
The Lobby Monitor

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Copyright Review Drawing Lines in Sand

The struggle over modifications and changes to the Copyright Act has led typical allies on copyright issues to end up on opposite sides. *See Copyright, pages 2 and 7*

Pursuit of Victory on the International Lobby Scene

Lobbying on the international scene — a look at intellectual property, at the Biodiversity Convention and the World Food Summit. *See Pursuit, page 3*

Lobbying for A Living

With economic times tough, lobbyists and GR specialists admit the climate has changed, but for those who adapt, the payoffs are there. *See Lobbying, page 8*

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Registrations In This Issue

Client Firms

1078385 Ontario Limited
Algonquin College of A&T
Aquatex Corporation
British Aerospace Defence Ltd
Capital One Financial Corp
Computing Devices Canada
Corestates Financial Corp
Farmer Rail Car Corp.
Ford Credit Canada Limited
Heroux Inc.
IBM Canada Limited
Intermark Envir. Solutions Inc
Laurier Office Mart
Loyd's Investment (USA) Corp
Lubetec Manufacturing Inc
Microcell Communications Inc.
Mihaly Intl Canada Ltd
Mitre Corporation

Mitretek Systems
Multi Employer Ben Plan Coun
Netstar Communications Inc.
Philex Gold Inc.
Pierce Leahy
Polygram Film entertainment
Prime Perforating Systems Ltd
Rider Travel
RJR Macdonald Inc.
SHL Canada
Starchoice Television Network
Trans Canada Credit Corp
United Defense, L.P.
Western Star Trucks Inc.

Lobby Firms

Beral Rodal Assoc
CFN Consultants
Earncliffe Strategy Gp
Fasken Campbell Godfrey

Govt Business Cons Gp
GPC Govt Policy Cons (Ott)
GSI Grants Consultants
Hill & Knowlton Canada (Ott)
Leonard Belaire
McKercher McKercher Laing
Metcalf & Assoc
Osler, Hoskin & Harcourt (Tor)
Perley-Robertson Panet
Public Perspectives Inc
SAMCI (Ott)
Smith, Lyons
The Capital Hill Group (Ott)
Tiendale Ltd.

Copyright Review Divides Allies

Impassioned pleas for legislation to deal with the new technologies and trade reality faced by both creators and sellers of artistic works have been echoing down the corridors of powers for more than eight years, yet it has, in part because of lobby gridlock, taken two governments and countless ministers to actually get something down on paper. Perhaps due to that famous artistic temperament, critics of the new bill didn't even wait until the ink was dry on C-32 before calling for modifications, additions and exemptions. It's safe to say that the government's proposed amendments to the Copyright Act has caused a mini-boom in the lobbyist and advocacy community. Lobbyist veterans like **Sean Moore** of **Gowling Strathy and Henderson** are rubbing shoulders with copyright experts the likes of **Howard Knopf** of **Perley Robertson Panet**.

Trouble Spots

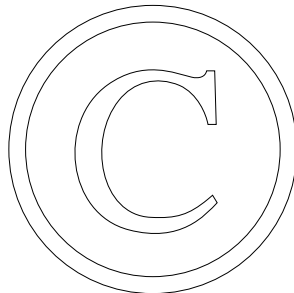
One current imbroglio between two otherwise symbiotic industries, Canadian publishers and booksellers, comes down to the thorny question of parallel importation, the right of booksellers to order directly from an American publishing house or wholesaler. In its current form, the bill would disallow this practice. Canadian publishers are thrilled, calling the provision "an important tool to enforcing contracts that have been freely entered into." But booksellers have protested, saying that this initiative would deprive them of the ability to best serve their clients – the bookbuying public. Representatives from both sectors have appeared before the Standing Committee on Canadian Heritage to plead their respective cases. While both sides try to paint their position as an altruistic one – "for the good of Canadians" – it's obvious that selflessness has less to do with this battle than self-preservation.

What it all comes down to, according to **Canadian Booksellers Association** spokesman **John Findlay**, is the question of service. Canadian consumers have become accustomed to waiting four to six weeks for a

special order to slowly work its way through the Byzantine chain between publisher and bookseller. But according to Findlay, a bookshop in Vancouver can have the same volume shipped from an American wholesaler in as little as 72 hours.

Under the new legislation, importing that book from the US, instead of its Canadian publisher, would be illegal, with certain exceptions, including an individual Canadian ordering his own book, direct from the publisher. With the emergence of "direct selling" of books by publishers on both sides of the border, as well as online marketing, booksellers can see their profits draining away even as the government seeks to increase the protection for Canadian publishers.

"This legislation will encourage foreign agents to bypass Canadian distributors, and



negotiate separate deals with larger (read: multinational) booksellers," says Findlay. "Right now, the system works mainly because of good will on both sides. Canadian booksellers will use Canadian publishers, and the intent is to work together to do a good job. But to put into legislation something which closes the border, it will be a different environment." The CBA supports the allowance of single-copy importation, with an individual simply being permitted to transfer their already present right to the bookseller.

Win-Win Negotiation

While both sides are fighting it out in public, it's a good bet that the antagonists will join the long line of supplicants taking

their squabbles to the department. Any good lobby campaign will be looking for a way to turn this into a win-win situation. For example, the publishing industry may be pleased with the wording surrounding parallel importation within C-32, but it is far from satisfied with the bill's other provisions, namely exceptions granting limited rights to make copies. Could the government maneuver a double quid-pro-quo to benefit the booksellers?

Ironically, though they seem to be figuratively at each others' throats during this debate, the publishers and booksellers have previously worked to develop voluntary guidelines for the industry to accomplish primarily the same thing as the legislation strives for – support for Canadian publishers and distributors of books. By enshrining the restriction on parallel importation, some in the industry fear that C-32 removes the incentive for all sides of the issue to work together.

To bolster its case, the CBA has sought out allies in some interesting places. Selling the issue as a "clear-cut case of the public right to service" being thwarted by industry interests, it has tried to draft the **Consumers Association of Canada** into its fight against the ban on parallel importation. CAC spokeswoman **Marnie McCall** says that, while her organization has not analyzed the situation in detail, there is definitely a service element to the issue. She says her understanding is that "booksellers would prefer to go to the Canadian agents, but can't give the same degree of service to their customers," citing the complaints received by the CAC on four-to-six week ordering delays as testimony to the trouble faced by the booksellers. What she'd like to see is an all-party agreement to continue work on a voluntary agreement, and worries that this legislation "could cut it off at the knees."

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Pursuing An International Lobby

Lobbying at the international level isn't easy. The playing field is much larger, the scope of the issues is broader and there are more people to target with lobbying efforts. And let's not forget the more pressing issue for lobbyists — finding a client who will pay for their efforts. But with the move towards globalization, it is becoming harder to ignore the international dimensions of issues. Lobbyists are heading into the international fray and are figuring out to how to lobby, who to lobby, and how to make their efforts pay off.

By lobbying internationally we don't mean lobbying foreign governments like the U.S. on a domestic issue. What we are referring to here is how to influence the deliberations of international forums such as the Convention on Biological Diversity. One hot lobbying issue emerging here is intellectual property rights.

IPR

While GATT has a clause on trade related intellectual property rights (TRIPS) that signatory countries must follow, the issue is far from resolved. A second round of lobbying is gearing up, targeting international decision-making venues.

The principle players right now on the IPR front outside of governments are corporate lobbyists and associations and interest groups. There is a noticeable absence of consultant lobbyists in the international lobbying efforts. According to one consultant, this is because of the in-house expertise of corporations. "Many firms have lawyers who specialize in intellectual property rights. The larger companies in particular — the biotech firms and pharmaceuticals — can afford in-house expertise, especially when the issue is so central to their work like IPR," he says.

Lobby Handles

The debate around IPR is focusing on setting parameters on what can be patented and under what conditions. The GATT TRIPS agreement left the issue of patenting

life forms unresolved until 1999, when the issue will be discussed again. With that date in mind, corporations are patenting everything they can as quickly as they can to move the issue forward before restrictions are put in place. On the other side, interest groups are pushing to have other international agreements set limits on IPR or have courts establish precedence for challenging GATT TRIPS.

At the third Conference of the Parties to the Convention on Biological Diversity coming up in November, IPR will be on the agenda for the first time. RAFI, the Rural Advancement Foundation International, points to a number of avenues for discussing IPR. "The convention provides a venue for raising questions about GATT TRIPS and its implications," says representative Jean Christie. "Under TRIPS, micro-organisms can be patented. At the convention we can question what a micro-organism is and question whether it includes higher life-forms. There is a huge policy vacuum on these specific questions that can be used to limit GATT."

Another angle that will be used to limit TRIPS is protecting traditional knowledge and compensating indigenous people for the use of their practices by others. This is a separate agenda item at the biodiversity conference. The underlying question is who owns the knowledge and the benefits that arise from the use of that knowledge. RAFI, the **Third World Network** and a number of indigenous organizations including the **Indigenous Peoples Biodiversity Network** (IPBN) want to ensure traditional knowledge is protected from 'corporate prospecting' and that there is a fair sharing of benefits. The groups will meet in the weeks before the conference to work out their positions and tactics.

RAFI will also be participating in the World Food Summit in November where it will raise the issue of farmers rights. "Farmers should receive the benefits from the use

of their knowledge by plant breeders. The breeders are always tapping the knowledge of farmers for good characteristics in crops which they then breed and patent, without compensating the farmers."

A third tactic RAFI will use to set parameters of IPR is the United Nations General Assembly and its review of Agenda 21. Here, they will raise the issue of life patenting and will request that the World Court give an opinion on the issue to set precedent.

The Corporate Scene

Corporate lobbyists are taking a different approach to promoting IPR.

The **Biotechnology Industry Association**, a U.S. based association representing 670 biotech firms, will participate directly in the conference on biodiversity. "We have attended the last two conventions to represent industry," says Richard Godown senior Vice-President. "At this meeting our purpose is to make sure that the IPR system encourages investment in research and development. There must be assurances that companies will receive compensation for their investments."

Along with making direct interventions in discussions, the Association also meets with key government representatives to promote their issues. They target not only like minded governments such as the European Union, Japan, and Canada but also with opposing governments in an attempt to sway decisions or at least stay opposition. One of their most effective tactics has been lobbying their national government to promote their position in government to government discussions. Godown notes that since the US is not an official party to the biodiversity convention (the senate hasn't ratified the convention), it is difficult to use this tactic.

While lobbying internationally may not be easy, it has its perks — like spending two weeks in exotic locations.

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Registration Notes

New Horizons

Brian Metcalfe of **Metcalfe and Associates** is registered for **Intermark Environmental Solutions Inc.**, a Canadian company dealing with hazardous waste treatments and recycling. While Intermark has primarily focused its efforts on the international front, Metcalfe is helping to identify marketing opportunities with the federal government and in the private sector in Canada. Intermark's president **Ron Riggs** says that while they are well known with the department of Foreign Affairs and the Canadian Export Association, he feels that they are virtually unknown with other departments that may be interested in their services.

"We are trying to raise our profile, and Brian Metcalfe is assisting us in these activities," adds Riggs, who adds that Metcalfe will also play an active marketing role.

Export Blues

Mihaly International Canada has signed with the other **Michael Robinson** of **Fasken Campbell Godfrey** to try to solve an international trade dispute involving a consortium led by Mihaly of 11 companies located in seven countries. **John Walker** of Mihaly says that a contract awarded to the consortium in 1993 started to sour when, near closing, they received requests for substantial bribes from the host country, Sri Lanka. When Mihaly refused to pay the bribes, and the government changed in Sri Lanka in August, 1994, the real troubles began.

Walker says that with \$8 million invested in engineering and legal fees, to name only two factors in their bid, they went to Fasken Campbell to try to find a solution. The answer – take the case to the International Centre of Investment Disputes, a little known branch of the World Bank. The problem – Canada is not a member, so Mihaly couldn't file under Canada's laws and membership. Luckily, five of the other partners

in the consortium are located in member countries, and Mihaly was able to file under US law and its membership.

While Robinson is orchestrating the complicated legal aspects, he is also working with the Canadian government to try to negotiate a settlement with the Sri Lankan government.

Hold Overs

Art Silverman and **Brian Guest** of **Association House** are registered for **DST Corfax Systems**, a registration that appeared in the last issue of the *Lobby Monitor*. Silverman says that he is providing assistance and an introduction to the Canadian government marketplace. DST operates in 10 countries, and the product it's offering is call centre technology. Its specialty is low-risk additions to computer programs and other technology found in transaction-heavy environments. Silverman says DST has made a few Canadian acquaintances, but that it is interested in exploring options in Ottawa in both the public and private sector.

Gilles Verret and **Kory McDonald** of **SAMCI** are registered for the **Canadian Creators Coalition**, a newly formed group of two of Canada's largest photographers' associations, a registration which also appeared in the last issue of the *Lobby Monitor*. The beef for this group is bill C-32, the copyright issue, which is currently before the Canadian Heritage committee. SAMCI's **Gordon Quaiattini** says that the photographers have participated in the past without much success on the issue of first ownership. Quaiattini adds that photographers want only what writers and TV producers are getting for their work, which is the rights for life plus fifty years. What SAMCI is doing is helping the group with the meetings with the standing committee, and getting them ready to participate in the public hearings scheduled for November, when the Creators Coalition will be presenting.

"They brought SAMCI in to turn it all around," says Quaiattini, adding that there are new emerging issues, like the internet. "Their resolve is to be recognized as other creators, and not just as distributors."

Concerns with Copyright

Much of the attention on C-32 has focused on creators, but on the other side of the copyright fence is **Algonquin College of Applied Arts and Technology**, which cannot be considered a creator, but definitely classifies as a user of copyright goods. While there was not an initial intention to prepare a brief for the standing committee studying this issue, a run in with Can Copy sent them to **Howard Knopf** of **Perley-Robertson, Panet, Hill & McDougall**. A further examination of the proposed revisions to C-32 led **Stephen Campbell** of Algonquin to his decision to shift Knopf's efforts from a legal consult to a more proactive role in promoting Algonquin's requirements.

"The changes give us cause for concern because they add significant damage provisions," says Campbell, who adds that the College is very careful to get permission before copying material. "We want the bill to be amended, but to make an exception for post secondary institutions."

Complicating the whole issue further, the College was hoping to present its brief to the Canadian Heritage standing committee only to be told that they were not going to be permitted to speak based on a decision by the committee's special counsel. Campbell says that they were stunned to find out that the lawyer for the committee was also counsel for Can Copy, with whom the College is having a difference of opinion.

"There are few enough users presenting briefs, and our efforts have gone nowhere," says Campbell, who places the emphasis on "the principle of the thing." He

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adds for reasons of cost, it is unlikely the college will press further, although Campbell says that they are considering releasing their brief on the internet, as well as to the media.

Algonquin's concerns are shared by and being vigorously pursued by the umbrella group for post secondary institutions, the Association of Universities and Community Colleges.

Will that be Cash or ...

Capital One Financial Corporation has broadened its base of influence by retaining **Richard Owens** of **Smith Lyons**. **Julie Dickson** of **GPC** has been keeping an eye on things for Capital One, but Owens has been brought in to work on specific sections of the White Paper on Financial Institutions Reform dealing with foreign banks, which Capital One says will place onerous burdens on them. While Capital One has permission from the government of Canada to operate as an issuer of credit cards in this country, the White Paper recommends that companies providing similar financial services be federally regulated as financial institutions. Owens says this will mean that companies like Capital One will be forced to take on a form not suited to their purposes.

"My job is to object to these provisions," says Owens of the White Paper, adding that the new criteria are particularly burdensome given the services that Capital One provides.

Another client for Owens on this issue, also with GPC, is the **TransCanada Credit Corporation**.

Hopper Cars Still Hopping

Douglas Richardson of **McKercher & Company** is registered for the **Farmer Rail Car Corporation**. Representing farm interests from Ontario to British Columbia, the FRCC has been spending some time in

Ottawa recently. At the top of the list is the sale of the federal government's hopper car fleet, and the Budget Implementation Act as it applies to the hopper cars. While the government did put out a draft request for proposal in August, the FRCC contested the document, arguing that the RFP was slanted in favour of the railways also interested in purchasing the fleet. In an effort to convince the government to more fairly balance the document, the FRCC has made a series of presentations to MPs and other officials. Sources close to the issue suggest that the government is now trying to determine whether or not to change the draft RFP. A decision is expected in the next few weeks.

Joining the Team

New to **Hill and Knowlton Canada Ltd.**, **Gordon O'Connor** has registered for a number of H&K's current clients. Among them are **British Aerospace Defence Limited**, **Computing Devices Canada**, **Western Star Trucks** and **United Defence L.P.**. There are no new issues for the client files, and O'Connor says he is still adjusting to his new responsibilities.

Ears to the Ground

Harry Near and **Michael Robinson** of **Earncliffe Strategy Group** are on the lookout for opportunities in the federal government for client **SHL Canada**. **Richard Bertrand**, a former owner of ECL Executive Consultants, and now with SHL, says that along with the lookout services, Earncliffe is also providing strategic advice on the issues of outsourcing for the federal government computer systems.

Against the Clock

Darrell Brown of **Public Perspectives** is registered for the **Multi-Employer Benefit Plan Council of Canada**, and is working with them on proposed amendments to the Pension Benefits Standards Act of 1995. Brown says they have been involved in on-

going consultations with the committee within the department of Finance to work on some of the sections of the draft legislation that the MEBPCC says are not appropriate. But they are working against the clock, as the department has suggested it wants to have legislation before Cabinet in early November.

"We believe there will be some changes before it goes," says Brown, who notes that they are still actively consulting with the department.

Cross-Border Efforts

Spotted in *The Political Finance & Lobby Reporter* this week was a registration by **Rogers & More**, a US lobby firm operating in Washington, DC, for **Chem-Security (Alberta) Ltd.**, from Calgary, Alberta. They hired Rogers & More to lobby on legislation impacting an **Environmental Protection Agency** regulation that relates to the importation of PCBs.

All in the Name

The Grocery Products Manufacturers of Canada association has officially changed its name to the **Food and Consumer Products Manufacturers of Canada** as of Oct. 1. This was done in part to reflect member changes, as well as to acknowledge the shift in the channels of distribution, says **Chris Bisanz** of FCPMC's Communications department. With grocery products sold in stores like WalMart and Price Club, and consumer goods sold in grocery stores, she says the name change is an opportunity to better reflect the membership. FCPMC also hopes to attract new members from the consumer products side of things to the association.

"We want to be able to demonstrate at the political level the broad base of our members and products," says Bisanz, who adds that the ability to demonstrate the impact of this sector and its contributions to the manufacturing GDP of Canada is also an issue.

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Copyright Woes

In another part of the copyright legislation jungle, two law firms have registered for clients duking it out over – fittingly – access and duplication of legal materials. Under the proposed amendments to the Copyright Act, lawyers who make copies of statutes, decisions and other court documents would have to pay royalties to legal publishers who make the material available.

The kicker? All this documentation is given to the publishers without charge by the federal government. Which means crown attorneys could wind up paying royalties to the publishers for the same information they provided – gratis. Nice work if you can get it.

Scott Joliffe of **Gowling, Strathy and Henderson** has stepped up to the plate on behalf of the **Federation of Law Societies**.

He says the changes are at best unnecessary, and at worst could leave Canadians without proper access to the legal system.

Marnie McCall of the **Consumers Association of Canada** agrees that this is

more than just a squabble between lawyers. “It’s a huge issue. It comes down to fundamental rights of citizenship.”

But the law publishers disagree, and have appeared before the Heritage Committee to argue that the legislation doesn’t need to be tinkered at this stage in the game, and have hired some lobbyist muscle of their own. *Ron Atkey, Peter Glossop* and *R. Alan Young* of **Osler Hoskin and Harcourt** have registered on behalf of the **Committee of Major Legal Publishers**.

In its appearance before the Heritage Committee last week, the CMLP argued that publishers have “invested significant financial resources in making their publications available to be accessed and used ... by new technologies.” Saying that they have never had a problem with lawyers making copies of documents for submission to a judge, the publishers claim that their copyrights are being threatened by “non-profit libraries” that distribute legal material without paying their fair share of royalties.

The FLS will appear before the Heritage Committee on October 29th, and are expected to use the hearing as a platform to demonstrate the broad support its opposition to the bill has garnered among civil liberty and justice groups, as well as lawyers and law societies.

People

GPC is shaking up its Ottawa office with the recent departure of *Kevin Wright* in late September. Filling the gap is *Leah Anderson* – who’s specialty is financial institutions regulations and policy. She’s moved over from the **Department of Finance**, and started at GPC October 15. While she has not registered yet for any of GPC’s clients, she will be taking over on a few files that were previously handled by Wright.

Another new face on the Ottawa scene is *Gordon O’Connor*, who has joined **Hill and Knowlton’s** Ottawa office. O’Connor’s first day was September 23, and he has recently registered for several of H&K’s long time clients in defence and outsourcing. O’Connor says these two fields are his specialty, along with alternative service delivery, but that he is still learning the ropes.

Stentor is still looking for a President/CEO to replace *Jocelyne Cote-O’Hara* who left in early summer for the Toronto scene. *Mike Murphy* is currently fulfilling the duties of the president/CEO, but says the alliance is still on the lookout for a permanent replacement. He wouldn’t venture an opinion on a deadline for the executive search, saying “these things take time.” Asked about whether or not he might be a candidate for the job, Murphy would not speculate, however he didn’t rule himself out either, saying only that it was up to the discretion of the Board of Directors.

Marc Desmarais is back on the GR scene fresh from his brief sojourn in Montreal at a pharmaceutical company. While Desmarais said in January of 1996 that the move to **Jouveinal Inc.** was a needed change of pace, he’s now back at the **Canadian Medical Association** in his former role in the government affairs department. Rumour has it he and the CMA were able to successfully negotiate his return and that both parties are pleased with the outcome. It could be that the commuting got to Desmarais, his family remained in Ottawa while he worked in Montreal.

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Making A Living At Lobbying

Making a living in the government relations business has changed along with the economic climate. Many lobbyists and GR specialists agree that right now, making a living isn't as easy for anyone as it used to be, although often the rewards are greater for the additional effort. It's not that business has dried up. Rather, it seems that more knowledgeable clients and keener competition in the marketplace continue to keep prices down and the billings honest.

Clients Calling the Shots

Clients are demanding more value for their dollars, and firms that used to market the big names and work the junior associates are finding that clients aren't interested in that kind of service any longer, say observers. Now clients are insisting that the person they hire is the one doing the work, and contingents of consultants aren't often welcome either.

"Clients are more cautious about the quality of work and who's doing it," comments an insider.

But some say that more people feel that they have to have a lobbyist when dealing with government. Either the client feels that they must be the first ones on the scene with a lobbyist or they need one because the competition has one.

"Clients are looking for well-rounded service," says one observer.

Competition Affects Marketplace

Compared to the Tory times of five years ago, lobbyists note that there are more people entering the GR world who have not had much political exposure.

While there is a seemingly large influx of former government employees into the government relations business, many observe that the large majority of these people are just not cut out to be consultants.

"Lots of people are out on the market, but I don't think that's what the clients are looking for," says one insider, who doesn't feel that former government employees are making that big of an impact. Another suggests that because many new entrants are

simply ill-equipped to do the job, the initial bidding for a job may be more competitive, but the ones riding clean up get the spoils.

Others note that those from the senior levels of public service do not necessarily provide lobbying or representation for their clients, but instead offer strategic advice on how to deal with government. But those firms with a broad selection of services, offering a range from government affairs to communications and strategy, are the ones who will best survive the dog-eat-dog world of government relations. Smaller, more specialized firms, while catering to a niche market, have the disadvantage of a smaller pool of clients for whom to fight over, and the more difficult marketing job.

"Lobbyists are caught in a trend affecting professionals, and lawyers and accountants are feeling this too," comments one player.

But on the whole, the feeling is quite optimistic – and well illustrated by this axiom "if there's one lawyer in town he starves; if there's two they both prosper."

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