

1975 Bill 203

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Fourth Session, 17th Legislature, 24 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

**BILL 203**

THE PRIVACY ACT

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MR. WILSON

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First Reading .....

Second Reading .....

Third Reading .....

# **BILL 203**

1975

## **THE PRIVACY ACT**

*(Assented to* \_\_\_\_\_ *, 1975)*

**H**ER MAJESTY, by and with the advice and consent of the Legislative Assembly of Alberta, enacts as follows:

**1. In this Act,**

- (a) "defamation" means libel or slander;
- (b) "family" means the husband, wife, child, step-child, parent, step-parent, brother, sister, half-brother, half-sister, step-brother, step-sister, in each case whether legitimate or born out of wedlock, of a person.

**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.

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

- (a) surveillance, auditory or visual, whether or not accomplished by trespass, of a person, by any means including eavesdropping, watching, spying, besetting or following; or
- (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; or
- (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* proof of a violation of the privacy of the person first mentioned.

**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; or
- (b) it was incidental to the exercise of a lawful right of defence of person or property; or
- (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
- (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, and was neither disproportionate to the gravity of the matter subject to investigation or committed in the course of trespass.

**(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.

**5.** Notwithstanding anything in any other Act, an action for violation of privacy shall be commenced, tried and determined in the Supreme Court of Alberta.

**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 of amends made by the defendant.

**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.

**8.** (1) The right of action for violation of privacy 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 to be disregarded in assessing damages in any other proceedings arising out of the same act, conduct or publication constituting the violation of privacy.

**9.** An action for violation of privacy shall be commenced within two years from the discovery of the alleged violation of privacy by the person who claims his privacy has been violated.

**10.** The Crown is bound by this Act.

**11.** *The Limitation of Actions Act is amended by adding the following section after section 52:*

**52.1** Except as provided in sections 57 to 61, an action for violation of privacy of a person may only be commenced,

- (a) where the person is aware of the violation of his privacy at the time the violation occurs, within two years after the occurrence of the violation; and
- (b) where the person is not aware of the violation of privacy at the time the violation occurs, within two years after he first becomes aware of the violation or, by use of reasonable diligence could have become aware of the violation, but in no case after four years from the occurrence of the violation.

**12.** This Act comes into force on the day upon which it is assented to.