

CORPORATIONS' RIGHT TO PRIVACY IN CANADA AND AUSTRALIA: A COMPARATIVE ANALYSIS

*Susan McCorquodale**

Introduction

Corporations¹ in all Australian and Canadian jurisdictions are independent legal entities. They are described variously as having 'the legal capacity and powers of an individual',² 'the capacity...rights, powers and privileges of a natural person',³ and 'the capacity ... rights, powers and privileges of an individual'.⁴ Corporations thus have rights and obligations in, for example, contract, property, tort and criminal law, independently of anyone else. This is as it should be, and running modern business would be impossible otherwise.

This seems obvious. But in the recent High Court of Australia case *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd.*,⁵ at least some members of the court were of the view that if the tort of invasion of privacy exists in Australia, corporations would be incapable of bringing such an action.

In this paper I will discuss the respective Australian and Canadian approaches to privacy rights. I will then discuss corporate privacy rights in particular, and show that corporations are already afforded at least some rights to privacy. Finally, I will argue that it is inconsistent and unprincipled to restrict corporations from utilizing the tort invasion of privacy, if such a tort does indeed exist.

* B.Sc.,M.A., LLB, Barrister and Solicitor and of the Law Society of Upper Canada, Adjunct Teaching Fellow at Bond University School of Law.

1 For the purposes of this paper, I will use the terms 'corporation' and 'company' interchangeably and as synonyms of one another.

2 *Corporations Act 2001* (Cth) s 124(1).

3 Canada *Business Corporations Act* R.S.C. 1985, c. C-44, as amended, s 15(1).

4 Saskatchewan *Business Corporations Act* R.S.S. 1978, c. B-10, as amended, s 15(1).

5 [2001] HCA 63.

Privacy Rights in Australia

Legislative Right to Privacy

(a) Public Sector Right to Privacy

There are several acts at the state and commonwealth levels that control the way government collects and handles personal information.⁶ It is an important control on public sector agencies, but does not deal with privacy issues as between private members of society.

(b) Statutory Tort of Invasion of Privacy

There are no Australian acts that create a statutory tort of invasion of privacy.

(c) Constitutional Protection of Privacy

Australia has no constitutional protection of privacy rights.⁷

Common Law Tort of Privacy

It is not clear that natural persons in Australia have a common law right to privacy. It is even less clear that corporations in Australia do.

*Victoria Park Racing and Recreation Grounds Co Ltd v Taylor*⁸ had long been authority that there is no common law right to privacy in Australia. In that case, the plaintiff⁹ ran a racetrack business on its premises. On adjoining land, the defendant erected a tall tower from which the races could be watched. The defendant broadcast descriptions and results of the races from a wireless station on the tower to the public. Attendance at the races decreased as a result, and the plaintiff suffered damages. The plaintiff sought an injunction restraining the defendant from broadcasting the races. It grounded its claim in nuisance.¹⁰

The majority of the High Court of Australia held that the plaintiff had no cause of action against the defendant because his behaviour did not amount to a known

6 See, for example, the *Privacy Act 1988* (Cth), *Information Privacy Act 2000* (Vic), and the *Privacy and Personal Information Protection Act 1998* (NSW).

7 Unlike jurisdictions like Canada and the United States of America, Australia has no constitutionally entrenched protection of human rights and civil liberties.

8 (1937) 58 CLR 479 (High Court of Australia).

9 A corporation, incidentally.

10 The tort of nuisance is 'an unlawful interference with a person's use or enjoyment of land, or of some right over it, or in connection with it.' *Butterworths Concise Australian Legal Dictionary* (2d ed).

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tort in nuisance, and because it would not extend nuisance to include protection of privacy rights.¹¹

Victoria Park was the leading authority on common law privacy issues in Australia until recently. Although not determinative of the issue, *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd*¹² is a recent and authoritative case about whether there is a right to privacy in Australia.

Lenah Game Meats Pty Ltd., a company (hereinafter referred to as 'Lenah'), was in the business of slaughtering possums, for processing and export of possum meat. It did so legally, and with the appropriate licenses. Although its method of killing the animals was unpleasant, it was certainly lawful.

An unidentified party trespassed on Lenah's premises, and secretly installed video cameras. The cameras were strategically placed such that the slaughtering operations were filmed without Lenah's knowledge. The tapes were then retrieved and given to an animal rights group, who in turn gave them to the Australian Broadcasting Corporation (the ABC). It was not alleged that the ABC was in any way involved in the unlawful acquisition of the tapes.

The ABC intended to broadcast the tapes. Lenah sought an interlocutory injunction prohibiting their broadcast. It contended that the broadcast would seriously damage its business.

In finding that Lenah was not entitled to the interlocutory injunction, the High Court of Australia handed down 4 sets reasons, each approaching the issues slightly differently. The reasons are summarized as follows.

(a) Gleeson CJ's Reasons

Gleeson CJ's reasons focused on the notion that in order to get an interlocutory injunction, the party seeking the injunction had to show, *inter alia*, that there was a serious issue to be tried between the parties. The ABC argued that Lenah could not show that there was a serious issue to be tried, because it did not have a cause of action at common law or in equity. That is, the ABC argued that there was no known cause of action which could support Lenah's request for an interlocutory injunction.

His Honour agreed that in order to get the relief sought, Lenah would have to show that it had a legal or equitable claim. He considered Lenah's privacy claim, and suggested that that the tort of breach of confidence could be extended to protect a right to privacy in circumstances where the information in question was

11 Rich and Evatt JJ, wrote dissenting reasons. They would have found for the plaintiff by extending the tort of nuisance to protect privacy rights.

12 (2001) 208 CLR 199 (High Court of Australia).

of a private nature. Because, he said, Lenah's operations were not private – they were open to inspectors, and there was 'no evidence that...any special precautions were taken by [Lenah] to avoid its operations being seen by people outside its organization'¹³ – Gleeson CJ held that Lenah had no action in breach of confidence.

Apart from protecting privacy rights in the context of a breach of confidence action, Gleeson CJ was not inclined to hold that there is a independent tort protecting privacy rights in Australia.

Regarding corporations' privacy rights generally, he said:

It is unnecessary, for present purposes, to enter upon the question of whether, and in what circumstances, a corporation may invoke privacy. United Kingdom legislation recognizes the possibility. Some forms of corporate activity are private. For example, neither members of the public, nor even shareholders, are ordinarily entitled to attend directors' meetings. And, as at presently advised, I see no reason why some internal corporate communications are any less private than those of a partnership or an individual. However, *the foundation of much of what is protected, where rights of privacy, as distinct from rights of property, are acknowledged, is human dignity. This may be incongruous when applied to a corporation....*¹⁴ (emphasis added)

(b) Gummow and Hayne JJ's Reasons (Gaudron J. concurring)

Like Gleeson CJ., Gummow and Hayne JJ. said that in order to be entitled to an interlocutory injunction prohibiting broadcast of the tapes, Lenah had to show that it had a legal, statutory or equitable right at issue.

Their Honours considered whether Lenah had a right to privacy. They concluded that even if there is a right to privacy in Australia (on which point they did not make a determination), it is only available to natural persons, and not to corporations. They said:

....Lenah can invoke no fundamental value of personal autonomy in the sense in which that expression was used by Sedley LJ. [in *Douglas v Hello! Ltd.*¹⁵]. Lenah is endowed with legal personality only as a consequence of the statute law providing for its incorporation. It is a "statutory person, a *persona ficta* created by

13 Note 13, page 221.

14 Note 13, page 226.

15 *Douglas v Hello! Ltd.* [2001] 2 All ER 289, the then leading English Court of Appeal case dealing with privacy matters.

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law” which renders it a legal entity “as distinct from the personalities of the natural persons who constitute it”. Lenah’s activities provide it with a goodwill which no doubt has commercial value. It is that interest for which, as indicated earlier in these reasons, it seeks protection in this litigation. But, of necessity, *this artificial legal person lacks the sensibilities, offence and injury* to which provide a staple value for any developing law of privacy.¹⁶ (emphasis added)

Their Honours cited with approval an American decision on the point:¹⁷

The tort of invasion of privacy focuses on the *humiliation and intimate personal distress* suffered by an individual as a result of intrusive behavior. While a corporation may have its reputation damaged as a result of intrusive activity, *it is not capable of emotional suffering.*(emphasis added)

(c) Kirby J’s Reasons

In considering whether Lenah was entitled to the injunction it sought, Kirby J. focused on Section 11(12) of the relevant statute, the *Supreme Court Civil Procedure Act 1932* (Tas), which provided that an injunction could be granted where it appeared ‘just and convenient that such order should be made’.¹⁸ Based on this, Kirby J. said that the court had wider jurisdiction to grant interlocutory injunctions under the act than it had in equity. Lenah did not have to show that it had a common law or equitable right at stake, it just had to show that it would be unconscionable to have the tapes broadcast in the circumstances.

Kirby J. considered Lenah’s interests in prohibiting the broadcast of information illegally obtained against the competing public interest of freedom of speech. He concluded that the public interest in the ‘free discussion of governmental and political issues of animal welfare’¹⁹ outweighed Lenah’s interests. He therefore agreed that Lenah was not entitled to the injunction it sought.

Kirby J’s discussion of privacy rights was *obiter*, and he did not address whether a tort of invasion of privacy exists in Australia. About corporations’ right to privacy he said that ‘doubt exists as to whether a corporation is apt to enjoy any common law right to privacy’.²⁰ He did not comment on the matter any further.

16 Note 13, page 256.

17 *NOC Inc v Schaefer* 484 1 ed 729 (1984).

18 Note 13, page 264.

19 Note 13, page 288.

20 Note 13, page 279.

(d) Callinan J's Dissenting Reasons

Callinan J. is the only member of the Court who would have granted Lenah the interlocutory injunction it sought.

Callinan J. held that the tapes in question were made and acquired by the ABC in circumstances which it could not in conscience use without Lenah's permission.²¹ He said that it did not matter that the ABC was not involved in the unlawful trespass that resulted in the tapes. Once the ABC came into possession of the tapes, it stood in a fiduciary relationship to Lenah because it had possession of the tapes in violation of Lenah's right to possession of them. On this basis alone, Callinan J. would have granted the injunction.

However, Callinan J. in *obiter* did offer some 'tentative views'²² regarding whether the tort of invasion of privacy exists in Australia, and whether a corporation could enjoy those privacy rights. Regarding the former, he said that 'the time is ripe for consideration whether a tort of invasion of privacy should be recognized'²³ in Australia. Regarding the latter, he said that he 'would not rule out the possibility that in some circumstances, despite its existence as a non-natural statutory creature, a corporation might be able to enjoy the same or similar rights to privacy as a natural person...'.²⁴

(e) Summary

To summarize, *Lenah* tells us that there may or may not be a common law right to privacy in Australia.²⁵ And if there is a common law right to privacy, it may not be available to corporations because, we are told, a corporation has no human dignity. It is incapable of experiencing things like humiliation, emotional suffering and personal distress – things that are supposedly at the centrepiece of privacy rights.²⁶

Note however that these factors – humiliation, emotional suffering and personal distress – are things that are typically considered in the context of damages rather than as elements comprising a tort. And as we will see from the Canadian notion of privacy protection, the right to privacy encompasses more than just

21 Note 13, page 316.

22 Note 13, page 320.

23 Note 13, page 328.

24 Note 13, page 326.

25 Mere days after this article was written, the District Court of Queensland released the reasons and judgement for *Grosse v Purvis* [2003] QDC 151. In it, Judge Skoien held that there is an actionable right to privacy in a fact situation in which the plaintiff (a natural person) was found to have been stalked by the defendant for many years. At the time of writing, it is not clear whether *Grosse v Purvis* will be appealed.

26 Note 13, page 256.

considerations related to human dignity. It is a broader concept than is suggested in *Lenah*. *Quaere* then, whether it is appropriate to entirely preclude a person, albeit a corporate person, from bringing a privacy action.²⁷ To put it another way, just because a corporation may not be able to prove certain damages issues, is not a reason to preclude it from bringing an action grounded in the much broader notion of privacy.

Privacy Rights in Canada

Legislative Right to Privacy

(a) Public Sector Privacy

As in Australia, there is legislation at the Canadian federal and provincial levels protecting privacy rights associated with personal information collected by the government.²⁸ And as in Australia, the acts only apply to the public sector. They do not apply to disputes as between private members of society.

(b) Statutory Tort of Invasion of Privacy

Four of the ten Canadian provinces have passed legislation aimed at protecting privacy within the private sector. Saskatchewan²⁹, Manitoba³⁰, British Columbia³¹ and Newfoundland³² all have legislation statutorily creating an action for invasion of privacy. Section 2 of the Saskatchewan act is typical. It provides:

27 Consider too the separate, but related matter of a corporation's right to bring defamation actions. Until recently, there was no question that corporations had the same entitlement to bring defamation actions as natural persons. But the recent enactment of the *Defamation Amendment Act 2002 (NSW)* changes that for corporations in New South Wales. Or at least changes it for *some* corporations in New South Wales; all corporations are now precluded from bringing defamation actions except those with fewer than ten employees and no subsidiaries (s 8A(3)). The prohibition against corporations bringing defamation actions, just like a prohibition against corporations bringing privacy actions, is an unprincipled, cumbersome, and makes the law unnecessarily complex.

28 Such as *Privacy Act* R.S.C. 1985 c. P-21, *Freedom of Information and Protection of Privacy Act* (R.S.A. 2000 c. F-25), *Freedom of Information and Protection of Privacy Act* (R.S.B.C. 1996 c. 165), *Freedom of Information and Protection of Privacy Act* (R.S.O. 1990 c. F-31).

29 *Privacy Act* R.S.S. 1978 c. P-24.

30 *The Privacy Act* C.C.S.M. . P125.

31 *Privacy Act* R.S.B.C. 1996 c. 373.

32 *Privacy Act* R.S.N.L. 1990 c. p-22.

‘It is a tort, actionable without proof of damage, for a person wilfully and without claim of right, to violate the privacy of another person.’³³

The acts variously describe invasions of privacy as including ‘auditory or visual surveillance of a person...without the consent of the person...’,³⁴ ‘eavesdropping’,³⁵ and using a person’s ‘letters, diaries and other personal documents without his consent.’³⁶

The Saskatchewan, Manitoba and British Columbia acts make it a tort to violate the privacy of a ‘person’. A ‘person’ includes a corporation.³⁷ The statutory tort of invasion of privacy is thus available to corporations in Saskatchewan, Manitoba and British Columbia.

Newfoundland’s is the only one of the four acts that applies only to natural persons. Section 2 of the Newfoundland act defines ‘individual’ as a natural person. Section 3(1) provides that ‘it is a tort, actionable without proof of damage, for a person, wilfully and without claim of right, to violate the privacy of an individual’ (emphasis added). It seems that in Newfoundland, then, a corporation can be liable under the statute for the tort of invasion of privacy (because it is a ‘person’), but has no corresponding right to privacy (because it is not an ‘individual’).

In addition to the statutory torts of invasion of privacy in Saskatchewan, Manitoba, British Columbia and Newfoundland, Article 5 of the Quebec *Charter of Human Rights and Freedoms*³⁸ provides that ‘every person has a right to respect for his private life’. It applies to corporations.³⁹ Further Article 3 of the Quebec Civil Code provides ‘every person is the holder of personality rights, such as the right to life, the right to the inviolability and integrity of his person, and the right to the respect of his name, reputation and privacy’. Article 36 sets out acts that may be considered as invasions of privacy, including intercepting private

33 The comparable provision in the Manitoba act (Section 2(1)) provides that ‘a person who substantially, unreasonably and without claim of right, violates the privacy of another person, commits a tort against that other person.’ The comparable provision in the British Columbia act (Section 1(1)) is virtually identical to the Saskatchewan provision. The comparable provision in the Newfoundland act (Section 3(1)) is virtually identical to the Saskatchewan provision, except that it applies to ‘an individual’ rather than to ‘a person’.

34 Saskatchewan *Privacy Act* R.S.S. 1978 c. P-24, s 3(a).

35 British Columbia *Privacy Act* R.S.B.C. 1996 c. 373, s 1(4).

36 Manitoba *The Privacy Act* C.C.S.M. C. P125, s 3(d).

37 Saskatchewan *Interpretation Act* S.S. 1995 c. I -11.2, s 27(1); Manitoba *Interpretation Act* C.C.S.M. c. I80, s 17; British Columbia *Interpretation Act* (R.S.B.C. 1996, c. 238), s 29.

38 R.S.Q. C. c-12.

39 Section 61(16) of the Quebec *Interpretation Act* (R.S.Q. i-16) provides that ‘the word “person” includes natural or legal persons...’.

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communications and using correspondence or other personal documents. It too applies to corporations. So while not expressly creating a statutory torts as in Saskatchewan, Manitoba, British Columbia and Newfoundland, the Quebec legislature has provided for express protection of privacy rights for both natural persons and corporations.

In summary, in five of the ten Canadian provinces, the right to privacy in the private sector is statutorily protected. And in all but one of the five, corporations are afforded a right to privacy on the same basis that natural persons are. The examples of invasions of privacy in the statutes include surveillance, use of private documents without consent, and interception of private communication. One would think that corporations are just as interested in such things as natural persons. And while it may be true that a corporate plaintiff would be unable to prove some damages criteria associated with humiliation or embarrassment, that is potentially true for any plaintiff.

(c) Constitutional Protection of Privacy

The *Canadian Charter of Rights and Freedoms*⁴⁰ (hereinafter 'the *Charter*') constitutionally entrenches protection of certain rights and freedoms in Canada. The *Charter* applies to the federal parliament and provincial legislatures – neither are permitted to pass any legislation that is in contravention with the *Charter*.⁴¹

The *Charter* does not expressly protect the right to privacy. However, the courts have held that some privacy rights are impliedly protected in the *Charter*.

For example, Section 8 of the *Charter* provides that 'everyone has the right to be secure against unreasonable search or seizure.' This right has been held by the Supreme Court of Canada in *R v Wong*⁴² and *Hunter v Southam Inc.*⁴³ as encompassing a right to privacy from unjustified state intrusion.

It is clear that corporations are afforded Section 8 *Charter* protection. Examples of cases in which corporations have made Section 8 arguments include *R v McLellan Supply Ltd.*,⁴⁴ *K Mart Canada Ltd. v Millmink*⁴⁵ and *R v Church of Scientology et al.*⁴⁶ It is important to note that corporations have not always been successful in their Section 8 arguments. But they are always entitled to at least make the Section 8 arguments.

40 Schedule B *Constitution Act, 1982* (79).

41 Subject to Sections 1 and 33 of the *Charter*.

42 (1990), 60 C.C.C. (3d) 460 (Supreme Court of Canada).

43 [1984] 2 S.C.R. 145 (Supreme Court of Canada).

44 *R. v McLellan Supply Ltd.* [1986] 5 W.W.R. 619 (Alberta Q.B.).

45 56 O.R. (2d) 422 (Ontario High Court of Justice).

46 (1997), 33 O.R. (3d) 65 ; [1997] O.J. No. 1548 (Court of Appeal for Ontario)(application for leave to appeal to the Supreme Court of Canada dismissed April 9, 1998).

Common Law Tort of Privacy

As in Australia, it is not clear whether there is a common law tort of invasion of privacy in Canada, though several lower level decisions suggest that there is.

The leading case is *Motherwell v Motherwell*.⁴⁷ In that case, the defendant had made constant harassing telephone calls to her father, and to her brother and sister-in-law at their respective residences. They brought an action against her for invasion of privacy and nuisance, seeking an injunction restraining her from making further telephone calls.

In finding for the plaintiffs, the Court held that the protection of privacy in these circumstances could be considered as a new category in nuisance. It said that the interference of the enjoyment of their land arose 'through the use...of communication agencies in the nature of public utilities',⁴⁸ a previously unrecognized nuisance. The court therefore held that the father and the brother established 'a claim in nuisance by invasion of privacy through abuse of the system of telephone communications'.⁴⁹

In *Saccone v Orr* ⁵⁰, the defendant recorded a telephone conversation he had with the plaintiff, without the plaintiff's knowledge. When the plaintiff subsequently found out about the tape of the conversation, he directed the defendant not to use it. But the defendant did use it; he played it at a municipal council meeting. The plaintiff sued for 'invasion of privacy'. The defendant sought to have the action dismissed on the grounds that there was no such cause of action.

In finding for the plaintiff, Jacob Co. Ct. J. said:

'Certainly, for want of a better description as to what happened, this is an invasion of privacy and, despite the very able argument of defendant's counsel that no such action exists, I have come to the conclusion that the plaintiff must be given some right of recovery for what the defendant has in this case done.'⁵¹

In *Roth v Roth*, ⁵² the plaintiffs' cottage was accessible only by boat or private access road, which was located on land owned by the defendants. The defendants asked the plaintiffs to sign an agreement to contribute to the road's maintenance. The plaintiffs refused. The defendants thereafter blocked access to the road,

47 (1976) 73 D.L.R. (3d) 62 (Alberta Supreme Court, Appellate Division).

48 Ibid, p 74.

49 Ibid, p 76.

50 (1982), 34 O.R. (2d) 317 (Ontario County Court).

51 Ibid, p 321.

52 4 O.R. (3d) 740 (Ontario Court (General Division)).

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removed from its land a dock, pump and shed built by the plaintiffs, and allegedly forced one of the plaintiffs off of the road. The plaintiffs commenced an action against the defendants claiming, *inter alia*, invasion of privacy.

Regarding the invasion of privacy claim, Mandel J. cited *Hunter v Southam Inc.*⁵³ as authority that there is a general right to privacy in Canada, and then discussed whether that meant that there is an actionable cause of action for an invasion of such right in Canada. He said that it would 'depend on the circumstances of the particular case and the conflicting rights involved'.⁵⁴ In this case, he held that the actions of the defendants, taken together, was a 'harassment of the plaintiffs in the enjoyment of their property which is of a kind that a person of normal sensitivity would regard as offensive and intolerable and is an invasion of the plaintiffs' rights of privacy...'.⁵⁵

*Lipiec v Borsa*⁵⁶ was about a 'vicious, mean-spirited feud'⁵⁷ between neighbours. The plaintiffs had lived in their house for some years. When the defendants moved in next door, the plaintiffs became inordinately interested in the renovations the defendants were doing at their premises. They constantly watched and photographed the defendants. They took down the fence between the yards so that they could watch the work. They installed a commercial style surveillance camera aimed at the defendants' yard. The plaintiffs sued the defendants for damage done to their land as a result of the plaintiffs' renovations. The defendants counterclaimed for invasion of privacy.

With respect to the invasion of privacy claim, McRae J. said that the plaintiffs' conduct had been unacceptable: 'They have greatly reduced the defendants' enjoyment of their property....the removal of the fence and the erection of the commercial type surveillance camera was an intentional invasion of the defendants' right to privacy...'.⁵⁸

What do these cases tell us about common law tort of privacy? They suggest that privacy has something to do with being free from harassment arising out of abuse of public communication systems.⁵⁹ It also has something to do controlling access to private conversations⁶⁰ and being free from surveillance.⁶¹ It extends to

53 Above, n 44.

54 Above n 53, p 750.

55 Ibid, p 751.

56 [1996] O.J. No 3819 (Ontario Court of Justice (General Division)).

57 Ibid., p 2.

58 See *Rathman v Rudka* [2001] O.J. No 1334 for another recent 'tale of neighbourly misconduct' in which invasion of privacy was successfully argued.

59 *Motherwell v Motherwell*, note 48.

60 *Saccone v Orr*, note 51.

61 *Roth v Roth* and *Lipiec v Borsa*, notes 53 and 57.

protection of some property rights, such as freedom from interference with interests in land.

The question that must be asked is: why wouldn't a corporation be entitled to the protection of those very same things? As Lord Woolf MR. said in *R v Broadcasting Standards Commission*:⁶²

While the intrusions into the privacy of an individual which are possible are no doubt more extensive than the infringements of privacy which are possible in the case of a company, *a company does have activities of a private nature which need protection from unwarranted intrusion. It would be a departure from proper standards, if for example, the BBC without any justification attempted to listen clandestinely to the activities of a board meeting.* The same would be true of secret filming of the board meeting. The individual members of the board would no doubt have grounds for complaint, but so would the board and thus the company as a whole. *The company has correspondence which it could justifiably regard as private and the broadcasting of the contents of that correspondence would be an intrusion on its privacy.* (emphasis added)

The things that the Canadian *Charter*, statutes and cases protect are not necessarily tied to 'humiliation, emotional suffering and personal distress.' Rather, they have more to do maintaining control of ones' reputation and property interests; they are to protect freedom from unwanted or unlawful intrusions. These are things that are of interest to corporations as much as they are to natural persons.

It is argued that these matters are better protected by other torts such as nuisance, defamation and trespass. But that is an argument against any recognition of the existence of the tort of invasion of privacy. It is not an argument against affording privacy rights to corporations.

Nor does it make sense to say that just because corporations may be unable to suffer damage to human dignity, they therefore have no standing to bring actions in invasion of privacy. It could be that a corporation would not be able to prove that it suffered humiliation, for example, as the result of an invasion of its privacy. But it is also true that a natural person may not be able to prove humiliation in similar circumstances. It is matter that is more appropriately dealt with as a question of damages.

Either a corporation is a separate legal entity, or it is not. The Canadian and Australian corporate statutes make it clear that corporations are separate legal entities in those jurisdictions. And either there are or are not privacy rights

62 [2000] 3 All E.R. 989 at 999.

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afforded to people in Australia and Canada. If there are, there is no reason that a legal person such as a corporation shouldn't be able to bring an action to protect its privacy interests.

Conclusion

The law of privacy is still developing in Australia and Canada. But it appears to encompass a much broader range of issues than just human dignity, humiliation and emotional suffering, as is suggested in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd.*⁶³

In any case, matters of human dignity, humiliation and emotional suffering are more appropriately considered in the context of damages, rather than as the elements comprising the tort of invasion of privacy. A corporation may not be able to prove certain elements of damages, but that is not reason to entirely deny it standing to bring a privacy action. Rather than entirely precluding corporations from bringing privacy actions, it would be preferable that corporations be free to assert claims in privacy, and then succeed or fail as the circumstances of each case dictates.

63 Note 13.