

# The New Tort Relating to Invasion of Privacy: Insurance Implications

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# *Sandra Jones v Winnie Tsige*

## The Key Facts:

- Jones and Tsige worked at different BMO branches
- Jones did all her personal banking at BMO
- Tsige accessed Jones' personal banking information at least 174 times over a period of 4 years
- Tsige was in a relationship with Jones' former husband
- Tsige did not publish, distribute or record the information in any way

# *Sandra Jones v Winnie Tsige*

## The Relief Sought:

- \$70,000.00 for invasion of privacy and breach of fiduciary duty
- \$20,000.00 for punitive and exemplary damages
- Permanent injunction to restrain Tsige

# *Sandra Jones v Winnie Tsige*

## The Motion Judge's Decision:

- Jones proceeded under Simplified Procedure moving for summary judgment
- Tsige brought cross motion for summary judgment to dismiss the action
- No tort of invasion of privacy in Ontario
- Tsige was held not to owe a fiduciary obligation to Jones and the claim was dismissed
- Costs awarded against Jones for \$35,000.00

# *Sandra Jones v Winnie Tsige*

## The Ontario Court of Appeal Decision

- Overturns Motion Judge's decision
- Federal and Ontario legislation not a sound basis to halt the development of the common law
- PIPEDA deals with organizations and Ontario legislation deals with protection of private information from public institutions

# *Sandra Jones v Winnie Tsigie*

## The Tort of Intrusion Upon Seclusion:

One who intentionally intrudes, physically or otherwise, upon the seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the invasion would be highly offensive to a reasonable person

# *Sandra Jones v Winnie Tsigie*

## Prosser's 4-Tort Catalogue

1. Intrusion upon a plaintiff's seclusion or solitude, or into his private affairs.
2. Public disclosure of embarrassing private facts about the plaintiff.
3. Publicity which places the plaintiff in a false light in the public eye.
4. Appropriation, for the defendant's advantage, of the plaintiff's name or likeness.

# *Sandra Jones v Winnie Tsige*

## Elements of Tort in Ontario

1. conduct must be intentional but recklessness is included
2. the defendant must have invaded, without lawful justification, the plaintiff's private affairs or concerns
3. the reasonable person would regard the invasion of highly offensive causing distress, humiliation or anguish



# *Sandra Jones v Winnie Tsige*

## The Damages

- Actual loss is not an element of the tort
- “Symbolic” or “moral” damages available in the absence of no provable pecuniary loss (capped at \$20,000.00)
- Damages factors in Manitoba Privacy Act govern analysis
- Jones awarded damages in the amount of \$10,000.00
- No costs awarded to Jones

# *Sandra Jones v Winnie Tsige*

## What's Next?

- Surge of privacy cases unlikely
- Class actions are expected
- Ontario consideration of other 3 Prosser torts likely
- Corporate policies may change

# Coverage For Privacy Torts

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- Coverage, if available, is most likely to be found in Personal Injury coverage
- Standard IBC Wording Defines Personal Injury to include “Oral or written publication, in any manner, of material that violates a person’s right of privacy

# Coverage For Privacy Torts

- Non-standard wording eliminates much blast fax coverage. Where “Personal Injury” is defined to mean:  
  
“making known to an person or organization covered material that violates a person’s right of privacy”
- Coverage for blast faxes should be unavailable

# Coverage For Privacy Torts

- Review your personal injury wording

# Questions?