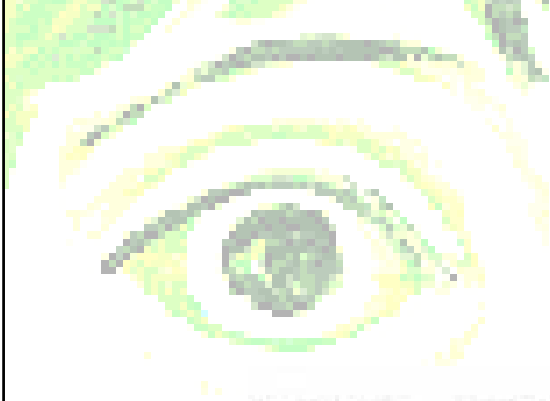




# Privacy, Identity & Equality: The Case of Child Pornography

Jane Bailey  
University of Ottawa  
Faculty of Law  
[jbailey@uottawa.ca](mailto:jbailey@uottawa.ca)

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# ON THE IDENTITY TRAIL



[www.idtrail.org](http://www.idtrail.org)

# Case Law Overview

- framed most often from accused's perspective
- individualistic
- negative
- state focused

# Child Pornography Case Law

- also considers privacy interests of the individual children used in production

# Privacy of the Accused

- search and seizure
- sex offender registries
- “private” possession

# Search & Seizure

- digital data & third parties
- IP address
- computers

# Sex Offender Registries

- Samples of body fluids
  - National DNA Databank
- Information
  - Ontario OSOR
  - federal SOIRA

# Private Possession

- privacy can escalate harm
- state should not trench on free thought

“The restriction ... regulates expression where it borders on thought. Indeed, it is a fine line that separates a state attempt to control the private possession of self-created expressive materials from a state attempt to control thought or opinion. ... To ban possession of our own private musings thus falls perilously close to criminalizing the mere articulation of thought.”

*Sharpe* at para. 107-108.

# Privacy of the Children

“The child is traumatized by being used as a sexual object in the course of making the pornography. The child may be sexually abused and degraded. The trauma and violation of dignity may stay with the child as long as he or she lives. Not infrequently, it initiates a downward spiral into the sex trade. Even when it does not, the child must live in the years that follow with the knowledge that the degrading photo or film may still exist, and may at any moment be being watched and enjoyed by someone.”

*Sharpe at para. 92*

# Privacy of the Children

“We recognize that privacy is an important value underlying the right to be free from unreasonable search and seizure and the right to liberty. However, the privacy of those who possess child pornography is not the only interest at stake in this appeal. The privacy interests of those children who pose for child pornography are engaged by the fact that a permanent record of their sexual exploitation is produced. This privacy interest is also triggered when material which is created by teenagers in a "consensual environment" is disseminated.”

*Sharpe* (dissent) at para. 189.





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