

The Privacy Act

The Privacy Act protects an individual's privacy with respect to personal information. It provides a right of action, without proof of damage, for willful violation of a person's privacy without their consent.

Examples of violation of privacy include doing any of the following without the consent, expressed or implied, of the person or some other person who has the lawful authority to give the consent:

- Auditory or visual surveillance;
- Listening to or recording a conversation in which a person participates, or listening to or recording of messages to or from that person passing by means of telecommunications;
- Use of the name, likeness or voice of a person for the purposes of advertising, sale, or for any other purposes of gain if the person is identified or identifiable and the user intended to exploit the name, likeness or voice of that person;
- Use of letters, diaries or other personal documents of a person; or
- Distribution of an intimate image, including photos or videos, in which a person is nude, partially nude, or engaged in explicit sexual activity, which was recorded in circumstances that gave rise to a reasonable expectation of privacy.

With respect to the distribution of an intimate image, the person depicted in the image does not lose their expectation of privacy by consenting to being recorded or providing the image to another person. An intimate image can only be circulated if the distributor has obtained express consent from the person depicted in the image to do so. The burden of proof rests on the person who circulated the image to show that they had reasonable grounds to believe they had the consent to distribute.

An act, conduct or publication is not a violation of privacy where:

- The person depicted in an intimate image consents to its distribution;
- It was incidental to the exercise of a lawful right of defence of person or property;
- It was authorized or required by a law or a court in the province;
- It was taken by a peace officer or a public officer acting in the course and within the scope of his or her duty; or
- It was taken by a person engaged in news gathering for a newspaper or a licensed broadcaster and such act, conduct or publication was reasonable in the circumstances and was necessary for, or incidental to, ordinary news gathering activities.

A publication of any matter is not a violation of privacy so long as the manner in which the information was obtained is not itself a violation of privacy where:

- 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
- The publication was, in accordance with the rules of law relating to defamation, privileged.

The Act provides that the nature and degree of privacy to which a person is entitled in any situation is that which is reasonable in the circumstances, giving due regard to the lawful interests of others. In determining whether any act, conduct or publication constitutes a violation of the privacy of a person, the Act requires that consideration be given to:

- The nature, incidence and occasion of the act, conduct or publication;
- The effect of the act, conduct or publication on the health and welfare or the social, business or financial position of the person, his or her family or relatives;
- Any relationship between the parties; and
- The conduct of the person and of the defendant both before and after the act, conduct or publication, including any apology or offer of amends made by the defendant.

An action for a violation of privacy can be brought by application to the Court of Queen's Bench, or alternatively where appropriate, Small Claims Court. In Small Claims Court damages are limited to \$30,000. It is up to a plaintiff to decide which avenue will better suit their needs.