



Robert Storey, Adam Bobker and Matthew Graff coauthored "Canada: Designs Laws and Regulations 2021"

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1. Relevant Authorities and Legislation

1.1 What is the relevant Design authority in your jurisdiction?

The primary design authority in Canada is the Industrial Design Office, which is a part of the Trademarks and Industrial Design Branch of the Canadian Intellectual Property Office ("CIPO").

1.2 What is the relevant Design legislation in your jurisdiction?

Registration of industrial designs is governed by the *Industrial Design Act* and the *Industrial Design Regulations* (the "Act" and "Regulations", respectively). However, in some cases, the *Copyright Act* and/or the *Trademarks Act* can also provide protection for industrial designs.

The *Copyright Act* expressly excludes protection for industrial designs applied to an article having a utilitarian function that has been reproduced in more than 50 items. However, there are exceptions to this exclusion, including graphic or photographic representations applied to the face of an article, and designs that are representations of a real or fictitious being or event or place.

The *Trademarks Act* recognises that designs such as figurative elements and three-dimensional shapes of products and modes of packaging can identify the source of goods and services and can therefore also be registered as trademarks. However, the Trademarks Office will require an applicant to provide evidence that such designs have become distinctive as of the filing date of the application for registration.

Design owners should consider all forms of protection, and consider the scope and term of protection provided, as well as the costs.

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