



## Featured Cartoon



On my way back to the patent office .

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## Events

May 21, 2020 | Ottawa  
**IP and BYOD in the Time of COVID-19**

On May 21, Fasken Ottawa partner **Jay Kerr-Wilson** gave a webinar on Bring Your Own Device policies to a group of startup companies in the Niagara Region.

The presentation looked at the issues confronting employers during the COVID-19 pandemic as more than five million Canadians have started working from home and, in many cases, using their own computers, tablets and smart phones to conduct company business. Fasken Toronto partner **Mark Penner** also presented to Spark Niagara exploring issues related to intellectual property in the time of COVID. The session was organized by the Intellectual Property Institute of Canada.

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Welcome to the 36th 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.

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, we examine some of the regulatory and international trade issues that are impacting, and being impacted by, the pandemic response and how we as a society strive to find a new normal that will balance economic prosperity with public safety. Stacey Smydo and Alexandra Logvin discuss users rights under copyright law. Andrew House looks at how COVID-19 has sharpened the National Security Review. Lastly, Kai Olson and Paul Burbank assess the "inherent tension" created by a gradual reopening of our economy.

In addition, we recap News, Events and Cases of Interest, where Fasken forges a new partnership with the Canadian Olympic Committee, discusses IP and BYOD in the time of COVID-19, trailblazes high-speed litigation in the digital age, tackles fair dealing and weighs the impact of the Ontario Labour Board's first gig economy decision.

### **Copyright and Users' Rights – An Issue at Home and Abroad, but not yet in International Trade**

Intellectual property law, and copyright law in particular, is becoming a significant part of international trade agreements. Yet, users' rights, which have long been an integral part of copyright law in Canada and many other countries, have not yet featured in any prominent way in any of these agreements. Stacey Smydo and Alexandra Logvin discuss the current state of users' rights in Canada and in international trade – and why a consistent international approach to users' rights has grown in importance as copyrighted works circulate digitally without regard for international borders.

### **The Long Arm of the Law: No Deal is Too Small – or Too Offbeat – for the Feds to Examine Under its National Security Review**

Andrew House discusses how important innovations, no matter how humble their beginnings in someone's basement, can become subject to a National Security Review if the inventor decides to sell

## **News**

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### **May 12, 2020 | Ottawa Fasken forges first-of-its-kind partnership with the Canadian Olympic Committee (COC)**

On May 12, Fasken and the COC announced a five-year partnership in which the firm will deliver value-in-kind legal services for Canadian national sport organizations (NSOs) and Olympic athletes.

"This partnership with Fasken will provide the NSOs with much needed legal services and help navigate complexities including eligibility for government assistance programs such as the Canada Emergency Wage Subsidy," David Shoemaker, CEO and Secretary General of the COC, said in a statement. "We are so incredibly thankful for the team at Fasken for fast-tracking these services for the immediate benefit of the NSO community and Olympic family."

Fasken shares with [Team Canada](#) the values of respect for people, fairness, excellence and high ethical standards. The Ottawa office, along with our peers across Canada, have been proud supporters of Team Canada for many years now. Further to this agreement, the Ottawa office has already been providing NSOs and athletes with presentations on COVID-19 related matters. The partnership complements the Government of Canada's recent \$72-million commitment to support amateur sport.

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**MORE NEWS**

## **Primary Contacts**

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to a foreign buyer. The regulatory scrutiny has only deepened with COVID-19. Many a brilliant electrical engineer or developer has been dashed on these rocks – here's what you need to know.

## **Down but Not Out: Essential Business Regulation and Reopening Despite Continued Concerns About COVID-19**

There will be no "grand reopening" of the Canadian economy, where a proverbial ribbon is cut and commerce returns to pre-pandemic levels. Paul Burbank and Kai Olson discuss the phased approach being taken in Ontario and other jurisdictions, and the tensions this creates to balance public policy goals with public health.

### **Who is Fasken Ottawa?**

Fasken is a leading national and international law firm with more than 750 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.

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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### **Featured Articles**

## **Copyright and Users' Rights: An Issue at Home and Abroad, but not yet in International Trade**

**Stacey Smydo**, Ottawa | **Alexandra Logvin**, Ottawa

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Intellectual property law has had an increasingly important place in international trade agreements and negotiations for many years. Yet one of the most fundamental aspects of copyright law, the rights of the public to use works for specific purposes without permission from or compensation to the owner, continues to be governed domestically despite the growing importance of a consistent international approach. The current COVID-19 pandemic, which has spurred a flurry of online innovation, has further illuminated the importance of intellectual property law.

Copyright law governs the use of creative works such as books, computer programs, databases, articles, photographs and music. Copyright law strives to balance the rights of authors and creators to be compensated for the use of these works with the rights of the public to use them to innovate and to create new works. The latter category of rights is known as "users' right" or limitations and exceptions to copyright.

[FULL ARTICLE](#)

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## The Long Arm of the Law: No deal is Too Small – or Too Offbeat – for the Feds to Examine Under its National Security Review

**Andrew House**, Ottawa | Toronto

You're far more important than you think – at least, your innovation, unique know-how, or product is – in the eyes of federal security officials. And in the era of COVID-19, the subject matter of your business could attract federal attention like never before.

Some of Canada's most important innovations began as ideas in a Kanata basement. Humble beginnings can have the effect of diminishing one's perception of the possible importance of an innovation or new product, but that won't stop Canada's Investment Review Division (IRD – an arm of the federal department of Industry, Science and Economic Development) from taking a close look at what you've built and to whom you might wish to sell. Recently, the Minister responsible for IRD signalled that a whole new level of **scrutiny will be applied to "opportunistic investment"** in the form of M&A activity related to distressed Canadian businesses.

For Canadians considering a proposal from a foreign buyer, it's anything but business as usual.



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FULL ARTICLE

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## Down but Not Out: Essential Business Regulation and Reopening Despite Continued Concerns About COVID-19

**Kai Olson**, Ottawa | **Paul Burbank**, Ottawa

The world as we know it has changed. As the COVID-19 pandemic has wreaked havoc across the globe – with no nation left untouched – the go-to response of almost every government has been the near total shutdown of its economy.

The fear and unease of the first weeks of the pandemic is only now beginning to subside. As government leaders addressed us daily and around the clock, we were met with stark images of suffering, empty store shelves, and a stock market rout (with the vaporization of trillions of dollars in market cap). It was, and remains, an uncertain time.

The act of searching for the necessities that were once readily available at the local supermarket has, in a very real sense, reminded us what is essential in our society: the energy and social connection that we find in the bustle of daily life, the economic stability that has been absent in the last several months and, most importantly, the physical and mental health of our community.

FULL ARTICLE

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### Cases of Interest

#### *York University vs. Access Copyright:* Implications for the education sector

The Federal Court of Appeal recently released its highly anticipated decision in ***York University v. The Canadian Copyright Licensing Agency (Access Copyright)*** in which it found that the payment of tariffs set by the Copyright Board is not mandatory. The decision considered both the mandatory nature of tariffs set by the Copyright Board and the Fair Dealing Guidelines adopted by many educational institutions across Canada and has important implications for the

education sector. The parties have until June 22 to seek leave to appeal to the Supreme Court of Canada.

Please see our previous bulletin on this topic: [The York University v. Access Copyright Decision and Copyright in the Education Sector](#)

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## Ontario Labour Board Says Foodora Couriers Can Unionize

In its first gig economy decision, the Ontario Labour Relations Board decided in February that Foodora's food delivery couriers are dependent contractors. This means they can unionize.

This is a significant decision because it is the first Ontario decision on the status of gig economy workers. But, these determinations are extremely fact specific. A finding that Foodora couriers are dependent contractors and able to unionize does not mean that all gig economy workers are dependent contractors. With advance planning, careful design and management, it is possible for organizations to set up gig economy relationships that will be found to be independent contractor relationships.

[Read the full bulletin](#) from Fasken Toronto lawyers Shane Todd and Tala Khoury to learn more about how the Ontario Labour Relations Board arrived at this decision and the key factors that were considered that could be relevant to you as an employer.

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