



No Tort of Invasion of Privacy in Ontario

March 29, 2011 by Bob Tarantino

The Ontario Superior Court of Justice recently confirmed, in emphatic and unambiguous terms, that Ontario law does not recognize a common law tort of "invasion of privacy". In Jones v. Tsige, 2011 ONSC 1475, Whitaker J. framed the question began his judgment as follows:

The central issue in this case is whether there is a tort for invasion of privacy.

He concluded as follows:

I conclude that there is no tort of invasion of privacy in Ontario.

That conclusion was made with reference to the Ontario Court of Appeal's decision in Euteneier v. Lee, 2005 CanLII 33024 (ON C.A.) wherein one of the justices noted that the appellant had "properly conceded in oral argument before this court that there is no "free standing" right to dignity or privacy under the Charter or at common law".

As Whitaker J. noted, there are four statutes which apply in Ontario which speak to the protection of an individual's privacy: Personal Information Protection and Electronic Documents Act; Personal Health Information Protection Act, 2004; Freedom of Information and Protection of Privacy Act; and Municipal Freedom of Information and Protection of Privacy Act. Outside the ambit of those pieces of legislation, there is no protection of privacy in Ontario (or at least none which would be encompassed within a tort of "invasion of privacy". As the judge also noted, other provinces already have in place various statutory regimes which provide more protection for privacy rights than is afforded by the four statutes mentioned above.

What is the relevance of the Jones v Tsige court's conclusion for entertainment and media lawyers? The ambiguous concept of "privacy rights" is often engaged (or at least brought up) as a concern when dealing with documentaries, news reports, "reality" TV - really any sort of printed or audio-visual content which involves some kind of depiction of an actual person. Further confirmation that there is no "invasion of privacy" tort in Ontario means that the universe of potential claims is that much narrower - when we advise our clients about "privacy" concerns raised by their activities we have a finite set of sources to assess from which such a claim could arise. (I canvassed some of the issues could arise from the Personal Information Protection and Electronic Documents Act (more commonly referred to as PIPEDA) in this earlier post: PIPEDA and Filming/Photographing Individuals for Film and TV Projects.)

UPDATE (April 17, 2011): David Vaver has stridently argued that the decision of the court in Jones v Tsige is incorrect, and that other Ontario courts have seen fit to award remedies for invasion of privacy: Jones v. Tsige: Snooping and Privacy in Ontario.

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