



MIKE OTTO

A KOZAK MOMENT Lawyer Fred Kozak tackled issues relating to media bans during a lecture last Friday in the Law Centre.

Local media lawyer weighs in on open courts and publication bans

VICTOR VARGAS
News Staff

Until recently, anyone requesting a media publication ban would be granted one in Alberta.

But according to Fred Kozak, a media lawyer representing the *Edmonton Journal*, the CBC, and the *Globe and Mail*, media publication bans are impractical and outdated.

Kozak explained at a lecture on open court principle last Wednesday that previous restrictions on the media in courtroom reporting were based on the assumption that the courts can control the flow of information and that they should control it because jurors cannot be trusted.

However, Kozak argued successfully in 2007 to an Alberta judge that publication bans had become unrealistic and unfair in today's age. Prior to the ruling, anyone simply requesting a publication ban at the bail hearing would be granted one automatically.

"I think that now [that] judges actually have an understanding that there has to be evidence to grant a publication ban, they're not as likely to grant it based on speculative evidence," he said.

Kozak explained that because of the perceived need to keep jurors unpolluted by information regarding a trial, the major media outlets would be shut out of the courtroom as early as the bail hearings. However, Kozak believes that since the Canadian court system doesn't allow jurors to be asked if they had heard evidence outside the trial or what effect external information played

in their decision-making, any argument that jurors would be influenced is simply speculation.

"You either trust jurors or you don't," he stated. "If this is the evil we are trying to address by this ineffective means, then do away with the jury system or incorporate another safeguard."

Kozak also argued that in today's age of communication, Canadian courts have lost the ability to control the flow of information, and therefore, the publication ban could only punish major Canadian news outlets.

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MEDIA LAWYER

Moin Yahya, an assistant law professor at the U of A and active blogger on the Faculty of Law blog, explained that it's virtually impossible to keep information from being leaked out of a courtroom. He believes that with the ability to load videos onto sites like YouTube with only a cell phone, only physically banning people from the courtroom could prevent bloggers

from leaking the information.

However, Yahya doesn't see this as a viable option. "The answer is increasingly no, and that kind of exposes the problem with creating these media bans in the first place."

He believes that courtrooms should take bloggers into account when making these publication bans and recognize that some of these blogs have as much or even more pull than the media.

"Some of those blogs in the States get 25 000 hits a day, and some others get 50 000. So that's more hits than some local media, like a small town newspaper," Yahya said.

However, Kozak said that even before blogs, he questioned the ability of the courtrooms to control information. Kozak cited several examples of how that information can be spread or how the ban can be circumvented by other means.

"The police [...] like to illustrate how strong a case they have. They like to appear in the paper saying '30 000' names in this database we found. If the media find out about it from some other source other than bail hearing, there is no restriction on reporting," he said.

And although Alberta is one of the few provinces that has loosened its restrictions on publication bans, Kozak believes that one way or another, the information is out there for anyone wanting it, and eventually the court system will have to accept it.

"The days where courts thought we had mainstream media and we could send a message to these relatively concentrated groups of owners that could be punished—those days are gone."

Panel commented in Sachs' absence

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"As we all increasingly appreciate, there is a downside, at least with the way we're doing it right now, and that is with our current technologies [and] the way we deploy them—energy, our fossil fuel use, the way we manage water, the air, the way we manage land use, and land use change," Sachs said.

On a more local scale, Nikiforuk, an environmental journalist and author from Calgary, drew several parallels between the downside of economic convergence and the development of oilsands.

"All of this spectacular growth has come with great environmental degradation that now critically threatens our water supply, our air quality, the health of our agricultural and forested lands, as well as the health of Aboriginals that live downstream from the tarsands."

He listed numerous environmental

statistics on the future outlook of our provincial landscape and provoked laughter while explaining that the federal government now ironically refers to climate change as "a threat to oil sands production."

Speaking for the environmental policies of the oil industry, Hyndman, a former professor of economics at the U of A, used a slideshow to illustrate the economic uncertainty of cutting down on reductions and the need for progressive policy.

"What we really need to do is to set out a policy price path for emissions so that industry will know, so that consumers will know that we're going to move from the modest \$15-a-tonne [...] Alberta policy that we have today," Hyndman explained. "The argument that Sachs was making, that it might not be cheap ... carbon capture and storage is definitely not cheap, but it's doable, and it's affordable if we do the policy the right way."

At the conclusion of the speeches, the two commentators responded to questions, coping with several audience members lambasting gov't policies and throwing personal attacks against Hyndman and the oil industry.

Each speaker managed to shrug off the adversarial atmosphere of the discussion, and both remained focused on sharing their views of how one can reconcile sustainability and manage climate change, especially in Alberta.

Sachs, however, took the issue back to a fundamentally global scale. He also remains hopeful that solutions to these problems are possible.

"We can dream a better world, we can work in practical ways to achieve a better world, and we should understand that the core reason we can do that is that so many of our problems are man-made and are solvable by people working together in a spirit that appreciates the common fate that we have on the planet."

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