

Prince Harry and Meghan's arrival could mean 'new grounds' for Canada's privacy laws

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Lawyers for the Duke and Duchess of Sussex sent a letter to British news outlets, accusing photographers of 'harassment,' and claiming that paparazzi have permanently camped outside the couple's Vancouver Island residence, attempting to photograph them at home using long-range lenses. (Frank Augstein/Associated Press)

British paparazzi may soon come face-to-face with Canada's privacy laws as the arrival of Prince Harry and Meghan has already prompted a warning to the U.K press to back off or face legal action.

But it's unclear what legal recourse the royal couple will have to keep news photographers away from their family.

David Fraser, a Halifax-based privacy lawyer, says, when it comes to privacy claims in Canada, he hasn't found any related to celebrities and paparazzi.

The lawsuits here that relate to invasions of privacy, most recently, deal with large-scale business data breaches, or hidden cameras, he said.

"So this is relatively new grounds that we're looking at, maybe because we don't have the same sort of paparazzi culture or the same sort of celebrity culture in Canada. But so far, a claim like this has not been made or at least hasn't gone to a published decision," he said.

"It's not something that's really been tested a whole lot in Canada. We don't have a paparazzi culture."

As paparazzi descend on Harry and Meghan, B.C. privacy laws could face first celebrity test

Buckingham Palace announced Saturday that the prince and his wife will give up public funding and try to become financially independent. The couple is expected to spend most of their time in Canada while maintaining a home in England near Windsor Castle in an attempt to build a more peaceful life.

Video from Sky News showed Harry landing at Victoria's airport late Monday. The prince, Meghan and their eight-month-old son Archie were reportedly staying at a mansion on the island.

Lawyers for the couple sent a letter to British new outlets, accusing photographers of "harassment," and claiming that paparazzi have permanently camped outside their Vancouver Island residence, attempting to photograph them at home using long-range lenses.

They also allege that pictures of Meghan — on a hike with Archie and her two dogs, trailed by her security detail, on Vancouver Island on Monday — were taken by photographers hiding in the bushes.

"There are serious safety concerns about how the paparazzi are driving and the risk to life they pose," the letter read.

When it comes to privacy issues in Canada, there are a few ways Canadians can take action, says Iain MacKinnon, a Toronto-based lawyer.

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One can argue "intentional infliction of mental stress" in which the conduct of the defendant has to be proven to be flagrant and outrageous; calculated to produce harm, and results in visible and provable illness, he said.

There's also what's known as "intrusion upon seclusion" in which the defendant's conduct must be intentional or reckless and have invaded the plaintiff's private affairs "without lawful reason." Also, a "reasonable person would regard the invasion as highly offensive causing distress, humiliation or anguish," MacKinnon said.

And there's public disclosure of private facts, when one publicizes an aspect of another's private life — without consent — that would be highly offensive to a reasonable person. The publication also would not be of legitimate concern to the public.

Trudeau says he hasn't spoken to Queen about security costs after Harry arrives in Canada

"And Meghan Markle walking her dog in a public space ... would not fall under any of those," MacKinnon said.

They may seek recourse under the B.C. Privacy Act which specifically says it's a violation for somebody to willfully and without a legal basis violate the privacy of someone else, and allows for someone to sue the alleged perpetrator.

In making that determination, a judge is required to take into account the circumstances of the situation, the relationships between the parties and other people's rights and interests. There is an exemption, however, for journalistic publications and if the matter is of public interest.

Prince Harry and Meghan will give up royal titles, public funding

"Up until now, certainly when they've been part of the Royal Family and are highly public figures and are paid, their whole and entire lifestyle is paid for by public funds, then that's certainly one justification for arguing that what they do is a matter of public interest," MacKinnon said.

"As they may recede from public life and become more private citizens, that argument may be more difficult to make. But certainly today, this is headline news, them leaving England, leaving the Royal Family, moving to Canada. It's tough to say that this is not a matter of public interest."

Most people won't consider it to be highly offensive that someone took a picture of Meghan in public park because there isn't a reasonable expectation of privacy, MacKinnon said.

Prince Harry saddened to step back, but wants 'more peaceful life'

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Prince Harry addressed the myriad emotions he and his wife, Meghan, are feeling after agreeing with Queen Elizabeth that the couple would step down from official roles. 1:33 "Now, if they're shooting with telephoto lenses into a house where Harry and Megan are staying and they're photographing them in their private lives inside a house, that might be a different story."

Fraser says, under the act, an invasion of privacy can also include surveillance.

"It's really going to depend upon the exact circumstances of what's alleged. But it certainly sounds like a group of photographers, paparazzi following them around might fit into the category of surveillance," he said.

Prince Harry might be looking for a job when he comes to Canada. Here are some options

Fraser said even if one is in a public place, there's still an expectation of privacy.

Being in a public park, there's a significantly reduced expectation of privacy. But when it comes to a photographer hiding in a bush, a court might say it's arguable that one has an expectation of privacy if they are in a place, looking around, not seeing other observers and somebody has hidden themselves, Fraser said.

"There would also probably be an element of kind of additional intrusion based on the fact that the person has hidden themselves and is covertly trying to surveil somebody," Fraser said.

The Charter of Rights and Freedoms doesn't give anybody a particular privacy interest among individuals — only against the state. It does, however, provide a right for freedom of expression, which would be the right that the photographers have, Fraser said.

Prince Harry lands in Victoria to reunite with Meghan and son Archie

"So any court considering these issues would have to balance those interests which includes the rights of journalists to collect information, to disseminate that information, against a particular privacy interest."

Still, Fraser believes Harry and Meghan could find a "level of sympathy" in the courts

"Given that, it seems that they're moving from the United Kingdom to Canada, least part time, in order to get away from this glare and get away from these invasions of privacy," he said.

It's unlikely that the royals would see a big cash windfall in the event their legal claims were successful. Privacy damages are relatively low or modest in Canada, Fraser said.

"But I would expect that an injunction so a court order requiring the paparazzi to stay away might be something that they would seek as well."

And as MacKinnon noted, Harry and Meghan, through their lawyers, are probably attempting to set new ground rules.

"My guess is that they're trying to draw a new line in the sand here with both the Canadian media [and], more likely, the Fleet Street tabloids."