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COMPUTER, INTERNET, ELECTRONIC COMMERCE AND ARTIFICIAL INTELLIGENCE LAW

Sookman

Release No. 4, July 2026

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.

What's New in this Update

This release features the addition of CIPO's March 2026 Practice Notice on Patentable Subject-Matter under the Patent Act as Appendix § C1:3 in Appendix C. Part III—Patents. This release also includes updates to Appendix E. Personal Information Protection including updates to Appendix § E3:1 *Personal Information Protection Act*—Amended by 2025, c. 31, ss. 16-26 [Not in force at date of publication.], and the addition of case law annotations to the *Personal Information Protection Act*. This release also features the addition of case law annotations to Appendix § F1:1 *Business Practices and Consumer Protection Act*, S.B.C. 2004, c. 2 in Appendix F. Consumer Protection. This release also features updates to Appendix N1. Remedies Table – Misuse of Confidential Information in Appendix N. Trade Secrets.

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Highlights

Patents—March 2026 Practice Notice on Patentable Subject-Matter under the Patent Act—Computer-implemented inventions—A claim involving a computer, like any other claim, must be purposively construed to determine the subject-matter defined by the claim prior to any assessment for patentability. In most cases, if a claim recites a computer, the computer is an essential element; however, the mere fact that a computer is identified as an essential element of a claim as construed does not necessarily mean that the physicality requirement referred to above is met. In computer-implemented inventions where there are additional physical essential elements such as a measurement step or sensor, or output means, such as a robotic actuator, there generally is physicality. In computer-implemented inventions one should consider during purposive construction whether the algorithm executed by the computer results in any improvement to the operation of the computer. The improvement may be to the computer's operation for tasks in general, such as an improved operating system that reduces memory usage, or an improvement to the task at hand, such as mathematical manipulations that speed up a mathematical simulation. These considerations may inform the nature of the invention.

Personal Information Protection—British Columbia—Personal Information Protection Act—Section 12(1)(e)—Collection of Personal Information Without Consent—Case Law— Clearview argued on appeal that the Commissioner's interpretation of the "publicly available" exemption was not reasonable because it did not have regard for the purposes of *PIPA*, its text and context, and the Commissioner did not address its Charter argument. Clearview submitted that the language of s. 2 of *PIPA* established that the purpose of *PIPA* was to create a "dual rights" regime that balances the rights of individuals to protect their personal information with the rights of organizations to collect and use it. As the chambers judge noted, Clearview's interpretation gave equal importance to the interests of individuals and organizations. Justice Iyer noted that Clearview referred to no authority for its interpretation of *PIPA*'s purpose. Justice Iyer explained that the foundation of the Joint Report analysis was that the well-established purpose of protection of privacy statutes is to provide individuals with some measure of control over the use of their personal information. An individual's right to control the use of their personal information is intimately connected to their individual autonomy, dignity, and privacy. The protection provided by a statute such as *PIPA* is characterized as "quasi-constitutional" because of the fundamental role privacy plays in the preservation of a free and democratic society. In the absence of any jurisprudential support for Clearview's alternative interpretation of *PIPA*, Justice Iyer considered the Commissioner's interpretation of its purpose reasonable. The fact that the exceptions in *PIPA* also acknowledge the need of organizations to use personal information for purposes that a reasonable person would consider appropriate does not result in competing "rights". The legislation does not aim to balance competing

rights. Rather, it balances a need with a right: *Clearview AI Inc. v. British Columbia (Information and Privacy Commissioner)*, 2026 CarswellBC 461, 2026 BCCA 67 (B.C.C.A.).

Consumer Protection—*Business Practices and Consumer Protection Act*—Case Law § 14.3—Dispute Resolution and Class Proceeding Term or Acknowledgement Prohibited—Consumer— The Court of Appeal noted that there was nothing in the Amendments to suggest that the Legislature intended them to apply to disputes that pre-date them. Section 203.001 states only that it applies to "contracts entered into before, on or after" March 31, 2025 and s. 14.3(2) states only that arbitration clauses in consumer contracts are void. Those provisions, in the Court of Appeal's view, simply provide that the legislation is backwards-looking vis a vis contracts that are already in existence. They do not state whether the Amendments should, or should not, apply to claims that have already arisen. That question is left to be determined by considering the intention of the Legislature within the context of the legal framework. The Court of Appeal agreed with Rogers that if the Legislature intended the Amendments to apply in circumstances where a dispute had already arisen, it would have done so expressly. In the Court of Appeal's view, the Legislature would have used specific language if the Amendments were intended to be retroactive. The Court of Appeal also agree with the Chambers judge that if the Legislature had intended the Amendments to be retroactive it would have provided guidance as to how they would affect completed arbitration hearings, or those which have already commenced. The Court of Appeal added that the Chambers judge was correct in her assessment that there was no sufficient "nexus" to a risk to the public in order to remove the presumption against retroactivity. The public protection exception only applies to very specific laws aimed at singular and identifiable risks to the public. It did not apply to the broad legislation in this case, which applied to any number of allegedly predatory arbitration clauses: *Vandenbosch v. Rogers Communications Canada Inc.*, 2026 CarswellBC 706, 2026 BCCA 102 (B.C.C.A.).

Remedies Table—Misuse of Confidential Information—Damages—Starbucks contracted with RACE to install the facility management system in 160 Starbucks retail outlets. However, the relationship between Behold and RACE soured. RACE claimed that the Behold hardware and software didn't work. On October 10, 2019, RACE terminated all business with Behold. Aquire went on to become Starbucks' provider of preventative maintenance systems in all Starbucks retail outlets in Canada, using Aquire's newly developed products in the place of the Behold products. The Court concluded that the Defendants were liable to Behold for breach of the tort of breach of confidence. The Court concluded that the Defendants did not restrict their use of the Behold System to the permitted purpose, but rather reverse engineered the hardware and misused the Technical/Design Information in the accelerated design and development of the Aquire System and the Aquire v.2 System. This provided the Defendants with a "springboard" or "head start. The Court concluded that the Defendants

could not have supplied and installed the Aquire System to Starbucks within 18 months of design and development without leveraging and misusing the Technical/Design Information of the Behold System. The Court noted that, like all misuse of confidential information cases, the damage was caused when the Defendants used the confidential information to achieve a head start or accelerated entry into the market, referred to as the "springboard." Behold was not in the business of providing consulting services for the identification of appropriate sensors for use in the design of a competing FMS. The confidential information was not for sale. The Court rejected the "consulting fee" approach to damages for misuse of confidential information. The Court noted that the starting point for its damage assessment depended on the determination of the length of the springboard period. The Defendants were able to market their Aquire System sooner and use it for the provision of a PEM system to Starbucks sooner because of the misuse of confidential information. The Court concluded that the appropriate springboard period was three years. The Court explained that "but for the breach", the Defendants would have continued to provide a PEM system to Starbucks using the Behold System until they lawfully developed their own FMS but would not have included Behold in their long-term business with Starbucks. Behold would not have supplied product for the entirety of the 8-year term of the Starbucks Contract. With this inference, the 2020 Starbucks Contract was not a "lost opportunity" to Behold because Behold could not have supplied the Behold System in support of the Defendants' long-term provision of a PEM to Starbucks. The Court concluded that the best tool available for determination of the appropriate measure of damages was Behold's loss of participation in the 2020 Starbucks Contract, not for quantification of the value under the 8-year term but rather to assess the benefit derived by the Defendants of a 36-month springboard. The Court concluded that Behold sustained a Hardware Income Loss in the amount of $2,192,865.00. Behold sustained a SaaS Income Loss in the amount of $415,933.00. The total Hardware Income Loss and SaaS Income Loss sustained by Behold was $2,608,798: *Behold Control Equipment Inc. v. Race Mechanical Systems Inc.*, 2025 CarswellOnt 21510, 2025 ONSC 7129 (Ont. S.C.J.).

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