



Capital Perspectives

OTTAWA'S BUSINESS LAW UPDATE

Featured Cartoon

the **Goat** by Gord Coulthart



If I get this job you'll be the first person I file a **complaint** about.

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Introduction

Welcome to the 20th 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

May 19, 2016 | Ottawa

THE ENTERPRISE LIABILITY OF SOCIAL MEDIA

On May 19 in Toronto, Fasken Martineau lawyers presented to an audience of Department of Justice Canada lawyers on the theme of Enterprise Liability. Toronto partners Robert Harrison and Jennifer McAleer presented on *Recent Trends in Corporate Liability of Canadian Parent Companies*, while Ottawa partner Virginia Schweitzer teamed with Toronto partner Andrew Alleyne to present on *Trends in Enterprise Liability: Social Media*.

Virginia's presentation focused on social media and best practices as they relate to corporate governance and related risk management.

May 5 and 6, 2016 | Ottawa

LAW SOCIETY CONFERENCE ON COMMUNICATIONS LAW & POLICY

Each issue of *Capital Perspectives* draws on the Fasken Martineau Ottawa team'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 feature topics from the sixth edition of the Fasken Martineau Ottawa Symposium, which took place on May 17 ...

Navigating New Ottawa: The early evolving dynamics of Liberal government decision-making

Every new government has or quickly develops what could be called a "culture of decision-making" that will shape the manner by which decisions are made. Understanding and articulating this culture is the cornerstone of any effective government relations strategy. Dan Brock outlines the Liberal government's new way of doing things and what this means for organizations looking to do business with government, or sway public policy.

10 tips for the seller: Avoid common pitfalls in a sales transaction

Baby boomer business owners are looking to retire and exit their businesses by the thousands, but how many are truly ready? What does it take to be ready, to be buyer friendly, to unlock maximum value and to avoid a tax bill that will derail those sunny retirement plans? Virginia Schweitzer and Julia Kennedy discuss common pitfalls many business owners fall into and how they can be avoided.

Hiring, promoting and staffing pitfalls for employers

As an employer, what kind of questions can you not ask in an interview with a job candidate? How must you communicate with new hires and employees to soften your risk of litigation? What are essential terms and conditions to include in an employment agreement at the time of hire? Marie-Andrée Richard and Stefan Kimpton discuss the HR best practices that employers should follow.

In addition ...

We recap recent events and news, and profile Stephen Whitehead as the featured lawyer in our Expert Spotlight. Stephen is a senior partner in the business and communications law groups, and the primary contact for clients and potential clients in the Ottawa office.

Who is Fasken Martineau Ottawa?

Fasken Martineau is a leading international business law and litigation firm. With more than 700 lawyers, the firm has eight offices

Co-chaired by Fasken Martineau Ottawa partner Laurence Dunbar, the *18th Biennial National Conference: New Developments in Communications Law and Policy*, ran May 5 and 6 at the Shaw Centre. The Symposium featured more than 200 of the finest minds in the area of communications law and policy, who provided answers for lawyers, government analysts, regulators and business leaders in the communications field through a range of sessions. Topics included the changing landscape of broadcasting regulation in Canada, big data, net neutrality, the Internet of Things, the impact of wireless technology and more. Partner Jay Kerr Wilson and associate Ariel Thomas from Fasken Martineau's Ottawa office presented a paper on the challenges facing the Canadian rights market for digital content. See [Law Society Conference on Communications Law & Policy](#).

For legal professionals, the Symposium provided 9.5 substantive hours toward CPD requirements of the Ontario Law Society of Upper Canada and 3 hours of professionalism credits.

MORE EVENTS

News

April 23, 2016 | Ottawa

MOCK TRIAL

Each year, the Ontario Bar Association, in partnership with the Ontario Justice Education Network, sponsors a series of mock trial tournaments for high school students across the province. The program involves local lawyers volunteering as coaches to assist the students in developing their trial advocacy skills. Fasken Martineau Ottawa partner Jay Kerr-Wilson coached the St. Francis Xavier High School team, which consisted of students from Ms. Laurie-

in Canada, the United Kingdom and South Africa. Our practice includes every sector of business, industry and government.

The Ottawa office is home to 27 lawyers, of which almost half are ranked as leading practitioners by *Chambers*, *Lexpert*, *Best Lawyers in Canada* and other prestigious and independent publications.

Fasken Martineau'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; 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, privacy and government relations. We provide our clients with seamless access to the broad range of professional services that Fasken Martineau offers on a national and international basis.

Anne Galveias' Grade 11 Law class.

The teams are provided with a hypothetical scenario involving an alleged criminal offense. Students have to play the roles of Crown prosecutors, defense lawyers and witnesses in mock trials conducted before volunteer judges played by local lawyers and law students. Fasken Ottawa articling student Nerissa Yan served as a judge during the tournament, which was held on April 23 at the Ottawa courthouse on Elgin Street. This year's fact situation was based on the trial of South African Olympic athlete Oscar Pistorius, who was convicted of murder in the shooting death of his girlfriend, Reeva Steenkamp. Pistorius claimed that he accidentally killed Steenkamp after mistaking her for an intruder.

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Featured Articles

Navigating New Ottawa: The early evolving dynamics of Liberal government decision-making

[Daniel Brock](#), Ottawa

Every new government quickly develops a "culture of decision-making," reflecting the personalities, priorities and predilections of those who have been elected and the people who advise them. It will reflect leadership style, relations between politicians and civil servants, the personalities and ambitions of cabinet and the government caucus, the quality and composition of exempt political staff, the dynamics within parliament, and the continuing unfolding of events domestically and globally.

[FULL ARTICLE](#)

10 tips for the seller: Avoid common pitfalls in a sales transaction

[Julia Kennedy](#), Ottawa | [Virginia K. Schweitzer](#), Ottawa

Many business owners will eventually exit from the organization. Whether it be for retirement after a long successful run or a tempting buyout of your startup, exit for most will happen

June 1-4 2016 | Ottawa

A MOUSE ROARS IN SUPPORT OF THE GCTC AND SALUS

Fasken Martineau Ottawa once again took part in, and co-sponsored, the annual Lawyer Play, a fundraising project that supports the operations of the Great Canadian Theatre Company (GCTC). The play is sponsored by the County of Carleton Law Association and is performed by a cast consisting of legal professionals including paralegals, litigators, in-house counsel and even a judge. The Play also benefits a local charity partner. This year, that partner was SALUS, a charity that provides life-changing housing and support services to people living with serious mental illness.

The 17th edition of the Play ran from June 1 to 4 at the GCTC and featured performances of *The Mouse That Roared*, a stage adaption of the 1955 Cold War satirical novel by Leonard Wibberley. Fasken Martineau Ottawa has a long history supporting the Play on stage, as well as off. On stage this year was Ottawa associate Julia Kennedy.

eventually. If the business is successful, or even if it is facing some troubles, the most common exit is through a sale of the business, either through a sale of shares or assets.

FULL ARTICLE

Hiring, promoting and staffing pitfalls for employers

Stefan Kimpton, Ottawa | **Marie-Andrée Richard**, Ottawa

New employees and employers are often eager to start a new working relationship as quickly as possible. Employers, however, should keep in mind issues that can arise in the process when hiring or promoting an employee. Mistakes in the hiring process can have important consequences down the line.

The following gives an overview of some best practices to keep in mind in the hiring, promoting and staffing process for employers.

FULL ARTICLE

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Expert Spotlight

Charting the legal boundaries of the final frontier

Fasken Martineau

He is that hard-working and down-to-earth fellow who leads Fasken Martineau's Ottawa team.

We're talking about Stephen Whitehead, a senior partner in the Ottawa office and a recognized "outer space lawyer," who has been practicing law for 36 years in Ottawa.

Stephen's work has earned him many accolades. Last year, he was named the *Best Lawyers* Communications Law "Lawyer of the Year" in Ottawa. In fact, Stephen is consistently recognized by independent guides, including *Chambers Global*, *Canadian Legal Lexpert Directory*, *Best Lawyers in Canada*, *Practical Law Company's Which Lawyer?* and *Who's Who Legal*, as a leading lawyer in telecommunications, media and technology.

Stephen is also an avid community supporter who strongly believes in volunteering. He was active for many years with the Canadian Cancer Society, including in an executive position, and currently serves on the board of Hospice Care Ottawa.

MORE NEWS

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We sat down with Stephen to chat about life and work:

[FULL ARTICLE](#)



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[ABOUT OUR TEAM](#)

Active Cases of Interest

The unexpected consequences of a criminal investigation

Criminal investigations into corporations and their executives have become increasingly problematic for Canadian business and have resulted in unexpected consequences. In one recent case, successfully handled by Fasken Martineau's Ottawa office, a senior executive of a successful Ottawa-based IT business had his personnel top secret security clearance revoked. The potential consequences on the business were disastrous as the business as a whole risked losing its security clearance, which was critical to performing its government contracts. All this arose after the Government of Canada learned of a Competition Bureau investigation that had briefly targeted the corporation, even though no charges were laid against the executive or the corporation.

Fasken Martineau launched an application to the Federal Court of Canada to reverse the decision. The case raised issues relating to a cross-section of legal areas, including administrative, criminal and procurement law. A subsequent security interview resulted in the security clearance being reinstated in its entirety, and the corporation continuing in business.

The team involved in this case was Patrick McCann, Peter Mantas and Tala Khoury.

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Another great speaker lineup for the annual Ottawa Symposium

The sixth annual Fasken Martineau Ottawa Symposium took place May 17 at the Ottawa offices in the Johnston & Buchan Conference Room. The event drew a mix of participants, including lawyers and non-lawyers from the public and private sectors. For lawyers, the Symposium provided up to three hours of education that can be

applied towards CPD requirements of the Ontario Law Society of Upper Canada. For non-lawyers, it provided an excellent grounding in a number of relevant topics, as well as a prime networking opportunity.

This year's presenters included:

- *TV Guide 2016*, by Ottawa associate Yael Wexler
- *Navigating New Ottawa*, by Toronto-based partner Daniel Brock
- *10 Common Pitfalls in a Sales Transaction*, by Ottawa partner Virginia Schweitzer and associate Julia Kennedy
- *Law of Government Relations (Lobbying) – Professional Implications for Corporate Council*, by Ottawa partner Guy Giorno
- *Hiring, Promoting and Staffing Pitfalls for Employers*, by Ottawa associates Marie-Andrée Richard and Stefan Kimpton
- *Managing Litigation – Risk Assessment and Process*, by Ottawa associate Alexandra Logvin

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