PANORAMIC

LUXURY & FASHION

Canada

LEXOLOGY

Luxury & Fashion

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MARKET SPOTLIGHT

State of the market

What is the current state of the luxury fashion market in your jurisdiction?

Canada has a vibrant luxury market, which includes department store or multi-brand locations (eg, Holt Renfrew, Ogilvy, Saks Fifth Avenue), individual apparel and leather goods brands (eg, Chanel, Prada, Gucci, Bottega Veneta, Louis Vuitton), hospitality (eg, Ritz Carlton, St. Regis, Fairmont hotels, Four Seasons), automotive and cosmetics and the growing personal care and luxury wellness segment. The luxury market includes not only physical stores and hotels, but also wholesale brand distribution, direct-to-consumer sales and e-commerce.

Despite the impact of inflation, a steady increase in interest rates in 2023, volatility in the market, concerns about a possible recession and global geopolitical uncertainty, the state of the luxury and high-end fashion market remains healthy. Particularly in Canada's major cities (such as Vancouver, Toronto and Montreal), we continue to see new entrants to the market and established brands entering by way of e-commerce. Foreign luxury businesses continue to see Canada as an attractive market in which to launch international expansion efforts.

Law stated - 20 February 2024

MANUFACTURE AND DISTRIBUTION

Manufacture and supply chain

What legal framework governs the development, manufacture and supply chain for fashion goods? What are the usual contractual arrangements for these relationships?

There are a number of legal frameworks that apply, including intellectual property, manufacturing process safety standards, product regulatory standards and international trade law. Generally speaking, product development contracts contemplate intellectual property ownership and the application of royalties, design and fabrication methodologies, and sourcing strategies or restrictions. From the manufacturing and supply chain perspective, effective contractual agreements will contemplate risks and liabilities from the point of manufacture all the way through to retail sale.

Manufacturing contracts are often executed between a producer and a brand owner, a distributor, or directly with a retailer. Terms that are particularly important to include are those governing manufacturing processes, finished product standards, supply chain integrity (including forced labour considerations), design execution expectations and liability for sub-standard or non-compliant product. Potential corrective measures such as recall protocols, and each party's responsibilities in engaging with regulators, are also important to include. On the supply chain side, key issues to consider are production and distribution rights, transportation and shipping, title transfer, import/export compliance and supply chain safety. Currently, emphasis on corporate social responsibility and its interplay in supply chain management has become more important with respect to brand protection and consumer interest. In fact, Canada has recently enacted additional measures relating to human rights violations within the supply chain including a reporting obligation related to forced labour

and child labour, and has prohibited the importation of goods made in whole or in part with forced labour or child labour.

Law stated - 20 February 2024

Distribution and agency agreements

What legal framework governs distribution and agency agreements for fashion goods?

In Canada, commercial distribution and agency relationships are primarily governed by contract law. There is no federal or provincial legislation that specifically targets distributorships or agency agreements in Canada, nor legislation that specifically targets these arrangements for fashion goods.

While there have been Canadian cases in which courts found certain automotive dealers were franchiseesunder the relevant Canadian franchise legislation, it is unlikely that typical distribution relationships between suppliers of fashion goods and retailers that carry multiple fashion brands would be treated as franchises. Nonetheless, parties should take care to consider if the terms of a particular relationship could constitute an unintended franchise.

A number of courts in Canada have ruled that because distribution relationships require mutual trust between the parties, either party may terminate a distribution agreement by giving reasonable notice to the other party in the event of a breakdown in that trust. To enforce this common law right in court, the terminating party would normally need to put forward evidence to demonstrate that the relationship of trust between the parties is broken.

There is also a line of case law dealing with claims brought by customers and other third parties that claim that a franchisor or manufacturer is legally responsible for the acts of its dealers, distributors or franchisees. While it is rare for a distributor to be treated as an agent of its supplier (and distribution agreements will normally disclaim an agency relationship), the case law has developed a principle known as 'apparent authority' (also referred to as 'agency by estoppel'). Under this principle, where a supplier causes third parties who transact with distributors to reasonably believe they are transacting with the supplier, the supplier may be directly liable to the third party. To mitigate the risk of this outcome, distribution agreements in Canada would normally require distributors to identify themselves as being owned and operated independently from the supplier.

Law stated - 20 February 2024

Distribution and agency agreements

What are the most commonly used distribution and agency structures for fashion goods, and what contractual terms and provisions usually apply?

Retailers often deal with a fashion brand supplier directly, a distributor representing a particular brand or distributors that represent multiple brands. Typically, the distribution agreements will include provisions that specify whether or not the rights are exclusive, if the rights are limited to a particular territory and any specific rights and obligations associated with the marketing and sale of the products, including (but not limited to)

the use of associated trademarks. These agreements also usually specify the relevant ordering procedure, shipping and delivery terms (including title, risk of loss, inspection and acceptance) and payment terms, as well as termination rights and the allocation of risk and liability between the parties.

Law stated - 20 February 2024

Import and export

Do any special import and export rules and restrictions apply to fashion goods?

Canadian import and export laws do not impose restrictions specific to fashion goods as such. However, Canada is a party to a number of bilateral and plurilateral free trade agreements (FTAs) that establish preferential tariff provisions for certain textile and apparel goods that are imported or exported within recognised free trade zones (including, for example, the United States, Mexico, Chile, Costa Rica, Honduras, Vietnam and Singapore). These FTAs present an opportunity for textile and apparel products that satisfy prescribed rules of origin to be imported into Canada under preferential trading conditions, often including lower rates of duty. In some instances, textile and apparel goods imported into Canada pursuant to Tariff Preference Level arrangements in FTAs may require an import permit issued by Global Affairs Canada under the authority of the Export and Import Permits Act.

In addition, Canada's Textile Labelling Act and Regulations prohibit the importation of consumer textile articles that are not labelled in accordance with that statute. Specific labelling requirements vary depending upon the article at issue, but generally consumer textile goods must display the fibre content and percentage by mass of the article (in both French and English), and the identity of the manufacturer, processor, finisher, retailer or importer of the product.

Fashion and luxury goods not subject to the Textile Labelling Act (ie, non-apparel and non-fabric goods) may instead be required to comply with Canada's Consumer Packaging and Labelling Act and Regulations (CPLA). Like the Textile Labelling Act, the CPLA prohibits the importation of consumer pre-packaged products that do not comply with the specific labelling requirements prescribed in the Regulations. Consumer pre-packaged products are broadly defined as including any product (subject to limited exemptions) that is packaged in a container in such a manner that it is ordinarily sold to or used or purchased by a consumer, without being repackaged. Accordingly, a wide variety of luxury and fashion accessories, cosmetics and non-textile goods can be expected to be subject to the CPLA.

Finally, Canada is a signatory to the Convention on International Trade in Endangered Species of Wild Flora and Fauna and has implemented it domestically by way of the Wild Animal and Plant Trade Act and Regulations (WAPTA). Pursuant to the WAPTA, the Canadian government maintains a list of endangered and protected species, the by-products of which (fur, pelts, skin, etc) can only be imported pursuant to a permit. This includes a number of reptile skins, ivory products and furs of various endangered or protected species.

Law stated - 20 February 2024

Corporate social responsibility and sustainability

What are the requirements and disclosure obligations in relation to corporate social responsibility and sustainability for fashion and luxury brands in your jurisdiction? What due diligence in this regard is advised or required?

Securities legislation in Canada requires reporting issuers to disclose the material risks affecting their businesses and the financial impacts of these risks. This includes material information about environmental, social and governance (ESG) issues. Reporting issuers may also have disclosure obligations under the timely disclosure policies of the relevant stock exchange, which require the immediate public disclosure of material information about a company that has a significant effect, or would reasonably be expected to have a significant effect, on the market price of the company's securities. Securities regulatory developments have slowed since the Canadian Securities Administrators (CSA) first published its proposed climate-related disclosure framework in October 2021, as the CSA has had to take stock of subsequent developments outside of Canada. These developments include the publication of the International Sustainability Standards Board's (ISSB) sustainability- and climate-related disclosure standards (the ISSB Standards) and the US Securities and Exchange Commission's proposed disclosure framework. In June 2023, the CSA announced that it would conduct further consultations to adopt disclosure standards based on the ISSB Standards. A revised draft of the CSA's proposal is anticipated later this year.

In October 2010, the CSA published Staff Notice 51-333 – Environmental Reporting Guidance (the Staff Notice) to assist issuers in understanding their reporting requirements in respect of environmental issues. The Staff Notice does not specifically address social information, but can be interpreted to include material social information, as disclosure requirements in the Annual Information Form and Management's Discussion and Analysis cover all material issues. Disclosures may be required in connection with climate change-related risks, environmental trends and uncertainties, environmental liabilities, asset retirement obligations, financial and operational effects of environmental protection requirements, and risk oversight and management. Staff Notice 51-358 – Reporting of Climate Change-related Risks, which was published in August 2019, supplements the Staff Notice and, among other things, provides an overview of board and management responsibilities related to climate change-related risk and outlines factors to consider when assessing the materiality of such risk.

Certain reporting issuers also have disclosure obligations relating to the representation of women on boards and in executive positions, as set out in the CSA's Form 58-101F1. In April 2023 the CSA published two alternative proposals to broaden its diversity disclosure requirements. Similar disclosure obligations were imposed on federally incorporated companies in 2020, when certain amendments to the Canada Business Corporations Act (CBCA) came into force that require such companies to disclose to shareholders information concerning the diversity of the board of directors and senior management. In particular, the CBCA's disclosure requirements capture four designated groups – women, indigenous peoples, persons with disabilities and members of visible minorities.

There are several internationally recognised voluntary frameworks and guidelines that Canadian businesses use to report on their sustainability initiatives, including the Global

Reporting Initiative (GRI) Sustainability Reporting Guidelines, the recommendations of the Task Force on Climate-Related Financial Disclosures (TCFD), the Equator Principles, the International Integrated Reporting Framework and the Sustainability Accounting Standards Board (SASB) Standards. The GRI guidelines have been widely adopted by Canadian companies (both publicly traded and privately owned) across industries. With the ISSB's second head office based in Montreal, Canadian businesses are also waiting to see how the Canadian Sustainability Standards Board will support the uptake of the ISSB Standards in Canada and facilitate interoperability between its own forthcoming standards and the ISSB Standards, with the latter building upon the TCFD's recommendations and the SASB Standards.

Due diligence of sustainability reporting should consider how a company manages and informs its stakeholders about its ESG and economic performance, as well as communicate the company's values, priorities and action plans and demonstrate how sustainability is considered in corporate strategy. In addition, key performance indicators, performance and impacts should be considered when assessing the efficacy of a company's ESG and sustainability reporting processes.

In response to the increasing global regulatory focus on supply chain risks, the Canadian government has introduced a number of measures to address potential human rights violations in supply chains, particularly around forced labour and child labour. This includes the passage of the Fighting Against Forced Labour and Child Labour in Supply Chains Act(the Supply Chains Act), which came into force on 1 January 2024. The Supply Chains Act imposes obligations on certain entities to publicly report, on an annual basis, on their supply chains and the measures taken to prevent and reduce the risk that forced labour or child labour is being used. Reporting under the Supply Chains Act is in the form of a written report as well as a detailed questionnaire to be filed with Public Safety Canada, the responsible regulator, on or before 31 May each year. The written report must also be published in a prominent place on the company's website, and Canadian businesses that meet the reporting requirements under the Supply Chains Act and that are incorporated under the CBCA must also provide a copy of this report to each shareholder along with their annual financial statements.

In addition to this reporting obligation, the Canadian government has also implemented general prohibitions on the importation of goods made in whole or in part with forced labour or child labour. This follows measures imposed by Global Affairs Canada and the Canadian Trade Commission Service issued in 2020 that were designed to address human rights violations in global sourcing and impose greater obligations on Canadian companies doing business abroad, largely responding to ongoing reports of human rights violations in Xinjiang. The Canadian government has also sanctioned a limited number of Chinese persons and entities for reasons related to their conduct in Xinjiang. This means that most dealings with these persons and entities is prohibited. Businesses are encouraged to engage in sufficient due diligence to assure themselves that they are in compliance with these prohibitions.

Law stated - 20 February 2024

Corporate social responsibility and sustainability

What occupational health and safety laws should fashion companies be aware of across their supply chains?

In Canada, both federal and provincial or territorial governments regulate occupational health and safety (OH&S), depending on the type of workplace and its location. OH&S legislation – whether federal or provincial – outlines the general rights and responsibilities of employers, supervisors and workers. Only a few workplaces are federally regulated, such as airlines, railways or the federal public service. Most workplaces are provincially or territorially regulated. OH&S legislation usually does not apply to private homes where work is done by owners or occupants, or workplaces that an employer cannot control.

OH&S legislation is designed to support and enforce the proper functioning of the 'internal responsibility system', where responsibility for health and safety is shared by everyone in a workplace, and the scope of each person's responsibility is described and enforced by law. A key feature of the internal responsibility system in workplaces with a large number of employees is the mandatory establishment of joint health and safety committees, where both workers and management are able to provide input to effectively address workplace health and safety issues.

All stakeholders in Canadian workplaces, including owners, employers, supervisors, workers, suppliers and officers or directors, have legal duties under OH&S legislation. While the specifics of legislation vary across different jurisdictions, the overall themes tend to be consistent. Generally, employers' responsibilities for OH&S matters include providing a safe work environment, preparing and implementing appropriate health and safety policies and procedures, training employees on the application of those policies, identifying and mitigating workplace hazards, and appointing competent supervisors. Workers' responsibilities generally include following health and safety regulations and procedures, reporting workplace hazards to employers, and wearing required protective equipment. Workers and other workplace parties typically have the right to refuse unsafe work. OH&S legislation may also require employers and other stakeholders to report workplace accidents, injuries and occupational illnesses to regulators.

OH&S legislation is enforced by regulators and all workplace parties may face statutory liability under OH&S legislation. Regulators can issue orders requiring a workplace party to comply with the law. They may also prosecute a party for violations by laying quasi-criminal (and in very rare cases, criminal) charges. Generally, offences under OH&S legislation are strict liability offences, where the prosecution need not prove intent, and a defendant will not be convicted if they can prove, on a balance of probabilities, that they were duly diligent in their efforts to avoid the violation. Penalties include significant fines, imprisonment or both.

Directors and officers of companies operating in Canada face personal liability under both federal and provincial or territorial OH&S legislation if they authorised, permitted or acquiesced in an offence (exact language varies by statute), and they may be subject to penalties including significant fines, imprisonment or both. Some legislation imposes a clear positive obligation on directors and officers to take all reasonable care to ensure that the company complies with legislation. In addition to statutory liability, directors and officers may in some cases also face common law liability for tort-based claims.

Law stated - 20 February 2024

ONLINE RETAIL

Launch

What legal framework governs the launch of an online fashion marketplace or store?

In Canada, various federal and provincial statutes govern the buying and selling of goods and services over the internet. These statutes contain discrete considerations that require the specific legal attention of e-commerce retailers. Broadly speaking, primary issues relevant to establishing an online fashion marketplace or store in Canada include compliance with Canadian provincial e-commerce, consumer protection and competition legislation, French language requirements, privacy and security requirements and domain name acquisition including meeting 'Canadian presence requirements'.

Provincial e-commerce laws impose obligations on e-commerce retailers before and after the sale of goods and services to consumers. In general, these laws require: (1) pre-sale disclosure of information (such as the seller's contact information, a description of the goods or services, purchase price, delivery arrangements and shipping and return information); and (2) delivery of a copy of the agreement to the consumer. Further, these disclosures must be prominent, clear, comprehensible and available in a manner that: (1) requires the consumer to access the information; and (2) allows the consumer to retain and print the information. In some provinces, these rules only apply to sales over C$50. Note that doing business online in the province of Quebec (or available to Quebec consumers) attracts other legal considerations, such as French language laws and specific consumer contractual requirements.

E-commerce fashion retailers should also be aware of consumer protection rules under the federal Competition Act that prohibit businesses from engaging in deceptive marketing practices for the purpose of promoting a product or a business interest. This prohibition applies to all representations, in any form, that are false or misleading in a material respect.

Canada also has strict private sector privacy legislation, at both the federal and provincial levels, which must be taken into account in the planning and launch of an online fashion marketplace or store. This is discussed in further detail below. Also, organisations conducting transactions via payment cards may be required to comply with the Payment Card Industry Data Security Standard (PCI-DSS) and ensure the terms of those standards bind their service providers or their service providers are PCI-DSS certified.

Online fashion retailers also need to take notice of the Web Content Accessibility Guidelines (WCAG) 2.0, an internationally accepted standard for web accessibility developed by the World Wide Web Consortium. WCAG 2.0 explains how to make web content more accessible to people with disabilities. The Ontario Integrated Accessibility Standards require private sector organisations with 50 or more employees as well as designated public sector organisations to conform to WCAG 2.0. The Ontario government has provided a useful guide for companies to follow to ensure compliance, which includes recommendations for: (1) testing compliance of current websites; and (2) working with web developers to ensure future websites satisfy WCAG criteria. In the coming years, other jurisdictions in Canada may adopt similar legal requirements.

In terms of selecting a domain name in Canada, the .ca domain name is administered by the Canadian Internet Registration Authority (CIRA). CIRA requires registrants to meet Canadian presence requirements designed to ensure that the .ca domain remains a 'key

public resource for the social and economic development of all Canadians'. Retailers typically meet the Canadian presence requirements by creating a Canadian corporation or registering a trademark in Canada that corresponds to the desired domain name.

Because of the widespread accessibility of online vendors, Canadian regulators have been required to determine how and when they will take jurisdiction over a website and its content. The Competition Bureau, for example, will address online marketing and advertising claims if the content is considered to have a fact-based connection to Canadian consumers. Some indicators of a connection include the use of a .ca website, providing pricing in Canadian dollars and offering sales or discounts on transportation to a Canadian jurisdiction.

Law stated - 20 February 2024

Sourcing and distribution

How does e-commerce implicate retailers' sourcing and distribution arrangements (or other contractual arrangements) in your jurisdiction?

Sourcing and distribution arrangements are often created to specifically contemplate online sales. From a commercial perspective, standard sourcing and distribution agreements may contain geographic sales limitations that would prohibit online sales to a variety of Canadian and international jurisdictions, so it is often the case that separate and additional agreements are created for online distribution. In addition, where larger retail sourcing arrangements might allow for co-mingling of merchandise, this may not always be advisable for online sales. It is possible that regulated products in one jurisdiction may not be lawfully sold in another if regulatory standards differ – this needs to be clearly addressed in a sourcing strategy for potential international online sales.

Larger online retailers often source bulk product, that is stored in sourcing warehouses in Canada, from which the product is distributed post-online sale. This can streamline the fulfilment process as international issues such as shipping and customs clearance can cause a lag in delivery to customers. In these instances, contractual arrangements between the retailer and the sourcing partner often call for, for example, a certain volume and value of merchandise to be warehoused, or for drop sales arrangements. This largely depends on whether the online retailer is selling direct to consumer, or whether the consumer is purchasing from a third-party vendor using a marketplace platform. Standard sourcing arrangements are not typically suited to cover risk in either case. Accordingly, the sourcing and distribution contractual arrangements are often executed specifically for online sales supply.

Law stated - 20 February 2024

Terms and conditions

What special considerations would you take into account when drafting online terms and conditions for customers when launching an e-commerce website in your jurisdiction? Have there been any recent developments with respect to enforceability of online contracts that implicate e-commerce sites?

Online orders are generally considered 'future performance agreements' or 'distance sales contracts' under provincial consumer protection legislation, imposing certain obligations on retailers that sell items online. Various provinces have enacted legislation that requires suppliers to disclose certain information and to memorialise the sale in writing.

While an e-commerce retailer should ensure its standard terms and conditions are posted on its website, in certain provinces, distance sales contracts are not binding unless a copy of the contract is provided within 15 days of its formation. Provincial consumer protection legislation imposes strict requirements regarding what information must be included in the contracts. While this information varies in each province, it generally includes the name of the customer, the date of the contract and the terms and conditions, which must be either linked or referenced. The information must be presented in a clear, prominent and comprehensible manner, and the customer must be able to easily retain and print the information. The customer must also be provided with an express opportunity to correct errors in the contract or accept or decline the contract. The practical effect of the legislation is that an internet contract only comes into effect once the retailer sends the customer confirmation of the purchase (along with all the other disclosure required) via email. In many provinces, if a customer is not provided with this disclosure within the required period of time, or if the disclosure they are provided with is deficient, they will be permitted to cancel the contract. Disclosure requirements and timelines vary by province. In British Columbia and Ontario, a customer may also cancel an online order if they are not given the opportunity to accept, decline or correct the contract immediately before entering into it. In the latter case, acceptance of the contract would be acceptance of the terms and conditions upon confirmation of the order.

In drafting internet contracts, an important consideration for retailers is whether to include a clause selecting the governing law or forum for any dispute. With the exception of Quebec, an online contract may include a forum selection clause and governing law clause, selecting the law and forum of another jurisdiction. However, recent jurisprudence from the Supreme Court of Canada casts doubt on the enforceability of such clauses. In Quebec, it is expressly prohibited to include any stipulation that a contract be governed by law other than Quebec's consumer protection legislation. In general, whether the terms of a consumer contract can be found online or are in hard copy written form presented to a consumer, provisions mandating arbitration or waivers of class action proceedings are not enforceable. Further, Ontario's Bill 142, which received royal assent on 6 December 2023, aims to enhance the protections afforded to consumers in Ontario. Particularly, the Bill sets out a list of prohibited contract terms. Note that suppliers cannot include a term that prevents consumers from publishing a review about the supplier, its goods or services or a term that prevents a consumer from bringing an action to the Superior Court of Justice or a term that subjects a dispute to mandatory arbitration. If such clauses appear in the contract, they are deemed void and allow the consumer to cancel the contract within one year of entering into it.

Law stated - 20 February 2024

Tax

Are online sales taxed differently from sales in retail stores in your jurisdiction?

Online sales are not, in principle, treated differently from sales made in classic brick and mortar retail settings. In general terms, the consumer is liable to pay sales and value-added (hereinafter referred to as sales taxes) taxes based on the rates and taxes applicable in the province of the place of delivery of the goods, and the supplier is liable to collect such taxes and remit them to the relevant Canadian tax authorities.

However, there are situations where customers are not charged the applicable taxes and must self-assess such taxes and pay them directly to the authorities. Where a non-resident supplier is not required to register for sales tax, the applicable sales taxes are generally collected and remitted by Canada Post or the courier to the Canada Border Services Agency. Historically, tax on imported goods was collected and remitted in this manner more frequently because the supplier was not registered for Canadian sales tax purposes and did not carry on business in Canada. More recently, these situations have become less commonplace because, as part of the global trend to tax the digital economy, legislative amendments have expanded the registration requirements to apply to many foreign vendors and digital platform operators (subject to the exceptions described below) that do not carry on business in Canada but who sell and deliver goods in Canada to Canadian consumers.

As a result, non-resident suppliers must determine whether they are required to register for the relevant sales tax (such as the goods and services tax/harmonised sales tax (GST/HST) or the Quebec Sales Tax (QST)), either because they are carrying on business in Canada or because they are required to do so under the expanded registration rules that apply to non-resident businesses that sell remotely, typically through the internet, to consumers in Canada. Since 1 July 2021 these rules generally apply to non-resident suppliers and digital platform operators that sell or facilitate the sale of goods that are delivered in Canada to Canadian consumers. The broader registration rules specifically apply to non-resident suppliers that use fulfilment warehouses in Canada but do not apply to non-resident suppliers that deliver goods to their customers in Canada exclusively by mail or courier from a location outside Canada and retain proof thereof. In addition, non-resident suppliers that only sell through digital platform operators might not be required to register, as the platform operator would be responsible for collecting and accounting for the GST/HST. Corresponding rules apply for QST purposes.

Non-resident suppliers of digital products and services and operators of online marketplace and accommodation platforms that sell to consumers in Canada became subject to expanded registration requirements under a simplified GST/HST system that came into effect on 1 July 2021. The corresponding QST rules came into force in 2019.

It is also necessary for suppliers, both foreign and Canadian, to consider their registration obligations for British Columbia, Saskatchewan and Manitoba provincial sales taxes. Each of these provinces has expanded the scope of its registration requirements for non-resident suppliers and amended its legislation to address the collection of provincial sales taxes for suppliers that sell directly or through marketplace facilitators or other platform operators. As a result of these recent amendments, operators of online marketplace platforms are generally required to register for and collect provincial sales tax on sales made through their platforms in each of these three provinces. The registration rules have also been expanded for vendors located outside each of these three provinces that sell directly to customers in each of these provinces.

Accordingly, due to the broadening of the registration requirements under the Canadian federal and provincial tax regimes, there is a smaller gap in the application of sales

tax between online sales and sales in retail stores, as more non-resident suppliers and out-of-province Canadian sellers of clothing, jewellery and other tangible goods may be required to register for and collect sales taxes on their taxable supplies of tangible goods to customers throughout Canada.

Any online retailer should be vigilant regarding the application of sales taxes, monitor its sales tax obligations and ensure its systems are programmed accordingly and in a timely manner.

Law stated - 20 February 2024

INTELLECTUAL PROPERTY

Design protection
Which IP rights are applicable to fashion designs? What rules and procedures apply to obtaining protection?

In Canada, fashion designs can be protected through copyright, trademark rights and industrial design rights. If a useful article (essentially anything that is made by hand, tool or machine that has a utilitarian function) is reproduced more than 50 times, a substantial or total reproduction of the article will not infringe copyright (and the rights holder would need to rely on industrial design rights). This 'more-than-50' rule does not apply in certain cases, for instance if the work is used as a trademark; a graphic or photo representation applied to the face of the article (ie, a design on a t-shirt); a material that has a woven or knitted pattern or that is suitable for piece goods or surface coverings or for making wearing apparel; or a representation of real or fictitious beings, events, or places applied to an article as a feature of shape, configuration, pattern or ornament. If these exceptions apply, then copyright will apply to the artistic work and copyright and industrial design rights can be enforced at the same time. Rights holders often use industrial design registrations in combination with trademark protection under Canadian practice to protect fashion designs. The rights holder would first file an industrial design registration for a fashion design (an industrial design application must be filed within one year of the first publication of the design) and then file a trademark application for the same design. Depending on the uniqueness of the design, the trademark filing may have to wait until the design has achieved the requisite distinctiveness. In these cases, while the design is acquiring the distinctiveness required to obtain a trademark registration (achieved through 'use' of the design in the Canadian marketplace), the industrial design registration can be enforced against copycats.

Law stated - 20 February 2024

Design protection
What difficulties arise in obtaining IP protection for fashion goods?

Any features that are primarily functional in nature cannot be registered as a trademark. Also, to obtain a trademark registration for a fashion design, a rights holder may need to show that its design has become distinctive in the Canadian marketplace, which requires evidence showing extensive use of the design across Canada over a fairly long period of time.

Law stated - 20 February 2024

Brand protection

How are luxury and fashion brands legally protected in your jurisdiction?

Luxury and fashion brands are legally protected through common law trademark rights (acquired through use) and registered trademark rights (acquired through registration with the Canadian Intellectual Property Office (CIPO)). Owing to the amendment of the Trademarks Act in 2019, there is a significant backlog of national trademark applications at the CIPO and it can take upwards of two or more years to obtain a registration. Accordingly, fashion brand owners may want to consider seeking a Canadian trademark registration through the Madrid system instead as the CIPO is obligated to process Madrid applications on a set timeline.

.ca domain names are administered by (and can be obtained from) the Canadian Internet Registration Authority (CIRA). Brands looking to register a .ca domain must comply with CIRA's Canadian presence requirements, which allow only certain categories of Canadian individuals and entities to apply for, hold, and maintain the registration of a .ca domain name. A person who does not fall into any of the enumerated categories but who owns a Canadian trademark registration is also permitted to register and maintain a .ca domain name registration but such permission is limited to a .ca domain name consisting of or including the exact word component of that registered Canadian trademark. CIRA domain names are protected through CIRA's Dispute Resolution Policy (CDRP), which is operated in a similar fashion to the Uniform Domain Name Dispute Resolution Policy process.

Law stated - 20 February 2024

Licensing

What rules, restrictions and best practices apply to IP licensing in the fashion industry?

The Canadian Trademarks Act requires that a licensor maintain control over the character and quality of the goods and services that are provided by others in association with the licensed trademark. Such control over the character and quality of the goods and services is often enforced and evidenced through contractual obligations between the licensor and licensee (eg, through approval rights, binding usage guidelines, and rights to audit the licensee's manufacturing facilities). Alternatively, to create a presumption of control, the licensee can be obligated to provide public notice indicating its use of the trademark is under licence. Under Canadian law, use of a trademark by a subsidiary or related company does not automatically enure to the benefit of the parent company or trademark owner. Accordingly, it is common for inter-company use of a trademark to be subject to a formal licensing agreement.

Law stated - 20 February 2024

Enforcement

What options do rights holders have when enforcing their IP rights? Are there options for protecting IP rights through enforcement at the borders of your jurisdiction?

Rights holders can enforce their IP rights in provincial or in federal courts. For .ca domain names, rights holders may utilise the CDRP. Pursuant to the Combating Counterfeit Products Act, brand owners can now file a 'request for assistance' with the Canadian Border Services Agency (CBSA) in pursuing remedies under the Trademarks Act and the Copyright Act, whereby the CBSA will help identify shipments of counterfeit or infringing goods at the Canadian border and notify the rights holder.

Law stated - 20 February 2024

DATA PRIVACY AND SECURITY

Legislation
What data privacy and security laws are most relevant to fashion and luxury companies?

There are several provincial and federal laws in Canada that deal with privacy rights and the collection, use and disclosure of personal information. By default, the handling of personal information by fashion and luxury companies in the private sector is governed by the Personal Information Protection and Electronic Documents Act (PIPEDA), a federal statute enforced by the Office of the Privacy Commissioner of Canada (OPC). However, PIPEDA will not apply where a province has enacted privacy legislation that is deemed substantially similar to PIPEDA (currently British Columbia, Alberta and Quebec), in which case the province's legislation will apply instead of PIPEDA for actions that take place entirely within its borders (with some exceptions).

Further, Canada's Anti-Spam Legislation (CASL) places restrictions and obligations in relation to the sending of commercial electronic messages (defined broadly to include text, sound, voice or image messages) and also includes provisions related to the installation of computer programs and alteration of transmission data. CASL is generally much more strict than the United States' CAN-SPAM Act of 2003. Fashion and luxury companies will need to carefully structure their electronic messaging (eg, email and SMS) campaigns to comply with Canadian laws.

Quebec's privacy law received a major overhaul with the amendments coming into force in phases between 2021 and 2024, and there are a number of other legislative reform activities that are at different stages of development elsewhere in Canada (including a bill for a new federal privacy law, the Consumer Privacy Protection Act, which is currently making its way through the legislative process). As such, it is likely that Canadian privacy laws will see substantial changes over the coming months and years.

Law stated - 20 February 2024

Compliance challenges

What challenges do data privacy and security laws present to luxury and fashion companies and their business models?

Canada's privacy laws are relatively strict, at both the federal and provincial levels. Compliance with Canadian privacy legislation requires more than simply drafting or revising a website privacy policy. It requires conducting a privacy audit to assess data flows, retention periods, the purposes of collection, the means of collection and the technological, administrative and contractual protections that have been put in place to ensure compliance. An ongoing compliance programme is then required to ensure that compliance is maintained. Additional privacy measures may be required for organisations handling sensitive personal information, such as financial or transaction data.

As well, it is noteworthy that PIPEDA has mandatory reporting and record-keeping requirements that are triggered if an organisation experiences a breach of security safeguards involving personal information. All breaches will trigger the requirement to retain records of the breach for a period of 24 months. Breaches that create a real risk of significant harm will trigger obligations to report the breach to the OPC and to notify the affected individuals and any organisations that may be able to reduce the risk of, or mitigate, the harm (which could include law enforcement). Alberta's Personal Information Protection Act and Quebec's Private Sector Privacy Act also have mandatory breach notification requirements that organisations need to consider when preparing for and responding to data breaches.

In relation to electronic messaging marketing (eg, using email or SMS), organisations will need to pay particular attention to compliance with the strict requirements of CASL, including obtaining consent to send commercial electronic messages, the form and content of the messages themselves and the manner in which unsubscribe requests must be processed.

Law stated - 20 February 2024

Innovative technologies

What data privacy and security concerns must luxury and fashion retailers consider when deploying innovative technologies in association with the marketing of goods and services to consumers?

At a high level, to the extent that an individual's personal information is used in connection with any technology, whether new or old, an organisation must ensure that the use is permissible under applicable privacy laws (which may include providing notice to, or obtaining consent from, the individual regarding the use).

More specifically, AI and automated decision-making is an area that is expected to evolve in the coming months and years. Quebec's privacy law currently requires transparency regarding the use of automated decision-making in relation to an individual, and similar requirements are likely to be a feature of other legislative reforms elsewhere in Canada (including a bill for a new federal Artificial Intelligence and Data Act, which is currently making its way through the legislative process and would, if passed, impose various requirements on the use of AI systems).

Also, if a person's identity is verified or confirmed by means of biometric characteristics or measures, or if a database of biometric characteristics or measures is being created, then Quebec's Act to Establish a Legal Framework for Information Technology imposes various

requirements, including that the regulator is notified and also regarding obtaining the express consent of the individual.

Law stated - 20 February 2024

Content personalisation and targeted advertising

What legal and regulatory challenges must luxury and fashion companies address to support personalisation of online content and targeted advertising based on data-driven inferences regarding consumer behaviour?

When using personal information for targeting content or advertising, organisations will need to ensure compliance with applicable privacy laws including in relation to transparency and consent. Further, individuals generally have a right to withdraw consent in relation to use of their personal information at any time (subject to legal or contractual restrictions), so organisations will need to maintain processes that allow for this withdrawal.

Under Quebec's privacy law there are the following provisions:

- an overarching requirement that privacy settings are set to their highest level of confidentiality by default (with limited exceptions);
- individuals have a number of additional rights, including rights of erasure and portability; and
- any technology that includes functions allowing a person to be identified, located or profiled must be disabled by default (meaning, for example, that any cookies that perform such functions must be 'opt in' only).

Other legislative reforms that are in progress elsewhere in Canada are also likely to provide individuals with additional rights in relation to their personal information, including a right of portability, increased transparency and rights of erasure. As such, it will be important to keep an eye on these legislative reforms as they progress.

Law stated - 20 February 2024

ADVERTISING AND MARKETING

Law and regulation

What laws, regulations and industry codes are applicable to advertising and marketing communications by luxury and fashion companies?

The Competition Act is the key statute that governs advertising and marketing in Canada. Of most relevance for luxury and fashion companies is the Competition Act's core prohibition against making representations to the public, for the purpose of promoting any business interest, that are 'false or misleading in a material respect'. Complementing this general prohibition are a number of more specific restrictions with respect to particular types of representations that promote a business interest, including with respect to a product's performance or efficiency (among other things).

The Competition Act also includes specific 'ordinary selling price' provisions that prohibit promoting rebates or discounts on the basis of unsubstantiated regular prices. Under those provisions, an ordinary selling price indicated in support of a rebate must meet one of two tests: either a substantial volume of the product was sold at the advertised ordinary price or a higher price, within a reasonable period of time (the volume test) or the product was offered for sale, in good faith, for a substantial period of time at that ordinary price or a higher price (the time test).

With increasing consumer appetite for products that align with environmental and sustainability values, Canada's Competition Bureau has adopted an increasingly proactive enforcement stance with respect to these types of marketing and advertising claims. We anticipate that the Competition Bureau will continue to pursue active enforcement efforts relating to the proliferation of environmental, sustainability and related claims, and accordingly luxury brands should ensure that such claims are accurate and can be supported by adequate substantiation. In fact, the Competition Bureau recently invited consumers to report unsupported environmental, or greenwashing, claims. Aside from the legal exposure and potentially high administrative monetary penalties that can arise as a result of Competition Bureau determinations (eg, a manufacturer recently settled an investigation by agreeing to pay a C$3 million monetary penalty and C$800,000 donation), these high-profile decisions can also carry significant reputational implications.

The maximum administrative monetary penalties that can be imposed under the Competition Act for misleading advertising have been increased significantly, from the prior maximum C$10 million (for a first order) to now up to 3 per cent of the company's annual worldwide gross revenues.

The Competition Act is currently undergoing a modernisation process. Noteworthy amendments include the recent introduction of a new specific drip pricing provision; under this new regime, it is prohibited to promote a price that is not attainable due to fixed charges or fees, other than taxes, that consumers must pay. Proposed amendments that are expected to be adopted in 2024 would, among others, introduce a specific greenwashing provision, and introduce a new right of access before the Competition Tribunal for private parties (with leave) for all deceptive practices.

It is also noteworthy that certain market sectors are subject to more stringent advertising and marketing restrictions pursuant to specialised regulatory regimes. These sectors include alcohol, tobacco, food, natural health and wellness products, and automobiles.

In addition to the Competition Act, marketing and advertising claims in Canada are monitored by Advertising Standards Canada, which is an industry self-regulating body that administers the Canadian Code of Advertising Standards (Code). Although it does not have the force of law, the Code applies to an array of advertising forms, establishes various parameters for specific advertising modes and content and includes a consumer complaint procedure. Where Advertising Standards Canada determines that there has been a breach of the Code, it may ask the advertiser to correct the advertisement in question, and may determine that publication of its decision (and the name of the impugned advertiser) is warranted.

Law stated - 20 February 2024

Online marketing and social media

What particular rules and regulations govern online marketing activities and how are such rules enforced?

Canada's Competition Bureau (responsible for enforcing the Competition Act) and Advertising Standards Canada have each published guidance in relation to the use of social media influencer marketing. In short, this guidance underscores the Competition Bureau's position that material connections between advertisers and influencers must be disclosed in a conspicuous manner, using clear and widely accepted hashtags or other disclosure mechanisms. Furthermore, disclosure of material connections should appear in close proximity to the endorsement. Material connections may consist of various types of compensation, including free products, samples, financial payments, discounts, free trips or tickets to events, or media exposure. Where influencer endorsements are replicated across various social media platforms, advertisers have the obligation of ensuring that the disclosure transfers properly across platforms (and is not tied exclusively to the disclosure mechanisms embedded in any single social media platform). The Competition Bureau's policy position in relation to social media influencer marketing and the attendant disclosure obligations, as well as in relation to online marketing activities more generally, derives directly from the general prohibition against false or misleading representations and deceptive marketing practices.

Law stated - 20 February 2024

PRODUCT REGULATION AND CONSUMER PROTECTION

Product safety rules and standards

What product safety rules and standards apply to luxury and fashion goods?

The Canada Consumer Product Safety Act (CCPSA) and regulations enacted under the CCPSA are Canada's core consumer product safety instruments relevant to luxury and fashion goods. The CCPSA applies to 'consumer products' and prohibits the manufacture, importation or sale of consumer products that pose a danger to human health or safety. 'Consumer products' are broadly defined as including all products that may reasonably be expected to be obtained by an individual to be used for non-commercial purposes. There are limited exemptions to this definition, but fashion and luxury brands should generally anticipate that their products may be subject to the CCPSA.

With respect to luxury food, natural health, supplements and cosmetic products, the Food and Drugs Act (FDA) and Safe Food for Canadians Act (SFCA) establish highly specific standards and requirements with which manufacturers, importers, distributors and retailers are required to comply. In some instances, these include registration obligations, product approval processes and licensing regimes.

Finally, apparel products are subject to specific advertising and labelling requirements pursuant to the Textile Labelling Act and regulations. These include mandatory disclosures with respect to fibre content, and prescriptive terminology for describing textile materials and their composition. While largely separate from product safety regulations, the requirements of the Textile Labelling Act constitute a central set of compliance obligations applicable to textile and apparel products imported into or sold in Canada.

Law stated - 20 February 2024

Product liability

What regime governs product liability for luxury and fashion goods? Has there been any notable recent product liability litigation or enforcement action in the sector?

The manufacture, importation, distribution and sale of consumer goods are the subject of heavy regulation in Canada. Various federal statutes impose stringent obligations on retailers and grant regulators broad powers to enforce compliance, including through compliance audits, and to impose fines and penalties. The regulatory regime can directly affect luxury and fashion goods in Canada because goods that fail to comply with the statutory requirements may not lawfully be sold in Canada and may be subject to recall.

For example, the CCPSA prohibits the manufacture, importation or sale of consumer products that pose a danger to human health or safety, and grants the federal government powers to regulate, inspect, test and recall consumer products and creates a wide array of related offences and penalties. Manufacturers, importers, distributors and retailers need to comply with stringent requirements to maintain certain records concerning their products and report 'incidents' to Health Canada within short time frames. Health Canada has broad audit and inspection powers to assess compliance with reporting obligations.

There are various labelling, advertising and marketing requirements for consumer products prescribed under the Competition Act, provincial consumer protection legislation, the Textile Labelling Act, the Consumer Packaging and Labelling Act, the Precious Metals Marking Act, the CCPSA, the FDA, the SFCA and regulations related to the foregoing. Certain regulations may impose additional requirements on certain specific categories of products, such as cosmetics and natural health products.

Sellers of luxury and fashion goods could also be potential defendants in individual and class action product liability litigation relating to allegedly defective products. For example, product liability litigation could include claims to be compensated for the cost of the defective product, as well as damages for any injury or damage arising therefrom. Claims may be based on breach of a contract, negligence or both.

Law stated - 20 February 2024

M&A AND COMPETITION ISSUES

M&A and joint ventures

Are there any special considerations for M&A or joint venture transactions that companies should bear in mind when preparing, negotiating or entering into a deal in the luxury fashion industry?

In addition to shareholder approval requirements for some acquisitions of private businesses (eg, a sale of substantially all of the assets of a corporation generally requires the approval of a special majority (usually 66.6 per cent) of its shareholders) and takeover bids of publicly held businesses (which include stipulations regarding the consideration being offered, the

period of acceptance and disclosure requirements), luxury businesses should be aware of Canada's Competition Act and Investment Canada Act requirements. In particular, some luxury businesses may be subject to the more stringent thresholds under the Investment Canada Act for 'cultural businesses'.

Acquisitions of Canadian businesses are subject to the Competition Act and acquisitions by foreign purchasers are subject to the Investment Canada Act. Certain transactions require pre-closing notice and approval under the Competition Act and the Investment Canada Act. In addition, some businesses are considered 'cultural businesses' under the Investment Canada Act, such as the publication, distribution or sale of books, magazines, periodicals or newspapers in print or machine readable form; the production, distribution, sale or exhibition of film or video recordings; the production, distribution, sale or exhibition of audio or video music recordings; the publication, distribution or sale of music in print or machine readable form; any business activities involving radio communication intended for direct reception by the general public; or any radio, television and cable television broadcasting undertakings and any satellite programming and broadcast network services. These businesses have different review and approval thresholds under the Investment Canada Act.

Law stated - 20 February 2024

Competition

What competition law provisions are particularly relevant for the luxury and fashion industry?

The Competition Act's non-criminal or civil provisions allow the Competition Tribunal, on application by the Commissioner of Competition (who heads the Competition Bureau), to review certain business practices, and, in certain circumstances, to issue orders prohibiting or correcting conduct to eliminate or reduce its anticompetitive impact. Reviewable practices include agreements among competitors outside the scope of the criminal cartel provisions, abuse of dominant position, and a number of vertical practices between suppliers and customers, such as price maintenance, tied selling, refusal to supply and exclusivity arrangements. Private parties are also able to apply to the Competition Tribunal to challenge certain types of reviewable conduct, such as abuse of dominance, price maintenance, exclusive dealing, tied selling and refusal to deal. It should be noted that there are no price discrimination provisions (similar to the United States Robinson-Patman Act) in the Competition Act.

Since June 2022, private parties can now directly apply to the Competition Tribunal for abuse of dominance. In addition, amendments adopted at the end of 2023 introduced a revised lower threshold test for abuse. The maximum administrative monetary penalties that can be imposed for abuse of dominance were significantly increased, and are now, respectively, C$25 million (for a first order, up from the previous C$10 million maximum) or up to 3 per cent of the company's annual worldwide gross revenues.

The luxury and fashion industry should also note that price maintenance is one of the main civil or reviewable practices under the Competition Act with respect to relations between suppliers and retailers. Price maintenance occurs when a person influences upward selling or advertised prices or discourages the reduction of another person's selling or advertised prices by means of a threat, promise or agreement, or when a person refuses to supply

another person or otherwise discriminates against that person because of its low-pricing policy, in each case with the result that competition in a market is likely to be adversely affected. For example, price maintenance may occur when a supplier prevents a retailer from selling a product below a minimum price (ie, minimum advertised pricing (MAP) policies). The Competition Bureau recognises that price maintenance practices are common in many markets and can be pro-competitive in many circumstances. However, in some circumstances, price maintenance may adversely affect competition. For example, price maintenance may raise concerns if: (1) price maintenance facilitates less vigorous price competition among suppliers; (2) retailers compel a supplier to adopt price maintenance to facilitate less vigorous price competition among retailers or to exclude discount retailers; or (3) an incumbent supplier uses price maintenance to guarantee margins for retailers to make them unwilling to carry the products of rival or new entrant competitors to the supplier.

Exclusive dealing, tied selling and market restrictions may raise concerns if any such practice is engaged in by a major supplier and the practice has substantially lessened competition (or is likely to). It is therefore prudent for suppliers to consider the competition law risks before engaging in such conduct given the possibility of a Competition Bureau inquiry or application to the Competition Tribunal by the Competition Bureau or private parties.

A 'refusal to deal' situation most frequently occurs where a supplier ceases to supply a retailer or distributor, and the business of such retailer or distributor is seriously affected because none of the potential suppliers are willing to deal with the company. If all the legislative requirements are met, the Competition Tribunal may, on application by the Commissioner of Competition or a private party, order the supplier to accept the customer who was refused supply.

Important proposed amendments currently expected to be adopted in 2024 would increase the risk of private actions by introducing a lower threshold for obtaining leave and allowing the Competition Tribunal to order payment to private applicants in the amount of the benefit derived from the conduct at issue (such compensation would be available for all practices discussed above).

Law stated - 20 February 2024

EMPLOYMENT AND LABOUR

Managing employment relationships

What employment law provisions should fashion companies be particularly aware of when managing relationships with employees? What are the usual contractual arrangements for these relationships?

The types of employment-related legislation with which fashion companies should be familiar, as employers operating in Canada, include legislation dealing with employment standards, labour relations, human rights, occupational health and safety, accessibility standards, federal and provincial privacy rules, and employment benefits, including pension, employment insurance and workers' compensation.

The employment relationship in Canada is governed by a broad array of legislation and common law principles (and, in Quebec, civil law principles). Employers need to be aware of the various legal considerations to avoid attracting liability in the workplace.

All jurisdictions in Canada have enacted legislation that establishes certain minimum employment standards. Generally, employment standards acts (ESAs) are broad and apply to employment contracts, whether oral or written. The standards defined in the ESAs are minimum standards only, and employers are prohibited from contracting out of or otherwise circumventing the established minimum standards. These laws spell out which classes of employees are covered by each minimum standard and which classes of employees are excluded.

Unlike employers in the United States, Canadian employers may not terminate employees 'at will'. Generally, employers must provide required notice of termination, unless they have just and sufficient cause to terminate an employee without notice. The length of the required notice period varies among jurisdictions, but generally increases with an employee's length of service.

In addition to minimum statutory termination and severance pay entitlements, a terminated non-union employee may be entitled by common law (or civil law in Quebec) to additional notice of termination or pay in lieu of notice. This right may be enforced before the courts. The amount of notice will depend on the employee's individual circumstances, including length of service, age, the type of position held and the prospect for future employment. In most jurisdictions, an employer can limit its liability to the statutory minimum in an employment contract. Employers who wish to avoid or limit liability for common law pay in lieu of notice should therefore have clear terms in written contracts.

Law stated - 20 February 2024

Trade unions

Are there any special legal or regulatory considerations for fashion companies when dealing with trade unions or works councils?

Fashion companies should note that the federal government and each province have enacted legislation governing the formation and selection of unions and their collective bargaining procedures. In general, where a majority of workers in an appropriate bargaining unit are in favour of a union, that union will be certified as the representative of that unit of employees. An employer must negotiate in good faith with a certified union to reach a collective agreement. Failure to do so may result in penalties being imposed. Most workers are entitled to strike if collective bargaining negotiations between the union and the employer do not result in an agreement; however, workers may not strike during the term of a collective agreement.

Law stated - 20 February 2024

Immigration

Are there any special immigration law considerations for fashion companies seeking to move staff across borders or hire and retain talent?

As a general principle, any foreign national who is neither a Canadian citizen nor a permanent resident of Canada, cannot work in Canada unless authorised to do so. For Canadian immigration purposes, work is defined as an activity giving rise to the payment of a salary

or commission, or that competes directly with activities of Canadian citizens or permanent residents in the Canadian labour market.

If the foreign national is considered to be seeking to work in Canada, the immigration officer will then determine whether: (1) a work permit is required; or (2) the work in question falls into one of the categories of work for which a work permit is not required (work permit exempt).

Canadian immigration authorities have outlined specific situations in which work completed in Canada will be work permit exempt, including, subject to certain conditions, where providing after sales or lease services, acting under a warranty or service agreement, acting as installation supervisors, acting as trainers and trainees, providing intra-company training and installation activities, for board of directors' meetings, short-term work visits for highly skilled workers, researchers and foreign students studying in Canada.

As a general rule, work that is not work permit exempt requires a work permit under one of two programmes in Canada, namely the Temporary Foreign Worker Program and the International Mobility Program.

The federal Immigration and Refugee Protection Act was recently amended. It imposes a rigorous compliance regime, which is designed to ensure that Canadian employers consistently respect the wage and working conditions of foreign nationals, and imposes serious penalties (including a period of ineligibility for hiring foreign nationals and penal charges) for non-compliance.

Law stated - 20 February 2024

UPDATE AND TRENDS

Trends and developments

What are the current trends and future prospects for the luxury fashion industry in your jurisdiction? Have there been any notable recent market, legal or regulatory developments in the sector? What changes in law, regulation, or enforcement should luxury and fashion companies be preparing for?

Canada continues to attract luxury goods manufacturers, retailers and distributors. Brands are increasingly selling direct to consumer and seeing significant proportions of their businesses shift to e-commerce and digital commerce.

In addition, the luxury and fashion market is being impacted by trade agreement developments; supply chain issues; a focus on environmental, social and governance matters; the entry into the market of disruptors and new ways of doing business, such as rental services and subscription services; intensifying efforts across all channels to deal with counterfeits and maintain brand integrity; and increased scrutiny of influencer advertising and social media.

Regarding privacy, there are a number of material legislative reform efforts underway in Canada. In Quebec, a major privacy reform bill came into force in phases between 2021 and 2024. This law makes sweeping amendments to Quebec's Privacy Act, including introducing mandatory breach reporting, new transparency and consent standards (including regarding the use of AI and automated decision-making processes), additional requirements for

transfers of data outside Quebec, and new rights granted to individuals. Further, the reform introduces significant administrative sanctions of up to C$10 million or 2 per cent of worldwide turnover, and penal sanctions of up to C$25 million and up to 4 per cent of worldwide turnover. There are also numerous other legislative reform efforts underway elsewhere in Canada, including at the federal level and in Alberta, British Columbia and Ontario. As such, privacy laws are widely expected to rapidly evolve across Canada over the coming months and years.

Law stated - 20 February 2024