

Ontario Photographers Rights

Charter of Rights and Freedoms

Everyone in Canada has the fundamental freedom of thought, belief, opinion, and expression, including the freedom of press and other media of communication.

Basically this provides every Canadian the freedom to take photographs and use methods to share those photographs. This does not mean that those photographs may be used in any and all manners that the photographer wishes though.

Privacy Act

The privacy act is often wrongly assumed to provide personal privacy to individuals when in public.

In fact the privacy act only protects personal information that is submitted to the government.

Privacy Act, 2.:

The purpose of this Act is to extend the present laws of Canada that protect the privacy of individuals with respect to personal information about themselves held by a government institution and that provide individuals with a right of access to that information.

Where can I photograph?

A photographer can take a photo anywhere that the photographer is legally allowed to be. This includes but is not limited to:

- Your own property
- Public property
- Private property with permission of owner

The laws regarding where you can legally be are beyond the scope of this pamphlet to properly describe and annotate

Unless otherwise notified a photographer may take photographs when legally on private property.

What can I photograph?

Assuming no others laws are being broken you may photograph anything you can see.

Despite common misconceptions this includes:

- Children
- Accidents
- Fire scenes
- Infrastructure
- Residential buildings
- Industrial buildings
- Criminal activity
- Law enforcement officers

The most notable exception and basic rule of thumb on whether the subject was legally photographed is considered "reasonable expectation of privacy".

Anybody that has a "reasonable expectation of privacy" cannot be legally photographed, even if other laws are being followed.

For example, a couple in an intimate embrace cannot be photographed from the sidewalk through their window. If the couple were outside and in the same embrace then they could be photographed legally.

What is publishing?

Publishing can roughly be defined as displaying for viewing. This can include:

- Print in newspaper, book, magazine, etc.
- Display in gallery
- Posting online

Posting online is not limited to social media sites or password protected sites.

What can I publish?

Your right to publish photographs is protected under section 2b of the charter of rights and freedoms

Any photograph may be published with these exceptions:

- You do not own
- Would interfere or threaten national security
- Would interfere with a large number of Canadian lives
- Name or photo of a minor convicted or charged with an offence
- A recognizable person endorsing a product or service without model release
- Image modified to deliberately mislead or misrepresent what an identifiable person is doing

Who owns a photograph?

Ontario does not have a law that gives each person a right to their image. This means that an image of a person is solely owned by the creator of that image.

A notable exception to this is when a photographer is working for somebody else. Then, unless otherwise stated through contract, the employer owns the copyright to the image.

Can I be forced to delete photos?

With very few exceptions nobody can force you to destroy your personal property. This means you cannot be forced to delete memory cards or expose your roll of film.

Notable exception is where the photograph jeopardizes national security.

Some relevant law

Canadian Charter of Rights and Freedoms:

2.b):

freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;

Criminal Code of Canada, 162. (1): ("Criminal Voyeurism")

Every one commits an offence who, surreptitiously, observes – including by mechanical or electronic means – or makes a visual recording of a person who is in circumstances that give rise to a reasonable expectation of privacy

Trespass to Property Act, 2.:

Every person who is not acting under a right or authority conferred by law and who, (a) without the express permission of the occupier, the proof of which rests on the defendant, (i) enters on premises when entry is prohibited under this Act, or (ii) engages in an activity on premises when the activity is prohibited under this Act; or (b) does not leave the premises immediately after he or she is directed to do so by the occupier of the premises or a person authorized by the occupier, is guilty of an offence and on conviction is liable to a fine of not more than \$2,000. R.S.O. 1990, c. T.21, s. 2 (1).

Where can I get more information online?

Canadian Charter of Rights and Freedoms:
<http://laws.justice.gc.ca/en/charter/>

Criminal Code of Canada:
<http://laws.justice.gc.ca/en/C-46/>

Trespass to property act:
<http://www.canadalegal.com/qosite.asp?s=1900>

Privacy Act:
<http://laws.justice.gc.ca/en/p-21/index.html>

General overview and links:
<http://ambientlight.ca/>

Notable Quote.

“Bottom line..... if it is viewable to the public, I see nothing wrong with taking a picture of it.”

- Superintendent Dave Pickford, Windsor Police Service