

**SUBMISSION BY THE UNITED STEEL, PAPER AND
FORESTRY, RUBBER, MANUFACTURING, ENERGY,
ALLIED INDUSTRIAL AND SERVICE WORKERS
INTERNATIONAL UNION (UNITED STEELWORKERS)**

TO

**THE STANDING COMMITTEE ON ALBERTA'S
ECONOMIC FUTURE**

ON THE

PERSONAL INFORMATION PROTECTION ACT REVIEW

February 26, 2016

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www.usw.ca

I. INTRODUCTION

A. WHO WE ARE

The United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (the “USW” or the “Union”) is an international trade union with approximately 225,000 members in Canada. Approximately 8,000 of those members live and work in Alberta.

The USW has members in every sector of the Alberta economy. In addition to our well-known membership in core industrial sectors such as mining and steel, the Steelworkers has grown into one of the most diverse unions in the province, representing employees in all areas of manufacturing including electronics, auto parts, rubber, aluminum and glass, plastics, appliances and paints. As a result of our 2004 and 2015 mergers with the Industrial Wood and Allied Workers (IWA), and the Telecommunications Workers’ Union (TWU), respectively, we have a significant presence in Alberta’s forest and telecommunications industries, along with a rapidly growing membership in the service sector in workplaces like call centres, retail stores, hotels, banks and nursing homes. Our Union has also been at the forefront of organizing security guards, truck drivers, and university employees.

We have reviewed the Discussion Guide produced by the Standing Committee on Alberta’s *Personal Information Protection Act* (“PIPA” or the “Act”), and welcome the opportunity to provide our submission on the Committee’s review.

II. RECOMMENDATIONS ON THE REVIEW

RECOMMENDATION: AMEND THE ACT AS IT RELATES TO THE COLLECTION, USE, OR DISCLOSURE OF PERSONAL INFORMATION WITHOUT CONSENT BY TRADE UNIONS

The United Steelworkers has been on the forefront of the battle to protect the privacy of our members from corporate interference in their lives. We have advanced our members interests both before arbitrators and courts to ensure the protection of our members’ personal medical information; their right to be free of unreasonable searches of their private effects or person; unwarranted drug and alcohol testing; or regular and ongoing surveillance at the hands of their employers. As a result, we support privacy legislation, like PIPA, which operates to enhance the control our members have over their personal information as a means of enhancing their individual autonomy and dignity. Individual autonomy,

privacy and dignity are all significant societal values which help to advance a free and democratic society.

Having said that, it is our view that the amendments to PIPA made by the previous Alberta Conservative Government in response to the Supreme Court of Canada's decision in *Alberta (Information and Privacy Commissioner) v. UFCW, Local 401* [2013] 3 S.C.R. 733 do not strike the appropriate balance between enhancing the objectives of the PIPA, and safeguarding a union's right to free expression as required by the *Canadian Charter of Rights and Freedoms* (the "Charter").

In particular, we submit that the amendment to the right of unions to collect, use and disclose information without consent made by Bill 3 is excessively narrow given the broad interpretation of a trade union's freedom of expression guarantee as recognized by the Supreme Court.

In *Alberta (Information and Privacy Commissioner) v. UFCW, Local 401*, the Supreme Court found that the provisions of the then PIPA violated a union's freedom of expression guarantee under the *Charter* as it provided no exception which would permit the collection, use, or disclosure of its member's information without consent for the purposes of advancing its interests in a labour dispute. In so finding, the Court recognized, once again, the fundamental importance of a union's freedom of expression in the context of labour disputes, and, indeed, as such expression relates to labour relations generally. As the Court noted in its decision:

PIPA's deleterious effects weigh heavily in the balance. What is of the utmost significance in our view is that PIPA prohibits the collection, use, or disclosure of personal information for many legitimate, expressive purposes related to labour relations. These purposes include ensuring the safety of union members, attempting to persuade the public not to do business with an employer and bringing debate on the labour conditions with an employer into the public realm. These objectives are at the core of protected expressive activity under section 2(b).

In October 2014, in response to the Supreme Court's decision in *Alberta (Information and Privacy Commissioner) v. UFCW, Local 401*, the Conservative Government tabled Bill 3. Bill 3 altered PIPA to permit the collection, use and disclosure of personal information without consent for the purposes of informing or persuading the public of a matter of significant public interest or importance relating to a labour dispute involving the union so long as the collection of the information is reasonably necessary for the purpose and it is reasonable to

collect the information taking into account all relevant circumstances, including the nature and sensitivity of the information.

In our view, the current language of PIPA as it relates to collection, use, and disclosure of personal information by trade unions fails to address the concerns raised by the Supreme Court in the passage above. The Court noted the deleterious effects of the PIPA as written on a union's guarantee of free expression was not limited to the period of a labour dispute, but applied to the full scope of a union's expressive rights generally, as part of an effective labour relations regime.

As Cory J. recognized in *K-mart Canada Ltd. v. UFCW, Local 1518* [1999] 2 S.C.R. 1083, "for employees, freedom of expression becomes not only an important, but an *essential* component of labour relations." This is because free expression and opinion are a necessary adjunct to the right of employees to associate (as protected by section 2(d) of the *Charter*) for the purposes of achieving workplace goals, including the right to bargain collectively with their employer. In addition, free expression is the means by which trade unions and their members promote the interests of workers in the workplace, at the bargaining table, and in society at large. Through exercising their right to free expression, unions and their members can attempt to redress the imbalance in economic power with an employer by means of public persuasion. In addition, it is through exercising their right to free expression that unions and their members are able to engage the public and thus pressure our provincial and federal governments to take action on important workplace issues. Our Union has recently spoken out to call attention to worker health and safety issues, including worker mortality rates across Canada, and has highlighted startling problems with the federal Temporary Foreign Worker Program.

Trade unions should be excluded from the application of Act

Given the above, it is our view that PIPA should be amended so to exclude its application to trade unions entirely. We note that the original policy rationale for the introduction of personal privacy legislation outside of the public sector was to safeguard against the unwarranted and exploitative collection, use and disclosure of personal information for commercial interests. Indeed, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), the federal equivalent of PIPA, only applies to personal information collected, used, and/or disclosed for a *commercial* purpose. It is our view that such an amendment is consistent with the original intent of such privacy legislation, while providing the greatest protection for the free expression rights guaranteed by the *Charter* to workers and their unions.

In the alternative, the Act should be amended to broaden a trade union's ability to collect, use or disclose personal information without consent where such activity engages in any manner a union's expressive rights.

In the alternative, the Steelworkers submits, the language of PIPA should be broadened to ensure that trade unions can collect, use and disclose personal information without consent where the collection, use, and disclosure is related to a union's expressive rights generally, and not just as such activity may relate to a labour dispute. In our view, an amendment broadening the existing PIPA language is required in order to meet the conditions of the Court's decision in *Alberta (Information and Privacy Commissioner) v. UFCW, Local 401 Alberta (Information and Privacy Commissioner) v. UFCW, Local 401* and to safeguard the important expressive and associational rights guaranteed to unions and their members by the *Charter*.

We appreciate the opportunity to provide our submission to the Committee for consideration during this review. Should you have any questions regarding the enclosed, please do not hesitate to contact me.

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