

February 26, 2016

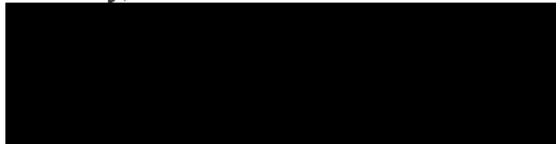
Ricardo Miranda, MLA
Chair, Standing Committee on Alberta's Economic Future
3rd Floor, 9820 – 107 Street NW
Edmonton, AB T5K 1E7

Dear Mr. Miranda

Please accept this submission on behalf of the Edmonton and District Labour Council for the Review of the Personal Information Protection Act.

If you have any question please contact me at your earliest convenience.

Sincerely,



Bruce Fafard, President
Edmonton and District Labour Council

Edmonton and District Labour Council PIPA Review Submission

Trade unions and PIPA

In response to the case *Alberta (Information and Privacy Commissioner of Alberta) v. United Food and Commercial Workers, Local 401*, the Supreme Court of Canada struck down PIPA in its entirety and the Legislative Assembly of Alberta reviewed and revised the Act in order to comply constitutionally with the court's decision. The decision of the SCC was based on the narrow question of the union's constitutional right to collect, use, and disclose individual's personal information in pursuit of its right to freedom of expression during a labour relations dispute.

In our opinion the revision of the act to include sections 14.1, 17.1, and 20.1 does achieve an appropriate balance between the "quasi-constitutional right" of privacy that allows individual's free and dignified participation in society and a trade union's right to freedom of expression.

However, we agree with the SCC assessment that "of utmost significance... is that PIPA prohibits the collection, use, and disclosure of for many 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." (*Alberta v. UFCW*, SCC at para 28).

Where the current legislation falls short with regard to the collection, use, and disclosure of personal information by trade unions is in respect to the fundamental labour relations activity of organizing workers into community of common interest for the purpose of collective bargaining.

In relation to expressive collective labour relations activities the current legislative framework mandates that such activities are facilitated through membership in a trade union. This is unlike, for example, the American framework in which the NLRB protects concerted or collective action outside of union membership.

Even with the amendments to the Act, without the explicit inclusion of an exemption for the collection, use, and disclosure of personal information, in particular personal employee information, during or in pursuit of an organizing drive than the employer will have an unfair ability to frustrate individuals ability to exercise their right to free association. As long as employers are able to use the protection of personal information to limit knowledge regarding labour conditions within their workplaces then employees trying to engage in organizing will be at a legislatively created disadvantage.

The EDLC suggests that the act should be amended to include an exemption for the collection, use, and disclosure of personal employee information of a particular employee to trade unions where the employee has become a member of the trade union or signed a valid petition to have the trade union recognized as the exclusive bargaining agent for the workplace.

This amendment should strike a balance between individuals that desire to join a trade union and individuals that are not interested in joining a trade union. By making the exemption based on the act of joining a trade union or signing a petition than the collection, use and disclosure of their personal employee information can be seen as arising from an act of explicit consent. Further, this creates an explicit and narrow exemption that should not be seen as overbroad or encroaching on the guarantee of privacy that the Act is intended to protect.

Personal employee information

With regard to personal employee information, the EDLC would like to see the definition of and employee under section 1(1)(e) to include all forms of sub-contracting, in particular sub-contracting arrangements which results in a relationship of financial dependence between the contracting organization and the sub-contractor.

This is important because sub-contracting is becoming the primary employment relationship within the growing and emerging “gig economy” and without explicit inclusion of such relationships than the Act may become a tool to disempower individuals that are effectively employees from exercising protections granted to others under the Act.

Notification of a Breach of Privacy

The EDLC suggest that the current act is insufficient in regards to reporting to the commission when a breach has occurred. Currently when there is a breach of information under 34.1(1) it is up to the organization that suffers the breach to determine if a potential harm exist of the information lost. The EDLC suggest that all breaches should be reported and the determination of any potential harm be left in the hands of the Commissioner.

This change is important as it would show the amount of breaches that do actually occur and measures can be taken to ensure compliance to the act. Furthermore it would quell any misinterpretation by an organization on the determination if the breach does have potential harm or not.