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Recent changes to Canada's securities laws

John Wilkin
Blake Cassels & Graydon LLP
Toronto

Over the past two years there have been several significant changes in Canadian securities laws that impact corporate finance transactions. Significant changes to the liability provisions of securities laws, heightened corporate governance requirements, the broadened scope of Canada's short-form prospectus rules, and the harmonisation of private placement rules across provincial jurisdictions have had, or are anticipated to have, a direct impact on corporate finance activities in Canada.

Civil liability for continuous disclosure

New legislation in the province of Ontario (Canada's largest capital market) has created a right of action against the issuer or any responsible person (defined as a reporting issuer in Ontario and any other issuer with a substantial connection to Ontario that has publicly traded securities) in favour of any person who buys or sells securities of the issuer during a period of time in which there is an uncorrected misrepresentation in a disclosure document or in a public oral statement. A disclosure document that might give rise to a right of action includes any written communication (including electronic) that is filed with the Ontario Securities Commission, any government or stock exchange, as well as any communication, the content of which would reasonably be expected to affect the market price or value of a security. A public oral statement will only give rise to a right of action if it relates to the business or affairs of the issuer and is made by a person with actual, implied or apparent authority to speak on behalf of the issuer in circumstances in which a reasonable person would believe that information contained in the statement will become generally disclosed.

Furthermore, the new amendments provide a right of action to persons who acquire or dispose of an issuer's securities during a period in which the issuer fails to make timely disclosure of a material change. This right of action will arise without regard to whether the person actually relied on the issuer's compliance with its disclosure requirements.

Parties potentially liable under these new provisions include: (i) the issuer; (ii) each officer of the issuer who authorises, permits or acquiesces in the release of the document containing a misrepresentation or in the failure to make a timely disclosure; and (iii) each influential person (defined as a controlling shareholder, promoter or insider of the issuer) and each director and officer of the influential person, who knowingly influences the issuer or director or officer of an issuer in the release of the document or the making of the public statement.

By way of defences, the new legislation provides that a person is not liable if they can prove that they had conducted, or caused to be conducted, a reasonable investigation and had no reasonable grounds to believe that there was a misrepresentation or that failure to make timely disclosure would occur.

To address the possibility of abusive strike-suits, such as those experienced by public companies in the US, the new legislation contains a requirement that a legal action based on a misrepresentation or failure to make timely disclosure cannot be commenced without leave of the court. As a threshold matter, the court must be satisfied that the action is being brought in good faith and that there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff. Also, any action that is brought cannot be discontinued or settled without court approval. The prevailing party is entitled to costs as determined by a court.

Corporate governance requirements

The US Sarbanes-Oxley Act of 2002 (SOX), which has changed the corporate governance landscape in the US, has also had a tremendous impact in Canada. The Canadian securities reg-

ulators have taken a number of steps to implement rules applicable to Canadian public companies that mirror SOX requirements. Three of the measures that have been implemented to date are: (i) requirements relating to the audit committee composition and auditor independence; (ii) requirements relating to certification of interim and annual financial statements by an issuer's chief executive officer and chief financial officer; and (iii) requirements relating to prescribed corporate disclosure by issuers and disclosure of an issuer's compliance with prescribed corporate governance guidelines.

National streamlined short-form prospectus system

National Instrument 44-101 – Short Form Prospectus Distributions has been amended to enable more issuers to use Canada's short-form prospectus system by relying on their existing continuous disclosure record, which is readily available to the public through the System for Electronic Document Analysis and Retrieval. The short-form prospectus system allows an issuer: (i) to file an abbreviated form of prospectus, which incorporates its publicly filed disclosure documents by reference; and (ii) to access the capital markets efficiently through a shortened regulatory review period. The short-form system was previously accessible to only senior issuers with substantial market capitalisation. However, the amendments eliminate the two-year seasoning period for an issuer following its initial public offering, and the minimum market capitalisation requirements of the previous rule. As a result of this significant broadening of the qualification requirements, smaller issuers are now able to efficiently access the public capital markets through the short-form prospectus system provided they have filed an annual information form, which serves as the base disclosure document for the issuer.

Harmonisation of the prospectus and registration exemptions

National Instrument 45-106 – Prospectus and Registration Exemptions was implemented on

September 14 2005, and consolidates and harmonises across Canada many of the exemptions from prospectus and registration requirements which had previously been contained in various provincial securities statutes and regulatory instruments. Before its enactment, multi-jurisdictional issuers were required to comply with differing distribution regimes in each jurisdiction. The implementation of the new rule is intended to reduce transaction costs for issuers, as they are now required to comply with only one set of rules for private placements in Canada.

Although the purpose of the new rule is harmonisation, certain differences between jurisdictions still exist. By way of example, the exemption from the dealer registration and prospectus requirements for family, friends and business associates of the issuer do not apply in Ontario, while an Ontario-only exemption for founders, control persons and family has been incorporated. Furthermore, the new rule contains two different versions of the offering memorandum exemption which have been adopted by various jurisdictions, with Ontario choosing to adopt neither.

The new rule contains a minimum amount exemption from the dealer registration and prospectus requirements in respect of trades of securities with an acquisition cost of not less than \$150,000. Exemptions relating to petroleum, natural gas and mining properties and estates, bankruptcies and liquidations have been broadened, and the exemption for accredited investors (which is similar to the US concept) made consistent. New exemptions from both registration and prospectus requirements have been added in respect of trades by an issuer to a creditor to settle a bona fide debt of the issuer, or in an evidence of deposit issued by a Schedule III bank or an association governed by the Cooperative Credit Associations Act (Canada).

Conclusion

The recent regulatory developments described above have been designed to reduce transaction costs and improve access by all market participants to the Canadian public capital markets. However, the regulators have tempered this with accountability through the adoption of secondary market liability and a tightening of corporate governance standards.

Capital markets

Recommended firms

Tier 1

Davies Ward Phillips & Vineberg
Osler Hoskin & Harcourt
Stikeman Elliott
Torys

Tier 2

Blake Cassels & Graydon
Goodmans
McCarthy Tétrault

Tier 3

Bennett Jones
Borden Ladner Gervais
Fasken Martineau
Ogilvy Renault

Tier 4

Fraser Milner Casgrain
McMillan

Canadian capital markets have suffered due to ripple effects from the US subprime crisis. Transaction volume in debt and equity has decreased over the course of the year. Concerns for exposure to subprime mortgages in third-party asset-backed commercial paper (ABCP) caused that market to freeze in August 2007. Despite the less than ideal environment for investors and financial institutions, the general attitude is one of relief when compared to the US. "I think we're watching particularly the US economy," says one partner. "I don't think anybody thinks we're out of the woods by any means."

The increase in commodities prices has allowed that portion of Canadian debt and equity markets to remain busy. The mining sector has been particularly active, proving the exception to the rule in issuing successful IPOs into the market throughout the year. "Canada has much more of an energy and resource-based economy than the United States does," says one lawyer. Many see this as a key factor in the relative stability in Canada after the subprime crisis came to bear.

But outside commodities issuances, the IPO market, often seen as an indicator of the health of equity markets, has fallen. Similarly, the debt markets have also seen a decrease in deal flow. Lawyers note only seeing deals coming to market from a select few of the so-called brand names within the sector. The market has only recently begun to improve. "The lenders are much more conservative than they were a year ago, but they're coming back," says a partner.

These conditions leave lawyers in Canada's capital markets hopeful that the most severe effects of the US subprime fallout are behind

them. And with the repealing of the country's withholding tax there is an expectation for a return of cross-border transactions within the coming year.

Davies Ward Phillips & Vineberg

Davies Ward Phillips & Vineberg's capital markets department has strong cross-border experience and is known for its in-depth legal knowledge.

In debt work, the firm served as Canadian counsel to a syndicate of underwriters for the issuance of Canada Mortgage Bonds by Canada Housing Trust No 1. The bonds had a sovereign guarantee through the Canada Mortgage and Housing Corporation, raising an estimated \$9.5 billion through the offering. Carol Pennycook, Sonny Bhalla, Ron Wilson, Scott Tayne and Candice Turner acted on the September 2007 transaction.

In July 2007, Davies Ward Phillips & Vineberg again served an underwriter syndicate as Canadian counsel on a debt offering, this time for CanWest MediaWorks. The communications company's offering of high-yield, senior subordinated notes raised \$400 million in the market.

The firm also represented Jaguar Mining on a cross-border public offering of common shares. The transaction raised \$110 million in February 2008 following the company's offer in all provinces of Canada and through a private placement in the US.

Leading lawyers

William Ainley
Maryse Bertrand
Shawn McReynolds
Patricia Olasker
Carol Pennycook

Osler Hoskin & Harcourt

Osler Hoskin & Harcourt has maintained a heavy workflow despite volatile market conditions thanks to a stable of clients which includes many of Canada's leading banks and prominent players in the mining sector. Clients and competitors note that Osler Hoskin & Harcourt is able to draw from a deep bench with all-round corporate experience.

Rick Fullerton represented Bank of Montreal (BMO) on two separate notes offerings. In September 2007, BMO released notes from its Subordinated Notes Trust worth an estimated \$800 million. And in March 2008, Fullerton represented BMO's renewal of an MTN programme worth approximately \$900 million.

Osler Hoskin & Harcourt's Steve Smith represented Scotia Capital, a subsidiary of

Bank of Nova Scotia, on a public offering of 10-year debentures worth \$1.7 billion. The transaction was completed in March 2008. Osler Hoskin & Harcourt welcomed a new client to the firm in Kinross Gold Corporation, conducting a Rule 144A offering of unsecured and convertible notes for the gold producer in January 2008. Doug Marshall and Mary Abbott led the Osler Hoskin & Harcourt team in the transaction.

Clients of the firm praise its expertise and creativity. "The legal services that Osler provides are excellent, and their staff are knowledgeable, responsive and practical," says a client.

Leading lawyers

Mary Abbott
Richard Fullerton
Doug Marshall
Peter Milligan
Christopher Murray
Steve Smith

Stikeman Elliott

Stikeman Elliott frequently acts on complex, international transactions, and retains longstanding relationships with clients, who roundly praise its practitioners for quality, ingenuity and professionalism. "Ron Ferguson is very good. He's very constructive. He's an all-round good corporate guy," says a client. Mihkel Voore, who co-chairs the firm's securities group, comes in for particular praise.

Quentin Markin, Jay Kellerman, and Keith Chatwin led Stikeman Elliott's representation of BMO Nesbitt Burns and UBS Securities Canada as the underwriters of the \$1 billion IPO of precious-metals miner Franco-Nevada. Closing in December 2007, the deal was the largest Canadian IPO of the year. Also in the commodities markets, Stikeman Elliott represented TransCanada PipeLines on its public offering of senior notes due 2037. The October 2007 transaction raised \$1 billion for the issuer.

Stikeman Elliott served as Canadian underwriters counsel, this time for a syndicate led by Goldman Sachs and JP Morgan in connection with the \$19.7 billion Visa IPO in March 2008. Simon Romano and Donald Belovich led the firm's counsel.

"As far as I'm concerned, our favourite is Stikemans. They are exceptional. They execute transactions seamlessly and flawlessly," says a client. "To give massive returns to your shareholders by way of capital is not something you do everyday, and they are experts on that."

Leading lawyers

Marc Barbeau
Glenn Cameron
Peter Hamilton
Jay Kellerman
Mihkel Voore

Torys

Torys' reputation brings it a diverse client base of financial institutions and public companies, many of which retain the firm in other practice areas as well. Competitors note the quality of Michael Feldman and James Scarlett in particular - both are described as "terrific lawyers".

Led by Karrin Powys-Lybbe, Torys represented Gerdau Ameristeel in the steelmaker's dual offering of common shares in the US and Canada. The transaction closed in November 2007 having raised \$1.5 billion for Gerdau. In June 2007, James Scarlett represented the Saskatchewan Wheat Pool on its C\$1.8 billion acquisition of United Grain Growers. The transaction included crossover capital markets work with public and private placements of subscription receipts as well as two separate public offerings of subscription receipts. In total, the deal was valued at \$919 million.

Torys also represented Scotia Capital in connection with its role as lead underwriter on the C\$345 million offering of preferred shares by Scotiabank. Phil Mohtadi, Blair Keefe and Sandra Iacobelli acted on the transaction, completed in October 2007.

Leading lawyers

Michael Feldman
Phil Mohtadi
Karrin Powys-Lybbe
James Scarlett

Goodmans

Goodmans had a steady year in the equity markets, representing mainly issuers in substantial IPOs for such companies as Franco-Nevada and Northstar Healthcare. Competitors noted the high level of quality attained by the lawyers at Goodmans, with many seeing Stephen Halperin and Neil May as standouts in the capital markets practice.

In the largest IPO of 2007, Jonathan Lampe represented mining client Franco-Nevada on its offering of nearly 80 million shares. The transaction raised \$1.2 billion after a smaller follow-on offering. In May 2007, Stephen Pincus represented Northstar Healthcare on its IPO, raising \$170 million for the healthcare company. The transaction also marked the first offering of cross-border, high-dividend common shares.

Representing the joint deal managers, Goodmans acted for BMO Nesbitt Burns and Genuity Capital Markets on the rights offering of Catalyst Paper Corporation. The \$125 million raised in the offering helped fund Catalyst's acquisitions in the pulp market, subsequently causing a secondary offering of subscription receipts. Goodmans fielded a team comprising Stephen Pincus, William Gorman, Kirk Rauliuk and Keir Hunt for the transaction.

Leading lawyers

Stephen Halperin
Neil May
Stephen Pincus

Blake Cassels & Graydon

Blake Cassels & Graydon this year increased its bench strength, adding William Sirett, Kathleen Keilty, and Steven McKoen as lateral hires in early 2008. Market commentators note the additions help Blakes increase an already broad national platform and cross-border capabilities.

Blakes represented the Canadian Imperial Bank of Commerce (CIBC) on an offering of common shares worth C\$2.9 billion. As the shares were offered through public and private placement, the January 2008 transaction became the largest Canadian equity offering in history. Blakes also acted as Canadian counsel to a syndicate of underwriters in connection with the \$1.5 billion public offering of common shares by Gerdau Ameristeel in November 2007. The syndicate included JP Morgan Securities and CIBC World Markets.

In December 2007, the firm acted for fertilizer producer Agrium on a cross-border offering of shares in the US and Canada. The transaction raised \$1.3 billion for Agrium.

Leading lawyers

Pat Finnerty
Brock Gibson
Chris Hewat
Jeff Lloyd
Ernest McNee

Borden Ladner Gervais

Despite the departure of several partners over the course of the last year, Borden Ladner Gervais maintained a solid presence on the debt and equity markets. The firm has taken on two new partners in François Brais and Manoj Pundit to help take the group forward.

In the debt market, Borden Ladner Gervais represented the Canada Housing and Mortgage Corporation when its subsidiary, Canada Housing Trust No 1, issued a tranche of mortgage bonds in September 2007, rais-

ing \$9.5 billion. The firm also represented the real-estate company Larco Investments on its involvement with the issuance of secured bonds in Royal Office Finance. Larco Investments created the leaseback vehicle in connection with the secured nature of the bonds. The October 2007 offering raised \$1.4 billion for Royal Office Finance.

Borden Ladner Gervais was also involved in one of the highest profile IPOs of the year. In May 2008, Sprout Asset Management offered 20 million common shares on the Toronto Stock Exchange, raising \$1.5 billion for the company. The deal is significant not only for its size, but also for the difficult time period in which it was achieved. Dolores Di Felice and Philippe Tardif represented Cormark Securities, one of two underwriters for the transaction.

Leading lawyers

Dolores Di Felice
Paul Mingay
Philippe Tardif

Bank – bank lending

Recommended firms

Tier 1

Blake Cassels & Graydon
McCarthy Tétrault
Osler Hoskin & Harcourt

Tier 2

Davies Ward Phillips & Vineberg
Ogilvy Renault
Stikeman Elliott

Tier 3

Bennett Jones
Borden Ladner Gervais
Fasken Martineau
Goodmans
Torys

Tier 4

Burnet Duckworth & Palmer
Fraser Milner Casgrain
Macleod Dixon
McMillan

Banking – financial services regulatory

Recommended firms

Tier 1

Blake Cassels & Graydon
McCarthy Tétrault
Osler Hoskin & Harcourt

Tier 2

Fasken Martineau
Ogilvy Renault
Stikeman Elliott
Torys

Tier 3

Borden Ladner Gervais
Fraser Milner Casgrain
Goodmans

The steady pace of banking and bank regulatory work in Canada comes as a welcome surprise. Many thought the travails of the US credit markets would spread north across the border. While activity has slowed, the situation has not been as bad as was feared.

Commodities work in western Canada is a highlight, as financing in the sector provides firms with sustained activity that is not prevalent elsewhere. Syndicate underwritings dominate lending deals as Canada's banks become more conservative and look to share risk. Overall, deals are not coming to market as often as they did.

The slowdown may appear detrimental to law firms, but many of those deals require greater due diligence. Banks are insisting on more robust covenants in this higher-risk environment, resulting in increased negotiations with borrowers. Many see this as a return to normality as covenant-lite structures are replaced by more traditional documentation requirements.

Lenders have also been insisting on higher equity requirements as bank covenants become more structured. This means that the historical 30% investment at closing has risen to 50% in some deals. The result is that only the most necessary of transactions come to market. The tighter market also means that borrowers tend to have established relationships with their banks.

Changes to anti-terrorist and anti-money-laundering laws in 2008 are keeping regulatory advisers busy updating financial reporting requirements. Law firms are also keeping busy preparing for the possible emergence of an Islamic finance market. "There's a lot of talk and interest in this," says a partner. "I question if there's a big enough business for it, and I wonder if Canada is a bit of a test market for the Middle Eastern banks."

US banks have largely retreated from activity in the Canadian market. And the anticipation of a US market recovery has created opportunities for local banks, whether they make acquisitions across the border or enhance their existing businesses in the US. Canada's financial law firms see this type of advisory capacity as essential in coming years. For them, the ability to follow Canadian banks into the US market will become a strong selling point.

Loan restructuring capabilities will also become an important interdisciplinary approach. "There's been an uptick in restructuring where companies need to convert to an asset-based structure," says a partner. Many lawyers predict the asset-based lending model will prevail throughout the market volatility.

Blake Cassels & Graydon

"Blakes has a depth to its practice; you're envious of them," says one rival partner. Through 2007 and into 2008, Blake Cassels & Graydon has deepened its bench strength in its Montreal office, including the addition of Sébastien Vilder. He joins a host of prominent Canadian banking lawyers such as Michael Harquail and John Teolis.

The firm benefited once again from its long-standing relationship with Canadian Imperial Bank of Commerce (CIBC) in a series of deals throughout the year. Blakes represented CIBC in its role as administrative agent to credit facilities totalling \$1.1 billion for George Weston and its food distributor subsidiary, Loblaw. Michael Harquail advised on the deal, closing in May.

Blakes also represented CIBC as lead arranger with Bank of Montreal on a C\$4 billion credit facility for PennWest Petroleum in January. Kevin Fougere led the Blakes team on the transaction.

In November, Blakes represented the Toba Montrose General Partnership in its receiving a \$470 million senior secured credit facility from Plutonic Power and the Canadian subsidiary of GE Energy Financial Services. The partnership is a joint venture by the two lenders to fund a hydroelectric project in British Columbia. Vancouver partners David Zacks, Neal Wang, Caroline Findlay and Greg Umbach acted on the deal.

Clients of the firm praise every aspect of the practice. "They have top-notch expertise and top-notch execution," says one. "They have very strong capability in structured debt financing and a great energy franchise."

Leading lawyers

Caroline Findlay
Kevin Fougere
Michael Harquail
Dawn Jetten
Greg Umbach
Neal Wang
David Zacks

Goodmans

Goodmans' lateral hire of James Riley is still a talking point among competitors two years after his departure from Ogilvy Renault. Rivals cite his addition as the one that confirms Goodmans' presence in the regulatory market.

The firm was involved in some of the largest domestic cases this year. In March, Goodmans represented the bondholders committee in the refinancing of \$1.4 billion maturing debt for forest products maker AbitibiBowater.

Goodmans was able to show its capabilities across financial services when the firm represented Tembec on a \$1.2 billion recapitalisation. The firm helped the forestry company convert that debt into new equity, and created a \$300 million credit facility with JP Morgan and CIT Business Credit Canada for its client.

In cross-border work, Goodmans represented soft-drinks maker Cott on a \$250 million senior secured asset-backed credit facility to fund the company's expansions in Canada, the UK and US. Goodmans also represented the mining company Franco-Nevada in updating a \$150 million credit facility with Bank of Montreal and UBS Securities.

Leading lawyers

Jean Anderson
Jeffrey Citron
David Nadler
Celia Rhea
James Riley

McCarthy Tétrault

Competitors of McCarthy Tétrault laud the firm for its client list, which includes many of the country's leading banks. One competitor says: "In terms of big Canadian banks, they have the most enviable practice."

Indeed, the firm has maintained strong relationships with Bank of Nova Scotia and the National Bank of Canada, among others. This led to deals such as advising Bank of Nova Scotia on a credit facility underwriting for electrical service provider Surepoint Services. This credit line was established after US private-equity firm Wynnchurch Capital acquired a stake in Surepoint.

The firm's Calgary office also served as regulatory counsel to Société Générale's wealth-management subsidiary, in its acquisition of financial-services company Canadian Wealth Management.

Clients and competitors also note the firm's partner roster as a strength, particularly out of McCarthy's Toronto office. In particular, Barry Ryan and Jean Michel Deschamps are highly recommended for lending work.

Leading lawyers

Gordon Baird
Stephen Clark
Jean Michel Deschamps
Bryan Gibson
Linda Pieterston
Barry Ryan

McMillan

McMillan maintains its place in the rankings after a year of solid mid-market representations. The firm's presence in western Canada provides McMillan with plenty of commodities work. Even the loss of one of the banking partners has not materially affected McMillan's client roster or the quality of the firm's work. "They've always done good work," says a client. Competitors are particularly impressed with Andrew McFarlane and Jeff Rogers in the lending practice.

Following the merger last year of McMillan Binch and Mendelsohn, the firm's banking practice is bolstered by its institutional lending clients. McMillan represented JP Morgan Chase as administrative agent to a syndicate that established a five-year, \$250 million credit facility for soft-drink maker Cott.

McMillan also represented GE Corporate Lending on a C\$175 million credit facility for Western Forest Products in March. Jeff Rogers and Stephanie Robinson, from the firm's Toronto office, led the McMillan team.

Leading lawyers

Paul Avis
Andrew McFarlane
Stephanie Robinson
Jeff Rogers
Rob Scavone

Osler Hoskin & Harcourt

Osler Hoskin & Harcourt's dominant corporate practice provides a stream of carryover work for its banking practice. The lending side helps provide acquisition financing for Osler's clients, while the regulatory team handles any issues arising from the takeovers.

The firm boasts a number of lawyers that are highly regarded by the market, including

Laurie Barrett, Michael Matheson and Etienne Massicotte. This strength grants Osler a strong reputation in Canada; the partners' cross-border work establishes the firm's reputation internationally.

Cross-border transactions were again a significant part of Osler Hoskin & Harcourt's overall banking business. The firm advised TD Bank Financial Group in regulatory matters relating to the company's \$8.5 billion acquisition of Commerce Bancorp. This deal saw John Jason, Desmond Lee and Firoz Ahmed leading the deal, from the Toronto office. KKR retained Jason along with Peter Glossop in connection with the financing of its \$29 billion acquisition of commercial technology group First Data in September.

In another corporate deal that led to bank regulatory work, Lorne Carson, Frank Turner and John Jason advised Deutsche Bank on regulatory matters in relation to its Maher Terminals buyout.

Leading lawyers

Laurie Barrett
Lorne Carson
John Jason
Etienne Massicotte
Michael Matheson
Frank Turner

Stikeman Elliott

Stikeman Elliott has lent its expertise to some of the largest cases of the year, and enjoys a solid reputation with its clients and competitors. "I have experience with Jim Harbell at Stikes, and he is a well-respected lawyer in the Canadian market," says a client. "He is commercially minded and does good work in the energy sector." Montreal partners Sterling Dietze and Erik Richer La Flèche are also complimented for their consistent, high-quality work in the market.

Stikeman Elliott's work in the commodities and natural resource markets created some of its highest profile representations this year, emphasizing the firm's national platform and offices in the western cities of Vancouver and Calgary. In February, Stikeman Elliott's Peter Hamilton acted for Barclays to create two financing facilities with a combined value of \$2.5 billion for the international mining company Xstrata.

The firm served as Canadian counsel through its Montreal office for AbitibiBowater in connection with the company's \$1.4 billion refinancing plan. The deal closed in April, allowing AbitibiBowater to address concerns of liquidity and the maturing debt of a subsidiary with multinational operations.

Institutional client Bank of Scotland is also retaining the firm's regulatory practice as the bank establishes its business throughout Canada.

"We owe them a debt of gratitude for having helped us execute upon our plan. They never give up. They do not ever over-lawyer something," says a client. "That's the thing about Stikeman: they're smart and they get it done."

Leading lawyers

Michael Allen
Glenn Cameron
Peter Hamilton
Jean Lamothe

Torys

Clients like RBC, Bank of Nova Scotia, and Ontario Teachers' Pension Plan serve as evidence of Torys' preferred status in the market. Competitors singled out Blair Keefe for his regulatory expertise and steady relationships with many of these premier clients.

The firm represented Alinda Capital Partners regarding the \$1.7 billion financing it needed to acquire Union Energy Waterheater Income Fund. The deal's structure included the creation of a bridge facility, the refinancing of an existing bridge facility, and private placements of notes in Canada and the US. Amanda Balasubramanian led the Torys team on the transaction out of the Toronto office.

Two deals highlight Torys' cross-border regulatory expertise and expanding insurance practice. In August 2007, Blair Keefe and Sunny Sodhi served as regulatory counsel to Great-West Life Assurance in its acquisition of Putnam Investments Trust for C\$4.6 billion. Keefe and Sodhi also represented Triad Guaranty Insurance Corporation and National Mortgage Guaranty Insurance Company in the incorporation of the two companies and their offering of mortgage-guarantee insurance throughout Canada. The partners also represented subsequent filings between the insurance provider and the Canadian Mortgage and Housing Corporation.

Leading lawyers

Amanda Balasubramanian
Adam Delean
Blair Keefe
Sunny Sodhi
Jonathan Weisz

Mergers and acquisitions

Recommended firms

Tier 1

Davies Ward Phillips & Vineberg
Goodmans
Osler Hoskin & Harcourt
Stikeman Elliott

Tier 2

Bennett Jones
Blake Cassels & Graydon
McCarthy Tétrault
Ogilvy Renault
Torys

Tier 3

Borden Ladner Gervais
Burnet Duckworth & Palmer
Fasken Martineau
Fraser Milner Casgrain
Macleod Dixon

Canadian M&A activity has suffered a slowdown similar to that felt in the US, following a reduction of available credit in the market. Highly-leveraged private-equity transactions have ceased, with the exception of the \$52 billion acquisition of Bell Canada Enterprises (BCE) by the Ontario Teachers' Pension Plan and three private-equity firms. After a year of litigation and regulatory hurdles which captivated the attention of the Canadian legal community, the deal was finally approved by the Canadian Supreme Court in June 2008.

But most recent transactions have been strategic, as buyers acquire distressed companies and concentrate specific market sectors. The mining sector, for instance, stayed active amid soaring commodities prices, creating a market which can sustain deals like BHP Billiton's \$150 billion bid for rival Rio Tinto. Mergers are also expected elsewhere in the commodities market, with Canadian resource trusts being forced to convert to corporate-tax status by 2010.

The financial sector saw similar contraction. In May 2008, the Toronto Stock Exchange (TSX) acquired Montréal Exchange, a Canadian derivatives market, for \$1.4 billion. Canadian banks made strategic acquisitions throughout the year with Toronto-Dominion Bank acquiring Commerce Bancorp of New Jersey in February 2008 for \$8.5 billion. Similarly, the Royal Bank of Canada (RBC) acquired Phillips Hager & North Investment Management in a share swap worth \$1 billion.

Despite being affected by the US downturn, many Canadian companies enjoy a stronger market position than their competitors across the border. Lawyers see this as lead-

ing to a resurgence in Canadian ownership. This has put a premium on cross-border expertise for Canadian law firms now looking to follow existing clients into international markets. Some, however, have reservations about sustained international activity by Canadian companies. Says one partner: "I don't think anybody thinks we're out of the woods by any means."

Davies Ward Phillips & Vineberg

Davies Ward Phillips & Vineberg has benefited from longstanding relationships with commodities clients like Xstrata and BHP Billiton. An impeccable reputation in M&A also makes Davies Ward Phillips & Vineberg a first option in so-called megadeals, evidenced by its representation of BCE during its takeover in June 2008. William Ainley and Maryse Bertrand led Davies' team acting for BCE. The Ontario Teachers' Pension Plan, together with private-equity firms Providence Equity Partners and Madison Dearborn Partners, paid \$52 billion for the telecoms company.

BHP Billiton retained the counsel of Davies Ward Phillips & Vineberg on two occasions this year, both of which were pending at the time of writing. In July 2008, the mining company looked to buyout all issued an outstanding shares of mineral explorer Anglo Potash for \$284 million. The firm is also serving as Canadian counsel to BHP Billiton in its offer to acquire mining rival Rio Tinto for \$150 billion. The latter deal would be second only in value to Vodafone's takeover of Mannesmann in 2000.

Also in the commodities markets, Davies represented the energy- and mining-related independent investment bank Westwind Partners during its \$147 million acquisition of Thomas Weisel Partners Group. The transaction was finalized in January 2008.

Leading lawyers

William Ainley
Maryse Bertrand
William Gula
Vincent Mercier
Kevin Thomson

Goodmans

Clients and competitors identified Stephen Halperin, Dale Lastman and Jonathan Lampe as drivers of Goodmans' M&A group, citing their appearances on the firm's highest-profile deals.

In the \$52 billion BCE buyout, Goodmans represented the investor group - the Ontario Teachers' Pension Plan and private-equity firms Providence Equity Partners and Madison

Dearborn Partners. Closing in June 2008, the transaction was the largest leveraged buyout in history. Jonathan Lampe led the Goodmans team on the transaction.

Goodmans also represented Daimler on the acquisition of the fuel-cell assets of Ballard Power Systems. Ford Motor Company teamed with Daimler on the \$168 million transaction, which closed in November 2007.

The Altus Income Fund again provided Goodmans with a steady workflow of acquisitions throughout 2007 and 2008. In December 2007, Goodmans represented Altus on a transaction allowing the Ontario Teachers' Pension Plan to acquire \$40 million of Altus fund units.

Goodmans also advised Altrus in November 2007 on the buyout of oil-and-gas surveyor Crape Geomatics Corporation for an undisclosed amount. Finally, the firm represented Altus in acquiring senior-healthcare consultant HealthTrust Canada, also for an undisclosed amount.

Leading lawyers

Stephen Halperin
Jonathan Lampe
Dale Lastman
Stephen Pincus

Osler Hoskin & Harcourt

Osler Hoskin & Harcourt offers its clients a history of strong cross-border experience. The firm boasts a New York office as a foothold for Canadian business in the US. "They're particularly strong on cross-border M&A advice" says a client of the firm.

Clients recommend Clay Horner as a standout practitioner from the firm. "Clay Horner is our chief legal adviser and he is, in my view, the best corporate lawyer and counsellor in Canada by some margin. He is superb in every respect," says one. Rival lawyers offer a similar view: "When there are high-profile deals, you will probably see him there," says a lawyer from a competing firm.

This year, the firm found activity on both sides of the St Lawrence River, representing usual clients like the Royal Bank of Canada as well as new clients like the shareholders of CHC Helicopters.

Osler Hoskin & Harcourt represented the Royal Bank of Canada on its \$1.35 billion acquisition of funds manager Phillips Hager & North. The firm also advised the controlling shareholders of CHC Helicopters during its proposed sale to the First Reserve Corporation for \$3.7 billion, in February 2008. Osler lawyers acted for telecommunications company Telus in its \$763 million takeover of Emergis.

"I believe Osler is the finest law firm in Canada," says a client. "It is our primary external adviser and we are highly satisfied. In any transaction, we think we have the best lawyers in the room when Osler is on for us."

Leading lawyers

Clay Horner
Brian Levitt
Linda Robinson
Donald Ross
Robert Yalden

Stikeman Elliott

Stikeman Elliott has been involved in some of this year's most complex cases, showing its expertise across disciplines and in cross-border matters.

One client says: "The lawyer who I find the most outstanding is Jean-Marc Huot. He has a good business sense and a ton of experience." Other clients recommended Edward Waitzer and Benoît Dubord.

Stikeman Elliott had a supporting role on the largest leveraged buyout in Canadian history, advising the shareholders' committee of BCE during the company's sale to Ontario Teachers' Pension Plan, Providence Equity Partners and Madison Dearborn Partners for \$52 billion.

Stikeman Elliott also worked extensively in natural resources this year. In June 2007, William Braithwaite, John Ciardullo, and Stewart Sutcliffe represented Indian oil-and-gas explorer Essar Global on its \$1.85 billion acquisition of Algoma Steel. The firm also acted for the PrimeWest Energy Trust on its sale to the Abu Dhabi National Energy Company for \$5 billion in January 2008. Edward Waitzer, Leland Corbett and Keith Chatwin led the Stikeman Elliott team.

"They are hands down the best business law firm in the country," says a client of Stikeman Elliott. "They provided excellent, results-driven advice: extremely diligent, hard-working, dependable."

Leading lawyers

Marc Barbeau
William Braithwaite
Richard Clark
Jean Marc Huot
Brian Pukier
Edward Waitzer

Blake Cassels & Graydon

Blake Cassels & Graydon has acted for a range of clients in oil and gas, aviation, agriculture and real estate, including public corporations, private-equity firms and income trusts.

Work in the commodities markets is an integral part of the firm's M&A practice. Blakes represented the First Reserve Corporation on its C\$3.7 billion buyout of CHC Helicopter, the largest buyout in the oilfield services sector.

Market commentators note Blakes' work in natural resources. The international nature of the companies in this industry also gives credence to the strength of Blakes cross-border platform across nine offices worldwide. In December 2007, Blakes acted for fertilizer-maker Agrium on its \$2.65 billion acquisition of agricultural products provider UAP Holding. The firm also represented energy distributor Areva on its \$2.5 billion acquisition of UraMin, an international uranium producer. The transaction closed in August 2007.

Representing the various forms of income trusts has been a mainstay for Blakes in recent years. In July 2007, Blakes represented the Legacy Hotels Reit during its acquisition by a consortium of investors for C\$2.5 billion. The consortium consisted of Caisse de Dépôt et Placement du Québec, Westmont Hospitality Group and InnVest Real Estate Investment.

The firm's corporate practice added partner William Sirett as a lateral hire in January 2008.

Leading lawyers

Michael Gans
Brock Gibson
Jeffrey Lloyd

Torys

Torys has had a respectable year of representations, advising several large clients in the commodities and technology sectors. Torys also increased its already deep bench in M&A work with the lateral hire of Omar Wakil in summer 2007.

In June 2007, Torys lawyers also advised the Saskatchewan Wheat Pool on its C\$1.8 billion acquisition of United Grain Growers. The deal included several public offerings of subscription receipts, two separate asset sales to Cargill and James Richardson International, and establishing a new credit agreement with TD Bank and GE Canada Finance.

David Chaikof, Peter Jewett, Tom Yeo and Phil Mohtadi advised corporate software maker Cognos on its \$5 billion acquisition by IBM. The January 2008 transaction made IBM and Cognos together the largest creator of business intelligence and performance management technology.

Torys also advised Gerdau Ameristeel Corporation on its takeover of the Chaparral

Steel Company for \$4.2 billion. Partners from the firm's offices in Toronto and New York led the deal through the close of the transaction in September 2007. This cross-border placement also looks to benefit Torys further in the coming year.

"I've worked with the firm for years," says a client. "They have some very bright lawyers both at the senior partner level and the associate level. I can tell you they're well-liked by the business people here because they put things into plain English."

Leading lawyers

Richard Balfour
Philip Brown
Sharon Geraghty
Patricia Koval

Borden Ladner Gervais

Borden Ladner Gervais appears to be well-positioned for a surge in mid-market M&A activity. The firm represented the Royal Bank of Canada on its acquisition of Phillips Hager & North Investment Management in February 2008. The \$1.36 billion transaction was financed through a share swap arrangement comprising nearly 27 million of RBC's own shares.

Borden also represented Husky Energy on its creation of two joint ventures with British BP in the Canadian oil sands. The joint ventures combined Husky's property with refining infrastructure owned by BP. Dan Kolibar led the March 2008 transaction for Borden Ladner Gervais.

The departures of five partners from Borden's M&A department, however, may be a drag for the future. The firm has added Manoj Pundit and François Brais in an effort to rebuild the department, but the next year may be a difficult one for Borden.

Leading lawyers

Dan Kolibar
Paul Mingay

Project finance

Recommended firms

Tier 1

Blake Cassels & Graydon
McCarthy Tétrault
Osler Hoskin & Harcourt
Torys

Tier 2

Bennett Jones
Fasken Martineau
Ogilvy Renault
Stikeman Elliott

Tier 3

Burnet Duckworth & Palmer
Davies Ward Phillips & Vineberg
Fraser Milner Casgrain
Gowling Lafleur Henderson
Macleod Dixon
McMillan

Though the effects of the credit crunch can hardly be avoided, the Canadian projects market has maintained a healthy deal flow. As western Canada sees thriving energy and mining sectors, eastern Canada works to renew infrastructure through PPPs, a market that has been growing exponentially in the jurisdiction.

This method of financing has been applied to hospitals, highways and power plants. Infrastructure Ontario and Canada's large pension funds have been particularly active in PPP. "We don't see any slowdown on the horizon," says a partner. "There's still a tremendous amount of infrastructure in need of renewal, and there's sort of a political appetite to use this model to renew it."

The repealing of Canada's withholding tax also explains growth in the infrastructure finance sector. With Canadian residents no longer required to pay a tax on interest to non-residents of Canada, European banks have increased their financing commitments. "I think you're getting a healthier mix of domestic and foreign on transactions," says a partner. Lawyers see the European banks as forcing Canadian banks to expand their credit horizons beyond their typical seven-year lending window.

For those involved in commodities work, the main concern is for a project's ultimate yield. "I think that the credit crunch has affected project finance in terms of more what the spreads are as opposed to whether there's capital available to finance projects," says a partner. Logistical projects such as pipelines and storage are some of the most abundant within the energy sector.

The restriction of credit from domestic and international banks is a constant danger

to project finance in Canada. Structuring has become paramount to loan arrangers as the risk of losing syndication partners is all too possible. While the workload for project finance practices increases, the growing need for caution cannot be ignored.

Blake Cassels & Graydon

Blake Cassels & Graydon's presence is felt across sectors, maintaining a reputation for quality representations throughout. "I have had first-class legal counsel by Blakes on quite a number of fronts over the years," says a client. "They are probably our number one legal go-to firm. In particular, Dan Fournier and Kevin Fougere have provided outstanding assistance." Both Fournier and Fougere are also highly recommended by competitors.

The firm worked consistently this year in the infrastructure and energy sectors as counsel both to project operators and lenders. In September 2007, Blakes represented St Clair Power in connection with a \$479 million syndicated loan for the construction of a gas-fired power plant in Ontario. Also in September, Alain Massicotte Yannick Beaudoin and Sophie Kaine Roy acted for Société Générale on the \$270 million syndicated loan to the consortium of developers acting as concessionaire for the expansion and maintenance of the A25 highway in Montreal.

Blakes drew upon its expertise in cross-border work to complete a transaction with Connacher Oil and Gas in December 2007. Representing the syndicate of Credit Suisse, Royal Bank of Canada and BNP Paribas, Blakes helped create two separate revolving credit facilities worth C\$150 million and \$50 million.

The firm also acted for the Toba Montrose General Partnership on a \$460 million syndicated loan for the East Toba River/Montrose Creek hydroelectric project in November 2007.

Leading lawyers

Kevin Fougere
Dan Fournier
Alain Massicotte
David Zacks

McCarthy Tétrault

McCarthy Tétrault retains its top-tier position following a year of successful representations with a focus on renewable energy. Clients and competitors recommend two lawyers for their work in this sector, Stephen Furlan and Marc Dorion.

McCarthy Tétrault advised on two separate wind farm projects this year. The first was completed in November 2007 with the firm

representing Brookfield Power Wind Prince Financial Corporation. The power operator refinanced \$300 million in construction loans connected to a wind project near Sault St Marie, Ontario. The firm subsequently acted for Kruger Energy Port Alma on obtaining a \$184 million loan from a Bank of Nova Scotia-led syndicate. The April 2008 transaction will provide financing for the construction of a wind farm on the north shore of Lake Erie.

In other renewables work, McCarthy Tétrault counselled Manufacturers Life Insurance Company on its role as lender to the Toba Montrose General Partnership in November 2007. The life insurance company's \$470 million loan financed the East Toba River/Montrose Creek hydroelectric project.

McCarthy Tétrault has also been increasing its presence in the infrastructure sector. In October 2007, the firm represented Infrastructure Ontario and the Saul Area Hospital in securing C\$408 million from a syndicate of lenders to finance the hospital's renovation.

Leading lawyers

Jean Michel Deschamps
Marc Dorion
Stephen Furlan
Byran Gibson
Barry Ryan

Osler Hoskin & Harcourt

Osler Hoskin & Harcourt works extensively in infrastructure development, and boasts clients like the Ontario Teachers Pensions' Plan and the Toronto Transit Commission. In November 2007, the group added a partner in Carlo Greco.

Rocco Sebastiano and Michael Watts advised Runnymede Healthcare Centre and the Ontario Teachers' Pension Plan on the ongoing development and financing of a \$95 million hospital facility in Toronto. The firm represented the healthcare company in structuring financing arrangements with the Ontario pension plan. The firm then advised Ontario Teachers' Pension Plan on a \$65 million credit facility to Bondfield Construction Company for the hospital's construction.

Sebastiano and Richard Borins again advised the Ontario Teachers' Pension Plan as part of a syndicate accepting the private placement of a C\$170 million debt issue by the Deh Cho Bridge Corporation. The proceeds of the sale will fund the development and construction of a two-lane bridge crossing the Mackenzie River in the Northwest Territories.

Osler Hoskin & Harcourt is also counselling the Toronto Transit Commission (TTC) on three separate infrastructure pro-

jects in the city: the C\$40 million York University Busway, a C\$1.5 billion Spadina subway expansion, and the redevelopment of Scarborough's rapid-transit system. Rocco Sebastiano, Robert Beaumont, Richard Wong and Andrew Wong lead the firm's team advising on the projects.

Leading lawyers

Robert Beaumont
Richard Borins
Rocco Sebastiano

Torys

Torys moves into the first tier following a year of high-profile representations in the infrastructure sector. From nuclear and cogenerating power plants to bridges, the firm has entrenched itself in infrastructure work.

For example, Jonathan Weisz led a team in the representation of Scotia Capital and Dexia Credit Local. The two lenders acted as the lead arrangers on a C\$750 million credit line for the refurbishment of Bruce Power's Bruce A nuclear facility. The loan was part of a larger C\$3 billion investment to refurbish the plant. The deal was conducted through the subsidiary BPC Generation Infrastructure Trust and received *Euromoney's* award for the project finance deal of the year in 2007.

Torys acted again for a financial institution in connection with a power plant in November 2007. The firm advised TD Securities as the bondholders on the C\$179 million private placement of secured debentures from East Windsor Cogeneration. The capital raised is going toward the development and construction of a cogeneration power plant in the region.

In the Northwest Territories, Torys acted for the financing consortium connected with the Deh Cho bridge project. The consortium consisted of TD Securities, Sun Life and the Ontario Teachers' Pension Plan Board, providing funding of more than C\$170 million.

Leading lawyers

Amanda Balasubramanian
Sabrina Gherbaz
Alison Lacy
Jonathan Weisz

Stikeman Elliott

Stikeman Elliott has acted on some of the most prominent projects this year, including the expansion of the A25 highway in Montreal and the creation of two power plants.

Clients of the firm praise its lawyers for their expertise. "My main contact is Erik Richer La Flèche, who is a very experienced lawyer in this field. And as far as I'm con-

cerned, he's one of the best lawyers I've ever met," says a client. "He's not just thinking in terms of how to do it legally; he's thinking of how to make the deals better in broader terms."

Torys represented Société Générale as lender's counsel on the \$479 million financing of the St Clair Energy gas-fired power project. Peter Hamilton, James Harbell, Brenda Hebert, and Kevin Kelly acted for Torys on the transaction.

The firm also represented RBC Capital Markets as lenders' counsel in connection with the \$518 bond offering Harrison Hydro Finance. Capital raised through the July 2007 offering will be used to create six hydroelectric power facilities in British Columbia.

Serving a consortium of lenders, Torys represented Macquarie North America and Kiewit Development Company on their \$500 million financing of the A25 highway in Quebec. The firm also represents Macquarie North America on its continuing \$1 billion financing of the A30 highway, also in Quebec.

Leading lawyers

Michael Allen
Peter Hamilton
Jim Harbell
Erik Richer La Flèche
Dana Smith

McMillan

McMillan's project finance team was involved this year in a number of unique and complex transactions. Clients and competitors of the firm report that it has an increasing market presence.

In August 2007, the firm represented CIT Financial as the lead agent and arranger of the financing arrangements for the construction of a hospital in Sault St Marie, Ontario. The C\$408 million funding was raised through a syndicate including CIT, Sun Life Assurance Company of Canada, the Manufacturers Life Insurance Company, and the Great West Life Assurance Company.

McMillan also acted for the EllisDon Corporation in October 2007. EllisDon led a private consortium in the financing of Bluewater Health's medical care facilities in Sarnia, Ontario. The consortium also acted in cooperation with the Gwich'in Tribal Council. C\$214 million was raised in a deal which will renovate Bluewater Health's existing facilities by 2011.

Leading lawyers

Chris Bennett
Catherine Doyle
Tim Murphy
Peter Willis

Restructuring and insolvency

Recommended firms

Tier 1

Bennett Jones
Goodmans

Tier 2

Blake Cassels & Graydon
McMillan
Ogilvy Renault
Osler Hoskin & Harcourt
Stikeman Elliott
Thornton Grout Finnigan

Tier 3

Borden Ladner Gervais
Davies Ward Phillips & Vineberg
Fasken Martineau
Fraser Milner Casgrain
Gowling Lafleur Henderson
McCarthy Tétrault
Torys

Canada's restructuring and insolvency lawyers have had a busy year, to say the least. The economy saw already-wounded sectors further diminished after the US subprime crisis restricted credit markets and curbed consumer spending. The auto-parts and forestry products sectors have been affected particularly badly. The freezing of the non-bank asset-backed commercial-paper (ABCP) market is yet another carryover from the US downturn. Derivatives worth \$33 billion spiralled out of control following reported exposure to subprime mortgages.

"In August, my life kind of stopped because I was involved in the ABCP matter," says one partner. Following a near total collapse, the commercial-paper market is undergoing an overhaul in order for investors to recoup some value from the affected notes. Normally short-term ABCP notes would become longer-term investments, and a safeguard for the issuers of the notes from possible litigation was instituted.

Many who worked on the resolution saw this restructuring as a monumental task whose precedent could be applicable worldwide. "It'll be remembered as a part of Canadian history. Maybe not a great part, but it will go down in the annals of the history of Canada," says one partner.

The bankruptcy and restructuring of large entities like Tembec and Pope & Talbot in the forestry sector have also provided a great deal of work for Canada's restructuring firms. The sector faces a widening price margin from alternative suppliers in Latin America, as well as slowing demand for lumber exports to homebuilders in the US. Canadian lawyers see cases like Tembec and Pope & Talbot only as

a precursor to further fallout in the lumber industry. Similar predictions remain for Canada's auto-parts manufacturers following sharp declines in automotive production across the border in the US.

One sector seeing unexpected effects of the restricted credit markets is energy. Despite a surge in the price of commodities, service companies to the oil fields in western Canada have faced hardships. "We're kind of in a period where there's a lot of walking wounded in the services sector," says a lawyer. Many believe strategic buyers will make future consolidations as a result. "We have been seeing a lot of players who were not well capitalized, not well run, or, you know, in a market that was just oversaturated," comments one partner. "The big guys are fine."

Bennett Jones

Like Goodmans, Bennett Jones has been involved in nearly every recent large restructuring and insolvency case in Canada - including Quebecor World, Tembec, and the restructuring of the ABCP market. "They're good players, we see them on a lot of stuff," says one competitor. Others recommend Rick Orzy and Kevin Zych as the firm's top restructuring talents.

Orzy and Zych represented Quebecor World's official creditors committee of unsecured creditors on the restructuring of the printing conglomerate. The ongoing restructuring involves approximately \$3 billion in debt and many of Canada's top law firms are on the deal.

Orzy, Zych and Raj Sahni also represented a group of bondholders in the restructuring of forestry products provider Tembec. Finished in March 2008, the company's restructuring was valued at \$1.2 billion. The file constituted one of the largest bankruptcies for Canada's ailing forestry sector.

Bennett Jones acted for a group of note indenture trustees in the ongoing restructuring of the ABCP market. Orzy, Zych, Sahni and Bruce Barker led the firm's response in the landmark unfreezing of \$33 billion in non-bank commercial paper.

"We worked with them on a pretty difficult restructuring and I thought they did a very good job considering the complexity of it," says a client. "They were always easy to get a hold of, which was a big thing for us."

Leading lawyers

Rick Orzy
Raj Sahni
Kevin Zych

Goodmans

Goodmans is present in nearly every high-profile case, making the restructuring practice one of its pillars. Market commentators frequently single out Jay Carfagnini as an experienced, professional practitioner.

The firm worked extensively in the forestry products sector this year. In March 2008, the firm represented the bondholders committee for AbitibiBowater in its refinancing of \$1.4 billion maturing debt. In December 2007, Jay Carfagnini, Brian Empey and Brendan O'Neill represented Calpine Canada Resources Company in the sale of \$360 million senior notes to Lehman Brothers in connection with Calpine's bankruptcy filings. The firm also represented Tembec in its recapitalisation, a transaction that involved converting \$1.2 billion in maturing debt into new equity.

Goodmans lawyers also represent the Pan-Canadian Investors' Committee on the restructuring of \$33 billion asset-backed commercial paper. The committee is leading the initiative to reform the third-party commercial-paper market in Canada.

Leading lawyers

Jay Carfagnini
Brian Empey
Brendan O'Neill

Blake Cassels & Graydon

The firm of Blake Cassels & Graydon acted in much of Canada's prominent restructuring work this year. Client representations such as Credit Suisse and the public sector pension investment board for Quebecor World and the ABCP market solidify Blakes' prominence. While not a top-tier firm yet, Blakes is well on its way after another year of successful representations across market sectors.

Dan Fournier, Pamela Huff, Linc Rogers and Sébastien Guy acted for Credit Suisse in its role as lender during the \$1.2 billion restructuring of Quebecor World. Blakes also represented the Public Sector Pension Investment Board in connection with Canada's frozen ABCP market. Both files give evidence to the quality Blakes is able to achieve for its clients in an interdisciplinary approach for its clients.

Blakes also offers strong cross-border capabilities that allow the firm to service the full spectrum of clients. Representing Ableco Finance, Susan Grundy, Bill Kaplan and Peter Rubin led the Blakes team in the ongoing \$250 million bankruptcy and restructuring of forestry products manufacturer Pope & Talbot.

"I use Blakes as one of my go-to firms for workouts and restructuring work," says a

client. “They provide excellent service and they have a highly specialized group on the restructuring side.”

Leading lawyers

Susan Grundy
William Kaplan
Dan Fournier

McMillan

McMillan’s work is well met-in the marketplace, and clients and competitors offer particular praise for Andy Kent and Montreal partner Max Mendelsohn. Says a client of Kent: “Andy is just a bankruptcy genius and is very creative.”

Relationships with some of Canada’s leading banks brought the firm roles in some of the year’s larger restructuring files. In the Quebecor World restructuring, McMillan represented the Royal Bank of Canada in its role as agent for a \$750 million bank syndicate. The firm also represented HSBC and the Bank of Nova Scotia on their involvement with the ABCP market restructuring.

In the Tembec case, McMillan represented an *ad hoc* committee of unsecured noteholders, most notable JP Morgan Chase. The deal consisted of a conversion of \$1.2 billion of unsecured notes into new equity along with the creation of a \$300 million term loan backstopped by the committee.

Leading lawyers

Andrew Kent
Dan MacDonald
Andrew McFarlane
Max Mendelsohn
Rob Scavone

Osler Hoskin & Harcourt

Osler Hoskin & Harcourt has a stable of high-profile clients in various practice areas, and benefits from a high volume of crossover work. “Osler in my opinion has the top corporate practice in Canada,” says a competitor. “Every lawyer at that firm is a good lawyer.”

In the \$250 million bankruptcy and restructuring of Pope & Talbot, Steven Golick and Marc Wasserman represented Wells Fargo Financial on the bank’s role as agent for a revolving credit facility. The bank also served as a senior secured creditor for Pope & Talbot’s inventory and receivables.

Wasserman and Michael Hart represented Goldman Sachs Credit Partners in connection with the \$300 million insolvency of Dura Automotive systems. Goldman Sachs acted as the administrative agent and collateral agent with Dura Automotive, a relationship which highlights the firm’s cross-border expertise.

Osler also acted for Brookfield Bridge Lending in connection with its role as the senior secured creditor to bathroom fixture manufacturer Maxx. The fund acquired a senior secured credit facility from a syndicated lending group and Maxx’s current credit facilities, totalling \$250 million.

Osler Hoskin & Harcourt found work in the ABCP restructuring through its advice to institutional investor BlackRock as the proposed administrator for 20 ABCP conduits.

“They’re very thorough, available basically 24/7, and extremely responsive,” says a client.

Leading lawyers

Sandra Abitan
Steven Golick
Tracy Sandler
Edward Sellers
Marc Wasserman

Stikeman Elliott

“Stikeman has done very well,” says a competitor. “It is a very good law firm,” Sean Dunphy, co-chair of the firm’s Toronto restructuring group, is praised by clients for his knowledge in the field. “Sean is exceptional,” says one. “I’ve seen him in the trenches with 300 rocket-propelled grenades coming at him, all coming from different directions. He is excellent.” Recent work on the ABCP restructuring plan and the bankruptcy of softwood and pulp manufacturer Pope & Talbot have only added to the firm’s market profile.

Dunphy and Peter Howard head the restructuring team advising HSBC Securities on its role in the resolution of the Canadian third-party ABCP market. The firm has engineered an interdisciplinary response to the file, drawing on resources from its capital markets and structured-finance practices.

Dunphy and Ashley Taylor also advised Pope & Talbot in its efforts to secure creditor protection under Canada’s Companies’ Creditors Arrangement Act (CCAA), with an estimated transaction value of \$250 million. Dunphy and Taylor also obtained creditor protection for the retail chain Athletes World.

A client of the firm says: “They come up with constructive, workable solutions to problems. There is never a problem that they don’t seem to be able to find some fix to or solution to.”

Leading lawyers

David Byers
Sean Dunphy
Jean Fontaine
Ashley Taylor

Borden Ladner Gervais

Borden Ladner Gervais’s restructuring practice has recently represented such high-profile clients as Chrysler, Ernst & Young, and JTI-Macdonald, making it a fast-rising firm in the market.

Borden acted for professional-services provider Ernst & Young in two cases this year. Patrick McCarthy, Josef Kruger and Kent Howie represented the company on its role as court-appointed monitor for Calpine’s CCAA proceedings. Ernst & Young was responsible for handling more than C\$21 billion in contingent claims against Calpine. Marc Duchesne, Craig Hill, Claudine Millette and Sam Rappos are representing Ernst & Young, again as a court-appointed monitor, on the resolution of the ABCP market freeze.

The firm also represented the Canadian tobacco manufacturer JTI-Macdonald during its application for CCAA protection. JTI-Macdonald sought protection after it was ordered to pay \$1.36 billion in excise tax to the province of Quebec. The firm is also representing Chrysler on the CCAA filing of auto-parts supplier Collins & Aikman.

Leading lawyers

Marc Duchesne
Craig Hill
Michael MacNaughton
Patrick McCarthy