



## Door left open for tort of invasion of privacy in Ontario

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If someone has their privacy violated in Ontario, can they pursue a civil remedy in the Ontario courts? Does Ontario law recognise the tort of invasion of privacy? These questions were the subject of a motion brought by McDonald's Restaurants of Canada seeking to strike out a plaintiff's claim for unlawful invasion of his privacy on the basis that it disclosed no reasonable cause of action.<sup>1</sup> In refusing to strike out the plaintiff's claim, Mr. Justice Stinson of Ontario's Superior Court concluded that because the law in Ontario is not settled on whether there is a common law tort of invasion of privacy, the action should be allowed to proceed.

The plaintiff, Mr. Somwar, was employed as a McDonald's restaurant manager when McDonald's conducted a credit bureau check on him without his permission. Mr. Somwar sued McDonald's for what he characterized as an intentional invasion of his privacy. McDonald's moved to strike out Mr. Somwar's claim, saying that the tort of invasion of privacy is not legally recognised in Ontario.

In Ontario, a claim will not be struck out unless it is "plain and obvious" that it discloses no reasonable cause of action. Here, the motion centred on one question: Is it fully settled in the jurisprudence that there is no common law tort of invasion of privacy? In examining this question, Stinson J. reviewed prior Ontario cases in which conduct ranging from aiming a surveillance camera on a neighbour to having a debt collector harass a debtor at work were found to be actionable.

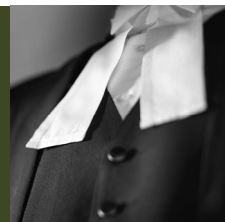
Stinson J. concluded that it is not settled law in Ontario that there is no tort of invasion of privacy. In doing so, he observed that Canada's Supreme Court has consistently found privacy rights worthy of constitutional protection. While conceding that the *Charter* does not apply to private disputes, Stinson J. found that the common law must nevertheless develop in accordance with *Charter* values and that "[p]rotection of those privacy interests by providing a common law remedy for their violation would be consistent with *Charter* values...." Stinson J. went on to state that "[T]he time has come to recognize invasion of privacy as a tort in its own right."

McDonald's motion to strike out Mr. Samwar's claim was accordingly dismissed, and the door opened a little wider for the tort of invasion of privacy in Ontario.

<sup>1</sup> *Somwar v. McDonald's Restaurants of Canada Ltd.*, 2006 CanLII (ON S.C.)

# THE LITIGATOR

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