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15th Biennial National Conference  
New Developments in Communications Law and Policy  
A National Symposium of The Law Society of Upper Canada and the  
Media and Communications Law Section of The Canadian Bar Association

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This program, having received Certified Specialist accreditation by the Law Society of Upper Canada, is also automatically accredited by The Barreau du Québec.

**Join us in person in Ottawa** \$925.00 + \$46.25 GST = **\$971.25**

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We reserve the right to change program content, speakers and locations without notice. Registration fee less \$50.00 plus GST for a full day and \$25.00 plus GST for a part day is refundable if cancellation is received five working days before the program. Transfers (e.g. from live attendance to webcast) will not be accepted within two days of program date. CLE Bursary application forms can be found on our website at: <http://ecom.lsuc.on.ca/cle/policies.jsp#bursary>

15<sup>TH</sup> BIENNIAL NATIONAL CONFERENCE

# NEW DEVELOPMENTS IN COMMUNICATIONS LAW AND POLICY

A National Symposium of The Law  
Society of Upper Canada and the Media  
and Communications Law Section of  
The Canadian Bar Association

#### Co-Chairs:

**Robert J. Buchan**  
*Fasken Martineau DuMoulin LLP (Ottawa)*

**Peter S. Grant**  
*McCarthy Tétrault LLP (Toronto)*

#### Vice-Chairs:

**Grant Buchanan**  
*McCarthy Tétrault LLP (Toronto)*

**Laurence J.E. Dunbar**  
*Fasken Martineau DuMoulin LLP (Ottawa)*

#### Dates:

**Friday, April 23, 2010**  
9:00 a.m. – 5:30 p.m.

**Saturday, April 24, 2010**  
9:00 a.m. – 12:30 p.m.

#### Location

**National Arts Centre**  
53 Elgin Street at Confederation Square  
Ottawa

Every two years the Law Society of Upper Canada, in association with the Canadian Bar Association, convenes a national conference on communications law and policy for the benefit of lawyers, industry executives and government officials. The 2010 symposium includes a wide choice of plenary and concurrent lectures and panel sessions canvassing current issues. This is an essential conference and a key industry event.

#### Steering Committee:

**Lori D. Assheton-Smith**, *Lori D. Assheton-Smith Professional Corporation*

**Mirko Bibic**, Chief, Regulatory Affairs, *Bell Canada*

**Pamela Dinsmore**, Vice President, Regulatory – Broadband & Video  
*Rogers Communications Inc.*

**Kirsten R. Embree**, *Fraser Milner Casgrain LLP*

**John Keogh**, Senior General Counsel, *CRTC*

**David C. Kidd**, *Blake, Cassels & Graydon LLP*

**Monique McAlister**, *Goodmans LLP*

**Margot Patterson, C.S.**, *Canadian Association of Broadcasters*

**BONUS  
BOOK**

In addition to the conference materials, registrants will receive a copy of the 10th edition of the *Canadian Broadcasting Regulatory Handbook*, the 5th edition of the *Regulatory Guide to Canadian Television*, and a new publication, *Communications Law and the Courts in Canada: An Annotated Guide to Judicial Decisions Relating to the Regulation of Communications and Copyright in Canada*. All three books are being published on the opening day of the conference.



The Law Society of  
Upper Canada



THE CANADIAN  
BAR ASSOCIATION  
L'ASSOCIATION DU  
BARREAU CANADIEN  
Media and Communications Law Section  
La Section du droit de l'information et  
des télécommunications

# Friday, April 23, 2010

8:00 a.m. – 9:00 a.m. Registration

## PLENARY SESSION

9:00 a.m. – 9:15 a.m. Opening Remarks

9:15 a.m. – 10:15 a.m. **The Courts and the Regulators – Judicial Review of Communications and Copyright Regulation in Canada**

On the occasion of the publication of a comprehensive analysis of Canadian judicial decisions affecting communications and copyright regulation from the earliest times to the present, the panel discusses how the courts have impacted the CRTC and the Copyright Board. What are the key decisions in the past 20 years? What lessons can we learn?

Moderator: **Robert J. Buchan**, *Fasken Martineau DuMoulin LLP*  
 Paper: **Peter S. Grant**, *McCarthy Tétrault LLP*  
 Panellists: **The Honourable Mr. Justice William J. Vancise**, Chairman, *Copyright Board of Canada*  
**Konrad von Finckenstein, Q.C.**, Chairman, *CRTC*

10:15 a.m. – 10:30 a.m. Coffee Break

## CONCURRENT SESSIONS

10:30 a.m. – 12:30 p.m. **Group-Based Licensing of TV Services – New Developments**

Upcoming renewal hearings for the conventional, pay and specialty TV licensees will need to take account of new CRTC policies on group-based licensing. How should the Canadian programming obligations of the licensees be handled? If these obligations are applied to a group, is there potential for “gaming”? What other issues need to be addressed in a group-based licensing system?

Moderator: **Andrée Wylie**, *Blake, Cassels & Graydon LLP*  
 Paper: **Peter Miller**, Barrister & Solicitor  
 Panellists: **John Barrack**, National Executive Vice-President and Counsel *Canadian Film & Television Production Association*  
**Robert Malcolmson**, *Goodmans LLP*

10:30 a.m. – 12:30 p.m. **Double or Triple Jeopardy – Satisfying Three Potential Masters in Ownership and Merger Reviews**

Under Canadian law, more than one government agency may have jurisdiction to review the ownership or merger of communications undertakings. Can, or should, a transaction be required to satisfy two, or possibly three, masters? Do the recent CRTC and Industry Canada reviews of the ownership of Globalive and BCE, and the 2002 conflict between the Competition Bureau and the CRTC over the Astral-Telemedia merger, represent an emerging trend or will they remain anomalies? What issues regarding procedure, fairness, and potential inconsistency are raised by dual or even triple-track reviews?

Moderator: **Stephen Millington**, Senior Legal Counsel, *CRTC*  
 Paper: **Monique McAlister**, *Goodmans LLP*  
 Panellists: **Sophie Émond**, Vice President, Regulatory and Government Affairs *Astral Media Inc.*  
**Chris Peirce**, Chief Corporate Officer *MTS Allstream*

12:30 p.m. – 2:00 p.m. **Buffet Luncheon – National Arts Centre, Ottawa**  
**“Communications Policy in the Political Arena”**

Speaker: **Jeffrey Simpson**, National Affairs Columnist, *The Globe and Mail*

## CONCURRENT SESSIONS

2:00 p.m. – 3:30 p.m. **The Matter of Local Television – Conventional Broadcasting at the Crossroads**

Whether expressed as “negotiation for value” or “fee for carriage”, the contentious debate over a subscription revenue model for over-the-air broadcasters has generated an unprecedented level of public interest and discussion. Whatever the outcome of that debate, there is little doubt that local television is in the midst of an important transformation. Is the business model broken? Are there alternative models? What are the legal and policy implications of various approaches? This panel will look at the road ahead for local television in Canada.

Moderator: **Lori D. Assheton-Smith**, *Lori D. Assheton-Smith Professional Corporation*  
 Paper: **Sheridan Scott**, *Bennett Jones LLP*  
**David Elder**, Barrister & Solicitor  
 Panellists: **Pamela Dinsmore**, *Rogers Communications Inc.*  
**Kevin Goldstein**, Vice-President, Regulatory Affairs, *CTVglobemedia*

2:00 p.m. – 3:30 p.m. **Preservation of an Open Internet – How does Canada Rate?**

How best can broadband networks and particularly the Internet be ubiquitous, open, affordable and accessible to all consumers? If consumers should have the right to run applications of their choice and application providers should have free access to all networks, how does one deal with traffic congestion and augmentation costs? How does Canada rate today – are we falling behind? Are the CRTC’s recent rulings pointing Canada in the right direction? Is there a need for an overarching government policy and legislation to drive the digital agenda?

Moderator: **David Kidd**, *Blake, Cassels & Graydon LLP*  
 Paper: **Peter David Ruby**, *Goodmans LLP*  
 Panellists: **Teresa Griffin-Muir**, Vice-President, Regulatory Affairs, *MTS Allstream*  
**Suzanne Morin**, Assistant General Counsel *Bell Canada*

# Friday, April 23, 2010 – Continued

3:30 p.m. – 3:45 p.m. Coffee Break

## CONCURRENT SESSIONS

3:45 p.m. – 5:30 p.m. **The Over-the-Air Digital Transition – New Developments**

The transition to digital television from OTA stations has been mandated for August 31, 2011. Significant issues in Canadian communications law and policy are being called into question as the industry prepares for the shift that is less than two years away. Are the priority carriage and simultaneous substitution rules that are ingrained in the analog world “regulatory privileges” or “regulatory obligations” as we move into the digital world? Is there a solid rationale for “free TV for all”? What has been the U.S. experience?

Moderator: **Margot Patterson, C.S.**, *Canadian Association of Broadcasters*  
 Paper: **Dr. Gregory Taylor**, *McGill University*  
 Panellists: **David D. Oxenford**, *Davis Wright Tremaine LLP* (Washington, D.C.)  
**Gary Smith**, (Formerly of *Bell ExpressVu*)  
**Wayne A. Stacey, P.Eng.**, *Wayne A. Stacey & Associates Ltd.*

3:45 p.m. – 5:30 p.m. **Policy Direction and Telecom Deregulation – Three Years Later**

In December 2006, the Federal Government issued to the CRTC the Telecom Policy Direction, which mandated that the CRTC should rely on market forces to the maximum extent feasible and regulate, where there is still a need to do so, in a manner that interferes with market forces to the minimum extent necessary. Has the Policy Direction been properly implemented? Has this changed in any way over the last three years? How have consumers and business users benefitted from the Policy Direction?

Moderator: **John Traversy**, Executive Director, Telecommunications, *CRTC*  
 Paper: **Jonathan Daniels**, Vice-President, Regulatory Law, *Bell Canada*  
**David Krause**, Director, Economic Analysis, *Bell Canada*  
 Panellists: **George Hariton**, President *TIA Telecommunications Issues and Analysis*  
**Christopher Taylor**, Barrister & Solicitor

5:30 p.m. – 6:30 p.m. Reception – (cash bar) National Arts Centre

# Saturday, April 24, 2010

## PLENARY SESSION

9:00 a.m. – 10:30 a.m. **A New Digital Agenda for Canada**

With many countries announcing digital strategies, calls are mounting for Canada to do the same. Convergence has also intensified the need for review. A distinguished panel sets out its thoughts on what Canada’s digital agenda should include. Is new legislation called for? What can we learn from other countries?

Moderator: **Tom Perlmutter**, Government Film Commissioner and President, *National Film Board of Canada*  
 Paper: **Peter Lyman**, Senior Partner, *Nordicity Group LLP*  
 Panellists: **Lawson A. W. Hunter**, Counsel, *Stikeman Elliott LLP*  
**Dr. Rudolf W. Strohmeier**, Head of Private Office of Viviane Reding, EU Commissioner for Information Society and Media, *Commission of the European Union* (Brussels)

10:30 a.m. – 10:45 a.m. Coffee Break

## CONCURRENT SESSIONS

10:45 a.m. – 12:30 p.m. **What Were the Top 10 CRTC Broadcast Decisions?**

The CRTC has been regulating broadcasting for over 40 years. Now that we have hindsight, what were its 10 most important decisions? This session is based on a paper that attempts to identify the all time “game-changing” CRTC decisions based on interviews with a who’s who of regulatory elders and sages.

Moderator: **John Riley**, President *Astral Television Networks*  
 Paper: **Douglas Barrett**, CTV Visiting Professor, *Schulich School of Business, York University*  
 Panellist: **C. Christopher Johnston, Q.C.**, Barrister & Solicitor

10:45 a.m. – 12:30 p.m. **Facebook™, Streetview™, and What’s Next – Navigating Your Way Through New Issues in Privacy Law**

Privacy issues are central in social networking, behavioural advertising, traffic management/network neutrality, anti-spam legislation, and lawful access legislation, among others. Is an Internet protocol address “personal information”? Does an individual have a reasonable expectation of privacy in information about their Internet browsing habits or their Facebook™ profile? What forms of consent are appropriate for the collection, use and disclosure of personal information online? This panel will explore current privacy issues in communications practice, law and policy.

Moderator: **Dr. Ian Kerr**, Canada Research Chair in Ethics, Law and Technology, Faculty of Law *University of Ottawa*  
 Paper: **Alex Cameron**, *Fasken Martineau DuMoulin LLP*  
 Panellists: **Jennifer Stoddart**, Privacy Commissioner of Canada  
**Jay Thomson**, President *Jay Communications Consulting Inc.*

12:30 p.m. Program Ends