



## Featured Cartoon



I thought I should bring a team of political advisors tonight, in case we talk about the upcoming election.

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## Introduction

Welcome to the 33rd edition of *Capital Perspectives: Ottawa's Business Law Update*. This authoritative resource provides legal insight and perspective on the issues that matter to private and public sector organizations operating in the National Capital Region.

## In this Issue:

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## Events

September 24, 2019 | Ottawa

JOIN FASKEN OTTAWA IN

SUPPORTING DRESS FOR

SUCCESS OTTAWA



Fasken Ottawa is proud to support Dress for Success Ottawa through our Fall Forward Clothing Drive & Fundraiser.

Dress for Success Ottawa is a local charity that provides women in the area with tools and resources to achieve economic independence, including office attire, workshops and confidence! Your donation will make a difference in a woman's life. Clothing donations will be accepted for current-styled women's work attire that is clean and in good repair, stain/pet-hair free and appropriate for the season.

Fasken Ottawa's goal is to collect 10 head-to-toe work-appropriate outfits and enough funds to sponsor 10 women through Dress for Success Ottawa's suiting program.

Each issue of *Capital Perspectives* draws on Fasken Ottawa's expertise in a variety of specialized areas of law to help our readers make sense of the events, issues and trends that impact their organizations.

In this issue, it's back to business with summer behind us. Our Spotlight profiles three new associates who have joined the Fasken Ottawa team post-Labour Day – Faye Voight, Gabrielle Cyr and Paul Burbank. Then, Virginia Schweitzer and Caroline Zechel dig into the pending changes to the *Canada Business Corporations Act* that pertain to diversity. Marcia Mills discusses how companies that want to win government business should avoid being too "commercial-centric." Lastly, Patrick McCann argues that remediation agreements are a rational process that is in the public interest.

In addition, we recap News and Events, where we climb the *Best Lawyers in Canada* rankings, support Dress for Success Ottawa, take the *Coureurs des bois* challenge and report on a recent win by Rogers Media to continue delivering multilingual multi-ethnic television services.

### **Promoting Diversity in the Boardroom and Within Management: New Diversity Disclosure Requirements for CBCA Distributing Companies**

Virginia Schweitzer and Caroline Zechel dig into the pending changes to the *Canada Business Corporations Act* that will require distributing corporations to provide additional information to shareholders regarding diversity on their boards of directors and within senior management. The new requirements will go beyond gender and apply to all distributing corporations, including "venture issuers," typically listed on the TSX Venture Exchange and the Canadian Securities Exchange.

### **Want to Win Government Business? Don't be too 'Commercial-Centric'**

Governments may be open for business, but that doesn't mean doing business with a government is necessarily easy. Marcia Mills discusses why companies seeking government business are well-advised to learn how the procurement system works to best serve their interests.

### **Remediation Agreements: A Rational Process that is in the Public Interest**

Remediation agreements have received some bad press in the past year as a result of the SNC Lavalin affair. Patrick McCann argues

**Drop off Date:** Sept. 24, 2019  
between 9 am and 5 pm

**Drop off Location:** Fasken  
Ottawa office, 1300- 55  
Metcalfe St., Ottawa

**Cash donations** can also be made in person or at **Fasken Ottawa's donation page**.

Dress for Success Ottawa uses cash donations to deliver other services and programs to its clients, including financial planning, job training and peer support, and career coaching and interview preparation through its suiting program.

Learn more about **Dress for Success Ottawa's work**.

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September 21, 2019 | Ottawa

#### **FASKEN LAWYERS TAKE THE**

#### **COUREURS DES BOIS CHALLENGE**

On September 21, runners large and small, from beginners to experienced athletes, took part in the Coureurs des Bois Challenge, an obstacle course race to promote the benefits of physical activity and support not-for-profit organizations in the Ottawa region.



Several members of the Fasken Ottawa office enthusiastically took up the challenge, which took place along the paths of the gorgeous Lavigne Natural Park in Clarence-Rockland.

This event contributes to the vitality of the community by redistributing all profits to various organizations in the region, and Fasken is proud to have sponsored it. Congratulations to all the organizers of this initiative, and to the participants for taking up the challenge!

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**MORE EVENTS**

they are nonetheless a rational process that ensures corporate compliance and accountability, which is in the public interest, while at the same time, limiting the harm to innocent individuals.

## Who is Fasken Ottawa?

Fasken is a leading national and international law firm with more than 700 lawyers and with 10 offices on four continents. Clients rely on us for practical, innovative and cost-effective legal services. We solve the most complex business and litigation challenges, providing exceptional value and putting clients at the centre of all we do.

The Ottawa office is home to 32 lawyers, of which almost half are ranked as leading practitioners by *Chambers*, *Lexpert*, *Best Lawyers in Canada* and other prestigious and independent publications.

Fasken's team of lawyers in the nation's capital offers broad expertise in the following areas of law: business, communications, labour and employment, litigation, international trade, procurement, anti-bribery and corruption, competition, copyright, accountability and ethics, government relations and white collar crime. We also engage in a number of related areas of practice, including constitutional and administrative law, human rights, official language rights and privacy. We provide our clients with seamless access to the broad range of professional services that Fasken offers on a national and international basis.

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## Spotlight

### Fasken Ottawa Welcomes Three New Associates

#### Fasken Ottawa

From white collar crime to international trade and the shifting landscape of broadcast regulation, Fasken Ottawa's newest associates are bringing a fresh perspective to key issues that impact our clients' ability to do business. They are Faye Voight, Gabrielle Cyr and Paul Burbank.

We caught up with each of them during their first week with the team to get their thoughts on the practice of law, the big issues for clients in their areas of specialty and what they do to unwind away from the office.

## News

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August, 2019 | Ottawa

### FASKEN CLIMBS *BEST*

#### LAWYERS IN CANADA RANKINGS

In August, the 2020 *Best Lawyers in Canada* guide ranked Fasken as "Mining Law Firm of the Year." The 14th edition of the publication also recognizes 229 Fasken lawyers in 60 practice areas, with a number of them being ranked in multiple sections.

This is a 29 per cent increase in the number of Fasken lawyers highlighted since last year. Furthermore, 16 of the 229 who are listed have been named "Lawyers of the Year."

Fasken Ottawa lawyers who have earned recognition include:

- **Jay Kerr-Wilson**, Intellectual Property Law, Communications Law
- **Clifford Sosnow**, International Trade and Finance Law
- **Judith Parisien**, Labour and Employment Law
- **Claire Vachon**, Labour and Employment Law
- **Laurence Dunbar**, Communications Law
- **Aidan O'Neill**, Communications Law
- **Scott Prescott**, Communications Law
- **Stephen Whitehead**, Communications Law
- **Robert Chapman**, Corporate Law, Technology Law
- **Virginia Schweitzer**, Corporate Law, Technology Law
- **Peter Mantas**, Public Procurement Law
- **Patrick McCann**, Criminal Defence



**FAYE VOIGHT**

**What drew you to the practice of law?**

**Faye:** I was attracted to the diversity that a career in law offers. Specifically, I was drawn to the fact that on a daily basis, lawyers are constantly tackling new challenges and solving new problems. Further, law is a career in which I can leverage the skills I developed during my business degree and prior work experience. I lean on this experience to provide business-focused advice to our clients.

**What practice group are you joining and what is your area of focus?**

**Faye:** I will be working with the Business Law, International Trade and Investment, and Procurement groups. I spent much of my articles working with these groups and developed a particular expertise in the area of international procurement law.

**What do you consider to be the most interesting or significant legal issue for clients at present related to your practice area?**

**Faye:** Both internationally and domestically, there have been a number of changes to the legal and regulatory environments. Clients must filter through these changes to determine which apply to them and how to modify their business to ensure compliance, both of which require additional resources and time. This is further complicated by the fact that, as a result of the global political landscape, it has become difficult for clients to predict changes to international laws.

**What was the last book you read?**

**Faye:** I recently finished reading *The Alice Network*. The book tells the story of a female spy working for the Alice Network, a real spy network in World War 1. I have read a fair number of books set during the two world wars, but this was easily my favourite. I highly recommend it to anyone searching for a new book to read.

**What are your hobbies/interests outside of work?**

**MORE NEWS**

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**Caroline Zechel**  
Ottawa

**Faye:** I am a big fan of staying active. In addition to biking and walking around Ottawa, I enjoy skiing and pretending that I am still a good hockey player. This year, in addition to hitting the slopes, I plan to try out some of the many cross-country trails the Ottawa region has to offer.

On my weekends, I like to spend my time exploring Ottawa's restaurant scene. However, I take a slight hiatus from this each summer when I can be found at my family's cottage in the Kawarthas.



**GABRIELLE CYR**

**What drew you to the practice of law?**

**Gabrielle:** Like most (I imagine), I was drawn to the practice of law by a desire to make a difference and to give a voice to those who cannot speak for themselves. I also love strategy, problem solving and tackling new challenges.

**What practice group are you joining and what is your area of focus?**

**Gabrielle:** I am joining the Litigation and Dispute Resolution group at Fasken. I practice in the areas of commercial litigation, procurement and white collar crime.

**What do you consider to be the most interesting or significant legal issue for clients at present related to your practice area?**

**Gabrielle:** This is a difficult question. The beauty of litigation is that every case is unique and raises new and exciting issues.

One issue of particular importance is the ability of bidders to challenge the invocation of the national security exception (NSE) in public procurements and the federal government's efforts to, on the one hand, expand its ability to invoke national security to exclude its obligations under the trade agreements and, on the other, create obstacles to bidders' ability to challenge the use of this power. This has become particularly evident with the recent amendments to the *Canadian International Trade Tribunal Procurement Inquiry*

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**ABOUT OUR TEAM**

*Regulations*, which make it easier for the government to invoke the NSE and seeks to remove the ability of the Canadian International Trade Tribunal to examine the reasonableness and justification for invoking the NSE.

This raises important questions about fairness, accountability and the government's commitment to its international trade obligations. As a result of these amendments, bidders wishing to challenge an unfair procurement will have to avail themselves of other instruments, such as the federal and provincial courts.

**What was the last book you read?**

**Gabrielle:** Honestly, the Harry Potter series. I recently re-read the series as I was back-packing across Eastern Europe this summer.

**What are your hobbies/interests outside of work?**

**Gabrielle:** My dog Jamie, a rowdy two-year-old golden retriever, takes up most of my free time. I also enjoy boxing, playing the piano and spending what time that remains with friends and family.



**PAUL BURBANK**

**What drew you to the practice of law?**

**Paul:** One of the most appealing aspects of the law is that it often requires taking a seemingly simple issue and unwrapping it to discover and analyze all of its complexities. Once this is done, it is a challenge to skillfully communicate the results to others – be it a judge or a client – in a clear and concise manner. I find this process both intellectually challenging and very rewarding.

**What practice group are you joining and what is your area of focus?**

**Paul:** I work with our Communications Law group to provide clients with advice on telecommunications and broadcasting, as well as other regulatory and administrative law matters. While I plan to assist our group in all areas of our work, I have particular experience working in the area of wireless telecommunications.

Prior to joining Fasken I worked in federal politics as a ministerial policy advisor. I leverage this experience by also working with our

Government Relations and Political Law group on some specific matters.

### **What do you consider to be the most interesting or significant legal issue for clients at present related to your practice area?**

**Paul:** The telecom and broadcasting industries are governed by a policy-driven regulatory framework that changes – often very quickly – based on the goals of the government of the day. This can result in a great deal of regulatory uncertainty that is a challenge for commercial actors that have to plan for and justify major long-run investment decisions.

Providing clients with the best advice in this type of environment requires understanding the big picture: by understanding the politics of the day, observing long term trends from the regulator and developing deep professional connections within the industry.

### **What was the last book you read?**

**Paul:** I just re-read *Nudge* by Cass Sunstein and Richard Thaler, combining economic and psychological theory to assess how individuals behave and make decisions in their lives, and considers ways to guide them toward improved decision-making.

While I read it almost a decade ago, it was a humbling exercise to go through it and consider its lessons in light of all the idiosyncrasies I've built up throughout my life.

### **What are your hobbies/interests outside of work?**

**Paul:** I'm a regular at my local tennis club throughout the summer and when I'm not there I can be found running along the canal or playing on one of my rec-league softball teams, which I'm told I take much too seriously. I also take every opportunity to get to a show at the NAC.

I'm currently on a mission to finally decide which shop makes the best coffee in the city, and I also like to frequent local wine nights at restaurants and pretend that I know what I'm talking about while tasting it.

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## **Featured Articles**

**Promoting Diversity in the Boardroom and within Management: New Diversity**

# Disclosure Requirements for CBCA Distributing Companies

Virginia K. Schweitzer, Ottawa | Caroline Zechel, Ottawa

As of January 1, 2020, distributing corporations governed by the *Canada Business Corporations Act* (CBCA) will be required to provide additional information to shareholders regarding diversity among their boards of directors and within senior management of the corporation. The additional diversity disclosure will be required in conjunction with the corporation's notice of meeting and/or management proxy circular for its annual meeting of shareholders to be held in 2020. Distributing corporations, typically public companies, will be required to disclose diversity policies as well as numbers and percentages of members of "designated groups" (as further described below), namely, women, Aboriginal persons, members of visible minorities and persons with disabilities which are identified among their directors and senior management.

The new CBCA disclosure requirements, set out in the amended section 172.1 of the CBCA and corresponding CBCA regulations (the "Regulations"), are aimed at broadening existing disclosure requirements for distributing corporations. While disclosure requirements under Canadian securities law, National Instrument 58-101 *Disclosure of Corporate Governance Practices*, have been limited to gender and have only applied to certain distributing corporations, such as those listed on the Toronto Stock Exchange (TSX), the new CBCA disclosure requirements will go beyond gender and will apply to all distributing corporations, including "venture issuers," typically listed on the TSX Venture Exchange (TSXV) and the Canadian Securities Exchange (CSE).

[FULL ARTICLE](#)

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## Want to Win Government Business? Don't be too 'Commercial-Centric'

Marcia Mills, Ottawa

Governments may be open for business, but that doesn't mean doing business with a government is necessarily easy. Government procurement is complex - this is not by happenstance. The rules on public procurement stem from a number of sources including law (trade agreements, the common law and legislation) and policy. It can be a painful and costly learning curve for companies that want

to sell goods and services to the country's largest buyers if they don't understand the rules.

Government decision-makers are answerable to a very wide range of stakeholders, including the Canadian voters who put them in office and the Canadian taxpayers who fund their operations. In a public procurement, it's not just about getting the best deal – it is also about meeting the broader public interest and achieving long-term policy objectives.

[FULL ARTICLE](#)

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## Remediation Agreements: A Rational Process that is in the Public Interest

**Patrick F.D. McCann**, Ottawa

Prosecuting a corporation for criminal offences has long been criticized as potentially giving rise to a number of unfair and unwarranted results. Usually the wrong-doing is attributed to one or two individuals who have acted on their own and often well into the past and are no longer associated with the company.

By prosecuting the entire company, a multitude of completely innocent individuals can be harmed. Investors can lose their investments, employees can lose their jobs, retired employees might lose their pensions. A criminal conviction of a corporation can have far-reaching repercussions, including being debarred from bidding on government contracts domestically and internationally. Many non-government requests for proposals now also have an integrity requirement for companies submitting bids.

[FULL ARTICLE](#)

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### Recent Cases

#### Rogers Successfully Defends License for OMNI Regional Television Service

In August, both the Federal Court of Appeal and the Governor in Council dismissed applications challenging the Canadian Radio-television and Telecommunications Commission's (CRTC) decision

to grant Rogers Media Inc. (Rogers) a new licence to continue to operate its national, multilingual multi-ethnic television service, known as OMNI Regional. The CRTC had granted Rogers the licence in May 2019 following a competitive licensing proceeding that involved eight applications and spanned almost two years.

The application for leave to appeal was filed with the Federal Court of Appeal by Independent Community Television Montreal (ICTV) on June 25, 2019. The application by ICTV (which was one of the competing applicants) alleged that the mere fact that a Rogers employee communicated with the Chair of the CRTC on three occasions during the CRTC's two-year process created a reasonable apprehension of bias on the part of the CRTC. The Federal Court of Appeal rejected that application shortly after ICTV filed its reply to the responding submissions of Rogers and the Attorney General of Canada.

Four separate petitions to the Governor in Council were filed in late June and early July by four of the applicants that were competing for the broadcasting licence that was granted to Rogers in May. In requesting that the Governor in Council set aside the CRTC's decision, the petitioners argued, among other things, that the decision was inconsistent with the *Canadian Charter of Rights and Freedoms* and the *Canadian Multiculturalism Act* and that the licence should not have been granted to a vertically-integrated broadcaster like Rogers, despite the fact that Rogers was the only applicant with any experience operating a multilingual multi-ethnic service in Canada and had been doing so for more than three decades. The Governor in Council rejected the arguments made by the four petitioners and dismissed the petitions, concluding that the decision did not derogate from the attainment of the policy objectives set out in the *Broadcasting Act*.

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