



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

# New Developments in Communications Law and Policy

THURSDAY, MAY 5, 2016 10:00 a.m. – 4:30 p.m. and FRIDAY, MAY 6, 2016 8:00 a.m. – 4:00 p.m.  
SHAW CENTRE, 55 Colonel By Drive, Ottawa, Ontario

THE  
INTERNET  
OF  
THINGS

BIG  
DATA

BROAD  
CASTING

SOCIAL  
MEDIA

THE  
WIRELESS  
MARKET

NET  
NEUTRALITY

PICK-  
AND-PAY

MULTI-  
PLATFORM  
WORLD

CYBER-  
SECURITY

A NATIONAL SYMPOSIUM OF THE LAW SOCIETY OF UPPER CANADA AND THE ENTERTAINMENT MEDIA AND COMMUNICATIONS LAW SECTION OF THE CANADIAN BAR ASSOCIATION.

**THIS NATIONAL CONFERENCE ON COMMUNICATIONS LAW AND POLICY** is designed for lawyers, industry executives, and government officials. This year's program includes a wide choice of plenary and concurrent lectures, as well as panel sessions canvassing current issues.



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Haut-Canada



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## CHAIRS



**Grant Buchanan**  
Partner  
*McCarthy Tétrault LLP*



**Laurence Dunbar**  
Partner  
*Fasken Martineau DuMoulin LLP*

## STEERING COMMITTEE

**Asha Daniere**, Executive Vice President, Business and Legal Affairs, *Blue Ant Media Inc.*

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

**David Elder**, Counsel, *Stikeman Elliott LLP*

**Christianne Laizner**, Senior General Counsel/Executive Director, Legal Sector, *CRTC*

**Robert Malcolmson**, Senior Vice President, Regulatory Affairs, *Bell Canada*

**Monique McAlister**, Partner, *Goodmans LLP*

**Margot Patterson, C.S.**, Counsel, *Dentons Canada LLP*

**Christopher Taylor**, Barrister and Solicitor

## BOOK BONUS

In addition to the CPD electronic conference materials, we are pleased to present you copies of a number of books prepared by *McCarthy Tétrault LLP*, all of which will be provided to registrants on the opening day of the conference.

## A SPECIAL THANK YOU TO OUR DAY ONE LUNCH SPONSORS:

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**Total CPD Hours = 9 h 30 m Substantive + 3 h Professionalism P**

LSUC CPD is an Accredited Provider of Professionalism Content. This program is also accredited by the Barreau du Québec.

**\$1325** + taxes (PDF materials included with registration fee)

8:00 a.m. – 10:00 a.m. **Registration**

10:00 a.m. – 10:10 a.m. **Welcome and Opening Remarks**

**Grant Buchanan**, Partner, *McCarthy Tétrault LLP*

**Laurence Dunbar**, Partner, *Fasken Martineau DuMoulin LLP*

10:10 a.m. – 11:30 a.m. **PLENARY SESSION**

### The Canadian Rights Market

The Canadian broadcasting system is built on the fundamental tenet of the existence of a distinct Canadian rights market. However, the Internet is disrupting this model. As OTT services like Netflix become increasingly global, what is the risk that the online rights they buy will follow suit? Then there is the problem of leaky geo-gates. How do existing Canadian OTT services and broadcasters protect the territorial rights they have purchased when Canadians with a Netflix subscription can easily access the U.S. Netflix service through DNS redirect services and VPNs? And what about pirate services like Popcorn Time that make copyrighted content available worldwide for free? What legal tools, civil and/or criminal, are available to Canadian rightsholders to combat leaky geo-gates and/or online piracy? More generally, how do we balance the damage to the Canadian territorial rights market against the rights of users, as well as the objectives of the *Broadcasting Act* against the desire and ability of consumers to access copyrighted programming over the Internet?

Moderator: **Peter Miller**, Barrister and Solicitor

Paper: **Jay Kerr-Wilson**, Partner | Trade-mark Agent, *Fasken Martineau DuMoulin LLP*

**Ariel Thomas**, Associate | Trade-mark Agent, *Fasken Martineau DuMoulin LLP*

Panellists: **Professor Jeremy deBeer**, Faculty of Law, *University of Ottawa*

**Stephen Stohn**, Partner, *Stohn Hay Cafazzo Dembroski Richmond LLP*

**Susan Wheeler**, Vice President, *Regulatory-Media, Rogers Media Inc.*

11:30 a.m. – 11:45 a.m. **Coffee and Networking Break**

11:45 a.m. – 1:15 p.m. **CONCURRENT SESSIONS**

#### The Changing Landscape of Broadcasting Regulation in Canada

What impact will the new pick-and-pay regime, the TVSP Code and the Wholesale Code, and other recent decisions have on the broadcasting sector? What will the introduction of these measures mean for consumers? Will they prevent an exodus of consumers to the Internet? What trends have we seen so far since the Let's Talk TV decisions? Should new types of services such as VOD, VPNs, Mobile TV and Streaming Audio services be treated differently than other comparable services? What has been the response of Canadian BDUs to the threat posed by the Internet?

Moderator: **Asha Daniere**, Executive Vice President, Business and Legal Affairs, *Blue Ant Media Inc.*

Paper: **Joel Fortune**, *Joel R. Fortune Professional Corporation*

Panellists: **Kevin Goldstein**, Vice President, Regulatory Affairs, Content and Distribution, *Bell Media*

[continued >](#)

OR

#### What's the Big Deal about Big Data?

As computing power increases and the world becomes increasingly networked, organizations have the capability to collect, analyze and exchange vast amounts of detailed data about consumer transactions, habits and preferences. In particular, communications companies have access to rich data sets derived from such sources as set-top boxes, mobile usage and Internet surfing behaviour. Applying sophisticated algorithms and predictive models to this data can provide organizations with important insights into their businesses and enable them to deliver advertising tailored to the interests and tastes of consumers. Big data can also provide benefits to consumers including special offers, recommendations and relevant advertising. However, many perceive the big data phenomenon as a form of mass surveillance, and fear how such data may be used, and the organizations, including the state, that have access to this "treasure trove"—many are also concerned that this data forms a detailed, permanent record about their lives. Some governments have enacted "right to be forgotten" laws to counter these fears. What are the responsibilities, (including during a data breach) of corporations and governments to users whose data they collect, use and disclose? How can individual privacy rights be best

[continued >](#)

11:45 a.m. – 1:15 p.m. **CONCURRENT SESSIONS****The Changing Landscape of Broadcasting Regulation in Canada** *(continued)*

Panellists: **Gary Maavara**, Executive Vice President and General Counsel, Corporate Secretary, *Corus Entertainment Inc.*  
**Ann Mainville-Neeson**, Vice President, Broadcast Policy and Regulatory Affairs, *Telus Communications Company*

OR

**What's the Big Deal about Big Data?** *(continued)*

protected, while allowing for the benefits that big data can provide? Is Canada's approach consistent with international practices?

Moderator: **David Elder**, Counsel, *Stikeman Elliott LLP*  
 Paper: **Chantal Bernier**, *Dentons Canada LLP*  
 Panellists: **Colin McKay**, Head of Public Policy & Government Relations, *Google Canada Corporation*  
**Regan Morris**, Legal Counsel, Legal Services, *Office of the Privacy Commissioner of Canada*

1:15 p.m. – 2:45 p.m. **Lunch Provided**

Speaker: **Jeffrey Campbell**, Vice President, The Americas Global Government Affairs, *Cisco Systems, Inc.*

2:45 p.m. – 4:30 p.m. **CONCURRENT SESSIONS****Update on the Wireless Market**

Is policy keeping up with changes in the wireless market? Is that even possible? Wi-Fi technology is evolving and becoming ubiquitous. Where is the technology now and how will it impact wireless voice and data services? Data consumption continues to increase rapidly. How will consumers' desire to avoid data charges impact the wireless market? Does the market have the broadcast spectrum it needs, and should Canada follow the U.S. on reverse auctions for spectrum? LTE networks are now well advanced and well understood, but other technologies are just now being rolled out or are around the corner. How will 5G—and the wider roll-out of existing technologies from LTE broadcast to small cells—impact the wireless market and the appropriate policy framework? How do we balance stability and responsiveness in the wireless policy framework?

Moderator: **Gregory (Greg) Kane, Q.C.**, Counsel, *Dentons Canada LLP*  
 Panellists: **Serge Bertuzzo**, Director, Regulatory Affairs, *Bell Canada*  
**Robert (Bob) Boron**, Chief Regulatory Officer, *Wind Mobile Corp.*  
**Dr. Jeffrey Eisenach**, Senior Vice President, Co-Chair, Communications, Media, and Internet Practice, *NERA Economic Consulting*

OR

**The Internet of Things (IoT)**

Last summer, McKinsey estimated that the IoT is expected to have an economic impact of \$3.9 trillion to \$11.1 trillion per year by 2025, which will represent up to 11% of the world's economy. The world's largest manufacturers have already jumped on board but as with any disruptive industry it will take a few years for the regulatory frameworks to catch up. With this new industry comes a host of new legal issues. Some areas of law that will be affected by the IoT include: security, privacy and net neutrality. Regulators may introduce minimum security protocols for IoT devices since breaches of security can lead to more direct and physical effects on a consumer's safety. Privacy also becomes exponentially more important since the amount of information about an individual's life will increase as more products become internet-enabled. Consumers of these products will demand more control over their private information, while companies will want to store that information for commercial purposes. And the debate around net neutrality may shift when the IoT is dealing with matters such as medical emergencies or track-and-control information like airlines or automobiles.

Moderator: **Grant Buchanan**, Partner, *McCarthy Tétrault LLP*  
 Paper: **Kirsten Thompson**, Partner, *McCarthy Tétrault LLP*  
 Panellists: **Corinne Charette**, Senior Assistant Deputy Minister, *Innovation, Science and Economic Development Canada*  
**Bruce Gustafson**, Principal, *Loquitur Group*  
**Patricia Kosseim**, Senior General Counsel, *Office of the Privacy Commissioner of Canada*

4:30 p.m. – 5:30 p.m. **RECEPTION (Cash Bar) Shaw Centre**

Program delegates are invited to a cocktail reception following Day One

**Total CPD for Day One = 5 h 30 m Substantive**

7:30 a.m. – 8:00 a.m.

Registration

8:00 a.m. – 9:30 a.m.

**PROFESSIONALISM – PLENARY SESSION****Turn and Face the Strange: How is Your Communications Practice Changing?** (1 h 30 m **P**)

How is the communications bar changing? In terms of understanding the business of law, how should the profession respond to these changes? What competencies will lawyers need to acquire to stay relevant in a world that sees the traditional silos of communications law merge? What skills and experience will give young lawyers an edge, and what “upgrades” should senior practitioners consider? Is it a must for a lawyer to be on-site in a communications law firm, a regulatory agency/government department, or a communications company to gain the experience necessary to practise effectively? What challenges and opportunities are there for business development and the value proposition for clients?

Moderator: **Chris Bentley**, Executive Director, Law Practice Program & Legal Innovation Zone,  
*Ryerson University*

Paper: **Colin Lachance**, Principal, *PGYA Consulting*

Panellists: **Ken Engelhart**, *Engelhart Law*

**Andrew (Andy) Kaplan-Myrth**, Director, Regulated Agreements, *TekSavvy Solutions Inc.*

**Monique Lafontaine**, Barrister and Solicitor

9:30 a.m. – 9:45 a.m.

Registration / Coffee and Networking Break

9:45 a.m. – 11:15 a.m.

**PLENARY SESSION****Net Neutrality**

Is net neutrality working in Canada? Are subsection 27(2) and section 36 of the *Telecommunications Act* sufficient to protect the interest of consumers, online content providers, and competing network providers? Is it a help or hindrance to net neutrality that Canada’s traffic management rules singularly rely on transparency? To what extent do these rules permit debate on whether and how services should be prioritized in high traffic periods, on the desirability and nature of zero-rated content arrangements, and on other practices that challenge neutrality? How does the approach in Canada differ from the new U.S. rules that went into effect in June 2015, and the new EU rules adopted in October 2015? Are there lessons that can be learned from other jurisdictions? A team of experts from Canada and the United States will tackle these issues.

Moderator: **Jacob Glick**, Chief Corporate Affairs Officer, *Rogers Communications*

Paper: **Bram Abramson**, Chief Legal & Regulatory Officer, *TekSavvy Solutions Inc.*

Panellists: **Russell Blau**, Partner, *Morgan Lewis & Bockius LLP*

**Tamir Israel**, Staff Lawyer, Samuelson-Glushko Canadian Internet Policy & Public Interest Clinic, Faculty of Law, Common Law Section, *University of Ottawa*

**Ted Woodhead**, Senior Vice President, Federal Government and Regulatory Affairs,  
*Telus Communications*

11:15 a.m. – 11:30 a.m.

Coffee and Networking Break

**P** = Session contains 100% professionalism content.

11:30 a.m. – 1:00 p.m. **CONCURRENT SESSIONS****Sliced and Diced: Public Broadcasting in a Multi-Platform World**

The Canadian broadcasting system has three elements—public, private and community-based—which the CRTC must regulate so that Canadians get the best of all worlds. As Canada's national public broadcaster, CBC/Radio-Canada is accountable to Parliament and regulated by the CRTC, it has a mandate under the *Broadcasting Act* to inform, enlighten and entertain. In a multi-platform environment, being all things to all people is an impossible task for any broadcaster, so when it comes to CBC/Radio-Canada: what comes first? What gets cut? And who should get to decide? Join us for a discussion of the role, regulation, accountability, independence and future of our national public broadcaster.

Moderator: **Christopher Taylor**, Barrister & Solicitor  
 Panellists: **Steve Anderson**, Founder and Executive Director, *OpenMedia.ca*  
**Sylvain Lafrance**, Adjunct Professor, Executive Education Department, *HEC Montréal*  
**Michael MacMillan**, Director, Co-Founder & CEO, *Blue Ant Media Inc.*

OR

**Liberalized? Have National Security Reviews Replaced Regulation of Foreign Ownership?**

When the ownership and control limits were removed in 2012 for all but the largest Canadian carriers, practitioners could be excused for wondering whether the Government of Canada was really prepared to take a hands-off approach to foreigners acquiring control over our wireless and wireline networks. With the application of the *Investment Canada Act's* new national security provisions (or the mere threat to do so) to proposed transactions for such diverse carriers and manufacturers as Allstream, WIND and Research in Motion, we may have the answer. This session will explore the increased focus in Canada and elsewhere on threats to national security posed by foreign ownership over telecommunications assets, in light of growing concerns over cyber-security and an unstable geopolitical environment. As well, we'll examine how the national security provisions of the *Investment Canada Act* are being applied to telecom deals in Canada, and consider the parallel CFIUS and Team Telecom reviews in the United States.

Moderator: **Lawson Hunter, Q.C.**, *Stikeman Elliott LLP*  
 Paper: **Michael Koch**, Partner, *Goodmans LLP*  
 Panellists: **Ray Boisvert**, Senior Associate, Public Affairs, *Hill + Knowlton Strategies*  
**Anne Salladin**, Special Counsel, *Stroock & Stroock & Lavan LLP*

1:00 p.m. – 2:30 p.m. **Lunch Provided**

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

2:30 p.m. – 4:00 p.m. **PROFESSIONALISM – PLENARY SESSION****Social Media and the Practice of Law** (1 h 30 m **P**)

What guidance do the LSUC professional laws of conduct provide about the ethics of using social media? How does this impact the LSUC conflict rules? How does the introduction of broad public input through the Internet affect hearings? Can the use of Twitter feeds unfairly sway administrative tribunals or court decisions? What procedural safeguards should there be? How have the Internet and social media impacted the practices of communications lawyers and the conduct of public proceedings? How does a communications lawyer, whose interest lies in the kind of multistakeholder debate that social media can host and transform, use social media? When is it appropriate to be part of the conversation, and when should communications lawyers stay out?

Moderator: **Christianne Laizner**, Senior General Counsel/Executive Director, Legal Sector, *CRTC*  
 Paper: **Crystal Hulley**, Legal Counsel, Law Sector, *CRTC*  
 Panellists: **Professor Michael Geist**, Canadian Research Chair of Law and E-commerce, Faculty of Law, *University of Ottawa*  
**Bob Tarantino**, Counsel, *Dentons Canada LLP*

4:00 p.m. **Program Ends**

**Total CPD for Day Two = 4 h Substantive + 3 h Professionalism **P****

**P** = Session contains 100% professionalism content.