



Top Breaches - Canada's top ten privacy law cases from 2005-2006

1. Does a business have the right to raise objections about the release of personal information? Yes.

H. J. Heinz of Canada Ltd. v. Canada, 2006 SCC13, April 21, 2006. [4 out of 3 decision]

Privacy and access rights must be balanced against one another, but privacy protection is paramount: the court upholds right of a third-party business enterprise to raise objections to the release of information based upon protection of personal information exemptions.

2. Privacy watchdog has to go to court to carry out its own function.

Blood Tribe Department of Health v. Canada (Priv. Comm.) [2005 4 FCR34]

Raises question of whether Privacy Commissioner can order production of documents subject to a claim of solicitor/client privilege for the purpose of verifying claim. The court held that the Privacy Commissioner can order production of documents in spite of solicitor/client privilege. This is under appeal.

3. Pilots and air flight attendants are concerned about on-flight communication if their information is going to be made available for public scrutiny.

Information Commissioner of Canada v. Transportation Safety Board and NAV Canada 2006 FCA 157, May 1, 2006

Court of appeal following DAGG finds that ATC Communications in-flight recorder boxes are not personal information and reverses trial division decision.

4. An employer escapes prosecution for secretly taping her employees only because she is discovered before anything is recorded.

Morgan v. Alta Flights Inc. 2005 FC421; affirm 2006 FCA 121

Attempted collection and use of employee's personal information by employer does not infringe PIPIDA; respondent had admitted that had alleged breach (surreptitious recording of employees in smoking room) in fact have occurred, it would have been subject to exemplary damages. Employees still had other remedies under the criminal code or common law. No costs.

5. Privacy Commissioner has no power to remedy a breach of privacy.

Murdoch v. Royal Canadian Mounted Police (F.C.) [2005] 4 F. C. R. 340

Complainant's son was in altercation with police. So the father went to the scene. RCMP investigated and reported the incident to the father's employer, who was the Edmonton Police Services. Held violation of privacy act did occur, but Commissioner has no authority to fashion any remedies for the breach.

6. Court balances business interest of Telus and privacy interest of staff—Telus wins.

Turner v. Telus Communications Inc. [2005 FCJ lo 1981, FCTD, NOV. 29, 2005]

Employer's requirement that all staff provide a voice data print is indeed a reasonable job requirement that does not violate PIPIDA. This is held. Employers need to ensure only Telus staff could gain remote access to the system justified the limited infringement of privacy by storage of the employee voice data print.

7. Nova Scotia doctors can keep their billing information private.

Doctors Nova Scotia v. Nova Scotia, 2006 NSCA 59, May 12, 2006

Superior Court ordered disclosure of named physician billings for 2002, 2004 in the province. Decision reversed by Nova Scotia Court of Appeal. Held: billing (specific salary) information is personal information. It is not exempted as financial details of a contract of services to a public body, and the presumption in favour of protecting privacy is not overcome by any pressing public interest in disclosure.

8. A wake-up call for the government

**B. C. Information and Privacy Commissioner Report F06-01: March 31, 2006-
Sale of Government Computer Tapes**

Report into media story re. sale of 41 government computer backup tapes sold at public auction containing thousands of highly sensitive personal information, such as: medical records of HIV positive diagnoses, mental illness and substance abuse sufferers; thousands of individual names with SIN numbers and date of birth; details of applications for social assistance with case worker entries on intimate aspects of people's lives.

- The report recommends centralized standard government policy on disposal of government media devices and technology.
- Monitor compliance through CIO and external periodic audits by Commissioner's Office.
- Governments should develop a strategy for the encryption of personal information stored electronically.
- All outsourcing to private service providers to only go to firms that offer IP security measures as good as or better than the government's.

9. It's a sin to use SIN as an identifier.

**Ontario IPC-Special Report to Ontario Legislature re. Disclosure of Mailing Lists
With Childcare Supplement Lists**, December 16, 2004

Ontario Ministry of Finance mistakenly mailed out 27,000 childcare supplement cheques with the name, address and SIN number of another client of the department. Cavoukian says don't use SIN as an identifier.

10. PHIPA offenders remain anonymous.

Ontario Information and Privacy Commissioner Order HO-001, October 31, 2005

Health records disposed of by youth in Toronto film shoot. The first order under Ontario's new Personal Health Information Protection Act (PHIPA.) Name of custodian agency will not yet be released. Because the Act is new, Information and Privacy Commissioner Anne Cavoukian has promised a one-year reprieve before violators under the Act are publicly named.

~From the 2006 Atlantic Canada Access & Privacy Conference, Speaker: Christian Whalen, LLB on "Top Breaches"