

*Essays in Honour  
of John M. Sharp*

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Dale Gibson

# Aspects of Privacy Law

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# **Aspects Of Privacy Law**

Essays in Honour  
of John M. Sharp

*Edited by*  
**Dale Gibson**  
*University of Manitoba*

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# **Aspects Of Privacy Law**

# DEDICATION

## JOHN MacLAREN SHARP

### 1940-1976

D.T. Anderson\*

This book, a collection of essays that together give timely and helpful increase to our understanding of a publicly important topic presenting many complex legal and social problems for resolution by our courts and legislatures, has been prepared and is presented by its contributing writers in affectionate and grateful tribute to the late John MacLaren Sharp. We remember thus the gift of his friendship and the accomplishments of his distinguished, but so brief, service as teacher, scholar and law reformer.

John Sharp came to Manitoba from his native England (one perhaps should say "his native Cornwall," for he was proud of his Cornish birth) in 1967, after three years teaching law in the University College of Wales, Aberystwyth, to join the Faculty of Law of the University of Manitoba. In 1969, he was appointed the first Director of the University's Legal Research Institute, and from 1969 to 1973 he was also the Chief Research Officer to the Manitoba Law Reform Commission. In 1976, aged only 35, he died after several years of progressively worsening illness. Although interrupted by occasional periods of apparent recovery and new hope, the disease was relentless; it was, however, resisted with a quiet valour and borne with a cheerful fortitude that deeply moved and inspired all those who knew this brilliant and lovable man.

Of all the deeply troubling thoughts that must have crowded in upon him as he entered the last phase of his long battle with his cancer, and realized the scope of its disabling effects, one matter that particularly concerned John Sharp was that he would not be able to complete the book he intended to write on the law of privacy in Canada. He regarded this an obligation undertaken to the Foundation for Legal Research, and one of my most poignant memories of those sad days is of his determined effort to use all his remaining power to put together and in good form for the use of those who might later take up the subject the notes and materials that he had earlier begun to assemble for the projected book.

It was a work he was pre-eminently qualified to undertake. The subject of privacy had caught his attention soon after he came to Manitoba, and he became deeply interested in it. This interest in privacy seems, as one looks back, rather

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puzzling, as John was himself the most open, forthcoming and straightforward of men. The apparent paradox (if that is what it is) can, I think be explained. John had a strong sensitivity to the feelings of others — a profound, almost instinctive, awareness of those private thoughts, inner concerns, and modest claims to individual character and autonomous action that give us each a sense of his or her own integrity and self-worth, and of their fragility and vulnerability to damage by clumsy intrusion or exposure. This was part of his genius for friendship, with persons in all walks of life and of widely varied interests and personalities, and underlay those extraordinary gifts of understanding and sympathy that caused so many (students and others) to look to him for counsel and support in their own moments of doubt or stress. Intellectually, devising appropriate legal measures to protect preferred values, and reconciling competing legitimate claims for confidentiality or disclosure, presented a stimulating challenge. And one suspects also that (whether innate or prompted by Cornish memories of Trelawney) there was a healthy alertness to the dangers of political or economic power being applied, deliberately or heedlessly, in ways that would affront basic human claims to be let alone.

In any event, John made early and important contributions to the study of privacy and the law. In 1968, with Dale Gibson, he wrote a pamphlet on privacy and commercial reporting agencies, and two years later he published a fuller book on the subject: *Credit Reporting and Privacy in Canada and the U.S.A.* In various articles, talks and briefs, he dealt with many other aspects of the topic, including computers, telecommunications, electronic surveillance, and consumer information. He served as a consultant to the Federal Government's Task Force on Privacy and Computers, and he was the principal draftsman of the Privacy Act of Manitoba.

Privacy is, therefore, a most fitting theme for this work in memory of John Sharp. Its range of subjects and views would please him. He would be grateful for the affection and regard that underlies it and, especially, for the place taken as editor by his friend Dale Gibson, with whom he worked so closely in many projects in teaching and law reform.

Other subjects would have been equally appropriate. In neither his work nor any other aspect of his life was John Sharp ever confined to a single note. Indeed, in his early studies and teaching his first interest was International Law, which he had first encountered in his fondly remembered years at Cambridge (Jesus College), and had later studied at The Hague Academy of International Law and as an International Law Fund Scholar working at the British Foreign Office. He brought his enthusiasm for this subject to his teaching in Manitoba, while developing also his justly-admired course in Torts and programmes for faculties outside the law school in commercial and medico-legal topics. Moreover, his work for the Law Reform Commission involved an extremely diverse lot of problems.

John Sharp's writings and law reform proposals stand as evidence of his gifts and diligence; but his greatest legacies, to those of us privileged to know him as students or colleagues, are not found in fixed and written form, but in our

recollections of him and their continuing influence on our own lives and work. For those who could not share this privilege, I should at least mention two outstanding aspects of John's life: his great gifts as a teacher, and his capacity, amounting to genius, for friendship.

At the root of John's success as a teacher lay his regard for his classes, his enthusiasm for the law, his respect for high standards of performance, and a willingness and capacity to work endlessly to help his students understand their subjects and realize their talents more fully. The underlying seriousness of his approach to the obligations of a teacher were sometimes well concealed by an easy manner and seldom repressed sense of fun at the lecturn. Any topic might be leavened by flashes of humour, ranging from subtle witticisms to outrageous puns, evoking either smiles, laughter or groans from the delighted audience; or in memorable comic illustrations of the workings of the law or the human foibles of its messengers and clients. However, beneath the genial and gentle manner, one now sees, were strong, almost fierce, qualities of dedication and self-discipline — revealed in the careful presentation of lectures, the constant search for new and better ways to bring students to a comprehension of the subject, and the uncounted hours spent in helping students with their questions and problems.

Probably John Sharp's splendid qualities as teacher and companion showed most fully in the several summers when, with his accomplished and energetic wife Carol, also a lawyer, he conducted the first of the federally sponsored residential courses in common law for civil law students from Quebec and Ottawa. They could not have had a more competent and helpful mentor, and many still write to remember those happy summer days in which useful studies were blended easily with pleasant recreation in an atmosphere of real welcome and friendship.

As a colleague and friend, John was superb. His diversity of interests and enthusiasms (not least in sport, including a passion for Canadian football), his openness to new experiences, his unbounded sense of fun, and his impulse to gentle mischief or teasing, enlivened many a session in the Faculty Common Room. It could be said of John, as someone said of the English parson-wit Sydney Smith, that he was a crackling bonfire of good cheer, warming the room for us all, and exploding in sparks of mirth that kindled the wit and humour of even the dourest of us.

But life, in the academy or outside it, is not always merry. There are moments of doubt, distress, even despair, that call for the counsel and support of a friend. No one, in such moments, was failed by John: his integrity, insight, and compassion made him a trusted confidant and counsellor of friends in all walks of life, and his many acts of kindness and encouragement, though rarely seen by others, enriched many lives.

It was ironic that he, who had given so much help to others, should himself have been stricken with a progressive terminal illness. It was typical that even then he continued to radiate cheer and encouragement to others. On one occasion he journeyed to another city to comfort someone with a similar

affliction. A visit to his sickroom toward the end, while one dreaded it beforehand like all such visits, invariably was turned by John into an easy and agreeable experience. Indeed, if others came along it almost became a party, with John as always the attentive host, drawing everyone into the proceedings and making all feel that they had added to the success of the occasion. We can only guess at what effort this must sometimes have cost him, but the gaiety never seemed forced, and the human interest and sympathies that made him so good a friend and companion stayed true and strong. He had his black moments, of course, but he sustained the periodic disappointments, and the sense of failing powers that to a vital intelligence may be the worst features of wasting illness, with a remarkable faith that under trial became even more sure and serene. It was with fortitude, rather than resignation, that he confronted disease, and with a cheerful spirit that he faced its consequences.

But it would not be just to the memory of John Sharp to dwell unduly on his last days, moving and inspiring though they were to those who shared them in any measure. His life was short, but it was full and useful, enjoyed in the happy companionship of a talented and vivacious wife. His work left the law better understood and improved. His teaching opened new vistas of thought and interest for his students. His kindness and good humour brought warmth and joy into many lives.

When John died, we felt ourselves immeasurably impoverished. Now, in the fuller perspective given by the intervening years, we may see more clearly not only how much our fortunate association with John enhanced our lives, but how his memory and example continue to enrich and inspire us.



## EDITOR'S NOTE

Dale Gibson\*

This book began as a project of John Sharp's. Before the onset of his final illness, Professor Sharp undertook, with the encouragement and financial assistance of the Canadian Bar Association's Foundation for Legal Research, the preparation of a treatise on the law of privacy. After his tragic death a number of his colleagues at the University of Manitoba decided to carry the project to completion, albeit in a rather different form than Professor Sharp had planned. To our good fortune, we were able to induce a number of Canada's leading privacy law scholars to join us in the enterprise.

The result, we hope, is a reasonably comprehensive examination from diverse points of view of the condition of the law of privacy in Canada in the autumn of 1979, together with suggestions for future improvements. While Canada in 1979 has been our principal focus, it is our hope that readers in other jurisdictions will also find much to interest them in these essays; and it is our expectation that many of the observations made will remain relevant for some years to come.

Thanks are due to many organizations and individuals. The Foundation for Legal Research of the Canadian Bar Association generously agreed to transfer Professor Sharp's Grant-in-Aid to the present project, and to augment it. The Social Science Research Council of Canada made possible, through a sabbatical leave fellowship, part of the time needed to complete the editorial chores. The Faculty of Law of the University of Manitoba made available both stenographic assistance and a sum of money which permitted a thorough footnote and quotation check to be carried out by first year law students (thus advancing the students' familiarity with legal research materials, and helping to preserve the editor's sanity). The Editorial Board, consisting of Professors D.T. Anderson, J. Irvine, and P. Osborne, did a fine job, both in providing the editor with sound direction and advice when requested, and in ensuring when necessary that he kept his nose to the grindstone. Lee Gibson performed one of her fabled last-minute rescue operations, reading the manuscript in the final few days before it went to the publisher, and thereby saving the editor from numerous embarrassments. Finally, but principally, I am deeply grateful to the authors for their enthusiastic participation in the project, and for their great patience with an editor in the throes of learning that editorial work is not as easy as it looks. Their collegiality and good humour were poignantly reminiscent of the man in whose memory the project was undertaken.

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\* Faculty of Law, University of Manitoba

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