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SPECIAL EDITION: LITIGATION 2020

TOP 10 CASES

BIG-HITTING DECISIONS
AFFECTING CANADIAN
BUSINESSES IN 2019-20

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LAW AWARDS**

All the winners revealed



VIGILANCE URGED

Opportunities for fraud, corruption and money laundering rise in pandemic

CLASS ACTIONS

Cannabis, Big Tech and long-term care facilities sectors are ripe for litigation

ARBITRATION 'EXPLOSION'

Virtual proceedings and customized timeframes are among the advantages of arbitration



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TOP 10 CASES

CANADIAN COURTS DELIVERED SEVERAL NOTABLE DECISIONS AFFECTING CANADIAN BUSINESSES IN 2019 AND 2020, INCLUDING THE LONG-AWAITED RELEASE OF THE SUPREME COURT OF CANADA'S ADMINISTRATIVE LAW TRILOGY

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First the bad news, then the good

When the litigation department is needed, it is usually not good news. Litigators are hired to resolve disputes, and disputes are rarely welcome.

In many ways, the pandemic has not changed that, and it has brought with it a whole new list of problems that will require litigators to resolve.

In difficult financial times, “the incidence of fraud seems to increase because people will sometimes turn to desperate measures to address the financial stress,” says Munaf Mohamed, of Bennett Jones LLP (p. 42).

Companies also need to monitor the risk of corruption where government dollars are flying out the door to deal with COVID-19. François Fontaine of Norton Rose Fulbright LLP says that, because governments are in a hurry to execute contracts and keep the economy afloat, the spending has far fewer controls.

“It’s opening the door for people to get contracts through the back door. It’s certainly an occasion for potential corruption,” says Fontaine.

Despite these warnings, though, litigators are seeing an upside to the pandemic with courts and arbitrators going virtual.

A big takeaway from the pandemic for litigators and arbitrators is that, with the proper gear, “virtual hearings can work,” says Marc-André Boutin of Davies Ward Phillips & Vineberg LLP (p. 8).

The old notion that a hearing or examination needs to be in person to be fully effective is gone, Boutin says. At his own firm, high-tech equipment was set up when it was becoming clear that COVID-19 was going to last awhile.

While court delays have made arbitration even more appealing and arbitrators are ahead of the courts in terms of technology and innovation, the courts are catching up.

“The courts have implemented creative measures, moving to electronic filing, virtual hearings,” says Iris Antonios at Blake Cassels & Graydon LLP.

“Ten years from now, looking back, you’ll say the pandemic, like most major events, resulted in a complete overhaul of how people have their legal matters adjudicated,” says Junior Sirivar at McCarthy Tétrault LLP.

So, the next time you call up the litigation department, you may be delivering bad news. But look forward to hearing a good news story as well from the litigators on the call.

Tim Wilbur, Editor-in-Chief

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fortuna favet fortibus

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PANDEMIC ACCELERATES 'EXPLOSION IN ARBITRATION'

ADVANTAGES OF ARBITRATION ARE VIRTUAL PROCEEDINGS, CUSTOMIZED TIMEFRAMES, A PAPERLESS PROCESS USING ELECTRONIC DOCUMENT FILING, REMEDIES THAT CAN BE SPECIFIED BY THE PARTIES AND CONFIDENTIALITY AND FLEXIBILITY IN THE PROCEEDING

ARE we tired of the novel coronavirus's effects on business and the practice of law yet? Although the answer is likely yes, the pandemic has had its upsides, including a move to more efficient technology in the courts and to more arbitration.

"I have seen in my own practice somewhat of an explosion in arbitration," says Junior Sirivar, a partner and co-chairman of McCarthy Tétrault LLP's international arbitration group, based in Toronto.

Delays in the courts have made commercial parties more amenable to agreeing to arbitration, which can proceed on an expedited schedule.

"If you want a hearing in a commercial context quickly, the courts will be a tough place to be," Sirivar adds. Assuming that the coronavirus pandemic environment lasts another year, at least, "if you just consider the backlog that the courts have to deal with — leaving aside the family cases, the criminal cases, the normal civil list — if you're lucky, you'll be able to get trial dates in three to four years."

The advantages of arbitration are virtual proceedings, which arbitrators have been using for more than a decade, customized timeframes for the parties, a paperless process in which all documents can be filed electronically, remedies that can be specified by the parties and confidentiality and flexibility in the proceeding. Parties also have the option of moving an entire dispute, or just part of it, from court to arbitration.

"We would encourage business leaders to consider arbitration, either for ongoing disputes or for potential future disputes, because it is so much more flexible [and] it can be tailored a lot more," says Iris Antonios, a partner at Blake Cassels & Graydon LLP in Toronto with a commercial litigation and arbitration practice.

Arbitrations that were already in process at the beginning of the pandemic faced "maybe a little less hiccups at the outset" because arbitration tends to have fewer



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USE OF COMMERCIAL ARBITRATION IN CANADA



Arbitration clauses are standard in many commercial contracts, including:

- Construction and engineering contracts;
- Shareholders' agreements;
- Business acquisitions;
- Franchise agreements;
- Technology and intellectual property licensing agreements.

While courts around the world closed in early 2020, arbitral institutions remained open for business. The arbitration bar in Canada has long been working electronically.

Source: Thomson Reuters Practical Law

“procedural layers,” for example, in communicating with tribunals or filing documents and already had the capabilities for moving to virtual platforms.

Confidentiality in proceedings is one significant advantage in arbitration, as courtroom proceedings are in the public sphere. “Where parties want to maintain confi-

dentiality, arbitration is the better route,” she says.

The arbitration process can be virtual from beginning to end, with an arbitrator or arbitration panel that can be adapted to the time demands of the parties, says Marc-André Boutin, a partner and commercial litigator in Davies Ward Phillips & Vineberg



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 Steven J. Atkinson is a Managing Partner at HARRISON PENSA™ and Practice Group Leader for the Litigation and Dispute Resolution Group. His litigation practice spans over 25 years. Steve's insurance clients do business across Canada insuring a range of exposures including home, auto, commercial general liability, course of construction/builders' risk, marine, officers'/directors' "E&O" and professional negligence. In addition to his work for the defence, a significant portion of his practice involves pursuing subrogated claims in a variety of situations. He is often called upon to provide coverage opinions. Steve trained as a mediator with the Harvard Negotiation Institute and is often called upon to assist with disputes regarding a variety of issues including tort, accident benefits, disability, life insurance, professional liability and a broad range of contractual/commercial disputes. Steve has been part of Harrison Pensa's Partnership Board since 2008 and a Managing Partner since 2014. He is a member of the Middlesex Law Association, Canadian Bar Association, Canadian Defence Lawyers Association, National Association of Subrogation Professionals, the Alternative Dispute Resolution Institute of Ontario and the Canadian Academy of Distinguished Neutrals.



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“TEN YEARS FROM NOW . . . YOU’LL SAY THE PANDEMIC, LIKE MOST MAJOR EVENTS, RESULTED IN A COMPLETE OVERHAUL OF HOW PEOPLE HAVE THEIR LEGAL MATTERS ADJUDICATED.”

Junior Sirivar
MCCARTHY TÉTRAULT LLP

LLP in Montreal. And it is easier to proceed paperless in an arbitration, “from A to Z,” although the courts are now adapting to the current pandemic situation, he adds.

“A big takeaway from the pandemic for litigators is that, provided that all attendees,” including lawyers and arbitrators, have the proper gear, “virtual hearings can work.”

The old notion that a hearing or examination needs to be in person to be fully effective is gone, Boutin says. At his own firm, boardrooms were set up with podiums, professional-grade cameras and lighting during the early stages of the pandemic, when it was becoming clear that COVID-19 restrictions were going to last a few months, “so we can do [arbitration hearings] from the office.”

Sirivar finds that cross-examining witnesses via meeting platforms such as Zoom

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“A big takeaway from the pandemic for litigators is that, provided that all attendees, including lawyers and arbitrators, have the proper gear, virtual hearings can work.”

Marc-André Boutin
DAVIES WARD PHILLIPS &
VINEBERG LLP

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“[While arbitration procedures were already] more inherently flexible . . . I think the courts are to be commended for also adapting to the situation.”

Iris Antonios
BLAKE CASSELS &
GRAYDON LLP

can be even more effective than in-person cross-examinations.

“You can see the beads of sweat on their forehead!” he notes. Changes in facial reactions are more visible on screens, since lawyers can’t get as close to witnesses in person.

Virtual meetings also make it easier to stay on the same page — literally — as a judge. “If I have a document to hand in in court, I’m never really sure the judge is on the same page I am. If I’m doing submissions on Zoom, I can force them to look at pages I want them to because we’re sharing a screen,” Sirivar says.

Arbitral institutions have also begun to develop virtual hearing protocols, says Antonios. And over the course of the pandemic, many have developed templates for proceedings and have virtual hearing platforms. “It’s now something that’s part of the shelf of resources among arbitral institutions.”

Not every dispute can go to arbitration, and arbitrators need to be paid. But for bigger players who may appear before the commercial list, “even though you pay for an adjudicator, the overall cost is less because there are less procedural fights,” says Sirivar. Going through discovery, where thousands of documents may be produced and reviewed — and not all are needed — can be an expensive process. Arbitration removes that, he says. “There’s usually an overall cost that’s less, or the same, but spent over a shorter period of time. Those cases will lead the docket.”

For litigators appearing in court, “the courts have implemented creative measures, moving to electronic filing, virtual hearings” and the like, says Antonios. While arbitration procedures were already “more inherently flexible . . . I think the courts are to be commended for also adapting to the situation.”

Although some courts have allowed for e-filing and made modifications in court-

houses to allow for physical distancing, “things are not back to normal,” says Boutin, and won’t likely be for some time. The pandemic has created backlogs and delays, virtual hearings have not been adopted across the board and courts in most provinces had suspended litigation with multiple parties.

“Arbitration can help the courts with their backlog, but only to a point,” he says, as more and more cases are brought to court each year. “You would need a lot more arbitration to make a dent in that.”

This backlog won’t likely be cleared if parties don’t agree to having some disputes dealt with by way of private arbitration, says Sirivar. “Commercial cases . . . will be the most ripe for private arbitration. That’ll be what I think has an impact on reducing the backlog.”

Does this mean a continuing increase in arbitration post-pandemic?

“I think so,” says Boutin. “I think it will take some time to manage the backlog; courts are adapting and will come with upgraded . . . paperless processes. But it will take time; the pandemic seems to be far from over.”

As litigators discover that virtual hearings can work well, it may push more parties toward arbitration, including internationally, he adds. The courts will remain the best forum for resolving disputes in certain circumstances, including very large litigation requiring an appeals process at the end of the first instance, “which you don’t have in an arbitration process. . . . But for other kinds of commercial litigation, I think it shines a bright light on some of the attractive features of arbitration,” including being able to tailor the arbitration schedule to the urgency of a case by engaging arbitrators available to do it in a suitable timeframe.

“A lot of litigators are realizing that not only can we work from home but we can do trials and discoveries,” says Sirivar, who



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predicts that the majority of discoveries in future will be conducted via Zoom and the like, as will case conferences.

“There’ll be no more chambers attendances where you go and wait two hours to be heard for five minutes,” he says. “The courts will do that online . . . because it’s more efficient; they can have one judge deal with way more. And the cost to litigants is less because their lawyer dockets for five minutes, as opposed to an hour because they walked up the court, waited in a waiting room, spoke to the matter for 15 minutes and then walked back.”

Now, Sirivar says, the docket for that file will be seven minutes, from the time the lawyer is let into a Zoom room for a case conference that starts at 9:10 and ends by 9:17. “I think that’ll stay in terms of arbitration.”

Arbitration facilities such as Arbitration Place are able to conduct hearings in virtual rooms, he adds, with an arbitrator controlling and moving back and forth between rooms as if they were live rooms.

“I think mediations will go online or be

virtual,” he adds. “I think trials in the civil list will probably still be live, [but] I think that there will be very little that’s actually live and in person, which means that you can do a lot more volume, and the borders will continue to disappear.”

Ontario is becoming recognized as an international centre of arbitration, in part as Europeans find Americans too discovery focused and so would prefer their proceedings to be “in Toronto or Vancouver rather than New York or Chicago,” he says. “Canadian jurisdictions . . . will attract a lot more arbitration than historically was the case,” and, people will be less inclined to travel internationally during the pandemic.

This “will bring dispute resolution into the 21st century in a way that should have happened years ago,” Sirivar says.

“Ten years from now, looking back, you’ll say the pandemic, like most major events, resulted in a complete overhaul of how people have their legal matters adjudicated, at least in a litigation context. And I think that’s probably a good thing.” ■



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Ren is a partner at Paliare Roland. His trial and appellate practice spans complex commercial disputes that often involve new technologies, intellectual property, defamation, and competition law. He regularly acts in cross-border litigation involving public and private companies, and his broad advocacy experience includes dozens of trials, appeals, international and domestic arbitrations, coroner's inquests, and administrative tribunal hearings. Ren both prosecutes and defends class actions. In addition to public-facing litigation, Ren frequently provides practical, discreet advice to organizations and individuals. Ren spent several years representing a non-governmental organization at a specialized agency of the United Nations based in Geneva, and served as a Google Policy Fellow while completing graduate work on competition law, technology standards, and intellectual property. In 2018, Ren was recognized with a *Precedent Setter Award* by *Precedent Magazine*. He clerked for the Judges of the Ontario Court of Appeal.



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HERE COME THE CLONES... THE BREXIT EFFECT ON TRADEMARKS



BREXIT IS NEAR and the clones are coming! As of Jan. 1, 2021, trademarks registered at the European Union Intellectual Property Office (EUIPO), including those granted designations in the EU through the Madrid Protocol system, will no longer provide protection in the U.K. The Brexit withdrawal agreement provides for a transition period that ends on Dec. 31, 2020. Until that time, EU trademark laws and rights continue to have effect in the U.K.

Under the current regime, trademark registrations may be obtained in Europe by filing a single European Union Trademark (EUTM) application or a Madrid application designating the EU. An EUTM registration provides trademark protection in all 28 member states of the European Union, including the U.K.

Starting on Jan. 1, 2021, trademarks registered at the EUIPO, including those granted designations in the EU through the Madrid system, will automatically generate a corresponding or “cloned” U.K. national trade-

mark registration, allowing protection to continue in the U.K. after Brexit. The U.K. cloned registration will keep the original EUTM filing and priority dates. The cloned U.K. registration will be a fully independent trademark registration although a separate U.K. registration certificate will not be issued (but details of the U.K. registration may be obtained at <gov.uk>). For the purposes of renewal, the cloned U.K. registration will retain the existing renewal date of the corresponding EUTM. A separate renewal fee will apply to the U.K. registration and the original EU registration, which must be paid to the respective IP offices.

Subject to some restrictions, there is a mechanism by which trademark owners can opt out of this cloning process. Such requests may only be filed as of Jan. 1, 2021, and, if accepted, the comparable U.K. registration will be treated as if it had never been created or registered under U.K. law.

For pending EU trademarks, including designations of the EU under the Madrid Protocol system, that are not yet registered by Dec. 31, 2020, a “clone” U.K. application will only be created if a request, along with the appropriate fee, is filed with the U.K. Intellectual Property Office (“UKIPO”) before Sept. 30, 2021. The request and fees are similar to the filing of a new U.K. application, but the application will retain the filing date of the pending EUTM, as well as any priority claims. The request must be for the same trademark and for the same goods/services that are identical to, or contained within, the corresponding EU application.

Similar changes are going to affect industrial design protection in the EU.

It would be prudent for companies conducting and considering business in the U.K. to review their EU and U.K. trademark rights to ensure that they are adequately protected and should consider re-filing or taking additional measures in the U.K. as necessary, particularly if a registration may be vulnerable to cancellation for non-use or does not cover the current or full scope of goods/services associated with the respective trademark. ■

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TOP 10 CASES OF 2019-2020

>CANADIAN COURTS
DELIVERED SEVERAL
HARD-HITTING DECISIONS
AFFECTING CANADIAN
BUSINESSES IN 2019
AND 2020, INCLUDING
THE LONG-AWAITED
RELEASE OF THE
SUPREME COURT OF
CANADA'S ADMINISTRATIVE
LAW TRILOGY, WRITES
ELIZABETH RAYMER

THE BAR has been set very high for this year's "Top 10 Cases," as our span encompasses two years rather than one. And our first case — actually, the first three — were judged by the Supreme Court of Canada as its most important decision(s) of 2019.

That would be the administrative law "trilogy" of *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65; *Bell Canada v. Canada (Attorney General)*, 2019 SCC 66; and *National Football League, et al. v. Canada (Attorney General)*.



In the insolvency sphere, the Supreme Court has ruled on three significant cases in a close span: *Orphan Well Association v. Grant Thornton Ltd.* in 2019, concerning environmental liabilities for bankrupt companies (the last such decision had been in *Newfoundland and Labrador v. Abitibi-Bowater Inc.* in 2012); *9354-9186 Québec inc. v. Callidus Capital Corp.* in 2020; and October's *Chandos Construction Ltd. v. Deloitte Restructuring Inc.*, which concerned the anti-deprivation rule.

"We're lucky in the insolvency world" to have had the Supreme Court of Canada rule on three significant cases in a close span of time," says Joseph Reynaud, an in-

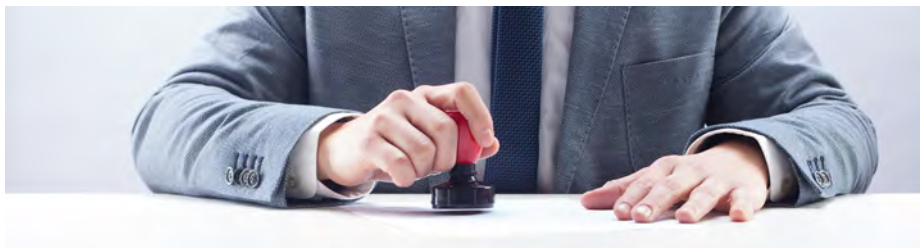
solventy practitioner in Stikeman Elliott LLP, in Montreal.

"The level of deference afforded to first-instance judges is very high. The decisions are often very fact-based, and the test to get to the court of appeal [is] on leave only," he says, "as well as that most of these are urgent business cases that get litigated very quickly." Accordingly, "cases in CCAA proceedings rarely make it all the way to the Supreme Court."

A number of influential class action cases also made our list: *Pioneer Corp. et al. v. Neil Godfrey*, which found that so-called umbrella purchasers have a claim under the Competition Act; *Uber Technologies Inc. v. Heller*,

which found an arbitration clause with contracted drivers unconscionable; and *TELUS Communications Inc. v. Wellman*, which set guidelines for cases in which consumer class actions and arbitration clauses intersect.

And two cases addressed the environment, directly or indirectly: British Columbia's *Reference re Environmental Management Act* concerned the contested Trans Mountain Pipeline expansion and held that B.C.'s amendments to provisions in its environmental legislation lay beyond its provincial jurisdiction; and *Nevsun Resources Ltd. v. Araya* found that a Canadian mining company operating in Eritrea was liable for damages in Canada.



CANADA (MINISTER OF CITIZENSHIP AND IMMIGRATION) V. VAVILOV; BELL CANADA V. CANADA (A.G.) (SCC, FCA)

THE SO-CALLED Administrative Law Trilogy was one of the most highly anticipated and publicized decisions of the past decade, dubbed #Adminlawpalooza on Twitter. The three appeals — one concerning immigration and the right to citizenship and a twin appeal by Bell Canada and the National Football League against a decision of the Canadian Radio-television and Telecommunications Commission — have garnered widespread attention from the media, academic commentators and the legal profession alike due to the impact the decisions would have on every type of administrative decision made in Canada.

“The judges hearing the case were clearly and fully aware of its import,” says Eugene Meehan of Supreme Advocacy LLP in Ottawa. “Rather than being written by one or two judges, the majority judgment in *Vavilov* was written by all seven judges that signed their name to it.”

It had been more than 10 years since the Supreme Court last considered administrative law, in its 2008 decision *Dunsmuir v. New Brunswick*, and there had been confusion in the intervening years over the standard of review to apply in administrative law cases.

In reaching its decisions in the trilogy in December 2019, the Supreme Court established a new framework for standard of review: the presumption of reasonableness, with two categories in which the presumption can be rebutted.

The *Vavilov* case concerned Alexander Vavilov’s claim to Canadian citizenship. Vavilov was born in Canada to two Russian spies. Canada’s Registrar of Citizenship did not

grant him citizenship, citing an exception in the Citizenship Act. The Federal Court upheld the Registrar’s decision on the standard of correctness, but both the Federal Court of Appeal and the Supreme Court sided with Vavilov on the standard of reasonableness. In unanimously dismissing the Minister of Citizenship and Immigration’s appeal, the Supreme Court found that the decision to declare the respondent a non-citizen was unreasonable.

At issue in the dual appeal by Bell Canada and the National Football League against a decision of the Canadian Radio-television and Telecommunications Commission was the simultaneous substitution regime that has been standard in Canada, by which U.S. commercials are exchanged for Canadian commercials on U.S. television broadcasts such as the Super Bowl that are aired on Canadian television stations. The simultaneous substitution regime gives Canadian broadcasters greater broadcasting revenues by virtue of being able to sell Canadian advertising on their channels to Canadian audiences.

The appeal of the CRTC’s prohibition order against simultaneous substitution for the Super Bowl was allowed in a 7/2 decision, with justices Rosalie Abella and Andromache Karakatsanis dissenting.

The court held that the CRTC did not have the authority to exempt the Super Bowl from long-standing regulations that apply to other programming, and in doing so, it departed from years of its own precedents by holding that administrative decisions subject to statutory appeal rights should be reviewed according to appellate rather than judicial

CLIENTS > FIRMS > LAWYERS

> Minister of Citizenship and Immigration
> Attorney General of Canada > Michael H. Morris, Marianne Zorić and John Provart

> Alexander Vavilov > Jackman Nazami & Associates > Hadayt Nazami, Barbara Jackman and Sujith Xavier

> Bell Canada and Bell Media Inc. > McCarthy Tétrault LLP > Steven G. Mason, Brandon Kain, Richard Lizius, Joanna Nairn, James S.S. Holtom, Grant Buchanan and Peter Grant

> Attorney General of Canada > Michael H. Morris and Ian Demers

review principles; so, the correctness standard applied to extricable legal issues such as the statutory interpretation in the Bell/NFL appeals.

“It’s a very important shift,” says Brandon Kain, a partner at McCarthy Tétrault LLP in Toronto who represented Bell Canada and the NFL before the appellate courts, and it “radically alters the Canadian administrative law framework in a number of different contexts involving many different boards and tribunals.”

“It’s the first year in which this decision has started to take shape,” says Kain’s partner Steven Mason, who likewise argued the Bell/NFL appeals before the appellate courts. “There has yet to be a case that makes its way up to the Supreme Court of Canada where [it] can clarify any of the issues that it set out in the Vavilov and Bell/NFL decisions. . . . It will be interesting to see how these decisions mature in the courts” and what the Supreme Court will eventually have to say about how the appellate judges or lower courts have applied their decision.

“This case wasn’t about putting a new saddle on an existing racehorse but about breeding a whole new mustang and breaking it in,” adds Meehan. “This new horse will be ridden by every judge as to the standard of review and by every administrative decision-maker on how to avoid being overturned or bucked off at the Supreme Court.”



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9354-9186 QUÉBEC INC. V. CALLIDUS CAPITAL CORP. (SCC, QCCA)

THIS DECISION in *9354-9186 Québec inc. v. Callidus Capital Corp.* marked the first time Canada's top court had dealt with third-party litigation funding, in a January 2020 decision from the bench that approved litigation funding allowing an insolvent company to sue one of its creditors.

The dispute in the case concerned Quebec-based gaming company Bluberi and the debt it owed creditors, including secured creditor Callidus Capital. Under the Companies' Creditors Arrangement Act regime, Callidus put forward a plan of arrangement in which Bluberi relinquished the right to sue Callidus.

But Callidus's plan fell short of the CCAA requirement of approval of a majority of creditors representing two-thirds of the value owed. Callidus declined to vote.

Bluberi then undertook a third-party litigation funding agreement to sue Callidus and asked the supervising judge to approve the agreement as interim financing. Callidus objected, saying the funding constituted a plan of arrangement and required a vote from creditors. Callidus put forward a new plan, but the supervising judge found the company was acting with "improper purpose" as it had relinquished its voting opportunity initially and was now attempting to override that result.

The Quebec Court of Appeal overturned that decision, finding the funding at issue

was a type of equity investment, an agreement requiring a vote, and that the funder was seeking to cut in front of creditors to take a slice of the company.

In May, the Supreme Court released its reasons, which focused on the broad discretion enjoyed by a supervising judge presiding over a Companies' Creditors Arrangement Act process and on the degree of deference appellate courts should demonstrate on appeal from a judgment of the CCAA court. It established a precedent on novel insolvency-related issues, notably by confirming that a creditor acting for an improper purpose may be barred from voting on a CCAA plan of arrangement, and that a third-party litigation funding agreement may be approved as interim financing pursuant to the CCAA.

The case is "a very interesting mix between insolvency law and litigation financing," says Joseph Reynaud of Stikeman Elliott LLP in Montreal, who represented the court-appointed monitor, Ernst & Young, in the case.

The two key takeaways from the decision, he says, are the level of discretion and deference that appellate courts must give to CCAA judges and the aspect of litigation funding, which was formerly outlawed in many jurisdictions.

"What [the Supreme Court] did here is it left the door open for litigation fund-

ing to be a plan of arrangement, depending on the circumstances of the case," says Reynaud. The court then said, in this particular case and given the assessments undertaken by the first instance judge, that "it was not a plan of arrangement, and therefore did not need to be voted upon by creditors and could therefore be approved for financing."

CLIENTS > FIRMS > LAWYERS

> 9354-9186 Québec inc. and 9354-9178 Québec inc. > Davies Ward Phillips & Vineberg LLP > Christian Lachance, Jean-Philippe Groleau, Gabriel Lavery Lepage and Hannah Toledano

> IMF Bentham Limited (now known as Omni Bridgeway Limited) and Bentham IMF Capital Limited (now known as Omni Bridgeway Capital (Canada) Limited) > Woods LLP > Neil A. Peden

> Callidus Capital Corporation > Gowling WLG (Canada) LLP > Geneviève Cloutier and Clifton P. Prophet

> International Game Technology, Deloitte LLP, Luc Carignan, François Vigneault, Philippe Millette, Francis Proulx and François Pelletier > McCarthy Tétrault LLP > Jocelyn Perreault, François Alexandre Toupin, Noah Zucker, Guillaume Mercier, Dominique Paiement, Laurence Landry-Plouffe, Thierry Noiseux, Justine Blair and Gabriel Faure



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PIONEER CORP. ET AL. V. NEIL GODFREY (SCC, BCCA)

THE CASE WAS significant for class actions and for limitation periods.

In *Pioneer* — which concerned an optical disk drive price-fixing class action in Ontario, British Columbia, Quebec, Manitoba and Saskatchewan — the Supreme Court found that so-called umbrella purchasers may have a claim under the Competition Act. In this case and its companion, *Toshiba Corporation, et al. v. Neil Godfrey*, the majority of the court also provided clarification on limitation periods for the discoverability rule and the doctrine of fraudulent concealment and on certification of loss as a common issue.

Neil Godfrey, a B.C. businessman and representative plaintiff, commenced a proposed class action alleging that Pioneer, Toshiba and other electronics manufacturers had participated in a global, criminal price-fixing cartel that overcharged British Columbians for optical disc drives — including CD, DVD and Blu-Ray drives — and related products. He alleged a breach of the Competition Act, the tort of civil conspiracy, the unlawful means tort, unjust enrichment and waiver of tort.

The proposed class was a hybrid class consisting of “direct purchasers” who had purchased the products directly from the manufacturers, “indirect purchasers” who had bought the products from suppliers and “umbrella purchasers” who had purchased products that were manufactured and supplied by a non defendant but which prices may have been risen as a result of the price fixing.

Finding that the class certification could proceed for all three classes, the Supreme Court also found that the two-year limitation period for filing suit could be extended by the discoverability rule and by that of fraudulent concealment.

Competition class actions have become common, says Neil Campbell of McMillan LLP in Toronto, who acted with partner Joan Young in Vancouver for a group of defendants in the case: Koninklijke Philips Electronics N.V., Lite-On Technology Corporation and Philips & Lite-On Digital Solutions Corporation. These actions “are seen in . . . domestic, alleged conspiracy conduct and as a Canadian piece of virtually every international case” where there could be effects on

the Canadian market and consumers, even if it’s not a Canada-based case.

Since a trilogy of competition class action decisions was released by the Supreme Court in 2013, the time was ripe for the court to take a fresh look at broader claims, such as those by umbrella purchasers, says Campbell.

There are two key conclusions from the decision that will have broader significance, he says. The first is that using the principle of discoverability as a way to interpret the limitation period, unless it’s clear from the statute that the legislature intended that not to apply, the two-year limitation period will start when a plaintiff knew or should have known of price fixing or bid rigging. And second, fraudulent concealment could now be a basis for which a plaintiff to argue for pushing ahead the start of the limitation period.

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> Panasonic Corporation, Panasonic Corporation of North America and Panasonic Canada Inc. > Bennett Jones LLP > John F. Rook, Christiaan A. Jordaan and Emrys Davis

> BENQ Corporation, BENQ America Corporation and BENQ Canada Corp. > Shapray Cramer Fitterman Lamer LLP > Stephen Fitterman

> Neil Godfrey > Camp Fiorante Matthews Mogerma LLP and Siskinds Law Firm > Reidar M. Mogerma, Linda J. Visser, David G.A. Jones, Charles M. Wright, Katie I. Duke and Bridget M. R. Moran



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IN THE MATTER OF THE CATALYST CAPITAL GROUP INC. ET AL. (OSC)

FOR SEVERAL WEEKS in late 2019, news of the contested privatization of the Hudson's Bay Company dominated the business pages of newspapers. In October, HBC and the Baker Group, led by Richard Baker, governor and executive chairman of HBC, had announced they had reached an agreement to take the company private at \$10.30 per share. A minority shareholder, the Catalyst Capital Group Inc., opposed privatization at the price proposed and commenced a securities hearing to cease-trade the privatization or get further disclosure from HBC and the Baker Group.

A full hearing before the Ontario Securities Commission was held in December 2019, and, in February, the OSC ruled that the transaction could proceed if HBC was to make additional disclosure.

The matter also resulted in the OSC issuing new guidance regarding the role and responsibilities of a special committee in a conflicted going-private transaction and re-confirmed long-held principles regarding the disclosure obligations of issuers.

The significance of the OSC's decision, says Stikeman Elliott LLP's Eliot Kolers, who acted for the Baker Group, was that Catalyst was able to use a commission to bring a private complaint regarding disclosure that HBC had made, and then obtained standing from the OSC; and although its application to cease-trade the privatization failed, Catalyst did obtain an order that further disclosure was required.

"The OSC's decision is one that is fairly carefully drafted in terms of how it articulated the disclosure standard, [and] any time an

insider group seeks to privatize a public company, this is going to be a decision that they need to pay attention to."

The Baker Group's proposal for privatization had been reviewed by an HBC special committee of directors, which concluded that the price offered was too low and did not recommend the offer to its shareholders. Baker Group increased its offer, as recommended by special committee, which went to shareholders and was the subject of the OSC hearing. The OSC ruled that additional disclosure was required, and Catalyst was in the marketplace as well, purportedly offering a higher price, says Kolers. The Baker Group raised its offer as well, Catalyst supported the raised offer and HBC was privatized in February 2020.

The OSC decision focuses on the role of the special committee in a contested transaction, says Paul Davis, head of the national Capital Markets Group for McMillan LLP and the principal counsel for Catalyst.

"It had a significant impact on future going private transactions," says Davis, "and reminded issuers about the importance of adopting a proper process and considering and approving material transactions that are conflicted, i.e., governed by multilateral instrument 61-101, which is a primary security law framework for conflicted transactions in Canada.

"It certainly made people more cautious about the process being followed in conflicted transaction."

The venue of the OSC was also notable, says Adam Chisholm, the principal litigator for Catalyst in front of the OSC.

"Regulators tend to be rather hands off about contested transactions, because they're happy to leave it to the parties to resolve their disputes," says Chisholm. "But in this case, the disclosure and the mechanisms used [in the offer] were of concern enough to the regulator that they thought it was appropriate to

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> Hudson's Bay Company > Blake Cassels & Graydon LLP > R. Seumas M. Woods, Jeffrey R. Lloyd, Michael I. Gans and Ryan A. Morris

> "Baker Group", composed of individuals and entities related to, or affiliated with, Richard A. Baker, governor and executive chairman of HBC; Rhône Capital L.L.C.; WeWork Property Advisors; Hanover Investments (Luxembourg) S.A.; and Abrams Capital Management, L.P. > Stikeman Elliott LLP > Eliot N. Kolers, Alexander D. Rose, Elizabeth (Libby) Nixon, Jonah Mann, Brian Pukier and Sean Vanderpol

take jurisdiction."

Takeaways from the case are that when a special committee is put in place in a significant conflicted transaction, what's required of the issuer is clear disclosure regarding the mandate, timing and the decisions made by or related to the special committee, says Davis.

"I think that's made an impact in terms of the level of disclosure you're now seeing circulars for conflicted transactions."

A special committee should be formed as soon as practicable when conflicts of interest arise for a significant transaction, he adds, "and here, the commission was pretty clear that they had significant concerns about when the committee was formed; [it] should have been formed far earlier."

Finally, notwithstanding that the process in this case was flawed, says Davis, "it's clear now that the commission is unlikely to cease-trade a transaction and thereby take the decision to complete the transaction out of the hands of the minority shareholders.

"However, in such circumstances, in order to ensure that the minority shareholders are making an informed decision, significant disclosure regarding any flaws in the process will be required. So, the more flawed the process, the more disclosure is required, and it will take significant flaws . . . for the commission to actually cease-trade a transaction."



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CANADA V. BANK OF MONTREAL (FCA)

THIS WAS A significant tax case under the general anti-avoidance rule.

Certain U.S. affiliates of BMO required US\$1.4 billion in financing between 2005 and 2010 to grow business organically and by acquisition. BMO implemented the financing using a cross-border financing structure that Canadian and U.S. tax authorities accepted at the time.

Among other things, the financing structure included a natural hedge of foreign exchange risk. The financing structure was established in 2005 and unwound in 2010. At the unwinding, offsetting foreign exchange gains and losses were realized. On the facts of the case, the gains were realized on debt repayment, and the losses were realized on disposing of shares of a certain Canadian corporation.

The Minister of National Revenue relied on the GAAR to reassess BMO's 2010 taxation year, reducing BMO's foreign exchange loss while taxing BMO on the offsetting foreign exchange gain. The minister's view was that the foreign exchange loss would have been reduced by past dividend payments from the same corporation if a specific stop-loss rule had applied. The minister's position was that BMO had circumvented the stop-loss rule by causing the corporation to have two classes of shares. The minister illustrated the alleged tax benefit by comparing BMO's actual transactions to hypothetical comparative transactions where the corporation had only one class of shares.

A "tax benefit" is generally defined as a reduction, avoidance or deferral of tax. The test

is a low threshold for the government, and taxpayers often concede or lose the issue.

The courts concluded that BMO had not circumvented the relevant stop-loss rule, because that rule was inapplicable to foreign exchange losses realized on share dispositions. The tax consequences to BMO were the same regardless of whether the corporation had one or two classes of shares. On that basis, the courts concluded that BMO enjoyed no tax benefit for purposes of the GAAR.

The case is a rare win for a taxpayer on the "tax benefit" issue, the first case to treat the "tax benefit" issue as a question of law and the first case where a taxpayer has prevailed on the tax benefit issue by showing that the tax consequences of the taxpayer's actual transactions and comparative transactions relied upon by the government are the same.

"I think it's the only case to say, 'I'm going to take head on the government's comparison transaction and show you that the tax consequences of that comparison are the same as the tax consequences [of] what I actually did,'" says Martha MacDonald of Torys LLP in Toronto, who represented the Bank of Montreal before the Tax Court and the Federal Court of Appeal.

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4352238 CANADA INC. V. SNC-LAVALIN GROUP INC., ET AL. (ONSC)

THE CASE INVOLVED a dispute over the right to exercise a right of first refusal in the context of a \$3-billion transaction. A focus of the dispute was with respect to the nature of a significant Ontario pension fund.

In April 2019, SNC-Lavalin Group Inc. entered into an agreement to sell a 10-per-cent stake in 407 International Inc. to the Ontario Municipal Employees Retirement System for \$3 billion. Pursuant to a unanimous shareholders agreement, SNC offered a right of first refusal to an indirect subsidiary of the Canada Pension Plan Investment Board but did not offer the ROFR to a subsidiary of Cintra Global S.E., a Spanish infrastructure company, because of an earlier waiver of the ROFR given to SNC in 2002 by Cintra. The Cintra waiver negated Cintra's ROFR rights unless the proposed share sale transaction was made to a "competitor" of Cintra.

Cintra commenced an application on the Commercial List in Toronto for a declaration that OMERS was a competitor based on the definition in the Cintra Waiver. Cintra relied on OMERS' alleged change from a passive to active investment strategy that included seeking board seats and other governance rights, along with OMERS' controlling or active investment in large-scale infrastructure projects in competition with Cintra. SNC and CPPIB opposed the application on the basis that OMERS is a pension fund and not a competitor of Cintra.

The court held that OMERS was a passive investor and was, therefore, not a "competitor" of Cintra such that Cintra had waived its ROFR with respect to OMERS' proposed purchase of SNC's shares in the Cintra Waiver. Cintra was, therefore, not entitled to acquire any of the 407 International shares in the transaction, and only CPPIB was.

Cintra filed a notice of appeal in the Court of Appeal for Ontario soon after the decision was released, but it abandoned the appeal in 2020.

"The decision relates to a significant ownership stake of a large infrastructure project in Ontario, Highway 407," says Kolers, whose team represented the Canada Pension Plan Investment Board respondents. "The ruling concludes that, as a pension plan, OMERS was not a competitor, the

nature of its investments is not the same and it does not trigger the carveout of the waiver.

"It's a significant decision because of the parties who were involved and the assets at stake and the nature of the relationship between them," he says. "It does speak to the more supervisory as opposed to active investment by pension plans in Canada, in very general terms."

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UBER TECHNOLOGIES INC. V. HELLER (SCC, ONCA)

IN RULING THAT a clause in the agreement between ride-hailing service Uber and its contracted drivers was impossible to arbitrate, the Supreme Court of Canada found Uber's clause unconscionable.

In *Uber*, the Supreme Court found that a court may depart from the general rule of deferring to an arbitrator if the dispute resolution clause is deemed to be invalid. In this case it was, meaning that *Heller v. Uber Technologies Inc.*, a proposed \$400-million class action, must be heard in Ontario rather than through international arbitration in the Netherlands.

The suit claimed that Uber's drivers are employees rather than independent contractors, and they should, therefore, be entitled to benefits under the Employment Standards Act in Ontario.

The arbitration filing fee is US\$14,500, which represented most of the annual income of the plaintiff, Uber driver David Heller, making it prohibitively expensive for him to bring the case to arbitration as required by the dispute resolution clause in Uber's agreements with its Ontario drivers.

Justices Rosalie Abella and Malcolm Rowe, writing for the majority of the court in the June 2020 decision, referred to the case as "a classic case of unconscionability."

"When arbitration is realistically unattainable, it amounts to no dispute resolution mechanism at all," they wrote.

The main aspect of the decision is the Supreme Court's refinement of the doctrine of unconscionability and how that applies to widespread online agreements, which are even more common since the novel coronavirus pandemic erupted earlier this year, says Michael Wright of Wright Henry LLP in Toronto, who represented the respondent in the case.

"Click here now; you're agreeing to a wide range of conditions that you may or may not have read or understand." These contracts of adhesion are non-negotiable but lawful contracts, and they are widespread particularly in the consumer context, such as for car rental agreements. In the *Uber* case, Wright says, the court was concerned that the terms of the contract were particularly one-sided and egregious.

"I think the key thing is that these kinds of contracts are still permitted, but their more egregious use has been curtailed. It's a very high threshold to demonstrate unconscionability, and the court spent a lot of time giving greater credence to that concept."

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NEVSUN RESOURCES LTD. V. ARAYA (SCC, BCCA)

THE SUPREME COURT’S ruling that corporations can be held liable in civil law for breaches of international law — and that the act of state doctrine is not a bar to the claim — has significant implications for Canadian companies with operations abroad, notably in the resources, technology and armaments sectors.

In *Nevsun*, the majority of the court found that the norms of customary international law raised by Eritrean workers who sued Nevsun Resources Ltd. for alleged human rights abuses form part of Canadian law. As a Canadian company, Nevsun is bound by Canadian law, and customary international law becomes part of Canadian law automatically, the majority found.

Three Eritrean refugees brought a claim against the Nevsun Resources Ltd., a publicly held British Columbia corporation. They alleged that, through a chain of subsidiaries, Nevsun entered into a commercial venture with Eritrea for the development of a gold, copper and zinc mine in Eritrea, and that they were conscripted to work at the mine under Eritrea’s National Service Program, which all Eritreans must enter at the age of 18 for a period of 18 months, but which may be extended indefinitely.

The court held that the act of state doctrine, which states that every sovereign state is

bound to respect the independence of every other sovereign state, could not be invoked in the case and that the doctrine ought not be recognized as part of Canadian law, says Joe Fiorante of CFM Lawyers in Vancouver, who acted for the respondent plaintiffs in the case.

“That’s significant,” he says. “It had not been dealt with before, to our knowledge, in Canada, but it had been the subject of judgments in the highest courts in Australia and the United Kingdom. So, it was significant that Canada decided this doctrine does not form any part of our law.”

That corporations can be held potentially liable for breaching these norms of customary international law, which are adopted into Canadian law and form part of our common law, “from the plaintiffs’ side, it’s a very significant step forward toward corporate accountability for overseas conduct,” says Fiorante.

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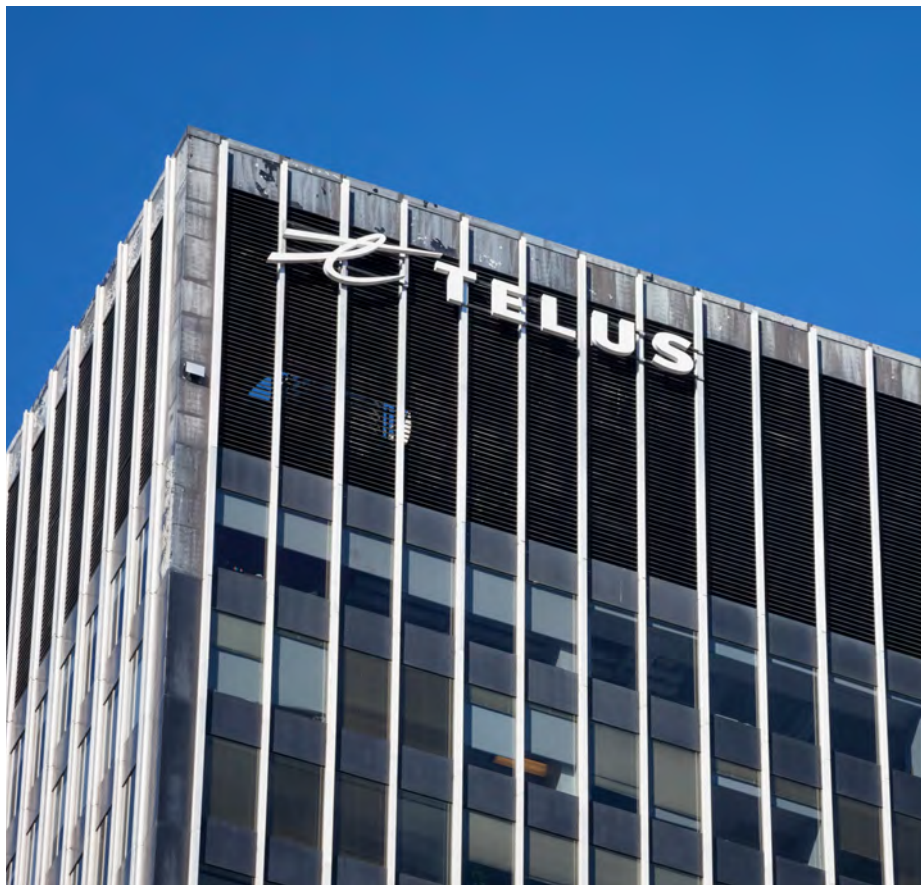
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TELUS COMMUNICATIONS INC. V. WELLMAN (SCC, ONCA)

BUSINESS CUSTOMERS WITH claims against TELUS Communications must pursue their cases through arbitration rather than as part of a class action, the Supreme Court of Canada ruled in April 2019 in a decision that set guidelines for when class actions and arbitration clauses intersect.

In a 5/4 decision in *TELUS Communications Inc. v. Avraham Wellman*, the majority of the Supreme Court found that TELUS's business customers could not proceed with a class action but must proceed with arbitration as stipulated in their contracts. The court ruled that s. 7(5) of the Arbitration Act, 1991 (Ontario) does not grant a court discretion to refuse to stay claims that are dealt with in an arbitration agreement.

However, the arbitration clause was determined to be invalid regarding personal customers by virtue of Ontario's Consumer Protection Act.

"This is an important decision that protects the process of arbitration but gives guidance concerning a very specific area of consumer protection," Brian Casey, an arbitrator and principal of Bay Street Chambers in Toronto, told Canadian Lawyer after the decision was released. "The Arbitration Act provides that parties to an arbitration agreement are going to have to arbitrate, period."

The class action arose from claims that TELUS had rounded up lengths of mobile phone calls to the next minute without disclosing this to its customers, so that customers were overcharged for calls and not entitled to

the number of minutes they should have had under their contracts.

Under s. 7(5) of the Arbitration Act, a court may "stay the proceeding with respect to the matters dealt with in the arbitration agreement and allow it to continue with respect to other matters if it finds that . . . (b) it is reasonable to separate the matters dealt with in the agreement from the other matters."

The motion judge dismissed TELUS's motion to stay the proceeding, finding that it was not reasonable to separate matters, i.e., between personal and business customers. She found the issues to be the same, that separating the claims would lead to inefficiency and inconsistent results and to a multiplicity of proceedings. The Court of Appeal for Ontario dismissed TELUS's request for a stay application.

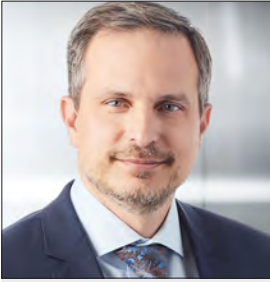
"The key takeaway is that the Ontario court does not have any jurisdiction to enter a stay in respect of matters covered by an arbitration clause," says Geoffrey Cowper of Fasken Martineau DuMoulin LLP in Vancouver, who acted for TELUS.

"Courts found that the Ontario act allowed them to refuse to stay when there was, in their view, a mixture of claims, and so it concerns the interpretation of s. 8 of the Ontario Arbitration Act," says Cowper. "The Supreme Court has found in a case like *Dell* that arbitration clauses are enforceable even in consumer contracts; in *TELUS*, it concerned business contracts [and] the court found that the business customers contract claims could not be sued on because they're covered by an arbitration clause and that the act does not allow the court to exercise any discretion to stay."

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REFERENCE RE ENVIRONMENTAL MANAGEMENT ACT (SCC, BCCA)

IN 2018, a brouhaha erupted between Alberta and British Columbia, as the Trans Mountain project became a source of considerable tension between the two provinces and their respective provincial governments. B.C. opposed the project; Alberta retaliated by boycotting B.C. wines. Prime Minister Justin Trudeau met with the premiers of the two provinces to broker a détente, and tensions were eased a little when B.C. agreed to refer the constitutionality of its proposed legislation to its Court of Appeal.

The case concerned heads of power. B.C. acknowledged that the pipeline is an interprovincial — and, therefore, federal — undertaking, but it said that provincial environmental legislation had long affected aspects of federal undertakings without serious challenge, that the heads of power set out in ss. 91 and 92 of the Constitution Act, 1867, are not “watertight compartments” and that the jurisprudence has recognized on occasion that certain functions are best carried out by the level of government closest to those affected.

Canada asked the B.C. Court of Appeal to find B.C.’s proposed legislative amend-

ments ultra vires or inoperative, with the view to eliminating the uncertainty surrounding the pipeline project. The Court of Appeal found the amendments to lie beyond provincial jurisdiction.

On the same day that it heard the appeal — on January 16, 2020 — the Supreme Court of Canada unanimously dismissed the appeal from the bench. Following the court’s decision, B.C. Premier John Horgan acknowledged that the legal battle against Trans Mountain (at least for the province) was over.

“The greater story coming out of the case is the confirmation and the clarity around the federal role in relation to interprovincial projects,” says Keith Bergner of Lawson Lundell LLP in Vancouver, who was on the legal team for the intervener Canadian As-

sociation of Petroleum Producers.

“The constitutional provision refers to interprovincial works and undertakings more generally — and that was pretty clearly affirmed at both levels of court: five judges of the Court of Appeal and a unanimous Supreme Court of Canada endorsement.” This means there is no ambiguity that jurisdiction lies with the federal government for these projects, he says.

The decision provides “a pretty clear statement on the division of powers analysis, ss. 91 and 92 of the Constitution,” he adds. “That analysis is alive and well, and I think it’s useful that five court of appeal and nine Supreme Court of Canada judges all signed on, effectively, to the same set of reasons, which make it a pretty clear statement of the law.”

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“With the pandemic, what is necessary is to adapt existing controls as a corporation to the new reality. What are the opportunities for your people to bypass controls?”

François Fontaine
NORTON ROSE
FULBRIGHT LLP

VIGILANCE URGED TO AVOID FRAUD

FRAUD, CORRUPTION OR MONEY LAUNDERING MAY NOT HAVE INCREASED IN VOLUME YET, BUT IT IS LOOMING ON THE HORIZON AND THE OPPORTUNITIES ARE INCREASING IN THE PANDEMIC, SAY LAWYERS

IN late September, a coalition of organizations urged the federal government to crack down on financial crime after Canadian banks, shell companies and individuals were identified in a global investigation into suspicious financial activity.

Between 2000 and 2017, the coalition, comprising Canadians for Tax Fairness, Transparency International Canada and Publish What You Pay Canada, said in a news release that suspicious activity reports referenced individuals from more than 170 jurisdictions and Canada ranked seventh among countries in which individuals were flagged for suspicious financial activity.



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“IF THEY HAVEN’T TAKEN STEPS TO COMPLY WITH PROVINCIAL LOBBYING LAWS BEFORE INTERACTING WITH THE GOVERNMENT, CORPORATIONS ... COULD FIND THEMSELVES IN VIOLATION OF THE LAWS THAT PERTAIN TO LOBBYING.”

Graeme Hamilton
BORDEN LADNER GERVAIS LLP

And in difficult financial times, such as during the current COVID-19 pandemic, “the incidence of fraud seems to increase because people will sometimes turn to desperate measures to address the financial stress, whether it’s individual or corporate,” says Munaf Mohamed, a partner and national co-chairman of Bennett Jones LLP’s fraud law practice, from his Calgary office.

Whether lawyers are seeing much fraud, corruption or money laundering now, it is looming on the horizon.

“If [corruption] does happen today, we’ll see it the next year or in two years,” says François Fontaine, senior partner at Norton Rose Fulbright LLP in Montreal. “At the moment, the risk is around public contracts that are given with much less oversight than they should have.

“The red flags are there,” he adds. “In that regard, I would say the occasions for fraud, money laundering and corruption are certainly increasing. When the government is spending money with limited tenders, the occasions are there.”

Particularly in Quebec, says Fontaine, MPs are complaining that — owing to the pandemic and increased public spending — the government is in a hurry to execute contracts and keep the economy afloat, but

all the spending that’s being done is with less control. “It’s opening the door for people to get contracts through the back door. It’s certainly an occasion for potential corruption.”

There is also a risk that, with limited enforcement resources, what enforcement is done may be focused on more pressing areas, such as accounting fraud, including pandemic financial aid, says Graeme Hamilton, a partner at Borden Ladner Gervais LLP in Toronto.

“We’re going to see accounting fraud and related issues percolate that didn’t arise out of the pandemic but were dilution ratios. They were precipitated by the pandemic, but the associated [economic] contraction brought them to the fore.”

Economic contractions can expose that a company’s financial position isn’t as robust as it may have been portrayed, says Hamilton, and out of that process an underlying fraud may be discovered. As well, the number of government financial relief programs available, all set up quickly, have seen some organizations taking advantage of the available aid when they weren’t necessarily entitled to it.

“I think you’re going to start to see that investigated as we move forward,” he adds.

Mohamed sees Canada as having a poor record of successfully prosecuting financial crime, such as money laundering and kiting and the U.S. as being more active in enforcements. As well, Canada’s civil system is better equipped, with its extraordinary remedies, to gain money than is the criminal system, he says. Getting world-

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wide freezing orders and third-party disclosure orders, “assuming you can establish the proper foundation of evidence, allows you to establish an investigation of a private party rather than leaving it in the hands of the criminal system or authorities.

“If you are a large company with resources, you can use the civil system to pursue

fraudulent claims and repatriate money and seek the extraordinary orders you can get here and in other jurisdictions. The case is different if you are an individual with limited means; you’re not going to have that ability, and you probably are going to have to go through the criminal justice system. And I guess the question is whether the criminal justice system has the resources to pursue what I’ll call extra-jurisdictional fraud claims.”

Managing corporate risk

Over the past six months, Mohamed has seen a heightened interest in corporations looking more closely at their affairs and conducting investigations, in part because regulators are being more vigilant about fraud and the like, he says.

And more companies are being increasingly vigilant in compliance and risk, he says, including monitoring their controls and whistleblower complaints. “A lot of money is flying around now from the government,” he says, and more vigilance is required for the executive who pays a bribe to save the company from dire straits, as well as employees filing false invoices and suppliers cutting margins; “all the things you’d expect when companies are in trouble.”

Because there has been a lot of government relief coming out in very short order and policy changes regarding alcohol and cannabis sales, for example, companies may find themselves in violation of lobbying laws, says Hamilton.



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WHITE COLLAR CRIME HITS HOME



- **55:** percentage of Canadian companies that reported suffering fraud in the past two years in a 2018 survey of economic crime and fraud, up from 37 per cent in 2016



- **48:** percentage of Canadian respondents that predicted cyber-crime would be the most disruptive force to their organization in the next two years



- **58:** percentage of fraud committed by external perpetrators

Sources: PricewaterhouseCoopers LLP

“If they haven’t taken steps to comply with provincial lobbying laws before interacting with the government, corporations are going to want to influence that involvement to their advantage and risk that they could find themselves in violation of the laws that pertain to lobbying,” he says, including anti-corruption laws concerning gifts and influence peddling.

Another heightened risk is that of material misrepresentation. If a company finds that there’s been a material misstatement that was used to obtain financing through the pandemic, for example, and has obtained that credit facility or other financing, a continuing offence could be found to have been committed by the company to the extent that that misrepresentation hasn’t been corrected, Hamilton says. If the board of directors or senior officers are made aware of that misrepresentation, “there really is a duty on them both to avoid corporate liability as well as personal liability, to take positive steps to correct that, to investigate the issue.”

Corporate controls to detect wrongdoing include compliance programs among agents, third-party suppliers and contractors, and sophisticated companies will have programs to detect money laundering and fraud, says Fontaine.

“If you get caught, maybe the only way you will defend yourself . . . is to show you had the mechanism, the controls in place [that are] compliant with the legislation.” This is especially important in starting business in a new overseas market where the risk of corruption may be higher. Ensuring that

controls are in place will minimize the risk of employees being successfully solicited for bribes or paying them, he says.

And with work now being conducted largely remotely, the risk of impersonation and fraud is greater, says Hamilton. “How does a work-at-home environment impact the security of your information?” Companies may also fall prey to being caught up in spoofing schemes in paying vendors.

Now more than ever, corporations must remain vigilant, says Fontaine. “With the pandemic, what is necessary is to adapt existing controls as a corporation to the new reality. . . . You work differently when you work remotely. As a company, what are the opportunities for your people to bypass controls? Are the controls adapted to that reality?”

The remote work environment brought into play by the pandemic will also change white collar crime and regulatory investigations, says Fontaine, who last year travelled to Europe 18 times to conduct investigations but this year has not ventured anywhere since February. Now, he uses online meeting platforms, “but you don’t interview the same way through a screen than when you meet face to face,” he says.

“It will be interesting to see how companies will deal with ‘sensitive meetings’ and internal investigations related to allegations of wrongdoing being corruption, fraud or money laundering after the pandemic and when travelling will again be possible,” adds Fontaine. “Will companies continue to discuss sensitive issues through a screen and on the various platforms [such as Zoom and



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Eric Lefebvre is Montréal chair of the Norton Rose Fulbright Canadian Litigation Group. His litigation practice involves a broad range of civil and commercial litigation matters, including banking, corporate disputes, class actions, competition law, consumer law, commercial contracts, and civil liability. He has particular experience in urgent remedies such as seizures and injunctions of various kinds. He has been retained both by petitioners and respondents in many high-stakes shareholder oppression cases and has defended parties facing cartel and bid-rigging accusations before criminal courts. Mr. Lefebvre represents clients before the Québec and federal courts as well as before regulatory bodies such as the Competition Tribunal. He has been involved in almost all investigations led by the Competition Bureau in Québec as well as ensuing class actions. In addition, he acts in commercial arbitration proceedings.



Lefebvre, QC, Wilfrid Norton Rose Fulbright Canada LLP > (514) 847-4440 wilfrid.lefebvre@nortonrosefulbright.com

Wilfrid Lefebvre is a senior partner of Norton Rose Fulbright in Canada. He practises in the areas of income tax and represents clients before tax authorities, courts, and administrative tribunals. He has extensive court experience and has served as legal counsel in many complex and important cases. He has appeared before the Supreme Court, the Federal Court of Appeal, and other Courts. He was appointed Queen's Counsel in 1982. Mr. Lefebvre started his career at the Department of Justice in Ottawa, where he worked as a legal advisor to the Department of Supply and Services, subsequently joining the Tax Litigation Section of the Department of Justice. In 1976, he became the Director of the Legal Services Branch of Revenue Canada and in 1978 was appointed General Counsel in charge of tax litigation in Canada. He was a member of the Technical Committee on Business Taxation (Mintz Committee) appointed by the Minister of Finance of Canada to review and recommend changes to the Canadian tax regime, which tabled its report in 1997. He was Chair of the Canadian Tax Foundation. He has been a lecturer at many Universities.



Legrand, André Norton Rose Fulbright Canada LLP > (514) 847-4412 andre.legrand@nortonrosefulbright.com

André Legrand's practice focuses on insurance law and professional liability. His insurance law practice focuses on general liability insurance, directors' & officers' liability insurance, professional liability insurance, and property insurance (including subrogation proceedings). Mr. Legrand's professional liability practice involves representing the interests of directors and officers of corporations. He also manages claims on behalf of insurers. He has acted before all Québec courts and the Supreme Court of Canada.



Leiti, Steven H. Norton Rose Fulbright Canada LLP > (403) 267-8140 steven.leiti@nortonrosefulbright.com

Steve's practice covers a broad range of commercial litigation matters, with emphasis on the areas of securities, M&A, directors' & officers' liability, class actions, and internal investigations. Steve has conducted proceedings in the courts of Alberta, Ontario, Manitoba, and Canada (Federal Court) and appeals in the Ontario Court of Appeal and Alberta Court of Appeal. Steve has conducted various regulatory proceedings before the Ontario, Alberta, and Manitoba Securities Commissions and the Alberta Utilities Commission. Steve is a regular speaker and writer on issues pertaining to securities litigation, insolvency, and class actions.



Linder, QC, Peter T. Peacock Linder Halt & Mack LLP > (403) 296-2282 plinder@plhlaw.ca

Peter Linder has over 30 years' experience in handling complex cases at all levels of the Canadian Court system and as both counsel and arbitrator in domestic and international arbitrations. He has extensive experience with administrative and regulatory proceedings. He clerked to the Alberta Court of Appeal, was called to the Alberta Bar in 1986 and was appointed Queen's Counsel in 2004. Mr. Linder holds an MA in Jurisprudence, Christ Church, Oxford; and an LLB and BA (with Distinction and First Class Honours), Dalhousie University. He has handled major cases in fields of oil and gas, securities litigation, complex corporate and commercial disputes, insolvency, construction, products liability, insurance law, environmental and employment law. He has achieved major successes in precedent-setting securities and shareholders' rights lawsuits and was appointed by the United States District Court, Central District of California, as an expert in Alberta corporate law. Mr. Linder is known as a fierce but fair advocate who achieves extraordinary results for his clients.



“The incidence of fraud seems to increase because people will sometimes turn to desperate measures to address the financial stress, whether it’s individual or corporate.”

Munaf Mohamed
BENNETT JONES LLP

Microsoft Teams] because it’s efficient and allows significant costs savings or will they return to in-person meetings?”

Fontaine predicts that many meetings will now be held virtually instead of in person, which raises the issue of confidentiality.

“We can assume that if the investigative authorities such as the RCMP and Department of Justice can intercept a telephone conversation, they will also be able to intercept internet meetings conducted virtually and invite themselves in the meeting room much easier than in the past. That will be interesting to follow in the after-pandemic.”

In the end, though, “those challenges

companies are facing have been existing since long ago and will continue to exist,” he says. “You consistently have to adapt your program, your control. The pandemic is an example, but the world is changing very quickly . . . year after year, and you cannot say, ‘I have a program in place for five years and it’s still up to date.’ You have to make sure that you maintain those controls, those programs, constantly.”

“You will have to face your new realities,” adds Fontaine. “When there’s a change in technology, you will have a new reality for all sorts of reasons. The pandemic is just one thing.” ■



MacInnis, QC, James Nathanson, Schachter & Thompson LLP > (604) 662-8840 jmacinnis@nst.ca

James is a respected trial and appellate lawyer. He regularly appears before the BC Supreme Court and Court of Appeal. Together with Kevin Loo, Karen Carteri, Peter Senkpiel, Julia Lockhart, and a team of associates among the country's brightest, James is part of NST's esteemed next generation. *Benchmark Canada* has listed James as a "Litigation Star" in British Columbia since 2012, and he is highly ranked by *Lexpert*®, *The Best Lawyers in Canada*, and *Chambers and Partners*. James acts for corporations, both private and public, as well as individuals. James' practice is focused on commercial and business disputes, including contractual disputes, professional negligence, defamation, and securities matters. He graduated as gold medallist from the University of British Columbia Law School. He then served as the judicial law clerk to the Chief Justice of British Columbia. He was appointed Queen's Counsel in 2019. James has contributed numerous articles and chapters to both academic and professional publications dealing with commercial law issues. He is the co-editor and contributing author of *Business Disputes in British Columbia*. He is the co-author of a *Civil Procedure Manual* published annually by Thomson Reuters that is used by litigators throughout British Columbia.



Mack, QC, Perry R Peacock Linder Halt & Mack LLP > (403) 296-2275 pmack@plhlaw.ca

Perry Mack has enjoyed a distinguished legal career in Calgary for 37 years. His practice has focused on civil litigation with emphasis on insurance, professional liability, personal injury, construction and administrative law. A well-known lawyer, mediator and arbitrator, Mr. Mack has appeared as counsel at all levels of court as well as numerous administrative tribunals, regulatory boards and professional disciplinary bodies. Throughout his career Mr. Mack has demonstrated an uncompromising commitment to the legal profession and to the public good. He was a board member (Bencher) of the Law Society of Alberta for seven years, serving as president in 2008. Mr. Mack has received numerous peer acknowledgments and distinctions and is a fellow of the American College of Trial Lawyers.



MacKenzie, Gavin MacKenzie Barristers > (416) 304-9293 gavin@mackenziebarristers.com

Gavin's litigation practice is focused on appeals, professional responsibility, liability and discipline, judicial review applications, and commercial litigation. He has appeared before all levels of court, including the Supreme Court of Canada and before many tribunals. Gavin is often retained as an expert witness on professional responsibility and standard of care issues. He was elected as a Bencher of the Law Society of Ontario four times and as Treasurer three times between 2006 and 2008. He has served as a Director of the Canadian Institute for the Administration of Justice, The Advocates' Society, and the Medico-Legal Society of Toronto, and as Chair of LibraryCo Inc. He was awarded an honorary Doctor of Laws degree by the Law Society in 2010 in recognition of his contributions to the profession. He has also been honoured by induction as a Fellow of the American College of Trial Lawyers and as a Fellow of the Litigation Counsel of America. He is the author of *Lawyers and Ethics: Professional Responsibility and Discipline*, the 6th edition of which was published by Thomson Reuters (Carswell) in 2018. He has also served as an Adjunct Professor of Legal Ethics at Osgoode Hall Law School.



MacKewn, Melissa J. Crawley MacKewn Brush LLP > (416) 217-0840 mmackewn@cmbllaw.ca

Melissa has been widely recognized within the profession as one of Canada's leading securities and corporate commercial litigators. She acts on a wide range of securities regulatory matters before the OSC, IIROC and the MFDA, both on the prosecution and defence side. Melissa routinely represents clients in compliance and registrant regulation matters and enforcement investigations, settlements and contested proceedings involving such issues as insider trading, disclosure violations and market manipulation. Melissa maintains an active complex commercial litigation practice, advising investors, registrants, issuers, officers, directors, underwriters and corporations on a variety of corporate and securities matters, including (defence-side) securities class actions, corporate and shareholder disputes, oppression remedy matters, proxy battles, corporate governance matters, breach of contract and professional negligence matters. Melissa is recognized by *Lexpert*® as one of the Leading 500 Lawyers in Canada. She has also been recognized as a leader in the field of securities litigation by *Chambers Canada*. Since 2017, she has been named one of the Top Women in Litigation by *Benchmark Canada*.



Maidment, Scott McMillan LLP > (416) 865-7911 scott.maidment@mcmillan.ca

Scott Maidment is one of Canada's leading litigation counsel, and he has appeared before trial and appellate courts and tribunals across the country. Scott is recognized in Canada and abroad as one of the world's top product liability lawyers, and is known especially for his work in class actions and complex cases, particularly for companies in the life sciences industry. His trial and appellate practice has also covered a wide range of other legal disputes in a number of economic sectors. He has conducted trials, arbitrations, applications, and appeals involving issues of contract, competition law, negligence, insurance law, defamation, employment law, real estate, constitutional law, human rights, and transportation law. Scott has served as an Adjunct Professor of Trial Advocacy at Osgoode Hall Law School and has taught trial advocacy for The Advocates' Society, the Attorney General of Canada, and the United Nations. Scott has also served as President and Chair of the Board of Directors of The Advocates' Society, which is widely regarded as Canada's pre-eminent organization of courtroom and tribunal advocates.



CANADIAN LAW AWARDS

COMMEMORATIVE GUIDE

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CANADIAN LAW AWARDS 2020: WINNERS ANNOUNCED

The first-ever Canadian Law Awards were beamed out to legal professionals across the country as *Lexpert* and *Canadian Lawyer* celebrated the industry's top lawyers, firms and in-house legal departments.

IT'S BEEN a challenging year for the legal profession, to say the least – so there's never been a better time to celebrate the achievements and efforts of those who have continued to thrive during such turbulent times. October 6 marked the first annual Canadian Law Awards, brought to you by Gowling WLG, reimagined as a virtual event that offered the industry a chance to connect, network and celebrate.

Attended by hundreds of legal professionals from across Canada, the online format offered a new event experience. In addition to hearing the much-anticipated announcement of award winners, attendees had

the opportunity to take part in education and thought-provoking live panel discussions hosted by some of the legal profession's elite.

Following a rigorous nomination and selection process, the nation's finest legal professionals jostled for pole position in 29 prestigious award categories. The quality of talent on display this year was exceptional across the board, and the team at *Lexpert* and *Canadian Lawyer* would like to extend a huge congratulations to the winners and nominees, as well as a sincere thank you to all of the attendees, esteemed judges and wonderful sponsors.

Read on to find out who won big this year.

WELCOME FROM THE PLATINUM SPONSOR

AS THE platinum sponsor for the inaugural Canadian Law Awards, Gowling WLG is delighted to welcome you to this important online celebration.

Although this has been a challenging year, it has also been one of opportunity. From building diverse and inclusive workforces to harnessing innovation to better serve clients in the era of social distance, we continue to raise the bar for ourselves and challenge what is possible.

These awards provide a unique opportunity to recognize the tireless work of our peers in positively shaping the culture of our industry – even in the most difficult circumstances.

Congratulations to all of the finalists and nominees!

CAPITAL MARKETS DEAL OF THE YEAR

Open to all capital markets deals that reached completion within 2019 for which the majority of the legal work was Canada-based.

GOLD WINNER

TransAlta strategic Partnership with Brookfield

Firms: Davies Ward Phillips & Vineberg LLP, Stikeman Elliott LLP, Torys LLP

Organizations: Brookfield Asset Management, TransAlta Corporation

Banks: CIBC World Markets, Inc., RBC Global Asset Management

EXCELLENCE AWARDS

- **Aquilini/Enthusiast Merger**

Firms: Minden Gross LLP, Norton Rose Fulbright Canada LLP, Stikeman Elliott LLP

Accountants: MNP LLP, Segal LLP

- **BMO Sustainability Bond**

Organizations: BMO Financial Group, Sustainalytics

- **Home Trust Company Residential Mortgage-Backed Securities Trust Program**

Firms: Lavery, de Billy, L.L.P., Morgan Lewis & Bockius LLP, Norton Rose Fulbright Canada LLP, Torys LLP

Banks: BMO Capital Markets, BofA Securities, RBC Capital Markets

- **Katanga Rights Offering**

Firms: Bennett Jones LLP, Fasken Martineau DuMoulin LLP, McCarthy Tétrault LLP

- **Keyera Hybrid Notes Offering**

Firms: Dentons Canada LLP, Norton Rose Fulbright Canada LLP

Banks: AltaCorp Capital Inc., BMO Nesbitt Burns Inc., CIBC, Citigroup Global Markets Canada Inc., MUFG Securities (Canada), Ltd., National Bank Financial Inc., Peters & Co. Limited, RBC, Scotia Capital Inc., TD Securities Inc.

- **Lightspeed POS IPO**

Firms: Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP

INSOLVENCY & RESTRUCTURING DEAL OF THE YEAR

Open to all insolvency and restructuring deals that reached completion within 2019 for which the majority of the legal work was Canada-based.

GOLD WINNER

Catalyst Paper Restructuring

Firms: Bennett Jones LLP, Cassels Brock & Blackwell LLP, Goodmans LLP, Gowling WLG (Canada) LLP, Jones Day, Lawson Lundell LLP, Miller Titerle Law Corporation, Skadden, Arps, Slate, Meagher & Flom LLP, Stikeman Elliott LLP

EXCELLENCE AWARDS

- **Clairvest Restructuring**

Firms: Davies Ward Phillips & Vineberg LLP, Goldman Sloan Nash & Haber LLP, Goodmans LLP, Gowling WLG (Canada) LLP, Miller Thomson LLP, Torys LLP

- **Nautilus Minerals Insolvency**

Firm: Fasken Martineau DuMoulin LLP

INFRASTRUCTURE & PROJECTS DEAL OF THE YEAR

Open to all infrastructure and projects deals that reached completion within 2019 for which the majority of the legal work was Canada-based.

GOLD WINNER

Wataynikaneyap Transmission Project

Firms: Davies Ward Phillips & Vineberg LLP, Fasken Martineau DuMoulin LLP, McCarthy Tétrault LLP, McMillan LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP, Torys LLP

Organizations: Ministry of the Attorney General

Banks: CIBC, National Bank of Canada, RBC, Scotiabank, TD Bank

EXCELLENCE AWARDS

- **Brookfield Buys Enbridge's Natural Gas Business**

Firms: Kirkland & Ellis LLP, Latham & Watkins LLP, McCarthy Tétrault LLP, Norton Rose Fulbright Canada LLP, Osler, Hoskin & Harcourt LLP, Torys LLP

Banks: Credit Suisse Group, HSBC, RBC Capital Markets Inc.

- **Pembina Pipeline's Acquisition of Kinder Morgan**

Firms: Blake, Cassels & Graydon LLP, Goodmans LLP, Latham & Watkins LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP

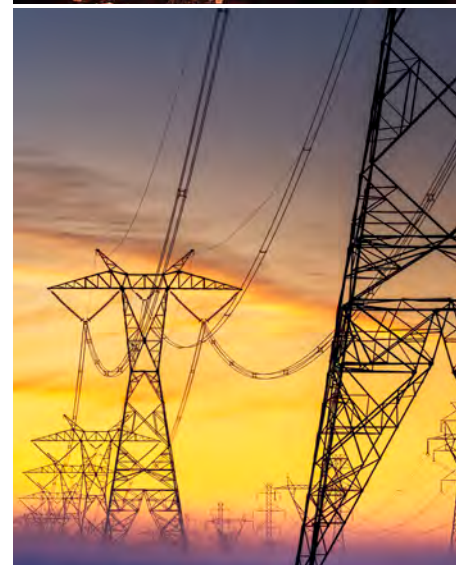
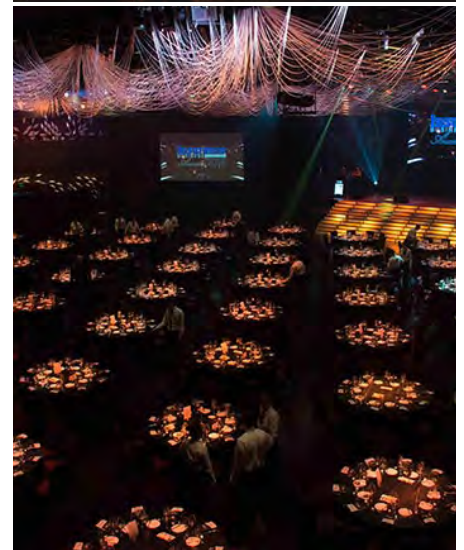
- **SNC-Lavalin Sells Interest in 407**

Firms: McCarthy Tétrault LLP, Norton Rose Fulbright Canada LLP, Stikeman Elliott LLP

- **TD Greystone, IST3 Infrastruktur and Seven Indigenous Communities Acquire Alberta PowerLine**

Firms: Alberta Counsel, Bennett Jones LLP, Biamonte LLP, Blake, Cassels & Graydon LLP, Dentons Canada LLP, Fasken Martineau DuMoulin LLP, George Lepine Professional Corporation, Main Street Law, McCarthy Tétrault LLP, Olthuis Kleeer Townshend LLP, Prowse Chowne LLP, Torys LLP

Bank: BNY Mellon



M&A DEAL OF THE YEAR

Open to all M&A deals, excluding those that fall within the private equity sector, that reached completion within 2019 for which the majority of the legal work was Canada-based.

GOLD WINNER

Air Canada Acquires Aeroplan

Firms: Borden Ladner Gervais LLP (BLG), Fasken Martineau DuMoulin LLP, McCarthy Tétrault LLP, Miller Thomson LLP, Norton Rose Fulbright Canada LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP, Torys LLP

Organizations: Air Canada

Banks: American Express, CIBC, TD Bank

EXCELLENCE AWARDS

- **Aphria's Takeover Defence of Green Growth's Hostile Bid**

Firms: Fasken Martineau DuMoulin LLP, McCarthy Tétrault LLP, Norton Rose Fulbright Canada LLP

- **Axiom and Manulife buy Northwest British Columbia Hydroelectric Facilities from AltaGas**

Firms: Davies Ward Phillips & Vineberg LLP, McCarthy Tétrault LLP, Stikeman Elliott LLP

- **Canadian Natural Acquires Devon Canada Assets**

Firms: Bennett Jones LLP, Cassels Brock & Blackwell LLP, Norton Rose Fulbright Canada LLP

- **Digital Colony Buys Cogeco Peer**

Firms: McCarthy Tétrault LLP, Miller Thomson LLP, Stikeman Elliott LLP

- **First Air and Canadian North Merge**

Firms: Bennett Jones LLP, Norton Rose Fulbright Canada LLP

- **Osisko Mining Reverse Takeover of Chantrell Ventures**

Firms: Bennett Jones LLP, Cassels Brock & Blackwell LLP, Peterson McVicar LLP

- **The Stars Group Combine with Flutter Entertainment**

Firms: Blake, Cassels & Graydon LLP, Fasken Martineau DuMoulin LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP



PRIVATE EQUITY DEAL OF THE YEAR

Open to all private equity deals that reached completion within 2019 for which the majority of the legal work was Canada-based.

GOLD WINNER

BC Partners Buys GardaWorld

Firms: McCarthy Tétrault LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP, Séguin Racine, Attorneys

EXCELLENCE AWARDS

- **CCMP Purchase of BGIS From Brookfield**

Firms: Borden Ladner Gervais LLP, Debevoise & Plimpton LLP, Latham & Watkins LLP,

McCarthy Tétrault LLP, Ropes & Gray LLP, Stikeman Elliott LLP, Torys LLP

Organization: BGIS Global Integrated Solutions

Accountants: Alvarez and Marsal, Deloitte LLP, Ernst & Young LLP, Wilmington Trust

Banks: Bank of Montreal, Citibank, CIBC, Morgan Stanley

- **Onex Acquires WestJet**

Firms: Blake, Cassels & Graydon LLP, Dentons Canada LLP, DLA Piper (Canada) LLP,

Goodmans LLP, Norton Rose Fulbright Canada LLP

- **Sale of Canada's Shares in Ridley Terminals**

Firms: Borden Ladner Gervais LLP, Fasken Martineau DuMoulin LLP, Goodmans LLP, Latham &

Watkins LLP, Lawson Lundell LLP, McCarthy Tétrault LLP, Stikeman Elliott LLP

Bank: Macquarie Capital Markets Canada Ltd.

CLASS ACTION TEAM OF THE YEAR

Open to all class action cases rendered or settled in Canada's courts in 2019 that involved upwards of 30 parties.

Judged on the case's significance and the extent to which it set new standards of excellence in the delivery of legal services.

GOLD WINNER



Gowling WLG (Canada) LLP
Federal Indian Day Class Action

EXCELLENCE AWARDS

- **Bennett Jones LLP**

Das v. George Weston Limited

- **Fasken Martineau DuMoulin LLP**

TELUS Communications Inc. v. Wellman

- **Koskie Minsky LLP, Raven, Cameron, Ballantyne & Yazbeck LLP, Wagners Law Firm, Acheson Sweeney Foley Sahota LLP, Quessy Henry St-Hilaire, avocats**

Sherry Heyder v. The Attorney General of Canada and Larry Beattie v. The Attorney General of Canada

- **McCarthy Tétrault LLP, Koskie Minsky LLP**

Reddock v. Canada (Attorney General)

- **Torys LLP**

Saurette v. AstraZeneca Canada Inc.

CROSS BORDER DEAL OF THE YEAR

Open to all deals that reached completion within 2019 having a substantial cross-border component.

GOLD WINNER

Newmont Acquires Goldcorp / Newmont Barrick Joint Venture

Firms: Blake, Cassels & Graydon LLP, Cassels Brock & Blackwell LLP, Davies Ward Phillips & Vineberg LLP, Goodmans LLP, Osler, Hoskin & Harcourt LLP

EXCELLENCE AWARDS

- **Brookfield Acquires Genworth**

Firms: Blake, Cassels & Graydon LLP, Goodmans LLP, McCarthy Tétrault LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP, Torys LLP

Banks: Bank of Montreal, CIBC, Goldman Sachs & Co. LLC, Lazard Frères & Co. LLC, National Bank of Canada, RBC, Scotiabank, TD Bank

- **Canopy Acquires Acreage**

Firms: Cassels Brock & Blackwell LLP, Davies Ward Phillips & Vineberg LLP, DLA Piper (Canada) LLP, McCarthy Tétrault LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP

- **Dream Global Sale to Blackstone**

Firms: Blake, Cassels & Graydon LLP, Davies Ward Phillips & Vineberg LLP, Goodmans LLP, Osler, Hoskin & Harcourt LLP

- **Hasbro Acquires Entertainment One**

Firms: Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP

COMMERCIAL LITIGATION TEAM OF THE YEAR

Open to all commercial cases rendered or settled in Canada's courts in 2019, excluding class actions.

Judged on the case's significance and the extent to which it set new standards of excellence in the delivery of legal services.

GOLD WINNER



McCarthy Tétrault LLP

Canada (Minister of Citizenship and Immigration) v. Vavilov, and the dual appeal in Bell Canada v. Canada (Attorney General)

EXCELLENCE AWARDS

- **Fasken Martineau DuMoulin LLP**

Canada Post Corp v. Canadian Union of Postal Workers

- **Lenczner Slaght Royce Smith Griffin LLP**

Third Eye Capital Corporation v. Resources Dianor Inc./Dianor Resources Inc.

- **Nathanson, Schachter & Thompson LLP**

Concord Pacific Acquisitions Inc. v. Oei

- **Torys LLP**

Ituna Investment LP v. Industrial Alliance Insurance and Financial Services Inc. and Mosten Investment LP v. Manufacturers Life Insurance Company

- **Torys LLP**

Ontario First Nations (2008) Limited Partnership v. Ontario Lottery and Gaming Corporation





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CANADIAN DEAL OF THE YEAR

Open to all deals that reached completion within 2019 for which the majority of the legal work was Canada-based.

GOLD WINNER

Newmont acquires Goldcorp/Newmont Barrick joint venture

Firms: Blake, Cassels & Graydon LLP, Cassels Brock & Blackwell LLP, Davies Ward Phillips & Vineberg LLP, Goodmans LLP, Osler, Hoskin & Harcourt LLP

EXCELLENCE AWARDS

- **Air Canada acquires Aeroplan**

Firms: Borden Ladner Gervais LLP, Fasken Martineau DuMoulin LLP, McCarthy Tétrault LLP, Miller Thomson LLP, Norton Rose Fulbright Canada LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP, Torys LLP

Organization: Air Canada

Banks: American Express, CIBC, TD Bank

- **BC Partners buys GardaWorld**

Firms: McCarthy Tétrault LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP, Séguin Racine, Attorneys

- **Catalyst Paper restructuring**

Firms: Bennett Jones LLP, Cassels Brock & Blackwell LLP, Goodmans LLP, Gowling WLG (Canada) LLP, Jones Day, Lawson Lundell LLP, Miller Titerle Law Corporation, Skadden, Arps, Slate, Meagher & Flom LLP, Stikeman Elliott LLP

- **Paulson & Co. Replaces Detour Gold's Board**

Firms: Goodmans LLP, McCarthy Tétrault LLP, Norton Rose Fulbright Canada LLP

- **TransAlta strategic partnership with Brookfield**

Firms: Davies Ward Phillips & Vineberg LLP, Stikeman Elliott LLP, Torys LLP

Organization: Brookfield Asset Management, TransAlta Corporation

Banks: CIBC World Markets, Inc., RBC Global Asset Management

- **Wataynikaneyap Transmission Project**

Firms: Davies Ward Phillips & Vineberg LLP, Fasken Martineau DuMoulin LLP, McCarthy Tétrault LLP, McMillan LLP, Osler, Hoskin & Harcourt LLP, Stikeman Elliott LLP, Torys LLP

Organization: Ministry of the Attorney General

Banks: CIBC, National Bank of Canada, RBC, Scotiabank, TD Bank

IP BOUTIQUE LAW FIRM OF THE YEAR

Open to all Canada-based law firms that derived at least 50% of their 2019 revenue from IP matters.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER

SMART & BIGGAR

Smart & Biggar LLP

EXCELLENCE AWARDS

- Aitken Klee LLP
- Bereskin & Parr LLP
- Deeth Williams Wall LLP
- Gilbert's LLP
- Oyen Wiggs Green & Mutala LLP

SMART & BIGGAR

GOLD WINNER



SMART & BIGGAR LLP

Smart & Biggar is Canada's largest intellectual property and technology law firm, with over 100 professionals in five offices across Canada. We work directly with global and domestic businesses and law firms, to help them secure, protect and maximize the value of their innovations and intellectual property investments in Canada. We are consistently recognized as the leading Canadian IP firm by a wide range of third party domestic and international rankings. We have been providing the world's most successful and innovative businesses with sophisticated and creative IP solutions for over 100 years.

LITIGATION & DISPUTE RESOLUTION BOUTIQUE LAW FIRM OF THE YEAR

Open to all Canada-based law firms that derived at least 50% of their 2019 revenue from litigation and dispute resolution.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

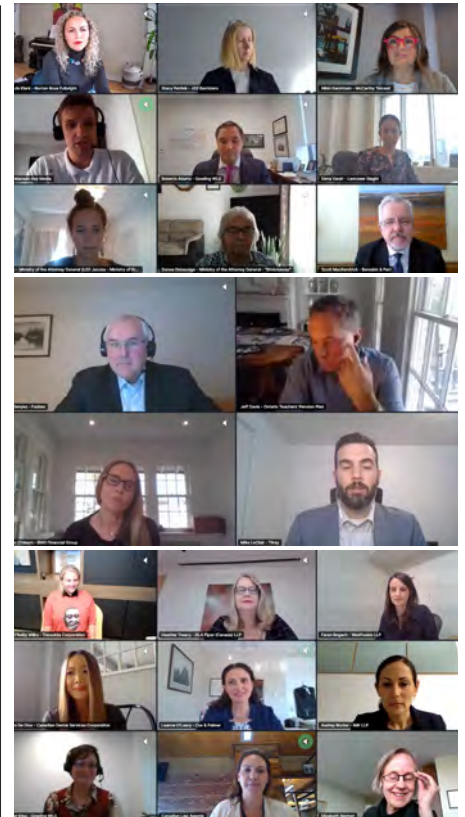
GOLD WINNER



Lenczner Slaght Royce Smith Griffin LLP

EXCELLENCE AWARDS

- **Crawley MacKewn Brush LLP**
- **Hunter Litigation Chambers**
- **Lax O'Sullivan Lisus Gottlieb LLP**
- **Nathanson, Schachter & Thompson LLP**
- **Singleton Urquhart Reynolds Vogel LLP**
- **Thomson Rogers**



“Although this has been a challenging year, it has also been one of opportunity.”

JAMES BUCHAN
Gowling WLG

BEST USE OF TECHNOLOGY IN A LAW FIRM

Open to all Canada-based law firms.

Judged on the extent to which firms have pushed through technological innovation and implemented fresh approaches in creating and delivering legal products, including utilizing technology and new business models, through 2019.

GOLD WINNER



Norton Rose Fulbright LLP

EXCELLENCE AWARDS

- Cassels Brock & Blackwell LLP
- Dentons Canada LLP
- Fasken Martineau DuMoulin LLP
- Gowling WLG (Canada) LLP
- MacKay Real Property Law
- Osler, Hoskin & Harcourt LLP

ONTARIO LAW FIRM OF THE YEAR

Open to firms that have offices only in Ontario, and offer a wide range of legal services.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER



WeirFoulds LLP

EXCELLENCE AWARDS

- Barriston Law
- Beard Winter LLP
- Lerner LLP
- McLeish Orlando LLP
- Torikin Manes LLP

PRAIRIES LAW FIRM OF THE YEAR

Open to firms that have offices only in Saskatchewan and/or Manitoba, and offer a wide range of legal services.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER



**Thompson Dorfman
Sweatman LLP**

EXCELLENCE AWARDS

- Fillmore Riley LLP
- McDougall Gauley LLP
- Pitblado LLP

ATLANTIC CANADA LAW FIRM OF THE YEAR

Open to firms that have offices only in Nova Scotia, New Brunswick, PEI and/or Newfoundland, and offer a wide range of legal services.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER

COX & PALMER

Cox & Palmer

EXCELLENCE AWARDS

- MDW Law
- Wagners LLP



WAGNERS

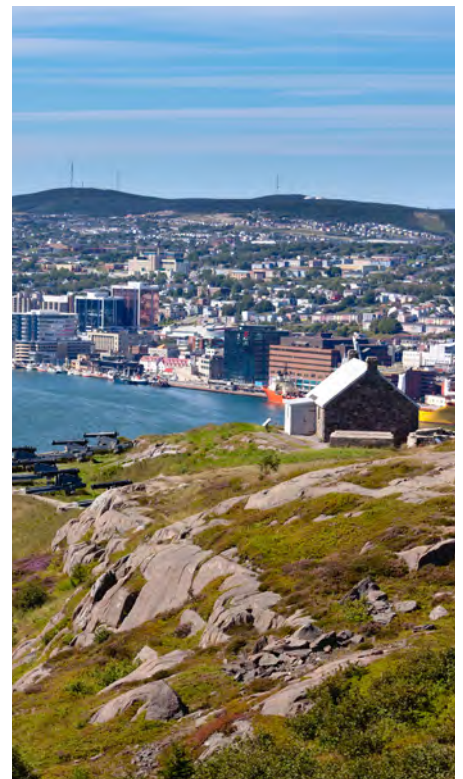
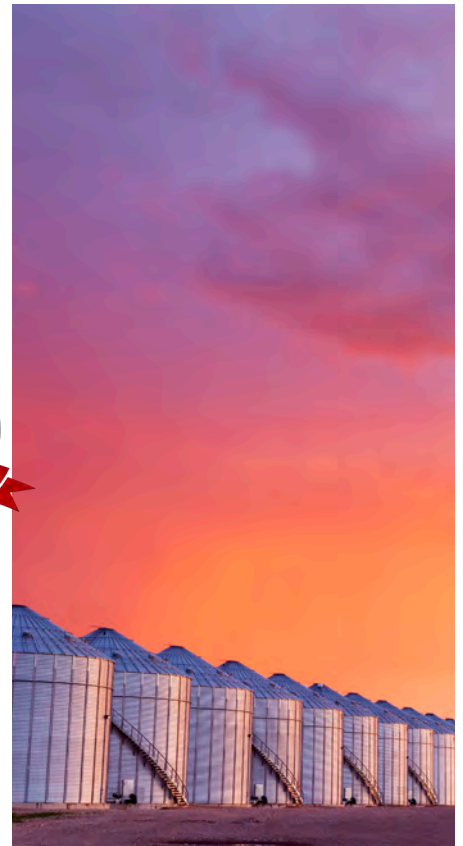
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EXCELLENCE AWARD

WAGNERS LLP

Raymond Wagner, Q.C. is the founder of Wagners. He has dedicated his legal practice to representing injured plaintiffs. His practice primarily focuses on class actions, medical negligence with a special focus in birth trauma, and personal injury litigation. He obtained his law degree from Dalhousie Law School and was called to the Nova Scotia Bar in 1980. Ray is a compassionate advocate, known for his candor, civility and practical advice. He places value on timely and equitable resolutions and has achieved significant settlements for his clients. Ray is known for litigating complex, technical and novel issues within his medical negligence and class action practice areas, and he has consistently strived to advance the law on behalf of injured plaintiffs. He is an experienced trial lawyer repeatedly recognized by peer review publications. He is a recipient of the H. Bruce T. Hillyer Award and the Lorne Clarke QC Access to Justice Award. Ray routinely presents to members of the CBA, the Atlantic Provinces Trial Lawyers Association, the Ontario Trial Lawyers Association, the American Association for Justice, and other associations and conferences. Ray has participated as an active member of the Nova Scotia Statutory Costs and Fees Committee, the NSBS Rules Committee, a Contingency Fee Agreement subcommittee and the Nova Scotia Bar and Bench Civil Procedure Rules Committee. He organized and addressed the first Nova Scotia Barristers Society Class Action Conference. Ray was one of four founders of APTLA, was the first president of APTLA, and was also first Chairman of the Canadian Caucus of the AAJ.



QUEBEC LAW FIRM OF THE YEAR

Open to firms that have offices only in the province of Quebec (extending across the river to include Ottawa), and offer a wide range of legal services.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER



Lavery, de Billy, L.L.P.

EXCELLENCE AWARDS

- BCF Business Law
- Cain Lamarre LLP
- Langlois lawyers, LLP

WESTERN CANADA LAW FIRM OF THE YEAR

Open to firms that have offices only in British Columbia and/or Alberta, and offer a wide range of legal services.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER



Farris LLP

EXCELLENCE AWARDS

- DuMoulin Black LLP
- Hakemi & Ridgedale LLP
- Harper Grey LLP
- Harris & Company LLP

LITIGATOR OF THE YEAR

Open to all Canada-based litigators.

Judged on the quantity, quality, importance and innovativeness of litigation work performed during calendar year 2019.

GOLD WINNER



Linda Plumpton,
Torys LLP

EXCELLENCE AWARDS

- **Awatif Lakhdar,**
Lavery, de Billy, L.L.P.
- **Chris Rusnak,**
Harper Grey LLP
- **Irwin G. Nathanson, Q.C.,**
Nathanson, Schachter & Thompson LLP
- **Julie Girard,**
Davies Ward Phillips & Vineberg LLP
- **Malcolm Ruby,**
Gowling WLG (Canada) LLP
- **Sean Griffin,**
Langlois lawyers, LLP
- **Steven Mason,**
McCarthy Tétrault LLP

Leading the way in Canadian litigation.

Congratulations to Linda Plumpton, Chair of our Litigation and Dispute Resolution practice, for being named Litigator of the Year at the Canadian Law Awards. Linda's abilities as a litigator are second to none, and her insight and advocacy on high-stakes matters are widely sought after. This award is a well-deserved reflection of Linda's reputation as one of the most formidable litigators in the country.



MANAGING PARTNER OF THE YEAR

Open to all managing partners, CEOs or similar of Canada-based law firms.

Judged on achievements, leadership and performance through 2019.

GOLD WINNER



Les Viner,
Torys LLP

EXCELLENCE AWARDS

- **Anik Trudel,**
Lavery, de Billy, L.L.P.
- **Blair McCreadie,**
Dentons Canada LLP
- **Dave Leonard,**
McCarthy Tétrault LLP
- **Julia E. Lawn,**
Nathanson, Schachter & Thompson LLP
- **Robert Seidel, Q.C.,**
DLA Piper (Canada) LLP
- **Teresa Dufort,**
McMillan LLP
- **Tom Curry,**
Lenczner Slaght Royce Smith Griffin LLP

CANADIAN BOUTIQUE LAW FIRM OF THE YEAR

Open to all Canada-based law firms that derived at least 50% of their 2019 revenue from a single practice area.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER



**Lenczner Slaght Royce
Smith Griffin LLP**

EXCELLENCE AWARDS

- **Goldblatt Partners LLP**
- **Green and Spiegel LLP**
- **Howie, Sacks & Henry LLP**
- **Oatley Vigmond LLP**
- **Roper Greyell LLP**
- **Smart & Biggar LLP**
- **Whitten & Lublin PC**
- **Wilbeoer Dellelce LLP**

BANKING & FINANCIAL INSTITUTIONS LAW DEPARTMENT OF THE YEAR

Open to all Canada-based law departments in banking or financial institutions (including banks, credit unions, lenders, insurance companies, pension funds and brokerage firms).

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER



BMO Financial Group

EXCELLENCE AWARDS

- **CIBC**
- **CPP Investments**
- **iA Financial Group**
- **National Bank of Canada**
- **PSP Investments**
- **Sun Life Financial**
- **TD Bank Group**
- **TMX Group Limited**

CONSTRUCTION, INFRASTRUCTURE & TRANSPORTATION LAW DEPARTMENT OF THE YEAR

Open to all Canada-based law departments in construction, infrastructure or transportation organizations.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNERS



Aecon Group Inc.



Air Canada

EXCELLENCE AWARDS

- Construction Association of Quebec
- Metrolinx

ENERGY & RESOURCES LAW DEPARTMENT OF THE YEAR

Open to all Canada-based law departments in energy and resources (including mining) organizations.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

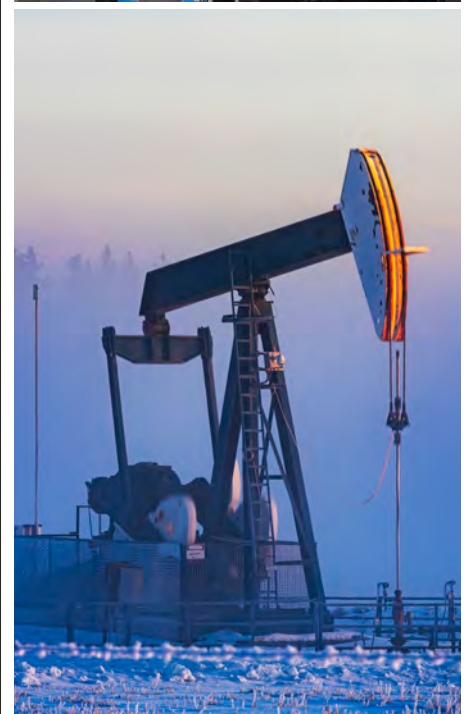
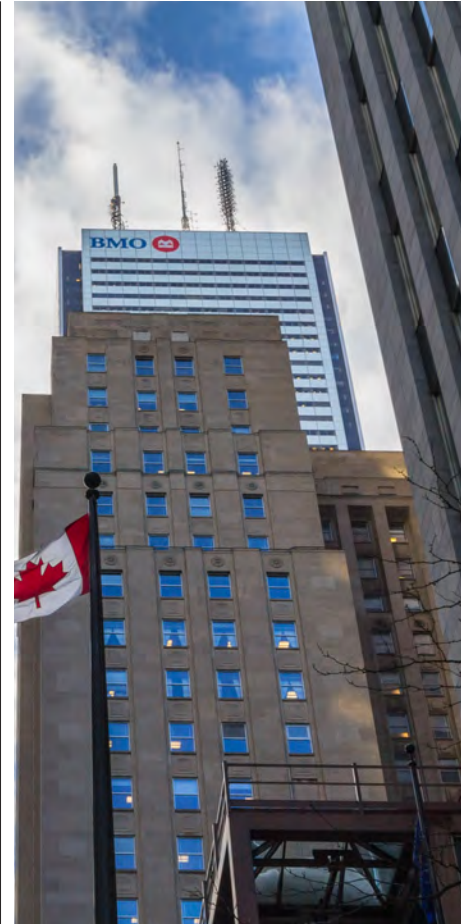
GOLD WINNER



Pembina Pipeline Corporation

EXCELLENCE AWARDS

- Bruce Power L.P.
- Enbridge Inc.
- Graymont Limited
- Manitoba Hydro
- Ontario Power Generation
- TransCanada Energy Corporation



LAW DEPARTMENT LEADER OF THE YEAR

Open to all Canada-based general counsels, chief legal officers, heads of legal, etc., in in-house positions.

Judged on transactions and other initiatives spearheaded and leadership qualities demonstrated through 2019.

GOLD WINNER



Kerry O'Reilly Wilks,
TransAlta Corporation

EXCELLENCE AWARDS

- **Andrea Cotroneo,**
Capital One Bank (Canada Branch)
- **Chris Wallace,**
Federation of Canadian Municipalities
- **David Hanick,**
Starlight Investments
- **Dr. Christelle Gedeon,**
Aphria Inc.
- **Jennifer Suess,**
RioCan Real Estate Investment Trust
- **Phil Shaer,**
Canopy Growth Corporation

THE FASKEN AWARD FOR LAW DEPARTMENT INNOVATION

Open to all projects or initiatives executed by Canada-based law departments in 2019.

Judged on the significance, innovativeness and impact of the project or initiative.

GOLD WINNER



**Ontario Teachers'
Pension Plan**

EXCELLENCE AWARDS

- **Aecon Group Inc.**
- **BMO Financial Group**
- **GS1 Canada**
- **Tilray**

AWARD SPONSOR

FASKEN

Fasken is a leading international law firm with more than 700 lawyers and ten offices on four continents. Clients rely on us for practical, innovative and cost-effective legal services. We solve the most complex business and litigation challenges, providing exceptional value.

For more information, visit
[fasken.com/en/firm](https://www.fasken.com/en/firm)

“The legal sector has seen a great deal of innovation in recent years. Never has that been more important than over the last seven months. Fasken is very pleased to be saluting and celebrating leading innovators in our sector.”

MARTIN DENYES
Fasken

A CAUSE FOR CELEBRATION

In this era of social change and economic uncertainty, it is more important than ever to celebrate those who are positively shaping the culture of our industry.

We thank those who participated in Gowling WLG's "Diversity and Inclusion in Law Firms" survey at the Canadian Law Awards. The time is now for leadership to drive the conversation and create data-driven change in the workplace.

Discover our commitment to diversity & inclusion at [gowlingwlg.com/diversity](https://www.gowlingwlg.com/diversity)



Gowling WLG (Canada) LLP is a member of Gowling WLG, an international law firm which consists of independent and autonomous entities providing services around the world. Our structure is explained in more detail at [gowlingwlg.com/legal](https://www.gowlingwlg.com/legal)

CANADIAN LAW DEPARTMENT OF THE YEAR

Open to all Canada-based law departments.

Judged on the quantity, quality, importance and innovativeness of legal work performed during calendar year 2019.

GOLD WINNER



Bell Canada

EXCELLENCE AWARDS

- **Aecon Group Inc**
- **Air Canada**
- **BMO Financial**
- **Hudson's Bay Company**
- **Ontario Teachers' Pension Plan**
- **Pembina Pipeline Corp**
- **RioCan Real Estate Investment Trust**

PRO BONO INITIATIVE OF THE YEAR

Open to any single pro bono or not-for-profit initiative executed by a Canada-based law firm or law department in 2019.

Judged on the impact of the initiative and its contribution to society and the community.

GOLD WINNER



BMO Financial Group

Closing the access to justice gap through pro bono activities

EXCELLENCE AWARDS

- **Cox & Palmer,**
Newfoundland Court of Appeal decision in *Re A.A.*
- **Gowling WLG (Canada) LLP,**
Pro Bono Gender Markers initiative
- **Lax O'Sullivan Lisus Gottlieb LLP, co-counsel McCarthy Tétrault LLP,**
Court of Appeal for Ontario decision in *Canadian Civil Liberties Association v Canada*
- **Nicola Law Group,**
Traffic Court Duty Counsel Project

“We are thrilled to be able to once again support the legal community in Canada as individuals, firms and departments are recognized for their excellence in driving innovation and efficiency in the profession as part of the Canadian Law Awards.”

ZENA APPLEBAUM
Thomson Reuters Legal,
Tax & Accounting Canada

THE GOWLING WLG AWARD FOR WOMAN OF THE YEAR

Open to all Canada-based women lawyers.

Judged on professional accomplishments, leadership, community involvement, and the extent to which the individual has either passively or actively contributed to gender equality in the legal profession in 2019.

GOLD WINNERS



Audrey Bactor,
IMK LLP



Claire Hunter, Q.C.,
Hunter Litigation Chambers

EXCELLENCE AWARDS

- **Barbara De Dios,**
Canadian Dental Services Corp
- **Faren Bogach,**
WeirFoulds LLP
- **Heather L. Treacy, Q.C., ICD.D.,**
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- **Jennifer Suess,**
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AWARD SPONSOR

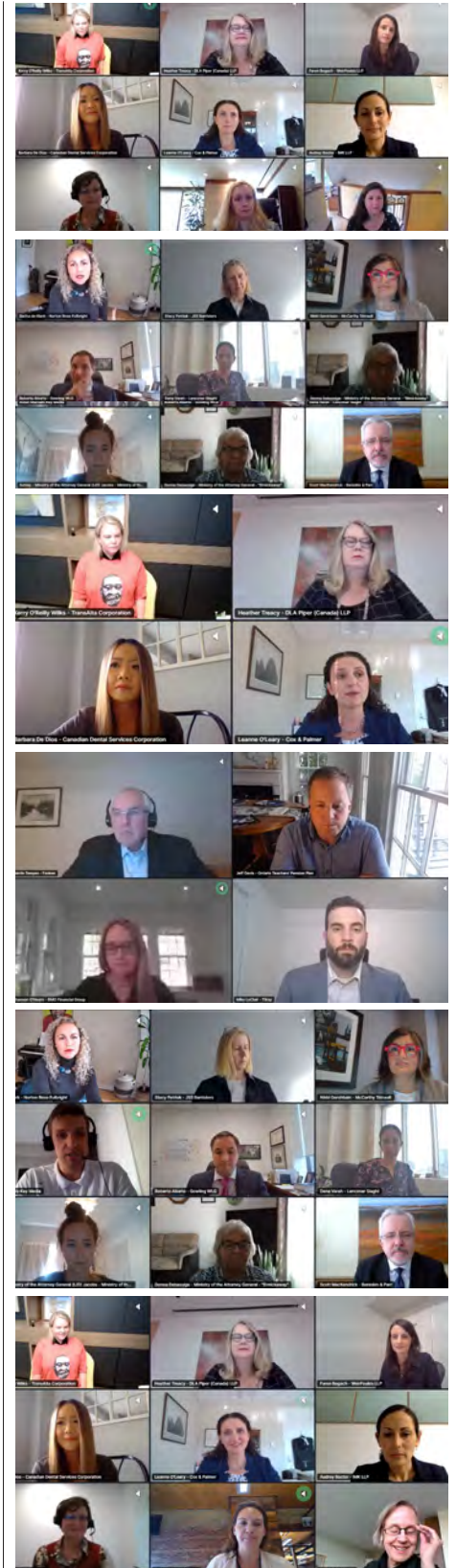


Gowling WLG is an international law firm built on the belief that the best way to serve clients is to be in tune with their world, aligned with their opportunity and ambitious for their success. All over the world, our 1,4000+ legal professionals and dedicated business support teams do just that, applying in-depth sector expertise to understand and support our clients' businesses.

For more information, visit gowlingwlg.com/en

“These awards provide a unique opportunity to recognize the tireless work of our peers in positively shaping the culture of our profession — even in the most difficult circumstances.”

JAMES BUCHAN
Gowling WLG



THE BERESKIN & PARR AWARD FOR DIVERSITY INITIATIVE OF THE YEAR

Open to all Canada-based law firms and law departments.

Judged on the concrete steps the law firm or law department took during 2019 to promote diversity and inclusion in the legal profession.

GOLD WINNER



McCarthy Tétrault LLP
Inclusion Now

EXCELLENCE AWARDS

- **Gowling WLG (Canada) LLP,**
Our People First: Mental Health Strategy
- **Jensen Shawa Solomon Duguid Hawkes LLP,**
Enhancing Diversity and Inclusion in Recruitment and Advancement Policy
- **Lenczner Slaght Royce Smith Griffin LLP,**
ReferToHer™
- **Ministry of the Attorney General,**
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- **Norton Rose Fulbright LLP,**
Achieving greater representation of women in leadership and partnership
- **Smart & Biggar LLP,**
Diversity Goals: Diversity Leadership & Programs

AWARD SPONSOR

Bereskin & Parr

Bereskin & Parr LLP is a leading Canadian full service intellectual property law firm serving clients across all industries around the world. Founded in 1965, the firm has grown to be one of the largest IP firms in Canada with offices located in major economic and technology centres. Bereskin & Parr is made up of more than 80 lawyers, patent and trademark agents, many of whom are recognized as leading practitioners in their specialized fields. The firm has established a depth of legal talent and systems to service clients in every aspect of patent, trademark, copyright, advertising & marketing law and IP litigation.

For more information, visit
www.bereskinparr.com

“Bereskin & Parr’s founding 55 years ago was grounded in diversity and inclusion, making it part of our DNA. This is part of why we think it is important to recognize significant initiatives that promote diverse and inclusive workspaces.”

SCOTT MACKENDRICK
Bereskin & Parr LLP



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TELUS

CLASS ACTIONS REMAIN STEADY

SECTORS THAT ARE NOW RIPE FOR LITIGATION INCLUDE CANNABIS, BIG TECH AND LONG-TERM CARE FACILITIES; PRIVACY, SECONDARY MARKET MISREPRESENTATION AND PREDOMINANCE OF COMMON ISSUES ARE ALSO IN THE FOREGROUND

IN September, a proposed class action lawsuit was filed in the Supreme Court of British Columbia against Google and its parent company, Alphabet Inc. Filed on behalf of millions of Canadians, the suit alleges that Google collects and profits from users' personal information without their consent.

The proposed suit may be the latest salvo in actions launched against Big Tech firms alleging privacy violations for use of user data or for security breaches causing data to be stolen.

Big Tech firms are facing enhanced scrutiny for two reasons: data protection and data security, says Matthew Fleming, a partner in the litigation and dispute resolution group of Dentons Canada LLP in Toronto.

While data breaches have caught the attention of the plaintiffs' class action bar, the concept of individuals owning their personal information and companies using that information for profit or other reasons that the individuals did not agree to has caused an uptick in the number of proposed class proceedings in the area of data protection, including against big technology giants such as Google, Facebook and Amazon.

Increasingly, Fleming adds, he has seen lawyers and firms bringing class actions where they previously weren't practising in that area and has seen several instances in which certain firms acting on the defence side have now shown up on the plaintiffs' side.

Céline Légendre, a partner at Osler Hoskin & Harcourt LLP's Montreal office, says there has been a rise in class actions over the past couple of years but it's been steady in the past few months. And the targets of class actions "will change depending on the situation," says Légendre, citing COVID-19-related suits that have been filed.

Other sectors where class actions are rising include cannabis and — related to the novel coronavirus pandemic — nursing homes, airlines and events, as well as those related to societal issues such as solitary confinement and systemic abuse in schools by religious orders.

"People are more in tune as to what can be accomplished in a class action . . . in a civil context, on behalf of a group," says Légendre. "That's starting to be more prevalent as well."



Malo, Caroline Clyde & Co Canada LLP > (514) 764-3603 caroline.malo@clydeco.ca

Caroline is a seasoned litigation lawyer with over 20 years of trial experience. Her practice specializes in insurance and construction law and primarily emphasizes the defence of a broad array of professionals. Throughout her career, she has focused on defending engineers, directors and officers, professional orders and various insurance claims. Caroline also counsels clients on insurance coverage, ethics and compliance matters. Fully bilingual in English and French, she handles complex files through resolution and has regularly appeared before all levels of Québec courts and administrative tribunals. She is a frequent lecturer and author on a variety of topics including ethics and professional liability. She teaches the Civil Liability Course at the Québec Bar School.



Martel, Guy P. Stikeman Elliott LLP > (514) 397-3163 gmartel@stikeman.com

Guy P. Martel is a partner in the Litigation & Dispute Resolution Group. He specializes in banking and finance, and restructuring. He practises in the areas of banking, corporate law and M&A with a focus on bankruptcy, insolvency and reorganization. Guy actively participates in the representation of lenders, borrowers and investors in Canadian, cross-border or foreign matters. He also often acts as legal advisor for lending institutions and companies that specialize in the restructuring and sale of financially troubled businesses.



Martineau, Yves Stikeman Elliott LLP > (514) 397-3380 ymartineau@stikeman.com

Yves Martineau is a partner in the Litigation & Dispute Resolution Group. Over the years, Yves has developed a specific expertise in class actions primarily defending manufacturers, banking institutions and telecommunications companies. He also deals with every aspect of litigation, such as commercial law, product liability, banking law, professional liability, consumer law and private international law. Yves has pleaded before all civil courts of Québec and before the Supreme Court of Canada.



Melchers, Sophie Norton Rose Fulbright Canada LLP > (514) 847-4784 sophie.melchers@nortonrosefulbright.com

Sophie Melchers practises mainly in the areas of commercial, corporate, and securities litigation. She has represented clients before the Québec specialized Securities Tribunal, the Québec courts, and the Supreme Court of Canada in connection with alleged violations of the *Québec Securities Act*—insider trading, tipping, market manipulation—and in connection with disputed takeover bids and corporate plans of arrangement. Her broad experience in securities litigation also encompasses representation of reporting issuers and their executives in connection with investigations conducted by the Québec securities regulator, the Autorité des marchés financiers. Ms. Melchers is a Fellow of the American College of Trial Lawyers and of the Litigation Counsel of America.



Merskey, Alan B. Norton Rose Fulbright Canada LLP > (416) 216-4805 alan.merskey@nortonrosefulbright.com

Alan Merskey is a commercial litigator with a particular focus on insolvency, construction, technology, and other corporate disputes. His substantive and procedural experience in these industry sectors informs his overall strategic approach to complex commercial litigation. In the insolvency area he has acted as counsel to court officers, debtors, and creditors in leading roles, including many of the major public and private company restructuring proceedings of the last 20 years. These include Bondfield, Sears, Nortel, Cash Stores, Air Canada, and Canada 3000. Among other things Mr. Merskey appeared as counsel on precedent-setting decisions from the Supreme Court, Ontario Court of Appeal, and Ontario Superior Court of Justice in areas such as environmental liabilities, debtor-creditor characterization, and equitable subordination. In the construction area, Mr. Merskey acts in complex delay and design deficiency cases for participants across the entire sector, from general contractors to owners and designers. Mr. Merskey is Toronto chair of our Litigation Group.



Fleming also notices an increased focus on claims against the government, whether it be for the management of a pension fund or Indigenous peoples bringing claims against the government for historical wrongdoings or prisoners complaining of their conditions.

“Not all class actions are motivated purely by financial goals . . . but are based on treatment that individuals have received through government programs or government institu-

tions,” he says. “Class actions [are] increasingly seen as a tool to remedy unfair treatment, not just to recover damages.”

In the cannabis sector over the past year or so, several claims have been commenced against various participants and, although the majority of claims have been filed in the U.S., they have also been filed in Canada, principally in the securities and product liability areas, says Fleming.

REQUIREMENTS TO CERTIFY A CLASS ACTION



- Pleadings must disclose a reasonable cause of action;
- The class must be capable of clear definition;
- There must be issues of law or fact common to all class members;
- Class action must be the preferable procedure to advance the litigation of the class members;
- The representative plaintiff must adequately represent the interests of the class.



Mestinsek, Michael E. Stikeman Elliott LLP > (403) 266-9078 mmestinsek@stikeman.com

Michael Mestinsek is a partner, Head of the Advocacy Group in the Calgary office and a member of the National Partnership Board. He represents numerous domestic and international clients in all major areas of commercial litigation, arbitration and alternative dispute resolution, with a specific focus on disputes arising in the energy industry.



Millar, W.A. Derry WeirFoulds LLP > (416) 947-5021 dmillar@weirfoulds.com

Derry Millar is a skilled and dedicated advocate with a broad civil litigation and administrative law practice. He was called to the Ontario Bar in 1974. He is a fellow of the ACTL and the CIARB. Mr. Millar has appeared in all levels of court in Ontario, the SCC and the FCC, and many administrative tribunals, and acts regularly as an arbitrator and mediator. He acted as lead commission counsel for the Ipperwash Inquiry. Mr. Millar is a former Treasurer (President) of The Law Society of Ontario (LSO); he was first elected a Bencher (Director) of the LSO in 1995 and has been Chair and Vice Chair of a wide variety of LSO Committees, and a Director of the Lawyers' Professional Indemnity Company. He has held a long list of professional titles including Member, Board of Legal Aid Ontario, January 1999 to June 2008, and was reappointed a Director in April 2011; Trustee of The Law Society Foundation; Director of LibraryCo; Member, Civil Rules Committee (since 1976); past Chair, Ontario Centre for Advocacy Training; former Director, The Advocates' Society and Pro Bono Law Ontario. Has been a co-editor of the Ontario Annual Practice since 1975. Mr. Millar has been a regular speaker at legal events and contributed to legal publications and seminars. He was a law clerk at the SCC.



Miller, D. J. Thornton Grout Finnigan LLP > (416) 304-0559 djmiller@tgf.ca

D. J. Miller is a restructuring and insolvency partner at Thornton Grout Finnigan LLP and has represented a wide variety of stakeholders in complex restructurings and insolvency litigation. She was lead Canadian insolvency counsel to the UK Pension Claimants in the Nortel Networks case and succeeded in obtaining a precedent-setting pro rata allocation of US\$7.3 billion of sale proceeds among more than 40 insolvency estates in Canada, the US, and Europe following the first joint trial of the Canadian and US Courts. Ms. Miller has extensive experience on the "deal" side of restructurings as well as insolvency litigation, and has appeared before every level of court in Canada. She is considered a "go-to" counsel for stakeholders requiring creative advice to achieve effective workouts, both within and outside of formal court proceedings. Ms. Miller is known for her deep knowledge of the insolvency framework, both domestic and international, and for applying analytical and strategic skills to achieve successful outcomes for her clients. She is a member of the International Insolvency Institute (III), the Insolvency Institute of Canada (IIC), past President of the Toronto Chapter of the Turnaround Management Association (TMA) and is on the Executive Board of TMA Global.



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“PEOPLE ARE MORE IN TUNE AS TO WHAT CAN BE ACCOMPLISHED IN A CLASS ACTION ... IN A CIVIL CONTEXT, ON BEHALF OF A GROUP.”

Céline Légendre
OSLER HOSKIN & HARCOURT LLP

“There was obviously a significant growth phase in that industry,” he says, which is now in a period of retrenchment, “where we’ve left the heady days behind leading up to legalization, and now that the market is settling in, that has uncovered certain issues with some of these companies.”

These include problems with public disclosure and some irresponsible players, and there has been debate as to whether companies had the underlying assets or resources to support the share prices that they were commanding. “There was a lot of speculation in the industry. Now that the market has settled

in and developed, people are taking a second look at the industry, including plaintiff-side class action lawyers.”

Several law firms have launched class actions for negligence against long-term care homes and even against provinces where residents have contracted and died from COVID-19. In June, Koskie Minsky LLP notified the province of Ontario that it would file a class action lawsuit against it alleging the province was negligent in its oversight of nursing homes. That same month, Public Health Ontario reported 1,825 confirmed cases among residents in long-term care facilities, including 1,465 deaths for an overall case fatality rate of 28.4 per cent.

Rochon Genova LLP launched a class action in July on behalf of residents of the 96 long-term care homes in Ontario that experienced COVID-19-related outbreaks as well as their family members and estates, and Howie Sacks & Henry LLP announced it was bringing claims “against the owners of any long-term care homes and retirement homes in Ontario where we believe there have been inadequate pre-emptive or responsive measures, made by the administration, to the COVID-19 outbreak.”

“We started tracking across a variety of sectors, and the one that’s generated the most class actions across Canada have been nursing homes” in the number of claims made, says Fleming, who estimates that more than 10 have been commenced in Canada against long-term care facilities as a result of COVID-19 illnesses and deaths.

“That’s a lot of class actions and a lot of time focused on [that] particular industry.”

In the common law provinces, Lockwood expects to see more privacy class actions. “Particularly, you’ve got the tort of intrusion upon seclusion, and the law is still a little unsettled around that. So, I think you’ll see a lot of activity around the parameters” of that and whether claims “can be brought on a class-wide basis and the issue of damages.”

On the securities side, whenever a publicly reporting company has to make an adjustment to its financial records, it must issue a financial restatement to investors. In the



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“Not all class actions are motivated purely by financial goals . . . but are based on treatment that individuals have received through government programs or government institutions.”

Matthew Fleming
DENTONS CANADA LLP

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“The consequence of having such a liberal interpretation of the conditions for authorization are that some cases that should have been weeded out were in fact authorized.”

Yves Martineau
STIKEMAN ELLIOTT LLP

past five to seven years, Lockwood says, all the provinces have adjusted their securities acts to allow for secondary market misrepresentation, and it may be assumed that clients have relied on a misstatement in the initial public document and can deem reliance on secondary market provisions. As a result, “almost any time there’s a restatement, it’s likely that you’re going to see a securities class action follow immediately” after.

Another issue, he notes, is the predominance requirement to certify a class action. Amendments to Ontario’s Class Proceedings Act came into force on Oct. 1 and require that common issues predominate over individual ones; many are speculating that this will raise the bar for certification and that plaintiffs will be loath to bring actions in Ontario.

“I don’t know [that] that’s necessarily the case,” he says, “but at this stage, very rarely do you see a class action in Canada that’s not national,” meaning that counsel from different firms in various provinces are co-ordinating and liaising with each other. “So, I feel the amendments to the Ontario act may not be as big as people think.”

These were the first significant amendments to Ontario’s act since the class action legislation was adopted in 1992, and “they are truly significant,” says Fleming. “They have raised the bar for plaintiffs at the certification stage [and] have encouraged preliminary motions, which dispose of all or part of the claim at an early stage of the proceedings.” The amendments also promote the early resolution of potential jurisdictional issues and imposed tighter timelines to provide for the dismissal for delay of claims that do not proceed in a timely fashion, he says.

In Quebec, conditions for class authorization (or certification) are considered less stringent. The province is also unusual — and has been seen as more efficient — in

having its own class actions chambers.

“We’ve been under a regime for close to a decade where the conditions are quite liberal,” says Yves Martineau, a partner at Stikeman Elliott LLP in Montreal. “That’s good for lawyers, but . . . the consequence of having such a liberal interpretation of the conditions for authorization are that some cases that should have been weeded out were in fact authorized” and went to trial.

That said, Martineau praises how Quebec courts have handled class actions during the pandemic. “They have been very impressive and efficient,” he says. “While we’ve seen other areas slowed down, these cases in Quebec are all case managed” with one judge per case. A small team in the class action chamber in Montreal has held several virtual hearings and has been “very efficient in not slowing down too much and reminding [lawyers] we must all do our best in pushing cases forward. . . . They had to be flexible and adapt, which they did.”

Looking ahead, the tip of the pandemic’s iceberg is still at some distance, say Osler’s Lockwood and Légendre.

“The reality is, we haven’t seen the . . . knock-on effects and economic repercussions” of the pandemic, says Lockwood. In the privacy sphere, there are already questions about whether the COVID-19 apps are properly protecting consumers’ data.

“Almost every sector is dramatically impacted by these things, [and] the class action regime lends itself to adjudication of a lot of these issues.”

Légendre likewise sees many more consumer privacy class actions coming, especially as consumers are using apps and online platforms so much more.

“Whether it be an app [or other technology], it just prompts that many more questions that people will have to resolve through class actions,” she says. ■



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Lexpert-ranked leading litigation lawyers



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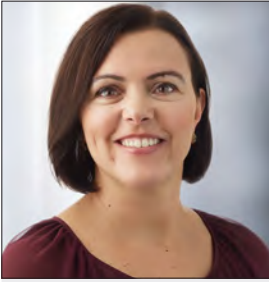
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- Bélanger, Philippe H.;** McCarthy Tétrault LLP
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- Bernier, Jacques;** Baker & McKenzie LLP
- Bernstein, Andrew E.;** Torys LLP
- Bhattacharjee, Subrata;** Borden Ladner Gervais LLP (BLG)
- Binnie, CC, QC, Ian;** Lenczner Slaght Royce Smith Griffin LLP
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- Blair, QC, John D.;** Borden Ladner Gervais LLP (BLG)
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- Block, Sheila R.;** Torys LLP
- Boddez, Thomas M.;** Thorsteinssons LLP
- Boggs, C. Kirk;** Lerners LLP
- Boisvert, Joëlle;** Gowling WLG
- Bombier, Nina;** Lenczner Slaght Royce Smith Griffin LLP
- Bomhof, Scott A.;** Torys LLP
- Book, Hilary;** Book Law
- Bordin, Michael;** Gowling WLG
- Borgers, Oliver J.;** McCarthy Tétrault LLP
- Boudreau, Adrienne;** Sotos LLP
- Boutin, Marc-André;** Davies Ward Phillips & Vineberg LLP
- Boyle, Sean K.;** Blake, Cassels & Graydon LLP
- Brabander, Kristian;** McCarthy Tétrault LLP
- Brasil, Luciana P.;** Branch MacMaster LLP
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Partner. Jonathan's practice focuses on class proceedings and commercial litigation. He is counsel in class actions in a wide variety of areas, including Crown liability, product liability, securities misrepresentation, employment law, public health, pension litigation, and other matters. Jonathan has been involved in many landmark cases and some of the largest class action settlements in Canada. For example, he is co-lead counsel in *Heyder v. Canada* involving alleged sexual misconduct in the Canadian Armed Forces and Department of National Defence. It settled for \$900 million, which is one of the largest class action settlements in Canadian history. He was lead counsel in *Rosen v. BMO*, the first overtime case to be certified on behalf of investment advisors, which has since settled. He is lead counsel in *Grann v. HMQ* involving allegations about the Children's Aid regime, as well as in *Keeping v. HMQ* regarding institutional abuse in youth training schools. He has been appointed to sit on the Ontario Class Action Bench-Bar Liaison Committee and speaks and publishes regularly on issues related to class actions and commercial litigation. He received his LLB in 2001 from the University of Toronto and his BA Hon in 1996 from McGill University.



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Joseph Reynaud is a partner in the Litigation & Dispute Resolution Group, whose practice focuses on restructuring, insolvency and commercial litigation. Joseph regularly advises and represents debtors, secured lenders, court-appointed officers and purchasers in proceedings under the *Companies' Creditors Arrangements Act* and the *Bankruptcy and Insolvency Act*. He is involved in Québec-based, national and cross-border proceedings and has appeared before all levels of courts, including the Supreme Court of Canada. Joseph has participated in large-scale restructurings, liquidations, distressed asset sales and the litigation or arbitration of major commercial disputes in several industry areas, including airlines and aircraft financing, banking, construction, equipment financing, energy, forest products, gaming, hydroelectricity, information technology, manufacturing, real estate and retail. His expertise in dispute resolution and insolvency also lead him to provide strategic advice to clients in commercial transactions.



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Mr. Rigaud is highly skilled in commercial insolvency and restructuring matters. He advises insolvent companies in formal and informal restructurings, as well as financial institutions, lessors, bondholders, strategic purchasers, trustees, receivers, and monitors. He advises clients regularly on matters ranging from litigation to corporate reorganizations, asset sales, and financing. He acts as the Canadian Co-Chair of the Norton Rose Fulbright financial restructuring and insolvency team. He speaks regularly on insolvency topics and is a member of the Insolvency Institute of Canada.



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Luisa's practice encompasses a wide variety of areas, including administrative law and civil and commercial litigation. Luisa has been a partner since 2006 and a member of the Firm's management committee since 2008. In 2018, Luisa became Managing Partner. In February 2016, Luisa received an Order-in-Council appointment as a part-time member of the Licence Appeal Tribunal. Luisa is counsel for the Canadian Centre for Ethics in Sports and has appeared on a number of anti-doping cases over the last several years. In addition, Luisa acts for students facing academic and non-academic related charges at secondary and post-secondary institutions throughout Ontario. Further, Luisa acts as independent legal counsel for a number of regulated health colleges and administrative tribunals throughout the province. In that role, Luisa provides substantive and procedural advice during hearings as well as ongoing training for adjudicators. In 2013, Luisa was appointed by former Chief Justice Warren Winkler to act as court monitor in the administration of two pan-Canadian settlements involving the tainted blood scandal, as well as the settlement involving water contamination in Walkerton, Ontario.



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Passionate about innovation, Judith Robinson's practice centres on IP litigation, dispute avoidance / resolution, risk mitigation, and related strategies. She has been particularly active in the pharmaceutical and aerospace sectors. She is described in the 2021 *Chambers* Band 1 for IP litigation as "an outstanding trial lawyer." Judith has a wide experience before the courts, including for cross-border patent trials and damages assessments as well as the judicial review of administrative decisions relating to IP and appellate work. She was also counsel in a statutory appeal in telecommunications that raised significant issues of copyright. She is proud of the many settlements that she has facilitated to the satisfaction of the firm's clients. In mid-2019, Judith stepped down as the Practice Group Leader of the IP practice of Norton Rose Fulbright Canada after five years in the role and on the management committee of the firm.

Other Lexpert-ranked leading litigation lawyers

B - E

- Bush, Rebecca L.;** Borden Ladner Gervais LLP (BLG)
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- Cameron, Donald M.;** Bereskin & Parr LLP
- Campbell, Nigel;** Blake, Cassels & Graydon LLP
- Campion, Nadia;** Lax O'Sullivan Lissus Gottlieb LLP
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- Casavant, Jean-Pierre;** Casavant Bédard
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- Chadwick, Robert J.;** Goodmans LLP
- Charette, Louis;** Lavery, de Billy, L.L.P.
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 Vincent Rochette deals in all aspects of civil, commercial, and constitutional litigation. His practice focuses primarily on class actions, contractual disputes, environmental disputes, and appeal proceedings, including before the Supreme Court of Canada. Practising out of our Montréal and Québec offices, Mr. Rochette represents clients before all levels of courts and several administrative tribunals. In the last few years, Mr. Rochette has acted in several complex legal disputes on behalf of Crown corporations and large local and international businesses. He has successfully represented a diverse clientele in several matters involving technical issues and complex expert evidence. Mr. Rochette is currently leading the defence in several class actions regarding environmental, insurance, educational, consumer law, and human rights and freedoms issues. He frequently acts in disputes over issues concerning the administration of pension plans or stemming from natural resource development projects. He also intervenes in cases involving constitutional or administrative law issues. During the judicial year 2010–2011, Mr. Rochette clerked for Mr. Justice Louis LeBel at the Supreme Court of Canada.



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 Ken Rosenberg addresses litigation as strategic problem-solving to assist clients in resolving their disputes. He is recognized as a leading lawyer in corporate commercial litigation, insolvency litigation, administrative law, cross-border disputes, and mediation. Throughout his more than 35 years of practice, Ken has appeared before all levels of court, administrative tribunals, and government agencies. These include financing, shareholders and/or contractual disputes, insolvency, and regulatory disputes. Luminary insolvency and cross-border cases include Nortel, Sino-Forest, Stelco, Air Canada, Lac Mégantic, ABCP, Indalex, and Sears. Ken is routinely recognized by many different organizations as leading counsel, including: *Lexpert*/*ROB Magazine*; *Chambers Canada*; Best Lawyers; Martindell-Hubbell; Who's Who Legal, and others. Ken has acted as a mediator in more than 100 mediations, from one-day bilateral cases to multi-month cases involving 20 or more parties. He also acts, from time to time, as an arbitrator.



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 Linda Rothstein is a senior partner at Paliare Roland Rosenberg Rothstein LLP. She is best known for probing cross-examinations, strategic advice and behind-the-scenes counsel work on high-stakes cases. She practises in civil & administrative litigation with expertise in class actions, commercial litigation, professional liability & misconduct, public law, employment & human rights, judicial review & appeals. Her high-profile work as Commission Counsel to the Inquiry into Pediatric Forensic Pathology and lead counsel to the Motherisk Hair Analysis Review have cemented her reputation as one of Ontario's leading advocates. Linda was given OBA's Award of Excellence in Civil Litigation in 2018 and is ranked in Chambers described as "a top litigator." She is recognized in *Globe and Mail's Lexpert*/*ROB Magazine* as a Leading Litigation Lawyer, 2019 and has been recognized by *The Best Lawyers in Canada* since 2006. She was awarded the Law Society Medal by the LSO, the Award of Distinction from Toronto Lawyers' Association, the Lexpert Zenith Award in 2013 and the University of Toronto Distinguished Alumnus Award in 2014. Linda has been named one of the Top 25 Women in Litigation and one of the Top 50 Trial Lawyers in Canada by *Benchmark Litigation* and is recognized as a Litigation Star.



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 Christian Roy is local chair of the Litigation Group in the Québec office. His practice focuses primarily on corporate restructuring, bankruptcy, insolvency, and realization of bank guarantees. His services are often retained by companies with restructuring needs and by court-appointed officers, financial institutions, secured and unsecured creditors, and purchasers of assets from distressed companies. He has acted for several financial institutions and companies in connection with informal workouts and debtor-in-possession financings. Mr. Roy has participated in numerous major restructurings and receiverships in a broad range of industries, including construction, manufacturing, saw mills, pulp and paper, technology, media, pharmaceutical, mining, retail, and real estate. He also acts in cases involving liability of directors and officers.



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 Danielle Royal is a partner in the Litigation & Dispute Resolution Group. Her practice focuses on class actions, complex commercial litigation and competition litigation. Danielle has appeared before all levels of Court in Ontario, the Federal Court of Appeal and the Supreme Court of Canada. She has represented clients on several cross-border class actions involving claims of price-fixing and conspiracy, other commercial disputes, as well as a range of product liability claims. Danielle has significant experience advising and assisting companies regarding internal investigations and responding to regulatory, criminal or quasi-criminal investigations and the class action litigation that often accompanies allegations of serious misconduct. In addition to her practice, Danielle is a member of the Associates' Committee in the Toronto office. Danielle is a member of the Canadian Bar Association and a participating member of the Competition Law Section (Criminal Matters and Enforcement Practices and Procedures Committees). She is a member of the Antitrust Law Section and the Tort Trial & Insurance Practice Section of the American Bar Association and a member of The Advocates' Society of Ontario. Danielle is co-editor of the firm's Product Liability Law blog and Class Actions Law blog.

Other Lexpert-ranked leading litigation lawyers

E - H

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 Stephen is one Canada's top trial and appellate lawyers at all levels. His focus is on corporate commercial litigation, including securities, derivative claims, oppression proceedings, and professional negligence. He was recognized as Vancouver's Lawyer of the Year for 2020 in corporate and commercial litigation, and regularly receives top rankings from publications such as Lexpert®, Benchmark Litigation, and Chambers and Partners. When founding NST in 1987 Stephen, Irwin Nathanson, QC, and Ardella Thomson were committed to building an elite team of litigators capable of advocacy and litigation at the highest level. That commitment continues today as NST has carefully expanded its talented team of litigators, each of whom are committed to intellectual rigour and to achieving optimal results for clients. Together with Irwin Nathanson, he has gathered one of the most select groups of litigation lawyers, positioning the firm for continued prominence among litigation firms in BC and Canada into the future, including a stellar group of younger partners who are widely recognized in their own rights, and a team of associates who are among the country's brightest. NST is regularly recognized as a top litigation firm and boasts some of the sharpest legal minds in Canada.



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 Louis Seveno is a partner at Woods LLP in Montréal specializing in high-stakes civil and commercial litigation and arbitration. Called to the Bars of Québec, Ontario and New York, he represents clients before both trial and appellate courts, as well as before domestic and international arbitral tribunals. He practises mainly in contractual disputes, corporate and shareholder litigation, insolvency, employment law, professional liability, class actions, private international law, and injunctive proceedings. He is active in cases involving Canadian and foreign corporations and in cases involving cross-border or multi-jurisdictional issues. He has acquired substantial expertise in construction and PPP disputes and is one of Canada's leading infrastructure lawyers in the 2020 *Lexpert® Special Edition: Infrastructure*. Acknowledged by his peers in *The Canadian Legal Lexpert® Directory* and *The Best Lawyers in Canada*, he was also included in *Benchmark Litigation's 40* and Under Hot List for 2020. Louis acts as Secretary of the Board of Directors and the Executive Committee of the CBA, Québec Division. He is a guest lecturer at the Université de Montréal's Civil Litigation Workshop and McGill University's Law for Architects and Engineers course. He practises in English, French and Spanish.



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 Ken Skingle's practice is restricted to taxation matters with an emphasis on tax dispute resolution and tax litigation, and corporate and high-net-worth individuals tax planning. He has appeared as counsel before the Supreme Court of Canada, the Tax Court of Canada, the Federal Court of Appeal, the Alberta Court of Queen's Bench, and the Alberta Court of Appeal representing taxpayers in appeals of tax reassessments. Ken was admitted to the Alberta Bar in 1988 and appointed QC in 2007. He is a former member of the Tax Court of Canada Bench & Bar Committee, previously served as member of the Judicial Advisory Committee for appointments to the Tax Court of Canada, was a Director of the CPTS, is a past President of the Calgary Bar Association, and is a past chairman of the Taxation Specialists (southern) for the Alberta branch of the CBA. In addition to his professional affiliations, Ken serves and has served as a Director or in other volunteer positions on such charitable organizations as the United Way of Calgary, the Calgary Health Trust, and the Calgary Women's Emergency Shelter. Author, speaker and instructor, he has lectured on tax-related topics for the CTF, Tax Executives Institute, CPTS, ICAA, Association of General Counsel of Alberta, University of Calgary, and the CBA.



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 Roger Smith is a litigation lawyer based in Calgary. Roger's practice is focused on complex litigation. He has acted in a broad range of matters, including contractual and joint venture, fiduciary duties, and oil.

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Bob is a founding partner of TGF and is widely acknowledged as one of the foremost insolvency practitioners in Canada. Best Lawyers 2018 named Bob "Lawyer of the Year" in Canada for Toronto Insolvency and Financial Restructuring Law. Euro-money's *The Best of the Best 2018* listed Bob as one of the top five insolvency and restructuring lawyers in Canada. He has been lauded as "a leading light" and "pound for pound one of the top lawyers in town." Bob is currently acting for JTI-Macdonald Corp., an applicant in the CCAA restructuring of the tobacco industry in Canada, described by the presiding judge as one of the most complex restructurings in Canadian history. He is also acting for the Monitor in the restructurings of Carillion Group in Canada and Performance Sports Group Ltd. He played a leading role in the restructurings of Stelco Inc. (twice), Pacific Exploration & Production Corporation, GuestLogix Inc., Coopers & Lybrand, Mobilicity, Hollinger, AbitibiBowater, Calpine, Air Canada, and the reorganization of BCE. Bob is a Fellow of the American College of Bankruptcy, a Fellow, Director and Vice President of the Insolvency Institute of Canada. He was called to the Ontario Bar in 1984.



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Martin Valasek is a leading practitioner in the area of international arbitration, with extensive experience in both investor-state and commercial contract disputes. He regularly acts as counsel, and also sits as an arbitrator. His experience covers a wide range of legal systems and industries, including aerospace, construction, mining, energy, pharmaceuticals, and manufacturing. He has consistently provided winning guidance to clients, in both transactions and disputes, under all of the leading rules, including the ICC, LCIA, ICSID, and UNCITRAL Rules, and other institutional and *ad hoc* regimes. He has extensive experience representing clients in investment disputes under BITS, multilateral investment treaties (including NAFTA in particular), and other instruments. In 2011, Mr. Valasek was named to *Global Arbitration Review's* 45 under 45 list of leading practitioners in the field of international arbitration under the age of 45. In 2007, he was named one of *Lexpert's* "Rising Stars: Leading Lawyers Under 40" for Canada. He is a member of the Bars of Québec, Ontario, and New York. He was editor-in-chief of the *McGill Law Journal* and clerked for Mr. Justice Gonthier of the Supreme Court of Canada. He is fluent in English, French, and Czech, and has a working knowledge of Spanish.



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Practises litigation with a focus on regulatory/administrative law, intellectual property, commercial disputes, and class actions. He has often acted for public agencies, industry regulators, and discipline tribunals in difficult matters, as well as on behalf of First Nations interests. He is cross-appointed to the intellectual property boutique PCK IP as part of his intellectual property litigation work. Brendan routinely argues matters before the various Ontario and federal courts as well as a wide variety of administrative tribunals and in private arbitrations. He has been repeatedly recognized as a leading counsel by *Chambers Canada*, *The Best Lawyers in Canada*, and *Benchmark Litigation*, and has been honoured with the Precedent-Setter Award and as a Lexpert Rising Star. He has taught administrative law as Adjunct Professor of Law at Osgoode Hall Law School since 2008. Prior to his litigation career, Brendan served as a law clerk to the Hon. Frank Iacobucci of the Supreme Court of Canada.



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Considered to be one of Ontario's most respected civil litigators, Dave Williams specializes in complex commercial litigation, plaintiff personal injury and class actions. Dave also has a special record of achievement in medical malpractice cases where he has successfully represented plaintiffs. He has also been active in representing Ontario lawyers in litigation supported by LAWPRO. His 30-year legal career has brought him before the Trial Division, the Court of Appeal and the Supreme Court of Canada. He has been involved in many high-profile cases including being a member of the plaintiffs' class action group for the Walkerton contaminated water claim as well as a landmark Aboriginal rights dispute. Most recently, Dave was co-counsel in one of the most significant class action judgments in Canada. His passion for the law is reflected inside and outside the courts. Dave served for 10 years on the Law Society of Ontario's Civil Litigation Specialty Committee, has taught courses on civil litigation, advocacy and practice for the Bar Admission Course and has published numerous conference papers. Dave is a member of the Canadian Bar Association, The Advocates' Society and the American Association for Justice. In 2009, he was inducted into the American College of Trial Lawyers.



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Matthew's practice focuses on all aspects of taxpayer representation. He has appeared before the Tax Court of Canada, the Federal Court of Canada, the Federal Court of Appeal, the Ontario Superior Court, and the Supreme Court of Canada on a wide range of issues. Matthew has extensive experience dealing with Canada's General Anti-Avoidance Rule (GAAR) in both domestic and international contexts having successfully appealed a number of cases in the Federal Court of Appeal. Matthew was named as a "Rising Star" by *Lexpert* Magazine in 2010 and has since been repeatedly recognized by *Lexpert* as a Consistently Recommended Corporate Tax litigator. Matthew has been recognized as a leading tax dispute resolution lawyer in the *International Tax Review*, was recently named among *The Best Lawyers in Canada* by Best Lawyers International, has been peer rated by Martindale-Hubbell as a "preeminent lawyer", and is included in *Chambers Global Guide*.



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Chris Wilson is internationally recognized as a leading Canadian intellectual property litigator. He acts as lead counsel in trademark, copyright, patent, and trade secrets litigation in the federal and British Columbia courts. His work includes precedent-setting decisions on internet keyword advertising and domain names, the constitutionality of Canada's official marks regime, contempt, and one of the largest monetary judgments for breach of confidence in Canadian history. Chris manages IP matters across numerous industries, including alcoholic beverages, software and video games, consumer products, traditional and e-commerce retailers, regulatory bodies, financial services, and natural resources. His practice focuses on enforcement and disputes, including trademark actions, patent infringement and ownership disputes, copyright and industrial designs, parallel imports (grey marketing), and all manner of issues relating to the internet. Mr. Wilson is an honorary executive member and past chair of the Canadian Bar Association's National Intellectual Property Section. He co-founded and co-hosts the annual BC Wine & Liquor Law Conference and is a director of the International Wine Law Association and President of its Canadian chapter, AIDV Canada. He is a former software programmer.

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James A. Woods, senior partner at Woods LLP, is considered to be one of the best lawyers in Québec and in Canada. He practises in litigation and arbitration and pleads at all levels of federal and provincial courts in Ontario and Québec, including the Supreme Court of Canada. Has acted as attorney or arbitrator either as President or Member of Arbitration Tribunal in commercial and international arbitrations, either ad hoc or ICC. Member of the panel of arbitrators of the AAA, of the CBA, QBA, LSO, LSBC, LSA, LSEW, ABA, IBA, LCIA, AAJ, and CCAC. Fellow of the ACTL, LCA, FDCC, and CIA (London). Called to the Bars of Québec, 1976; Ontario, 1979; Alberta and BC, 2006; England & Wales, 2007; Barreau Paris, 2013; and discerned *Advocatus Emeritus* by Québec Bar, 2013. Named "Litigator of the Year 2016" by *Le Monde Juridique Magazine* and as one of the Leading 500 Lawyers in Canada - Montréal, Corporate Commercial Litigation by *Lexpert*® since 2015. Recognized consistently by *The Best Lawyers in Canada* for his expertise in the fields of bet-the-company litigation, class action litigation, corporate and commercial litigation, director and officer liability, legal malpractice law, and securities law, and multiple times as Lawyer of the Year in Montréal.



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