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## Canadian Court Clarifies Limits of Internet Anonymity

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A recent Ontario Divisional Court decision sets a significant Internet law precedent by ruling that the identity of an anonymous Internet user will not be automatically disclosed to a plaintiff in civil litigation, even though the information is in the possession of a named defendant. The decision confirms that identity information should be disclosed only when the plaintiff's claim is legitimate and after a consideration of the public interests at stake, including the anonymous Internet user's *Charter* rights.

In *Warman v. Wilkins-Fournier*,<sup>1</sup> the Divisional Court overturned an order requiring the named defendants, who run an Internet message board, to produce documents that could reveal the identities of several anonymous Internet users. The plaintiff wanted to sue the anonymous Internet users for posting allegedly defamatory comments on the message board, and named these users as defendants using the pseudonyms under which they had posted the comments online. The Court found that the case engaged both freedom of expression and privacy interests under the *Charter* and that these interests should be balanced against the public interest in disclosure for the administration of justice. It held that courts should adopt a process that provides for a balancing of the interests at stake before identity information is disclosed by a party. Otherwise, a plaintiff with no legitimate claim could misuse the court rules by, for example, commencing a frivolous action against an Internet service provider for the sole purpose of unmasking an anonymous Internet commentator.

The *Warman* case is now the leading authority in Ontario for the proposition that although an Internet user's anonymity should not be protected absolutely, the mere commencement of a lawsuit will not give rise to an automatic entitlement to information identifying a previously anonymous user. Instead, the courts must balance the right of a plaintiff to seek redress against the public interests served by anonymous Internet activity. **1**

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<sup>1</sup> Torys LLP lawyers Wendy Matheson and Natalie Biderman successfully intervened on behalf of the Canadian Civil Liberties Association in the *Warman* appeal.