

Case In Point

Privacy Rights and A Union's Duty to Represent its Membership

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Last week, a case that has significant labour relations and privacy implications was argued before the Supreme Court of Canada. At issue in [*Bernard v. Canada \(Attorney General\)*](#) is the appropriate balance between an individual's privacy rights and a union's right, and duty, to represent its membership. In other words, what employee personal information is an employer required to provide to a union—and to what point can an employee resist such disclosure?

The case involves the right of the appellant, Ms Bernard, to have her personal information protected from disclosure to the unions which she declined to join during her years of employment with the federal government, but to which she was mandatorily obligated to pay union dues.

The lengthy proceedings in this case began when Ms Bernard filed a complaint with the Office of the Privacy Commissioner after learning that her employer had disclosed her home address to the union representing the bargaining unit to which she then belonged. The employer subsequently ceased disclosing such information, ultimately causing the Professional Institute of the Public Service of Canada ("PIPSC") to file an unfair labour practice complaint with the Public Service Labour Relations Board ("Board") against it. The Board ruled that the employer's failure to provide employee home addresses and phone numbers to the bargaining agent constituted a form of interference in the union's representation rights. It ordered disclosure of the requested information for all bargaining unit employees, whether employees were union members or—like Ms Bernard—not.

Ms Bernard's application for judicial review of that decision was granted. The Federal Court remitted the matter to the Board for a reasoned decision on what information the employer was required to disclose to enable the union to discharge its obligations under the *Public Service Labour Relations Act* ("PSLRA"), without breaching employees' rights under the *Privacy Act*. The Board did not consider Ms Bernard's *Charter*-based argument—namely, that disclosure of her personal information violated her freedom of association as provided by section 2(d) of the *Charter*, which includes the freedom to *refrain from* association. The Board did, however, conclude that PIPSC required Ms. Bernard's personal information to properly discharge its duties as her bargaining agent. In this regard, the Board determined that PIPSC required quick, direct access to bargaining unit members in order for it to discharge its representational duties under the PSLRA. The Board also concluded that the disclosure of Ms. Bernard's personal information by the employer to PIPSC was authorized by section 8(2)(a) of the *Privacy Act* as the purpose for disclosure was consistent with the reasons for which it was collected. In coming to this conclusion, the Board noted that the analysis under section 8(2)(a) is focused on the purpose for which the institution obtained the information, not the purpose for which the employee provided it. In the present case, the employer had collected the information for "compensation" and "business continuity" purposes, and the disclosure to the union was consistent with these purposes.

Ms Bernard filed an application for judicial review which was dismissed by the Federal Court of Appeal, on the basis that the Board's decision was reasonable. The matter was appealed to the Supreme Court which will now consider the appropriate balance between an employee's privacy rights and a union's right, and duty, to represent its membership.

Stay tuned.