

# Canada

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## Recent changes to Canada's securities laws

John Wilkin  
Blake Cassels & Graydon LLP  
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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 harmonization 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 authorizes, 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 regulators 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 capitalization. However, the amendments eliminate the two-year seasoning period for an issuer following its initial public offering, and the minimum market capitalization 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 informa-

tion form, which serves as the base disclosure document for the issuer.

### Harmonization of the prospectus and registration exemptions

National Instrument 45-106 – Prospectus and Registration Exemptions was implemented on September 14 2005, and consolidates and harmonizes 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 harmonization, 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 DuMoulin  
Ogilvy Renault

#### Tier 4

Fraser Milner Casgrain  
McMillan Binch Mendelsohn

What used to be a time of income trusts dominating the equity market in Canadian initial public offerings (IPOs) has now dried up due to the new legislation taxing the trusts. “There is a three-year window where it still remains an advantage to be an income trust,” said one partner. Some have seen new yield equity instruments and common share IPOs popping up to replace the demand. Real estate investment trusts (Reits) – an area where the law remains unchanged – are consistently strong in equity, as is resource financing.

Furthermore, there is a large amount of debt in Canada due to the proliferation of note issuances in the past four years. The maple bond market, in which non-Canadian companies issue Canadian dollar bonds, is flourishing. Since the Canadian government repealed a law limiting foreign credit issuers in pension plans, maple bonds have increased, and the end of this trend doesn't seem to be near. In all, maple bonds made up 60% of the new issues in 2007.

### Davies Ward Phillips & Vineberg

Consistency in deals and the ability to sustain respect throughout the practice has kept Davies Ward Phillips & Vineberg in the forefront. With more than 100 lawyers in Toronto, Montreal, and New York, the firm has a venerable reputation of quality cross-border work. Some doubt the firm's future in capital markets but recognize its partners as a few of the best in this area. “Shawn McReynolds and Patricia have a breadth of experience which gives them expertise,” said one peer. Patricia Olasker is known for her experience in cross-border deals. She was

counsel to Citigroup Global Markets for its \$525 million senior note offering in the US and Canada.

One of Davies' main strengths is in structured products and alternative investments. The firm represented underwriters The Toronto-Dominion Bank, CIBC World Markets, Merrill Lynch Canada, RBC Dominion Securities and Scotia Capital in Canada Housing Trust's C\$7.7 billion (\$7.3 billion) special-purpose securitization trust. The firm also represented Alimentation Couche-Tard in both Canada and US matters regarding its debt-secured senior-term refinancing, with \$500 million of unsecured evergreen revolving facilities.

Reflecting its consistent work in IPOs, Davies Ward Phillips & Vineberg represented Fortis, with proceeds reaching C\$125 million. Other clients the firm has represented in capital markets are Barrick Gold Corporation, Agricore United, Scotia Capital and CIBC World Markets.

### Leading lawyers

William Ainley  
Michael Clifford  
Shawn McReynolds  
Patricia Olasker  
Jay Swartz

### Osler Hoskin & Harcourt

“They're active enough in markets that they've developed expertise,” said one client of Osler Hoskin & Harcourt. Most of the firm's capital markets practice revolves around IPOs, and it has developed deep relationships with clients. Peers and clients agree that because of the depth of experience, the firm remains in the top tier. In the past year, it represented the underwriters on key Canadian IPOs. Rob Yalden led the group in December acting for underwriters RBC Capital Markets, Citigroup and TD Securities in Air Canada's IPO, one of Canada's largest in 2006, valued at C\$525 million.

In another significant instruction, Osler Hoskin & Harcourt represented underwriters RBC Capital Markets and CIBC World Markets in Teranet Income Fund's C\$700-million flotation, led by Chris Murray. Clients consider Murray to be “excellent” and “very bright”. In a cross-border offering in both the US and Canadian markets, the firm acted for underwriters, led by Morgan Stanley, in software company Corel Corporation's IPO and secondary offering, valued at C\$118 million.

On the debt side, lead partner Steve Smith advised Goldman Sachs in the issuing of maple bonds (Canadian dollar bonds issued by a non-Canadian entity) valued at C\$1.25 billion. Partners at other firms call Osler

Hoskin & Harcourt “creative and innovative” when doing deals. One example of this was the noteworthy Telus Corporation’s cross-border registered offering of notes, which was a US offering under Canadian disclosure documents. Ending in March, the deal was worth C\$1 billion and was led by partners Doug Marshall, Michael Innes and Kevin Cramer.

Osler Hoskin & Harcourt boasts clients including Morgan Stanley, National Bank Financial, and American Express. A client said: “They’re very knowledgeable about the capital markets questions we put to them.”

#### Leading lawyers

Andrew Aziz  
Mark DesLauriers  
Jean Fraser  
John Macfarlane  
Peter Milligan  
Christopher Murray  
Donald Ross

#### Stikeman Elliott

Stikeman Elliott has received overwhelming praise by peers and clients, and this has helped it secure its spot as one of the leading capital markets firms in Canada. One client said: “Stikeman provides excellent service, and provides quick turnaround.” Sidney Horn is a lawyer who is widely admired by competitors. Others consider Darin Renton someone to watch over the years. “He’s a highly practical and effective lawyer,” said a competitor. “He gets stuff done in a way clients find effective.” One of the highlights of the past year is when the firm represented TransCanada Corporation in the biggest Canadian equity bought deal offering, valued at C\$1.75 billion.

Last November, the Montreal office, led by Jean Marc Huot, acted for Air Canada and ACE Aviation Holdings in Air Canada’s C\$525 million IPO. The firm also represented CIBC World Markets as the underwriter in Fortis’s C\$1 billion deal, with proceeds used to fund the Terasen acquisition, one of Canada’s largest natural gas distribution utilities.

Stikeman Elliott’s debt capital markets team has dealt with substantial issuances in the past year including counseling the underwriters Morgan Stanley, RBC Capital Markets, Scotia Capital, BMO Capital Markets and TD Securities in the Morgan Stanley’s maple bond offering of C\$2.5 billion, the largest in Canadian history. D’Arcy Nordick also headed the deal acting for underwriters in Bear Stearns’ C\$250 million maple bond offering, proving that the maple bond market is a hotbed of activity.

Partner Sidney Horn has established a terrific reputation among clients. One noted:

“He is a businessman’s lawyer with outstanding business judgment,” and that he’s “good at dealing with people”. Other clients the firm represents include Scotia Capital and Yellow Pages Group.

#### Leading lawyers

Michael Allen  
Joel Binder  
James Davis  
Jonathan Drance  
Peter Hamilton  
Sidney Horn  
Jeffrey Singer  
Mihkel Voore

#### Torys

Torys has had a remarkable year in equity and structured finance. Even though some express doubt in the firm’s future standing due to its reliance on the fading income trust market, it was still present in a number of extraordinary deals in the past year. Jamie Scarlett and Patricia Koval received substantial praise from competitors, who deem them among the best in the practice. Scarlett was involved in two of the three transactions in which the firm acted for Saskatchewan Wheat Pool in its subscription receipt offerings in February and April, averaging C\$306 million.

The Torys securitization team, led by Michael Feldman, represented TD Securities as the underwriter in Genesis Trust’s C\$1 billion public offering, closing in October. This is a special-purpose vehicle which deals with the purchase of receivables in real estate through credit accounts set up in Toronto-Dominion Bank and Canada Trust. Peers recognize Feldman as one of the leading lawyers in the Canadian securitization market.

A client said: “They are very transaction-oriented and very qualified.” TD Securities and GMAC of Canada are a few of the clients Torys has represented in the past year. One client reserved particular praise for Matthew Cockburn, coordinator of the Torys corporate practice.

#### Leading lawyers

Richard Balfour  
Philip Brown  
Michael Feldman  
Patricia Koval  
Kevin Morris  
James Scarlett

#### Blake Cassels & Graydon

With a large deal volume and cross-border practice, Blake Cassels & Graydon secures its place as a high-ranking capital markets firm. Peers note the firm’s good international pres-

ence, with work originating from European clients through its London office. Will Fung and Leslie Ann Johnson from Fraser Milner Casgrain are new arrivals to the firm last year. A client said: “They have a great team. Sheila Murray is our principal lawyer and she’s exceptional.” Murray was the lead lawyer in Bell Aliant’s C\$2.25 billion medium term notes issuance in September and February, exemplifying the presence of the large maple bond market. The firm also acted for underwriters Credit Suisse, TD Securities and RBC Capital Markets in OPTI Canada’s \$1.75 billion issuance of senior secured notes in offerings in December and June.

In equity, Blake Cassels & Graydon represented NovaGold Resources last April in a \$176 million cross-border offering of common shares, contributing to the increase of resource financing in the market. The net proceeds have been used to explore the financing of the Galore Creek Project, a copper resource project in British Columbia. Furthermore, the firm advised another resource financing with Enerplus Resources Fund’s issuance of 4.3 million trust units, with a value totalling C\$210 million. Partners Brock Gibson and Chad Schneider in the Calgary office headed the transaction, which was used to finance the acquisition of interest in the Kirby Oil Sands Partnership.

Blake Cassels & Graydon has activity in retail structured products offerings in representing the issuers and underwriters resulting in over 30 deals, worth more than C\$2.3 billion. CIBC, Great West Life and Canadian Imperial Bank of Commerce add to the firm’s roster of representations. “They’re great,” said one client, adding: “We rely on them a lot.”

#### Leading lawyers

Ross Bentley  
Martin Fingerhut  
Pat Finnerty  
Brock Gibson  
David Jackson  
Jeff Lloyd  
Sheila Murray

#### Goodmans

“The quality of lawyers there is very high and so is the execution,” said one client when asked about Goodmans. Jonathan Lampe was praised by peers as being one of the firm’s best. “He has a good reputation in the investment dealer community.” The firm was involved in the first cross-border high dividend common share offering. Stephen Pincus was the leading lawyer representing Northstar Healthcare in its IPO, worth more than C\$142 million.

A peer commended Pincus in his ability to provide income trusts advice, even though

some say the trusts won't be as active in the future. Pincus headed the transformation of CI Financial into a C\$8.5 million income fund, making it the largest conversion in the business income fund sector at the time of writing. One peer said: "They're dominant in income trusts, and that was the dominant area in Canada up until last November."

In debt capital markets, Goodmans acted as Canadian counsel to Colony Capital in the \$2.7 billion syndicated debt financing, used to partially acquire Fairmont Hotels & Resorts' outstanding shares. Also in debt, competitors identify Shelton Freeman as a "real up-and-comer" in the firm. He represented a syndicate of lenders, led by The Toronto-Dominion Bank, in Arctic Glacier's C\$150 million offering of subscription receipts and unsecured debentures.

One client, calling Goodmans' lawyers "the top-notch talents", thought very highly of Neil May and David Matlow, saying they are "top technical lawyers with excellent legal judgment". The firm's clients include Atlantic Power Corporation, BMO Capital Markets and CIBC World Markets.

#### Leading lawyers

Paul Goldman  
Stephen Halperin  
Jonathan Lampe  
Stephen Pincus

### **Borden Ladner Gervais**

Borden Ladner Gervais has a good reputation among peers and the ability to please its clients, who are both issuers and underwriters. This gives the firm an extra edge to move into tier three this year. "They performed satisfactorily," said a client. "There is a low level of risk in the deal." Within the last year, the firm hired a number of associates to boost the practice.

The firm has been involved in some traditional financing deals in the last year, but is also capable of producing more noticeable work. Last November, Borden Ladner Gervais represented North American Energy Partners, a company involved with the Canadian oil sands, when it went public on both New York and Toronto stock exchanges, via a C\$255 million IPO.

Another important transaction in equity led the firm to counsel Chartwell Seniors Housing's C\$275 million offering of trust units and convertible debentures for the financing of US and Canadian expansion. The team was led by Paul Mingay, who clients call "very thorough, always accessible" and a "good negotiator".

Borden Ladner Gervais has represented clients such as Commack Securities, Merrill

Lynch Canada and Sentry Select over the past year. "They are responsive in understanding our business needs," said one client.

#### Leading lawyers

Frank Allen  
Derrick Armstrong  
Paul Mingay  
William Sirett

### **Ogilvy Renault**

Although some doubt its presence in Toronto, Ogilvy Renault continues to have a strong standing in the Montreal market, and is regarded by competitors as one of the city's top-three firms. Jacques Demers and Andrew Fleming received particular market praise for the roundedness of their practice. In debt matters, the firm has completed numerous maple bond issues as well as over C\$10 billion in debt financings in 2006.

Ogilvy Renault represented Lehman Brothers Holdings in its three maple bond issues, totalling C\$930 million. Similarly, it acted for Inter-American Development Bank in a C\$1 billion maple bond issue and Merrill Lynch in the C\$500 million maple bond issue by Bank of Ireland.

In securitization matters, Ogilvy Renault has closed several deals with Bank of America. The firm acted for the bank in the asset based revolving credit facility by Modular Space Corporation. This led to the purchase of General Electric Capital Corporation's American and Canadian mobile business. Similarly, the firm was counsel to Bank of America in the asset-based revolving credit facility for private-equity firms Bain Capital Partners and The Blackstone Group in its purchase of Michaels Stores, North America's largest arts and crafts chain.

Ogilvy Renault has long-standing relationships with many of its clients. Its list includes Marathon Structured Finance Fund, HSBC Securities Canada and St George Bank.

#### Leading lawyers

Renaud Coulombe  
Jacques Demers  
Andrew Fleming  
Richard Sutin

### **Fraser Milner Casgrain**

Fraser Milner Casgrain prides itself on capital markets, focusing on the energy and mining sectors. Peers applaud the firm's mid-market presence and broad regional coverage. Competitors also agree that Bill Jenkins, the department head in Calgary, is one of the backbones of the firm's practice. In one of Fraser Milner Casgrain's biggest

debt deals of the year, it acted for underwriters led by Scotia Capital and CIBC World Markets in energy transportation distributor Enbridge's C\$532 million offering of common shares. In debt, it also counseled Shaw Communications in its C\$400 million senior note offering.

In equity matters, the firm represented the underwriters in Pengrowth Energy Trust's C\$526 million trust unit offering in September 2006 and a C\$460 million trust offering in December. The proceeds of these transactions financed the asset acquisition from ConocoPhillips and the second offering marked the first of its kind after the new trust legislation.

Fraser Milner Casgrain acts for issuers and underwriters, and in the past year the list includes Boralex, HSBC Securities, TD Securities and Epcor Power.

#### Leading lawyers

Bill Jenkins  
Michael Melanson  
Vitale Santoro

## **Bank lending**

### **Recommended firms**

#### **Tier 1**

Blake Cassels & Graydon  
McCarthy Tétrault  
Ogilvy Renault  
Osler Hoskin & Harcourt

#### **Tier 2**

Davies Ward Phillips & Vineberg  
Stikeman Elliott  
Torys

#### **Tier 3**

Borden Ladner Gervais  
Fasken Martineau DuMoulin

#### **Tier 4**

Bennett Jones  
Burnet Duckworth & Palmer  
Fraser Milner Casgrain  
Goodmans  
McMillan Binch Mendelsohn  
Macleod Dixon

## Banking – financial services regulatory

### Recommended firms

#### Tier 1

Blake Cassels & Graydon  
McCarthy Tétrault  
Osler Hoskin & Harcourt  
Torys

#### Tier 2

Fasken Martineau DuMoulin  
Ogilvy Renault  
Stikeman Elliott

#### Tier 3

Borden Ladner Gervais  
Fraser Milner Casgrain

Private equity and hedge funds are slowly taking over Canada's banking sector. These players have been doing a large portion of lending, while traditional banks are fading from the forefront on larger transactions. Lawyers are calling it a great time for borrowers, as "private equity provides more cash for less, in terms of ratios". As private equity shifts into M&A and the market is continuing to swell, there has been a rise in acquisition financing and asset-based lending.

But just as one area rises, another is in decline. "Income funds that were driving the market have disappeared due to tax changes," said a partner. In October 2006, the Canadian government said it would start to tax income fund distribution, known as specified investment flow-through, which reduced the market value of the funds.

Still, the atmosphere has generally been lively. The large amount of activity has led some to believe this bubble will soon pop, and thus lead to a rise in insolvency work. The increasing aggressiveness of lenders in building ever lighter covenant structures and credit structures, and the general over-leveraging of the M&A market, mean some mistakes are inevitable. And when they come, there will be a high price to pay.

### Blake Cassels & Graydon

Blake Cassels & Graydon stands out among its peers as a quality lending and regulatory practice with excellent connections among financial institutions. One client praised the firm as "responsive", while another said its lawyers have "good business acumen". In December, Blake Cassels & Graydon represented Ford Motor Company of Canada in its \$23.4 billion secured financing, which funded its restructuring. The deal included a \$7 billion term loan, and was led by Toronto partner Mark Selick. In July 2006, Michael

Harquail represented the lender Bell Aliant Regional Communications in a C\$3.5 billion (\$3.3 billion) revolving-term credit facility. One client said that Harquail has "seniority and a depth of experience from a critical-asset financing or asset-based lending perspective." A peer recommended the financial services department head James Christie, describing him as a "respected steady finance hand".

Blake Cassels & Graydon has 50 lawyers practising in the financial services area in offices across Canada and internationally. The firm represented The Standard Life Assurance Company in its demutualization, converting the company's ownership by policyholders to shareholders with publicly traded stock. The transaction closed at £3.5 billion (\$7 billion) and was led by a team of Dawn Jetten and Greg Frenette. Another significant transaction in the regulatory department is Barclays Bank's \$12 billion prospectus offering to Canadian purchasers. Pamela Hughes and Paul Belanger acted as counsel to Barclays. "Paul Belanger at Blakes, I have respect for," said one peer.

Clients also admire Marc-Antoine La Rochelle and Warren Nishimura in the Calgary office. Canadian Imperial Bank of Commerce, JPMorgan Chase Bank, and UBS Bank in Canada are a few of the firm's many clients. "They have a depth in their commercial lending team," said one client.

#### Leading lawyers

Paul Belanger  
James Christie  
Michael Harquail  
Dawn Jetten  
Jacqueline Shinfield  
John Teolis  
David Zacks

### Borden Ladner Gervais

With strong client and partner recommendations, Borden Ladner Gervais secures a spot this year on the regulatory rankings and maintains its high standing in bank lending. One peer said: "I know they're doing the work, and the more of it you do the better it is. The lawyer added that the firm's recent increase in volume was contributing to its expertise. Borden Ladner Gervais boosted its practice with the addition of Alec Zimmerman in February to the group of over 50 financial services lawyers. Before working at NexGenRx, Zimmerman was with Osler Hoskin & Harcourt. Peers also valued Ken Atlas as one of the firm's star partners in financial services. "Ken Atlas in the Montreal office is very confident," said one client.

Last December, Bruce Fowler fronted the firm's group when it counselled The Bank of

Nova Scotia and Royal Bank of Canada as co-lead arrangers for Greenfield Ethanol's C\$405 million senior secured credit facilities. With this financing, Greenfield will be able to build ethanol plants across Canada. The firm also represented The Bank of Nova Scotia, NM Rothschild & Sons and The Toronto-Dominion Bank who comprised the syndicate of lenders when Agnico-Eagle Mines reorganized its existing \$300 million credit facility.

When asked about Borden Ladner Gervais, one client said: "Stephen Redican is an excellent lawyer." In June 2006, Redican, who is considered to be on the rise, was part of a team of lawyers including Don Bird and Tim Sehmer, who represented Portland-based paper producer Pope & Talbot in its C\$325 million syndicated credit facility, with Lehman Commercial Paper acting as agent.

Borden Ladner Gervais' client list includes HSBC Bank of Canada, The Citigroup Private Bank and National Bank. One long-standing client said: "They have people who can respond to our requirements on efficient basis." A client also spoke of Frank Callaghan as being strong in income trusts.

#### Leading lawyers

Ken Atlas  
Glen Bowman  
Ron Bozzer  
Joanne Foot  
James Mathers  
Benoît Provost  
William Robertson  
Alec Zimmerman

### Davies Ward Phillips & Vineberg

Davies Ward Phillips & Vineberg's financial services group is known in the practice for doing non-traditional banking work. It acted as Canadian adviser to Key Principal Partners along with Plastival Canadian Holdings and Plastival US Holdings in the C\$52.5 million funding for the purchases of Plastival in the US and Canada. Some in the field observed that the firm's banking arm has successfully capitalized on a robust M&A practice to capture the increase in acquisition financing instructions. It was counsel to Agricore United in its C\$150 million Secured Term B financing, partially to fund an acquisition.

In addition, Davies Ward Phillips & Vineberg represented GPX International Tire Corporation in the financing used to purchase Maine Industrial Tires, and thus expanding its manufacturing ability in North America. The Royal Bank of Scotland provided the \$170 million financing. Furthering the acquisition financing trend, the firm acted for the underwriters in Diversified Preferred Share Trust's C\$181 million issuance of units. This was

used by the company to purchase supplemental securities.

Scott Hyman, an “old hand”, and Jay Swartz received praise from competitors. Davies Ward Phillips & Vineberg has represented numerous clients in the past year with Citigroup Global Markets, Patheon and Bell Canada Enterprises on the list.

#### Leading lawyers

Sylvain Cossette  
Scott Hyman  
Carol Pennycook  
Jay Swartz

### Fasken Martineau DuMoulin

Fasken Martineau DuMoulin is a steady player in the bank lending and financial services market with one client calling the firm “very responsive, professional and bright”. In May 2006, the firm, led by John Torrey, represented the two banking syndicates in financing Goldcorp’s \$1.4 billion acquisition of Placer Dome assets from Barrick. When asked about top lawyers, one firm’s partner said: “John Torrey definitely deserves to be there.”

For regulatory work, interviewees particularly said they admire partner Brian Wright for his representation skills, and for his outcome-focused practice. A client also commended associate Thomas Meagher in the firm’s Toronto office as being innovative.

In the past year, Fasken Martineau DuMoulin has represented several banks in the launch of commercial paper programmes. The firm acted for Dexia and Dexia Credit Local’s New York branches when the company launched its commercial paper programme, issued at C\$3.5 billion. The dealers for the programme are a syndicate of banks including Bank of Montreal, CIBC World Markets, RBC Dominion Securities and Scotia Capital. Furthermore, the firm counselled WestLB’s New York branch when it launched its commercial paper programme in August 2006, worth \$3 billion. The dealers for this transaction are Bank of Montreal and RBC Dominion Securities. Robert Elliott headed both deals.

Other clients the firm has represented in past transactions include Credit Suisse, Cascades and Bank of Nova Scotia. A client said: “They have great business sense and competent lawyers,” while another said: “They are very practical and don’t nickel-and-dime you.”

#### Leading lawyers

Robert Elliott  
Jonathan Levin  
Xeno Martis  
John Torrey  
Brian Wright

### Goodmans

In the active markets for acquisition financing over the past year, Goodmans is a player in some of the hottest M&A deals. The firm represented Credit Suisse, UBS, ABN Amro and Santander as lenders in the C\$19.5 billion financing of Companhia Vale do Rio Doce’s acquisition of Inco. The company used half of the \$34 billion allotted to it by the syndicate of banks for the purchase. A peer commented on Goodmans’ performance in high-profile deals: “They have a reputation of having a high-grade practice.”

In one of the most publicized deals of the year, Goodmans counseled the lenders, The Royal Bank of Scotland, Deutsche Bank, Credit Suisse and Société Générale, in Rio Tinto’s \$38.1 billion bid for Alcan, which will create a global aluminium leader.

Additionally, Goodmans was lead counsel to Wachovia and JPMorgan Chase Bank, who provided the credit facilities established to finance Carlyle Group’s acquisition of Open Solutions in January. Jean Anderson and David Wiseman led the group in advising on the credit facilities totalling \$605 million. One partner admired Anderson, and said the firm had made “some stepped-up effort in banking”. Jim Riley, who joined the firm from Ogilvy Renault, proved to be a beneficial addition.

Onex Corporation, Clairvest Group, GE Capital, Wachovia and Fortress Credit Corporation are other clients Goodmans has advised over the past year. “They are a very capable counsel,” said one client. “They will push hard for their client.”

#### Leading lawyers

Jean Anderson  
Jeffrey Citron  
David Nadler  
Celia Rhea  
Jim Riley

### McCarthy Tétrault

Due to client satisfaction and support from peers recognizing its national practice, McCarthy Tétrault is one of the leading firms in Canadian lending and regulatory advice. Richard Higa was often mentioned among peers as a respectable lawyer. One said: “He’s a good lawyer and a pleasure to deal with.”

In regulatory, lawyers from other firms and clients deemed Barry Ryan and Stephen Clark as standout names on McCarthy Tétrault’s list of partners. A peer said of Ryan: “He takes strong positions on what’s important and tends to not needlessly take confrontational positions on what’s not important.” The firm advised Falconbridge with regulatory issues in the US and Europe regarding its C\$27 billion

purchase of Xstrata, producing one of the largest mining companies.

A long-standing client of McCarthy Tétrault said: “They offer us the services of a national law firm. They have a very good team of young lawyers, and we always get excellent service.” A client mentioned he worked with Robert Metcalfe on a deal and said: “He’s a great lawyer with very good business acumen.”

#### Leading lawyers

Gordon Baird  
Stephen Clark  
Jean Michel Deschamps  
Byran Gibson  
Richard Higa  
J Michael McIntosh  
Linda Pieteron  
Barry Ryan  
Henry Wiercinski

### McMillan Binch Mendelsohn

Despite the loss of Richard Higa, which some think was a blow to the firm, clients still deem McMillan Binch Mendelsohn to be user-friendly and view the firm’s lawyers as having the knowledge to get a deal successfully completed. One said: “It’s comforting not having to be all over them to make them do something.” Competitors and clients also singled out Andrew Kent. “Andy Kent at McMillan Binch is probably one of Canada’s most senior on the insolvency side, and he also does banking,” said a client. “He’s excellent.” Another said that Chris Bennett was extremely easy to deal with.

In asset-based lending, McMillan Binch Mendelsohn has acted for a variety of lenders. The firm counselled lender Wachovia Capital Finance Corporation in the C\$65 million credit facility for Shermag, which will be used to elevate its C\$22.2 million debt. Similarly, it represented GE Capital Commercial Finance as agent to the lenders in the C\$140 million senior secured revolving and term credit facilities to The Forzani Group.

McMillan Binch Mendelsohn’s other clients include ING Canada, Bank of Tokyo in Canada and Comerica Bank. Partner Paul Avis received acclaim from a client: “He requires very little direction. The turnaround time was excellent and he gets the deals done quickly by focusing on the right issues.” The client also spoke about the firm generally: “They provide excellent legal advice and are reasonable.”

#### Leading lawyers

Paul Avis  
Andrew Kent  
Peter Willis

## Ogilvy Renault

Ogilvy Renault's status as a tier-one bank lending firm remains intact this year and it enjoys another solid presence in regulatory work. The firm's asset-based lending team includes over 20 lawyers located in offices in Toronto, Montreal and Ottawa. Peers have said the only thing Ogilvy Renault lacks is a presence in western Canada. In asset-based lending, the firm acted as Canadian counsel to Bank of America in the \$3.4 billion senior revolving and credit facilities for Bain Capital Partners and The Blackstone Group to purchase Michaels Stores, the largest retail acquisition of the year. It also acted in representing agents and lenders in the revolving credit facility and second-lien term loan when Modular Space Corporation was bought by Resun Leasing.

"A guy I like at Ogilvy is Jacques Demers. He's a very good, smart, helpful guy," said a peer. Ogilvy Renault's clients said they were pleased with both the firm's banking and regulatory partners. The firm has represented Bank of America, RSM Richter, CIT Business Credit Canada and General Electric Commercial Finance in the past year.

### Leading lawyers

Jacques Demers  
Marc Duquette  
Andrew Fleming  
Brian Kelsall  
Kevin Morley

## Osler Hoskin & Harcourt

Osler Hoskin & Harcourt continues to enjoy its place in the top tier in both bank lending and financial services. Peers consider the firm "clearly tier one" and a main competitor. Clients and partners agree that Michael Matheson stands out from the rest. "Mike Matheson at Osler is someone who I would strongly support," said a peer. The firm has been involved in the dynamic acquisition financing market, representing Citibank as part of the syndicate of lenders who provided a C\$3.72 billion credit facility in the purchase of Fairmont Hotels & Resorts by Kingdom Hotels International and Colony Capital last May. Additionally, the firm counseled Toronto-Dominion Bank in the financing of the purchase of Chum, a Canadian media company, by Bell Globemedia. Toronto-Dominion Bank was part of a group of lenders with credit facilities that formed some of the C\$1.4 billion of debt and equity financing.

In regulatory matters, Osler Hoskin & Harcourt represented State Farm Life Insurance Company's C\$1 billion transfer of Canadian business and re-licensing, with

department head John Jason leading the firm. Jason was continuously suggested by peers to be one of the firm's principal players. "I have great respect for John," said one. When asked about the firm, a client said: "John Jason is knowledgeable and practical." Another significant deal in the private-equity sector was when Osler Hoskin & Harcourt advised Kohlberg Kravis Roberts in the C\$29 billion acquisition of First Data Corporation, which at the time of writing had not yet closed.

Clients spoke about their experiences with the Osler Hoskin & Harcourt team. One said: "They are very service-oriented," while another said: "We count on them for a wide variety of things, and we can easily find a lawyer that has the knowledge and depth to handle them." Bank of Montreal, TD Securities, and Royal Bank of Canada are a few of the firm's many clients.

### Leading lawyers

Laurie Barrett  
John Black  
Linda Currie  
John Jason  
Michael Matheson  
Peter Milligan

## Stikeman Elliott

Stikeman Elliott follows through again with a good year in bank lending and regulatory. Peers thought Brian Rose stood out as one of Stikeman Elliott's star lawyers. In February, the firm acted for Aviva with regulatory issues regarding the \$2.9 billion purchase of AmerUS Group. In addition, Peter Hamilton and Paul Collins were Canadian counsel to Bank of New York in its purchase of Mellon Financial, providing regulatory advice to both companies. The \$16.5 billion deal closed in May and created the largest securities servicing company.

The firm has done a number of deals representing lenders. Jean Lamothe acted for a syndicate of banks, namely ABN Amro, BNP Paribas, Deutsche Bank, JPMorgan and National Bank of Canada, in the €4.3 billion syndicated letter of credit issuance facility for Bombardier. This replaces facilities in North America and Europe. CIT Business Credit Canada and GE Canada Finance Holding were the lenders in the C\$600 million credit agreement with Stelco as the borrower. Stikeman Elliott acted for CIT Business Credit Canada in the deal, which is intended to reduce the operating cost of one of Canada's largest steel producers.

Clients spoke well of Stikeman Elliott and were pleased with its performance on completing deals. One client said: "We use Stikeman for high-end and complex deals,

with a very important matter." The firm's client list includes Fortis Bank and Macquarie North America.

### Leading lawyers

Michael Allen  
Roderick Barrett  
Glenn Cameron  
Peter Hamilton  
Jean Lamothe  
Brian Rose

## Torys

Competitors agree that Torys is a top-tier regulatory firm with an ability to maintain its status in lending. Torys retains a great volume of deals with one partner from another firm commenting: "They're more oriented at getting the deal done." With over 20 lawyers practicing regulatory work in the firm, the team has gained admiration from peers and clients.

Blair Keefe heads Torys' regulatory practice and is admired by others in the sector. "Blair is very well respected by clients and very good at his work," said a peer. Keefe has been present on the firm's highlighted deals of the year. In the midst of the rise in private equity, Keefe led the Torys team in counseling Stone Point Capital, a private-equity firm, in Paris Re Holdings' purchase of a €120 million stake in Axa Group. Paris Re Holdings was formed by investor group Trident III, a Stone Point Capital fund, and other private-equity firms.

In bank lending, Torys partners Adam Delean and James Baillie are noted as leading players. Delean worked on an acquisition financing, acting for Hidlaco Industries, which financed the \$6 billion Novelis acquisition, creating the largest aluminium rolling company worldwide. He also led a deal involving Royal Bank of Canada and a syndicate of lenders in the C\$405 million senior secured credit facilities for Greenfield Ethanol.

Torys boasts a client list that includes Bank of Montreal, Sun Life Financial and TD Securities. One client thought Torys was "one of the best in the industry".

### Leading lawyers

James Baillie  
Adam Delean  
Blair Keefe

## 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 DuMoulin  
Fraser Milner Casgrain  
MacLeod Dixon

The Canadian mergers and acquisitions market has gone through some interesting transitions in the last year. Firms have seen more foreign acquisitions of Canadian companies and cross-border transactions, particularly in the mining sector, which has previously seen an ebb and flow. One partner expressed concern: "Canada is being hollowed out."

A strictly Canadian phenomenon happened in November 2006 when the government passed legislation to tax income trusts, causing further consternation in the market. "Income trusts had the legs cut out from underneath them," said one lawyer, "They had to look around at strategic options. Should they stay as income trusts, convert to corporations, or should they sell?"

Similarly to the US market, private equity is flexing its muscles in all of the practice areas, chiefly M&A. "Private-equity buyers bring a different dynamic to the process," said one lawyer. Expect firm to respond by beefing up their private-equity practices in the near future.

### Davies Ward Phillips & Vineberg

With more than 90 practitioners in Toronto, Montreal, and New York, Davies Ward Phillips & Vineberg secures its place as a top-tier firm. The firm has maintained a name in doing a large number of high-quality transactions. Bill Ainley has a solid reputation among peers. "He's on a roll right now," said one. He acted in the representation of Xstrata in its acquisition of Falconbridge, closing at C\$24.1 billion (\$22.4 billion), making it the largest hostile acquisition in the mining industry. Ainley also headed the group in representing Bell Canada Enterprises (BCE) when it was

bought out by Teachers' Private Capital, Ontario Teachers' Pension Plan's private investment group, for C\$51.7 billion, making it the largest buyout in Canadian history.

One rival said: "Kevin Thompson is the lawyer that when you work with a client that does lots of deals, he's good." Thompson headed the Davies Ward Phillips & Vineberg team with its representation of Barrack Gold, a long-standing client, in its unsolicited takeover bid for Placer Dome in 2006.

The firm counselled Trizec Canada when it, along with Trizec Canada properties, was acquired by US Brookfield Properties for \$8.9 billion. In a year dominated by foreign acquisitions, this was the largest cross-border deal in real estate of 2006. Bill Gula headed the Davies transaction. "Bill has a mix of investment banking and legal experience which makes him good," said a peer.

Davies Ward Phillips & Vineberg represents a number of clients, which include Fortis, Mittal Steel and Pershing Square Capital Management.

#### Leading lawyers

William Ainley  
Maryse Bertrand  
Bill Gula  
Peter Mendell  
Vincent Mercier  
Kevin Thompson

#### Goodmans

Goodmans jumps to tier one after a strong year. The addition of Jim Riley from Ogilvy Renault was a significant move, which is highly discussed throughout the practice. Stephen Halperin also received praise by peers for his work. "They are strong in their talent pool," said one. "Steve Halperin is top." Halperin was lead partner in representing Norilsk Nickel, the world's largest nickel miner, in the C\$6.8 billion acquisition of LionOre Mining International, a Canadian gold and nickel producer. This purchase was in the midst of strategic bidding against Xstrata.

In the largest buyout in Canadian history, Goodmans partner Jonathan Lampe acted for the buyer, the investor group of the Ontario Teachers' Pension Plan, in the C\$51.7 billion purchase of BCE.

As private equity becomes more prominent in the M&A market, Cascade Investment took private Four Seasons Hotels. Goodmans was counsel for Four Seasons Hotels in the \$3.8 billion deal, led by Lampe, who peers and clients consider to be a top lawyer in the practice.

In the real-estate market, Goodmans represented Summit Real Estate Investment Trust (Reit) in its takeover by ING Real Estate

Canada Trust for C\$3.3 billion, making it the largest takeover privatization of a Reit in 2006. Similarly, the firm acted for Retirement Residences Reit when it was bought out by the Public Sector Pension Investment Board for C\$2.8 billion in January.

Clients are satisfied with Goodmans lawyers' performance. The firm's client list includes OMERS Capital Partners, Quantum Capital, Brookfield Asset Management and Fortress Investment Group. A long-standing client said: "We've been exceptionally pleased with all the work they've done. We believe they have the finest M&A lawyers in the country."

#### Leading lawyers

Stephen Halperin  
Jonathan Lampe  
Dale Lastman  
David Matlow  
Neill May

### Osler Hoskin & Harcourt

Consensus among peers is that Osler Hoskin & Harcourt is "clearly a top-tier firm". The firm has done a number of cross-border and mining deals in the Canadian M&A boom over the last year. It represented Inco when it was bought by Companhia Vale do Rio Doce (CVRD) for \$17.6 billion, creating the world's third-largest mining company.

In November 2006, Osler Hoskin & Harcourt acted for Glamis Gold, which was acquired by Goldcorp for over C\$8 billion, resulting in one of the world's largest gold mining companies. Clay Horner headed this team and has an outstanding reputation in the practice. One peer said: "He is good on strategy... [and would be] at the top of anyone's list." Another spoke of Horner in Toronto and Brian Levitt in Montreal: "They're the ones you want to hire."

In the Montreal office, the firm advised Bell Canada in the first phase of creating a wireless broadband network along with Rogers Communications. Wireless will be implemented by the end of next year, with a total C\$200 million investment from both parties.

Led by Rob Desbarats and Janice Buckingham, Osler Hoskin & Harcourt's Calgary office completed the biggest deal in the Canadian oil patch since 2002. It represented Canadian Natural Resources in its acquisition of Anadarko Petroleum Corp's Canadian assets, closing at \$4.1 billion.

Among Osler Hoskin & Harcourt's other clients, the firm has represented Ventas, Ipsco Enterprises and Deutsche Bank Securities.

**Leading lawyers**

Mark DesLauriers  
Jean Fraser  
Don Gilchrist  
Clay Horner  
Brian Levitt  
Linda Robinson  
Donald Ross

**Stikeman Elliott**

Stikeman Elliott has had a continual standout presence in the market as one of Canada's leading M&A advisers. It has shown noteworthy deal value and volume in 2006. The firm, along with top-tier US M&A firm Sullivan and Cromwell, advised CVRD in its C\$19.9 billion acquisition of Inco, which was named *IFLR* Americas Deal of the Year in 2006 and added to the lively M&A activity in the mining sector. The team was led by Bill Braithwaite, who peers describe as a "capable, principled good deal guy" with a flair for client relationships. Braithwaite also acted for Royal Dutch Shell in the buyout of minority shareholders of Shell Canada, ending at C\$8.7 billion. Stikeman Elliott was another Canadian firm involved in the historic C\$51.7 billion BCE buyout, representing BCE alongside Davies Ward Phillips & Vineberg.

As private equity flourishes in Canada, Stikeman Elliott's Montreal office, led by Marc Barbeau and Pierre Raymond, counseled Kingdom Hotels International in the privatization of Four Seasons Hotels, valued at C\$3.8 billion.

Other clients the firm has represented include Bain Capital and ING Real Estate Canada. One client called the lawyers "absolutely fantastic", adding that they are "great businessmen". Marvin Yontef and Brian Pukier also have strong recommendations among peers. "Marvin is unbelievably prolific," said one.

**Leading lawyers**

Marc Barbeau  
William Braithwaite  
John Leopold  
Simon Romano  
Brian Pukier  
Marvin Yontef

**Bennett Jones**

"Bennett Jones is on the rise," said a competitor when asked about the firm. "They are huge in western Canada and are very credible in Toronto." Known for its presence in Alberta, the firm has been involved in a number of attractive deals in the past year, particularly in the oil and gas sector. A partner from

another firm commented: "They're top in oil and gas." The firm represented Norwegian Statoil in its C\$2.2 billion takeover of North American Oil Sands. Statoil now has access to leases in the Athabasca region of Alberta, one of the world's largest heavy-oil provinces. Also, in the mining sector, Bennett Jones counseled Bema Gold Corporation's Special Committee in its acquisition by Kinross Gold Corporation, closing at \$3.1 billion in February.

Bennett Jones acted in the largest property acquisition by a Canadian energy royalty trust to date. The firm represented Pengrowth Energy Trust in its C\$1.4 billion purchase of Canadian oil- and gas-producing properties last November. The trust bought shares through four subsidiaries of Burlington Resources, which is a subsidiary of ConocoPhillips, the third-largest integrated energy company in the United States.

While it may not be as well known for matters outside of energy, Bennett Jones has additionally been involved in other M&A transactions. In the Reits sector, the firm acted in a cross-border deal for Health Care Property Investors when it acquired assets of Sunrise Senior Living Real Estate Investment Trust, valued at C\$1.4 billion.

Competitors noted lawyers Alan Bell and Jeffrey Kerbel as adding to the firm's strength in Toronto. "Alan is very experienced, strategic, and a quality person," said one peer. Perry Spitznagel, a younger lawyer, is also regarded as an asset in Calgary.

**Leading lawyers**

Alan Bell  
Jeffrey Kerbel  
Martin Lambert  
John MacNeil  
C Perry Spitznagel

**Blake Cassels & Graydon**

"Blakes has got a very good firm pedigree," said one peer. The firm remains busy and has a large presence by completing more than 50 transactions in in the last year. In the income trust sector, the firm represented Bell Aliant in the acquisition of Aliant from Bell Canada Enterprises, which closed last year at \$1.8 billion. David Jackson, who competitors call one of the firm's stars, led the transaction.

Blake Cassels & Graydon also counseled Calpine Power Income Fund in the unsolicited takeover by an affiliate of Harbinger Capital Partners, closing at C\$800 million. Brock Gibson led the firm's team and has a strong reputation among clients. One said: "I am not exaggerating when I say that we believe Mr Gibson and his team are, relative to their competitors, top-quality performers."

In energy matters, Blake Cassels & Graydon represented The Colt Companies when it was sold to WorleyParsons, which now gains a strategic advantage in North America. Pat Finnerty, who was one partner present on the deal, was described by a competitor as "an absolute standout". Earlier this year, the firm acted for Kinder Morgan, one of the largest energy transportation companies in North America, in its sale of Terasen to Fortis, closing at \$3.7 billion. This sale is said to have energized the retail utility sector.

Other notable clients include Caxton-Iseman Capital, Great-West Lifeco, Kinross and Lundin Mining, among others. One client said: "We have confidence not only in their abilities as lawyers but in their ability to quickly progress a transaction to closing even in the most difficult of circumstances. I believe what sets them apart from their competitors is their attitude toward providing superior service to their clients."

**Leading lawyers**

J Rob Collins  
Pat Finnerty  
Brock Gibson  
David Jackson  
Craig Thorburn

**Ogilvy Renault**

Ogilvy Renault continues to be the top Montreal M&A firm. Despite the loss of partner James Riley to Goodmans, the firm still has key players in the market. "Norm Steinberg is the current keeper of the flame of their unbelievable franchise in Montreal," said one rival. Steinberg, along with Francis Legault, Andrew Bleau and Peter Wiazowski, was involved in the busy mining sector and foreign acquisitions representing Alcan, in the unsolicited bid by Alcoa, which at the time of writing was dropped for the \$38.1 billion offer by Rio Tinto.

In 2006, Ogilvy Renault acted for Domtar in its \$3.3 billion merger with American forest products company Weyerhaeuser, creating the second-largest maker of uncoated freesheet paper worldwide. Further in the trend of cross-border deals, the firm counseled Bowater in its merger with Abitibi-Consolidated, valued at \$9 billion. This transaction creates the third-largest paper and forest products company in North America, and the eighth-largest globally.

Ogilvy Renault also acted on behalf of the Special Committee of Directors for Shell Canada in the acquisition of its common shares by Royal Dutch Shell Canada, with an offer of \$8.3 billion. Shell Canada has a substantial business in the oil sands sector. With this acquisition, the company was able

to efficiently simplify the company's organization.

#### Leading lawyers

Terence Dobbins  
Michael Lang  
Francis Legault  
Norman Steinberg

#### Torys

Torys has had another respectable year, with a peer noting the firm's "strength in income trusts". Although some believe the firm has slipped with the loss of key partner Jim Turner, who joined the Ontario Securities Commission, rivals still consider the firm to have a "strong group".

However, the firm encountered controversy relating to its role in Hollinger International's sale of a number of newspapers to CanWest Global Communications. Conrad Black, who ran Hollinger, was convicted of mail fraud and obstruction of justice. "They've had a difficult year," said one peer. "They were involved in the Conrad situation and admitted the advice they gave was wrong."

The firm is resolute, however, in its intention to bounce back, and some competitors believe Torys can strengthen its team, believing the addition of star lawyer Jamie Scarlett will be beneficial. Scarlett was among the counsel that acted for Alinda Capital Partners in its C\$1.74 billion cross-border acquisition of UE Waterheater Income Fund.

In the media sector, Torys advised Thompson Corporation in its \$17.5 billion acquisition of Reuters Group, generating a world leader in news which some say will be Bloomberg's leading competitor. Richard Balfour led the counsel and has an excellent reputation in the market.

Torys represented Algoma Steel in its C\$1.85 billion sale to India's Essar Global, adding to the busy foreign acquisition sector. The firm also acted as lead counsel for Hindalco Industries' \$6 billion acquisition of Novelis. This makes India's largest metals company a global leader in producing aluminium, adding to the dynamic impact of mining and metals in Canadian M&A deals this year.

#### Leading lawyers

Richard Balfour  
Philip Brown  
Sharon Geraghty  
Peter Jewett  
Patricia Koval  
James Scarlett

#### Borden Ladner Gervais

"They are a full service firm in Canada. They offer the level of sophisticated services we need," said one client of Borden Ladner Gervais. With over 130 M&A lawyers, the firm has a considerable income trust practice, which has picked up some speed in the last year. The firm represented US Waterheater in the \$1.74 billion income fund sale to Alinda Capital Partners, a deal involving partner Frank Allen. "Frank Allen is encyclopaedic in knowledge and knowing what's going on in the market," said one peer.

Borden Ladner Gervais has been actively involved in the emerging private-equity sector. In January, it played a part in cross-border work, acting for US private-equity firm Golden Gate Capital in its acquisition of Vancouver's Sierra Systems Group. Paul Mingay and Kathleen Keilty closed the C\$100 million deal. A client spoke highly of Mingay: "He's thorough and good at getting back to you." In the same month, Borden Ladner Gervais closed a C\$1.15 billion deal, advising Centurion Energy when it was bought by Dana Gas, the first regional private gas company in the Middle East.

The firm boasts clients like American Capital, Kensington Capital Partners, Precision Drilling and Centurion Energy. "Murray Shopiro has excellent communications with clients," said one who had worked with the firm.

#### Leading lawyers

Francis Allen  
Paul Mingay  
William Sirett

#### Fraser Milner Casgrain

Fraser Milner Casgrain prides itself on activity in the mining, nickel, technology, and real-estate sectors. The firm has over 80 lawyers working in M&A nationally, with 50 as partners. It has done some cross-border work, namely the \$2 billion sale of Vancouver based oil and gas company Northrock Resources, owned by Houston's Pogo Producing Company, to the Abu Dhabi National Energy Company. Bill Jenkins fronted the firm's team in Calgary representing Northrock, which led to the first Canadian oil patch owned by a Middle Eastern company.

In real estate matters, Fraser Milner Casgrain acted for Canada Pension Plan Investment Board as part of the conglomerate buying O&Y Properties and O&Y Reit for \$2.1 billion. Internationally the firm advised the Special Committee of Peru Copper when it was acquired by Aluminium Corporation of China. The corporation owns Chalco, whose aluminium production rivals that of Alcan.

In an acquisition valued over C\$240 million, Fraser Milner Casgrain represented Tiberon Minerals when outstanding shares were acquired by TML Acquisition, organized by Dragon Capital Management. Some other Fraser Milner Casgrain clients include Bank of Montreal and RBC Capital Markets.

#### Leading lawyers

Michael Melanson  
John Sabine  
Ralph Shay

### Project finance

#### Recommended firms

##### Tier 1

Bennett Jones  
Blake Cassels & Graydon  
McCarthy Tétrault  
Ogilvy Renault  
Osler Hoskin & Harcourt

##### Tier 2

Davies Ward Phillips & Vineberg  
Fasken Martineau DuMoulin  
Stikeman Elliott  
Torys

##### Tier 3

Burnet Duckworth & Palmer  
Fraser Milner Casgrain  
Gowling Lafleur Henderson  
Macleod Dixon  
McMillan Binch Mendelsohn

As energy is one of the pillars of the Canadian economy, the past year in project finance has been an active one, with some foreign-influenced adjustments. "Canadian expertise is being exported," said one partner. Canadian firms are broadening their reach by doing more international work, which is not common for this jurisdiction. "It is natural for a New York firm to do foreign transactions," said a partner, "but if you say that's the same in Canada, they wonder why a Canadian firm is involved." Also, more foreign banks have been leaving their mark by investing in Canadian projects. "It has changed the way the projects market is financed," said one lawyer. "There are longer tenures, knowledge and market technology they've applied in the western European market."

A relatively new phenomenon in Canada is mono-line-wrapped project financing. The first mono-line-wrapped public-private partnership (PPP) was the C\$929 million (\$890 million) bank financing for the Golden Ears Bridge Project in Vancouver, which closed in March 2006. Many expect to see growth in this area.

While some say PPPs are old news, others still consider them to be a growing sector of the Canadian project finance market and extending their reach across the country. One partner said: "It might be interesting to see how it progresses, as it has in England where they commoditized that market."

### **Bennett Jones**

Known for its presence in western Canada's energy field, Bennett Jones jumps into the first tier with a substantial following in the practice. The firm touts expertise in infrastructure and PPPs, and is said to have C\$100 billion planned investment in Alberta's oil sands. The firm's supremacy in the oil and gas sectors is widely acknowledged, and this year it acted for the financing arrangements of The Aboriginal Pipeline Group in the C\$5 billion project. Bennett Jones represented Atco Power in the Athabasca Oil Sands Cogeneration Projects, valued at C\$274 million. The Athabasca Oil Sands supply more than one-tenth of Canada's oil.

But the firm is also developing its concentration in renewable energy, which is becoming a much more popular area of the market. The firm recently acted in a wind park project development, counseling SkyPower Wind Energy Fund in the C\$300 million loan agreement and C\$77 million public-equity financing.

#### **Leading lawyers**

Philip Backman  
Mark Bain  
Bruce Barker  
Paul Blundy  
Paul Mantini

### **Blake Cassels & Graydon**

Blake Cassels & Graydon moves into tier one this year after a stellar performance, above all in PPPs. The firm is also recognized for its presence in Vancouver and Montreal. In the oil sands sector, Blakes acted for Credit Suisse, Royal Bank of Canada, The Toronto-Dominion Bank and others in the Opti Canada oil sands project in Alberta. This included a \$450 million and C\$500 million revolving credit facility and a \$1 billion bond issue, used to finance the Long Lake lease. Department head Daniel Fournier led the firm in representing the lenders. "We have come to trust Dan. He talks in layman's terms rather than legal terms," said one client. "He provides options rather than problems."

Additionally, the firm represented lenders, Toronto-Dominion Bank, in the oil sands project revolving and term credit facility giving sole ownership to Petrobank Energy and Resources, worth C\$120 million. "Mike Harquail is their key guy," said one competitor, and others men-

tioned Anne Stewart's powerful presence in Vancouver. In infrastructure, Blake Cassels & Graydon is advising the lenders in the design, financing, and operation of the A25 Highway, which stretches across Quebec.

The firm's client roster includes Lehman Brothers, Scotia Capital and TD Securities. "They go beyond legal and put thought into their advice," said a client.

#### **Leading lawyers**

James Christie  
Martin Fingerhut  
Dan Fournier  
Michael Harquail  
Anne Stewart  
John Teolis

### **McCarthy Tétrault**

"McCarthy has a strong team and is probably the top energy firm in Canada," said a client when asked about McCarthy Tétrault. "They are strong in Toronto and Calgary, and have a strong office in Montreal." The firm's Northern Projects Initiative helps clients to do energy-related transactions in northern Canada and deals with Aboriginal issues. The firm also played a significant role in developing the Canadian Council for Public-Private Partnerships.

Peers believe McCarthy Tétrault to be eligible for tier one and showed admiration for Barry Ryan and Michael Weizman. "Barry Ryan is superb at whatever he does at McCarthys," said one competitor. The firm represented Aecon Infrastructure, First Transit, Siemens and Fluor in the bidding for the Richmond Airport Vancouver Rapid Transit Link Project. The project is the largest PPP in Canada and the first rail PPP in North America.

Another considerable infrastructure deal is the first wrapped loan financing in North America, which involved mono-line guarantees. McCarthy Tétrault acted as Canadian counsel to the lenders and mono-line insurers in the C\$1 billion Golden Ears Bridge project, which will cross the Fraser River.

When asked about McCarthy Tétrault, a long-standing client said of Stephen Furlan: "Steve is easily one of the best project finance lawyers in Canada." Other clients that use McCarthy Tétrault are Bank of America, Manulife and TD Securities.

#### **Leading lawyers**

Michel Deschamps  
Marc Dorion  
Byran Gibson  
David Lever  
Richard Miner  
Barry Ryan  
Michael Weizman

### **Ogilvy Renault**

Despite occasional rumblings from peers about the stability of the firm's future in project finance, Ogilvy Renault has had a standout year as one of the best project finance groups in Canada. "There is an efficient process with them," said one client, "They have an understanding of what's required." Peers highlight Jacques Demers as a leader in the firm's practice, saying he has a "serious project finance profile".

In domestic matters, Ogilvy Renault has participated in a number of health infrastructure projects. Demers and Merie-Anne Beavis, for example, acted as lead counsel to Infrastructure Ontario in the Woodstock Health Centre project. Led by Nick Williams, the firm also represented the lenders in the Belleville General Hospital project, the first part of Infrastructure Ontario's new Alternative Financing and Procurement model. Progress was delayed at the time of writing due to a construction worker strike, which will prolong the work. "Nick Williams and Ella Plotkin are very knowledgeable and pragmatic in finding the best solution to an issue," said a client.

Another client was also satisfied by Plotkin's performance. "Ella Plotkin works effectively to get deals done and is able to meet what I need out of a deal," said the client. Plotkin worked alongside Brian Kelsall in the representation of International Finance Corporation and other lenders in the financing of a port retrofit in Buenos Aires, Argentina. An additional international transaction involving Kelsall was the financing for the development of gas and oil fields in Pakistan and Egypt. The firm acted for the lender, International Finance Corporation, and the deal involved numerous borrowers in many jurisdictions.

Ogilvy Renault's client list includes Bombardier, Borealis, High Plains Uranium and SNC-Lavalin. "They don't introduce their personalities and just move forward," said a client.

#### **Leading lawyers**

Jacques Demers  
Brian Kelsall  
Ella Plotkin  
Nicholas Williams

**Osler Hoskin & Harcourt**

Osler Hoskin & Harcourt is known throughout the field as having an engaging presence on key projects in infrastructure and energy. Peers agree the firm has a tier one stance and a strong practice. In energy, the firm represented Bank of Montreal in the financing of the Trans-Northern Pipeline Gas Expansion, valued at C\$157 million. In addition, the firm represented Royal Bank of Canada in the financing of the Mackenzie Valley Pipeline Project, worth C\$4.5 billion. Royal Bank of Canada acted as financial adviser to Mackenzie Valley Aboriginal Pipeline, part of the project to connect the North American markets with northern Canada onshore gas facilities.

“Osler, you see on more deals and it’s been that way for a while,” said one partner from another firm. The firm acted for Canadian Opera House Corporation in the C\$54 million credit facility for construction of Four Seasons Centre for the Performing Arts in Toronto, with lenders fronted by Bank of Nova Scotia.

Past clients Osler Hoskin & Harcourt has represented are the Greater Toronto Airports Authority, Japan National Oil Corporation and Enstar Financial Corporation, among others.

**Leading lawyers**

Lorne Carson  
Clay Horner  
Eden Oliver  
Rocco Sebastiano

**Davies Ward Phillips & Vineberg**

Davies Ward Phillips & Vineberg’s concentration on infrastructure keeps it in the project finance market as the rise in PPPs branches out in Canada. When asked about the firm’s lawyers, one competitor said: “Bill Ainley is a first-class attorney.”

The firm has recently represented InTransit British Columbia in the construction and partial financing of Richmond Airport Vancouver Rapid Transit Link Project.

This year, Davies Ward Phillips & Vineberg counselled Access Justice Durham consortium in the building of the Durham Consolidated Courthouse, joining the services of the Superior Court and Ontario Court. The firm also acted for sponsor Babcock & Brown and lender ABN Amro Bank. The courthouse will be energy-efficient and marks the first PPP courthouse in North America.

In the health sector, Davies Ward Phillips & Vineberg acted as lead counsel to Plenary Health consortium, comprising Deutsche

Bank, PCL Constructors Canada and Johnson Controls, in the financing and building of the North Bay Regional Health Centre project, serving northeast Ontario.

The firm is active in various types of energy projects as it was a part of the Murdochville wind farms, representing 3Ci, the main contractor. Furthermore, the firm acted for General Electric Energy in the proposed construction its first 7H gas turbine, which will have an 800-megawatt combined cycle. The firm has counseled numerous clients in the past year including BMO Nesbitt Burns and RBC Capital Markets, among others.

**Leading lawyers**

William Ainley  
Robert Bauer  
Scott Hyman  
Nicholas Leblovic  
Carol Pennycook  
Jay Swartz  
Pierre-André Themens

**Stikeman Elliott**

Stikeman Elliott was a dominant player in project finance with deals this year, particularly in infrastructure and PPPs. Peers consider the firm to do “real project finance”. Last May, the firm, led by Jim Harbell, Brenda Hebert and Peter Hamilton, closed a deal representing Sithe Global Power and Goreway Station Partnership in the construction facility for the 880-megawatt Goreway Station, worth C\$942 million. Competitors spoke of Harbell and Hamilton as the firm’s stars. In Calgary, peers believe department head Glen Cameron to be one of the best. “He knows the matter, and he’s a good draftsman and negotiator,” said one partner from another law firm.

With the rising trend for PPP work, Stikeman Elliott is busy in both Quebec and western Canada. A client spoke of Erik Richer La Flèche out of the Montreal office: “He did a good job of staying on top of issues and, as time went on, was very quick to be right back on top of the issue.” The firm is acting as part of a consortium counsel representing Macquarie North America and Kiewit Development Company in the Autoroute 25 and Autoroute 30 PPPs in Quebec. The head of the Vancouver project finance department, Michael Allen, is advising Macquarie North America in the bidding by lenders for the PPP Calgary Ring Road projects.

Stikeman Elliott’s many clients include Carillion Canada, Cordiant Capital and Canaccord Capital Corporation. “Stikeman has a lot of bench strength,” said a client. “It has the depth to respond and keeps the deal from going sideways.”

**Leading lawyers**

Michael Allen  
Glen Cameron  
Jonathan Drance  
Peter Hamilton  
James Harbell  
Erik Richer La Flèche

**Torys**

“Jonathan Weisz is a very technically competent project finance lawyer. He’s really in the flow in terms of energy projects,” said one client when asked about Torys, adding: “Jonathan is probably as good as you’re going to get in Canada.” The firm has a reputation for having a quality practice that delivers what it promises. A client said he is content with Alison Lacy, who does a fair amount of project work. Lacy and Weisz both acted for Greenfield Power in August 2006, in the financing of a 1010 megawatt combined-cycle gas-turbine (CCGT) power plant near Ontario, valued at C\$450 million.

Even though Torys does not have an office in Calgary, it is known for its dominant energy presence in Ontario. The firm was involved in the construction of the Prince I and Prince II wind generating facilities, representing Brookfield Power Wind Prince. The transaction, worth C\$300 million, was led by Lacy. The firm also acted for the lender TD Bank in the financing of Fort Chicago Energy Partners and Pristine Power’s 83MW East Windsor cogeneration power facility.

Torys calls MIT Power Canada Investment, XL Capital Assurance and RBC Dominion Securities a few of its loyal clients. One client mentioned Scott Kraag as an up-and-coming lawyer in the firm. Kraag was involved in Ontario Power Generation’s 550MW Portlands Energy Centre CCGT power project, set to begin operations in 2008.

**Leading lawyers**

Paul Kennedy  
Alison Lacy  
Jonathan Weisz

**McMillan Binch Mendelsohn**

Participating in one of the most discussed projects of the year, McMillan Binch Mendelsohn has played an active role in the project finance market. Peers deem Peter Willis and Chris Bennett to be standouts in the firm. Both partners acted for the lenders Dexia Crédit Local and Fortis Capital Corporation in the building, financing, and operating components of the northeast portion of the Stoney Trail in Calgary, known as the Calgary Ring Road, which will connect

other roads to help grow and develop the province. The deal, which closed in February, was valued at C\$650 million.

In Ontario, McMillan Binch Mendelsohn represented Morguard Investments in the building, financing and operating of the Archives of Ontario at York University. In the redevelopment of the Sudbury Regional Hospital in Ontario, the firm counseled Royal Bank of Canada in the building and financing of Phase II. The deal closed in May at C\$131.9 million.

Other clients the firm advises include CIT Financial, EllisDon Corporation and Bilfinger Berger.

#### Leading lawyers

Chris Bennett  
Andrew McFarlane  
Peter Willis

## Restructuring and insolvency

Recommended firms	
<b>Tier 1</b>	
Goodmans	
Osler Hoskin & Harcourt	
<b>Tier 2</b>	
Bennett Jones	
Blake Cassels & Graydon	
McMillan Binch Mendelsohn	
Ogilvy Renault	
Stikeman Elliott	
ThorntonGroutFinnigan	
<b>Tier 3</b>	
Borden Ladner Gervais	
Davies Ward Phillips & Vineberg	
Fasken Martineau DuMoulin	
Fraser Milner Casgrain	
Gowling Lafleur Henderson	
McCarthy Tétrault	
Torys	

Canada's insolvency and restructuring market has minimized due to the rise of financial liquidity. Although bankruptcy work is slow at the moment, firms are preparing for a backlash from the vibrant M&A activity. "M&A is generally over-leveraged," said one partner. "There will inevitably be some mistakes."

Companies have avoided filing for bankruptcy as a result of investments from private equity and hedge funds. In turn, they are restructuring behind closed doors. Some speak of this trend as a bubble, and they doubt how long it will last. "Groups come in and buy companies with due diligence and then realize they have bigger problems," said one partner. Others note the decline in participation of Canadian banks in the senior-debt market and the increase in alternative investors.

The rise of the Canadian dollar has also reduced law firms' insolvency activities, especially in the automotive industry. The increase has weakened profits for Canadian suppliers. "It's the pressure from manufacturers to keep prices down," said a partner. Others think it may spread to different industries including energy. One lawyer said: "Most think prices will stay high, but it might not always be that way."

### Goodmans

Goodmans maintains its place in the top tier this year by securing high-profile deals and continuing a first-rate reputation in restructuring and insolvency. The firm boasts a large and deep practice across Canada. Both law firms and clients agree Goodmans remains a leading force in the field. "They're recognized as experts in the field and have an excellent reputation," said a client. "They've been doing it for many years."

One prominent deal is Calpine's restructuring, which began in 2005 and involves over \$10 billion in claims. The firm represented Calpine, who rejected private-equity offers, and instead filed under Chapter 11 of the US Bankruptcy code. The company is expected to emerge from the bankruptcy case by the end of the year. Jay Carfagnini, Brian Empey, Fred Myers and Joseph Pasquariello are involved with the restructuring. Carfagnini has an outstanding reputation among peers, with some calling him "an excellent lawyer" and "the top person". David Bish was also praised by a client as having "good expertise and trust with us".

In the multifaceted cross-border MusclTech Research and Development (MDI) restructuring that closed in April, Goodmans acted as the Canadian counsel to the debtors, MDI and its subsidiaries under the Companies' Creditors Arrangement Act (CCAA). This is the first cross-border Chapter 15 insolvency filing. Carfagnini, David Bish and Fred Myers headed the firm's team.

Over the past year, Goodman's extensive client list includes Cadillac Fairview, Kaiser Aluminum, Ernst & Young and PricewaterhouseCoopers. A client said of Goodmans. "They understand our issues and give timely service. We trust their advice."

#### Leading lawyers

David Bish  
Jay Carfagnini  
Robert Chadwick  
Fred Myers  
Gale Rubenstein

### Osler Hoskin & Harcourt

Osler Hoskin & Harcourt moves into the top tier this year after continually outstanding performance and presence in the insolvency

market. The firm has a leading national practice which spans through other jurisdictions. Partners Edward Sellers and Steven Golick are deemed by peers to be at the top of their game. A client called Sellers "the number one person".

A few firms consider Osler to be among their chief competitors in the market, and one described it as "the best corporate firm". Edward Sellers led the Osler Hoskin & Harcourt team in the complex Stelco restructuring, representing Tricap Restructuring Fund. The deal involved C\$3 billion (\$2.8 billion) of liabilities and was completed in two steps. Stelco repaid all pre-filing senior secured debt, and the company's remaining operating divisions were deconsolidated. Rupert Chartrand was also involved in the transaction.

Osler Hoskin & Harcourt played a part in the complex cross-border MusclTech restructuring by counseling Zurich Insurance Company. The transaction was led by Steven Golick, who is regarded as one of the best insolvency partners at the firm.

Furthermore, Osler Hoskin & Harcourt acted for Greater Toronto Airports Authority in the bankruptcies of Inter-Canadien and Canada 3000. Through an appeal before the Supreme Court of Canada, the airport authorities confirmed a right to detain aircraft in order for the insolvent airline to pay its fees, including landing fees.

Other clients the firm has represented in the past year include Bank of Montreal, Toronto Dominion Bank, and Bank of America. When asked about Osler Hoskin & Harcourt, a client said: "They have given us good advice on a consistent basis."

#### Leading lawyers

Rupert Chartrand  
Steven Golick  
Edward Sellers

### Bennett Jones

Bennett Jones is one of the most active firms in the Canadian insolvency and restructuring market. The firm has acted on international restructurings in Europe, Central America and Australia. In the steel industry, it represented note holders in Ivaco's CCAA proceedings, which includes C\$300 million in claims.

The group is co-headed by Richard Orzy, who is regarded by peers and clients as a primary partner in the practice. One client said: "He gives very good advice including strategic legal advice. He's the most responsive person I've ever dealt with."

In the chemicals industry, Bennett Jones acted as counsel to the secured creditor in General Chemical's Canadian liquidation pro-

ceedings, valued at C\$100 million. Kevin Zych, a partner of the Toronto office, led the deal. “Kevin has had a terrific run on engagements,” said a competitor.

“There are strong partners and a lot of associates that bring in the support necessary for complex matters,” said a peer. Frank Dearlove was regarded by many competitors as a leading lawyer at the firm with a solid reputation among bondholders.

Bennett Jones touts other clients not limited to Forum Financial Corporation, Retrocom Growth Fund and Catalyst Capital. A client said: “They give good legal advice and are extremely responsive. They think about the people they put on a file.”

#### Leading lawyers

Frank Dearlove  
Richard Orzy  
Kevin Zych

### Blake Cassels & Graydon

“In the workout insolvency, they have a team of very seasoned, experienced lawyers,” said one client of Blake Cassels & Graydon. The firm recently lost partner Kevin McElcheran, who went to McCarthy Tétrault in February. “Kevin’s leaving Blakes, and it is going to be hurtful,” said a competitor.

Despite the loss, Blake Cassels & Graydon is a powerful contestant and was engaged in one of the largest Canadian insolvencies of the year. The firm represented the board of trustees of Calpine Commercial Trust, a subsidiary of Calpine Power Income Fund.

Calpine Power Income Fund was a creditor of Calpine Canada Power, which filed under the CCAA. The firm helped in the re-tolling of Calgary Energy Centre after Calpine rejected the tolling agreement. Susan Grundy and Steven Weisz, who competitors name as star lawyers in the field, advised on that deal. Clients named Grundy as one of the firm’s leading practitioners.

In other CCAA filings, the firm is also representing Hamilton Specialty Bar Corporation and Pine Valley Mining Corporation in their proceedings. In addition, Blake Cassels & Graydon is acting for the debtor in the cross-border Delphi Corporation restructuring.

Blake Cassels & Graydon have counseled a wide variety of clients in the past year, not limited to Canadian Imperial Bank of Commerce, GE Capital and General Chemical Canada. One client noted the firm’s efficiency: “They can build a team very quickly.”

#### Leading lawyers

Susan Grundy  
Pamela Huff  
William Kaplan  
Steven Weisz

### Ogilvy Renault

Ogilvy Renault has been a consistent contender in insolvency and restructuring over the past year. Although John Porter left to work with ThorntonGroutFinnigan, the firm is still a force in the market. Peers consider Derrick Tay to be one of the best partners in the industry: “He’s a quality big-picture strategic guy,” said one. “He’s a top performer.” Clients also singled out Mario Forte for praise.

As part of the Stelco restructuring, Ogilvy Renault represented Mittal Canada in the purchase of Stelco’s three operating subsidiaries. It was also counsel to PricewaterhouseCoopers in Hemosol’s CCAA proceedings.

The firm acted for Pliant Corporation last year as counsel to the lender and debtor-in-possession financier in the CCAA Chapter 11 proceedings, which is intended to reduce debt and lower interest rates. In addition, the firm acted as counsel to Canadian craft store Lewsicraft Corporation in CCAA matters when it filed for bankruptcy protection.

Ogilvy Renault boasts a client list which includes Iovate Health Sciences, Ravelston Corporation, and GMAC.

#### Leading lawyers

Mario Forte  
Louis Gouin  
Tony Reyes  
Derrick Tay

### Stikeman Elliott

Specializing in representing debtors, the lawyers at Stikeman Elliott provide quality restructuring and insolvency advice. The firm prides itself on a history that includes Air Canada’s restructuring in 2003, which was one of the largest and most successful Canadian restructurings to date. More recently, it advised CIT Business Credit in the Stelco restructuring, helping it to avoid bankruptcy. Partners Sean Dunphy and David Byers were the key lawyers in this representation. “Dunphy’s an unbelievably brilliant and talented insolvency lawyer,” said a client. “He’s very strong tactically.”

In the automotive industry, which is said to be increasing in restructurings, Stikeman Elliott represented auto-parts manufacturer Collins & Aikman Canada in CCAA proceedings. Dunphy headed the firm’s insolvency

counsel. In addition, the automaker MetalForming Technologies filed its own insolvency. One client praised the firm’s ability to get a deal organized, and said: “They’re our go-to firm for larger complex restructuring.”

Other clients Stikeman Elliott has advised include big-four accounting firms Ernst & Young, PricewaterhouseCoopers and KPMG. One client said: “They have a very strong business sense which they meld with outstanding legal skills, and they have a terrific value of the client.”

#### Leading lawyers

David Byers  
Sean Dunphy  
Stephen Raicek

### Borden Ladner Gervais

With insolvency lawyers in each of its five offices, Borden Ladner Gervais is a national firm with a robust practice. The addition of Alec Zimmerman from Fraser Milner Casgrain in February strengthens the firm in Toronto. In the Calgary office, Patrick McCarthy, who a peer calls the firm’s “star in Calgary”, led the group in advising Ernst & Young, which acted as monitor in the Calpine Canada CCAA proceedings. A client commended Kenneth Atlas for his insolvency work saying that he “would rank at the top of the list”.

Even though some market commentators say that Borden Ladner Gervais may lack enough depth to put the firm in the first tier, they agree the firm has some standout partners.

Borden Ladner Gervais represented tobacco manufacturer JTI-Macdonald, part of Japan Tobacco, in its CCAA proceedings, asserting C\$10 billion in claims. The cigarette producer is alleged to owe back taxes on smuggled cigarettes. Michael MacNaughton, who received highly positive reviews from competitors, headed this transaction.

In the automotive industry, Borden Ladner Gervais counseled Daimler Chrysler Canada in relation to supplier Collins & Aikman’s CCAA proceedings, which also includes US bankruptcy matters. Other clients of the firm include Bank of Montreal and Canadian Investor Protection Fund.

#### Leading lawyers

Craig Hill  
Roger Jaipargas  
Michael MacNaughton  
Patrick McCarthy

## **Davies Ward Phillips & Vineberg**

Davies Ward Phillips & Vineberg has had a decent year for restructuring and insolvency, acting for a wide variety of parties. Some peers consider the firm to have a more transactional focus. Natasha MacParland joined the firm in 2005 and is well regarded among competitors. One competitor said: "Natasha, I think the world of her. She's very capable." Jay Swartz also has an exceptional reputation among peers. In the prominent MuscleTech restructuring, Davies Ward Phillips & Vineberg represented RSM Richter as a monitor of MuscleTech Development.

The firm also acted for automotive parts designer and manufacturer Dura Automotive in its Chapter 11 restructuring. In addition, the firm counseled Hollinger International in Ravelston Corporation's CCAA proceedings last year. Both Hollinger and Ravelston were holding companies owned by media mogul Conrad Black.

Davies Ward Phillips & Vineberg claims Catalyst Fund, Deutsche Bank and the lessors of Air Canada as some of its other clients.

### **Leading lawyers**

Denis Ferland  
Natasha MacParland  
Mark Schrager  
Jay Swartz

## **Fasken Martineau DuMoulin**

Although Fasken Martineau DuMoulin recently lost a few of its key partners, the firm has been present on substantial deals. Michael Fitch retired from the firm's Vancouver office, and leading lawyer Sheryl Seigel left the firm in August 2006 to work for Lang Michener. Aubrey Kauffman joined Fasken Martineau DuMoulin in 2006, which peers consider to be a beneficial move. "They have more bench strength now," said a competitor.

Fasken Martineau DuMoulin has been involved in a few restructurings this year. The firm, led by Edmond Lamek, acted for CCAA monitor RSM Richter in NRI Industries' C\$15 million restructuring. Lamek also counseled CSE and Seaway Marine, as part of Upper Lakes Group, in the restructuring of Canadian Shipbuilding & Engineering, which was formed from two large private shipping companies.

Other clients the firm has represented in the past year include Laurus Master Fund, Abakhan & Associates and TCP Reliable.

### **Leading lawyers**

David Baird  
John Grieve  
Aubrey Kauffman  
Edmond Lamek  
Jonathan Levin  
Alain Riendeau

## **Fraser Milner Casgrain**

"They have a strong insolvency practice, and a good national practice," said one peer of Fraser Milner Casgrain. The firm has more than 35 insolvency lawyers. In the automotive industry, it acted for Hunjan International in its reorganization under CCAA and the US Bankruptcy code. Shane Kukulowicz led his team in Toronto through the transaction. "Shane has been able to develop a confidence level amongst his peers," said a competitor. "His is one of the three or four names that constantly pop up." In the Canada 3000 proceedings out of Toronto, the firm counseled the aircraft lessor Ansett Worldwide Aviation.

In Vancouver, Fraser Milner Casgrain acted for PricewaterhouseCoopers in Northern Energy & Mining's CCAA matters, which resulted in the creation of Peace River Coal, Anglo Coal Canada, and Hillsborough Resources. Partner Douglas Knowles headed the firm in this deal. Then there was the firm's representation of Pine Valley Mining Corporation in its CCAA proceedings, with partner John Sandrelli, who is highly regarded for his work in British Columbia, leading the team.

Cogeco Cable, Roman Corporation, Genesys Capital Partners and KPMG are only a few of Fraser Milner Casgrain's long list of clients.

### **Leading lawyers**

Dan Dowdall  
Douglas Knowles  
Shayne Kukulowicz  
Joseph Marin  
John Sandrelli

## **McCarthy Tétrault**

Founded in 1855, McCarthy Tétrault boasts a large and varied practice across the Canadian restructuring and insolvency market. The firm has seen some new additions in the past year including Kevin McElcheran from Blake Cassels & Graydon, and James Farley, who was the supervising judge of the Commercial List in Toronto at the Supreme Court.

"Hiring Kevin was a very good thing," said one peer. Another spoke of Farley's hire as an improvement to the firm's practice: "His reputation is so strong." In some of the more prominent transactions McCarthy Tétrault

represented St Mary's in its well publicized restructuring, as well as Stelco in the steel industry. Competitors say the firm has a sturdy office in Montreal. One of McCarthy Tétrault's highlighted clients is Canadian Pacific Railway.

### **Leading lawyers**

Philippe Bélanger  
Barbara Boake  
James Farley  
James Gage  
Kevin McElcheran  
Larry Robinson  
Sylvain Vauclair

## **Torys**

While some describe Torys' insolvency team as a shrinking practice, they still consider the firm to have a few leading lights in the Toronto office. Department head Tony DeMarinis received admiration from peers for his ability to handle high-value and complex matters. DeMarinis was lead counsel to Brookfield Asset Management in its Tricap restructuring fund, which, at the time of writing, had not yet closed. He also advised Honeywell International in the General Chemical Canada proceedings.

"Scott Bomhof is a good young guy and is well liked in the business," said a partner from another firm. Bomhof acted for Heating Oil Partners in its cross-border restructuring, closing in 2006. As part of the Calpine restructurings, Torys, led by Bomhof and DeMarinis, counseled Mitsui Corporation and Greenfield Energy Centre. In the past year, the firm has also acted for RSM Richter, Morgan Stanley and Saskatchewan Wheat Pool.

### **Leading lawyers**

Scott Bomhof  
Tony DeMarinis  
Michael Rotsztein