decisions. A party seeking production needs strong, clear, and cogent evidence of relevance—and should consider whether its evidence will, objectively, meet the threshold. Facebook production orders are becoming more common. In the past, courts in some provinces have simply inferred that due to Facebook's social nature, a completely private Facebook profile will contain some content relevant to a claimant's post-accident functioning—but the *Conrod* and *Lauschway* decisions support the view that going forward, the court will require more than this simple inference for a production order.

So Is Privacy. Not all "electronic information" is equal—at least in terms of production. Courts generally seem more willing to order a party to produce usage records than content like photographs or private Facebook messages, based on (arguably) reduced privacy interests. For example, courts have ordered production of computer metadata, hard drives, or records from Internet service providers to ascertain how often or long someone is online or her capability to performing sedentary work. *Lauschway* and*Conrod* seem to follow that trend—and emphasize that courts won't accept that a litigant grants a defendant licence to delve into aspects of her private life that don't require it to properly dispose of the litigation by merely claiming the damages the law allows. Rather, courts will carefully scrutinize the evidence and terms of any proposed order, before determining whether an order is warranted.

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1 [2014] N.S.J. No. 107, 2014 NSCA 7.

2 [2014] N.S.J. No. 25, 2014 NSSC 35.

Fixing Alberta's Privacy Legislation

Bob Pakrul
Partner
Alexander Holburn Beaudin + Lang LLP

In November 2013, the Supreme Court of Canada declared Alberta's *Personal Information Protection Act* [*PIPA*][1] to be unconstitutional but suspended the effect of the ruling for 12 months to permit legislative changes to be brought forward to remedy the deficiencies. The case of *Alberta (Information and Privacy Commissioner) v. United Food and Commercial Workers, Local 401* [*United Food*][2] successfully challenged the constitutionality of *PIPA* in the context of picket line surveillance in a labour dispute. *PIPA*'s restrictions on the collection, use, and disclosure of personal information were seen as violating the union's freedom of expression rights in this labour context. At the request of the Alberta government, the court declared the entire *PIPA* unconstitutional, rather than attempting to determine which particular legislative provisions might need to be modified.

In December 2013, Alberta's Information and Privacy Commissioner publicly commented on her assessment of what needs to be done to amend *PIPA* in response to this case. In a letter addressed to the Alberta government, she suggests that only very limited changes are appropriate or necessary.

Varying degrees of scope of amendment could possibly be advanced to deal with the constitutional issues arising from *PIPA*'s structure, which establishes a broad prohibition against any information

collection, use, or disclosure absent consent, providing only selected and specified statutory exemptions. These potential degrees of scope of amendment included

a) narrow amendments exempting information collection in a picket line scenario to the extent related to union expressive rights in that narrow context [the particular facts of the *United Food* case];

b) broader amendments exempting information collection in any context of labour dispute to the extent related to union expressive rights, even if not in the context of a picket line;

c) even broader amendments exempting information collection in the labour relations sector generally to the extent related to any party's expressive rights, even if there is no labour dispute;

d) very broad amendments exempting information collection generally both within and outside the labour relations context in any situation where there are legitimate rights of expression, which are considered to be protected by the Charter of Rights and Freedoms.

In her letter, Alberta's commissioner advocates that the most appropriate scope of change is the narrowest one, set out in para. a) above. She believes that this would preserve the delicate balance between freedom of expression rights and legitimate privacy expectations of individuals, which *PIPA* is designed to protect. She also suggests that given the imposed timeline for rectification, this specific and narrow amendment can be made without waiting for the context of a more comprehensive and general review of the *PIPA* legislation.

In January 2014, the Alberta government announced that it would be bringing forward only selective amendments to *PIPA* in the fall legislative session, which would focus on and be restricted to unions and picketing. A more comprehensive review of the *PIPA* legislation would no doubt occur at a later date. This effectively defers any debate on the extent to which *PIPA* should accommodate other and broader rights of expression beyond the narrow facts of the *United Food* case.

The Alberta amendments will also be observed with interest by other governments. British Columbia has its own version of *PIPA*, which is very similar in structure to the Alberta legislation. Although not strictly bound by the November 2014 deadline, British Columbia would be expected to implement changes to its own *PIPA* law, closely tracking the process that occurs in Alberta. The federal private sector privacy law, the *Personal Information Protection and Electronic Documents Act* [*PIPEDA*],[3] is not modelled on the *PIPA* structure but does contain privacy restrictions that are substantially similar. Some remedial amendments to the *PIPEDA* law might be expected as well. It is not known how that federal process, if it occurs, would harmonize with current efforts to update *PIPEDA*, including the recent introduction of the *Digital Privacy Act* [Bill S-4] in the Canadian Senate.

Finally, the status of all personal information protection laws enacted in Canada has now been somewhat overshadowed by an initiative in the European Union to re-examine Canadian legislation in this area to assess how closely it meets evolving privacy standards in the European Union. Stay tuned.

[*Editor's note*: The article was originally published on the *Information + Privacy Law Blog* on February 14, 2014.]

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1 SA 2003, c. P-6.5.
2 [2013] S.C.J. No. 62, 2013 SCC 62.
3 S.C. 2000, c. 5.