



## Privacy Act of Manitoba By Douglas A.S. Paterson, Q.C.

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This is a short but important Act. It has been in effect since October 9, 2008 in its present form.

The nub of the Act relates to the tort of violation of privacy. That is: “A person who substantially, unreasonably, and without claim of right, violates the privacy of another person, commits a tort against that other person”.

A tort is a civil wrong as opposed to a criminal wrong.

If a violated person sues the offender under this statute, no proof of damage is required. In other words the offence is actionable in and of itself.

Examples of violation of privacy could be:

1. By any surveillance of a person, with or without trespass, in her residence or a vehicle, and by any means including eavesdropping, watching, spying or besetting.
2. By listening to or recording her conversations or

messages via telephone without the subject’s knowledge.

3. By the unauthorized use of a person’s name, likeness, or voice to advertise or sell an item of service for gain by the user and where the person was intentionally exploited by the user in that regard.
4. By the use of letter, diaries or personal documents without the owner’s consent or without consent of the person who has possession of them.

An action or suit for violation of privacy may result in the award of damages (ie money), an injunction to stop the behavior in question, an Order to account for profits made, and an Order to surrender the private documents or articles to the owner.

In considering the level of damages, the Court of Queen’s Bench may consider any pertinent evidence such as the nature of the breach, the effect on the victim and family, any

distress or embarrassment suffered, the conduct of the victim and the offender before and after the violation, and whether apologies or amends were offered.

There are defences to an action for violation of privacy. These would be expressed or implied consent, the defendant never knew and could not reasonably have known the actions would be a violation of privacy of the plaintiff, the acts complained of were reasonable and necessary in connection with the exercise of the defendant’s rights, legal authority, was an act reasonable and necessary and within the scope of police duties, any act of publication was in the public interest, not defamatory, or a fair comment in the public interest.

For the tort of violation of privacy, it is in addition to and not in subtraction of, any other action or remedy available to the plaintiff.

Given that the level of education is going up in today’s world and everyone is much more aware of their rights, this

Act is very appropriate and useful. When you think of the fabulous technology available today, at the same time you must think of its power to violate your private world. The chances are now really quite high of someone spying on you with a high-powered camera lens, listening to your cell calls with scanners, listening to your conversations with directional microphones, taping you with remote, slave closed circuit t.v. cameras and the like. As well, our internet use can be monitored and traced and interfered with from anywhere in the world – maybe even webcams in your own home can be remotely activated. Whether these sorts of violations can be controlled by this Act and perhaps the Criminal Code of Canada is an open question.