

# *The Privacy Act*

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Chapter P-24 of *The Revised Statutes of Saskatchewan, 1978* (effective February 26, 1979) as amended by the *Statutes of Saskatchewan*, 1979, c.69; 2004, c.L-16.1; 2018, c.28; and 2022, c.29.

## **NOTE:**

This consolidation is not official. Amendments have been incorporated for convenience of reference and the original statutes and regulations should be consulted for all purposes of interpretation and application of the law. In order to preserve the integrity of the original statutes and regulations, errors that may have appeared are reproduced in this consolidation.

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## CHAPTER P-24

### An Act respecting the Protection of Privacy

#### PART 1

#### Violation of Privacy

##### Short title

1 This Act may be cited as *The Privacy Act*.

##### Violation of privacy

2 It is a tort, actionable without proof of damage, for a person wilfully and without claim of right, to violate the privacy of another person.

R.S.S. 1978, c.P-24, s.2.

##### Examples of violation of privacy

3 Without limiting the generality of section 2, proof that there has been:

(a) auditory or visual surveillance of a person by any means including eavesdropping, watching, spying, besetting or following and whether or not accomplished by trespass;

(b) listening to or recording of a conversation in which a person participates, or listening to or recording of messages to or from that person passing by means of telecommunications, otherwise than as a lawful party thereto;

(c) use of the name or likeness or voice of a person for the purposes of advertising or promoting the sale of, or any other trading in, any property or services, or for any other purposes of gain to the user if, in the course of the use, the person is identified or identifiable and the user intended to exploit the name or likeness or voice of that person; or

(d) use of letters, diaries or other personal documents of a person;

without the consent, expressed or implied, of the person or some other person who has the lawful authority to give the consent is *prima facie* evidence of a violation of the privacy of the person first mentioned.

R.S.S. 1978, c.P-24, s.3; 1979, c.69, s.19.

##### Defences

4(1) An act, conduct or publication is not a violation of privacy where:

(a) it is consented to, either expressly or impliedly by some person entitled to consent thereto;

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

(c) it was authorized or required by or under a law in force in the province or by a court or any process of a court; or

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- (d) it was that of:
  - (i) a peace officer acting in the course and within the scope of his duty; or
  - (ii) a public officer engaged in an investigation in the course and within the scope of his duty;

and was neither disproportionate to the gravity of the matter subject to investigation nor committed in the course of trespass;

- (e) it was that of a person engaged in a news gathering:
  - (i) for any newspaper or other paper containing public news; or
  - (ii) for a broadcaster licensed by the Canadian Radio-Television Commission to carry on a broadcasting transmitting undertaking;

and such act, conduct or publication was reasonable in the circumstances and was necessary for or incidental to ordinary news gathering activities.

- (2) A publication of any matter is not a violation of privacy where:
  - (a) there were reasonable grounds for belief that the matter published was of public interest or was fair comment on a matter of public interest; or
  - (b) the publication was, in accordance with the rules of law relating to defamation, privileged;

but this subsection does not extend to any other act or conduct whereby the matter published was obtained if such other act or conduct was itself a violation of privacy.

- (3) In this section “**court**” means any person authorized by law to administer an oath for the taking of evidence acting for the purposes for which he is authorized to take evidence.

R.S.S. 1978, c.P-24, s.4.

## **5 Repealed.** 2018, c28, s.4.

### **Considerations in determining whether there is a violation of privacy**

**6(1)** The nature and degree of privacy to which a person is entitled in any situation or in relation to any situation or matter is that which is reasonable in the circumstances, due regard being given to the lawful interests of others.

**(2)** Without limiting the generality of subsection (1) in determining whether any act, conduct or publication constitutes a violation of the privacy of a person, regard shall be given to:

- (a) the nature, incidence and occasion of the act, conduct or publication;
- (b) the effect of the act, conduct or publication on the health and welfare, or the social, business or financial position, of the person or his family or relatives;
- (c) any relationship whether domestic or otherwise between the parties to the action; and
- (d) the conduct of the person and of the defendant both before and after the act, conduct or publication, including any apology or offer or amends made by the defendant.

R.S.S. 1978, c.P-24, s.6.

**Remedies**

- 7** In an action for violation of privacy, the court may as it considers just:
- (a) award damages;
  - (b) grant an injunction;
  - (c) order the defendant to account to the plaintiff, for any profits that have accrued or that may subsequently accrue to the defendant by reason or in consequence of the violation;
  - (d) order the defendant to deliver up to the plaintiff all articles or documents that have come into his possession by reason or in consequence of the violation; or
  - (e) grant any other relief to the plaintiff that appears necessary under the circumstances.

R.S.S. 1978, c.P-24, s.7.

## PART 2

### Privacy of Intimate Images

**Definition for Part**

**7.1** In this Part, “**intimate image**” means a visual recording of a person, whether or not the person is identifiable or whether or not the image has been altered in any way, made by any means, including a photograph, film or video recording:

- (a) in which the person in the image is or is depicted as:
  - (i) nude or exposing his or her genital organs or anal region or her breasts; or
  - (ii) engaging in explicit sexual activity;
- (b) that was recorded in circumstances that gave rise to a reasonable expectation of privacy with respect to the image; and
- (c) if the image has been distributed, in which the person who is or is depicted in the image retained a reasonable expectation of privacy at the time it was distributed.

2022, c 29, s.3.

**Interpretation – distribution of intimate images**

**7.2** For the purpose of this Part and subsection 8(2), a person distributes an intimate image if he or she publishes, transmits, sells, advertises or otherwise distributes the image, or makes it available, to a person other than the person who is or is depicted in the image.

2018, c 28, s.5; 2022, c 29, s.4.

**Non-consensual distribution of intimate images**

**7.3(1)** It is a tort for a person to distribute or threaten to distribute an intimate image of another person without that other person's consent.

(2) A person who distributes or threatens to distribute an intimate image commits the tort mentioned in subsection (1) against the person who is or is depicted in the image in any of the following circumstances:

- (a) the person knows that the person who is or is depicted in the image does not consent to the distribution;
  - (b) the person is reckless as to whether or not the person who is or is depicted in the image consents to the distribution.
- (3) An action pursuant to this section may be commenced, in the form and manner prescribed in the regulations, without proof of damage.

2018, c 28, s.5; 2022, c 29, s.5.

**When expectation of privacy not lost**

**7.4** Notwithstanding section 4, for the purposes of an action for the non-consensual distribution of an intimate image, the person who is or is depicted in the image does not lose his or her expectation of privacy with respect to the image:

- (a) if he or she:
  - (i) consented to another person recording the image; or
  - (ii) provided the image to another person; and
- (b) in circumstances where the other person mentioned in subclause (a)(i) or (ii) knew or ought reasonably to have known that the image was not to be distributed to any other person.

2018, c 28, s.5; 2022, c 29, s.6.

**Reverse onus**

**7.5(1)** If an action for the non-consensual distribution of an intimate image has been commenced, that distribution is presumed not to have been made with the consent of the person who is or is depicted in the image.

(2) If an action for the non-consensual distribution of an intimate image has been commenced, the defendant must establish that he or she had reasonable grounds to believe that he or she had ongoing consent for distribution of that intimate image.

2018, c 28, s.5; 2022, c 29, s.7.

**Defence – public interest**

**7.6** It is a defence to an action for the non-consensual distribution of an intimate image if the distribution of the intimate image is in the public interest and does not extend beyond what is in the public interest.

2018, c 28, s.5.

**Remedies**

**7.7(1)** In an action for the non-consensual distribution of an intimate image, the court may:

- (a) award damages to the plaintiff, including general, special, aggravated and punitive damages;
  - (b) with respect to any profits that have accrued to the defendant as a result of the non-consensual distribution of the intimate image:
    - (i) order the defendant to account to the plaintiff for those profits; and
    - (ii) make an order in favour of the plaintiff with respect to the recovery of those profits from the defendant;
  - (b.1) with respect to all or any intimate images of the plaintiff that the defendant has distributed or threatened to distribute without the plaintiff's consent:
    - (i) declare the distribution of the intimate images to be unlawful;
    - (ii) order the defendant to make every reasonable effort to make the intimate images unavailable to others, including by:
      - (A) destroying all copies of the intimate images in the defendant's possession or control;
      - (B) having the intimate images removed from any platform operated by an internet intermediary; and
      - (C) having the intimate images de-indexed from any internet search engine;
    - (iii) order any internet intermediary or other person or organization to make every reasonable effort to remove or de-index all intimate images of the plaintiff;
  - (c) issue an injunction on any terms and with any conditions that the court determines to be appropriate in the circumstances; and
  - (d) make any other order that the court considers just and reasonable in the circumstances.
- (2) In awarding damages in an action for the non-consensual distribution of an intimate image, the court must not have regard to any order made pursuant to clause (1)(b).

2018, c 28, s.5; 2022, c 29, s.8.

**Publication ban**

**7.8** In an action for the non-consensual distribution of an intimate image, the court may make an order prohibiting the publication of the name of any party to the action or any information likely to identify a party if it considers the making of the order to be in the interests of justice.

2018, c 28, s.5.

### PART 3 General

#### Right of action in addition to other rights

8(1) The right of action for violation of privacy or the non-consensual distribution of an intimate image under this Act and the remedies under this Act are in addition to, and not in derogation of, any other right of action or other remedy available otherwise than under this Act.

(2) This section shall not be construed as requiring any damages awarded in an action for violation of privacy or the non-consensual distribution of an intimate image to be disregarded in assessing damages in any other proceedings arising out of the same act, conduct or publication or distribution constituting the violation of privacy or non-consensual distribution of an intimate image.

R.S.S. 1978, c.P-24, s.8; 2018, c28, s.7.

#### 9 Repealed. 2004, c.L-16.1, s.68.

#### Death extinguishes right of action

10 A right of action for violation of privacy pursuant to Part 1 is extinguished by the death of the person whose privacy is alleged to have been violated.

R.S.S. 1978, c.P-24, s.10; 2018, c28, s.8.

#### Crown is bound

11 The Crown is bound by this Act.

R.S.S. 1978, c.P-24, s.11.

### PART 4 Regulations

#### Regulations

12 The Lieutenant Governor in Council may make regulations:

- (a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;
- (b) providing support for plaintiffs commencing an action pursuant to Part 2;
- (c) prescribing the form and manner in which an action pursuant to section 7.3 may be commenced;
- (d) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;
- (e) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

2018, c28, s.9; 2022, c29, s.9.