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Mclsaac, Klein, Brown

The Law of Privacy in Canada

“The Law of Privacy in Canada” is a comprehensive and thorough treatment of the regulation of the collection and use of personal information in Canada. It is the only publication that includes everything lawyers and business professionals need to know about privacy from privacy protection to tackling issues such as public surveillance to the *Personal Information Protection and Electronics Documents Act* (PIPEDA). While the work focuses primarily on the domestic regulatory scene, the factors that have made privacy such a salient topic have also mandated the inclusion of similar developments in the regulation of the collection and use of personal information in the European Union and in the United States. Important areas of coverage include Technology and Privacy; Challenges and Solutions; Privacy Protection Under the Criminal Law; Privacy Protection in the Civil Context; Workplace Privacy; Health Privacy; Public Sector Regulation; Private Sector Regulation; and International Privacy Issues.

This release features new and updated legal memoranda in the Issues in Focus section of the book in addition to legislative updates.

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Highlights

- **Issues in Focus — How have courts interpreted the exception found in s. 13(1) of the *Freedom of Information and Protection of Privacy Act*?** — The purpose of s. 13(1) is to ensure that a public body may engage in full and frank deliberations, including requesting and receiving advice, in confidence and free of disruption from requests from outside parties for disclosure. The deliberative process includes the investigation and gathering of the facts and information necessary to the consideration of specific or alternative course of action. “Advice or recommendations” was intended by the Legislature to include information to present background explanations or analysis for consideration in making a decision, including the opinions of experts obtained to provide background explanations or analysis necessary to the deliberative process.
- **Issues in Focus — What are the elements of the tort of invasion or breach of privacy in British Columbia?** — Courts in British Columbia have determined that there is no common law cause of action for invasion of privacy as the tort is entirely governed by statute. The key elements of this cause of action are: (1) the defendant’s conduct must be intentional, which includes reckless; (2) the defendant must have invaded, without lawful justification, the plaintiff’s private affairs or concerns; and (3) a reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish. However, proof of harm to a recognized economic interest is not an element of the cause of action.
- **Issues in Focus — Under what circumstances can information related to social networking websites be made available to another party as part of the discovery process?** — Information from a social networking site which is relevant and probative may be ordered made available to the other side. The same considerations are used whether the content of the website is at issue, or a party’s use of the website. Certain cases have concluded that the nature of a social networking website itself allows inferences to be drawn about the information within, while others as part of the discovery have resisted this idea. Privacy concerns are generally not an overriding factor, although privacy appears to be given more consideration where computer usage itself is the main issue.