

In 2022, a publicly-funded Ontario University contracted with a private American company to implement an AI-powered performance evaluation system that analyzes teaching scores, publication output, grant revenue, and social media activity to generate annual performance scores for all faculty. In 2023, a Professor received a low performance score. He was told the score was generated by the Company's system and that the underlying algorithmic weighting is proprietary and cannot be disclosed. Based partly on this score, the University denies the Professor a merit pay increase and initiates a process that could lead to the revocation of his tenure. The Professor's union files a grievance. The Professor also separately learns that the Company's system ingested his personal emails from his University account, his publicly posted social media content, and student evaluation data that included personal information about students who have not consented to their data being shared with a foreign company. The Professor is also a vocal critic of the University's administration and has published several opinion pieces arguing that the University's current president should resign. He believes the low score is partly retaliatory. Identify every legal avenue available to the Professor, assess which are most likely to provide meaningful relief, and advise on how the union grievance process interacts with any independent claims the Professor may wish to pursue. Please cite relevant cases and legislation.

Overview

A tenured Ontario university professor whose employment is being threatened through an opaque AI evaluation system has comprehensive legal recourse: the union grievance (primary forum) covers procedural fairness, FIPPA and HRC breaches, and academic freedom retaliation; a parallel Superior Court civil action against the American company for intrusion upon seclusion survives outside arbitral jurisdiction; and concurrent FIPPA/IPC, PIPEDA, and HRTO complaints provide additional independent remedies operating simultaneously with the grievance.

FACTS

The Professor is a tenured faculty member at a publicly-funded Ontario university. In 2022, the University contracted with a private American company (the "Company") to implement an AI-powered performance evaluation system analyzing teaching scores, publication output, *grant* revenue, and social media activity. In 2023, the Professor received a low performance score generated by the Company's system. The University denied him merit pay and initiated a process that could lead to tenure revocation. The algorithmic weighting is proprietary and was refused for disclosure.

The Professor's union filed a grievance. He separately learned the Company ingested his

personal emails from his University account, publicly posted social media content, and student evaluation data containing personal information about students who had not consented to data sharing with a foreign company. The Professor is a vocal critic of the University's administration and has published opinion pieces calling for the President's resignation, believing the low score is partly retaliatory.

ISSUES

1. Does the union grievance process provide adequate remedies, and does it operate to the exclusion of independent claims?
 2. Has the Professor been denied procedural fairness by the use of a proprietary, opaque algorithmic evaluation system?
 3. Does the University's sharing of the Professor's personal information with the Company violate FIPPA and PIPEDA?
 4. Does the Professor have a claim in the tort of intrusion upon seclusion?
 5. Does the Professor have a claim for retaliation against his academic freedom and Charter s. 2(b) freedom of expression rights?
 6. What independent avenues remain outside the grievance process?
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BRIEF ANSWER

The union grievance process is the Professor's primary and most powerful avenue. Under *Weber v Ontario Hydro*, [1995 CanLII 108 \(SCC\)](#), [1995] 2 SCR 929 (“*Weber*”), all disputes whose essential character arises from the collective agreement fall within exclusive arbitral jurisdiction. The grievance arbitrator has jurisdiction over virtually every aspect of this dispute: procedural fairness in the evaluation, merit pay denial, tenure revocation, FIPPA breaches, *Human Rights Code* violations, and academic freedom under the CBA. Under *Parry Sound (District) Social Services Administration Board v OPSEU Local 324*, [2003 SCC 42](#), [2003] 2 SCR 157, and LRA s. 48(12)(j), those statutory rights are implicitly incorporated into the collective agreement.

Claims against the Company for intrusion upon seclusion and PIPEDA violations survive outside arbitral jurisdiction because the Company is not a party to the collective agreement: *R.W. Tomlinson Limited v LIUNA Local 527*, [2025 ONCA 861](#). The Professor also has independent recourse to the Ontario Human Rights Tribunal, the IPC, the Federal *Privacy* Commissioner, and potentially the Ontario Ombudsman. The retaliation argument is most effectively pursued within

the grievance through CBA academic freedom and anti-reprisal provisions.

LAW

I. The Exclusive Jurisdiction Doctrine and Grievance Arbitration

The foundational principle governing the Professor's remedial landscape is the exclusive jurisdiction model established in *Weber*. Where the essential character of a dispute arises from the interpretation, application, administration or violation of a collective agreement, courts have no jurisdiction and the claimant must proceed by arbitration: *Weber* at para 52. As McLachlin J. held: "The issue is not whether the action, defined legally, is independent of the collective agreement, but rather whether the dispute is one 'arising under [the] collective agreement': *Weber* at para 43.

The *Weber* test has two elements: identifying the dispute's essential character through its factual foundation (not its legal characterization), and assessing whether that character falls within the ambit of the collective agreement: *Weber* at paras 51–52. Innovative pleading — framing a workplace dispute as a tort or constitutional claim — does not displace arbitral jurisdiction: *Weber* at para 49. This proposition was reaffirmed most recently in *Northern Regional Health Authority v Horrocks*, 2021 SCC 42 at para 40, which confirmed that "[t]he relevant inquiry is into the facts alleged, not the legal characterization of the matter."

In 2025, the Ontario Court of Appeal clarified the framework further in *R.W. Tomlinson Limited v LIUNA Local 527*, 2025 ONCA 861. Tulloch CJO confirmed at para 57 that the *Weber* analysis requires both subject-matter jurisdiction (does the dispute arise from the CBA?) and personal jurisdiction (are the parties bound by the CBA?). Critically, if one party — here, the Company — is not bound by the collective agreement, the arbitrator lacks personal jurisdiction over claims against it, and the Superior Court retains jurisdiction: *Tomlinson* at paras 40 and 58. This is the pivotal structural point for the Professor's dual-track strategy.

LRA s. 48(1) mandates final and binding arbitration of "all differences between the parties arising from the interpretation, application, administration or alleged violation of the agreement." Under *Parry Sound* and LRA s. 48(12)(j), grievance arbitrators have the "power and responsibility to enforce the substantive rights and obligations of human rights and other employment-related statutes, despite any conflict between those statutes and the terms of the collective agreement": *Parry Sound* at para 1. Human rights and employment-related statutes "establish a floor beneath which an employer and union cannot contract": *Parry Sound* at para 28. FIPPA, the *Human Rights Code*, and academic freedom provisions are all incorporated.

The Professor's recent cases confirm this principle in the university context. In *Lacasse c Université du Québec à Rimouski*, [2025 QCCA 1012](#) at para 65, the court held that where allegedly defamatory or wrongful conduct occurs in the course of a CBA-governed evaluation procedure, the dispute is squarely arbitrable. Similarly, *Mehta v Acadia University Faculty Association*, [2022 NSSC 69](#) at para 62, confirmed that legal recharacterization as defamation does not remove evaluation disputes from CBA jurisdiction where the essential character is the employment relationship. The Professor must not attempt to proceed in Superior Court on claims the University can characterize as arising from the CBA-governed evaluation process.

II. Procedural Fairness and the Right to Know the Case to Meet

The use of the proprietary algorithmic evaluation system raises acute procedural fairness concerns. The leading authority in the university employment context is *Kane v Board of Governors of University of British Columbia*, [1980 CanLII 10 \(SCC\)](#), [1980] 1 SCR 1105, where Dickson J. established that "a high standard of justice is required when the right to continue in one's profession or employment is at stake." A process denying a faculty member the basis of an adverse decision involving tenure revocation cannot satisfy this standard.

The *Baker v Canada (Minister of Citizenship and Immigration)*, [1999 CanLII 699 \(SCC\)](#), [1999] 2 SCR 817 five-factor framework confirms this elevated standard. The importance of the decision to the individual — merit pay denial combined with tenure revocation proceedings — is high. As *Baker* held at para 43: "It would be unfair for a person subject to a decision such as this one which is so critical to their future not to be told why the result was reached." The algorithmic score, with its undisclosed proprietary weighting, violates this principle directly.

The SCC's analysis in *Suresh v Canada (Minister of Citizenship and Immigration)*, [2002 SCC 1](#) at para 122 ("Suresh"), is directly applicable by analogy: "in the absence of access to the material she was receiving from her staff and on which she based much of her decision, [the affected person] and his counsel had no knowledge of which factors they specifically needed to address, nor any chance to correct any factual inaccuracies or mischaracterizations." The proprietary algorithm functions precisely as the undisclosed memorandum did in *Suresh* — a hidden basis for an adverse decision that the Professor cannot see, let alone challenge.

Charkaoui v Canada (Citizenship and Immigration), [2007 SCC 9](#) at para 64 ("Charkaoui"), put the principle at its sharpest: "How can one meet a case one does not know?" Although that case involved national security, the underlying principle — that the right to know the case against oneself is a fundamental element of natural justice — applies to any proceeding affecting significant interests. The arbitrator should be invited to order disclosure of the algorithmic methodology as necessary to permit meaningful challenge, relying on LRA s. 48(12)(b) (*power to compel document production*).

Said v University of Ottawa, 2011 ONSC 6179 at para 28, confirmed the application of this heightened standard in the Ontario university context: "The duty of fairness is high in a case such as this where the refusal of a promotion has such dramatic consequences... 'Since the refusal of tenure has such drastic consequences for the respondent's right to continue in his profession or employment, a high standard of justice is required.'" The arbitrator will be well-placed to order the University to compel the Company to disclose sufficient information about the algorithmic methodology to permit a meaningful challenge.

III. FIPPA Violations

The University is an institution subject to FIPPA, RSO 1990, c F.31. The disclosure of the Professor's personal emails and employment records to the Company constitutes an apparent violation of FIPPA s. 42(1), which prohibits disclosure of personal information except in the enumerated circumstances. The Company is not an "officer, employee, consultant or agent of the institution" performing institutional duties under s. 42(1)(d) in the relevant sense; it is an independent third-party commercial vendor with its own proprietary systems. The Professor's personal correspondence was not collected for the purpose of being shared with an AI company for performance scoring, and there is no "consistent purpose" within s. 43 — a reasonable professor would not have expected such use.

FIPPA s. 38(2) prohibits collection of personal information on behalf of an institution "unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of a lawfully authorized activity." Sharing faculty emails with a foreign AI company falls outside all three grounds. FIPPA s. 38(3) requires a written *privacy* impact assessment before collecting personal information — the University almost certainly failed to prepare one covering the Company's ingestion of employee emails. The IPC now has express *power* under FIPPA s. 49.0.1(7) to order the University to discontinue the information practice, change it, or destroy unlawfully collected personal information.

As confirmed in *Association of Academic Staff of the University of Alberta v University of Alberta*, 2012 ABQB 248 at paras 46–47, the essential character of access-to-records and information practices disputes under FOIPPA is properly determined under that statute rather than treated as a labour dispute. This creates a concurrent jurisdiction for the IPC that is not ousted by *Weber*. The Professor should file a complaint with the Ontario IPC under FIPPA, independent of the grievance.

Regarding student data, students have not consented to their personal information being shared with a foreign company. This implicates FIPPA s. 42 independently with respect to the student records, and may also engage PIPEDA given the Company's US location. The Professor may have standing to raise this as part of the grievance insofar as the University's use of

non-consented student data as a component of his evaluation score affects his employment rights.

IV. PIPEDA Violations

The Company's ingestion of the Professor's personal emails constitutes a commercial activity subject to PIPEDA, SC 2000, c 5. The Federal Court of Appeal confirmed in *Canada (Privacy Commissioner) v Facebook, Inc.*, [2024 FCA 140](#) at para 62 that meaningful consent under PIPEDA is assessed from "the perspective of the reasonable person" — would a reasonable person understand the purposes for which their data is being used? At para 83, the FCA held that where it is impossible for individuals to inform themselves about the purposes for which their data would be used by a third-party service, meaningful consent is absent. No reasonable faculty member would expect personal emails to be ingested by a private AI company for algorithmic performance scoring without explicit consent.

PIPEDA Schedule 1, Principle 4.5 (Purpose Limitation) prohibits use or disclosure of personal information for purposes other than those for which it was collected. The emails were collected for university administration; they are being used for commercial algorithmic scoring — a clearly unauthorized secondary purpose. *Mountain Province Diamonds Inc v De Beers Canada Inc*, [2014 ONSC 2026](#) at para 49, confirmed that "De Beers can only disclose personal information with the consent of the employees whose personal information would be disclosed" even where a contractual right to audit exists.

The PIPEDA complaint process requires filing first with the *Privacy Commissioner*, who investigates and issues findings. If unsatisfied, the Professor may then apply to the Federal Court under PIPEDA s. 14 for a declaration and damages. As confirmed in *A.T. v Globe24h.com*, [2017 FC 114](#) at para 97, damages under PIPEDA serve compensation, vindication, and deterrence functions and do not require proof of financial loss. However, damages will only be awarded in egregious circumstances: *Migliaro v Royal Bank of Canada*, [2018 FC 525](#) at para 41. Given the deliberate, commercial ingestion of private correspondence, the Professor should argue this is precisely such a case.

V. Intrusion Upon Seclusion — Claim Against the Company

The tort of intrusion upon seclusion, recognized in *Jones v Tsige*, [2012 ONCA 32](#) ("*Jones*"), is the Professor's most direct legal avenue against the Company for the unauthorized ingestion of his private emails. The three elements are: (1) intentional or reckless conduct by the defendant; (2) invasion without lawful justification of the plaintiff's private affairs; and (3) a reasonable person would regard the invasion as highly offensive, causing distress, humiliation or anguish: *Jones* at para 71.

All three elements are satisfied. First, the Company's ingestion of the Professor's emails was deliberate commercial conduct, not passive storage — this is the critical distinction from the database custodian cases. As the Ontario Court of Appeal held in *Owsianik v Equifax Canada Co*, [2022 ONCA 813](#) at para 57, intrusion upon seclusion requires "positive conduct amounting to an intrusion by the defendant itself." The Company actively and deliberately designed a system to ingest email content — it is not a passive custodian. Second, as *Jones* at para 72 expressly stated, "employment" records and "private correspondence" are among the categories of information whose unauthorized accessing is "highly offensive" to a reasonable person. Third, ingestion of private professional correspondence without consent satisfies the offensiveness threshold.

Damages for intrusion upon seclusion need not include proof of pecuniary loss: *Jones* at para 71. The current damages range extends to \$20,000 in general damages: *Jones* at para 87. More significantly, the 2025 BC Court of Appeal decision in *Insurance Corporation of British Columbia v Ari*, [2025 BCCA 131](#) at paras 60 (“*Insurance*”) and 48, confirmed that where a *privacy* breach "is serious, deliberate, and for an improper purpose, it is entirely open to a judge to conclude more than technically nominal damages are required to compensate for the intrinsic damage to the *privacy* rights of the plaintiff," and that "general damages may be awarded without proof of consequential loss where the seriousness of the violation of the right itself calls out for vindication, deterrence, and compensation for harm to the claimant's intangible interests." The deliberate commercial exploitation of private correspondence for performance scoring purposes supports an award above the mid-range, with a strong argument for aggravated and punitive damages.

As confirmed in *Ontario v Madan*, [2023 ONCA 18](#) at para 40, the *privacy* tort "seeks to protect the integrity and autonomy of one's personal information through the recognition of one's right to control access to, dissemination of, and use of one's private information by others." The Professor's inability to challenge or even know the weighting given to his private emails compounds the injury.

This claim against the Company must proceed in the Superior Court (or potentially the HRTO for the *privacy* aspects), NOT through grievance arbitration. The Company is not a party to the collective agreement; the arbitrator has no personal jurisdiction over it under the two-step Tomlinson framework. This is the most valuable independent claim the Professor possesses.

VI. Retaliation and Academic Freedom

The retaliation argument is strongest within the grievance process itself. Academic freedom provisions in collective agreements expressly prohibit the University from penalizing faculty for their scholarly expression and criticism: *First Nations University of Canada v University of Regina Faculty Association*, [2008 SKCA 162](#) at para 9, confirming that academic freedom

includes the right "to disseminate their opinion(s) on questions related to... professional activities... both inside and outside their classroom" and to pursue scholarly activities "without interference or reprisal." The Professor's published opinion pieces criticizing the University President fall squarely within protected academic freedom. If the algorithmic scoring system gave weight to social media activity and the Professor's public criticism was factored into the score, this is a prima facie breach of the academic freedom provisions of the CBA.

Under the *Human Rights Code*, RSO 1990, c H.19, s. 8, "every person has a right to claim and enforce his or her rights under this Act... without reprisal or threat of reprisal for so doing." If the low score was motivated in any part by anticipation of the Professor asserting his rights — including his *privacy* rights or his right to challenge the algorithmic system — s. 8 provides an independent basis for an HRC complaint. This avenue survives independent of the grievance through the HRTO, confirmed by Quebec (Commission des droits de la personne) v Quebec (AG), [2004 SCC 39](#) (Morin) at para 11 to be available where the dispute's essential character is external to the CBA.

For Charter purposes, the Doré/Loyola proportionate balancing framework applies where the University as a public institution makes decisions that limit a faculty member's s. 2(b) expression rights. *Zarabi-Majd v Toronto Police Service*, [2025 ONSC 277](#) at para 50, confirmed that to be reasonable, such a decision "must reflect a 'proportionate balancing' of her Charter rights and the statutory objectives." Criticizing institutional leadership through published opinion pieces is near the core of protected political expression: *Hansman v Neufeld*, [2023 SCC 14](#) at para 91, confirming that political speech is "the single most important and protected type of expression." Using a low algorithmic score as partial pretext for adverse employment action against a faculty member for protected expression would not represent a proportionate balance. This argument is most effectively advanced through the grievance but could support a Charter damages claim against the University as a distinct claim if the arbitrator lacks jurisdiction to provide the necessary remedy.

If the University or any party brings an action against the Professor for his published opinion pieces, the anti-SLAPP provisions of s. 137.1 of the Courts of Justice Act would provide a complete defence. As confirmed in *Joshi v Allstate Insurance Company of Canada*, [2019 ONSC 4382](#) at para 8, public expression about institutional management practices satisfies the public interest threshold, and the Pointes Protection framework would likely defeat any such attempt.

VII. Constructive Discrimination Under Human Rights Code s. 11

If the algorithmic performance metrics disparately impact faculty on the basis of prohibited grounds — for example, older faculty who publish less frequently, faculty from non-English-speaking backgrounds who receive different student evaluation results, or faculty

with disabilities who generate less *grant* revenue — the University may face a constructive discrimination claim under HRC s. 11(1). The AI system's use of social media activity as a metric may also create disparate impacts on faculty who do not maintain social media presences for cultural, religious, or other reasons protected under the Code. This avenue, combined with the s. 8 reprisal claim, provides the Professor with HRTO jurisdiction operating concurrently with the grievance under the Parry Sound/LRA s. 48(12)(j) framework.

ANALYSIS — INTERACTION OF GRIEVANCE AND INDEPENDENT CLAIMS

Primary Forum: Grievance Arbitration

The union grievance is the Professor's most powerful vehicle. The grievance arbitrator has jurisdiction under LRA s. 48(1) and *Weber* over: the denial of merit pay, the tenure revocation process, the University's violation of procedural fairness in the evaluation, the failure to disclose the algorithmic methodology, the breach of academic freedom and anti-reprisal CBA provisions, FIPPA violations by the University, HRC s. 5 and s. 8 claims against the University, and Charter s. 2(b) proportionality arguments. Available remedies include: reinstatement of merit pay (LRA s. 48(17)); cessation of the tenure revocation process; declaratory relief; damages for HRC violations, CBA breaches, and Charter infringement; and orders to produce the algorithmic methodology under LRA s. 48(12)(b).

The arbitrator should be asked to order the University to disclose the algorithmic weighting applied to the Professor's score, relying on LRA s. 48(12)(b) and the procedural fairness principles from *Suresh* and *Charkaoui*. The University will argue the Company's trade secrets justify non-disclosure. The Professor should argue that the third-party proprietary interest under FIPPA s. 17(1) cannot override the right of an affected employee to know the basis of a decision affecting his tenure — an argument supported by the principle that "how can one meet a case one does not know?": *Charkaoui* at para 64.

Independent Claim Against the Company: Superior Court

Claims against the Company for intrusion upon seclusion (*Jones; Owsianik*), unjust enrichment from exploitation of private data, and negligence in data handling must proceed in the Superior Court, not arbitration. The Company is not a party to the CBA; the arbitrator lacks personal jurisdiction: Tomlinson at para 58. This is a standalone civil action. The Professor should also file a PIPEDA complaint with the *Privacy* Commissioner against the Company (and potentially the University as its client), as a precondition to any Federal Court application under PIPEDA s. 14.

FIPPA Complaint: Ontario IPC

The Professor should file a FIPPA complaint with the Ontario Information and *Privacy* Commissioner regarding: (1) the University's disclosure of his personal emails to the Company without authority under FIPPA s. 42; (2) the University's failure to conduct a *privacy* impact assessment under FIPPA s. 38(3); and (3) his right to access the algorithmic score and underlying evaluation records under FIPPA s. 48. The IPC may order the University to discontinue the information practice and destroy unlawfully collected personal information under FIPPA s. 49.0.1(7). This proceeding is concurrent with and independent of the grievance.

Ontario Human Rights Tribunal

The Professor has independent HRTO access for: (1) s. 5(1) discrimination claims if the AI metrics disparately impact him on any prohibited ground; (2) s. 8 reprisal claims arising from his exercise of rights. If the union fails to advance these grounds in the grievance, or advances them inadequately, the Professor may file with the HRTO independently. The HRTO may defer to arbitration under HRC s. 45.1, but following *Horrocks* and *Morin*, the HRTO retains concurrent jurisdiction in Ontario because the Ontario legislature has clearly expressed concurrent intent: *Nelson v Ontario*, [2020 ONCA 751](#) at para 34. If the union is adverse in interest on any aspect of the complaint (as may be the case if the union participated in implementing the AI evaluation system), the Professor retains full independent HRTO access: *Morin* at para 28.

Duty of Fair Representation Safety Valve

If the union fails to advance the *privacy*, algorithmic fairness, or academic freedom grounds — or advances them in a superficial or perfunctory manner — the Professor may file a duty of fair representation complaint with the Ontario Labour Relations Board under LRA s. 74, which prohibits the union from acting in a manner that is "arbitrary, discriminatory or in bad faith" in representation. A successful DFR complaint could result in the OLRB ordering the union to resume or reinstate the grievance on the neglected grounds.

Ontario Ombudsman

The Ontario Ombudsman has jurisdiction over universities (*Ombudsman Act*, RSO 1990, c O.6, s. 1.1) and may investigate administrative unfairness, including the deployment of opaque AI evaluation systems without adequate procedural safeguards. While Ombudsman recommendations are not legally binding, an investigation may compel the University to disclose the system's methodology, conduct a retroactive PIA, and revise its evaluation practices. This is a low-cost, non-adversarial avenue that can run concurrently with all other proceedings.

CONCLUSION

The Professor has a comprehensive set of legal avenues, the most powerful of which is the union grievance. The grievance arbitrator has plenary jurisdiction over the University's conduct through LRA s. 48(1), s. 48(12)(j), *Weber*, Parry Sound, and *Horrocks*. The Professor should ensure the grievance expressly pleads: procedural fairness breach through algorithmic opacity; breach of academic freedom and anti-reprisal CBA provisions; FIPPA violations by the University; HRC s. 5(1) constructive discrimination and s. 8 reprisal; and Charter s. 2(b) proportionality. The arbitrator should be asked to compel production of the algorithmic methodology under LRA s. 48(12)(b).

Independently and concurrently, the Professor should: (1) file a FIPPA complaint with the Ontario IPC; (2) file a PIPEDA complaint with the Federal *Privacy* Commissioner; (3) pursue a civil action against the Company in the Superior Court for intrusion upon seclusion, PIPEDA breach, and related torts; and (4) file an HRTO complaint for s. 5(1) and s. 8 HRC violations if the union fails to advance those claims.

The retaliation claim is strong if there is evidence the performance score was influenced by social media content critical of the administration, or if the evaluation system's weighting of social media activity systematically disadvantaged faculty who exercise freedom of expression. The near-core political speech represented by the Professor's opinion pieces about institutional leadership commands the strongest possible Charter s. 2(b) protection under *Hansman*: such expression is "the single most important and protected type of expression" and any adverse employment action attributable to it would fail the Doré proportionality test.

The Professor should act promptly: FIPPA requests must be filed within applicable timeframes; HRTO complaints are subject to one-year limitation periods; and delay in filing the PIPEDA complaint may affect remedial options before the Federal Court.