

UNIFORM PRIVACY ACT

(1994 Proceedings at page 49)

Definition

1. In this Act, "court" means *(Each enacting jurisdiction should specify the proper name of the superior court of that jurisdiction)*.

Tort

2. Violation of the privacy of an individual by a person is a tort that is actionable without proof of damage.

Proof in absence of contrary evidence

3. Without limiting the generality of section 2, proof of any of the following, in the absence of evidence to the contrary, is proof of a violation of the privacy of an individual:

(a) auditory or visual surveillance of the individual or the individual's residence or vehicle by any means, including eavesdropping, watching, spying, besetting and following, whether the surveillance is accomplished by trespass or not;

(b) listening to or recording a conversation in which the individual participates, or listening to or recording a message to or from the individual that passes by means of telecommunications, by a person who is not a lawful party to the conversation or message;

(c) publication of letters, diaries or other personal documents of the individual;

(d) dissemination of information concerning the individual that has been gathered for commercial or governmental purposes if

(i) the dissemination is contrary to a statute or regulation, or

(ii) the information was provided by the individual in confidence, and the dissemination is made for a purpose other than the purpose for which the information was provided.

Defences

4.(1) An act, conduct or publication does not constitute a violation of privacy of an individual if

(a) it is specifically consented to, expressly or impliedly, by the individual, the individual is entitled to consent to it, and the court is satisfied that the consent is freely given;

(b) it is reasonably incidental to the exercise of a lawful right of defence of person or property;

(c) subject to subsection (2), it is authorized or required

(i) under a statute or regulation,

(ii) by a court or by a person, tribunal or agency, other than a commissioner for oaths or a notary public, that is authorized by law to administer an oath for the purposes for which the person, tribunal or agency is authorized to take evidence, or

(iii) by any process of a court, person, tribunal or agency mentioned in subclause (ii);

(d) it is an act, conduct or publication of a peace officer or a public officer engaged in an investigation who is acting in the course and within the scope of his or her duty, it is not disproportionate to the gravity of the matter that is the subject of the investigation, and it is not committed in the course of trespass or other unlawful act;

(e) it is reasonable, having regard to any relationship, domestic or otherwise, between the parties to the action; or

(f) the defendant neither knew nor reasonably should have known that the act, conduct or publication would violate the privacy of any individual.

(2) No authorization or requirement under a statute or regulation provides a defence to an action for violation of privacy unless the statute or regulation specifically authorizes or requires the act, conduct or publication for the purpose for which it is undertaken.

(3) A publication of a matter is not a violation of the privacy of an individual if

(a) there are reasonable grounds for belief that the publication is in the public interest; or

(b) the publication is privileged under the law relating to defamation.

(4) Subsection (3) does not apply to any act or conduct by which the matter published is obtained if that act or conduct constitutes a violation of privacy.

Remedies

5. In an action for violation of privacy, the court may do one or more of the following:

(a) award damages;

(b) grant an injunction;

(c) order the defendant to account to the plaintiff for any profits that have accrued or may accrue to the defendant as a result of the violation of privacy;

(d) order the defendant to deliver up to the plaintiff all articles or documents that have come into the defendant's possession as a result of the violation of privacy;

(e) grant any other relief to the plaintiff that the court considers necessary in the circumstances.

Damages

6.(1) In awarding damages in an action for violation of privacy, the court shall consider all the circumstances of the case, including

(a) the nature of the act, conduct or publication and the context in which it occurs;

(b) the effect of the act, conduct or publication on the health and welfare or on the social, business or financial position of the plaintiff or relatives of the plaintiff; and

(c) the conduct of the plaintiff and of the defendant before and after the act, conduct or publication, including any apology or offer of amends made by the defendant.

(2) In an action for violation of privacy, the court may award punitive damages, taking into account the flagrancy of the violation of privacy and the conduct of the defendant.

Right of action in addition to other rights

7.(1) The right of action for violation of privacy conferred by this Act and the remedies available under this Act are in addition to, and not in derogation of, any other right or remedy available under any other law.

(2) Subsection (1) does not require damages awarded in an action for violation of privacy to be disregarded in assessing damages in any other proceedings arising out of the same act, conduct or publication that constitutes the violation of privacy.

Crown bound

8. The Crown is bound by this Act.