



Governance of Social Media Using the Principles of Community Radio

Ken Zakreski

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May 17, 2023

Attachments

1 Letter from Canadian Heritage Minister November 10, 2022

2 Gabriola Radio Society Dissolution March 4, 2022

3 Third Letter to MP Dr Kitchen April 20, 2022

4 Memo from legal on FaceBook group ownership April 15, 2022

5 Letter to MP Dr Kitchen February 10, 2022

6 Case for Social Media as Community Media

About the author - Ken Zakreski December 18, 2022

From: Honorable Pablo Rodriguez hon.pablo.rodriguez@pch.gc.ca 

Subject: Reply from the Ministerial Correspondence Secretariat, in response to your correspondence, forwarded to the Honourable Pablo Rodriguez, Minister of Canadian Heritage

Date: November 10, 2022 at 9:21 AM

To: ken.zakreski@gmail.com

HR



Dear Mr. Zakreski:

I am writing in response to your correspondence, forwarded to the Honourable Pablo Rodriguez, Minister of Canadian Heritage, regarding the regulation of social media in accordance with the *Broadcasting Act*. Minister Rodriguez appreciates your taking the time to write on this matter. Please excuse the delay in my reply.

The Government of Canada understands the importance of local news to Canadians so that they have access to quality local and community programming that meets their needs. This includes access to high-quality local news on which Canadians rely to stay informed of issues that matter to them. In this regard, the Government appreciates your contribution through the Community Bulletin Board, Life on Gabriola.

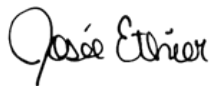
As you may know, the Government provides support to local journalism, especially in small communities. For example, the [Local Journalism Initiative](#) supports the creation of original civic journalism that covers the diverse needs of underserved communities across Canada. In addition, the [Canadian journalism labour tax credit](#) is applied to the salaries or wages of employees of eligible organizations that produce original news content. The Government also implemented the [Special Measures for Journalism 2021](#) component of the Canada Periodical Fund, which provided recovery funding to Canadian magazines and community newspapers to support organizations that struggled due to the COVID-19 pandemic.

Bill C-11, the [Online Streaming Act](#), currently at its second reading before the Senate, does not seek to regulate social media platforms. Because content shared on social media cannot be considered a broadcasting undertaking, a Facebook group cannot be considered a community element or subjected to laws governing broadcast undertakings. Moreover, the [Broadcasting Act](#) only applies to audio and audiovisual content, not written journalism.

Furthermore, it is noteworthy to mention Bill C-18, the [Online News Act](#), which is designed to support the Canadian news industry, and would make online platforms such as Google and Meta, compensate media organizations for reusing their journalism. This bill should contribute financially to the vitality of news media.

Please accept my best wishes.

Sincerely,

A handwritten signature in black ink that reads "Josée Ethier".

Josée Ethier (*elle/she/her*)
Director
Ministerial Correspondence Secretariat

The word "Canada" in a bold, serif font, with a small red maple leaf icon above the letter 'a'.

Gabriola Radio Society Dissolution

My name is Ken Zakreski and I am a director of the former Gabriola Radio Society (BC Society incorporation number S - 49407). I have access to the society's assets as a former signing authority. My role here is to disburse assets of the dissolved incorporated society as per its bylaws.

Question

Is a Facebook Group an asset of a BC incorporated society?

Introduction

"Gabriola CoopRadio" operates 2 FaceBook Groups, *Social Events Bulletin Board - Life on Gabriola* ("Social Events") and *Community Bulletin Board - Life on Gabriola* ("CBBlog"). Both FaceBook Groups are still going strong, local moderators are in place at both, and the groups have been operating uninterrupted since November 26, 2010, by the now defunct, Gabriola Radio Society (GRS aka CKGI 98.7FM aka Coop Radio and on FaceBook *"Gabriola CoopRadio"*). CBBlog and Social Events were launched by then GRS volunteer *"DJ Princess"* CJ Rice, for the Society, to use as an electronic news gathering service for then nascent CKGI 98.7 FM. Rice was GRS's first programming director for the live radio broadcasts from the National Campus/Community Radio Conference when Gabriola Island invited community broadcasters from

across Canada and the United States for the annual national conference - NCRC. CRTC, Industry Canada officials and federal political representatives were in attendance. CKGI was widely supported by the residents of Gabriola, so much so that the CRTC issued a license to broadcast on FM radio at 98.7MHz. Notice should go to the many Musicians of Gabriola that supported development of CKGI with the donations of their time and talents to the multiple Fundraising shows we held. Of special note are Lou Gradanti who we recognized with our lifetime achievement award and Leah Hokanson who wrote our song.

"Gabriola CoopRadio" operates these FaceBook Groups as a "person" account not a business page. Businesses were supposed to switch over to FaceBook Pages, but GRS never did, lack of resources. Facebook (now Meta Platform Inc.) is aware of this from multiple interactions including support to reclaim access, with CRTC assistance, to *"Gabriola CoopRadio"* following a "password lock out" of access to the groups following a small plane crash on the island.

Gabriola Radio Society was dissolved by their board of directors following the loss of its second application to their local land use authority "Gabriola Islands Trust", seeking no objection (Islands Trust Resolution GB-2014-167) regarding a tower site at Stoney Ridge, arguably the highest geographical location on Gabriola. There was enough rationale for the Local Islands Trust Committee to

not support the application for the tower site even though all other approvals were complete, including a CRTC Approval for a License to Broadcast (CRTC 2011-679) and Industry Canada Brief. Many felt, now Honourable Ms. Malcolmson, MLA, then, chair of the Islands Trust, was wrong in not providing the requested land use referral. There is an argument that a widely supported Facebook Group better served this community during the Covid 19 pandemic due to the challenges of broadcasting over intervening topography impacting on the CKGI 98.7FM coverage area and the loss of cable FM carriage on cable following the CRTC decision to remove a “must carry” for radio AM & FM to Broadcasting Distribution Units on their cable networks.

Following the dissolution, GRS bylaws required it to disburse all of its assets to “... a responsibly managed organization having purposes similar to those of the present Gabriola Radio”. CHCR, a non profit community radio station located in the Ottawa Valley unknowingly put out a request for assistance for a transmitter and associated radio gear. They were the recipients of GRS’s transmission gear and remaining funds.

All that remains of CKGI are the studio gear (estimated value \$800) and two FaceBook groups GRS founded to gather local news. The *Community Bulletin Board - Life on Gabriola* and *Social Events Bulletin Board - Life on Gabriola*

remain active and continue to operate, as a trust or stewardship, following the purposes laid out in the GRS bylaws.

The rationale for these 'Life on Gabriola' groups to continue is they operate open to the public to access and promote Canadian Freedom of Expression. Other FaceBook Groups on Gabriola do not operate publicly facing, with a commitment to citizen journalism, following FaceBook policies or a community radio philosophy.

CBBlog currently operates as a non profit, unincorporated partnership using the community radio philosophies of citizen journalism, inclusiveness and diversity.

Questions

Winding down Gabriola Radio Society under the *Societies Act (S.B.C. 2015 c.18)* requires disbursements of the assets.

1. Are the FaceBook Groups CBBlog and Social Events an asset of GRS and as such, need to be disbursed per their bylaws?
2. If the answer is negative to the previous question. Can it be distributed in the form outlined in the bylaws anyway?
3. Does the mission statement for CBBlog deem it a community media under the House of Commons Government Bill C11? If so then, do CRTC

regulations to this endeavour apply under Bill C11 if it receives royal assent in its current form? Would Bill C11 allow CRTC “licensing” for “ISO Registered” Social Media that acts like a media.

Author’s Opinion

FaceBook Groups consist of the network effect and moderated, curated, mostly local information supplied by user generated content (alpha text/images/video).

In my opinion both Facebook Groups, CBBlog and Social Events, serve a useful purpose to society and are a social good. I conclude these groups currently have no externalities that cannot be internalized and are therefore preferred over print which has a larger carbon footprint.

Additional References and Supporting Information

Group Insights (December 12, 2021)

On Gabriola Island BC the “Community Bulletin Board - Life on Gabriola”, a FaceBook Group (“CBBlog”) is the largest and most viewed on line Community Group serving Gabriola, Mudge, Link & De Courcy Islands. *The Community Bulletin Board is the place for general news, pictures, videos, announcements, discussion, and information about Life on Gabriola.* Another FaceBook Group operated by Gabriola CoopRadio, *Social Events Bulletin Board – Life on Gabriola (“Social Events”) is the place for local ticket info, concerts, plays, special events, & fun stuff.*

Estimated population of Gabriola ~4,000 (2016 Census).

CBBlog membership 5,635 members with 2,076 reporting as Gabriola Residents, 1,016 Nanaimo and all including remainder report to have a connection to Gabriola.

CBBlog activity per week Dec 5, 2021 to Dec 12, 2021 - 426 posts, 1,510 comments, 3,642 reactions.

Excerpts from Gabriola Radio Society bylaws.

2. Purposes of the Society

the Society is to provide the island and surrounding communities of Gabriola, Valdes, Mudge, Link, DeCourcy, Ruxton, Pylades with an FM Radio Station capable of performing the following:

- a. provide, local and Canadian, actors and musicians a broadcast platform on an alternative, commercial free community radio station;*
- b. offer the general public an intelligent, innovative, entertaining, alternative to the programming fare currently offered;*
- c. communicate, with the highest standards of journalism, the concerns, interests and activities of the gulf islands to the general public;*
- d. give groups from the community (other than partisan political or religious groups) an opportunity to communicate with their members and with the general public;*
- e. give individuals an opportunity to develop and use their creative talents on radio.*

Dissolution of Society

3. Dissolution of the Society

Upon the winding up or dissolution of the Society, any assets remaining after the satisfaction of the Society's debts and liabilities shall be held in a trust until such time as said assets may be transferred to a responsibly managed organization having purposes similar to those of the present Gabriola Radio. This provision is unalterable.

Parliamentary Library Response

On February 7, 2022 a response from the Parliamentary Library describes the state of affairs.

Please see the Parliamentary Library's research result of your question:

Further to your request to the Library of Parliament, here is information regarding whether a Facebook group is an asset of a BC incorporated society.

Please note that it is not within the Library of Parliament's mandate to provide legal interpretation or advice. Your constituent may wish to seek the assistance of a legal professional of their choice. The following information is intended for reference purposes.

After consulting Facebook's [Terms of Service](#) and the [Pages, Groups and Events Policy](#), no information was found to help answer the constituent's question. A search was also performed in the Lexology Pro legal database, to which the Library of Parliament has a subscription, for articles containing the keywords "Facebook group" and "asset". No relevant results were found.

The constituent may wish to consult the provincial government's page on [not-for-profit organizations](#) for further information regarding the legal aspects of an incorporated society. They may also wish to consult the provincial [Societies Act](#) and [Societies Regulation](#). No definition of "asset" is provided in this act or regulation.

As additional information, the word "asset" is not defined within the parameters of British Columbia's [Business Corporations Act](#). The constituent may wish to search the current laws and regulations within the [BC Laws](#) portal, for the keyword "asset" and "corporation" and refine the search by other keywords pertinent to their situation.

Response from David Fewer, General Counsel, CIPPIC (February 8, 2022)

Hello, Mr. Zakreski. You have an interesting question.

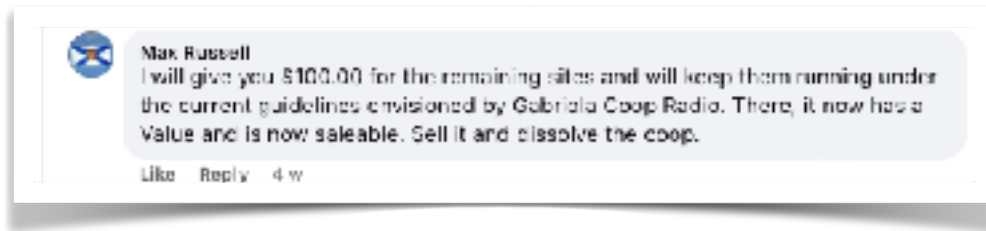
The short answer is that although a Facebook Group is not "property", the contractual "rights and interests" a Society holds in that Group could be subject to distribution, in the form of assignment, on dissolution of a BC Society. Accordingly, if the Society (and not an individual) has the contractual relationship with Facebook in respect of the Facebook Group in question, and Facebook permits assignment of the contract, then the Facebook Group could be assigned to a qualified recipient as defined in the Act and authorized according to the mechanisms specified in the Act.

"Rights and interests" in the network that comprises the various elements of a Facebook Group will generally be governed by the contractual relationship between Facebook and the Society. Accordingly, one ought to read Facebook's terms of use and policies that govern Facebook Groups. Note that "Facebook Groups" have no independent legal existence outside of Facebook's technical architecture; they are entirely a created phenomena under the control of Facebook. Members of Facebook Groups have independent contractual relationships with Facebook, and Facebook owes duties to those individuals, include privacy obligations, that are independent of the relationship between the Society and the Facebook Group.

Response from MP Thomas, of the Standing Committee on Canadian Heritage

I spoke with MP Thomas yesterday she also said that a Facebook account is not an asset of a not for profit because it has no monetary value so can't be claimed as such.

Offer to purchase CBBlog and Social Events.



BC Attorney General's response

Hon. Sheila Malcolmson's constituency office responded with a comment for the BC Attorney General's office,

"The Attorney Generals office also responded and shared:

From the Legal Services Branch:

The question is essentially an accounting question to which the provincial government cannot provide an answer; asset in this context is an accounting term. The constituent may wish to consult an accountant regarding how to construe the monetary value of the rights arising under the user agreement with Facebook. The constituent may also wish to consult a lawyer regarding the terms of the Facebook user agreement. The Attorney General cannot provide legal advice to members of the public."

Peer Review

(Nolan excerpt) posted on CBBlog December 3, 2021 , the comment goes on to critique management processes and provides valuable feedback.



FaceBook Terms and Conditions

https://web.facebook.com/terms.php?_rdc=1&_rdr

CRTC approval for CKGI 98.7FM.

[ARCHIVED - Broadcasting Decision CRTC 2011-679 | CRTC](#)

Gabriola Island Land Use Decision

Local Trust Committee letter stating non concurrence.

November 28, 2014 File: 5590-20-01 (Gabriola Radio Society). Regarding resolution "GB-2014-167 *It was MOVED and SECONDED that the Gabriola Island Local Trust Committee not support the proposal submitted by the Gabriola Radio Society,*

Excerpts from Islands Trust Resolution GB-2014-167

"there are options to broadcast Gabriola coop radio without a tower"

"... testing support for new community radio broadcasts over the internet"

Current Legislation Regarding Social Media

C-11 (44-1) - LEGISinfo - Parliament of Canada

<https://www.parl.ca/legisinfo/en/bill/44-1/c-11>

end of document

Ken Zakreski (Admin)

Community Bulletin Board - Life on Gabriola ("CBBlog")

The Island's oldest, largest and most active on-line group.

<https://www.facebook.com/groups/cbblifeongabriola>

We respectfully acknowledge our area of service covers the traditional Snuneymuxw First Nation.

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Ken Zakreski
a retired individual
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April 20, 2022

Dr Robert Kitchen MP
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Robert.Kitchen.c1@parl.gc.ca

via couriel

Further to my:

- two previous letters regarding Parl GC Bill C11 (44-1), and;
- one previous letter regarding Parl GC Bill C10 (43-2),
- please see attached copy of Memo regarding Social Media, prepared by a law student, relating property, “contract of adhesion” and FaceBook.

Below is my opinion regarding local news. One solution to the news problem? Community Media can help to clear up misinformation.

Dear Dr Kitchen

It is note worthy the Public Policy Forum report *The Shattered Mirror: 5 Years On Platforms, Innovation and Local News* (March 2022) uses ‘community newspapers’ to refer to commercial newspapers and doesn’t distinguish that community media can be a CRTC regulated undertaking in Canada. My experience at the **Navigator Newspaper Society** (Community Newspaper serving Vancouver Island University) and **CHLY** (Community Radio station serving Vancouver Island) demonstrates the Public Policy Forum hasn’t examined all the options the Government of Canada has to transition news to Canadian Communications Law Policy 3.0.

Here is a one rigorous way to think about adopting Social Media to better serve communities. *'Consider Asimov's culture of ignorance leads to Rawls' veil of ignorance leads to Mills' white ignorance and here we are home at doxastic anxiety about social media. Hermeneutical injustice is the concern as people are denied the knowledge they need to understand.'* Again, but with clarity as the goal.

A *culture of ignorance flourishes in social media. Often people do not understand their own experience, or the experience of others because they do not have the concepts needed for understanding. It is thus important they are not denied concepts required for their full understanding. For example, Legislators need to know something about gay culture before they can make any decisions about it.*

Social media can help people use social media. Community Media (Radio and TV) policies and CRTC regulations can be used for social media. This is one pathway to a safe harbour in a sea of internet.

The Canada *Broadcasting Act* describes three elements, *"...comprising public, private and community elements..."*, the CBC (nationally funded), commercial (for profit) and community (not for profit) operated undertakings. Social Media administrators see three business models active here as the Government of Canada starts to regulate the internet under Bill C11.

Canada's **public** broadcaster, the CBC, has been asked to do more with less and as a result cannot service smaller cities with local news. They have their growth plan but that may have to wait.

For many smaller cities and towns the **commercial** media sector has shut down or reduced local service after the downturn in the economy and lower listenership due to increased streaming consumption.

Community media (from Indigenous to Campus) are providing local content as part of their CRTC licensing requirements. Indigenous radio stations operate preserving language and culture. Community media is decades old and volunteer run by members of the community they live in. Service in "*over 60 languages*" says Barry Rooke of the National Campus and Community Radio Association.

Going forward there is a cost benefit of, mostly volunteer run community stations, providing order of magnitude lower costs, for media services.

The government is serious about improving local news content in smaller communities. Parliament is getting better at recognizing the community element in Bill C11. The Local Journalism Initiative is adopted and active.

Should FaceBook Groups registered with the CRTC, under new legislation, be treated as new media? Some Canadians say yes. Cathy Edwards of **CACTUS**, one of Canada's Community TV associations calls it new media in that the distribution platform is not the issue. What does make community groups community media? Cathy responded "*... it's bylaws, articles of incorporation that state they are community media, they have accessibility, commitments to skills training, any member of the community can be a member, and there is accountability to a board of directors*". Eligibility for LJI funding through **CACTUS** requires these same commitments.

It is risky for a small community to invest into a platform as ownership and licensing have not been negotiated. Is a FaceBook Group property of a not for profit society? This question was presented to the legal community. The Business Law Clinic took the challenge to provide a memo based on our request. That memo, from a law student, is attached.

For a Canadian experience the Government of Canada can require the CRTC regulate the API for FaceBook and other at scale networks. A Canadian FaceBook Viewer, if you will, could be developed under those conditions. It is the tradition of Canada that phone numbers be portable, imo, the same as FaceBook Addresses could be. Our great phone companies (note our dial country code here +1) became more useful under interoperability when they came together.

Consider the comments of Professor Dwayne Winseck, Communications and Media Studies (COMS) Carleton University in a personal communication with myself.

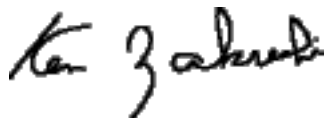
"I agree with you that access to APIs on a non-discriminatory basis and with regulated access to the underlying interface/interconnection standards is key. The 2nd of our two annual reports do address this, especially in the "Towards a New Generation of Internet Services Regulation" from pp. 133 onwards and, more specifically, pp. 140-147. Of course, there's much more work to be done here and those pages could be more precise about APIs and interoperability... "

Professor Winseck went on to write,

"I fundamentally disagree with the idea that the either the CRTC or broadcasting regulation should cover social media. I also think there are much better ways to fortify community institutions so that they can serve local communities... "

Thank you for your attention, I would like to speak with Kevin Waugh, MP, SCCH member, on the issue of broadcasting regulation and Professor Winseck as a SCCH witness...

Sincerely,



April 20, 2022, Ajijic Jalisco Mexico

Ken Zakreski, is a ten+ year admin for one of the FaceBook Groups serving Gabriola, BC.

Community Bulletin Board - Life on Gabriola

The Island's oldest, largest and most active on-line group.

<https://www.facebook.com/groups/cbblifeongabriola>

We respectfully acknowledge our area of service covers the traditional Snuneymuxw First Nation.

#Bill C11, #TheStreamingAct

Ken Zakreski

ken.zakreski@gmail.com

Messages: 250 247 9891

Netherlands cell phone number to be announced.

One attachment memo on FaceBook as property and “contract of adhesion”

***** end of document *****



DATE April 15, 2022

TO: Ken Zakreski

FROM:

Jared Hubbard



Re: Facebook Groups

Disclaimer

The Business Law Clinic (the “BLC”) is pleased to provide general legal information related to your queries. Please note that this information is for reference purposes only since, as law students, we are not licensed to provide legal advice. If you wish to pursue any course of action based on the information contained within this memorandum, it is advisable to speak first to a licensed lawyer practising in British Columbia.

Dear Ken,

Thank you for reaching out to the clinic. Pursuant to your request, I have compiled the following research memo on behalf of the BLC. I hope you will find the legal information useful.

Summary

1. Rights and interests in a Facebook group could, in theory, be transferred as property under the *Societies Act* as long as Facebook consents to the transfer. This theory is currently unconfirmed by Canadian courts.

2. Facebook groups and other social media are likely not community elements under Bill C-11. A community element requires individuals to be part of a broadcasting undertaking. Clause 2.1 of Bill C-11 excludes social media platforms from broadcasting undertakings. Because content shared on social media cannot be considered a broadcasting undertaking, a Facebook group cannot be considered a community element or subjected to laws governing broadcast undertakings.

Assumptions

This memo assumes that the Gabriola Radio Society (“GRS”) was validly incorporated and dissolved under the *Societies Act*, and that distributable property was transferred to a qualified recipient specified in the bylaws or otherwise named in an ordinary resolution or director’s resolution as required by s.124. This memo also assumes that the Facebook groups in question were set up according to Facebook’s terms and conditions and that GRS did not otherwise violate Facebook’s terms and conditions. Lastly, this memo assumes that Bill C-11 and all of its provisions cited herein will come into force.

Background #1

The Gabriola Radio Society (“GRS”), incorporated under the British Columbia *Societies Act*, was dissolved and its assets were distributed according to GRS bylaws. In 2010, before the dissolution, GRS launched two Facebook groups as electronic news gathering mediums. These groups are still operated by GRS via its Facebook account “*Gabriola Co-op Radio*” and generate significant weekly engagement from over 5500 members.

Issue #1

Are the Facebook groups property of GRS that must be distributed on dissolution under the *Societies Act*?

Analysis

Section 4 of the *Societies Act* restricts the distribution of money and property to certain scenarios. One of these scenarios is the dissolution of a society. Sections 124(1) and 124(2) of the *Societies Act* allow a society that has paid all of its liabilities to distribute any “remaining money or property” to a qualified recipient. Since the word “asset” is not mentioned or defined in the *Societies Act*, this inquiry focuses on whether a Facebook group may be considered “property” subject to distribution under the act.

Because Facebook is a product owned by Meta Platforms, Inc., and Facebook groups are a functionality of Facebook, groups and other functionalities are unlikely to be the property of GRS in the ordinary sense.¹ However, the *Societies Act*’s definition of property includes “rights and

¹ See Meta Platforms, Inc. “What are the Meta Products?” (2022), online <www.facebook.com/help/1561485474074139?

interests”. Therefore, in theory, the rights and interests that GRS has in the Facebook groups could be considered distributable property under the *Societies Act*.

If rights and interests in Facebook groups could be considered property, the next step would be to determine what those rights and interests are. Case law helps determine situations where rights and interests might arise. The Supreme Court of Canada has described Facebook use as an “online contract of adhesion”—a standard form of contract that a user must accept to use the product.² The British Columbia Supreme Court has ruled that rights and interests in contractual agreements fall under the definition of “property” in the *Societies Act*.³ Since Facebook use is a type of contractual agreement, the contractual rights and interests of users could theoretically be considered property under the *Societies Act*.

Having determined that contractual rights and interests in a Facebook group *could* be considered property, the next step is to determine what those rights and interests are. Facebook users’ contractual rights and interests are found within Facebook’s terms and conditions. These terms and conditions allow users to utilize all of Facebook’s services—including groups—as long as users do not do or share anything that violates the community standards or other terms and policies.⁴ However, Facebook’s terms and conditions prevent the sale or transfer of any “rights and obligations under these terms” without consent.⁵ Accordingly, anyone wishing to transfer their rights and interests in a group would need Facebook’s consent to do so.

Conclusion

“Property” under the *Societies Act* includes rights and interests. Courts have classified contractual rights and interests as this kind of property. Facebook users derive contractual rights and interests from Facebook’s terms, conditions, and policies. In theory, these rights and interests in a Facebook group could be classified as property and distributed under the *Societies Act*. However, this transfer would have to be done with Facebook’s consent. Because there is no case law directly supporting this theory, its application would be contingent on a ruling from the Canadian courts.

² *Douez v. Facebook, Inc.*, 2017 SCC 33 (CanLII), <<https://canlii.ca/t/h4g1b>> at para 98

³ *Fusion Football Club Soccer Association v. Vancouver Youth Soccer Association*, 2021 BCSC 1336 (CanLII), <<https://canlii.ca/t/jgv61>> at paras 30-32

⁴ Facebook, “Terms of Service” (2022), online <www.facebook.com/legal/terms>, see part 1 “The services we provide”, and 3-2 “What can you share and do on Facebook”

⁵ “Terms of Service”, *Ibid.*, see part 5 “other” in s.4; Meta Platforms, Inc. “Spam” (2022), online <<https://transparency.fb.com/en-gb/policies/community-standards/spam/>>

Background #2

Section 3(1)(b) of the Canada *Broadcasting Act* describes the three pillars of the Canadian broadcasting system as “public, private and community elements”. Bill C-11, currently undergoing its second reading in the House of Commons, proposes several amendments to the *Broadcasting Act*. Clause 2(2) of these proposed amendments defines “community element” as “the element of the Canadian broadcasting system as part of which members of a community participate in the production of programs that are in a language used in the community and participate in the day-to-day operations of a broadcasting undertaking”.

Issue #2

Is a Facebook group a community element under Bill C-11’s proposed amendments to the *Broadcasting Act*? Is social media subject to telecommunications regulations?

Analysis

Facebook groups arguably involve the participation of members in creating community-centred content or “programs”. However, the definition of community element also requires members to be participating in a “broadcasting undertaking”. This means that a Facebook group would have to be considered a broadcasting undertaking to be a community element.

“Broadcasting undertaking” is defined in the *Broadcasting Act* to include “a distribution undertaking, a programming undertaking and a network”. Bill C-11 further expands this definition to include “online undertakings”, which are defined as “undertaking(s) for the transmission or retransmission of programs over the Internet for reception by the public by means of broadcasting receiving apparatus”. However, Bill C-11 specifically excludes social media from this definition in cl 2.1 as follows: “A person who uses a social media service to upload programs for transmission over the Internet and reception by other users of the service — and who is not the provider of the service or the provider’s affiliate, or the agent or mandatary of either of them — does not, by the fact of that use, carry on a broadcasting undertaking for the purposes of this Act.”

Because Bill C-11 excludes programs uploaded on social media from the definition of broadcasting undertakings, they cannot be considered community elements under Bill C-11. This arguably exempts social media from regulation under the *Broadcasting Act*, since this act applies to broadcasting undertakings (see s.4[2]). Since the *Telecommunications Act* adopts the definition of “broadcasting undertaking” set out in the *Broadcasting Act*, it would also seem inapplicable to social media (see s.2[1] “broadcasting undertaking”).

Conclusion

Programs uploaded to social media are excluded from the definition of “broadcasting undertaking” in Bill C-11. Accordingly, Facebook groups cannot be considered community media under the *Broadcasting Act*. Similarly, because social media is not a broadcasting undertaking, it is likely

not subject to telecommunications regulations under the *Broadcasting Act* or *Telecommunications Act*.

We trust that the information above assists with your legal issue. Thank you for using the services of the Business Law Clinic.

Ken Zakreski
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February 10, 2022

Dr Robert Kitchen MP
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Robert.Kitchen.c1@parl.gc.ca

via email

Dear Dr Kitchen

This letter is a request for Dr Kitchen, of the Conservative Party of Canada, MP for Souris - Moose Mountain to support Parl GC Bill C-11 (44-1) ("The Streaming Act") amending the Broadcasting Act S.C. 1991, c. 11 ("Act"), because that bill provides a pathway to legitimacy for compliant FaceBook groups as community media operating as not-for-profit associations, cooperatives or unincorporated partnerships, as the CRTC may rule. My personal request is that parliamentarians rethink their positions on Social Media following the events of January 6, 2021 in the US Capitol Building and consider the consequences of **rogue** social media and the harms they can create.

Community media is one of the three pillars of the Canadian broadcast network, according to the Act. I include suggested amendments to the Act in this letter.

My Background

During the 1990's I served as President and Business Manager for the longest running community newspaper on Vancouver Island, BC, the Malaspina University-College's, *Navigator Newspaper Society*. Following my work at the *Navigator* I worked as president in a for-profit print venture, *PIER Magazine* serving the Nanaimo BC area with news and entertainment reportage in the 90's.

My background in community media includes completing successful CRTC applications (old regime and current regime) for a campus based community radio undertaking (CHLY, 101.7FM - CRTC 2001-319) and community radio application (CKGI, 98.7FM - now defunct - CRTC 2011-679). CKGI was granted a license to broadcast by the CRTC but denied the required broadcasting tower site from the land use authority, Islands Trust (Resolution GB-2014-167). This Islands Trust decision was, presided by then Islands Trust chair, former Nanaimo BC MP and current BC MLA, Hon. Sheila Malcolmson. Reasons for not providing a no objection to our land use application for a tower site included "*could use the internet*"

I have followed: debate on Bill C-10 (43-2), Lincoln, Aird and Yale Report. Familiar with amending legislation having been the government's parliamentary and senate witness (concurrent hearings) to the Canada Shipping Act amendments, following the Valdez oil spill (1980's) on behalf of Georgia Strait Alliance. Our position (confirmed by an act of parliament) was that oil should be **illegal to spill** in the waters of Canada and

volunteers, those that clean up those spills, should **be compensated** from the Ship Source Oil Pollution Fund.

Currently, I volunteer as the longest running admin for the FaceBook Group serving the communities of Gabriola, Mudge, Link and De Courcey Islands in British Columbia. *Community Bulletin Board – Life on Gabriola*: (“CBBlog”) established in 2010, is the islands largest (and most active digital group) plus it runs with a citizen journalism heritage. CBBlog was formed to work as a news gathering service for the now defunct Gabriola Radio Society - CKGI 98.7 FM. Also created, back in the day, and still running is *Social Events Bulletin Board – Life on Gabriola*.

Gabriola Island, British Columbia is located about a 20 minute ferry ride from Nanaimo BC off Vancouver Island. Gabriola has a population of around 4,000. Gabriola is hard pressed, because of its size, to be served in any meaningful manner by commercial media yet is drowning in one of the most congested media corridors.

Actions

The Government of Canada, in its deliberations amending the Act, should provide a pathway to legitimacy for Social Media as Community Media, like Apple Inc. provided legitimacy for on line music distribution, with its role out of iTunes, back in the day. You will see a lot of Canadian Community Campus Radio Stations on Apple’s streams and podcasts.

Australia and the EU seem to be fixing a process on how to proceed with internet governance. Given the Canadian history of producing great media theorists, our strategic position between UK and USA, plus having a population of diverse multinational citizens, we are positioned to lead here. Political will is necessary, we need to marshal support, because the welfare of citizens is pitted against some of the world's largest and most influential communications corporations. Their business models benefit under near monopolistic conditions caused by the network effect and no federal regulations requiring interoperability for user generated content. China's response is interesting, but perhaps not so attractive to liberal democracies. *“The one constant in broadcasting is change”*. Canada should *“maintain and enhance national identity and cultural sovereignty through encouraging the development of Canadian expression and displaying Canadian talent”*. *“The challenge is not to re-invent a broadcasting system which is generally satisfactory, indeed in many ways successful, but to recommend improvements to its key components and elements.”*

My Point

I am writing to tell you, in my opinion, these FaceBook groups, especially if run with the principles of Community Radio, are a media outlet and deserve an opportunity to have a pathway to legitimate media. There is concern, if a pathway to legitimacy isn't provided, what could become of digital groups, perhaps rogue media. **Look to the events of January 6, 2021 in the US Capital if you doubt the strength of Big Social to set a society's pathway.**

Consider misinformation, I would make it akin to an oil spill that overwhelms the resources of the defending nation. FaceBook Groups do help clean up that oil spill. Volunteers that operate these FaceBook Groups could be funded, by the social platform, under regulation from the CRTC, much like the Ship Source Oil Pollution Fund compensates those that clean up spills in Canadian waters.

In my opinion, Freedom of Expression in Canada need some guardrails.

Social Media, as it currently operates, is akin to other socially disturbing media phenomena. In 1958, for example, propelled by public concern about a theatre in New Jersey that had supposedly hidden messages in a movie to increase ice cream sales, the National Association of Broadcasters – the association that set standards for US television – amended its code to prohibit the use of subliminal messages in broadcasting. In 1974, the Federal Communications Commission opined that the use of such messages was '*contrary to the public interest*'. Legislation to prohibit subliminal messaging was also introduced in the US Congress but never enacted. Both the UK and Australia have strict laws prohibiting it.

Yale Report Excerpts

Furthermore, social media platforms are becoming an increasingly significant source of news. Recognizing the appeal and reach of such platforms, various actors are using them to distribute false and misleading information. The phenomenon of online disinformation has the potential to

undermine our democratic institutions, compromise the integrity of our elections and erode public trust. Page 211.

Recommendation 76: We recommend that the Broadcasting Act be amended to ensure that the CRTC can — by regulation, condition of licence, or condition of registration — impose reporting requirements, including with respect to financial information, consumption data, and technological processes such as algorithms, on all media content...

Recommendation 72. We recommend that the relationship between social media platforms that share news content and the news content creators be regulated to ensure that news producers are treated fairly where there is an imbalance in negotiating power. Consistent with the earlier Recommendation 61, the CRTC should have the specific jurisdiction to regulate economic relationships between media content undertakings and content producers, including terms of trade. This would include media content undertakings that make alphanumeric news content available to the public.

Moving Forward with a Principled Approach

After discussion with interested parties, I am gleaning a philosophy or approach to updating the *Broadcasting Act* that might make the discussion a little less complicated. We should deal with principles of amending the Act. Be advised, these comments are my own. I represent the interests of the FaceBook Group *Community Bulletin Board - Life on Gabriola* as its admin. I do not speak for the community of Gabriola, I only admin their largest digital forum.

Consider the following... as a cogent action.

1. We are at the beginning of this journey, living with a global digital network.
2. Updating the *Broadcasting Act* should deal with, at a fundamental manner, a constantly changing phenomenon that is the World Wide Web.
3. Principles of how to move forward must be agreed upon before going with amendments.
4. There are many principles to consider, here are two:
 - I. *plus ça change, plus c'est la même chose*
 - II. Legislation should follow:
 - A. Reuse legislation and regulations as they can be applied to the changing media landscape.
 - B. Recycle/repurpose legislation and regulations that need adjustment to be applicable.
 - C. Reduce legislation or regulations that are no longer useful.

Examples that follow these Principles

CanadaPost provides an email address for every Canadian that needs one.

Content goes to CRTC for licensing and regulation.

Spam falls under the Do Not Call regulations.

Licensing for broadcast media would be under CRTC regulations.

Some Examples of the Principled Approach with Expanded Descriptions

The expansion of CanadaPost. When I am a Canadian residing in Mexico, and I pay the rent to a Canadian landlord, a Royal Bank of Canada transaction Interact email payment is generated. Alphabet Google's Gmail, an American based multinational corporation, does not need to be involved, my email address uses gmail. Canada Post could provide email services to and for Canadians. Postal Code domains (i.e. Ken.Zakreski@S4A2A3) provide locality to a location *agnostic* service.

The CRTC currently grants community media licensing for audio and video broadcasting. It should remain so. That content can be used over multiple channels of distribution such as cable, FM, or AM, they are *agnostic* to the channel. With new technology, groups should remain, *interoperable* and perhaps, *ambivalent* to medium.

My thesis on how to deal with this century's problems is to use the thinking that the more things change the more they stay the same. The problems are still the same, only the technology changes. The problems are human centric. YouTube's volume levels would be covered by existing regulation for volume levels.

Ownership of groups under a platform would reside with the admins of the digital groups (i.e. FaceBook Groups). The content could be platform agnostic and as the platforms change vogue, the members of the group can be easily moved using the principles of *interoperability*. This also includes 'reducing the effort' to move personal user generated content to a new group as platforms evolve.

Regarding Social Media groups, size matters. CRTC could state, a 4,000 member size groups, could go unlicensed, this follows unregulated microtransmitters outside of Canada. The license holder would be the group admin, (or moderators in cases like Mumsnet) if they decided to legitimize, and group admin/moderators would be the medium's management. For large national based networks the Government of Canada should require at scale *interoperability* for social platforms. This follows from the joining of the great telephone networks back in the day. This *interoperability* would provide an opportunity for Canadian players to implement new *social browsers* and for Canadian tech the chance to lead globally.

This *interoperability* feature, in advanced networks, does raise these questions, **Do we want our social media ethics derived from large American investment firms? Or Should we require social media maintain, at scale interoperability, so Canadian players can enter the market and set algorithm feeds for our Canadian users?** Recall the Aird Report's slogan, "*the state or the United States*". Do we want the

Government of Canada to operate our broadcast network or the United States of America? Further to Aird we have Yale, *the state or the world*.

The social media platform would be held accountable for SOCAN payments, copyrights and damages as they have the revenues from advertising (commercial) or subscription (public) or donations (community). This follows (generally) as the platform is the carrier and admin/moderators the *station* licensee / management. Payments to the Groups admin/moderators could be scale or fixed or dependent on revenues. Here we see media turned on itself. *(needs footnote from Policy Analyst, writer not qualified)

The NCRA/ANREC were helpful moving closed circuit radio stations to FM broadcasting, they should be approached to see if they are willing, if given the resources, to assist in amending legislation of this import. In my thinking Community Radio was the first social media with its user broadcast content, and they have more to contribute here. For full disclosure, I volunteer for the NCRA/ANREC in music sales and am a member/volunteer at CJTR radio. These comments are my own and those that contributed to this document. In no way does this writer represent the national radio associations or independent, non-profit radio stations, who should be consulted further as witnesses on the issue of Social Media as Community Media.

Types and sizes of social groups can apply to follow government set requirements leading to legitimacy in a flexible regime. We now regulate BDUs (broadcast distribution undertakings, which are more commonly know as cable or satellite service

providers) and spectrum and specialty broadcast channels. Health channels are not the same as commercial ventures. Community radio is allowed some advertising.

Conclusions

The principles found in this letter, if implemented, will address problems we currently face. Money to Canadian artists, platforms not wanting to be publishers, and a role for admin/mods to support expression in a Canadian fashion. Payments to moderators (volunteer frontline workers) could be calculated as are Tariffs for Carriage, and could be dependant on classes/types of groups and sizes. Solutions for Canadian Content and minority language regulations can be found in the CRTC Regulations. In my opinion, and I haven't check with the CRTC, nearly all of the CRTC broadcasting requirements could be recycled.

Reusing the principles that, amended the Canada Shipping Act, making it illegal to spill oil in our oceans and volunteers that clean up that oil, should be compensated, I also suggest we clean up misinformation. You have my suggestion to regulate FaceBook Groups of a threshold size/type, written here as best I could, for your support.

Amendments for Parl GC Bill C-11 (44-1) - The Streaming Act

"We recommend that the Broadcasting Act be amended to ensure that the CRTC can — by regulation, condition of licence, or condition of registration — impose reporting requirements,

including with respect to financial information, consumption data, and technological processes such as algorithms, on all media content undertakings” (Yale recommendation 76)

include the following:

- cost efficiency, support for the broadcasting network
- carbon foot print,
- externalities that cannot be internalized
- contributions to clean up misinformation
- business model for this venture, subscription portion
- at scale compliant interoperability of user generated content
- a succession plan for operations and user generated content it holds.

Recognize Community Media as a Social Good.

Other amendments that may be outside scope of bill... chair to rule

Make advertising and the undertaking’s expense offsets to CCRA, less than one hundred percent tax deductible for unregistered, unlicensed, undertakings that support misinformation.

Advertising is a negative externality, increasing the cost of goods and making bread more expensive for the consumer. It serves no real benefit to society, the common good is not served. Only firms receive any benefit. Some could argue, society was served when personal computers were adopted at an accelerated

rate because of advertising but then you have to ask what has advertising done for us lately? And is *ewaste* also a negative externality?

Also consider, the problems associated with social media are related to keeping the users' attention. Subscription services would move the customer from the advertiser to the user.

Government shall publish a healthy media diet for Canadians.

Request the Senate hear Bill C11 witnesses concurrently to send a message of urgency to complete the amendments.

Other issues

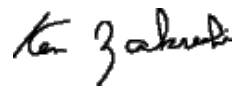
The Government of Canada is in a position to negotiate "*Canadian Ownership of the Broadcast Network*", for control and/or understanding of the recommendation algorithms for social media suggestions to the public! Consider instead of algorithm regulation, interoperability of content. Give Canadians a choice to use a Canadian Netflix viewer or FaceBook viewer and they will, I will.

Recommend Reading - Ron Deibert's *Reset: Reclaiming the Internet for Civil Society* (2020), where he argues that "restraint" is the most effective principle in these matters. See p. 312-13 for his specifically targeted "recessed restraints." *Restraints* can be incremental, selectively applied, and legal (not discretionary).

"Peace is not the absence of war—peace is the absence of fear."

The CBC should be funded to levels that keep its website ranking consistent to 2001-2009 levels.

Sincerely,

A handwritten signature in black ink that reads "Ken Zakreski". The signature is written in a cursive, slightly slanted style.

Ken Zakreski,
Admin CBBlog



Social media users check community posts.

Gabriola Treating Social Media as Community Media?

During the height of the pandemic, FaceBook community media proved exceptionally useful to the small Gabriola community in the Southern Strait of Georgia, also known as the Salish Sea. The 5,635 members of the Community Bulletin Board – Life on Gabriola FaceBook page used the platform to share information about events, announcements, discussions, and general news.

Notably, more than half of the Gabriola residents belong to this group. Another thousand members hail from Nanaimo. The rest belong to the FaceBook group because of a special connection to the island. The area of service includes the traditional Snueymuxw First Nation territory and surrounding communities of Gabriola, Valdes, Mudge, Link, DeCourcy, Ruxton, Pylades.

Former Gabriola resident Ken Zakreski (currently residing in Mexico) serves as the page admin. He uses Community Radio principles of access, participation, and accountability to run the group. In his opinion, “This is Community Media, specifically in geek, online groups like this consist of the network effect and moderated, curated, information supplied by user-generated content. These groups will be eligible for CRTC registration under Bill C11, The Streaming Act. “

Zakreski further notes that members make the group page a lively source of information. With 426 posts, 1510 comments and 3642 reactions in December 2021 alone, it's evident that social media has become a useful communication tool. Zakreski notes, "Gabriola is hard-pressed, because of its size, to be served in any meaningful manner by commercial media yet is drowning in one of the most congested media corridors."

Social media scales up quickly, with none of the drawbacks of print media such as cost, time, and waste. Social media groups have the advantage of speed and efficiency. What's not to love about being digitally connected?

The answer is simple: external interference.

Protecting community media

Digital obstruction from outside entities could destroy social media groups' positive impact on their communities, like the *CBB-Life on Gabriola's* FaceBook page. Therefore, the Canadian Radio-Television and Telecommunications Commission (CRTC) needs to protect community media by regulating foreign social media. Any reluctance to do so devalues dialogue and potentially endangers group members who rely on social media for information.

Accusations of social media interference abound throughout the internet. Many recent complaints come to mind: possible election interferences, the January 6th incident at the Capitol, and a propensity for misinformation. Additionally, both China and Russia have been accused of spreading propaganda, hacking information, and harvesting data. The USA seems particularly plagued by such meddling.



Social media groups need protections from internet hackers.

So far, Australia and the UK have taken action to protect social media users by creating explicit laws for use and imposing heavy fines when these laws are not followed. It's time for Canada to follow suit and protect its citizens from outside threats as well. According to Zakreski, "Freedom of Expression in Canada needs some guardrails."

An obvious solution would be for the CRTC to regulate social media pages. According to the principles of Community Radio, limiting and altogether removing terroristic or otherwise harmful posts would protect the FaceBook page.

Another solution to regulating communications interference would be to install a broadcasting tower and obtain a broadcasting license. Although the CRTC granted a permit to the CKGI, the land use authority denied the required broadcasting tower site (Islands Trust, Resolution GB-2014-167). The rationale was that Gabriola "could use the internet."

That's what the residents of Gabriola have done. By working together, their internet-based media has become a trusted communication asset. Now it's time for the rest of us to treat social media as what it has become: a vital news source.

Social media as a broadcast tool

Embracing social media as a broadcast tool requires that Canadians recognize the presence of a global, digital network that has a far-reaching impact on daily life. They should also update the Broadcasting Act to include the World Wide Web. Finally,



Canadians rely on digital networks for information.

Zakreski suggests four initiatives to establish the media guardrails needed for monitoring social media communications:

1. The CRTC should continue the practice of granting community media licensing for audio and video broadcasting. Multiple distribution channels (internet, cable, FM, or AM) can use the same content.
2. Admins would retain platform group ownership, which would allow for more effortless movement when platform trends change.
3. Regarding Social Media groups, size matters. the CRTC could permit smaller member-size groups to go unlicensed. The Government of Canada should require at-scale interoperability for social platforms with national-based networks. This interoperability would encourage Canadian players to implement new social browsers.
4. The social media platform would be held accountable for SOCAN payments, copyrights and damages as they have the revenues from advertising (commercial) or subscription (public), or donations (community).

If implemented, these changes to Bill C11 will address multiple challenges that present themselves in social media. Canadian artists could monetize their craft, and community admin/mods could support expression Canadian style. Payments to moderators (volunteer frontline workers) could be calculated, as are Tariffs for Carriage. Remuneration could be dependent on classes/types of groups and sizes. Furthermore, the Canadian Content and minority language in the CRTC Regulations would require no extra work.

What's next

The Government of Canada currently in Parliament, will debate Parl GC Bill C-11 (44-1) - The Streaming Act. Amending the Broadcasting Act would ensure that the CRTC can, by regulation, condition of licence, or condition of registration, impose reporting requirements, including financial information, on all media content undertakings.

It's time to treat social media pages as what they are: a valued community media resource.