



NEWSLETTER

Canadian IT Law Association

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Copyright Law

In *Positive Attitude Safety System Inc. v. Albian Sands Energy Inc.*, Noel J. of the Federal Court Trial Division considered a motion for summary judgment in relation to a claim for copyright infringement. The plaintiff had created a safety system called the Positive Attitude Safety System (PASS). The system was described in a book, and includes supporting materials to be used in its implementation. Businesses were licensed to use the system in their operations. It was alleged that the defendant created a similar safety system, called ASESS, which was based upon that of the plaintiff. Initially, the defendant used materials copied from the plaintiff's, but later replaced these materials with his own materials developed as part of ASESS. The similarities in the two systems included charts and boards to be used on the wall, employee "huddles", and the fact that both were employee, rather than management, driven systems.

Noel J. was of the view that the plaintiff's system was not performed in public when employees went into huddles as part of the system. However, he determined that a trial judge would be in a better position to determine if there was copyright infringement of the PASS system by the ASESS system. The trial decision will be an interesting one, as the case is one that raises serious questions around the idea/expression dichotomy in copyright law. As Noel J. noted: "PASS is basically an idea which was expressed in literary terms and forms. The expression of the idea is protected, but the idea is not." (at para. 68) However, Noel J. left to the trial judge the task of determining whether "when examined as a whole", the ASESS system "bears a certain resemblance both in terms of quantity and quality of the methodology, to the PASS system." (at para 71). This latter statement

suggests that the methodology expressed in the system may be protectable, which might skate rather close to protecting the idea, rather than the expression.

Privacy

IN A [RECENT NEWS RELEASE](#), British Columbia has announced plans to introduce new privacy legislation in response to the results of a comprehensive review of the United States *Patriot Act*. The review concluded that the *Patriot Act* presents risks to personal information collected in British Columbia and that steps should be taken to further protect the privacy of British Columbians. The new rules, expected this fall, will forbid Canadian subsidiaries of American companies from disclosing private information to American law enforcement agencies. The government's submission to the B.C. Privacy Commissioner is available online at <http://www.gov.bc.ca/mser/down/submission.pdf>.

THE PRIVACY COMMISSIONER HAS RELEASED two recent Findings. In [Finding #273](#) employees complained that their personal information was being collected after video surveillance cameras were installed. The Assistant Commissioner concluded that the complaint was resolved as the Broadcasting company agreed to inform its employees about the purposes for which the cameras were being used and to develop a policy document on the use of the surveillance cameras. In [Finding #274](#), a customer complained that his cellular phone company could not explain the calls he received from what he believed was a telemarketer working on the company's behalf. Although the Assistant Commissioner found that the company had not met the expectations outlined in Principles 4.8 and 4.8.1, because the client service representatives have since been given an information package so they can respond to customer inquiries, the complaint was resolved to the satisfaction of the customer and the Assistant Commissioner.

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 Anne Uteck 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 Anne Uteck 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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