Our lawyers have appeared before all levels of courts and administrative tribunals in Canada, bringing to each case a practical and thorough knowledge of litigation, mediation and arbitration strategies, tactics and procedures. Our work has resulted in hundreds of reported decisions from provincial trial and appeal courts, the Federal Court, the Tax Court and the Supreme Court of Canada, and we have significant experience in private arbitrations and mediations including ICC and AAA arbitrations.

The disputes in which we act are as diverse as the clients whom we represent. From shareholder disputes, loan enforcement, breach of contract and bankruptcy litigation to libel and slander, professional negligence and energy co-ownership and royalty disputes, we bring extensive industry knowledge and finely honed advocacy skills to each file. We have represented clients in many precedent-setting landmark cases. For example, we recently acted for the senior bondholders of Stelco Inc. in connection with Stelco’s reorganization under the Companies’ Creditors Arrangement Act (Canada) and the Canada Business Corporations Act, and for Hollinger International and the Special Committee of Hollinger International in connection with a proceeding before the Ontario Securities Commission opposing the privatization of Hollinger Inc.

For us, teamwork is key. We work closely with colleagues throughout the firm to provide the background and resources required for each client’s needs, also tapping the resources of external experts such as accountants, forensic investigators, valuators and other consultants when necessary. Organizational skills are critical to the success of any claim, so our capabilities include expert document management, the judicious yet efficient use of cutting-edge courtroom technology, and the implementation of effective communications strategies to help clients win both in the traditional courts and in the court of public opinion.

Select Experience

- **Calgary Police Service**, with their Freedom of Information and Protection of Privacy (FOIP) Act matters, including appearing before the Office of the Information and Privacy Commissioner of Alberta’s office on breach and notification matters, as well as before the courts.

- **Citimark Group**, in the acquisition of a partnership interest in the developer of a 36-storey residential tower in the Metrotown area of Burnaby, B.C., and ongoing development advice to Citimark Group in the development, marketing and sales of the project and development units.

- The special committee of **Holloway Lodging Corporation**, in the acquisition by Clarke Inc. of all of the issued and outstanding common shares of Holloway that it does not currently own by way of statutory plan of arrangement.

- **ECI Software Solutions Inc.**, in its acquisition of Office Document Consulting Inc. (ODC).

- **Akvatech AS**, in the successful defence of an application seeking to invalidate a license granting intellectual property rights.

- An Intervenor at the Supreme Court of Canada in TELUS Communications Inc. v. Wellman on arbitration and class actions.

- **Precision Castparts Corp.**, seeking to recover US$60 million as part of a post-closing dispute over the US$560-million purchase of an aerospace parts company and an undisclosed accounting fraud.

- Canadian counsel to **Conagra Brands, Inc.**, in its $10-9 billion acquisition of Pinnacle Foods Inc.

- A commercial land developer, in a successful action for inducing breach of contract against the principal of a corporate defendant in the absence of justification for breaking the corporate defendant’s contractual commitments. 2007 ABQB 642
A commercial real estate owner, in appeal proceedings successfully upholding the dismissal of an action for the sale of land voided by mutual mistake. 2003 ABCA 221

A commercial real estate owner, in the successful interpretation of a Purchase and Sale Agreement made “subject to vendor’s lawyer’s approval”, leading to the discharge of purchaser’s contract and CLP.

A contractor in resisting an application for an interlocutory injunction premised, among other things, upon a non-competition agreement. Altam Holdings Ltd v Lazette, 2009 ABQB 458; 2009 ABQB 521

A large oil and gas exploration and production company, in a recent complex litigation matter involving a freehold lessor, the termination of a petroleum and natural gas lease and the lessor’s entitlement to damages.

A large group of investors in an alleged Ponzi-type ticket brokering scheme, including the obtaining of orders for pre-judgment locating and freezing of assets and other extraordinary relief. 2009 ABQB 394, 2009 ABCA 141, 2008 ABQB 216, 2008 ABQB 550

A leading cement manufacturer, in successful multi-million dollar arbitration and appellate proceedings to enforce long-term contractual supply and restrictive covenant rights.

A leading chemical and technology company, in a $900-million claim against the operator of a jointly owned ethylene manufacturing facility.

A major creditor of Calpine Canada Resources Corporation, in Calpine’s Companies’ Creditors Arrangement Act (CCAA) proceedings.

A national non-profit organization, in connection with recovering funds and other property wrongfully misappropriated to form a competing organization.

A natural foods products company, in a multi-million dollar claim against a multinational food company for misuse of confidential information and breaches of product development and license agreements. 2010 ABCA 169

A petroleum producer, in a claim relating to rights of first refusal.

A private golf and country club, obtaining an order for certiorari, quashing a Municipal Government Board order and enforcing an Annexation Order with associated declaratory relief. 2006 ABQB 312

A seismic imaging company, in the successful defence of an oil and gas builder’s lien claim in the collection of speculative seismic data. 2002 ABQB 1008

A significant public corporation in relation to its right under the Canadian Association of Petroleum Landmen operating procedure against a financially distressed operator of hundreds of wells and on extensive petroleum and natural gas leases.

Acted for successful party in a multi-million-dollar expedited arbitration involving a significant recreational resort property in the interior of British Columbia with the arbitration involving a consideration of construction delay claims as well as First Nations issues.

Acting for a company in a RFP bid subject to contest.

Acting for an underwriting syndicate lead by BMO Nesbitt Burns Inc, in offering of $1,058,202,000 principal amount of credit card receivables-backed notes by Master Credit Card Trust.

Air Canada, in defence of an oppression claim and in subsequent arbitration to determine the fair value of certain of its regional connector planes.


Alliance for Marriage and Family, as intervenor in an appeal regarding parentage and equality rights. A.A. v. B.B., 2007 ONCA 2

An agricultural producer, in a successful appeal to the Alberta Agricultural Marketing Council Appeal Tribunal of a decision of the Alberta Sugar Beet Growers to cancel production quota under the Marketing of Agricultural Products Act.

An industry association of Canada’s largest brewers, in relation to a judicial review application concerning the conduct of the Beverage Container Management Board in setting fees for manufacturers in part to provide a reasonable rate of return to bottle depots. The application was successful and resulted in the establishment of a proper regulatory regime for determining this significant annual expense of all beverage manufacturers in the Province.

An oil and gas producer in relation to allegations of oppression and appropriation of corporate opportunities relating to the sale of the company.

An oilfield service company, in successful arbitration proceedings dismissing claims arising from a patent license dispute concerning certain downhole technology.

An oilfield service company, in the ongoing defence of well fracturing claims.

Approximately 850 investors in Edgeworth Mortgage Investment Corporation and related companies in an action against its directors and officers.


ATCO Midstream Ltd., in a successful application for leave to an ERCB decision to allow Keyera Energy Ltd. to expand its Rimby plant to increase production of ethane. The groups upon which leave was granted involved standing, failure to adjourn the hearing, and failure to consider the public interest.

Canadian-based international energy company, in a series of multi-million-dollar claims against an errors and omissions insurer arising in the construction of a multi-billion-dollar oil sands project; resolved through mediation.

Church entity, in the Indian Residential School litigation.

Commissioner of Competition, in litigation relating to the Labatt/Lakeport beer merger.

Community Legal Clinic, Simcoe, Haliburton and Kawartha Lakes, as counsel to the Clinic, in an application challenging the sponsorship undertaking required by the Immigration and Refugee Protection Act.

Community residents at the Ontario Municipal Board in the successful opposition of an unprecedented $3.2 million costs claim. Kimvar Enterprises Inc. v. Innisfil (Town) 2009 O.M.B.D. No. 33

Conakry Holdings Ltd., as successful respondent in an application by a minority shareholder alleging oppression pursuant to the Ontario Business Corporations Act.

Consulting engineer, in multi-party litigation and mediation proceedings arising in the construction of a large housing development.

Counsel for proposed representative plaintiffs in a class action relating to an alleged Ponzi scheme alleged to have received in excess of $100 million from Albertan and Canadian investors. In this regard, have obtained Receivership Orders against the key companies and Attachment Orders freezing the assets of alleged key defendants.

Defence of a claim for in excess of $20 million under a product supply agreement.


Extendicare Real Estate Investment Trust, in its conversion from an income trust structure to a corporate structure by way of a plan of arrangement.

Health Care Property Investors Inc., in its $1.4-billion offer to acquire all of the outstanding units of Sunrise Senior Living Real Estate Investment...
Trust.


- **Hollinger International and the Special Committee of Hollinger International**, before the Ontario Securities Commission in its successful opposition to Ravelston’s effort to privatize Hollinger Inc. Representation of Hollinger International in Ravelston’s ensuing insolvency proceedings.

- **Hotspex Inc.**, as successful moving party for an interlocutory order to search departing employees’ computers for confidential information. *Hotspex Inc. v. Edwards* (2012), 95 CCEL (3d) 313, 2011 ONSC 3837

- **ICE**, in obtaining an Anton Pillar private search warrant resulting in the prosecution, conviction, and deportation of a U.S. immigration officer and pending criminal prosecution of those with whom he dealt.

- **Informal Committee of Noteholders**, in the successful opposition of an application for leave to appeal order obtained on motion by Monitor concerning calculation of working capital adjustments: *Ivaco Inc. (Re)* 2007 87 O.R. (3d) 561.

- **International construction contractor**, in court proceedings advancing a multi-million dollar claim arising out of the design and construction of a magnesium oxide plant in Jordan.

- **International energy company**, in a series of UNCITRAL arbitration proceedings relating to multiple multi-million dollar disputes arising out of the ownership and operation of a gas field in the Caspian Sea.

- **Joint venture partner**, in ICC arbitration proceedings relating to the ownership and operation of an oilfield in Asia.

- **Leading global well service companies**, in the defence of claims arising from fracturing and related oilfield applications.

- **Linda J. Court**, in acting on behalf of local resident and, successfully judicially reviewing a decision of the Alberta Environment permitting the construction of a gravel pit south of Calgary causing a re-hearing on various environmental issues.

- **Manulife Securities Investment Services Inc.**, as representative plaintiff in an action commenced against Societe Generale pursuant to the *Class Proceedings Act, 1992* in relation to losses suffered by investors in the Portus group of companies, entered into a settlement agreement in November 2008. That settlement agreement, which calls for payments of approximately $478 million to investors in the plaintiff class, was approved by the Ontario Superior Court on December 18, 2008.

- **Middlefield Group**, in the successful defence of a $190-million claim in relation to a limited partnership.

- **NAL Oil & Gas Trust**, in its $400-million acquisition of Breaker Energy Ltd.

- **National energy company**, in defending a claim by a works contractor arising in the construction of a multi-billion-dollar oil sands project.

- **National energy company**, in defending a multi-million-dollar delay and lost productivity claim by a works contractor arising in connection with the construction of a multi-billion-dollar oil sands project.

- **National equipment company**, in a claim for passing off and wrongful use of business name and logo.

- **Nordion Inc.**, in the due diligence aspects of its US$826M acquisition by Sterigenics relating to an investigation by Canadian and US regulatory authorities. Sterigenics is a portfolio company of GTCR LLC, a leading Chicago-based private equity firm.

- One of Calgary’s largest firm of realtors in relation to a significant fraud by its in house accountant, including the tracing of assets, the result of which was the repayment of most of the money taken.

- One of the former auditors of Livent in the successful defence of disciplinary proceedings before the Institute of Chartered Accountants of Ontario.

- **Paramount Energy Trust**, in a decision made by a panel of the Alberta Securities Commission *Re: Arc Equity Management (Fund 4) Ltd.*
Paramount Resources Limited, in successfully resolving an arbitration between Paramount Resources Limited and Elizabeth Metis Settlement with respect to land access and lease payments to land governed by the Metis Settlement Act.

Pipeline company, in defending a delay and lost productivity claim arising in the construction of an oil and gas pipeline.

PricewaterhouseCoopers Inc., as Monitor of Poseidon Concepts Corp. in its cross-border Companies Creditors’ Arrangement Act (“CCAA”) proceedings, including in its Court sanctioned role of taking proceedings against Poseidon’s directors and auditors to recover additional funds for the estate.

Pro Bono Law Ontario, as counsel in the Supreme Court of Canada’s decision in Hinse v Canada (Attorney General) on the issue of indemnification for legal costs in private pro bono litigation. Hinse v Canada (Attorney General).

Re Canadian Jones Limited (1992), 15 OSCB 257 (Ont.Sec. Comm. - takeover bids – defensive tactics)

Health institution in response to an application for production of third party counseling records by the accused in a sexual assault case. R. v. Vant and Vant, 2010 ONSC 1055.

A major financial institution in a fraud recovery lawsuit to seek recovery of losses arising from a sophisticated cheque-kiting scheme involving the cycling of hundreds of millions of dollars in Canada and the United States – Bank of Montreal v. Mair Faibish et al.

A psychiatrist in response to an application before the Consent and Capacity Board to determine whether a patient suffering from schizophrenia and schizo affective disorder met the conditions for involuntary hospital admission under the Mental Health Act. Re: AG, 2010 CanLII 12807 (ON C.C.B.).

Citibank, N.A. in opposition to a motion brought by BlackRock Asset Management Canada Limited under the Plan of Compromise and Arrangement, which restructured the $32-billion third-party asset backed commercial paper market – Re Metcalfe & Mansfield Alternative Investments II Corp.

Research in Motion Limited, in injunctive relief sought relating to its' ultimately successful hostile takeover of Certicom Corp. Certicom Corp. v. Research In Motion Limited, 2009 CanLII 1651 (ON S.C.).

Research In Motion Limited, in its $150-million acquisition of Certicom Corp.

Resolution of over $130 million in claims in the above mentioned categories since October 2006.

Rouge Valley Health Services, as counsel in an appeal involving the fictitious payee defence under the Bills of Exchange Act. Rouge Valley Health System v. TD Canada Trust (2012), 108 OR (3d) 561, 2012 ONCA 17.

Royal Group Inc., as successful appellant overturning an order that the defendant must pay costs “thrown away” as a condition to amending its pleadings. Casboro Industries Ltd. v Royal Composites Co. (2010), 93 CPC (6th) 53, 2010 ONSC 1871.

Royal Host Inc., a diversified hospitality company, in connection with its acquisition by Holloway Lodging Corporation by way of plan of arrangement in a transaction valued at approximately $157 million on an enterprise value basis.

Sears Canada Inc., in an application for leave to commence a refusal to deal application at the Competition Tribunal.

Sears Canada Limited, in successfully coordinating and managing remediation and resolution of claims involving leaking gasoline from a Calgary service station affecting approximately 25 residences.

Several hundred Concrete Equities investors in a series of real estate investment partnerships, in BIA and CCAA proceedings including the appointment of a monitor/inspector and, ultimately, the successful exit of the partnerships from CCAA protection and their turnover to new general partners of the investors’ choosing. 2012 ABCA 58, affirming 2011 ABQB 338.

Several US-based real estate investment funds, in various ongoing proceedings to recover joint venture monies.

Sino-Forest Corporation, a commercial forest plantation operator in China formerly listed on the Toronto Stock Exchange, on all Canadian matters relating to or resulting from allegations that have been made against it and certain of its directors and officers since June, 2011.
- **Stewart McKelvey Stirling Scales**, in a multi-party securities litigation.

- **Stone Creek Properties Inc.**, in successfully concluding dispute resolution process with respect to development initiatives of Stone Creek Properties Inc.’s development rights on Kinbasket Indian Reserve lands.

- Successful appeal to the Alberta Court of Appeal with the issues of *res judicata*, issue estoppel and abuse of process. Established an important point of procedural law in respect to the re-litigation of legal issues and causes of action. *Hnatiuk v. Assured Developments Ltd.*, 2012 ABCA 97.

- Successful counsel in striking a $6.5 million constructive dismissal counterclaim, on the basis that the claim was statute-barred by the provisions of the Limitations Act, 2002. *Saltsov v. Rolnick*, 2010 ONSC 914 (Div. Ct.).

- **Sun-Times Media Group Inc.**, Chicago-based newspaper group formerly known as Hollinger International, with the various multi-jurisdictional court and regulatory proceedings against the former CEO, Ravelston Corporation Ltd., and Hollinger Inc., among others.

- **TELUS Communications Inc.**, in a two week trial resulting in the successful dismissal of a $20 million claim pursuant to a contract induced by the misrepresentation of the opposing party. 901126 Alberta Ltd. v. Telus Corporation, 2008 ABQB 46.

- **TerraPro Group Inc.**, an Alberta-based provider of environmental, terrain protection and remote access solutions, in its reorganization pursuant to a plan of arrangement and concurrent refinancing.

- The bondholders of **Rio Algom Limited.** in an oppression application against Rio Algom and Billiton plc arising out of Billiton’s 2000 takeover of Rio Algom.

- The former auditors of **Buckingham Securities** in defence of a class action claim and in defence of proceedings before the Ontario Securities Commission.

- **The Metropolitan Conference Centre**, in a successful appeal setting aside a trial decision and limiting a commercial landlord’s contractual right to reclaim premises for purposes of building redevelopment. 2005 ABCA 274.

- The representative plaintiff and court-appointed receiver in a class action involving more than 50 civilian investors and $10 million in fraudulent real estate transactions. Application brought on behalf of the insured victims of the real estate fraud who had been denied coverage. The insurer was ordered to pay more than $2 million under the terms of the policy. Simpson v. Lloyd’s Underwriters, 2008 CanLII 51771 (ON S.C.), affirmed by the Court of Appeal Simpson v. Lloyd’s Underwriters, 2009 ONCA 327.

- **Upper Lake Oil and Gas Ltd.** and **Monterey Exploration Ltd.**, in their Arrangement Agreement that will provide for a business combination between the companies. The transaction is to be undertaken pursuant to a plan of arrangement.

- Various condominium corporations and developers, in the defence of claims of “improper conduct” under section 67 of the Condominium Property Act. 2007 ABQB 640

- Various condominium corporations, in design and construction deficiency actions against developers and prime consultants.


- Various shareholder groups, in oppressed shareholder proceedings in the financial advisory services and real estate development industries. 2010 ABQB 647, 2009 ABQB 77.

- **Vector Transportation Services Inc.**, as successful respondent on an appeal of an order respecting e-discovery rights. *Vector Transportation Services Inc. v. Traffic Tech Inc.* (2008), 58 CPC (6th) 364 (Sup Ct).

- **VimpelCom Ltd.**, in its sale process and disposition of their debt and equity interests in the Globalive group of companies in Canada, including Globalive...
Wireless Management Corp. (WIND Mobile), including the forgiveness or sale of approximately $2 billion of debt owed by WIND Mobile and the sale of their equity interests in WIND Mobile for approximately $130 million.

- Viva group of companies - counsel to Citigroup, senior secured creditor, in the interim receivership and liquidation of the assets of the Viva group.

- Wachovia Capital Finance Corporation, the lender providing financing to Brake Pro Inc., as counsel, during the Companies' Creditors Arrangement Act proceedings.

- WaterFurnace, one of the market leaders in the North American geothermal heat pump heating and cooling solutions market, in its acquisition by NIBE, a leading heat pump manufacturer in Europe for $378 million by way of plan of arrangement.

- WIC Western International Communications Ltd., before the Ontario, Alberta and British Columbia Securities Commissions and in the Ontario courts in the successful defence of litigation in relation to a $1 billion takeover bid by CanWest subsidiary CW Shareholdings Inc. Representation of WIC in subsequent oppression claim by CW in the B.C. Supreme Court. Re: CW Shareholdings Inc. and WIC Western International Communications Ltd. (8 April 1998), OSC Decision, online: OSC, Re: CW Shareholdings Inc. and WIC Western International Communications Ltd. (8 April 1998), BCSC Decision, online: BCSC, Re: CW Shareholdings Inc. and WIC Western International Communications Ltd. (8 April 1998), ASC Decision, online: ASC, CW Shareholdings Inc. v. WIC Western International Communications Ltd. 39 O.R. (3d) 755


- Zwaig Associates Inc., in its dual capacity as proposal trustee and interim receiver of EnerNorth Industries Inc. in EnerNorth’s attempted restructuring under the BIA involving assets located in Canada, India and elsewhere.

Recent Recognitions

- **Chambers Canada**
  Band 1, Litigation: General Commercial: Alberta; Ranked, Litigation: General Commercial: Canada and Ontario; Litigation: Products Liability - Canada
  Ranked: Litigation: Securities - Ontario
  Ranked: Dispute Resolution: Class Action (Defence)

- **Chambers Global: The World’s Leading Lawyers for Business**
  Ranked, Band 1, Dispute Resolution: Alberta
  Ranked, Dispute Resolution: Ontario

- **The Legal 500 Canada**
  Ranked, Tier 1, Dispute Resolution: Alberta
  Ranked, Dispute Resolution: Ontario

- **The Canadian Legal Lexpert Directory**
  Most Frequently Recommended, Litigation - Corporate Commercial, Calgary
  Most Frequently Recommended, Litigation - Corporate Commercial, Toronto
  Consistently recommended, Litigation - Corporate Commercial, Edmonton

- **Benchmark Litigation**
  Alberta Law Firm of the Year, Bennett Jones
Key Contacts

David M. Hawreluk
780.917.5238
hawrelukd@bennettjones.com

Richard B. Swan
416.777.7479
swanr@bennettjones.com

Michael P. Theroux
403.298.4438
therouxm@bennettjones.com