



Mark Tonkovich

Partner | Toronto

mark.tonkovich@blakes.com

Toronto: 416-863-5258

Mark's practice focuses on resolving tax and tax-related public law disputes. He represents many of Canada's and the world's largest and most sophisticated businesses in a wide range of tax matters. He has particular expertise in proactively analyzing and advising on tax litigation risks, navigating sensitive tax audits, negotiating with federal and provincial tax authorities, and litigating tax assessments or CRA administrative activities. He develops and executes comprehensive and practical strategies for resolving tax disputes as efficiently and favourably as possible, both in and out of the courtroom.

An exceptional litigator, Mark has successfully represented many clients in administrative appeals and before federal and provincial courts, including the Tax Court of Canada, the Federal Court, the Federal Court of Appeal, the Ontario Superior Court of Justice, the Court of Appeal for Ontario, the Court of Appeal of Alberta, and in resisting leave to appeal before the Supreme Court of Canada. The Federal Court of Appeal observed as follows in a 2013 judicial review application: "In exemplary fashion, Mr. Tonkovich untangled a confusing body of evidence and argument, discerned the most important legal issues, and effectively presented submissions that were of significant assistance to the Court in the efficient resolution of this case."

Before joining Blakes, Mark was a tax partner at a prominent international law firm. Prior to that, he was a government tax litigator with the Department of Justice and a judicial clerk at the Federal Court of Appeal.

SELECT EXPERIENCE

- Trial-level tax disputes concerning the general anti-avoidance rule (GAAR), the taxation of foreign affiliates, transfer pricing adjustments, foreign entity characterization, the scientific research and experimental development (SR&ED) program, and the tax consequences of employee fraud
- Appellate-level cases concerning the GAAR, business vs. property income issues, employer-provided taxable benefits, and the implementation of the provincial reassessment waiver regime
- Appellate-level judicial intervention on behalf of the Canadian Bar Association concerning fundamental precepts of solicitor-client privilege in the tax context
- Applications for judicial review concerning failures by the Canada Revenue Agency (CRA) to issue timely assessments of federal income tax, compelling the refund of erroneously-remitted Part XIII withholding tax, disputing the validity of CRA audit requirements, challenging the CRA's refusal to provide relief from double taxation under the Canada-US Tax Treaty, and navigating the intersection of employment insurance and bankruptcy law
- Provincial rectification proceedings to correct substantial transactional errors in a cross-border hybrid refinancing plan
- Administrative appeals relating to foreign accrual property income, non-resident withholding tax,

payments in respect of intellectual property, the thin capitalization rules, errors in the presentation of financial information, income vs. capital characterization issues, federal sales tax and the financial service exemption, provincial sales tax on insurance products, and the scope and validity of provincial income tax assessments

- Submissions to the CRA's Transfer Pricing Review Committee overcoming the proposed application of transfer pricing penalties
- Both frontline and behind-the-scenes guidance on a large number and variety of complex tax audits, including in the context of reviews by the CRA's Aggressive Tax Planning Division, the foreign affiliate regime, transfer pricing issues, entitlement to benefits under Canada's tax treaties, the reporting of offshore assets, employee/independent contractor classification and the SR&ED program
- Voluntary disclosure submissions concerning a complex web of cross-border transactions involving dozens of legal entities, offshore asset reporting issues, and substantial errors under various provincial sales tax regimes
- Providing post-transaction opinions on specific tax risks, focusing on the viability of client tax positions and the proactive management of litigation risks and other sensitive matters

AWARDS & RECOGNITION

Mark is recognized as a leading tax lawyer in the following publications:

- *The Best Lawyers in Canada 2020* (Tax Law)
- *International Tax Review's World Tax 2019* – Highly Regarded (Tax Controversy)
- *The Best Lawyers in Canada 2019* (Tax Law)
- *International Tax Review's Tax Controversy Leaders Canada 2018*
- *International Tax Review's Tax Controversy Leaders Canada 2017*

PUBLICATIONS

Co-author: Striking a Balance: Exploring Legitimate Expectation and the Fisc's Administrative Positions in Canada, the UK, and the US

Tax Litigation, Vol. 22, Issue 2, p. 2, Federated Press, 2019.

Co-author: Future Law and Alternative Facts in the GAAR Analysis

Tax Litigation, Vol. 21, Issue 1, p. 6, Federated Press, 2018.

Co-author: After IGGillis Holdings: Protecting privilege when giving common legal advice

CBA National, March 26, 2018.

Co-author: FCA Rules CRA Cannot Force Taxpayers to Self-Audit on Uncertain Tax Positions

Taxation Law Section Newsletter, Ontario Bar Association, May 15, 2017.

Author: Theft by Owners or Senior Employees: Deductibility of Losses

Canadian Tax Focus, Vol. 6, Issue 1, pp. 1-2, 2016.

PROFESSIONAL APPEARANCES

Co-presenter: Transfer Pricing – Law and Practice

International Fiscal Association YIN Seminar, IFA Canada, March 2019.

Co-presenter: Current Cases Seminar

Ontario Tax Conference, Canadian Tax Foundation, October 2018.

Mentor: Speed Mentoring – Practical Advice on Succeeding as a Young Tax Lawyer

Taxation Law Section Seminar, Ontario Bar Association, October 2018.

Panellist: Best Practices to Deal with Canadian Tax Authorities and Audits

Canadian Tax Workshop for US Companies, Council on State Taxation, September 2017.

Panellist: Need to File an Appeal – Procedures to Object and Appeal Canadian/Provincial Tax Assessments and Customs/Duties (Including Input GST)

Canadian Tax Workshop for US Companies, Council on State Taxation, September 2017.

Chair: Year-End Address

Taxation Law Section Year-End Seminar, Ontario Bar Association, June 2017.

Speaker: Tax Challenges in Taking Your Business International

Trade Accelerator Program, Toronto Region Board of Trade, March 2017.

MEDIA APPEARANCES

Quoted: Federal Court of Appeal gives guidance to CPP filing obligations of retired business partners

Interviewed by Terry Davidson, *The Lawyer's Daily*, June 18, 2018.

Quoted: Federal Court of Appeal clarifies reach of solicitor-client privilege

Interviewed by Amanda Jerome, *The Lawyer's Daily*, March 14, 2018.

Quoted: The CBA's intervention on common interest privilege

Interviewed by Yves Faguy, *CBA National Magazine*, October 5, 2017.

PROFESSIONAL ACTIVITIES

Mark is a frequently published author. He has written or co-written dozens of articles on Canadian tax matters, including in the peer-reviewed *Canadian Tax Journal* and the *National Journal of Constitutional Law*, as well as in several trade publications. He also sits on the editorial board of *Tax Litigation*, a Federated Press journal.

Mark is a member of the Tax Court Bench and Bar Committee, a board member of the Toronto Centre CRA & Tax Professionals Group, and a past chair of the Ontario Bar Association's Taxation Law Section. He is also a member of the Canadian Tax Foundation, The Advocates' Society, the Canadian Bar Association, the Canadian Petroleum Tax Society, the International Fiscal Association, the Halton County Law Association, and the Ukrainian Canadian Bar Association.

Mark regularly speaks at events for tax professionals and has appeared as an invited witness before the House of Commons Standing Committee on Finance.

Mark has also provided many hundreds of hours of pro bono public-interest representation to select organizations and low-income individuals. He is a founding board member and serves as secretary of the non-profit Making the Shift Inc., a youth homelessness social innovation lab that has been granted \$17.9 million in funding from the Canadian government to address and prevent youth homelessness. Mark also

volunteers as a judge for a variety of moot court competitions (including the Bowman National Tax Moot, the Canadian rounds of the Jessup International Moot, and the OBA/OJEN High School Mock Trial Competition).

EDUCATION

Admitted to the Ontario Bar – 2009

LL.M. (Tax), Osgoode Hall Law School – 2014

LL.B. (with Distinction), University of New Brunswick – 2008

B.A., University of Guelph – 2005