

From: [Katrina Piechotta](#)
To: [EconomicFuture Committee](#)
Subject: Submission of UFCW Local 401 to the Standing Committee on Alberta's Economic Future (Personal Information Protection Act)
Date: Friday, February 26, 2016 5:49:18 PM
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[Submission of UFCW Local 401 to the Standing Committee on Alberta's Economic Future \(PIPA\).pdf](#)

Good Afternoon,

Please find attached the Submission of UFCW Local 401 to the Standing Committee on Alberta's Economic Future.

Sincerely,

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**Submission to the Standing Committee on
Alberta's Economic Future: The *Personal
Information Protection Act***

**Submitted by the United Food and Commercial Workers
Canada Union, Local No. 401**

February 26, 2016

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INTRODUCTION

The United Food and Commercial Workers Canada Union, Local No. 401 (the “UFCW 401”) is the largest private sector union in Alberta, with approximately 30,000 members. UFCW 401 is responsible for the administration and enforcement of more than 60 collective agreements in bargaining units spread across the province, representing a diverse range of industry, including retail food service, meat processing, food production and hospitality.

Our members include those that work for some of the largest private sector employers in Alberta, such as Safeway/Sobeys, Loblaw, JBS Canada, Sofina Foods, Maple Leaf, Civeo and Gateway Casinos. Our members are also proud residents of Alberta cities, towns and villages, who care deeply about their communities, and whose families’ livelihoods depend on a healthy and robust economy.

We appreciate the opportunity to provide this submission to the Standing Committee on Alberta’s Economic Future (the “Committee”).

UFCW 401 was identified as an Interested Party by the Committee and invited to provide a written submission in respect of the Committee’s comprehensive review of the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (the “PIPA”).

Our submission will address our organization’s experience with PIPA, the current state of the legislation and our recommendations for changes to the Act.

PIPA AND THE CHILLING OF ALBERTA CIVIC PARTICIPATION

In Alberta, groups of individuals, or “organizations”, cannot speak or write anything about anyone without that person’s consent. They are prohibited from speaking, writing or otherwise conveying anything that includes any individual’s “personal information” unless a narrow exception in PIPA applies.

PIPA does this by prohibiting “organizations” from collecting, using, and/or disclosing “personal information” – any “information about an identifiable individual” – without advance express consent in writing, unless a narrow exception applies, such as the exceptions applicable to collection, use, and/or disclosure for an artistic, literary or journalistic purpose. The type of personal information conveyed and the organizations’ motive is largely irrelevant.

When applied to advocacy, lobby, public interest, social and labour groups, PIPA’s impact on freedom of expression is dramatic. Regardless of the political affiliation of such organizations, it prohibits these organizations’ members from engaging in routine and legitimate activities unless express written consent is acquired in advance. Examples of prohibited activities include the following (and is certainly not exhaustive):

- Taking a group photo of people at their organization's fundraising dinner.
- Taking a group photo of people protesting at the legislature.
- Telling others what a politician or other public figure said to protesters at the legislature.
- Telling others that they saw a politician or other public figure meeting with someone opposed to an organization's cause.
- Telling others that they saw a politician or other public figure taking cash from an individual or business.
- Telling others that the leader of another advocacy group is doing things in public contrary to his or her own organization's cause.
- Telling others what is happening in a workplace if to do so would identify a member of management.
- Taking pictures of a park or playground the organization seeks to protect if there are people in the photograph.

The absurdity of curtailing the above activities is striking enough to make the average Albertan shake his head – this cannot be the purpose for which PIPA was intended.

Advocacy, lobby, public interest, social and labour groups play a fundamental role in civic engagement. PIPA's restrictions on their freedom of expression reduces their effectiveness, suppresses dissent and discussion, and ultimately, threatens our democracy.

ALBERTA (INFORMATION AND PRIVACY COMMISSIONER) v. UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 401

In 2006, UFCW 401 was involved in a strike at the Palace Casino at West Edmonton Mall. The strike lasted 305 days. During the course of the strike, both the union and the employer video-taped and photographed the picket line near the main entrance to the casino. In an effort to persuade people not to cross the picket line, the union put up signs indicating that images of individuals who did cross may be put online at www.casinoscabs.ca.

Several individuals complained to the Alberta Privacy Commissioner that their rights under PIPA were violated. The matter was adjudicated and the union was ordered by the Privacy Commission to stop collecting information for any purpose other than a

possible investigation or legal proceeding. It was also ordered to destroy any personal information it had in its possession.

On judicial review, a Court of Queen's Bench Justice determined that PIPA limited the union's freedom of expression by preventing the union from collecting, using and disclosing personal information obtained from individuals while they were in public view. The Alberta Court of Appeal agreed that PIPA breached the freedom of expression provisions of the Charter and the union was granted a constitutional exemption from PIPA. The Government of Alberta sought and received leave to appeal the matter to the Supreme Court of Canada.

On November 15, 2013, the Supreme Court declared PIPA unconstitutional. The legislation, as it existed at the time, and the prohibition on the collection, use and disclosure of personal information violated freedom of expression as protected by the Canadian *Charter of Rights and Freedoms*. With respect to unions, the Court noted the fundamental importance of freedom of expression in the labour context and that picketing is a crucial form of expression with strong historical roots. By restricting the union's ability to communicate about the strike and persuade the public to support its cause, the legislation impaired the union's use of one of its most effective bargaining strategies.

The Court gave the Alberta government one year (plus a six month extension) to amend the Act to bring it into compliance with the Charter.

RECENT AMENDMENTS TO PIPA

In December 2014, the Legislative Assembly of Alberta amended PIPA by adding an exception. The newly created exception only applies to union expression, and for it to apply, the union's collection, use and/or disclosure of personal information has to be:

- For the purpose of informing or persuading the public,
- About a matter of *significant* public interest or importance,
- About a labour dispute (rather than being expression in the labour context) and the labour dispute must be one involving the union (not another union),
- Reasonably necessary for the union's purpose (as determined by the Privacy Commissioner in the event there is a dispute),
- Reasonable in the circumstances (as determined by the Privacy Commissioner in the event there is a dispute).

This newly created exception only applies to trade unions and is thus inapplicable to social or advocacy groups, such as the Alberta Federation of Labour. The exception is

also unnecessarily narrow, as presumably, it would only apply during the course of a strike or lockout involving the trade union. For example, it would not apply to communications a union made regarding an employer about anything unrelated to a labour dispute, or even to communications the union made relating to another union's strike or lockout. Finally, the exception is cumbersome, in that it includes not one but two reasonableness requirements: the first in regard to being "reasonably necessary for that purpose" (the purpose being informing the public) and second in regard to the exception only applying if, in all surrounding circumstances, it is reasonable to collect, use or disclose the personal information without consent.

It is the opinion of UFCW 401 that PIPA has sweeping, unintended consequences for a broad cross-section of organizations in Alberta. This is additionally problematic because the amendments made to PIPA do little to address the concerns the Supreme Court raised about the Act.

RECOMMENDATIONS

The amendments made to PIPA may be consistent with a narrow reading of the Supreme Court's decision. However, as stated above, we do not believe that they sufficiently respect the Charter guaranteed right to freedom of expression. It is very possible that PIPA in its current state will invite additional Charter litigation.

An amendment that would respect the Charter would be to make PIPA consistent with the federal *Personal Information Protection and Electronic Documents Act*, S.C. 2000, c. 5 (the "PIPEDA"). PIPEDA only applies to the collection, use and disclosure of personal information for a commercial purpose. Because of this, PIPEDA does not generally apply to advocacy, lobby, public interest, social and labour groups acting in pursuit of non-commercial goals.

Making such an amendment to PIPA would simply require changing the Act's application provisions, currently found in Section 4. At present, this section states "except as provided in this Act and subject to the regulations, this Act applies to every organization and in respect of all personal information," followed by a list of exceptions.

In order to make PIPA consistent with PIPEDA an amendment to ensure that the Act only applies to commercial endeavours would suffice. An example of a potential application provision is:

Except as provided in this Act and subject to the regulations, this Act applies to every organization and in respect of all personal information that

(a) the organization collects, uses or discloses in the course of commercial activities; or

(b) is about an employee of the organization.

This straightforward and simple solution would resolve many of the disconcerting problems with PIPA and ensure that there continues to be “made in Alberta” privacy legislation.

CONCLUSION

To conclude, UFCW 401 thanks the Committee for the opportunity to make this submission and for considering the aforementioned recommendations. As was requested in the Committee’s letter dated January 4, 2016, we would like the opportunity to make an oral presentation, should the Committee decide to consider such submissions.