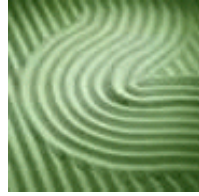


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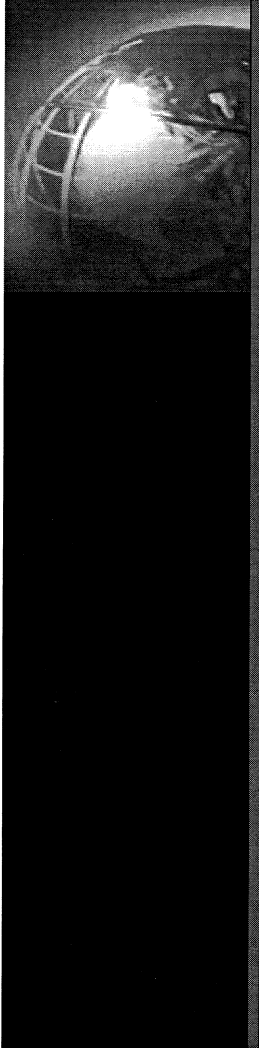
## Charities and Not-For-Profit Law Seminar Intellectual Property and Privacy Issues

by Eve C. Munro

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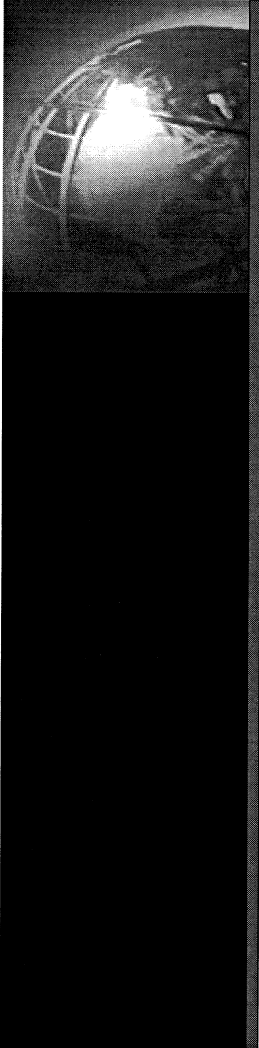
# **INTRODUCTION TO INTELLECTUAL PROPERTY**

## **WHAT IS IT?**

- **Trade-marks**
- **Copyrights**
- **Patents**
- **Trade secrets/confidential information**

## **AREAS OF CONCERN FOR CHARITIES**

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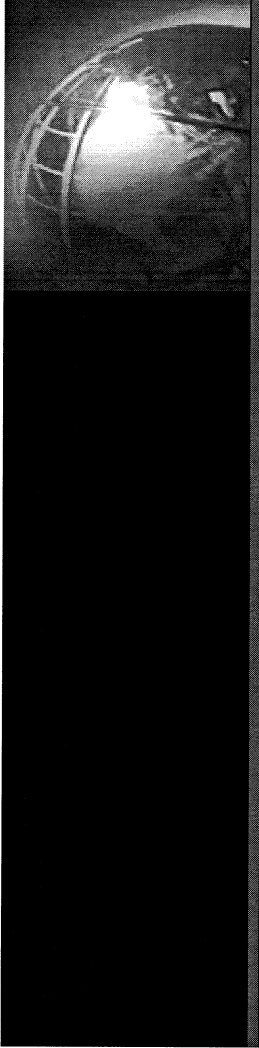


## **TRADE-MARKS**

### **BRANDING ISSUES FOR CHARITIES**

- **Organization name**
- **Program names**
- **Logos/designs**
- **Event names**
- **Elements of fund raising methods**
- **Use of others' marks**

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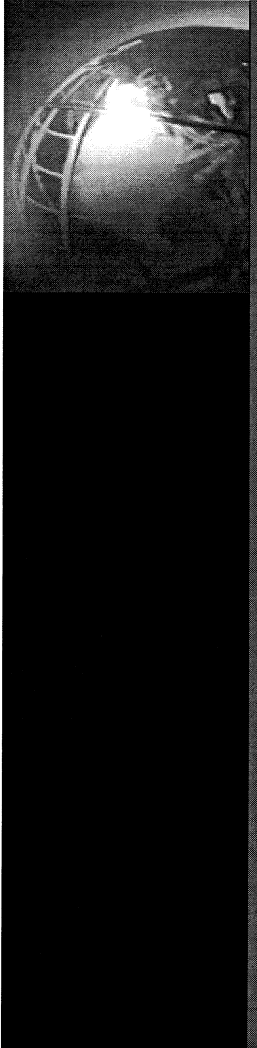


## **TRADE-MARKS (cont'd)**

### **TYPES OF TRADE-MARKS**

- **Ordinary marks**
- **Certification marks**
- **Distinguishing guise**

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## **TRADE-MARKS (cont'd)**

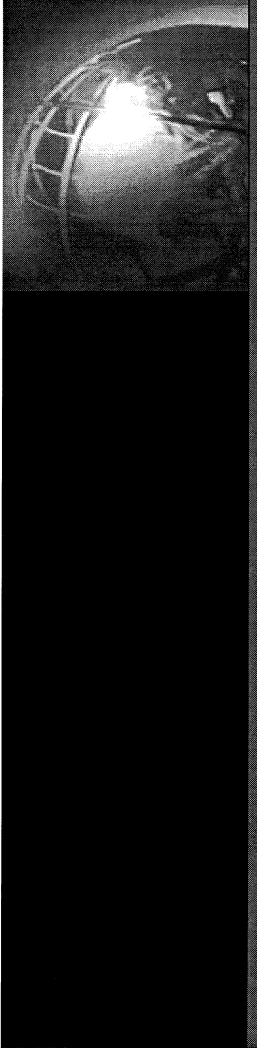
### **WHAT MAKES A STRONG TRADE-MARK?: DEVELOPING YOUR MARKS**

**Stronger marks receive greater protection and are easier for the public to associate with your services.**

#### **Registrability Issues**

- **General and descriptive marks**
- **Suggestive trade-marks**
- **Fanciful and arbitrary marks**

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## **TRADE-MARKS (cont'd)**

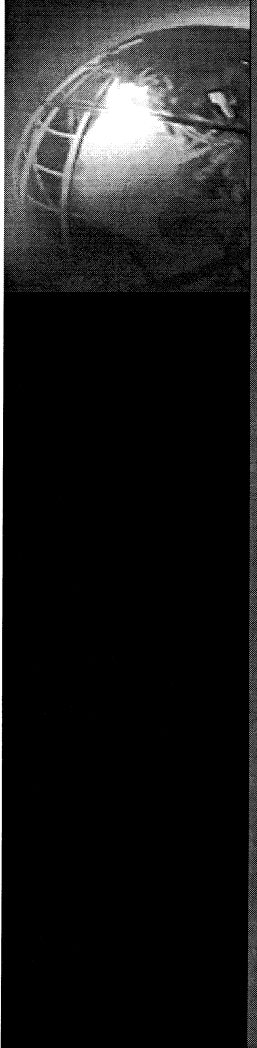
### **PROTECTING MARKS THROUGH REGISTRATION**

- 1. Trade-mark registration**
- 2. Section 9 recordal**
  - **Universities**
  - **Public authorities**

#### **Differences in:**

- **Process**
- **Effect**
- **Cost**

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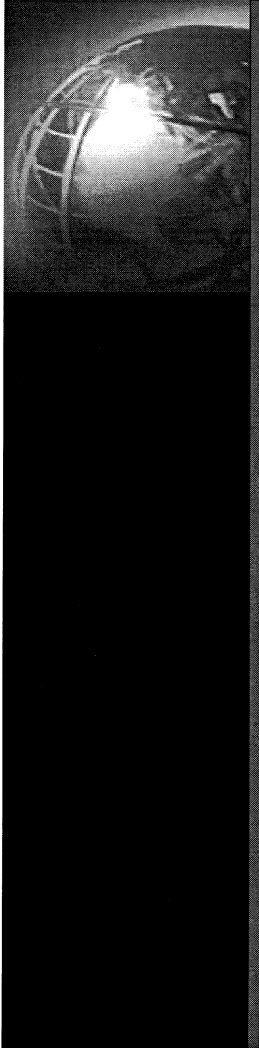


## TRADE-MARKS (cont'd)

### NEW DEVELOPMENTS RE USE OF SECTION 9 PROTECTION

- **Previous practice of Registrar of Trade-marks**
- **Recent decisions**
  - *Ont. Assoc. of Architects v. Assoc. of Architectural Technologists (F.C.A.)*
  - *Can. Jewish Congress v. Chosen People Ministries Inc. and the Registrar of Trade-marks (F.C.)*
- **New test for public authority status: significant degree of government control and public benefit**
- **Test requires ongoing government supervision**

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## **TRADE-MARKS (cont'd)**

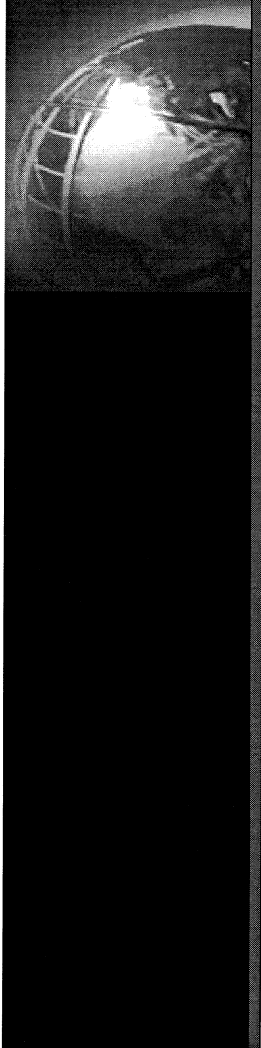
### **NEW DEVELOPMENTS RE USE OF SECTION 9 PROTECTION**

#### **WHERE DO WE GO FROM HERE?**

- **Previously obtained section 9 recordals may not now be effective**
- **Need to protect these marks by trade-mark registration**

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# **COPYRIGHT**

## **WHAT IS COPYRIGHT?**

- **Series of rights created by statute**

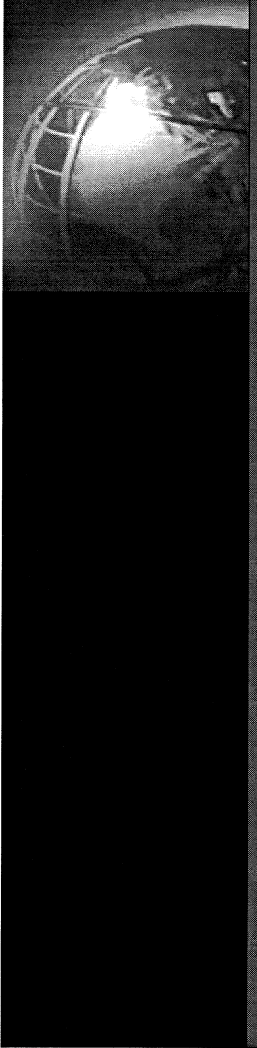
## **REGISTRATION**

- **Not necessary for copyright to exist**
- **Benefit**

## **JURISDICTION**

- **Territorial; federal legislation in Canada**

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## **COPYRIGHT (cont'd)**

### **TERM**

- **For most works life of author plus 50 years**

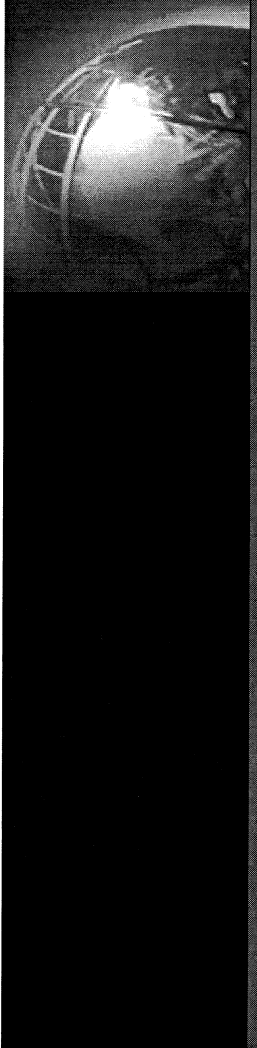
### **OWNERSHIP**

- **General rule: author is first owner**
- **Employees v. contractors**

### **INFRINGEMENT**

### **EXCEPTIONS**

- **Limited**

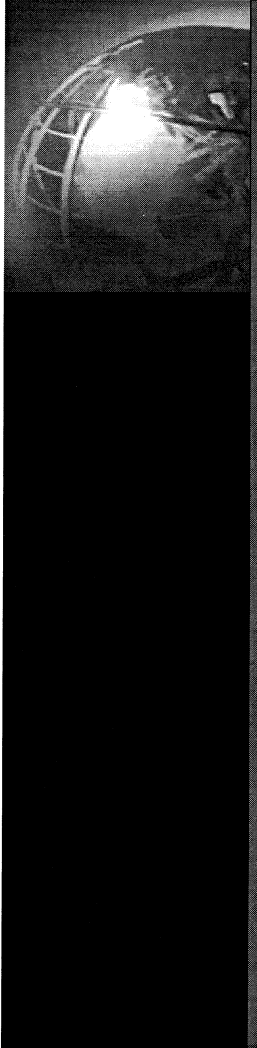


## **COPYRIGHT (cont'd)**

### **AREAS OF CONCERN FOR CHARITIES**

- **Operation specific concerns**
  
- **Web site content**
  - **Creating content**
  - **Acquiring rights to others' content**
  
- **Fundraising campaigns/special events**
  - **Graphics and other printed material**
  - **Music**
  - **Entertainment**
  
- **Production of promotional merchandize eg. T-shirts, coffee mugs, posters, video or digital recordings**

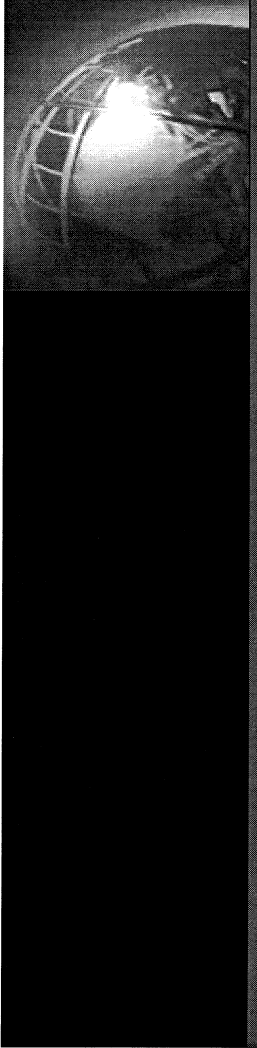
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## **OTHER INTELLECTUAL PROPERTY**

- **Consider specifics of operations**
- **Consider whether have technology tools that could be licensed**
- **Confidential Information – consider need for confidentiality and non-competition agreements:**
  - **Lists of donors**
  - **List of suppliers**
  - **Know-how and processes**

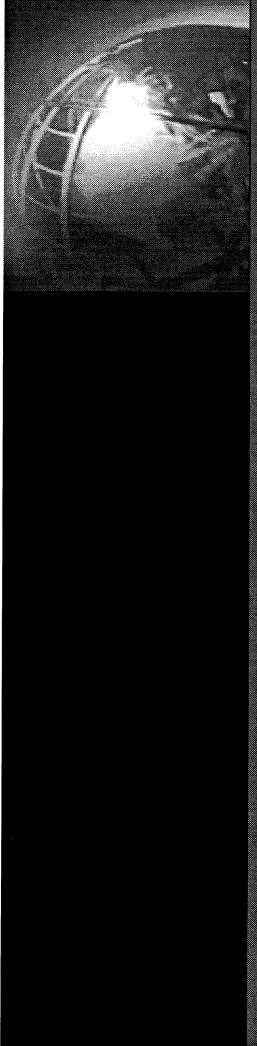
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# **IP STRATEGIC MANAGEMENT**

- 1. Conduct an IP Audit**
  - **Identification of IP**
  - **Ensure necessary rights have been obtained**
  
- 2. Protection**
  - **Register**
  - **Appropriate agreements**

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## **IP STRATEGIC MANAGEMENT (cont'd)**

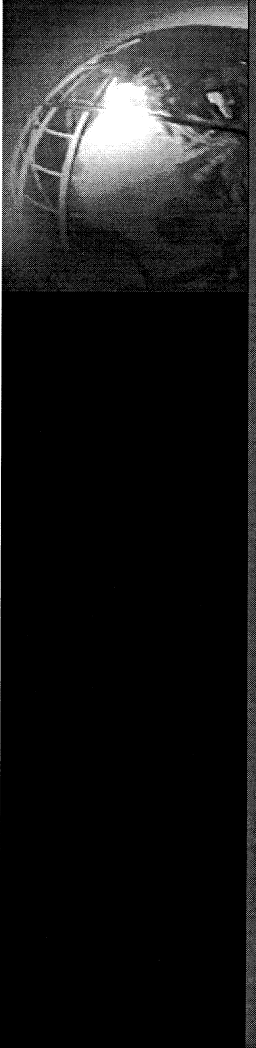
### **3. Use**

- **Consistent use of trade-marks**
- **Trade-mark notices**
- **Copyright notices**
- **In-house knowledge management and education**
- **License all other users**

### **4. Infringement**

- **Trade-mark watch services**
- **Prompt notice to infringers**
- **Defense of IP rights**

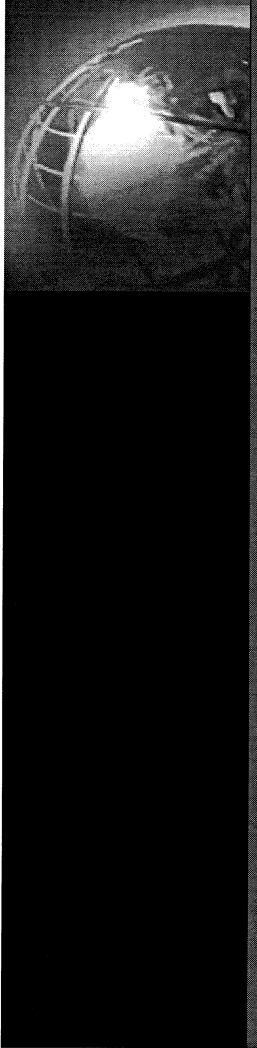
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## **BENEFITS OF A STRATEGIC MANAGEMENT PLAN**

- **Strategically managed IP portfolio can assist in resolving disputes without resorting to litigation by virtue of the strength of position achieved**
- **Shields from infringement claims**
- **Licensing can generate revenue**

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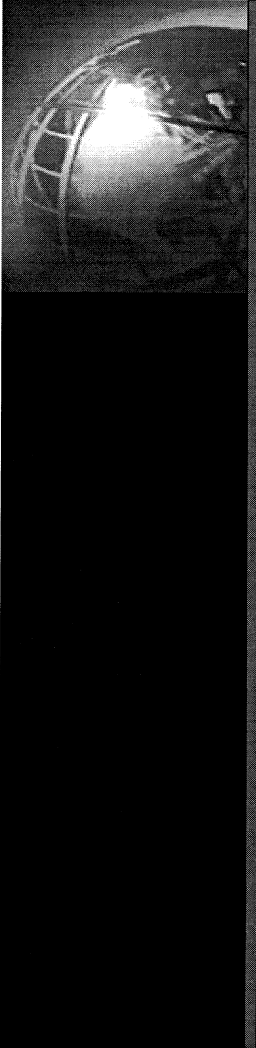


## **CANADA'S NEW PRIVACY LAWS: IMPLICATIONS FOR THE CHARITABLE AND NOT-FOR-PROFIT SECTORS**

- **All Canadian provinces have access to information and protection of privacy legislation for information held by the public (governmental) sector**
- **Purpose of new legislation is to regulate the collection, use and disclosure of personal information in the private sector**

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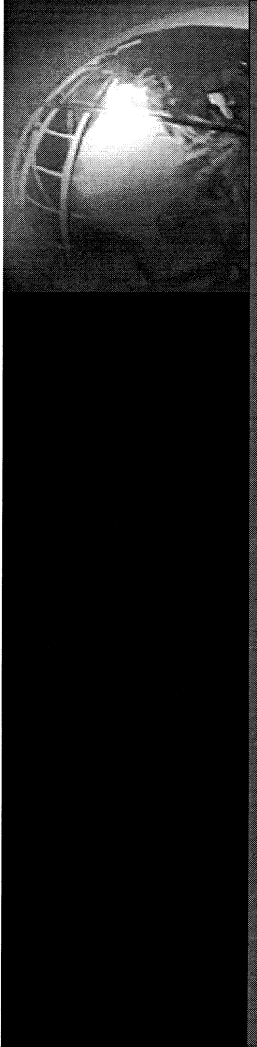




## **BACKGROUND**

- **In English common-law there is no traditional right to privacy; in health sector in Canada there developed a duty of confidentiality**
- **With the growth of e-commerce and use of the Internet there is an increased level of concern over privacy**
- **European Union has implemented its Data Protection Directive – prevents data exchange between members of the European Union and jurisdictions without adequate privacy protection**

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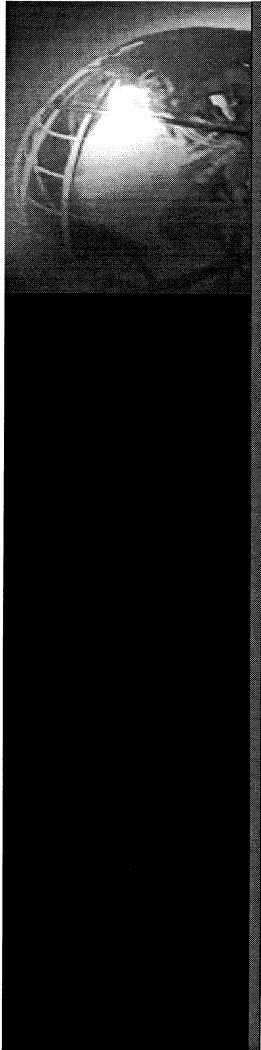


# **PERSONAL INFORMATION PROTECTION AND ELECTRONIC DOCUMENTS ACT (“PIPEDA”)**

## **Implementation Schedule:**

- **January 1, 2001 - Applies to federally regulated undertakings and interprovincial and international transfers of information (except for personal health information)**
- **January 1, 2002 - Applies to personal health information in above areas**
- **January 1, 2004 - Act purports to apply to all organizations whether federally or provincially regulated unless a province enacts comparable legislation**

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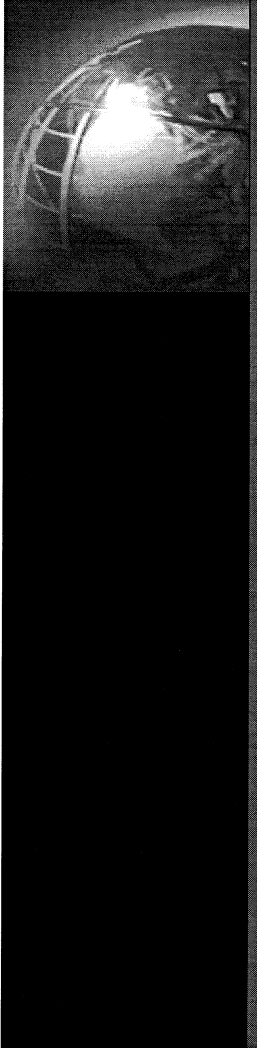


## **APPLICATION**

**Subject to the staged implementation  
PIPEDA applies:**

- **To every organization in respect of personal information that the organization collects, uses or discloses in the course of commercial activities;**
- **to federal works, undertakings or businesses with respect to personal information about employees.**

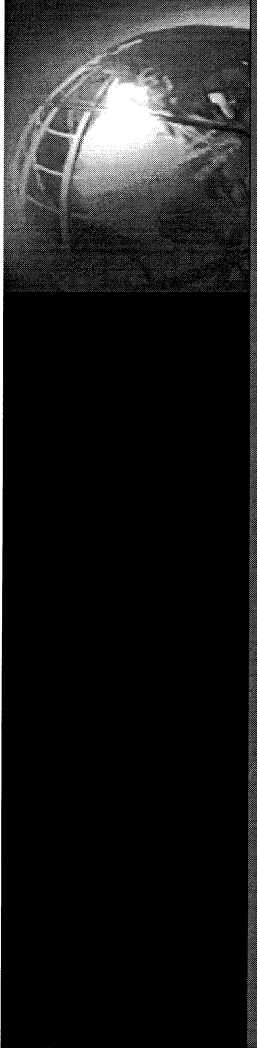
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## **DOES NOT APPLY TO:**

- **Government**
- **Information collected for domestic purposes**
- **Journalistic, artistic or literary purposes**
- **Publicly available information (to be specified in regulations)**

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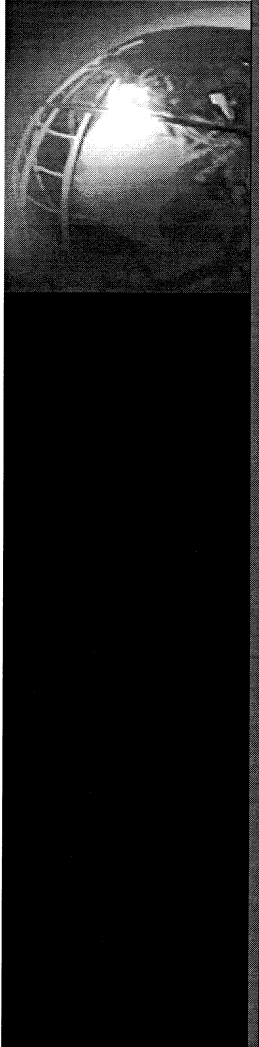


## KEY DEFINITIONS

**“commercial activity”** means any particular transaction, act or conduct or any regular course of conduct that is of a commercial character, including the selling, bartering or leasing of donor, membership or other fundraising lists.

**“Personal Information”** means information about an identifiable individual, but does not include the name, title or business address or telephone number of an employee of an organization

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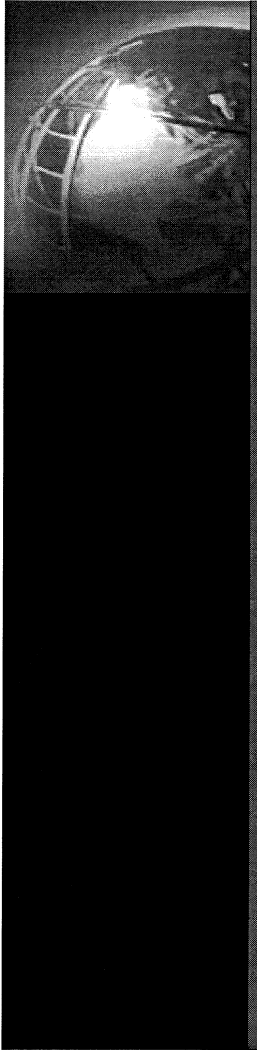


## **APPLICATION TO CHARITIES**

### **PIPEDA:**

- **Before January 1, 2004 PIPEDA will apply to few charities or not-for-profits**
- **Applies or will apply to personal information gathered in the course of commercial activities: likely any revenue generating activity**

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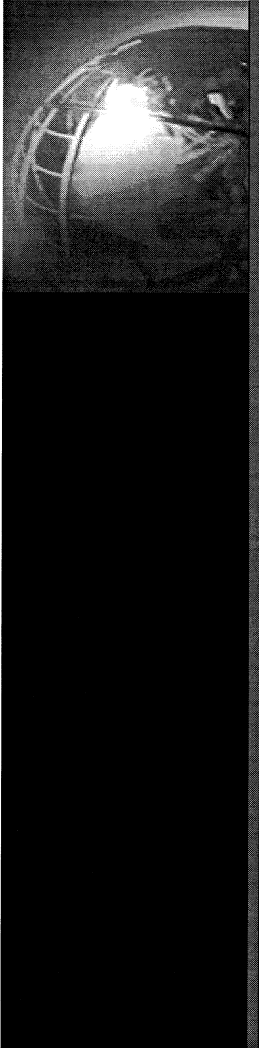
## **APPLICATION TO CHARITIES**

- **Commercial activities specifically include the selling, bartering or leasing of donor, membership or other fundraising lists**
- **Does not apply to non-commercial activities of charities not-for-profits**

### **PROPOSED B.C. LEGISLATION:**

- **Draft legislation not yet publicly made available but B.C. Consultation Paper states an intention that legislation not be restricted to commercial activities**

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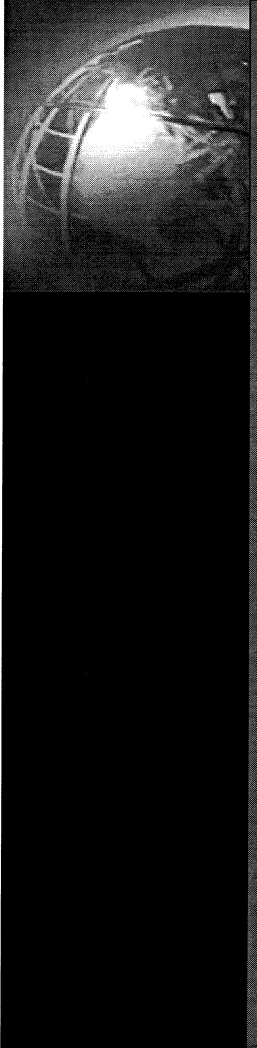
## **APPLICATION TO CHARITIES (cont'd)**

**CHARITIES AND NOT-FOR-PROFITS SHOULD ASSUME THEIR TREATMENT OF PERSONAL INFORMATION WILL BE SUBJECT TO REGULATION IN THE FORESEEABLE FUTURE:**

- **Even where a province enacts similar legislation PIPEDA continues to apply to federal undertakings and international or inter-provincial trade in personal information**
- **B.C. legislation will likely apply to charities and not-for-profits**
- **Donors will expect organizations to comply with federal or provincial requirements as a matter of course**

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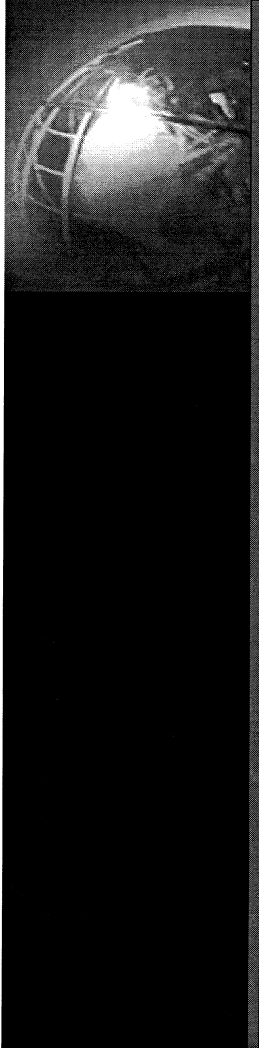


## **PRINCIPLES AND COMPLIANCE - SCHEDULE 1 - CSA MODEL CODE**

- 1. ACCOUNTABILITY** - appoint a “Chief Privacy Officer”
  
- 2. IDENTIFY PURPOSES** - should be relatively specific; at or before the time the information is collected

**Section 5(3) must be purposes that a reasonable person would consider are appropriate in the circumstances**

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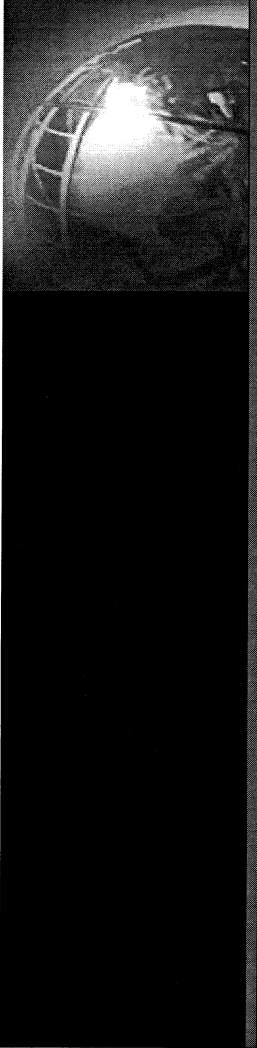


## **PRINCIPLES AND COMPLIANCE - SCHEDULE 1 - CSA MODEL CODE (cont'd)**

### **3. CONSENT**

- obtain appropriate consent for collection, use or disclosure, for the purposes identified**
- appropriate consent varies with the sensitivity of the personal information**
- consent cannot be a condition for the supply of a product (unless necessary for the supply)**
- Exceptions: for each of collection, use and disclosure**

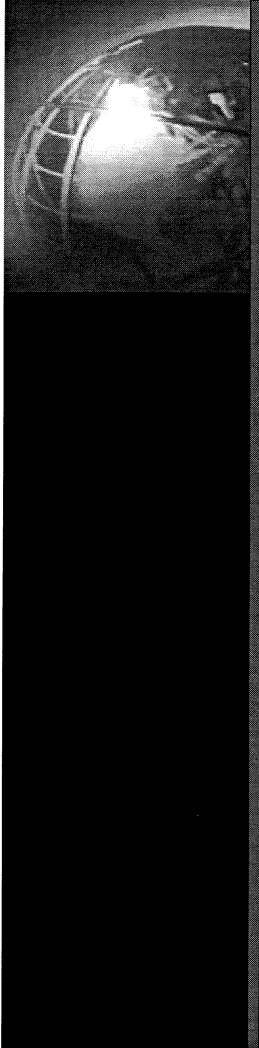
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## **PRINCIPLES AND COMPLIANCE – SCHEDULE 1 - CSA MODEL CODE (cont'd)**

- 4. LIMITING COLLECTION** - amount and type of personal information collected is limited to the identified purposes
  
- 5. LIMITING USE, DISCLOSURE, AND RETENTION** - new purposes or disclosures require further consent

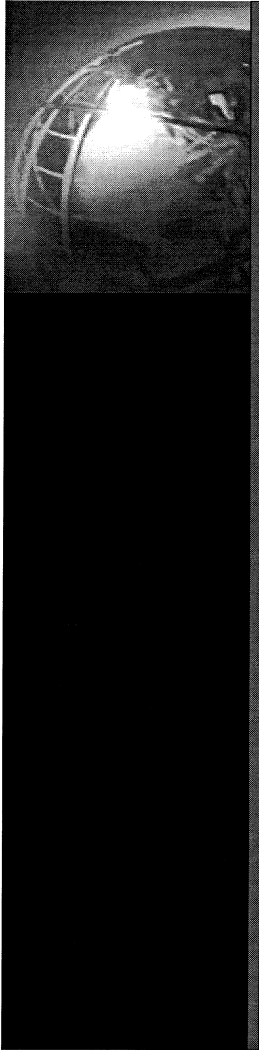
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## **PRINCIPLES AND COMPLIANCE – SCHEDULE 1 - CSA MODEL CODE (cont'd)**

- 6. ACCURACY** - maintain data as required by the purposes
- 7. SAFEGUARDS** - protect against, loss, theft, or unauthorized access
- 8. OPENNESS** - disclosure policies and practices shall be readily available

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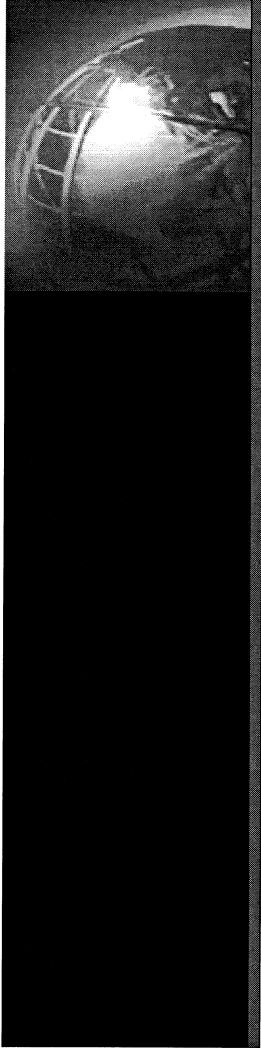


## **PRINCIPLES AND COMPLIANCE – SCHEDULE 1 - CSA MODEL CODE (cont'd)**

### **9. INDIVIDUAL ACCESS**

- on request - individuals to be informed of the existence, use, and disclosure of their personal information, and to be given access
- response to be within a reasonable time (generally not later than 30 days after receipt)
- response to be a minimal or no costs. Any charges to individual must be approved by the individual in advance

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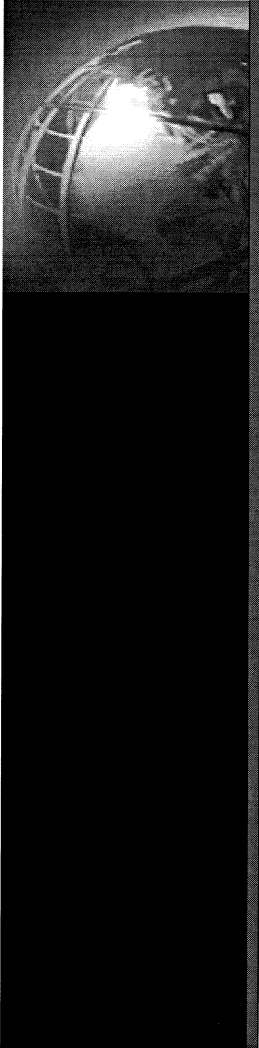


## **PRINCIPLES AND COMPLIANCE – SCHEDULE 1 - CSA MODEL CODE (cont'd)**

### **10. CHALLENGING COMPLIANCE**

- Complaint procedure required
- All complaints to be investigated

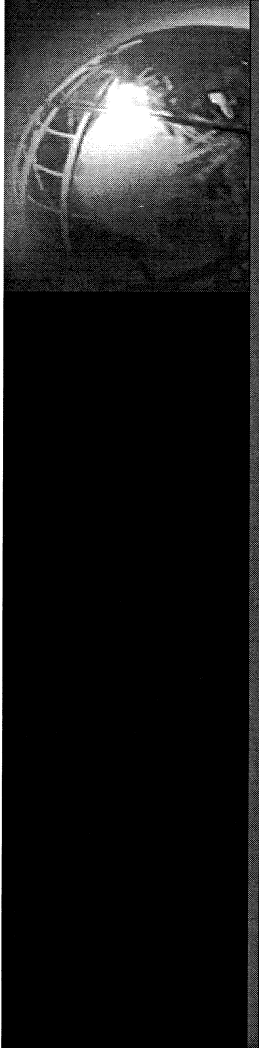
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## **REMEDIES UNDER PIPEDA**

- **Complaint to Privacy Commissioner who reports but has no power to make orders**
- **Audits of an organization's personal information management practices conducted by Commissioner**
- **Action to Federal Court for:**
  - **compliance order**
  - **publication order**
  - **damages, including for humiliation**

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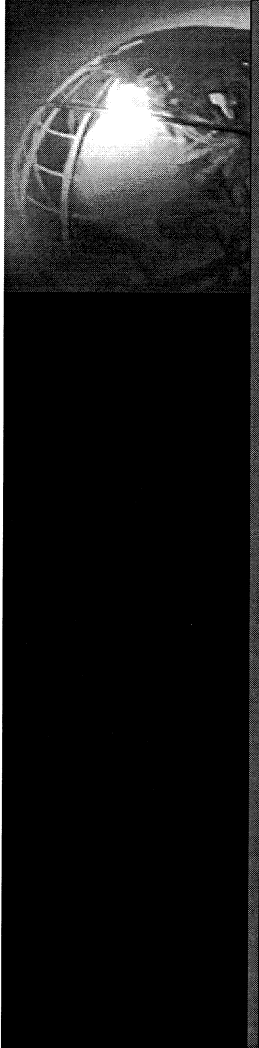
# **COMPLIANCE STRATEGIES**

**Board should decide to implement  
privacy protection**

- 1. Appoint a compliance officer**
  - Develop a plan**

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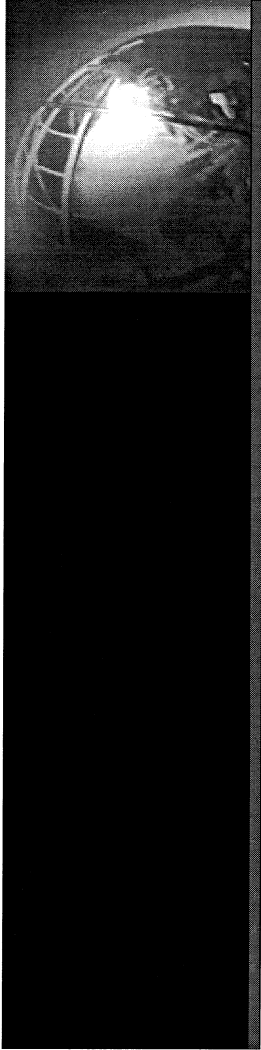


## **COMPLIANCE STRATEGIES (con't)**

### **2. Conduct a Privacy Audit**

- What information is being collected, used, held or disclosed?**
- What is “personal information”?**
- Where is it – identify jurisdictions**
- Areas to consider:**
  - member files**
  - fundraising lists and activities**
  - online operations**
  - security services**
  - third party suppliers**

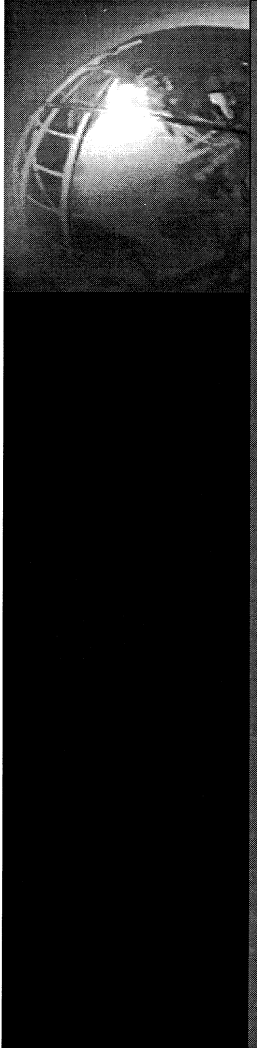
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## **COMPLIANCE STRATEGIES (cont'd)**

- 3. Develop a List of Approved Purposes**
  - used for obtaining consent
  
- 4. Prepare Privacy Policies, Brochures and Consent Forms**
  - decide on type of consent required in specific areas
  
- 5. Consider a New Filing System**
  - different files for different purposes

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## **COMPLIANCE STRATEGIES (cont'd)**

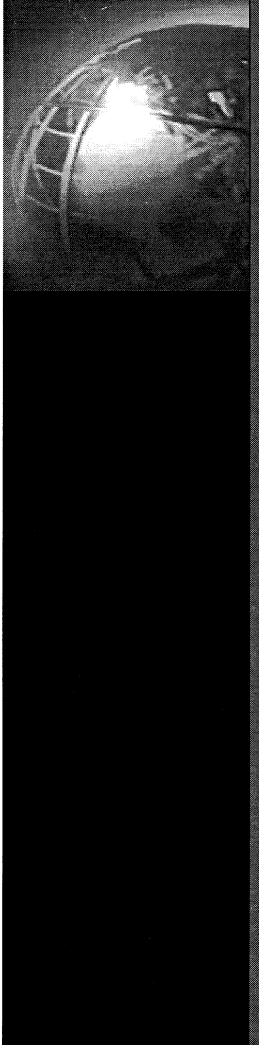
### **6. Initiate the Privacy Plan**

- obtain consents from existing members**
- put safeguards in place**
- have access costs and complaint policies ready**
- train staff**

### **7. Maintain Compliance**

- ongoing training**
- response plan for breaches and complaints**
- compliance audits**

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# **CHARITIES AND NOT-FOR- PROFIT LAW SEMINAR**

## **INTELLECTUAL PROPERTY AND PRIVACY ISSUES**

Presented By:

**EVE C. MUNRO**  
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