

Big brother and privacy: who wins?

By JANICE MUIR

Privacy. The right to believe that in a free and democratic society, individuals are protected from unnecessary encroachments from the State. Is it a myth, or do people really have the right to be protected from zealous representatives of the Queen?

Justice Gerard V. La Forest knows the answers. In Charlottetown recently for the Chief Justice Thane A. Campbell Lectureship in Law, the former Supreme Court judge endorsed the need for courts to remain as "guardians of the constitutional values of society."

In his presentation, Justice La Forest told over 200 in attendance that "the broad and general right to be secure from unreasonable search and seizure guaranteed by section 8 is meant to keep pace with technological development, and accordingly, to ensure that we are ever protected against unauthorized intrusions upon our privacy and agents of the state, whatever technical forms the means of invasion may take."

Citing the bugging of telephones as a "massive invasion of privacy," Justice La Forest spoke of the individual's right to a legitimate and reasonable expectation to privacy. He said the courts should be concerned about allowing the police to intercept private communication solely on the basis of their own reasonable belief that valuable evidence stands to be gained.

"We all have a profound interest in privacy. It serves as

a shield for us against state powers. As we pursue our rights and activities without government intrusion, the courts must ensure privacy for all people. The courts are guardians of the constitutional

Society has come to realize that privacy is at the heart of liberty in a modern state...

Privacy is essential for the well being of the individual.

For this reason alone, it is worthy of constitutional protection, but it also has profound significance for the public order. The restraints imposed on government to pry into the lives of the citizen go to the essence of a democratic state.

values in society. That is the price of freedom," he said.

Further, Justice La Forest said that "electronic surveillance is indiscriminately acquisitive; its reach extends to the conversations of the innocent and the guilty alike."

He added that the indiscriminate acquisitiveness of electronic surveillance invites

the courts to redouble their vigilance, and to be especially sensitive of the potential of certain practices to undermine the expectation of Canadians that their communications are inviolable.

"Privacy is central to a free and democratic society. It safeguards human dignity by providing all individuals with a shield against forced intrusions into their personal space. Privacy guarantees that individuals may move freely, think freely and participate equally in democratic decision making. In particular, the Charter limits the actions of government. Section 8 of the Charter specifically guarantees privacy rights over property, over the person and over information.

"Informational privacy is built on the principle, and upheld by the Supreme Court, that all information about an individual is fundamentally his or her own property. In other words, no one should have more control over the personal information than the person it concerns.

"It is sad to reflect that, even with the assistance of the Charter, the courts have failed to take the steps necessary to avoid this danger, and that if Canadians are to receive adequate protection against the insidious threat to individual privacy posed by electronic surveillance, they must turn to Parliament to provide additional safeguards. There is a biting irony in this. The Charter was designed to protect us from possible inroads on individual rights by Parliament."

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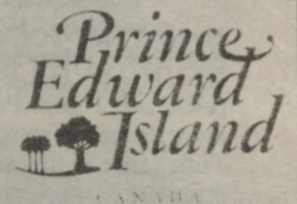


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