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Developments in Canadian securities law

Frank Turner and Janet Salter
Osler Hoskin & Harcourt
Toronto

Defensive tactics and shareholder rights plans

Two decisions over the course of the last year illustrate how securities regulators play an active role in the Canadian M&A context.

Re Neo Material Technologies

In mid-2009, Pala Investments made a hostile, partial take-over to acquire a large block of shares of Neo Material Technologies. Neo adopted a shareholder rights plan to block the bid. At a special meeting of shareholders the plan was overwhelmingly approved. Pala subsequently sought an order to have the plan cease-traded and for the first time the Ontario Securities Commission (OSC) declined to exercise its public interest jurisdiction to cease-trade a rights plan and allowed the Neo plan to stay in place.

There has been considerable debate among M&A lawyers regarding the OSC's decision to depart from past practice. Some practitioners have suggested boards may now be able to just say no to a bid, whereas others believe that the decision was decided on unique facts and does not represent a change in the traditional approach to rights plans that involves a determination of when, not if, a rights plan will be set aside.

Re Lionsgate

In May 2010, the British Columbia Securities Commission (BCSC) cease-traded the rights plan that Lionsgate Entertainment Corporation adopted in response to a hostile take-over bid by Carl Icahn. In reaching this decision, the BCSC expressed reservations about Neo stating that it represented a departure from the Canadian securities regulators' prior views of the public interest as it relates to the adoption of rights plans.

In the wake of Neo and Lionsgate, Canadian M&A practitioners are now faced with some uncertainty with respect to the utility of shareholder rights plans. Only time will tell whether the OSC continues the approach seen in Neo notwithstanding the concerns the BCSC expressed, or whether the OSC will return to its more traditional approach.

Restructuring under the Canada Business Corporations Act

On March 22 2010, the Superior Court of Quebec approved a plan of arrangement under the Canada Business Corporations Act (CBCA) that allowed a corporation to achieve a worldwide capital restructuring of its business under a corporate statute, rather than under an insolvency and restructuring statute. This was coupled with a recognition proceeding in the United States enforcing the arrangement in the United States. It is the first time an arrangement of this nature has been implemented in Canada.

The court orders in this case confirm that the CBCA arrangement provision can provide a practical option for a quick and effective restructuring of a company's debt securities and senior secured debt where stakeholders support the outcome and the court is able to conclude that the transaction is fair and reasonable.

The CBCA allows arranged entities to retain greater control of the restructuring process and does not require a trustee or court-appointed monitor to oversee the transaction. Accordingly, a CBCA arrangement can provide a more efficient and flexible alternative as compared to conventional insolvency statutes. As well, there may be a business benefit to not undertaking insolvency proceedings.

At the same time, it remains an open question as to the scope of circumstances in which the courts across Canada will endorse the CBCA as an appropriate statutory framework for balance sheet restructuring, particularly

where secured bank debt, non-CBCA companies or broad stays of proceedings are involved.

TSX shareholder approval requirements

In November 2009, in response to a decision of the OSC concerning Hudbay Minerals' proposed acquisition of Lundin Mining through an all-stock arrangement that would have resulted in just over 100% dilution to Hudbay, the Toronto Stock Exchange (TSX) adopted a new rule that requires TSX-listed issuers to obtain shareholder approval for public company acquisitions that would result in the issuance of more than 25% of the issued and outstanding shares of an acquiring company on a non-diluted basis. Historically, an acquiring company was required to obtain shareholder approval in circumstances where a dilutive share issuance would "materially affect" the control profile of the issuer; that rule continues in effect.

As a result of the new TSX rule, there will be incremental deal risk associated with the execution of transactions that require a shareholder vote. The policies of the TSX now generally conform to several other stock exchanges such as the NASDAQ Market and the New York Stock Exchange, which require shareholder approval for share issuances equal to or greater than 20% dilution.

Movement toward a single securities regulator

Securities regulation in Canada is currently administered by 13 separate provincial and territorial securities regulators. In March 2009, the federal government signalled its intention to move to a single regulator by establishing the Canadian Securities Transition Office to draft a federal Securities Act and to draw up a transition plan to move to a single regulator. The federal government noted that Canada is the only G20 member without a single securities regulator and noted its belief that a single regulator will improve Canada's policy coordination internationally and strengthen enforcement domestically.

On May 26 2010 the federal government tabled in Parliament, for information purposes, the proposed Canadian Securities Act (Proposed Act). The transition plan was published July 13 2010.

It is anticipated that most of the substantive law governing securities regulation in Canada will be maintained by the new regulator. However, the Proposed Act contains enhanced enforcement powers, and securities offences which currently exist in the federal Criminal Code will be moved into the Proposed Act so that it contains a comprehensive code of conduct. The Proposed Act contemplates voluntary opt-in by the provinces and territories.

The federal government has referred the Proposed Act to the Supreme Court of Canada (SCC) for a ruling as to whether the federal government has the constitutional authority to enact the legislation. The federal government will wait for the SCC ruling before proceeding, but will continue working with the participating jurisdictions on transition planning. Two of the three provinces that are not participating jurisdictions – Alberta and Quebec – have also referred constitutional questions to their respective Courts of Appeal.

IFRS reporting starts in Canada January 2011

In January 2011 Canadian generally accepted accounting principles for publicly accountable entities (PAE) in Canada will be replaced with International Financial Reporting Standards (IFRS). IFRS has already been adopted in over 100 countries including in Europe and Australia.

While PAEs do not have to begin presenting their financial statements in IFRS until the first quarter of 2011 (assuming a calendar year end), the 2011 interim financial statements will need to include comparative statements for 2010 prepared in accordance with IFRS. As such, many Canadian PAEs are currently preparing their 2010 interim financial statements in accordance with Canadian GAAP and are also preparing a second set in accordance with IFRS for use in 2011.

The next year will be an interesting one for Canadian capital markets as issuers, as well as analysts, investors and regulators, become familiar with the new financial presentation which will result from the adoption of IFRS.

Capital markets

Recommended firms

Tier 1

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

Tier 2

Blake Cassels & Graydon
Goodmans
McCarthy Tétrault

Tier 3

Bennett Jones
Borden Ladner Gervais
Fasken Martineau
Ogilvy Renault

Tier 4

Cassels Brock
Fraser Milner Casgrain
McMillan

Although the Canadian capital markets started to rebound in both debt and equity issues by the summer of 2009, there has been reason for renewed caution with the onset of the European debt crisis. The extent of its impact on the global financial markets has still yet to be seen but there are looming concerns about how it will affect international economic recovery efforts and global equity markets.

In early May of this year one partner commented that the market had become very choppy. Despite any disturbances, Canadian media outlets overwhelmingly reported that Europe's overall impact is modest. "We're on our way back to a healthy market but we're not there yet," says one partner.

The IPO market, which froze during the wake of the credit crisis, started to return again in the fourth quarter, though remained far below normal levels. "The market is still pretty cautious," confirms one partner. It is this type of uncertainty that has been causing many investors to sit on their cash and wait for a more opportune time to risk an IPO. Although no one has a crystal ball, 2010 may be a year of increased investor appetite as one partner reports an increase in the momentum for public offerings.

Deal activity for 2009 was dominated by the mining and financial institutions sectors. In terms of the mining area, lawyers experienced a stream of private investment in public equity (pipe) deals. "Pipe transactions are still in vogue," says one partner. China was a particularly large player during the year even having a role on the largest Canadian pipe financing of 2009 with China Investment Corporation (CIC). CIC invested C\$1.7 bil-

lion (\$1.6 billion) of common shares in Teck Resources.

An interesting development in the Canadian financial market is the rise of a potentially viable high-yield market. "We've seen a Canadian high-yield market emerge which is fairly new," says one partner. Factors contributing to this emergence include an increase in investor appetite for risk and a lack of long-term lending by the Canadian banks. In addition, investors are searching for lucrative alternatives to income trusts, which will be phased out in 2011.

Davies Ward Phillips & Vineberg

Davies Ward's focus on capital markets work has propelled it to its top-tier status. With an expertise in cross-border transactions, the firm boasts a diverse client base including domestic and international issuers, underwriters, investors and other market participants. Its cross border capability is enhanced through its office in New York.

In the past year Davies has earned a place as counsel on some historical deals. In November 2009 the firm advised CDP Financial, the funding arm of the Quebec Public Pension Fund, in its offering of C\$5.2 billion (\$5 billion) of senior secured notes in the United States. The book managers on the sale included the Royal Bank of Canada as well as US financial institutions Bank of America Merrill Lynch, Goldman Sachs and Morgan Stanley. It is the largest non-government guaranteed offering to date by a Canadian issuer in US dollars.

Davies also acted as advisor to one of the world's largest gold mining companies. As counsel for Barrick Gold Corporation, the firm assisted in the completion of its \$C4.1 billion (\$4 billion) cross-border offering. The transaction is the largest common stock offering in Canadian history.

Leading lawyers

Shawn McReynolds

Osler Hoskin & Harcourt

Osler has a reputation in the market for quality. Under the direction of Desmond Lee and Vitale Santoro, the firm's corporate finance group has built a strong track record for its capital markets work, especially on the side of the underwriters. Osler's longstanding relationship with financial institution and mining clients like Bank of Montreal, the Bank of Nova Scotia, Cameco and Kinross Gold also gives the firm its share of issuer work. "I have a lot of confidence in the firm," says one client. "They play at the upper end of the market."

On the Barrick Gold transaction, where the company issued \$C4.1 billion (\$4 billion) in common shares, Osler acted as Canadian counsel on behalf of the underwriters. Toronto partners Doug Marshall and Michael Innes worked on the deal's execution through a cross-border offering using the Multi-Jurisdictional Disclosure System (MJDS) between Canada and the US. The underwriters were led by Royal Bank of Canada Capital Markets and Morgan Stanley.

The firm also found itself on not only the largest IPO of 2009 but the largest in the Canadian market since 2007. Osler acted as advisor to the underwriters, led by CIBC and Goldman Sachs on Genworth MI Canada's IPO. The transaction was led by partners in the firm's Toronto, Ottawa and New York offices and involved an IPO spinoff whereby Genworth Financial would divest itself of its Canadian operations yet retain a stake in the company. The IPO closed in July 2009 with a value of C\$850 million.

Leading lawyers

Michael Innes
Desmond Lee

Stikeman Elliott

Stikeman Elliott is known for its well integrated corporate practice. The firm has offices across Canada's provinces in Toronto, Montreal, Calgary and Vancouver that are headed by Mihkel Voore, Jean Marc Huot, Christopher Nixon, and Neville McClure, respectively. Stikeman also has offices in New York, London and Sydney, which enables it to have a competitive place in the international market. The corporate team's collaboration across jurisdictions and practice areas (the team works closely with the firm's M&A group) gives it an edge in advising both issuers and underwriters.

Stikeman scored itself a place on the largest IPO of 2009 serving as counsel for Genworth MI Canada on its C\$850 million (\$735 million) IPO. In addition to this high profile transaction, the firm also acted on offerings from the Royal Bank of Canada and TransCanada Corporation. The firm advised the underwriters on the Royal Bank of Canada deal in their multiple offerings of preferred shares to the bank. The final proceeds from this transaction exceeded more than C\$1.2 billion.

Calgary partners David Lefebvre and David Taniguchi acted as advisors to TransCanada Corporation in its multiple offerings. In June 2009, the company completed its C\$1.6 billion offering in common shares. Later in the year the North America energy company completed offerings of

C\$567 million in preferred shares and C\$2 billion in debt securities.

Leading lawyers

David Lefebvre
Christopher Nixon
Mihkel Voore

Torys

Torys' capital markets practice is known for its strength in representing issuers as well as underwriters. The team saw a much more stable year without any significant departures of key personnel. The firm in fact expanded this year with the addition of Ian Arellano to its roster in September 2009. Arellano has an expertise in capital markets as well as M&A work with a particular specialty in cross border transactions.

The firm advised global information company Thomson Reuters on its repurchase of C\$722 million (\$700 million) of debt securities due in January 2012. The transaction was led by Michael Siltala and Cornell Wright in Toronto and Andrew Beck, Daniel Raglan, Jonathan Wiener and Chris Roehrig in the firm's New York office. The repurchase was executed through a voluntary tender offer proceeded by a make-whole redemption of the untendered notes.

Thomson Reuters also retained the firm on its C\$516 million offering of 5.85% notes due in 2040. The proceeds are to be used in conjunction with available cash to fund the repurchase. Both offerings closed at the end of March 2010.

Leading lawyers

Kevin Morris
Karrin Powys-Lybbe
Patricia Olasker

Blake Cassels & Graydon

Blakes' capital markets practice stands out for its cross-border capabilities and its work on behalf of issuers in equity offerings. The firm particularly has strength in acting for Canadian issuers in IPOs. The practice is also known for its knowledge of securities regulation, thus gaining clients like the Canadian Securities Administrators and the Ontario Securities Commission.

Additional clients include financial institutions like CIBC (Canadian Imperial Bank of Commerce) which have had a longstanding relationship with the firm. The group is led by partner Frank Arnone who has expertise in corporate finance and securities regulation.

Toronto partners Jeff Lloyd and Shlomi Feiner advised Genworth Financial and Genworth MI Canada in connection with the

C\$950 million (\$921 million) IPO of Genworth MI Canada. In order to fund the transaction Genworth MI issued C\$5.1 million worth of shares while Genworth Financial issued the remaining amount. The C\$950 million offering was the largest Canadian IPO for the 2009 year, and is also reported to be the fourth largest IPO on the Toronto Stock Exchange since 2001.

Scott Cochlan and Dan McLeod acted as counsel for a syndicate of other underwriters, led by Morgan Stanley Canada, GMP Securities on the IPO of Athabasca Oil Sands Corporation. The transaction was completed in April 2010 for a total of C\$1.6 billion. The IPO raised double the funds Athabasca had originally anticipated, and was the largest Canadian IPO in over a decade.

Leading lawyers

Frank Arnone
Scott Cochlan
Christopher Hewat
Jeffrey Lloyd
Peter O'Callaghan

Goodmans

Goodmans' capital markets team benefits from being incorporated into the firm's corporate finance and securities practice. The close knit relationship of the lawyers within the corporate group allows the firm to better serve its clients through multidisciplinary consultation. Goodmans advises a range of clients including issuers, banks, investors and regulators. Despite being smaller than most of its competitors and only having an office in Toronto, Goodmans is known to punch above its weight.

Goodmans advised the syndicate of underwriters in connection with Brookfield Asset Management's offering of 11 million preferred shares. The C\$275 million (\$267 million) issue was previously set at C\$150 million until underwriters increased the size of the deal. The syndicate was led by financial institutions including Scotia Capital, CIBC World Markets, RBC Dominion Securities and TD Securities. The transaction, led by partners Lawrence Chernin and Bill Gorman, closed in January 2010.

The firm also acted as counsel for RioCan Real Estate Investment Trust, the largest Reit (real-estate investment trust) in Canada, in connection with its public offering of trust units.

Leading lawyers

Stephen Halperin
Jonathan Lampe

McCarthy Tétrault

McCarthy Tétrault has a highly integrated financial services practice with a cross disciplinary approach. Offering clients a combined expertise in capital markets and banking has enabled the firm to meet diverse client needs. The firm is especially known to be preferred counsel for financial institution issuers and underwriting syndicates.

The firm acted as counsel for the underwriters in Manulife Financial's offering of Tier I notes. In July 2009, Manulife Financial Capital Trust II issued C\$1 billion (\$162 million) worth of notes for Tier I capital. The MaC II - Series 1 were issued through the syndicate of underwriters which were led by RBC Capital Markets and National Bank Financial.

Following on its advice to Manulife Financial Capital Trust II, McCarthy went on to advise the underwriters on Manulife Financial Corporation's equity offering. In November 2009 the company completed its offering of \$2.5 billion worth of common shares. The shares were offered through the syndicate of underwriters through a bought deal led by Scotia Capital and RBC Capital Markets. Andrew Parker led the transaction with a team of lawyers including Barry Ryan, Gabrielle Richards, and Jerald Wortsman.

Leading lawyers

Andrew Armstrong
Graham Gow
Edward Kerwin
Philip Moore
Andrew Parker
Barry Ryan

Other ranked firms

Borden Ladner Gervais' capital markets practice benefits from an integrated approach often work together with professionals from other practice areas with the firm to achieve results. In April 2010, the group added Mark Wheeler to its ranks from Beach Hepburn. He has a particular focus on mineral exploration and development companies as well as mining-related offerings.

This year the firm advised North American Energy Partners in connection with its offering of Series 1 senior debentures due 2017 in the amount of C\$225 million (\$218 million) via a private placement. The debentures were sold through a syndicate of underwriters led by CIBC World Markets which included Scotia Capital, Jefferies & Company, TD Securities and HSBC Securities Canada. The transaction closed in April 2010.

Leading lawyers: Frank Callaghan

Fasken Martineau advises capital markets participants on both M&A and corporate finance transactions. The firm's issuer clients

include public companies listed on both national and international stock exchanges while its dealer clients include investment banking firms and bank-owned securities firms.

The firm advised the syndicate of underwriters on TD Bank's C\$750 million (\$727 million) offering of TD Capital Trust IV Notes - Series due in 2108. The public offering qualified as Tier I capital and closed in September 2009.

The firm also advised a syndicate of investment dealers in connection with YPG Holdings' multiple public offerings. Fasken was counsel on six deals from June 2009 to December 2009. The total amount for the offerings of four medium term notes and two preferred shares totalled C\$990 million. The syndicate was led by RBC Dominion Securities, Scotia Capital and BMO Nesbitt Burns.

Leading lawyers: Gilles Leclerc and Richard Steinberg

Ogilvy Renault's capital markets practice is led by Terence S Dobbin of the Toronto office. The firm grew its practice in 2009 and 2010 with three new additions including Micheal Bennett from McCarthy Tétrault and James Rumball from Davies Ward Phillips and Vineberg. It also added Sanjay Joshi from the Toronto law firm WeirFoulds.

Ogilvy was counsel to the underwriters in connection with the widely recognised IPO of Dollarama for C\$300 million (\$291 million) in October 2009. The offering was made through a syndicate of underwriters led by RBC Dominion Securities, CIBC World Markets and Credit Suisse Securities.

Leading lawyers: Stephen Kelly and Peter Noble

Bank lending

Recommended firms

Tier 1

Blake Cassels & Graydon
McCarthy Tétrault
Osler Hoskin & Harcourt

Tier 2

Borden Ladner Gervais
Davies Ward Phillips & Vineberg
Goodmans
Stikeman Elliott

Tier 3

Bennett Jones
Fasken Martineau
Ogilvy Renault
Torys

Tier 4

Burnet Duckworth & Palmer

Fraser Milner Casgrain
Macleod Dixon
McMillan

Financial services regulatory

Recommended firms

Tier 1

Blake Cassels & Graydon
McCarthy Tétrault
Osler Hoskin & Harcourt
Torys

Tier 2

Fasken Martineau
Ogilvy Renault
Stikeman Elliott

Tier 3

Borden Ladner Gervais
Fraser Milner Casgrain
Goodmans

The subprime mortgage crisis affected banks around the world, yet unlike many other nations, Canada was able to avoid much of the fallout. Among the contributing factors for the country's success was the decision of the banks to not engage in subprime lending and the government's overall financial regulatory framework. "The Canadian banks fared better than most in the G20 and G7 countries," says one partner.

Canada, however, was not completely immune to the crisis as the impact became apparent with the lack of liquidity in the global marketplace. For Canadian banks, this meant an increase to the cost of funds and a decrease in overall profitability.

Although the capital markets were dislocated in the first half of 2009, the second half saw a revival in the debt and equity markets and an increase in transactional work for lawyers. "It's been very busy on the bank lending side," says one partner. "The most active has been the resource sector-oil, gas, etcetera."

Despite the return of some foreign institutions like JPMorgan and the Royal Bank of Scotland, the availability of long-term loans is limited due to their lack of presence in the market. "They packed up their little kit bags and went home," says a partner. In order to compensate for their absence, Canadian banks ramped up their commercial lending capacities; an area where foreign lenders tended to dominate. According to one domestic lawyer: "[Canadian] banks are actively looking to make commercial loans."

Although Canadian banks are still lending, the conditions under which credit is being extended to potential borrowers have become more rigorous. One partner, however,

observes that even though loans are harder to obtain, “credit is available for the right borrowers”.

In an effort to reduce their risks, some banks have started to recommend that their corporate clients use the emerging junk-bond market as an alternative source of financing. The high-yield market has also been attracting corporate borrowers on its own merit. Although junk bonds may come with greater risk, they also offer companies a cheaper alternative to bank loans and companies that raise capital with high-yield bonds can typically borrow for longer periods of time and with looser loan covenants. “We’re seeing some corporate banking deals being paid by the issuance of high-yield bonds,” notes one partner.

Blake Cassels & Graydon

The breadth of Blakes financial services practice is hard to rival with its rounded platform in both banking and regulatory expertise. The firm’s international capabilities has earned it priority placement in the rolodex of the premier financial institutions in Canada, the US, Europe and Asia. “The people at Blakes tend to be more pragmatic on the negotiation side,” says one client. “They concentrate on the important things.”

Under the leadership of Michael Harquail, Blakes’ financial services group has acted on some of the largest deals in the past year.

One highlight of the firm’s work came in April 2009, when the firm advised JPMorgan on the amended and restated terms of its loan to Teck Resources. As counsel for the lender, the firm assisted with negotiating the revised terms of JPMorgan’s contribution to Teck Resources’ C\$4.2 billion (\$4 billion) senior term loan facility and its \$C6 billion senior bridge loan facility.

The firm also advised Toronto-Dominion Bank and a syndicate of lenders in connection with establishing a revolving term-out credit facility and non-revolving term credit facility for PetroBakken Energy. The firm finalised the negotiations for the credit facilities in October 2009 in the amount of C\$1 billion. The credit facilities were completed concurrently with PetroBakken’s IPO.

Leading lawyers

Kevin Fougere
Dan Fournier
Michael Harquail

McCarthy Tétrault

McCarthy Tétrault has grabbed attention for its banking practice. It is known for effectively representing both lenders and borrowers,

putting it ahead of competitors that lean on their ability to advise on only one side of the table. It is also preferred counsel to the *big five* banks, which gives it a tremendous market share on bank related transactions. In having this kind of breadth, the firm has been requested as counsel on numerous transactions for the 2009 year.

McCarthy acted as counsel for Canadian Imperial Bank of Commerce and The Toronto-Dominion Bank as the lenders in Sierra Wireless’ acquisition of the all the share capital and convertible bonds of Wavecom. In an agreement with the banks, the company secured a non-revolving credit facility to finance the acquisition. The transaction was completed for C\$325.6 million.

In July 2009, the firm acted as Canadian counsel for GE Capital, the financial services division of General Electric. McCarthy advised GE Capital on its exit financing loan to the Canadian and US businesses of Quebecor World (now known as World Color Press). Credit Suisse and Wells Fargo also contributed loans to Quebecor World to assist the company in avoiding bankruptcy. Quebecor World successfully emerged from bankruptcy protection using C\$826 million in exit financing under both Canada’s CCAA and the US Chapter 11 Bankruptcy Code.

Leading lawyers

Stephen Furlan
Garth Girvan
Richard Higa
Andrew Parker
Barry Ryan

Osler Hoskin & Harcourt

Osler’s banking and financial services team gets high marks when it comes to getting results for its clients. In offering a diverse array of services such as corporate lending, asset based lending, and debtor-in-possession (DIP) financings, the firm has not only managed to retain top companies and financial institutions as clients but gained new ones in the past year. Osler is also preferred counsel to banks like RBC (the Royal Bank of Canada) making it a staunch competitor in the marketplace.

In January 2010 Stephen Clark, formerly of McCarthy Tétrault, joined the Osler team. Stephen brings with him his experience acting for a range of financial institutions and his strong relationship network, which includes Canadian financial services regulators.

Osler advised RBC Dominion Securities in the completion of C\$650 million (\$630 million) senior secured syndicated credit facilities for Groupe Aeroplan. The company was

able to refinance its credit facilities in June 2009.

In May 2009 the firm acted as counsel for Canwest Media in securing a credit line from CIT Business Credit Canada. Totalling C\$75 million the asset-based credit facility was converted in October 2009 to a C\$100 million debtor-in-possession (DIP) credit facility for the company’s CCAA proceedings. Oslee also advised on the company’s issuance of C\$105 million of 12% senior secured notes. The company used the proceeds to pay down debt.

Leading lawyers

Michael Innes
Desmond Lee

Torys

Torys is recognized by its peers as having one of the strongest regulatory practices in Canada. The practice’s department head, Blair Keefe, along with his team of lawyers, have a large part to do with this reputation. The firm has a longstanding list of clients to show for its work including financial instructions like the Royal Bank of Canada, TD Bank, Bank of Nova Scotia, and large Canadian pension funds. Ian Arellano joined the firm in September 2009 from McCarthy Tétrault. Although he is in the firm’s capital markets group, he is working closely with the financial services team on the Scotia Capital deal.

Blair Keefe provided regulatory counsel for a private investor group, led by the Ontario Teachers’ Pension Plan, in an agreement to purchase American International Group’s Canadian mortgage insurance business. The terms and final closing price for the transaction were undisclosed. AIG’s mortgage division, Toronto-based United Guaranty Canada, has C\$274 million (\$265.6 million) worth of assets and C\$127 million of total equity.

Ian Arellano, the firm’s newcomer, is advising Scotia Capital, the investment banking division of the Scotiabank Group, on its agreement to acquire Royal Bank of Scotland’s wholesale banking operations in Columbia. Announced in March 2010, the transaction will be Scotiabank’s first acquisition in Canada (pending regulatory approval). Upon closing, Scotiabank will become the only Canadian-wholesale institution with a presence in Columbia. The transaction was still pending as of publication.

Leading lawyers

Amanda Balasubramanian
Adam Delean
Blair Keefe
Nadine Rockman
Tom Zverina

Borden Ladner Gervais

Borden Ladner Gervais' financial services group has gained some strong recognition among its peers this year to warrant its movement into the second tier. The strength of the firm's banking and regulatory practice, as well as leadership of the likes of Ken Atlas, has put BLG at a competitive advantage in the market. Its strong cross-border capabilities also makes it a contender in the global economy. The firm serves a variety of clients, including Canadian and international financial institutions, companies, and government agencies.

One of Ken Atlas' highlights this year saw him represent a syndicate of lenders co-led by Royal Bank of Canada and The Toronto-Dominion Bank in its unsecured syndicated loan of C\$1.4 billion (\$1.3 billion) to Bell Canada. The transaction closed in May 2009 under difficult credit market conditions.

BLG also advised The Bank of Nova Scotia in connection with the replacement of an unsecured syndicated revolving facility for the Toronto-based gold mining company Agnico-Eagle Mines. In June 2009, Agnico-Eagle announced its new C\$600 million unsecured syndicated revolving facility. The facility replaces a previous C\$300 million tranche that was set to mature in September 2010.

Leading lawyers

Ken Atlas
Andrew Harrison
Prema Thiele

Davies Ward Phillips & Vineberg

Davies Ward's banking team is known as a contender in the market, acting on some of the most innovative and complex transactions of the 2009 year. The firm's banking department is headed by partners Scott Hyman and Carol Pennycook. Davies' domestic and cross-border capacity, combined with its ability to work on behalf of both borrowers and lenders, makes it a preferred choice among clients.

Davies acted as Canadian counsel for Fiat, part of the alliance forming Chrysler Group, in its C\$2 billion purchase of Chrysler. In connection with the closing of the sale, the firm aided in the negotiation of a C\$7.2 billion credit facility from the United States Department of Treasury and a C\$2 billion working credit facility from Export Development Canada. The transaction closed in June 2009.

The firm also provided counsel to Toromont Industries in establishing a C\$450 million term credit facility with a syndicate of banks to finance the company's acquisition of Enerflex Systems Income Fund. The proceeds from the credit facility were used in the finance of Toromont Industries' unsolicited

takeover of Enerflex. Davies represented Toromont on the latter portion of the transaction as well as securing a final price of C\$684 million for the acquisition.

Leading lawyers

Scott Hyman
Carol Pennycook
Jay Swartz

Goodmans

Goodmans' banking and regulatory practice is gaining momentum in the Canadian market. In creating a broad based practice the firm has been able to pick up work in an environment where the effects of the 2008 crisis still lingers. Goodmans was not only able to keep busy on a steady stream of transactions in comparison to its competitors, but it was able to achieve roles on some of the year's most significant and high-profile transactions like Canwest Media, GM and Chrysler.

On the Canwest deal, partners Celia Rhea and Micheal Bertrand led the banking team in representing the *ad hoc* committee of Canwest Media's debt refinancing. In May 2009 the company and its subsidiaries closed a refinancing transaction which included a C\$75 million senior secured revolving asset-based loan facility from CIT to pay down existing debt and finance operations at the company.

The firm also acted as counsel for The Brick Group Income Fund with regard to its recapitalisation. As part of the transaction, Goodmans assisted on negotiating a C\$130 million asset-based credit facility for the income fund with GE Capital. The complete recapitalisation was for a total of C\$250 million.

In connection with the bankruptcy financing of GM and Chrysler, Goodmans advised the province of Ontario. The province contributed C\$1.3 billion to the package while the Canadian government pitched in C\$2.7 million. Of the total C\$4 billion in government loans, GM Canada received C\$3 billion while Chrysler Canada was awarded C\$1 billion.

Leading lawyers

Michael Bertrand
Lisa Mantello
Celia Rhea
Jim Riley

Stikeman Elliott

Stikeman's banking and financial services practice is lauded for its depth of expertise across various specialty areas, including corporate financing, syndicated financing, and acquisition financing. The firm's practice also

includes a focus on regulatory matters which is enhanced through its strong relationships with Canadian regulators. Stikeman, for example, has a longstanding relationship with the Office of the Superintendent of Financial Institutions (OSFI), Canada's federal regulator for financial institutions and pension plans.

The firm advised TransCanada Corporation in its establishment of a new C\$1 billion credit facility with banks in its existing relationship network. The financing was used on the acquisition of ConocoPhillips' remaining 20% interest in the Keystone Pipeline System. The transaction closed in August 2009.

With lawyer Jean Lamothe at the helm, the firm's banking team acted as advisor to Bell Canada in its C\$1.5 billion financing from a syndicate led by Toronto-Dominion Bank in June 2009. In another transaction, Lamothe advised BCE, parent company of Bell Canada, in the C\$2 billion refinancing of its working capital credit facilities.

On the regulatory side, Stikeman is acting for Barclays in connection with its acquisition of the Canadian assets of Lehman Brothers.

Leading lawyers

Peter Hamilton
Jean Lamothe
Daphne MacKenzie

Fasken Martineau

The success of Fasken Martineau's regulatory group is due in part to the diligence and prestige of its director, Robert Elliot, who had served two consecutive terms as a legal advisor for the Canadian Bankers Association on regulatory matters. In September 2009, the practice added Anna Tosto from competitor McCarthy Tétrault. The practice's clientele primarily includes financial institutions and other financial services providers.

Fasken recently served as counsel to the diamond company De Beers in connection with refinancing its C\$4 billion (\$3.9 billion) existing credit facilities, which involved the negotiation of the renewal and extension of the company's credit facilities, as well as a C\$1 billion rights issue.

Robert Elliott and Robert McDowell also advised Co-operators Life Insurance Company on the regulatory elements of its C\$245 million acquisition of The Cumis Group. The regulatory team assisted the company on meeting requirements for regulatory, court and shareholder approvals. The transaction, which also involved Central 1 Credit Union on the side of the acquirer, was completed in December 2009.

Leading lawyers

Brian Kelsall
 Marc Novello
 Brian Wright

Ogilvy Renault

Ogilvy Renault is known for its regulatory practice, especially in Toronto. In the Toronto office the firm expanded its team with the addition of James Rumball, who was lured away from Davies Ward. James' expertise includes corporate finance, asset-based lending, and structured finance and securitisation. In hiring James, Ogilvy has positioned itself as a formidable competitor in an ever-evolving market.

The firm acted as regulatory counsel to Kingsway Financial Services in connection with its sale of all its issued and outstanding shares of Jevco Insurance to Westaim Corporation. The firm assisted on the regulatory compliance issues in the agreement between Kingsway and Westaim. The transaction was completed in March 2010 for C\$264.2 million (\$256 million) and was subject to insurance regulatory approval prior to closing.

Kevin Morley led the banking team in advising Bank of America as collateral and administrative agent in its arrangement of a \$1.1 billion credit facility for Michael Stores and its subsidiaries. Closing in February 2010, the deal was the largest asset-based lending facility for the 2010 year as of publication.

Leading lawyers

Kevin Morley
 James Rumball

Other ranked firms

Fraser Milner Casgrain's financial services group added Vivek Bakshi from Blake Cassels & Graydon to its group in April 2010. The following month the firm tapped Marc Lemieux, who previously worked at McCarthy Tétrault, to head up its Montreal office where he will oversee a group of 10 lawyers. The firm's banking platform acts for both lenders and borrowers and advises clients including financial institutions and corporations.

One of the firm's highlights this year was advising Corus Entertainment in the refinancing of its credit facilities, which included a C\$500 million secured revolving-credit facility along with an issue of notes.

Leading lawyers: Stephanie Campbell, Bill Jenkins, Charles Rich and Scott Sangster

McMillan's banking group is known to represent clients on the lender side, offering a

breadth of expertise which includes syndicated lending, asset-based lending, as well as refinancing and debt restructuring. The firm regularly acts as counsel for three out five of Canada's main banks: Royal Bank of Canada, The Bank of Nova Scotia and Bank of Montreal. It also advises international financial institutions which include Bank of America, Citibank, Credit Suisse, Deutsche Bank and JPMorgan Chase.

One of the firm's highlights this year was acting as counsel for Export Development Canada (EDC), the agent for the governments of Ontario and Canada, on C\$3.8 billion (\$3.7 billion) of financing to Chrysler and C\$9.5 billion to GM Canada which was to be used towards the restructuring of their operations in Canada and the US.

Leading lawyers: Andrew Kent and Paul Avis

Mergers and acquisitions**Recommended firms****Tier 1**

Blake Cassels & Graydon
 Davies Ward Phillips & Vineberg
 Goodmans
 Osler Hoskin & Harcourt
 Stikeman Elliott

Tier 2

Bennett Jones
 McCarthy Tétrault
 Ogilvy Renault
 Torys

Tier 3

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

Much like its neighbours in the US, Canada has had a lukewarm year in terms of M&A activity. Deal size and volume remain significantly low in comparison to pre-crisis levels, and the era of the mega deal does not seem to be poised for a return, at least any time soon. The only mega deal to close for the year was the merger between energy rivals Petro-Canada and Suncor Energy. "It's been a tough marketplace," says one partner.

Although market conditions are far from favourable, the challenging credit environment has given leverage to strategic buyers. "Strong strategic players are looking to take advantage of others and more reasonable valuations," says a partner. In contrast to the boom where financial buyers dominated the deal landscape, 2009 was indeed the year of the strategic deal. According to one partner, as

much as 80% of deals involved strategic buyers acquiring distressed companies.

Canada's oil, gas and mining sectors have accounted for the majority of deal activity. In addition to the Petro-Canada Suncor merger, transactions like Eldorado Gold's friendly bid for Gold Mining kept lawyers busy. The deal closed in December with a final price tag of \$2 billion.

Besides sector-specific activity, lawyers report that the distressed M&A climate has caused restructuring and insolvency levels to increase as well. "We are seeing a fair bit of transactions related to insolvency situations," says one partner.

There has also been an increase in cross-border work as more international buyers look to Canada for agribusiness. "They see the stability of the Canadian economy," says one partner. Canada has fare better than many of its fellow G20 nations during the global economic crisis due to its culture of fiscal conservatism and strong financial regulatory framework. One country that lawyers are seeing more on M&A deals is China. "We've got China very interested in Canada," notes one partner. Chinese acquirers are looking to capitalise on Canada's natural resource based economy.

One partner noted that there is growing optimism in terms of the outlook for the rest of the year. Although the IPO market is still "dicey", there are some IPOs returning into the pipeline and private-equity buyers are slowly coming back. "Thankfully there's been a bit of resurgence," says one partner.

Blake Cassels & Graydon

Blakes continues its reign in the rankings as one of Canada's most pre-eminent firms for M&A. "Blakes deserves to be in tier one," says a peer. The firm's multi-provincial presence in Canada and across international markets gives it an edge over its competitors. Its global offices are not only in New York, Chicago, London, and Beijing but also Bahrain, making it the first Canadian firm to open an office in the Middle East.

Despite the quiet year, Blakes has managed to act on some of the most prominent domestic and international transactions. The firm has worked on the high-profile Petro-Canada Suncor deal, which closed in August with a value of C\$19.2 billion (\$18.6 billion).

In another high-profile transaction, Blakes is advising Sinopec International Petroleum and Production Corporation on its proposed C\$4.65 billion purchase of ConocoPhillips' 9% stake in the Syncrude Canada joint venture. The firm has retained a relationship with Sinopec for close to a decade.

Blakes is frequently selected as preferred Canadian counsel on cross-border deals. The firm worked as co-counsel with Paul Weiss Rifkind Wharton & Garrison on Ericsson's acquisition of Nortel's North American CDMA wireless business and LTA (long-term evolution) assets. The transaction resulted from an auction taking place on July 25, 2009 where Ericsson outbid competitors Nokia Siemens and MatlinPaterson for C\$1.17 billion.

Leading lawyers

Richard Corley
Brock Gibson
Michael Laffin
Andrew Mcleod

Davies Ward Phillips & Vineberg

Despite being one of the smaller firms in Canada, Davies is still ahead of many competitors on quality of advice. The firm not only has a strong presence in Toronto and Montreal, but also has an office across the border in the US financial hub of New York, making it one of the few Canadian firms that offer a US law practice in the US.

The firm is counsel for Canada's Shaw Communications on its proposed C\$2 billion (\$2 billion) acquisition of CanWest's television channels. As part of the deal, Shaw entered into tumultuous negotiations with Goldman Sachs to buy its stake in CanWest. In the final terms of the agreement, Goldman sold its share to Shaw for C\$692 million. CanWest is expected to become a wholly owned subsidiary of Shaw once the transaction is complete.

Davies also advised Amcor, an Australian packaging company, on its C\$2 billion buy-out of Rio Tinto's Alcan Packaging operations.

Leading lawyers

William Ainley
William Gula
Carol Hansell
Vincent Mercier
Patricia Olasker

Goodmans

Although Goodmans only has offices in Toronto, the firm has a presence in the market that makes it hard to be ignored. The firm's M&A practice has a reputation for its breadth and expertise. "They are an excellent firm," says one client. "They put together all the different resources you need to get something done."

In the Petro-Canada Suncor merger, Goodmans represented Deutsche Bank and RBC Capital Markets, the financial advisors

to Petro-Canada. The deal closed in August 2009 with a value of C\$19.2 billion (\$18.6 billion).

Osler also advised Canaccord Financial, Canada's biggest independent brokerage, on its acquisition Genuity Capital Markets. In March 2010 the firm assisted the company in acquiring the rights to 100% of Genuity in a definitive agreement. Subsequent to closing, Genuity was also guaranteed to receive an additional \$28 million in cash as a working capital adjustment.

Under the leadership of partner Stephen Pincus, Goodmans' M&A team was able to negotiate a C\$353 million in the finalisation of the Canaccord's acquisition of Genuity. Upon the closure of the transaction in April 2010 the combined company operations were renamed Canaccord Genuity.

Leading lawyers

Stephen Halperin
Jonathan Lampe
Dale Lastman
Neill May

Osler Hoskin & Harcourt

Osler is a strong contender in Canada's M&A market, providing its clients with some of the finest legal counsel in the field. The firm boasts a client roster including names like TD Bank, Royal Bank of Canada, Bank of Montreal and CanWest.

Osler's reputation among clients has enabled the firm to land key advisory roles on some of the most significant transactions of 2009. The firm is advising Nortel's board of directors in connection to the sale of its assets. In November 2009 the company completed the sale of its CDMA business and LTE (long-term evolution) Access technology to Ericsson. The deal was valued at C\$1.2 billion (\$1.1 billion) and was subject to regulatory approvals in both Canada and the US.

Osler has also carved a space in the international market, advising the board of directors of Addax Petroleum, an international oil and gas production and exploration company, during Sinopec's purchase of the company. With the Chinese government's stamp of approval, the C\$8.8 billion deal closed in August 2009.

Leading lawyers

Janice Buckingham
Jean Fraser
Clay Horner
Andrea Whyte

Stikeman Elliott

Stikeman Elliott is one of Canada's premier firms for M&A. With partners such as William Braithwaite and Brian Pukier in Toronto and Pierre Raymond in Montreal, the firm has been able to capture its share of sophisticated deals in both the domestic and international markets. The firm's international work has been bolstered by its offices in New York, London and Sydney, and its dedication to expanding its legal presence in Asia. In February 2010, the firm added partner Warren Katz from rival Osler to its Montreal office.

Stikeman Elliott has been involved in a number of significant transactions in 2009 including the largest Canadian M&A deal of the year: Suncor Energy's C\$19.2 billion (\$18.6 billion) acquisition of Petro-Canada. The merger between the two oil companies has formed the country's largest energy company. The transaction closed in August 2009 and was led by partners David Lefebvre and David Taniguchi, both of the Calgary office.

The firm also acted on the largest private placement investment in Canadian history. As counsel for Teck Resources Limited, the nation's biggest diversified mining company, Stikeman Elliot was able to secure its \$1.74 billion cash sale to China Investment Corporation. William Braithwaite and Sean Vanderpol led the M&A team on the Teck Resources transaction which closed in July 2009.

Leading lawyers

William Braithwaite
David Lefebvre
Brian Pukier
Pierre Raymond

Bennett Jones

With its expertise in energy and telecom and its history of groundbreaking work, Bennett Jones' M&A team successfully captured a solid share of transactions in the market for the year. The firm is presently serving as Canadian counsel to Teva Pharmaceutical in connection with its expected acquisition of Ratiopharm Group, one of Europe's premier generic drug companies. Teva won a C\$5 billion (\$4.9 billion) bid against Pfizer and Actavis, an Icelandic generic drug company, for Ratiopharm in March 2010.

Additionally, the firm added to its M&A ranks by courting Ken Klassen and Chris Gauthier away from Davies Ward. Both partners joined the firm's Toronto office in March 2010.

Leading lawyers

Francis Allen

Alan Bell

McCarthy Tétrault

Although it was a slow year for M&A in Canada, McCarthy Tétrault had a relatively strong year in terms of both deal volume and value.

In advising the Commissioner of Competition for the Petro-Canada Suncor merger, McCarthy solidified its position as a staunch competitor in the market. The firm has also secured a place on a variety of other notable transactions making McCarthy a top choice among clients. "They've always been first rate and very helpful," says one client. "What I like most about McCarthy is that they take a team approach to client work."

Graham Gow led the M&A group in advising Genuity Capital Markets with respect to its acquisition by Canaccord Financial. The transaction's value, which was previously projected to be around C\$286 million, increased to C\$352 million when it closed in April 2010. Canaccord's operations in Canada, the US and the UK are now named Canaccord Genuity.

McCarthy also acted for the US telecommunications company Avaya in its distressed acquisition of Enterprise Solutions from Nortel. In December 2009 Avaya purchased Nortel's Enterprise Solutions business and other assets for \$915 million. Nortel filed for bankruptcy in January 2009 and is in the process of selling off its primary businesses to pay off its creditors.

Leading lawyers

Éric Gosselin
Graham Gow
Robert Hansen
Clemens Mayr
Kevin McElcheran
David Woollcombe

Ogilvy Renault

Ogilvy's M&A practice has earned recognition for its representation of clients on all sides of the transaction. The firm advises players ranging from bidders and targets to shareholders and acquisition financiers.

The firm has boosted its team this year; in November 2009, François Duchesneau was recruited to the team from Fasken Martineau, followed by Miles Pittman, Micheal Bennet and Ben Rogers subsequently joining in January 2010 from Fraser Milner Casgrain, McCarthy Tétrault and Blakes respectively. These additions offset the loss of long-time partner Marc Lacourcière, who left for an in-house position at PSP Investments in June 2010.

Under the leadership of Geoffrey Gilbert and Amy Grubb, the firm advised Warner Chilcott on its acquisition and financing of Procter & Gamble's pharmaceuticals business. The acquisition, which took place in October 2009, was valued at C\$3.2 billion (\$3.1 billion). It was one of the first leveraged loan deals of this magnitude since April 2008 when Mars agreed to purchase Wrigley, and was the fourth-largest leveraged loan in the US in 2009.

The firm also acted as counsel to Rio Tinto Alcan in the \$2 billion sale of its subsidiary, Alcan Packaging, to Amcor. In order to finance the offer, Amcor issued shares and took on debt in the amount of \$1.3 billion. The deal was Amcor's biggest acquisition to date.

Leading lawyers

Geoffrey Gilbert
Steve Malas
Norman Steinberg

Torys

In September 2009, Torys recruited Ian Arellano from McCarthy Tétrault. Although Arellano is a partner in the capital markets group, he has significant experience in international M&A and joint venture work.

One of the firm's highlights saw it represent Petro Canada in its high-profile merger with Suncor Energy. Torys participated in the planning and structuring of the transaction in connection with the Petro-Canada Public Participation Act. The structuring of the deal was accomplished in a manner that would bypass the share ownership restrictions which stipulated that no shareholder could own more than 20% of the company. The merger included a common share exchange which gave Suncor shareholders 60% and Petro-Canada shareholders 40% of the newly formed company. Suncor purchased Petro-Canada in August 2009 for C\$19.2 billion (\$18.1 billion).

The firm also acted as counsel for China Investment Corporation in its C\$1.7 billion (\$1.5 billion) purchase of Class B subordinate shares of Teck Resources, entailing a private placement through its subsidiary, Fullbloom Investment Corporation. Among the lawyers on the transaction, closing in July 2009, were partners Philip Brown of Torys' New York office and Michael Amm of the Toronto office.

Torys also advised Fairfax Financial Holdings in connection with its acquisition of all the outstanding shares of common stock of Odyssey Re Holdings Corporation that it did not already own. The company sold \$1 billion in stock to fund the purchase, which was

completed in September 2009. Chaikof and Thomas Yeo, both of the Toronto office, advised on the transaction.

Leading lawyers

Philip Brown
David Chaikof
Peter Jewett

Other ranked firms

Borden Ladner Gervais' M&A group is comprised of over 300 lawyers and is known for its specialisation in mid-market deals. In April 2009, the firm added Mark Wheeler to the team from the boutique firm Beach Hepburn. He has an expertise in public M&A with a particular concentration on mineral exploration.

In February 2010, the firm advised Kogas Canada, a subsidiary of Korea Gas Corporation, in connection with its outsourcing agreement with the North American gas producer EnCana Corporation. Under the terms of the agreement Kogas agreed to invest up to C\$565 million (\$548 million) over a three-year period to earn 50% of EnCana's interest in two North American properties: NE British Columbia's Horn River and the Montney. The BLG team on this transaction consisted of Calgary partners Edward Tapuska and Michael Perkins, as well as Jay Shin from the Vancouver office.

In September 2009, **Fasken Martineau** raided the offices of local rival McCarthy Tétrault, hiring Robert Chapman, Anna Tosto and Virginia Schweitzer from the Ottawa office. The firm also increased its international presence in September 2009 by opening an office in Paris.

In August 2009, the firm secured a position on the high profile Sinopec-Addax transaction, advising Addax Petroleum in connection with its acquisition by Sinopec for C\$7.7 billion (\$7.5 billion).

The firm also advised Australian company Eldorado Gold in two separate transactions for its acquisition of Sino Gold Mining. Eldorado acquired the company for a total of C\$2 billion, giving it ownership of China's second largest gold mine.

Leading lawyers: Richard Steinberg and John Turner

Project finance

Recommended firms

Tier 1

Blake Cassels & Graydon
McCarthy Tétrault
Osler Hoskin & Harcourt
Torys
Stikeman Elliott

Tier 2

Borden Ladner Gervais
Davies Ward Phillips & Vineberg
Fasken Martineau

Tier 3

Bennett Jones
Burnet Duckworth & Palmer
Davis
Fraser Milner Casgrain
Gowling Lafleur Henderson
Macleod Dixon
McMillan

Although the year began slowly, transactional activity began to pick up in the spring of 2009, especially in the renewable energy sector. Largely driven by the enactment of the Green Energy Act in May 2009, Ontario lawyers were able to see their fair share of wind, solar, and infrastructure projects come through the pipeline. "Project finance has been reasonably active over the year," says one partner. The year was also defined by activity in the PPP (public-private partnerships) market, with financing generally being raised in the bond market. "There's been an evolution towards private placement of bonds," comments one partner.

Although the Green Energy Act has had an overwhelmingly positive reception from the market, particularly to its Feed-In-Tariff program (Fit), there are some lawyers that have expressed some concerns over the Fit domestic content requirements. As part of the program, companies seeking to develop wind or solar projects are required to use a certain percentage of goods and services within the Ontario province.

One partner expressed that this provision could spell problems for lenders. "Lenders have no control over the domestic content," the partner noted. "If you don't meet a certain level of domestic content, you don't know until 60 days after if you've completed this requirement." Another partner, however, emphasised that the benefits of the program outweigh the drawbacks. "This is a bold step forward I think," the lawyer says.

The lenders to Canada's renewable energy projects have predominantly been Canadian banks, European banks and US banks (typically with European headquarters). Although Canadian banks are fulfilling short-term financing obligations, European banks are the go-to source for long-term projects. "The lenders on these projects tend to be more foreign," says one partner.

After a pronounced absence in Canada, European and to a much smaller extent US banks have slowly been returning to the mar-

ket. One partner noted, however, that they are lending less than they previously did in the past. As a result of the reduced lending capacity of the banks, there have been some constraints on funding. "One of the issues is the availability of capital," says one partner. "It only takes five or six projects to eat up the capital."

Blake Cassels & Graydon

Blakes has secured a prominent role in Canada's public infrastructure market with a strong reputation for its PPP (public-private partnership) and AFP (alternative financing and procurement) work, especially in the energy sector. The firm's Infrastructure group boasts such talent as Kevin Fougere, Anne Stewart, and Ian MacIntosh.

The recent addition of Michael McIntosh in the Calgary office has also enhanced the group's capabilities. Although more known for his banking expertise, Michael has been involved in major mining, oil & gas and power projects. It is this type of cross integration of experience that Blakes' lawyers can bring to the firm and its clients that keeps it on top.

The firm has served as counsel on some significant transactions for the year including Dokie General Partnership's purchase of the 144MW Dokie Ridge Wind Project from EarthFirst Canada. Formed through a partnership between GE Energy Financial Services and Plutonic Power Corporation, Dokie General Partnership was able to secure C\$175 million (\$170 million) in debt financing for the wind farm project. The project is the largest wind farm under construction in British Columbia and, once completed, Dokie General Partnership will own and operate it.

Blakes also advised the sponsors and borrowers on the project development and financing of the Southeast Stoney Trail highway in Calgary. The Chinook Partnership, comprised of engineering companies Acciona and SNC-Lavalin Group, and the Alberta Ministry of Transportation and Infrastructure, issued C\$156.7 million in senior secured notes for the debt financing of the project.

Leading lawyers

Kevin Fougere
Anne Stewart
David Zacks

McCarthy Tétraut

McCarthy has gained recognition in the projects space for its expertise across the mining, oil and gas, infrastructure and power sectors. "They cover the whole gamut of industries,"

says one client. "You name it and they have a specialisation within the firm." McCarthy's Infrastructure group is headed across provinces by Gordon Willcocks, Bryan Gibson, Marc Dorian and David Lever.

In the past year, Gibson, along with Linda Brown and Stephan Furlan, spearheaded the firm's efforts on numerous standout deals. On the Southeast Stoney Trail Project, Linda led the firm in advising Chinook Roads Partnership on its public private partnership (PPP) contract with Alberta the Ministry of Transportation and Infrastructure worth C\$769 million (\$745.5 million).

In March 2010, Bryan Gibson acted as the leading lawyer on the Route 1 Gateway Project. The firm advised the lending syndicate, composed of various banks and financial institutions from Canada and abroad, on its C\$580 million credit agreement with Dexter Developer General Partnership. The construction on the four lane highway is expected to improve the safety on Route 1 and will stretch from St. Stephen to River Glade in New Brunswick.

Leading lawyers

Linda Brown
Marc Dorian
Stephen Furlan
Bryan Gibson
David Lever
Gordon Willcocks

Osler Hoskin & Harcourt

Osler's project finance practice gets solid marks on its integrated practice platform and its ability to work across different industries. "They are one of the top firms in the country," says one client. "They have all of the skill sets that you need." The firm's expertise lies particularly in energy and infrastructure where it gains its share of big deals in the marketplace.

The firm was boosted this year with the arrival of Tobor Emakpor from Davis. Tobor is particularly an asset to the firm's Infrastructure and Project Finance practice on account of his PPP (public-private partnership) and AFP (alternative finance projects) experience.

In April 2010, Emakpor advised Gracorp Capital Advisors and Hochtief PPP Solutions North America on the Alberta Schools Alternative Procurement II Project. In an agreement with the Government of Alberta, B2L Partnership, the consortium of sponsors and owners including Gracorp and Hochtief, offered C\$253 million (\$253 million) towards the design, construction, and finance of 10 new schools in Edmonton and Calgary. The deal was done through a public private partnership and

was one of the first PPP projects in Alberta to close following the financial crisis.

Osler also served as counsel to Greengate Power Corporation, a private renewable energy developer, on the Halkirk Wind Project in Alberta. Greengate is to receive C\$46 million in financing from the government's EcoEnergy for Renewable Power programme, along with private project-financing. Upon completion, the C\$350 million project will be Alberta's largest wind energy project.

Leading lawyers

Lorne Carson
Tobor Emakpor
Rocco Sebastiano

Torys

Torys has a reputation in the energy and infrastructure market that makes it a cut above the rest. Adding its cross-border capabilities into the mix, the firm truly has earned a place as one of the top firms in the country.

In November 2009 the firm added Mark Bain and Daniel Ford from rival Bennett Jones. Bain now co-heads the infrastructure and energy group with Jonathan Weisz, and heads the firm's Public-Private Partnership group.

In January 2010, Weisz, along with colleagues Scott Kraag and Ash Nicol, served as counsel for Dexia Cr dit and Union Bank in negotiating a C\$75 million (\$72.7 million) financing agreement with EDF EN Canada for the Arnprior Solar Project. The project is one of North America's largest solar photovoltaic installations.

The firm also represented ICICI Bank in December 2009 in its C\$200 million financing of Essar Algoma's cogeneration project in Ontario. Adam Delean, Vanessa Kee and Nina Mansoori acted as the advisors on the transaction.

Leading lawyers

Mark Bain
Valerie Helbrunner
Scott Kraag
Jonathan Weisz

Stikeman Elliott

Stikeman Elliott's strong banking background means the firm is prevalent on the lender side of a number of project finance transactions in Canada. The group's seasoned experience with the PPP (public-private partnership) model and its ability to effectively coordinate with other teams within the firm makes it a top choice among clients.

One of the firm's highlights this year saw Michael Allen, the group's Vancouver director,

act as counsel for the designated lenders in the C\$966 million financing of the Royal Canadian Mounted Police E-Division headquarters in Surrey, British Columbia; the first PPP undertaken by the Canadian government. In April 2010, the government of Canada and the Green Timbers Association signed an agreement for C\$966 million for the entire project.

While the firm is known best for its lender work, Lewis Smith and Dana Porter, department heads in Toronto, showed the team's breadth when they advised Infrastructure Ontario and the Ministry of Transportation on the development of the Windsor-Essex Parkway. The parties contributed C\$1.6 billion (\$1.4 billion) for the project which would connect Highway 401 to Interstate 75 in Michigan by way of a new bridge and border crossing. The parkway is the largest highway investment in Ontario's history and its first highway PPP project.

Leading lawyers

Michael Allen
Erik Richer La Fl che

Borden Ladner Gervais

Borden Ladner Gervais is gaining momentum in the market as a serious competitor. With a round of strong peer feedback, the firm boosts its position into tier two.

The group, which has a strong expertise in PPP projects, has landed roles on some noteworthy transactions. BLG also has a strong presence across Canada with team members of its projects group in Vancouver, Calgary, Toronto, Ottawa and Montreal. More than half of its lawyers remain consistently active on infrastructure and PPP projects.

Linda Bertoldi and Bruce Fowler of the Toronto office represented the Manufacturers Life Insurance Company as lead lender for a syndicate of financial institutions providing project financing to Raleigh Wind Power Partnership. In January 2010, the company received C\$175 million (\$169.6 million) from the syndicate for its Raleigh Wind Energy Centre, a 78MW wind farm located in the municipality of Chatam-Kent, Ontario.

BLG also has a cross-border element to its projects platform. The firm advised SNC Lavalin in connection with the construction of a second underground line in Mumbai. A consortium comprised of Canadian company SNC Lavalin, as well as Indian companies Reliance Infrastructure and Reliance Communications, secured a contract for the Re110 billion (\$2.3 billion) project.

Leading lawyers

Linda Bertoldi

Heather Douglas
Bruce Fowler
Morton Gross

Davies Ward Phillips & Vineberg

Davies Ward's project finance group champions a cross disciplinary approach and an expertise in handling infrastructure work. The firm also has significant experience in PPP (public-private partnership) transactions on the sides of both public and private-sector partners. The practice is under the direction of Carol Pennycook and Robert Bauer, who are both in the Toronto office.

Davies acted as lead counsel for the Miami Access Tunnel consortium on the financing of the C\$1 billion (\$1 billion) greenfield Port of Miami Tunnel project. The firm aided the consortium in the negotiation of \$350 million in senior debt for Port of Miami Tunnel project from ten international banks, as well as a \$351 million subordinated debt facility from the United States Department of Transportation.

In another transaction, the firm advised Plenary Health, which led a consortium in the design, build, finance and operation of the Niagara Health System project. The project was completed under the alternative financing and procurement (AFP) model, and set a number of milestones. It is Infrastructure Ontario's first design, build, finance and maintenance AFP hospital project; the largest project completed by Infrastructure Ontario as of publication; and the first significant Canadian AFP/PPP to secure financing since the 2008 economic crisis.

Leading lawyers

Robert Bauer
Steven Martin
Carol Pennycook
Nicholas Williams

Fasken Martineau

The strength of Fasken Martineau's project finance practice is apparent with expertise in PPP (public-private partnership) infrastructure projects and its ability to work proficiently across different sectors. The firm has undertaken projects in industries ranging from mining and energy to telecommunications and media, predominantly advising lenders and financial institutions for the transactions. Fasken is particularly known for its prowess in the mining area.

Brian Kelsall, the department's director, and Ella Plotkin led the group in advising RBC Dominion Securities and a banking syndicate in the arrangement of bond financing for a C\$622 million (\$603 million) contract

for the new Bridgepoint Hospital in Toronto. The transaction, which closed in August 2009, is the second significant PPP financing to close following the financial crisis. The hospital project will be delivered with the use of both the alternative financing and procurement model.

Kelsall and Plotkin also led the team on advising Toronto Dominion Bank and the Bank of Nova Scotia in connection with their C\$300 million contract with Host Kilmer Service Centres for new highway service stations. In the terms of the contract, Host Kilmer Service Centres, a special purpose company, agreed to design, build, finance, maintain and operate 23 service stations along highways 400 and 401 in Ontario. The transaction closed in March 2010.

Leading lawyers

Jon Holmstrom
Brian Kelsall
Ella Plotkin

Other ranked firms

Fraser Milner Casgrain's project finance group is known for its expertise in the oil and gas, and power sectors. It has experience representing clients on all sides of a project financing transactions including financial institutions, developers, investors, sponsors and contractors.

Acting for Northern Health, the firm helped negotiate a project agreement with ISL Health General Partnership, a consortium of architecture and construction firms, for the design, build, finance and operation of the Fort St. John Hospital and Residential Care Project. In July 2009, ISL agreed to finance to project for C\$298 million (\$289 million). Besides the project agreement, the firm also assisted on matters including land rezoning, subdivision and acquisition.

Restructuring and insolvency

Recommended firms

Tier 1

Goodmans

Tier 2

Blake Cassels & Graydon
Davies Ward Phillips & Vineberg
Ogilvy Renault
Osler Hoskin & Harcourt
Stikeman Elliott
ThorntonGroutFinnigan

Tier 3

Bennett Jones
Borden Ladner Gervais
Fasken Martineau

Fraser Milner Casgrain
Gowling Lafleur Henderson
McCarthy Tétrault
McMillan

As companies in Canada and the United States entered into a long drawn period of distress, lawyers experienced a boom in business. "It's certainly been a busy time for us," says one partner. Although there has been a steady stream of work for firms working on large filings for companies like General Motors, Chrysler, CanWest and Nortel, the era of the plain-vanilla deal seems to be a thing of the past. The credit crisis changed the rules of the game for restructuring and insolvency lawyers, making transactions increasingly complex. Not only were the volumes of large files going up, but they were also taking longer and crossing industries and borders.

Cross-border transactions dominated the 2009 year with Canada and the US being the main players. The restructuring of General Motor's Canadian division was one of the largest restructurings in Canada and managed to get completed out of court unlike its US parent which had to file for Chapter 11 bankruptcy. "The interesting thing about some of these filings is that they all have cross-border aspects," remarks one partner. "It's becoming virtually standard because of the almost invariable connection of a Canadian business with the US."

Canadian lawyers also witnessed a considerable amount of out of court proceedings. "We're seeing a lot of things being dealt with out of court," says one partner. GM, Chrysler, and Aveos Fleet Performance, Air Canada's former in-house maintenance arm, all stand as high-profile examples of companies that underwent out of court restructurings in the past year.

Besides large restructurings, lawyers were also occupied with a fair amount of mid-market work in 2009, which has progressed into the 2010 year. "Very recently we are seeing more mid-market companies ending up in proceedings," says one partner. As the credit market becomes increasingly more stable, large filings are expected to drop off.

Despite the upsurge in new large bankruptcy filings that the European debt crisis has caused in countries like the US, Canada seems more poised to take less of a hit as its market is healthier than most of the other developing nations. "My own theory is that we won't see many more large filings," says one partner. "We are likely see a shakeout in the mid- and upper mid-market."

Goodmans

Goodmans is in a class by itself, earning a coveted role as not only preferred counsel but *the counsel* for clients for both domestic and international restructuring matters. The firm's multi-disciplinary approach, cross-border capacity, and ability to work on all sides of the restructuring process gives it an edge over its competitors. "Everyone accepts that Goodmans is in a different category," says one of the firm's peers. Goodmans' corporate restructuring group is headed by Jay Carfagnini. "Jay has good strategic vision," says one client. "He's got a great approach."

Goodmans acted on one of the most high-profile restructuring deals of 2009 - the restructuring of international automaker Chrysler. As external counsel to the Government of Ontario, the firm assisted in negotiating a loan in excess of C\$2.3 billion (\$2.2 billion) to Chrysler's Canadian operations. The US operations similarly received financial support from the US government. The transaction closed in July 2009. The Canadian government now holds a 2.5% share in the new Chrysler Group.

The firm also represented Eddie Bauer Canada in Eddie Bauer's cross-border restructuring and acquisition. In August 2009, Everest Holdings purchased Eddie Bauer for C\$302 million with C\$12 million going towards Eddie Bauer of Canada Corporation's acquisition of the Canadian Eddie Bauer business.

Leading lawyers

Jay Carfagnini
Robert Chadwick
Brendan O'Neill
Joseph Pasquariello

Blake Cassels & Graydon

Blakes has one of the most competitive insolvency practices in Canada. Lawyers from its Toronto, Montreal, Calgary, and Vancouver offices have all played prominent roles on some of the country's largest bankruptcy filings and corporate restructurings this. Additionally, the firm is becoming known for securing roles on significant cross-border transactions that draw upon the overall corporate expertise at Blakes as well.

The director of the group, Steven Weisz, is advising CIT Business Credit Canada on the ongoing CCAA proceeding of Canwest Global Communications. Collaborating with financial services department head Michael Harquail, Weisz advised CIT in its \$103 million (\$100 million) DIP (debtor-in-possession) financing for Canwest. CIT's credit facility, which previously provided working capital to the company, was converted into

DIP financing in the wake of Canwest's filing in October 2009.

Blakes also represented the first lien lenders in the out-of-court recapitalisation and debt restructuring of Aveos Fleet Performance, a maintenance and repair provider for the airline industry. In January 2010, the firm assisted the lenders in negotiating an agreement with Aveos. Under the terms of the agreements, lenders approved a reduction of the company's C\$800 million of first and second lien debt to C\$75 million.

Leading lawyers

Susan Grundy
Steven Weisz

Davies Ward Phillips & Vineberg

Davies has climbed the rankings into the second tier after a strong round of peer feedback. One partner in particular was noted by lawyers at competing firms as having a stand-out presence at Davies. "Robin Schwill is leading a lot of transaction work," says a peer. The firm is known in the market for its multidisciplinary approach and cross-border ability. Davies also prides itself on its efforts to keep clients out of court and negotiate compromises for all involved parties.

Davies added to its clout in the market by gaining roles in connection with the high-profile Canwest and Nortel proceedings. In the Canwest transaction the firm acted as counsel for the committee of bondholders. In March 2010, bondholders were engaged in a showdown with Goldman Sachs for control over the restructuring of Canwest Global Communications. To the dismay of Goldman, the Ontario Superior Court ruled in favour of the bondholders, who agreed to purchase both the newspaper and online operations of Canwest for C\$1.1 billion (\$1.06 billion).

Davies also served as Canadian counsel for Nortel Networks UK along with 18 of its subsidiaries. After the Nortel's Canadian and US divisions filed for bankruptcy protection in January 2009, Nortel UK entered into administration proceedings under the UK court. Nortel's total debt for its global operations is C\$6.5 billion.

Leading lawyers

Denis Ferland
Jay Swartz

Ogilvy Renault

The restructuring team at Ogilvy Renault has a well-earned reputation through roles on complex restructuring and insolvency cases like Nortel and Canwest. The practice also has

cross-border capabilities, an asset that has become absolutely vital in becoming a serious player in the world's global financial market.

Ogilvy is Canadian counsel to Nortel Networks and Nortel Networks, the company's principal operating subsidiary, in its multijurisdictional restructuring proceedings. The transaction is being led by Derrick Tay, who is also the director of the practice. "He gets right to the issues and moves files forward," says one client. The multijurisdictional aspect of the deal required the firm to not only handle matters related to the Companies' Creditors Arrangement Act (CCAA) in Canada but the Chapter 11 and 15 bankruptcy codes of the US as well. As of September 2009 the company was reported to have C\$6.5 billion (\$6.3 billion) in debt.

The firm is also advising the Special Committee of the Board of Directors of Canwest Communications in connection with Canwest's filing for bankruptcy protection. The company made the filing in October 2009 under Canada's CCAA. As of January 2010, Canwest's debt totalled approximately C\$4 billion dollars.

Leading lawyers

Mario Forte
Kevin Morley
Derrick Tay

Osler Hoskin & Harcourt

Osler's restructuring and insolvency team has a reputation for its depth of experience and its integrated approach across offices. Located in Toronto, Calgary and Montreal, the group has forged a successful collaboration in order to meet the complex challenges that its clients experience. The practice's department head Edward Sellers is credited for spearheading efforts in making Osler a strong domestic and international player. "He's done a fantastic job in concern to establishing an international presence," says one client. "He's assembled an excellent team across the country."

Partners Steven Golick, Tracy Sandler and Marc Wasserman led the team on GM Canada's out-of-court restructuring. With an estimated 90 staffers working on the transaction at various times during the process, the transaction was one of the largest and most challenging restructurings in Canada to date. The complexities of representing the largest automaker in Canada involved not only reaching agreements with other companies and unions but gaining approval from both the Canadian and US governments. GM's consolidated debt load was C\$57.5 billion (\$54.4 billion).

In speaking of Golick one client says: "He's a practical guy and good at strategy in terms

of how to orchestrate a certain result." Another client then adding of Wasserman: "He's by far, in this market and at that age, going to be the next generation in this industry."

Under the leadership of Edward Sellers, Osler also acted as counsel for Canwest Global Communications, its broadcast subsidiaries and the National Post in regard to their Companies' Creditors Arrangement Act (CCAA) restructuring proceedings.

"Edward's a very strong individual and has great depth," says another client.

Leading lawyers

Steven Golick
Christa Nicholson
Tracy Sandler
Edward Sellers
Marc Wasserman

Stikeman Elliott

Stikeman Elliott is known for the depth and breadth of its insolvency work. The firm's restructuring and insolvency lawyers pride themselves on being versed in a wide range of disciplines as well as cross-border matters, amplifying the strength of the practice. In Toronto the practice is lead by co-heads Sean Dunphy and David Buyers. "He's absolutely fantastic," says one client of David. "He gets right to the heart of the issue and gets things done." Jean Fontaine is the department head in Montreal.

Sean Dunphy has assisted in advising AbitibiBowater Group in its global restructuring under the Companies' Creditors Arrangement Act (CCAA) and Chapter 11 bankruptcy code. As part of the restructuring, the company sold its 60% indirect stake in Manicouagan Power Company's 335MW hydroelectric facility to Hydro-Québec for proceeds of C\$615 million (\$596 million). The proceeds from the sale are to be used to pay down loans and provide additional liquidity to the company's Abitibi-Consolidated subsidiary.

Jean Fontaine and colleague Kevin Kyte served as Canadian counsel to White Birch Paper Company in its \$650 cross-border restructuring. In February 2010, the company and its subsidiaries filed for bankruptcy in both Canada and the US. White Birch secured \$140 million in debtor-in-possession (DIP) financing from its prepetition lenders so that it could continue regular operations in spite of the restructuring.

Leading lawyers

Marc Barbeau
David Byers
Sean Dunphy

Jean Fontaine

ThorntonGroutFinnigan

Despite being a boutique firm, ThorntonGroutFinnigan has proved itself as a strong competitor in the market and has improved its position to by moving into the second tier. Although TGF is younger than all of the firms on the list, it has also gained quick momentum in the market through its highly dedicated team of lawyers and its ability to secure roles on high-profile transactions. ThorntonGroutFinnigan was co-founded by former Fasken lawyers Robert Thornton and James Grout in 1998.

In the past the firm has been involved on big restructuring and insolvency proceedings including Air Canada, Bell Canada International and Hollinger. ThorntonGroutFinnigan more recently has been involved on the high profile Nortel and Abitibi Bowater bankruptcies.

When Nortel filed for creditor protection in January 2009, the firm landed a role acting for Flextronics, Nortel's main supplier. The firm assisted in negotiating the terms of an amended agreement between Flextronics and Nortel. Nortel stipulated that it would purchase C\$124 million (\$120 million) of existing inventory by July 1 2009, as well as make quarterly purchases of other inventory.

In the Abitibi Bowater bankruptcy, TPG acted as counsel to Ernst & Young, the court appointed monitor, which recommended that Abitibi Bowater receive debtor-in-possession (DIP) financing since the firm projected that the company would stay under bankruptcy protection until at least late summer of the 2010 year. In November 2009, the Montreal Superior Court granted the company an increase in DIP financing from C\$140 million to C\$370 million.

Leading lawyers

James Grout
Robert Thornton
DJ Miller

Other ranked firms

Bennett Jones has an active restructuring and insolvency practice that is known for its representation of creditors and noteholders. Its department heads in Toronto, Richard Orzy and Kevin Zych, have participated on some of Canada's most complex and newsworthy deals including the bankruptcy of Nortel Networks, AbitibiBowater and Canwest Global Communications.

In Nortel Networks' Chapter 11 and Companies' Creditors Arrangement Act (CCAA) proceedings, Richard Orzy and

Kevin Zynch are acting for the noteholders' committee. The Canadian telecom company filed for bankruptcy in January 2009 because of its C\$4.4 billion (\$4.5 billion) debt.

The firm is also representing another big company in its Chapter 11 and CCAA proceedings: AbitibiBowater. Richard and Kevin are leading the team on this transaction as well with the assistance of partner Ray Sahn. Bennett Jones is advising the official Chapter 11 Committee of unsecured creditors on ongoing matters. AbitibiBowater, North America's biggest newsprint maker, sought bankruptcy protection in April 2009 after struggling with its debt load of almost C\$9 billion.

Leading lawyers: Richard Orzy and Kevin Zych

Borden Ladner Gervais' restructuring and insolvency practice is over 40 lawyers strong across Canada's five key provinces. The firm serves a wide range of industries and clients, and works closely with other practices within the firm to tackle challenges on transactions with multidimensional aspects.

On the Nortel Networks bankruptcy, BLG is advising the ad hoc committee of senior secured noteholders in connection with the ongoing restructuring of Abitibi Bowater. The cross-border proceedings, which are taking place in both the US and Canada, involve operational, labour, pension and credit issues. The company has more than C\$6.3 billion (\$6 billion) of debt.

Leading lawyers: Craig Hill, Patrick McCarthy and Michael MacNaughton

Fasken Martineau's insolvency and restructuring group is led by John Grieve in the Vancouver office. The firm has experience advising on all sides of a proceeding and has clients which include financial institutions, bondholders, strategic investors, private equity and investment funds as well as public entities such as Export Development Canada.

In the Canwest bankruptcy the firm is representing a group of shareholders and members of the Canwest Global Communications Corporation (CGCC) board on ongoing matters. In October 2009, CGCC, Canwest Media and other related entities filed for bankruptcy protection under the Companies' Creditors Arrangement Act (CCAA) because of its \$3.9 billion (\$3.1 billion) worth of debt.

Fasken also advised the parties in January 2010 on new developments. A second CCAA filing took place in connection with Canwest Publishing and its entities. Canwest's newspaper chain is expected to be purchased for C\$1.1 billion (\$1 billion), including C\$950 million in cash.

Leading lawyers: John Grieve, Jonathan Levin, and Alain Riendeau

McCarthy Tétrault's bankruptcy and restructuring group is known to be a strong player in the mid-market, often working on the side of the debtor. The firm also, however, acts as counsel for financial institutions and court-appointed monitors, among other parties.

Toronto partner and department head Jamey Gage acted as counsel to Chrysler Canada in connection with the US bankruptcy filing by Chrysler. The transaction involved McCarthy advising the company on matters related to the bankruptcy of its US parent, the Canadian aspects of the Fiat deal, government funding, and the healthcare trust for its employees. The transaction, which included loans from the government of Canada and the government of Ontario, closed in June 2009 for C\$2.4 billion (\$2.3 billion).

The firm also advised Avaya in connection with its \$915 million acquisition of Nortel's Enterprise Solutions business. This was part of Nortel's efforts to sell its assets while under bankruptcy protection.

Leading lawyers: Jamey Gage and Kevin McElcheran

McMillan's corporate restructuring group is led by Andrew Kent in Toronto and Max Mendelsohn in Montreal, and handles national casework as well as cross-border cases involving the Canada and US.

Acting for the lender, the firm advised Export Development Canada (EDC) in connection with setting up loan facilities for GM Canada and Chrysler Canada. In April 2009, GM Canada, and its subsidiaries, entered into a loan agreement with EDC with funds being contributed by the Government of Ontario and the Government of Canada. GM Canada was provided with a C\$3 billion (\$2.9 billion) loan facility to be used to restore liquidity and stability for the automaker.

In March 2009, EDC provided a term facility of up to C\$1 billion to Chrysler Canada with funds again being contributed by both the Government of Ontario and the Government of Canada.

Leading lawyers: Andrew Kent