in *Four B Manufacturing Ltd.* v. *United Garment Workers of America et al.*, 1979 CanLII 11 (SCC), [1980] 1 S.C.R. 1031 and in *Northern Telecom Ltd.* v. *Communications Workers of Canada*, 1979 CanLII 3 (SCC), [1980] 1 S.C.R. 115.
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> Exceptionally, however, section 4 of the *Canada Labour Code* provides that employees who are employed on or in connection with the operation of any federal work, undertaking or business come under federal jurisdiction. Section 2 defines aerodromes as a federal work, undertaking or business that comes under the legislative authority of Parliament. Security services are not within the enumerated exceptions of section 4 and, and as a consequence, should come within provincial jurisdiction.
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> There is, however, an exception to the rule of provincial jurisdiction, where it is established that the undertaking or business - in this case Securiguard's services at the Vancouver International

> Airport - form an integral part of a core federal undertaking - in this case an employer engaged in aeronautics.
>
> Securiguard employees are permanently assigned to provide services to the airport and are trained specifically for these duties. Securiguard employees enforce on behalf of a federal undertaking, security measures developed in compliance with schedules to the *Aeronautics Act*, which is federal legislation. Securiguard employees must obtain valid restricted area passes issued by Transport Canada that are exclusive to the airport to be able to work there. Moreover, certification under the provincial *Private Investigators Act* and the *Security Agencies Act* (R.S.B.C., 1996, c. 374) is a general competence requirement of all persons who work as security guards within the province, but does not determine whether employees are governed by provincial labour legislation. As well, the services provided by Securiguard under contract to the Vancouver International Airport are separate from its contracts for services at other employers.

[para 8] The bargaining unit for which the Organization acts as agent provides security services in relation to customs and immigration as well and therefore has even greater ties to federal jurisdiction than the bargaining unit under consideration in *Securiguard*.

[para 9] In *Syndicat des agents de sécurité Garda, Section CPI-CSN v. Garda Canada Security Corporation*, 2011 FCA 302 (CanLII) the Federal Court of Appeal summarized the rules for determining when labour relations falls within federal jurisdiction, stating:

> The basic rule governing the division of powers over labour relations is that the provinces have jurisdiction over enterprises that fall within provincial legislative authority and the federal government has jurisdiction over enterprises that fall within federal legislative authority. Given that provincial jurisdiction over "Property and Civil Rights" under subsection 92(13) of the *Constitution Act, 1867* extends to labour relations, provincial jurisdiction is the rule, and Parliament can only assert jurisdiction over labour relations if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject: *Consolidated Fastfrate*, at paragraphs 27 and 28.
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> The labour relations of an enterprise therefore fall under the *Canada Labour Code* only if the enterprise in question is a federal work, undertaking or business or if its activities, which *a priori* fall under provincial authority, are nonetheless integral to a federal work, undertaking or business: *Consolidated Fastfrate*, at paragraph 28.
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> In this respect, Justice Dickson summarized as follows the applicable principles and the analytical method to use in *Northern Telecom v. Communications Workers*, 1979 CanLII 3 (SCC), [1980] 1 S.C.R. 115 ("*Northern Telecom*"), at pages 132 to 133:
>
> (1) Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.
>
> (2) By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject.
>
> (3) Primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but only if it is demonstrated that federal authority over these matters is an integral element of such federal competence.

> (4) Thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one.
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> (5) The question whether an undertaking, service or business is a federal one depends on the nature of its operation.
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> (6) In order to determine the nature of the operation, one must look at the normal or habitual activities of the business as those of "a going concern", without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity.

[para 10] As discussed in the cases cited above, to determine whether labour relations falls within federal jurisdiction requires consideration of whether it forms an integral part of a federal work or undertaking. The Organization in this case is a bargaining agent for a bargaining unit within federal jurisdiction. As agent, it negotiates conditions of employment on behalf of employees in a federal work or undertaking within the framework of the *Canada Labour Code*. Federal employees, and their conditions of service, are an integral part of a federal work or undertaking. As agent, the Organization is given authority to act on behalf of federal employees and to negotiate agreements on their behalf. In this capacity, it is subject to the same laws and rules that govern the employees for whom it acts – those governing employees in a federal work or undertaking.

[para 11] The Order, cited above, excludes federal businesses, works, and undertakings from the scope of PIPA. I acknowledge that the Order appears to imply that an organization must itself be a federal business, work or undertaking before it will be exempt from PIPA as it states: "*An organization, other than a federal work, undertaking or business* […]*"* The Order does not refer to an organization being *part of* or *connected to* a federal work, undertaking, or business, such that its activities fall within federal jurisdiction. However, when the meaning of the words "work" and "undertaking" are considered – they typically mean "tasks" or "activities" – it is clear that an organization cannot be a work or undertaking. As a result, to be meaningful, the Order must exempt organizations that are integral to the work of a federal work, undertaking, or business.

[para 12] If I were to find that the Organization is subject to PIPA, it would pose difficulties for the interpretation of the collective agreement. This is because the employer and the employees would be subject to PIPEDA when collecting, using, and disclosing personal information within its terms, but the bargaining agent would be subject to PIPA.

[para 13] As discussed above, I find that acting as a bargaining agent for the Complainant's bargaining unit is an activity integral to a federal work or undertaking. I therefore conclude that the Organization, when it acts as a bargaining agent for a federally regulated bargaining unit, is not an organization subject to PIPA.

[para 14] Although it was not argued before me, I believe it is also important to note that the collective agreement between the union and the employer in this case states:

> All questions, disputes and controversies, arising under this Agreement or any supplement hereto will be adjusted and settled within the terms and conditions of this Agreement […]

The agreement then provides steps for resolving the dispute under the agreement. Failing this, the dispute is to be resolved through binding arbitration.

[para 15] Even though the Complainant made her complaint against the Organization, the source of her complaint is a provision of the collective agreement between her union (bargaining agent) and employer requiring the employer to provide the social insurance numbers of bargaining unit members to the bargaining agent. Her complaint is therefore a dispute regarding the interpretation and application of the collective agreement.

[para 16] I note that section 56 of the *Canada Labour Code* makes collective agreements, including the provisions for resolving disputes, binding on the parties to the collective agreement. It states:

> *56 A collective agreement entered into between a bargaining agent and an employer in respect of a bargaining unit is, subject to and for the purposes of this Part, binding on the bargaining agent, every employee in the bargaining unit and the employer.*

[para 17] From the foregoing, I conclude that the collective agreement is binding on the Complainant, the Organization and her employer. In other words, the provisions in the collective agreement for settling disputes under the collective agreement are binding on the Complainant, as are the terms in relation to providing social insurance numbers to the Organization. From the terms of the collective agreement, it does not appear to be open to the Complainant to make a complaint to the Commissioner regarding the terms of the collective agreement.

[para 18] Section 57 of the *Canada Labour Code* requires a collective agreement to provide steps for final resolution of disputes. It states:

> *57 (1) Every collective agreement shall contain a provision for final settlement without stoppage of work, by arbitration or otherwise, of all differences between the parties to or employees bound by the collective agreement, concerning its interpretation, application, administration or alleged contravention.*

The collective agreement contains provisions for final settlement without stoppage of work as required by the *Canada Labour Code*.

[para 19] Court decisions have considered final settlement clauses to give exclusive jurisdiction to the arbitrators assigned to finally settle a dispute. In *Weber v. Ontario Hydro*, 1995 CanLII 108 (SCC), [1995] 2 SCR 929, the Supreme Court of Canada adopted an exclusive jurisdiction model to labour relations disputes and held:

The final alternative is to accept that if the difference between the parties arises from the collective agreement, the claimant must proceed by arbitration and the courts have no power to entertain an action in respect of that dispute. There is no overlapping jurisdiction.

On this approach, the task of the judge or arbitrator determining the appropriate forum for the proceedings centres on whether the dispute or difference between the parties arises out of the collective agreement. Two elements must be considered: the dispute and the ambit of the collective agreement.

In considering the dispute, the decision-maker must attempt to define its "essential character", to use the phrase of La Forest J.A. in *Energy & Chemical Workers Union, Local 691 v. Irving Oil Ltd.* (1983), 1983 CanLII 3072 (NB CA), 148 D.L.R. (3d) 398 (N.B.C.A.). The fact that the parties are employer and employee may not be determinative. Similarly, the place of the conduct giving rise to the dispute may not be conclusive; matters arising from the collective agreement may occur off the workplace and conversely, not everything that happens on the workplace may arise from the collective agreement: *Energy & Chemical Workers Union*, *supra*, *per* La Forest J.A. Sometimes the time when the claim originated may be important, as in *Wainwright v. Vancouver Shipyards Co.* (1987), 1987 CanLII 166 (BC CA), 38 D.L.R. (4th) 760 (B.C.C.A.), where it was held that the court had jurisdiction over contracts pre-dating the collective agreement. See also *Johnston v. Dresser Industries Canada Ltd.* (1990), 1990 CanLII 6808 (ON CA), 75 O.R. (2d) 609 (C.A.). In the majority of cases the nature of the dispute will be clear; either it had to do with the collective agreement or it did not. Some cases, however, may be less than obvious. The question in each case is whether the dispute, in its essential character, arises from the interpretation, application, administration or violation of the collective agreement.

Because the nature of the dispute and the ambit of the collective agreement will vary from case to case, it is impossible to categorize the classes of case that will fall within the exclusive jurisdiction of the arbitrator. However, a review of decisions over the past few years reveals the following claims among those over which the courts have been found to lack jurisdiction: wrongful dismissal; bad faith on the part of the union; conspiracy and constructive dismissal; and damage to reputation (*Bartello v. Canada Post Corp.* (1987), 1987 CanLII 177 (ON SC), 46 D.L.R. (4th) 129 (Ont. H.C.); *Bourne v. Otis Elevator Co.* (1984), 45 O.R. (2d) 321 (H.C.); *Butt v. United Steelworkers of America* (1993), 1993 CanLII 3352 (NL SC), 106 Nfld. & P.E.I.R. 181 (Nfld. T.D.); *Forster v. Canadian Airlines International Ltd.* (1993), 1993 CanLII 1670 (BC SC), 3 C.C.E.L. (2d) 272 (B.C.S.C.); *Bell Canada v. Foisy* (1989), 1989 CanLII 452 (QC CA), 26 C.C.E.L. 234 (Que. C.A.); *Ne-Nsoko Ndungidi v. Centre Hospitalier Douglas*, 1992 CanLII 4104 (QC CS), [1993] R.J.Q. 536).

This approach does not preclude all actions in the courts between employer and employee. Only disputes which expressly or inferentially arise out of the collective agreement are foreclosed to the courts: *Elliott v. De Havilland Aircraft Co. of Canada Ltd.* (1989), 32 O.A.C. 250 (Div. Ct.), at p. 258, *per* Osler J.; *Butt v. United Steelworkers of America*, *supra*; *Bourne v. Otis Elevator Co.*, *supra*, at p. 326. Additionally, the courts possess residual jurisdiction based on their special powers, as discussed by Estey J. in *St. Anne Nackawic*, *supra.*

[…]

To summarize, the exclusive jurisdiction model gives full credit to the language of s. 45(1) of the *Labour Relations Act.* It accords with this Court's approach in *St. Anne Nackawic.* It satisfies the concern that the dispute resolution process which the various labour statutes of this country have established should not be duplicated and undermined by concurrent actions. It conforms to a pattern of growing judicial deference for the arbitration and grievance process and correlative restrictions on the rights of parties to proceed with parallel or overlapping litigation in the courts: see *Ontario (Attorney-General) v. Bowie* (1993), 1993 CanLII 8638 (ON SC), 110 D.L.R. (4th) 444 (Ont. Div. Ct.), *per* O'Brien J.

[para 20] In *Weber*, the Supreme Court of Canada determined that where labour relations schemes provide for final means of dispute resolution through arbitration, the arbitrator has exclusive jurisdiction to resolve the dispute, ousting the jurisdiction of the Court.

[para 21] In *Ecuyer v. Aéroports de Montréal*, 2003 FCT 573 (CanLII), the Federal Court applies the principles in Weber and held that the dispute resolution terms of a collective agreement required disputes regarding personal information to be decided exclusively through arbitration. The Court said:

> It is true that two concurrent legislative schemes may exist, but following the model set out by the Supreme Court of Canada in *Weber, supra*, only one tribunal has jurisdiction to hear the dispute. The models of concomitant or overlapping jurisdiction have been rejected in favour of exclusive jurisdiction which applies, *inter alia*, to all administrative tribunals, provided the Act empowers them to hear the matter and grant the remedies claimed. In *Regina Police Assn. Inc. v. Regina (City) Board of Police Commissioners*, 2000 SCC 14 (CanLII), [2000] 1 S.C.R. 360, the Supreme Court of Canada concluded:
>
> > . . . the rationale for adopting the exclusive jurisdiction model was to ensure that the legislative scheme in issue was not frustrated by the conferral of jurisdiction upon an adjudicative body that was not intended by the legislature.
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> It can be seen from *Weber, supra* and *Regina, supra*, that to determine whether the dispute is exclusively within the jurisdiction of a grievance arbitrator, it must be decided whether the gist of the dispute arises from the collective agreement expressly or by implication. Courts must thus attempt to define the gist of the dispute, considering first its nature and then the scope of the collective agreement. The nature of the dispute is to be looked at not in light of the classification of the dispute from a legal standpoint, but in terms of the factual situation giving rise to the dispute. Once the nature of the dispute has been determined, the Court must consider the provisions of the collective agreement to determine whether it covers factual situations of the same kind.

[para 22] The dispute in this case is regarding the inclusion of a term in the collective agreement regarding the disclosure and collection of social insurance numbers and the application of the term. Such a dispute is contemplated by the dispute resolution provisions of the collective agreement as it is a dispute regarding interpretation and application of the collective agreement.

[para 23] Following the reasoning in the foregoing cases, the collective agreement contains an exclusive mechanism for resolving the Complainant's complaint, and I lack jurisdiction to address the complaint for that reason as well.

[para 24] Finally, even if I had found that PIPA applied to the complaint, I would find that the collection and use of the Complainant's social insurance number was authorized by PIPA. Sections 14(c.1) and 17(c.1) authorize collection and use without consent if the collection is required by a collective agreement. Under the collective agreement before me, it is mandatory for the employer to provide the Organization with social insurance numbers. As a result, the Organization is also required to collect them and to use them for the purposes for which the mandatory provision was included in the collective agreement.

ISSUE B: Did the Organization collect, use, or disclose the Complainant's personal information?

[para 25] As I find that the Organization is not an organization subject to PIPA when it acts as a bargaining agent for federal sector employees, I need not answer this question.

ISSUE C: Did the Organization collect, use, or disclose the information contrary to, or in compliance with, section 7(1) of PIPA (no collection, use or disclosure without either authorization or consent)?

[para 26] As I find that the Organization is not an organization subject to PIPA when it acts as a bargaining agent for federal sector employees, I need not answer this question.

ISSUE D: Did the Organization use the information contrary to, or in accordance with, sections 16(1) and (2) of PIPA?

[para 27] As I find that the Organization is not an organization subject to PIPA when it acts as a bargaining agent for federal sector employees, I need not answer this question.

ISSUE E: Is PIPA in force?

[para 28] The Organization argues:

> The issue centers on a case of the Supreme Court of Canada (SCC) which I am sure you are aware of involving Information and Privacy Commissioner of Alberta and United Food and Commercial Workers, Local 401 and Attorney General of Alberta found at 2013 SCC 62 (Can II). For sake of ease I will refer to all as Local 401 (copy enclosed).
>
> This involves the active jurisdiction of PIPA in Alberta (AB).
>
> The specific issue of the case is not relevant but the principle is. The last paragraph of the headnote reads: "Given the comprehensive and integrated structure of the statute, the Government of Alberta and the Information and Privacy Commissioner requested that the Court not select specific amendments, requesting instead that the entire statute be declared invalid so that the legislature can consider the Act as a whole. The declaration of invalidity is therefore granted but is suspended for a period of twelve months to give the legislature the opportunity to decide how best to make the legislation constitutionally compliant".
>
> Paragraph 40 of the decision of the SCC then in part reads: "Both the Information and Privacy Commissioner of Alberta and the Attorney General of Alberta stated in oral argument that if they were unsuccessful, they would prefer that PIPA be struck down in its entirety. We agree. Given the comprehensive and integrated structure of the statute, we do not think it is appropriate to pick and choose among the various amendment that would make PIPA constitutionally compliant".

> The SCC continued in paragraph 41: "We would therefore declare PIPA to be invalid but suspend the declaration of invalidity for a period of 12 months to give the legislature time to decide how best to make the legislation constitutional".
>
> The SCC Docket record (copy enclosed) indicates a miscellaneous motion by the Attorney General of Alberta was filed 2014-09-30 seeking an extension of the suspension of the declaration of invalidity. That was responded to by the SCC on 2014-10-30 and in part reads - The suspension of the declaration of invalidity is extended for a period of six months from the original deadline set by this Court in the judgment dated November 15, 2013.
>
> The total of the two suspensions then brings the period of suspension to May 15, 2015 after which PIPA again becomes invalid.
>
> The SCC docket then indicates the appeal is closed.
>
> Further information coming to us from the office of PIPA in AB is that there are few subsequent matters that have taken place. The first, the *Personal Information Protection Amendment Act*, 2014, SA 2014, c14, given Royal assent 2014-12-17, assented to December 17, 2014 (copy enclosed) which indicates PIPA is amended by this Act and it reads in several parts certain sections are struck out and replaced by substituting new sections. Some of these affect the matter now before you. An example of this is section 8 which injects sections 14.1, 17.1 and 20.1 into the current matter.
>
> What the Amendment Act does not do is bring back to life PIPA.
>
> I cannot understand how this can occur but it seems to have happened. In my submission you cannot enact amendments to an Act that has been declared invalid. What has to happen is there must be a re-enactment of the entire act with the new amendments incorporated into it.

[para 29] The Organization argues that it was not open to the Legislature to amend PIPA, but instead, the Legislature was required to enact a new Personal Information Protection Act, given that the Supreme Court of Canada had struck down PIPA in its entirety in *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers*, Local 401, 2013 SCC 62 (CanLII), [2013] 3 SCR 733.

[para 30] I have decided that I will not decide this issue. In my view, the Applicant has raised a constitutional issue, as the Applicant is essentially asking me to declare that PIPA, and the Legislature's action of amending PIPA, are of no force or effect.

[para 31] Section 11 of the *Administrative Procedures and Jurisdiction Act* authorizes decision makers set out in the Designation of Constitutional Decision Makers Regulation to decide constitutional questions. The Regulation does not designate the Information and Privacy Commissioner as a decision maker who may decide constitutional matters regarding the *Personal Information Protection Act* (PIPA). As a result, there is no clear authority for me to pronounce on the issue raised by the Organization.

[para 32] In addition, section 12 of the *Administrative Procedures and Jurisdiction Act* requires that the party challenging the constitutionality of a provision provide notice. Section 12 states, in part:

12(1) Except in circumstances where only the exclusion of evidence is sought under the Canadian Charter of Rights and Freedoms, a person who intends to raise a question of constitutional law at a proceeding before a designated decision maker that has jurisdiction to determine such a question

(a) must provide written notice of the person's intention to do so at least 14 days before the date of the proceeding

(i) to the Attorney General of Canada,
(ii) to the Minister of Justice and Solicitor General of Alberta, and
(iii) to the parties to the proceeding,
And

(b) must provide written notice of the person's intention to do so to the designated decision maker.

I understand that at this time, no notice has been provided to all the parties set out in section 12 of the *Administrative Proceedings and Jurisdiction Act.*

[para 33] Finally, it is not clear to me that the Organization has standing to seek a declaration that PIPA is of no force or effect. Given my finding that the Organization is not an organization to which PIPA applies, assuming PIPA to be in force, it is unclear what the Organization's interest would be in the constitutionality of PIPA. As the Organization is not subject to PIPA in this case, PIPA does not affect its private interests. Further, it does not appear to have a "real stake" in relation to the status of PIPA to warrant granting public interest standing.

IV. ORDER

[para 34] I make this Order under section 52 of the Act.

[para 35] I decline to take jurisdiction for the reasons set out in the body of the Order.

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Teresa Cunningham
Adjudicator