



# NEWSLETTER

Canadian IT Law Association

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## Anonymity

### Recent article:

- Peter Carmichael Keen, "Anonymity and the Supreme Court's Model of Expression: How Should Anonymity be Analyzed Under Section 2(b) of the *Charter*?" (2003) 2 *Canadian Journal of Law & Technology* 167.

## Competition Law

The federal Competition Bureau concluded in a [news release](#) that the exclusive, pre-Christmas distribution agreement between Best Buy Canada Ltd. and TGA Entertainment Ltd. for the Rolling Stones *Four Flicks* music DVD set did not violate the *Competition Act*. The release states that "exclusive arrangements are not in and of themselves contrary to the law."

## Consumer Protection

NOVA SCOTIA'S [CONSUMER PROTECTION ACT \(amended\)](#), S.N.S. 2001, c. 40, was proclaimed on December 19. Of all the jurisdictions that have thus far passed specific consumer protection measures for Internet sales contracts, Nova Scotia's most clearly resembles the Internet Sales Contract Harmonization Template. The Template, and the Nova Scotia amendments, focuses on issues relating to contract formation and cancellation, reimbursement rights on credit cards, and disclosure of information before a consumer enters into an Internet sales contract. Some of these requirements have been relegated to the [Internet Sales Contract Regulations](#) passed pursuant to the *Consumer Protection Act*. The

regulations became effective upon proclamation of the amendments to the Act.

THE U.S. FEDERAL TRADE COMMISSION (FTC) has sought a stipulated order from a federal district court requiring Domain Registry of America, Inc., of Ontario, to cease making misrepresentations in the marketing of its domain name registration services and require it to pay redress to consumers. According to the FTC's [Complaint](#), the company violated the FTC Act by misleading consumers into thinking that they were renewing their registrations with their current registrar, when instead they were transferring their registrations to the company's registrar.

## Health Law

### Recent article:

- Elaine Gibson, "Jewel in the Crown? The Romanow Commission Proposal to Develop a National Electronic Health Record System" (2003) 66 *Saskatchewan Law Review* 647.

## International Trade

### Recent articles:

- Myra J. Tawfik, "Intellectual Property Laws in Harmony with NAFTA: The Courts as Mediators Between the Global and the Local" (2003) 2 *Canadian Law & Technology Journal* 213.
- Todd Weiler, "Technology and International Trade: Will the Real Transformer Please Stand Up?" (2003) 2 *Canadian Law & Technology Journal* 223.

## Jurisdiction

A recent Supreme Court of Canada decision on the enforcement of a default foreign judgment in Canada signifies the importance that the Court continues to place on the "real and substantial connection"

test, which has implications for jurisdiction and the Internet. In *Geoffrey Saldanha, et al. v. Frederick H. Beals III*, the Court surveyed the conditions that must be met before a domestic court will enforce a judgment from a foreign jurisdiction. Mr. Justice Major, for the majority, stressed that “A real and substantial connection is the overriding factor in the determination of jurisdiction,” and that factors such as presence in the foreign jurisdiction “will serve to bolster the real and substantial connection to the action or parties.” The Court expressly stated that the *Morguard* test for the recognition and enforcement of interprovincial judgments should apply equally to the recognition of foreign judgments. Moreover, the Court concluded that the defence of public policy to challenge enforcement of foreign judgments should have a narrow application, and is “not a remedy to be used lightly.” The Court also discussed the reality of the world economy, and considered that it is reasonable that individuals who do business in a foreign jurisdiction should be required to defend themselves in that jurisdiction.

## Privacy

**THE PRIVACY COMMISSIONER** of British Columbia has sent a [letter](#) to the federal Minister of Industry advocating his view that British Columbia’s *Personal Information Protection Act* is substantially similar to the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). David Loukidelis strongly disagrees with the views of the former federal privacy commissioner, who criticized the B.C. legislation for failing to provide effective privacy protection. He urges that the “substantial similarity” analysis should employ the test articulated by Industry Canada in the *Canada Gazette* (that is, the provincial legislation should be substantially similar), not the test suggested by the former federal privacy commissioner (that the provincial legislation be equivalent or superior to the federal PIPEDA).

**THE PROVINCE OF QUEBEC IS SET TO** contest the constitutional validity of the federal *Personal Information Protection and Electronic Documents Act* (PIPED) on the basis that the federal law interferes with Quebec’s constitutional authority to enact laws relating to civil rights. The government of Canada has consistently maintained that it has

not exceeded its jurisdiction arguing it has authority under the trade and commerce provisions of the Constitution to enact privacy laws related to commercial transactions. As of January 1, 2004, the *PIPED Act* applies to any business in provinces that do not have substantially similar private-sector privacy legislation. British Columbia and Alberta enacted privacy legislation at the end of 2003 and since 1993, Quebec has had private sector privacy legislation. Ontario Information and Privacy Commissioner Ann Cavoukian wants the Ontario government to follow the course of action taken by British Columbia and Alberta and introduce private sector legislation in 2004. A constitutional challenge by Quebec at this point is somewhat surprising given that its privacy legislation was declared to be “substantially similar” by the [Privacy Commissioner of Canada](#), thus avoiding the application of the federal Act. It is unclear whether any of the provinces, particularly those now subject to the *PIPED Act* would support Quebec’s challenge.

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This newsletter is intended to keep members of IT.Can informed about Canadian legal developments as well as about international developments that may have an impact on Canada. It will also be a vehicle for the Executive and Board of Directors of the Association to keep you informed of Association news such as upcoming conferences.

If you have comments or suggestions about this newsletter, please contact Professors Michael Deturbide, Anne Mussett and Teresa Scassa at [it.law@dal.ca](mailto:it.law@dal.ca).

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Le présent bulletin se veut un outil d'information à l'intention des membres d'IT.Can qui souhaitent être renseignés sur les développements du droit canadien et du droit international qui pourraient avoir une incidence sur le Canada. Le comité exécutif et le conseil d'administration de l'Association s'en serviront également pour vous tenir au courant des nouvelles concernant l'Association, telles que les conférences à venir.

Pour tous commentaires ou toutes suggestions concernant le présent bulletin, veuillez communiquer avec les professeurs Michael Deturbide, Anne Mussett et Teresa Scassa à l'adresse suivante : [it.law@dal.ca](mailto:it.law@dal.ca)

Avertissement : Le Bulletin IT.Can vise à informer les lecteurs au sujet de récents développements et de certaines questions à portée juridique. Il ne se veut pas un exposé complet de la loi et n'est pas destiné à donner des conseils juridiques. Nul ne devrait donner suite ou se fier aux renseignements figurant dans le Bulletin IT.Can sans avoir consulté au préalable un conseiller juridique.

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