



# Turn to Canada's leading tax team

Tax controversy and litigation

OSLER

*“Cornerstone of the Canadian tax market  
with a formidable presence in tax litigation...”*

*Chambers Global,  
Guide to the World’s Leading Business Lawyers*

## Recent industry recognition

International Tax Review: Americas Tax Awards, 2022: Canada Tax Disputes Firm of the Year

International Tax Review: Americas Tax Awards, 2016, 2018 and 2019, Osler named Canada Tax Court Firm of the Year

International Tax Review: Americas Tax Awards, 2016, 2018 and 2019, Al Meghji named Americas Tax Litigation & Disputes Practice Leader of the Year

International Tax Review: Americas Tax Awards, 2022: Impact Case of the Year for our work on *Canada v. Loblaw Financial Holdings Inc.*, which resulted in a unanimous win at the Supreme Court

International Tax Review: Americas Tax Awards, 2019 and 2020, Impact Case of the Year for our work on *Cameco Corporation v The Queen*

Benchmark Litigation Canada Awards, 2019: National Impact Case Award for our work on *Cameco Corporation v The Queen*

International Tax Review: Americas Tax Awards, 2016, 2017 and 2018, Osler named Canada Transfer Pricing Firm of the Year

International Tax Review: Americas Tax Awards, 2020: Canada Tax Firm of the Year and Americas Tax Innovator of the Year

Chambers Canada Awards, 2015, Osler wins Tax Team of the Year, the first and only time this award has been presented to a Canadian law firm

*Chambers Canada: Canada’s Leading Business Lawyers* (Band 1, Tax)

*Chambers Global: The World’s Leading Business Lawyers* (Band 1, Tax)

International Tax Review, *Tax Controversy Leaders Guide*

International Tax Review, *World Tax Guide* (Tier 1 in Tax, Transactional Tax and Tax Controversy, Canada)

International Tax Review, *World Transfer Pricing Guide* (Tier 1, Canada)

International Tax Review, *Women in Tax Leaders*

*The Canadian Legal Lexpert Directory*

*The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada*

*Lexpert Guide to the Leading US/Canada Cross-border Litigation Lawyers in Canada*

# Navigating a complex, evolving landscape

As the size and stakes of tax disputes increase, access to strategic and experienced tax law counsel is imperative in mitigating the impact of tax controversy and litigation. We work closely with our clients' business and legal teams to provide focused and strategic advice to help our clients avoid debilitating tax payments and penalties – especially in “bet the company” controversies. Our clients benefit from our considerable experience in proactively managing and resolving audit and appeal disputes with the CRA, as well as, our in-depth knowledge of the *Income Tax Act*. While we work with clients to avoid going to court whenever possible, Osler litigators have successfully represented clients in several of the most significant tax litigation cases in Canada.

Osler's strategic focus, and the depth and breadth of our experience, is invaluable to our clients. We advise on the full range of contentious tax issues including:

- Transfer pricing
- The general anti-avoidance rule in the federal and provincial context
- Resources taxation
- Computation of profit
- Goods and services tax
- Interest deductibility
- Scientific Research and Experimental Development credits
- Treaty interpretation
- Corporate reorganizations
- Corporate control
- Shareholder and employee benefits
- Deductibility of settlement payments and other types of expenses
- Foreign tax credits
- Meaning of inventory
- Residence for tax purposes
- A range of administrative and procedural tax matters (including requirement letters, access to information and privilege related issues)

# Counsel to corporate Canada on landmark and complex cases of national importance

## General anti-avoidance rule (GAAR)

Successful representation of Canada Trustco Mortgage Co. before the Supreme Court of Canada (SCC) in the leading decision referred to by all levels of court in interpreting the GAAR.

Successful representation of Veracity Capital Corporation in its appeal to the British Columbia Court of Appeal regarding the Minister's application of provincial GAAR on taxable income resulting from a "Q-Yes" plan.

Successful representation of Husky Energy before the Court of Queen's Bench of Alberta (upheld by the Alberta Court of Appeal) in connection with the application of the Alberta provincial GAAR regime to interprovincial tax planning.

Successful representation of Inter-Leasing Inc. before the Ontario Court of Appeal (which reversed the Ontario Superior Court) that the Ontario GAAR did not apply to a "finco" transaction (similar to that in Husky Energy). On March 5, 2015, the Supreme Court of Canada dismissed the Ontario Minister of Revenue's application for leave to appeal.

Osler successfully argued the leading GAAR case heard before the SCC.

Osler leads the way on provincial GAAR litigation.

## Transfer pricing

Successful representation of GlaxoSmithKline before the SCC where, in a unanimous decision, the SCC articulated the proper approach to determining appropriate arm's length prices in Canadian law.

Successful representation of Cameco Corporation before the TCC and FCA. This was the first case to consider the interpretation and application of the transfer pricing "re-characterization" rules in paragraphs 247(2)(b) & (d). The Tax Court rejected all three bases of support for the CRA's reassessments and the FCA upheld

Osler successfully argued the leading transfer pricing case before the SCC.

Osler successfully argued the first case to apply the current transfer pricing regime.

the TCC's decision. The Crown's request for leave to appeal to the SCC was denied.

Representation of Wheaton Precious Metals in the successful resolution of its transfer pricing dispute with the CRA. The dispute was also a "re-characterization" case and was one of the most significant transfer pricing appeals in Canada.

Successful representation of Sifto Canada Corp in its appeal in the TCC, in which the Court rejected the Minister's arguments that a competent authority agreement was not binding on the tax authorities.

Successful representation of General Electric Capital Canada before the Federal Court of Appeal on the issue of whether the guarantee fee to the taxpayer's U.S. parent exceeded an arm's length price.

## Foreign Accrual Property Income (FAPI)

Successful representation of Loblaw Financial Holdings Inc. before the SCC regarding the interpretation and application of important elements of Canada's system for taxing income earned by foreign subsidiaries of Canadian companies, specifically the FAPI regime. The SCC unanimously dismissed the government's appeal, upholding the 2020 FCA decision that income earned in another country by a controlled foreign affiliate of a Canadian company was not FAPI and therefore not taxable in Canada.

The decision provided rare guidance from Canada's highest court on how to interpret and apply foreign affiliate rules in the *Income Tax Act*.

## Resource industry

The Canadian Association of Petroleum Producers (CAPP) intervened at the SCC in *Daishowa-Marubeni*, a case dealing with the assumption of reclamation obligations. In overturning the lower courts, the SCC expressly accepted CAPP's submission that a statutory interpretation promoting symmetry and fairness is to be preferred over one that promotes neither.

Successful representation of Devon Canada Corporation before the TCC to dispose of a question of law on a pre-trial basis. This case concerned the limitations on the deduction of resource expenditures in the context of a two-tiered partnership. The "successor rules" in question had never previously been interpreted by a court.

CAPP chose Osler to intervene on behalf of industry before the SCC.

## International tax

Successful representation of TD Securities (USA) LLC before the TCC where the Court overturned the long-established position of the CRA under which LLCs that are fiscally transparent for U.S. tax purposes were denied eligibility for benefits under the Canada-US treaty.

## GST / HST

Successful representation of CIBC in the FCA, which overturned the decision of the TCC and found that services provided by credit card networks such as Visa are exempt from GST/HST as financial services. The FCA decision has important implications for what constitutes an exempt financial service under the *Excise Tax Act*, especially as this definition applies to issuers of credit cards.

Successful appeal on behalf of CIBC World Markets Inc., establishing that GST registrants are entitled to revise their claims for input tax credits within the applicable limitation period. Where a method is used to apportion GST for purposes of input tax credits, a change to the method within the limitation period is permitted, where the revised method fulfills the statutory requirements.

## Judicial review

Successful representation of RBC Life Insurance Company where the Federal Court (decision upheld on appeal to the FCA) held that the Minister of National Revenue's third-party requirements were invalid as the Minister failed to make full disclosure in obtaining an ex parte order; and that the Minister's primary goal was to "chill" the "10-8" life insurance business.

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Osler tax lawyers persuaded the courts that the Minister's third party requirements were issued improperly.

## Audit Powers

Successful representation of Cameco Corporation in the Federal Court of Appeal in a precedential decision establishing that the CRA could not compel the interviews of 25 officers and employees of a multinational company. The decision has been widely reported and has been identified as a critical legal precedent for limiting the CRA's audit powers.

Successful representation of BP Canada Energy Company in the Federal Court of Appeal's decision which protected the confidentiality of a taxpayer's own analysis of tax exposure in its accrual working papers. This was the first Canadian case to deal with the issue of the production of a TAWPs to tax authorities.

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# Osler's tax controversy and litigation team



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## About Osler, Hoskin & Harcourt LLP

Osler is a leading law firm with a singular focus – your business. From Toronto, Montréal, Calgary, Ottawa, Vancouver and New York, we advise our Canadian, U.S. and international clients on an array of domestic and cross-border legal issues. Our collaborative “one firm” approach draws on the expertise of over 500 lawyers to provide responsive, proactive and practical legal solutions driven by your business needs. For over 150 years, we’ve built a reputation for solving problems, removing obstacles, and providing the answers you need, when you need them.

**It’s law that works.**

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