BRITISH COLUMBIA LABOUR RELATIONS BOARD

SUNRISE POULTRY PROCESSORS LTD.

(the "Employer")

-and-

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 1518

(the "Union")

PANEL:	Elena Miller, Vice-Chair
APPEARANCES:	Israel Chafetz, Q.C., for the Employer Chris Buchanan, for the Union
CASE NO.:	66186
DATE OF DECISION:	May 28, 2014

DECISION OF THE BOARD

I. NATURE OF APPLICATION

1 The Union applies under Section 99(1)(b) of the *Labour Relations Code* (the "Code") for review of an arbitration award of Stan Lanyon, Q.C. (the "Arbitrator") dated October 28, 2013, Ministry No. A-088/13 (the "Award"). The Union submits, however, that authority to review the Award rests with the British Columbia Court of Appeal under Section 100 of the Code. Accordingly, it submits, the Board should suspend its proceedings while the matter proceeds before the Court of Appeal.

2 Alternatively, if the Board determines it has jurisdiction to review the Award under Section 99, the Union submits the Arbitrator erred in a number of respects, including with respect to matters on which he was required to be correct. The Union submits the Board should therefore set aside the Award and substitute its decision for that of the Arbitrator on the central issue in dispute in the Award.

3 The Employer submits that jurisdiction to review the Award does not fall to the Court of Appeal under Section 100, but rather to the Board under Section 99. With respect to the Union's alternative submission that, if the Award is reviewable under Section 99, it should be set aside, the Employer submits the Award should be upheld on review.

4 I am able to decide this matter on the basis of the parties' written submissions and attached materials, which include the Award.

II. THE AWARD

5 The Arbitrator began the Award by noting that, in an earlier award issued November 21, 2012 (*Sunrise Poultry Processors Ltd. and United Food and Commercial Workers, Local 1518 (BF Grievance)*, Ministry No. A-117/12, [2012] B.C.C.A.A.A. No. 148 (Lanyon, Q.C.)) (the "Merits Award"), he had allowed the Union's grievance of the dismissal of an employee (the "Grievor"), substituting a lengthy disciplinary suspension for the dismissal and ordering a disciplinary transfer of the Grievor from his position as a truck driver to a position in the Employer's production plant for a period of one year. The Arbitrator noted that, in addition to the issue of the dismissal, there were several other issues argued by the parties, one of which was outstanding.

6 The Arbitrator described the one outstanding issue as an issue of "privacy (the non-publication of names in an arbitral award)" (Award, para. 3). He noted the Union argued before him that the name of the Grievor and witnesses should remain confidential in the publication of any award, unless those persons gave their consent to the publication of their names. The Employer opposed the Union's position. The Award is the Arbitrator's ruling on that issue.

7 The Arbitrator summarized the arguments of the parties in the Award. The Union argued that, pursuant to the *Personal Information Protection Act*, S.B.C. 2003, c. 63 ("*PIPA*"), arbitrators cannot disclose the names of witnesses or grievors in their awards without their express consent. The Union submitted that no consent had been provided in the proceedings before the Arbitrator with respect to the publication of the name of the Grievor.

8 In the alternative, the Union argued, the application of proper labour relations principles must result in the non-publication of the Grievor's or witnesses' names unless there are compelling public interest reasons to publish them. The Union submitted that the open court principle does not apply to labour arbitrators, because labour arbitrators are primarily a private dispute mechanism. Further, privacy legislation is quasi-constitutional in nature, and when combined with the application of *Charter* values, it should take precedence over the traditional custom of publicizing the names of grievors and witnesses.

9 The Union submitted that neither the Grievor nor the witnesses were party to the proceedings, and the publication of their names was not material to the resolution or understanding of the legal issues in dispute. The Union further submitted that the issue of privacy has taken on even more importance given new technological innovations (such as the Internet) that substantially increase the opportunities for misuse of personal information.

10 The Employer replied that the inherent nature of the adjudication process, which requires the adducing of evidence and the resolution of legal issues, along with the publication of the labour arbitrator's reasons, requires the collection, use and disclosure of personal information arising in the workplace. It submitted that the participation of grievors and witnesses in arbitral processes gave rise to implied consent. The Employer further argued that labour arbitration is not a private dispute resolution mechanism but rather is statutorily mandated under the Code, and that the open court principle therefore applies to it. It submitted that non-publication of names in awards should be the exception, not the rule, and that in this case the Grievor's name should be published in the Award.

11 The Employer submitted arbitrators have the discretion not to publish the names of grievors or witnesses in their awards, or other identifying personal information, and that this is often exercised in cases involving medical evidence. The Employer submitted that the current practice of labour arbitrators adequately addresses the Union's privacy concerns.

12 After summarizing the parties' arguments, the Arbitrator next summarized, and quoted passages from, a recent arbitration award on which the parties had made submissions, *Husband Food Ventures Ltd. (c.o.b. IGA Store No. 11) and United Food and Commercial Workers International Union, Local 1518 (Termination Grievance)*, Ministry No. X-003/13(a), [2013] B.C.C.A.A.A No. 91 (Sanderson) ("*Husband Food*"). He noted that in *Husband Food*, the same Union had presented similar arguments regarding privacy and the non-publication of the names of grievors and witnesses to the

arbitrator, John P. Sanderson, Q.C. ("Arbitrator Sanderson"). Arbitrator Sanderson considered the issue and decided that whether a grievor's name is redacted in an arbitration award is a matter of arbitral discretion to be decided on the facts of the case. In *Husband Food*, Arbitrator Sanderson published the name of the grievor.

13 The Arbitrator then noted the parties before him had agreed that, pursuant to Section 96 of the Code, arbitration awards in British Columbia are filed with the Director of the Collective Agreement Arbitration Bureau ("CAAB"), who then makes them available to the public upon request. They further agreed that labour arbitration awards are made available to the public, free or for a fee, through online legal services such as CanLII and QuickLaw, among others. Those services reproduce the awards as issued, without redacting the grievor's name or personal information. They also agreed that lawyers and others post commentaries about arbitration awards online and typically these online commentaries do not redact names or personal information, and that arbitration awards are published in legal journals and case collections which reproduce the awards as issued, without redactions. They agreed these journal and case collections are available to the public through libraries, in either written or electronic forms.

14 The Arbitrator next turned to the Union's argument that, under *PIPA*, labour arbitrators cannot disclose the names of grievors or witnesses in their awards unless those persons have given their consent to the publication of their names. He noted that neither party was able to provide him with any prior decisions that addressed the application of privacy legislation to labour arbitrations (except the decision of Arbitrator Sanderson in *Husband Food*). After considering various provisions of *PIPA*, the Arbitrator stated:

> In summary, the definition section of *PIPA* casts a very wide net. The definition of "organization" is so broadly defined that it is capable, as the Union argues, of including an arbitration board; second, personal information includes "employee personal information"; and third, a "proceeding" includes an "administrative proceeding where there has been a breach of an agreement or an enactment". Further, the *Act* applies to "every organization" with the significant exception of the courts. (Award, para. 50)

15 The Arbitrator further stated that under Sections 12, 15 and 18 of *PIPA*, the collection, use or disclosure of personal information does not require the consent of an individual if that consent would compromise an investigation or proceeding and the information is reasonably necessary. He noted that arbitration proceedings "may necessarily involve the personal information of a grievor in respect to both his work life and his personal life – for example drug and alcohol addiction, or marital and family status" (para. 53).

16 The Arbitrator noted that Section 18(1)(i) exempts disclosure pursuant to a subpoena, warrant or orders by a "court, person or a body with jurisdiction to compel the production of personal information" and that arbitrators have that power under the Code (Award, para. 54). Sections 12(1)(h), 15(1)(h) and 18(1)(o) also exempt the collection,

use and disclosure of personal information "as is required or authorized by law". After considering these and other provisions, the Arbitrator stated:

> I conclude that a fundamental purpose of *PIPA* is not to restrict or interfere with the collection, use and disclosure of evidence in adjudicative proceedings. It is not the purpose of *PIPA* to interfere with the rules of natural justice. (Award, para. 56)

17 The Arbitrator then set out and explained the numerous provisions of the Code relevant to labour arbitrators and labour arbitration proceedings. He noted that under the Code, arbitration is "the essential dispute resolution procedure" for resolving collective agreement grievances and disputes without resorting to work stoppages (para. 68), and noted that labour arbitrators have an expansive jurisdiction with respect to such disputes, including jurisdiction to apply human rights legislation and other statutes of general application. He stated:

> There are characteristics of a labour arbitration that are similar to a private dispute resolution mechanism. First, its origins lay in the collective agreements negotiated by the parties as an in-house or domestic tribunal. Second, the parties choose their arbitrators who, over time, became familiar with both the parties and their negotiation history. Third, the grievance/arbitration process is related directly to both the administration and negotiation of the collective agreement. Fourth, the hearings are not open nor are they attended by members of the general public. These characteristics are important elements in the underlying and significant statutory principle of self-government. However, what the *Code* does in effect, is to incorporate this principle of self-government (free collective bargaining), within the context of a comprehensive and compulsory labour relations scheme, which includes arbitrators under Part 8, whose primary purpose is the peaceful resolution of workplace disputes. This statutory scheme, when combined with the Supreme Court of Canada's view of the jurisdiction of labour arbitrations to resolve all issues of human rights arising under a collective agreement, and second, the jurisdiction to adjudicate torts and matters arising under the *Charter of Rights and Freedoms*, supports the legal conclusion that labour arbitration, whatever its origins may have been, is no longer a private dispute resolution mechanism. (para. 77)

18 Next, the Arbitrator considered the Union's argument that the open court principle does not apply to labour arbitrators, as arbitration is a private dispute resolution mechanism and there is no public interest in the outcome of a labour arbitration. After considering a number of authorities, facts, and arguments raised by the parties in relation to this issue, the Arbitrator stated, under the heading "Analysis and Conclusions":

> I will now proceed to address the parties arguments within the framework in which they have presented them: *PIPA*; *Labour*

> *Relations Code,* common law, the *Charter* and the current practices of other tribunals and the Courts. After considering all of these competing rights and interests within the context of labour arbitration, I have reached the following conclusions.
>
> First, labour arbitration is not a private dispute mechanism. Whatever its origins as an internal or domestic dispute resolution provision in collective agreements, labour arbitration is now part of a comprehensive labour relations scheme meant to regulate workplace disputes that arise during the life of a collective agreement. The duties and powers of an arbitrator are those prescribed under the *Code*. The Supreme Court of Canada has enhanced that jurisdiction to include the authority to deal with issues such as human rights, torts and the *Charter*.
>
> Second, and not unrelated to my first determination, I conclude that labour arbitration is subject to the open court principle. For example, when a labour arbitrator decides that the Province of British Columbia has discriminated against its own employees under the *Human Rights Code* (as was the case in *Meiorin, supra*), or under the *Charter*, that decision requires public scrutiny and accountability. Applying Justice Wilson's succinct summary of the open court doctrine, I find first, such a hearing and decision benefits from public scrutiny by safeguarding an effective evidentiary process; second, it ensures that arbitrators behave fairly and are sensitive to the values espoused by society; third, it guarantees that the arbitration process operates with integrity and dispenses justice; fourth, arbitral processes and decisions provide an ongoing opportunity for the community to learn how labour arbitration operates; and finally, the publication of arbitration awards demonstrates how the rule of law is being applied to the workplace. (paras. 99-101)

19 The Arbitrator then observed that an important element of the open court principle is the publication of reasons, which helps ensure "fair and accurate decision making" and also provides "public accountability": *R. v. R.E.M.*, [2008] 3 S.C.R. 3 at paras. 12 and 13. The Arbitrator further observed that applying the open court principle to workplace disputes "inevitably raises the connection between a persons' [sic] work life and their personal life" (Award, para. 103), and that under the Code, decisions of arbitrators may be filed with the Supreme Court and enforced as decisions of that court. He further noted there are two statutory avenues to appeal labour arbitration awards (Sections 99 and 100 of the Code). He found the enforceability of arbitration awards as orders of the Court, and the statutory rights of appeal, "further support the open court principle applying to decisions of arbitrators" (para. 105).

20 The Arbitrator then noted that the open court principle must be balanced against the right to privacy, and added:

> Although I agree with Arbitrator Sanderson that the past practice of the last five decades is important, it is no longer, in itself,

> determinative. Privacy has gained substantial constitutional weight over the last five decades. Certainly the sensitivity of personal information combined with the potential of harm [through] increased accessibility and information sharing due to technological developments (internet, smartphones, social media, etc.) must be weighed with the public interest in disclosure. (para. 106)

21 The Arbitrator found that *PIPA* does not apply to labour arbitration proceedings, or that they fall within exemptions to the *PIPA* provisions (Sections 12, 15 and 18) governing the collection, use and disclosure of personal information without consent. He stated:

> I conclude that these exemptions capture labour arbitration proceedings. And in furtherance of the purposes of *PIPA* set out in Section 2, the collection, use and disclosure of personal information in arbitration proceedings and awards are "for purposes that a reasonable person would consider appropriate in the circumstances". Finally, this exemption of arbitration proceedings under *PIPA* is consistent with the open court principle. (para. 118)

22 The Arbitrator further stated:

> However, I do agree with the Union that the past custom of general publication is no longer sufficient given the importance of privacy and the difficulties that may arise as a result of the publication of awards on the internet. Whatever legislative scheme may ultimately apply, or whether or not the open court principle applies, an arbitral approach must be developed in respect to the issue of privacy, and its application to the disclosure and publication of personal information in arbitration awards. As the Union states, labour arbitrators can benefit from the practice of other tribunals as well as the policies and protocols enumerated by the courts. The constitutional values of privacy established by the *Charter*, and captured in provincial and federal privacy legislation, must be incorporated into the practices and customs of labour arbitrators in the publication of their awards. (para. 119)

23 The Arbitrator found that there is a "privacy spectrum – different types of information may receive different levels of protection" (para. 120). Personal information such as birth dates, social insurance numbers, credit card numbers, and financial account numbers should generally be omitted. Names of family members, co-workers, business associates, community and recreational groups, as well as addresses and geographical information especially in smaller communities should not be published if they are not material to the reasons. Similarly, an individual's marital and family status, sexual orientation, religious or political beliefs, race, gender and physical or mental disabilities should not be published unless such information is necessary to explaining the reasons for the award. Where such personal information is material, it may be appropriate to anonymize the person's identity.

24 The Arbitrator added that an "important area of privacy, about which there is much consensus, is the disclosure of health records" (para. 125). Where health records are relevant, disclosure should only be to the extent necessary and "it is often the practice of arbitrators to anonymize (use initials) the name of the individual whose health records have been disclosed and are to be published in an award" (para. 127). Similarly, the identities of persons who have been subject to sexual, physical or mental abuse, as well as minors and "innocent third parties" are anonymized when the personal information is necessary to the decision (para. 128).

25 By contrast, the Arbitrator stated, there can be a public interest in knowing the identity of grievors found to have committed serious disciplinary offences such as theft, fraud and assault. The Arbitrator discussed where the onus for non-publication should lie and the standard or test to be used for determining whether it is met. He rejected the Union's position that there should be a "blanket order or approach" of non-disclosure of personal information about grievors without their consent. He found such an approach would not be "an appropriate framework in balancing the interests of privacy with the open court principle in the context of labour arbitration proceedings" (para. 138).

26 The Arbitrator found the appropriate approach or framework would be a balancing of the open court principle and the right to privacy in the specific circumstances of the case before the arbitrator. He concluded:

> Labour arbitrators currently exercise a discretion in respect to the issues of privacy. However, to date, the Union argues, it has been within the unexamined custom of the last five decades of simply publishing arbitral awards without reference to either the open court principle or to a legislative privacy framework. Other tribunals, and the Courts, have developed institutional guidelines that address issues of privacy and publication on the internet. Labour arbitrators, however, do not operate in an institutional framework. The development of guidelines, therefore, must proceed either on a case by case basis, or by legislation.
>
> The adoption of the open court principle creates the presumption of publication; however, the privacy concerns of grievors and witnesses, especially in respect to personal identifiers, and personal information, do raise significant issues. Arbitrators must balance the sensitivity of the personal information, and the potential harm to grievors and witnesses in the event of publication of their names, in the crafting [of] their awards. Therefore, grievors and witnesses always maintain the right to raise the issue of the non-disclosure of personal information, or the right to anonymity in respect to the publication of such personal information.
>
> Finally, turning to the circumstances of the case before this board, my conclusion would have been not to grant the grievor anonymity. His offence is a disciplinary one. He provides no specific circumstances to distinguish himself from any other person in a similar situation; indeed, his application for anonymity is based

> solely on a blanket approach – that all persons must give consent to the publication of their name in an arbitral award. I have declined to follow such an approach. (paras. 140-142)

III. POSITIONS OF THE PARTIES

Union

A. REVIEW JURISDICTION

27 The Union's primary position is that jurisdiction to review the Award rests with the Court of Appeal under Section 100, because the real substance of the Award is a matter of general law, namely, the proper interpretation of *PIPA*. The Union submits the provisions of *PIPA* at issue apply to all administrative proceedings, not simply to labour arbitration proceedings, and apply not just to unionized workers, but also to non-unionized workers and persons in general. Therefore, the Union submits, the main constituent of the Award is a matter of general law not included in Section 99(1). The Union relies in particular on *Vancouver Hospital & Health Sciences Centre v. British Columbia Nurses' Union*, 2005 BCCA 343 ("*HEABC*") and *British Columbia Teachers' Federation v. British Columbia Public School Employers' Assn.*, 2013 BCCA 179 ("*BCTF*"), which both dealt with the application of the *Employment Standards Act*, R.S.B.C. 1996, c. 113 (the "*ESA*").

B. SECTION 99 APPLICATION

28 In the alternative, if the Board finds it has jurisdiction to review the Award under Section 99 of the Code, the Union submits the proper standard of review is the "law of the statute" standard of correctness, and that the Arbitrator made a number of errors which require that the Award be set aside and a different decision substituted for it.

29 The Union reiterates its primary position is that the Arbitrator erred in his interpretation of *PIPA*. Since this issue does not involve the "law of the contract" (an arbitrator's interpretation of the collective agreement) but rather the interpretation of a statute, the Board's "law of the statute" approach would apply and the Arbitrator's interpretation of *PIPA* would be reviewed for correctness: *Castlegar and District Hospital*, BCLRB No. B484/2000 at para. 25; *Board of School Trustees of School District No. 23*, BCLRB No. B214/94 at pp. 10-11.

30 With respect to why the Arbitrator's interpretation of *PIPA* is not correct, the Union begins by submitting that, until recently, an individual who participated in labour arbitration proceedings "had very little to be concerned with regarding an invasion of his or her privacy". Awards received fairly limited publication and distribution in forms that were not easily available to the public. However, the Union submits, "...over the years the power of the internet has been unleashed with an explosion of information and sophisticated search tools, including CanLII's publication of every arbitration award (or essentially every arbitration award) issued in this Province, making them available to the entire world, all free and easily found on the internet".

31 The Union next submits that the Supreme Court of Canada has held that privacy legislation is quasi-constitutional legislation: *Lavigne v. Canada (Office of the Commissioner of Official Languages)*, [2002] 2 S.C.R. 773, 2002 SCC 53 at paras. 25-26. It submits that therefore such statutes must be read broadly to protect the right to privacy. The Union submits the British Columbia legislature recognized individuals' right to privacy and to control the collection, use and disclosure of their personal information with the passage of *PIPA* in 2003, and that the "...modern law as it relates to individuals' right to privacy of their personal information, and in particular the recognition of the new right created in 2003, has not been taken into account, or not properly taken into account, by labour arbitration panels".

32 The Union next submits that the Arbitrator erred in finding that the open court principle applies to labour arbitration proceedings. The Union submits the principle applies to courts or at least requires a public institution, which the Union says a labour arbitration between private parties is not. The Union submits that if the open court principle applies to labour arbitration proceedings, it would require not just that the awards be made public but that the proceedings themselves be public. The Union submits there is a presumption against the public being able to attend arbitration hearings: *Malaspina University College and Malaspina University College Faculty Association (Mison Nishihara Grivance)*, Ministry No. X-013/93, [1996] B.C.C.A.A.A. No. 69, 53 L.A.C. (4th) 93 (Bruce) at paras. 12-14.

33 The Union submits that courts have to balance the competing values of the right to privacy and the important constitutional value of the open court principle, and it further acknowledges that often the right to privacy gives way to the principle. However, it submits that labour arbitrators do not serve a constitutional role and accordingly they do not need to have the public put a check on their powers. Therefore, the Union submits, the open court principle does not apply to them.

34 The Union submits that the power of arbitrators is checked not by the public but rather by review of their decisions by the Board under Section 99 and the Court of Appeal under Section 100, and also by the parties, who are free to negotiate limitations on or changes to arbitral outcomes. The Union submits: "The public does not have a means to check the power of arbitration panels".

35 The Union submits that the Award in this case, as in most arbitration proceedings, resolved a private dispute between the Union and the Employer over whether the Employer had breached the collective agreement by dismissing the Grievor and, if so, what the appropriate remedy was. The Union submits the Arbitrator does not identify any public interest in the outcome, nor any public interest in knowing the names of the Grievor or witnesses. The Union submits there is no public interest as the Award affects only the immediate parties.

36 To the extent the Arbitrator relied on Code provisions regulating labour arbitration proceedings as support for his finding that the open court principle applies, the Union submits that those provisions do not transform a private dispute resolution process into a public one, or one which possesses a public interest element when it involves only

private litigants. The Union submits the "only grey area" arises when the employer is also a governmental institution. In that case, the Union acknowledges the public may have an interest in arbitration proceedings which involve issues such as whether the governmental institution violated human rights legislation. However, the Union submits, those considerations do not apply here as the Employer is a private sector employer.

37 Assuming the open court principle does not apply to labour arbitration proceedings, the Union submits there is nothing to override the right to privacy as the determining consideration. The Union further submits that over the past several years, a number of important reports have been published by federal and provincial privacy bodies which have made recommendations regarding the current practices of administrative tribunals concerning the disclosure of personal information in decisions. The Union submits that, when applied to arbitration awards, those recommendations would result in awards not disclosing such information.

38 The Union notes that Section 96 of the Code requires an arbitrator to file a copy of their award with the Director of CAAB, who must make the award available to the public. However, the Union submits there is no statutory requirement that the award must contain names of the grievor or witnesses. Awards have been filed in which names have been redacted. Thus, the Union submits, Section 96 does not compel or even "create a presumption of" including names in arbitration awards.

39 The Union submits the Arbitrator also erred in finding that Section 61 of the *Administrative Tribunals Act*, S.B.C. 2004, c. 45 (the "*ATA*") applied to labour arbitrators. Section 61(2) of the *ATA* provides that the *Freedom of Information and Protection of Privacy Act*, R.S.B.C. 1996, c. 165 ("*FIPPA*") does not apply to "(a) a personal note, communication or draft decision of a decision maker" or "(f) a decision of the tribunal for which public access is provided by the tribunal". The Union submits that Section 61 of the *ATA* is made applicable to an administrative tribunal through an express amendment to the tribunal's home statute. It gives the tribunal the ability to disclose personal information in its decisions, if it wishes. However, the Union submits, the Code was amended (by Section 115.1) to make Section 61 applicable to the Board only. No provision of the *ATA* – including Section 61 – has been made applicable to labour arbitrators. Furthermore, the Union submits, and in any event, *FIPPA* cannot apply to labour arbitrators as it applies only to "public bodies". Accordingly, it submits, as *FIPPA* already does not apply to them, it is unnecessary to find an exemption to its application for labour arbitrators under Section 61 of the *ATA*.

40 The Union submits that the Arbitrator's analysis of Section 61 of the *ATA* in the Award was incorrect, and also unnecessary, because the Union did not take the position that *FIPPA* applies to labour arbitrators. Rather, it took the position that *PIPA* applies, and prevents the disclosure of personal information of individuals appearing before labour arbitrators in their awards without the individual's express consent.

41 On that issue, the Union submits the Arbitrator erred in finding *PIPA* did not apply to labour arbitrators because they do not fall within the definition of "organization" in Section 1 of *PIPA*. "Organization" in that provision is defined broadly to include a

"person", and specifically exempts public bodies and the courts, among others, but not labour arbitrators. The Union further submits that Section 3(2)(f) of *PIPA* exempts personal information contained in "a note, communication or draft decision of the decision maker in an administrative proceeding". The Union submits Section 3(2)(f) applies to labour arbitrators, but notes that it specifically covers only draft decisions, and not the final decision or award. Accordingly, awards (final decisions) of labour arbitrators are subject to *PIPA*.

42 The Union submits this interpretation of *PIPA* as applying to the decisions of labour arbitrators is consistent with the purpose of *PIPA* as set out in Section 2:

> ...to govern the collection, use and disclosure of personal information by organizations in a manner that recognizes both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

The Union submits that the right of the individual to protect their personal information is therefore to be balanced against the need of the organization to collect, use or disclose such information. The Union submits that need "sets a very high threshold". It further submits it "is not taking issue with an arbitrator's collection or use of personal information, only its disclosure".

43 The Union further submits that, if there could be any doubt arbitrators fall within the scope of *PIPA*, such doubt is removed by the limited exception for mediators and arbitrators found in Section 23(3)(e) of *PIPA*. Such an exception would be unnecessary if arbitrators did not fall within the scope of *PIPA*. The Union submits it is clear that a labour arbitrator is an "organization" within the meaning of Section 1 of *PIPA* and therefore the Arbitrator erred in finding that *PIPA* did not apply. Not only does *PIPA* apply, but also it exempts the deliberation (notes, communications and draft decisions) of labour arbitrators only (under Section 3(2)(f)), not their final decisions. The Union submits the Arbitrator was therefore also incorrect in finding that, if *PIPA* applies to labour arbitrators, their final decisions (awards) are exempt.

44 The Union submits the Arbitrator erred when he found, in the further alternative, that if *PIPA* applied to labour arbitrators' awards, express consent of individuals for disclosure of their personal information in those awards was not required. The Union submits that none of the categories of exceptions from the need for consent cited by the Arbitrator apply. The Union submits the Grievor's involvement in the grievance process cannot be relied on as implied consent to the disclosure of his personal information in the Award and in any event, even if somehow his participation could be taken as implying consent, he expressly withdrew any such implied consent (Award, para. 34).

45 The Union further submits that none of the four *PIPA* exemptions which the Arbitrator relies on are applicable. Section 18(1)(c) applies where it is "...reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an

investigation or a proceeding". The Union submits the Arbitrator does not indicate in the Award how the arbitration proceedings would be compromised if the Grievor's name was not disclosed in the Award. The Union submits that requiring consent of the individual to disclose their name in the award would not compromise arbitration proceedings; accordingly, the exception in Section 18(1)(c) of *PIPA* to the requirement of consent does not apply.

46 The Union submits the next exception relied on by the Arbitrator is in Section 18(1)(o): consent is not required where the disclosure is "...required or authorized by law". The Union submits the Code does not require an arbitrator to disclose personal information without consent, nor authorize it. There is nothing similar to Section 61 of the *ATA* in the Code that applies with respect to labour arbitrators. The Union submits that neither Section 89 nor Section 92 of the Code authorizes or requires disclosure of names of grievors or witnesses in arbitration awards without their consent.

47 The Arbitrator also cites the exception in Section 18(1)(i): consent is not required where "...the disclosure is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of personal information". The Union submits this exception does not apply, first because the Grievor did not testify pursuant to a summons, and second, Section 18(1)(i) applies when the disclosure is a result of an individual being compelled to disclose as a result of a summons or order. It thus protects witnesses who are legally compelled to disclose personal information they would not otherwise be permitted to disclose (were it not for the subpoena, warrant, or legal order compelling them to do so). The Union submits it does not, however, apply to a person receiving the compelled disclosure. In particular, it does not permit that person to then go on to disclose the personal information without consent. Arbitrators are not disclosing personal information pursuant to Section 18(1)(i) because they are not disclosing "for the purpose of complying" with a subpoena, summons or order.

48 The Arbitrator also cited the exception in Section 18(1)(m), for disclosure that is "...to a lawyer who is representing the organization". The Union submits this exception does not apply. The Arbitrator was not representing the parties and there was no lawyer representing the Arbitrator. This provision simply has no application.

49 The Union notes that Section 17 of *PIPA* provides an organization "...may disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances and that...(c) are otherwise permitted under this Act". The Union submits that, even if disclosure of personal information by an arbitrator was otherwise permitted under *PIPA* (which it disputes), a reasonable person would not consider it appropriate in the circumstances to disclose a grievor's or witness's name in an award without that person's consent. The Union submits that the parties to the arbitration proceeding know the identities of those involved in the proceeding. They are free to keep their own records or notes of the proceeding for their own purposes, including in personnel files. Further, arbitrators could adopt the practice of providing the parties with an appendix which is not part of the published award but

which identifies those involved. There is no need to disclose names in the award without consent, in breach of the right to privacy.

50 The Union summarizes its position as being that *PIPA* applies to arbitrators and prevents them from disclosing personal information such as names of grievors and witnesses in their awards without those individuals' consent. In this case, the Grievor did not consent. The Arbitrator erred in interpreting *PIPA* as not applying and in finding that the Grievor's name could be disclosed without consent. Complying with *PIPA* does not impair the arbitration process, or the parties' right to a fair hearing, and does not prevent the disclosure of personal information by others, such as the employer or the union, which they are lawfully permitted to disclose. Applying *PIPA* to arbitrators' awards would not result in a publication ban but would "...simply result in arbitrators' [sic] issuing an award using initials, which could (if one desired) be supplemented with an appendix separate from the final award and available only to the parties".

Employer

A. REVIEW JURISDICTION

51 The Employer notes that, under Section 100 of the Code, the review jurisdiction of the Court of Appeal is limited to circumstances where the "...basis of the decision or award is a matter or issue of the general law not included in s. 99(1)". The Employer disagrees with the Union's submission that the Arbitrator's interpretation of *PIPA* is the basis of the Award. It notes that simply because a matter of general law is raised before an arbitrator, that does not make his interpretation or application of that matter the basis of the award. The Court of Appeal has found in a number of decisions (cited by the Employer in its submission) that the real basis of an award is not the arbitrator's consideration of the general law matter raised, but rather a labour relations matter. In such circumstances, review does not lie under Section 100: *HEABC* at paras. 49-50.

52 The Employer notes that in *Communications, Energy and Paperworkers' Union of Canada, Local 433 v. Unisource Canada Inc.*, 2004 BCCA 351, the Court of Appeal rejected an argument that it had jurisdiction under Section 100 because the arbitrator, in the course of deciding a grievance, considered privacy legislation and the law relating to privacy. The Court found in that case the basis for the award was whether the installation of surveillance cameras was a reasonable exercise of management rights in all the circumstances, and found this constituted an issue of labour relations within the jurisdiction of the Board under Section 99.

53 The Employer also cites and relies on the recent judgment of the Court of Appeal in *Okanagan College Faculty Assn. v. Okanagan College*, 2013 BCCA 561 ("*Okanagan College*"). In that decision, the Court of Appeal reviewed its previous judgments on the jurisdictional issue and emphasized that the matter of general law had to be "the" basis and not merely a basis of the award. Where a matter of general law is merely a basis of an arbitration award, interpretation of that general law may be subordinate to the paramount labour relations matter before the arbitrator.

54 The Employer submits that, in the present case, the privacy issues arose in the context of a grievor who had been dismissed for cause. While the privacy issues were addressed in a separate award, they arose in the context of a termination grievance engaging the just cause standard. The Employer submits that the privacy issues were addressed in a separate award because the Arbitrator had initially referred them to the Board under Section 98 of the Code, and then had to address them separately when they were remitted back to him by the Board. The Employer submits that, in these circumstances, the basis of the Award was the application of the just and reasonable cause standard of the Code, and labour relations issues related thereto. It submits the case involved more than the application of the general law. The privacy issue "was nothing more than a consequence or constituent element of process as part of the termination for cause hearing" and "had no life of its own".

55 The Employer submits that where an external statute is interpreted through the "prism of labour relations principles", as it submits *PIPA* clearly was in the Award, it cannot be said that the question of general law is "not included in s. 99(1)". The Employer submits that, in this case, the review of *PIPA* was done in the context of labour relations principles and thus the interpretation of *PIPA* is not the basis of the Award.

B. SECTION 99 APPLICATION RESPONSE

56 The Employer submits that arbitration is one aspect of a comprehensive and integrated statutory scheme for the regulation of labour relations in British Columbia (*Northstar Lumber, a Division of West Fraser Mills Ltd. v. United Steelworkers of America, Local 1-424*, 2009 BCCA 173). It submits arbitral decisions are "laden by weaving together both statutory and arbitral labour relations principles" and thus it would be "inappropriate to hive off certain aspects of a decision and apply different standards of review depending on which finding of the arbitrator is being challenged". Accordingly, the Employer does not agree that the Arbitrator's interpretation of *PIPA* should be reviewed on a correctness standard.

57 The Employer disagrees that the Arbitrator erred in finding that the open court principle applies to labour arbitrations. It submits arbitration tribunals are statutory bodies subject to the open court principle. As such, the Employer submits, the Arbitrator correctly found labour arbitrations were a public institution and not merely a private dispute mechanism, and the open court principle is applicable to them.

58 The Employer further states that it is "...content to respond to the Union's grounds for review assuming (for the purposes of argument only) that the Union is correct in its assertions that PIPA applies to arbitrators and, as a result of the application of PIPA arbitrators cannot disclose 'personal information' without consent". The Employer says it "adopt[s] this manner of proceeding in order to expedite the review process in the matter at hand".

59 The Employer submits that the purpose of *PIPA*, reflected in Section 2 of that statute, contemplates a balancing of interests. It submits that, while privacy rights are important rights, they "do not trump all other rights nor does PIPA override all other legal hierarchies". The Employer submits that, under Section 2 of *PIPA*, the right to use or disclose personal information is made subject to what a "reasonable person would consider appropriate in the circumstances". Furthermore, under Section 18(1)(o), personal information may be disclosed without consent if it is "authorized by law". The Employer submits that *PIPA* "accepts that its provisions will be applied in many legal contexts by expert adjudicators in their respective field" and that "[w]hen those persons administering other legal hierarchies perform the balancing required by s. 2 and find it reasonable to do so, personal information may be disclosed without consent". The Employer submits that, in such circumstances, "that disclosure is authorized by law".

60 The Employer submits that in this case, the Arbitrator reviewed the competing interests under *PIPA* "through the prism of his labour relations expertise and through the statutory framework arising from the *Code* which governed the exercise of his authority". He concluded that a reasonable person in the context of a labour arbitration proceeding would, for all the reasons set out in the Award, expect that the names of the Grievor and the witnesses would be disclosed in the Award. The Employer submits that, while the Arbitrator had the authority to anonymize those names, as an exercise of discretion conferred on him by the Code, the discretion was exercised within the framework of his expertise and statutory authority. The fact that the Union does not agree with the Arbitrator's exercise of discretion in that regard is not a ground for review unless it breaches principles expressed or implied in the Code.

61 The Employer submits that there may be circumstances where statutes require that personal information not be disclosed, but it submits the Code does not do this. The Employer submits that the Legislature has "imbued labour arbitrators with very significant authority" over the administration of collective agreement grievance arbitration, and the Arbitrator had authority to apply *PIPA* and determine whether to disclose names or anonymize them. The Employer submits that this is an exercise of discretion that arises from the plenary power given to arbitrators under the Code. It submits that in this case, the Arbitrator engaged in considering the circumstances and concluded that anonymity was not necessary. While the Union does not agree with how the Arbitrator exercised his discretion when balancing rights under *PIPA*, the Employer submits it has not shown the Arbitrator's exercise of discretion was inconsistent with Code principles.

Union's Final Reply

62 In its final reply, the Union submits that in some decisions cited and relied on by the Employer, the Court of Appeal found it did not have jurisdiction under Section 100 because, although the arbitrator considered a matter of general law, the real basis of the award was found to be the interpretation of the collective agreement. In this case, the Arbitrator was not called upon to interpret or apply any provision of the collective

agreement in the Award. Rather, he was interpreting and applying *PIPA*, which the Union submits was the basis of the Award.

63 With respect to *Okanagan College*, the Union submits the Court of Appeal expressed some frustration at the difficult task of determining the proper review jurisdiction in that case. Eventually the Court held that since the interpretative issues of the human rights legislation were settled, the arbitrator was, for the most part, applying those long settled principles, not interpreting them. The Union submits that the analysis in *Okanagan College* demonstrates that, at some point, an issue of general law may become so settled as to involve only the application of a statute to the specific circumstances, not its interpretation, and that when that occurs, the matter falls within the review jurisdiction of Section 99. In the present case, however, the Union submits, the interpretation of *PIPA* is far from settled and the Award is a decision of a "novel issue of interpretation". The Union submits that therefore the present case is unlike the circumstances in *Okanagan College*, and review jurisdiction would lie with the Court of Appeal.

64 The Union submits the basis of the Award cannot be said to be the just and reasonable cause determination found in the Merits Award. The determination of the grievance in the Merits Award is not the basis of the Award, which does not address the issue of just and reasonable cause or the merits of the grievance. The basis of the Award is the interpretation of *PIPA*, a matter of general law, and accordingly reviewable under Section 100.

65 The Union submits the open court principle applies only to the judiciary and not to administrative proceedings. If the open court principle applied to labour arbitrators, their hearings would have to be open to the public and exhibits and written arguments would have to be accessible to the public. The Union says that not being covered by the open court principle does not diminish the importance of arbitration proceedings; it merely recognizes that arbitrators do not have a constitutional role in society which requires the principle to apply to them.

66 The Union submits the competing values set out in Section 2, the purpose provision of *PIPA*, are not the open court principle and the right to privacy, but rather the right of individuals to protect their personal information as against the needs of organizations to collect, use or disclose such personal information. The Union submits the Employer does not identify any actual need for arbitrators to disclose the names of grievors and witnesses in their awards. The Union submits that, while the employer community may prefer the disclosure of names in labour arbitration awards, preference is not sufficient; *PIPA* requires a "need" for an organization to collect, use or disclose personal information.

67 In any event, the Union submits, a general "purpose" provision in a statute cannot override specific substantive provisions in *PIPA* which restrict the collection, use and disclosure of personal information by organizations without consent.

IV. ANALYSIS AND DECISION

A. REVIEW JURISDICTION

68 The first question to be decided is whether the Award falls within the jurisdiction of the Board to review under Section 99 of the Code.

69 Section 99(1) provides the Board with jurisdiction to review an arbitration award on application by an affected party for: (a) denial of a fair hearing; or (b) inconsistency with principles expressed or implied in the Code or another act dealing with labour relations. Section 100 provides the Court of Appeal with jurisdiction to review an arbitration award "...if the basis of the decision or award is a matter or issue of the general law not included in section 99 (1)".

70 Thus, the Court of Appeal's jurisdiction under Section 100 is not triggered whenever the basis of an arbitrator's decision or award is a matter or issue of general law; it is only triggered where the basis is a matter of general law "not included" in Section 99. In *HEABC*, a leading decision by a five-member division of the Court of Appeal, the Court stated:

> I would summarize what I understand to be the correct analytical approach to the application of ss. 99 and 100, based on a purposive interpretation of those sections, and the jurisprudence which has previously addressed the problem:
>
> 1. Identify the real basis of the award;
>
> 2. Determine whether the basis of the award is a matter of general law;
>
> 3. If the basis of the award is a matter of general law, determine whether it raises a question or questions concerning the principles of labour relations, whether expressed in the Labour Relations Code or another statute.
>
> If the answer to the third question is in the affirmative, then review of the award lies within the jurisdiction of the Labour Relations Board. If it is negative, review lies within the jurisdiction of this Court. (paras. 49-50)

71 The Court of Appeal has consistently described the scope of its jurisdiction to review arbitration awards under Section 100 as narrow: *Okanagan College* at para. 78, quoting the following passage from *British Columbia Public School Employers' Assn. v. British Columbia Teachers' Federation*, 2005 BCCA 411:

> The legislative history of sections 99 and 100 of the *Code*...and the general history of labour relations in this Province in the preceding 75 years support the view that the legislative intent in

> enacting sections 99 and 100 was to confer a narrowly restricted jurisdiction upon the court. … (para. 13)

72 It is not enough that "a" basis of the award is a matter of general law; the general law matter must be "the" basis of the award: *Okanagan College* at paras. 44-45. Thus, even though "a" basis of the award in *Okanagan College* was the arbitrator's application of the *Human Rights Code*, R.S.B.C. 1996, c. 210, the Court concluded it did not have review jurisdiction because the arbitrator's application of the *Human Rights Code* was not "the" basis of the award. The Court stated:

> To the extent that interpretation of the general law was required, I consider it ancillary to the real basis of the award, which was the interpretation of the collective agreement. (para. 84)

73 In the present case, the Arbitrator was not interpreting the collective agreement. Rather, the Award decides an application by the Union to have the Grievor's name anonymized (represented by initials), on the basis that publishing his name in any award without his consent would breach his right to privacy. The Union's primary argument in support of its application was that labour arbitrators are subject to *PIPA* and, accordingly, they cannot disclose names of grievors and witnesses in their awards without the express consent of those individuals. Alternatively, the Union submitted, even if labour arbitrators are not subject to *PIPA*, nonetheless, as a matter of sound labour relations policy, labour arbitrators should not publish the names of grievors and witnesses in their awards without their consent.

74 The Arbitrator was required to, and did, address both the Union's primary and the alternative arguments in the Award. The Award is thus based not only on the Arbitrator's consideration of the parties' arguments with respect to the interpretation and application of *PIPA*, but also on his consideration of the parties' labour relations policy arguments regarding participants' right to privacy in the context of labour arbitration. Both issues are necessary aspects of the Award. While the Union submits that the Arbitrator's interpretation of *PIPA* is the basis for the Award, I find it is only "a" basis.

75 In *Okanagan College*, the Court noted that the arbitrator's conclusions with respect to the application of the statute of general application in that case, the *Human Rights Code*, were "deeply intertwined with his conclusions regarding the nature and scope of the collective agreement, and the purposes for the evaluative regime set up by the parties", and this supported the conclusion that the award did not fall to be reviewed under Section 100 (para. 68). Similarly, in the present case, I find the Arbitrator's conclusions with respect to the application of *PIPA* in the arbitration context are deeply intertwined with his findings regarding the nature and scope of the labour arbitration process under the Code and the role and impact of participants' right to privacy in that specialized context.

76 For example, the Arbitrator considered whether the arbitration process is a private dispute resolution mechanism, as argued by the Union, or has a public interest component, as argued by the Employer. This issue was relevant to his consideration of the parties' arguments not only with respect to *PIPA*, but also with respect to what

privacy protection is appropriate in the arbitration context from a labour relations policy perspective. Thus, the Arbitrator's consideration of the privacy issue before him was not limited to an issue of interpreting *PIPA*. To the extent he interpreted and applied *PIPA*, he did so as one aspect of deciding the Union's application for anonymization of the Grievor's name in any award arising from his dismissal grievance.

77 The Court in *Okanagan College* noted the high degree of deference that the Supreme Court of Canada has mandated for decisions of labour arbitrators, observing (at para. 82) that this was a factor considered in *Teck Coal Ltd. v. United Steelworkers Local 9346 (Elkview Operations)*, 2013 BCCA 485 ("*Teck Coal*") in deciding the review jurisdiction issue in that case. In *Teck Coal*, as in the present case, the arbitration award at issue did not decide the merits of the grievance but rather an ancillary issue which did not involve collective agreement interpretation.

78 The award in *Teck Coal* decided the union's application for an interim order precluding the employer from implementing a random drug and alcohol testing policy pending the arbitrator's decision on the merits of the grievance. When the arbitrator issued an award declining to grant the interim order, the union sought review under Section 100, arguing the award was based on a matter of general law, namely "...the application of the common law test for an injunction or stay of proceedings as set out in *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311" (*Teck Coal*, para. 10).

79 The Court of Appeal in *Teck Coal* accepted that "[t]he application of the test for injunctive relief is clearly a question of general law" (para. 25). However, in light of the wording of Sections 99 and 100 and the Court of Appeal's previous decisions interpreting the scope of Section 100 narrowly, the Court further found jurisdiction depended on "...whether this is an issue of general law that is outside the scope of review by the LRB" (*ibid.*). In concluding it was not, the Court noted a recent decision of the Supreme Court of Canada which acknowledged the expertise of labour tribunals in applying common law principles in a labour law context (paras. 34-35) and stated:

> This expertise of the arbitrator and the LRB cannot be overlooked when assessing whether the application of the general law principles of interim relief fall within s. 99(1). (para. 36)

80 The Court then quoted a passage from the Supreme Court of Canada's recent decision in *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper Ltd.*, 2013 SCC 34 as support for the proposition that the "...balancing of irreparable harm and the balance of convenience when assessing the safety and privacy interests of workers engages the objects and principles of the *Code*" (*Teck Coal*, para. 37). It further stated:

> The issue that is raised on the application for a prehearing order the balancing of safety interests versus privacy interests is the same issue that will be raised before the arbitrator on the merits [of the grievance]. The analysis in *Irving* speaks strongly of the

> importance of having such policy decisions made in the labour relations context. (para. 38)

81 Thus, notwithstanding the basis of the award in *Teck Coal* was not a matter of collective agreement interpretation but rather a matter of general law (interim injunctive relief), the Court concluded the award fell to be reviewed by the Board under Section 99. The Court found the issue of interim injunctive relief arose in the context of labour arbitration and therefore engaged principles of labour relations. The Court recognized the Board has expertise in applying such general law principles in the labour relations context, and held it was important to have the Board make such labour relations policy decisions.

82 Similarly, in the present case, I find it is important that issues regarding how participants' right to privacy affects the publication of their names in labour arbitration awards be determined in a labour relations context, notwithstanding those issues may involve some interpretation and application of the general law. As the Court of Appeal noted in *Teck Coal*, some general law matters fall within the scope of the Board's jurisdiction under Section 99. I find the issue of how participants' privacy rights should affect publication of grievors' and witnesses' names in labour arbitration awards is one such matter.

83 I find the Section 100 decisions relied on by the Union are distinguishable because, in those cases, the Court found the "real basis" of the award was a matter of general law which fell outside the Board's jurisdiction under Section 99. For example, the basis of the awards in *HEABC* and *BCTF* were in both cases found to be the interpretation of the *ESA*. Here, I find the interpretation of *PIPA* is not the basis of the Award; at most it is "a" basis, which does not suffice to invoke the Court of Appeal's jurisdiction under Section 100: *Okanagan College*.

84 I find the issue in the present case is similar to the issue in *Teck Coal*, in that it involves a matter of general law (interim relief in that case, the right to privacy in this case), that arose as an ancillary issue to the "real substance of the matters in dispute" (to use the language of Section 82(2) of the Code). In both cases, the ancillary matter or issue arose in the specialized context of labour arbitration and is imbued with labour relations policy considerations. To the extent the issue requires interpretation of a statute of general application (in this case, *PIPA*), that is merely a basis of the Award, not the basis. The Award concerns labour arbitration practice with respect to the naming of grievors and witnesses in awards, and how that practice is or should be affected by the right to privacy of participants in the labour arbitration process. In these circumstances, I find the Award falls within the Board's review jurisdiction under Section 99.

B. SECTION 99 APPLICATION

85 As the Union notes in its Section 99 application, the Supreme Court of Canada has said that the protection of privacy is "a fundamental value in modern, democratic states": *Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403 ("*Dagg*") at para. 65.

As the Court further noted in *Dagg*: "Privacy is a broad and somewhat evanescent concept, however" (para. 67). One type of privacy interest identified by the Court in *Dagg* is the ability to control the disclosure of information about oneself (personal information). The Court in *Dagg* quoted a passage from an earlier decision, *R. v. Dyment*, [1988] 2 S.C.R. 417 at pp. 429-430, which states in part:

> In modern society, especially, retention of information about oneself is extremely important. We may, for one reason or another, wish or be compelled to reveal such information, but situations abound where the reasonable expectations of the individual that the information shall remain confidential to the persons to whom, and restricted to the purposes for which it is divulged, must be protected. Governments at all levels have in recent years recognized this and have devised rules and regulations to restrict the uses of information collected by them to those for which it was obtained; see, for example, the Privacy Act... (para. 67)

86 The Union submits the Legislature recognized the importance of privacy rights by enacting *FIPPA*, which regulates the collection, use and disclosure of personal information by public sector entities, and *PIPA*, which regulates the same by private sector entities. The Union submits *FIPPA* does not apply to labour arbitrators, but *PIPA* does. It submits the Arbitrator erred when he concluded that "...*PIPA* does not apply to labour arbitration proceedings" (Award, para. 114).

87 The Union notes that *PIPA* applies to an "organization", which is defined in Section 1 as:

> "organization" includes a person, an unincorporated association, a trade union, a trust or a not for profit organization, but does not include
>
> > (a) an individual acting in a personal or domestic capacity or acting as an employee,
> >
> > (b) a public body,
> >
> > (c) the Provincial Court, the Supreme Court or the Court of Appeal,
> >
> > (d) the Nisga'a Government, as defined in the Nisga'a Final Agreement, or
> >
> > (e) a private trust for the benefit of one or more designated individuals who are friends or members of the family of the settlor…

88 Section 1 of *PIPA* also states:

> "public body" means

> (a) a ministry of the government of British Columbia,
>
> (b) an agency, board, commission, corporation, office or other body designated in, or added by regulation to, Schedule 2 of the Freedom of Information and Protection of Privacy Act, or
>
> (c) a local public body as defined in the Freedom of Information and Protection of Privacy Act…

89 Labour arbitrators are not designated in, or added by regulation to, Schedule 2 of *FIPPA*. There is no suggestion they are a local public body as defined in *FIPPA*, or otherwise fall within any of the express exclusions from the definition of "organization" in *PIPA*. The Union submits that a labour arbitrator is a "person" within the meaning of the definition of "organization", and therefore an organization to which *PIPA* applies. (Section 3 of *PIPA* states that it applies "to every organization".)

90 The Arbitrator acknowledged that the definitions of "organization", "proceeding" and "personal information" in Section 1 of *PIPA* are "broad enough to incorporate labour arbitration boards" (Award, para. 24). He further stated:

> In summary, the definition section of *PIPA* casts a very wide net. The definition of "organization" is so broadly defined that it is capable, as the Union argues, of including an arbitration board; second, personal information includes "employee personal information"; and third, a "proceeding" includes an "administrative proceeding where there has been a breach of an agreement or an enactment". Further, the *Act* applies to "every organization" with the significant exception of the courts. (Award, para. 50)

91 The Arbitrator nonetheless concluded that "...*PIPA* does not apply to labour arbitration proceedings" (Award, para. 114). He continued:

> Clearly, on its face, *PIPA* is wide enough in its scope to include labour arbitration. However, it does not expressly do so. It is worth repeating Privacy Commissioner David Loukidelis remarks in his paper, *Privacy and Openness in Tribunal Decisions*, dated November 22, 2008, quoted by Arbitrator Sanderson in his *Husband Food Ventures Ltd, supra,* award, that the provisions of *PIPA* do not address the "collection, use and disclosure" of personal information in "labour arbitration processes and awards" (page 5). (*ibid.*)

92 In its Section 99 application, the Union takes issue with the Arbitrator's interpretation of Commissioner Loukidelis' remarks in his 2008 paper as supporting the conclusion that *PIPA* does not apply to labour arbitrators. The Union submits that, read in context, the remarks support the conclusion that *PIPA* does apply. I find it unnecessary to decide whether the remarks of Commissioner Loukidelis in a 2008 paper support a conclusion that *PIPA* does or does not apply to labour arbitrators.

Having reviewed the remarks, I find they are ambiguous on this issue, and in any event, they do not purport to offer a binding legal opinion or ruling.

93 The Union notes the Arbitrator also stated in the Award that "a labour arbitration proceeding does not constitute an administrative proceeding as set out in *PIPA*" (Award, para. 115) and that a labour arbitrator is "akin to a lawyer in private practice" (Award, para. 116). The Union submits the Arbitrator erred in concluding a labour arbitration proceeding is not an administrative proceeding within the meaning of *PIPA*, but that in any event, it makes no difference for purposes of determining whether *PIPA* applies. Even if a labour arbitrator is, as stated by the Arbitrator, "...purely an adjudicatory tribunal, rather than an administrative tribunal" (Award, para. 115) or akin to a private practice lawyer, a labour arbitrator is still a "person" and accordingly an "organization" to which *PIPA* applies.

94 I agree with the Union that the analysis at paragraphs 114-116 of the Award does not establish that a labour arbitrator is not an "organization" to which *PIPA* applies. As the Arbitrator noted several times in the Award, the definition of "organization" in *PIPA* is broad enough to include labour arbitration boards. While labour arbitrators are not expressly included in that definition, they are also not expressly excluded (as are the courts and public bodies). Given the broad and inclusive definition of "organization" in *PIPA*, I accept for purposes of this decision the Union's contention that labour arbitrators are "persons" within the *PIPA* definition of "organization", and that accordingly *PIPA* applies to them.

95 I note the Employer also accepted, for purposes of responding to the Union's Section 99 application, that *PIPA* applies to labour arbitrators.

96 The Arbitrator's analysis of *PIPA* in the Award is not limited to a conclusion that the statute does not apply to labour arbitrators. The Award contains further analysis of *PIPA*, which addresses the alternative that *PIPA* applies to labour arbitrators.

97 The Arbitrator noted that Section 6(1)(c) of *PIPA* provides that an organization must not disclose personal information about an individual, but Section 6(2) provides that subsection (1) does not apply if (a) the individual gives consent to the disclosure, (b) *PIPA* authorizes the disclosure without the consent of the individual, or (c) *PIPA* deems the disclosure to be consented to by the individual (Award, para. 30).

98 The Arbitrator further noted that Section 8 of *PIPA* addresses circumstances in which an individual is deemed to have consented to disclosure of personal information by an organization (Award, para. 31), and that Section 9 permits withdrawal of consent (Award, para. 32). The Arbitrator then noted that the Union submitted the publication of names of grievors in arbitration awards would require express consent and that no such consent was given in this case, while the Employer submitted the Grievor had given his implied consent when he invoked the grievance arbitration process (Award, para. 33).

99 The Arbitrator found that grievors give "initial implied consent" to disclosure when they invoke the grievance arbitration process, but that under Section 9 of *PIPA*, they may withdraw that consent by asking for the non-publication of their personal information and their name, and in that case, "...the implied consent is no longer in effect" (Award, para. 34). The Arbitrator further stated that "in this case" the Grievor had asked for non-publication (*ibid.*).

100 I find it is evident from the Arbitrator's analysis in paragraph 34 of the Award that he found the Grievor had given implicit consent within the meaning of Section 8 of *PIPA* to the publication of his name in any award arising from his grievance by invoking the grievance process, but that when he asked for non-publication of his name (through the Union), the Grievor withdrew his consent to the disclosure within the meaning of Section 9 of *PIPA*. The Arbitrator therefore considered the provisions of *PIPA* that address circumstances in which an organization can disclose personal information of an individual without that individual's consent.

101 The Arbitrator noted that Section 12 of *PIPA* addresses the collection of personal information without consent, Section 15 addresses use of personal information without consent, and Section 18 addresses disclosure of personal information without consent. In particular, Section 18(1) lists a number of specific circumstances, (a) through (p), in which an organization may disclose personal information without consent. These include if:

> (c) it is reasonable to expect that the disclosure with the consent of the individual would compromise an investigation or proceeding and the disclosure is reasonable for purposes related to an investigation or proceeding,
>
> * * *
>
> (i) the disclosure is for the purpose of complying with a subpoena, warrant or order issued or made by a court, person or body with jurisdiction to compel the production of personal information,
>
> * * *
>
> (m) the disclosure is to a lawyer who is representing the organization,
>
> * * *
>
> (o) the disclosure is required or authorized by law,...

102 For the reasons that follow, I agree with the Union that, to the extent the Arbitrator relied on subsections 18(1)(c), (i) and (m), they do not provide a basis for concluding that labour arbitrators may disclose names of grievors and witnesses in their awards without those individuals' consent. However, I disagree with the Union's submission that subsection 18(1)(o) does not provide such a basis.

103 With respect to subsection 18(1)(c), I agree with the Union that it is not evident, and the Arbitrator does not explain in the Award, how a labour arbitration investigation or proceeding would be compromised if the arbitrator could not disclose the names of grievors or witnesses in an award without consent. The Union's position is not that *PIPA* prevents the disclosure of those names to the participants during the arbitration proceeding (or any investigation). It merely submits that *PIPA* prevents the arbitrator disclosing those names without consent in a publicly available award. Among other things, the Union suggests that, if it is important for the parties to have an official written record of the actual names of the grievor and witnesses in an arbitration proceeding, the arbitrator could prepare and provide to the parties a confidential appendix to the award containing that information. In my view, the Award does not provide a basis for finding that it is reasonable to expect a labour arbitration investigation or proceeding would be compromised if the arbitrator could not disclose the names of grievors or witnesses in an award without consent.

104 Subsection 18(1)(i) applies where an organization discloses personal information without consent for the purpose of complying with a subpoena, warrant or order issued by a body with jurisdiction to compel the production of such information. Arbitrators have jurisdiction to issue subpoenas and orders to compel parties before them to produce personal information without consent. However, arbitrators are not themselves subject to any subpoena or other order compelling them to disclose personal information such as the names of grievors and witnesses in their awards. Subsection 18(1)(i) therefore does not apply.

105 Subsection 18(1)(m) does not apply because, when arbitrators disclose the names of grievors and witnesses in their awards without consent, they are not disclosing that information to a lawyer who is representing the arbitrator.

106 With respect to subsection 18(1)(o), I agree with the Union that disclosure of the names of grievors and witnesses by labour arbitrators in their awards without consent is not "required" by law. As the Union points out, arbitrators frequently choose not to publish names or other personal information of grievors or witnesses in their awards, and nothing requires them to publish this information. However, I find the Arbitrator sets out a compelling basis in the Award for the conclusion that such disclosure is "authorized by law" within the meaning of Subsection 18(1)(o) of *PIPA*. The law in question is the Code, which the Arbitrator discussed extensively in the Award.

107 At paragraphs 58-67, the Arbitrator set out and discussed the statutory provisions, primarily contained in Part 8 of the Code, that are relevant to labour arbitration. Among other things, he noted that Section 89 sets out the statutory authority of arbitrators to provide final and conclusive settlement of collective agreement disputes and notes that this authority includes "the ability to make monetary awards, order the reinstatement of employees, determine whether discipline or dismissal is excessive, and interpret and apply any Act intended to regulate an employment relationship" (Award, para. 61).

108 The Arbitrator further noted that Section 92 of the Code sets out the powers of an arbitration board, which include to "determine its own procedures, accept evidence whether or not that evidence is admissible in a court of law, determine prehearing matters, issue prehearing orders, and carry out inspections in a wide variety of workplaces" (Award, para. 62). Section 93 grants arbitration boards the power to "issue summonses to compel witnesses to give testimony as well as produce any relevant documents" and Section 95 provides that decisions of arbitrators are binding on the parties to the collective agreement (Award, para. 63).

109 The Arbitrator further noted Section 96 of the Code, which states:

> An arbitration board must, within 10 days of issuing an award, file a copy of it with the director [defined in Section 81 of the Code as the director of the Collective Agreement Arbitration Bureau] who must make the award available for public inspection.

110 The Arbitrator noted (at paras. 64-65) that under Section 102 of the Code, arbitration awards can be filed in the Supreme Court registry as an order of the Court and enforced as such. Further, the decisions and awards of arbitrators can be appealed, under Section 99 to the Board or under Section 100 to the Court of Appeal. He further noted that Section 2, the purposes or "duties" provision of the Code, applies to arbitrators as "...other persons who exercise powers and perform duties under this Code...".

111 The Arbitrator then noted that, under the Code, the Board is responsible for the regulation of labour disputes, and under Section 82 arbitration is "the essential dispute resolution procedure" for resolving collective agreement disputes without resort to work stoppages (Award, para. 68). In the same paragraph, the Arbitrator quoted a passage from an academic article about collective agreement arbitration, emphasizing the following excerpt from that passage:

> ...the old notion of collective agreement arbitration as a sometimes private and consensual method for the resolution of disputes has been overtaken by the more modern notion that it is accountable to the relevant statutory labour regime and that the legislation is to be viewed as a comprehensive code governing all aspects of labour relations for the benefit of all. …

112 The Arbitrator next noted (Award, paras. 69-73) that the jurisdiction of labour arbitrators has expanded to include the interpretation and application of human rights legislation in the workplace. He further noted (Award, paras. 74-76) that in light of *Weber v. Ontario Hydro*, [1995] 2 S.C.R. 929, arbitrators have exclusive jurisdiction to resolve all workplace disputes arising from a collective agreement, including disputes involving such issues as alleged torts and alleged breaches of the *Charter of Rights and Freedoms*.

113 The Arbitrator then concluded that while there are "...characteristics of a labour arbitration that are similar to a private dispute resolution mechanism...", "...what the *Code* does in effect, is to incorporate this principle of self-government (free collective bargaining), within the context of a comprehensive and compulsory labour relations scheme, which includes arbitrators under Part 8, whose primary purpose is the peaceful resolution of workplace disputes" (Award, para. 77). The Arbitrator then stated:

> This statutory scheme, when combined with the Supreme Court of Canada's view of the jurisdiction of labour arbitrations to resolve all issues of human rights arising under a collective agreement, and second, the jurisdiction to adjudicate torts and matters arising under the *Charter of Rights and Freedoms*, supports the legal conclusion that labour arbitration, whatever its origins may have been, is no longer a private dispute resolution mechanism. (*ibid.*)

114 I agree with this conclusion, for the reasons given by the Arbitrator in the Award. Labour arbitration is not a purely private dispute resolution mechanism. Under the Code, it is a statutorily mandated process for resolving mid-contract labour disputes without resort to work stoppages. The process is highly regulated and arbitration boards are empowered by various provisions of Part 8 of the Code, as described by the Arbitrator in the Award and summarized above.

115 Significantly, the Code requires arbitration awards to be made "available for public inspection" (Section 96), provides that they can become orders of the Court and enforceable as such (Section 102), and provides for statutory rights of appeal of arbitrators' awards and decisions (Sections 99 and 100). I agree with the Arbitrator it is also significant that the jurisdiction of labour arbitrators has broadened in recent years to include not only disputes emanating directly from collective agreement provisions but also human rights, tort and *Charter* claims. The Supreme Court of Canada has also indicated that courts will give a high degree of deference to the decisions of labour arbitrators on judicial review.

116 For all these reasons, I agree with the Arbitrator's conclusion that labour arbitration is not a purely private process; there is a public interest in labour arbitration and particularly in the awards which arbitrators issue. This is reflected most clearly in the requirement contained in Section 96 of the Code that awards must be made "available for public inspection". If labour arbitration awards were nothing more than the product of a purely private dispute resolution mechanism, there would be no need to make them available for public inspection. This provision clearly contemplates that awards are not merely of interest to the parties, but also to the public.

117 The Arbitrator noted that the Union had pointed to the practices and protocols of other tribunals with respect to the publication of names and other personal information that identifies individuals in their decisions. For example, the Manitoba Labour Relations Board "...no longer uses personal identifiers in its public decisions..." and the Alberta Labour Relations Board "...can, in its discretion, not publish sensitive personal information..." (Award, para. 95). After noting some further examples of tribunals which

did not publish the names of individuals in decisions, the Arbitrator observed that the Canadian Judicial Council ("CJC") had issued a paper in 2005 addressing the publication of personal information in court decisions. The Arbitrator noted that the CJC paper "...states that the publication of decisions on the internet has greatly enhanced 'access to justice'; however, it has also raised 'new privacy concerns'" (para. 96).

118 The Arbitrator then quoted a passage from the CJC paper which describes a "...protocol…intended to assist judges in striking a balance between protecting the privacy of litigants in appropriate cases and fostering an open judicial system when drafting reasons for judgments" (Award, para. 97). The Arbitrator stated with respect to the protocol described in the CJC paper:

> This protocol goes on to identify three "Levels of Protection" in respect to personal information. The first is "Personal Data Identifiers", which includes information such as day and month of birth, social insurance numbers, credit card numbers and financial account numbers. This information is "fundamental to an individual's right to privacy" (para. 21) because such information is susceptible to "identity theft" (para. 23). The recommendation is that "...this type of information should generally be omitted from all reasons of judgment" (para. 23). The second level of protection refers to statutory and common law bans on publication; for example, the *Youth Criminal Justice Act*. The third level, "Discretionary Protection of Privacy Rights", deals with exceptional cases where there may be harm to "minor children, or innocent third parties, or where the ends of justice may be subverted by disclosure or the information might be used for an improper purpose" (para. 31). Finally, the protocol includes an appendix which incorporates suggestions on how to anonymize the names of individuals in decisions. (Award, para. 98)

119 The Arbitrator then briefly summarized his conclusions first, that labour arbitration is not a private dispute resolution mechanism and second, that it is therefore subject to the open court principle (Award, paras. 100-101). The Arbitrator stated that his "...third conclusion relates to the issue of privacy and *PIPA*" (Award, para. 106). He continued:

> As the Supreme Court stated in *Edmonton Journal, supra* the constitutional doctrine of the open court principle must be balanced with the constitutional doctrine of privacy. Although I agree with Arbitrator Sanderson that the past practice of the last five decades is important, it is no longer, in itself, determinative. Privacy has gained substantial constitutional weight over the last five decades. Certainly the sensitivity of personal information combined with the potential of harm th[r]ough increased accessibility and information sharing due to technological developments (internet, smartphones, social media, etc.) must be weighed with the public interest in disclosure. (*ibid.*)

120 The Arbitrator then went on to consider whether Section 61 of the *ATA* applies to arbitration decisions, concluding that it does (Award, paras. 107-113). The Union submits that this is an erroneous conclusion, and that neither *FIPPA* nor Section 61 of the *ATA* applies to labour arbitration proceedings. I agree with the Union on this point, but find this error does not affect the outcome in this case. As the Union submits in its Section 99 application, because *FIPPA* does not apply to labour arbitrators, there is no need to consider whether the exemption to *FIPPA* applies.

121 As noted earlier, the Arbitrator concluded that one or more exemptions in Section 18 of *PIPA* apply such that labour arbitrators may disclose personal information in awards without consent. He further stated that such disclosure is "...for purposes that a reasonable person would consider appropriate in the circumstances" (Award, para. 118). This phrase appears both in Section 2, the purposes provision of *PIPA*, and in Section 17 of *PIPA*, which states:

> Subject to this Act, an organization may disclose personal information only for purposes that a reasonable person would consider are appropriate in the circumstances and that...
>
> (c) are otherwise permitted under this Act.

122 Thus, the Arbitrator concluded the disclosure of personal information of individuals in arbitration awards without their consent is permitted under Section 18 of *PIPA*, and is (or may be) for purposes that a reasonable person would consider are appropriate in the circumstances (as required by Sections 2 and 17 of *PIPA*). The Arbitrator further stated:

> However, I do agree with the Union that the past custom of general publication is no longer sufficient given the importance of privacy and the difficulties that may arise as a result of the publication of awards on the internet. *Whatever legislative scheme may ultimately apply, or whether or not the open court principle applies, an arbitral approach must be developed in respect to the issue of privacy, and its application to the disclosure and publication of personal information in arbitration awards.* As the Union states, labour arbitrators can benefit from the practice of other tribunals as well as the policies and protocols enumerated by the courts. The constitutional values of privacy established by the *Charter*, and captured in provincial and federal privacy legislation, must be incorporated into the practices and customs of labour arbitrators in the publication of their awards. (Award, para. 119, emphasis added)

123 The Arbitrator then stated that "...what emerges in respect to other adjudicative forums is a privacy spectrum – different types of information may receive different levels of protection" (Award, para. 120). Information such as birth dates, social insurance numbers, credit card numbers and financial account numbers are susceptible to identity theft and as a result, the Arbitrator concluded, quoting the 2005 CJC report, they should "generally be omitted from all reasons for judgment" (Award, para. 122). Less direct

personal identifiers such as the names of other individuals, addresses and "...geographical locations (especially in smaller communities) should not be published if they are not material to a reasoned award" (Award, para. 123).

124 Personal information such as marital status, sexual orientation, religious beliefs, or disabilities "...should be avoided if such information is unnecessary to explaining the reasons for an award" (Award, para. 124). Where such personal information is material, "...there may be the ability to anonymize the person's identity" (*ibid.*). A similar approach should be taken with respect to personal health and medical information and records (Award, paras. 125-126). The Arbitrator noted there was already an established arbitral practice in that regard, and that "...it is often the practice of arbitrators to anonymize (use initials) the name of the individual whose health records have been disclosed and are to be published in an award" (Award, para. 127).

125 The Arbitrator added:

> Included or related to this area of confidentiality (but more rare) is the anonymity of persons who have been subject to sexual, physical or mental abuse as well as the protection of minors and innocent third parties; once again if personal information is crucial to the resolution of factual and legal issues the individual's identity may be anonymized. (Award, para. 128)

126 The Arbitrator then stated that an "...area of disclosure where one would expect a higher onus on an individual's application for non-publication is in respect to serious disciplinary offences; for example, theft, fraud and assault" (Award, para. 129). The Arbitrator noted the Employer raised a concern that a grievor would seek non-publication in order to conceal their conduct and that the Federal Assistant Privacy Commissioner of Canada, in a speech given in 2011, had stated there is a public interest in the publication of such employment offences (*ibid.*).

127 The Arbitrator noted the Union took the position that, whether or not *PIPA* applies, arbitrators should not disclose the names of grievors or witnesses in awards without consent (Award, para. 137). The Arbitrator stated that he did not find such a "blanket" approach to be "...an appropriate framework in balancing the interests of privacy with the open court principle in the context of labour arbitration proceedings" (Award, para. 138). He then stated:

> Returning to Justice Wilson's remarks in the *Edmonton Journal, supra* the application of judicial discretion to specific ("tailored") circumstances, as they relate both to the spectrum of privacy interests and the necessary standard of protection, may provide a framework that best balances the open court principle with the right to privacy. Ensuring public access to reasons for judgment is fundamental to the open court principle. It enhances access to justice. It fosters an accountable judicial system. Conversely, privacy is essential to our fundamental freedoms – freedom of conscience, freedom of expression, and our basic political and religious freedoms. It preserves, protects and

> promotes individual identity. It is the balancing of these two important principles in specific circumstances that is the task of judicial and quasi-judicial adjudication.
>
> Labour arbitrators currently exercise a discretion in respect to the issues of privacy. However, to date, as the Union argues, it has been within the unexamined custom of the last five decades of simply publishing arbitral awards without reference to either the open court principle or to a legislative privacy framework. Other tribunals, and the Courts, have developed institutional guidelines that address issues of privacy and publication on the internet. Labour arbitrators, however, do not operate within an institutional framework. The development of guidelines, therefore, must proceed either on a case by case basis, or by legislation. (Award, paras. 139-140)

128 The Arbitrator went on to state that the open court principle "...creates the presumption of publication...", but that "...the privacy concerns of grievors and witnesses, especially in respect to personal identifiers, and personal information, do raise significant issues" (Award, para. 141). He added:

> Arbitrators must balance the sensitivity of the personal information, and the potential harm to grievors and witnesses in the event of publication of their names, in the crafting [of] their awards. Therefore, grievors and witnesses always maintain the right to raise the issue of the non-disclosure of personal information, or the right of anonymity in respect to the publication of such personal information. (*ibid.*)

129 The Arbitrator concluded:

> Finally, turning to the circumstances of the case before this board, my conclusion would have been not to grant the grievor anonymity. His offence is a disciplinary one. He provides no specific circumstances to distinguish himself from any other person in a similar situation; indeed, his application for anonymity is based solely on a blanket approach – that all persons must give consent to the publication of their name in an arbitral award. I have declined to follow such an approach. (Award, para. 142)

130 I am not persuaded the Arbitrator erred, or rendered a decision inconsistent with *PIPA* or the Code, in declining to follow the approach advocated by the Union – that is, not publishing the name of the Grievor simply because he did not consent to its disclosure in the Award. I agree with the Arbitrator that labour arbitration proceedings are not purely private dispute resolution mechanisms but rather that there is a public interest in them and in particular in accessing arbitration awards. This is reflected in Section 96 of the Code, which requires that all arbitration awards be made available for public inspection. I find the Code does not require, but authorizes, disclosure of personal information in awards, within the meaning of Section 18(1)(o) of *PIPA*.

131 Disclosure is authorized under the Code because it can serve the public interest. As the Arbitrator noted in the Award (at para. 129), there is a public interest in the publication of the names of those who commit employment offences; privacy legislation is not intended to hide wrongdoing or to protect those who misconduct themselves (absent circumstances justifying such protection). As such, disclosure of personal information in awards can be "for purposes that a reasonable person would consider appropriate in the circumstances", consistent with Sections 2 and 17 of *PIPA.*

132 In the present case, the Arbitrator considered the Grievor's right to privacy but declined to anonymize his name in the circumstances. The Arbitrator noted that the Grievor's offence is "a disciplinary one" and that there were "no specific circumstances" relied on in requesting anonymization; "...his application for anonymity is based solely on a blanket approach – that all persons must give consent to the publication of their name in an arbitral award. I have declined to follow such an approach" (Award, para. 142).

133 Having reviewed the Award in light of the parties' submissions, I am satisfied the Arbitrator's decision to deny the Union's application for anonymization of the Grievor's name in this case is not inconsistent with Code principles. In my view, it is consistent both with *PIPA* requirements and with sound labour relations policy.

134 Section 2 of *PIPA*, the purposes provision, recognizes "both the right of individuals to protect their personal information and the need of organizations to collect, use or disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances". The Union acknowledged in its submissions that therefore the right of individuals to protect the privacy of their personal information is not absolute, but must be balanced against the need of organizations to disclose personal information for purposes that a reasonable person would consider appropriate in the circumstances.

135 The Arbitrator agreed with much, if not all, of the submissions the Union made with respect to the increased importance of privacy rights and the changed environment in which labour arbitration awards are published. He found that labour arbitrators need to be sensitive to these factors when deciding applications to anonymize the names of grievors or witnesses. In essence, he differed from the Union only with respect to whether a "blanket" approach or a discretionary, case-by-case approach should be taken to this issue in the labour arbitration context.

136 I find the discretionary, case-by-case approach to such applications in the labour arbitration context taken by the Arbitrator is consistent with Code principles, including the purposes set out in Section 2 of the Code. Those purposes recognize that not only employers and trade unions but also employees have rights and obligations under the Code (Section 2(a)), and that arbitrators, as "other persons" who exercise powers and perform duties under the Code, have a duty to do so in a manner that "(e) promotes conditions favourable to the orderly, constructive and expeditious settlement of

disputes". I find that the informed, sensitive, case-by-case approach of the Arbitrator to anonymization requests is more consistent with these Code principles and duties and with sound labour relations policy than the "blanket" approach advocated by the Union.

137 Accordingly, I decline to set aside the Award or substitute a different decision.

V. CONCLUSION

138 For the reasons given, the Union's Section 99 application is denied.

LABOUR RELATIONS BOARD

"ELENA MILLER"

ELENA MILLER
VICE-CHAIR