

Jeff Leiper, *Remarks, Rebooting Canada's Communications Legislation, A conference to examine changes to Canada's broadcasting and communications legislation (Ottawa: May22-23, 2015), Session 3*

Thanks, Monica and organizers for inviting me to be here today. It's a very accomplished panel and I feel more than a little like a fish out of water this afternoon.

For about five years I worked up the ranks at the CRTC, starting as a manager and eventually ending up an executive. I had a hand in crafting several new policies including new cable rules, Canadian programming expenditure rules, vertical integration rules as well as looks at over-the-top broadcasting. It was one of the most fascinating jobs I've ever had.

It pains me a little to say, but today I'm a politician. I represent Kitchissippi ward, a busy corner of Ottawa, as its city councillor. To the topic of today's panel, I spend much of my time being lobbied on issues big and small. I spend my days in meetings with professional lobbyists, advocacy groups and residents. People and groups email me, call me, tweet at me, tweet at me some more, reply to my blog posts, tag me in Facebook posts and, where my cell number has escaped into the wild, text and iMessage me.

I actually find myself on fairly familiar ground in many ways at the City of Ottawa. We have a relatively small cadre of hard-working professional staff, who - depending on their silo - have their own culture and world-view that inform their recommendations. There's a political level made up of reasonable, bright people who seek to balance the concerns of all stakeholders. We have a communications shop that both reaches out with information and that is responsible for inviting feedback. And, Legal is an entity unto itself, keeping us all on track.

While our mandate and jurisdiction at the City is much broader than the CRTC's, in many ways I believe we have an easier job. There is no government that is closer to its stakeholders. If I go grocery shopping with Natalie, we leave my ward so as not to get caught for 45 minutes in the peanut butter aisle discussing the route our new LRT system should travel west.

I'm fortunate to have in my ward probably the city's most engaged and expert residents. There are eight community associations along with hundreds of engaged residents who have a collective experience of municipal affairs that rivals staff's. They are generous with their time and knowledge. The more accessible I make myself to them, the more I am rewarded with a rich understanding of the issues and counter-points to the views expressed by those who are paid to hold views.

I've been asked to join this panel exploring how a quasi-judicial entity such as the CRTC should consider evidence. I've heard significant discomfort that the CRTC in its current outlook is open to incorporating - or at least not ignoring - social media channels during its hearings. Should a comment made by a relatively anonymous observer on Twitter be allowed to form the basis of a question or of decision-making by a CRTC commissioner, for example?

One of the contentious issues with which the City of Ottawa will deal in the next while is the

entry by Uber into our market. People and organizations have used all the channels listed above, and several I'm sure I'm forgetting, to let me know how they believe the City should proceed.

We'll be exploring in what will be a rich policy process the continued applicability of permission-based licensing and ex post/ex ante regulatory measures for a new breed of transportation network companies, many foreign entrants, to address anticipated market failure to achieve the public interest.

And I thought I'd escaped Netflix.

Taxi regulation has a history of raucousness and spirited debate in this city. Going into our Committee meeting, where the heavy lifting of policy-making is done under our current Mayor, I expect that there will be a flood of social media commentary. We have an expert City Hall press corps that engages actively with observers during the course of our meetings, live-Tweeting our debates and engaging in real-time. A phalanx of City staff and even councillors will be monitoring the online debate.

I think that's important because it's unlikely that we'll hear from many of the users of taxi services through our formal Committee process.

It's a matter of public record that I have been lobbied both by the incumbent taxi service providers, as well as by Uber. I've been grateful for their outreach. The issues are complex and I need a bit of hand-holding. I listen with an open mind, make no commitments, and seek out countervailing opinions. Until the moment I vote, I'm never exactly sure what the right answer is. I very much appreciate the online debate to help me reach a decision, even if tweets and posts simply challenge my assumptions and force re-consideration.

I raise the taxi issue because I see so many parallels between the work we're about to undertake and the regulatory policy-making undertaken by the Commission. And, frankly, I think we as councillors will be better able to make decisions related to our mandate than will the CRTC because we are not bound by overly-legalistic rules of evidence and procedure. We'll drink from the fire hose, as they say.

But the nagging feeling that the analogy isn't perfect led to further reflection, and to the Ontario Municipal Board. I know many of you are quite familiar with it. It is the appeals body to which residents and developers seek to overturn our Council's land use planning decisions.

I wonder how this audience would react to the notion of an OMB member reading tweets during the course of a hearing?

While, as noted, I am not particularly perturbed by lobbying and social media use at the CRTC – and in fact consider that it is probably necessary to arrive at policies that are truly in the public interest – this hypothetical situation admittedly gives me pause.

“Ordinary” citizens are often granted participant status before the Board. They take the

opportunity to frame the Planning Act questions for the Board in terms of what actually matters to them. But party status is a much more difficult proposition. The right to cross-examine witnesses and propose witnesses of their own comes with a price that many communities simply can't afford. Legal representation and planning consultants are expensive. Few community associations can afford the \$30,000-\$35,000 price tag to play with the developers and City.

The populist in me loves the notion of leveling the playing field at the OMB with a curated tweet wall when, for example, municipalities face off with developers. But, it somehow seems, well, *inappropriate*. Certainly, when I have participated in Board hearings as an appellant, it would be abhorrent to me to think that the Member was hearing anything off-record. So what's the difference between the CRTC and the OMB? Why, in my view, should CRTC commissioners actively engage with the public via all channels, and welcome lobbying properly disclosed, but the OMB member stay focused on the evidence before her?

The more I thought about the question in the lead-up to today's panel, the more I came to the conclusion that the line in the sand for me personally is when the regulatory body is required to adjudicate, rather than set policy. I don't have the legal background that this audience has, but I wonder whether high-level communications policy issues are best handled in judicial fashion – quasi or otherwise – at all.

What I would propose, at the end of the day, is to remove quasi-judicial rules of evidence from the CRTC's constraints for some types of regulatory policy-making. I am not a lawyer, as I'm sure has become very obvious, and this is likely a naïve proposition. However, I have come to trust the wisdom and capacity of ordinary Canadians to contribute to complex problem-solving in a very meaningful way. Broadcasting and telecommunications are not so arcane that an intelligent person, with all the research and collaboration tools available to today's Internet user, can't participate. Their interpretation of the public interest is just as valid as the professional stakeholder interests

I think it's worth thinking about. There would of course be significant hurdles to putting communications policy decisions in the hands of some new branch of the CRTC or even of government.

I'm an elected official, subject to the City of Ottawa's well-recognized accountability framework. Residents know with whom I'm meeting and when and about what. If they don't like how I vote, they can turf me out of office in relatively short order. Appointed Commissioners may not have the same level of accountability. And I think we all recognize that there are some decisions we don't want politicians to make. The case for a hand's-off broadcasting regulator is well-understood given the sector's role in our democracy.

But, I am enough of a populist to believe it would help us achieve decisions that better reflect the public interest, and in fact put the CRTC in touch with what the public interest truly is.

I'm looking forward to today's discussion.