

**IN THE SUPREME COURT OF CANADA
(ON APPEAL FROM THE COURT OF APPEAL OF ALBERTA)**

BETWEEN:

INFORMATION AND PRIVACY COMMISSIONER

APPELLANT

-and-

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 401

RESPONDENT

AND BETWEEN:

ATTORNEY GENERAL OF ALBERTA

APPELLANT

-and-

UNITED FOOD AND COMMERCIAL WORKERS, LOCAL 401

RESPONDENT

-and-

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PART I: OVERVIEW

1. The *Personal Information Protection Act*, S.A. 2003, c. P-6.5 (the “*Act*”), and the *Personal Information Protection Act Regulation*, Alta Reg. 366/2003, violate s. 2(b) of the *Canadian Charter of Rights and Freedoms* by restricting a union’s ability to collect, use or disclose personal information during the course of a lawful strike. That violation cannot be justified pursuant to s. 1 of the *Charter*.
2. Picketing is expressive activity. It is a primary means by which a union communicates to its members, the picketed employer, those who would do business with the employer, those who would cross the picket line to perform the striking employees’ work, and the general public, about the labour dispute giving rise to the picket line and its aims in bargaining. By its picket line, the union seeks to dissuade people from crossing it to do business with the employer.
3. A union must be able to collect, use and disclose information about picket line activity in order to further its lawful collective bargaining aims. The *Act* prevents unions from collecting, using and disclosing information about picket line activity (with narrow exceptions which are not relevant here). In particular, the *Act* prevents unions from recording the activity of persons choosing to cross a lawful picket line, and using the recordings made for the purposes of advancing its legal strike.
4. Privacy legislation such as the *Act* protects persons from the unauthorized collection, use and disclosure of personal information. Protection of a person’s ability to control personal information about themselves is a pressing and substantial purpose, capable, in the appropriate circumstances, of justifying the infringement of a constitutionally protected right.
5. The *Act* fails, however, to strike an appropriate, or indeed any, balance between the protection of privacy and freedom of expression. The *Act* contains no mechanism by which the Commissioner can assess competing claims to privacy and freedom of expression.
6. The absolute prohibition on a union recording the activity of persons choosing to cross its lawful picket line cannot be justified. Choosing to cross a lawful picket line is itself expressive activity, undertaken in a public place. Persons choosing to engage in such expressive, public

activity do not have a sufficient expectation of privacy to justify prohibiting a trade union from recording that activity, and using the information recorded for the purposes of furthering their collective bargaining goals.

7. The BCCLA relies on the facts as set forth by the Appellants.

PART II: BCCLA'S POSITION ON THE APPELLANTS' QUESTIONS

8. The Chief Justice stated the following Constitutional Questions for this appeal:

- 1) Do the *Personal Information Protection Act*, S.A. 2003, c. P-6.5 and the *Personal Information Protection Act Regulation*, Alta Reg. 366/2003 violate s. 2(b) of the *Canadian Charter of Rights and Freedoms* insofar as they restrict a union's ability to collect, use or disclose personal information during the course of a lawful strike?
- 2) If so, is the infringement a reasonable limit prescribed by law, which can be demonstrably justified in a free and democratic society under s. 1 of the *Canadian Charter of Rights and Freedoms*?

9. The *Act* and *Regulation* violate a union's freedom of expression, protected by s. 2(b) of the *Charter*, by restricting a union's ability to collect, use or disclose personal information during the course of a lawful strike. In the BCCLA's submission, a union's ability to collect, use and disclose information about picket line activity is crucial to its lawful purposes, and the *Act's* prohibitions strike at core expressive rights.

10. The BCCLA submits that the infringement of a union's freedom of expression is not demonstrably justified in a free and democratic society under s. 1 of the *Charter*.

11. In addition, the Appellant, the Information and Privacy Commissioner of Alberta, stated a final question:

What is the administrative tribunal's role when its enabling legislation is the subject of a constitutional challenge, and it does not have the power to decide constitutional questions? (Appellant Information and Privacy Commissioner of Alberta Factum, para. 34)

12. The BCCLA agrees with the Information and Privacy Commissioner of Alberta that her constitutional incapacity, when faced with a constitutional challenge to her empowering statute, leaves her, and more importantly the parties appearing before her, in an untenable position. The

BCCLA submits that the Court should ensure that its decision in this case provides guidance with respect to how the Legislature can correct this untenable situation by ensuring that parties can have their constitutional questions properly addressed at first instance.

PART III: ARGUMENT

A. Recording picket line activity is expressive conduct worthy of the highest protection

13. Recording activity related to a lawful picket line is an exercise of freedom of expression and one which is closely related to the expressive activity of picketing itself. As stated by this Court in *R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.*, [2002] 1 S.C.R. 156 (“*Pepsi*”), “[p]icketing, however defined, always involves expressive action. As such, it engages one of the highest constitutional values: freedom of expression, enshrined in s. 2(b) of the Charter.” (para. 32)

14. This Court held in *Pepsi* “[f]ree expression is particularly critical in the labour context.” (para. 33) As Cory J. observed for the Court in *U.F.C.W., Local 1518 v. KMart Canada Ltd.*, [1999] 2 S.C.R. 1083 (“*KMart*”), “[f]or employees, freedom of expression becomes not only an important but an essential component of labour relations.” (para. 25)

15. Freedom of expression in the labour context serves broad societal value, not merely the economic interests of unions and workers. As stated in *Pepsi*:

Free expression in the labour context benefits not only individual workers and unions, but also society as a whole... As part of the free flow of ideas which is an integral part of any democracy, the free flow of expression by unions and their members in a labour dispute brings the debate on labour conditions into the public realm. (para. 35)

16. Recording conduct related to picketing, and in particular recording the conduct of those who choose to cross a lawful picket line, is itself expressive activity, as are the various uses to which such recordings might be put, including their inclusion in leaflets and posters, use in educational materials for union members and other unions, posting on the internet and so forth.

17. In particular, and contrary to the suggestion made by the Appellant Information and Privacy Commissioner at para. 38, the collection of personal information by recording the act of crossing the picket line is itself an expressive act. First, the very act of recording persons

crossing the picket line, and posting signs advising them of that fact and the uses to which the recordings may be put is an expressive act. It communicates that “we are watching you and we don’t want you to cross our picket line.” Second, the collection of the information by recording is part of a single continuum of expressive activity culminating in the dissemination of the images recorded. The taking of the video or still image can no more be distinguished from its publication in a leaflet than the taking of the photograph in *Aubry* could be distinguished from its publication.

18. Picketing is used as an expressive means to attempt to persuade persons not to cross the picket line and do business with the struck employer. As stated by this Court in *Pepsi*, “its purposes are usually two-fold: first, to convey information about a labour dispute in order to gain support for its cause from other workers, clients of this struck employer, or the general public, and second, to put social and economic pressure on the employer and, often by extension, on its suppliers and clients”. (para. 27) Attempting to persuade persons not to cross a lawful picket line picketing is political expression, entitled to the highest level of constitutional protection: *KMart*, para. 29.

19. The acts of recording and potentially using or otherwise distributing recordings of persons crossing the picket line, and of advising such persons through signs posted at the picket line of the fact they are being recorded and the potential uses of those recordings, are persuasive acts of expression protected by s. 2(b) of the *Charter*.

B. A contextual approach must be taken in balancing privacy and freedom of expression

20. Privacy legislation, such as Alberta’s *Act*, seeks to protect privacy by protecting persons’ right to control personal information about themselves. The BCCLA accepts that this is a pressing and substantial objective capable, in the appropriate circumstances, of justifying an infringement of a constitutionally protected right or freedom.

21. While protecting persons’ right to control personal information about themselves, as an aspect of their right to privacy, is an important objective, it does not create an absolute right to the control of one’s image.

22. In *Godbout v. Longueuil (City)*, [1997] 3 S.C.R. 844, this Court considered the nature of the right to privacy encompassed within the s. 7 right to liberty. As stated by La Forest J.:

...[t]he right to liberty enshrined in s. 7 of the *Charter* protects within its ambit the right to an irreducible sphere of personal autonomy wherein individuals may make inherently private choices free from state interference. I must emphasize here that ... I do not by any means regard this sphere of autonomy as being so wide as to encompass any and all decisions that individuals might make in conducting their affairs ... Moreover, I do not even consider that the sphere of autonomy includes within its scope every matter that might, however vaguely, be described as "private". Rather, as I see it, the autonomy protected by the s. 7 right to liberty encompasses only those matters that can properly be characterized as fundamentally or inherently personal such that, by their very nature, they implicate basic choices going to the core of what it means to enjoy individual dignity and independence. (para. 66)

23. In *Aubry v. Éditions Vice-Versa*, [1998] 1 S.C.R. 591, this Court considered *Godbout* in concluding that s. 5 of the *Quebec Charter of Human Rights and Freedoms* protected a sphere of individual autonomy that included the ability to control the use made of one's image: para. 52. The Appellants rely upon *Aubry* for the proposition that the complainants in the case on appeal had a right of ownership in the images that were taken by the Union.

24. In the BCCLA's respectful submission, *Aubry* cannot bear the weight placed upon it in the Appellants' submissions. As stated by the majority in that case, the matter was governed by the *Civil Code of Lower Canada*: para. 39. Further, as the majority stated, "the case at bar raises a problem of civil law and it is in light of that law that it must be resolved" (para. 49). *Aubry* was not a case considering the constitutionality of a statutory provision violating a union's freedom of expression.

25. Further, in *Aubry*, the majority recognized that the civil right to privacy was not absolute, and is limited by freedom of expression:

The public's right to information, supported by freedom of expression, places limits on the right to respect for one's private life in certain circumstances. This is because the expectation of privacy is reduced in certain cases.

... The balancing of the rights in question depends both in the nature of the information and on the situation of those concerned. This is a question that depends on the context. Thus, it is generally recognized that certain aspects of the private life of a person who is engaged in a public activity or has acquired a certain notoriety can become matters of public interest...

In the context of freedom of expression, which is at the heart of the public's interest in being informed, the person's express or tacit consent to the publication of his or her image must, therefore, be taken into account. (paras. 58-60)

26. Thus, in a circumstance where a person's right to privacy, and in particular, the right to control personal information about themselves, including their image, comes into conflict with another person's freedom of expression, a contextual analysis must be undertaken. Quite simply, a person's right to privacy is different in the context of a student, as in *Aubry*, unknowingly having her photograph taken while sitting on the front steps of a building, as opposed to a person crossing a picket line, knowing that they are being recorded in the act. Context counts.

27. Where a *prima facie* infringement of s. 2(b) is established as a result of the application of legislation intended to protect personal information, the BCCLA submits that a purposive and contextual approach must be taken to determine whether such an infringement is demonstrably justifiable in a free and democratic society, and thus saved under s. 1 of the *Charter*.

28. The Appellant Attorney General of Alberta criticizes the Court of Appeal's reasoning as being "difficult to map precisely onto the three stages of the *Oakes* test." (para. 40) The BCCLA disagrees, and submits that it is abundantly clear that the Court of Appeal found that the *Act* failed the proportionality analysis, both because it fails to impair freedom of expression as little as possible and because the deleterious effects of the *Act* outweigh its benefits. The manner in which the Court undertook its s. 1 analysis is entirely consistent with the flexible, contextual approach mandated by this Court in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1995] 3 S.C.R. 199, paras. 62-64.

29. The BCCLA submits that, in considering whether the infringement of a union's freedom of expression can be justified under s. 1, a number of contextual factors must be considered which include:

- i. The fact that the recording of the information in question occurred in the context of a lawful labour dispute and a lawful picket line, given the importance which the law ascribes to freedom of expression in that context;
- ii. The fact that such activity occurred in a public place in which a person has a sharply diminished reasonable expectation of privacy;

- iii. The fact that the act of choosing to cross a picket line is itself an expressive act which may have a significant political component. As recognized by this Court in *KMart*, drawing upon the earlier judgment of Chief Justice Dickson in *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214:

Picketing sends a strong and automatic signal: do not cross the line lest you undermine our struggle; this time we ask you to help us by not doing business with our employer; next time, when you are on strike, we will respect your picket line and refuse to conduct business with your employer. (para. 40)

Given the universally understood message conveyed by a picket line, the decision to cross a picket line is itself an expressive act that communicates that, for whatever reason, the person crossing the picket line considers their reason for doing so to be of greater value than respecting the picket line itself. The BCCLA submits that persons choosing to engage in public expressive activity such as crossing a picket line cannot then seek to prevent others from engaging in subsequent expressive activity about the very expressive activity in which they have chosen to engage;

- iv. The fact that the person whose personal information was collected, used or disclosed was aware of the collection of that information, and being aware of that collection, chose to engage in conduct permitting that collection to occur. While choosing to engage in conduct knowing that your conduct will be recorded may not be the same thing as consenting to its recording, it is, in the BCCLA's respectful submission, a contextual factor which can and should be taken into account in determining whether the privacy rights of the person choosing to engage in that conduct despite that knowledge outweigh the expressive rights of those who would seek to record it;
- v. The reasons why the person whose personal information is being collected continues to engage in the activity, despite knowing their activity is being recorded, and the relationship, if any, between that person and the person collecting their personal information. There is a significant difference, for example, between choosing to cross a picket line because one wants to do business with the struck employer, on the one hand, and being recorded by a state agent in a government office which one must enter in order to obtain government services, on the other: see *R. v. Wong*, [1990] 3 S.C.R. 36, pp. 48-

55, cited in *Aubry, supra*, para. 8. The former encompasses a degree of freedom of choice lacking in the latter. Further, there is a disparity in power present in the governmental office scenario lacking in choosing to cross a picket line. Crucially, one is private action, while the other is state action and, as LaForest J. stated in *Wong*, “we must be prepared to live with the first risk, but, in a free and open society, need not tolerate the spectre of the second”.

- vi. The uses to which the personal information in question will be put. Some uses to which personal information may be put may be of greater or lesser societal value than others. Picketing is a constitutionally protected activity, and, as recognized by this Court in *KMart*, “[s]ociety has long since acknowledged that a public interest is served by permitting union members to bring economic pressure to bear upon their respective employers through peaceful picketing. . . .” (para. 39) By extension, recording and distributing images of those who choose to cross a peaceful picket line has significant societal value.

C. The *Act* fails to provide a mechanism enabling an adjudicator to balance freedom of expression with the protection of privacy

30. An adjudicator under the *Act* lacks jurisdiction to consider constitutional questions. Section 11 of the *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, Chapter A-3, grants jurisdiction to decide a question of constitutional law only to decision-makers listed in the *Designation of Constitutional Decision Makers Regulation*, A.R. 69/2006. The Information and Privacy Commissioner is not listed, and therefore lacked jurisdiction to consider the constitutionality of the *Act* or its application to the activities of the Union in issue here.

31. The constitutionality of the statutory negation of constitutional jurisdiction is not directly raised by the parties before this Court, although, in the BCCLA’s submission, serious questions exist about the constitutionality of eliminating, by statute, the constitutional jurisdiction which an adjudicator with the power to decide questions of law would otherwise have pursuant to this Court’s decision in *Nova Scotia (Workers’ Compensation Board) v. Martin; Nova Scotia (Workers’ Compensation Board) v. Laseur*, [2003] 2 S.C.R. 504.

32. This case illustrates some of the problems which arise when an administrative tribunal lacks jurisdiction to consider constitutional questions¹, including the fact that the parties were unable to have the entirety of the dispute between them adjudicated at first instance, and the Courts on judicial review lacking the benefit of the adjudicator's consideration of the parties' arguments about the Union's freedom of expression claims. Courts do not have a monopoly on the adjudication of *Charter* issues, but the Commissioner's lack of constitutional jurisdiction has that effect in this case: *Doré v. Barreau du Québec*, [2012] 1 S.C.R. 395, para. 30.

33. The lack of any mechanism by which the Commissioner could weigh and assess the competing claims to privacy and freedom of expression raised in this case has affected the remedies ordered by the Courts below. In particular, the Court of Appeal declined to declare the *Act* unconstitutional, in whole or in part, instead declaring that the application of the statute to the activities of the Union was unconstitutional. It did so on the basis that:

It is possible that all of the impugned provisions of the *Act* might have a constitutional application in some cases so long as protected rights are not engaged. There is no obvious way to prune this statute so as to make it constitutional. (para. 80)

34. The Court of Appeal went on to state that it was within the mandate of the Legislature to determine what amendments are required to bring the *Act* in line with the *Charter*.

35. An absolute prohibition on the collection, use and disclosure of personal information cannot be constitutionally sustained in circumstances where that prohibition infringes freedom of expression.

36. Under the *Act*, the adjudicator is left with no discretionary leeway to decide whether the collection of personal information should be permitted, despite a violation of the *Act*. In the circumstances, a "*Charter*-values" approach, as discussed in *Doré, supra*, is not available.

37. The BCCLA submits that while it is within the Legislature's mandate to determine what amendments are required to bring the *Act* in line with the *Charter*, this Court should make clear

¹ The Alberta Information and Privacy Commissioner, and other statutory decision-makers not listed under the *Authorities Designation Regulation* are not alone in being statutorily prevented from deciding constitutional issues which may arise in the course of their adjudication of cases before them. Sections 44 and 45 of the *British Columbia Administrative Tribunals Act*, S.B.C. 2004 c.45, for example, have the same effect on those administrative tribunals to which they apply.

that the *Act* must contain a mechanism by which an adjudicator may assess competing claims of privacy and freedom of expression. Further, within that mechanism, an adjudicator must be directed to give due consideration to the impact of the *Act's* provisions on constitutionally protected freedom of expression.

PART IV: SUBMISSIONS REGARDING COSTS

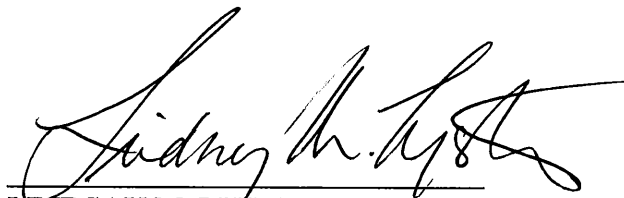
38. Pursuant to the Order of Justice Rothstein dated April 30, 2013, the interveners shall pay to the appellants and respondents any additional disbursements occasioned by their interventions. Beyond this, the BCCLA requests that no order for costs be made against it and seeks no costs.

PART V: REQUEST FOR PERMISSION TO PRESENT ORAL ARGUMENT

39. The BCCLA seeks leave to present ten minutes of oral argument at the hearing of the within appeal.

ALL OF WHICH IS RESPECTFULLY SUBMITTED

May 15, 2013
Vancouver, British Columbia



LINDSAY M. LYSTER
Counsel for the Intervener, British Columbia
Civil Liberties Association

PART VI: TABLE OF AUTHORITIES

Jurisprudence	Paragraph(s)
<i>Aubry v. Éditions Vice-Versa</i> , [1998] 1 S.C.R. 591 (Appellant Information and Privacy Commissioner's Book of Authorities, Tab 3)	17, 23, 24, 25, 26, 29(v)
<i>B.C.G.E.U. v. British Columbia (Attorney General)</i> , [1988] 2 S.C.R. 214	29(iii)
<i>Doré v. Barreau du Québec</i> , [2012] 1 S.C.R. 395	32, 36
<i>Godbout v. Longueuil (City)</i> , [1997] 3 S.C.R. 844	22, 23
<i>Nova Scotia (Workers' Compensation Board) v. Martin; Nova Scotia (Workers' Compensation Board) v. Laseur</i> , [2003] 2 S.C.R. 504	31
<i>RJR-MacDonald Inc. v. Canada (Attorney General)</i> , [1995] 3 S.C.R. 199	28
<i>R. v. Wong</i> , [1990] 3 S.C.R. 36	29(v)
<i>R.W.D.S.U., Local 558 v. Pepsi-Cola Canada Beverages (West) Ltd.</i> , [2002] 1 S.C.R. 156 (Appellant Information and Privacy Commissioner's Book of Authorities, Tab 22)	13, 14, 15, 18
<i>U.F.C.W., Local 1518 v. KMart Canada Ltd.</i> , [1999] 2 S.C.R. 1083	14, 18, 29(iii), 29(vi)

PART VII: STATUTORY PROVISIONS

	Paragraph(s)
<i>Administrative Procedures and Jurisdiction Act</i> , R.S.A. 2000, c. A-3, s. 11	
<i>Administrative Tribunals Act</i> , S.B.C. 2004, c. 45, ss. 44, 45	32
<i>Canadian Charter of Rights and Freedoms, The Constitutional Act, 1982</i> being schedule B to the <i>Canada Act 1982 (UK)</i> , c. 11 ss. 1, 2 (b)	1, 8, 9, 10, 13, 19, 27, 28, 29, 32, 34, 37
<i>Designation of Constitutional Decision Makers Regulation</i> , Alta Reg. 69/2006	30
<i>Personal Information Protection Act</i> , S.A. 2003, c. P-6.5	1, 3, 4, 5, 8, 9, 20, 28, 30, 33, 34, 36, 37
<i>Personal Information Protection Act Regulation</i> , Alta Reg. 366/2003	1, 8, 9

The statutory provisions legislation directly at issue are appended. The cited sections of the B.C. *Administrative Tribunals Act* are included in the BCCLA's Book of Authorities.



Province of Alberta

ADMINISTRATIVE PROCEDURES AND JURISDICTION ACT

Revised Statutes of Alberta 2000
Chapter A-3

Current as of July 1, 2012

Office Consolidation

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Alberta Queen's Printer
5th Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
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(b) the reasons for the decision.

RSA 1980 cA-2 s7

Requirements of other Acts

8 Nothing in this Part relieves an authority from complying with any procedure to be followed by it under any other Act relating to the exercise of its statutory power.

RSA 2000 cA-3 s8;2005 c4 s6

Rules of evidence

9 Nothing in this Part

- (a) requires that any evidence or allegations of fact made to an authority be made under oath, or
- (b) requires any authority to adhere to the rules of evidence applicable to courts of civil or criminal jurisdiction.

RSA 2000 cA-3 s9;2005 c4 s7

Part 2 Jurisdiction to Determine Questions of Constitutional Law

Definitions

10 In this Part,

- (a) "court" means the Court of Queen's Bench of Alberta;
- (b) "decision maker" means an individual appointed or a body established by or under an Act of Alberta to decide matters in accordance with the authority given under that Act, but does not include
 - (i) The Provincial Court of Alberta or a judge of that Court,
 - (ii) a justice of the peace conferred with the authority to determine a question of constitutional law under the *Provincial Court Act*,
 - (iii) the Court of Queen's Bench of Alberta or a judge or master in chambers of that Court, or
 - (iv) the Court of Appeal of Alberta or a judge of that Court;
- (c) "designated decision maker" means a decision maker designated under section 16(a) as a decision maker that

has jurisdiction to determine one or more questions of constitutional law under section 16(b);

- (d) "question of constitutional law" means
- (i) any challenge, by virtue of the Constitution of Canada or the *Alberta Bill of Rights*, to the applicability or validity of an enactment of the Parliament of Canada or an enactment of the Legislature of Alberta, or
 - (ii) a determination of any right under the Constitution of Canada or the *Alberta Bill of Rights*.

2005 c4 s8;2011 c20 s8

Lack of jurisdiction

11 Notwithstanding any other enactment, a decision maker has no jurisdiction to determine a question of constitutional law unless a regulation made under section 16 has conferred jurisdiction on that decision maker to do so.

2005 c4 s8

Notice of question of constitutional law

12(1) Except in circumstances where only the exclusion of evidence is sought under the *Canadian Charter of Rights and Freedoms*, a person who intends to raise a question of constitutional law at a proceeding before a designated decision maker that has jurisdiction to determine such a question

- (a) must provide written notice of the person's intention to do so at least 14 days before the date of the proceeding
 - (i) to the Attorney General of Canada,
 - (ii) to the Minister of Justice and Attorney General of Alberta, and
 - (iii) to the parties to the proceeding,

and

- (b) must provide written notice of the person's intention to do so to the designated decision maker.

(2) Until subsection (1) is complied with, the decision maker must not begin the determination of the question of constitutional law.

(3) Nothing in this section affects the power of a decision maker to make any interim order, decision, directive or declaration it

considers necessary pending the final determination of any matter before it.

(4) The notice under subsection (1) must be in the form and contain the information provided for in the regulations.

2005 e4 s8

Referral of question of constitutional law

13(1) With respect to a question of constitutional law over which a designated decision maker has jurisdiction and in respect of which a notice has been given under section 12, if the designated decision maker is of the opinion that the court is a more appropriate forum to decide the question, the designated decision maker may, instead of deciding the question,

- (a) direct the person who provided the notice under section 12 to apply to the court to have the question determined by that court, or
- (b) state the question of constitutional law in the form of a special case to the court for the opinion of the court.

(2) Before acting under subsection (1)(a) or (b), the designated decision maker may conduct any inquiries the designated decision maker considers necessary.

(3) Where the designated decision maker acts under subsection (1)(a) or (b), the designated decision maker must, unless otherwise directed by the court, suspend the proceeding, or any part of the proceeding, as it relates to the question to be heard by the court under subsection (1) until the decision of the court has been given.

(4) A question of constitutional law in respect of which an application has been directed to be made to the court under subsection (1)(a) must be brought on for hearing as soon as practicable.

(5) The court must hear and determine the question of constitutional law submitted to it under this section and give its decision as soon as practicable.

(6) The designated decision maker may and, at the request of the court, shall provide the court with any record and documentation that may assist the court in determining the question of constitutional law submitted to it under this section.

2005 e4 s8

**Attorney General of Canada and Minister of Justice
and Attorney General of Alberta**

14 In any proceeding relating to the determination of a question of constitutional law before a decision maker or before the court under this Part, or in any subsequent proceeding on appeal or judicial review,

- (a) the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta are entitled as of right to be heard, in person or by counsel,
- (b) no person other than the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta shall, on behalf of Her Majesty in right of Alberta, or on behalf of an agent of Her Majesty in right of Alberta, appear and participate, and
- (c) if the Minister of Justice and Attorney General of Alberta or counsel designated by the Minister of Justice and Attorney General of Alberta appears, the Minister of Justice and Attorney General of Alberta is deemed to be a party and has the same rights as any other party.

2005 c4 s8

Transitional

15 Where proceedings to determine a question of constitutional law have commenced but have not been concluded before the coming into force of this Part, the decision maker hearing the question may continue the proceedings as if this Part had not come into force.

2005 c4 s8

Regulations

16 The Lieutenant Governor in Council may make regulations

- (a) designating decision makers as having jurisdiction to determine questions of constitutional law;
- (b) respecting the questions of constitutional law that decision makers designated under a regulation made under clause (a) have jurisdiction to determine;
- (c) respecting the referral of questions of constitutional law to the court;
- (d) respecting the form and contents of the notice under section 12(1).

RSA 2000 cA-3 s10;2005 c4 s8

LAW LIBRARY
COURTHOUSE
FOOT MOUNTAIN, ALBERTA
8211

ELIZABETH II



Canada Act 1982

1982 CHAPTER 11

ANNEXE A—SCHEDULE A

An Act to give effect to a request by the Senate and House of Commons of Canada

Loi donnant suite à une demande du Sénat et de la Chambre des communes du Canada

Whereas Canada has requested and consented to the enactment of an Act of the Parliament of the United Kingdom to give effect to the provisions hereinafter set forth and the Senate and the House of Commons of Canada in Parliament assembled have submitted an address to Her Majesty requesting that Her Majesty may graciously be pleased to cause a Bill to be laid before the Parliament of the United Kingdom for that purpose.

Sa Très Excellente Majesté la Reine, considérant :

qu'à la demande et avec le consentement du Canada, le Parlement du Royaume-Uni est invité à adopter une loi visant à donner effet aux dispositions énoncées ci-après et que le Sénat et la Chambre des communes du Canada réunis en Parlement ont présenté une adresse demandant à Sa Très Gracieuse Majesté de bien vouloir faire déposer devant le Parlement du Royaume-Uni un projet de loi à cette fin,

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

sur l'avis et du consentement des Lords spirituels et temporels et des Communes réunis en Parlement, et par l'autorité de celui-ci, édicte :

Constitution Act, 1982 enacted

1. The *Constitution Act, 1982* set out in Schedule B to this Act is hereby enacted for, and shall have the force of law in Canada and shall come into force as provided in that Act.

1. La *Loi constitutionnelle de 1982*, énoncée à l'annexe B, est édictée pour le Canada et y a force de loi. Elle entre en vigueur conformément à ses dispositions.

Adoption de la *Loi constitutionnelle de 1982*

Termination of power to legislate for Canada

2. No Act of the Parliament of the United Kingdom passed after the *Constitution Act, 1982* comes into force shall extend to Canada as part of its law.

2. Les lois adoptées par le Parlement du Royaume-Uni après l'entrée en vigueur de la *Loi constitutionnelle de 1982* ne font pas partie du droit du Canada.

Cessation du pouvoir de légiférer pour le Canada

French version

3. So far as it is not contained in Schedule B, the French version of this Act is set out in Schedule A to this Act and has the same authority in Canada as the English version thereof.

3. La partie de la version française de la présente loi qui figure à l'annexe A a force de loi au Canada au même titre que la version anglaise correspondante.

Version française

Short title

4. This Act may be cited as the *Canada Act, 1982*.

4. Titre abrégé de la présente loi : *Loi de 1982 sur le Canada*.

Titre abrégé

SCHEDULE B
CONSTITUTION ACT, 1982

PART I

CANADIAN CHARTER OF RIGHTS AND
FREEDOMS

Whereas Canada is founded upon principles that recognize the supremacy of God and the rule of law;

Guarantee of Rights and Freedoms

1. The *Canadian Charter of Rights and Freedoms* guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental Freedoms

2. Everyone has the following fundamental freedoms:

- (a) freedom of conscience and religion;
- (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
- (c) freedom of peaceful assembly; and
- (d) freedom of association.

Democratic Rights

3. Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership therein.

4. (1) No House of Commons and no legislative assembly shall continue for longer than five years from the date fixed for the return of the writs at a general election of its members.

(2) In time of real or apprehended war, invasion or insurrection, a House of Commons may be continued by Parliament and a legislative assembly may be continued by the legislature beyond five years if such continuation is not opposed by the votes of more than one-third of the members of the House

ANNEXE B

LOI CONSTITUTIONNELLE DE 1982

PARTIE I

CHARTRE CANADIENNE DES DROITS ET
LIBERTÉS

Attendu que le Canada est fondé sur des principes qui reconnaissent la suprématie de Dieu et la primauté du droit :

Garantie des droits et libertés

1. La *Charte canadienne des droits et libertés* garantit les droits et libertés qui y sont énoncés. Ils ne peuvent être restreints que par une règle de droit, dans des limites qui soient raisonnables et dont la justification puisse se démontrer dans le cadre d'une société libre et démocratique.

Libertés fondamentales

2. Chacun a les libertés fondamentales suivantes :

- a) liberté de conscience et de religion;
- b) liberté de pensée, de croyance, d'opinion et d'expression, y compris la liberté de la presse et des autres moyens de communication;
- c) liberté de réunion pacifique;
- d) liberté d'association.

Droits démocratiques

3. Tout citoyen canadien a le droit de vote et est éligible aux élections législatives fédérales ou provinciales.

4. (1) Le mandat maximal de la Chambre des communes et des assemblées législatives est de cinq ans à compter de la date fixée pour le retour des brefs relatifs aux élections générales correspondantes.

(2) Le mandat de la Chambre des communes ou celui d'une assemblée législative peut être prolongé respectivement par le Parlement ou par la législature en question au-delà de cinq ans en cas de guerre, d'invasion ou d'insurrection, réelles ou appréhendées, pourvu que cette prolongation ne fasse pas

Rights and freedoms in Canada

Fundamental freedoms

Democratic rights of citizens

Maximum duration of legislative bodies

Continuation in special circumstances

Droits et libertés au Canada

Libertés fondamentales

Droits démocratiques des citoyens

Mandat maximal des assemblées

Prolongations spéciales



Province of Alberta

ADMINISTRATIVE PROCEDURES AND
JURISDICTION ACT

**DESIGNATION OF CONSTITUTIONAL
DECISION MAKERS REGULATION**

Alberta Regulation 69/2006

With amendments up to and including Alberta Regulation 170/2012

Office Consolidation

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10611 - 98 Avenue
Edmonton, AB T5K 2P7
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ALBERTA REGULATION 69/2006

Administrative Procedures and Jurisdiction Act

**DESIGNATION OF CONSTITUTIONAL
DECISION MAKERS REGULATION**

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Schedulés

Definitions

1 In this Regulation,

- (a) "Charter" means the *Canadian Charter of Rights and Freedoms*;
- (b) "labour arbitrator" means
 - (i) a voluntary arbitration board appointed under Part 2, Division 15 of the *Labour Relations Code*;
 - (ii) a compulsory arbitration board appointed under Part 2, Division 16 of the *Labour Relations Code*;
 - (iii) a public emergency tribunal established under Part 2, Division 18 of the *Labour Relations Code*;
 - (iv) an arbitrator, arbitration board or other body referred to in Part 2, Division 22 of the *Labour Relations Code*;
 - (v) a construction industry disputes resolution tribunal under Part 3, Division 6 of the *Labour Relations Code*;
 - (vi) a compulsory arbitration board established under Part 6 of the *Public Service Employee Relations Act*;

- (vii) an arbitrator appointed under Part 7 of the *Public Service Employee Relations Act*,
- (viii) an interest arbitration board established under Part 3 of the *Police Officers Collective Bargaining Act*,
- (ix) an arbitrator, a grievance arbitration board or other body referred to in Part 4 under the *Police Officers Collective Bargaining Act*,
- (c) "Law Society entity" means the Benchers or a panel, committee or subcommittee of the Benchers or any other entity established, by or under the *Legal Profession Act*.

Authorization

2 The decision makers listed in column 1 of the Schedule have jurisdiction to determine the questions of constitutional law set out opposite them in column 2.

Form of notice

3 The notice for the purpose of section 12(1) of the Act is set out in Schedule 2.

Expiry

4 For the purpose of ensuring that this Regulation is reviewed for ongoing relevancy and necessity, with the option that it may be repassed in its present or an amended form following a review, this Regulation expires on January 31, 2016.

Coming into force

5 This Regulation comes into force on the coming into force of section 8 of the *Administrative Procedures Amendment Act, 2005*.

Schedule 1

Column 1	Column 2
Decision Maker	Jurisdiction
Labour Relations Board	all questions of constitutional law
Alberta Energy and Utilities Board	all questions of constitutional law
Law Society entity	all questions of constitutional law
a human rights panel appointed under the <i>Human Rights, Citizenship and Multiculturalism Act</i>	questions of constitutional law arising from the federal or provincial distribution of powers under the Constitution of Canada
labour arbitrators	all questions of constitutional law
Workers' Compensation Board	questions of constitutional law arising from the federal or provincial distribution of powers under the Constitution of Canada
Appeals Commission established under the <i>Workers' Compensation Act</i>	questions of constitutional law arising from the federal or provincial distribution of powers under the Constitution of Canada
Law Enforcement Review Board	questions of constitutional law relating to the Charter
Alberta Securities Commission	questions of constitutional law that relate to the Charter or arising from the federal or provincial distribution of powers under the Constitution of Canada
Alberta Utilities Commission	all questions of constitutional law
Energy Resources Conservation Board	all questions of constitutional law

AR 69/2006 Sched.1;254/2007

Schedule 2

DESIGNATION OF CONSTITUTIONAL
DECISION MAKERS REGULATION

AR 69/2006

Schedule 2(Administrative Procedures and
Jurisdiction Act (section 12))**Notice of Question of Constitutional Law**

To: The Minister of Justice and Solicitor General of Alberta:

To: The Attorney General of Canada:

AND

To: (decision-maker before which question will be raised)

From: _____

Address: _____

Phone: _____

Lawyer (if any): _____

Date of hearing: _____

I intend to raise the following question(s) of constitutional law. Attached
are the details of my argument:

Question(s): _____

I intend to seek the following relief: _____

Estimated time needed to call evidence and make arguments before the
decision-maker: _____

Dated: _____

Signed: _____

Details of Argument

Details are to include:

- The grounds to be argued and reasonable particulars of the proposed argument, including a concise statement of the constitutional principles to be argued, references to any statutory provision or rule on which reliance will be placed and any cases or authorities to be relied upon.
- The law in question, the right or freedom alleged to be infringed or denied or the aboriginal or treaty right to be determined, as the case may be.
- The material and documents that will be filed with the decision-maker.
- List of witnesses intended to be called to give evidence before the decision-maker and the substance of their proposed testimony.

AR 69/2006 Sched. 2;170/2012



Province of Alberta

PERSONAL INFORMATION PROTECTION ACT

Statutes of Alberta, 2003
Chapter P-6.5

Current as of July 1, 2012

Office Consolidation

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Amendments Not in Force

This consolidation incorporates only those amendments in force on the consolidation date shown on the cover. It does not include the following amendments:

2012 cP-39.5 s59 amends s4(3)(g).

2012 cE-0.3 s288 amends s56(1)(a)(iv).

Regulations

The following is a list of the regulations made under the *Personal Information Protection Act* that are filed as Alberta Regulations under the Regulations Act

	Alta. Reg.	Amendments
Personal Information Protection Act		
Personal Information Protection Act.....	366/2003	108/2004, 51/2010

PERSONAL INFORMATION PROTECTION ACT

Chapter P-6.5

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PERSONAL INFORMATION
PROTECTION ACT

2003
Chapter P-6.5

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HER MAJESTY, by and with the advice and consent of the
Legislative Assembly of Alberta, enacts as follows:

Definitions

1(1) In this Act,

- (a) "business contact information" means an individual's name, position name or title, business telephone number, business address, business e-mail address, business fax number and other similar business information;
- (b) "Commissioner" means the Information and Privacy Commissioner appointed under the *Freedom of Information and Protection of Privacy Act*;
- (c) "credit reporting organization" means a reporting agency as defined in Part 5 of the *Fair Trading Act*;
- (d) "domestic" means related to home or family;
- (e) "employee" means an individual employed by an organization and includes an individual who performs a service for or in relation to or in connection with an organization
 - (i) as a partner or a director, officer or other office-holder of the organization,
 - (i.1) as an apprentice, volunteer, participant or student, or
 - (ii) under a contract or an agency relationship with the organization;
- (f) "investigation" means an investigation related to
 - (i) a breach of agreement,
 - (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or

- (iii) circumstances or conduct that may result in a remedy or relief being available at law,
- if the breach, contravention, circumstances or conduct in question has or may have occurred or is likely to occur and it is reasonable to conduct an investigation;
- (g) "legal proceeding" means a civil, criminal or administrative proceeding that is related to
- (i) a breach of an agreement,
- (ii) a contravention of an enactment of Alberta or Canada or of another province of Canada, or
- (iii) a remedy available at law;
- (g.1) "legislative instrument of a professional regulatory organization" means a bylaw, resolution or rule that is
- (i) enacted or otherwise established by a professional regulatory organization under an Act or a regulation of Alberta, and
- (ii) of a legislative nature;
- (g.2) "local government body" means a local government body as defined in the *Freedom of Information and Protection of Privacy Act*;
- (h) "Minister" means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (i) "organization" includes
- (i) a corporation,
- (ii) an unincorporated association,
- (iii) a trade union as defined in the *Labour Relations Code*,
- (iv) a partnership as defined in the *Partnership Act*, and
- (v) an individual acting in a commercial capacity,
- but does not include an individual acting in a personal or domestic capacity;
- (j) "personal employee information" means, in respect of an individual who is a potential, current or former employee of

an organization, personal information reasonably required by the organization for the purposes of

- (i) establishing, managing or terminating an employment or volunteer-work relationship, or
- (ii) managing a post-employment or post-volunteer-work relationship

between the organization and the individual, but does not include personal information about the individual that is unrelated to that relationship;

- (k) "personal information" means information about an identifiable individual;
- (k.1) "professional Act" means an enactment under which a professional or occupational group or discipline is organized, and that provides for
 - (i) membership in the professional or occupational group or discipline, and
 - (ii) the regulation of the members of the professional or occupational group or discipline with respect to more than one of the following:
 - (A) registration;
 - (B) competence;
 - (C) conduct;
 - (D) practice;
 - (E) disciplinary matters;
- (k.2) "professional regulatory organization" means an organization incorporated under a professional Act;
- (l) "public body" means a public body as defined in the *Freedom of Information and Protection of Privacy Act*;
- (m) "record" means a record of information in any form or in any medium, whether in written, printed, photographic or electronic form or any other form, but does not include a computer program or other mechanism that can produce a record;

- (m.1) "regulation of Alberta" means a regulation as defined in the *Regulations Act* that is filed under that Act;
- (m.2) "regulation of Canada" means a regulation as defined in the *Statutory Instruments Act* (Canada) that is registered under that Act;
- (m.3) "service provider" means any organization, including, without limitation, a parent corporation, subsidiary, affiliate, contractor or subcontractor, that, directly or indirectly, provides a service for or on behalf of another organization;
- (n) "volunteer work relationship" means a relationship between an organization and an individual under which a service is provided for or in relation to or is undertaken in connection with the organization by an individual who is acting as a volunteer or is otherwise unpaid with respect to that service and includes any similar relationship involving an organization and an individual where, in respect of that relationship, the individual is a participant or a student.

(2) For the purposes of section 14(c.3), 17(c.3) and 20(c.3), "audit" means a financial or other formal or systematic examination or review conducted in accordance with recognized standards for an accepted business purpose, but does not include an examination or review conducted with respect to a business transaction referred to in section 22.

2003 cP-6.5 s1;2009 c50 s2

Standard as to what is reasonable

2 Where in this Act anything or any matter

- (a) is described, characterized or referred to as reasonable or unreasonable, or
- (b) is required or directed to be carried out or otherwise dealt with reasonably or in a reasonable manner,

the standard to be applied under this Act in determining whether the thing or matter is reasonable or unreasonable, or has been carried out or otherwise dealt with reasonably or in a reasonable manner, is what a reasonable person would consider appropriate in the circumstances.

Part 1 Purpose and Application

Purpose

3 The purpose of this Act is to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of an individual to have his or her personal information protected and the need of organizations to collect, use or disclose personal information for purposes that are reasonable.

Application

4(1) Except as provided in this Act and subject to the regulations, this Act applies to every organization and in respect of all personal information.

(2) Subject to the regulations, this Act does not apply to a public body or any personal information that is in the custody of or under the control of a public body.

(3) This Act does not apply to the following:

- (a)** the collection, use or disclosure of personal information if the collection, use or disclosure, as the case may be, is for personal or domestic purposes of the individual and for no other purpose;
- (b)** the collection, use or disclosure of personal information if the collection, use or disclosure, as the case may be, is for artistic or literary purposes and for no other purpose;
- (c)** the collection, use or disclosure of personal information, other than personal employee information that is collected, used or disclosed pursuant to section 15, 18 or 21, if the collection, use or disclosure, as the case may be, is for journalistic purposes and for no other purpose;
- (d)** the collection, use or disclosure of an individual's business contact information if the collection, use or disclosure, as the case may be, is for the purposes of enabling the individual to be contacted in relation to the individual's business responsibilities and for no other purpose;
- (e)** personal information that is in the custody of an organization if the *Freedom of Information and Protection of Privacy Act* applies to that information;

- (f) health information as defined in the *Health Information Act* to which that Act applies;
 - (g) the collection, use or disclosure of personal information by the following officers of the Legislature if the collection, use or disclosure, as the case may be, relates to the exercise of that officer's functions under an enactment:
 - (i) the Auditor General;
 - (ii) the Ombudsman;
 - (iii) the Chief Electoral Officer;
 - (iv) the Ethics Commissioner;
 - (v) the Information and Privacy Commissioner;
 - (vi) the Child and Youth Advocate;
 - (h) personal information about an individual if the individual has been dead for at least 20 years;
 - (i) personal information about an individual that is contained in a record that has been in existence for at least 100 years;
 - (j) personal information contained in any record that
 - (i) was transferred to an archival institution before the coming into force of this Act where access to the record
 - (A) was unrestricted before the coming into force of this Act, or
 - (B) is governed by an agreement entered into by the archival institution and the donor of the record before the coming into force of this Act,
- or
- (ii) is transferred to an archival institution after the coming into force of this Act where access to the record is governed by an agreement entered into by the archival institution and the donor of the record before the coming into force of this Act;
- (k) personal information contained in a court file, a record of a judge of the Court of Appeal of Alberta, the Court of Queen's Bench of Alberta or The Provincial Court of Alberta, a record of a master in chambers of the Court of

Queen's Bench of Alberta, a record of a justice of the peace other than a non-presiding justice of the peace under the *Justice of the Peace Act*, a judicial administration record or a record relating to support services provided to the judges of any of the courts referred to in this clause;

- (l) personal information contained in a record of any type that has been created by or for
 - (i) a Member of the Legislative Assembly, or
 - (ii) an elected or appointed member of a public body;
 - (m) the collection, use or disclosure of personal information by, or for, a registered constituency association or a registered party as defined in the *Election Finances and Contributions Disclosure Act* or in respect of an office or a position in a registered constituency association or a registered party;
 - (n) the collection, use or disclosure of personal information by, or for, an individual who is a bona fide candidate for public office or for an office or a position in a registered constituency association or a registered party as defined in the *Election Finances and Contributions Disclosure Act* where the information is being collected, used or disclosed, as the case may be, for the purposes of campaigning for that office or position and for no other purpose;
 - (o) personal information contained in a personal note, communication or draft decision created by or for a person who is acting in a judicial, quasi-judicial or adjudicative capacity.
- (4) If an organization has under its control personal information about an individual that was acquired prior to January 1, 2004, that information, for the purposes of this Act,
- (a) is deemed to have been collected pursuant to consent given by that individual,
 - (b) may be used and disclosed by the organization for the purposes for which the information was collected, and
 - (c) after the coming into force of this Act, is to be treated in the same manner as information collected under this Act.
- (5) This Act is not to be applied so as to
- (a) affect any legal privilege,

- (b) limit the information available by law to a party to a legal proceeding, or
 - (c) limit or affect the collection, use or disclosure of information that is the subject of trust conditions or undertakings to which a lawyer is subject.
- (6) If a provision of this Act is inconsistent or in conflict with a provision of another enactment, the provision of this Act prevails unless
- (a) the other enactment is the *Freedom of Information and Protection of Privacy Act*, or
 - (b) another Act or a regulation under this Act expressly provides that the other Act or a regulation, or a provision of it, prevails notwithstanding this Act.
- (7) This Act applies notwithstanding any agreement to the contrary, and any waiver or release given of the rights, benefits or protections provided under this Act is against public policy and void.

2003 cP-6.5 s4;2005 c29 s2;2009 c50 s3;
2011 cC-11.5 s31;2011 c20 s8

Part 2 Protection of Personal Information

Division 1 Compliance and Policies

Compliance with Act

- 5(1) An organization is responsible for personal information that is in its custody or under its control.
- (2) For the purposes of this Act, where an organization engages the services of a person, whether as an agent, by contract or otherwise, the organization is, with respect to those services, responsible for that person's compliance with this Act.
- (3) An organization must designate one or more individuals to be responsible for ensuring that the organization complies with this Act.
- (4) An individual designated under subsection (3) may delegate to one or more individuals the duties conferred by that designation.
- (5) In meeting its responsibilities under this Act, an organization must act in a reasonable manner.

(6) Nothing in subsection (2) is to be construed so as to relieve any person from that person's responsibilities or obligations under this Act.

Policies and practices

6(1) An organization must develop and follow policies and practices that are reasonable for the organization to meet its obligations under this Act.

(2) If an organization uses a service provider outside Canada to collect, use, disclose or store personal information for or on behalf of the organization, the policies and practices referred to in subsection (1) must include information regarding

- (a) the countries outside Canada in which the collection, use, disclosure or storage is occurring or may occur, and
- (b) the purposes for which the service provider outside Canada has been authorized to collect, use or disclose personal information for or on behalf of the organization.

(3) An organization must make written information about the policies and practices referred to in subsections (1) and (2) available on request.

2003 cP-6.5 s6;2009 c50 s4

Division 2 Consent

Consent required

7(1) Except where this Act provides otherwise, an organization shall not, with respect to personal information about an individual,

- (a) collect that information unless the individual consents to the collection of that information,
- (b) collect that information from a source other than the individual unless the individual consents to the collection of that information from the other source,
- (c) use that information unless the individual consents to the use of that information, or
- (d) disclose that information unless the individual consents to the disclosure of that information.

(2) An organization shall not, as a condition of supplying a product or service, require an individual to consent to the collection, use or

disclosure of personal information about an individual beyond what is necessary to provide the product or service.

(3) An individual may give a consent subject to any reasonable terms, conditions or qualifications established, set, approved by or otherwise acceptable to the individual.

Form of consent

8(1) An individual may give his or her consent in writing or orally to the collection, use or disclosure of personal information about the individual.

(2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for a particular purpose if

- (a) the individual, without actually giving a consent referred to in subsection (1), voluntarily provides the information to the organization for that purpose, and
- (b) it is reasonable that a person would voluntarily provide that information.

(2.1) If an individual consents to the disclosure of personal information about the individual by one organization to another organization for a particular purpose, the individual is deemed to consent to the collection, use or disclosure of the personal information for the particular purpose by that other organization.

(2.2) An individual is deemed to consent to the collection, use or disclosure of personal information about the individual by an organization for the purpose of the individual's enrolment in or coverage under an insurance policy, pension plan or benefit plan or a policy, plan or contract that provides for a similar type of coverage or benefit if the individual

- (a) has an interest in or derives a benefit from that policy, plan or contract, and
- (b) is not the applicant for the policy, plan or contract.

(3) Notwithstanding section 7(1), an organization may collect, use or disclose personal information about an individual for particular purposes if

- (a) the organization

- (i) provides the individual with a notice, in a form that the individual can reasonably be expected to understand, that the organization intends to collect, use or disclose personal information about the individual for those purposes, and
 - (ii) with respect to that notice, gives the individual a reasonable opportunity to decline or object to having his or her personal information collected, used or disclosed for those purposes,
- (b) the individual does not, within a reasonable time, give to the organization a response to that notice declining or objecting to the proposed collection, use or disclosure, and
- (c) having regard to the level of the sensitivity, if any, of the information in the circumstances, it is reasonable to collect, use or disclose the information as permitted under clauses (a) and (b).

(4) Subsections (2), (2.1), (2.2) and (3) are not to be construed so as to authorize an organization to collect, use or disclose personal information for any purpose other than the particular purposes for which the information was collected.

(5) Consent in writing may be given or otherwise transmitted by electronic means to an organization if the organization receiving that transmittal produces or is able at any time to produce a printed copy or image or a reproduction of the consent in paper form.

2003 cP-6.5 s8;2009 c50 s5

Withdrawal or variation of consent

- 9(1) Subject to subsection (5), on giving reasonable notice to an organization, an individual may at any time withdraw or vary consent to the collection, use or disclosure by the organization of personal information about the individual.
- (2) On receipt of notice referred to in subsection (1), an organization must, subject to subsection (3), inform the individual of the likely consequences to the individual of withdrawing or varying the consent.
- (3) An organization is not required to inform an individual under subsection (2) if the likely consequences of withdrawing or varying the consent would be reasonably obvious to the individual.
- (4) Except where the collection, use or disclosure of personal information without consent of the individual is permitted under this Act, if an individual withdraws or varies a consent to the

collection, use or disclosure of personal information about the individual by an organization, the organization must,

- (a) in the case of the withdrawal of a consent, stop collecting, using or disclosing the information, and
- (b) in the case of a variation of a consent, abide by the consent as varied.

(5) If withdrawing or varying a consent would frustrate the performance of a legal obligation, any withdrawal or variation of the consent does not, unless otherwise agreed to by the parties who are subject to the legal obligation, operate to the extent that the withdrawal or variation would frustrate the performance of the legal obligation owed between those parties.

(6) A withdrawal or variation of a consent by an individual may be given to an organization in the same manner as a consent may be given.

(7) An individual may, subject to this section, withdraw or vary a consent subject to any reasonable terms, conditions or qualifications established, set, approved by or otherwise acceptable to the individual.

(8) Nothing in this section is to be construed so as to empower

- (a) an individual, as part of the withdrawal or variation of a consent, to impose an obligation or a liability on an organization unless the organization agrees otherwise, or
- (b) an organization, as part of the withdrawal or variation of a consent, to impose an obligation or liability on an individual unless the individual agrees otherwise.

Consent obtained by deception, etc.

10 If an organization obtains or attempts to obtain consent to the collection, use or disclosure of personal information by

- (a) providing false or misleading information respecting the collection, use or disclosure of the information, or
- (b) using deceptive or misleading practices,

any consent provided or obtained under those circumstances is negated.

Division 3 Collection of Personal Information

Limitations on collection

11(1) An organization may collect personal information only for purposes that are reasonable.

(2) Where an organization collects personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is collected.

Limitation on sources for collection

12 An organization may without the consent of the individual collect personal information about an individual from a source other than that individual if the information that is to be collected is information that may be collected without the consent of the individual under section 14, 15 or 22.

Notification required for collection

13(1) Before or at the time of collecting personal information about an individual from the individual, an organization must notify that individual in writing or orally

- (a) as to the purposes for which the information is collected, and
- (b) of the name or position name or title of a person who is able to answer on behalf of the organization the individual's questions about the collection.

(2) Repealed 2009 c50 s6.

(3) Before or at the time personal information about an individual is collected from another organization without the consent of the individual, the organization collecting the personal information must provide the organization that is disclosing the personal information with sufficient information regarding the purpose for which the personal information is being collected in order to allow the organization that is disclosing the personal information to make a determination as to whether that disclosure of the personal information would be in accordance with this Act.

(4) Subsection (1) does not apply to the collection of personal information that is carried out pursuant to section 8(2).

2003 cP-6.5 s13;2009 c50 s6

Notification respecting service provider outside Canada

13.1(1) Subject to the regulations, an organization that uses a service provider outside Canada to collect personal information about an individual for or on behalf of the organization with the consent of the individual must notify the individual in accordance with subsection (3).

(2) Subject to the regulations, an organization that, directly or indirectly, transfers to a service provider outside Canada personal information about an individual that was collected with the individual's consent must notify the individual in accordance with subsection (3).

(3) An organization referred to in subsection (1) or (2) must, before or at the time of collecting or transferring the information, notify the individual in writing or orally of

- (a) the way in which the individual may obtain access to written information about the organization's policies and practices with respect to service providers outside Canada, and
- (b) the name or position name or title of a person who is able to answer on behalf of the organization the individual's questions about the collection, use, disclosure or storage of personal information by service providers outside Canada for or on behalf of the organization.

(4) The notice required under this section is in addition to any notice required under section 13.

2009 c50 s7

Collection without consent

14 An organization may collect personal information about an individual without the consent of that individual but only if one or more of the following are applicable:

- (a) a reasonable person would consider that the collection of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;
- (b) the collection of the information is authorized or required by
 - (i) a statute of Alberta or of Canada,
 - (ii) a regulation of Alberta or a regulation of Canada,
 - (iii) a bylaw of a local government body, or

- (iv) a legislative instrument of a professional regulatory organization;
- (b.1) the collection of the information is pursuant to a form that is approved or otherwise provided for under a statute of Alberta or a regulation of Alberta;
- (c) the collection of the information is from a public body and that public body is authorized or required by an enactment of Alberta or Canada to disclose the information to the organization;
 - (c.1) the collection of the information is necessary to comply with a collective agreement that is binding on the organization under section 128 of the *Labour Relations Code*;
 - (c.2) the collection of the information is necessary to comply with an audit or inspection of or by the organization where the audit or inspection is authorized or required by
 - (i) a statute of Alberta or of Canada, or
 - (ii) a regulation of Alberta or a regulation of Canada;
 - (c.3) the collection of the information is by an organization for the purposes of conducting an audit of another organization, other than an audit referred to in clause (c.2), and it is not practicable to collect non-identifying information for the purposes of the audit;
- (d) the collection of the information is reasonable for the purposes of an investigation or a legal proceeding;
- (e) the information is publicly available as prescribed or otherwise determined by the regulations;
- (f) the collection of the information is necessary to determine the individual's suitability to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary;
- (g) the information is collected by a credit reporting organization to create a credit report where the individual consented to the disclosure to the credit reporting organization by the organization that originally collected the information;
- (h) the information may be disclosed to the organization without the consent of the individual under section 20;

- (i) the collection of the information is necessary in order to collect a debt owed to the organization or for the organization to repay to the individual money owed by the organization;
- (j) the organization collecting the information is an archival institution and the collection of the information is reasonable for archival purposes or research;
- (k) the collection of the information meets the requirements respecting archival purposes or research set out in the regulations and it is not reasonable to obtain the consent of the individual whom the information is about;
- (l) the collection of the information is in accordance with section 15 or 22.

2003 cP-6.5 s14;2009 c50 s8

Collection of personal employee information

15(1) An organization may collect personal employee information about an individual without the consent of the individual if

- (a) the information is collected solely for the purposes of
 - (i) establishing, managing or terminating an employment or volunteer-work relationship, or
 - (ii) managing a post-employment or post-volunteer-work relationship,
 between the organization and the individual,
- (b) it is reasonable to collect the information for the particular purpose for which it is being collected, and
- (c) in the case of an individual who is a current employee of the organization, the organization has, before collecting the information, provided the individual with reasonable notification that personal employee information about the individual is going to be collected and of the purposes for which the information is going to be collected.

(2) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to collect personal information under section 14.

2003 cP-6.5 s15;2009 c50 s9

Division 4 Use of Personal Information

Limitations on use

16(1) An organization may use personal information only for purposes that are reasonable.

(2) Where an organization uses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is used.

Use without consent

17 An organization may use personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

- (a) a reasonable person would consider that the use of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;
- (b) the use of the information is authorized or required by
 - (i) a statute of Alberta or of Canada,
 - (ii) a regulation of Alberta or a regulation of Canada,
 - (iii) a bylaw of a local government body, or
 - (iv) a legislative instrument of a professional regulatory organization;
- (b.1) the use of the information is for the purpose for which the information was collected pursuant to a form that is approved or otherwise provided for under a statute of Alberta or a regulation of Alberta;
- (c) the information was collected by the organization from a public body and that public body is authorized or required by an enactment of Alberta or Canada to disclose the information to the organization;
- (c.1) the use of the information is necessary to comply with a collective agreement that is binding on the organization under section 128 of the *Labour Relations Code*;

- (c.2) the use of the information is necessary to comply with an audit or inspection of or by the organization where the audit or inspection is authorized or required by
- (i) a statute of Alberta or of Canada, or
 - (ii) a regulation of Alberta or a regulation of Canada;
- (c.3) the use of the information is for the purposes of an audit of or by the organization, other than an audit referred to in clause (c.2), and it is not practicable to use non-identifying information for the purposes of the audit;
- (d) the use of the information is reasonable for the purposes of an investigation or a legal proceeding;
- (e) the information is publicly available as prescribed or otherwise determined by the regulations;
- (f) the use of the information is necessary to determine the individual's suitability to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary;
- (g) a credit reporting organization was permitted to collect the information under section 14(g) and the information is not used by the credit reporting organization for any purpose other than to create a credit report;
- (h) the information may be disclosed by an organization without the consent of the individual under section 20;
- (i) the use of the information is necessary to respond to an emergency that threatens the life, health or security of an individual or the public;
- (j) the use of the information is necessary in order to collect a debt owed to the organization or for the organization to repay to the individual money owed by the organization;
- (k) the organization using the information is an archival institution and the use of the information is reasonable for archival purposes or research;
- (l) the use of the information meets the requirements respecting archival purposes or research set out in the regulations and it is not reasonable to obtain the consent of the individual whom the information is about;

- (m) the use of the information is in accordance with section 18 or 22.

2003 cP-6.5 s17;2009 c50 s10

Use of personal employee information

18(1) An organization may use personal employee information about an individual without the consent of the individual if

- (a) the information is used solely for the purposes of
- (i) establishing, managing or terminating an employment or volunteer-work relationship, or
 - (ii) managing a post-employment or post-volunteer-work relationship,

between the organization and the individual,

- (b) it is reasonable to use the information for the particular purpose for which it is being used, and
- (c) in the case of an individual who is a current employee of the organization, the organization has, before using the information, provided the individual with reasonable notification that personal employee information about the individual is going to be used and of the purposes for which the information is going to be used.

(2) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to use personal information under section 17.

2003 cP-6.5 s18;2009 c50 s11

Division 5 Disclosure of Personal Information

Limitations on disclosure

19(1) An organization may disclose personal information only for purposes that are reasonable.

(2) Where an organization discloses personal information, it may do so only to the extent that is reasonable for meeting the purposes for which the information is disclosed.

Disclosure without consent

20 An organization may disclose personal information about an individual without the consent of the individual but only if one or more of the following are applicable:

- (a) a reasonable person would consider that the disclosure of the information is clearly in the interests of the individual and consent of the individual cannot be obtained in a timely way or the individual would not reasonably be expected to withhold consent;
- (b) the disclosure of the information is authorized or required by
 - (i) a statute of Alberta or of Canada,
 - (ii) a regulation of Alberta or a regulation of Canada,
 - (iii) a bylaw of a local government body, or
 - (iv) a legislative instrument of a professional regulatory organization;
- (b.1) the disclosure of the information is for a purpose for which the information was collected pursuant to a form that is approved or otherwise provided for under a statute of Alberta or a regulation of Alberta;
- (c) the disclosure of the information is to a public body and that public body is authorized or required by an enactment of Alberta or Canada to collect the information from the organization;
- (c.1) the disclosure of the information is necessary to comply with a collective agreement that is binding on the organization under section 128 of the *Labour Relations Code*;
- (c.2) the disclosure of the information is necessary to comply with an audit or inspection of or by the organization where the audit or inspection is authorized or required by
 - (i) a statute of Alberta or of Canada, or
 - (ii) a regulation of Alberta or a regulation of Canada;
- (c.3) the disclosure of the information is

- (i) to an organization conducting an audit, other than an audit referred to in clause (c.2), by the organization being audited, or
 - (ii) by an organization conducting an audit, other than an audit referred to in clause (c.2), to the organization being audited
- for a purpose relating to the audit and it is not practicable to disclose non-identifying information for the purposes of the audit;
- (d) the disclosure of the information is in accordance with a provision of a treaty that
 - (i) authorizes or requires its disclosure, and
 - (ii) is made under an enactment of Alberta or Canada;
 - (e) the disclosure of the information is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body having jurisdiction to compel the production of information or with a rule of court that relates to the production of information;
 - (f) the disclosure of the information is to a public body or a law enforcement agency in Canada to assist in an investigation
 - (i) undertaken with a view to a law enforcement proceeding, or
 - (ii) from which a law enforcement proceeding is likely to result;
 - (g) the disclosure of the information is necessary to respond to an emergency that threatens the life, health or security of an individual or the public;
 - (h) the disclosure of the information is for the purposes of contacting the next of kin or a friend of an injured, ill or deceased individual;
 - (i) the disclosure of the information is necessary in order to collect a debt owed to the organization or for the organization to repay to the individual money owed by the organization;
 - (j) the information is publicly available as prescribed or otherwise determined by the regulations;

- (k) the disclosure of the information is to the surviving spouse or adult interdependent partner or to a relative of a deceased individual if, in the opinion of the organization, the disclosure is reasonable;
- (l) the disclosure of the information is necessary to determine the individual's suitability to receive an honour, award or similar benefit, including an honorary degree, scholarship or bursary;
- (m) the disclosure of the information is reasonable for the purposes of an investigation or a legal proceeding;
- (n) the disclosure of the information is for the purposes of protecting against, or for the prevention, detection or suppression of, fraud, and the information is disclosed to or by
 - (i) an organization that is permitted or otherwise empowered or recognized to carry out any of those purposes under
 - (A) a statute of Alberta or of Canada or of another province of Canada,
 - (B) a regulation of Alberta, a regulation of Canada or similar subordinate legislation of another province of Canada that, if enacted in Alberta, would constitute a regulation of Alberta, or
 - (C) an order made by a Minister under a statute or regulation referred to in paragraph (A) or (B),
 - (ii) Investigative Services, a division of the Insurance Bureau of Canada, or
 - (iii) the Canadian Bankers Association, Bank Crime Prevention and Investigation Office;
- (o) the organization is a credit reporting organization and is permitted to disclose the information under Part 5 of the *Fair Trading Act*;
- (p) the organization disclosing the information is an archival institution and the disclosure of the information is reasonable for archival purposes or research;
- (q) the disclosure of the information meets the requirements respecting archival purposes or research set out in the

regulations and it is not reasonable to obtain the consent of the individual whom the information is about;

- (r) the disclosure is in accordance with section 21 or 22.

2003 cP-6.5 s20;2009 c50 s12

Disclosure of personal employee information

21(1) An organization may disclose personal employee information about an individual without the consent of the individual if

- (a) the information is disclosed solely for the purposes of
- (i) establishing, managing or terminating an employment or volunteer-work relationship, or
 - (ii) managing a post-employment or post-volunteer-work relationship,

between the organization and the individual,

- (b) it is reasonable to disclose the information for the particular purpose for which it is being disclosed, and
- (c) in the case of an individual who is a current employee of the organization, the organization has, before disclosing the information, provided the individual with reasonable notification that personal employee information about the individual is going to be disclosed and of the purposes for which the information is going to be disclosed.

(2) An organization may disclose personal information about an individual who is a current or former employee of the organization to a potential or current employer of the individual without the consent of the individual if

- (a) the personal information that is being disclosed was collected by the organization as personal employee information, and
- (b) the disclosure is reasonable for the purpose of assisting that employer to determine the individual's eligibility or suitability for a position with that employer.

(3) Nothing in this section is to be construed so as to restrict or otherwise affect an organization's ability to disclose personal information under section 20.

2003 cP-6.5 s21;2009 c50 s13

**Division 6
Business Transactions****Disclosure respecting acquisition of a business, etc.**

22(1) In this section,

- (a) "business transaction" means a transaction consisting of the purchase, sale, lease, merger or amalgamation or any other type of acquisition or disposal of, or the taking of a security interest in respect of, an organization or a portion of an organization or any business or activity or business asset of an organization and includes a prospective transaction of such a nature;
- (b) "party" includes a prospective party.

(2) An organization may, for the purposes of a business transaction between itself and one or more other organizations, collect, use and disclose personal information in accordance with this section.

(3) Organizations that are parties to a business transaction may,

- (a) during the period leading up to and including the completion, if any, of the business transaction, collect, use and disclose personal information about individuals without the consent of the individuals if
 - (i) the parties have entered into an agreement under which the collection, use and disclosure of the information is restricted to those purposes that relate to the business transaction, and
 - (ii) the information is necessary
 - (A) for the parties to determine whether to proceed with the business transaction, and
 - (B) if the determination is to proceed with the business transaction, for the parties to carry out and complete the business transaction,

and

- (b) where the business transaction is completed, collect, use and disclose personal information about individuals without the consent of the individuals if
 - (i) the parties have entered into an agreement under which the parties undertake to use and disclose the information only for those purposes for which the information was

initially collected from or in respect of the individuals,
and

- (ii) the information relates solely to the carrying on of the business or activity or the carrying out of the objects for which the business transaction took place.

(4) If a business transaction does not proceed or is not completed, the party to whom the personal information was disclosed must, if the information is still in the custody of or under the control of that party, either destroy the information or turn it over to the party that disclosed the information.

(5) Nothing in this section is to be construed so as to restrict a party to a business transaction from obtaining consent of an individual to the collection, use or disclosure of personal information about the individual for purposes that are beyond the purposes for which the party obtained the information under this section.

(6) This section does not apply to a business transaction where the primary purpose, objective or result of the transaction is the purchase, sale, lease, transfer, disposal or disclosure of personal information.

2003 cP-6.5 s22;2009 c50 s14

Part 3 Access to and Correction and Care of Personal Information

Division 1 Access and Correction

Definitions

23 In this Division,

- (a) "applicant" means an individual who makes a written request in accordance with section 26;
- (b) "organization" does not include any person acting on behalf of an organization.

Access to records and provision of information

24(1) An individual may, in accordance with section 26, request an organization

(b) render the personal information non-identifying so that it can no longer be used to identify an individual.

(3) Subsection (1) applies notwithstanding any withdrawal or variation of the consent of the individual that the personal information is about under section 9.

2003 cP-6.5 s35;2009 c50 s26

Part 4 Role of Commissioner

General powers of Commissioner

36(1) In addition to the Commissioner's powers and duties under Part 5 with respect to reviews, the Commissioner is generally responsible for monitoring how this Act is administered to ensure that its purposes are achieved, and may

- (a) conduct investigations to ensure compliance with any provision of this Act;
- (b) make an order described in section 52 whether or not a review is requested;
- (c) inform the public about this Act;
- (d) receive comments from the public concerning the administration of this Act;
- (e) engage in or commission research into anything affecting the achievement of the purposes of this Act;
- (f) comment on the implications for protection of personal information in relation to existing or proposed programs of organizations;
- (g) bring to the attention of an organization any failure by the organization to assist applicants as required under section 27;
- (h) give advice and recommendations of general application to an organization on matters respecting the rights or obligations of an organization under this Act.

(2) Without limiting subsection (1), the Commissioner may investigate and attempt to resolve complaints that

- (a) a duty imposed by section 27 has not been performed;
- (b) an extension of a time period under section 31 for responding to a request is not justified;

- (c) a fee estimated or required by an organization under this Act is inappropriate;
 - (d) a correction of personal information requested under section 25 has been refused without justification;
 - (e) personal information has been collected, used or disclosed by an organization in contravention of this Act or in circumstances that are not in compliance with this Act;
 - (e.1) notification of an incident described in section 34.1 has not been provided in accordance with this Act;
 - (f) an organization is not in compliance with this Act.
- (3) The Commissioner may, on request, give advance rulings in respect of any matters that are or could potentially be the subject of an investigation by the Commissioner under this Act.

2003 cP-6.5 s36;2009 c50 s27

Power to authorize an organization to disregard requests

37 If an organization asks, the Commissioner may authorize the organization to disregard one or more requests made under section 24 or 25 if

- (a) because of their repetitious or systematic nature, the requests would unreasonably interfere with the operations of the organization or amount to an abuse of the right to make those requests, or
- (b) one or more of the requests are frivolous or vexatious.

Power to require notification

37.1(1) Where an organization suffers a loss of or unauthorized access to or disclosure of personal information that the organization is required to provide notice of under section 34.1, the Commissioner may require the organization to notify individuals to whom there is a real risk of significant harm as a result of the loss or unauthorized access or disclosure

- (a) in a form and manner prescribed by the regulations, and
- (b) within a time period determined by the Commissioner.

(2) If the Commissioner requires an organization to notify individuals under subsection (1), the Commissioner may require the organization to satisfy any terms or conditions that the

Commissioner considers appropriate in addition to the requirements under subsection (1).

(3) The Commissioner must establish an expedited process for determining whether to require an organization to notify individuals under subsection (1) in circumstances where the real risk of significant harm to an individual as a result of the loss or unauthorized access or disclosure is obvious and immediate.

(4) The Commissioner may require an organization to provide any additional information that the Commissioner considers necessary to determine whether to require the organization

- (a) to notify individuals under subsection (1), or
- (b) to satisfy terms and conditions under subsection (2).

(5) An organization must comply with a requirement

- (a) to provide additional information under subsection (4),
- (b) to notify individuals under subsection (1), or
- (c) to satisfy terms and conditions under subsection (2).

(6) The Commissioner has exclusive jurisdiction to require an organization

- (a) to provide additional information under subsection (4),
- (b) to notify individuals under subsection (1), or
- (c) to satisfy terms or conditions under subsection (2).

(7) Nothing in this section is to be construed so as to restrict an organization's ability to notify individuals on its own initiative of the loss of or unauthorized access to or disclosure of personal information.

2009 c50 s28

Powers of Commissioner re investigations or inquiries

38(1) In conducting an investigation under section 36 or an inquiry under section 50, the Commissioner has all the powers, privileges and immunities of a commissioner under the *Public Inquiries Act* and the powers given by subsection (2) of this section.

(2) The Commissioner may require any record to be produced to the Commissioner and may examine any information in a record,

including personal information, whether or not the record is subject to this Act.

(3) Notwithstanding any other enactment or any privilege of the law of evidence, an organization must produce to the Commissioner within 10 days any record or a copy of any record required under subsection (1) or (2).

(4) If an organization is required to produce a record under subsection (1) or (2) and it is not reasonable to make a copy of the record, the organization may require the Commissioner to examine the original record at its site.

(5) After completing a review or investigating a complaint, the Commissioner must return any record or any copy of any record produced.

(6) The Commissioner may publish any finding or decision in a complete or an abridged form.

Legal privilege not affected

38.1 If a legal privilege, including solicitor-client privilege, applies to information disclosed to the Commissioner on the Commissioner's request under section 37.1 or section 38, the legal privilege is not affected by the disclosure.

2009 c.50 s.29

Statements not admissible in evidence

39(1) A statement made or an answer given by a person during an investigation or inquiry by the Commissioner is inadmissible in evidence in court or in any other proceeding, except

- (a) in a prosecution for perjury in respect of sworn testimony,
- (b) in a prosecution for an offence under this Act, or
- (c) in an application for judicial review or an appeal from a decision with respect to an application for judicial review.

(1.1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not give or be compelled to give evidence in a court or in any other proceeding in respect of any information obtained in performing their duties, powers and functions under this Act, except in the circumstances set out in subsection (1)(a) to (c).

(2) Subsections (1) and (1.1) apply also in respect of evidence of the existence of proceedings conducted before the Commissioner.

(3) Subsection (2) is not to be construed so as to restrict an individual's ability to commence an action under section 60.

2003 cP-6.5 s39;2009 c50 s30

Privileged information

40 Anything said, any information supplied or any record produced by a person during an investigation or inquiry by the Commissioner is privileged in the same manner as if the investigation or inquiry were a proceeding in a court.

Restrictions on disclosure of information

41(1) The Commissioner and anyone acting for or under the direction of the Commissioner shall not disclose any information obtained in performing their duties, powers and functions under this Act, except as provided in subsections (2) to (4).

(2) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information that is necessary for the purposes of

- (a) conducting an investigation or inquiry under this Act, or
- (b) establishing the grounds for findings and recommendations contained in a report under this Act.

(3) In conducting an investigation or inquiry under this Act and in a report under this Act, the Commissioner and anyone acting for or under the direction of the Commissioner must take every reasonable precaution to avoid disclosing, and shall not disclose, any information that an organization would be required or permitted to refuse access to if access to personal information were requested under section 24(1)(a).

(3.1) Subject to subsection (3.2), the Commissioner may disclose to the Minister of Justice and Attorney General information relating to the commission of an offence under an enactment of Alberta or Canada if the Commissioner considers there is evidence of an offence.

(3.2) The Commissioner shall not disclose information under subsection (3.1) if the information is subject to solicitor-client privilege.

(4) The Commissioner may disclose, or may authorize anyone acting for or under the direction of the Commissioner to disclose, information in the course of a prosecution, application or appeal referred to in section 39.

2003 cP-6.5 s41;2009 c50 s31

Protection of Commissioner and staff

42 No proceedings lie against the Commissioner, or against anyone acting for or under the direction of the Commissioner, for anything done, reported or said in good faith in the exercise or performance or the intended exercise or performance of a duty, power or function under this Part or Part 5.

Delegation by the Commissioner

43(1) The Commissioner may delegate to any person any duty, power or function of the Commissioner under this Act except the power to delegate.

(2) A delegation under subsection (1) must be in writing and may contain any conditions or restrictions the Commissioner considers appropriate.

Extra-provincial commissioner

43.1(1) In this section,

- (a) "extra-provincial commissioner" means a person who, in respect of Canada or in respect of another province of Canada, has duties, powers and functions similar to those of the Commissioner;
- (b) "information protection statute" means a statute of Canada or of another province of Canada the purpose of which is similar to the purpose of this Act as set out in section 3.

(2) The Commissioner may, where the Commissioner considers it appropriate to do so, do one or more of the following:

- (a) consult with or enter into agreements with extra-provincial commissioners with respect to matters that come under this Act or other information protection statutes;
- (b) subject to clause (d), make a delegation under section 43 to an extra-provincial commissioner;

- (c) accept a delegation from an extra-provincial commissioner of any power, duty or function of the extra-provincial commissioner that is provided for under an information protection statute;
 - (d) in the case of a matter that is the subject of an investigation or a review referred to in section 36 or 46 or an inquiry referred to in section 50 and that also comes within the jurisdiction of an extra-provincial commissioner, delegate the matter to that extra-provincial commissioner for the purposes of conducting an investigation, a review or an inquiry;
 - (e) in the case of a matter that comes within the jurisdiction of an extra-provincial commissioner, refer the matter to that extra-provincial commissioner for the purposes of having the matter dealt with;
 - (f) in the case of a matter that comes within the jurisdiction of the Commissioner, accept a referral of the matter from an extra-provincial commissioner for the purposes of dealing with the matter;
 - (g) notwithstanding anything in section 41, disclose information for the purposes of exercising or performing any power, duty or function pursuant to clauses (a) to (f);
 - (h) notwithstanding anything in section 41, collect, use and disclose personal information about an individual without the consent of the individual for the purposes of exercising or performing any power, duty or function referred to in this section.
- (3) Notwithstanding section 36, 46 or 50, where, under subsection (2)(d), the Commissioner delegates a matter to an extra-provincial commissioner, the matter is not to be further dealt with under section 36, 46 or 50, as the case may be, at any time during which the delegation remains in effect.

2005 c29 s3

Annual report of Commissioner

44(1) The Commissioner must report annually to the Speaker of the Legislative Assembly on

- (a) the work of the Commissioner's office under this Act, and
- (b) any other matters relating to protection of personal information that the Commissioner considers appropriate.

(2) The Speaker must lay each annual report before the Legislative Assembly as soon as possible.

Part 5 Reviews and Orders

Definition

45 In this Part, "review" means a review asked for under section 46.

Right to ask for a review or initiate a complaint

46(1) An individual who makes a request to an organization respecting personal information about that individual may ask the Commissioner to review any decision, act or failure to act of the organization.

(2) An individual may initiate a complaint with respect to the issues referred to in section 36(2).

(3) If the Commissioner is satisfied that there are other grievance, complaint or review procedures available for the purposes of resolving issues for which a review may be requested or a complaint may be initiated under this Part, the Commissioner may require that an individual asking for a review or initiating a complaint under this Part must first exhaust those other procedures with a view to resolving the matter before the Commissioner proceeds to hear or otherwise deal with the review or complaint.

How to ask for a review or initiate a complaint

47(1) To ask for a review or initiate a complaint under this Part, an individual must,

- (a) in the case of a request for a review, deliver a written request for review to the Commissioner, or
- (b) in the case of a complaint, deliver a written complaint to the Commissioner.

(2) A written request for review to the Commissioner for a review of a decision of an organization must be delivered within

- (a) 30 days from the day that the individual asking for the review is notified of the decision, or



Province of Alberta

PERSONAL INFORMATION PROTECTION ACT

**PERSONAL INFORMATION
PROTECTION ACT REGULATION**

Alberta Regulation 366/2003

With amendments up to and including Alberta Regulation 51/2010

Office Consolidation

© Published by Alberta Queen's Printer

Queen's Printer Bookstore,
Main Floor, Park Plaza
10611 - 98 Avenue
Edmonton, AB T5K 2P7
Phone: 780-427-4952
Fax: 780-452-0668

E-mail: qp@gov.ab.ca
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Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

(Consolidated up to 51/2010)

ALBERTA REGULATION 366/2003

Personal Information Protection Act

**PERSONAL INFORMATION PROTECTION
ACT REGULATION**

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**Part 8
Coming into Force and Expiry**

- 29 Coming into force
30 Expiry

Definition

- 1 In this Regulation, "Act" means the *Personal Information Protection Act*.

AR 366/2003 s1;51/2010

Application of Act to Alberta Treasury Branches

2(1) The Act applies to Alberta Treasury Branches and its subsidiaries and to any personal information that is in the custody of or under the control of Alberta Treasury Branches or any of its subsidiaries.

(2) Notwithstanding subsection (1), any records of Alberta Treasury Branches and of any of its subsidiaries that are subject to the *Freedom of Information and Protection of Privacy Act* remain subject to that Act.

**Part 1
Definition for the Purposes
of the Act**

“managing”

3 For the purposes of sections 1(1)(j), 15(1)(a), 18(1)(a) and 21(1)(a) of the Act, “managing” includes administering.

AR 366/2003 s3;51/2010

4 and 5 Repealed AR 51/2010 s5.

**Part 2
Personal Information that is
Publicly Available**

Definitions

6 In this Part,

- (a) “Corporate Registry” means
 - (i) the records maintained by the Registrar of Corporations pursuant to a statute of Alberta or a regulation of Alberta, and
 - (ii) the records maintained by the Registrar of Companies pursuant to a statute of Alberta or a regulation of Alberta;
 - (b) “established purpose” means, when used in reference to a registry, the purpose for which a registry is established and operated as that purpose,
 - (i) in the case of a Government registry, is, directly or indirectly, set out or otherwise described or provided for pursuant to
 - (A) a statute of Alberta or a regulation of Alberta, or
 - (B) any policy governing or relating to the operation of the registry that is made pursuant to a statute of Alberta, a regulation of Alberta or by the Government;
- and
- (ii) in the case of a non-governmental registry, is set out pursuant to a statute of Alberta or a regulation of Alberta;

- (c) "Government registry" means
- (i) the Personal Property Registry,
 - (ii) the Corporate Registry, and
 - (iii) the Land Titles Registry,
- and includes any other registry not referred to in subclauses (i) to (iii) that is operated by the Government and to which the public has access;
- (d) "Land Titles Registry" means the register and the other records required or authorized to be kept by the Registrar of Titles under the *Land Titles Act*;
- (e) "non-governmental registry" means a registry
- (i) that is operated pursuant to a statute of Alberta or a regulation of Alberta by
 - (A) an organization, or
 - (B) a local public body as defined in the *Freedom of Information and Protection of Privacy Act*,
 and
 - (ii) to which a right of public access is authorized by law.

AR 366/2003 s6;51/2010

Publicly available personal information

7 For the purposes of sections 14(e), 17(e) and 20(j) of the Act, personal information does not come within the meaning of "the information is publicly available" except in the following circumstances:

- (a) the personal information is contained in a telephone directory but only if
 - (i) the information consists of the name, address and telephone number of a subscriber to the directory,
 - (ii) the directory is available to the public, and
 - (iii) the subscriber can refuse to have the personal information appear in the directory;
- (b) the personal information, including, but not limited to, the name, title, address, telephone number and e-mail address

of an individual, is contained in a professional or business directory, listing or notice but only if

- (i) the directory, listing or notice is available to the public, and
- (ii) the collection, use or disclosure of the personal information relates directly to the purpose for which the information appears in the directory, listing or notice;

(c) the personal information is contained in a registry that is

- (i) a Government registry, or
- (ii) a non-governmental registry,

but only if the collection, use or disclosure of the information relates directly to the purpose for which the information appears in the registry and that purpose is an established purpose of the registry;

(d) the personal information is contained in a record of a quasi-judicial body but only if

- (i) the record is available to the public, and
- (ii) the collection, use or disclosure of the information relates directly to the purpose for which the information appears in the record;

(e) the personal information is contained in a publication, including, but not limited to, a magazine, book or newspaper, whether in printed or electronic form, but only if

- (i) the publication is available to the public, and
- (ii) it is reasonable to assume that the individual that the information is about provided that information;

(f) personal information that is under the control of an organization and that has been collected from outside of Alberta, that if collected from within Alberta would have been collected under the authority of clause (a), (b), (c), (d) or (e), or any 2 or more of those clauses.