DAVIES



Matthew Milne-Smith
Partner

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Toronto

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Expertise
Litigation
Class Actions
Commercial Litigation
Securities Litigation
Competition Litigation

Bar Admissions
New York, 2000
Ontario, 2001

"Matthew is an outstanding litigation lawyer and lead counsel. He delivers practical and actionable advice, customised with deep knowledge of our business. His excellent judgment makes him a go-to litigation counsel."

Client – *Chambers Canada*

Known for his intellectual acuity, Matthew acts in matters before a variety of tribunals and courts across Canada, including in precedent-setting appeals before the Ontario Court of Appeal and the Supreme Court of Canada. He was named Insolvency Lawyer of the Year 2014 by Benchmark Canada. A market source for*Chambers Canada* describes Matthew as "an excellent commercial litigator…someone you want on your side."

Matthew advises a variety of clients – public and private companies as well as government agencies – across a wide range of civil litigation matters, including commercial disputes, complex class actions, securities disputes, constitutional challenges, insolvency proceedings and novel tort claims. In addition to his extensive trial and motions work, Matthew has also successfully mediated or arbitrated numerous confidential disputes.

Representative Work

Atlantic Lottery Corporation, British Columbia Lottery Corporation, Manitoba Liquor and Lotteries, Lotteries and Gaming Saskatchewan
Acting for **provincial lottery corporations** representing seven out of 10 provinces in a criminal law and constitutional law reference before the Court of Appeal for Ontario concerning the scope of a province's authority to conduct and manage online gambling with international aspects.

Fiera Capital Corporation and Fiera Infrastructure Inc.
Acted for **Fiera Capital Corporation** and its infrastructure platform, **Fiera Infrastructure Inc.**, in a high-profile dispute on the Commercial List of the Ontario Superior Court of Justice, brought by the founder and former President of Fiera Infrastructure and their holding company.

Delta Air Lines
Successfully acted for **Delta Air Lines** in defending a multi-billion-dollar proposed class action alleging a conspiracy to constrain capacity in the passenger airline industry in North America. In June 2025, Davies defeated certification in the Ontario Superior Court of Justice.

Maple Leaf Foods Inc.
Acting for **Maple Leaf Foods Inc.**, as well as several current and former executives of the company, in complex litigation pending before the Ontario Superior Court of Justice against Grupo Bimbo S.A.B. de C.V. and Canada Bread Company, Ltd. involving claims of more than C$2.2 billion arising from the 2014 sale of Canada Bread to Grupo Bimbo, as well as allegations concerning price-fixing in the bread industry in Canada.

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Manitoba Liquor & Lotteries Corp.

Successfully acted for **Manitoba Liquor & Lotteries Corp.**, a member of the Canadian Lottery Coalition, in the first-of-its-kind litigation seeking to bar offshore online gambling site Bodog from operating or advertising in the province.

Confidential client

Acted for a **public company** in defence of a proposed securities class action alleging misrepresentations contrary to the *Securities Act* (Ontario) in connection with government contracting and the importation of goods.

Moez Kassam and Anson

Acting for **Moez Kassam** and **Anson funds** in pursuing claims for defamation and conspiracy, arising from a series of false and defamatory statements published about them anonymously on the internet.

Gotham Green Partners, LLC

Acting as counsel to **Gotham Green Partners, LLC** in defence of a petition seeking to unwind the debt restructuring transaction of iAnthus Capital Holdings Inc.

Gotham Green Partners, LLC

Acted for **Gotham Green Partners, LLC** in a successful application by the Gotham lenders to compel the enforcement of a restructuring and support agreement concerning the recapitalization of iAnthus Capital Holdings.

The YMCAs

Acting for **a consortium of Canadian YMCAs** in insurance coverage litigation stemming from the COVID-19 pandemic, including on a successful motion before the Ontario Superior Court of Justice for a declaration of coverage under a unique policy insuring against business interruption losses from communicable disease outbreaks.

Agnico Eagle Mines Limited

Acted for **Agnico Eagle Mines Limited** in its all-cash acquisition of TMAC Resources Inc. by way of assignment to Agnico Eagle from Shandong Gold of an arrangement agreement between Shandong Gold and TMAC pursuant to a court-approved plan of arrangement under the *Business Corporations Act* (Ontario). The transaction had a total equity value of approximately C$287 million and, in connection with the acquisition, Agnico Eagle also retired TMAC's outstanding debt and deferred interest of approximately US$135 million.

OMERS Administration Corp and OMERS Private Equity Inc.

Acting for **OMERS Administration Corporation** and **OMERS Private Equity Inc.** in multiple separate lawsuits filed by former employees of OMERS Private Equity, including one that initially claimed C$65 million in damages. The plaintiffs allege, among other things, breach of a long-term compensation plan.

Maxit Capital LP

Acted for **Maxit Capital LP**, as a financial advisor to Guyana Goldfields Inc., in a successfully contested plan of arrangement under the *Business Corporations Act* (Ontario) in relation to Maxit's retainer agreement with Guyana.

Canadian Chamber of Commerce

Acted for the **Canadian Chamber of Commerce** as an intervener before the Supreme Court of Canada in an appeal concerning the applicability of arbitration clauses to class actions in Ontario.

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Delta Air Lines

Acting for **Delta Air Lines** in a class action alleging failure to offer refunds for all air carrier services that were cancelled after March 1, 2020, as a result of the COVID-19 pandemic.

Canadian Chamber of Commerce

Acted for the **Canadian Chamber of Commerce** as an intervener before the Supreme Court of Canada in an appeal concerning whether Canadian law should recognize a novel tort of disgorgement of profits gained as a result of wrongdoing.

James MacDonald

Acted for **Mr. James S.A. MacDonald** before the Supreme Court of Canada in an appeal concerning the difference between speculation and hedging, and the tax treatment applicable to gains or losses arising from derivative transactions.

West Face Capital Inc.

Acted for **West Face Capital Inc.** in defending successfully against a second claim asserted against it by The Catalyst Capital Inc., this time for more than $1.3 billion, arising from the participation by West Face in the purchase and subsequent sale of Wind Mobile Inc. On April 18, 2018, Justice Hainey of the Ontario Superior Court of Justice determined that this second claim was essentially an attempt to re-litigate the same facts and issues that had previously been decided by Justice Newbould in the first such claim between Catalyst and West Face. As such, Justice Hainey dismissed the claim as against West Face, and all of the other defendants, as an abuse of process. Catalyst's appeal from the Order of Justice Hainey dismissing this action as an abuse of process was dismissed by the Ontario Court of Appeal in early May 2019. In November 2019, the Supreme Court of Canada dismissed Catalyst's application for leave to appeal.

KSV Kofman Inc. (now known as KSV Restructuring Inc.)

Acted for **KSV Kofman Inc. (now known as KSV Restructuring Inc.)**, as monitor for the Urbancorp Group of Companies, in an appeal concerning whether a certain transaction was a fraudulent conveyance or otherwise voidable by the monitor in connection with Urbancorp's *CCAA* proceedings.

Liquor Control Board of Ontario

Acted for the **Liquor Control Board of Ontario** in defending claims asserted against it for approximately $1.5 billion in antitrust class action proceedings pending in the Ontario Superior Court against the LCBO, Brewers Retail Inc. and a number of major brewers. In March 2018, Justice Perell of the Ontario Superior Court granted summary judgment dismissing all claims asserted against the LCBO and the other defendants, and awarded substantial costs of almost $800,000. The decision of Justice Perell granting summary judgment in favour of the LCBO was affirmed by the Ontario Court of Appeal in April 2019.

Ontario Lottery and Gaming Corporation

Successfully acted for the **Ontario Lottery and Gaming Corporation** in a judicial review application brought by the City of Niagara and the Region of Niagara Falls concerning the selection process for an operator of the Niagara gaming bundle.

Confidential Arbitration

Successfully arbitrated a contractual dispute for a Québec-based client in the retail products industry. The dispute involved synthesizing the 20 year history of a series of

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multi-lateral relationships and resulted in a complete victory for Davies' client.

Endo International plc

Represented **Endo International plc** in a Canadian securities class action alleging that Endo made material misrepresentations and omissions concerning (i) its receipt of "a subpoena from the State of Connecticut about likely antitrust violations concerning" certain products; and (ii) the erosion in its generic pharmaceutical business.

Roy Gardiner

Acted for the defendants on appeal in *Todd Family Holdings Inc. v Gardiner*, in which the Ontario Court of Appeal overturned a number of trial findings made against Roy Gardiner and Dayl Armstrong arising out of a loan by the plaintiffs to the defendants. The trial judge had made findings of fraud against Gardiner and Armstrong; awarded damages of over US$2.2 million; awarded costs of almost $1 million; assigned the defendants' intellectual property to the plaintiffs until all debts were satisfied; and held that the plaintiffs had not recovered any sums owing during the period leading up to trial, despite having held the IP for seven years. The Ontario Court of Appeal reversed the finding of deceit against Armstrong; reduced the damages award by approximately US$1 million; reversed the award of costs; reversed the finding that the plaintiffs had not recovered any sums owing up to the trial date; and ordered an accounting of all sums recovered by the plaintiff to date.

West Face Capital Inc.

Acted for **West Face Capital Inc.** in defending successfully claims asserted against it by The Catalyst Capital Inc. for more than $500 million arising from the participation by West Face in the purchase and subsequent sale of Wind Mobile Inc. at a profit of approximately $1.3 billion. Every claim asserted by Catalyst against West Face was dismissed by Justice Newbould of the Superior Court of Ontario in August 2016, following the conclusion of a closely watched trial in the Commercial List. In February 2018, the Ontario Court of Appeal dismissed from the bench Catalyst's appeal from the decision of Justice Newbould.

Anson Advisors Inc.

Acted for **Anson Advisors Inc.** and others in defending a $300-million claim for defamation and intentional interference with economic relations relating to a blog post published on the website "Seeking Alpha". This claim and the $50-million counterclaim for defamation were consensually resolved.

Shaw Communications Inc.

Acted successfully for **Shaw Communications Inc.** *In the Matter of an Application by The Catalyst Capital Group Inc.*, the first case in which the Ontario Securities Commission has denied standing to a party to commence an application under the "public interest" jurisdiction of the Ontario *Securities Act*.

EMEA Nortel Debtors

Acted for the **EMEA Nortel Debtors** in the Ontario Commercial List and Delaware Court of Bankruptcy concerning allocation of approximately $7.5 billion of proceeds from the sale of Nortel assets. The Nortel allocation proceedings were unique in their size, complexity, and multi-jurisdictional nature.

Rogers Communications Inc.

Acting for **Rogers Communications Inc.** in connection with numerous multi-billion

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dollar class action proceedings across Canada to recover "system access fees" charged to consumers by wireless service providers in Canada in the period since 1987. These are some of the largest class actions in Canadian history and have given rise to numerous trial level and appellate decisions in favour of Rogers in various provinces in Canada, including Saskatchewan, Manitoba, Québec, Nova Scotia, Alberta and British Columbia.

WIND Mobile Corp. and its shareholders

Acted for **WIND Mobile Corp. (WIND)** and its shareholders, including **West Face Capital**, in connection with the sale of WIND to Shaw Communications Inc. for approximately $1.6 billion.

Ontario Lottery and Gaming Corporation

Acting for the **Ontario Lottery and Gaming Corporation** (OLG) in successfully bringing a motion to have a claim dismissed for failure to state a cause of action. The plaintiff alleged that OLG owed a duty of care to identify and exclude problem gamblers from its facilities. In striking the claim at the pleadings stage, the Court established for the first time in Ontario that as a matter of law, casinos do not owe a duty of care to problem gamblers. This decision follows numerous actions alleging such a duty and a proposed class action premised on such a duty, for which class certification had been denied.

Maple Leaf Foods Inc.

Acted for **Maple Leaf Foods Inc.** in connection with its defence to a claim by its former food broker for reasonable notice of termination and breach of contract.

Nevsun Resources Ltd.

Acted for **Nevsun Resources Limited** in defending cross-border securities class actions in Canada and the United States. This litigation was resolved successfully following mediations in New York and Los Angeles.

Maple Leaf Foods Inc.

Acted for **Maple Leaf Foods Inc.** in putting Nutreco, a leading animal nutrition company, on notice to hold Maple Leaf harmless for any losses as a result of mislabelled hog feed.

Joseph Cassano

Acting in defence of **Joseph Cassano** in a class action against AIG and certain of its former officers and directors.

Ontario Lottery and Gaming Corporation (OLGC)

Acted for the **Ontario Lottery and Gaming Corporation** ("OLG") in connection with a $3.5-billion class action and numerous individual actions alleging OLG owed a duty of care to prevent "problem gamblers" from gambling in OLG's commercial casinos. Successfully defeated certification at hearings before the Superior Court of Justice, Divisional Court and Court of Appeal for Ontario.

Apotex Inc.

Acted for **Apotex Inc.** in defending successfully at trial in the Superior Court of Ontario claims made by Alcon Canada Inc. concerning an alleged settlement of claims between the parties arising from patent disputes in the United States and Canada. Alcon's claims were dismissed by a Justice of the Commercial List in Toronto following the conclusion of an expedited trial.

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Maple Leaf Foods Inc.

Acted for **Maple Leaf Foods Inc.** and **Olivieri Foods Limited** in defending a breach of contract lawsuit regarding the supply of pasta products by Benevito Foods.

Platinum Partners Value Arbitrage Fund

Acted for **Platinum Partners Value Arbitrage Fund** before the courts of Ontario and Supreme Court of Canada in successfully obtaining summary judgment dismissing a $200 million claim alleging fraud in respect of ownership of a Peruvian mine. This case was one of the first cases in which summary judgment was upheld by the Ontario Court of Appeal following the Combined Air decisions, which limited the scope of summary judgment.

Samsung Renewable Energy Inc. and Pattern Renewable Holdings Canada ULC

Acted for **Samsung Renewable Energy Inc.** and **Pattern Renewable Holdings Canada ULC** in hearings before the Environmental Review Tribunal in the successful defence of appeals of the renewable energy approvals for the South Kent 270 MW and Grand Renewable 148 MW wind energy projects.

Audley Capital

Acted for **Audley Capital** in successfully defeating motions for class certification and for leave to commence a claim for securities misrepresentation under Part XXIII.1 of the Ontario Securities Act in the leading case of Gould v. Western Coal Corporation et al. This action was the first case in which leave to proceed under Part XXIII.1 was denied on the merits of the claim since that legislation permitting "secondary market claims" was introduced in Ontario. Justice Strathy's decision in this case established important precedents on issues of expert evidence, the standard for leave to proceed under Part XXIII.1, conspiracy, and oppression.

Maple Leaf Foods Inc.

Acted for **Maple Leaf Foods Inc.** in defending class action proceedings in the Superior Court of Ontario concerning alleged mislabelling in Maple Leaf's "Natural Selections" and Schneider's "Country Naturals" brands of processed meats.

Rogers Communications Inc.

Acted for **Rogers Communications Inc.** in obtaining summary judgment dismissing Allarco Entertainment's claim against Rogers for more than $100 million in damages for alleged breach of contract, negligence, breach of fiduciary duty and intentional interference with economic relations.

Ontario Lottery and Gaming Corporation (OLG)

Acted successfully for the **Ontario Lottery and Gaming Corporation** (OLG) with respect to *Loveless* v. *Ontario Lottery and Gaming Corporation* in a decision denying class certification to a proposed class of individuals who bought lottery tickets from OLG between the years 1975 to 2009.

Canadian Coalition for Good Governance

Acted for the **Canadian Coalition for Good Governance**, a collection of Canada's leading institutional investors, in a reference to the Supreme Court of Canada concerning the constitutional validity of proposed legislation creating a National Securities Regulator in Canada.

Maple Leaf Foods Inc.

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Acted for **Maple Leaf Foods Inc.** in the successful lawsuit launched against Illinois-based Formax Inc. for defective meat slicers.

BCE Inc.

Acted for **BCE Inc.** and **Bell Canada** in a successful appeal to the Supreme Court of Canada in a landmark commercial case involving the proposed $51.7 billion privatization of BCE. The decision of the Supreme Court in this case set the standard in Canada for approval of plans of arrangement and claims of oppression. It also clarified the law concerning the duties of directors of public companies faced with potential change of control transactions. This case also resulted in the fastest commercial appeal ever heard by the Supreme Court of Canada. The appeal was heard by the Court and decided unanimously in favour of BCE less than 30 days after BCE launched its application for leave to appeal from a decision of the Québec Court of Appeal revoking approval for BCE's proposed plan of arrangement that had been granted by Justice Silcoff of the Quebec Superior Court following a lengthy and highly expedited trial.

Osprey Media Income Fund

Acted for **Osprey Media Income Fund** in its auction process and the resulting negotiated all-cash takeover bid for Osprey by Quebecor Media Inc., including successfully defending Osprey against litigation initiated by Quebecor to challenge Black Press Ltd.'s superior proposal that was eventually matched by Quebecor in a transaction valued at $578 million.

Beaverbrook (U.K.) Foundation

Acted for the **Beaverbrook (U.K.) Foundation** in closely watched trial and appellate arbitration proceedings that were held in public in New Brunswick concerning the ownership of numerous valuable works of art acquired by the Beaverbrook (U.K.) Foundation between 1954 and 1965 that are currently housed at the Beaverbrook Art Gallery in Fredericton. This case was the subject of extensive media coverage throughout Canada, including a lengthy book written by a reporter from the Canadian Broadcasting Corporation.

PetroKazakhstan Inc.

Acted for **PetroKazakhstan Inc.**, a Canadian-listed energy company**,** in its US$4.18-billion acquisition by China National Petroleum Corporation by way of negotiated takeover bid.

Recognitions

Chambers Global
Dispute Resolution: Litigation

Chambers Canada
Dispute Resolution: Class Action (Defence); Litigation, General Commercial: Ontario

Benchmark Canada Awards
Insolvency Litigator of the Year
2014

Benchmark Canada Awards
Impact Case of the Year
2017, 2020

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Benchmark Canada
Top 50 Trial Lawyers in Canada
2025-2026

Benchmark Canada
Commercial; Securities
Litigation Star

Legal 500 Canada
Dispute Resolution: Ontario
Leading Partner

Lexpert 500 Cross Border
Litigation: Corporate Commercial

Lexpert Special Edition
Litigation; Restructuring and Insolvency; Technology

Lexpert (CLLD)
Litigation: Corporate Commercial
Most Frequently Recommended

Lexpert (CLLD)
Class Actions; Commercial Arbitration; Litigation: Securities

Best Lawyers Canada
Class Action Litigation; Corporate and Commercial Litigation; Gaming Law; Mergers & Acquisitions Law; Securities Law

Lexpert Rising Stars
Leading Lawyers Under 40 (Litigation)
2013

Chambers Canada Award
Litigation Firm of the Year
2018

Chambers Canada
Litigation, General Commercial Department: Nationwide and Ontario
Band 1

External Engagements

Article
Gifford v Air Canada: **Ontario Court Grounds Alleged Conspiracy to Suppress Supply of Transborder Air Travel, co-author**
Dec 1, 2025
Class Action Defence Quarterly (LexisNexis Canada Inc.), Vol. 20, No. 2
Read More

Speaking Engagement
Co-chair, The Advocates' Society, “Motions Advocacy”, Webinar
Mar 9, 2023

Speaking Engagement
Law Society of Ontario, “Defamation Law: Trends and Developments”; Webinar

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Nov 4, 2021

Speaking Engagement
The Advocates' Society and the American College of Trial Lawyers, Spring Symposium 2021: The Effective Advocate, "The Year in Review: Key Cases in 2020"; Webcast
Apr 21, 2021

Speaking Engagement
Ontario Bar Association, "Introducing Evidence at Trial"; Toronto, ON
Mar 1, 2019

Article
Ontario Court of Appeal Upholds Application of Regulated Conduct Defence to Dismiss Class Action Alleging Conspiracy in Beer Industry, co-author
Jun 30, 2019
Competition Policy International
Read More

Speaking Engagement
Co-chair, The Advocates' Society, "Examining and Cross-examining Experts", Toronto, ON
Apr 18, 2018

Article
If we can't trust witnesses, can we trust trials?
Oct 1, 2017
The Advocates' Journal, Vol. 36, No. 2 (The Advocates' Society) This article was originally published in *The Advocates' Journal* (Fall 2017). Posted with permission.
Download Article

Speaking Engagement
The Advocates' Society, "Insolvency Litigation", Toronto, ON
Jun 7, 2017

Insights

Lexpert Highlights Davies' Expertise in Insolvency and Restructuring
Oct 7, 2026

Davies Lawyers Recognized by *Best Lawyers*
Sep 3, 2026

Canadian Constitution Guarantees Judicial Review for Legality
Aug 6, 2026

Lexpert Recognizes Davies' Technology Expertise
Jun 5, 2026

Ontario Court of Appeal Confirms Personal Liability for Civil Fraud
May 25, 2026

Benchmark Litigation Recognizes Davies
Apr 30, 2026

Lexpert Affirms Davies' Position as a Leading Firm
Mar 17, 2026

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Matthew Milne-Smith Named Fellow of the American College of Trial Lawyers
Mar 3, 2026

FINTRAC's Shift to Aggressive AML Enforcement
Jan 29, 2026

Lexpert 500 Guide Recognizes Davies
Jan 14, 2026

Lexpert Recognizes Davies' Excellence in Litigation
Nov 20, 2025

Lexpert Recognizes Davies' Restructuring Expertise
Oct 1, 2025

Supreme Court: Statutes Can Be Constitutionally Inapplicable Based on Potential Effects
Jun 18, 2025

Court Rejects Airline Class Action for Insufficient Evidence
Jun 16, 2025

Lexpert Special Edition Recognizes Davies' Expertise in Technology
Jun 4, 2025

Benchmark Litigation Recognizes Davies
May 1, 2025

Ontario Court of Appeal Issues Decision in *The Catalyst Capital Group Inc. v West Face Capital Inc.*
Jun 6, 2023

Canada's Top Court Confirms Anti-SLAPP Motions Protect Speakers, Not Plaintiffs
May 25, 2023

Davies Recognized in *Lexpert Special Edition: Litigation*
Nov 29, 2021

The Legal 500 Canada Recognizes Davies as "Best in Class"
Nov 15, 2021

Davies Litigators Achieve Top Ranking in*Benchmark Canada* 2021
Apr 28, 2021

Agnico Eagle Acquires TMAC Resources After Shandong Gold Deal Denied
Feb 12, 2021

Ontario Court Applies Regulated Conduct Defence on Summary Motion to Dismiss Class Action Alleging Market Allocation Conspiracy
Mar 23, 2018

Education

Yale Law School, JD, 1999
Princeton University, AB (Summa Cum Laude), 1996
Clerk, The Honourable Mr. Justice Frank Iacobucci, Supreme Court of Canada

Bar Admissions

New York, 2000

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Board Memberships

AboutFace International

Professional Affiliations

Metropolitan Toronto Lawyers Association
The Advocates' Society