



## **Primer 3 - The Law and Privacy**

Privacy rights are protected through a combination of:

- International laws
- Canadian Charter of Rights and Freedoms (the "Charter")
- Provincial and federal privacy legislation
- Common law / case law

### **International Law**

Canada is a member of the United Nations. International laws drawn up by the United Nations and approved by many of the world's countries recognize privacy as one of our essential human rights. Article 12 of the Universal Declaration of Human Rights states:

No one shall be subjected to arbitrary interference with his privacy, family, home, or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to protection of the law against such interferences or attacks.

A number of other international documents such as the International Covenant on Civil and Political Rights also speak about privacy rights.

### **Charter**

The Charter outlines the rights and freedoms guaranteed to Canadians, and acts as a promise between the government (or government bodies) and the people of Canada. The government agrees to make and enforce laws that abide by these Charter promises. It is important to note, however that these promises are not being made by private bodies or companies. The rules governing private bodies or companies are often found in legislation, such as provincial human rights law.

While the Charter of Rights and Freedoms does not explicitly include the right to privacy, many of its provisions have been interpreted to include the protection of privacy. These include:

- The right to life, liberty and security of person (section 7);
- The right to be free from unreasonable search and seizure (section 8);
- The right to freedom of thought, opinion and belief (section 2);
- The right to consult legal counsel in private (section 10);
- The right not to incriminate oneself (section 11 and 13); and
- The right to equality (section 15(1)).

The Supreme Court of Canada has recognized a constitutional right to privacy in the above noted sections which are at the very core of liberty in Canadian society, and are rooted in individual autonomy and dignity.

## **Provincial and Federal Laws**

There are various laws which protect privacy and allow for the free flow of certain information. Canada has specific laws, both federally and provincially, which govern the collection, use, storage, and dissemination of personal information collected by both public and private bodies.

## **Common Law**

When faced with a new case, sometimes there is no specific law for the Courts to apply. In such circumstances, the Courts will consider if the activity took place in a "private" place, and if the information is private. There are some places and communications that the courts have deemed to be private. These generally include our homes, automobiles, and any identifying information. If the common law is undecided about whether a particular place gives rise to a right to privacy the court will examine whether there is a "reasonable expectation" of privacy.

For more information, see chapter 2 in the *Techno-tonomy* privacy textbook.

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