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Canada Update - Highlights of Major Legal News and Significant Court Cases from February 2008 to April 2008

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CANADA UPDATE — HIGHLIGHTS OF MAJOR LEGAL NEWS AND SIGNIFICANT COURT CASES FROM FEBRUARY 2008 TO APRIL 2008

*Romit S. Cheema**

I. SUMMARY OF LEGAL NEWS

A. CANADIAN BORDER AGENCY TO INCREASE ITS SURVEILLANCE PROGRAM

CANADA'S border agency, Canada Border Services Agency (CBSA), wants buses, trains, and cruise ships to provide electronic lists of passengers and their personal details in advance of their arrival into Canada.¹ Currently, the CBSA collects information on airline passengers, but companies that operate buses, trains, and cruise ships are only required to provide the information on request and not with the same mandatory electronic transfer.² This additional collection of passenger details would mean that the CBSA would be able to obtain electronic data on 100 percent of passengers, coming from all modes of travel.³ The personal information that airlines currently provide the CBSA "includes full name, birth date, gender, citizenship, visa and passport numbers, baggage information, and seat number."⁴ A report from the agency stated that they plan to create a single, central authority that would be used to collect, monitor, and analyze this passenger information to spot potential terrorists and criminals.⁵ Canada currently shares some of this information with U.S. agencies under agreement.⁶

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1. Dean Beeby, *Border agency to expand surveillance program*, THE CANADIAN PRESS, Feb. 4, 2008, available at http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080204/border_agency_080204/20080204?hub=Canada.

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

1. *Proposed Amendment to Customs Act*

The Minister of Public Safety announced plans to introduce amendments⁷ to the Customs Act into the House of Commons aimed at “stopping illegal activity and protecting Canadians from threats to their health, safety and security.”⁸ The amendments would require businesses to provide electronic data to the CBSA in advance of their goods reaching Canada.⁹ They would also provide border services officers with more flexibility in examining goods, questioning, and searching people in a broader “customs controlled area,” as opposed to only at exit points as provided under the current act.¹⁰

B. THE CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION STIFFENS RULES TO LIMIT MEDIA OWNERSHIP

The Canadian Radio-Television and Telecommunications Commission (CRTC), “an independent agency responsible for regulating Canada’s broadcasting and telecommunications systems,”¹¹ announced new changes to media ownership in Canada. The changes mean “companies can own only one TV station per language in a single market; two AM and two FM radio stations in the same language in large markets; three radio stations, but only two per frequency band, in smaller markets.”¹² The CRTC is also limiting broadcasting license ownership so that no one party can control more than 45 percent of total television audience share as a result of a merger or acquisition.¹³ It also discourages one entity from effectively controlling the delivery of television programming in a market and will not approve transactions that would create this result.¹⁴

The number of newspapers a company can own, however, remains unrestricted.¹⁵ In addition, the new media restrictions only apply to private broadcasters and do not apply retroactively to existing media ownership in Canada.¹⁶ The CRTC stated that the new rules will “preserve the plurality of editorial voices and the diversity of programming available to

7. An Act to amend the Customs Act, Bill C-43, 39th Parl., H.C. (2d session), 56-57 Elizabeth II, (2008) available at <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3288491&Language=e&Mode=1&File=14>.

8. *The Government of Canada proposes amendments to the Customs Act to strengthen border security*, CANADA BORDER SERVICES AGENCY, Feb. 15, 2008, <http://www.cbsa-asfc.gc.ca/media/release-communique/2008/2008-02-15-eng.html>.

9. *Id.*

10. *Id.*

11. Canadian Radio-television and Telecommunications Commission Welcome Page, <http://www.crtc.gc.ca/eng/welcome.htm> (last visited on X DATE)

12. *CRTC tightens rules to limit media ownership*, THE CANADIAN PRESS, Jan. 15, 2008, available at http://www.ctv.ca/servlet/ArticleNews/story/CTVNews/20080115/crtc_ownership_080115/20080115?hub=TopStories.

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*; *CRTC establishes a new approach to media ownership*, CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, Jan. 15, 2008, available at <http://www.crtc.gc.ca/eng/NEWS/RELEASES/2008/r080115.htm>.

Canadians.”¹⁷

C. WORLD TRADE ORGANIZATION BACKS THE UNITED STATES AND CANADA IN BEEF DISPUTE WITH EUROPEAN UNION

The World Trade Organization (WTO) allowed the United States and Canada to maintain punitive duties against the European Union’s import ban on beef treated with hormones.¹⁸ The punitive duties are worth tens of millions of dollars a year on European products including “Roquefort cheese, truffles and Dijon mustard.”¹⁹ In 1999, the WTO authorized the United States and Canada to impose duties on European goods after the EU banned beef.²⁰ The EU was at fault because they “failed to properly assess risks before banning certain hormones in beef imports.”²¹ The panel also agreed that the United States and Canada committed “a clear breach of WTO rules” when they refused to review the sanctions brought on European goods after subsequent EU directives upholding the bans.²² Canada’s International Trade Minister noted that the “WTO has once again sided with Canada by confirming that the ban is inconsistent with the EU’s international trade obligations” and urged the EU to lift its ban.²³

II. RECENT SIGNIFICANT COURT DECISIONS

A. NO RIGHT TO COMPENSATION FOR PRODUCTION ORDERS — *R. v. TELE-MOBILE Co.*

According to the Supreme Court of Canada, amendments to the Criminal Code in 2004, which allowed police to compel parties to produce documents or data via a production order, reflected an “intention that compensation not be paid for compliance with production orders.”²⁴ Tele-Mobile was ordered to produce phone records for police in two investigations, and they claimed that the estimated cost of \$662,000 without compensation was unreasonable.²⁵ Tele-Mobile argued that the language of the Criminal Code would permit a judge to add terms and

17. CANADIAN RADIO-TELEVISION AND TELECOMMUNICATIONS COMMISSION, *supra* note 16.

18. WTO backs US, Canada in beef dispute with EU, but both sides claim victory, ASSOCIATED PRESS, Mar. 31, 2008, available at <http://www.iht.com/articles/ap/2008/03/31/business/EU-FIN-ECO-WTO-Beef-Hormones.php>.

19. *Id.*

20. *Id.*

21. *Id.*

22. *Id.*

23. *Ministers Welcome WTO reports reaffirming that EU beef hormone ban is unjustified*, FOREIGN AFFAIRS AND INTERNATIONAL TRADE CANADA, Mar. 31, 2008, http://w01.international.gc.ca/MinPub/Publication.aspx?isRedirect=True&Language=E&publication_id=386009&docnumber=70.

24. *R. v. Tele-Mobile Co.*, [2008] S.C.C. 12 (Can.), available at <http://scc.lexum.umontreal.ca/en/2008/2008scc12/2008scc12.html>.

25. *Police don't have to pay when they seek third-party information, says Supreme Court*, CBC NEWS, Mar. 28, 2008, <http://www.cbc.ca/canada/story/2008/03/28/scoc-phones.html>.

conditions, but the Court held that the judge “can only consider the financial aspect of compliance . . . when deciding whether or not an exemption order should be made.”²⁶

B. SIKH MOTORCYCLE RIDER MUST WEAR HELMET —
R. v. BADESHA

In a decision by the Ontario Court of Justice, the accused, Badesha, challenged the constitutionality of section 104(1) of the Ontario Highway Traffic Act.²⁷ Badesha was charged with failing to wear an approved helmet while riding a motorcycle, but, as a member of the Sikh faith, he believed that he had to wear a turban at all times in public.²⁸ Badesha also argued that it was part of his religious belief that he could not wear anything over his turban.²⁹ The Ontario Human Rights Commission intervened on Badesha’s behalf, advocating his request for religious accommodation.³⁰ His argument was based on section 2(a) of the Canadian Charter of Rights and Freedoms, which states that “everyone has the following fundamental freedoms: a) freedom of conscience and religion . . .”³¹ and section 15, which states that “every individual is equal before and under the law and has the right to the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on . . . religion.”³²

Justice Blacklock dismissed the application because, though the impact on the applicant’s freedom of religion could “properly be characterized as more than a ‘trivial’ interference,” the universal helmet law, when properly understood, was clearly a requirement that was reasonably necessary to ensure the safety and security of the rider, other users of the road, as well as emotional and economic interests of other members of the public, namely the families of the riders themselves.³³

The court also found that the legislation “[did] not draw any express distinctions based on religion or creed” and, therefore, the section 15 claim did not hold up.³⁴ The court stated that it was “not satisfied that a rational and informed person in a similar position to the Applicant would

26. *R. v. Tele-Mobile Co.*, [2008] S.C.C. 12 (Can.).

27. Highway Traffic Act, R.S.O., ch. H 8 (1990) (Can.), available at http://www.e-laws.gov.on.ca/html/statutes/english/elaws_statutes_90h08_e.htm#BK158.

28. *R. v. Badesha*, 3160-83382604, [2008] O.J. 854 LEXIS (O.C.J. Mar. 6, 2008) (Can.), available at <http://www.lexisnexis.ca/info/index.php?dynid=245&docno=618>.

29. *Id.*

30. *Ontario Human Rights Commission Intervenes in Motorcycle Helmet Case Involving Religious Accommodation*, ONTARIO HUMAN RIGHTS COMMISSION, Feb. 14, 2008, <http://www.ohrc.on.ca/en/resources/news/badesha>.

31. Constitution Act, 1982, § 2(a), Canadian Charter of Rights and Freedoms as Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982, ch.11 (U.K.), available at http://www.solon.org/Constitutions/Canada/English/ca_1982.html.

32. *Id.* at § 15.

33. *Badesha*, [2008] O.J. 854.

34. *Id.*

feel that the law undercut or deprecated [sic] their human dignity.”³⁵ Some provinces, however, including British Columbia and Manitoba, have exemptions that allow devout Sikhs to ride without a helmet.³⁶

35. *Id.*

36. Jordana Huber, *Judge Rejects Case for Going Helmet-Free*, NATIONAL POST, Mar. 7, 2008, available at <http://www.nationalpost.com/news/story.html?id=357883>.

