

## MICHAEL H. LUBETSKY\*



**Categories:** [People](#), [Lawyers](#)

Michael Lubetsky leads McMillan's national tax litigation practice and he acts in complex commercial disputes and cases raising novel questions of constitutional and comparative law. His intellect, insight, and clear presentation of information are a benefit to his clients, including large and medium-sized corporations, high-net-worth individuals, and charities.

Michael has appeared and argued successfully before all levels of court across Canada, including the Supreme Court of Canada. Further, he has authored articles on a diverse range of legal subjects, some of which have been cited by the Supreme Court of Canada and the Federal and Québec Courts of Appeal. He has also authored two textbooks on the art of debate.

Having held positions as a researcher with an investment company in Japan and later as an officer in the Canadian Foreign Service, serving in Haiti, the Dominican Republic and China, Michael brings a unique

perspective and understanding of geopolitical situations to clients dealing with international business matters.

**Email:** michael.lubetsky@mcmillan.ca

**Expertise:** Administrative & Public Law, Litigation & Dispute Resolution, Tax

**Language Spoken:** English, French

**Location:** Toronto

**Phone:** 416.865.7907 | 514.375.5103

**Position/Title:** Partner, Tax & Litigation

**Community Involvement:**

- American Contract Bridge League, Bronze Life Master
- Canadian Bar Association, Sexual Orientation and Gender Identity Committee Member
- Donald GH Bowman National Tax Moot, McGill team coach
- Corporate/Securities Moot: Judge (2018, 2019, 2020, 2022 and 2023)

**Directorships & Affiliations:**

- Canadian Bar Association
- Canadian Tax Foundation
- Ontario Bar Association
- The Advocates Society

**Publications: Peer-Reviewed Book Chapters**

- [“Dispute Resolution under Tax Treaties and Beyond,”](#) (Canada Chapter) IBFD, (2023) pg. 567-621.
- [“The Fractured Jurisdiction of the Courts in Income Tax Disputes,”](#) in Tax Disputes in Canada, Canadian Tax Foundation (2022)
- [“Charity in Common Law and Civilian Traditions,”](#) Research Handbook on Not-for-Profit Law, Edward Elgar Publishing (2018) pg. 325
- [“Categorically Different: Unintended Consequences of Trust Taxonomy,”](#) in The Worlds of the Trust,

Cambridge University Press (2013)

### Peer-Reviewed Journal Publications

- [“Uncharted Paths for Arm’s-Length Dealing and Indirect Transfers: Case Comment on Canada v. Microbjo Properties Inc.”](#), Canadian Tax Journal 1159, 71:4 (2023)
- [“Bending Limitation Periods to Achieve Equity: Case Comment on Barrs v. Canada \(National Revenue\)”](#), Canadian Tax Journal 281, 71:1 (2023)
- [“Tax Warranty and Tax Indemnification Clauses: Case Comment on Boliden Mineral v FQM Kevitsa Sweden Holding”](#), Canadian Tax Journal 397, 70:2 (2022)
- [“Interest Relief on Income Tax Debts: Canada Versus the United States”](#), (2020) Canadian Tax Journal 931, 68:4 (2020)
- [“Income Tax Disputes Involving Loss Years: Pitfalls, Foibles, and Possible Reforms”](#), Canadian Tax Journal 499, 67:3 (2019) [Winner of the 2020 Douglas J. Sherbaniuk Distinguished Writing Award]
- [“The Power to Audit is the Power to Destroy: Judicial Supervision of the Exercise of Audit Powers”](#), co-author with Guy du Pont, Canadian Tax Journal 81, 61:3 (2013) [cited by the Federal Court of Appeal in JP Morgan Asset Management (Canada) Inc. v. Canada (National Revenue), 2013 FCA 250]
- [“Qui est ton parent? – les implications de Droit de la famille—111729”](#), Développements récents en droit familial, vol. 355 (2013), 87 [cited by the Québec Court of Appeal in Droit de la famille—191677, 2019 QCCA 1386]
- [“Losing Interest: Financial Alchemy in Islamic, Talmudic & Western Law”](#), Transnational Law & Contemporary Problems 231, 19:1 (2010) [Winner of the 2009 Trandafir International Law Writing Competition]
- [“Appealing Outcomes: A Study of the Overturn Rate of Canada’s Appellate Courts”](#), co-author with Joshua A. Krane (2009)
- [“Adding Epicycles: The Inconsistent Use Test in Adverse Possession Law”](#), (2009) [cited by the Supreme Court of Canada in Nelson (City) v Mowatt, 2017 SCC 8]
- [“Reopening the Langelier-Mignault Debate on Unauthorized Transactions Involving a Minor’s Property”](#), co-author with Joshua A. Krane (2009) 39 Revue générale de droit 101 [cited by the Québec Superior Court in MS c AG, 2019 QCCS 3585]
- [“Cultural Difference and Corporate Governance”](#), Transnational Law & Contemporary Problems 187, 17:1 (2008) [Winner of the 2007 Trandafir International Law Writing Competition]
- [“Sensei, I Slashed My Wrists Last Night”](#), The Language Teacher 42, 22:5 (1998)

### Non-Peer Reviewed Publications in Tax-Related Newsletters and Journals

- [“To Err is Human: Policy Implications of Collins Family Trust,”](#) Perspectives on Tax Law and Policy 1, 3:4 (2022)
- “Taxpayer Confidentiality: Misuse and Abuse of Section 241,” co-author with Bobby J. Sood Perspectives on Tax Law and Policy 15, 2:4 (2021)
- [“Stewart: CRA Audit Project Gone Awry,”](#) co-author with Matthias Heilke Canadian Tax Highlights 4, 27:4 (2019)
- [“SCC on Suing Tax Advisors,”](#) Canadian Tax Highlights 2, 27:1 (2019)
- [“T1135 Penalty Relief,”](#) Canadian Tax Highlights 1, 26:6 (2018)
- “\$1.7 Million Civil Damage Award Against the CRA,” Canadian Tax Highlights 1, 26:4 (2018)
- [“Interest Relief Under the Federal and Provincial Regimes”](#) Tax Litigation (Federated Press) 1182, XX(1) (2015)
- [“Canada Closely Watching U.S. Supreme Court Proceedings in Wynne,”](#) Tax Notes International 341, 77:4 (2015)
- “Head of Revenu Québec Summoned,” co-author with John Lennard 210 Canadian Tax Highlights 1, 23:10 (2015)
- “Québec Ombudsman Lambastes Revenu Québec,” Canadian Tax Highlights 1, 22:10 (2014)
- “Unanswered Question: Judicial Recourse,” (2012) 20:1 Canadian Tax Highlights 2, 20:1 (2012)

### Debate-Related Publications

- Contributor to “Dibeito-de Kangaeru Chikara-o Tsukeru,” (1999) (CD-ROM)
- “Discover Debate—Debate for ESL Learners,” co-author with Charles Lebeau and David Harrington Language Solutions, (1999) (textbook)
- “Make Your Point—Debate for EFL Students,” Tuttle ELT Publishing (1997) (textbook)
- Weekly newspaper column with Shigeru Matsumoto “Soapbox: Debate Forum,” The Daily Yomiuri (1997)

### Education & Admissions:

**Degree:** Called to the Ontario bar

**Year:** 2012

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**Degree:** Called to the Québec bar

**Year:** 2009

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**Degree:** MBA (Finance Concentration) (Dean’s Medal for Great Distinction)

**University:** McGill University

**Year:** 2008

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**Degree:** LLB/BCL (with Great Distinction, Elizabeth Torrance Gold Medal)

**University:** McGill University

**Year:** 2008

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**Degree:** AB Religion (Cum Laude)

**University:** Princeton University

**Year:** 1993

**Media Mentions:**

- “Top 10 Business Decisions of the Past Year, Part Two” Interview, The Lawyer’s Daily (2023)
- [“Scotiabank’s \\$7.9-million tax riddle,”](#) by Patrick Brethour, The Globe and Mail, November 1, 2021
- [“U.S. double-taxation case captures Canadian attention,”](#) by Julius Melnitzer, Financial Post, June 25, 2014
- [“Fertility dispute triggers ripples of concern across Canada after sperm donor wins paternity ruling,”](#) by Tom Blackwell, National Post, April 10, 2012
- [“Québec Superior Court ruling is historic win for trans rights,”](#) by Elizabeth Raymer, Canadian Lawyer, February 2, 2023
- [“Landmark ruling for trans rights,”](#) by Luis Millán, Law in Québec, March 1, 2021.
- [“New Québec bill raises troubling issues, family law experts say,”](#) by Luis Millán, Law360 Canada, November 11, 2021
- [“Concordia student group wins a landmark human rights case in Québec Superior Court,”](#) by Ashley Fortier, Concordia, February 4, 2021

**Rankings & Recognition:**

- Recognized in the 2024 Benchmark Litigation: Canada Guide
- Recognized in the 2024 Canadian Legal Lexpert Directory as a Consistently Recommended Lawyer in the area of Litigation – Corporate Tax
- Recognized by Chambers Global (2024) as a leading lawyer in the area of Tax: Litigation
- Recognized by Chambers Canada (2024) as a leading lawyer in the area of Tax: Litigation
- Recognized in the 2023 Lexpert Special Edition on Canada’s Leading Litigation Lawyers as a Leading Litigation Lawyer
- Recognized by *Chambers Canada* (2023) as a leading lawyer in the area of Tax: Litigation

- Recognized in the 2023 *Canadian Legal Lexpert Directory* as a Consistently Recommended Lawyer in the area of Litigation: Corporate Tax
- Recognized in the 2022 *Lexpert Special Edition: Litigation (2022)*
- Recipient of the Benchmark Canada Impact Case of the Year Award (2020) for acting for the LCBO in obtaining summary judgment dismissing a \$1.5 billion antitrust class action, which was later upheld by the Ontario Court of Appeal
- Recognized in *Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms & Attorneys—Future Star in the Jurisdiction of Ontario* (2021)
- Awarded the Douglas J. Sherbaniuk Distinguished Writing Award (2020) by the Canadian Tax Foundation

### **Speaking Engagements:**

- International Fiscal Association-Canada Annual Conference, "Current Cases" (panelist) (Calgary)  
- May 16, 2023  
- <https://youtu.be/M8CC-mHV3c8>

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- University of Toronto Faculty of Law, Hausman Tax Law and Policy Workshop, "Perspectives on Tax Law & Policy: Collins Family Trust" (panelist) (Toronto)  
- January 11, 2023

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- Canadian Bar Association, Journée de formation annuelle de l'ABC-Québec et SOQUIJ, « Droits fondamentaux des personnes transgenres, intersexes et non-binaires au Québec » (panelist) (Montréal)

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- Ontario Bar Association, Sexual Orientation and Gender Identity Community Section, "Litigating Gender and Gender Identity in the Courts" (Toronto)  
- December 4, 2019

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- Continuing Education Presentation, « Plaidoyer avec fierté » (panelist) (Montréal)  
- August 14, 2019

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- Continuing Education Presentation, "Advocacy with Pride" (panelist) (Toronto)  
- June 12, 2019

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- Université de Montréal, "The Law of Charity" Conference, "Bijuralism and the Meaning of 'Charitable'" (presented a paper followed by a debate with Professor Aline Grenon) (Montréal)

- May 8, 2015

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- Jeune Barreau de Montréal, 70e Congrès annuel, « Naviguer les eaux troubles d'un litige fiscal: de la vérification jusqu'à la cour » (moderator of panel discussion including TCC Chief Justice Rossiter) (Montréal)

- May 28, 2015

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- Association du Barreau Canadien, "50 Shades of Privilege" (panelist) (Montréal)

- May 14, 2015

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- Universidad Anáhuac, "Negotiating a Contract in Canada" (Huixquilucan, Mexico) (guest lecture to Negociación de Contratos y Arbitraje Course)

- November 4, 2014

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- National Judicial Institute: Presentation to judges of the Federal Court of Appeal and Tax Court of Canada on "Effective Advocacy: Different Perspectives of Bench and Bar" (with Guy Du Pont, Ad.E. and Deen C. Olsen)

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- McGill University Faculty of Law, "Comparative Judicial Procedure: Ontario, Québec & Elsewhere" (annual lecture to Judicial Institutions and Civil Procedure course) (Montréal/virtual)

- 2019, 2020, 2021, 2022, 2023

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- Barreau de Montréal, Salon Visez Droit: « Le changement de nom et de désignation de sexe au Québec et ailleurs » (panelist) (virtual)

- March 29, 2021

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- LGBTQ2S+ Firm Hop, "Centre for Gender Advocacy v Québec, 2021 QCCS 191" (virtual)

- March 19, 2021

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- Tournée des cabinets LGBTQ2S+, « Centre for Gender Advocacy v Québec, 2021 QCCS 191 » (virtual)

- March 1, 2021

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- McGill University Faculty of Law/University of Ottawa Faculty of Law, « Le Monde du litige fiscal - Entretien

avec Allison Christians et Samuel Singer » (virtual)

- February 26, 2021

- <https://youtu.be/vIH3W98kPrc>

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- Université de Montréal Faculté de droit, « Centre for Gender Advocacy c Québec, 2021 QCCS 191 » (co-presenter) (virtual)

- February 11, 2021

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- McGill University Faculty of Law, "Adding Epicycles: From McGill Property Law to the Osgoode Hall Law Review" (guest lecture to Property class) (virtual)

- November 3, 2020

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- Canadian Maritime Law Association, Annual Seminar: "Transport Desgagnés v Wärtsilä: Where to now?" (co-presenter) (virtual)

- June 12, 2020

### Representative Matters: Tax Matters

- Acted for various members of the **Ghermezian family** before the Federal Court and the Federal Court of Appeal in a case involving the scope of the Canada Revenue Agency's audit powers
- Acted for **Glenn French** before the Federal Court of Appeal in a case involving the bijural interpretation of the word "gift" in *Income Tax Act*
- Acted for **Glencore Canada Corporation** in a tax appeal before the Ontario Superior Court (Commercial List) in a dispute involving Ontario mining tax
- Acted for **National Money Mart** in a tax appeal before the Tax Court of Canada involving the characterisation of "financial services" under the *Excise Tax Act*
- Acted for a subsidiary of **Target Corporation** in a tax appeal before the Tax Court of Canada involving application of the thin-capitalisation rules of the *Income Tax Act*
- Acted for **EDF Renewables Canada Inc.** in a tax appeal before the Tax Court of Canada involving the characterisation of its wind farms for tax purposes
- Acted for the **Tax and Customs Agency of the Kingdom of Denmark** in the Ontario Superior Court (Commercial List) against three Canadian pension plans to recover tax refunds paid out over the course of a multi-billion-dollar fraudulent scheme
- Acted for the **owners of the Bell Campus** in Montréal in a tax appeal before the Tax Court of Canada in a case involving the application of the general anti-avoidance rule



- Acted for **Exiros Canada Inc.** in a tax appeal before the Tax Court of Canada in a case involving transfer-pricing
- Acted for **Michael Rosenberg** before the Federal Court in a seminal case involving the enforcement of a settlement agreement against the CRA
- Acted for **Glenn Chamandy** before the Federal Court in a case involving the enforcement of a compliance order
- Acted for **Picchio Pharma Inc.** in a tax appeal before the Tax Court of Canada in a case involving the valuation of a biotech company
- Acted for a **major property development group** in a case involving contestation of late-filing penalties (successfully resolved at the objection phase with the Canada Revenue Agency)

### Non-Tax Matters

- Acted for **Wärtsilä Canada Inc.**, before the Supreme Court of Canada in a constitutional case over the applicability of the Civil Code of Québec to a dispute governed by Canadian maritime law
- Acted for **Egale Canada** in its intervention before the Québec Superior Court and the Québec Court of Appeal in a constitutional challenge to 11 provisions of the Civil Code of Québec concerning birth registrations and identity documents for trans, non-binary and intersex people)
- Acted for the **Liquor Control Board of Ontario** in its successful defence against a \$1.4 billion-plus class action involving application of the regulated conduct defence
- Acted for **Kevric** before the Québec Superior Court, Québec Court of Appeal and Supreme Court of Canada in a case involving the interpretation of a rarely-litigated standard provision in liability insurance contracts
- Acted for **a group of littoral property owners** before the Québec Superior Court, Québec Court of Appeal in what has become the leading case on Article 997 of the Civil Code of Québec
- Acted for **Aldo Group** before the Ontario Superior Court (Commercial List), the Ontario Court of Appeal and the Supreme Court of Canada in a case involving the opposability of forum selection clauses to third parties
- Acted for the guardians of a seven-year-old child before the Québec Court of Appeal and the Supreme Court of Canada in a groundbreaking case with respect to assisted procreation

### Pro Bono

- Representing Egale Canada—Canada’s leading organization for 2SLGBTQI+ people and issues—in its intervention in the *Center for Gender Advocacy v Québec* trans rights litigation that was heard and decided by the Québec Superior Court ([2021 QCCS 191](#)) and is currently under appeal before the Québec

Court of Appeal (Docket #500-09-029391-216; appeal heard in April 2022 and currently under advisement)

- Acted for Egale Canada in making submissions to the Department of Finance in September 2022 concerning proposed reforms to the medical expense tax credit as it pertains to surrogacy and assisted reproduction arrangements (<https://egale.ca/awareness/budget-2022-consultation-tax-credit-for-surrogacy-related-medical-expenses/>)
- Acted for the guardians of a seven-year-old child in a groundbreaking case with respect to assisted procreation (LB v. GN (Droit de la famille — 111729), [2011 QCCA 1180](#), leave to appeal to the SCC refused)

#### **Teaching Engagements:**

- Advanced Commercial Law (Legal Writing in English), Université de Montréal, 2008-2011
- Introduction to Western Legal Systems, Université de Montréal, 2010-2012

**Practices:** Administrative & Public Law, Litigation & Dispute Resolution, Tax