

Labour Arbitrator Sims awards damages for an employer's invasion of privacy.

In *Alberta v. Alberta Union of Provincial Employees (Privacy Rights Grievance)* (2012), 221 LAC (4th) 104 ("*Alberta*"), the Employer had been found by Alberta's Privacy Commissioner to have violated the province's privacy legislation by conducting Equifax credit checks of employees. Twenty-six (26) grievors claimed damages for the employer's violation of their privacy rights. The employer admitted the violation at arbitration, but had taken steps to correct the breach. The issue at arbitration was the appropriate remedy. To support the claim for damages, the Union relied on the *Charter*, the tort of intrusion upon seclusion of a person's private affairs, and Alberta's *Freedom of Information and Protection of Privacy Act*.

Arbitrator Sims cited the Ontario Court of Appeal's decision, *Jones v. Tsige*, [2012] ONCA 32 ("*Jones*") in his conclusion that it was not necessary to rely on the *Charter* to craft a remedy, but that fundamental *Charter* values relating to privacy will influence statutory remedies, tort law, and remedies in the labour relations context (see para. 13). Arbitrator Sims also stated that labour arbitrators have a wide jurisdiction to craft appropriate remedies. Damages were then calculated according to the principles set out in the *Jones* decision, other labour arbitration decisions and an analysis of the facts of the case. Although the employer had admitted to the wrongdoing and taken steps to correct the breach, a monetary remedy was nonetheless warranted. Each grievor was awarded an amount of \$1,250.

This decision applies the Ontario Court of Appeal's enunciation of common law principles relating to the right to privacy to the labour arbitration context, and shows that similar analyses will guide labour arbitrators in crafting remedies. It remains to be seen how damages for an unlawful invasion into privacy will be quantified in labour arbitration. However, as set out in *Jones* and the Alberta decision, damages are generally intangible and will usually be set at a modest or nominal amount that will depend on the factual context.