

Matthew Fleming

Partner



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Overview

Matthew Fleming is a partner in the Litigation and Dispute Resolution group of Dentons' Toronto office and is the Co-Lead of the Firm's global Financial Services Litigation group. His practice focuses on commercial litigation, including securities litigation, class actions, product liability and professional liability matters.

Matthew has represented financial institutions, accounting firms, manufacturers, retailers and natural resource companies in a wide variety of commercial litigation matters, including shareholder disputes, proxy fights, contested takeover bids and regulatory investigations. He also advises and represents clients engaged in domestic and commercial arbitration, as well as auditor liability, administrative and judicial review proceedings and competition law cases. He has appeared before the Supreme Court of Canada, the Ontario Superior Court of Justice (including the Commercial List), the Court of Appeal for Ontario, the Federal Court, the Federal Court of Appeal, the Québec Superior Court of Justice, the Ontario Securities Commission and the tribunals of the Chartered Professional Accountants of Ontario.

Matthew regularly speaks and publishes on class actions, securities litigation, corporate governance and director and officer liability matters. He volunteers as a mentor to new immigrants to Canada under the Toronto Region Immigrant Employment Council Mentorship Program and to high school students under the LAWS Mentoring Program.

Experience

- **Deloitte LLP:** Trial and appellate counsel, including in the Supreme Court of Canada, in connection with \$450 million claim relating to the fraud at Livent Inc. *Deloitte & Touche v. Livent Inc. (Receiver of)*, 2017 SCC 63.
- **Lenovo (Canada) Inc.:** Successfully representing in the Quebec Superior Court in obtaining the dismissal of a proposed product liability class action at the certification stage. *Durand v. Attorney General of Quebec*, QCCS 2817.
- **Confidential client:** Representing in connection with Ontario Securities Commission investigations relating to insider trading and registration matters.

- **Confidential client:** Representing two of the world's largest financial institutions in connection with their role as underwriters of offerings by Sino-Forest Corporation and related securities class actions.
- **Deloitte LLP:** Representing in connection with secondary market securities class action involving SouthGobi Resources Ltd.
- **VMedia:** Successfully representing in the Federal Court of Appeal in appeal from the decision of the Canadian Radio-television and Telecommunications Commission. *2251723 Ontario Inc. (c.o.b. as VMedia) v. Rogers Media Inc.*, 2017 FCA 186.
- **PwC:** Representing in regulatory proceedings related to audits of financial statements of offshore investment funds involving broker-dealer firm and the fraud by Bernie Madoff.
- **Central GoldTrust:** Advising in connection with Sprott Asset Management's CA\$1 billion hostile take-over bid for all the outstanding units.
- **KPMG LLP:** Successfully representing in obtaining bar order and third party releases in proceedings under the *Companies' Creditors Arrangement Act* involving Hollinger Inc. *Hollinger Inc.*, Re, 2012 ONSC 5107 (S.C.J. – Comm. List).
- **Sandvine Corporation:** Advising the TSX-listed corporation and the special committee of its board of directors on the acquisition of the company by an affiliate of Francisco Partners and Procera Networks, Inc. for CA\$562 million by way of a plan of arrangement. The acquisition followed a successful auction under a go-shop process.
- **CV Technologies Inc.:** Acting as defence counsel in a precedent-setting class action case under s. 138 of the *Ontario Securities Act* regarding secondary market liability. *Ainslie v. CV Technologies Inc.*, (2008), 304 D.L.R. (4th) 713 (Ont. S.C.J.).
- **KPMG LLP:** Successfully representing before the Court of Appeal for Ontario in upholding a sealing order in proceedings related to Hollinger Inc. and Conrad Black, *Hollinger Inc. (Re)*, 2011 ONCA 579.
- **Bayer AG and Bayer Inc.:** Successfully representing in the CA\$20 million contract dispute. *Nova Petrochemicals Ltd. v. Bayer AG*, 2011 ONSC 4372 (S.C.J. - Comm. List).
- **TransCanada Pipelines Limited:** Successfully representing in CA\$500 million pan-Canadian class action, *Canadian Alliance of Pipeline Landowners' Associations v. Enbridge Pipelines Inc.*, 2008 ONCA 227.
- **Canadian Wheat Board:** Successfully representing in administrative law cases in the Federal Court and Federal Court of Appeal relating to the CWB's statutory marketing mandate (2006-2011).
- **Teranet Inc.:** Advising in connection with the successful multi-million dollar dissenting shareholder dispute. *Teranet Inc. v. Canarab Marketing Corp.* (2008), 54 B.L.R. (4th) 138 (Ont. S.C.J. - Comm. List).
- **Royal Bank of Canada and RBC Dominion Securities:** Counseling in connection with the collapse of the asset backed commercial paper market (2008).
- **Augen Capital Corp.:** Representing successful party in precedent-setting proxy contest case. *Mason v. Augen Capital Corp.* (2010), 75 B.L.R. (4th) 116 (Ont. S.C.J. – Comm. List).
- **KPMG LLP:** Successfully representing before Ontario Securities Commission. *Black, Re* (2007), 31 O.S.C.B. 10397 (O.S.C.).
- **Polar Star Mining Corp.:** Acting as counsel in precedent setting proxy fight case (*Polar Star Mining Corporation v. Willock* (2009) 96 O.R. (3d) 668 (S.C.)).
- **Meridian Gold Inc.:** Advising in connection with the CA\$3.5 billion take-over bid for Meridian by Yamana Gold Inc., including a "poison pill" hearing before the Ontario Securities Commission.
- **Deloitte Touche Tohmatsu LLP:** Successfully representing in dismissing action against it on jurisdictional grounds. *Rosser v. Deloitte Touche Tohmatsu LLP*, (2008), 60 B.L.R. (4th) 59 (S.C.J.).

- **Chairman and CEO of ATI Technologies:** Successfully representing former chairman and CEO of ATI Technologies in high profile insider trading case before the Ontario Securities Commission. *ATI Technologies Inc., Re* (2005), 28 O.S.C.B. 8558 (O.S.C.).
- **Jones Heward Investment:** Successfully representing in investment portfolio management case. 2878852 Canada Inc. v. Jones Heward Investment Counsel, 2007 CarswellOnt 90 (C.A.).
- **Rio Narcea Gold Mines, Ltd.:** Advising on Lundin Mining Corporation's CA\$956 million take-over bid for Rio Narcea.
- **IAMGOLD Corporation:** Advising in connection with its CA\$275 million acquisition of Orezone Resources Inc.
- **Adamus Resources Limited:** Advising with respect to its CA\$313 million combination by way of a plan of arrangement with Endeavour Mining Corporation.
- **First Uranium Corporation:** Acting as counsel in connection with its CA\$405 million sale of its principal operating assets.
- **Confidential client:** Advising in connection with its business combination with Geotech Ltd.

Recognition

- Recognized in *Chambers Canada* as a leading lawyer in the area of Litigation: General Commercial (Ontario) (2020)
- Recognized in *Acritas* as an *Acritas Star™*(2019)
- Recognized in *The Legal 500 Canada* in the area of Dispute Resolution (2019)
- Recognized by the *Lexpert Special Edition – Canada's Leading Global Mining Lawyers* (2017)
- Recognized by the *Lexpert Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada* (2017)
- Ranked by *The Canadian Legal Lexpert Directory* as a Lawyer to Watch in the area of Corporate Finance and Securities (2017)
- Recognized as a finalist by *Lexpert*, "**Rising Stars: Leading Lawyers Under 40**", 2016

In the Media

- Quoted in "Little legal recourse for opponents of council cuts," *Law Times*, September 17, 2018
- Quoted in "Tesla wins court challenge against province," *Law Times*, September 3, 2018
- Quoted in "Ontario Court of Appeal throws out Silvercorp class action appeal," *Legal Feeds Blog*, August 2016

Insights

- Co-author, "Hostile board and rogue director impact material decisions," *Legal Alert*, February 2018
- Co-author, "Court of appeal sets jurisdiction test for class actions with global classes," *International Law Office*, January 2, 2018
- Co-author, "Court reconsiders the role of "public corrections" in securities class actions ," *Canadian Securities Litigation*, November 9, 2016
- Co-author, "Judges may weigh evidence on leave motions in secondary market securities class actions," *The*

- Co-author, "Ontario Court of Appeal lifts stay in cross-border class action," *The International Law Office*, September 27, 2016
- Co-author, "Director liable for corporate reorganization," *Legal Alert*, Vol. 35 no.6, p.45-46, September 2016
- Co-author, "Court of Appeal Confirms Judges May Weigh Evidence on Leave Motions in Secondary Market Securities Class Actions," *Canadian Securities Litigation*, September 6, 2016
- Co-author, "Court of Appeal Lifts Stay in Cross Border Class Action," *Canadian Securities Litigation*, August 15, 2016
- Co-author, "The Lessons on Proxy Fights From the U.S. Presidential Race", Canadian Mining Magazine, Summer 2016 (read full magazine here)
- Co-author, "Court clarifies scope of underwriter liability in securities class actions," *The International Law Office*, May 24, 2016
- Co-author, "Court Clarifies the Scope of Underwriter Liability in Securities Class Actions", *Canadian Securities Litigation*, May 10, 2016
- Co-author, "Secondary market securities class action dismissed based on evidence", *International Law Office*, May 10, 2016
- Co-author, "Court of Appeal holds that polluters pay... personally," *Legal Alert*, Vol. 35 no.1, p.6-8, April 2016
- Co-author, "Supreme Court considers Limitation Period for Secondary Market Securities Class Actions," Case Comment on *Canadian Imperial Bank of Commerce v Green*, *International Law Office* (2 February 2016)
- Co-author, "What constitutes a 'public correction' for the purpose of secondary market misrepresentation class actions?", *International Law Office*, January 26, 2016
- Co-author, "*Swisscanto v. Blackberry*. What constitutes a "public correction" for the purpose of secondary market misrepresentation class actions?", *Canadian Securities Litigation*, January 11, 2016
- Co-author, "Policy ambiguity resolved in favour of directors and officers", *Legal Alert*, Vol. 34 no. 9, p.65, December 2015
- Co-author, "Supreme Court of Canada considers Limitation Period for Secondary Market Securities Class Actions," Case Comment on *Canadian Imperial Bank of Commerce v Green* (9 December 2015), online: Canadian Securities Litigation.
- Co-author, "Ontario Proposes Whistleblower Regime", *Dentons Insights*, November 3, 2015
- Co-author, "Director's estate liable for unpaid wages arising from oppression", *Legal Alert*, Vol. 34 no.5, p.38, August 2015
- Co-author, "Supreme Court raises bar for leave to bring secondary market securities class actions", *International Law Office*, July 14, 2015
- Co-author, "*Theratechnologies inc. v. 12185 Canada inc*: Supreme Court of Canada raises the bar for obtaining leave to bring secondary market securities class actions", *Canadian Securities Litigation*, June 30, 2015
- Co-author, "Costs Awards in Class Actions: Equal Treatment for Plaintiffs and Defendants," Case Comment on *Fischer v IG Investments Management Ltd.*, *International Law Office* (30 June 2015)
- Co-author, "Director Personally Liable for Arbitration Award," *Legal Alert*, Vol.34 no.2, p.9, May 2015
- Co-author, "Director resignation need be effective to avoid liability," *Legal Alert*, February 2015, Vol.33, No.

- Co-author, "Ontario Court of Appeal deals blow to securities class actions," *International Law Office*, February 24, 2015
- Co-author, "The OSC's proposed Whistleblower Program," February 13, 2015
- Co-author, "Directors' Duties for Executive Compensation Matters Clarified," Case Comment on *Unique Broadband Systems, Inc. (Re)* (October 2014) 33:7 *Legal Alert* 55
- Co-author, "Ontario declines jurisdiction over BP cross-border securities class action", *International Law Office*, September 16, 2014
- "Do directors owe each other duties re: investments?", *Legal Alert*, July 2014, Vol. 33, No. 4, p. 30
- Co-author, "Court of Appeal Clarifies Directors' Fiduciary Duties and the Business Judgment Rule for Executive Compensation Matters," Case Comment on *Unique Broadband Systems, Inc. (Re)*, (11 August 2014), online: Canadian Securities Litigation
- "Harsh settlement terms for insider trading accusations", *Legal Alert*, April 2014, Vol. 33, No. 1, p. 4
- Co-author, "No Fault Responsibility for Environmental Remediation Costs," Case Comment on *Baker v Ministry of the Environment* (March 2014) 32:12 *Legal Alert* 93
- Co-author, "*Green v CIBC*: Court of Appeal Revisits Limitation Period for Secondary Market Securities Class Actions and Limits Common Law Negligent Misrepresentation Class Actions," Case Comment (11 February 2014), online: Canadian Securities Litigation
- Co-author, "Class Action Trilogy Clarifies Certification Test, Increases Anti-Competitive Exposure," Case Comment, *International Law Office* (7 January 2014)
- "Retention May Not Apply to Insolvent Company", *Legal Alert*, November 2013, Vol. 32, No. 8, p. 57
- "Appeal Court Interprets Insurance Clauses", *Legal Alert*, August 2013, Vol. 32, No. 5, p. 33
- "Advancement of Directors' Legal Fees Denied", *Legal Alert*, May 2013, Vol. 32, No. 2, p. 14
- "Court Invalidates Director Elections Due to Voting Instructions Provided by Telephone", *Corporate Governance Report*, March 2013
- "Director Personally Liable for GST Remittance", *Legal Alert*, February 2013, Vol. 31, No. 11, p. 87
- "Insurance Policy Interpreted in Officers' Favour ", *Legal Alert*, November 2012, Vol. 31, No. 8, p. 62
- "Directors Owe No Duty to Foreign Residents", *Legal Alert*, August 2012, Vol. 31, No. 5, p. 33
- "Supreme Court Develops New Test for Assuming Jurisdiction Over Foreign Defendants", *International Law Office*, June 2012
- "Strict Approach to Defences for Failure to Remit Taxes", *Legal Alert*, February 2012, Vol. 30, No. 11, pg. 86
- "Securities Class Actions in Canada - Increased Exposure for U.S. Companies, Directors and Officers as a Result of Canada's New Secondary Market Civil Liability Regime" *Inside*, New York State Bar Association Newsletter - Corporate Counsel Section, Vol. 29, No. 2, p. 22 (Fall 2011)
- "The Corporate Identification Doctrine - the Key Element of a Strong Defence for Auditors", *Professional Liability and Discipline Litigation*, Volume XIV, No. 3 (Federated Press, 2011), p. 882.
- "Directors May Retain Counsel in a Receivership", *Legal Alert*, October 2011, Vol. 30, No. 7, p. 49.
- "CSA Issues Guidance for Corporate Governance Disclosure", *Legal Alert*, February 2011
- "The Grey Area of Proxies: Court Clarifies Voting Rights in Proxy Contests", *Legal Post*, October 2010

- "Shareholder Democracy Essential in Managing Shareholder Meetings", *Legal Alert*, October 2010, Vol. 29, No. 7, p. 55
- "The 2010 Guide to Litigation, Arbitration and Dispute Resolution", *Executive View Media Limited* (March 2010)
- CSA Abandons Changes to Corporate Governance Guidelines, *Legal Alert*, January 2010, Vol. 28, No. 10, p.73
- Exercise Caution in Selecting Financial Advisors, *Legal Alert*, October 2009, Vol. 28, No. 7, p.54
- Indemnification Possible Where Director Admits Wrongdoing, *Legal Alert*, July 2009, Vol. 28, No. 4, p.26
- Statutory Disclosure Obligations Trump Business Judgment, *Legal Alert*, February 2008, Vol. 26, No. 11, p. 86
- "Takeover Battles: New Limits on Maximizing Shareholder Value?", May 2007
- "The Corporate Identification Doctrine - The Key Element of a Strong Defence for Auditors", *Corporate Risk*, Vol. XII, No. 4 (Federated Press, 2012), p. 959 (with Frank Bowman)
- "Proposed Changes to Director Elections", *Legal Alert*, April 2012, Vol. 31, No. 1, p. 4 (with John Zerucelli)
- "Strict Approach to Defences for Failure to Remit Taxes", *Legal Alert*, February 2012, Vo. 30, No. 11, p. 86
- "Court Endorses Advancement of Former Directors' Legal Expenses", *Legal Alert*, July 2011, Vol. 30, No. 4, p. 31
- "OSC Clarifies Directors' Duties Regarding Poison Pills", *Legal Alert*, April 2011, Vol. 30, No.1, p. 5
- "Admissibility of Administrative Settlement Agreements in Civil Proceedings", *Professional Liability and Discipline Litigation*, Vol. XIV, No. 1 (Federated Press, 2010), p. 850 (with Frank Bowman)
- "Undertaking by OSC Staff May Not be Binding", *Legal Alert*, July 2010, Vol. 29, No. 4, p. 28.
- "Court Interprets Leave Provision in Secondary Market Liability Class Action," *Legal Alert*, April 2010, Vol. 29, No. 1, p.1
- "The BCE Decision: What's Next for Directors," *Legal Alert*, April 2009, Vol. 28, No. 1, p. 1
- "Several Issues Involved in Director Indemnification for Legal Costs," *Legal Alert*, February 2009, Vol. 27, No. 11, p. 85
- "Directors Need to Consider Disclosure Obligations for Trust Holdings," *Legal Alert*, October 2008, Vol. 27, No. 7, p. 51
- "Repap Decision Provides Guidance for Directors on Executive Pay," *Legal Alert*, August 2008, Vol.27, No. 5, p. 3
- "OSC Renders Disclosure Obligations Unclear," *Legal Alert*, May 2008 Vol 27, No.2, p. 11
- "Changes to OBCA in force as of August 1," *Legal Alert*, June 2007, Vol. 26, No.3, p. 1
- "Court Reaffirms Deference to Business Judgment," *Legal Alert*, June 2006, Vol. 25, No. 3, p. 21
- "ADR in Cross-Border Canadian Corporate Restructuring," paper delivered to International Bar Association Conference by J.L. McDougall, Q.C., Athens, Greece, May 7-9, 2006
- "Ontario Securities Commission Dismisses Insider Trading Allegations," *International Law Office*, March 21, 2006 (with J.L. McDougall, Q.C.)
- "Ontario Proposes Whistleblower Regime," November 3, 2015

Activities and Affiliations

- Member, Canadian Bar Association
- Member, Ontario Bar Association
- Member, The Advocates' Society
- Associate Member, American Bar Association

Presentations

- Speaker, "Lessons Learned from the Supreme Court of Canada's Decision in *Livent*," The Twelve Minute Civil Litigator 2018, Law Society of Ontario, September 18, 2018
- Panelist, "Recent Trends in Securities Class Actions," Advocates' Society 8th Annual Securities Litigation Symposium, September 2018
- Panelist, "Class Action Year in Review 2013," Dentons Canada LLP: Continuing Professional Development Program, November 2013
- Panelist, "Enforceable Non-Competition Clauses in the Sale of a Business," Dentons Canada LLP: Continuing Professional Development Program, November 2013
- Speaker, "Fiduciary Duty for Investment Dealers and Advisors – The Impact of a Statutory Best Interest Duty on Civil Liability," Advocates' Society 3rd Annual Securities Litigation Symposium, September 2013
- Speaker, "Litigating Proxy Fights," Advocates' Society 2nd Annual Securities Litigation Symposium, September 2012
- Panelist, "National Classes," Canadian Institute Class Actions Bootcamp, April 2012
- Speaker, "Fundamentals of Civil Motions - Preparing for Oral Argument," Ontario Bar Association, November 2011
- Speaker, "Cross-Border Securities Class Actions," New York City Bar Association, International Commercial Disputes Committee, January 2011

Areas of focus

Practices

- Alternative Dispute Resolution (ADR)
- Class Action Defense
- Commercial Litigation
- Financial Markets Litigation and Regulation
- Corporate Governance
- Litigation and Dispute Resolution
- Product Liability and Complex Torts
- Professional Liability Litigation
- Securities and Shareholder Litigation

Industry sectors

- Accounting Firms
- Financial Institutions
- Manufacturing
- Mining Litigation and Dispute Resolution
- Professional Services

Education

- University of Ottawa, 2002, LLB
- University of Ottawa, 1999, B.Sc. (Hons.), Political Science

Admissions and qualifications

- Ontario, 2003

Languages

- English