



NEWSLETTER

Canadian IT Law Association

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Constitutional Law

The B.C. Court of appeal has decided to grant leave to appeal in the case of *R. v. Bryan*. In that case Bryan had been charged and convicted with a violation of s. 329 of the *Canada Elections Act*, which prohibits the transmission of electoral results from one district to another district in which the polling stations are not yet closed. Bryan had done this by posting election results from the East Coast on a web site on the West Coast during the November 2000 federal election. At trial he argued that s. 329 of the Act violated his freedom of expression rights guaranteed under s. 2(b) of the Charter. The trial judge found that s. 329 did infringe s. 2(b), but was justifiable under s. 1 of the Charter. The decision was reversed by a summary convictions appeal judge, who found that the s. 1 justification was not made out.

In its decision granting leave, Smith J.A. of the B.C. Court of Appeal noted that the applicant had to establish that the court below had made an error on a question of law, and that the issue raised is one of importance. The applicant would also have to show that there was a reasonable possibility of success of the appeal. Smith J.A. found the test to be met. The question of law raised by the appeal is "whether the summary conviction appeal judge erred by substituting his view of the facts for that of the trial judge" (at para 20).

Copyright Law

The Federal Court continued its hearing this week into the application by the Canadian Recording Industry Association (CRIA) to have the court order

5 ISPs to disclose the identities of 29 different subscribers that CRIA believes are engaging in illegal uploading activity. A decision by the Court is expected shortly.

Privacy

The Assistant Privacy Commissioner of Canada issued [Case Summary #227](#) dealing with a complaint that a telecommunications company had allegedly recorded a telephone call and gave the police a copy of the transcript without the complainant's knowledge or consent. The complainant was accused of threatening a relative of his estranged girlfriend. The company denied the complainant's claim that it recorded and stored the content of communications for billing reasons or in the event complaints were made against the operator without the user being notified. The Commissioner's office was able to confirm that it was not the company's usual practice to record or save any personal information. The police officer had contacted the telecommunications company to inquire whether any such records were available, but the company indicated that this was not permitted "due to privacy issues." Having established no calls were being recorded and no transcripts were sent to the police, the Assistant Privacy Commissioner was satisfied that there had been no contravention of Principle 4.3. Thus, the complaints were not well-founded.

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.

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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

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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