

## Constitutionally Protected Privacy Rights

Below are the Supreme Court of Canada's (SCC) findings in many cases on the Constitutionality of privacy.

As stated by the SCC in O'Connor (1995 4 SCR 411, 1995 CanLII 51 @ para. 121) privacy, especially with respect to one's confidential private medical information as being a core of biographical information and in relation to one's lifestyle and/or political/religious opinions, is both a common law and is constitutionally protected right pursuant to s. 7 and 8 of the Charter of Rights and Freedoms. I bring to your attention the following dicta from the SCC in O'Connor:

*"In my view, it is not without significance that one of those rights, s. 8, has been identified as having as its fundamental purpose, **"to protect individuals from unjustified state intrusions upon their privacy"** (Hunter, supra, at p. 160)...**Respect for individual privacy is an essential component of what it means to be "free"**. As a corollary, the infringement of this right undeniably impinges upon an individual's "liberty" in our free and democratic society. (@ para. 113)*

*Privacy has traditionally also been protected by the common law...*

*In Hill [v Church of Scientology of Toronto 1995 CanLII 59 SCC]...Cory J. reiterates the constitutional significance of the right to privacy...reputation is intimately related to the right to privacy which has been accorded constitutional protection. As La Forest J. Wrote in R. v. Dyment 1988 2 S.C.R. 417, at p. 427, privacy, including informational privacy, is "(g)rounded in man's physical and moral autonomy" and "is essential for the well-being of the individual". (para. 115)"*

*R v Mills 1999 3 SCR 668, para. 79-81, La Forest J. of the SCC held that:*

*"...privacy is at the heart of liberty in a modern state"....**This interest to be left alone by the state includes the ability to control the dissemination of confidential information.** As La Forest J. stated in R. v. Duarte, 1995 1 S.C.R. 30, at pp. 53-54:*

*... it has long been recognized that this freedom not to be compelled to share our confidences with others is the very hallmark of a free society. Yates J., in Millar v. Taylor (1769), 4 Burr. 2303, 98 E.R. 201, states, at p. 2379 and p. 242:*

*It is certain every man has a right to keep his own sentiments, if he pleases: he has certainly a right to judge whether he will make them public, or commit them only to the sight of his friends.*

*These privacy concerns are at their strongest where aspects of one's individual identity are at stake, such as in the context of information "about one's lifestyle, intimate relations or political or religious opinions": Thomson Newspapers, supra, at p. 517, per La Forest J., cited with approval in British Columbia Securities Commission v. Branch...1995 2 S.C.R. 3, at para. 62.*

*The significance of these privacy concerns should not be understated. Many commentators have noted that privacy is also necessarily related to many fundamental human relations.*

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<sup>1</sup> <https://action4canada.com/wp-content/uploads/pho-order-school-staff.pdf>

*To respect, love, trust, feel affection for others and to regard ourselves as the objects of love, trust and affection is at the heart of our notion of ourselves as persons among persons, and privacy is the necessary atmosphere for these attitudes and actions, as oxygen is for combustion.*

*See also D. Feldman, "Privacy-related Rights and their Social Value", in P. Birks, ed., Privacy and Loyalty (1997), 15, at pp. 26-27, and J. Rachels, "Why Privacy Is Important" (1975), 4 Philosophy & Public Affairs 323. This Court recognized these fundamental aspects of privacy in R. v. Plant, 1993 CanLII 70 (SCC), [1993] 3 S.C.R. 281, [page723] where Sopinka J., for the majority, stated, at p. 293:*

*In fostering the underlying values of dignity, integrity and autonomy, it is fitting that s. 8 of the Charter should seek to protect a biographical core of personal information which individuals in a free and democratic society would wish to maintain and control from dissemination to the state. This would include information which tends to reveal intimate details of the life-style and personal choices of the individual.*

The SCC has emphasized in the strongest possible terms, that our right to privacy is sacrosanct and subsumed in both s. 7 and 8 of the Charter and is of paramount importance to our life, liberty, security of the person and from unreasonable search and seizure.

According to Section 52(1) of the Constitution Act ALL Statutes, Orders, By-laws, and "Acts" must be consistent with the Constitution...or they are of no force or effect.

- Section 52(1) of the Constitution Act, 1982: The Constitution of Canada is the supreme law of Canada, and any law that is inconsistent with the provisions of the Constitution is, to the extent of the inconsistency, of no force or effect.