



Carol D. Pennycook

Partner

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Expertise

Corporate
Capital Markets and Securities
Mergers and Acquisitions
Infrastructure
Energy
Finance

Bar Admissions

Ontario, 1985
Alberta, 1981

“Superstar in project finance.”

Chambers Canada

For more than 30 years, clients have turned to Carol as a trusted adviser. They have described her as “fantastic in driving deals forward and very thoughtful in drafting and considering client needs.” (*Chambers Global 2016*)

Recognized as a Star Individual in *Chambers Global*, Carol advises on a wide range of transactions – corporate finance, structured finance, project finance, debt capital market offerings, private equity, mergers and acquisitions, and corporate reorganizations.

A significant portion of Carol’s practice is devoted to financing transactions, acting for both borrowers and lenders. Public and private companies and financial institutions choose Carol for her ability to structure innovative financing solutions, both Canadian and cross-border, for their specific requirements.

Carol acts in many of the highest-profile public-private partnership projects in Canada and the U.S. She has achieved great success for borrower and lender clients in complex infrastructure financings.

She is a former director of PPP Canada and a former member of our firm’s Management Committee.

REPRESENTATIVE WORK

Canada Enterprise Emergency Funding Corporation

Acted for Canada Enterprise Emergency Funding Corporation, a non-agent Crown corporation and wholly owned subsidiary of Canada Development Investment Corporation, in connection with Air Canada’s approximately \$6-billion financing agreements with the Government of Canada through the Large Employer Emergency Financing Facility (LEEFF) program.

Bank of Montreal, Royal Bank of Canada and The Bank of Nova Scotia

Acted for Bank of Montreal, Royal Bank of Canada and The Bank of Nova Scotia, as lenders, in the establishment of approximately \$1.1 billion in secured margin loan facilities made available to a number of shareholders of GFL Environmental Holdings Inc. The margin loans were established in connection with the initial public offering of subordinate voting shares and tangible equity units of GFL Environmental Inc.

FortisOntario Inc.

Acted for Fortis Inc. and its subsidiary FortisOntario Inc. in connection with Ontario’s largest First-Nations-led transmission project being undertaken by Wataynikaneyap Power LP, a partnership between 24 First Nations and private investors led by Fortis. This project was one of Lexpert’s Top 10 deals of 2019.

TransEd Partners consortium

Acted for the TransEd Partners consortium, comprised of Fengate Capital Management Ltd., Bechtel Development Company, Inc., EllisDon Capital Inc. and Bombardier Transportation Canada Inc., in its winning bid in excess of \$1.8

DAVIES

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billion for the design, build, finance, operation and maintenance of the City of Edmonton's Valley Line Light Rail Transit Project, which is the city's first public-private partnership project. The Valley Line is the largest single infrastructure project in Edmonton's history. Davies acted as lead transaction counsel for the consortium, including in the negotiation of the project documents with the City of Edmonton, the design-build documentation with the design-build contractor (which includes vehicles on this project), the operation and maintenance documentation with the O&M contractor and the financing agreements with the lenders, as well as the shareholder arrangements between the equity investors. The financing included \$394-million senior long-term amortizing bonds with final maturity date of September 30, 2050 and a \$200-million senior construction period credit facility.

Fortis Inc.

Acted for Fortis Inc. in connection with its US\$11.3-billion acquisition of Novi, Michigan-based ITC Holdings Corp., the largest independent electric transmission company in the United States.

BMO Nesbitt Burns Inc. and TD Securities Inc.

Acted for BMO Nesbitt Burns Inc. and TD Securities Inc., as placement agents, and The Toronto-Dominion Bank and Bank of Montréal, as lenders, in connection with the private placement of \$400 million aggregate principal amount of 3.310% Fixed Rate Senior Secured Notes due November 30, 2029 by, and the establishment of \$33.5 million of credit facilities for, H2O Power Limited Partnership, a joint venture between Public Sector Pension Investment Board and BluEarth Renewables Inc., that owns and operates eight hydroelectric generating facilities in Ontario with a total installed capacity of approximately 142 MW. H2O Power Limited Partnership is the third largest provider of hydroelectric power in Ontario.

Port City Water Partners consortium

Acted for the Port City Water Partners consortium, comprised of Brookfield Financial Corp., Acciona Agua International, S.L. and North America Construction (1993) Ltd., in its winning bid in excess of \$200 million for the design, build, finance, operation and maintenance of the City of Saint John Safe Drinking Water project, which is the city's first public-private partnership project. Davies acted as lead transaction counsel for the consortium, including in the negotiation of the project documents with the City of Saint John, the design-build documentation with the design-build contractor, the operation and maintenance documentation with the O&M contractor, and the financing agreements with the lenders, as well as the shareholder arrangements between the equity investors.

Delta Air Lines, Inc. (Delta)

Acted as Canadian counsel to Delta Air Lines, Inc. (Delta) in its purchase from Bombardier of 75 CS100 aircraft with options for an additional 50 CS100 aircraft. Based on the list price, the firm order is valued at approximately \$5.6 billion. Deliveries of the state-of-the-art aircraft to Delta are scheduled to begin in 2018.

Acciona-Led Consortium

Acted as transaction counsel for a consortium comprised of Acciona Agua S.A., Acciona Agua Internacional, S.L. and Acciona Infrastructure Canada Inc., in its winning bid of \$525 million for the design, build and finance of the Lions Gate

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Wastewater Treatment Plant project. Davies acted as lead transaction counsel for the consortium, including in the negotiation of the project documents with the Greater Vancouver Sewerage & Drainage District, the design-build documentation with the design-build contractor and the financing agreements with the lenders.

Burger King Worldwide, Inc.

Acted for Burger King Worldwide, Inc. in connection with its acquisition of Tim Hortons Inc. for approximately US\$12.5 billion, the related financing, which involved a US\$3-billion preferred equity investment from Berkshire Hathaway Inc., a secured US\$7.25-billion credit facility and a private placement of US\$2.25 billion of second lien secured notes, and an associated tender offer for Tim Hortons' outstanding US\$1.2 billion of debt securities. This transaction resulted in the creation of Restaurant Brands International, a new global company headquartered in Canada, and the third-largest quick service restaurant in the world with approximately US\$23 billion in system sales and over 18,000 restaurants in 100 countries. The transaction was recognized as Global M&A Deal of the Year: Canada by *The American Lawyer's* 2015 Global Legal Awards.

RECOGNITIONS

Construction Lawyers Society of America—Fellow

Chambers Global: The World's Leading Lawyers for Business—Banking and Finance (Band 1); Project Finance (Band 1)

Chambers Canada: Canada's Leading Lawyers for Business—Banking and Finance (Band 1); Project Finance (Band 1)

The Canadian Council for Public-Private Partnerships' National Awards for Innovation & Excellence in P3s—Lifetime Champion (2023)

IFLR1000: The Guide to the World's Leading Financial Law Firms—Banking; Project Finance

IFLR1000: Women Leaders—Banking; Project Finance

The Legal 500 Canada—Banking and Finance (Leading Individual); Infrastructure Projects (Leading Individual)

WXN—Canada's Most Powerful Women: Top 100 Award

The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada—Corporate Commercial Law; Project Finance

Lexpert Special Edition: Energy

Lexpert Special Edition: Finance and M&A

Lexpert Special Edition: Infrastructure

Lexpert Guide to US/Canada Cross-Border Lawyers in Canada—Financing

The Canadian Legal Lexpert Directory—Corporate Commercial Law (Most Frequently Recommended); Derivative Instruments; Project Finance (Most Frequently Recommended); Banking and Financial Institutions; Corporate Finance and Securities; Infrastructure Law; Mergers and Acquisitions; Private

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Equity

Lexpert Zenith Award—Canada's Leading Women Lawyers

The Best Lawyers in Canada—Banking and Finance Law (Lawyer of the Year 2016 and 2020, Toronto); Corporate Law (Finance); Derivatives Law (Lawyer of the Year 2014, Toronto); Energy Law; Mergers and Acquisitions Law; Project Finance Law; Securities Law

Martindale-Hubbell—AV Preeminent Ranking

Who's Who Legal: Banking—Finance; *Who's Who Legal: Project Finance*; *Who's Who Legal: Canada*—Banking; Capital Market; Project Finance

Expert Guides' *Best of the Best*; Expert Guides' *Women in Business Law*; Expert Guides—Banking and Finance

INSIGHTS

If It Ain't Broke... Davies Comments on Draft Capital Markets Act
Feb. 25, 2022

Electronic Signatures: A Guide for Ontario Businesses
Mar. 04, 2021

Back to Normal? Ontario Court of Appeal Overturns *ClearFlow* Decision on Interest Disclosure under Section 4 of *Interest Act*
Sept. 06, 2018

Interest Disclosure under Section 4 of the *Interest Act*: The Ghost Is Clanking Its Chains Again
Feb. 09, 2018

Perfection by Control of Security Interests in Cash Collateral Accounts: Recent Ontario Developments
Dec. 07, 2016

The Banking Regulation Review, 7th ed.: Canada Chapter
May 01, 2016

The Banking Regulation Review, 6th ed.: Canada Chapter
June 08, 2015

EDUCATION

University of Calgary, JD, 1980
University of Calgary, BSc, 1972

PROFESSIONAL AFFILIATIONS

Construction Lawyers Society of America, Fellow
Trial Law Institute
Diversity Law Institute

BOARD MEMBERSHIPS

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Infrastructure Ontario, director
PPP Canada (P3C), former director

COMMUNITY INVOLVEMENT

Carswell's *Canadian Corporation Precedents* and *Canadian Securities Law Precedents*, Editorial Board
Government of Ontario, *Commodity Futures Act*, Advisory Committee, chair
Montréal Heart Institute, Polo avec Coeur fundraiser, organizer

TEACHING ENGAGEMENTS

Carol is an adjunct professor at Osgoode Hall Law School. She assisted in developing and now coordinates the Advanced Business Law Workshop on mergers and acquisitions.