

# clientbulletin

IP/IT AND PRIVACY LAW



## The Power of the Internet – Beware of What You Write

*Krista R. Chaytor*

## Stricter Rules for Telemarketers

*Ralph Kroman*

### **The Power of the Internet – Beware of What You Write**

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In a recent decision, the Ontario Court of Appeal has described the Internet as one of the most powerful tools of communication ever invented, with the potential to be a medium of virtually limitless international defamation. Based on its characterization of the Internet, the Court of Appeal increased damages awarded for “cyber-libel” from \$15,000 to \$125,000—\$75,000 in general damages and \$50,000 in punitive damages.

The case, *Barrick Gold Corporation v. Jorge Lopehandia and Chile Mineral Fields Canada Ltd.*, involves allegations by Mr. Jorge Lopehandia that Barrick Gold fraudulently obtained a Chilean mining project that was actually owned by Mr. Lopehandia and three other people. When Barrick Gold refused to pay Mr. Lopehandia \$3 million (US) in compensation, Mr. Lopehandia began posting messages on numerous internet sites claiming fraud and criminal misconduct on the part of Barrick Gold.

Barrick Gold sued Mr. Lopehandia and his company, Chile Mineral Fields Canada Ltd., for defamation. Neither defended Barrick Gold's action and damages were assessed on a motion for default judgment. The motions judge held that Mr. Lopehandia's Internet postings "came across as a diatribe or rant", were unlikely to be believed and had not caused any serious damage to Barrick Gold's reputation. The Court of Appeal disagreed.

The Court of Appeal held that given the "ubiquity, universality and utility" of the Internet, Internet defamation should be distinguished from defamation in other media. The Court of Appeal also commented that the impersonal and anonymous nature of Internet communications may create a greater risk that defamatory remarks are believed. The court further noted that the all-pervasive and interactive nature of the internet gave it a distinctive capacity to cause instantaneous and irreparable damage to reputation.

The Court of Appeal's decision and, in particular, its comments about the instantaneous, far-reaching and persuasive impact of internet defamation, suggest that damages for "cyber-libel" could surpass traditional damages for defamation.



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## Stricter Rules for Telemarketers

**Ralph Kroman**

The Canadian Radio-television and Telecommunications Commission has passed new rules regarding telephone calls made by telemarketers. Some of these rules relate to "do not call" lists.

A "do not call" list must be maintained by the telemarketer and remain active for three years. If, during the call, the called party asks to be put on a "do not call" list, this request must be processed without requiring the called party to do anything further. If the call is made by an agent, calling on behalf of a client, the agent must ask the called party if the called party's name should be on the agent's "do not call" list, the client's "do not call" list or both "do not call" lists.

As of October 1, 2004, the telemarketer must give a unique registration number for confirmation purposes to each called party who requests to be added to the "do not call" list.

A toll-free telephone number must be provided by the telemarketer regardless of whether the called party requests it. The telemarketer must be available at the toll-free number to deal with questions about the call.

The United States has a national "do not call" registry and U.S. law requires telemarketers to search the registry every three months and avoid calling any phone numbers that are on the registry. A telemarketer who disregards the U.S. national "do not call" registry could be fined up to US\$11,000 for each call. The CRTC has stated that a Canadian national "do not call" registry is a good idea, but advised that it does not have the tools to enforce it properly.



*Ralph is the Chair of the IP/IT and Privacy Law Group and a member of the Corporate Team. He is adept at helping clients deal with intellectual property and technology matters such as the acquisition, licensing and protection of copyright and trade marks. He practises business law and has provided his expertise to many significant mergers, financings, acquisitions, reorganizations and joint ventures. His clients are in the public and private sectors, and in many industries including automotive, transportation, manufacturing, knowledge-based, finance and professional services. He can be reached at 416-947-5026 or [rkroman@weirfoulds.com](mailto:rkroman@weirfoulds.com).*