

## FOCUS ON ENTERTAINMENT LAW

### “Canadian Idol” panel describes myriad of legal issues for industry lawyers

By Tara Parker

“Canadian Idol”, the number one rated series on Canadian television, was the subject of a stimulating panel discussion at a recent event sponsored by the Law Society of Upper Canada. *The Entertainment and Advertising and Media Law symposium* was held at the Toronto Board of Trade on April 8-9 and was attended by lawyers from the film, television, music recording, advertising and broadcast industries.

A blue chip panel of industry experts including Tracey Pearce, vice-president and general counsel of Bell Globemedia Inc., Brenda Pritchard, a partner at Gowling Lafleur Henderson LLP, Stephen Stohn, the founding partner of

Stohn Hay Caffazzo Dembroski Richmond LLP and David Zitzerman, the co-chair of the Entertainment Group at Goodmans LLP. The panellists provided their insights into the development, production, financing and exploitation of the Idol series.

Tracey Pearce led off the session by describing how she assembled her “dream team” of lawyers with expertise in advertising (Pritchard), music (Stohn) and film and television (Zitzerman) to tackle the complex legal issues raised by Idol. Pearce described acquiring the format rights from FreemantleMedia and structuring the production with Insight Production Company as the producer and CTV as the broadcaster.

In response to the hypothetical query: “who needs a format if it’s just a talent show?”, Pearce elaborated on the bundles of rights to be considered when acquiring a format, including, for example, the right to use names, logos, trademarks and other intellectual property, the “look and feel” of a series, the music, the structure of a series, episode themes, the right to merchandise, telecast and to distribute the series in all media (such as the Internet, DVDs and CDs) and the right to own copyright in the series. In return, the licensor of format rights may negotiate for fees, royalties, credits and/or approval rights in connection

with the series.

Pritchard was charged with the task of preparing the rules which were posted on the online website and dealing with the multiplicity of releases required from competitors. Pritchard and Pearce went on to describe some of the issues they had to keep in mind in preparing the rules. For example, competitors are advised to refrain from



David Zitzerman, Tracey Pearce, Stephen Stohn and Brenda Pritchard, photo by Tara Parker

wearing any clothing bearing logos or the name or likeness of a celebrity to avoid any claims of infringement of copyright, trademark or publicity rights. Also, in the competitor release forms (which must be fully signed by the competitor or, if a minor, the competitor’s parent or legal guardian before auditioning), competitors are required to represent and war-

rant that they do not have a criminal record or pending criminal charges and that they are not subject to any management, modeling or other contracts. According to Pritchard and Pearce, these requirements were necessary to ensure that the winner was able to travel freely around the world and to enter into recording, management and merchandising deals for the worldwide exploitation of the winner’s auditions and performances.

In each of the first two seasons of the series, Stohn was chosen by the top 30 competitors to represent the top 10 competitors in negoti-

label would offer to a Juno award-winning artist. Nevertheless, because the agreements had been negotiated and executed within a short time frame and, in some cases, within as little as 48 hours, it was important to CTV that the lawyer chosen to educate and represent the competitors had a reputation that was “unimpeachable”. This way, explained Pearce, if any competitor subsequently attempted to disaffirm a contract on the basis that an agreement was unfair or misunderstood, CTV would be in a position to say: “it wasn’t us – it was Stephen Stohn!”

Zitzerman concluded the session with a brief description of the production contracts required to put the series together, including the Canadian broadcast licence agreement between Insight Production Company Ltd. and CTV and the regional co-production agreements between Insight and its co-producers, Rink Rat Productions Co. (in eastern Canada) and Aquila Productions Inc. (in western Canada), as well as the talent agreements between Insight and Ben Mulrone, as host of the series, and each of the four judges: Sass Jordan, Farley Flex, Zack Werner and Jake Gold.

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### Entertainment lawyers must anticipate potential sources of revenues for clients

“After all, who remembers the lawyer who represented the studio which gave up merchandising and licensing rights to the ‘Star Wars’ franchise to George Lucas because they felt there was no revenue potential?!”

By Arthur Evrensel

The last five years have been characterized by enormous and far reaching changes in the global media marketplace which impact producers. Technological advances have permitted the creation of additional television outlets, which fragmented viewership, and ultimately resulted in advertisers paying the broadcasters less for commercial time slots due to reduced audiences. In turn, the broadcasters paid lower licence fees to producers, which was one of the key reasons for the emergence of low cost reality television programming. In addition, advertisers reply to declining audiences

on television, was to resort to embedded advertising and sponsorship opportunities to reach a public, routinely surfing during commercials or digitally recording their favourite programs for viewing later, commercial free.

Meanwhile, in the world of the theatrical box office, improvements in technology have also impacted the marketplace. Due partially to the emergence of the importance of DVD revenues and the power of the Internet to permit downloading (legally or otherwise) of a film, the gap between theatrical and DVD release dates has been reduced to three months, whereas in 1994, the gap was over

six months. In addition, there has been a consolidation globally of the ownership of both film distribution companies and broadcasters. The undelivered promise of “synergy” of the AOL-Time Warner merger will be a reality in the next five years, as bandwidth capacity to download films at home increases dramatically. While DVD sales revenues are currently at historic highs and continue to shatter records, it will eventually give way to the next platform. The near future will also see reality television series further develop interactive elements by which viewers will be an active part of the program; current examples

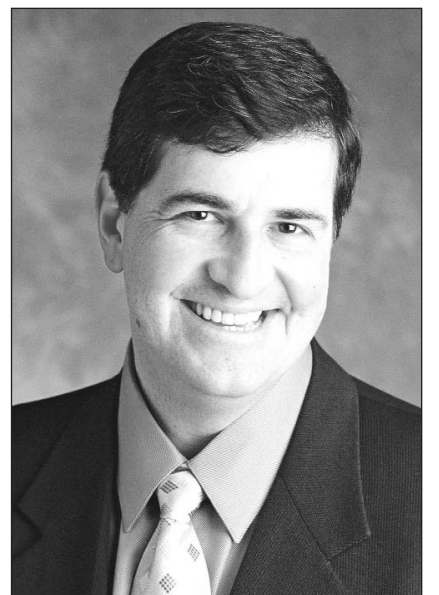
include audiences which select the finalists for “Canadian Idol” (see article above).

During this period of evolution, the challenge for entertainment lawyers is to identify and examine the changing nature of the marketplace and understand how business issues will impact producers. The most important elements of legal representation and negotiation on behalf of film and television producers is understanding the potential sources of revenue for the client and the constant changes in the marketplace in which they operate. After all, who remembers the lawyer who represented the studio which gave up merchandising and licensing rights to the “Star Wars” franchise to George Lucas because they felt there was no revenue potential?!

Some of the more important issues to deal with include:

#### Ancillary & Subsidiary Rights

Control over ancillary and subsidiary revenues of a film or televi-



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sion property may be a major source of income for a producer or creator, depending on the type of programming. It is advisable to negotiate a separate pool of revenues for ancillary and subsidiary

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