

Navigating the Internet: Legal and Regulatory Issues

Communications Group Seminar
Thursday, May 13, 2010



Christian Leblanc
Partner
514 397 7545
cleblanc@fasken.com



Leslie J. Milton
Partner
613 236 3882
lmilton@fasken.com



J. Aidan O'Neill
Partner
613 236 3882
aoneill@fasken.com

Navigating the Internet: Legal and Regulatory Issues

May 13, 2010
Communications Group Seminar
Christian Leblanc, Leslie J. Milton, J. Aidan O'Neill



Defamation And Libel Issues Associated With The Internet

May 13, 2010
Christian Leblanc



Traditional Media

VIACOM

The Washington Post



New Media

facebook

You Tube
Broadcast Yourself

twitter

FASKEN
MARTINEAU
INSTITUTE

cebook Recherche

CBS News

Babillard Infos Encarts Liens Évènements Poll >>

CBS News + autres Seulement les autres

CBS News Will Other States Follow Arizona's Lead on Immigration?
Will Other States Follow Arizona's Lead on Immigration? - Political Hotsheet - CBS News
www.cbsnews.com
Arizona's Controversial Immigration Law Has Spurred Politicians in at Least Five States to Call for Similar Bills Read more by Stephanie Condon on CBS News' Political Hotsheet.
Il y a 13 minutes · Partager
15 personnes aiment ça.
Afficher les 28 commentaires

Charles Allan Gwaltney Great idea.
Il y a 29 secondes · Signaler

Glenn Robinson I hope so!!!!!!
Il y a 27 secondes · Signaler

CBS News Weeks after KFC made headlines — not entirely celebratory — by stacking two pieces of chicken around bacon and cheese, IHOP is introducing a limited-time dessert featuring two pancakes sandwiching a layer of cheesecake. What's your favorite over-the-top food?
IHOP Introduces Pancake-Cheesecake Sandwich - CBS News
www.cbsnews.com

Recommander à des amis

Trusted news with content and perspective found nowhere else.

26 457 personnes aiment ça

Robby Rakow Shelby Needham Olivia Clark
Yousuf Hashmi Socrates Porco Christopher King

The Washington Post

twitter

Have an account? [Sign in](#)

Get short, timely messages from The Washington Post.

Twitter is a rich source of instantly updated information. It's easy to stay updated on an incredibly wide variety of topics. **Join today** and follow **@washingtonpost**.

[Get started now >](#) Get updates via SMS by texting **follow washingtonpost** to 21212 in the Canada Codes for other countries

washingtonpost

Name The Washington Post
Location Washington, D.C.
Web <http://www.washingtonpost.com>
Bio The Washington Post. Follow more Washington Post Twitter accounts and feeds at <http://twitter.com/WashingtonPost>

6,822 following 96,778 followers 6,297 listed

Tweets 6,656

Favorites

Lists
[@washingtonpost/forhood](#)
[View all](#)

Following

RT @TheFix Charlie #Crist plans to switch parties, run for #Senate as independent <http://bit.ly/dofAo5>
 4 minutes ago via HootSuite

RT @dcsportsbog: RT @MarkZuckerman At 12-10, the #Nats have secured their first winning month since Sept. 2007.
 12 minutes ago via web

RT @TheFix: It's the (Bush) economy, stupid <http://bit.ly/auoZPL>
 12 minutes ago via web

To woo voters, #Dems plan to cast selves as party of results <http://bit.ly/bv4k0tm>
 24 minutes ago via HootSuite

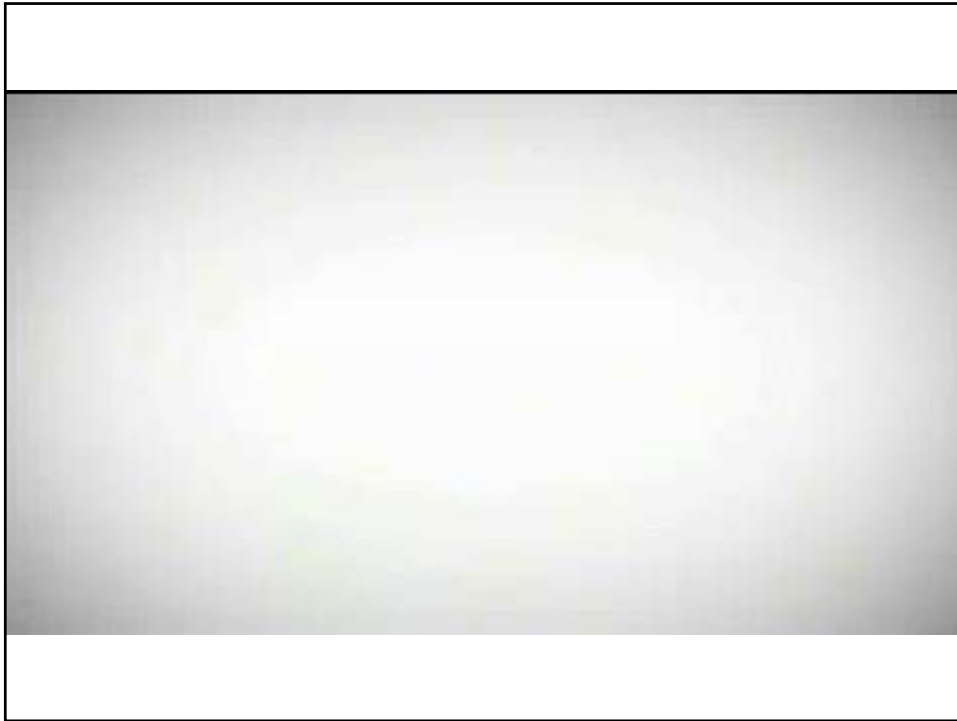
RT @postmetro: A man faked his death to avoid jail -- and it worked... until he was caught alive. Oops. <http://bit.ly/9ULUQU>

What Does it Mean for Businesses?

Dissemination of information

Worldwide audience

Bad/illegal information = disaster



LEGAL RISKS

DEFAMATION

Definition

Prud'homme v Prud'homme

“consists in the communication of spoken or written remarks that cause someone to lose in estimation or consideration, or that prompt unfavourable or unpleasant feelings toward him or her”

Damage Potential of the Internet

Barrick Gold Corp. v. Lopehandia, 2004 ONCA

“distinctive capacity of the Internet to cause instantaneous, and irreparable damage”



ISP Defamation Liability - Control

Blunt v. Tilley (United Kingdom)

“an ISP which performs no more than a passive role in facilitating postings on the Internet cannot be deemed to be a publisher at law.”

No Canadian decisions



Liabe Even Where Insufficient Control

Carter v. BC Federation of Foster Parents, 2006
BCCA

“Here the Federation did not take effective steps to remove the offending comment and there seems to have been no proper follow up to see that necessary action had been taken.”



International Liability

Dow Jones v. Gutnick



Braintech v. Kostiuk



International Liability

Investors Group Inc. v. Hudson



Location = Irrelevant

High Damages

Southam v. Chelek (BC)

875 000\$

*Association des médecins traitant l'obésité c. Breton
(QC)*

220 000\$

Graf v. Duhaime

50 000\$

Defenses to Defamation

Defence of Truth

Defence of Fair Comment

Innocent Disseminator Defence

Public Interest Responsible Communication Defence



VIRTUAL WORLDS





FASKEN
MARTINEAU
INSTITUTE



FASKEN
MARTINEAU
INSTITUTE





FASKEN
MARTINEAU
INSTITUTE

Real-World Companies Participate



FASKEN
MARTINEAU
INSTITUTE

Real-World Companies Participate



FASKEN
MARTINEAU
INSTITUTE

Real-World Companies Participate



FASKEN
MARTINEAU
INSTITUTE

Real Money at Stake

1.8 billion US \$ exchanged between users in 2006

8 billion US \$ exchanged between users in 2010

579 million registered user accounts across all virtual worlds

Largest virtual world : *World of Warcraft* with 14 million active paying users world-wide



What's in it for Corporations?

Marketing and advertising

Product information

Targeted Consumer Groups

Strong interaction with consumers

Brings the benefits of Social Media to a new level



Risks

Eros, LLC v. Linden Research, Inc.



FASKEN
MARTINEAU 
INSTITUTE

Conclusion

Use and explore all social media possibilities

Be aware of the legal risks and liabilities

Minimize exposure to liability

FASKEN
MARTINEAU 
INSTITUTE

Christian Leblanc
Partner - Montréal
514 397 7545
cleblanc@fasken.com



CRTC Regulation, Spam and Privacy Issues

May 13, 2010
Leslie J. Milton



“Net Neutrality”

- **“Bell traffic shaping sparks ISP outrage”**

Network World Canada (March 25, 2008)

- **“Bell rejects call to curb traffic shaping”**

Bell Canada Inc. has rejected a call by smaller service providers to immediately stop the shaping of Internet traffic

CBC News (April 17, 2008)

- **“CRTC orders Bell to prove Net ‘shaping’ needed”**

Regulator wants evidence that networks are congested in squabble over practice of slowing some Internet traffic

The Globe and Mail (May 16, 2008)



Complaint By CAIP

- In April 2008, CAIP (the Canadian Association of Internet Providers) applied to the CRTC for orders directing Bell Canada to cease and desist from throttling Internet traffic by peer-to-peer (P2P) file sharing applications on Bell's wholesale ADSL service
- Bell acknowledged that it was engaged in “traffic shaping” on its network during peak periods, to alleviate network congestion



Bell Defence

- Bell relied on Article 8.3 of its Terms of Service which permits Bell to limit use of its service where customer usage by some prevents fair and proportionate use by others
- In this case Bell claimed that P2P applications were hogging bandwidth to the prejudice of other users – a small group of customers were impairing use by many

CRTC Determinations

- Bell's practices were not unjustly discriminatory
- Bell was not interfering with the content of communications
- Bell's conduct was not contrary to the policy objectives in the *Telecommunications Act*

Broader Review of ISP Network Management Practices

- Following the Bell complaint, the CRTC initiated a broader public review of ISP network management practices
- In its decision released in October, 2009, the CRTC generally endorsed use of traffic management practices – but put in place terms and conditions for disclosure of such practices and their practical impact on service performance at the time of contract

Broader Review of ISP Network Management Practices

- Policy objective to balance “the freedom of Canadians to use the Internet for various purposes with the legitimate interests of ISPs to manage the traffic thus generated on their networks, consistent with legislation, including privacy legislation”
- ISPs to give preference to traffic management practices based on economic measures, disclose all measures in advance to customers, and discriminate “as little as reasonably possible”

Transparency

- ISPs must disclose to subscribers:
 - The reason for the traffic management practice
 - Who will be affected by the practice
 - When traffic management will occur
 - What type of traffic is subject to management
 - How Internet speeds will be affected
- ISPs must also provide 30 days notice to retail subscribers, and 60 days notice to wholesale customers, of any changes to traffic management practices

Non-Discrimination

- Traffic management of wholesale traffic cannot be any more restrictive than traffic management of ISPs' own retail customers

CRTC Privacy Requirement

- ISPs must not use personal information collected for traffic management for any other purpose and must not disclose that information
- This is a higher level of protection than would normally apply under the *Personal Information Protection and Electronic Documents Act* (PIPEDA) where disclosure would be permitted with consent

Anti-Spam Legislation

- *Electronic Commerce Protection Act* tabled in April 2009
- Bill died on the order paper when Parliament was prorogued at the end of 2009 but it is widely expected that the proposed legislation will be revived

Canada Is A Spam Haven

- Canada is the only G8 country and one of only four members of the OECD that does not have anti-spam legislation
- 4.7% of the world's spam is estimated to originate in Canada
- Purpose of legislation is to promote efficiency and adaptability of the economy by regulating certain activities that discourage use of electronic means of carrying out commercial activities

Phishing And Spyware

- Phishing - email containing a link to a counterfeit website in an attempt to obtain personal information
- Spyware – software installed on computer without knowledge of owner that collects personal information of the user

Commercial Electronic Message

- Act treats all “commercial electronic messages” the same way
- “Electronic message” is “a message sent by any means of telecommunication, including a text, sound, voice or image message”
- Approach is:
 - Technology neutral
 - Captures unsolicited text messages, known as “cellphone spam”
 - Captures business-to-business messages as well as business to consumer messages

Prohibitions

- Sending of unsolicited commercial electronic messages
- Alteration of transmission data (exception for network management)
- Unauthorized installation of computer programs

Opt-In Requirement

- Express or implied consent is required before a commercial electronic message can be sent
- Consent implied when the sender and the recipient have an existing business or non-business relationship

Other Content Requirements

- Identify person who sent the message
- Set out contact information (active for 60 days)
- Provide an unsubscribe mechanism (effective within 10 days; active for 60 days)

Penalties For Noncompliance

- CRTC authority to impose administrative monetary penalties (AMPs) up to \$1 million in the case of an individual and up to \$10 million for any other person
- Vicarious liability for employees subject to due diligence defence
- Private right of action for damages plus a maximum of \$200 for each day of contravention (up to a cap of \$1,000,000) for breach of prohibition on unsolicited messages, \$1,000,000 per day for each contravention of the prohibition on alteration of transmission data, and \$1,000,000 for each contravention of the prohibition on unauthorized installation of computer programs

Enforcement

- CRTC
 - Broad range of investigatory powers
 - Authority to obtain undertakings or commence action
- Commissioner of Competition
- Office of the Privacy Commissioner
- Authority to share information amongst three Canadian authorities as well as with foreign authorities
- Creation of spam reporting centre

OPC Issues

- Street-level imaging
- Social networking

Basic Requirements of PIPEDA

- Obtain consent to the collection, use and disclosure of an individual's personal information
- Use and disclose only for purposes for which consent has been obtained
- Limit collection and retention to that which is necessary for purpose
- Safeguard personal information from unauthorized use or disclosure

Street Level Imaging

- What Google says it does to protect privacy on Street View:
 - Public access images only
 - Images not in real time
 - Faces and licence plates blurred
 - Ability to request removal of images

Concerns of OPC

- Imperfections in blurring technology
 - Use proven and effective blurring technologies
- Notification of collection of images
 - Visibly mark vehicles carrying cameras
 - Provide advance notification through range of media
 - Identify contact for further information
- Retention of images
 - Must have a good reason to retain unblurred images
 - Limit retention and protect through appropriate security

Facebook: OPC Decision Re CIPPIC Complaint

- Targeted marketing and advertising
 - Facebook ads (consent mandatory); Social ads (opt out available)
 - No opt out for Facebook ads acceptable, as essential to “free” service
 - Recommended fuller explanation of advertising system
- Access to personal information by third party applications
 - Only grant access to information required for application
 - Prevent access to other users’ information
 - Obtain consent prior to installation

Facebook: OPC Decision Re CIPPEC Complaint

- Account deactivation and deletion
 - Deactivated accounts retained indefinitely
 - Facebook agreed to improve its explanation of the distinction between deactivation and deletion

Renewed Investigation of Facebook

- OPC has launched a new investigation of changes in Facebook privacy policies



Leslie J. Milton
Partner - Ottawa
613 236 3882
lmilton@fasken.com



Navigating the Internet: Copyright Issues

May 13, 2010
J. Aidan O'Neill



Legal Issues and the Internet

- 1) Legal issues raised by Copyright Board decisions involving SOCAN
- 2) Likely Internet amendments to the *Copyright Act* proposed by Bill C-61



Legal Issues and the Copyright Board

- Importance of the Supreme Court's decision in *CCH Canadian v. Law Society of Upper Canada*
- Represents the Court's latest word on the interpretative approach to copyright issues
- Courts must balance the rights of creators and copyright users
- An overly broad interpretation of the *Copyright Act* would over compensate rights holders. This is economically inefficient

CCH Decision

- Great Library at Osgoode Hall does not infringe copyright by permitting photocopying of works as part of legal "research"
- Section 29 fair dealing exceptions under *Copyright Act* – research and private study – must be given a large and liberal interpretation
- Court should not constrain users' rights or confine them to non-commercial contexts
- Lawyers practising for profit are entitled to the benefit of the fair dealing exceptions

CCH and Communication to the Public

- Law Society's faxing of copies of protected works to lawyers does not constitute a "communication to the public"
- The fax transmission of a single copy to a single individual is not a communication to the public
- *Obiter dictum* that a series of repeated fax transmissions of the same work to numerous recipients might constitute a communication to the public.

Copyright Collectives

SOCAN: represents composers, lyricists, and music publishers for their public performance and communication rights in musical works

NRCC (Re: Sound): represents musical performers and makers of published sound recordings for their right to equitable remuneration for the communication and public performance of sound recordings

CMRRA/SODRAC: represents music publishers for their reproduction rights in musical works

Copyright Board Internet Decisions

- 1) SOCAN “Ringtones” Decision – Tariff 24
 - Use of musical works in ringtones that are sold to cellular phone users
 - SOCAN proposed a tariff for the communication of musical works to the public in downloaded ringtones
 - Wireless carriers argued that transmitting a ringtone to a subscriber did not involve a “communication to the public”

Legal Issues Considered by Board

- a) Does a ringtone constitute a “substantial” part of a musical work?
 - Impact of section 3 of *Copyright Act*
- b) Is the communication of a ringtone to a subscriber a communication “to the public”?

a) “Substantial” Part of a Work

- Ringtones don't use entire musical works
- Ringtones use short 30 second clips
- Ringtones are supposed to contain a recognizable portion of a work or there would be no purpose for them
- Subjective questions as to what is “substantial”
- A 30 second ringtone is held to be a substantial part of a work

b) “Communication to the Public”

- SOCAN's entitlement to royalties depends on the existence of a communication “to the public.”
- Is the transmission of a ringtone a point-to-point, one-to-one delivery of a musical work?

Board's Decision

- Board held in 1999 in SOCAN Tariff 22 that a communication was to the public if musical files were made available on the Internet "openly and without concealment"
- Board holds against the position of the wireless carriers
- "carriers offer to sell a musical ringtone to all their subscribers, not to one individual"
- The reception of a musical work in a private setting does not turn a communication to the public into an individual transaction

b) SOCAN Tariffs 22A and B to G

- SOCAN filed proposals each year since 1996 relating to the communication of musical works over the Internet
- Board's SOCAN Tariff 22A decision in October, 2007 focused on online music services
- Decision relating to Internet distribution of radio and television services, specialty and pay audio services, and games released a year later in October 2008 – SOCAN Tariffs 22 B to G

SOCAN Tariff 22A Legal Issues

- a) Is the transmission of a download a communication to the public?
- b) Do “previews” of musical works qualify as a form of “research” such that they are exempt under section 29 of the *Copyright Act*?
- c) Are services located outside of Canada subject to the tariff?

a) The Transmission of a Download

- *CCH* decision held that the transmission of a series of faxes might constitute a communication to the public
- Board’s decision in the *SOCAN Ringtones* decision was the subject of a judicial review application
- Downloads are targeted at an aggregation of individuals
- Don’t need simultaneous transmissions
- Board’s ruling that the transmission of a download to a member of the public is a communication to the public

b) Previews as “Research”

- This question was not raised by any of the parties
- Purchasers sample 30 second portions of works before choosing whether or not to purchase
- *CCH* decision re large and liberal interpretation of “research”
- Users who listen to previews are entitled to avail themselves of section 29 of *Copyright Act*
- Previews encourage the sale of downloads which benefits copyright owners

c) Servers Outside of Canada

- Supreme Court in *SOCAN v. CAIP* (2004) re SOCAN Tariff 22
- Using a server outside of Canada does not insulate a content provider from liability
- Depends on whether there is a “real and substantial connection” between Canada and the communication
- A telecommunication from outside of Canada to Canada can be both “here and there”

3) Federal Court's Decision re Ringtones

- Cable/Telcos had sought judicial review of the Board's (2006) *SOCAN Ringtones* decision
- January, 2008 decision
- Upheld Board's decision that the transmission of ringtones to phone subscribers on request was a "communication to the public"
- Ringtones are offered to the public and this supplies the requisite degree of openness
- If simultaneous communication of ringtones to all customers is a communication to the public, so is a one-on one, non-simultaneous transmission

4) SOCAN Tariff 22 B to G

- Board decision in October, 2008
- Established tariffs for Internet communication of musical works in radio and television services, specialty and pay audio services, and games
- a) **Legal Issue**
 - Board refused to set a tariff for "other sites", such as Facebook and MySpace because of lack of evidence
 - Is the Board entitled to refuse to certify a tariff if there is a use being made of SOCAN works?
 - Judicial review sought of Board's jurisdiction to refuse to certify a tariff

5) Court Hearing in May, 2010

- Various judicial review applications relating to SOCAN Tariffs 22A, and B to G
- a) Cable/Telcos rely on *CCH* to argue that the Court's *SOCAN Ringtones* decision is wrongly decided
- Argue that Board's approach to communication to the public in SOCAN Tariff 22A is inconsistent with Supreme Court in *CCH*
- Argue that communication to the public does not apply to a communication that is only intended to be received by a single individual
- SOCAN argues that this issue has already been decided by Federal Court of Appeal in *Ringtones* decision
- Application for leave to appeal of *Ringtones* decision was refused by Supreme Court

5) Court Hearing in May, 2010 (Cont'd)

- b) SOCAN argues that previews of musical works cannot constitute "research" under section 29 of *Copyright Act*
- Argues that the Board's application of section 29 was "overly broad"
- Claim that the Board's ruling re previews results in the misappropriation of SOCAN's property (ie. the musical works previewed on the Internet)

5) Court Hearing in May, 2010 (Cont'd)

- c) Can the Board refuse to certify a tariff when a use is obviously being made of a work?
 - The Board must set “fair and equitable” tariffs
 - How can it do so in the absence of evidence?
 - Is the Board required to compel the production of evidence and subpoena witnesses?
 - What is the Board’s role if a collective cannot produce sufficient evidence to defend a tariff proposal?

Copyright Reform Process

- In June, 2008, Bill C-61 was introduced into the House of Commons
- These were long-awaited amendments to update the *Copyright Act* to recognize Internet technology
- Parliament was later dissolved and an election called, so Bill C-61 died on the order paper
- The Conservative government was re-elected in October, 2008
- Reform mentioned in November, 2008 throne speech

Copyright Reform Process (Cont'd)

- Ministers of Canadian Heritage and Industry held town hall meetings in the summer of 2009 to consult copyright stakeholders. Online consultations were also held and over 8,000 submissions were filed
- Bill C-61 had generated much controversy
- Given work that went into Bill C-61, it is likely that it will be only “tweaked” when a new bill is introduced

Bill C-61

- Tried to balance legitimate needs of copyright creators with the needs of consumers
- Bill C-61 contained something for everyone

Making Available Right

- 1996 WIPO Internet treaties provided for exclusive right to “make available”
- Under Bill C-61, performers and makers of sound recordings were given exclusive rights to make their works available on the Internet
- Have exclusive right to communicate “in a way that allows a member of the public to access the work from a place and a time individually chosen by that member of the public”
- This is distinct from the right to receive equitable remuneration which is provided under “neighbouring rights” regime
- Allows creators to control peer to peer online sharing of music

ISPs are Exempt from Liability

- Bill C-61 confirms that Internet Service Providers (“ISPs”) are not liable for copyright infringement for providing means of telecommunication or reproduction through the Internet
- ISPs only provide the technical means for others to access the Internet
- Hosting an infringing work is not itself infringing unless host is aware of a Court decision to the effect that it is an infringing work
- Introduction of a “notice and notice” regime

“Notice and Notice” System

- If an ISP receives a complaint from a copyright owner alleging that a subscriber is engaged in an infringing activity, the ISP must forward that notice to the subscriber who is the subject of the complaint
- The ISP must advise the complainant that the notice has been forwarded to the subscriber
- The ISP is not required to disclose the identity of the subscriber but must keep a data record of his or her identity for six months

Digital Locks (TPMs)

- Bill C-61 protects technological protection measures (TPMs)
- Used by rights holders to prevent unauthorized use of their works
- “Access control” – password protection to restrict access to authorized users
- “Copy control” – encryption used to prevent someone from copying, e.g., a movie from a DVD to a home computer

Digital Locks (TPMs) (Cont'd)

- Bill C-61 prohibits the circumvention of both access control TPMs and copy-control TPMs
- Prohibits the offer of services that are provided primarily for purpose of circumventing a TPM
- Prohibits the manufacture or importation of any technology or device produced primarily for the circumvention of a TPM
- Exceptions to the prohibition for (1) national security (2) encryption research (3) making content perceptible to a person with perceptual disabilities



J. Aidan O'Neill
Partner – Ottawa
613 236 3882
aoneill@fasken.com



BIOGRAPHIES



Christian Leblanc

Partner

Montréal

Direct Line: 514 397 7545

Facsimile: 514 397 7600

cleblanc@fasken.com

www.fasken.com/Christian-Leblanc

Christian Leblanc joined Fasken Martineau as a partner in 2003. He practices commercial and civil litigation, with a particular emphasis on intellectual property, high technology, media law, communications and defamation.

Christian is one of our senior litigators involved in various aspects of NOC cases. He is also involved in proceedings related to drugs approved on the basis of Notice of Compliance with Conditions ("NOC/C").

Christian is one of a handful of specialists in media and communication law in Montreal. His practice also encompasses intellectual property litigation, including copyrights, trademarks, high technology and patents. He acts on behalf of clients before all Quebec courts, the trial and appeal divisions of the Federal Court of Canada and various administrative tribunals such as the Canadian Radio-television and Telecommunications Commission (CRTC).

Christian acts for some of the larger media enterprises in Canada, and regularly intervenes on their behalf in issues relating to freedom of the press and freedom of speech. He also represents many clients operating in a wide number of industries seeking to protect and assert their rights as regards intellectual property and state-of-the-art technology.

He regularly gives pre-broadcast and pre-publication advice to the media, on whose behalf he deals with topics requiring fast and critical action that could be broadcast on the news or published in the newspapers. He also intervenes in extra-judicial proceedings with which the media are sometimes confronted, such as pre-publication injunctions and seizures of journalistic materials.

Christian Leblanc is rated as an expert in Media Law and Defamation in *"The Best Lawyers in Canada"* directory.

He has been recognized in 2007 as a "Leading Lawyers under 40" of the Canadian legal community by *Lexpert*. He has also been recognized by *Lexpert* as "consistently recommended" in Litigation-Defamation and Media. Furthermore, Christian was listed in the 2008 *Lexpert US Guide* for cross-border litigation as one of the "Canadian Litigation Lawyers to Watch".

Christian has been a lecturer at Concordia University, teaching the course "Media and the Law" for students enrolled in their journalism program. He is also a professor at the École du Barreau du Québec, where he teaches the art of representing, pleading, examination and cross-examination before the courts. He has been a panellist at the Oxford Round Table in March 2004 with respect to "Civil Rights and Liberties." He is also a member of the Canadian Journalists for Free Expression (CJFE).

Representative Experience

- *Lundbeck Canada wins landmark patent case before the Federal Court of Canada*
Counsel to H. Lundbeck A/S and Lundbeck Canada
- *CRTC releases "Review of the Regulatory Framework for Broadcasting Services Canada"*
Co-authored by Laurence J.E. Dunbar and Christian Leblanc

Areas of Practice

Litigation and Dispute Resolution

Government Relations and Ethics

Communications

Defamation

Intellectual Property

Information Technology

Commercial Litigation

Antitrust/Competition & Marketing

Education

LL.B.,
University of Montréal, 1991

Year of Call

Québec, 1992

Languages

French

English

Presentations

- Navigating the Internet: Legal and Regulatory Issues, Communications Group Seminar, May 13, 2010
- E-discovery, October 1-2, 2008
- Fifth Communications and Media Relations Summit, November 7-9, 2007
- Conference on Advertising and Marketing Law, November 5-6, 2007
- E-Discovery – Computer Forensics, October 29-30, 2007
- Insight Info's Entertainment Industries Summit, Speaker, Christian Leblanc, October 22-23, 2007
- Entertainment Industries Summit, October 22-23, 2007
- Canadian Association of Broadcasters 80th Anniversary Convention, November 5-7, 2006
- E-Discovery - Computer Forensics, November 1-3, 2006

Publications

- " Grant V. Torstar : The Right To Be (Responsible And) Wrong", Internet and E-Commerce Law in Canada, March 2010
- "He Said, She Said: A Worldview on the Challenges of Citizen Journalism and Proving Defamation Online", American Society of News Editors, November 2009
- "Calling All Bloggers", Los Angeles Daily Journal, September 15, 2009
- "He Said, She Said: A Worldview on the Challenges of Citizen Journalism and Proving Defamation Online", Mealey's Litigation Report: Cyber Tech & E-Commerce, Vol. 11, No. 7, September 2009
- " Gesca Ltée and Joël-Denis Bellavance v. Le Groupe Polygone Éditeurs Inc. and the Attorney General of Canada ", Public Access to Information Bulletin, August 2009

Memberships and Affiliations

- Member, Québec Bar
- Member, Montreal Bar
- Member, Canadian Bar Association
- Member, Ad Idem - Advocates in Defence of Media
- Member, Canadian Journalists for Free Expression (CJFE)

Rankings and Awards

- Lexpert Directory - Leading lawyer under 40 (2007)
- Lexpert US Guide Directory (cross-border litigation) - Canadian Litigation Lawyers to Watch (2008)
- The Best Lawyers in Canada - Recognized as an expert in Media and Defamation Law (2009)
- Lexpert Directory - Consistently recommended in Litigation-Defamation and Media
- Lawday Directory - Lawday heading lawyers: Defamation and Media (2009)



Leslie J. Milton

Partner

Ottawa

Direct Line: 613 236 3882

Facsimile: 613 230 6423

lmilton@fasken.com

www.fasken.com/leslie-milton

Leslie Milton is a partner in the Ottawa office of Fasken Martineau. Leslie practises primarily in the areas of communications law, competition law and international trade law. In all of these areas, Leslie is able to provide advice that builds on her prior training in economics. Before becoming a lawyer, Leslie worked as an economist at the Bank of Canada.

Leslie's communications law practice extends to all areas of communications regulation. Leslie has represented clients in regulatory proceedings before the Canadian Radio-Television and Telecommunications Commission covering all aspects of telecommunications regulation, including the framework proceedings for local and international services competition, forbearance proceedings, price cap regulation, regulation of Internet services, competitive safeguards and terms and conditions of interconnection, as well as regulation and licensing of broadcasting distribution undertakings. Leslie also acts for clients in matters relating to regulation and access to radio frequency spectrum and satellite orbital slots, and regularly advises clients on foreign ownership restrictions under the *Telecommunications Act*, the *Broadcasting Act* and the *Radiocommunication Act*.

In her competition law practice, Leslie assists clients in clearing merger transactions through the Canadian Competition Bureau, with particular focus on transactions in the telecommunications and broadcasting sectors. Leslie also regularly advises clients on compliance with the criminal and civil provisions of the *Competition Act* and the intersection between regulated conduct and competition law. In 2003-2004, Leslie was seconded to the Competition Law Division of the Department of Justice (Canada) where she acted as counsel for the Commissioner of Competition on merger reviews and investigations under the reviewable practices and deceptive marketing provisions of the *Competition Act*. Leslie also acted as counsel to the Commissioner before the Competition Tribunal in *Commissioner of Competition v. Sears Canada Inc.*, an application brought under the ordinary selling price provisions of the *Competition Act*. More recently, Leslie acted for the Commissioner in the appeal and cross appeal of the Competition Tribunal's decision in *Commissioner of Competition v. Canada Pipe Inc.* (abuse of dominance and exclusive dealing) and in the proceedings before the Competition Tribunal in *United Grain Growers Limited v. Commissioner of Competition and Canadian Wheat Board and Mission Terminal Inc.* (application to vary a consent order pursuant to section 106 of the *Competition Act*).

In international trade, Leslie advises on the scope of Canadian international trade commitments under the CUSTA, NAFTA and WTO agreements, with particular emphasis on commitments in the areas of telecommunications, cultural industries, investment and, more recently, agriculture and supply management in Canada. Leslie was Canadian counsel to the Canadian Film and Television Production Association in respect of the U.S. proceedings requesting application of countervailing duties on "runaway" productions.

Representative Experience

- *Federal Court of Appeal affirms CRTC decision to reject property fees for Canadian telecom carriers*
Counsel to the Canadian Radio-television and Telecommunications Commission (CRTC)

Areas of Practice

Antitrust/Competition & Marketing
 Communications
 International Law
 Corporate / Commercial
 Foreign Investment
 International Trade and Customs Law
 Cartels & Other Competition
 Criminal Matters
 Competition Litigation, including Class Actions
 Merger Notification & Review
 Competition Compliance Programs
 Abuse of Dominance/Monopolization
 Trade Associations
 Pricing and Distribution
 IP/Competition Interface

Education

LLB,
 University of Toronto, 1992
 MA, Economics
 University of British Columbia,
 1986

BA (Hons), Economics and
Computer Science
Queen's University, 1984

Year of Call

Ontario, 1994

- *Commissioner of Competition v. Canada Pipe Ltd.*, 2006 D.L.R. (4th) 193 FCA
Counsel to the Commissioner of Competition
- *Commissioner of Competition v. Sears Canada Inc.*, (2005) 37 C.P.R. (4th) 65
Counsel to the Commissioner of Competition

Presentations

- Navigating the Internet: Legal and Regulatory Issues, Communications Group Seminar, May 13, 2010
- Current Topics in Communications Law, April 8, 2010
- Recent 'Must-Know' Developments in Canadian Competition Law, Antitrust/Competition & Marketing Law Group Seminar, November 19, 2008
- Competition Law Compliance for Corporate Counsel, Speaker, CCCA 20th Annual Meeting, August 17-19, 2008
- 4th Annual Technology in Bloom 2008: New Developments in Technology Law, April 3, 2008
- Managing Competition Law Risk, Association of Corporate Counsel, January 31, 2008
- Market Definition: The Case for Converging or Emerging Markets, Panelist, 2007 Competition Law and Policy Forum, Northwind Professional Institute, February 2007
- Social Obligations in an Internet Protocol Environment -- 911 and Emergency Alerting Services, Panelist, CBA Conference, New Developments in Communications Law, Spring 2006
- Misleading Advertising Issues, Competition Law Conference, Northwind Professional Institute, October 2004
- Recent Developments in Trade Disputes over Runaway Productions, Panelist, CFPTA Annual Conference, Spring 2003
- FTAC/SAG Petition for Countervailing Duties on "Runaway" Film and Television Productions, Panelist, CFTPA Annual Conference, Spring 2002
- The Winds of Change: Regulating Communications in a Global Environment, Panelist, National Capital Association of Communications Lawyers, October 1997

Publications

- "Antitrust/Competition & Marketing Group 2009 Year in Review", Antitrust/Competition & Marketing Bulletin, January 2010
- "Cabinet Overturns CRTC's Globalive Decision", Communications Bulletin, January 2010
- "Antitrust/Competition & Marketing Group 2008 Year in Review: Reviewable Practices and Marketing & Advertising Developments in Canada", Antitrust/Competition & Marketing Bulletin, July 2009
- "Competition Policy Review Panel Proposes National Competitiveness Agenda", Antitrust/Competition & Marketing Bulletin, July 2008
- "Antitrust/Competition & Marketing 2007 Year in Review", Antitrust/Competition & Marketing Bulletin, March 2008
- "Developments in the Privatization of Inmarsat", IBA Outer Space Committee Newsletter, March 1999

- "Making Good on Access Commitments: Implementation of WTO Commitments on Basic Telecommunications Services by EU Member States, the United States and Canada", Co-author, paper presented at the CBA Conference, New Developments in Communications Law and Policy: Towards the Millenium, April 1998
- "Implications of the New WTO Rules for Trade in Telecommunications and Competition in International Services", Presentation at Infonex Conference, Canadian Telecommunications Regulation after 95-36 and 96-08, July 1997
- "Canada's Trade Obligations in Telecommunications: Where are we at and where are we going?", Paper presented at the CBA Conference, New Developments in Communications Law and Policy: Canada and the Global Information Society, April 1996
- "Regulation of Foreign Ownership and Canadian Specialty Services", Co-author, paper presented at the Canadian Satellite Users Association Conference and Trade Show, March 1996
- "Recent Developments in the Regulation of Satellite Services", Co-author, paper presented at the Canadian Satellite Users Conference and Trade Show, March 1996
- "The Meaning of "Public Interest" in the Context of Canadian Dumping and Subsidy Disputes", Paper prepared for the Canadian International Trade Tribunal, August 1992
- "An Examination of the Too Large to Fail Doctrine", Co-author, Bank of Canada, 1991
- "Early Warning Systems: An Examination of the Methodology and Results of Bank Failure Prediction Models", Bank of Canada, 1991
- "Blocked In: On the Benefits of Multilateralism, the Dangers of Regionalism, and Why Canada Must Participate in a US-Mexico Trade Deal", Course Paper, 1990
- "Bank Aid: An Investigation of the Costs and Benefits of Bailing Out Banks", Bank of Canada, 1990
- "An Analysis of the Information Content of Credit Aggregates", Bank of Canada Technical Report No. 49, 1988
- "Has Credit Been Given Where Credit is Due? An Analysis of the Information Content of Alternative Credit Aggregates", Bank of Canada, 1987
- "The Rules of the Game: A Study of the Role of Regulation in the Banking Industry", Masters Thesis, 1986

Memberships and Affiliations

- Member, Canadian Bar Association
- Member, County of Carleton Law Association
- Member, Canadian Women in Communications

Rankings and Awards

- Listed in Practical Law Company 2009 (Canada) as a recognized lawyer in telecommunications
- Listed in Chambers Global 2007 as a leading Canadian lawyer in telecommunications
- Listed in The Best Lawyers in Canada in Communications Law, as published in the National Post, December 2006



J. Aidan O'Neill

Partner

Ottawa

Direct Line: 613 236 3883, Ext: 259

Facsimile: 613 230 6423

aoneill@fasken.com

www.fasken.com/aidan-oneill

J. Aidan O'Neill practises primarily in the fields of intellectual property, media and communications law. He is a member of both the Quebec and Ontario Bars, which he joined in 1982 and 1985 respectively.

Aidan has extensive experience with respect to copyright issues relating to the communications and new media sectors. In this regard, he regularly advises clients in the context of tariff-setting proceedings conducted before the Canadian Copyright Board. In this capacity, he has acted as legal counsel in a variety of proceedings before the Copyright Board to establish the royalties payable for the use of musical works, sound recordings and other copyrighted works by both private and public broadcasters, as well as for the use of published literary works by educational institutions in Canada.

Aidan also acts for a broad range of clients with respect to their regulatory dealings with the CRTC, including the licensing of new television and radio broadcasting services, and the distribution in Canada of foreign satellite services.

He often acts for his clients before the Federal Court of Canada in relation to judicial review applications arising from Copyright Board and CRTC decisions.

Aidan also has broad experience dealing with legal issues relating to Canadian constitutional law, particularly those affecting the protection of official language rights. In this regard, he has represented clients before both federal and provincial courts in relation to the linguistic guarantees set out in the *Canadian Charter of Rights and Freedoms* and the *Official Languages Act*.

Representative Experience

- *Copyright Board of Canada Decision - Public Performance of Musical Works*
Counsel to the Canadian Broadcasting Corporation
- *Broadcasting Decision CRTC 2003-194*
Counsel to Canadian Hellenic Cable Radio Ltd.
- *Copyright Board of Canada Decision - Reproduction of Musical Works*
Counsel to the Canadian commercial radio industry
- *Copyright Board of Canada Decision - Public Performance of Sound Recordings 1998-2002*
Counsel to the Canadian commercial radio industry

Presentations

- Navigating the Internet: Legal and Regulatory Issues, Communications Group Seminar, May 13, 2010
- Top Intellectual Property Cases of 2009, Technology and Intellectual Property Group Seminar, January 26, 2010

Areas of Practice

Communications

Technology and Intellectual Property

Government Relations and Ethics

Entertainment & Media

Education

LL.B.
McGill University, 1981

B.C.L.
McGill University, 1981

B.A.
McGill University, 1976

Year of Call

Ontario, 1985

Québec, 1982

Languages

English

French

- Canadian Association of Broadcasters Annual Conference, Speaker, November 2005

Publications

- "Access Copyright's Educational Photocopying Tariff – What Does It Mean For the Future?", Intellectual Property Bulletin, September 2009
- "Intellectual Property: The Year 2008 in Review", by the Intellectual Property Practice Group, February 2009
- "Net Neutrality Debate Looks Set to Escalate", June 2008
- "Calculating Copyright", Electronic Times Report, April 1999
- "Canadian Broadcasters and Phase II Copyright Reform", Paper presented at Insight Conference, June 1997
- "A Case for Open Appeals", Electronic Times Report, June 1997
- "Bill C-32 - The Rough Beast of Copyright Reform", Electronic Times Report, February 1997
- "Cable Copyright Liability for Local Broadcast Signals?", Cable Communications Magazine, July/August 1993
- "Tariff 17 and Bill C-88: Cable's Continuing Copyright Struggle", Cable Communications Magazine, November/December 1992
- "Cable and Musical Reproduction Rights", Cable Communications Magazine, September/October 1992
- "Competing Allocation Methodologies Considered by Copyright Board in Retransmission Proceeding", Canadian Competition Policy Record, September 1992
- "New Cable Retransmission Tariffs Considered by Copyright Board", Canadian Competition Policy Record, June 1992
- "Copyright and the Carriage of Non-Broadcast Services", Cable Communications Magazine, March/April 1992

Memberships and Affiliations

- Law Society of Upper Canada
- Barreau du Québec
- Intellectual Property Institute of Canada (IPIC)
- Association littéraire et artistique internationale (ALAI)
- Canadian Bar Association

