

**IN THE MATTER OF AN ARBITRATION**

**BETWEEN:**

**United Food and Commercial Workers Canada, Local 1006A**

**("the Union").**

**- and -**

**Sofina Foods Inc**

**("the Employer")**

**Before: C. Michael Mitchell**

**Appearances**

**For the Union: Micheil Russell**

**For the Employer: John D.R. Craig**

1. This is a policy grievance filed by the United Food and Commercial Workers Canada, Local 1006A ("the Union") against Sofina Foods Inc ("the Employer"). There is an equivalent grievance by the Employer against the Union. The Union and Sofina are parties to a collective agreement with a term from January 1, 2022, to December 31, 2024.
2. Article 5.02 of the collective agreement requires Sofina not only to deduct dues from all employees and remit them to the Union but also requires that they be accompanied by an excel spreadsheet that includes, amongst other things, social insurance numbers ("SINs").
3. The relevant articles of the collective agreement are as follows:

5.01: All present union members shall, as a condition of employment, and any other present employees may, at their discretion, sign an "Authorization to Deduct Union Dues". Any such authorization shall take effect as of the next regular deduction date after the company has received it.:

5.02 The Company agrees to deduct Union dues and initiation fees from the wages of all employees. Deductions shall be made every pay period and forwarded to the Union office on a monthly basis for the preceding month, by the 15<sup>th</sup> day of that month. The Company shall notify the Union of new employees as well as their classifications and rates of pay, in addition to any terminations on a monthly basis.

These deductions shall be remitted to the Union by method of electronic funds transfer (EFT) and shall be accompanied with a statement from the Company in an electronic Excel spreadsheet providing the following information:

- Full Name of the Employee
- **Social Insurance Number (SIN)**
- Employee Number (if applicable)
- Full Address (including postal code)
- Telephone Numbers (including cell phone if available)
- Email Address (if available)
- Start/Hire Date
- Rate of Pay
- Classification
- Job Status
- Amount of Union Dues/Initiation Fees Deducted (or the reason a deduction was not made)

The Parties agree that it is the responsibility of the employees to provide the Company with accurate and updated contact information. The Union shall notify the Company should Union dues and/or initiation fees be increased during the life of this Agreement. [emphasis added]

(Emphasis Added).

5.03 All employees hired after the date of this Agreement shall, on hiring, execute an "Authorization to Deduct Union Dues".

4. The parties came to an agreed statement of fact. The Employer also called one witness, Mr. Kirby, the Director of Labour Relations. The Union called no evidence, but both parties submitted documents not challenged by the other. From the documents, the oral evidence and the agreed statement of facts, I have concluded as follows with respect to the relevant facts:

a. Articles 5.01 and 5.03 have been in the collective agreement since at least 2000. Article 5.02, as it was in the collective agreement prior to 2022, provided as follows:

The company agrees that it will deduct from the earnings of each employee who has signed an "Authorization to Deduct Union Dues" in each month, regular monthly union dues in the amount certified by the Union to the company to be currently in effect according to the Union's constitution. Such deductions shall be made on a weekly basis.

b. The Excel spreadsheet referred to in the current Article 5.02 contains the employee SINS as the first entry in the left-hand column.

c. The "Authorization to Deduct Union Dues" Form (see Schedule A), which is referred to but not found in the collective agreement, contains on the top left-hand side the title: United Food and Commercial Workers International Union Membership Application and in the top middle: UFCW CANADA. In 2/3 of the Form going both down and horizontally, there is space for the following information to be filled in:

- last name
- first name, initial,
- sex
- date of birth
- address
- city (and carrying over onto the right-hand side of the Form ), province, postal code)
- e-mail address

- home phone
  - married, single
  - employee number
  - date of hire
  - type of work performed
  - store number
  - department number
  - full-time, part-time
  - company name
  - business address
  - applicant signature
  - date signed.
- d. On the right-hand side of the Form at the top, there is a box that runs from top to bottom containing (from top to bottom) a space for the insertion of the LOCAL UNION number along with the CITY and PROVINCE, below which is a space for the social insurance number. Below that is the space for Province and Postal Code (carrying over from the left-hand side of the Form as set out above). In the bottom right corner of the Form at the bottom of the box referred to above are the words "APPLICATION/AUTHORIZATION" and then in small font the following:
- "I hereby make application for membership in the UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION and affirm that the above statements by me are true. I authorize the UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION to represent me for the purpose of collective bargaining and handling of grievances either directly or through such local union as it may duly designate. *I understand and acknowledge that the Union has my consent and agreement to the collection, use or disclosure, of personal information, as required, as it applies to my membership in, and representation by, the Union.* (emphasis added)
- e. Sofina has provided monthly union dues reports including SIN numbers to the Union since at least 2017 and probably for much longer. Those are the precise words of the agreed statement of fact.
- f. The practice of deducting dues and providing them together with SINS to the Union was formalized in the 2022 -2024 collective agreement by an amendment to article 5.02. The prior collective agreements did not explicitly require the provision of SINS by Sofina to the Union.

- g. SINS have been provided by employees to the Union as part of the process of compulsory membership in the Union through an APPLICATION/AUTHORIZATION TO COLLECT UNION DUES Form as required by the collective agreement since at least 2000.
- h. SINs were first used in Canada in 1964 to register individuals for unemployment insurance (now Employment Insurance). In 1965, the Canada Pension Plan and the Quebec Pension Plan began to use the SIN as a file number. In 1967, the SIN became a file number for income tax purposes.
- i. Employers are required by statute to collect SINs from their employees and to use the SINs for reporting to the Government of Canada. The Employment Insurance Regulations require an employer to obtain an employee's SIN within three days of the commencement of employment. Every employer who employs an employee in pensionable employment must require the employee to provide their SIN within 30 days after the person becomes employed or reaches 18 years of age, whichever is later.
- j. The UFCW constitution provides that Locals in Canada obtain the SINs of their registered members for use as identification numbers, if permitted by law, or a unique identification number of each member, and to provide those to the International Union in the United States. Article 34 (7) provides:

7. The Local Union President shall ensure that the home address, date of birth, cellular phone number, and social security number, if permitted under applicable law, or unique identification number of each member, is sent to the International headquarters at the time of reporting affiliation, as well as all changes of address when they occur. New Local Unions, when chartered, shall furnish the home addresses, dates of birth, cellular phone numbers, and social security numbers, if permitted under applicable law, or unique identification numbers of all members in the first report. A copy of this report shall be kept on file by the Local Union.
- k. In September 2013, the Federal Government published the SIN Code of Practice, which established the intended use of SINs and best practices to prevent fraud and other illegal activities from unauthorized disclosure of SINs.
- l. Sofina has 13 bargaining units across Canada covering 14 unionized plants. Different unions represent employees at different plants. Many of these collective agreements include a requirement for Sofina to provide those unions with the SINs of employees.

- m. In May 2024, Robert Kirby, the Sofina Director of Labour Relations, became aware that another Local of the UFCW was transmitting SINS to the International Union in the United States for administrative purposes. He was concerned about this based on his experience. He performed his own research and sought and obtained a legal opinion from external counsel regarding the transmission of SINS to the Unions.
- n. Kirby came to the conclusion that because the Employer is required by law to collect SINS for tax reporting, EI and CPP, it is not permitted to provide SINS to any third party, including the Union for any purpose other than that for which they were initially obtained. The legal opinion confirmed Kirby's view. Sofina does not use SINS as personal identification numbers in its own systems but rather uses a unique employee ID number. The opinion letter was not produced in the proceedings.
- o. The Union does not pay or provide benefits to Sofina employees and does not use the SINS for that purpose.
- p. In the spring of 2024, Sofina decided to cease providing SINS to unions in Canada and gave notice of same to this Union on August 23, 2024. Sofina offered to allow the Union to use Sofina's internal employee ID numbers as an alternative to using SINS. In June 2024, Sofina unilaterally revised the Excel spreadsheet requirement in Article 5.02 to remove employee SINS. In response, the Union filed a grievance to which Sofina responded by grieving as well.
- q. The agreed statement of facts provides that "the Union has advised Sofina that it uses the SINS to verify the accuracy of the dues deducted and remitted by Sofina and as the principal identification number for employees it represents". The Union did not call evidence aside from the documents that were submitted.

## **ANALYSIS AND DECISION**

### **Legal Provisions**

5. The relevant statutory provisions are as follows:

*Income Tax Act*, RSC 1985, c 1 (5th Supp) ("ITA")

237 (2) For the purposes of this Act and the Regulations, a person or partnership required to make an information return requiring a business number, Social Insurance Number or trust account number of another person or partnership

(b) shall not knowingly use, communicate or allow to be communicated, otherwise than as required or authorized under this Act or a regulation, the number without the written consent of the other person or partnership.

239(2.3) Every person to whom the business number of a taxpayer or partnership, to whom the social insurance number of an individual or to whom the trust account number of the trust has been provided under this act or the regulations, and every officer, employee and agent of such a person, who without written consent of the individual, taxpayer, partnership or trust, as the case may be, knowingly uses, communicates or allows to be communicated the number (otherwise then as required or authorized by law, in the course of duties and connection with the administration or enforcement of this act or for a purpose for which it was provided by the individual, taxpayer, partnership or trust, as the case may be) is guilty of an offence and liable on summary conviction to a fine not exceeding \$5000 or to imprisonment for a term not exceeding 12 months, or to both.

*Labour Relations Act, 1995 S.O. 1995 c.1 as amended ("LRA")*

10 (1) The Board shall certify a trade union as the bargaining agent of the employees in a bargaining unit that is determined by the Board to be appropriate for collective bargaining if more than 50 per cent of the ballots cast in the representation vote by the employees in the bargaining unit are cast in favour of the trade union. 1995, c. 1, Sched. A, s. 10 (1).

16 Following certification or the voluntary recognition by the employer of the trade union as bargaining agent for the employees in the bargaining unit, the trade union shall give the employer written notice of its desire to bargain with a view to making a collective agreement. 1995, c. 1, Sched. A, s. 16.

17 The parties shall meet within 15 days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement. 1995, c. 1, Sched. A, s. 17.

45 (1) Every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein.

48. (12) An arbitrator or the chair of an arbitration board, as the case may be, has power,

(j) to interpret and apply human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement. 1995, c. 1, Sched. A, s. 48 (12).

56 A collective agreement is, subject to and for the purposes of this Act, binding upon the employer and upon the trade union that is a party to the agreement whether or not the trade union is certified and upon the employees in the bargaining unit defined in the agreement.

96 (1) The Board may authorize a labour relations officer to inquire into any complaint alleging a contravention of this Act.

(2) The labour relations officer shall forthwith inquire into the complaint and endeavour to effect a settlement of the matter complained of.

(3) The labour relations officer shall report the results of his or her inquiry and endeavours to the Board. 1995, c. 1, Sched. A, s. 96 (3).

(4) Where a labour relations officer is unable to effect a settlement of the matter complained of or where the Board in its discretion considers it advisable to dispense with an inquiry by a labour relations officer, the Board may inquire into the complaint of a contravention of this Act and where the Board is satisfied that an employer, employers' organization, trade union, council of trade unions, person or employee has acted contrary to this Act it shall determine what, if anything, the employer, employers' organization, trade union, council of trade unions, person or employee shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing may include, despite the provisions of any collective agreement, any one or more of,

(a) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to cease doing the act or acts complained of;

(b) an order directing the employer, employers' organization, trade union, council of trade unions, employee or other person to rectify the act or acts complained of; or ...

Personal Health Information Protection Act, 2004, S.O. 2004, c. 3, Sched. A

18(1) If this Act or any other Act requires the consent of the individual for the collection, use or disclosure of personal health information by a health information custodian, the consent,

(a) must be a consent of the individual;

(b) must be knowledgeable;

(c) must relate to the information; and

(d) must not be obtained through deception or coercion.

## **SUBMISSIONS OF THE PARTIES**

6. The Union submits that the Arbitrator has no jurisdiction to interpret the ITA because it is not an employment related statute within the meaning of section 48(12) (j) of the LRA. The Employer has taken it upon itself to see what the ITA Tax Act means and is now asking the Arbitrator to legitimize its reading. The Union maintains this is the wrong forum to raise that issue. If the company wants to

establish a violation of the ITA, then it should be seeking the determination of the appropriate court and obtain a ruling there.

7. Further, the Union argues that the consent of the employees is not required for the disclosure of SINs because the fact that Article 5.02 is included in the collective agreement gives it the status of “law,” which is the very exemption granted by the ITA in section 239(2.3). It relies upon the decision of the Arbitrator in *Northwest Territories and Union of Northern Workers*, 2000 Carswell NWT 10463 CLAS 112. (“NWT 1”). In the alternative, it says that the provisions of the SINs to the Union by Sofina have the same purpose as the provision of the SINs to the Employer (for purposes of employment) and thus is a valid exemption from the provisions of section 239(2.3) of the ITA. It relies upon *Northwest Territories v. Union of Northern Workers*, 2001 NWTSC 27 (“NWT 2”) a decision of the NWT Supreme Court on judicial review of the arbitration Award referred to above.
8. The overriding context of the arguments of the Employer is based on current concerns about the privacy of individuals and their sensitive personal data, such as SINs, which can easily be an instrument of fraud and other illegal activity. In the modern technological world, personal information is subject to hacking and other forms of illegal disclosure. The Employer urges that the policy context of the need to protect the private information of individuals in the modern world, and particularly that of employees, is the overriding consideration in the interpretation and application of the statutes and the collective agreement. These must be interpreted and applied in terms of current concerns over the protection of the privacy of individuals and not interpreted and applied as per outdated jurisprudence because those cases were decided in an era when privacy concerns were not as profound as they are now and the consequences of a breach of privacy are so fraught because of new technology.
9. The Employer concedes that Article 5.02 of the collective agreement requires it to provide SINs to the Union, but it submits that it cannot contract out of the ITA, relying on *Russell v R* 2016 T CC 122. The Employer further submits that none of the three exemptions provided by s. 239(2.3) of the ITA have been met. In particular, the disclosure is not required by law, for the reasons given in *NWT2* (the collective agreement provision is not “law”), the purpose of the disclosure to the Union is not for the same purpose that the SINs are provided by employees to the Employer, and finally that the employees have not provided their written consent to disclosure, or given informed consent. Further, to the extent that there is consent of employees, it is to the Union and not to Sofina.
10. The Employer rejects the argument of the Union that the Arbitrator has no jurisdiction to interpret the ITA because it is not sufficiently employment related. The Employer submits that articles 237 (2) and 239 (2.3) of the ITA relate to the protection of the privacy of employees. It submits that arbitrators have jurisdiction to interpret and apply legislative provisions related to privacy in the workplace. It relies on *Canadian National Railway Company v. Teamsters Canadian Rail*

*Conference* 2014 CanLII 16954 (CA LA). Further, it relies on *Ontario Agency for Health Protection and Promotion and OPSEU, Local 545 (Nagra) Re*, 2013 CarswellOnt 15270 2 to support the argument that arbitrators have jurisdiction where there is a meaningful connection or nexus between the collective agreement provision and the statute, which it submits is the case here with Article 5.02 and the ITA. It asserts that the matter bears on the employment relationship and could give rise to issues of application in the workplace, which provides a sufficient nexus such that the arbitrator has jurisdiction because Article 5.02 requires the provision of SINs and the ITA prohibits the disclosure of SINs except in certain circumstances. Further, it says it is clear from the jurisprudence that the statute does not need to deal with employment-related matters exclusively in order for an arbitrator to have jurisdiction, relying on *C.U.P.E., Local 133 v. Niagara Falls (City)*, 2005 CarswellOnt 2468.

11. Sofina further submits that the highly sensitive nature of SINs has been recognized by privacy commissioners across Canada. In PIPEDA Findings No. 2021-003, the Office of the Privacy Commissioner of Canada classified SINs as “Tier 1” Information, which is particularly sensitive. 2021 CarswellNat 5867 (Office of the Privacy Commissioner of Canada). It further relies on the findings and comments of the Privacy Commissioner in Alberta, 1209652 Alberta Ltd., 2015 CarswellAlta 3133 (Alberta Information and Privacy Commissioner), British Columbia, Mission School District No. 75, 2007 CarswellBC 1987 (British Columbia Office of Commissioner of Information and Privacy), Ontario, Ontario (Ministry of Government Services), 2010 CarswellOnt 18874 (Ontario Information and Privacy Commissioner), and especially Saskatchewan, Saskatchewan Telecommunications, (Saskatchewan Privacy Commissioner, 2012 CarswellSask 960.
12. Sofina submits that the written consent required by sections 237(2) and 239(2.3) of the ITA requires the actual written consent of each individual who is the holder of the SIN. Since Sofina does not have the written consent of individual employees, it cannot disclose the SINs to the Union.
13. In response to the submission of the Union that employees have consented in writing to disclosure of their SINs by virtue of their employment with Sofina and the fact that they are represented by the Union, Sofina submits that consent to the disclosure of highly sensitive personal information must be provided by the individual directly. It relies on *Inergi LP*, where the Arbitrator found that the Union could not give consent on behalf of its members to the disclosure of personal health information because the Personal Health Information and Protection Act (“PHIPA”) required individual consent: *Inergi LP and Society of United Professionals* (2019-0258), 2020 CarswellOnt 14912. It also relies on *Toronto Hydro-Electric System Ltd. and Power Workers’ Union* (2012-040), 2017 CarswellOnt 13304, and *Toronto District School Board and CUPE, Local 4400* (B-20-84), 2020 CarswellOnt 19906.

14. It argues that these cases, which are premised on PHIPA, are highly persuasive in interpreting sections 237(2) and 239(2.3) of the ITA because section 239(2.3) requires an individual's written consent as well and is therefore analogous to the language in section 18(1) of PHIPA. It submits that if Parliament had intended for an agent to be entitled to provide consent on behalf of the individual under the relevant provisions of the ITA, then it would have explicitly provided for this.
15. Sofina submits that SINs and employee personal health information are of a similar magnitude of sensitivity. Accordingly, the specific safeguards provided for the protection of personal health information should be provided for SINs as well.
16. Further, it submits that to infer the right to consent on behalf of employees from the Union's bargaining rights would be to grant it the open-ended right to consent to the release of any private information of an employee. It again submits that the authorities establish that this open-ended consent is ineffective and relies on *Society of Energy Professional v. Ontario Power* 2009 CarswellOnt 5637
17. With respect to the argument of the Union concerning the consent of employees being derived from Articles 5.01 and 5.03 of the collective agreement, which requires employees to execute an "Authorization to Deduct Union Dues" Form, Sofina submits that the obligation to execute the Form authorizing the deduction of union dues does not meet the requirement that consent be individualized and specific. In practice, this form is the Union's Membership Application Form. This is effectively an assertion that the Union, as bargaining agent, has provided consent on behalf of each individual employee by bargaining those provisions of the collective agreement. But there is no requirement for the employee to provide SINs to the Union in the collective agreement. That obligation is Sofina's, not the employees'. To the extent that the Union asserts that employees have given their individual consent by executing the Form itself, that consent has been granted to the Union, not to the Employer. Finally, an employee providing their SIN to the Union directly obviates the need for Sofina to provide the number, except for the convenience of the Union.
18. Further, Sofina submits that the Authorization, which it acknowledges is required by the collective agreement, is not sufficiently specific to constitute consent for the disclosure of SINS. The Collective Agreement itself does not describe the contents of the Authorization and does not provide that an employee would have to disclose their SIN to authorize deduction of union dues from their wages.
19. Additionally, no employee would reasonably expect to have to disclose their SIN to a third party as an implied condition of their employment. It submits that the reasonable expectations of the individual are relevant as to whether they provided consent. It submits that an employee would not reasonably expect the disclosure of their SIN to their Union without their individual written consent.

20. Sofina submits that the use of the information within the meaning of sections 239(2.3) of the ITA, but not section 237(2), allows the use and disclosure without individual written consent so long as the use and disclosure is “for a purpose for which it was provided by the individual...” Here, the Union is using employee SINS for a purpose unrelated to why Sofina collected them. Sofina is required to collect employee SINs under the ITA, the Employment Insurance Regulations and the Canada Pension Plan, i.e., for the purposes of Federal Government programs, which is not the purpose for giving the Union the information.
21. Further, a finding that the union has the authority to give the consent of individuals to the disclosure of SIN numbers contravenes the principle that the need for written consent means that the individuals know what they are consenting to, and that the employee is knowledgeable and informed. Here there is no evidence that the Union made any effort to apprise employees as to the importance of what they are consenting to.

## **DECISION**

22. Some time after final argument was made by the parties, Sofina sought to reopen the proceedings to adduce evidence regarding the hacking of other Locals of the UFCW wherein the social security numbers of employees in the United States were wrongfully obtained by unknown third parties. The Union conceded that I had the jurisdiction to reopen the proceedings to accept the evidence, but it denied that the evidence was relevant. I agree. I accept the submissions of the Employer that there is a significant privacy risk to the collection and use of SINS and their provision by Sofina to the Union and by the Union to the International Union. Even had this hacking not occurred, the ongoing risk of hacking in the modern world is undeniable, and the policy arguments favouring the protection of the privacy of personal information are powerful and legitimate. However, I am not being asked to determine a policy issue but to interpret a collective agreement (in the context of the ITA) made between sophisticated parties wherein one party, after providing SIN information for years to the Union, and having just agreed to insert into the collective agreement the explicit requirement to provide SINS to the Union, has concluded that providing the SIN information is a bad policy decision and seeks to have this Board declare that legally it does not have the right to produce this information to the Union. In my view, the policy considerations that Sofina offers are likely correct, but it does not follow that the legal conclusion Sofina seeks is also correct. Admitting the evidence of the successful hacking of the database of another Local of the same Union or the International Union, or any other union, would make no difference to my legal conclusions. As I have already inferred, I accept the wisdom of Sofina’s policy concerns. However, the evidence proposed to be entered is irrelevant to the legal outcome of this proceeding.
23. I also reject the argument of the Union that I have no jurisdiction to interpret the ITA because it is not sufficiently an employment-related statute within the meaning of section 28 (12) (j) of the LRA. Of course, the ITA is not, in the main, an

employment-related statute, but this does not mean that some of its provisions are not related to employment in a meaningful way. Where the nexus between the statute and employment does exist, and the employment relationship is covered by a collective bargaining relationship, it makes sense in terms of the intention of the LRA for the arbitrator to interpret the statutory provision. Sofina is required by various statutes to provide the government with the employees' SINs within a fixed period of time of commencing employment. Moreover, the ITA seeks to protect this information from being provided by the employer to others where there is not the written consent of the employee, except in limited circumstances. Article 5.02 of the collective agreement clearly requires the Employer to provide the SINs to the Union. Thus, I must decide as an Arbitrator interpreting Article 5.02 (and other provisions of the collective agreement) and the provisions of the ITA, whether there is in fact sufficient consent to Sofina to provide the SIN information to the Union, and whether the exemptions in Sections 237 and 239 apply to the prohibition on disclosure. While the Union submits that Sofina should be compelled to bring the motion that the terms of the ITA have not been met in a competent judicial forum, that forum would almost certainly not have the original jurisdiction to interpret and to apply the provisions of the collective agreement. By virtue of the LRA, only an arbitrator has the original jurisdiction to interpret and apply the provisions of the collective agreement, and the Legislative intent is that where there is an overlap between the employment issue, the collective agreement and the statute, an arbitrator may and often should take jurisdiction.

24. The further argument of the Union is that the obligation of the Employer to provide SINs to the Union is required or authorized by law within the meaning of sections 237 and 239 of the ITA, by virtue of section 56 of the LRA. In support of this proposition, the Union relies upon the decision of the Arbitrator in *Northwest Territories and Union of Northern Workers*, Re2000 Carswell NWT 104, 63 C.L.A.S. 112 ("NWT 1") where the Arbitrator found that the equivalent provision in the *Public Service Act* of the Northwest Territories constituted the required authorization by law. The Arbitrator, Stephen Kelleher, an experienced member of the British Columbia Labour Relations Board, its Chair for a time and an experienced Arbitrator, said as follows:

23. It is an offence, then, for the Government to communicate the social insurance number unless there is written consent from the individual. There are, however, three exceptions contained above in parentheses. It is not an offence if (1) communication is "required or authorized by law", or (2) communication takes place in the course of duties in connection with the enforcement of the *Income Tax Act* or (3) it was communicated for a purpose for which it was provided by the individual.

24. The second and third exceptions have no application here. But in my view the communication of the social insurance number by the Employer to the Union is required by law. The Government has agreed in Article 14.01 of the Collective Agreement to provide the information to the Union. Section 41.6 of the *Public Service Act* provides:

(6) A collective agreement made between the Minister and an employees' association is binding on the Government of the Northwest Territories, the employees' association and the members of the bargaining unit to which the collective agreement applies.

25. This provision, together with Article 14.01, means that the Government is required by law to provide the social insurance number. That is to say, the Government's failure to provide it is a breach of Article 14.01 of the Collective Agreement. A breach of the Collective Agreement is a breach of the *Public Service Act*. The Government may communicate the social insurance numbers because it is required by law to do so. That is not a breach of Section 239(2.3) of the *Income Tax Act*.

25. This legal conclusion by the Arbitrator was explicitly found to be in error by the Supreme Court of the Northwest Territories on an Application for Judicial Review in *Northwest Territories v. Union of Northern Workers*, 2001 NWTSC 27, 2001 CarswellNWT 29, [2001] 7 W.W.R. 374, [2001] N.W.T.J. No. 24 ("NWT2"). Sofina relies upon the ruling of the Court, where it stated:

16. The fact that I think the arbitrator was correct in the result should in most circumstances be sufficient to dispose of this application. It is often said, at least on appeals in ordinary civil litigation, that an appeal is from an order or judgment, not from the reasons: see, for example, *Hamilton Brothers Corp. v. Royal Trust Corp. of Canada* (1991), 117 A.R. 314 (Alta. C.A.). On a judicial review application, however, the reasons may be more of a concern if one has to assess the reasonableness of a decision. It is also true, and again speaking in purely general terms and in the context of ordinary litigation, that an adjudication under appeal may be affirmed on a ground not articulated or different from the reasons of the original tribunal. An appellate court may affirm the decision on any valid ground: *Thatcher v. Lindskog* (1983), 1 D.L.R. (4th) 763 (Sask. C.A.). In this case, counsel for the government expressed grave concerns over the potential implications of the arbitrator's finding that the *Income Tax Act* prohibition did not apply because the agreement itself has the status of "law" by virtue of s. 41(6) of the *Public Service Act*. I can appreciate those concerns and it is here where I think the arbitrator was in error in his reasoning even though he came to the correct result in the end.

17. In my opinion, it would take explicit statutory language for some external document to be regarded as law. Examples can be found in both federal and territorial legislation. One is the *Canada-United Kingdom Civil and Commercial Judgments Conventions Act*, R.S.C. 1985, c. C-30. That statute provides, in s. 2, that the Convention, itself being an agreement, is approved and "declared to have the force of law in Canada." It goes on to provide that the provisions of the Act and the Convention prevail over any other law if there is any inconsistency. Another example is the *Intercountry Adoption (Hague Convention) Act*, S.N.W.T. 1998, c. That Act provides, in s. 3, that when the Convention comes into force "its provisions are law in

the Territories." It also provides that the Convention prevails in case of any conflict with Territorial law.

18. These examples clearly show the type of specific statutory language required to elevate an external agreement to the status of "law." Contrasted to these examples is s. 41(6) of the *Public Service Act*, which merely affirms that a collective agreement is binding on the Government. There may be a number of reasons for having such a "binding" provision in the statute (and I note that both the *Canada Labour Code*, in s. 56, and the federal *Public Service Staff Relations Act*, in s. 59, have similar provisions). But whatever its purpose the effect is clearly not to elevate the agreement itself to the status and force of law.

19 Such an interpretation would also contradict some other obvious provisions of both the agreement and the *Public Service Act*. Article 5.01 of the agreement provides that nothing in the agreement shall be construed so as to require the employer to do or refrain from doing anything contrary to any Act of the Territories; Art. 5.02 states that in the event that any law renders null and void any provision of the agreement then the remaining provisions shall remain in effect. All of this suggests a superiority of laws over the agreement. It accords with the accepted principle that, where the provisions of a collective agreement are clearly contrary to a statute, the arbitrator is to treat that portion of the agreement as null and void: see Brown & Beatty, *Canadian Labour Arbitration* (at para. 2:2100).

20. The *Public Service Act* provides, in s. 44, that no collective agreement shall provide for the alteration or elimination of any existing term or condition of employment if such would require the enactment or amendment of any existing legislation. This too contradicts the notion that s. 41(6) of the Act has the effect of giving the agreement the force of law.

21. So, for these reasons, I respectfully conclude that the arbitrator was wrong in his reasons dealing with the impact of the *Income Tax Act* prohibition. I nevertheless think he came to the correct conclusion because, in my opinion, the communication of social insurance numbers is authorized by reason of the third exemption in s. 239(2.3) of that Act: "for a purpose for which it was provided by the individual."

22. The employee provides his or her social insurance number to the employer for purpose of employment. The employee must be a member of the union, or at least subject to the terms of any collective agreement so long as he or she is a member of the bargaining unit, also for purpose of employment. One is inseparable from the other. A purpose of providing one's social insurance number is to comply with employment requirements, as is compliance with the terms of the agreement. Section 41(6) of the *Public Service Act* also makes the agreement binding on the members of the bargaining unit. Therefore, in my opinion, the employer's communication of the employee's social insurance number to the employee's bargaining agent, the Union, is implicitly a purpose for which the employee

provided it to the employer. Thus, the *Income Tax Act* does not prohibit compliance with the Government's obligation pursuant to Art. 14.02 of the agreement.

26. The decisions of the Court and of the Arbitrator set out above do not distinguish between the provisions of Section 237(2) and 239(2.3) of the ITA, but there is a difference. Section 239 (2.3) refers to an exemption from the need for written consent "otherwise than as required or authorized by law", while section 237(2) refers to "otherwise than as required or authorized under this Act or a regulation". The parties did not address whether this difference is meaningful and whether section 237(2) requires an explicit authorization under the ITA or a regulation. In my view, the two provisions are related, and it does not make sense to interpret the provisions as requiring different authorizations or requirements. In my view, an authorization which is "required or authorized by law" under section 239(2.3) constitutes something that is "required or authorized under *this Act*" for the purposes of section 237(2). In other words, the exemption provided by section 239(2.3) provides the authorization or requirement necessary under the ITA for the purposes of section 237(2). This applies to the finding in *NWT 1* as well as the finding in *NWT 2*, i.e., if the arbitrator is correct about the collective agreement being "law" requiring or authorizing the disclosure under section 239(2.3) of the ITA, that constitutes authorization or a requirement "under this Act", for the purposes of section 237(2). The same is true for the Court's interpretation of the common purpose aspect of section 239(2.3).
27. If that interpretation is wrong and authorization or a requirement under section 239(2.3) is not sufficient for the purposes of section 237(2), the next sections of this award would only apply to section 239(2.3), and the only exemption relevant to section 237(2) would be whether there was written consent of the employees.
28. I respectfully disagree with the conclusion of the Court in *NWT2*, which is not binding on me, that a provision of a collective agreement cannot have the force of "law" in terms of the provisions of the ITA. In Ontario, the provisions of now section 56 of the LRA (previously section 50) are the equivalent of the provisions of the Public Service Act in the *NWT1* and *NWT 2* cases. The Ontario Labour Relations Board has for decades accepted that a breach of a collective agreement can constitute a violation of the LRA over which it may take jurisdiction because of the operation of section 56. In *Service Employees International Union, Local 204 v. Kennedy Lodge Inc.*, 1984 CanLII 3448, ("*Kennedy Lodge*"), the applicant submitted the following interpretation of then section 50 of the LRA and Vice-Chair Burkett agreed:

27. The applicant/complainant also relies on sections 50 and 106(2) of the Act. The applicant/complainant submits that the Board has the authority under section 106(2) of the Act to determine if the persons supplied by Medox are employees of Kennedy Lodge. It is submitted that if they are employees of Kennedy Lodge and remain so at a time when more senior employees covered by the collective agreement are on layoff there exists a massive breach of the collective agreement, thereby constituting a

breach of section 50 of the Act. *Maple Leaf Taxi Limited*, [1982] OLRB Rep. Nov. 1671, *Eastern Sheet Metal and Mechanical Contractors*, [1981] OLRB Rep. Jan. 26 and *Carroll Electric (1982) Limited, supra*, are cited in support of the Board's authority to find a breach of section 50 of the Act where a party to a collective agreement "massively, totally and in a wholesale manner" repudiates its provisions....

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39. It is our intention to determine firstly, if we are dealing with a contracting out as contemplated by article 2.03 of the collective agreement or whether the work in question will continue to be performed by employees of Kennedy Lodge such that the terms and conditions of the collective agreement will apply and any attempt to circumvent the seniority and wage provisions of the collective agreement in respect of the performance of this work will constitute a breach of section 50 of the Act and consequentially a breach of section 64 of the Act and thereby bring into play the remedial

41. Before proceeding further it is useful to establish the statutory basis upon which we make this inquiry. The applicant/complainant relies upon section 106(2) of the Act and upon section 50 in asking us to make the aforementioned inquiry in order to identify who will be the employer of the aides supplied by Medox. While the Board has not used section 106(2) of the Act to determine whether a person is an employee within the meaning of a recognition clause in a collective agreement, the Board has made it clear in a number of decisions that section 106(2) empowers it not only to decide whether a person is an employee within the meaning of the Act, but also whether a person is an employee of the employer who is a party to the application or complaint before it. (See *Re Ontario Hydro*, [1981] OLRB Rep. July 931 and the decisions referred to in paragraph 12 of that decision). Furthermore, although the Board has a long history of deferring to arbitration in matters of contract interpretation, the Board has, in recent years, as a result of its expanded remedial authority and policy responsibilities, refused to defer to arbitration where the alleged violation of the collective agreement would, if proven, constitute a repudiation of the collective agreement or involve, as well, violations of the Act. (See *K Mart Limited*, [1983] OLRB Rep. May 649, *Nelson Quarry* [1983] OLRB Rep. Sept. 1531 *Dufferin Aggregates*, [1983] OLRB Rep. July 1031.) In disposing of this type of case, therefore, the Board may rely on section 50 of the Act in addition to the unfair labour practice sections of the Act. (See *Re Maple Leaf Taxi Limited, supra, Carroll Electric, supra*, at page 1289.) Inherent in the Board's authority to determine if a party has breached a binding collective agreement contrary to section 50 of the Act is the authority to determine if certain persons are employees covered by that agreement.

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58....However, we are of the view that some comment pertaining to the legality of the subcontracting arrangement that is the subject of this decision vis-a-vis the unfair labour practice provisions of the Act would be

of assistance to the parties in structuring their affairs and to the nursing home industry generally where recent decisions to subcontract have generated a great deal of union/management friction.

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63. [The Board then went on to find that the contracting out scheme of the Employer violated the collective agreement and thereby the Act].

69. Having regard to all of the foregoing, we hereby declare that under the terms of the arrangement between Kennedy Lodge and Medox

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(ii) Any attempt to utilize the persons supplied by Medox in this capacity in place of the aides presently employed by Kennedy Lodge will constitute a breach of the collective agreement between Kennedy Lodge and the applicant/complainant trade union, which continues in full force and effect, **and consequently a breach of sections 50** and 64 of the Act. (emphasis added)

29. In addition to the cases cited by the Board and the applicant in *Kennedy Lodge*, see *RPKC Holding Corporation* [1986] OLRB Rep. June 828 where the Board found that the breach of the layoff and recall provisions of the collective agreement constituted a breach of section 50, and *Standard Insulation Ltd.*, 1984 CanLII 1092 (ON LRB) where the Board found the failure of a construction employer to file reports and remittances constituted a breach of section 50.
30. Thus, in Ontario, an explicit statutory provision such as that referred to by the Court in *NWT2*, is not required to give a collective agreement the force of law. An article of a collective agreement is binding on parties and employees by virtue of section 56 of the LRA, and compliance with the collective agreement is required by law. While the Board will only take jurisdiction to deal with an alleged breach of a collective agreement as a breach of the Act on rare occasions, such as where there has been a complete repudiation of the collective agreement, and will mostly defer to an arbitrator, it nonetheless has jurisdiction under section 96 to deal with the alleged breaches of the collective agreement which constitute violations of the Act. I agree with the reasoning of Arbitrator Kelleher in *NWT1*, and that article 5.02 has the force of law in this case, exempting Sofina and the Union from an alleged breach of section 239(2.3) and thereby section 237(2) of the ITA.
31. In the alternative, if I am wrong about the provisions of the collective agreement constituting "law" for the purposes of the ITA, I also agree with that portion of the judgment in *NWT2* quoted above that the purpose of the disclosure under both the collective agreement and the statute was for the same employment related purposes, and that, therefore, Sofina did not violate the non-disclosure requirement of sections 239(2.3) and thereby also section 237(2) of the ITA. In my view, it is sufficient, given that the sole purpose of obtaining the SINs of employees

is to provide this information to the Government for the purposes of employment in the areas of taxation, pensions, employment insurance and other similar purposes, likely as a unique identifier, it is sufficient if there is an employment purpose in Sofina providing the SINS to the Union as a unique identifier. As in *NWT2*, there is here a closed shop provision where ultimately all the members of the bargaining unit must be members of the Union and provide the SIN as part of that process to both the Union and to the Employer. It does not matter that, having agreed to supply the SINS to the Union for many years and just recently in the collective agreement itself, Sofina no longer thinks that purpose is legitimate. The fact is that SINS have been provided by companies to unions by virtue of collective agreement provisions across Canada for many years and long before the privacy concerns articulated by Sofina now were recognized. Clearly the parties to many collective bargaining relationships believed that there was a legitimate employment purpose served in providing this information for employment related purposes to the Union and there is nothing to be served in reading the term "purpose" in the ITA so narrowly (i.e., for the purposes of the federal government as Sofina proposes) with the effect of criminalizing all of this conduct of employers (and perhaps unions) essentially retroactively. While I do not disagree with Sofina's concerns respecting privacy and the wisdom of protecting these numbers against modern hacking and the realistic concerns expressed regarding the widespread use of SINS enabling fraud and other criminal activities, the Court in *NWT2* was wise and correct in its determination that because the purpose of the original disclosure was employment related and the purpose of the particular disclosure to the union is also employment related, there was no breach of the ITA.

32. In the further alternative, I find that the third exemption in both sections 237(2) and 239 (2.3) also applies, and that the employees have granted their written consent to the disclosure of the SINS. I have come to this conclusion for four reasons. First, the Union has the exclusive bargaining authority to consent on behalf of individuals. Second, the restriction on this right of the Union is clear in the context of PIPHA but not in the case of the ITA. Third, I reject the submissions of Sofina that I should read into the provisions of the ITA that the consent must be shown to be the informed consent of individual employees and that the matter consented to must be shown to be a reasonable expectation of employees. Fourth, I find that on the facts here, the written consent of the employees for the purposes of sections 237(2) and 239(2.3) has been demonstrated.
33. As a general matter, it is important to maintain perspective on this case when it comes to assessing the consent of employees. No employee has brought this case forward to submit that they did not provide actual or deemed or implied or informed consent. All of the submissions of Sofina are those of the Employer ostensibly making submissions about the consent of employees when no employee is complaining or aggrieved. I do not say that Sofina does not have standing to raise these issues because it does provide SINS to the Union every month, but it bears keeping in mind that it has done so for many years, and further it agreed formally in the collective agreement just recently to continue to do so before it stopped the

practice, not at the urging of employees but over concerns raised by the Director of Labour Relations.

34. First, in terms of consent of the employees, in my view, because the Union is the exclusive bargaining agent by virtue of the LRA for the employees of Sofina, it has the right to grant authorization on behalf of the employees in the bargaining unit to all and every provision in a collective agreement regarding terms and conditions of employment, privileges of employment, and all other matters relating to employment. This is subject only to the requirement of ratification by a majority of employees voting in a ratification vote, and subject to the duty to fairly represent the members of the bargaining unit in collective bargaining, and subject to the provisions of a statute which explicitly requires individual consent. In a collective bargaining context, as opposed to non-unionized employment, the Supreme Court of Canada in *McGavin Toastmaster Ltd. v. Ainscough* [1976] 1 S.C.R. Laskin CJC said the following:

... The majority of this Court, speaking through Judson J. in *Syndicat Catholique des Employés de Magasins de Québec Inc. v. Compagnie Paquet Ltée*<sup>[2]</sup>, at p. 212, said this in a situation where a union was certified for collective bargaining under Quebec labour relations legislation:

There is no room left for private negotiation between employer and employee. Certainly to the extent of the matters covered by the collective agreement, freedom of contract between master and individual servant is abrogated. The collective agreement tells the employer on what terms he must in the future conduct his master and servant relations,

The situation is the same in British Columbia where the legislation in force at the material time stated explicitly that a collective agreement entered into between a union and an employer is binding on the union, the employer and the employees covered thereby: see *Mediation Services Act*, 1968 (B.C.), c. 26, s. 6.

The reality is, and has been for many years now, throughout Canada, that individual relationships as between employer and employee have meaning only at the hiring *stage* and even then there are qualifications which arise by reason of union security clauses in collective agreements. The common law as it applies to individual employment contracts is no longer relevant to employer-employee relations governed by a collective agreement which, as the one involved here, deals with discharge, termination of employment, severance pay and a host of other matters that have been negotiated between union and company as the principal parties thereto. To quote again from the reasons of Judson J. in the *Paquet* case, at p. 214:

If the relation between employee and union were that, of mandator and mandatary, the result would be that a collective agreement would be the equivalent of a bundle of individual contracts between employer and employee negotiated by the union as agent for the employees. This seems to me to be a complete misapprehension of the nature of the juridical

relation involved in the collective agreement. The union contracts not as agent or mandatary but as an independent contracting party and the contract it makes with the employer binds the employer to regulate his master and servant relations according to the agreed terms.

35. In these circumstances, given that these statements by the Supreme Court of Canada continue to constitute the primary essence of collective bargaining and labour law in Canada, it is not appropriate for an arbitrator to read strictly the type of written consent required by section 239(2.3) and 237(2) of the ITA, where the union has the full and exclusive right to bargain on behalf of the employees, a right granted by the Legislature, and reaffirmed time and again by the courts. In this context, I agree with the reasons of Arbitrator Kaplan in *The Corporation of the City of Timmins (Golden Manor Home For the Aged) and ONA*, October 15, 2025 (unreported), where the Employer also alleged the collective agreement was illegal because of the applicable privacy and tax legislation:

The Association is the sole and exclusive bargaining agent for the relevant employees. It has collectively bargained a provision that is prescriptive and governing and constitutes the consent of the employees to release the information. I note as well that the Association in Article 6.05 provides an indemnity to the employer. Moreover, remission of dues, along with Social Insurance Numbers, has been collectively bargained across the health care sector: hospitals, long-term care and home care etc. It is ubiquitous... Accordingly, the employer is directed forthwith to provide the SINS along with remission of Association dues.

36. Given the importance and primacy of the exclusive bargaining rights of trade unions representing employees in bargaining units, in my view an arbitrator should be loathe to read down those rights and to require something more than the consent of the union on behalf of employees, unless the statute clearly requires such a reading. There is no conflict between the provisions of the ITA and the LRA as the ITA should be read as permitting the consent of the employees to be expressed through the collective agreement absent some clear indication that this is not what was intended. Further, to the extent that there is a conflict between section 237(2.3) and (237(2) of the ITA and the entire scheme of the LRA, but in particular sections 45(1) and 56 of the LRA, in my view the provisions of the LRA prevail over any general effort to restrict the authority of the union to consent to terms and conditions of employment on behalf of the members of the bargaining unit.
37. Second in terms of consent, it is clear that the consent required by PIPHA is individual consent of each employee but that is not clear from the provisions of the ITA. I recognize that the right of a Union to agree that its members will disclose personal confidential health information has not been implied from the general authority of the trade union to bargain provisions of a collective agreement. The Employer submits SINS are in the same category as personal health information

and should be protected in the same way. In my view, the situations are very different. All the cases relied on by the Employer for the protection of personal health information are based on the provisions of PHIPA where Section 18 (1), in my view, explicitly requires the consent of the individual:

18(1) If this Act or any other Act requires the consent of the individual for the collection, use or disclosure of personal health information by a health information custodian, the consent,

(a) must be a consent of the individual;

(b) must be knowledgeable;

(c) must relate to the information; and

(d) must not be obtained through deception or coercion.

38. There are at least four things that differentiate section 18(1) of PHIPA from sections 237(2) and 239(2.3) of the ITA.
39. The first difference is that PHIPA is exclusively and specifically focused on protecting the privacy of *personal* health information. In that context, interpreting the key section which does not allow providers to disclose information without the consent of the individual as nonetheless permitting that disclosure with consent granted by unions would be unreasonable and miss the entire purpose of the statute. In contrast, the ITA does not deal primarily or exclusively with protecting the privacy of SINS and actually permits disclosure of SINS by the employer in a variety of circumstances. In that different statutory context, it is not unreasonable to ask whether the consent in the ITA must be that of the individual personally or whether it can be directed through the agency of an exclusive bargaining agent.
40. The second difference between PHIPA and the ITA is that section 18(1) is aimed at what a health care custodian requires before disclosing personal health information. The statute insists that the consent be knowledgeable, has to relate to the information itself, and must not be obtained through deception or coercion. These are attributes or criteria which apply to individuals, and it would be unreasonable to interpret the entirety of the section as permitting consent to be given by a union when the concepts of knowledgeable consent given without deception or coercion have no application to a union. This leads to the reasonable conclusion that the statute does not contemplate consent being given through a union. In contrast, the ITA does not have other attributes required which only fit with individual consent.
41. Third, in terms of the difference in the two Acts, while there is no inherent difference in the meaning of the words "shall" and "must", the construction of sections 237(2) and 239(2.3) of the ITA on the one hand, with section 18(1) of PHIPA on the other hand, shows a difference in the intent of the sections. In section 18(1), the word

“must” is used four times to specifically rule out what consent is and is not. In the context of that statute, and the structure of that section, the correct interpretation is that the words “must be the consent by the individual” means just what it says and is intended to permit no variation. In contrast, the word “shall” in section 237(2) relates to knowing use or communication and is not specifically modifying what the attributes of consent must be. The ITA does not contain a specific provision setting out that the consent has to be that of the individual and no one else, or that the consent must be knowledgeable and given without coercion or restraint. Sofina submits that if the ITA intended someone other than the individual to be able to give consent on their behalf, it would have said so. In my view, the opposite is the case. The ITA is focused on the need for consent but not on the way in which it can and cannot be manifested or what the attributes of consent must be. Thus, it is reasonable to ask whether in requiring the consent of the individual, Parliament was ruling out that consent being granted by the exclusive bargaining agent. Given the law regarding the authority of trade unions as articulated by the Supreme Court of Canada, it is incorrect to read that restriction into the statute in this case. In that context, it is not unreasonable to assume that Parliament was aware of the practice referred to by Arbitrator Kaplan of employers agreeing to provide unions with SINs across Canada for decades.

42. Fourth in terms of the difference between PHIPA and the ITA, I do not agree that the transmission of SINs for employment purposes is equivalent to requiring an employee to disclose their personal health information and therefore I should read the prohibition in the ITA in the same way as the prohibition in PHIPA. First, the employee is compelled to transmit the SIN to the employer by law. The same is not true for personal health information. Disclosure of SINs is also permitted where authorized or required by law in the ITA, which is not contemplated by section 18 of PHIPA. SINs can be disclosed under the ITA when the purpose of the disclosure is the same as the original disclosure, but there is no equivalent provision in PHIPA. In other words, the attributes of the information in the two situations are quite different.
43. Sofina submits that it is reasonable for the arbitrator to read into the requirement for consent in the ITA the same criteria as apply under PIPHA and as applied by various privacy commissioners, so that I am urged to read into the need for consent the requirement that it be knowledgeable, and that it is not a reasonable expectation of employees that their SINs be provided to their Union. In my view, , there is no labour relations reason to create a standard of disclosure and knowledge that unions must provide to employees before their union can consent to the provision of SIN information, that is different from the ordinary law under the duty of fair representation. The relationship between employees in a bargaining unit and their bargaining agent is complex and multi-faceted. Much of it is regulated by both general and specific labour law provisions and Labour Relations Boards. There is no reason for me as an arbitrator to require stricter standards of disclosure by unions in relation to SINS than is the case with all other contract proposals.

44. As for the standard of the reasonable expectations of employees not expecting that a union would agree to the disclosure of SINs, most employees would not have a reasonable expectation that a union would agree to lower wages or modify a benefit to restrict access or use by employees or think it reasonable for the union to agree to terms adverse to some employees or perhaps even all employees on a broad range of matters that go beyond compensation such as promotion and layoffs. However, in fact, unions can and do make these tough decisions all the time, and they prevail (if they are ratified by a majority of those voting) even if they run counter to the objective “reasonable expectations” of employees.
45. Viewing the consent of the individual employees in sections 232(2) and 239(2.3) of the ITA through the prism of “reasonable expectations” and a requirement for disclosure ensuring informed consent is inconsistent with the fundamental structure of labour law. There are a variety of checks and balances within labour law as to how and what unions can bargain. The duty of fair representation owed by unions to employees is set out in section 74 of the LRA and applies to the negotiation of collective agreements. This is regulated by the Ontario Labour Relations Board. In addition, there are statutory rules requiring the ratification of contracts by employees in a bargaining unit. Moreover, unions have constitutions and bylaws which are enforceable, unions are generally democratically controlled by their memberships, and there are a great variety of processes governing the development, approval and ratification of contractual proposals as well as electoral provisions which provide accountability of union leadership to its members. Finally, there are statutory rights that employees have to terminate the bargaining rights of the union at set times in addition to the normal democratic pressures that can be exerted by employees on unions and union officials. It is not for the arbitrator, in this context, at least, to comment on the reasonable expectations of employees regarding disclosure of SINs to constrain the authority of unions to do so. Nor is it the function of an arbitrator to impose strict rules surrounding the need for informed consent concerning the disclosure of SINs that do not apply to other matters. To inject a theory of reasonable expectations of employees as to what would be contained in a collective agreement would create important elements of uncertainty as to the outcomes of the collective bargaining process for which there is no authority in the law.
46. Overall for the reasons given above, it is not obvious nor necessary to use PHIPA as a basis for interpreting the ITA. Given that the law grants bargaining agents the exclusive authority to bargain over everything and the pertinent differences between PHIPA and the ITA, it should be crystal clear from the statute that the authority of the Union is restricted. I believe the provisions of PHIPA meet that test but the provisions of the ITA do not.
47. Finally in terms of consent being given, if I am wrong in all else I have said above, I find that in this case the employees have, to the full knowledge of Sofina, given their written consent to the Union having their SINs and therefore Sofina knows the employees have provided their consent to the Union having the information.

48. I arrive at that conclusion because the collective agreement provides that every employee who is a union member must sign, together with any new employee, an "Authorization to Deduct Union Dues" as the Form has been called for years. The Form is not itself reproduced in the collective agreement, but it is referred to in articles 5.01 and 5.03. The Form was provided in evidence without dispute and described in detail above. It is attached as Schedule A.
49. The provisions of the Form and the collective agreement are not as clear as one would have liked, but one has to read them as a whole, as part of a cohesive labour relations matrix, including the collective agreement provisions, the Authorization Form itself, but also one must read and interpret them in the context of the long practice of the parties which did not change with the introduction of the new language of the collective agreement and the amendments to article 5.02 introduced in the last collective agreement.
50. Under Article 5.01, only those employees who at the time (presumably the first time this provision was entered into) were Union members had to sign the Form authorizing the Employer to deduct union dues. Even though the Form is, in part, an application for membership in the Union, the employees who were members had to provide the Form anyway and the information it required, including their SINs. Other employees who were not members of the Union could or could not sign the Form. However, under Article 5.03, all new employees were also required to sign the Form so that eventually everyone was a member of the Union and membership in the Union, as well as deduction of dues, became *de facto* over time, a condition of employment for everyone. It appears to me, although it is not relevant to this case, that under Article 5.02, from the outset, the Company was required to deduct union dues from everyone, even if they were not members of the Union (and presumably, for reasons best known to the framers of the original collective agreement, the non-members were not required to sign a form which authorized the deduction of an equivalent amount to union dues).
51. The box on the bottom right of the Form states that it is an "Application/ Authorization". Thus, while the Form is a membership application to the Union, it is not only that. It is also, either primarily or equally, what it is called in the collective agreement itself: an "Authorization to Deduct Union Dues". The Form is not directed only to the Union because it is also an Authorization to Sofina to deduct dues. It is true that while it does not say on the Form that it is an authorization to deduct dues, it uses the word "Authorization" but without specifics as to what is being authorized. Obviously, however, in the context of the collective agreement which explicitly names the Form as an "Authorization to Deduct Union Dues" in Articles 5.01 and 5.03, the authorization in the Form is to Sofina for that purpose. It cannot be anything else. Indeed, in the collective agreement it is referred to only as the Authorization to Deduct Dues and only the Form itself makes it clear that it is also an application for membership in the Union. Thus, the Form has a dual purpose: it is not only an authorization to deduct dues, but at the same time it is an application for membership in the Union. The Form is not, as the company

suggests, only directed to the Union, but it is also, and indeed primarily, the intention of the parties as set out in the collective agreement, directed to Sofina authorizing it to deduct dues.

52. In summary, the Form pertains to the Union insofar as it applies for membership in the Union and authorizes the company to deduct dues. The Form pertains to Sofina as it complies with the contractual condition that every current Union member sign the Form (and be a member of the Union), that all new employees sign the same Form applying for membership in the Union, and all who sign the Form authorize Sofina to deduct union dues.
53. It is also that Form which contains the employees' signature and where the employee provides his/her SIN in my view, to both parties. The Application/ Authorization Form has been in use for many years, and both parties must be taken to be fully cognizant of precisely what it provides, including the signature of the employee and the provision by that employee to both the company and the Union of their SIN.
54. I understand that the Agreed Statement of Facts did not state that the authorization Form went to both the Union and to the Company. However, in the context of the collective agreement language, the Form itself, and the Agreed Facts, no other conclusion is possible. It must be intended that Sofina receive the written authorisation to deduct dues and therefore that it receive the Form where the employee provides the SIN to both parties. Similarly, it must be intended that the Union receive the application for membership with the SIN provided by the employee. Both parties must be taken to be aware that each of them has the SIN of the employee who signs the Form. In addition, Sofina has this signed acknowledgement from the employee:

I understand and acknowledge that the Union **has my consent and agreement to the collection, use or disclosure, of personal information, as required**, as it applies to my membership in, and representation by, the Union. (emphasis added)

55. In other words, the company is fully aware that the employee has actually provided the Union with the SIN. Further, the employee agreed to the Union collecting, using, or disclosing the information on top of actually providing her information to the Union. Independent of anything else, in the circumstances, in my view, this constitutes written consent of the employee within the meaning of the two sections of the ITA. It provides sufficient consent for Sofina to disclose the information to the Union which it knows the Union already has, as it was provided by the employee in writing signed by the employee. No one could convict Sofina for breaching the sections of the ITA, or find on these facts that the employees had not consented to Sofina providing the Union with the SINs. The employee has already given the SIN to the Union in writing (or must provide it). All the company does, as a clerical matter, is provide the number back to the Union in one place

with all the other information set out in Article 5.02 together with the dues. Thus, where the employee has already provided the SIN to the Union with the knowledge of Sofina, Sofina does not require further evidence of consent from the employee for it to provide the SIN to the Union in this clerical context. Sofina has all the evidence of consent of the employee that it requires for the purposes of sections 237(2) and 239 (2.3) of the ITA.

56. I understand Sofina's submission that the collective agreement and the Form do not specifically state that it is authorized to provide the SIN to the Union. The point is that the consent of the employee has been provided to Sofina by it knowing that the employee has provided the SIN himself or herself in writing to the Union. On these facts and this language, I do not see how it can be reasonably concluded that Sofina does not have evidence of the written consent of the employee to the Union having the SIN. Sofina is only providing the SIN monthly for convenience of something the Union already has as a result of the actions of that employee. Interpreting these facts and the collective agreement to find that Sofina does not have the consent of the employee to provide the SIN to the Union when the employee has already provided the SIN to the Union with the knowledge and agreement of Sofina, in my view, would be a perverse interpretation of the facts and place form over substance.
57. As a result, I find that Sofina has the consent of all the employees to provide the SIN to the Union, except for an employee who is not a member of the Union and who has not signed an Authorization. If there are such persons, the law still permits the disclosure by Sofina of their SINs as set out above because the collective agreement has the force of law for purposes of the two provisions of the ITA. Moreover, the common purpose exception in section 239(2.3) applies and also applies, as I explained above to section 237(2) as a result of the operation of section 239(2.3). In addition, the Union, by virtue of its role as the exclusive bargaining agent of the employees, has the authority to provide the consent of all employees, members of the Union or not, for the purposes of sections 237(2) and 239(2.3) of the ITA, which it has done.
58. I direct Sofina to provide the SINs to the Union in accordance with Article 5.02.

DATED at Toronto this 10th day of August, 2026



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C. Michael Mitchell

SCHEDULE "A"

| UNITED FOOD & COMMERCIAL WORKERS<br>INTERNATIONAL UNION<br>MEMBERSHIP APPLICATION |  |  |  |  |  |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |  |  |
|-----------------------------------------------------------------------------------|--|--|-----------------------------------------------------------------------------------|--|--|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|--|
| PERSONAL DATA                                                                     |  |  | LOCAL UNION                                                                       |  |  | CITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| PROVINCE                                                                          |  |  | SOCIAL INSURANCE NO.                                                              |  |  | POSTAL CODE                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| LAST NAME                                                                         |  |  | FIRST NAME                                                                        |  |  | MIDDLE NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 |  |  |
| DATE OF BIRTH                                                                     |  |  | SEX                                                                               |  |  | DATE OF BIRTH                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| WIFE/CHILD                                                                        |  |  | ADDRESS                                                                           |  |  | CITY                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |  |  |
| PROVINCE                                                                          |  |  | POSTAL CODE                                                                       |  |  | E-MAIL ADDRESS                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |  |  |
| HOME PHONE                                                                        |  |  | <input type="checkbox"/> MARRIED<br><input type="checkbox"/> SINGLE               |  |  | EMPLOYER NAME                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |  |  |
| DATE OF INFO                                                                      |  |  | STORE NO.                                                                         |  |  | DEPT. NO.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| TYPE OF WORK PERFORMED                                                            |  |  | <input type="checkbox"/> FULL-TIME<br><input type="checkbox"/> PART-TIME          |  |  | APPLICATION/AUTHORIZATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |
| COMPANY NAME                                                                      |  |  | BUSINESS ADDRESS                                                                  |  |  | I hereby make application for membership in the UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION and affirm that the above statements are true, and I agree that all moneys paid by me shall be forfeited and my membership declared void if they are not true. I authorize the UNITED FOOD & COMMERCIAL WORKERS INTERNATIONAL UNION to represent me for the purpose of collective bargaining and handling of grievances either directly or through such local union as it may duly designate. I understand and acknowledge that the Union has my consent and agreement for the collection, use, or disclosure of personal information as required as it applies to my membership in, and representation by, the Union. |  |  |
| APPLICANT SIGNATURE                                                               |  |  | DATE SIGNED                                                                       |  |  | 4/15/2008                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |  |  |