



Ottawa

Local Knowledge and International
Reach in the Nation's Capital

FASKEN
Law Firm

About Fasken

Fasken is a leading international business law and litigation firm. With more than 700 lawyers, the firm has eight offices in Canada, the United Kingdom and South Africa.

We provide strategic advice in virtually all areas of business law to a broad range of clients including close to half of the Fortune 100 companies, major corporations, government agencies, Crown corporations, regulatory authorities, non-profit bodies and individual clients. The firm's international excellence and sector expertise continue to earn top rankings around the world.

Fasken has long recognized the importance of the dynamics and growing complexity of world markets. We help our clients better integrate the effect of laws into their business plans. We offer extensive experience acting for clients dealing with international issues and our lawyers are quoted regularly on legal issues affecting business.

Ottawa Office

In Ottawa, Fasken's local team of lawyers has broad expertise and practises extensively in the areas of business, communications, labour and employment, litigation, trade, anti-bribery and corruption, competition, copyright, accountability and ethics law, and in the area of government relations. We also engage in a number of related areas of practice, including constitutional and administrative law, human rights, food and drug regulation, official language rights and access to information and privacy. Much of our expertise draws on our local presence in the national capital, and our knowledge and experience in the law and policy processes of the Canadian federal government and various regulatory agencies.

In addition to our local expertise, we provide our clients with seamless access to the broad range of professional services that Fasken offers on a national and international basis.

Business Law

The Ottawa office advises local, national and international clients on business structures, strategic alliances, public and private equity and debt financing, corporate governance, securities, mergers and acquisitions, other business combinations, infrastructure and public-private partnerships, information technology, intellectual property matters, international trade (importing and exporting), foreign investment, competition law, procurement, employment matters, trade names and trade-marks, and a broad variety of corporate and commercial agreements. Our business law practice includes specialized commercial advice on matters involving the communications, technology, mining, defence and railway transportation industries. Lawyers in the Ottawa office are recognized as leaders in technology transactions and corporate law by the *Canadian Legal Expert Directory* and by *Best Lawyers in Canada*.

Recent business law experience of the Ottawa office includes:

- US\$550 million credit facility for a newly established US railcar lessor
- Acquisition of an Ontario-based agri-business by a Québec-based agricultural cooperative
- Sale of US\$261 million bonds on a foreign railcar lease/financing wind-down
- Public financing of an optical component manufacturer
- Private placement financing of a TSX-Venture Exchange listed mining company engaged in the acquisition, exploration and development of precious metal prospects in Canada and Mexico
- Sale of an Ottawa electronics manufacturer to a leading California-based electronics manufacturing services provider in a transaction valued at US\$53 million
- Advice to an industrial company listed on the TSX-Venture Exchange with respect to continuous disclosure defaults and related cease trading orders
- Advice to a major defence contractor on a business combination involving competition, corporate and procurement law issues
- Advice to an international pharmaceutical company on a major supply contract
- Advice to private sector clients on procurement and contracting with the Government of Canada
- Advice to the special committee of the board of directors in the sale of a TSX listed technology company
- Restructuring of a technology company to dispose of assets and improve financial performance
- Canadian legal advice to a leading provider of converged IP performance test systems and service verification platforms for wireless and wired infrastructures and services on an asset purchase involving US\$44 million in cash and the assumption of certain liabilities
- Defence of US-based technology company in wrongful dismissal actions brought by former employees as a result of lay-offs occasioned by the sale of a Canadian subsidiary
- Corporate reorganizations and other business combinations
- Strategic alliances, including infrastructure and public-private partnerships (P3) involving public and private companies, First Nations, Crown corporations and municipalities
- Asset purchase agreements relating to acquisitions of spectrum by wireless service providers

- Share purchase and asset purchase agreements relating to the acquisition of telecommunications corporations and telecommunications assets
- Corporate secretarial services

Communications Law

The Ottawa office has an international reputation for the excellence of its work in communications law, which involves public regulation of telecommunications, broadcasting, radiocommunication, copyright and the Internet, specialized commercial work for communications industry participants, and competition, copyright and foreign investment matters. The number of lawyers at Fasken practising communications law, and the breadth and depth of their experience and expertise, is unparalleled by any other law firm in Canada. This expertise has been consistently recognized by numerous industry publications that have ranked highly both our firm and leading individual practitioners in Ottawa. For example, *Chambers Global 2016* recognizes six of our Ottawa practitioners in Telecoms, Media & Broadcasting and ranks the firm in its highest band (Band 1). Fasken is one of only two Canadian law firms to achieve this ranking.

The Ottawa office represents clients before the CRTC and Industry Canada. We represent clients in federal court and Cabinet proceedings arising out of decisions taken by the CRTC and Industry Canada.

Recent communications law experience of the Ottawa office includes:

- Regulatory advice on the acquisition of Score Media Inc. by Rogers Media Inc.
- Counsel in CRTC proceedings on roaming obligations and arbitrations relating to roaming agreements of wireless service providers
- Regulatory advice on Rogers Communications Inc.'s acquisition of Mountain Cablevision and option to acquire wireless spectrum from Shaw Communications Inc.
- Regulatory advice on the acquisition of Maple Leaf Sports and Entertainment by Rogers Communications Inc. and Bell Canada
- Regulatory advice relating to acquisitions, licensing and transfers of commercial mobile spectrum by wireless service providers
- Regulatory advice on compliance with the new national anti-spam legislation and regulations and the national Do-Not-Call Rules
- Counsel to radio and television broadcasters with respect to their applications for new licences and licence renewals
- Counsel to radio and television broadcasters in the CRTC proceeding regarding the tangible benefits policy
- Counsel to satellite communications company in the CRTC Inquiry into satellite services used by telecommunications service providers
- Regulatory advice on a public debt financing by a broadband service provider
- Regulatory advice on public senior note offerings by regulated Canadian communications entities
- Counsel in CRTC proceedings on rates for access to telephone company support structures, including poles and conduit

- Regulatory advice on access to municipal rights-of-way and other public places
- Regulatory advice on compliance with foreign ownership restrictions applicable to telecommunications and broadcasting undertakings
- Counsel in CRTC, Cabinet and federal court proceedings on distribution of deferral account funds, including use of the funds to extend broadband access to unserved communities
- Regulatory advice on local telecommunications (CLEC) entry procedures and requirements
- Regulatory advice on international licence procedures and requirements
- Regulatory advice relating to compliance with the CRTC regulatory framework for vertical integration within the broadcasting industry
- Regulatory advice relating to compliance with the Broadcasting Distribution Regulations
- Regulatory advice on the merger of the XM Canada and Sirius Canada satellite radio undertakings



Labour, Employment & Human Rights

Fasken is a national leader in labour, employment and human rights law. Our lawyers have a solid track record of successfully representing clients in all aspects of labour and employment law in virtually every private sector industry and across the public sector throughout Canada.

Our labour, employment and human rights lawyers represent and provide practical, innovative, strategic and timely advice to a wide variety of clients in a broad range of sectors and industries, including health care, hospitals, universities, school boards and municipal, provincial and federal government agencies. We also advise Canada's

leading corporations and institutions in federally and provincially regulated industries such as transportation, telecommunications and banking as well as airlines, postal services, mining, manufacturing, hi-tech, construction and retail. We also provide advice to many not-for-profit organizations.

Our lawyers are recognized as leaders in employment law, labour relations and workplace human rights by *Chambers Global*, *Best Lawyers in Canada*, *Canadian Legal Expert Directory* and *Who's Who Legal*. Fasken was also recognized as Employment Law Firm of the Year by Chambers Canada in 2016. All of our six lawyers in the Ottawa group practice in both official languages and three members of our group are also called to the Québec Bar and can provide legal services to clients on both sides of the Ottawa river.

Recent labour, employment and human rights law experience in the Ottawa office includes:

- Providing day-to-day strategic advice to Human Resources professionals and executives on best practices in the workplace to ensure productivity and constructive labour relations
- Representing public sector and private sector employers before judicial and administrative, including the

Ontario Human Rights Tribunal, the Canadian Human Rights Tribunal, the Ontario Labour Relations Board and the Workplace Safety and Insurance Board with respect to employment, labour relations, and human rights matters

- Representing public sector and private sector employers in interest and rights arbitrations
- Representing public sector and private sector employers before labour relations boards with respect to related employer applications, unfair labour practice applications and construction grievances
- Representing public and private sector employers with respect to all aspects of pay equity, including negotiation of pay equity plan and maintenance issues, assisting in the context of Pay Equity Commission investigations and making representation before the Pay Equity Hearing Tribunal
- Assisting employers facing plant closures or employee reduction measures
- Assisting employers facing allegations and complaints of harassment, discrimination and sexual misconduct in the workplace
- Providing advice to employers in relation to attendance management and request for accommodation
- Providing advice to employers on employment agreements including restrictive covenants such as confidentiality, non-competition and non-solicitation clauses
- Assisting employers on certification application, collective bargaining and work disruptions in case of strikes, lock-outs and picketing, including seeking injunctive relief
- Providing advice on corporate transactions
- Providing advice to public sector employers on the *Broader Public Sector Accountability Act, 2010*, the *Public Sector Compensation Restraint Act, 2012*, the *Broader Public Sector Executive Compensation Act, 2014* and its related compensation frameworks
- Providing advice and numerous training sessions to private and public sector management and staff on various topics such as accommodation in the workplace, disability management, performance appraisals, work refusals, workplace harassment and investigations, hiring practices and conflicts of interest
- Acting as counsel and spokesperson for Franco-Ontarian Catholic School Boards at bargaining tables with various unions representing teaching and non-teaching staff
- Providing advice to School Trustees' Associations and Ontario School Boards on all aspects of labour relations in the context of various legislative changes such as the amalgamation of school authorities (2005 and 2009), the enactment and repeal of the *Putting Students First Act* (2012) and the enactment and implementation of the *School Boards Collective Bargaining Act* (2014)
- Providing advice to clients in relation to their obligations arising from the *Ontario College of Teachers Act*, the *Early Childhood Educators Act* and the *Child and Family Services Act*
- Providing advice to Ontario School Boards and related consortia on various issues relating to school transportation



Litigation & Dispute Resolution

Fasken has one of the largest and most respected litigation groups in Canada. Some of the most distinguished trial lawyers in Canadian history have practised at the firm.

The Ottawa litigation team builds on this tradition of excellence. Our Ottawa lawyers have acted as counsel at all levels of the Ontario and federal courts, including the Supreme Court of Canada, the courts in several other provinces and various domestic and international tribunals. The group has considerable expertise in complex litigation matters including class action and mass litigation cases, shareholder and oppression remedies, employment litigation, judicial review and appeals of decisions of administrative tribunals, proceedings involving the federal government (including procurement and white collar crimes), injunctions and in disputes involving cross-border issues. In addition, our clients benefit from the tremendous resources and talent of the firm's entire litigation group.

Recent litigation experience of the Ottawa office includes:

- Representation of an Ottawa IT group of companies in complex procurement and bid-rigging matters
- Representation of individuals in connection with RCMP investigations, including under the *Parliament of Canada Act*
- Defence of individuals in complex litigation involving parliamentary privilege, Crown prerogative and allegations of defamation and conspiracy
- Representation in matters involving fraud and dissipation of funds
- Representation in franchise litigation
- Defence of international religious organization, clerics and volunteers in class action alleging conversion, conspiracy, negligent misrepresentation, breach of fiduciary duty and human rights violations
- Representation of vendor shareholders of Ottawa IT company for non-payment of monies owed by purchaser in a case involving issues of breach of contract and restrictive covenants on sale of business (the trial and appeal courts)
- Defence of national commercial property management corporation in a case involving allegations of breach of commercial lease and bad faith by tenant at major Ottawa office complex
- Defence of manufacturers in product liability cases

- Representation of Canadian company with respect to breach of contract and non-payment by organization located in Baghdad, Iraq, and similar representation for breach of contract and non-payment by private and quasi-governmental defendants located in Africa and South America
- Defence of national organization and its directors with respect to allegations of defamation arising from reports delivered at annual general meeting
- Defence of US-based company with respect to allegations of interference with contractual relations arising from defamatory emails delivered by unidentified person alleged to be employee of client's Canadian subsidiary
- Representation of manufacturer of consumer products against Vancouver-based distributor regarding Canadian and global distribution rights
- Representation of communications company in action for breach of contract and interference with contractual relations with respect to Canadian broadcasting rights over certain foreign-based programming
- Defence of US-based technology company in wrongful dismissal actions brought by former employees as a result of layoffs occasioned by the sale of Canadian subsidiary
- Federal court proceedings on distribution of deferral account funds, including use of the funds to extend broadband access to unserved communities
- Counsel in proceedings before the Patented Medicines Prices Review Board, Ratiopharm Inc. (and ratio-Salbutamol HFA)

Supreme Court of Canada Agency and Advocacy Services

A unique subset of our litigation and dispute resolution practice is that the Ottawa office provides agency services to clients involved in litigation at the Supreme Court of Canada, as well as in litigating cases all the way through the Supreme Court of Canada.

The Supreme Court agents in our Ottawa office have extensive experience advising and assisting parties in the practice and procedure of in bringing matters through the Supreme Court, from the leave to appeal stage to the appeal stage, and everything in between including motions, stays in other courts pending leave applications and appeals, changes of counsel and constitutional questions as well as the issue of costs after a proceeding.

Our knowledgeable agents and experienced litigators assist with advising on the *Supreme Court Act* and *Rules of the Supreme Court of Canada* in general, assessing the jurisdiction of the Supreme Court, preparing court documents in compliance with the Court's rules, service and filing of all manner of materials involved in a proceeding, advising and strategizing on how to obtain leave to appeal and respond to applications for leave, strategy for advocacy at a hearing of an appeal, coordination and preparation for hearing day, attendance at media and counsel "lock-ups" when decisions are released, and monitoring issues and cases proceeding before the Supreme Court of Canada.

As well, our litigators and subject-matter experts in other areas of law are able to act as co-counsel on any given case.

We have agents in Ottawa practising in English and in French.

White Collar Crime

Criminal and regulatory investigations and charges can have a severe impact upon corporations, their executives, employees and shareholder value. Likewise, criminal investigations and charges against government officials and others in high-profile positions can be devastating. Our Ottawa office has the necessary resources to effectively manage multi-jurisdictional white collar crime cases and investigations.

We represent clients from the moment the authorities commence investigations through representation in court or before the relevant tribunal. In addition, our team has experience representing clients in parallel regulatory and civil proceedings, which frequently occur alongside criminal investigations.

Our clients benefit from the team's extensive network of relationships, including with investigating authorities, outside criminal counsel (who can assist related parties), public relations experts, forensic accountants and forensic computer experts. Backed by the strength of our internationally recognized complex commercial litigation practice and trial expertise, clients can count on our White Collar Crime, Investigations & Compliance Group to defend them in all of the courts within the various jurisdictions in which we practice.

The expertise of the Ottawa office team is complemented by Fasken's extensive experience in corporate social responsibility, defamation and reputation management, elections and lobbying regulatory compliance, securities, corporate governance, international trade, mining, employment, communications and procurement.

Recent white collar crime, investigations and compliance experience in the Ottawa office includes:

- Representation of Nigel Wright with respect to an investigation by the RCMP. Wright was the Chief of Staff to the Prime Minister of Canada. This matter was related to a broader investigation by the RCMP into whether illegal conduct occurred with respect to expense claims by various Canadian Senators. No charges were laid
- Represented TPG Technology Consulting in a massive criminal bid rigging case wherein TPG, its President and one of its officers, along with others corporate defendants, were charged with bid rigging under the Competition Act, and conspiracy under the Criminal Code. The proceeding is one of the largest bid-rigging cases in Canadian history



Trade Law

The Ottawa office maintains a top tier international trade, investment and procurement law practice. Trade lawyers in the Ottawa office maintain leading positions in the international trade and investment bar and trading community. Recognized as leading practitioners in their field, our trade lawyers advise and act for corporate and government clients on Canadian International Trade Tribunal (CITT), World Trade Organization (WTO) and NAFTA issues, investment disputes, international commercial arbitration, trade remedies, customs, import and export controls and controlled goods, sanctions, foreign corrupt practices, foreign investment, trade in cultural goods and services, and all facets of government procurement. We represent our clients before a broad variety of domestic and international agencies, departments, tribunals and courts.

In addition, we regularly advise our clients on cross-border trade due diligence, government relations, international environmental law, international agriculture law, international intellectual property law, inter-provincial trade and Cuban-blocking legislation.

Recent trade, investment and procurement law experience of the Ottawa office includes:

- Counsel to a US flight simulator construction company regarding Government of Canada's refusal to pay and seizure of goods
- Representation of a North-American government as respondent in a judicial review before the Federal Court of Appeal regarding a decision of the CITT in an anti-dumping and subsidy case
- Appeal to CITT of decision by federal government to award IT contract to client's competitor
- Advice to one of the largest pharmaceutical companies on the NAFTA law applicable to US legislative initiatives seeking to prohibit the importation of prescription drugs into the US
- Advice to foreign governments on various trade related issues in support of trade negotiations with Canada
- Representation of an aerospace company in Federal Court regarding an application for judicial review where the company was able to successfully defend a procurement challenge to its winning bid for an aircraft maintenance contract

- Advice to a North-American supplier of specialty fertilizers on the Canada-Egypt bilateral investment treaty
- Counsel to NAFTA trade dispute panels in Ottawa, Washington, D.C., and Mexico City, on dumping and subsidy cases
- Advice to a US association of primary agriculture products on WTO issues involving the Sanitary and Phytosanitary Agreement
- Representation of a foreign Chamber of Commerce in respect of trade by the businesses represented by the Chamber in Canada
- Advising clients on aspects of the proposed Canada-EU Trade Agreement and meeting with Canadian negotiators on behalf of clients
- Representation of one of the world's largest manufacturers of aircraft engines in several WTO disputes

Competition Law

The Ottawa office advises clients on mergers, criminal matters including cartels and bid rigging, restrictive trade practices such as abuse of dominance, refusal to deal, tied selling, exclusive dealing and resale price maintenance, and the misleading advertising provisions of the Competition Act. Associated with our competition law expertise is our advice on the notification and review requirements for foreign investments in new and existing Canadian businesses under the Investment Canada Act, the new security review provisions, and the policies respecting foreign investments in Canadian cultural industries.

In addition, litigators in the Ottawa office represent clients charged with offences under the Competition Act and the Criminal Code. Our team maintains relationships and works in cooperation with some of Canada's leading criminal lawyers to bring our clients unparalleled multidisciplinary advice in defending such complex matters.

Competition law experience of the Ottawa office includes:

- Advice on the merger of the XM Canada and Sirius Canada satellite radio undertakings and the successful application for a No-Action Letter and waiver of the requirement to file a notification
- Regulatory advice on competition compliance policies for communications companies
- Counsel to the Commissioner of Competition in *Commissioner of Competition v. Canada Pipe Inc.* (abuse of dominance and exclusive dealing)
- Counsel to the Commissioner of Competition in *Commissioner of Competition v. Sears Canada Inc.* (ordinary selling price representations)
- Regulatory advice on the application of the merger pre-notification requirements
- Regulatory advice on the application of the net benefit test under the *Investment Canada Act*
- Counsel to lead defendant in one of the largest bid-rigging cases in Canadian history involving the provision of IT services to the Government of Canada

Copyright Law

The Ottawa office has an extensive copyright practice, advising clients on copyright licensing issues and on proposed amendments to the Copyright Act, as well as representing copyright users in tariff proceedings before the Copyright Board of Canada.

We also represent clients in Federal Court of Appeal and Supreme Court of Canada proceedings arising out of decisions taken by the Copyright Board or by other administrative tribunals that relate to matters of copyright law.

The Ottawa office copyright group has recently represented:

- Canada's largest wireless telecommunications companies, in a lawsuit against the songwriters and music publishers' collective (SOCAN) to recover royalties that had been paid for the downloading of ringtones under an interpretation of the law that is now known to be invalid
- A consortium of provincial Ministries of Education, in a Copyright Board proceeding in which the consortium argued that much of the copying of short excerpts of books, magazines and newspapers that a teacher makes for the students in his or her class can be considered "fair dealing" and thus does not infringe copyright
- A group of online music services, in a Copyright Board proceeding that set the first-ever tariff for the webcasting of sound recordings in Canada
- A group of online music services, in a Copyright Board proceeding in which the services argued that the royalties payable to songwriters by webcasters should be set in accordance with the royalties payable by commercial radio stations, and that cached copies of streaming music playlists are personal copies that do not infringe copyright
- Two large cable and wireless communications companies, in a Supreme Court of Canada proceeding in which the Court decided that the CRTC does not have the authority to implement a retransmission consent regime for over-the-air broadcast signals
- A group of online music services, in a Supreme Court of Canada proceeding in which the Court determined that music downloads do not infringe songwriters' and music publishers' right to communicate their works to the public by telecommunication
- A group of provincial governments, in a Federal Court of Appeal proceeding in which the Court had to decide whether or not these governments were subject to tariffs established under the Copyright Act as a result of the legal presumption of Crown immunity

Accountability & Ethics

The Ottawa office advises on public sector ethics, conflict-of-interest codes, accountability legislation (including freedom of information law), lobbyist registration law and election and election finance law.

Guy Giorno, a partner in the Ottawa office, is widely recognized as Canada's leading expert on lobbying legislation and lobbyist registration law, and is co-author of the book *Lobbying in Canada*.

The accountability and ethics law experience of our Ottawa office team members includes:

- Developing compliance protocols for corporations and organizations to ensure that their government relations activities satisfy the rules and registration requirements for in-house lobbying
- Extensively writing and lecturing on lobbying-transparency laws and lobbyist registration
- Drafting conflict-of-interest and whistleblowing policies
- Acting for requesters in Freedom of Information requests and appeals, and advising institutions on best-practices for compliance
- Co-authoring the Ontario Hospital Association's *Hospital Freedom of Information (FOI) Toolkit: A Guide to the Freedom of Information and Protection of Privacy Act*
- Successfully representing a printing company wrongly accused of leaking a confidential government report
- Championing the adoption of lobbying-transparency laws in jurisdictions that lack them
- Advising clients on public-sector rules governing conflict-of-interest, post-employment restrictions and hospitality



Government Relations

The Ottawa office participates with the firm's other offices in offering a broad range of government relations services to clients. These services include monitoring political and policy developments, strategic communication and communication planning, crisis communication and issue management, strategic planning and facilitation, and advocacy (lobbying) and representation on behalf of clients with public officials at the national, provincial, regional and municipal levels.

Recent government relations experience of the Ottawa office includes:

- Advising Al Jazeera English on successful application to the CRTC to include the award-winning international news and current affairs channel on the lists of services that Canadian cable and satellite distributors may distribute
- Advising a coalition of national and multinational communications and technology companies on legislative amendments to the *Copyright Act* and representing the coalition in discussions with federal government officials
- Representing Canada's cable and satellite providers in discussions with Canadian officials on the negotiation of international copyright treaties

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