

United Food and Commercial Workers, Local 401 (respondent/applicant) v.  
Information and Privacy Commissioner (respondent/respondent) and Attorney General of  
Alberta (appellant/respondent)  
(1103-0211-AC; 2012 ABCA 130)

**Indexed As: United Food and Commercial Workers, Local 401 v. Privacy Commissioner  
(Alta.) et al.**

Alberta Court of Appeal  
Slatter and McDonald, J.J.A., and Read, J.(ad hoc)  
April 30, 2012.

**Summary:**

The United Food and Commercial Workers, Local 401 (UFCW) sought judicial review of a decision by an Adjudicator for the office of the Privacy Commissioner under Alberta's Personal Information Protection Act (PIPA). UFCW alleged that the provisions of PIPA that prohibited the Union from recording (either by photo or video) its lawful picket line was an infringement of its s. 2(b) rights under the Charter. The Attorney General of Alberta was the only participating respondent in the judicial review.

The Alberta Court of Queen's Bench, in a decision reported at 509 A.R. 150, granted UFCW's application for judicial review. The court found that: (a) the exception in s. 4(3)(c) of PIPA that applied only to an organization that had a journalistic purpose and no other purpose infringed s. 2(b) and was not justified under s. 1 of the Charter; and (b) the provisions in PIPA that prohibited an organization from collecting, using and disclosing personal information collected at a public, political demonstration, like a picket line, infringed s. 2(b) and were not justified under s. 1. The Adjudicator's decision was quashed to the extent that it relied on the impugned provisions. The court granted a declaration that the phrase "and for no other purpose" in s. 4(3)(c) was of no force or effect. As the remedy for the breach occasioned by the narrow definition of "publicly available" in s. 7 of the PIPA Regulation, the court declared s. 7 to be of no force or effect, but suspended the declaration of invalidity for 12 months. The Attorney General appealed.

The Alberta Court of Appeal allowed the appeal only to the extent that the court varied the remedy granted by the chambers judge. In place of the declarations of invalidity, the court granted a declaration that the application of PIPA to the activities of the Union was unconstitutional. The order quashing the offending portions of the Adjudicator's decision was affirmed.

**Administrative Law - Topic 8905**

Boards and tribunals - Duties of - Re application of constitution or constitutional principles (incl. Charter) - [See all **Civil Rights - Topic 8317**].

**Administrative Law - Topic 9102**

Boards and tribunals - Judicial review - Standard of review - [See all **Civil Rights - Topic 8317**].

### **Civil Rights - Topic 1850**

Freedom of speech or expression - Limitations on - Picketing (incl. recording of) - A Union videotaped people crossing its picket line, and suggested it might post those recordings on the Internet - An Adjudicator under Alberta's Personal Information Protection Act concluded that the Union did not have the right to collect and use those recordings - The Union initially focussed its challenge on the "journalism exemption" in s. 4(3)(c) of the Act - The Alberta Court of Appeal stated that "it is not helpful to try and force what the union was trying to do into the 'journalism' exemption. ... The Act contains no general exemption for forms of expression that are constitutionally protected. To the extent that the exemptions in the Act are not sufficient to permit the type of collection and use of information engaged in by the union, its constitutionality should be analyzed directly, not indirectly through an artificial screen of journalistic purposes" - See paragraphs 55 to 59.

### **Civil Rights - Topic 1850**

Freedom of speech or expression - Limitations on - Picketing (incl. recording of) - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its s. 2 Charter rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal held that the Union had established a prima facie breach of its s. 2 Charter rights - There were many aspects of the Adjudicator's order that had a direct impact on the right of the union to free expression - Labour picketing incorporated an expressive component - "The picket line itself is an expressive activity. It is also appropriate to note that the expressive activity at issue is directly related to the protected Charter right of the workers to associate together to achieve their common goals" - In the analysis under s. 1 of the Charter, the court concluded that the Attorney General was not able to justify the infringements of free expression arising from the Act - The court issued a declaration that the application of the Act to the activities of the union was unconstitutional, and quashed the Adjudicator's order - See paragraphs 60 to 68.

### **Civil Rights - Topic 1858.1**

Freedom of speech or expression - Limitations on - Protection of privacy - [See both **Civil Rights - Topic 1850**].

### **Civil Rights - Topic 1863**

Freedom of speech or expression - Denial of - [See second **Civil Rights - Topic 1850**].

### **Civil Rights - Topic 8317**

Canadian Charter of Rights and Freedoms - General - Application - Administrative decisions and Charter protection - The present appeal raised two kinds of Charter issues - From the perspective of the trial judge, some of the provisions of Alberta's Personal Information Protection Act were inconsistent with the Charter - The Alberta Court of Appeal stated that "[a]n analysis of the constitutionality of the statute calls for an

application of the Oakes test. On the other hand, it could be argued that the statute is not unconstitutional per se, but that the way it was brought to bear in this particular decision was inconsistent with Charter values. From that perspective, a Doré [Doré v. Barreau du Québec (2012) (S.C.C.)] analysis is called for. Even if the statute is valid, Doré confirms that the particular decision must be consistent with Charter values ... As long as the tribunal's decision correctly interprets the Charter text, the decision will not be disturbed unless its assimilation of Charter values is disproportional, and therefore unreasonable" - See paragraph 40.

### **Civil Rights - Topic 8317**

Canadian Charter of Rights and Freedoms - General - Application - Administrative decisions and Charter protection - The Alberta Court of Appeal stated that "The Administrative Procedures and Jurisdiction Act should not be viewed as a direction to Alberta tribunals that they should ignore Charter values. ... '[A]dministrative decisions are always required to consider fundamental values'. But because the statute limits their power to directly resolve Charter issues by limiting their jurisdiction, the statute will necessarily influence the standard of review analysis relating to the tribunal's decision. ... [T]he rule in Dunsmuir is based in part of legislative intent, and the intent of the Administrative Procedures and Jurisdiction Act is clearly that the excluded tribunals have a limited role in play in this area" - See paragraph 42.

### **Civil Rights - Topic 8317**

Canadian Charter of Rights and Freedoms - General - Application - Administrative decisions and Charter protection - The respondent Union videotaped people crossing its picket line, and suggested it might post those recordings on the Internet - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use the recordings - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its constitutional rights under the Charter of Rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal, in determining the standard of review, stated that "the Adjudicator quite properly did not attempt to engage the Charter issues. She recognized that it was beyond her mandate. It is likely that the parties did not provide a full Charter argument as a result. She not having purported to balance Charter with privacy values, there is in truth no decision to review, either for reasonableness, disproportionality, or correctness. In all the circumstances, applying the four part test in Dunsmuir, the standard of review of the compliance of the decision of the Adjudicator with the Charter should be reviewed for correctness" - See paragraph 44.

### **Civil Rights - Topic 8317**

Canadian Charter of Rights and Freedoms - General - Application - Administrative decisions and Charter protection - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line during a strike - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its constitutional rights under the Charter of Rights - The chambers judge agreed, and struck

down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal, in determining the standard of review, stated that "[t]o the extent that the decision of the chambers judge (as it reviewed the decision of the Adjudicator) engaged a consideration of the constitutionality of the Personal Information Protection Act, it has to be reviewed for correctness. The approach in Doré [Doré v. Barreau du Québec (2012) (S.C.C.)] only applies to the review of individual administrative decisions for constitutional compliance, where Charter rights have to be balanced with other values. It has no application to a determination of whether a statute is constitutional. Such issues are always reviewed for correctness. ... To the extent that the chambers judge engaged in an ab initio review of the specific decision for constitutional compliance, that decision is to be further reviewed by this Court for correctness" - See paragraph 45.

### **Civil Rights - Topic 8348**

Canadian Charter of Rights and Freedoms - Application - Exceptions - Reasonable limits prescribed by law (Charter, s. 1) - The issue on this appeal was whether the respondent Union had a constitutionally protected right to collect images of persons crossing the picket line, and therefore whether an Adjudicator's order under Alberta's Personal Information Protection Act preventing it from doing so should be set aside - The Alberta Court of Appeal held that the Union had established a prima facie breach of its s. 2 Charter rights - "Determining if the restriction on free expression is justified starts by analyzing whether the objectives of the statute are related to a pressing and substantial goal. If so, the analysis turns to the proportionality of the legislation. If the limiting measures are rationally connected to the objective, one must then determine whether the infringement is as limited as possible. Finally, the analysis examines whether the salutary effect of the Act outweighs its deleterious effect" - See paragraph 69.

### **Civil Rights - Topic 8348**

Canadian Charter of Rights and Freedoms - Application - Exceptions - Reasonable limits prescribed by law (Charter, s. 1) - On this appeal, the provisions of Alberta's Personal Information Protection Act (PIPA) that prohibited the respondent Union from recording (either by photo or video) its lawful picket line were found to infringe its s. 2(b) Charter rights - In the analysis under s. 1 of the Charter, the appellant Attorney General argued that the exemption for journalistic activities, and for information that was publicly available were demonstrably justifiable - The Alberta Court of Appeal held that the appellant was not able to justify the infringements of free expression arising from the Act - The issue was whether the Act as a whole was demonstrably justified, having regard to the impact that it had on the expressive rights of the union - "The issue is not what the Act allows, but what it prohibits" - The problem related to proportionality - "The constitutional problems with the Act arise because of its breadth. ... The appellant has not demonstrated why this heavy handed approach to privacy is necessary, given the impact it has on expressive rights. It is also not apparent that the salutary effects of the Act outweigh its deleterious effects" - See paragraphs 70 to 78.

### **Civil Rights - Topic 8372**

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Scope of - An Adjudicator under Alberta's Personal Information Protection Act concluded that the

respondent Union did not have the right to collect and use recordings of persons crossing its picket line during a strike - The Alberta Court of Appeal stated that "[t]he Adjudicator's interpretation of the Act, and the order she granted interfered with the union's Charter rights. The chambers judge attempted to remedy that breach by providing expansive and somewhat artificial interpretations on some of the terms used in the Act, and by declaring other portions of the Act inoperative. ... Striking out or reading down portions of the statute are not attractive options. ... There is no obvious way to prune this statute so as to make it constitutional. Artificially expanding the meaning of 'journalism' is not a helpful solution. The appropriate remedy in this case is, therefore, not to strike down any portion of the statute. A declaration should issue that the application of the Act to the activities of the union was unconstitutional, because it infringed on the union's Charter rights. The order of the Adjudicator should be quashed. It is within the particular mandate of the Legislature to decide what amendments are required to the Act in order to bring it in line with the Charter" - See paragraphs 79 to 81.

### **Civil Rights - Topic 8380.2**

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Declaration of statute invalidity (including portion or section) - [See **Civil Rights - Topic 8372**].

### **Labour Law - Topic 8151**

Industrial relations - Picketing - Right to picket (incl. right to record) - Freedom of Expression - Charter, s. 2(b) - [See second **Civil Rights - Topic 1850**].

### **Trade Regulation - Topic 9404**

Protection of personal information and electronic documents - Application and interpretation of legislation - [See second **Civil Rights - Topic 1850**].

### **Trade Regulation - Topic 9443**

Protection of personal information and electronic documents - Protection, collection or disclosure of personal information - When appropriate - [See second **Civil Rights - Topic 1850**].

### **Cases Noticed:**

Pepsi-Cola Canada Beverages (West) Ltd. v. Retail, Wholesale and Department Store Union, Local 558 et al., [2002] 1 S.C.R. 156; 280 N.R. 333; 217 Sask.R. 22; 265 W.A.C. 22; 2002 SCC 8, refd to. [para. 22].

United Food and Commercial Workers, Local 1518 v. KMart Canada Ltd. et al., [1999] 2 S.C.R. 1083; 245 N.R. 1; 128 B.C.A.C. 1; 208 W.A.C. 1, refd to. [para. 22].

New Brunswick (Board of Management) v. Dunsmuir, [2008] 1 S.C.R. 190; 372 N.R. 1; 329 N.B.R.(2d) 1; 844 A.P.R. 1; 2008 SCC 9, refd to. [para. 32].

Alliance Pipeline Ltd. v. Smith, [2011] 1 S.C.R. 160; 412 N.R. 66; 2011 SCC 7, refd to. [para. 32].

Khosa v. Canada (Minister of Citizenship and Immigration), [2009] 1 S.C.R. 339; 385 N.R. 206; 2009 SCC 12, refd to. [para. 33].

Alberta Teachers' Association v. Information and Privacy Commissioner (Alta.) et al., [2011] 3 S.C.R. 654; 424 N.R. 70; 2011 SCC 61, refd to. [para. 36].

Leon's Furniture Ltd. v. Information and Privacy Commissioner (Alta.) et al. (2011), 502 A.R. 110; 517 W.A.C. 110; 45 Alta. L.R.(5th) 1; 2011 ABCA 94, reld to. [para. 36].

Stubicar v. Information and Privacy Commissioner (Alta.) et al. (2008), 440 A.R. 190; 38 W.A.C. 190; 97 Alta. L.R.(4th) 23; 2008 ABCA 357, reld to. [para. 36].

Canada (Attorney General) v. Mowat, [2011] 3 S.C.R. 471; 422 N.R. 248; 2011 SCC 53, reld to. [para. 37].

Doré v. Barreau du Québec (2012), 428 N.R. 146; 2012 SCC 12, reld to. [para. 38].

R. v. Oakes, [1986] 1 S.C.R. 103; 65 N.R. 87; 14 O.A.C. 335, reld to. [para. 38].

PHS Community Services Society et al. v. Canada (Attorney General), [2011] 3 S.C.R. 134; 421 N.R. 1; 310 B.C.A.C. 1; 526 W.A.C. 1; 2011 SCC 44, reld to.

Workers' Compensation Board (N.S.) v. Martin et al., [2003] 2 S.C.R. 504; 310 N.R. 22; 217 N.S.R.(2d) 301; 683 A.P.R. 301; 2003 SCC 54, reld to. [para. 41].

Fraser et al. v. Ontario (Attorney General) (2011), 415 N.R. 200; 275 O.A.C. 205; 2011 SCC 20, reld to. [para. 63].

R. v. National Post et al., [2010] 1 S.C.R. 477; 401 N.R. 104; 262 O.A.C. 1; 2010 SCC 16, reld to. [para. 65].

**Statutes Noticed:**

Personal Information Protection Act, S.A. 2003, c. P-6.5, sect. 3 [para. 5]; sect. 4(3)(c) [para. 7].

**Counsel:**

R.S. Wiltshire, for the appellant;  
G.J. Gray, Q.C., and V.A. Cosco, for the respondent, United Food and Commercial Workers, Local 401;  
G.S. Solomon, Q.C., for the respondent, Information and Privacy Commissioner.

This appeal was heard on January 13, 2012, before Slatter and McDonald, J.J.A., and Read, J.(ad hoc), of the Alberta Court of Appeal. In reasons written by Slatter, J.A., the Court delivered the following judgment, filed on April 30, 2012.

Appeal allowed in part.

Editor: E. Joanne Oley

**Administrative Law - Topic 8905**

Boards and tribunals - Duties of - Re application of constitution or constitutional principles (incl. Charter) - The present appeal raised two kinds of Charter issues - From the perspective of the trial judge, some of the provisions of Alberta's Personal Information Protection Act were inconsistent with the Charter - The Alberta Court of Appeal stated that "[a]n analysis of the constitutionality of the statute calls for an application of the Oakes test. On the other hand, it could be argued that the statute is not unconstitutional per se, but that the way it was brought to bear in this particular decision was inconsistent with Charter values. From that perspective, a Doré [Doré v. Barreau du

Québec (2012) (S.C.C.)] analysis is called for. Even if the statute is valid, Doré confirms that the particular decision must be consistent with Charter values ... As long as the tribunal's decision correctly interprets the Charter text, the decision will not be disturbed unless its assimilation of Charter values is disproportional, and therefore unreasonable" - See paragraph 40.

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Boards and tribunals - Duties of - Re application of constitution or constitutional principles (incl. Charter) - The Alberta Court of Appeal stated that "The Administrative Procedures and Jurisdiction Act should not be viewed as a direction to Alberta tribunals that they should ignore Charter values. ... '[A]dministrative decisions are always required to consider fundamental values'. But because the statute limits their power to directly resolve Charter issues by limiting their jurisdiction, the statute will necessarily influence the standard of review analysis relating to the tribunal's decision. ... [T]he rule in *Dunsmuir* is based in part of legislative intent, and the intent of the Administrative Procedures and Jurisdiction Act is clearly that the excluded tribunals have a limited role in play in this area" - See paragraph 42.

### **Administrative Law - Topic 8905**

Boards and tribunals - Duties of - Re application of constitution or constitutional principles (incl. Charter) - The respondent Union videotaped people crossing its picket line, and suggested it might post those recordings on the Internet - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use the recordings - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its constitutional rights under the Charter of Rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal, in determining the standard of review, stated that "the Adjudicator quite properly did not attempt to engage the Charter issues. She recognized that it was beyond her mandate. It is likely that the parties did not provide a full Charter argument as a result. She not having purported to balance Charter with privacy values, there is in truth no decision to review, either for reasonableness, disproportionality, or correctness. In all the circumstances, applying the four part test in *Dunsmuir*, the standard of review of the compliance of the decision of the Adjudicator with the Charter should be reviewed for correctness" - See paragraph 44.

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Boards and tribunals - Duties of - Re application of constitution or constitutional principles (incl. Charter) - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line during a strike - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its constitutional rights under the Charter of Rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal, in determining the standard of review, stated that "[t]o the extent that the decision of the chambers judge (as it reviewed the decision of the Adjudicator) engaged a

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### **Administrative Law - Topic 9102**

Boards and tribunals - Judicial review - Standard of review - The present appeal raised two kinds of Charter issues - From the perspective of the trial judge, some of the provisions of Alberta's Personal Information Protection Act were inconsistent with the Charter - The Alberta Court of Appeal stated that "[a]n analysis of the constitutionality of the statute calls for an application of the Oakes test. On the other hand, it could be argued that the statute is not unconstitutional per se, but that the way it was brought to bear in this particular decision was inconsistent with Charter values. From that perspective, a Doré [Doré v. Barreau du Québec (2012) (S.C.C.)] analysis is called for. Even if the statute is valid, Doré confirms that the particular decision must be consistent with Charter values ... As long as the tribunal's decision correctly interprets the Charter text, the decision will not be disturbed unless its assimilation of Charter values is disproportional, and therefore unreasonable" - See paragraph 40.

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Boards and tribunals - Judicial review - Standard of review - The Alberta Court of Appeal stated that "The Administrative Procedures and Jurisdiction Act should not be viewed as a direction to Alberta tribunals that they should ignore Charter values. ... '[A]dministrative decisions are always required to consider fundamental values'. But because the statute limits their power to directly resolve Charter issues by limiting their jurisdiction, the statute will necessarily influence the standard of review analysis relating to the tribunal's decision. ... [T]he rule in Dunsmuir is based in part of legislative intent, and the intent of the Administrative Procedures and Jurisdiction Act is clearly that the excluded tribunals have a limited role in play in this area" - See paragraph 42.

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Boards and tribunals - Judicial review - Standard of review - The respondent Union videotaped people crossing its picket line, and suggested it might post those recordings on the Internet - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use the recordings - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its constitutional rights under the Charter of Rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal, in determining the standard of review, stated that "the Adjudicator quite properly did not attempt to engage the Charter issues. She recognized that it was beyond her mandate. It is likely that the parties did not provide a full Charter argument as a result. She not having purported to balance Charter with

privacy values, there is in truth no decision to review, either for reasonableness, disproportionality, or correctness. In all the circumstances, applying the four part test in Dunsmuir, the standard of review of the compliance of the decision of the Adjudicator with the Charter should be reviewed for correctness" - See paragraph 44.

### **Administrative Law - Topic 9102**

Boards and tribunals - Judicial review - Standard of review - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line during a strike - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its constitutional rights under the Charter of Rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal, in determining the standard of review, stated that "[t]o the extent that the decision of the chambers judge (as it reviewed the decision of the Adjudicator) engaged a consideration of the constitutionality of the Personal Information Protection Act, it has to be reviewed for correctness. The approach in Doré [Doré v. Barreau du Québec (2012) (S.C.C.)] only applies to the review of individual administrative decisions for constitutional compliance, where Charter rights have to be balanced with other values. It has no application to a determination of whether a statute is constitutional. Such issues are always reviewed for correctness. ... To the extent that the chambers judge engaged in an ab initio review of the specific decision for constitutional compliance, that decision is to be further reviewed by this Court for correctness" - See paragraph 45.

### **Civil Rights - Topic 1858.1**

Freedom of speech or expression - Limitations on - Protection of privacy - A Union videotaped people crossing its picket line, and suggested it might post those recordings on the Internet - An Adjudicator under Alberta's Personal Information Protection Act concluded that the Union did not have the right to collect and use those recordings - The Union initially focussed its challenge on the "journalism exemption" in s. 4(3)(c) of the Act - The Alberta Court of Appeal stated that "it is not helpful to try and force what the union was trying to do into the 'journalism' exemption. ... The Act contains no general exemption for forms of expression that are constitutionally protected. To the extent that the exemptions in the Act are not sufficient to permit the type of collection and use of information engaged in by the union, its constitutionality should be analyzed directly, not indirectly through an artificial screen of journalistic purposes" - See paragraphs 55 to 59.

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impact on the right of the union to free expression - Labour picketing incorporated an expressive component - "The picket line itself is an expressive activity. It is also appropriate to note that the expressive activity at issue is directly related to the protected Charter right of the workers to associate together to achieve their common goals" - In the analysis under s. 1 of the Charter, the court concluded that the Attorney General was not able to justify the infringements of free expression arising from the Act - The court issued a declaration that the application of the Act to the activities of the union was unconstitutional, and quashed the Adjudicator's order - See paragraphs 60 to 68.

### **Civil Rights - Topic 1863**

Freedom of speech or expression - Denial of - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its s. 2 Charter rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal held that the Union had established a prima facie breach of its s. 2 Charter rights - There were many aspects of the Adjudicator's order that had a direct impact on the right of the union to free expression - Labour picketing incorporated an expressive component - "The picket line itself is an expressive activity. It is also appropriate to note that the expressive activity at issue is directly related to the protected Charter right of the workers to associate together to achieve their common goals" - In the analysis under s. 1 of the Charter, the court concluded that the Attorney General was not able to justify the infringements of free expression arising from the Act - The court issued a declaration that the application of the Act to the activities of the union was unconstitutional, and quashed the Adjudicator's order - See paragraphs 60 to 68.

### **Civil Rights - Topic 8380.2**

Canadian Charter of Rights and Freedoms - Denial of rights - Remedies - Declaration of statute invalidity (including portion or section) - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line during a strike - The Alberta Court of Appeal stated that "[t]he Adjudicator's interpretation of the Act, and the order she granted interfered with the union's Charter rights. The chambers judge attempted to remedy that breach by providing expansive and somewhat artificial interpretations on some of the terms used in the Act, and by declaring other portions of the Act inoperative. ... Striking out or reading down portions of the statute are not attractive options. ... There is no obvious way to prune this statute so as to make it constitutional. Artificially expanding the meaning of 'journalism' is not a helpful solution. The appropriate remedy in this case is, therefore, not to strike down any portion of the statute. A declaration should issue that the application of the Act to the activities of the union was unconstitutional, because it infringed on the union's Charter rights. The order of the Adjudicator should be quashed. It is within the particular mandate of the Legislature to decide what amendments are required to the Act in order to bring it in line with the Charter" - See paragraphs 79 to 81.

### **Labour Law - Topic 8151**

Industrial relations - Picketing - Right to picket (incl. right to record) - Freedom of Expression - Charter, s. 2(b) - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its s. 2 Charter rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal held that the Union had established a prima facie breach of its s. 2 Charter rights - There were many aspects of the Adjudicator's order that had a direct impact on the right of the union to free expression - Labour picketing incorporated an expressive component - "The picket line itself is an expressive activity. It is also appropriate to note that the expressive activity at issue is directly related to the protected Charter right of the workers to associate together to achieve their common goals" - In the analysis under s. 1 of the Charter, the court concluded that the Attorney General was not able to justify the infringements of free expression arising from the Act - The court issued a declaration that the application of the Act to the activities of the union was unconstitutional, and quashed the Adjudicator's order - See paragraphs 60 to 68.

### **Trade Regulation - Topic 9404**

Protection of personal information and electronic documents - Application and interpretation of legislation - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its s. 2 Charter rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal held that the Union had established a prima facie breach of its s. 2 Charter rights - There were many aspects of the Adjudicator's order that had a direct impact on the right of the union to free expression - Labour picketing incorporated an expressive component - "The picket line itself is an expressive activity. It is also appropriate to note that the expressive activity at issue is directly related to the protected Charter right of the workers to associate together to achieve their common goals" - In the analysis under s. 1 of the Charter, the court concluded that the Attorney General was not able to justify the infringements of free expression arising from the Act - The court issued a declaration that the application of the Act to the activities of the union was unconstitutional, and quashed the Adjudicator's order - See paragraphs 60 to 68.

### **Trade Regulation - Topic 9443**

Protection of personal information and electronic documents - Protection, collection or disclosure of personal information - When appropriate - An Adjudicator under Alberta's Personal Information Protection Act concluded that the respondent Union did not have the right to collect and use recordings of persons crossing its picket line - The Union applied for judicial review, arguing that the Adjudicator's interpretation of the Act violated its s. 2 Charter rights - The chambers judge agreed, and struck down certain portions of the Act - The Attorney General appealed - The Alberta Court of Appeal held

that the Union had established a prima facie breach of its s. 2 Charter rights - There were many aspects of the Adjudicator's order that had a direct impact on the right of the union to free expression - Labour picketing incorporated an expressive component - "The picket line itself is an expressive activity. It is also appropriate to note that the expressive activity at issue is directly related to the protected Charter right of the workers to associate together to achieve their common goals" - In the analysis under s. 1 of the Charter, the court concluded that the Attorney General was not able to justify the infringements of free expression arising from the Act - The court issued a declaration that the application of the Act to the activities of the union was unconstitutional, and quashed the Adjudicator's order - See paragraphs 60 to 68.