



# SELL and be RUINED



A Canadian perspective.

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# “The Canadian Acts”

- OLD Act
  - First to Invent
  - On sale bar
- NEW Act
  - First to file
  - disclosure in a manner that invention becomes available to the public.

# First to Invent Qualified

- Must have become available to public.
- Cannot defeat a valuable patent by activities kept secret

# The recent Jurisprudence

- Canwell v Baker
  - 17 CPR 4th @478
  - [www.fct-cf.gc.ca](http://www.fct-cf.gc.ca)

# Facts

- Sale of a chemical compound prior to relevant date.
- Reverse Analysis showed some of constituents

# Issues

- Nature of sale
  - unconditional

# Issues

- “made available” vs “becomes available”
  - do not have to show that analysis was performed, only that could be performed

# Issues

- Reverse analysis discloses the whole product
  - not only what is claimed is necessary



# Issues

- Flawed analysis does not prove that reverse engineering not possible

# Issues

- Must analysis show all of claimed range
  - no only one example within range necessary

# Issues

- What is the appropriate test
  - whether a person skilled in the art and using data and techniques available could discover the invention without application of inventive skill
  - evidence of inventive activity necessary to defeat this test

# Issues

- Where use resulting from the sale is not important
  - use on private land did not attach any confidentiality to sale, user was part of public

# Issues

- Confidentiality of analysis
  - not relevant, test is whether sale is unconditional