

Who Is Legal Protection Available For?

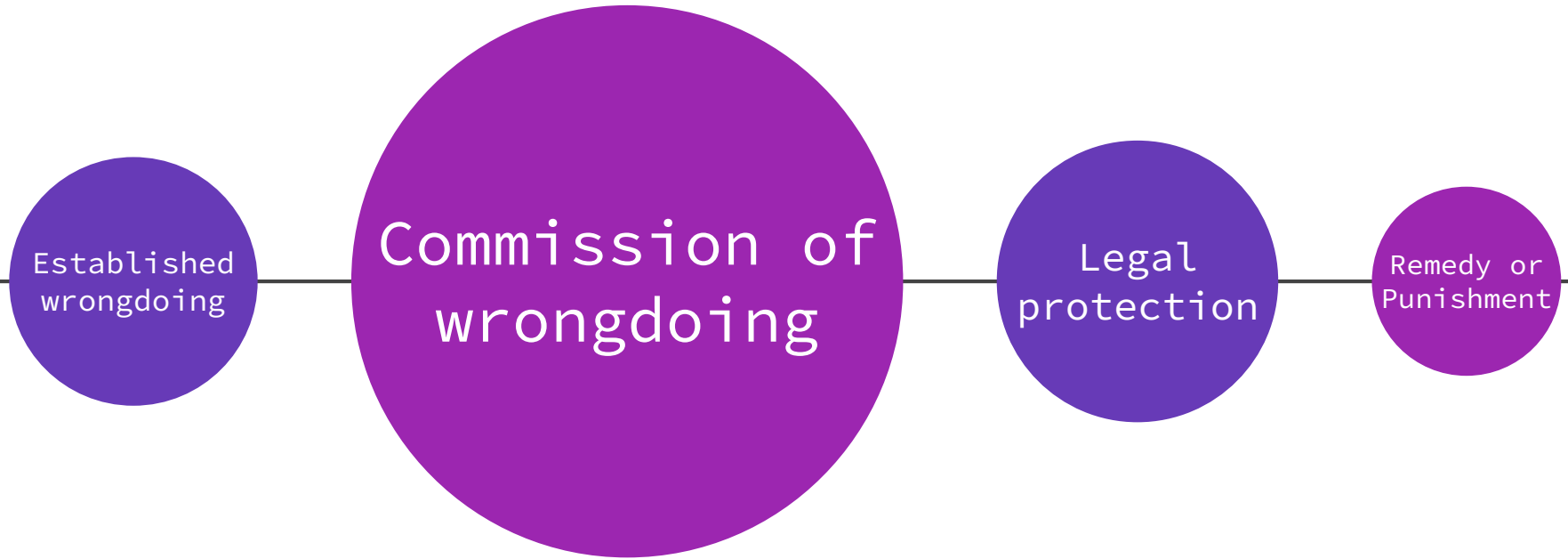
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What is legal protection?

Legal protection refers to the recognition, compliance, and support for the rights of individuals. It involves the principles and rules that regulate and protect individuals in various contexts. In offering said protection, our legislators had to establish measures for protecting and restoring violated rights, as well as measures of responsibility in case of unlawful acts.

When does legal protection kick in?



Financial Scams

Electronic Crimes Act

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SECTION 7(1) A person shall not, intentionally or without lawful excuse or justification, induce another person to enter into a relationship, with the intent to defraud that person or cause that person to act to his own detriment or suffer loss of property, by – (a) any input, alteration, deletion or suppression of data; or (b) any interference with the functioning of an electronic system.

SECTION 7 (2) A person who contravenes subsection (1) commits an offence and is liable on- (a) summary conviction to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both; or (b) conviction on indictment to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding seven years, or to both.

THE ELECTRONIC TRANSFER OF FUNDS CRIMES ACT, 2007

AN ACT to regulate the transfer of money by electronic means by use of a card or data associated with a card for the purpose of instructing or authorising a financial institution to debit or credit a cardholder's account when anything of value is purchased and for other related purposes

SECTION 19 General Offence for Fraudulent Electronic Fund Transfer

A person who, in the course of an electronic fund transfer, uses, with intent to defraud an issuer or a creditor, the personal or financial data or credit account numbers or card of another, or who obtains money, goods, services, or anything else of value by using without authorisation using the personal or financial data or credit account numbers or card of another or by representing that he is another, where such an offence is not otherwise provided for under this Act, commits an offence and is liable on—

- (a) summary conviction to a fine of thirty thousand dollars or to imprisonment for two years or to both; or
- (b) conviction on indictment to a fine of fifty thousand dollars or to imprisonment for five years or to both

Identity Theft

Electronic Crimes Act

SECTION 5 (1) A person shall not intentionally, without lawful excuse or justification make fraudulent or dishonest use of an electronic signature, password or other unique identification feature of another person.

SECTION 5 (2) A person who contravenes subsection (1) commits an offence and is liable on- (i) summary conviction to a fine not exceeding two hundred thousand dollars or to imprisonment for a term not exceeding three years, or to both; or (ii) conviction on indictment to a fine not exceeding five hundred thousand dollars or to imprisonment for a term not exceeding seven years, or to both.

Doxxing - To search for and publish private or identifying information about (a particular individual) on the internet, typically with malicious intent.

International Legislation

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Criminal Code Canada, Ontario

- 372** (1) Everyone commits an offence who, with intent to injure or alarm a person, conveys information that they know is false, or causes such information to be conveyed by letter or any means of telecommunication.
- (4) Everyone who commits an offence under this section is
- (a) guilty of an indictable offence and liable to imprisonment for a term of not more than two years; or
 - (b) guilty of an offence punishable on summary conviction.

Deep Fakes - an image or recording that has been convincingly altered and manipulated to misrepresent someone as doing or saying something that was not actually done or said.

Non-Consensual Sharing of Intimate Photos

Electronic Crimes Act

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Section 8 - Violation of privacy

(1) Subject to subsection (2), a person who, intentionally or without lawful excuse or justification, captures, publishes or transmits the image of a private area of a person, or the image whether whole or partial of a person in a vulnerable position without his or her consent, under circumstances violating the privacy of that person, commits an offence and is liable on –

(a) summary conviction to a fine not exceeding one hundred thousand dollars or to imprisonment for a term not exceeding two years, or to both; or

(b) on conviction on indictment to a fine not exceeding two hundred and fifty thousand dollars or to imprisonment for a term not exceeding five years, or to both.

(2) A person who commits an offence under subsection (1) is liable to face the same penalty specified in that subsection, where the victim of the offence is disabled or mentally incapacitated and incapable of giving his or her consent.

(3) For the purposes of this section–

“capture” with respect to an image, means to videotape, photograph, film or record by any means; “

private area” means the naked or undergarment clad genitals, pubic area, buttocks or female breast;

“publishes” means reproduction in the printed or electronic form and making it available for public;

“transmit” means to electronically send a visual image with the intent that it be viewed by a person or persons;

“under circumstances violating privacy” means circumstances in which a person can have a reasonable expectation that –

(i) he or she could disrobe in privacy, without being concerned that an image of his or her private area was being captured; or

(ii) any part of his or her private area would not be visible to the public, regardless of whether that person is in a public or private place.

“vulnerable position” means circumstances in which a person is ill, injured or otherwise physically incapacitated.

Who are the fines paid to?

The Crown.



Financial Damages / Compensation for Emotional Distress

Elmo alis Ltd. V The Attorney General of Anguilla:

“It is simply not sufficient for a party to assert, as a basis for entitlement to an award of damages, that they were treated unfairly by a public authority and that they have suffered pecuniary harm as a consequence. To obtain an award of damages in judicial review proceedings, a claimant must plead and prove a recognised private law cause of action, for which damages would be available as a remedy.”

AG v Ramanoop

The Board explained that 'compensatory' damages may be awarded by the Court for constitutional breach where the claimant has suffered wrong in much the same way and by the same measure that damages are awarded at common law in tort. This is usually referred to as general damages. The Court also referred to another element of damages sometimes termed 'punitive' or 'exemplary' damages which may be ordered as an additional remedy and sum to not to punish the defendant but 'to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches.

Allin Durand v Superintendent Of Prisons et al

Mr. Allin Durand is employed as a prison officer in the service of the Government of Anguilla. On March 15th, 2019, he was charged by the Acting Superintendent of Prisons ('Acting Superintendent') with the offences of breach of confidence and discreditable conduct contrary to sections 14(1) and 14(2) of the Prison's Code of Discipline. She suspended him from duty on April 8th, 2019, with full pay and referred the charges to His Excellency the Governor Mr. Tim Foy for determination.

Mr. Durand contended that the actions by the Acting Superintendent and the Governor caused him irreparable loss of reputation, hardship and emotional and physical distress which is ongoing. He sought general and vindicatory damages in the global sum of USD\$300,000.00 and prescribed costs of USD\$30,000.00.

Allin Durand v Superintendent Of Prisons et al

Having regard to the facts as found, I am of the considered opinion that Mr. Durand is entitled to an award of damages in respect of the damage suffered by him as manifested in his averments that the defendants' refusal to consider his written representations that they had erred, caused him periods of anxiety and forced him to take legal action. This is manifest from the record and the course that the litigation has taken. I find however, that although ill-advised the defendants were not motivated by malice or spite and meant him no ill-will apart from their obvious determination to pursue disciplinary charges in accordance with the Prison Code. Their belated concessions make this abundantly clear.

The Balancing Act

Allin Durand v Superintendent Of Prisons et al

The reality is that Mr. Durand suffered no reduction in remuneration from his employment and had the opportunity while at home to pursue healthy no-cost avenues to ameliorate any stress that may have been occasioned by the unlawful conduct. I do not think that he reasonably experienced an inordinate amount of stress that would elicit a significant award in damages. This case is also not one which justifies making an additional award to reflect the sense of public outrage alluded to in Ramanoop and urged on Mr. Durand's behalf. I am satisfied that the declaratory reliefs achieve that objective. I agree with the learned Attorney General that Mr. Durand has produced no evidence of pecuniary loss and therefore the award contains no such element.

In Bibi Ally v The Commissioner of Police et al where the claimant being unable to substantiate any pecuniary loss and was awarded \$5,000.00 for vindication of the breach of her constitutional right. In that case, the court made declaratory orders that the claimant's constitutional right to protection of privacy was violated when the Police conducted an unlawful search warrant at her house and removed computer and other electronic devices.

Bibi Ally v The Commissioner of Police et al

The approach taken by the Court in the Bibi Ally case commends itself to me. In that regard, I am satisfied that a nominal sum will adequately compensate Mr. Durand for any feelings of embarrassment and emotional distress which was occasioned by this unfortunate incident, and vindicate the related negative fallout he experienced from the constitutional breaches, procedural irregularities and absence of due process.

In the circumstances, using the Ally award of \$5,000.00 as a baseline and taking into account the indisputable inflationary effects which have been evident throughout the region and specifically in Anguilla since 2018 when that award was made, and without any scientific calculations, I would add a sum of \$250.00 to the Ally award for present purposes to capture that upward inflationary movement.

In the premises, I make an award of \$5,250.00 to Mr. Durand as ‘general’ damages in respect of the constitutional breaches by the defendants of his right to protection of the law and due process in relation to the declarations made by the learned judge.

How Digital Technologies May Improve The Mental Burdens

- 1. E-Litigation Portal;**
- 2. Online Cpr;**
- 3. Online Case Libraries;**
- 4. Online Legislation (Laws.Gov.Ag)**
- 5. Online Gazette (Laws.Gov.Ag)**

Questions/Concerns?

Now is the time to ask!

