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Fourteenth Biennial National Conference New Developments in COMMUNICATIONS Law and Policy (April 25 and 26, 2008)

Live at the Ottawa Congress Centre

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- For **GROUP REGISTRATION**, please call 416-947-3315 or 1-800-668-7380 Ext. 3315

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A National
Symposium of
The Law Society
of Upper Canada

Fourteenth Biennial National Conference

New Developments in COMMUNICATIONS Law and Policy

Chaired by: **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 25, 2008** 9:00 a.m. to 5:30 p.m.
and
Saturday, April 26, 2008 9:00 a.m. to 12:30 p.m.

Location: **Ottawa Congress Centre**, 55 Colonel By Drive, Ottawa

Steering Committee:

Lori Assheton-Smith, Barrister & Solicitor
Pamela Dinsmore, Vice President, Regulatory – Broadband & Video, *Rogers Communications Inc.*
David Elder, Vice-President, Regulatory Law and Bell Privacy Ombudsman, *Bell Canada*
Kirsten Embree, *Fraser Milner Casgrain LLP*
John Keogh, Senior General Counsel, *CRTC*
David C. Kidd, *Blake, Cassels & Graydon LLP*
Monique McAlister, *Goodmans LLP*
Christopher A. Taylor, Barrister & Solicitor

Every two years The Law Society of Upper Canada convenes a national conference on communications law and policy for the benefit of lawyers, industry executives and government officials. The 2008 conference includes more than ten different lectures and panel sessions over a two day period. In addition to the conference materials, registrants will receive a copy of the 9th edition of *Canadian Broadcasting Regulatory Handbook*, the 4th edition of *Regulatory Guide to Canadian Television*, and the 2nd edition of *Regulatory Guide to Canadian Radio*. All three books will be updated to April 1, 2008, and are being published on the opening day of the conference. This is an essential conference and a key industry event.



The Law Society of
Upper Canada | Barreau
du Haut-Canada

Legal information and support designed for you.

DAY ONE Friday, April 25, 2008

8:00 A.M. – 8:45 A.M. REGISTRATION

9:00 A.M. - 9:15 A.M. OPENING REMARKS

PLENARY SESSION

9:15 A.M. - 10:15 A.M. ARE WE THERE YET? NEW MEDIA GOES MAINSTREAM

Almost a decade after the CRTC issued its *Exemption Order for New Media*, it launched its New Media Initiative in 2007, and posed three fundamental questions: Is it necessary to regulate commercial broadcasting over new media? If so, what measures need to be implemented? And how to go about implementing these measures? This opening panel will explore some of the key legal and policy issues raised by these questions, including the role of regulation in achieving cultural, economic and social policy objectives.

Moderator: Professor Thomas Gibbons, The School of Law, The University of Manchester (UK)

Paper: Stephen Stohn, Stohn Hay Cafazzo Dembrski Richmond LLP, President/Executive Producer, Epitome Pictures Inc.

Panelists: Mirko Bibic, Chief, Regulatory Affairs, Bell Canada

Jacob Glick, Canada Policy Counsel, Google Inc.

10:15 A.M. - 10:30 A.M. COFFEE BREAK

10:30 A.M. - 12:30 P.M.

NEW DEVELOPMENTS ON THE COPYRIGHT FRONT

Copyright has become a front-burner issue for those who create, distribute and consume content. The Copyright Board and the courts have been dealing with copyright issues arising out of the Internet and ring-tones. Everyone is waiting to see what copyright reform proposals the government will put forward. This panel will examine the issues that make copyright a major public policy focus.

Moderator: Grace Westcott, LL.M., Barrister & Solicitor

Paper: Jay Kerr-Wilson, Fasken Martineau DuMoulin LLP

Panelists: Jean-Pierre Blais, Assistant Deputy Minister, Cultural Affairs, Department of Canadian Heritage
Government of Canada

Wendy M. Noss, Acting Executive Director
Canadian Motion Picture Distribution Association

12:30 P.M. - 2:00 P.M. BUFFET LUNCHEON — OTTAWA CONGRESS CENTRE, COLONEL BY SALON
“COMMUNICATIONS POLICY IN THE POLITICAL ARENA”

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

2:00 P.M. - 3:30 P.M.

COMMUNICATIONS POLICY AND THE RIGHTS MARKETPLACE IN CANADA

Content is king, but without a separate Canadian program rights market will Canada just be the pawn? With the recommendation in the Dunbar-Leblanc Report that the Commission reassess the simultaneous substitution regime, the integrity of the Canadian program rights market is once again drawn into question. Is it time to revisit the retransmission regime under the *Copyright Act*? Should the Commission revisit the distant signal and time-shifting phenomena or is the horse already out of the barn? Is non-simultaneous substitution and/or program deletion the answer?

Moderator: Peter Miller, Barrister and Solicitor

Paper: Dina Graser, Goodmans LLP

Panelists: Charlotte Bell, Senior Vice-President,
Regulatory Affairs, CanWest Media Inc.

Kevin Goldstein, Vice President,
Regulatory Affairs, CTVglobemedia Inc.

Yves Mayrand, Vice-President,
Corporate Affairs, Cogeco Cable Inc.

CONCURRENT SESSIONS

SPECTRUM MANAGEMENT — CANADIAN AND INTERNATIONAL DEVELOPMENTS

This session will examine the evolution of spectrum management practices in Canada, with an emphasis on increased transparency, predictability and accountability. The group will also consider additional spectrum management challenges, and how Canada is placed to respond to them. The November 2007 AWS Policy Framework will be examined, as well as the recommendation of the Telecom Policy Review Panel that spectrum licensing be moved to the CRTC. FCC and Ofcom experience will be noted.

Moderator: Len Katz, Vice-Chairman, Telecommunications, CRTC

Paper: Stephen Rawson, McCarthy Tétrault LLP

Panelists: Michael Hennessy

Vice-President, Wireless, Broadband and Content Policy
TELUS Communications Company

André Tremblay, Managing Director and Founder
Trio Capital Inc.

CONCURRENT SESSIONS

PRIVATE FACES IN PUBLIC PLACES — CHILDREN’S PRIVACY AND THE SOCIAL NETWORKING PHENOMENON

Canadian children are among the most wired in the world. Online chatting, texting, blogging and the use of sites like Facebook and Myspace are part of everyday life for many young people. However, these activities generate large amounts of personal data and raise significant legal and policy issues relating to privacy. What information is collected through this type of online activity and how is it used? How exposed are our children? Do existing laws and approaches adequately protect users of these sites?

Moderator: Suzanne Morin, Assistant General Counsel,
Regulatory Law and Policy, Bell Canada

Paper: Valerie Steeves, JD, PhD, Professor,
Department of Criminology, University of Ottawa

Panelists: Patricia Kosseim, General Counsel
Office of the Privacy Commissioner of Canada

To be announced

3:30 P.M. - 3:45 P.M. COFFEE BREAK

3:45 P.M. - 5:30 P.M.

CONCURRENT SESSIONS

GLOBALIZATION, REGULATORY COMPETITION AND AUDIOVISUAL REGULATION IN FIVE COUNTRIES

The results of a three year comparative study of audiovisual regulation in Canada, France, Germany, the UK and the USA will be presented. How do the approaches to regulation in each country compare? How has each country responded to the forces of globalization, competition and technological change? What can Canada learn from these experiences?

Moderator: Konrad W. von Finckenstein, Q.C., Chairman, CRTC

Paper: Professor Peter Humphreys

The University of Manchester (UK)

Panelists: Peter S. Grant, McCarthy Tétrault LLP

Dr. Marc Raboy

Professor and Beaverbrook Chair in Ethics,
Media and Communication, McGill University

DISPUTE RESOLUTION — NEW DEVELOPMENTS

Regulators are increasingly turning to alternative dispute resolution (ADR) as a means of resolving issues that have traditionally been the preserve of the regulator. The CRTC, Industry Canada and a growing number of other regulators in Canada and around the world are seeking to expand the role of ADR in increasingly competitive markets. Does ADR adequately address public policy issues that arise in the course of inter-party disputes? Are the rights of those who are not parties to the dispute adequately protected? Are bargaining imbalances between the parties adequately addressed in the context of ADR? Are other jurisdictions making better use of ADR than we are?

Moderator: Professor Richard D. French

Graduate School of Public and International Affairs
University of Ottawa

Paper: Laurence J. E. Dunbar, Fasken Martineau DuMoulin LLP

Panelists: Hank Intven, McCarthy Tétrault LLP

Andrew D. Lipman, Bingham McCutchen LLP
(Washington)

5:30 P.M. - 6:30 P.M. RECEPTION — (CASH BAR) OTTAWA CONGRESS CENTRE, COLONEL BY SALON

DAY TWO Saturday, April 26, 2008

PLENARY SESSION

9:00 A.M. - 10:30 A.M. NEW DEVELOPMENTS IN FOREIGN OWNERSHIP POLICY

Over the past year, the CRTC has addressed the issue of complex foreign ownership structures in several major transactions. Noteworthy are the transfer of control in the CanWest/Alliance Atlantis acquisition as well as the BCE privatization transaction. Industry Canada has wrestled with similar foreign ownership issues in the transfer of control of Telesat Canada and of various BCE subsidiaries holding radiocommunication licenses. What are the key issues and hot spots in foreign ownership review for 2008? To what extent does the process of foreign ownership review occur behind closed doors? Should the process be more open to public scrutiny or would this put an even greater chill on foreign investment?

Moderator: David Kidd, Blake, Cassels & Graydon LLP

Paper: Grant Buchanan, McCarthy Tétrault LLP

Panelists: Michael Koch, Goodmans LLP

Barbara Miller, Fasken Martineau DuMoulin LLP

10:30 A.M. - 10:45 A.M. COFFEE BREAK

10:45 A.M. - 12:30 P.M.

CONCURRENT SESSIONS

NEW APPROACHES TO BROADCAST CONTRIBUTION

A number of CRTC proceedings involve a re-examination of the approaches to supporting under-represented Canadian production on television, particularly Canadian drama. To what extent can or should each part of the system (OTA, pay, specialties, BDUs, ISPs) make a contribution, whether through CPE requirements, transfer benefits, levies, fee for carriage, or otherwise? Should group ownership play a factor? How do the CTF and other funds fit in?

Moderator: Helen del Val, Regional Commissioner, CRTC

Paper: Monique Lafontaine

General Counsel & Director of Regulatory Affairs
Directors Guild of Canada

Panelists: Ken Engelhart, Vice-President,
Regulatory & Chief Privacy Officer
Rogers Communications Inc.

David Goldstein

Senior Vice President, Regulatory Affairs, CTVglobemedia

JUST AND UNJUST DISCRIMINATION ON THE INTERNET — WHAT ARE THE BOUNDARIES?

The degree to which ISPs have the right to price and manage the flow of data over their networks lies at the very heart of the debate over network neutrality. Is there a network neutrality problem in Canada, and if so, how has it been manifested? Is subsection 27(2) of the *Telecommunications Act* sufficient to ensure that content providers will not be discriminated against or treated unfairly by Canadian ISPs, while at the same time permitting ISPs to meet diverse user preferences? Is there a difference between restricting legitimate traffic and illegal traffic and can or should ISPs make that distinction? What are the potential privacy and freedom of speech implications?

Moderator: Charles M. Dalfen, Torys LLP

Paper: Craig McTaggart, Director, Broadband Policy
TELUS Communications Company

Panelists: Philippa Lawson, Director,
Canadian Internet Policy and Public Interest Clinic
Faculty of Law, University of Ottawa

Christopher W. Savage
Davis Wright Tremaine LLP (Washington, D.C.)

12:30 P.M. PROGRAM ENDS