

Canada – Law Firms

Toronto: An Entertainment Law Destination And Much More

The Editor interviews David Zitzerman, Partner, Goodmans LLP.

Editor: Mr. Zitzerman, would you tell our readers something about your professional experience?

Zitzerman: I began my career in the 1980s as a commercial lawyer. When I joined Goodmans in 1986, I went directly into the entertainment law group headed by Michael Levine. The firm had an excellent reputation in the field, and I have never looked back.

Editor: How has your practice evolved over the course of your career?

Zitzerman: At the beginning, in 1986, movie and television production in Canada amounted to a couple hundred million dollars. Canadian TV shows did not appear outside the country and were largely government funded. Last year alone saw more than \$4 billion in production in Canada. Canadian programs are now routinely shown in the U.S. and Europe.

Editor: Goodmans has a worldwide reputation for its entertainment law practice. What is its origin?

Zitzerman: It goes back to Eddie Goodman, our firm patriarch, who died just recently. He was good friends with John Bassett, and the two of them were instrumental in setting up *The Toronto Telegram* newspaper and BATON Broadcasting System, which became CTV. When the *Telegram* folded, Eddie helped create *The Toronto Sun*.

When Michael came to the firm, he was one of a handful of entertainment lawyers in Canada who had any sort of practice. And when I joined, our group was one of the few groups with a substantial practice in this area in Toronto.

Editor: Would you give us an overview of the practice?

Zitzerman: Out of the 200 lawyers at Goodmans, we have 12 lawyers, six in the entertainment law group and six in the communications law group, the latter engaged primarily in CRTC – the Canadian Radio-television & Telecommunications Commission – work. We are all full-time practitioners in this practice. In our entertainment law group we have three partners, Michael Levine, Carolyn Stamegna and myself, engaged in diverse practices.

The communications law group handles, by way of example, CRTC regulatory work on behalf of CTV. They also work with cable, satellite and radio companies.

Our entertainment law practice is equally diverse and covers TV and feature film development and production, financing, distribution, multimedia, book publishing, digital distribution and the like.

Editor: I gather that copyright and IP issues are at the center of your practice.

Zitzerman: Absolutely. Copyright is the foundation of entertainment law. Film, TV shows, books and videos are all protected under copyright law, and we deal with it on a daily basis.

Another branch of IP that we handle is trademarks. There is a great deal of merchandising associated with films and TV shows, and we have dedicated trademark attorneys in the firm whom we access regularly.

Similarly, with respect to IP-related litigation,



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we have several litigators in the firm with great expertise. For example, we handled the recent appeal of the Canadian Recording Industry Association of the decision of the Federal Court in connection with copyright infringement relating to unauthorized on-line music downloading.

Editor: And labor and employment law?

Zitzerman: The film and TV business is heavily organized, and the actors, directors, writers and other players in the industry are frequently represented by guilds and unions. Much of our day-to-day work involves what we call “above the line” contracts – contracts for producers, principal actors and directors. “Below the line” contracts – relating to the film crew and everything else – are handled by our full-time labor lawyers.

Editor: Finance must be an important part of your practice as well.

Zitzerman: The entertainment industry is a high-cost business. You need a great deal of money to make even the lowest budget TV show or feature film. The average Hollywood film costs about \$80 million at present. We are always looking for funding sources: private equity, government-sponsored direct financing, tax incentives – both federal and provincial – bank loans, international “soft money” financing of many different types, and so on. Every deal has its unique structure, and much of what we do in our practice involves considerable creativity in thinking through financing options.

Much of our practice is about representing clients who are trying to have their films or TV shows developed, produced, financed, distributed and successfully exploited. “Exploitation,” which used to mean exhibition through movie theatres, TV, cable, home video stores, and the like, now extends to the Internet. We now routinely deal with the online digital transmission of films and TV shows onto computers and mobile devices.

Editor: I gather that there is a lot of government support for what the Canadian entertainment industry is doing. How does this work?

Zitzerman: In addition to being an important business, film and TV reflects the culture of the country of origin. The Canadian government – like many other foreign governments except the U.S. – provides financial support to ensure the continuation of an indigenous Canadian entertainment industry.

For example, The Canada Feature Film Fund has a goal of 5 percent of total Canadian box office receipts from Canadian films. We are not quite there yet, but the goal beckons.

We also have excellent tax incentives. There are refundable film tax credits, both federal and in most Canadian provinces. There are tax credits that encourage Canadian-owned and -controlled projects, and there are also tax incentives for the industry generally that encourage both foreign and local producers. The idea is that these producers employ local people who pay taxes in the local jurisdiction, so attracting the business makes good financial sense.

Film and TV production is a very competitive business, and there are many other jurisdictions, including many European countries and several U.S. states, that offer tax rebates, refunds and other incentives to attract production. And, as with just about every country including the U.S., in Canada there are certain limitations on foreign investment in cultural businesses – under the Investment Canada Act a foreign investor is not permitted to gain control of a Canadian film distributor or book publisher, for example – but the volume of foreign investment in the Canadian entertainment industry continues to grow.

Editor: Your practice is also engaged in domestic regulation.

Zitzerman: We deal with the CRTC, which regulates Canadian television, on an ongoing basis. We deal with the Canada Revenue Agency and the Canadian Audio-Visual Certification Office in connection with federal tax credits, with Telefilm Canada on official film treaty co-productions and with the Department of Canadian Heritage on a variety of issues.

This is also a cross-border practice. If a film is being shot in New York and Toronto, we must address the issue of actors and directors coming into the country to work for short periods of time. And we also represent Canadians doing precisely the same thing in the U.S. There are many complicated immigration, labor law and taxation issues to be sorted out.

Editor: What makes Toronto, say, such an attractive alternative to Hollywood?

Zitzerman: A Hollywood studio shooting a film in Toronto would be able to access a federal production services tax credit of 16 percent of eligible Canadian labor – that is, 16 percent of everything spent on qualified Canadian labor would be returned as a refundable tax credit – and the Ontario production services tax credit would add another 18 percent of eligible Ontario labor. That means that almost 34 percent of everything spent on Canadian labor is recouped. Considering the huge budgets of most Hollywood films, that is a substantial amount of money.

If you wish to understand why *The Sum Of All Fears* was filmed in Montréal, *Cinderella Man* in Toronto, *The Shipping News* in Halifax or *Shall We Dance* in Winnipeg, to say nothing of the many TV series such as *X-Files* and *Queer as Folk* that have been filmed in Canada over the years, I would point in particular to the financial and tax incentives.

Editor: Is there competition between British Columbia and Ontario in this regard?

Zitzerman: Yes. There are films and TV

productions that can only be shot in one place or the other because of geography, but aside from that, there is a great deal of competition among all of the Canadian provinces as well as between Canada and foreign locations. Film projects pay extremely well, and the economic multiplier effect and spinoff in publicity for the host city is very positive.

Editor: Where does the practice reside? Are there particular strengths in Toronto and Vancouver?

Zitzerman: Toronto is a much larger office and the center of our entertainment law practice. Our Vancouver office is an excellent commercial outpost, and their lawyers are very valuable in many of our entertainment projects. The bulk of the work is done through the Toronto office, however.

Having said that, let me add that we work with clients who shoot their films all across Canada and, indeed, across the world. At the moment, we are working on a project entitled *The Tudors* based upon the Henry VIII dynasty that is an official Canada-Irish film co-production which will be broadcast in Canada on CBC and in the U.S. on Showtime. It recently concluded filming in Dublin and is now beginning post-production in Canada.

Editor: Who are the clients and what media do they represent?

Zitzerman: We do a great deal of work for Canadian entertainment companies such as CTV, Cookie Jar, Maple Pictures, Think-Film and many others. We also work for Canadian independent producers such as Insight Productions, which produces, *Canadian Idol*, *Falcon Beach* and the *Juno Awards* and Temple Street Productions which produces *Billable Hours* and *Canada's Next Top Model*. We handle the Canadian legal work for several U.S. networks, cable services and Hollywood studios, including Paramount, NBC Universal, CBS, Showtime, Marvel, MTV, HBO, Nickelodeon, ABC Disney Cable, Oxygen, Discovery, A&E, National Geographic and others and represent European entertainment companies such as Endemol.

My partner Carolyn Stamegna does a great deal of work in film financing, particularly for banks and other financiers. She works extensively with The Royal Bank in Canada and with Comerica Bank, which is based in Los Angeles, as well as with Rogers Telefund and Peace Arch Entertainment.

Michael Levine is one of the few lawyers in Canada who has a large talent practice in addition to one comprised of conventional entertainment enterprises. Michael represented the late Mordecai Richler for a number of years and now represents his estate. He also acts for Lloyd Robertson, the anchor of the CTV national news, Peter C. Newman, Michael Ignatieff, Jan Martell, Adrienne Clarkson, John Ralston Saul, Robert Bateman, Sandie Rinaldo and many other prominent Canadian personalities.

I would like to think that because we started this practice early, we have built excellent contacts across the industry and the world. This is important because the entertainment business is built on personal relations. I do not think that will change, notwithstanding the emergence of new technologies. Digital transmission is going to be the distribution vehicle of the future, and it will impact that way in which we do business. For entertainment lawyers, it's a wonderful opportunity and an enormous challenge too.

Please email the interviewee at dzitzerman@goodmans.ca with questions about this interview.