

News and insights from Osler's market-leading Real Estate team – Spring 2023

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Stay current on developing legislation and news from Osler's Commercial Real Estate lawyers and learn about our team and what they have been working on.

Regulatory amendments address commercial real estate industry concerns regarding federal foreign buyer ban

Legislation passed in late 2022 by the federal government ostensibly to protect housing stock in Canada from foreign speculators had the unintended effect of catching commercial deals that had nothing to do with housing stock (e.g., shopping centres, office buildings, etc.), resulting in uncertainty and risk in the commercial real estate industry and the delay or cancellation of purely commercial transactions.

Osler's Real Estate group was quick to highlight the negative consequences of the legislation on the industry, including being interviewed in [mainstream media](#) and advocating for the CRE industry on [LinkedIn](#).

In March, the Minister of Housing and Diversity and Inclusion announced a series of regulatory amendments with respect to the *[Prohibition on the Purchase of Residential Property by Non-Canadians Act](#)* (the Act) which alleviate many of the concerns Osler and the commercial real estate industry had voiced regarding the legislation; however, the amended Regulations do not entirely dispose of the issues. Care will still need to be taken in assessing the application of the law to transactions involving properties that have existing residential uses, on a case-by-case basis. Read [Osler's coverage](#) of the issues addressed in the amendments.

Ontario government proposes key changes to provincial planning policy

On April 6, 2023, the Ontario government unveiled the latest of its policy and legislative proposals as part of its Housing Supply Action Plan. The proposals include the release for comment of a new Provincial Planning Statement, which will replace the Provincial Policy Statement and the Growth Plan. To understand these proposed changes in context, Osler has prepared a [comprehensive comparison](#) (along with a concordance table) of the proposed 2023 Provincial Planning Statement, as well as a comparison showing the proposed changes to the *Planning Act*.

Buyers can price assets to discourage exercise of a ROFR, court confirms

What duties do buyers and sellers owe to the holder of a right of first refusal (ROFR) in an asset sale? The Court of Appeal clarified that while ROFR holders must have a clear opportunity to pay the price offered by a buyer and accepted by the seller, there is no “correct price” for a ROFR. A third-party buyer and a ROFR holder are in competition: a buyer can price their bid to dissuade a holder from exercising their ROFR, provided that the price is binding on the buyer and the ROFR is not frustrated.

[Read this commentary](#) by Osler litigators Mark Gelowitz and Sandy Hay on their successful defence and the implications for deals involving ROFR-encumbered assets.

How dense is too dense? Challenges of urban densification

During the height of the pandemic, we witnessed a greatly accelerated increase in online shopping and the resulting impact it had on real estate; the demand for industrial space became insatiable while the demand for physical retail space was tepid at best. This trend appears likely to continue for the foreseeable future, though concerted efforts towards return to office in some sectors has provided some assistance to physical retail space in core urban markets with dense office populations.

We are now witnessing another societal-induced effect on real estate, albeit one that has been much more gradual in the making: the “densification” of urban real estate. While this trend is primarily in response to urban migration and resulting shortages in affordable residential real estate, it is likely to have ripple effects in many other real estate sectors. These changes therefore bear watching by every participant in the real estate space.

[Read or listen to this article](#), the most popular in Osler’s 2022 Legal Year in Review.

Recent work highlights

- Advising Choice REIT in connection with a \$76 million financing of a four-property portfolio of grocery/pharmacy-anchored retail centres in Toronto and Calgary issued by Manulife, as lender.
 - Advising Choice REIT in connection with the acquisition of a 50% interest in two industrial buildings valued at \$71 million through a limited partnership structure set up by Osler to allow the acquisition of the economics of buildings on a site on a building-by-building basis as completed.
 - Advising a client in connection with a “swap” transaction where the parties bought out each other’s 50% JV positions in two office towers in downtown Calgary.
 - Subsequent to December 31, 2022, Dream and Great Gulf Group, acquired phase one of the Quayside Development site in downtown Toronto, comprised of 4.5 acres. Upon full build-out of the 12-acre site, Quayside is expected to provide over 4,000 residential units, including more than 800 affordable housing units with an emphasis on family-sized accommodations, 3.5 acres of public green space and Canada’s largest residential mass timber structure. Quayside will be a dynamic, inclusive and resilient community. Osler has been advising Dream Unlimited on partnership and financing aspects of the project as part of a wide-ranging mandate involving our real estate and corporate legal teams.
 - Advising a major development company in its application for high-density rezoning of a four-tower, 45–60-storey development in the Yonge and Steeles neighborhood of north Toronto.
 - Acting for the vendor in connection with the sale of approximately 1 million square metres of developable industrial land to a governmental agency for approximately \$20 million.
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Team announcements

We are pleased to announce that **Josh Disenhouse** and **Matthew Ritchie** of Osler’s Commercial Real Estate Group were admitted to the Osler partnership, effective March 1, 2023.



Josh joined Osler in 2017 after having practiced as an associate in the commercial real estate and leasing groups at another Bay Street firm. Josh's practice encompasses all aspects of commercial real estate transactions, including the acquisition, disposition, financing and leasing of real property. Josh has extensive experience in commercial leasing, including office, industrial and retail leasing. Josh also advises renewable energy firms on the assembly of land rights and financing of wind, hydro and solar power projects and pipeline and electricity transmission companies with respect to easements, claims, permit requirements, acquisitions and related matters.



Matthew has been an associate in Osler's Real Estate Group since 2014, after completing his articles with Osler. He has extensive experience advising on all aspects of commercial real estate transactions, including the acquisition, disposition, financing and leasing (landlord and tenant) of industrial, office, retail, hospitality, long-term care, development and mixed-use properties. He also advises on insolvency and restructuring transactions, and advises on the real estate components of mergers and acquisitions.



We would also like to welcome Paul O'Brien, who joined our Montréal Real Estate team as an associate in January 2023. Called to the Québec bar in 2017, Paul assists landlords and tenants in the drafting, reviewing and negotiation of non-disclosure agreements, supply agreements and commercial leases. Paul has been involved during his university studies as a volunteer for the Pro Bono Canada Foundation and more recently as a member of the Board of Directors of the Regroupement d'affaires de Lachine Inc.

Commercial Real Estate Team Spotlight



Stella Di Cresce

Q: Tell us about your practice.

My practice is a transactional practice focusing on acquisitions, dispositions and financing of commercial real estate as well as joint venture structuring for a wide range of clients including REITs, trusts and financial institutions. I also work on construction and development projects for our clients and their joint venture partners. In addition to the transactional aspect of my practice, I advise landlords and tenants in all aspects of commercial leasing and property management. I am based in Toronto but often lead transactions nationally and work closely with my colleagues in all of our other offices.

Q: What do you most enjoy about being a commercial real estate lawyer at Osler?

Being a commercial real estate lawyer at Osler allows me the opportunity to work on significant real estate transactions that are also of strategic importance to our clients. I enjoy the variety of the work, the complexity of the transactions and the chance to work with our various teams. No two files are the same and each will have its own unique issues to navigate and resolve. I am constantly learning and constantly being challenged, which is really important to me. I also enjoy being part of a team — brainstorming, listening and working collaboratively with some of the most skilled legal minds in the country — and I especially enjoy the relationships we form internally with colleagues and externally with clients which, hopefully, will last a lifetime.

Q: What is the most interesting/rewarding/business-critical matter you have worked on in the last six months?

The most noteworthy transaction that I worked on in the last six months would have to be

the acquisition of Summit REIT by Dream and GIC. This was a highly sophisticated, business-critical and extremely complex transaction with a large real estate focus involving a portfolio of over 150 industrial properties located in Ontario, Alberta, Québec and New Brunswick. It required a tremendous team effort from the various Osler workstreams including Real Estate, Corporate, Tax, Banking and Competition. I am proud to have been a part of the incredible team and proud to have been a part of this landmark transaction.

Connect with us

With a team of 28 lawyers and eight law clerks across Canada, Osler's Real Estate Group offers commercially sound legal advice on complex and transformative developments, acquisitions, dispositions, joint ventures, leases and financings of commercial real property of all types. Our team helps clients navigate even the most complex real estate transactions. With local expertise in every major Canadian market, our team advises on all aspects of real property including in **Toronto**, **Montréal**, **Calgary** and **Vancouver**.

[Learn more about the work we do.](#)