

*Case Name:*

**Otis Canada Inc. v. International Union  
of Elevator Constructors, Local 1  
(Telematics Device Grievance)**

**IN THE MATTER OF an Arbitration under  
the Labour Relations Code, R.S.B.C.**

**1996**

**Between**

**Otis Canada Inc. (the "Employer"), and  
International Union of Elevator Constructors,  
Local 1 (the "Union")**

**Re: Telematics Device Policy Grievance**

[2010] B.C.C.A.A.A. No. 121

No. A-088-10

British Columbia

Collective Agreement Arbitration

Vancouver, British Columbia

**Panel: John Steeves (Arbitrator)**

Heard: March 15, 16; June 1, 2, 4, 2010.

Written submissions: July 23, July 27, August 3, 2010.

Award: August 30, 2010.

(116 paras.)

**Appearances:**

Peter Archibald, Q.C., Sheila Tucker, for the Employer.

Theo Arsenault for the Union.

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**AWARD**

## A. INTRODUCTION

1 The Employer has installed electronic devices using technology called "Telematics" in vehicles owned by them and driven by employees who are elevator mechanics. Using satellite technology, the devices collect information about vehicles when they are operated by the mechanics. The mechanics use the vehicles to attend various worksites and they are also permitted to use the vehicles to drive to and from home. This is a decision about issues related to privacy, technological change, other provisions of the collective agreement and section 54 of the *Labour Relations Code* that the Union has raised about the introduction of the electronic devices.

2 The Union has filed a policy grievance about the intrusive nature of the electronic Telematics devices on their privacy. They also allege violations of the collective agreement, including the technological change provision, and a violation of section 54 of the *Labour Relations Code*. With respect to privacy, their concern is that the devices track the location of employees, as drivers of the vehicles, especially when the vehicles are used for use to and from home. Specifically, the Union submits that the devices violate the privacy rights of the elevator mechanics as those rights are set out in the *Personal Information Protection Act*. That is, the information collected is "personal information" or "employee personal information", the collection is not reasonable and the legislation requires the Employer to obtain the consent of employees before the information can be collected or used. The Union also submits that the introduction of these devices is contrary to the technological change provisions of the collective agreement, other provisions of the collective agreement as well as Section 54 of the *Labour Relations Code*.

3 A number of orders and directions are sought by the Union and these amount to enjoining the Employer from using the electronic devices to collect or use private information about employees without their consent. The Union is especially concerned that the Employer did not bargain the introduction of the electronic devices with the Union, as has been done in other jurisdictions. An order directing the Employer to bargain the introduction of the electronic devices is also sought.

4 The Employer submits that the electronic devices were put in place in order to monitor the vehicles, in particular the operation of the vehicle's engine, not the employees. The Employer also submits that employees can be disciplined for not attending work at the required times using information obtained from the devices. According to the Employer, the information collected is related to their business and it is not personal information of employees under privacy legislation. Therefore, there is no violation of the privacy rights of employees. Alternatively, if the information is personal information, then the collection and use of the information is reasonable. The Employer also submits that the installation of the electronic devices does not violate any provisions of the collective agreement or Section 54 of the *Labour Relations Code*. Specifically, there is no requirement for the Employer to enter into mid-contract bargaining with the Union over the introduction of the devices. The Employer seeks the dismissal of the grievance.

5 The Union previously sought an interim order with respect to the introduction of the electronic devices. In an interim award dated February 19, 2010 I denied the Union's application for interim relief.

## B. BACKGROUND

6 The Employer is in the business of constructing and maintaining elevators and the Union represents elevator mechanics employed by the Employer.

7 Mechanics attend at different job sites and they use vehicles provided by the Employer for this purpose. The Employer has a fleet of vehicles of various kinds and the annual cost of this fleet in Canada is in the order of \$1 million. There is no dispute that the vehicles used by mechanics in their work are, in labour relations terms, the property of the Employer although they are leased vehicles. The lessor, rather than the Employer, tracks the usual maintenance requirements required by the manufacturer of the vehicles. The Employer also permits mechanics to use these vehicles to go back and forth between their homes and the various locations where they do their work.

8 The Employer has a policy on vehicle use. For example, there is a document titled "Automobile Fleet

Administration - Hourly" dated January 1997. I reproduce a portion of that document that deals with vehicle use as follows (reproduced as written),

#### ***4.5 AUTHORIZED VEHICLE USE***

*The Operation of company-owned or leased vehicles is restricted to the individual to whom the vehicle is assigned, see section 3.0 "Company Vehicle Assignment". Other company employees may operate the vehicle provided that they meet the same eligibility requirements detailed under section 3.0 "Company Vehicle Assignment -- Eligibility Criteria", and receive prior approval from their supervisor. Personal use, other than driving to and from work, or use by any member of the employee's family is strictly prohibited [emphasis added]. The cartage of passengers is limited to Otis associates and to business invitees, Non-business carpooling, picking up of hitch-hikers, and giving rides to strangers is strictly prohibited.*

*It is the responsibility of each Otis driver to ensure that company vehicles are not operated by anyone except in accordance with this policy. Failure to comply with policy may result in the revocation of driving privileges as well as appropriate disciplinary action up to and including dismissal.*

*The company requires that all drivers authorize the release of their personal drivers licence record from the provincial government prior [emphasis in original] to operating a company vehicle, see section 3.0 "Company Vehicle Assignment -- MVR Report". Additional checks will be made on a bi-annual basis. It is the responsibility of local management to ensure that all drivers hold and maintain a valid drivers [sic] license. It is the employees responsibility to report any driving record suspensions or violations to the local management.*

#### **UNAUTHORIZED VEHICLE USE**

*The individual assigned to a particular vehicle is responsible for the consequences of any unauthorized use of the company owned or leased vehicle. If a vehicle driven by or occupied by an unauthorized or prohibited individual is involved in an accident, the individual assigned to the vehicle will be held personally liable for damage to the vehicle and to third parties, including unauthorized passengers. Such violation of policy is also grounds for disciplinary action up to and including dismissal.*

9 There is another document of the Employer titled "Fleet Manual", dated January 2009, that distinguishes between company and personal use of vehicles. Section 8 of that document is titled "Personal Use of Company Vehicles" and is as follows,

#### ***SERVICE, REPAIR, AND DELIVERY VEHICLES OPERATED BY FIELD HOURLY EMPLOYEES ARE:***

- \* *For Company use only. No personal use is allowed (Home to work location and return is considered company use.) [Emphasis added].*
- \* *To carry only Company employees, customers and vendors as passengers. Non-business car-pooling, picking up hitchhikers and giving rides to strangers or family members is strictly prohibited.*

\* *Prohibited from pulling personally owned trailers.*

**10** I have italicized one sentence in each of these documents. As will be seen, there is a dispute whether the differences in these two sentences are significant for the issues in this arbitration. Mr. Marco Grubisa, the Purchasing Manager for the Employer, testified that he "had a hand" in the latter document, the "Fleet Manual". He explained that the 1997 document came from the United States and the 2009 document was a "Canadianized" version of the American document. His evidence was that there was no intention to change the meaning of the 1997 document as it related to "personal use". This was also the evidence of Mr. Ken Litteral, Senior Field and Safety Manager for the Employer.

**11** In their work, mechanics use cell phones with something called a "PDA" capability that records login and logout at the beginning and end of the day, arrival and departure at a worksite and it also records work tasks after they have been completed. This information is entered into the PDA by the mechanics. As discussed in more detail below, there have been problems with mechanics not recording information in "real time" on their PDA. For example, some mechanics enter information in their PDA at home, at the end of the work day, rather than when they arrive and leave a work site. The Union submits that PDA should be preferred as a less intrusive technology than the Telematics electronic devices that are the subject of the arbitration. However, the Employer says that PDA does not provide them with adequate or accurate information.

**12** There is evidence from the Union that employees are required to submit a weekly report for their vehicles; this document was entered in evidence and it is titled, "Commercial Vehicle Weekly Report". It includes the name of the mechanic, the week the report applies to, the odometer readings, the kilometers driven and the expenses incurred by the mechanic. The form also has a safety checklist for things such as a fire extinguisher and a first aid kit. According to the Union this report was used for some time before the introduction of the Telematics devices which are the subject of this grievance and this is also less intrusive than the Telematics devices. On the other hand, the evidence of the Employer is that this report is largely unknown to them and the information it contains is "trivial".

**13** Prior to the introduction of the Telematics devices that are the subject of this arbitration, there were four incidents of discipline related to company vehicle use. In 1997 an employee was given a "final" warning as a result of being involved in an accident while under the influence of alcohol. In 2004 the same employee was involved in two incidents: one case involved fraudulent time tickets and the other involved aggressive driving. Another employee was suspended for two weeks in 2008 for negligent driving (and inappropriate use of a company cell phone). Finally, in 2009, an employee was terminated for operating a company vehicle while impaired. According to the Employer, there may have been occasional complaints from the public who used the 1-800 telephone number that appears on company vehicles. However, there is no evidence of any specific complaints. With regards to the use by mechanics of PDA, there is no evidence of discipline for improper entry of data.

**14** In the past the Union and its members have been vigilante about privacy. In August 2005 the Union wrote to the Employer suggesting that the addition of a GPS system on company-supplied cellular phones was a change in the mechanics' conditions of employment. The Union requested that the Employer provide information about what business purpose the use of the technology was aimed at. There is no other evidence about this incident. Also, there was an issue related to an application that mechanics make to the Insurance Corporation of British Columbia with respect to disclosure of their driver license abstract. Part of this form has, according to the Union, been regularly crossed out by the mechanics for privacy reasons.

**15** The Employer has, as of January 2010, a privacy policy as follows,

***EMPLOYEE INFORMATION PRIVACY POLICY***

***OUR COMMITMENT TO PRIVACY***

*Otis Canada Inc. ("Otis") is committed to maintaining the security, confidentiality and privacy of employees' personal information. Otis respects employee privacy and strives to be an open and accessible organization. We have developed this Privacy Policy to reflect our ongoing commitment to our employees and in compliance with applicable legislation which governs the collection, use and disclosure of personal information.*

### **SCOPE OF POLICY**

*This Policy applies to Otis and its collection, use and disclosure of personal information of employees. The Policy does not apply to the collection, use and disclosure of an employee's business contact information or work product.*

### **PURPOSES**

*When Otis collects personal information about employees we will explain why we are doing so.*

*Otis collects, uses and discloses personal information for purposes authorized or required by applicable law. For example, we collect, use and disclose personal information about our employees:*

- a) to make decisions about hiring (including reference checks, driving abstracts and medical evaluations), promotions, transfers, demotions, rewards/recognition and remuneration or about the ending of employment;*
- b) to respond to medical emergencies;*
- c) to provide and administer medical, dental, insurance, pension and other benefits and to meet the requirements of benefits providers and pension standards requirements;*
- d) to protect customers, employees and Otis from theft, fraud and similar risks;*
- e) to process and administer payroll and to meet regulated regulatory and legal requirements (for example, Canada Customs and Revenue Agency requirements);*
- f) to determine, administer and document training, educational and licensing requirements;*
- g) to monitor, document, assess and address employee performance by personal supervision and other means, including electronic data devices such as corporate vehicle monitoring devices;*
- h) to maintain employee/employer communication;*
- i) to process expense claims;*

- j) *to verify information provided by our employees or about our employees which is necessary to manage and administer the employment relationship;*
- k) *to administer and document vacation leaves, sick days/leaves or other leaves or absences from work;*
- l) *to monitor, document, assess and address employee adherence to applicable laws and policies (such as the Internet/E-mail Usage Policy, safety policies and vehicle use policies) and to address other security and internal control matters (including video surveillance in high risk areas); and*
- m) *to address the above matters post-employment as necessary (e.g. transfer of benefit coverage).*

*Otis's collection, use and disclosure of the above personal information is only done to the extent reasonable and necessary to manage and administer the employee-employer relationship, as authorized by applicable law.*

#### **NEW PURPOSES**

*When personal information about an employee is to be collected, used or disclosed for a purpose not previously identified, Otis will provide reasonable notice of the intended purpose and, where necessary under applicable law, will obtain the employee's consent.*

#### **ACCURACY**

*Otis will strive to ensure that personal information it collects, uses or discloses is accurate and complete. In some cases (such as address information or emergency contact information, etc.) we will rely on the information provided by our employees. If an employee demonstrates the inaccuracy or incompleteness of personal information, Otis will amend the information as required and, if appropriate, send the amended information to third parties to whom the information has been disclosed.*

*When a question regarding the accuracy of personal information is not resolved to an employee's satisfaction, Otis will make a note that the correction was requested but not made.*

#### **SAFEGUARDING PERSONAL INFORMATION**

*Otis protects the personal information it holds by making security arrangements to protect it. We will also take steps, through contractual or other reasonable means, to ensure that a comparable level of personal information protection is implemented by the service providers who assist in providing services to Otis and its employees. Some specific safeguards include:*

- \* *physical measures such as locked filing cabinets and restricted access cards;*

- \* *organizational measures such as restricting employee access to files and databases as appropriate;*
- \* *electronic measures such as passwords and firewalls; and*
- \* *investigative measures where Otis has reasonable grounds to believe that personal information is being inappropriately collected, used or disclosed.*

### **OPENNESS AND ACCESS**

*All individuals have a right to access their personal information subject to applicable legislative limits. Upon written request to the Privacy Officer, Otis will make an employee's personal information available within 30 days (or other applicable legislative time limits) or provide a written explanation in circumstances where additional time is required to fulfill the request.*

*In some situations, Otis may not be able to provide access to certain personal information (e.g., if disclosure would reveal personal information about another individual, etc.). Otis may also be prevented by law from providing access to certain personal information. Where an access request is refused, Otis will provide an explanation in writing.*

### **ACCOUNTABILITY**

*Otis is responsible for personal information under its control.*

**16** The Union takes issue with this policy for two reasons. First, it was not in place until they raised privacy issues and the Employer was required by section 5 of the *Personal Information and Protection Act*, S.B.C., Chapter 63 ("PIPA"), to have something in place before January 2010. As well, the Union submits that this general policy is not sufficient to comply with the specific nature of the Telematics data. What is required, according to the Union, is policy addressing the specific collection, use and disposal of that data.

### **C. INTRODUCTION OF THE TELEMATICS DEVICES**

**17** The introduction of the electronic devices appears to have commenced in late 2009 and the planning for them occurred some time before.

**18** On December 8, 2009 employees were asked by the Employer to attend one of two safety meetings that day. Mr. Simon Knight, the manager of the Employer's Vancouver operations, attended both meetings. He testified that the first meeting was "uneventful"; however Marcero Katzeff, a mechanic who also attended this meeting, testified that the first session was "heated". The primary focus of the evidence is the second meeting. Knight agreed in his testimony that the second meeting was heated and, in his words, it "got side-tracked" by the issue of the personal use of company vehicles and the Telematics devices.

**19** Mr. Bernie Jones, an elevator mechanic, also attended the second meeting. He prepared notes and he was a witness for the Union. I reproduce Jones' notes as follows (reproduced as written),

*Meeting Dec. 8 a.m. at Otis shop board room.*

*Ken Litteral (On speaker phone) [Senior Field and Safety Manager]*

*Simon Knight [Regional Manager, Vancouver] and Ray Piche Present*

*There was early 7 a.m. meeting for service crews at 7 a.m. (this meeting had a PowerPoint presentation.*

*Ken Litteral announced that Otis would be installing an electronic device on the cars (called Otis Telematics) to save vehicle costs. He gave ex. Of \$ amount per yr. currently.*

*He also explained that personal use would be zero tolerance and that you could be terminated.*

*He said that this device would know when the car was being used.*

*I asked what personal use was. He replied that would be anything outside of work hours except driving to and from home, on call mechanics during their shift, and LR's as their (sic) were on call 24/7.*

*I asked him if I would be able to stop on the way home for groceries or eat as I had always done in the past, his answer was no.*

*I asked if I could stop for gas he said yes.*

*I then asked if I could leave the car at the gas station and cross the street for a burger, he said no that would be personal use and they would know by how long that car would be off: longer than a fill up. However if I went into the gas station not longer than a few minutes it would look like a normal fuel stop to them and I could buy milk or food and they would have no way of telling if I did so.*

*I asked if we could still take the cars to union meetings and union school as we had done in the past. His reply was no that would be considered personal use.*

*He also stated -- that time theft would not be tolerated and would be grounds for termination. That the device would indicate how long the car was used and if the on and off cycles of the car differed from the employee's submitted time it would be considered time theft.*

*One of my co-workers asked him how much time would be considered time theft. Ken Litteral replied "more than one hour".*

*He went on to warning everyone that they had been given warning and any violations would lead to termination without notice or warning.*

*Also he stated that any tampering with the unit would be noticed within 30 mins. and that would lead to termination.*

*He also warned that he would know if an employee would be on a job at his start time, based on the data given by the device. He said the car should be off by 8 a.m.*

*Also if the car was idling too long the device would flag a warning for him to investigate. He didn't say how long was too much idling.*

*It became quite clear to us that the car was now a time clock. The discussion became very heated between Litteral and some in the room.*

*Litteral responded by saying Otis was prepared for casualties and that employees who disagreed with Telematics could go elsewhere. He warned however that Otis's competitors were preparing to have similar devices, some more invasive with GPS tracking. That these other companies were just waiting to see how things play out at Otis.*

*I told Mr. Litteral that the Company had no right to monitor me on my way home and that Otis could not make me take the car home on my own time and where would they like me to park it at night.*

*He agreed to my statement about taking the car home.*

*He replied that Otis was prepared to call customers and that he was sure they would supply a parking spot in exchange to have a mech. at their site everyday at 8 a.m.*

*I told him ok.*

*He said anyone who wanted this arrangement to notify their supervisors and allow a few weeks time for Otis to make arrangements.*

*He warned that it was still a big benefit to drive the Otis car home to save on commuting \$ and that we should give it some thought before making a quick decision.*

*After Ken Litteral had finished he re-stated that we had all been warned and there would be no further warning before terminations were given.*

*Simon stated after Ken was off the phone that there was a [Power Point] presentation that we were supposed to see and that it would have to be at a later date.*

**20** The Employer disagrees with some parts of these notes. They disagree that Litteral said that taking company vehicles to union school was personal use and, therefore, prohibited. According to the Employer, he said that use was

permitted; Litteral also stated this in his evidence in this arbitration. But attending union meetings with company vehicles was not, and is not, permitted because it did not relate to any business of the Employer.

**21** There is also a dispute whether the "presentation" referred to in the last paragraph of Jones' notes was shown to both meetings. This was a PowerPoint presentation and, as above, Jones' notes say the presentation was not given to the second meeting. During his evidence, he maintained the presentation was not shown in the second meeting. However, Knight, on behalf of the Employer, testified that the presentation was given to both meetings, the one attended by Jones and the earlier one. I reproduce the presentation below.

**22** In other parts of his evidence, Litteral, testifying on behalf of the Employer, confirmed the information in Jones' notes. For example, with regards to the statement that the Employer was "prepared for casualties", Litteral testified he "probably" said that. He also confirmed in his evidence that he wanted "to send a message" that "time theft" could be the subject of discipline, including termination. Employees needed to "enter time accurately" because the data from the Telematics devices would give the Employer the ability to cross-reference other information about the location of vehicles and employees. Litteral stated in his evidence that the Employer was not trying to terminate employees but time discrepancies in excess of one hour were likely to attract attention because someone "cannot work seven hours and get paid for eight hours". Litteral also testified that the devices were not GPS enabled and he speculated that it was perhaps necessary to install software in the devices before they could be GPS enabled. The Employer's PowerPoint presentation (used during at least one of the meetings on December 8, 2009) also stated that the Employer was not using GPS-enabled technology.

**23** In cross-examination Litteral disagreed that the Telematics devices gave the Employer the ability to track the location of employees; they "give nothing about location" and only information about trip times. He stated that other employees such as apprentices could be driving the vehicles and the Employer would not know it by looking at only the data from the devices. He agreed the devices were similar to a time clock because they were another way to verify employees' working time. However, they provided a basis for asking questions of his managers rather than a reliable way on their own to draw any firm conclusions about how an employee uses work time. His practice is to pass on the information from the devices to his branch managers with questions from him noted in the electronic document. The managers then carry out further investigations.

**24** On December 9, 2010, the day after the initial meetings with employees, there was a meeting of Jones (the mechanic), Knight (the Vancouver manager) and Mr. Gordon Hurd, Business Manager for the Union. I reproduce excerpts of Jones' notes of that meeting as follows (reproduced as written),

*December 9 meet at Otis Office. Gordie H and Simon Knight and myself.*

*I asked Simon some question regarding the Telematics in attempt to understand how it worked and how it would affect the workers.*

*He stated the device wasn't GPS and that it only collected data from the car. However he could connect the dots and determine what the employee was doing.*

*Simon also said that he would know when the employee left his house in the morning, by the time the car started. He would also know how long it should take the employee to get to work and whether or not he could make it on time. Again he said all he had to do was connect the dots.*

*I asked him how the flag/warning settings were set on the device. His reply was if he told us then employees would go right to the limit of what was allowed and not over. He used the example of*

*the speed settings 120 km/h and not get caught.*

*Simon also stated that union meetings and union school was personal use.*

...

*The discussion included my personal decision not to take the car home. He said that they would find me a place to park. I stated that they already had a stall paid at Bentall Centre for me. I informed him that he would have to pay me the \$15/day downtown zone as per the collective agreement.*

*His answer was that seeing that I lived +15 kms from work and that it cost Otis \$0.50/km to run the car, they were still ahead and that would be ok.*

...

**25** On December 11, 2009 Hurd wrote on behalf of the Union to the Employer about the introduction of the "telematics vehicle monitoring system". He requested a "written copy of Otis' policy documents regarding the intended use of this device" and he advised the Employer that the Union would like to review the documents "prior to the installation of this system". Knight, on behalf of the Employer, replied on December 17, 2009. Part of that reply is as follows,

*As you may know, Otis Canada has already installed and is using these telematics devices on Company-assigned vehicles in many of the Provinces. As part of the introduction process, the enclosed PowerPoint presentation is presented to our relevant field hourly employees. This presentation explains the functions of the telematics device, as well as Otis' reasons for installing and using them.*

**26** The PowerPoint presentation referred to by Knight was the one that was given to at least one of the meetings with mechanics on December 8, 2009. I reproduce the five slides of that presentation as follows (I have numbered the slides; reproduced as written),

***[1] Telematics Device***

*What is it?*

*It is a device Otis Canada will install on our fleet vehicles to*

- \* Evaluate and help improve fuel efficiency*
  
- \* Ensure regular maintenance schedule is followed*
  
- \* Identify unauthorized use*
  
- \* Reduce fuel usage.*

- \* *Why implement?*

**[2] Fleet Summary 2008**

- \* *Total expenditures \$5.9M*
- \* *Average Monthly Bill \$491,000*
- \* *Average fuel liters per month 162,833*
- \* *Fuel Costs \$2.1M*
- \* *Lease Costs \$1.8M*
- \* *Maintenance costs \$470,000*

**[3] Information Received from Telematics Device**

*The following information will be received daily by vehicle number:*

- \* *Data and time engine is started and turned off per trip*
- \* *Total km's driven per trip per day*
- \* *Time spent driving and time vehicle is stationary*
- \* *Stop time between trips*
- \* *Gas consumption (liters/km)*
- \* *Idling and speeding report*
- \* *Maximum speed reached per trip.*

*Device will not track your location throughout the day [emphasis in original].*

**[4] Benefits of Telematics Device**

- \* *Reduction in fuel costs*

- \* *Extended life and value of vehicles*
- \* *Reduce/eliminate unnecessary/unauthorized kilometers*
- \* *Ensure timely maintenance*
- \* *Encourage safe driving habits*
- \* *Reduce pollution and costs associated with excessive idling*
- \* *Can assist in identifying fuel theft through card cloning or improper billing.*

*[5] Company Vehicle Policy*

*Permitted Uses*

- *Driving during working hours as well as commuting from your home to work and vice versa.*
- *Transporting Company employees, customers and vendors as passengers.*
- *Carrying Company equipment*

*Prohibited Uses*

- *Driving during non-work hours during the week and weekends*
- *Transporting any employees, customers and passengers not listed in the column to the left, including family members.*
- *Carrying items not required by the Company or pulling personally owned trailers, vehicles, boats, etc*

*\*Improper use of Company vehicles may result in discipline/termination.*

27 In his evidence Knight, the Vancouver Manager, provided more details about the use of the Telematics devices. As of the date of the hearing of this grievance he had already used information from the devices in discussions with a number of employees about issues of work time that had come up in his review of the data. He decided that, prior to

April 23, 2009, the data would be used to have discussions with people and try to correct time problems without resort to discipline. Problems after that date may result in discipline. Knight testified that there has been a "dramatic improvement" with employees coming to work and leaving work on time. Since elevator mechanics are paid, on average, \$95 - \$110,000 per year (with some mechanics making substantially more) relatively small increases in efficiency can result in significant financial savings.

**28** As well, there has been a significant improvement in vehicle maintenance. For example, in the three years before the introduction of the Telematics devices three engines were "blown" because the regular maintenance was not done, according to Knight. Now the Telematics devices will stop sending data when an engine warning light comes on and this causes someone to react immediately. Knight was "certain" the previous engine problems would not have happened if the devices had been in place. In cross-examination Knight agreed that there was no identification of problems with employees arriving late before the introduction of the Telematics devices but he also said "we may not have known there was a problem". He was asked whether the Employer was using the Telematics devices as a monitoring tool and his answer was that the devices "tell me if an employee is working his shift. I can make sure the employee is working eight hours and following policy". Knight was also asked why the devices were necessary at all since there were no previous problems and he answered they were necessary to "manage fleet costs".

**29** The example of one employee was discussed in the evidence. According to Knight the Telematics data identified a number of time issues related to this employee such as the length of time taken to start his vehicle in the morning and the time the vehicle arrived at the first job site that day. There were also issues about the time the employee left the last job site and the time he arrived home. According to Knight, the data raised "questions" that needed to be answered and "there could be a very rational explanation about what was going on" such as stopping for gas or being called out for work.

**30** Grubisa, the Purchasing Manager for the Employer, also testified about the introduction of the Telematics devices. He stated that there had been a reduction in fuel and maintenance costs as a result of the devices. This was because more efficient use of the vehicles meant fewer kilometres were driven and, therefore, company vehicles needed fewer oil changes, brake repairs and less fuel. Grubisa estimated that in Vancouver there had been a 14% reduction in fuel usage and eighty-eight hours of available work time (or "wrench time") had been added each month. As well, alarm warnings had resulted in prompt repairs on three occasions.

**31** The Employer wrote to the elevator mechanics on December 14, 2009 about the "TELEMATICS devices" as follows,

*As you know, Otis Canada recently installed TELEMATICS devices on its company vehicles. These devices enable us to collect information concerning vehicle performance such as: fuel consumption; kilometers driven per day; engine starts and stops; idling time; and recommended maintenance tasks. This information will be used to save costs, improve efficiencies, and achieve an even greater level of safety.*

*We have spent the past few months getting familiar with and analyzing the information gathered by the TELEMATICS devices. Unfortunately, this review has revealed incidents when company vehicles were used in inappropriate and prohibited ways, such as speeding, use during non-work time, and excessive idling. We recently discussed with the Union our concerns about this misuse and advised it would not be tolerated.*

*Please be advised that, based on TELEMATICS device information, Otis will now be taking appropriate disciplinary action, up to and including discharge, to address inappropriate use of company vehicles. If you have any questions regarding the appropriate use of company vehicles,*

*please consult your Otis Driver's Handbook, the Otis Canada Inc. Fleet Manual (most recently dated September 2009), or contact your supervisor.*

*Please contact me with any questions.*

32 Knight also wrote to the mechanics on December 17, 2009 as follows,

*As the Telematics devices are fitted to Company vehicles this week I have been asked on multiple occasions to clarify exactly what Company vehicles can be used for.*

*As per the Canadian Fleet Policy (Page 8, Section 8) dated September 2009, Company vehicles are to be used for Company business only. If the company is paying you for travel time or to travel between job sites you are on company business. The only exception is to travel from home to work location and return. LR's and on-call mechanics are considered to be on Company Business after hours and at weekends.*

*Also attached is a communication from the BC Ministry of Public Safety with regards to changes to the Motor Vehicle Act. Please read this so that you are familiar with your responsibilities to comply with this legislation. If you do not have a hands-free device for your company cell phone or PDA please contact Susan in the office and she will issue you with one.*

33 The Employer's letter of December 17, 2009 included a copy of a PowerPoint presentation that had been given to employees (reproduced above).

34 On December 18, 2009 there was a meeting between Hurd, representing the Union, and Knight, representing the Employer. Hurd's notes of that meeting (Knight had no notes) state that the Employer had not yet "located a copy of the Otis privacy policy" required by privacy legislation. The Telematics devices were discussed and, according to Hurd's testimony, Knight showed him a one page document that indicated the information received from the devices but Knight did not give Hurd a copy. Hurd presented the union's concerns and his notes indicate these included collection of information from employees during the work day without consent, lack of explanation and consultation/input before the devices were installed and the perception of the employees that the devices would be used to discipline employees.

35 About this time the Union started to do their own research about the Telematics devices and they obtained some information from the internet. From Wikipedia they found the following information which raised concerns about GPS tracking of mechanics,

*Telematics (synonymous with telemetry) is any of the following:*

- \* *The integrated use of telecommunications and informatics, also known as ICT (Information and Communications Technology). More specifically it is the science of sending, receiving and storing information via telecommunication devices.*
- \* *More recently, telematics have been applied specifically to the use of Global Positioning System technology integrated with computers and mobile communications technology in automotive navigation systems.*
- \* *Most narrowly, the term has evolved to refer to the use of such systems within*

*road vehicles, in which case the term vehicle telematics may be used.*

...

*Vehicle tracking*

*Vehicle tracking is a way of monitoring the location, movements, status and behaviour of a vehicle or fleet of vehicles. This is achieved through a combination of a GPS (GNSS) receiver and an electronic device usually comprising a GSM GPRS modem or SMS sender) installed in each vehicle, communicating with the user (dispatching, emergency or co-ordinating unit) and PC -- or web-based software. The data are turned into information by management reporting tools in conjunction with a visual display on computerized mapping software. Vehicle tracking systems may also use odometry or dead reckoning as an alternative or complementary means of navigation.*

...

*Satellite navigation*

*Satellite navigation in the context of vehicle telematics is the technology of using a GPS and electronic mapping tool to enable the driver of a vehicle to locate a position, then route plan and navigate a journey.*

**36** The Telematics devices were installed in the mechanic's vehicles on or about December 15, 2009. They are black boxes in each vehicle and they use satellite technology to provide information to the Employer about vehicle use. The evidence included the form that records the information provided by the device in one vehicle and I reproduce it as follows,

[Name of Mechanic]				
Trip Start	Trip End	Trip Time	Idle Time	Stop Time
12/27/2009 5:51:44 AM	12/27/2009 6:43:31 AM	41.00 00 51:57	00:06:36	08:41:44
12/27/2009 3:25:25 PM	12/27/2009 3:32:02 PM	4.00 00 06:37	00:00:00	00:02:11
12/27/2009 3:34:13 PM	12/27/2009 4:26:22 PM	38.00 00:52:09	00:00:00	1d, 22:02:53
12/29/2009 2:29:15 PM	12/29/2009 3:35:49 PM	37:00 01:06:34	00:04:50	00:02:21
12/29/2009 3:38:10 PM	12/29/2009 3:45:38 PM	4.00 00:07:28	00:00:00	05:41:59
12/29/2009 9:27:37 PM	12/29/2009 10:18:42 PM	46.00 00:51:05	00:00:00	15:47:14
12/30/2009 2:05:56 PM	12/30/2009 2:23:25 PM	12.00 00:17:29	00:00:00	00:02:03
12/30/2009 2:25:28 PM	12/30/2009 3:02:33 PM	29.00 00:37:05	00:00:00	00:04:19
12/30/2009 3:06:52 PM	12/30/2009 3:24:58 PM	4.00 00:18:06	00:11:36	00:23:02
12/30/2009 3:48:00 PM	12/30/2009 3:48:28 PM	0.00 00:00:28	00:00:00	00:12:59
12/30/2009 4:01:27 PM	12/30/2009 4:03:38 PM	0.00 00:02:11	00:00:00	05:09:50
12/30/2009 9:13:28 PM	12/30/2009 10:06:21 PM	44.00 00:52:53	00:00:00	00:03:25
12/30/2009 10:09:46 PM	12/30/2009 10:15:24 PM	2.00 00:05:38	00:00:00	00:00:00

37 Finally, the evidence is that other locals of the Union in the United States (New York and New Jersey) have negotiated language in their collective agreement that provides some protection to the privacy of employees there in the context of electronic surveillance. In Ontario, members of the Union local there have been disciplined using information obtained from Telematics devices and there are proceedings in that province involving privacy issues similar to the ones in this case.

#### **D. BACKGROUND ON PRIVACY ISSUES**

38 The Union relies on the *Personal Information Protection Act, S.B.C. 2003, Chapter 63* ("PIPA"), and alleges that the Employer has violated the privacy protections of that statute. There is no dispute that PIPA applies to the Employer.

39 A number of witnesses testified for the Union about their privacy concerns with the introduction by the Employer of the Telematics devices.

40 These witnesses began their evidence with a description about how things had been in the past, before the

introduction of the Telematics devices. According to this history, employees were able to use company vehicles for minor stops to and from work. For example, one mechanic testified that the Employer knew about and approved him taking his mountain bicycle in his vehicle and stopping for a ride on the way home. Other mechanics testified that the Employer accepted that they could stop on the way home for a meal, especially if they had worked overtime. Other accepted reasons for using company vehicles, according to the Union, included stopping for groceries and stopping on the way home to coach a baseball team. And employees were able to use company vehicles to attend at the Union hall for meetings as well as educational functions.

**41** The evidence of the Employer's witnesses is that they were unaware of the use of company vehicles for these type of things. Further, according to the Employer, such uses were contrary to a long-standing policy of the Employer that personal use of company vehicles was prohibited. The Employer emphasizes that the use of company vehicles to and from work (or while on-call) is the only valid company use. They also point to income tax liability for employees who use company vehicles for personal use, except when the vehicle is used for commuting to and from work or if it is used because the employee is on-call (Canada Revenue Agency, *Income Tax Technical News*, No. 40, June 11, 2009). Again, the Employer accepts that company vehicles can be used to attend education functions at the Union hall, but not events such as membership meetings.

**42** For their part, the Union's witnesses accepted that company vehicles were the property of the Employer and improper personal use was grounds for discipline. Examples of this might be using vehicles on weekends without authorization or taking the vehicle outside the Vancouver area without authorization. There was also evidence from some mechanics that they had individual agreements with the Employer to, for example, be available to back up other mechanics or be available on the telephone for support. In exchange, they could use their company vehicles while off-duty.

**43** At the December 2009 meeting with the Employer, the employees were told these activities were at an end, according to the Union's witnesses. By all accounts this was a considerable surprise to the mechanics, at least, as discussed above, at the second meeting.

**44** It seems to be accepted that the Employer advised employees at the December 2009 meeting that the Telematics devices did not include a GPS capability. This was also stated expressly on the PowerPoint presentation. Nonetheless, "There was a lot of confusion in the room" on this point and "a lot of people left the meeting believing it was a GPS system", according to Jones, the Union witness. Mr. Marcelo Katzeff, a mechanic/adjuster and witness for the Union, testified that he pointed out to Litteral that the devices "could do the job of GPS, although not GPS". Katzeff had done his own research on-line and he said to Litteral that what the Employer wanted to do was not allowed.

## **E. DECISION AND REASONS**

**45** By way of general context I note that an employer can, pursuant to its general management rights, implement methods for recording the working time of employees (*Provincial Council of Construction Unions and Pigott Construction Co. Ltd.* (1965), 16 L.A.C. 32 (Hanrahan)). A previous arbitration described the ability of employers to collect information about the use of company vehicles as the "natural function of management" (*Milk and Bread Drivers, Local 647 v. Dominion Dairies Ltd. (Task Requirement Grievance)*, [1969] O.L.A.A. No. 1; (1969), 20 L.A.C. 315 (Weatherill et al)). This right is well established in the authorities and, as previous cases and this case demonstrate, its application often raises privacy concerns by employees. It is important to note that it is also well established that this right by management is subject to the terms of the applicable collective agreement as well as any applicable legislation (such as PIPA).

**46** In this case the collective agreement contains no specific restriction to prevent the Employer from monitoring the work of elevator mechanics, including their time at work or their time driving company vehicles to and from home to work. However, the collective agreement does contain provisions related to technological change and the Union relies on that provision. In addition, a collective agreement is subject to legislation such as the *Labour Relations Code* and

PIPA and the Union also relies on those statutes to challenge the Employer's introduction of the Telematics devices.

47 I will address some issues of fact and then consider privacy, the collective agreement and the *Labour Relations Code*, in turn.

**(a) The Evidence**

48 I begin by considering the factual issues that arise in this arbitration.

49 As above, the evidence is that, prior to the introduction of the Telematics devices in December 2009, there were two possible ways of tracking vehicles and the work of employees: the "Commercial Vehicle Weekly Report" form and the PDA technology.

50 The "Commercial Vehicle Weekly Report" form, entered into evidence by the Union, is a record kept by driver/mechanics. It is filled out when a vehicle is fuelled up to record various information including kilometers driven and expenses incurred for a vehicle. This is submitted on a monthly basis to the Employer, although evidence from the union suggests that use of this form was "irregular"; one witness for the union testified that he submitted it every two weeks while another said it was done every week. For their part, the Employer's witnesses placed very little value in the information on this form and they characterized its use as less than irregular. Knight, the Vancouver Manager, testified that he had not seen the form until it arose in evidence in this arbitration. As well, less than twenty per cent of mechanics use it, it is not used regularly and it was of "trivial value", according to Knight.

51 Overall, I conclude that the use of the "Commercial Vehicle Weekly Report" form is intermittent at best and it is largely unknown to the Employer. Therefore it is of minimal use in tracking vehicle use and maintenance.

52 There is also the PDA technology whereby mechanics use their cellular phones to enter information about their work, including the worksites attended, start time and stop time. However, there were and continue to be problems with this technology because some mechanics enter the information at the end of the day, rather than in real time. This obviously makes the tracking of the work of mechanics by means of PDA problematic. As late as June 11, 2009 managers of the Employer had been directed in strong terms to correct this situation; an email of that date set out the problem and concluded by saying, "The days of recording at the end of the day, end of the week are over. This requires your active management". Despite this directive, I take from the evidence of both the Union and the Employer that the problem continues. The Union's witnesses, for example, testified that it was difficult for some mechanics to enter time while actually on the job. The result is that they still enter time in their PDA at the end of the day or at times other than the actual time the work is done.

53 I conclude that the nature of the PDA technology is that it tracks work of mechanics when they enter it in real time but this is not done consistently by mechanics. Further, it has very little use to track the efficiency of company vehicles.

54 As another factual issue, it is useful to consider the nature of the Telematics devices in dispute in this arbitration. As above, they are black boxes installed in each vehicle and they communicate through satellite technology to provide information to the Employer about a trip start/stop and duration time, the idle time and the stop time. This information is available to selected members of management along with the name of the mechanic who is driving the vehicle.

55 There was an issue in the evidence about whether the Telematics devices are GPS enabled. The significance of this is that there is some authority that suggests collection of information through GPS technology raises privacy issues (*PIPEDA Case Summary #351*, [2006] C.P.C.S.F. No. 28). However, the evidence in this case is that the Telematics devices do not have an enabled GPS capability. This was explained to the employees at the December 8, 2009 meetings although it was not received well. As the Employer put it in their written submission, "... the Telematics system is *not* GPS-enabled, and cannot provide any information regarding the geographic location of a vehicle. ... even if Otis were, at some point in the future to opt to GPS enable the Telematics system, Otis has no intention of doing so without providing a warning of that change to its employees" [emphasis in original]. I add that the Union submits that consent of

employees rather than notification is required under PIPA.

**56** Nonetheless, without the GPS technology the Employer is able to make an approximate assessment of the movements of mechanics using the Telematics technology along with other information. For example, Knight, the Vancouver Manager, testified that the Employer knows where mechanics live and they know the location of the first worksite of a work day. An estimation of the time to get from a mechanic's home can be made and, if the first trip takes longer than the estimate then some explanation may be sought from the mechanic. Knight described this as "connecting the dots" but he emphasized that a longer-than-expected trip time might be explained by genuine work reasons such as stopping for a part or for gas. Whether the time taken was for work reasons or non-work reasons is something to be determined by means of collecting other information and, ultimately, by means of an interview with the mechanic. This is also discussed below.

**57** I agree with the characterization by both parties of a Telematics device as something akin to a "time clock". But, in my view, it is not the same as a time clock. A time clock is typically in one place and, therefore, information obtained from it may reliably indicate location and time. That is, a card from a time clock indicates that an employee came or left work and at a specific time. Location can be determined with confidence because the clock is in a specific and known location. On the other hand, the Telematics devices collect information about vehicle times but they do not provide data about location (assuming, as in this case, that the devices are not GPS-enabled). At best the devices provide information that can be used to speculate about the location of company vehicles.

**58** The Union submits that there were few if any problems prior to the introduction of the Telematics devices and, therefore, there was no reason for their introduction. It is true there were a small number of incidents of discipline before the devices were introduced. The most relevant ones occurred in 2008 and 2004. In February 2008 a mechanic was disciplined for failing to conduct the required maintenance on his vehicle. In December 2004 another employee was disciplined for fraudulent time reporting. There are other incidents involving alcohol use and vehicles "tailgating" other vehicles (three incidents in 2009, 2004 and 1997) but I am unable to find that the Telematics devices can somehow track alcohol use or other problems related to the actual driving of company vehicles.

**59** I also note two or three occasions when vehicle engines "blew-up" because of a lack of maintenance, including employees ignoring the maintenance warning light in the vehicle. Overall, it cannot be said there were no problems in the past in B.C. In any event, as a legal issue, the Employer is entitled to make reasonable decisions to improve the efficiency of its operations without having to demonstrate to the Union the need for increased efficiency. Of course this general statement is subject to the provisions of the collective agreement and applicable legislation (such as PIPA and the *Labour Relations Code*) and these issues are discussed below.

**60** As a final factual issue, with regards to the PowerPoint presentation and whether it was given to both meetings on December 8, 2009, I find that it is probable that it was not presented to the second meeting. Jones, the Union witness, recorded this in contemporaneous notes and Knight, the Employer's witness, did not have as specific a memory of the issue in his evidence. I conclude that it was not shown because the meeting got "side-tracked" very quickly by the anger of the mechanics over their privacy concerns. In any event, the presentation subsequently was given to all mechanics as part of the December 17, 2009 letter to them. Therefore, there is no issue about whether the mechanics were notified of the introduction of the Telematics devices; the dispute is whether their consent was required.

#### **(b) Privacy Issues**

**61** I next turn to the privacy issues in this arbitration. They are as follows: is the Telematics data "personal information" or "employee personal information" under PIPA?; if the data is "personal information" or "employee personal information", then what constraints, if any, are there on the Employer for the collection and use of the data? I will consider these issues in turn.

**62** With respect to the first issue, I reproduce the definitions of "personal information" from section 1 of PIPA as

follows,

*"personal information" means information about an identifiable individual and includes employee personal information but does not include*

(a) *contact information, or*

(b) *work product information;*

63 I also reproduce the definitions of "contact information" and "work product information",

*"contact information" means information to enable an individual at a place of business to be contacted and includes the name, position name or title, business telephone number, business address, business email or business fax number of the individual;*

...

*"work product information" means information prepared or collected by an individual or group of individuals as a part of the individual's or group's responsibilities or activities related to the individual's or group's employment or business but does not include personal information about an individual who did not prepare or collect the personal information.*

64 I note that the definition of "personal information" in the B.C. legislation includes "employee personal information". "Employee personal information" is also defined in section 1 of PIPA as follows,

*"employee personal information" means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment;*

65 As I read PIPA, one significance of defining "employee personal information" on its own is that an employer is entitled to collect, use, etc. that information, subject to a reasonableness standard, without the consent of an individual employee for the purpose of reasonably managing etc. the employment relationship as long as the employee is notified (as required under sections 13(3), 16(3) and 19(3)). Put another way, if the information is personal information then consent of the individual is required before it can be collected etc. but if it is *employee* personal information then notification to the individual is required. I take it as obvious that notification is a less onerous standard for employers to meet than consent. The intent appears to be to give employers more latitude for the collection, use, etc. of personal information that is about employees and is used to manage etc. employment relationships.

66 I also note that PIPA provides for a reasonableness standard for the collection etc. of both "personal information" and "employee personal information" (see sections 11 and 13 for example). In other words, there must be a balancing of the privacy of the individual employee with the business interests of the employer when collecting both of these types of information. But before information becomes "employee personal information", it must first meet the threshold test of being "personal information". As above, I do not read the definition of "personal information" as requiring a reasonableness standard or balancing test. Information is either "personal information" or it is not based on the definition of that term in PIPA, not based on any balancing test. In this respect, I disagree with the submission of the Union that a balancing test applies at the definition stage of both "personal information" and "employee personal information".

67 Therefore, I turn to the issue of whether the information received by the Employer from the Telematics devices is

"personal information" under PIPA?

**68** As above, "personal information" is "information about an identifiable individual". This language reflects the general scope of privacy legislation as "undeniably expansive" and "deliberately broad" (*Nav Canada, supra*, paragraph 36; citing *H. J. Heinz Co. of Canada Ltd. v. Canada (Attorney General)*, 2006 SCC 13, at paragraph 26; also *Canada (Information Commissioner) v. Canada (Solicitor General)*, (1988) F.C.J. No. 408, at page 557). Similarly, "... in a situation involving personal information about an individual, the right to privacy is paramount over the right to access to information, except as prescribed by legislation" (*Dagg v. Canada (Minister of Finance)*, [1997] 2 S.C.R. 403, at paragraph 68).

**69** I accept that information the Employer receives from the Telematics devices identifies individual employees. This is self-evident from the form described above that lists the data about a vehicle along with the name of the driver/mechanic. However, I also note that other than the name of the employee/driver/mechanic, all of the other information relates to the operation of the vehicle (trip start time, idle time, etc.); this is also discussed below.

**70** I next turn to whether the information obtained from the devices is "information *about* an identifiable individual" [emphasis added], the other significant part of the definition of "personal information" in PIPA. As a starting point, I do not read this definition to mean that "personal information" includes any and all information about an individual. This is demonstrated, first of all, by the two exceptions to the definition of personal information, "contact information" and "work product information". Going beyond those obvious qualifications what, then, is information "about" an identifiable individual? There are decisions from other jurisdictions that are of assistance in considering this question.

**71** There is authority from the Supreme Court of Canada that section 8 of the *Canadian Charter of Rights and Freedoms* contains protection for privacy as part of the right "to be secure against unreasonable search and seizure". In *R. v. Plant*, [1993] 3 S.C.R. 281 the court found that a police search of computerized electrical records of a suspected marijuana grow operation was reasonable under section 8 (although a "perimeter search" was unreasonable). Among other things, the court found that the "electrical consumption in the residence cannot reasonably be said to reveal intimate details" of the occupant "since electricity consumption reveals very little about the personal lifestyle or private decisions of the occupant of the residence" (page 293). I note that this judgment was made under section 8 of the *Charter* and it does not directly address the issue of what is "personal information" under privacy legislation. Nonetheless it provides some general assistance about the personal nature of privacy: protection of privacy relates to information that is intimate to the individual.

**72** Other jurisdictions have privacy legislation that includes the term "personal information" and, similar to PIPA, they define it to mean information "about an identifiable individual". In Ontario section 2(1) of the *Freedom of Information and Privacy Act*, R.S.O. 1990, Chapter F.31, defines "personal information" as follows,

**"personal information"** means recorded information about an identifiable individual, including,

(a) information relating to the race, national or ethnic origin, colour, religion, age, sex, sexual orientation or marital or family status of the individual,

(b) information relating to the education or the medical, psychiatric, psychological, criminal or employment history of the individual or information relating to financial transactions in which the individual has been involved,

(c) any identifying number, symbol or other particular assigned to the individual,

(d) the address, telephone number, fingerprints or blood type of the individual,

(e) the personal opinions or views of the individual except if they relate to another individual,

(f) correspondence sent to an institution by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence,

(g) the views or opinions of another individual about the individual, and

(h) the individual's name where it appears with other personal information relating to the individual or where the disclosure of the name would reveal other personal information about the individual;

This list of examples of personal information under section 2(1) in the Ontario legislation is not exhaustive (*Order PO-2715; Ontario (Ministry of Community Safety and Correctional Services*, [2008] O.I.P.C. No. 177, paragraph 9).

**73** Two decisions from Ontario under the legislation in that province are instructive. In *Order PO-2715, supra*, an adjudicator with the Ontario Information and Privacy Commissioner found that some records about an in-custody death requested by the media were not personal information and some were. The adjudicator's reasons included the following statement, "To qualify as personal information, the information must be about the individual in a personal capacity. As a general rule, information associated with an individual in a professional, official or business capacity will not be considered to be 'about' the individual" (paragraph 10).

**74** In another decision the issue was whether the Ontario Rental Housing Tribunal was required to disclose information it kept about debts owed by landlords to the tribunal. The Assistant Commissioner posed the issue as, "Is it a context that is inherently personal, or is it one such as a business, professional or official government context that is removed from the personal sphere?" The conclusion was that the information was inherently of a business nature, it was not personal, and therefore it was subject to disclosure (*Order PO-2225; Ontario (Rental Housing Tribunal)*, [2004] O.I.P.C. No. 8, paragraph 24 - 25).

**75** Turning to the federal jurisdiction, legislation in the form of the *Privacy Act*, R.S.C., P-21, defines "personal information" as "information about an identifiable individual that is recorded in any form". This is the same language used in the definitions of "personal information" in the Ontario and B.C. statutes.

**76** The federal *Privacy Act* was considered in *Canada (Information Commissioner) v. Canada (Canadian Transportation Accident Investigation and Safety Board) and NAV Canada*, 2006 FCA 157 ("*NAV Canada*"); leave to appeal denied, *Canada (Information Commissioner) v. Canada (Canadian Transportation Accident Investigation and Safety Board)*, [2006] SCCA No. 259). The facts of that case involved a refusal by the Canadian Transportation Accident Investigation and Safety Board to release communications related to four "air occurrences". A prior Federal Court decision found the information in dispute to be "personal information" because it related to the manner in which individuals at the Board chose to perform their tasks. Further, the sole purpose for the existence of the information was to "carry out an evaluation of the performance of the parties to those communications in the event that something goes wrong" (cited at paragraph 8 of the Federal Court of Appeal judgment).

**77** The Federal Court of Appeal allowed an appeal of this decision. The court noted the wide scope of "personal information" and the individual's right of privacy. However, they relied on a judgment of the Supreme Court of Canada

that "The notion of privacy derives from the assumption that "all information about a person is in a fundamental way his own information" (paragraph 49; citing *R. v. Dymont*, [1988] 2 S.C.R. 417, at pages 429-430). Further, "Privacy ... connotes concepts of intimacy, identity, dignity and integrity of the individual" (paragraph 52). The Court of Appeal then stated (emphasis in original),

*53. The information at issue is not "about" an individual. As found by the application judge (at para. 18 of her reasons) the content of the communications is limited to the safety and navigation of aircraft, the general operation of the aircraft, and the exchange of messages on behalf of the public. They contain information about the status of the aircraft, weather conditions, matters associated with air traffic control and the utterances of the pilots and controllers. These are not subjects that engage the right to privacy of individuals.*

*54. The information contained in the records at issue is of a professional and non-personal nature. The information may have the effect of permitting or leading to the identification of a person. It may assist in a determination as to how he or she has performed his or her task in a given situation. But the information does not thereby qualify as personal information. It is not about an individual, considering that it does not match the concept of "privacy" and the values that concept is meant to protect. It is non-personal information transmitted by an individual in job-related circumstances.*

*55. ... The ATC communications, when combined with other information, may well in certain circumstances be used as a basis for an evaluation of their authors' performances. However, the possibility of such eventual use cannot transform the communications themselves into personal information, when the information contained therein has no personal content.*

**78** Finally, there are previous arbitration awards that have considered the issue of privacy in the context of employer actions that were alleged to violate privacy rights of employees. These rights are what might be called "common-law" rights in arbitral jurisprudence and they developed independent of, and prior to, privacy legislation.

**79** One award in particular is instructive. It involved a claim of privacy by drivers of company vehicles who had their driving monitored by a machine called a "tachograph" (*Dominion Dairies Ltd.*, *supra*). Arbitrator Weatherill disagreed there was a violation of the employees' privacy rights and he denied the grievance. I set out his reasoning as follows,

*2. The tachograph, as its name suggests, is a combined tachometer and recording machine. The tachometer, fed by the speedometer cable of a vehicle, registers engine speed; a chart, co-ordinated with a clock, records the tachometer readings throughout the period the machine is in operation. Thus, where the tachograph has been properly installed and used, the chart records the time and rate of engine speeds, as well as idling times, of a vehicle. Once the installation of the tachograph has been done, its daily operation is a simple matter. One opens the tachograph with a key, inserts the circular chart, winds the clock, and closes the tachograph. This must be done at the beginning of each day; at the end of the day, the card is removed. The company has installed tachographs on a number of its vehicles; it proposes to require its wholesale route salesmen to install and remove tachograph cards as part of their daily routine. The union contends that this requirement would be contrary to the collective agreement on two principal grounds, first, that the company may not make use of a device such as the tachograph at all, and second, that the salesman may not properly be required to operate these machines as part of their duties.*

...

5. Were it not for the provisions of art. 21A of the collective agreement, it would be our view that there was nothing which expressly or implicitly restricted the company in this regard. The recording of the time and speed of vehicle movements is not in itself repugnant to anything in the collective bargaining relationship or to anything in the collective agreement. It would seem on the contrary to be a natural function of management. It is argued, however, that installation and use of a tachograph is contrary to art. 21A of the agreement. That article provides as follows:

*"A. This agreement shall not take from the employee any privileges they have hitherto enjoyed, except as are specifically dealt with in this Agreement."*

6. It is said that freedom from the surveillance of this "mechanical spy" is a privilege which the employees had enjoyed, and which, not being dealt with in the agreement, may not be removed. However emotional the phrase by which the tachograph is described, it simply produces a record of the time and speed of vehicle operation. In our view, it would not be accurate to say that it was a "privilege" of the employees that the company remain ignorant of the facts with respect to the operation of its vehicles. It is no doubt true that the tachograph machines would provide evidence which might be the basis of discipline of an employee. The record furnished by the machine has more uses than this, however. It provides a record of hours worked, it can be of use in matters of vehicle maintenance, and can provide essential data for purposes of route analysis. It is said by some to be a safety device, and it would certainly appear to have some deterrent value against excessive speeds in the operation of vehicles. There is no allegation that the use of the machine would not be legitimate for these latter purposes. The company is, it goes without saying, entitled to know what its employees do when they go about the company's business in its vehicles. Its supervisors could quite properly check up on the whereabouts of employees: the tachograph simply assists in the efficient, and objective performance of this function.

7. The only related case to which we were referred was the *Eico, Inc.* case, 44 L.A. 563. In that case, there was a provision of the collective agreement to the effect that any "conditions of employment" which were "beneficial to employees" were to be continued during the collective agreement unless there was good cause for their withdrawal. During the term of the agreement, the company had installed a closed circuit television system on its production floor. It was the arbitrator's finding that working without cameras focusing upon their every move was a condition beneficial to employees, and that the use of such equipment imposed a serious burden on their working conditions, without good cause being shown therefore. Accordingly, it was held that the employer in that case had violated the collective agreement. With respect, the decision in that case would appear to be the right one on the facts. Today, at least, constant scrutiny of a person's every move would be a working condition of which most employees would be quite sensitive. The absence of such scrutiny may well be considered a benefit, or as in this case a "privilege" of employees. The analogy with the instant case is, however, far from complete. Certainly the tachograph does not subject the "every move" of the employees to scrutiny. It simply records the movements of the vehicle under their control. The tachograph card may perhaps most aptly be described as the production record of a piece of moving equipment. For all these reasons, then, it is our conclusion that the company would not violate art. 21A of the collective agreement, or any other provision thereof, in installing and using tachographs in its vehicles.

**80** With the above authorities in mind I return to the issue of whether the Telematics data is personal information under PIPA because it is "about" an identifiable individual.

**81** First of all, I note that the arbitrator in *Dominion Dairies* suggested a possible concern with employers being able to scrutinize an employee's "every move". However, he disagreed with that characterization of the tachograph and found that it recorded information about the "vehicles under their [the employees'] control" (paragraph 7). That is, the arbitrator balanced the privacy interests of the employees with the business interests of the employer. That is the "common law" approach. However, as above, I do not read a balancing test as part of the inquiry as to what is "personal information" as that term is defined in section 1 of PIPA.

**82** I note that there are differences between the definition of "personal information" under PIPA and the definitions in the Ontario and federal legislation. As above, the Ontario definition is lengthy since it states that personal information is "recorded information about an identifiable individual" and then it identifies a non-exhaustive list of examples. By contrast, in B.C. the definition of "personal information" is very general and brief. That is, the Ontario and federal legislation is detailed and prescriptive while the B.C. legislation is performance based, using a general policy objective. Overall it can fairly be said that PIPA is structured quite differently than the equivalent legislation in Ontario and federally. An example of the differences between PIPA in B.C. and the Ontario and federal statutes is that I do not see where the latter include a definition of, and the regulation of, *employee* personal information. As suggested by the above Ontario decisions, the extent to which information in that province about employees is treated differently from other personal information would seem to be an interpretive one related to the scope of the definition of "personal information".

**83** Of more significance, in my view, is that the Ontario and federal statutes use the Phrase "about an identifiable individual", as does the B.C. legislation. For this reason I conclude that the authorities from Ontario and the federal jurisdiction are of some assistance in deciding the issues in this grievance.

**84** Applying the above analysis to the evidence in this case, the data collected by the Employer from the Telematics devices would seem to have two purposes. First, it is intended to reduce the Employer's fleet costs and the Employer led evidence to that effect. The Union questioned whether the devices really were significant for this purpose however the evidence is that the data from the devices has already been a factor in reducing fleet costs, in some areas a significant factor. For example, in the Vancouver Branch of the Employer, fuel usage has been reduced by 14% (as a result of being able to plan trips more efficiently) and maintenance costs were reduced by 10% (as a result of, for example, fewer oil changes and brake repairs and prompt response to engine check lights). In addition, the Employer estimates that eighty-eight hours have been added each month to "wrench time" (the time that mechanics are actually at the job sites rather than doing other things such as driving). Knight, the Vancouver manager, estimated in an email dated May 18, 2010, that "around 6 mechanics have changed their daily habits to get close to job sites on time, leave on time - estimated at around 4 hours per day for these 6".

**85** A second purpose for the data is to monitor the use by employees of company vehicles. Included in this is the time mechanics take to perform their work tasks and the time it takes them getting to and from work using company vehicles. This purpose was raised by the Employer at the staff meetings verbally and as part of the PowerPoint presentation on December 8, 2009; indeed, it was the cause of the controversy that arose in at least one of the meetings.

**86** But there are some limitations in how the devices can be used for this purpose. For example, the devices indicate the movement of the vehicles rather than the location of the employee named as the driver/mechanic on the form containing the data. This means, for example, that an apprentice could have driven the vehicle rather than the named employee. As well, the data does not show the location of the vehicles because the devices are not GPS-enabled.

**87** The result is that in order for the Employer to use the data from the Telematics devices they need to "connect the dots" as Knight, the B.C. Manager put it. For example, the Employer will know generally where an employee lives and can make an estimate of the time it would take to get from home to the first job of the day. If the time is lengthy, that might mean an unauthorized stop was made by the employee on the way to work. However, it might also mean the employee stopped for a part, stopped to help another mechanic or there was heavy traffic. In fact, and as a practical matter, as Litteral testified, the Employer is usually looking for time discrepancies of one hour or more. The evidence

did include data about one employee where there were time discrepancies of far less time but there was more than one incident of this and there was, according to the Employer, a pattern to them. In any event, the practice is to use the data to identify a possible problem and then, if necessary, question the employee about the reason for the time discrepancies. This is being done in the case of the employee with time discrepancies of less than one hour.

**88** From this evidence I draw the following conclusions. First, as above, I am unable to find that the purpose of the Telematics devices is solely for the tracking of the locations of employees. Indeed, the evidence is that the primary function of the devices is to reduce fleet costs and the data itself is primarily oriented to fleet efficiency. Again, it does not track the location of vehicles, much less employees. The Telematics data may suggest unauthorized use of company vehicles but a firm conclusion cannot be drawn from the data itself. Further investigation, including interviewing the employee/driver, is required. I make these conclusions based on the assumption that more than speculation is required to justify serious matters such as the discipline of employees. In summary, there are problems of reliability in relying on only the Telematics data to accurately determine the activities and locations of employees.

**89** In fact, the nature of the form that contains the Telematics data (reproduced above) is that the only information that is "personal" is the name of the employee/driver/mechanic. All the other information on the form relates to vehicle operation. I note that one of the exceptions to "personal information" in PIPA is "contact information" and this includes the name of the individual. I do not conclude that the Telematics data is "contact information" but I reason by way of analogy that the name of an employee is not necessarily protected from disclosure as "personal information". Similarly, I am unable to find that the inclusion of an employee's name in the data reveals "intimate details" of that employee's life (*Plant, supra*). To paraphrase *Nav Canada, supra*, the information at issue is of a professional and non-personal nature (paragraph 54, emphasis in original).

**90** It is true that the data contains information about the stop times of a vehicle and this may also be information about the activities of the driver/employee. However, I agree with the analysis in *Nav Canada, supra*, that this type of information does not engage the right to privacy of individual employees. It is also true that the Telematics data may lead to decisions by the Employer to discipline employees. There are two responses to this concern. First of all, the data does not provide a complete or reliable picture of the activities of an individual and other information would be required to sustain just cause for discipline (actual cases of discipline will have to be judged on their individual circumstances).

**91** Second, to paraphrase *Nav Canada*, the possible use of the data to evaluate the performance of employees does not transform the information into personal information under PIPA. The information may have the effect of permitting or leading to the identification of a person and it may assist in a determination as to how he or she has performed his or her task in a given situation. "But the information does not thereby qualify as personal information. It is not about an individual, considering that it does not match the concept of "privacy" and the values that concept is meant to protect. It is non-personal information transmitted by an individual in job-related circumstances" (*Nav Canada, supra*, paragraph 54, emphasis in original). I note in *Nav Canada* that the information related to recorded communications of employees and there was no real dispute that the information was *about* the employees. Therefore, it was more directly applicable to issues of discipline than the information in this case which primarily relates to the operation of company vehicles.

**92** In summary, I am not persuaded that the collection and use of an employee's name, by itself, is collection and use of information that is "fundamental" to the "dignity and integrity" of the employee (*Dyment, supra*). Put another way, in the circumstances of this case, the collection of information about the operation of a company vehicle, that also includes the name of the driver of the vehicle, does not transform that data into "personal information" under PIPA. I conclude that the data from the Telematics devices can be considered in the same way as the information obtained from the tachograph in *Dominion Dairies, supra*. The Employer in this arbitration is entitled to know what its employees are doing when they are working and when they are using company vehicles. This information assists management by providing reliable and objective information to improve the efficiency of the vehicle fleet. The same information is not "about" an individual employee and it may be used as part of Employer investigations of disciplinable offences without violating the privacy of employees. As stated in *Nav Canada, supra*, information that is transmitted by an individual in job-related circumstances is not information about that individual.

**93** This is an appropriate place to discuss the use of company vehicles by mechanics to travel back and forth from work and home. First of all, there is a dispute between the parties about two different versions of the Employer's policy on this issue. It may be recalled that a January 1997 version of the policy contains the statement, "Personal use, other than driving to and from work, ... is strictly prohibited". Then there is a January 2009 version of the policy that states company vehicles are for "... company use only. No personal use is allowed (Home to work location and return is considered company use.)" According to the evidence of the Employer the reason for the later version of the policy was that they wanted to "Canadianize" the previous policy which originated in the United States.

**94** I agree with the Union that there is some confusion between these two policies. The 1997 version suggests that "personal use" includes driving to and from work but the 2009 version can be read to mean that driving to and from work is "company use". Nonetheless, even under the 1997 policy, I cannot find that driving a company vehicle to and from work is somehow time that is exempt from any scrutiny by the Employer. That result would require very specific language since it would lead to quite anomalous results that no one intended. For example, the witnesses for the Union agreed that a mechanic could not take a company vehicle for a personal trip over the weekend. In any event, the 2009 policy prevails over the earlier 1997 policy and the former is unequivocal that driving to and from work is company use. It follows that, since the use of vehicles to travel to and from work is company use, the Employer is entitled to monitor the efficiency and use of those vehicles at those times and in appropriate ways.

**95** As a final matter with regards to the privacy issues in this grievance, at my request the parties provided written submissions on the issue of the significance, if any, of the word "solely" in the definition of "employee personal information". For convenience I set out that definition from PIPA again,

*"employee personal information" means personal information about an individual that is collected, used or disclosed solely for the purposes reasonably required to establish, manage or terminate an employment relationship between the organization and that individual, but does not include personal information that is not about an individual's employment; [Emphasis added].*

I was directed by counsel to two previous decisions (*Re: Twentieth Century Fox Film Corporation*, [2006] B.C.I.P.C.D. No. 35; *Re: Tatsu Shores Homeowners Corporation*, [2006] B.C.I.P.D. No. 41) on the significance of "solely" in this definition.

**96** However, as can be seen above, I have concluded that this grievance must be decided by consideration of the definition of "personal information" and it is not necessary to consider the definition of "employee personal information" or the authorities submitted.

**(c) The Collective Agreement (technological change and other provisions)**

**97** As stated in the *Dominion Dairies* award, *supra*, an employer is entitled to obtain information about employees for the purpose of reasonably managing its operations. This right is subject to applicable provisions of the collective agreement and I now turn to the collective agreement in this case.

**98** The Union raises issues of technological change under Article 4(B) of the collective agreement. Among other things, it states as follows,

...

*(2) Where an Employer intends to introduce a change in its work, undertaking or business, or a change in equipment or material from that previously used by that Employer in its work, undertaking or business, or where that Employer changes the manner in which it carries on its work, undertaking or business by the introduction of equipment or material different from that previously used, no strike, slowdown or stoppage of work shall occur, and any disputes concerning adjustments to such changes are to be settled in accordance with the provisions of*

*this Article.*

*(3) Where it is anticipated that any such change shall significantly affect the terms and conditions or security of employment of a significant number of Employees to whom this agreement applies, the Employer shall give the Union ninety (90) days notice in writing with full particulars of the intended change.*

...

**99** The Union seeks a declaration that the Employer has breached Article 4(B) with the unlawful implementation of the Telematics devices. The remedy sought is an Order compelling the Employer to negotiate with the Union the implementation of the devices.

**100** With regards to Article 4B(2), that provision sets out the conditions of change where Article 4(B) might apply. This is where "an Employer intends to introduce a change in its work, undertaking or business, or a change in equipment or material from that previously used by that Employer in its work, undertaking or business, or where that Employer changes the manner in which it carries on its work, undertaking or business by the introduction of equipment or material different from that previously used ...". If those conditions are met then "no strike, slowdown or stoppage of work shall occur, and any disputes concerning adjustments to such changes are to be settled in accordance with the provisions of this Article". In my view, the intent of this provision is to commit the parties to the dispute resolution process in the collective agreement rather than a strike, slowdown etc. where there is a change to the work, undertaking etc.. I cannot find in this language constraints on the Employer with respect to making changes such as the introduction of the Telematics devices. Article 4B(2) is, therefore, of limited assistance in resolving the issues in this arbitration.

**101** Article 4B(3) then says if "any such change" has a significant "affect" on the terms and conditions of employment or the security of employment of a significant number of employees then the Employer is required to give the Union ninety days notice in writing, with full particulars of the change or changes. With regards to the security of employment of employees, I am unable to accept that the prospect of Telematics data being used to discipline employees is an issue of security under Article 4B(3). The Employer, under this collective agreement, is entitled to introduce new procedures or policy, or amend existing ones, and there is a potential for discipline if employees do not comply with these policies or changes. I cannot find that the parties intended to prevent the Employer from introducing new policy or changes to policy and, further, that employees would be immune from discipline if the policy or change was not followed. That is, I cannot find that the introduction of the Telematics devices is an issue of security of employment issue under the technological change language in Article 4B(3).

**102** Similarly, I do not agree with the Union that the introduction of the Telematics devices amounts to a significant "affect" on the terms and conditions of employment of employees. Employees continue to work the same hours, they continue to receive the same pay and so on. What has changed for the employees is that their work is subject to more scrutiny and, as a result of that scrutiny, they are required to work (including travel to and from home as "company use") in what the Employer says is a more efficient manner. It is true that they do not have the same freedom in controlling their work times as before but, again, the Employer has the right to manage its employees as part of its attempts to be more efficient. It is also true that, before the introduction of the Telematics devices, there were minimal or even no controls on the maintenance of company vehicles and very limited control over the work activities of mechanics. However, again, the Employer is entitled to introduce or change its business practices, always subject to the collective agreement.

**103** I am unable to find that these changes are a significant change to the terms and conditions of employment of employees.

**104** The Union relies on a number of other provisions of the maintenance and construction collective agreements. I

conclude that the introduction by the Employer of the Telematics devices does not violate the recognition clauses (Article 2, maintenance and construction agreements) since the evidence does not support a conclusion that the Employer does not recognize the Union. As well I cannot find that the repair work provision (Article 7, maintenance agreement) or the contract service maintenance provision (Article 8, maintenance agreement) have been violated. I have reviewed the scope and terms provisions (Article 19 of the construction agreement and Article 20 of the maintenance agreement) and I cannot find that the Employer has made any rules or given any instructions that are contrary to the agreement or its intent. Finally, assuming without deciding that the preambles of the agreements are a basis for a grievance, I cannot find the introduction of the Telematics devices are contrary to that language.

**105** The Union also alleges that the introduction of the Telematics devices is a unilateral and unreasonable employer policy that is contrary to the well-known principles in *KVP Co. Ltd.*, [1965] O.L.A.A. No. 2 (Robinson). To the extent this issue relates to privacy issues, those are dealt with above. Assuming without deciding that the introduction of the devices was the introduction of a "policy", I conclude it was not an unreasonable one. To some extent I accept the Union's point that the situation with regards to mechanics' use of company vehicles in B.C. was for the most part unknown prior to the introduction of the devices. Nonetheless, there had been problems with maintenance of company vehicles in the past and there had been a small number of employees who were disciplined for misuse of company vehicles. As well, the Employer had documented information from Ontario about inappropriate use of company vehicles and it was reasonable for the Employer in B.C. to investigate the situation on the basis of that experience in Ontario.

**106** A related matter is the Union's concerns about the Employer's privacy policy dated January 2010: that it was introduced too late to cover the Telematics devices and it was not specific enough to properly protect personal information obtained from those devices. This policy is required by section 5 of PIPA but I cannot find in PIPA any requirement that such a policy must address specific situations such as the Telematics data. On the contrary, the intent of section 5 of PIPA appears to be to require the Employer to have a broadly worded policy that applies in a wide range of situations.

**107** With respect to the timing of the policy, the evidence is that the Employer published the policy after the introduction of the Telematics devices. However, the purpose of the policy is so that the Employer can "meet the obligations of the organization under this Act" (section 5(a)). The "obligations" of the Employer includes the collection, use etc. of "personal information" as that term is defined in PIPA. I have found above that the Telematics data is not "personal information" under PIPA.

**108** Finally, the Union entered into evidence agreements from other jurisdictions where employers have negotiated language related to the issues similar to those in the grievance in this case. For example, the New York and New Jersey U.S.A. local of the Union has the following provision,

*... the Union specifically recognizes the Company's need to continuously upgrade the technologies it employs. This includes devices carried and used by its Employees to record data such as product performance or callback-related information, payroll information, to communicate with other Employees both in the field and in the office, to communicate with computers and computer-related devices, to record service data, and/or to obtain customer authorization or approval of work performed or to be performed. These devices may include cell phones or an evolution of cell phone technology, beepers or an evolution of beeper technology, or portable computers or an evolution of portable computers, video technology or an evolution of video technology and Company vehicle. All such devices shall not contain any type of tracking devices and shall be used only in the Maintenance, Repair, Modernization and Construction of elevators. All such devices shall be supplied to its Employees by the Company. ... [emphasis added].*

**109** It is not in dispute that the above is part of the collective agreement for elevator mechanics in New York and

New Jersey, U.S.A. However, it is not part of the collective agreement between the Employer and Union in this case. I accept that this language, or some variation of it, could be the result of negotiations on the issue of Telematics devices that would have been successful from the Union's point of view. However, those negotiations have not taken place and I am unable to find in the collective agreement, PIPA, the *Labour Relations Code* or the arbitral jurisprudence the authority to compel the Employer to enter into them.

**(d) Section 54 of the *Labour Relations Code***

**110** The union submits that the introduction of the Telematics devices is a violation of section 54 of the *Labour Relations Code*. That provision is as follows,

*54 (1) If an employer introduces or intends to introduce a measure, policy, practice or change that affects the terms, conditions or security of employment of a significant number of employees to whom a collective agreement applies,*

*(a) the employer must give notice to the trade union ...*

**111** There is considerable overlap between this issue and the issue of technological change, discussed above. I conclude that the introduction of the Telematics devices by the Employer in this case was not a measure, policy etc that "affects the terms, conditions or security of employment of a significant number of employees ...". I am unable to find that section 54 of the *Code* means that the Employer is prevented from introducing policies or changes in policy that, if violated by employees, would result in discipline. This does not affect the terms, conditions or security of employment of employees to whom the collective agreement applies.

**F. CONCLUSION**

**112** The introduction by the Employer of the Telematics devices is primarily aimed at the efficiency of the fleet of company vehicles. It is not GPS enabled. The Employer is also able to use the data from the devices to begin a process of investigating the use of company vehicles by mechanics and discipline may ultimately be the result.

**113** The information from the devices contains the name of the mechanic/driver and no other information personal to the individual. It identifies the individual. However it is not information that is intimate to the individual or otherwise inherently personal. It may be used along with other information for the discipline of employees but that does not transform it into "personal information" under PIPA. As required by PIPA, this is a question of interpretation rather than balancing of interests.

**114** With regards to issues of technological change and the protections for employees under section 54 of the *Labour Relations Code*, the introduction of the Telematics devices do not significantly affect the terms and conditions or security of employment of a significant number of employees. Other provisions relied on by the Union likewise do not support the grievance, including the provisions relating to recognition of the Union, repair work, contract services, scope and terms and the preamble to the collective agreement.

**115** Finally, any issues related to specific agreements between individual employees and the Employer about the use of company vehicles are not part of this arbitration and are to be considered on their particular merits.

**116** For the above reasons, the grievance is denied.

Dated this 30th day of August, 2010, in the City of Vancouver, Province of British Columbia.

John Steeves

qp/e/qlas