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CANADIAN TELECOMMUNICATIONS AND ONLINE SERVICES LAW

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This publication provides a comprehensive statement and analysis of the law relating to telecommunications law in Canada. This in-depth reference deals with a broad range of topics, including a general description of the constitutional and legislative framework governing telecommunications services, the incorporation, licensing and powers of carriers, the regulation of rates, resale of services, carrier liability and the duty to serve, the powers of the CRTC and the conduct of regulatory proceedings. The publication includes a discussion of all significant case law and regulatory rulings across Canada. Supplemented annually, this publication is an invaluable reference for anyone involved in this rapidly changing field.

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What's New in this Update

This release revises the existing commentary in Chapter 5 (Liability of Service Providers), Chapter 8 (Online Services), Appendix H (Tables of Statutes, Regulations and Statutory Instruments), and updates Appendix B (Federal Regulations, Directives, CRTC Information Bulletins).

Highlights

Liability of Service Providers—In *Thorpe v. Boakye*, Google asserted that under Canadian law passive intermediaries are not publishers of content authored by others and as a consequence it had no liability for content that defamed the plaintiffs that had been posted on “Google Maps,” “Google Search,” and/or “Local Reviews.” The court dismissed an application for summary judgment, concluding that the Supreme Court’s decision in *Crookes* was based on the particular nature of hyperlinks, which do not give the host of the internet platform where they appear control over the content of the third party material to which the links provide its users access, and that that decision should not be applied broadly to extend immunity to publishers for third party content over which they are able to exercise control. Since in *Thorpe* Google had created the platform on which the allegedly defamatory reviews were posted it had the power to remove them. The case includes a review of Canadian and U.S. jurisprudence and the differences between the principles governing liability.

Online Services—Online Transactions—Regulations made by the Governor in Council provide that there is a “significant bargaining power imbalance between an operator and news businesses” only if, with respect to the first factor, the operator’s total revenue from all sources in the previous calendar year is greater than \$1 billion; and with respect to the second and third factors, the digital news intermediary in question is either (i) a search engine that, during the previous calendar year, had an average of at least 20 million unique visitors in Canada per month; or, (ii) a social media service that, during the previous calendar year, had an average of at least 20 million active users in Canada per month. (Google meets the first condition and Meta (Facebook) the second.)

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