

Guidelines for Protecting Privacy Interests in Reasons for Judgment

The principle of open justice is a cornerstone of our judicial system. There are, however, times when the privacy interests of a litigant outweigh the public interest of open justice.

The need to protect the privacy of participants in the judicial system has led to statutory and common law restrictions on publication of certain facts or information. Where such restrictions apply, commercial case law reporters have traditionally assumed the task of editing reasons for decision before publication to ensure compliance with the law.

Publication of decisions by the courts over the internet has raised new privacy issues that must be addressed by the courts and the judges. Decisions involving family law matters are particularly sensitive. Courts in Canada have developed different solutions to protecting the privacy of the parties and others involved in such litigation. Some courts do not publish family law decisions at all; others publish only headnotes, using initials; while others publish the decisions with full names.

In 2002, the Court of Appeal decided to continue to publish family law decisions on our website, using initials to identify the parties in the style of cause and the body of the decision. It soon became apparent that using initials made identifying cases and conducting family law research difficult. In October 2003, the Court unanimously approved the return to the use of full names in family law judgments, except where otherwise precluded by law, with the recommendation that judges be encouraged to edit their decisions by including in the decision only personal information which is relevant to the decision being made. While the preparation of reasons for judgment is a discretionary matter and unique to each judge, some guidance can be provided to assist in the task. Four main objectives have been identified for each judge to consider when preparing reasons for judgment:

1. Full compliance with the law
2. Openness of the judicial system
3. Privacy interests of the litigant
4. Readability of the reasons for judgment

In addition to these principles, the following considerations may also be helpful in editing decisions for privacy concerns:

- The presence of **personal data** (e.g. address, account numbers) and **personal acquaintances' information** (e.g. personal data of parents, workplace, school) in a decision represents a high risk of violating privacy concerns;

- With respect to readability of the reasons for decision, **specific factual information** (names of communities, accused persons or persons acting in an official capacity) tends to have little or no legal relevance in and of itself, while **general factual information** (age, occupation, judicial district of residence) tends to be relevant;
- The presence of **general factual information** in a decision tends to represent a low risk of identification of a person if **personal data** (e.g. name, address) and **personal acquaintances** have been removed.

As indicated, each judge is independent and has complete discretion in preparing their reasons for judgment. These items are presented for guidance purposes only.

Dated: June 29, 2004

Signed: "The Honourable Chief Justice Finch"