

Publisher's Note

An Update has Arrived in Your Library for:

Please circulate this notice to anyone in your office who may be interested in this publication. <i>Distribution List</i>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>
<input type="checkbox"/>

COMPUTER, INTERNET AND ELECTRONIC COMMERCE LAW

Sookman

Release No. 2, June 2022

Publisher's Special Release Note 2021

The pages in this work were reissued in December 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the December 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

THOMSON REUTERS CANADA®

Customer Support

1-416-609-3800 (Toronto & International)

1-800-387-5164 (Toll Free Canada & U.S.)

Fax 1-416-298-5082 (Toronto)

Fax 1-877-750-9041 (Toll Free Canada Only)

E-mail CustomerSupport.LegalTaxCanada@TR.com

This publisher's note may be scanned electronically and photocopied for the purpose of circulating copies within your organization.

From a single volume as first published in 1989 to the present eight volumes of detailed, comprehensive coverage, this publication has become the foremost Canadian authority on the law of computers, the Internet and Electronic Commerce and is frequently referred to and applied by the courts.

This release features updates to Appendix B. Copyright Protection B5. Canada including updates to Appendix § B5: 2 – Quantum Table: Copyright Infringement. This release also features updates to Appendix E5. Quebec, namely, updates to § E5:2 *An Act Respecting the Protection of Personal Information in the Private Sector*, CQLR , c. P-39.1 – Amended by *An Act to modernize legislative provisions as regards the protection of personal information*, S.Q. 2021, c. 25. This release also features the addition of the Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada, Staff Notice 21-330, Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use to Appendix K. Internet Advertising, E-mail and Spam and Spyware as Appendix K1.1 Canada: Crypto-Trading Platforms. This release also includes updates to Appendix N1. Remedies Table – Misuse of Confidential Information in Appendix N. Trade Secrets. This release also includes updates to Appendix TC. Tables of Concordance including updates to Appendix § TC.1 Table of Concordance – Electronic Commerce Statutes, and updates to Appendix § TC:2 Table of Concordance of Private Sector Privacy Acts.

Highlights

- **Quantum Table – Copyright Infringement– Damages and Lost Profits** – Justice McHaffie explained that the Court may consider a benefit unjustly received by a defendant from their infringement of an intellectual property right as part of the assessment of damages and/or profits arising from that infringement. As the cause of action for infringement is established, the consideration of such enrichment in the assessment of damages need not meet the elements of the cause of action for unjust enrichment. Justice McHaffie agreed that there was value to the defendants in using infringing copies of the Arkit software to develop the Matidor software. There was also plainly some value to the defendants in using the infringing marketing materials. Simply taking Arkit’s materials and replacing “Arkit” with “Matidor” spared the defendants the cost of developing those materials and the cost of conducting their own case studies to the extent they could do so. It also allowed them to go before clients at an early stage with a full package of marketing materials. While Justice McHaffie rejected the plaintiffs’ contention that the Arkit software was worth \$1,700,000 or that the defendants obtained that value or anywhere near that value through their conduct, Justice McHaffie accepted that the defendants obtained a benefit through their infringement that ought to be disgorged. It was difficult to quantify with precision the benefit obtained, so it must be the subject of a “rough and ready” determination. Justice McHaffie assessed this value to Matidor as being \$50,000: *Ark Innovation Technology Inc. v. Matidor Technologies Inc.*, 2021 CarswellNat 5508, 2021 FC 1336 (F.C.).
- **Private Sector Privacy Legislation – Modernizing Privacy in Ontario – White Paper** – In Ontario, privacy in the private sector is

governed by the federal *Personal Information Protection and Electronic Documents Act* (PIPEDA). Ontario is considering proposals that would implement a fundamental right to privacy for Ontarians, introduce more safeguards for artificial intelligence (AI) technologies, introduce dedicated protections for children, update consent rules to reflect the modern data economy, promote responsible innovation and correct the systemic power imbalances that have emerged between individuals and organizations that collect and use their data. The white paper outlines Ontario's proposals and provides examples of legislative language that demonstrate how these protections could be reflected in law. These proposals are aligned with the government's Digital and Data Strategy and build on recent efforts to improve health privacy in the *Personal Health Information Protection Act* (PHIPA). These proposals, if introduced, would harmonize with Ontario's other privacy laws, and minimize regulatory burden for Ontario organizations.

ProView Developments

Your ProView edition of this product now has a new, modified layout:

- The opening page is now the title page of the book as you would see in the print work
- As with the print product, the front matter is in a different order than previously displayed
- The Table of Cases, Table of Statutes and Index are now in PDF with no searching and linking
- The Table of Contents now has internal links to every chapter and section of the book within ProView
- Images are generally greyscale and size is now adjustable
- Footnote text only appears in ProView-generated PDFs of entire sections and pages