

Publisher's Note

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McIsaac, Klein, Brown

The Law of Privacy in Canada

“The Law of Privacy in Canada” is a comprehensive and thorough treatment of the regulation of the collection and use of personal information in Canada. It is the only publication that includes everything lawyers and business professionals need to know about privacy from privacy protection to tackling issues such as public surveillance to the *Personal Information Protection and Electronic Documents Act* (PIPEDA). While the work focuses primarily on the domestic regulatory scene, the factors that have made privacy such a salient topic have also mandated the inclusion of similar developments in the regulation of the collection and use of personal information in the European Union and in the United States. Important areas of coverage include Technology and Privacy; Challenges and Solutions; Privacy Protection Under the Criminal Law; Privacy Protection in the Civil Context; Workplace Privacy; Health Privacy; Public Sector Regulation; Private Sector Regulation; and International Privacy Issues.

This release features four new legal memoranda in the Issues in Focus section of the service and updates to Ontario and federal legislation.

Highlights

- **Issues in Focus — How does the common law privacy tort of intrusion upon seclusion co-exist with *Personal Information Protection and Electronic Documents Act* and other legislative privacy schemes?** — Personal privacy in Canada is protected through a variety of legal avenues: federal and

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provincial legislation, traditional torts in the common law, and the *Canadian Charter of Rights and Freedoms*. This piecemeal jurisprudence spanning jurisdictions has created both overlaps and lacunas in the law. Whether a separate tort for invasion of privacy existed in the common law was unsettled in Ontario until it was adopted by the Court of Appeal in 2012. the Court held that the tort of “intrusion upon seclusion” was a free-standing cause of action. On whether a legislative privacy protection scheme overrode or ousted a claim at common law, the Court concluded that the tort was enforceable in addition to statutory and constitutional privacy rights.

- **Issues in Focus — How has the tort of invasion of privacy been treated by the courts in Alberta?** — Unlike the provinces of British Columbia, Saskatchewan, Manitoba, and Newfoundland and Labrador, the legislature in Alberta has not enacted a statute which expressly creates a right of privacy. Due to this, the degree to which the right to privacy has developed and is presently protected under the common law is relevant to Alberta.
- **Issues in Focus — What actions, if any, may an individual in Alberta take against his neighbour who has installed a surveillance camera and is videotaping his property?** — Currently in Alberta, there is no legislation which expressly creates a right of privacy. Absent this, the citizens of Alberta rely on laws relating to trespass, nuisance, and harassment to protect themselves against invasions of their privacy. the tort of nuisance is made out in circumstances where a neighbour deliberately, significantly, and unjustifiably interferes with another neighbour’s enjoyment of his or her property. This type of conduct may be labelled as harassment, intimidation, or invasion of privacy and are, in essence, manifestations of the well-established tort of nuisance.
- **Issues in Focus — Does an internal promotional campaign for a retail store that will use the names and images of certain celebrities break any laws, even if it is never shown to the general public and is not being used for any direct gain?** — The statutory basis of the tort of appropriation of personality is found within the common law. However recent decisions of the British Columbia Supreme Court have held that there is no longer a common law right to privacy in British Columbia.