

BCTF/SD No. 75 (Mission): Gallup *TeacherInsight* Assessment

Issue: In October 2004, the Employer began using the *TeacherInsight* assessment to screen applications from new applicants for teaching positions. As part of its application screening process, the Employer informed new applicants that they must complete the assessment. In order to complete the assessment, applicants had to logon to the Gallup website. At the outset of that process, the applicants were asked to provide the following information:

- A numeric code identifying the Board
- Their SIN or substitute numeric identifier (if the applicant objected to providing his/her SIN), and
- Their country of residence.

After the applicant provided the initial information, a welcome screen appeared informing him/her about the online process. The next screen contained a consent form asking the applicant to confirm that s/he voluntarily agreed and consented to: (1) Gallup performing the activities described on the welcome page and (2) his/her data being transferred to the United States.

The BCTF and the Mission Teachers' Union filed a complaint with the Office of the Information and Privacy Commissioner alleging that the Employer's collection of personal information through the assessment contravened sections 26, 30, 30.1 and 32 of the *Freedom of Information and Protection of Privacy Act* (FOIPPA).

Decision: The Information and Privacy Commissioner determined that the Employer was authorized to collect the personal information through the assessment.

Section 26 of FOIPPA places limits on the collection of personal information by or for a public body. It reads:

26. No personal information may be collected by or for a public body unless
 - (a) the collection of that information is expressly authorized by or under an Act,
 - (b) that information is collected for the purpose of law enforcement, or
 - (c) that information relates directly to and is necessary for an operating program or activity of the public body.

The Commissioner determined that the Employer was authorized to collect all of the personal information contained in the assessment, with the exception of Social Insurance Numbers (SINs), as the information related directly to the activity of recruiting and hiring teachers and thus fell squarely within the Employer's mandate under s. 15 of the *School Act*.

The collection of SINs was found to contravene FOIPPA as that information is not required for the hiring process at the stage of processing or considering applications.

The Commissioner also determined that the Employer met its obligation under section 30 to protect personal information in its custody and under its control.

Section 30.1 of FOIPPA provides that a public body must ensure that personal information in its custody or under its control is only stored and accessible in Canada unless one of three exceptions apply. The exceptions are as follows:

- (a) if the individual the information is about has identified the information and has consented, in the prescribed manner, to it being stored in or accessed from, as applicable, another jurisdiction;
- (b) if it is stored in or accessed from another jurisdiction for the purpose of disclosure allowed under this Act;
- (c) if it was disclosed under section 33.1(1)(i.1).

The Commissioner found that the Employer met its obligation under section 30.1(a). The data consent page and the introductory page of the assessment together provided enough information to enable applicants to provide informed consent. Those pages specified to whom the personal information may be disclosed and outlined how the information may be used. The Commissioner found it critical to his finding that the consent form provided explicit notice to applicants that their personal information would be stored and accessed in the United States.

The Commissioner further stated that when a public body uses a form of electronic consent it should ensure that it is in a position later to establish that consent was given. In this case, the evidence showed that an applicant could not proceed beyond the consent page unless he or she clicked the "I consent" button.

Finally, the Commissioner determined that the Employer's actual use of the personal information collected in the assessment was authorized under section 32 of FOIPPA. Section 32(a) requires that a public body ensure that personal information in its custody or under its control is used only for the purpose for which that information was obtained or compiled, or for a use consistent with that purpose. The evidence established that the personal information was being used by the Employer for the purpose for which it was obtained and compiled, namely to assist with screening applicants and identifying those applicants who should be short-listed for interviews.

The Commissioner did find that Gallup's validation process, whereby Gallup clients provide information on 10% of new hires, used the personal information in a manner that did not fall within the scope of consent because the validation process was not disclosed in the introductory process nor in the consent pages.

BCPSEA Reference No. FOI-01-2007

BCTF/SD No. 70 (Alberni): Professional Development

Issue: Is it the Employer or the Union that has the authority to permit individual teachers to undertake self-directed professional development activities on school-based professional development days?

Facts: The collective agreement provides for five professional development days. Two of the days are organized by the District Professional Development Committee; three of the days are used for activities organized by the professional development committees at each school.

Article 78 provides that teachers must inform their administrator, in advance, of the locations and activities they plan to attend on each district professional development day. The collective agreement is silent on this issue with respect to school-based professional development days.

The Alberni District Teachers' Union (ADTU) developed a professional development committee document, referred to as "Policies and Procedures," articulating that the ADTU has responsibility for all teacher-initiated professional development activities. The ADTU also developed a "Release Form" for teachers to undertake self-directed professional development. The Employer was unaware of the ADTU Policies and Procedures and Release Form until this dispute arose.

The Employer implemented a "Self Directed Professional Development Authorization Form" for school-based professional development days in response to an activity planned for a school-based professional development day, which teachers from other schools attended.

Decision: Grievance dismissed. Arbitrator John Hall articulated that:

"When examining Article 78 as a whole, the District Committee is mainly responsible for the delivery of professional development activities, and it organizes planned activities on district professional development days. The District Committee includes a school trustee and a representative of the Superintendent, and the Board is entitled to a list of planned activities prior to all district days. The school committees have a parallel responsibility for organizing activities on school-based professional development days. However, the planning of those activities is subject to "meaningful consultation" with principals. Given this regime, one would expect to find some contractual foundation for the Union's position that the parties mutually intended teachers could undertake self-directed activities on professional development days without any notice to and/or approval by management."

Arbitrator Hall concluded that the collective agreement does not contain the clarity of expression necessary for the Union to succeed in its claim of authority over self-directed professional development.

The collective agreement does, however, provide for a commitment on the part of the Employer and the Union to work cooperatively with respect to professional development. To that end, Arbitrator Hall suggested that collaboration over a single form for self-directed professional development could meet the needs of all parties.

Significance: This is the second arbitration award addressing the locus of control of self-directed professional development activities. A SD No. 73 (Kamloops/Thompson) decision reported in *Grievance & Arbitration Update* No. 2007-01 (BCPSEA Reference No. A-02-2007) also upheld the employer's authority to approve self-directed professional development activities.

BCPSEA Reference No. A-23-2007

Questions

If you have any questions concerning these decisions, please contact your BCPSEA labour relations liaison. If you want a copy of the complete award, please contact **Nancy Hill** at nancyhi@bcpsea.bc.ca and identify the reference number found at the end of the summary.