



# COVID-19: *What has changed since the beginning of the crisis?*

May 13, 2020

## Speakers:

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## Guest Speaker:

**Greg Barker**  
Chief Legal Officer & Corporate Secretary  
Canada Lands Company

## **COVID-19: *What has changed since the beginning of the crisis?***

### **Program Overview**

#### **Welcome**

*Brenda Macdonald, Vice President Regulatory Affairs  
Ontario Power Generation*

#### **What's happening with the Federal and Provincial governments and their offices?**

*Daniel Brock, Partner, Toronto*

How has the COVID-19 crisis impacted the way the Feds and Provinces are managing the business of government? How are issues being prioritized? How are stakeholders being engaged? How are decisions being made in the fog of a global pandemic? Daniel Brock the Chair of Fasken's Government Relations group will peel the cover back on these questions and more.

#### **Navigating the courts – Court closures, limitation period suspensions, and which cases are being heard and how**

*Vera Toppings, Partner, Toronto*

Following a near-total shutdown at the outset of the pandemic, the courts are slowly expanding the cases that can be heard, and forging completely new procedures for filings and hearings. Which civil and commercial cases are being heard? How are parties and counsel appearing before the courts? What is the status of limitation periods in Ontario? How have judges interpreted the new processes and requirements? What alternatives are available to resolving disputes in court? This session will review these and other issues relevant to any company with a pending or potential dispute during the pandemic.

#### **Privacy and Cybersecurity – Summary of key developments**

*Alex Cameron, Partner, Toronto*

From employee management to contact tracing and cyber attacks, this session will highlight key privacy and cybersecurity developments in the pandemic and provide practical guidance about how to manage evolving risks and requirements.

#### **Drafting and interpretation of force majeure clauses**

*Zohar Levy, Partner, Toronto*

Is Covid-19 a force majeure? If so, what does it mean for the parties to a contract with a force majeure clause? What are current best practices around drafting contracts with force majeure clauses or that otherwise try to account for the potential impact of Covid-19? Zohar Levy of the Fasken Litigation and Dispute Resolution group will consider these issues in light of existing jurisprudence and the rapidly evolving environment.

#### **Panel discussion and audience Q&A:**

*Stuart Brotman, Partner, Toronto*

*Greg Barker, Chief Legal Officer & Corporate Secretary, Canada Lands Company*

- Working from home – Issues and best practices relating to advising remotely
- What might corporate counsel consider that may not already be top of mind?
- What are law firms doing that might also apply to in-house lawyers?
- How can law firms help in-house counsel during this time?
- What issues may emerge as time goes on?

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# What's happening with the Federal and Provincial governments and their offices?

Daniel Brock  
Partner, Toronto

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## ▼ Gov't Decision-Making

### *in the Age of COVID-19*

1. Pre-Pandemic Government Relations
2. Pandemic and Government Responses
3. How decision-making has changed
4. Managing issues now and going forward

## ▼ Gov't Decision-Making

### *in the Age of COVID-19*

- Government Relations Pre-COVID-19
  - Managing exposure to Government decision-making
    - Exploiting opportunities – Mitigating risks
  - Government priorities and Political imperatives
  - Awareness-raising and Relationship building

## ▼ Gov't Decision-Making

### *in the Age of COVID-19*

- Pandemic and Government Responses
  - *Friday the 13<sup>th</sup> horror show*
  - New imperatives
    - Securing Borders; Closing Workplaces and 'flatten the curve'
  - New priorities
    - Saving Workers, Businesses and the Economy

## ▼ Gov't Decision-Making

### *in the Age of COVID-19*

- How decision-making has changed
  - *Scope*
  - *Speed*
  - *Process*

## ▼ Gov't Decision-Making

### *in the Age of COVID-19*

- Managing issues now and going forward
  - Proactive & Reactive – *where you fit*
  - Individual & Collective
  - *The New Normal*

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# Navigating the Courts – *Court Closures, Limitation Period Suspensions, & Which Cases are Being Heard and How*

Vera Toppings  
Partner, Toronto

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## ▼ Navigating the Courts

- Suspension of Ontario Limitation Periods and Timelines
- Civil Cases Currently Being Heard
- How Cases are Proceeding Virtually
- Current Climate and What to Expect Next

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## ▼ Suspension of Ontario Limitation Periods and Timelines

- Most limitation periods and timelines in Ontario suspended
- Exceptions include certain *Construction Act* and Court of Appeal matters

## ▼ Civil Cases Currently Being Heard

- Superior Court (Toronto)
  - Urgent matters (immediate and significant financial repercussions)
  - Certain pre-trial conferences
  - Motions and applications relating to Rule 7 (parties under disability)
  - Consent matters
  - Most class action motions and case conferences



## ▼ Civil Cases Currently Being Heard

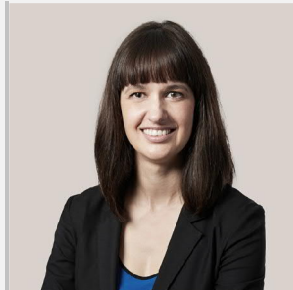
- Commercial List
  - Urgent matters
    - immediate and significant financial repercussions
    - certain CCAA matters; receivership; urgent bankruptcy; plans of arrangement; injunctions
  - “Select” motions/applications (almost everything?)
  - Case management, pre-trial & settlement conferences

## ▼ How Cases are Proceeding Virtually

- Email filings
- Conference calls
- Zoom and other video conference tools

## ▼ Current Climate & What to Expect Next

- Courts embracing virtual hearings as necessary to administer justice during COVID-19
- Introduction of new rules and processes
- Expectation that parties will cooperate on process and get comfortable in the virtual world
- Expansion of matters that can be heard remotely
- Potential for increased use of mediation and arbitration



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# Privacy and Cybersecurity – Summary of key developments

Alex Cameron  
Partner, Toronto

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## ▼ Privacy and cybersecurity

- Key cybersecurity trends:
  - Remote work risks
  - Phishing
  - Third party risk

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## ▼ Privacy and cybersecurity

- Privacy developments:
  - Workplace and facilities safety
  - Legislation and regulatory guidance
  - Contact tracing
  - PIPEDA amendments

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# Drafting and interpretation of force majeure clauses

Zohar Levy  
Partner, Toronto

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## ▼ Force Majeure

- vs Doctrine of Frustration
- vs Material Adverse Effect clauses

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## ▼ Contractual Considerations

- Triggering events: broad / open-ended vs. specific list; exclusions; Direct or indirect causation
- Threshold: does the triggering event make performance impossible? Illegal? Delay? Hinder?
- Obligations of impacted party: Notification, mitigation
- Remedies: Right to terminate? Temporary relief?

## ▼ COVID-19 Drafting Considerations

- Include triggering events that can be closely tied to COVID-19 such as “pandemic”, “epidemic”, “changes in law”, “quarantine” and “supply chain disruption”
- Include a catch-all such as “any cause beyond the party’s control”
- When entering into a new contract, be aware that COVID-19 is likely no longer an ‘unforeseen’ event



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# Panel discussion and audience Q&A:

Stuart Brotman  
Partner, Toronto

Greg Barker  
Chief Legal Officer & Corporate Secretary,  
Canada Lands Company

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## Panel Discussion and Q&A

- You may be wearing your slippers, but...
  - Confidentiality
  - Quality
  - Timeliness
  - Leadership
  - Health and wellness
- ...and what happens next?

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# Biographies

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## Daniel Brock

PARTNER | LEADER, GOVERNMENT RELATIONS

### Toronto

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### Areas of Expertise

Corporate Social Responsibility | Government Relations and Strategy | Oil and Gas | Health | Mining | Energy | Financial Services | Power | Renewable Energy | Insurance | 5G Network

### Education

1997, BCL, McGill University

1997, LLB, McGill University

### Jurisdiction

Ontario, 2001

### Languages

English | French

Dan Brock is the Chair of the firm's Government Relations & Strategy practice group. One of Canada's top lobbyists, Dan provides clients with critical insights into government policy development, and political decision-making.

Specializing in advisory services, policy analysis, strategic planning, political intelligence gathering and lobbying, Dan is a leading figure in Canadian government relations. He has held several senior advisory positions with federal Ministers, including to the Justice Minister, Attorney General, Minister of Finance, and Deputy Prime Minister, and has worked as Senior Communications Advisor to the Minister of the Environment.

Dan is listed among the top-ten lobbyists working in Ottawa, and offers clients unique insights and access into the political sphere. With his deep understanding of the decision-making processes of governments, Dan works to develop and execute strategies that effectively manage risks to client interests, or helps exploit client opportunities associated in the decisions of governments.

Providing support through business coalition building and participation in parliamentary consultations, Dan also works to consistently keep clients aware of legislative changes and their impact.

An active and recognized lobbyist, Dan's influence has been recognized by *Maclean's Magazine* and *The Hill Times*.



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## Areas of Expertise

Insolvency & Restructuring | Alternative Dispute Resolution | Retail | Mining

## Education

1998, M.B.A., York University  
1998, LLB, Osgoode Hall Law School at York University  
1994, BA (ASC), University of Western Ontario

## Jurisdiction

Ontario, 2000

## Language

English

Stuart Brotman is Leader of the firm's Insolvency and Restructuring Group. Acting in all nature of insolvency proceedings, Stuart assists clients in bankruptcy, receivership and restructuring under the Companies' Creditors Arrangement Act, the Bankruptcy and Insolvency Act, the Canada Business Corporations Act and the Winding Up and Restructuring Act.

Stuart has considerable cross-border experience, having advised clients under the CCAA and Chapter 15 of the United States Bankruptcy Code. Advising both private and public companies, these clients include a broad range of stakeholders, including debtors, creditors, suppliers, customers and other contracting parties and monitors, receivers and trustees in bankruptcy. He also frequently represents prospective purchasers in pursuing and completing asset sales in domestic and cross-border insolvency proceedings.

Stuart is regularly involved in lending transactions, advising primarily on recovery and intercreditor issues. He has particular experience with the interaction between traditional bank financing and alternative financing in the mining sector (eg., streaming and royalties). Stuart also maintains an active commercial litigation practice.

An active speaker, Stuart regularly writes and presents on topics related to insolvency and creditors' rights. Stuart is a member of the prestigious Insolvency Institute of Canada. His expertise is recognized by Chambers Canada, the Canadian Legal Lexpert Directory, among other publications.



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## Alex Cameron

PARTNER | CO-LEADER, PRIVACY & CYBERSECURITY

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### Areas of Expertise

Defamation & Media | Alternative Dispute Resolution | Real Estate Law | Intellectual Property | Marketing & Advertising | Privacy and Cybersecurity | Class Actions | Commercial Litigation | Procurement | Litigation and Dispute Resolution | Retail | Life Sciences | Health | Entertainment & Media | Financial Services | Technology, Media and Telecommunications | Insurance | Video Games and Computer Games | Communications

### Education

2012, LL.D., Doctor of Laws, University of Ottawa

2004, LL.M., Law and Technology, University of Ottawa

1999, LL.B., University of British Columbia

1996, B.A., University of British Columbia

### Jurisdictions

Ontario, 2007 | British Columbia, 2000

### Language

English

Alex Cameron is co-leader of the firm's Privacy and Cybersecurity Group. Clients from all sectors, including numerous Fortune 100 and 500 companies, consistently turn to Alex for his recognized leading expertise in privacy, cybersecurity and related matters.

Clients work closely with Alex to achieve business objectives through the innovative use of personal information, while ensuring compliance and managing risk. From big data projects, to marketing initiatives, to workplace management, Alex helps clients to identify and implement creative solutions to all manner of privacy issues. He also assists clients in managing compliance with Canada's Anti-Spam Law (CASL).

Working closely with clients and outside security experts, Alex assists clients in managing cybersecurity risks, conducting strategic risk assessments, and implementing effective governance, risk transfer and incident response planning.

Alex has helped clients respond to a full range of data breach incidents involving millions of affected records and individuals, including some of Canada's most high-profile breaches. Clients have looked to Alex to help effectively investigate and respond to significant matters such as:

- Cyber extortion in the context information theft, DDoS attacks and ransomware



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- Large-scale ransomware attacks
- Sophisticated hacking, malware and phishing attacks
- Lost and stolen laptops, drives and paper information
- Business practice claims (e.g. alleged misuse of information for commercial purposes)
- Data breaches impacting payment cards and PCI rules
- Careless, snooping and rogue employees
- Vendor and service provider breaches

An accomplished litigator, Alex has acted as lead counsel in landmark cases in his areas of practice, before all levels of court, including the Supreme Court of Canada, and in high-profile class action litigation involving cybersecurity and data breaches.

In the freedom of information field, Alex assists clients with strategic requests to obtain material information for business or legal purposes, and with resisting the disclosure of important confidential information before institutions, regulators and the courts. A longstanding director on the Advisory Board of the International Association of Privacy Professionals (IAPP) Canada, former Chair of the Canadian Bar Association Privacy and Access Law Section, and recipient of a doctoral degree in privacy law, Alex has contributed to thought leadership and the shaping of privacy and related law and policy in Canada. In recognition of his expertise, Alex has received a number of prestigious commissions from the Office of the Privacy Commissioner of Canada (OPC) to author reports and guidance material, including , PIPEDA and Your Practice — A Privacy Handbook for Lawyers, a national privacy handbook for the legal profession; Leading by Example: Key Developments in the First Seven Years of PIPEDA, a milestone privacy law report, and Metadata and Privacy: A Technical and Legal Overview. Alex is consistently ranked in Chambers Canada and The Best Lawyers in Canada as one of Canada's top privacy and data protection lawyers. He was also named as the 2018 and 2020 Toronto Privacy and Data Security Law "Lawyer of the Year".





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## Area of Expertise

Litigation and Dispute Resolution

## Education

2008, BA, Political Science, McMaster University

2008, JD/LLB, Osgoode Hall Law School at York University

## Jurisdictions

Ontario, 2011 | New York, 2009

## Language

English

Zohar Levy practices predominantly in civil and commercial litigation. She regularly assists clients in contractual and shareholder disputes, defends product liability claims, and enjoys advocacy at all levels of court.

Zohar has appeared before the Supreme Court of Canada, Ontario Court of Appeal, Federal Court of Appeal, Divisional Court, Superior Court and the Ontario Court of Justice. She has represented diverse clients including municipalities, automotive manufacturers, and individual professionals, and has always taken a measured, strategic approach to secure the best possible outcome in each situation.

Zohar is active in her community, both through pro bono work and through volunteer work with Covenant House. She represented the Canadian Civil Liberties Association as an intervenor before the Supreme Court in an appeal involving electoral spending limits and the registration requirement in British Columbia, and represented a variety of non-profit organizations as an intervenor before the Ontario Court of Appeal in an appeal involving the application of the *Consumer Protection Act* to the *Occupiers' Liability Act*. She is a regular volunteer at Law Help Ontario.



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## Areas of Expertise

Litigation and Dispute Resolution | Commercial Litigation | Class Actions | Alternative Dispute Resolution | Securities Litigation | Antitrust / Competition & Marketing | Competition Litigation, including Class Actions

## Education

2007, JD, Osgoode Hall Law School at York University  
2003, B Comm (Hons), Queen's University

## Jurisdiction

Ontario, 2008

## Languages

English | Serbian | French

Vera Toppings practices commercial and civil litigation, with a focus on class actions and complex business and contractual disputes.

Vera has particular experience with class action litigation. She has represented Canadian and international clients in significant class proceedings addressing noteworthy and emerging issues in the field. Her experience includes multi-jurisdictional cases involving allegations of price-fixing and other anti-competitive practices in the electronics and automotive fields; product liability, misrepresentations, and breaches of contract and consumer protection law in the telecommunications and automotive fields; and securities misrepresentation in the mining and healthcare fields.

Vera represents Canadian, American, European and Asian clients doing business across a range of industries including electronics, mining, aerospace, automobile, healthcare, software, banking, investments, telecommunications, consumer and industrial goods, real property and professional services.

She has appeared on behalf of clients before trial and appellate courts in Ontario and British Columbia, before the Supreme Court of Canada, as well as in domestic and international arbitrations. She also regularly advocates for clients in complex settlements and multi-party mediations.

Vera is Vice-Chair of the Canadian Bar Association's national Competition Litigation Committee. She has been an adjunct professor at Osgoode Hall Law School, as part of the teaching team for the "Lawyer As Negotiator"

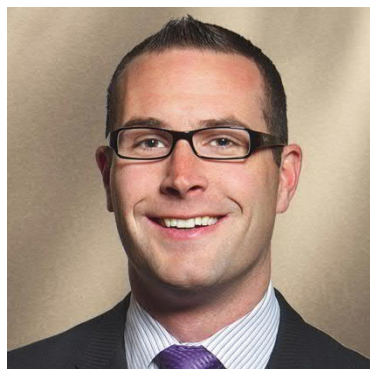


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course. She is also one of the founders of the Osgoode Mediation Clinic and the law school's Mediation Intensive Clinical Program. As a member of the Fasken Student Development Committee, Vera is involved in the recruitment and professional development of the firm's summer and articling students.

Vera is ranked as a Future Star in Litigation by Benchmark Litigation (2019, 2018), is recognized on the Benchmark Litigation 40 & Under Hot List (2019, 2018), and has been shortlisted as a Future Leader in Competition Litigation by Who's Who Legal and Global Competition Review.





## **Greg Barker**

Chief Legal Officer & Corporate Secretary  
Canada Lands Company

Greg Barker is Chief Legal Officer and Corporate Secretary for Canada Lands Company. In this role, he is responsible for all legal and regulatory issues and matters affecting the company's various divisions, including the CN Tower, Old Port of Montreal, Montreal Science Centre, Parc Downsview Park and Real Estate division. He also advises the company's Board and senior management team on corporate governance matters; serves as the company's Access to Information and Privacy Coordinator and Company Security Officer; oversees the maintenance of the company's crisis management plan; and is a member of the company's Executive Team.

Greg is a champion for diversity and inclusion at Canada Lands Company and within the legal profession. He is a member of Legal Leaders for Diversity and a member of Canada Lands Company's Diversity and Inclusion Committee. He also recently established Canada Lands Company's Rainbow Connection, a resource group for employees of the company who are members of the LGBTQ2+ community or who are allies of that community.

Prior to joining Canada Lands Company in 2012, Greg practised corporate and commercial real estate law at two national law firms. He holds a Bachelor of Commerce (Hons) degree from Queen's University and a Law degree from the University of Toronto.

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