



Office of the  
Information and Privacy  
Commissioner of Alberta

**December 19, 2011**

## **Supreme Court of Canada upholds Commissioner's interpretation that extending time for completing inquiry after time limit expires does not automatically terminate inquiry**

The Supreme Court of Canada has upheld former Information and Privacy Commissioner Frank Work's interpretation that extending the time for completing an inquiry after the time limit expires does not automatically terminate an inquiry under the Commissioner's home statutes.

Ten individuals complained to the Information and Privacy Commissioner that the Alberta Teachers' Association (ATA) had violated the *Personal Information Protection Act* (PIPA) in disclosing their personal information in a newsletter. The Commissioner's delegate who heard the inquiry agreed that the ATA had contravened PIPA.

On judicial review, the Alberta Court of Queen's Bench overturned the delegate's decision, on the ground that the Commissioner had lost jurisdiction because he had breached the 90-day time limit for completing the inquiry. The Court said that the inquiry was therefore terminated. The Alberta Court of Appeal agreed with this conclusion, on the ground that the Commissioner had not extended the time within the 90 days. The Commissioner publicly expressed grave concern that these court decisions would cause Albertans to lose privacy remedies under PIPA. He appealed to the Supreme Court of Canada.

The time extension issue had not been raised before the Commissioner's delegate. However, since the delegate had held the inquiry, the Supreme Court found that she had implicitly decided that extending the time after the 90 days expired did not result in automatic termination of the inquiry. The Supreme Court said that because the Commissioner is an expert in interpreting his own statute, the implied decision of the delegate only had to be reasonable rather than correct.

To decide whether the implied decision was reasonable, the Supreme Court looked at a number of earlier decisions of the Commissioner and his delegates that had dealt with the same or similar time extension questions. In the view of the Supreme Court, the earlier decisions of the Commissioner's office – that extending the time for completing an inquiry after the 90 days had expired did not result in automatic termination of the inquiry – met the requirements of justification, transparency and intelligibility in administrative decision making, and was a reasonable interpretation of the Commissioner's home statutes. It was reasonable for the Commissioner's delegate to apply these reasonable interpretations, and, therefore, her decision should be reinstated.

The Supreme Court sent the decision of the Commissioner's delegate back to the Court of Queen's Bench to consider the other challenges to the decision that the Court had not dealt with. See *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61.

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**Contact:**

Wayne Wood  
Communications Director  
Office of the Information & Privacy Commissioner  
(780) 644-4015

