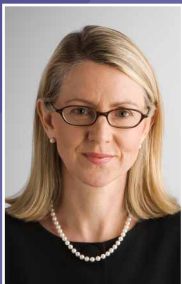


# Recent Tax Developments

Tax Group Seminar  
Thursday, April 22, 2010



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## Recent Tax Developments

April 22, 2010  
Kathleen Hanly, Mitchell Thaw, Ron Nobrega, Paul Casuccio



## Presentation Overview

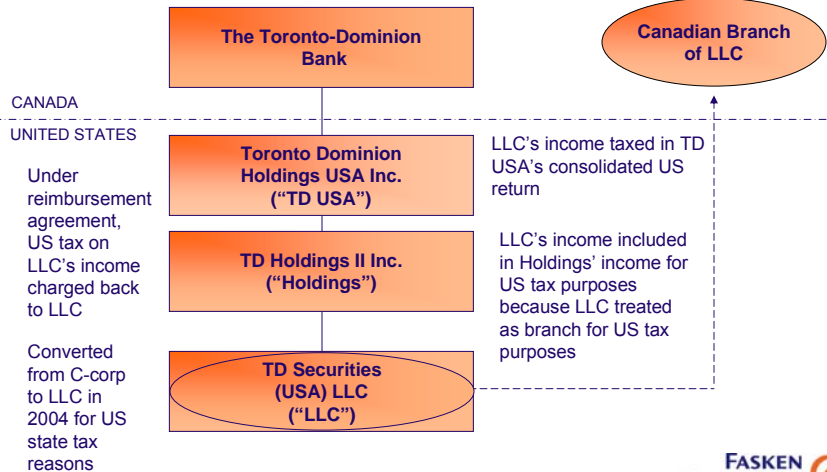
- Recent TCC case and UK case re US LLCs and CRA position re “related” test in Article XXI of US Treaty
- Recent TCC case on notice of objection process and recent CRA statements re Reg 105
- Update on 2010 Federal and Ontario budgets
- Ontario HST update



## US Limited Liability Companies

- *TD Securities (USA) LLC v The Queen*, 2010 TCC 186 (Tax Court of Canada - April 8, 2010)
- *Mr Swift v The Commissioners for HMRC*, [2010] UKFTT 88 (UK First-Tier Tax Tribunal - February 22, 2010)
- CRA document no. 2009-0319411C6, August 5, 2009
- See also e.g. CRA document no. 2009-0345351C6, February 11, 2010, re dividend and interest payments from ULC or Canco to LLC and access to US Treaty benefits (not discussed today)

## TD Securities



## TD Securities (cont'd)

- LLC filed Canadian tax returns for 2005-6 and paid branch tax at 5%
- CRA assessed on basis LLC subject to branch tax at 25%
- ISSUE:
  - Was LLC entitled to US Treaty benefits → 5% branch tax?
  - Was LLC a US resident for US Treaty purposes? i.e. was it liable to tax in US “by reason of [its] ... place of incorporation or any other criterion of a similar nature”?
- CRA ARGUED:
  - LLC not entitled to US Treaty benefits because *not itself liable* to tax in US – give effect to plain words in US Treaty
  - Alternatively, if LLC was “liable to tax” because Holdings was taxed on LLC’s income, LLC was not liable to tax by reason of place of incorporation etc. or similar criterion
  - Inappropriate to extend US Treaty benefits to LLCs pre-Protocol because renders meaningless effect of Protocol changes

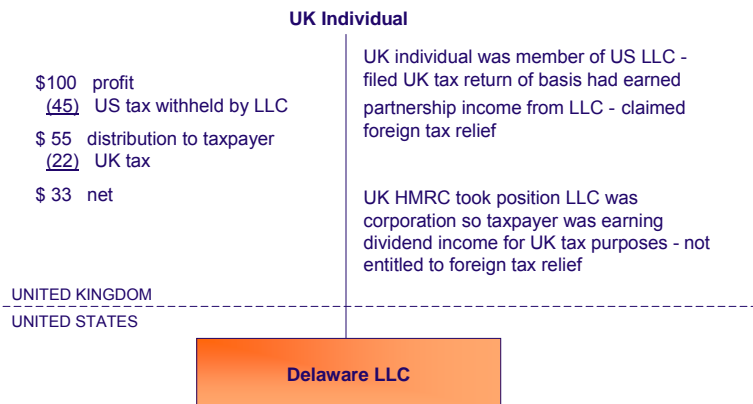
## TD Securities (cont'd)

- TAXPAYER ARGUED:
  - LLC should be considered “liable to tax in” US for US Treaty purposes – liability to tax ≠ mere determination of whether person required to pay tax on its income under IRC
  - Taxpayer position consistent with OECD commentaries (upon which neither Canada nor US reserved)
  - Liberal interpretation and application of US Treaty (that achieves its purpose) requires that LLC be treated as US resident
- HELD:
  - LLC was US resident for US Treaty purposes because:
    - Liable to tax in US because income comprehensively taxed in US (*Crown Forest*), albeit at member level
    - Liable to tax “by reason of” similar criterion, namely, place of incorporation of its member

## TD Securities (cont'd)

- REASONS:
  - Consistent with statements in OECD Partnership Report and other OECD commentary, upon which Canada did not reserve
  - Consistent with Canada's approach to tax-exempts and governments (i.e. they get US Treaty benefits even though not themselves subject to tax, as confirmed in 1995 Protocol amendment to Article IV)
  - Inconsistent with treaty purpose to deny treaty benefits to entity whose income is fully and comprehensively taxed in jurisdiction just because tax levied at level of shareholders, members or partners

## SWIFT



## Swift (cont'd)

- ISSUE: Was taxpayer earning partnership income or dividends from US corporation, for UK tax purposes?
- HELD: Taxpayer was earning partnership income for UK tax purposes → entitled to tax relief for US tax
- REASONS:
  - Under Delaware company law and particular LLC agreement, profits of LLC belonged to members as they arose (although LLC owned assets)
  - While Delaware LLC can be regarded as having share capital in certain cases, in this instance, the members' interests were more like partnership interests

## Swift (cont'd)

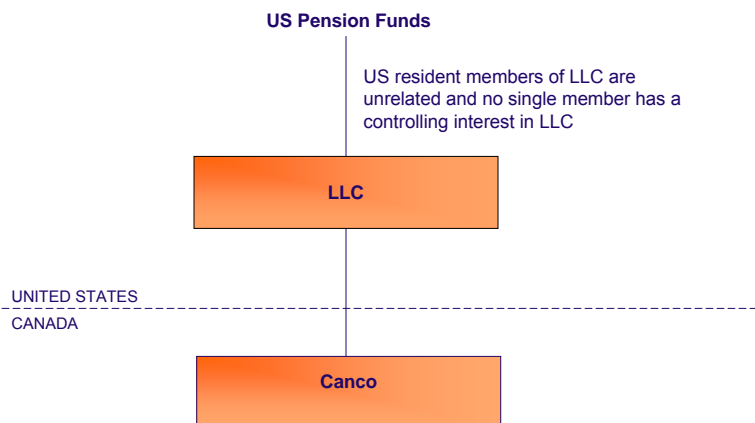
- HMRC POSITION:
  - Has appealed decision
  - UK will tax LLC member on profits only when distributed, since LLC is corporation for UK tax purposes
  - LLC member who considers this approach inappropriate in member's particular circumstances can seek HMRC review

## Article IV(6) of US Treaty

6. An amount of income, profit or gain shall be considered to be derived by a person who is a resident of the United States where:

- (a) The person is considered under the taxation law of the United States to have derived the amount through an entity (other than an entity that is a resident of Canada); and
- (b) By reason of the entity being treated as fiscally transparent under the laws of the United States, the treatment of the amount under the taxation law of the United States is the same as its treatment would be if that amount had been derived directly by that person.

## CRA Doc 2009-0319411C6



## CRA Doc 2009-0319411C6 (cont'd)

- Article XXI of US Treaty generally exempts US pension fund (and other specified tax-exempt entities) from Canadian withholding tax on dividends and interest from Canco – exemption N/A if “income ... from a related person”
- CRA confirmed that “relatedness” is tested between pension fund and Canco – it does not matter that LLC is related to Canco
- CRA stated that it applies same approach to partnerships, i.e. it does not attribute relationship between partnership and Canco to members of partnership

## Notices of Objection

- Appeal Process
  - Assessment or Reassessment
  - Notice of Objection
  - Notice of Appeal

## Notices of Objection

- *Fidelity Global Opportunities Fund v The Queen* (Tax Court of Canada - February 2010)
  - Mutual fund trust realized capital loss in 2002 and carried it forward to 2006
  - January 2008 – assessment of CRA denies claim
  - February 2008 – Fidelity sends letter to CRA disagreeing with assessment and requesting two adjustments

## Notices of Objection

- No adjustments made ... Fidelity files Notice of Appeal with TCC
- Crown brings motion before TCC to strike out Notice of Appeal
  - Basis of motion: notice of objection not valid

## Notices of Objection

- To be valid an objection must:
  - be in writing;
  - set out reasons for objection and relevant facts; and
  - be served on the Minister of National Revenue on or before day that is 90 days after day of mailing of notice assessment.

## Notices of Objection

- To be validly served:
  - Must be addressed to Chief of Appeals in a District Office or a Taxation Centre of CRA and delivered or mailed to that Office or Centre
  - The CRA has discretion to accept a notice of objection that is not served in proper manner
- Court reasons:
  - “...it would be next to impossible for the Canada Revenue Agency to keep proper records to ensure that the objections are dealt with ‘with all due dispatch’ as required  
...”

## Regulation 105

- Subsection 105(1) of the regulations:
  - “Every person paying to a non-resident a fee, commission or other amount in respect of services rendered in Canada, of any nature whatever, shall deduct or withhold 15 per cent of such payment ...”

## Regulation 105

- Purpose: to provide security for tax that may later be assessed
- Penalty – amount of tax, plus 10%, plus interest
- Several recent cases, *Ogden Palladium Services* (2001), *Weyerhaeuser* (2007), *FMC Technologies Co.* (2009), *Stora Enso Beteiligungen GmbH* (2009)
- Does not apply if waiver obtained from CRA
- Does not apply to expense reimbursements

## Regulation 105

- March 2010 CRA document no. 2010-0355591E5
  - Does it apply to payment made months in advance to a non-resident agent to secure services that will be performed in future in Canada by a non-resident and only released to performer upon completion of contract?
  - CRA: “applies to payments for services rendered, or to be rendered, in Canada”

## BUDGET 2010

### Taxation of Corporate Groups

- Importance of tax consolidation
- Cost to federal and provincial governments

## BUDGET 2010 (cont'd)

### Tax Avoidance Information Reporting

- Purpose
- Applicable to reportable transactions that are “avoidance transactions” that meet at least 2 out of 3 of following hallmarks:
  1. Promoter or tax advisor entitled to fees based on amount of tax benefit, obtaining the tax benefit or number of taxpayers participating or having received advice on tax consequences;
  2. “Confidential Protection”;
  3. “Contractual Protection”.



## BUDGET 2010 (cont'd)

- Consequences of not reporting
- Application date
- Public consultation



## BUDGET 2010 (cont'd)

### Section 116 and Taxable Canadian Property ("TCP")

- Section 116 compliance process for non-resident taxpayer's disposition of TCP
- Pre-Budget definition of TCP relating to shares
- Proposed Budget amendments

## BUDGET 2010 (cont'd)

### Employee Stock Options

- Elimination of deferral of taxation of public company stock options
- Special relief for tax deferral elections
- New treatment of stock option cash-out payments
- Remittance requirement

## Ontario HST Update

- **Overview**

- Status of the Legislation
- Recent Provincial Announcements impacting Harmonization
  - QST Place of Supply Rules
  - Nova Scotia HST Rate Increase
- The “Financial Services” Fiasco
- The Importance of May 1, 2010 – Transitional Rules
- RST Wind-Up Details
  - Rebates
  - Important Dates
  - Taxation of Insurance Premiums
- Personal HST Tax Planning Tips

## Ontario HST Update

- **Status of the HST Legislation**

- ???
- Promised for end of March 2010
- Expected mid-April 2010
- No word still...

## Ontario HST Update

- **Recent Provincial Announcements Impacting Harmonization**

- QST Place of Supply Rules
  - Quebec 2010 Budget – announced that the QST place of supply rules will generally be harmonized with the proposed HST place of supply rules
- Nova Scotia HST Rate Increase
  - Nova Scotia 2010 Budget – announced plans to increase its HST rate to 15% from 13%
  - Yet another tax rate jurisdiction

## Ontario HST Update

- **The “Financial Services” Fiasco**

- December 2009 – Finance announced amendments to definition of “Financial Services” in the *Excise Tax Act*
  - Purpose is to clarify long-standing policies and interpretations
  - applies equally to GST and HST
- Feb 11, 2010 – CRA publishes GST Notice 250 regarding its interpretation of the proposed amendments
  - Inconsistent with former policy statements of the CRA (e.g. trailer fees)
- March 22, 2010 – Bill C-9 is introduced
- March 26, 2010 – Finance assures the public of no new tax on Financial Services; CRA retracts Notice 250 for “reviewing and updating”

## Ontario HST Update

- **The Importance of May 1, 2010 – Transitional Rules**
  - A critical date for the Transitional Rules
  - HST rules will apply for amounts of consideration paid or payable on or after May 1, 2010 in respect of goods or services to be supplied on or after July 1, 2010
  - Reporting of such amounts collected or ITCs claimed must wait until the reporting period that includes July 1, 2010



## Ontario HST Update

- **RST Wind-Up Details**
  - Rebates
    - Transitional Rules indicate that RST will apply to payments due or amounts paid between October 2009 and May 1, 2010 even where they relate to services or goods performed/delivered after July 1, 2010
    - Major Exception – Entities engaged in exclusively in commercial activities
      - Rebates should be claimed for overpayment of RST
  - Important Dates
    - June 23<sup>rd</sup> – Final RST Return
    - Supplemental Returns – July 23, August 23, Sept 23, Oct 23, Nov 23 (Final Supplemental Return Due)
  - Taxation of Insurance Premiums



## Ontario HST Update

- **Personal HST Tax Planning Tips**
  - Purchases worthy of some planning
    - Services relating to real property
      - e.g. landscaping, painting
    - Pure Services
      - e.g. legal services – wills, powers of attorney
  - Purchases not to worry about
    - Tangible personal property
      - e.g. home theatre, used cars
    - Insurance
    - Used residential property



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# BIOGRAPHIES



## Paul V. Casuccio

*Partner*

### Toronto

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[www.fasken.com/paul-casuccio](http://www.fasken.com/paul-casuccio)

Paul Casuccio's practice focuses on providing timely and effective commodity tax advice to his clients, primarily with respect to goods and services tax, harmonized sales tax and retail sales tax issues.

Paul has assisted clients with their commodity tax planning in all manners of circumstances, including business asset acquisitions, cross-border transactions, outsourcing arrangements, and Canadian start-ups and reorganizations. Paul provides advice regularly to non-resident entities; Canadian not-for-profit and charitable organizations, including a number of major hospitals and health care providers; all types of financial institutions; as well as to both traditional and e-commerce-based Canadian companies.

Paul's practice also includes advocating on behalf of clients with the various tax and trade authorities in Canada with respect to commodity tax issues, and although he often works with clients during tax audits to assist with settling matters informally, he also regularly works with clients engaged in formal dispute resolution with Canada's taxing authorities, from the objection stage through to trial.

Prior to joining the firm in 2002, Paul had a particularly distinctive scholastic career, winning numerous academic and community service awards, and graduating as the Silver Medalist of his law school class at Osgoode Hall.

### Representative Experience

- *Co-operators Life Insurance Company and Central 1 Credit Union complete \$245 million acquisition of The CUMIS Group*  
Advised Co-operators Life Insurance Company
- *FCI sells North American-based electrical division to Hubbell for US\$360 million*  
Advised FCI S.A.
- *CCMP Capital stalking horse bidder in Eddie Bauer bankruptcy*  
Advised CCMP Capital Advisors
- *Northland Power Income Fund merges with Northland Power Inc.*  
Advised the Independent Trustees of Northland Power Income Fund
- *Barrick Gold purchases Hemlo stake from Teck Cominco for US\$65 million*  
Advised Barrick Gold
- *Ornge purchases aviation assets from CHL for \$30 million; enters into \$90 million service agreement for helicopter fleet*  
Advised Ornge
- *Handleman sells its Canadian music operations to Anderson Merchandisers*  
Advised Handleman Company
- *Foresters completes acquisition of Unity Life in Canada's first sponsored demutualization*  
Advised The Independent Order of Foresters

### Areas of Practice

Taxation

### Education

BA,  
York University, 1998

LLB, Silver Medalist  
Osgoode Hall Law School at  
York University, 2001

In-Residence GST Course,  
Canadian Institute of Chartered  
Accountants, 2003

In-Depth Income Tax Course -  
Part I,  
Canadian Institute of Chartered  
Accountants, 2003

### Year of Call

Ontario, 2002

- *North Castle Partners acquires World Health Club*  
Advised North Castle Partners
- *Audiovox buys Thomson SA's non-European consumer electronics audio video business*  
Advised Audiovox Corporation
- *Liqui-Box sells performance films business to Exopack*  
Advised Liqui-Box Canada Inc.
- *TiVo comes to Canada*  
Advised TiVo with respect to Canadian legal issues related to doing business in Canada, including: distribution, packaging, French language requirements, consumer protection, tax, customs duties, importing, IP registrations, customer contracts, warranty and service contracts, privacy, security interests and collections, on-line terms and conditions, telecommunication equipment standards and specifications, and copyright issues
- *International Automotive Components completes Collins & Aikman soft trim acquisition*  
Advised International Automotive Components Group North America
- *DaimlerChrysler sells Chrysler Group to Cerberus Capital Management in US\$7.4 billion deal*  
Acted as special Canadian counsel to DaimlerChrysler AG
- *Smiths Group completes US\$4.8 billion sale of aerospace business to General Electric Company*  
Advised Smiths Group PLC
- *Nautical Data International insolvency proceedings and sale of rights to Department of Fisheries and Oceans*  
Advised Nautical Data International, Inc.
- *Hilton Canada sells last five Canadian hotels for \$243 million*  
Advised Hilton Canada Co.
- *Park Lawn Company creates income trust*  
Advised Park Lawn Company Limited
- *Retrocom Mid-Market REIT completes \$118 million IPO*  
Advised Retrocom Mid-Market REIT
- *P&O Ports Canada acquires assets of Casco Terminals and Canadian Stevedoring businesses of BCR Marine*  
Advised P&O Ports Canada Inc.

## **Presentations**

- Recent Tax Developments, Taxation Group Seminar, April 22, 2010
- The Impact of Sales Tax Harmonization on Charities and Not-for-Profits, UJA Seminar, April 21, 2010
- The Impact of Sales Tax Harmonization on the Investment Fund Industry, ICAC/FMD Seminar, March 30, 2010
- HST and the IT/Outsourcing Industry, Ontario Bar Association, March 8, 2010
- GST/HST and Insurance, Guarantees, Indemnities and Derivatives, CICA Canadian Commodity Tax Symposium, September 2008
- Tax Issues, Speaker, Establishing Private Healthcare Facilities, The Canadian Institute, June 2006
- Defining the Boundaries Between Real, Tangible/Intangible Personal Property and Services, CICA Canadian Commodity Tax Symposium, September 2005

## **Publications**

- "Will The HST Apply? The Proposed HST Place of Supply Rules", Taxation Bulletin, March 2010
- "HST and its Impact on Hospitals and Charities", Health Law in Canada, volume 30, number 3 (Butterworths)
- "Tax Measures in Budget 2010", Taxation Bulletin, March 5, 2010
- "Harmonized Sales Tax – Temporary Restrictions on Input Tax Credits for Large Businesses", Taxation Bulletin, February 4, 2010
- "GST/HST on Investment Management Fees: Department of Finance Releases Legislative Proposals to Overrule CMPA Decision", Taxation Bulletin, December 2009
- "Impact of Harmonized Sales Tax on Hospitals and Foundations", Taxation Bulletin, October 2009
- "Ontario Releases General Transitional Rules for Harmonized Sales Tax", Taxation Bulletin, October 2009
- "British Columbia Releases General Transitional Rules for Harmonized Sales Tax", Taxation Bulletin, October 2009
- "BC Joins Ontario in Eliminating PST: Harmonizing with Federal GST", Taxation Bulletin, July 2009
- "Ontario's "Tax Smart" Budget Means Tax Cuts For Business", Taxation Bulletin - Ontario Budget 2009, March 2009
- "Ontario to Eliminate Provincial Sales Tax July 1, 2010; Harmonize with Federal GST", Taxation Bulletin - Ontario Budget 2009, March 2009
- "The Ontario government using the existing federal business number (BN) as a single identifying number", Taxation Bulletin, June 20, 2008
- "Outsourcing Transactions: A Practical Guide", Eds. C. Ian Kyer and John Beardwood, Canada Law Book, 2008
- "Executors' Fees and Canada's Goods and Services Tax", CICA bulletin by Paul V. Casuccio, December 2005
- "Defining the Boundaries Between Real, Tangible/Intangible Personal Property and Services", by Paul V. Casuccio, David Douglas Robertson and Pierre Bocti Canadian Institute of Chartered Accountants' Canadian Commodity Tax Symposium, September 2005
- "Proposed Changes to GST Rebate for the Health Care Industry", Health and Taxation Law Alert by Paul Casuccio, March 2005
- "A Problem with using fiscal accounting periods for GST Reporting", Taxation Law Bulletin, Ontario Bar Association, 2005
- "GST Update for Life and Health Insurance Companies", Taxation Bulletin by Paul Casuccio and David Douglas Robertson, May 2004
- "E-Commerce Law: Corporate-Commercial Practice", Contributor, by Mark Fecenko and Anita Huntley, Butterworths, 2003
- "The European Union VAT and E-Commerce Directive", Taxation Law Bulletin, Ontario Bar Association, May 2003
- "Canada: A Corporate Tax Haven?", Taxation Bulletin by Kathleen S. M. Hanly and Paul V. Casuccio, December 2002

### **Memberships and Affiliations**

- Contributing Editor, Sales and Use Tax Journal published by Federated Press
- Member, Canadian Tax Foundation
- Member, Ontario Bar Association
- Member, National Sales and Commodity Tax Section, Canadian Bar Association
- Member, Toronto Commodity Tax Study Group

### **Rankings and Awards**

- Silver Medalist, Osgoode Hall Law School, 2001



## Kathleen S.M. Hanly

*Partner*

### Toronto

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Kathleen Hanly is the director of the Toronto office's Taxation Practice Group and a partner in the group. Her practice focuses on corporate income tax.

Kathleen advises both domestic and international clients on taxation matters, including the tax aspects of reorganizations, acquisitions, divestitures, investment funds, financial products, financing, debt restructuring and transfer pricing. She regularly advises U.S. and European financial institutions and other corporations on structuring and financing their Canadian operations and on structuring cross-border transactions. She also represents clients in dealing with the Canada Revenue Agency and provincial tax authorities.

Kathleen is listed as one of the best lawyers in Canada in *The Best Lawyers in Canada 2010* directory and is recognized in *Chambers Global 2010*.

### Representative Experience

- *Co-operators Life Insurance Company and Central 1 Credit Union complete \$245 million acquisition of The CUMIS Group*  
Advised Co-operators Life Insurance Company
- *BNP Paribas and Bank of America arrange US\$800 million financing as SemGroup emerges from Chapter 11 and CCAA restructuring*  
Canadian counsel to the first and second lien lenders
- *Linens 'N Things insolvency proceedings*  
Counsel to RSM Richter Inc., the Interim Receiver, Receiver and trustee in bankruptcy
- *Foresters completes acquisition of Unity Life in Canada's first sponsored demutualization*  
Advised The Independent Order of Foresters
- *Morgan Stanley helps finance Mitel's US\$723 million merger with Inter-Tel*  
Acted as Canadian counsel to Morgan Stanley
- *DaimlerChrysler sells Chrysler Group to Cerberus Capital Management in US\$7.4 billion deal*  
Acted as special Canadian counsel to DaimlerChrysler AG
- *Anglo American Capital launches US\$2 billion Canadian commercial paper program*  
Advised Anglo American Capital plc
- *Credit Suisse arranges \$700 million in first lien and second lien credit facilities to assist Harbinger Capital Partners in financing for its acquisition of Calpine Power Income Fund*  
Advised Credit Suisse
- *Dexia launches \$3.5 billion Canadian commercial paper program*  
Advised Dexia CAD and Dexia Crédit Local, New York Branch
- *Horizon Total Return Fund raises \$38 million in IPO*  
Advised Middlefield Capital Corporation

#### Areas of Practice

Taxation

#### Education

BSc,  
University of Toronto, 1979

LLB,  
University of Toronto, 1982

#### Year of Call

Ontario, 1984

- *Kinross completes US\$500 million financing*  
Advised the banking syndicate led by The Bank of Nova Scotia
- *Middlefield Canadian Income Trusts Investment Company PCC closes £55 million offering in the UK*  
Advised Middlefield Canadian Income Trusts - GBP PC
- *Arcelor acquires Dofasco for \$5.6 billion*  
Advised Dofasco Inc.
- *First Trust/Highland Capital Floating Rate Income Fund II completes \$85 million IPO and First Trust/Highland Capital Senior Loan Trust closes related \$85 million revolving credit facility*  
Advised First Trust/Highland Capital Floating Rate Income Fund II
- *Somerset Entertainment Income Fund completes IPO and enters into new credit facilities with TD Bank*  
Advised Toronto-Dominion Bank
- *International Royalty completes offering and acquires Voisey's Bay Royalty*  
Advised International Royalty Corp.
- *ING Canada completes \$1.04 billion IPO*  
Advised ING Canada
- *ING Canada acquires Allianz of Canada*  
Advised ING Canada
- *E-L Financial completes \$100 million offering*  
Advised the syndicate of underwriters
- *Cable operator Persona Inc. acquired for \$406 million by consortium of Canadian and U.S. private equity groups*  
Advised Hicks, Muse, Tate & Furst Incorporated and Canadian Cable Acquisition Company Inc.
- *Retrocom Mid-Market REIT completes \$118 million IPO*  
Advised Retrocom Mid-Market REIT
- *STRATA Income Fund closes \$214 million IPO*  
Advised STRATA Income Fund and Middlefield Securities Limited
- *INDEXPLUS INCOME FUND closes \$345 million IPO*  
Advised INDEXPLUS Income Fund and Middlefield Securities Limited
- *CHUM completes \$109 million offering of non-voting Class B shares*  
Advised CHUM Limited
- *TD Bank completes \$900 million medium term note offering*  
Represented the underwriting syndicate led by TD Securities Inc.
- *TD Bank completes \$200 million offering*  
Represented the underwriting syndicate led by TD Securities Inc.
- *Desjardins Group acquires Province of Ontario Savings Office, and creates Desjardins Credit Union Inc.*  
Advised The Desjardins Group
- *TD Bank completes \$350 million preferred share offering*  
Represented the underwriting syndicate led by TD Securities Inc.
- *Kinross merges with TVX and Echo Bay*  
Acted for the special committee of the board of directors of TVX and as special counsel to TVX

- *TD Bank Financial Group transfers more than \$8 billion of assets under administration to subsidiary of AGF Management*  
Advised TD Bank Financial Group
- *TD Bank Financial Group sells its internal and external custody business (transferring \$75 billion of custodial assets under administration) to CIBC Mellon*  
Advised TD Bank Financial Group
- *Credit Suisse completes US\$11.6 billion acquisition of Donaldson, Lufkin & Jenrette*  
Advised Credit Suisse
- *TD Securities and JP Morgan provide \$7.7 billion lending facility to finance acquisition by Telus of ClearNet Communications*  
Advised TD Securities and JP Morgan
- *Grafton-Fraser purchases Tip Top Tailors Group from Dylex*  
Advised Grafton-Fraser Inc.

## **Presentations**

- Recent Tax Developments, Taxation Group Seminar, April 22, 2010
- Debt Restructuring, Speaker, Federated Press Conference, Taxation of Corporate Reorganization, 2002-2010
- Emerging from Insolvency: Selected Income Tax Issues of CCAA Restructuring, Receivership and Bankruptcy, Speaker, Annual Canadian Tax Foundation Conference, November 22-24, 2009
- Inbound Tax Issues: Financing Transactions Into Canada, Tax-Efficient Tax Structures, November 2-3, 2009
- Recent Cases on Inbound Investment, Speaker, Federated Press Conference in Inbound Investment, September 10-11, 2009
- Inbound Tax Issues: Financing Transactions into Canada, Speaker, Federated Press Conference on Tax - Efficient Finance Structures, 2008
- Canada-U.S. 5th Protocol, Speaker, Board of Trade, 2007
- Chair, International Tax and Corporate Finance Session, Annual Canadian Tax Foundation Conference, 2006
- Cross-Border Financing - Recent Cases, Speaker, Infonex Conference on Cross-Border Taxation, 2006
- Cross-Border Real Estate Investment, Panellist, Annual International Bar Association Conference, Prague, Czechoslovakia, 2005
- Cross-Border Financing and Investment Structures, Speaker, Annual Canadian Institute Cross-Border Financing Conference, 2004
- Tax Loss Utilization, Speaker, Annual Canadian Tax Foundation Conference, 2003
- Tax Provisions of Share Purchase Agreements, Speaker, Canadian Institute Conference on Critical Tax Aspects of Business Agreements, 2002
- Foreign Bank Branch Tax Issues, Speaker, Canadian Bankers Association, 2001
- Foreign Investment Entities, Speaker, Infonex Conference on Financial Structures and Transactions, 2001

- Convertible Preferred Shares Not Term Preferred Shares, Citibank Canada v. The Queen, Author, Canadian Tax Journal, 2001

## **Publications**

- "Tax Measures in Budget 2010", Taxation Bulletin, March 5, 2010
- "ULCs Lose US Treaty Benefits After 2009 – 25% Withholding Tax Will Apply to Payments from ULCs: It's Still Not Too Late to Restructure Your Canadian Investments", Taxation Bulletin, November 2009
- "Canadian Federal Government Announces New Taxes on Income Trusts and Other Public Flow Through Entities", Tax, Securities and Investment Funds Alert by Mitchell Thaw, Kathleen Hanly, Stephen Erlichman, Frank S. Schober, Gilles Carli and Jim Lisson, November 2006
- "Cross-Border Financing - Recent Cases", by Kathleen S.M. Hanly and Ron Choudhury Toronto - October 2006, October 2006
- "Debt Restructuring", by Kathleen S.M. Hanly and Ron Choudhury, January 2006
- "New protocol to Canada-UK tax treaty signed", by Kathleen S.M. Hanly and Ron Choudhury, July 2003
- "Canada: A Corporate Tax Haven?", Taxation Bulletin by Kathleen S. M. Hanly and Paul V. Casuccio, December 2002
- "The Share Purchase Agreement", by Kathleen S. M. Hanly Canadian Institute Critical Tax Aspects of Key Business Agreements Conference, December 2002
- "Current Corporate Tax Rates - Ontario Budget Announcement", by Kathleen S. M. Hanly, October 2002
- "Case Comment on Citibank - Convertible Preferred Shares Not Term Preferred Shares", by Kathleen S. M. Hanly, August 2002
- "New Canada-Italy Tax Treaty Signed", Taxation Law Bulletin by Kathleen S. M. Hanly and Mitchell L. Thaw, June 2002
- "New Canada-Germany Tax Treaty in Force", Taxation Law Bulletin by Kathleen S. M. Hanly and Mitchell L. Thaw, April 2002
- "Debt Restructuring", by Kathleen S. M. Hanly Federated Press Taxation of Corporate Reorganization Conference, February 2002
- "Miscellaneous Tax Topics - Foreign Banks", by Kathleen S. M. Hanly, December 2001
- "General Overview of Foreign Investment Entity Rules", by Kathleen S. M. Hanly, October 2001
- "Case Comment on Citibank - Citibank Canada v. The Queen 1999-3261(IT)G(TCC)", by Kathleen S. M. Hanly, March 2001

## **Memberships and Affiliations**

- Canadian Tax Foundation (Past Governor)
- Taxation Section Executive, Canadian Bar Association (Past Member)
- Taxation Section Executive, Ontario Bar Association (Past Chair, Vice Chair, Program Coordinator, Member of Legislative Subcommittee)
- Taxation Section, Bar Admission Course, Law Society of Upper Canada (Past Instructor)
- Canadian Tax Foundation (Member)

- International Fiscal Association (Member)
- Canadian Bar Association (Member)

### **Community Involvement**

- Fasken Martineau Team Leader and Walker, 2005-2010 Weekend to End Breast Cancer, 60 Km Walk to Raise Funds for Princess Margaret Hospital



## Ronald Nobrega

*Partner*

### Toronto

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Ronald Nobrega is a partner in the Firm's Taxation Group. Ron practises in all areas of income tax, including corporate finance, mergers and acquisitions, reorganizations, joint ventures, divestitures and international transactions.

### Areas of Practice

Taxation

Cross-Border and International Transactions

Investment Products & Wealth Management

Joint Ventures

Private Equity

Project Finance

Securitization and Asset-Based Finance

Securities and Mergers & Acquisitions

### Education

LLB,  
University of Toronto, 1992

B Comm (Hons),  
Queen's University, 1989

### Year of Call

Ontario, 1994

### Representative Experience

- *Lending syndicate provides \$1 billion in financing to Yellow Media*  
Advised the lending syndicate
- *ArcelorMittal Dofasco divests minority interest in Wabush Mines*  
Advised ArcelorMittal Dofasco
- *Open Link acquires dbc SMARTsoftware*  
Advised Open Link Financial, Inc.
- *Great Basin Gold closes \$126.5 million bought deal public offering of convertible debentures*  
Advised the syndicate of underwriters led by RBC Capital Markets
- *CCMP Capital stalking horse bidder in Eddie Bauer bankruptcy*  
Advised CCMP Capital Advisors
- *Great Basin Gold completes \$149.5 million equity financing*  
Advised the underwriters led by BMO Capital Markets and RBC Capital Markets
- *Western Financial Group and Bank West acquire AgriFinancial Canada*  
Advised Western Financial Group
- *MMFX Technologies completes institutional funding*  
Advised MMFX Technologies Corporation
- *FrontFour Holdings acquires 44.5% of units of IAT Air Cargo Facilities Income Fund*  
Advised FrontFour Capital Group LLC
- *Skye Resources and HudBay Minerals complete \$460 million business combination*  
Advised Skye Resources Inc.
- *Klöckner sells Canadian subsidiary Namasco to Samuel, Son & Co.*  
Advised Klöckner & Co and Namasco Ltd.
- *First Quantum Minerals completes \$281 million acquisition of Scandinavian Minerals*  
Advised First Quantum Minerals Ltd.
- *Adanac closes \$80 million bridge financing for Ruby Creek Project*
- *AEA Mezzanine Fund provides mezzanine debt to Kohlberg & Co. to assist in funding its US\$200 million acquisition of Nike's Bauer Hockey subsidiary*  
Advised AEA Mezzanine Fund

- *Parker Hannifin Corporation acquires Vansco Electronics*  
Advised Parker Hannifin Corporation
- *Yildiz Holding A.S purchases Godiva Chocolatier business from Campbell Soup for US\$850 million*  
Advising Yildiz Holding A.S.
- *North Castle Partners acquires World Health Club*  
Advised North Castle Partners
- *NewPage buys North American paper operations of Stora Enso in US\$2.5 billion deal*  
Advised NewPage on the Canadian aspects of this transaction
- *Consortium including Nautilus Renewables invests in North American renewable energy partnership*  
Advised Nautilus Renewables LLC
- *FUJIFILM Canada sells Black's Photography*  
Advised FUJIFILM Canada Inc.
- *BluMont Augen Limited Partnership 2007-1 completes \$16 million flow-through offering*  
Advised BluMont Capital
- *International Automotive Components completes Collins & Aikman soft trim acquisition*  
Advised International Automotive Components Group North America
- *Craig Wireless Systems completes qualifying transaction and \$40 million private placement*  
Advised SSQ Acquisitions Inc.
- *Apax Partners takes minority stake in SMART Technologies*  
Advised Apax Partners
- *Harris Interactive acquires Decima Research*  
Advised Harris Interactive
- *Gold Reserve closes concurrent US\$183.3 million cross-border public offerings*  
Advised Gold Reserve Inc.
- *MDS completes \$500 million issuer bid*  
Advised MDS Inc.
- *Mercator Minerals completes \$162 million in two financings*  
Advised the syndicate of agents led by Jennings Capital Inc.
- *Addax Petroleum closes \$402 million public offering*  
Advised Addax Petroleum Corporation in closing its \$402 million public offering
- *Acquisition of ethanol production facilities, manufacturers and telephone directory businesses*  
Advised various private equity funds
- *Offerings of income funds and income securities products*  
Represented issuers and underwriters

## **Presentations**

- Income Tax Aspects of Shareholder Agreements, Law Society of Upper Canada, October 2006

## **Publications**

- "Tax Measures in Budget 2010", Taxation Bulletin, March 5, 2010
- "Partnership Financings and the Subparagraph 212(1)(b)(vii) Exemption", CCH International Tax Newsletter, December, 2004
- "Foreign Affiliate Share and Asset Sales", CCH International Tax Newsletter, February, 2003

### **Memberships and Affiliations**

- Member, Ontario Bar Association (Taxation section)
- Member, Canadian Tax Foundation
- Member, International Fiscal Association



## Mitchell L. Thaw

*Partner*

### Toronto

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[www.fasken.com/mitchell-thaw](http://www.fasken.com/mitchell-thaw)

Mitchell Thaw is a partner in the firm's Taxation group with extensive experience in a diverse range of income tax matters including: investment funds, mergers and acquisitions, corporate reorganizations, cross-border transactions and estate planning. He is the author of Canada's first text on the taxation of mutual fund trusts and corporations and he has worked on over 40 transactions that have been listed in LEXPERT's Big Deals and Suits.

### Areas of Practice

Taxation

Investment Products & Wealth Management

### Education

BSc,  
McGill University, 1988

LLB,  
Osgoode Hall Law School at  
York University, 1994

### Year of Call

Ontario, 1996

### Representative Experience

- *Romarco Minerals completes \$120 million financing*  
Advised the underwriters led by BMO Nesbitt Burns Inc. and Paradigm Capital Inc.
- *MINT Income Fund closes \$134 million exchange and cash offering*  
Advised MINT Income Fund and its manager, Middlefield Limited
- *Timbercreek closes \$28.75 million offering of Class A Shares*  
Advised the syndicate of agents led by Raymond James Ltd.
- *International Royalty valued at \$700 million in arrangement agreement with Royal Gold*  
Advised International Royalty Corporation
- *UnoMobi acquired by Multiplied Media*  
Advised UnoMobi Inc.
- *Horizons AlphaPro launches three new actively managed ETFs*  
Advised AlphaPro Management Inc.
- *Horizons AlphaPro S&P/TSX 60 130/30(TM) ETF launched - The first of its kind in Canada*  
Advised AlphaPro Management Inc.
- *Uruguay Mineral Exploration and Fortune Valley Resources complete plan of arrangement*  
Advised Uruguay Mineral Exploration Inc.
- *Ridgewood Canadian Investment Grade Bond Fund closes \$52.4 million IPO*  
Advised the Fund
- *Horizons AlphaPro Income Plus Fund closes \$29.5 million IPO*  
Advised AlphaPro Management Inc.
- *XATA acquires Turnpike Global*  
Advised XATA Corporation
- *Creststreet 2009 Limited Partnership completes flow-through fund offering*  
Advised the syndicate of investment dealers led by Scotia Capital Inc.
- *Discovery 2009 Flow-Through Limited Partnership closes IPO of Units*  
Advised Discovery 2009 Flow-Through Limited Partnership and its manager, Middlefield Fund

Management Limited in closing its initial public offering of units.

- *Horizons AlphaPro Seasonal Rotation ETF launched*  
Advised AlphaPro Management Inc.
- *Horizons AlphaPro Gartman Fund completes conversion into ETF*  
Advised AlphaPro Management Inc.
- *Purepoint Uranium completes flow-through financing*  
Advised Purepoint Uranium Group Inc.
- *Uranium Focused Energy Fund raises \$25.4 million in rights offering*  
Advised Uranium Focused Energy Fund Fund and Middlefield Fund Management Limited
- *CHIP Mortgage Trust closes \$150 million sale of floating rate medium term notes*  
Advised CHIP Mortgage Trust
- *International Power acquires Canadian wind farm developer AIM PowerGen*  
Advised International Power
- *Northland Power Income Fund closes \$161 million offering of trust units and convertible debentures*  
Advised the underwriters led by CIBC World Markets
- *FCI sells North American-based electrical division to Hubbell for US\$360 million*  
Advised FCI S.A.
- *Alliance Grain Traders Income Fund completes \$104 million transformational acquisition and conversion from income trust to corporation*  
Advised Alliance Grain Traders Inc.
- *TD Bank completes \$750 million offering of TD Capital Trust IV Notes - Series 3*  
Advised the underwriters led by TD Securities Inc.
- *Alliance Grain Traders Income Fund completes \$99 million public offering*  
Advised Alliance Grain Traders Income Fund
- *Northland Power Income Fund merges with Northland Power Inc.*  
Advised the Independent Trustees of Northland Power Income Fund
- *BetaPro Management launches 6 commodity-based Horizons BetaPro ETFs*  
Advised BetaPro Management Inc.,
- *Banro closes \$100 million common share offering*  
Advised the underwriters co-led by GMP Securities L.P. and CIBC World Markets Inc.
- *Inmet Mining closes \$348 million equity bought deal*  
Advised the underwriters led by Credit Suisse Securities (Canada), Inc. and CIBC World Markets Inc.
- *Addax Petroleum agrees to \$8.3 billion acquisition by Sinopec Group, the largest acquisition ever by a Chinese, state-owned company*  
Advised Addax Petroleum Corporation
- *Ornge Issuer Trust completes \$275 million debenture offering*  
Advised Ornge Issuer Trust
- *TD Bank completes \$350 million preferred share issue, Series AK*  
Advised the underwriters led by TD Securities Inc.
- *Horizons AlphaPro Gartman Fund closes \$55 million IPO*  
Advised AlphaPro Management Inc.
- *Simmer & Jack Mines completes \$90 million secondary offering of shares of First Uranium*

Advised Simmer & Jack Mines, Limited and First Uranium Corporation

- *TD Bank completes \$275 million preferred share issue, Series AI*  
Advised the underwriters led by TD Securities Inc.
- *Western Financial Group and Bank West acquire AgriFinancial Canada*  
Advised Western Financial Group
- *TD Bank completes \$375 million preferred share issue, Series AG*  
Advised the underwriters led by TD Securities Inc.
- *TD Bank completes \$1 billion public offering of innovative Tier 1 capital, TD CaTS IV*  
Advised the underwriters led by TD Securities Inc.
- *Asset Backed Commercial Paper market restructuring*  
Advised the Issuer Trustees/Debtors and one Sponsor
- *Med-Emerg and AIM Health Group complete merger*  
Advised Med-Emerg International Inc.
- *TD Bank completes \$300 million preferred share issue, Series AE*  
Advised the underwriters led by TD Securities Inc.
- *MINT Income Fund raises \$27.4 million in rights offering*  
Advised MINT Income Fund and its manager, Middlefield Fund Management Limited
- *TD Bank completes \$1.4 billion common share offering*  
Advised the underwriters led by TD Securities Inc.
- *TD Bank completes \$220 million preferred share issue, Series AC*  
Advised the underwriters led by TD Securities Inc.
- *TD Bank Financial Group completes \$1 billion public offering of innovative Tier 1 Capital*  
Advised the underwriters led by TD Securities Inc.
- *TD Bank completes \$250 million preferred share issue, Series AA*  
Advised the underwriters led by TD Securities Inc.
- *Lift Technologies sold to Calvi Holding*  
Advised Calvi Holding Srl
- *C.H. Robinson Worldwide acquires Transera International*  
Advised C.H. Robinson Worldwide, Inc.
- *TD Bank completes \$250 million preferred share issue, Series Y*  
Advised the underwriters led by TD Securities Inc.
- *Retrocom Mid-Market REIT completes property acquisitions valued at approximately \$55 million*  
Advised Retrocom Mid-Market Real Estate Investment Trust
- *Timbercreek Mortgage Investment Corporation closes IPO of subscription receipts*  
Advised a syndicate of agents, co-led by Manulife Securities International Limited and Raymond James Ltd.
- *TD Bank issues \$1.025 billion of medium term notes*  
Advised the dealer syndicate led by TD Securities Inc.
- *Travelzest acquires The Cruise Professionals for \$13 million*  
Advised Travelzest plc
- *First Quantum Minerals completes \$281 million acquisition of Scandinavian Minerals*  
Advised First Quantum Minerals Ltd.
- *BetaPro Management launches 10 additional Horizons BetaPro ETFs*

Advised BetaPro Management Inc.

- *TD Bank completes \$250 million preferred share issue, Series S*  
Advised the underwriters led by TD Securities Inc.
- *Private Chilean company sells water rights to Andina Minerals*  
Advised Inversiones y Asesorias en Recursos Hidricos S.A.
- *Home Equity Income Trust subsidiary issues \$165 million of senior medium term notes*  
Advised Home Equity Income Trust and CHIP Mortgage Trust
- *Andean Resources closes \$40 million bought deal financing*  
Advised the underwriters led by BMO Capital Markets
- *TD Bank issues \$500 million of medium term notes*  
Advised the syndicate of dealers led by TD Securities Inc.
- *YieldPlus Income Fund raises \$113 million in rights offering*  
Advised YieldPlus Income Fund and Middlefield Fund Management Limited
- *Ascendant Copper Corporation acquires St. Geneviève Resources*  
Advised Ascendant Copper Corporation
- *The Bank of Nova Scotia completes \$345 million preferred share offering*  
Advised the syndicate of underwriters led by Scotia Capital Inc.
- *TD Bank completes \$250 million preferred share issue, Series R*  
Advised the underwriters led by TD Securities
- *Creststreet completes initial closing of 2008 flow-through fund offering*  
Advised syndicate of investment dealers led by Scotia Capital Inc., BMO Nesbitt Burns Inc. and CIBC World Markets Inc.
- *BluMont Augen Limited Partnership 2008 completes initial closing of flow-through offering*  
Advised BluMont Capital Corporation
- *TD Bank completes \$200 million preferred share issue*  
Advised the underwriters led by TD Securities
- *Group DKG acquires Precisioneering*  
Advised Group DKG Corp.
- *Key Brand Entertainment acquires Live Nation's North American Theatrical Company*  
Advised Key Brand Entertainment
- *BetaPro Management launches additional Horizons BetaPro ETFs*  
Advised BetaPro Management
- *MINT Income Fund raises \$45 million in rights offering*  
Advised MINT Income Fund
- *Uranium Focused Energy Fund closes offering of units with warrants*  
Advised Uranium Focused Energy Fund
- *Home Equity Income Trust files equity and medium term note short form base shelf prospectuses*  
Advised Home Equity Income Trust
- *TD Bank completes \$250 million preferred share issue*  
Advised underwriting syndicate led by TD Securities Inc.
- *TD Bank issues \$2.5 billion of medium term notes*  
Advised agency syndicate led by TD Securities
- *BluMont Augen Limited Partnership 2007-1 completes \$16 million flow-through offering*

Advised BluMont Capital

- *NovaBay Pharmaceuticals closes US\$20 million IPO*  
Advised NovaBay Pharmaceuticals, Inc.
- *ACTIVEnergy Income Fund merges with ALBERTA Focused Income & Growth Fund*  
Advised Middlefield Group
- *Home Equity Income Trust subsidiary issues medium term notes*  
Advised CHIP Mortgage Trust
- *YIELDPLUS Income Fund completes merger of funds*  
Advised Middlefield Group on merger of YIELDPLUS Income Fund with four other funds.
- *Magna announces completion of substantial issuer bid totalling US\$1.1 billion*  
Advised Magna International Inc. (Special Committee of the Board of Directors)
- *United Group completes US\$408 million acquisition of UNICCO*  
Advised United Group Limited
- *Magna completes US\$1.54 billion transaction involving Russian Machines*  
Advised the Special Committee of the Board of Directors of Magna
- *Uranium One acquires Energy Metals for \$1.9 billion*  
Advised Uranium One
- *OilSands Canada Corporation closes \$50 million IPO*  
Advised Middlefield Group
- *TD Bank issues \$1.8 billion of Reset Medium Term Notes*  
Acted for the agency syndicate led by TD Securities Inc.
- *Providence Equity Partners acquires Decision Resources*  
Canadian counsel to Providence Equity Partners
- *Creststreet completes closing of its 2007 flow-through offering raising \$58 million*  
Advised the syndicate of investment dealers led by Scotia Capital Inc.
- *Hitachi and GE Energy forge global alliance in nuclear industry*  
Advised Hitachi, Ltd.
- *US private equity firm buys majority interest in Canadian menswear retailer Grafton-Fraser*  
Advised Grafton-Fraser Inc.
- *Smiths Group completes US\$4.8 billion sale of aerospace business to General Electric Company*  
Advised Smiths Group PLC
- *First Uranium completes \$150 million senior unsecured convertible debenture offering*  
Advised First Uranium Corporation
- *Gammon Lake Resources completes \$200 million public offering*  
Advised Gammon Lake Resources Inc.
- *sxr Uranium One and UrAsia Energy complete US\$5 billion business combination*  
Advised sxr Uranium One Inc.
- *Uranium Focused Energy Fund completes \$203 million IPO*  
Advised Middlefield Capital Corporation
- *Nautical Data International insolvency proceedings and sale of rights to Department of Fisheries and Oceans*  
Advised Nautical Data International, Inc.
- *Fralax Therapeutics completes initial public offering*  
Advised underwriter Westwind Partners

- *AXMIN closes \$40.4 million financing*  
Advised AXMIN Inc.
- *Silgan Holdings acquires Cousins-Currie for \$48.3 million*  
Advised Silgan Holdings Inc.
- *First Uranium completes \$203 million initial public offering*  
Advised First Uranium Corporation
- *sxr Uranium One completes \$155 million public offering*  
Advised sxr Uranium One Inc.
- *TD Bank completes \$2.25 billion issue of subordinated reset medium term notes, the largest ever corporate finance transaction in Canada*  
Represented the underwriting syndicate led by TD Securities Inc.
- *Horizon Total Return Fund raises \$38 million in IPO*  
Advised Middlefield Capital Corporation
- *Travelzest acquires iTravel2000.com for \$51.5 million*  
Acted for Travelzest plc in Canada
- *HMSHost Corporation acquires Cara Operations' Airport Terminal Restaurant Division for \$62 million*  
Advised Host International of Canada
- *Cansult merges with AECOM's Maunsell operating company to create Cansult Maunsell*  
Advised Cansult
- *Nettec acquires Newfound Group in reverse takeover for up to £95 million*  
Advised the Newfound Group
- *Hilton Canada sells last five Canadian hotels for \$243 million*  
Advised Hilton Canada Co.
- *Park Lawn Company creates income trust*  
Advised Park Lawn Company Limited
- *Bell Globemedia acquires CHUM*  
Advised CHUM Limited
- *Addax Petroleum acquires business of Pan-Ocean Energy for \$1.6 billion*  
Advised Addax Petroleum Corporation
- *Vision Capital acquires businesses of AEA Technology plc for up to £76.4 million*  
Acted for Vision Capital Limited
- *Creststreet 2006 (II) Limited Partnership completes \$40 million initial public offering*  
Advised the syndicate of investment dealers led by Scotia Capital Inc., BMO Nesbitt Burns Inc., CIBC World Markets Inc. and RBC Capital Markets
- *Addax Petroleum closes \$402 million public offering*  
Advised Addax Petroleum Corporation in closing its \$402 million public offering
- *Gammon Lake Resources and Mexgold Resources complete \$1.6 billion business combination*  
Advised Gammon Lake Resources Inc.
- *Xap Corporation acquires Bridges Transitions*  
Advised Xap Corporation
- *MINT Income Fund rights offering fully subscribed*  
Advised MINT Income Fund

- *Middlefield Canadian Income Trusts Investment Company PCC closes £55 million offering in the UK*  
Advised Middlefield Canadian Income Trusts - GBP PC
- *GMP Capital Trust completes EdgeStone acquisition for \$155.4 million*  
Advised GMP Capital Trust
- *QuStream completes \$10 million bought deal offering*  
Advised the underwriting syndicate
- *First Quantum acquires Adastra for \$275 million*  
Advised First Quantum Minerals Ltd.
- *TD Bank issues \$500 million of MTNs*  
Represented the syndicate of dealers led by TD Securities Inc.
- *Alberta Focused Income & Growth Fund completes \$69 million IPO*  
Advised Alberta Focused Income & Growth Fund
- *Open Energy acquires Solar Roofing Systems for \$18.5 million*  
Advised the shareholders of Solar Roofing Systems Inc.
- *Stone 2006 Flow-Through Limited Partnership raises \$31.8 million in initial public offering*  
Advised the securities dealers led by Scotia Capital Inc. and Wellington West Capital Inc.
- *Celtic Minerals completes private placement*  
Advised Jennings Capital Inc.
- *Morse Automotive sells Gunn Metal Stampings to Qualitor*  
Advised Morse Automotive Corporation
- *Canadian General Investments completes \$75 million public offering*  
Advised the syndicate of investment dealers led by Scotia Capital Inc.
- *Creststreet 2006 Limited Partnership completes \$40 million initial public offering*  
Advised the syndicate of investment dealers co-led by Scotia Capital Inc., BMO Nesbitt Burns Inc. and CIBC World Markets Inc.
- *CHIP Mortgage Trust files short-form base shelf prospectus in respect of \$600 million of medium term notes and completes offerings*  
Advised CHIP Mortgage Trust and Home Equity Income Trust
- *MG Dividend & Income Fund completes \$120 million IPO*  
Advised MG Dividend & Income Fund
- *Ipsos-Reid acquires Camelford Graham*  
Advised Ipsos-Reid
- *Golden Star Resources completes \$88 million bought deal financing*  
Advised Golden Star Resources Ltd.
- *Golden Star Resources completes \$135 million acquisition of St. Jude Resources*  
Advised Golden Star Resources Ltd.
- *Trans-Northern Pipelines completes \$135 million offering*  
Advised Trans-Northern Pipelines Inc.
- *Brookfield Consortium acquires O&Y Properties and O&Y REIT for \$2.1 billion*  
Advised O&Y Properties Corp.
- *Medical Capital Holdings acquires Specialty Board Games in Canadian exchangeable share transaction*

Advised Medical Capital Holdings, Inc.

- *Retrocom Mid-Market REIT acquires property portfolio for \$182 million*  
Represented Retrocom Mid-Market REIT
- *Core IncomePlus Fund completes \$275 million IPO*  
Advised Core IncomePlus Fund
- *First Trust/Highland Capital Floating Rate Income Fund II completes \$85 million IPO and First Trust/Highland Capital Senior Loan Trust closes related \$85 million revolving credit facility*  
Advised First Trust/Highland Capital Floating Rate Income Fund II
- *IGN Entertainment, Inc. acquires "www.AskMen.com"*  
Advised IGN Entertainment, Inc. (part of the Fox Interactive Media portfolio)
- *First Trust/Highland Capital Floating Rate Income Fund completes \$185 million IPO and closes related \$185 million revolving credit facility*  
Advised First Trust/Highland Capital Floating Rate Income Fund
- *Ford Credit Canada files \$6 billion prospectus and renews \$6 billion MTN program*  
Advised Ford Credit Canada Limited and Ford Motor Credit Company
- *CHUM completes \$265 million purchase of Craig Media and financing*  
Advised CHUM Limited
- *ACTIVEnergy Income Fund completes \$290 million IPO and establishes \$90 million loan facility*  
Advised ACTIVEnergy Income Fund and Middlefield Capital Corporation
- *YIELDPLUS Income Fund completes \$220 million IPO and establishes \$70 million loan facility*  
Advised YIELDPLUS Income Fund and Middlefield Securities Limited
- *Scotiabank provides credit facilities to Borealis Capital and Kilmer Capital Partners to assist in financing their acquisition of Vansco Electronics*  
Advised the Bank of Nova Scotia
- *Cable operator Persona Inc. acquired for \$406 million by consortium of Canadian and U.S. private equity groups*  
Advised Hicks, Muse, Tate & Furst Incorporated and Canadian Cable Acquisition Company Inc.
- *Home Equity Income Trust files shelf prospectus and completes offering*  
Advised Home Equity Income Trust
- *Retrocom Mid-Market REIT completes \$118 million IPO*  
Advised Retrocom Mid-Market REIT
- *STRATA Income Fund closes \$214 million IPO*  
Advised STRATA Income Fund and Middlefield Securities Limited
- *Industrial Alliance acquires Co-operators Mutual Funds*  
Advised The Co-operators Group Limited
- *TD Bank \$1 billion debt offering largest in Canadian history*  
Acted for the syndicate of dealers consisting of TD Securities, Scotia Capital, RBC Dominion Securities, BMO Nesbitt Burns, CIBC World Markets, National Bank Financial, HSBC Securities (Canada), Merrill Lynch Canada, Desjardins Securities and Trilon Securities
- *INDEXPLUS INCOME FUND closes \$345 million IPO*  
Advised INDEXPLUS Income Fund and Middlefield Securities Limited
- *O&Y Real Estate Investment Trust completes \$75.5 million offering*  
Advised O&Y Real Estate Investment Trust
- *CHUM completes \$109 million offering of non-voting Class B shares*

Advised CHUM Limited

- *MAXIN Income Fund completes \$83.8 million IPO*  
Advised MAXIN Income Fund and Middlefield Securities Limited
- *Energizer Holdings completes purchase of Schick-Wilkinson Sword for US\$930 million*  
Advised Energizer Canada Inc.
- *Kerry (Canada) acquires Metarom Canada*  
Advised Kerry (Canada) Inc.
- *Manulife Investments launches the MIX funds*  
Advised Manulife Mutual Funds
- *Kerry (Canada) acquires Rector Foods Group*  
Advised Kerry (Canada) Inc.
- *AT&T Corp. completes \$5.5 billion "back-end" acquisition*  
Advised AT&T Corp.
- *Clearwater Seafoods Income Fund completes \$211 million IPO*  
Advised the underwriting syndicate and the lenders, The Bank of Nova Scotia and Islandsbanki hf.
- *Karthika Technologies acquired by Kasten Chase Applied Research*  
Acted for Karthika Technologies, Inc.
- *ING Canada acquires insurance business from Zurich North America Canada*  
Advised ING Canada
- *Du Pont Canada Inc. v. Canada, 2001 FCA 114 (CanLII)*  
[Du Pont Canada Inc. v. Canada, 2001 FCA 114 \(CanLII\)](#)

On April 12, 2001, the Federal Court of Appeal released its decision in *DuPont Canada Inc. v. The Queen*. At issue was whether the explosive operation of DuPont which was sold in 1988 constituted a separate business of DuPont. If the operation were a separate business then DuPont was required to maintain the depreciable assets and eligible capital expenditures of the operation in classes separate from DuPont's other assets and eligible capital expenditures. If separate classes were required to be maintained, the 1988 sale would have resulted in an additional income inclusion of approximately \$24 million in respect of recaptured depreciation and eligible capital expenditures.

The FCA overturned the decision of the Tax Court of Canada and held that the explosive operation was not a separate business. Among other things, the FCA appreciated the significance of the evidence on the issue of DuPont's centrally provided services to its operations and the degree of DuPont's product integration particularly in the context of what is the essence of a business in today's world where activities such as advertising, the granting of credit and research and development go to the heart of the business. Leave to appeal is not being sought.

DuPont was represented in the FCA by Alan M. Schwartz, Q.C., Jeffrey Leon and Mitchell Thaw all of the Toronto office of Fasken Martineau.

- *John Hancock Mutual Insurance purchases Aetna Life Insurance Company of Canada for \$432 million*  
Advised Aetna Life Insurance Company (U.S.)

## Presentations

- Federated Press's 12th Taxation of Corporate Reorganization Conference, January 9-11, 2008
- Income Tax Aspects of Shareholder Agreements, Authored and presented by Mitchell Thaw, Law Society of Upper Canada, CLE programme, September 2002, September 2002

- Federated Press Conferences 2002-2006, 2002-2006
- CITE Conference: Doing Business in Canada, May 1, 2001

### **Publications**

- "US Pension and Endowment Funds", Investing In Canada Bulletin, March 26, 2010
- "Tax Measures in Budget 2010", Taxation Bulletin, March 5, 2010
- "Canadian Federal Government Announces New Taxes on Income Trusts and Other Public Flow Through Entities", Tax, Securities and Investment Funds Alert by Mitchell Thaw, Kathleen Hanly, Stephen Erlichman, Frank S. Schober, Gilles Carli and Jim Lisson, November 2006
- "Takeovers and Tax Issues", by Alan M. Schwarz and Mitchel Thaw, January 2006
- "Taxation of Mutual Fund Trusts and Corporations in Canada", Author, Carswell, 2006
- "Income Trusts: Canadian Government Proposes to Reduce Taxes on Corporate Dividends to Level Playing Field", Tax and Investment Funds Alert by James Lisson, Stephen Erlichman and Mitchell Thaw, November 2005
- "Takeovers and Tax Issues", by Alan M. Schwartz and Mitchell Thaw, January 2005
- "Manitoba Provincial Tax Changes", Taxation Law Bulletin by David Douglas Robertson and Mitchell L. Thaw, April 2004
- "Withholding Rates Under Article X of Canada-U.S. Tax Treaty: Ownership Test and 'Voting Stock' Examined", by Mitchell L. Thaw, October 2002
- "Preliminary Results of CCRA Review of Interest Deductibility Study Announced - Mostly Good News for the Taxpayer", Taxation Law Bulletin by Elizabeth J. Johnson and Mitchell L. Thaw, October 2002
- "Income Tax Aspects of Shareholder Agreements", by Mitchell L. Thaw, September 2002
- "New Canada-Italy Tax Treaty Signed", Taxation Law Bulletin by Kathleen S. M. Hanly and Mitchell L. Thaw, June 2002
- "New Canada-Germany Tax Treaty in Force", Taxation Law Bulletin by Kathleen S. M. Hanly and Mitchell L. Thaw, April 2002
- "Canada's New Foreign Spin-off Rules", by Douglas A. Cannon and Mitchell L. Thaw, February 2002
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- "Taxation of Intellectual Property in Canada", Author, presentation to CITE conference on "Doing Business in Canada", Chicago, May 2001

### **Memberships and Affiliations**

- Member, International Fiscal Association
- Member, Canadian Bar Association
- Member, Canadian Tax Foundation
- Member, Taxation Working Group, The Investment Funds Institute of Canada (2003 - 2005)