

FASKEN

Capital Perspectives

Ottawa's Business Law Update



Featured Cartoon



The guy at the thrift shop said it's a **smart phone** from 1966.

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Introduction

Welcome to the 32nd 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.

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Events

June 4, 2019 | Ottawa

5G, Procurement and the Aftermath of CUSMA

On June 4, Fasken Ottawa held its 9th Annual Symposium at its 55 Metcalfe offices. Attendees got the chance to share a word with His Worship, Mayor Jim Watson, over coffee before the start of his busy day, and then sat down to cover a range of timely subjects.

First up, a panel consisting of lawyers Laurence Dunbar, Paul Burbank, Stephen Whitehead, Leslie Milton and Andrew House discussed 5G - *What's all the fuss about?* From the basics of the technology to future use cases that ranged from the valuable to the bizarre, the presenters cut through the hype to offer an insightful primer on the subject matter. Some of the topics addressed by the panel are included in the article by Paul Burbank found in this edition of *Capital Perspectives*.

Fasken Ottawa counsel Marcia Mills then drew on her decades of private and public sector experience, including

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 no longer business as usual for Canadians or Canadian business. Our Expert Spotlight features James Villeneuve, Senior Strategic Business Advisor with Fasken, and former Consul General to Los Angeles, who worked on the frontline of the NAFTA renegotiation. Virginia Schweitzer then summarizes the amendments to the *Canada Business Corporations Act* (CBCA) that came into effect on June 13, 2019, while Matthew Welch explores the new election laws that also took effect on June 13. Lastly, Paul Burbank gets to the root of what all the fuss is about with 5G.

In addition, we recap News and Events, where we welcome a new face to the Ottawa Labour, Employment and Human Rights (LEHR) Group, lace up in support of Camp Ooch, consider the challenges for international law, recap our Annual Symposium, take to the stage for the Great Canadian Theatre Company (GCTC) and St. Mary's Home, and play host to the Canadian Corporate Counsel Association's (CCCA) Ottawa Social.

Current Amendments and Future Amendments to the CBCA

Partner Virginia Schweitzer reviews the amendments to the *Canada Business Corporations Act* (CBCA) in force as of June 13, 2019 and those still to come – what steps must corporations take, without delay, to avoid the penalties for non-compliance and to ensure they are prepared for future changes to the CBCA?

Even Non-Political Businesses Could be Snared by Canada's New Election Law

Associate Matthew Welch discusses how changes to Canadian election law that are now in effect are out of step with the modern internet age and how businesses must be more diligent than ever to avoid running afoul of the Commissioner of Canada Elections.

A Spectrum of Opportunities and Challenges: Canada's 5G future

Articling student (and soon-to-be associate) Paul Burbank explains how the fifth-generation of mobile networks (5G) will profoundly change our lives and assesses where Canada stands in the global race for deployment.

Who is Fasken Ottawa?

10 years as counsel to Public Services and Procurement Canada, to ask attendees, *Are you ready for government procurement?*

James Villeneuve, Senior Strategic Business Advisor with Fasken, and former Consul General to Los Angeles, then rounded out the agenda with *Insights on Trade Relations – Canada/U.S.* He recapped the behind-the-scenes efforts of Canada's consular service to ensure a favourable outcome for the country from the recent renegotiation of NAFTA and what it means for Canadian business going forward. James is featured in this issue's Expert Spotlight.

June 5-8, 2019 | Ottawa

Lawyer Play Tackles H.G. Wells



Fasken Ottawa continued its long-standing support of the GCTC /CCLA annual fundraiser and its charity partners as a bronze sponsor of the 20th Annual Lawyer Play – *War of Two Worlds*. The play was performed by 23 local lawyers on June 5, 6, 7 and 8. In the play, it's 1949 and Ottawa radio station CCTC is in financial trouble. A rag-tag team of voice actors must put on a radio play version of *The War of the Worlds* by H.G. Wells to save the station from ruin. Talented Fasken Ottawa partner Julia Kennedy returned to the stage to play Camilla, the leader of the Glebe Community Choral and Dramatic Society.

The 20th Annual Lawyer Play raised funds for the GCTC and its charity partner, St. Mary's Home. St. Mary's Home is an Ottawa-based social service agency that provides a full range of programs and services for young pregnant women, young moms and dads, and their infants and young children.

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 29 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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Expert Spotlight: James Villeneuve

From the Beer Industry to the Vanguard of Canada's NAFTA Renegotiations

Fasken Ottawa

Up close with Fasken Senior Strategic Business Advisor James Villeneuve.

US\$650 billion.

That's the approximate value of the goods and services that cross the Canada/U.S. border each year. It's by far Canada's largest trading relationship and No. 2 for the U.S. after China. Energy (primarily oil and gas) and automotive are the two largest segments, but even combined, still represents less than 35 per cent of the total. This demonstrates just how diverse, and important, the relationship is for both nations.

Emphasizing this point to American politicians became an all-hands-on-deck imperative for Canada's diplomatic corps after the Trump administration decided to renegotiate NAFTA. In short order, the White House came to question everything from the purported

June 17, 2019 | Ottawa
Here's to Summer!

On June 17, Fasken Ottawa played host to the Ottawa Social of the Canadian Corporate Counsel Association Ontario Chapter. The event gave lawyers serving as corporate counsel in the Ottawa area a chance to reconnect, network and unwind, in a relaxed setting, ahead of the summer cottage and vacation season in a relaxed setting.

Fasken Ottawa's meeting space at 55 Metcalfe is a multi-functional boardroom/conference centre suitable for meetings, symposia or cocktail receptions. It is video conference capable and adaptable for small to larger groups.

[MORE EVENTS](#)

News

May 21, 2019 | Ottawa
New Face in the Ottawa LEHR Group

Christine Côté has joined the Ottawa office as an Associate with the Labour, Employment and Human Rights Group. She has a broad practice advising private and public sector employers on a wide range of employment and labour law issues.

Christine was called to the Ontario and Quebec Bars in 2018 and practises in both English and French. During her studies at the University of Ottawa, Faculty of Law, Christine received several honours for her academic achievements. She also joined the team representing the Civil Law Section in the Sopinka Moot Court Competition (Criminal Law). Her team won the Guy Guérin Cup and she was awarded the prize for the best cross-examination at the provincial level of the competition. She also interned at a legal clinic, where she

"national security risks" of Canadian steel and aluminum to Canada's supply management system for dairy and even federal policies to protect the domestic entertainment and cultural industries.

James Villeneuve, now a Senior Strategic Business Advisor with Fasken, served as Consul General to Los Angeles (Canada's senior representative in Southern California, Arizona and Nevada) during this challenging time. This put him on the frontline of three years of intense diplomatic effort to arrive at a new NAFTA that would be a reasonable compromise for all three stakeholder nations – Canada, the U.S. and Mexico.

'You Kind of Knew Things Were Coming'

James came into the role from private industry near the end of the Harper-Obama era. As the Trudeau-Trump dynamic unfolded, it quickly became evident that Canada-U.S. relations faced a major shakeup.

"You kind of knew things were coming," he said. "Our relationship on trade with the U.S. is never easy, it's always bumpy on a series of interests, but the Prime Minister could pick up a phone or someone in the US administration could pick up a phone and solve the problem. We could always get through things based on our relationship."

As the rhetoric heated up and the potential for real and lasting damage deepened, a more "granular" and hard-hitting approach was needed – on both sides of the border.

In Canada, James characterized it as a "Mars Attacks" scenario – a foreign entity was attacking Canadian trade interests, which made it relatively easy to muster broad-based support across regional and party lines to respond with a united front.

In the U.S., the consular service worked hard to encourage members of Congress and the U.S. Senate to lobby the White House on Canada's behalf. These efforts took full advantage of the goodwill that U.S. politicians from across the spectrum have for Canada and Canadians.

Hammering Out a New Deal

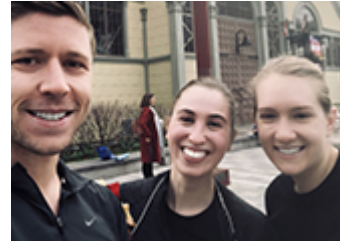
The consular service even created a "\$250 Million Club," where select Congressional districts that exported US\$250 million or more in goods and services to Canada each year were targeted with local events. These emphasized the importance of the trading relationship with Canada to local businesses and local employment.

worked on immigration and refugee law cases.

Before joining Fasken, Christine worked as a student and associate in a specialized litigation group of a national law firm and as an associate at a boutique firm where her practice focused on public, administrative, education and constitutional law litigation.

May 12, 2019 | Ottawa

Fasken Ottawa Team Runs for Camp Ooch



Camp Oochigeas (Camp Ooch) is a privately funded non-profit charity that brings laughter and joy to kids affected by childhood cancer. Its Community, In-Hospital and Overnight Camp programs give kids self-confidence and a sense of belonging at any stage of their cancer journey.

On May 12, joint Sporting Life 10 km run/walk events in Ottawa and Toronto raised almost \$2 million for the camp and its programs. Fasken Ottawa's Paul Burbank, Caroline Zechel and Stacey Smydo rallied to field a corporate team. Together, they raised \$780 and that amount was doubled by a matching donation from the Fasken Ottawa office.

Fasken Ottawa associate Kevin Massicotte ran in the Toronto event and demonstrated (once again) his athletic prowess by finishing 24th out of 17,392 participants!

May 2019 | Ottawa

International Law at a Crossroads

At the end of May, Faye Voight attended the International Law at a Crossroads conference at Queen's University's scenic castle in East Sussex, England. Faye recently completed her articles at Fasken and will be returning

In the end, negotiators hammered out a new NAFTA that, for example, reflects Canada's stance on protection of culture, gender issues, labour standards and the rights of Indigenous peoples. Greater stability was achieved for the automotive industry, with more integrated North American supply chains and a boost in the regional content requirements from 62.5 to 75 per cent. Tariffs on Canadian steel and aluminum have been lifted. Trade in energy products – oil, gas, electricity – was largely untouched. (Read the [Government of Canada's full Summary Backgrounder.](#))

Some points of discontent obviously remain – changes with dairy quotas have been criticized by Canadian producers for giving up too much and by their U.S. counterparts for not yielding enough. Meanwhile, James acknowledges Canadian exporters must still face hawkish "Buy American" attitudes across the U.S. Still, the new deal has favourable terms for review, renewal and dispute arbitration.

An Offer He Couldn't Refuse

But what led a beer industry executive, a year away from retirement, to accept a Consul General appointment in the first place?

In the 1990s, James joined Labatt Breweries in a sales and marketing position. He worked his way up to regional director for government affairs and then took the lead on Labatt's 1995 rebranding. He later became vice-president of corporate affairs for Canada. Following the acquisition of Labatts by InBev, he worked in Brussels to lead InBev's global corporate affairs practice. After InBev purchased Anheuser Busch in 2009, James moved to St. Louis to lead the company's North American corporate affairs department.

This broad corporate experience, as well as a variety of board roles, made him an attractive recruit for the Harper government in 2014, which wanted to beef up Canada's consular service. James found it an offer he couldn't refuse.

"It was just the opportunity to serve your country, honestly," he said. "I know it sounds corny, but aside from running for public office, it just doesn't happen that often. I knew the importance of the relationship with the U.S. from doing business down there and it was just an honour to do it."

This desire to make a positive difference and keep a hand in the business world led him to Fasken last fall after his term as Consul General ended. As a Senior Strategic Business Advisor, he continues to lever that corporate experience, and now diplomatic experience, where it is needed most.

as a business law associate this fall.

Queen's alumni, international law professors, international law lawyers and students of the Queen's Law International Law program attended to discuss the theory and practice of international law. Keynote addresses were made by Stephen de Boer, the Ambassador and Permanent Representative of Canada to the WTO, and Kim Prost, Judge on the International Criminal Court. Both provided valuable insight and thought-provoking discussions as to the state of international law today. Panel discussion topics included steel safeguard inquiries, the WTO Appellate Body crisis, jurisdiction of arbitral tribunals in international commercial disputes and the difficulties surrounding the governing law in international contracts. The many backgrounds and practices of the panelists made for a comprehensive and well-rounded conference.

Faye Voight spoke on a panel moderated by Valerie Hughes, previously the Director of the Appellate Body Secretariat of the WTO. Faye discussed the parallels between international trade law and Canadian procurement law, using a successful procurement challenge led by Fasken under the Canadian Free Trade Agreement (CFTA) as an example.

[MORE NEWS](#)

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"I respect the firm, it's a great Canadian firm with lots of great people, and I wanted to work with Canadian business again," James said. "We have a whole strategy to raise the Fasken brand in the U.S."

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Featured Articles

Current Amendments and Future Amendments to the CBCA

Virginia K. Schweitzer, Ottawa

Have you heard about the amendments to the *Canada Business Corporations Act* (CBCA) that came into force on June 13, 2019 and the proposed amendments to the CBCA that are currently under consideration? This article provides an overview of the amendments so you can ensure you are in compliance and contemplate what steps to take for potential compliance in the future.

Significant Control Register - New Record Keeping

As of June 13, 2019, private corporations incorporated under the CBCA are required to create and maintain a register of individuals who have "significant control" over the business (the "Significant Control Register"). Reporting issuers, public corporations and corporations listed on a stock exchange are exempt from this requirement.

Among the objectives behind these amendments is to provide increased corporate transparency and to assist governmental authorities with matters related to money laundering. Various provincial and territorial governments are pursuing similar legislative amendments for their corporate statutes.

[FULL ARTICLE](#)

Even Non-Political Businesses Could be Snared by Canada's New Election Law

Matthew Welch, Ottawa

As of June 30, election season is upon us, and new rules are kicking in.



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[ABOUT OUR TEAM](#)

For many of us, federal election law regulates what is, for the most part, a spectator sport.

Sure, we all have the option to vote. And we could volunteer on campaigns and spread policy ideas around. Some of us even take on the vital role of the ornery family member, burdened with the responsibility of educating his or her politically unenlightened kinfolk over dinner.

But, for the most part, we sit back, watch and cheer (or jeer). For many of us, election season is primarily about excellent TV viewing and inspired political cartoons. Perhaps for even more of us, election season is nothing more than an unavoidable irritant or sleep aid.

Many of us are happy with the *status quo*. But imagine if the rules changed and forced us to participate in the ruckus? That would be like armchair critics of a hockey team suddenly finding themselves lacing up and submitting themselves to drug tests.

This would never happen in sports, of course. Fans of professional sports are not subject to the rules of the game.

And therein lies a difference between the rules of spectator sports and federal election law.

[FULL ARTICLE](#)

A Spectrum of Opportunities and Challenges: Canada's 5G Future

Paul Burbank, Ottawa

5G wireless has been thrust into the public spotlight over the last year. Between the technology's lofty economic potential and the security concerns that it raises, you are bound to have heard something about it in the news.

Despite all this coverage, and 5G's power to reshape the world around us and how we communicate, public literacy about 5G and why it matters remains remarkably low.

What is 5G and Why the Rush to it?

5G refers to the fifth-generation of mobile networks, which will usher in faster, denser and more reliable wireless connections and ultimately give rise to a world of limitless interconnectivity. Stripped down to its essential elements, 5G is a set of standards and technology that will enable these future networks.

[FULL ARTICLE](#)

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