



CANADA
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Country Report

CANADA

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1. Topic:	Federal Legislation - Government Review of Lawful Access Laws
Who:	Government of Canada
Where:	Ottawa, Ontario, Canada
When:	Announced: August 26, 2002 Comments due by November 15, 2002
What happened:	<p>Canadians are being consulted concerning lawful access to information and communications. [Lawful access is the lawful interception of communications, and the search and seizure of information by law enforcement and national security agencies. It can only be exercised with a legal authority, and is well-entrenched in laws such as the <i>Criminal Code</i>, the <i>Canadian Security Intelligence Act</i>, the <i>Competition Act</i> and other Acts of Parliament.] Federal government partners involved include the Department of Justice Canada, Solicitor General Canada, Industry Canada, the RCMP, the Canadian Security Intelligence Service, the Department of Foreign Affairs and International Trade and the Competition Bureau.</p> <p>The consultation process will include proposed changes to the <i>Competition Act</i>.</p>
Comment:	<p>New technologies, including the Internet and e-mail, are posing challenges to conventional lawful access methods. Updating the legislation is seen as being essential to a broad range of investigative bodies in continued efforts to fight crimes such as terrorism, child pornography, drug trafficking, smuggling, Internet and telemarketing fraud, price fixing and money laundering.</p>

2. Topic:	Provincial Jurisprudence: Cyber Cafés Regulated as Amusement Centres
Who:	City of Richmond, B.C. v S. L. & T. Dynamic Enterprises Ltd.
Where:	British Columbia
When:	August 15, 2002
What happened:	The petitioner city, Richmond (B.C.), obtained an order enjoining the respondent Café from operating without an amusement centre business license. The court found that the Café's practice of charging \$0.25 membership fees plus "all you can drink" coffee, instead of charging for computer time were [ludicrous] attempts to characterise the business as a restaurant housing a private club. [As a restaurant, the Internet café could operate 24 hours a day, but amusement centres must close at 1 a.m. on weekdays or 2 a.m. on the weekend.]
Comment:	Decision reinforces the general approach adopted by many courts to regulate Internet activities according to traditional principles of law even if the end result is somewhat unusual. In this case an Internet café was declared an "amusement centre."

3. Topic:	Federal Legislation: Proposed E-Commerce Jurisdiction Rules
Who:	Industry Canada + Provincial legislators
Where:	Canada
When:	Announced: August 19, 2002 Comments due: September 6, 2002
What happened:	Federal, provincial and territorial consumer affairs ministers have released a consultation paper proposing rules for determining jurisdiction in cross-border business-to-consumer e-commerce transactions. Among other provisions, the proposed rules would permit vendors to bring legal proceedings only in the consumer's jurisdiction, but would allow consumers to sue vendors in either the consumer's or the vendor's jurisdiction, unless reasonable steps were taken to avoid concluding contracts with consumers in the consumer's jurisdiction.
Comment:	Industry Canada seeking public comment on its proposal, in an effort to support cross-border activities with Federal Trade Commission and other departments.

4. Topic:	Federal Legislation: Sales Tax Guidance for E-commerce
Who:	Canada Customs & Revenue Agency (CCRA)
Where:	Canada
When:	Released: July 2002
What happened:	The <u>Technical Information Bulletin B-90 GST/HST and Electronic Commerce</u> addresses downloads of computer programs and other e-commerce activities. In some instances, non-residents are liable to collect GST on supplies made to Canadian residents. In other instances, Canadian recipients must self-assess the tax as an importation.
Comment:	CCRA Bulletin provides some guidance about Goods & Services Tax (GST) application on "a supply of intangible personal property or service" in Canada

5. Topic:	Ontario Legislation: Ontario Retail Sales Tax Amendment
Who:	Ontario provincial government
Where:	Ontario
When:	Announced: July 19, 2002
What happened:	The Ontario provincial government released new draft legislation related to the Retail Sales Tax ("RST") treatment of computer programs. The draft legislation is intended to simplify the taxation of computer software and IT services. The legislation includes new industry specific definitions which reflect the characteristics of the services provided by the IT industry. When enacted, the changes will be retroactive to July 19, 2002.
Comment:	Current Retail Sales Tax legislation remains in force until new amendments are enacted, which is expected to take place in the autumn of 2002.

6. Topic:	Federal Legislation: Order re: Promotional Messages on community television
Who:	Canada Radio & Television Corporation (CRTC) v Rogers Cable

Where:	Canada
When:	August 19, 2002
What happened:	<p>Rogers Cable was found to have broadcast promotional messages on its community television channels, in breach of its license conditions. Rogers intended its messages to be informational in nature, notifying customers of procedures for transferring internet accounts to a new proprietary service offered by Rogers.</p> <p>CRTC ordered Rogers Cable to file quarterly compliance reports for the next three (3) years following finding that company had contravened the <i>Broadcasting Distribution Regulations</i>.</p>
Comment:	Important to ensure that informational messages are not perceived to be promotional in nature.

7. Topic:	Federal Regulations: Internet Retransmissions - Public Consultation
Who:	Canada Radio & Television Corporation (CRTC)
When:	Announced: August 1, 2002; Responses due: Sept 6, 2002
What happened:	<p>CRTC has issued a call for comment on Internet retransmission of over-the-air television and radio signals by third parties inviting the public to address such issues as the potential impact of Internet retransmission on:</p> <p>the existing regulatory framework;</p> <p>the broadcasting system, including, viewers, subscribers, advertisers, producers and broadcasters;</p> <p>the creation of Canadian content;</p> <p>the protection of program rights; and</p> <p>attainment of the policy objectives set out in the <i>Broadcasting Act</i>.</p> <p>The CRTC further requests suggestions as to mechanism, measures, and conditions to properly address some of the impact.</p>
Comment:	Final report is due by mid-January 2003.

8. Topic:	Provincial Jurisprudence: Internet Communications
Who:	Reichmann v. Berlin, O.J.
Where:	Ontario Superior Court of Justice
When:	July 8, 2002
What happened:	<p>Ontario court ordered \$400,000 in damages for Internet defamation after finding the defendant's "extortion campaign" using defamatory Internet publications justified the award for general, aggravated and punitive damages.</p> <p>In an attempt to extort a large sum of money, the defendants repeatedly threatened to publish and published on the Internet baseless allegations that the plaintiff lied and cheated an innocent man out of an inheritance. The defendants also distributed cards to the plaintiff's neighbours alerting them to the existence of websites containing the false allegations. Over a number of years, the defendants published the defamatory statements on at least seven different websites. Each time the plaintiff stopped one website from publishing the false material, another website sprung up repeating the allegations.</p> <p>The defendants failed to defend the plaintiff's lawsuit, and were noted in default. In assessing damages, the court considered various factors, including the manner and extent of the defamatory publication and the size of the target audience.</p>
Comment:	<p>In this libel case involving an individual's use of the Internet to post defamatory material about another person, a large damages award was justified on the grounds that internet communications reach a worldwide audience. Under Canadian law, libel damages generally depend on the breadth of distribution. In this case, the court noted that Internet publication instantly communicates information to a world-wide audience, and that the defendants' defamatory statements were seen by people from as far away as Austria and Israel as well as residents of Toronto.</p>

9. Topic:	Competition - Ordinary Selling Price Provisions
Who:	Competition Bureau v Sears Canada
Where:	Ottawa, Ontario
When:	July 23, 2002

What happened:	<p>The Competition Bureau served its first application under the new ordinary selling price provisions on Sears Canada Inc. This application alleges that Sears deceived consumers about the real value of their savings by referring to "inflated" regular prices when advertising certain tires at "sale" prices during the year 1999. During that year, the tire market industry in Canada was worth approximately \$1-billion.</p> <p>The application has been made under the Deceptive Marketing Practices provisions of the Competition Act: the Commissioner has asked the Tribunal to issue a prohibition order for 10 years, and order Sears to cease and desist the alleged conduct, publish a public corrective notice, and pay a monetary penalty.</p>
Comment:	Although activity took place over 2 years ago, Competition Bureau's Fair Business Practices Branch has been actively pursuing companies that it perceives has misled consumers.

10. Topic:	Self-Regulatory - Proposed Code for Authenticating Canadian Diamond Claims
Who:	Competition Bureau
Where:	Canada
When:	Summer 2002
What happened:	<p>The private sector has been asked to provide feedback to a proposed Code of Conduct for Authenticating Canadian Diamond Claims, drafted following the release in November 2001 of an Enforcement Policy on Marketing of Canadian Diamonds.</p> <p>The proposed voluntary code of conduct establishes a minimum standard for authenticating a claim that a diamond is of Canadian origin.</p>
Comment:	Feedback was due in late July 2002.

11. Topic:	Copyright Infringement & Selling Unauthorized Equipment
Who:	RCMP v Robert Garby
Where:	Ottawa, Ontario

When:	July 2002
What happened:	An Ottawa man who sold chips that allowed Sony PlayStation units to play pirated games was fined \$17,000 and sentenced to a year of probation, pleaded guilty to two counts of copyright infringement and four counts of selling unauthorized computer equipment. He was charged after an RCMP investigation found he was selling a line of 413 pirated video games and charging \$30 to install "mod chips" in Sony PlayStation video game consoles. The chips circumvented the console's copy protection measures, which ensure that only authorized discs can be played. Once installed, the chips allow the modified units to play illegally copied video game discs.
Comment:	Police estimated Garby grossed about \$30,000 from the illegal business. Sony applauded the conviction, the first for selling mod chips in Canada, calling it "precedent setting." Garby said he didn't know he was committing a crime and would have never gotten involved in selling mod chips if he had known the law.

12. Topic:	Consumer Packaging & Labelling Act
Who:	Competition Bureau v Modugno-Hortibec Inc.
Where:	Quebec Province
When:	July 15, 2002
What happened:	Five (5) charges have been laid against a Quebec company under the net quantity provisions of the <i>Consumer Packaging and Labeling Act</i> . Modugno-Hortibec Inc. is a Quebec company specializing in the packaging and sales of garden products such as top soil and compost. In May 2002, the Bureau conducted a detailed inspection of five types of packing of compost and marble chips to verify the net quantity. This inspection revealed that the net quantity of certain items packaged under the names Canadian Garden, Master Gardener and Hortibec, was not the same as that indicated on the label. In fact, the quantity was less than indicated on the label. As a result, the Bureau alleged that consumers were deceived about the quantity of the products.
Comment:	Fair Business Practices Branch of Industry Canada is very diligent in protecting Canadian consumers

13. Topic:	Quebec Stores Charged With Unclear Pricing
Who:	Quebec's Consumer Protection Office
Where:	Quebec Province
When:	July 2002
What happened:	<p>11 retail outlets have been charged for failing to clearly post prices. As a result of a change to Quebec's pricing regulations in 2001, stores don't have to put a price sticker on every individual product <u>provided</u> the price and unit cost of that product appear on the shelf. Retail outlets had one year to comply with the new law.</p> <p>Officials from the consumer protection office visited 154 stores recently, and found all but 10 were in contravention of the new law. The officials went back to 34 of those stores: most still weren't obeying the rules. The office has laid a total of 302 charges against 11 stores. The rest are still under investigation.</p>
Comment:	If convicted, minimum fines are \$2,000 for each charge. Under the Quebec law, if you find a product priced higher at the cash register than the price indicated on the shelf, you can demand \$10 off the price of that product. If the price is under \$10, it's free.

14. Topic:	Deceptive Marketing, Misleading Advertising & False Claims
Who:	Competition Bureau v Directors of NSV Nutrinautes Inc. (Cocooning Club)
Where:	Quebec Province
When:	July 2002
What happened:	<p>Following charges against the company in March (11 counts for operating a multi-level marketing plan in contravention of the deceptive marketing practices provisions of the <i>Competition Act</i>.) They recruited new participants by exaggerating income expectations without disclosing the income of a typical participant.</p> <p>The Directors are also charged with operating an illegal scheme of pyramid selling and making false or misleading representations on its Web sites</p>
Comment:	Under the <i>Competition Act</i> , it is illegal to make reference to earnings/income in a multi-level marketing plan by operators or participants without disclosing a <u>typical</u> participant's income.


15. Topic:	<i>Competition Act: Misleading Representation & Deceptive Marketing Practices</i>
Who:	Competition Bureau v Yellowbusiness.ca
Where:	Ontario
When:	July 4, 2002
What happened:	Further charges laid under the misleading representation and deceptive marketing practice provisions of the <i>Competition Act</i> against an individual responsible for the mailings by Yellowbusiness.ca - which asked recipients to send a payment to a postal box in the Toronto area for the listing of their business in the Internet business directory, Yellowbusiness.ca. Mailings were made to appear as invoices from an existing service provider (i.e.: Bell Canada or the Yellow Pages) requiring recipients to pay \$85.55 when in fact they weren't customers. Charges follow the guilty plea of another director earlier in the year, which resulted in a fine of \$30,000 on May 28, 2002, plus an order to dissolve the numbered company within 90 days.
Comment:	These charges demonstrate the Bureau's ongoing efforts to pursue those responsible for deceptive mail pieces which target thousands of Canadian businesses and non-profit organizations

16. Topic:	Misleading representation and deceptive marketing practices provisions of the <i>Competition Act</i> - unsolicited deceptive mailings
Who:	Competition Bureau v 2 Toronto corporations, HMS Direct Limited and Hallstone Products Ltd., their director David Stucky and employee Sylvia Carbone; + 2 Vancouver corporations, 483775 B.C. Ltd. and Ravenshoe Services Limited, and their director Tom Taylor.
Where:	Ontario and British Columbia
When:	July 2002
What happened:	Three people and four corporations were charged under the misleading representation and deceptive marketing practices provisions of the <i>Competition Act</i> . These charges relate to unsolicited deceptive mailings promoting participation in the purchase of lottery tickets.

	The mailings in question were sent out under the names Canadian Lottery Buyers Association, International Lottery Commission and the International Monetary Funding. Several million of these mailings were sent to residents of the United States, United Kingdom, Australia and New Zealand. The mailings asked recipients to send a payment to participate in various international lotteries. The Bureau alleges that the mailings exaggerated the amount that consumers could win, as well as their chances of winning, that the mailings falsely represented an association with the governmental body issuing the lottery tickets and that consumers had already won substantial sums of money.
Comment:	Increased efforts to ensure Canada does not become a 'safe haven' for misleading and deceptive practices internationally

17. Topic:	Regulations - Sports Nutrition Products (labelling, packaging & advertising)
Who:	Canadian Food Inspection Agency (CFIA)
Where:	Canada
When:	Summer 2002
What happened:	CFIA began nationwide inspections to verify compliance of Sports Nutrition Products with the current Acts and Regulations enforced by the CFIA. The CFIA enforces the <i>Food and Drugs Act</i> and <i>Regulations</i> to protect the health of Canadians and to prevent product misrepresentation and fraud. Sellers and manufacturers of Sports Nutrition products were encouraged to conduct a thorough examination of the labels and composition of their products to ensure they are not in violation.
Comment:	Sellers are legally responsible to ensure that all food products sold or distributed meet the requirements of the <i>Food and Drugs Act</i> and the <i>Consumer Packaging and Labelling Act</i> and their respective Regulations.

18. Topic:	Public Relations upsets "derby"
Who:	Humane Society v Saskatchewan Wildlife Federation
Where:	Saskatchewan Province

When:	June 2002
What happened: 	<p>A contest turned a Prairie pastime into a competitive shooting match aimed at fast-breeding gophers. The Saskatchewan Wildlife Federation sponsored the 12-week gopher-killing derby to keep the population of the crop-eating creatures in check.</p> <p>But animal rights activists complained that the contest, the first of its kind held in Saskatchewan, was cruel and barbaric. The top 10 hunters (bringing in the most gopher tails as proof of their kill) were awarded cash prizes. Members of one Saskatchewan family who paid the \$20 entry fee to take part in the derby say hunting gophers is often a daily ritual. The province has millions of gophers, some living in the middle of Saskatoon. Two years of dry conditions have caused a boom in the population.</p>

19. Topic:	Privacy - Improper/Unauthorized Use of Customer's Social Insurance Number
Who:	Federal
When:	July 2002
What happened:	<p>An individual complained that a telecommunications company had improperly disclosed his personal information, specifically his social insurance number (SIN), without his knowledge and consent, on the address label of an envelope.</p> <p>There was no dispute that the complainant had originally provided his SIN to the company voluntarily. The data input error had probably occurred when some of the complainant's personal information was downloaded from the company's customer profile database into a smaller database used by credit services staff in closing accounts. The company issued a memo to all employees and managers in that section, reminding them of the need for caution in downloading data, given that address labels would subsequently be generated automatically and errors could have serious consequences.</p> <p>The Commissioner determined that the company had disclosed the complainant's SIN on an address label without his knowledge and consent in circumstances to which no exception under the <i>Act</i> applied. He found therefore that the company had contravened Principle 4.5.</p>
Comment:	As of January 1, 2001, the <i>Personal Information Protection and Electronic Documents Act</i> applies to any federal work, undertaking, or business. The Commissioner had jurisdiction because telecommunications companies are federal works, undertakings, or businesses as defined in the <i>Act</i> .

	Application: Principle 4.5, Schedule 1, states that personal information should not be used or disclosed for purposes other than those for which it was collected, except with the consent of the individual or as required by law.
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20. Topic:	Privacy - Failure to safeguard information of online contest entrants
Who:	Privacy Commissioner of Canada - An individual complained that a company was not using appropriate security safeguards to protect information collected from participants in online contests in contravention of the provisions of the <i>Personal Information Protection and Electronic Documents Act</i>
When:	Summer 2002
What happened:	<p>Several participants in online contests run by the company in question received telephone calls from a person or persons falsely claiming to represent the company. An internal investigation revealed that the company could not determine exactly how unauthorized persons had obtained personal information collected from contest entrants, but believed it possible that the computer database in which the information was stored might have been compromised. An inspection by an outside firm could not confirm how or even whether the database had been compromised, but did give rise to several recommendations towards improving the company's informational security. The company has adopted all recommendations and has taken specific measures to physically secure contest participants' personal information from unauthorized access. At the time of the complaint, the company had no policies for the retention and disposal of personal information. On the advice of the Commissioner's Office, the company has also agreed to implement such policies.</p> <p>The Commissioner noted that the company had meanwhile taken appropriate steps to bring its policies and practices into compliance with the relevant provisions of the <i>Act</i>.</p>
Comment:	<p>As of January 1, 2001, the <i>Act</i> applies to any federal work, undertaking, or business. The Commissioner had jurisdiction in this case because the company was a federal work, undertaking, or business as defined in the <i>Act</i>.</p> <p>Principle 4.5.2 states that organizations should develop guidelines and implement procedures regarding personal information retention, including minimum and maximum retention periods. Principle 4.5.3 states that personal information no longer required to fulfil identified purposes should be destroyed, erased, or made anonymous and that organizations must develop guidelines and implement procedures to that end. Principle 4.7 states that personal information must be protected by security safeguards appropriate to the sensitivity of the information. Principle 4.7.1 states that the security safeguards must protect</p>

	personal information against loss or theft, as well as unauthorized access, disclosure, copying, use, or modification.
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21. Topic:	False & Misleading Representations by Telemarketers
Who:	Competition Bureau v Gerald Goldstein
Where:	Montreal, Quebec
When:	July 2002
What happened:	Charges laid against a telemarketers for their role in relation to the misleading representations and deceptive marketing practice provisions of the <i>Competition Act</i> for aiding and abetting, as provided under the <i>Criminal Code</i> , for making false and misleading representations to Canadian consumers. The misrepresentations related to the winning of prizes and the quality, value and nature of the prizes and other promotional products under the business names S.D. Prestige Enterprises, Farber Blake Corporation and J.C.&A. They follow charges under the misleading representation and deceptive marketing practice provisions of the <i>Competition Act</i> laid against S.D. Prestige Enterprises, Farber Blake Corporation and J.C.&A., their principal directors and individual telemarketers on June 27, 2001.

22. Topic:	Self-Regulatory: Advertising
Who:	Advertising Standards Canada <i>Code Revisions ("Code")</i>
When:	Announced mid-2002 - Effective March 2002
What happened:	<p>(i) Introduction of new Complaint Procedure for "Special Interest Groups", defined as being "an identifiable group representing more than 1 individual and/or organization, expressing a unified viewpoint that is critical of the content of an advertising and/or the production method or technique, and/or the medium used to carry the advertisement and convey its perceived message"</p> <p>(ii) Amended Appeal procedure, whereby requests for an appeal must be received within 7 working days from notice of decision, and providing that appeal decisions will be released within 5 working days following a Hearing.</p> <p>(iii) Gender portrayal guidelines, formerly a stand-alone document, are now</p>

	applied in appropriate cases
Comment:	Modifications, most of which are procedural in nature, are as a result of recommendations resulting from experience gained by Councils in applying and interpreting the 1999 version of the Code, in an effort to demonstrate sensitivity of needs of stakeholders and the public.

23. Topic:	Advertising Complaints - Disguised Advertising Techniques
Who:	Advertising Standards Canada (ASC) - Government Assistance Programs
Where:	National (Canada) - via Direct Mail
When:	Reported in <i>2001 Ad Complaints Report</i> , ASC
What happened:	Complaint received and upheld that a direct mail piece resembling an article extracted from a business publication was really a disguised advertisement. The 'article' (offering advice on obtaining information about available government funding) included the words "Financial Business Report January - February 2000" at the bottom, and the word "Advertisement" in the top right corner. Covering up the word "Advertisement" was a yellow sticker note on which other words were hand-written. Overall impression was that this was an article from a credible business publication, rather than an advertisement.
Comment:	It is important to ensure that the format and style of advertisements do not conceal the commercial intent of the ad.

24. Topic:	Advertising Complaints - Unacceptable Depictions & Portrayals
Who:	Advertising Standards Canada (ASC) - Ford Motor Company Ltd.
Where:	English Canada (i.e.: National excluding Quebec)
When:	Reported in <i>2001 Ad Complaints Report</i> , ASC
What happened:	Advertisement depicted a young woman shoving an unsuspecting male store clerk into the back of her car and then driving away. Complaint was that this commercial appeared to condone violence and unlawful behaviour (abduction).
Comment:	ASC Council found that commercial exhibited indifference to unlawful

	behaviour, whether depicted in an aggressive or humorous manner. Ford of Canada did not intend to offend anyone in their attempt to show the attributes of the car being advertised (i.e.: large trunk)
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25. Topic:	Advertising Complaints - Accuracy & Clarity
Who:	Advertising Standards Canada (ASC) - Pharma Plus Drugmarts Ltd.
Where:	Ontario, via a flyer
When:	Reported in <i>2001 Ad Complaints Report</i> , ASC
What happened:	Complaint filed that appliances advertised at a special price were no longer available when he attended at the store, and that there were no rain checks (which was a usual procedure for this retailer). Disclaimer in the ad cited only that all items might not be available at all locations. Disclaimer was placed at the end of a six-page flyer in small type - while the sale price claim appeared in bold type on the front page. Council found that the disclaimer did not sufficiently address the issue of availability of the advertised products.
Comment:	Placement of disclaimers is critical to overcoming misleading impressions.