



In this edition:

*Bill C - 32:
Modernizing Copy-
right Law1*

*Raising Equity for
a Small Business 2*

*CIPO Proposal to
Expedite Green
Patents.....3*

*More Join the
Team.....4*

**Bill C-32: Modernizing
Copyright Law**

by Cory Schneider

With Bill C-32, the *Copyright Act* will undergo its first substantial change since 1997 to catch up to how consumers have been dealing with copyrighted works.

User generated content

The bill includes a new exception to copyright infringement which allows individuals to use existing copyright material to create *new* works, but only if the following conditions are met:

1. the new work is used solely for non-commercial purposes;
2. the original source is mentioned and did not itself infringe copyright;
3. the new work does not have a substantial adverse effect on the existing work.

The foregoing would seem to permit you to, for example, post a video of your baby lip-synching to Lady Gaga. Critics of this provision say, however, that it is too broadly written as it would also permit you to post a compilation of all your favourite Lady Gaga Songs and call it a “new work,” as long as you referenced the source and didn’t make any money doing it.

Format shifting, time shifting and backup copies

The current *Copyright Act* allows the reproduction of musical works on an “audio recording medium” for private use. Under the proposed changes, this will expand to the copying of all

copyright works for private purposes and as long as the reproduction does not circumvent a “technological protection measure” or TPM—also referred to as a “digital lock.” Unfortunately for those looking to transfer their DVD collection to their computers, TPMs exist on most commercially available DVDs.

Bill C-32 also makes an exception for reproduction of broadcast signals. Consumers, for example, would be able to record their favourite shows to their personal video recorder (PVR) and view them at a “more convenient time.” But again, this can only be done if it doesn’t circumvent a TPM, something which broadcasters could start adding to programs provided by way of digital signals.

The Bill would also allow you to make backup copies of any work, including computer programs. As with the other exceptions, however, a backup can only be made as long as no TPM is being circumvented.

Bill C-32 appears to address what many people are doing already—saving copyrighted material for personal use, format shifting, time shifting, and making backup copies.

Critics say, however, that the proposed changes may be rendered meaningless if more copyright owners digitally “lock” their works by adding TPMs.



*Cory has a broad practice, stretching from intellectual property to personal injury litigation. Cory is a registered trade-mark agent.
His direct line is 416-446-5818*

DEVRY SMITH FRANK *LLP*

95 Barber Greene Road,
Suite 100
Toronto, Ontario
M3C 3E9
416-449-1400

www.devrylaw.ca

Raising Equity for a Small Business

by Bill Smith

Most small businesses get started with a mix of the proprietor's money, a lot of "sweat equity," and often a small business loan from a bank. Sometimes, however, a small business will look to outside investors to provide risk capital.

Any small business owner, though, will have to become familiar with the rules that regulate how a small business can go about raising capital—in particular the rules concerning the issue of shares or debt in Ontario.

Shares of a company—as well as promissory notes, debentures, and other debt instruments—are called "securities," the issue and transfer of which is overseen by the Ontario Securities Commission (OSC) under the authority of the *Securities Act* as well as a body of regulations, policy statements, and rulings, which, for convenience are simply referred to below as the "*Securities Act*." A company that issues shares or other securities is often called an "issuer."

For large businesses, the securities regime is intended to create an efficient and transparent market. The issue of securities requires registration with the OSC, a prospectus providing details of the company and the investment, and ongoing financial reporting and disclosure. Small businesses may, however, be exempt from registration, prospectus and disclosure requirements.

The \$150,000 Minimum Exemption. Any sale to investors who make the purchase on their own behalf and not on behalf of another person, company, or group; who invests at least \$150,000; and who pays for the investment in cash at the time of the purchase, is exempt.

The Accredited Investor Exemption. The "accredited investor" exemption allows you to raise any amount from investors who meet certain qualifications, including, for example, the following: a person who, alone or together with a spouse, owns financial assets worth more than \$1 million before taxes but net of related liabilities; a person whose net income before taxes was greater than \$200,000 in each of the previous two years and who expects to maintain

at least the same level of income this year; and a company with net assets (after deducting liabilities) for at least \$5 million.

The Private Issuer Exemption. The private issuer exemption allows you to raise funds from up to 50 investors—as long as you qualify as a private issuer and you do not offer securities to the public.

To qualify as a private issuer, either your board of directors or your shareholders must be required to approve all share transfers. This restriction on share transfer must be set out in your constating documents or shareholders' agreement, something which most lawyers, including those at DSF, routinely include in the Articles of Incorporation of private companies.

To qualify as a private issuer, you cannot have more than 50 security holders, other than holders of debt (creditors) whose debts are not convertible into shares. In addition, private issuers cannot be mutual funds or investment funds.

The most frequently encountered difficulty with the private issuer exemption is determining who is the "public." Securities laws do not define who the public is, but they do describe individuals and organizations that are *not* considered to be the public, including, among others, an employee, shareholder, director, executive officer, founder, or control person (which may be someone who owns as little as 20%) of the issuer.

Investing as a Principal. It is important to note that for these exemptions to be available the investor must, in most cases, acquire securities as "principal" – that is, for themselves and not on behalf of another .

Information about the Investment. You must be very careful about what kind of information you give to investors. Misleading or inaccurate facts—especially if they result in loss of money or failure to meet investment objectives—can have very serious consequences. Although not required, you may want to provide investors with an "offering memorandum" which is simpler and less expensive than a prospectus, but which meets certain technical requirements and is factual.

Bill is a founding partner of the firm and heads the Corporate Law Group. His direct line is 416-446-5800.



CIPO Proposal to Expedite Green Technology Patent Applications

by Wayne Lewis



Wayne practises in Corporate/Commercial, IP and Entertainment law with a particular interest in start up companies. His direct line is 416-446-5867.

News reports on alternative fuels and energy are as common as the weather report. “Think Green” slogans may be as popular as McDonald’s golden arches; prominent figures are taking on the issue of the environment

(Al Gore, for example, recently appeared in the environmental documentary *The Inconvenient Truth*); and world leaders vow to find solutions to such problems as global warming.

In response to environmental challenges, researchers and research institutions have focused their efforts on developing green technology—Green Centre Canada in Kingston, Ontario, for instance, was recently established to develop and commercialize green technology inventions. To protect their rights in these inventions, these researchers and institutions must seek to obtain a patent at the Canadian Intellectual Property Office (CIPO).

One of the obstacles to developing green technology solutions in Canada is CIPO’s backlog of applications. This backlog slows down the process, hindering the expeditious commercialization of an invention. To resolve the problem, CIPO has announced a proposal to amend subsection 28(1) of the *Patent Rules*. The amendment will speed up the patent applications for inventions related to green technology—and thus expedite bringing this technology to the public—by giving these inventions higher priority than non-green technology inventions.

Faster CIPO processing and commercialization means that inventors may be able to secure funding, create businesses, and bring green technology to the market more quickly than currently and fall in line with the Government of Canada’s objectives of promoting the growth of businesses, developing a clean energy economy, and fighting global warming.

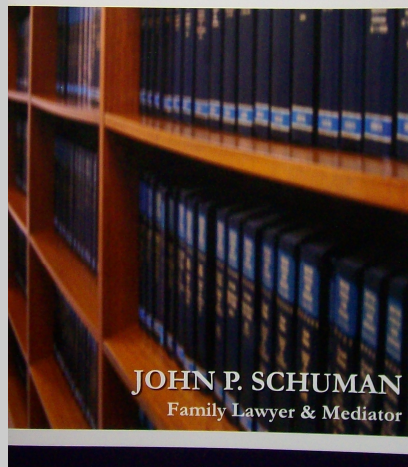
The amendment to the *Patent Rules* will explicitly allow the Commissioner of Patents to expedite an application when the invention is related to green technology. It will allow green technology inventors, when they are filing an application, to declare that the application relates to technology whose commercialization will help to resolve or mitigate environmental impacts or conserve the natural environment and its resources. No additional fees will be charged for this expedition.

CIPO’s proposed amendments are similar to the Green Technology Pilot Program (Pilot Program) implemented by the United States Patent and Trademark Office (USPTO) on December 8, 2009. Prior to this program, applications filed within the US and related to the environment, energy conservation, renewable energy resources, or greenhouse gas reduction had to meet the requirements of an accelerated examination program in order to be advanced. Under the Pilot Program, the examination of patent applications for green technology inventions is simply accelerated as will be the case in Canada if the proposed amendments are adopted.

Once the Commissioner’s proposed amendments are implemented, researchers and research institutions should find that the red tape slowing the CIPO application process has been replaced by a “green” tape—opening doors for the continuous flow of green technology.

DSF Guide To The Basics Of Ontario Family Law

A Short and Easy-To-Understand Guide to Separation, Divorce, Child and Family Law Issues and the Family Court Process



Now available at

Chapters.ca
Amazon.ca
Indigo.ca

Or order your free copy by calling

416-449-1400 ext .5847

More join the team!

Devry Smith Frank *LLP* is pleased to welcome five new members to our family.

Lucy De Muzio is the newest addition to our insurance defence team. Lucy brings more than ten years experience of work in the legal field, with extensive knowledge of both plaintiff and insurance defence litigation. Lucy earned a Law Clerk and Business Administration diploma from Centennial College.

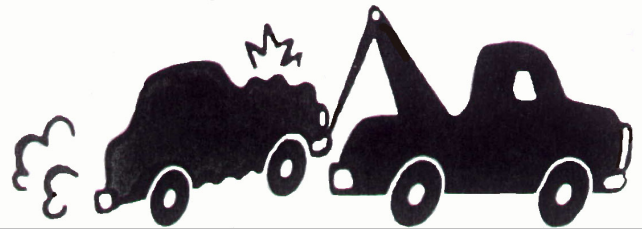
Wayne O. Lewis joins DSF as a corporate/commercial, intellectual property, and entertainment lawyer. He graduated from the University of Toronto with a Bachelor of Science (Honours) degree, majoring in neuroscience and psychology. He attained his law degree in 2005 at Osgoode Hall Law School and was called to the bar in 2006. Wayne has represented small to mid-size business, research and development groups, entertainment groups, as well as artists in the film and music industries.

Andrea Gosher returns to DSF as a senior law clerk in our family law group. Andrea is a graduate of the University of South Africa, where she earned a Bachelor of Commerce as well as a Bachelor of Laws degree.

Jenny Rose Gillegan joins DSF as an assistant/law clerk for our insurance defence and personal injury team. Jenny is a graduate of Seneca College and has several years of legal experience.

Viet Nguyen joins DSF to continue his practice in recovery and commercial litigation. He is a two-time graduate of University of Western Ontario, earning a Bachelor of Arts (Administrative and Commercial Studies) in 1998 and a Bachelor of Laws in 2001. He was called to the bar in 2002 and spent several years as an associate in a multi-service law firm in Toronto.

YOUR CAR COULD BE IMPOUNDED!



On December 1, 2010, the *Highway Traffic Act* was amended to impose a mandatory seven-day vehicle impoundment for:

- drivers caught driving with a suspended licence;
- drivers required to use an ignition interlock device who are caught without one;
- drivers caught with a blood alcohol limit concentration over .08 or who refuse to provide a breath sample.



DEVRY SMITH FRANK *LLP*

95 Barber Greene Rd, Ste. 100
Toronto, Ontario M3C 3E9
416-449-1400

www.devrylaw.ca

From its genesis in 1964, Devry Smith Frank *LLP* has grown to a professional corps of 41 lawyers, 5 licensed paralegals, 26 law clerks and a complement of highly skilled and dedicated staff, offering a broad range of legal services to our individual, business and institutional clients.

To learn more, please visit our website at www.devrylaw.ca, our Facebook page, or call us at 416-449-1400.

This newsletter is intended to inform and to entertain our clients and friends. Its content does not constitute legal advice and should not be relied on by readers. If you need legal assistance, please see a lawyer. Each case is unique and a lawyer with good training and sound judgment can provide you with advice tailored to your specific situation and needs. If you would like to receive our future newsletters but are not yet on our mailing list, please send your name and e-mail address to: info@devrylaw.ca