

Winnipeg-based law firm finds niche with real estate investment trusts

By Geoff Kirbyson
Winnipeg

You can count Aikins, MacAulay & Thorvaldson LLP among the many parties breathing a sigh of relief now that the federal government has announced new tax guidelines would not negatively target the income trust sector.

The Winnipeg-based law firm has recently carved out a profitable niche for itself doing the legal work for a quintet of real estate investment trusts and one business trust on the TSX Venture Exchange.

So it was music to the ears of Ed Warkentin, managing partner of Aikins, when Finance Minister Ralph Goodale said personal income taxes on dividends would be lower but the much-feared tax hike on income trusts would not materialize.



Ed Warkentin

He said Goodale's comments in September that Ottawa would postpone providing advance tax rulings for companies considering converting to an income trust pending a review of the industry clearly had a cooling effect on the once high-flying sector.

"It had an impact on the markets which has also had an impact on our clients, particularly those going to the market to raise additional capital," he said.

Even before Goodale made his pre-election proclamation in November, Warkentin was preparing to grow its trust business, hiring a new associate, Nicole Cyr Hiebert, in its securities division. Warkentin said he's actively looking for a few more.

It's little wonder, because the five real estate investment trusts (REITs) Aikins counts as clients – Lanesborough REIT, Huntingdon REIT, Lakeview REIT, Westfield REIT and Whiterock REIT – have raised more than \$350 million in the first 10 months of 2005 alone.

Arni Thorsteinson, CEO of both Lanesborough and Huntingdon, said he always believed the real estate part of the income trust sector would be exempt from any tax increases. So while the content of Goodale's announcement wasn't a shock, the timing of it was.

"They said we wouldn't hear until January. The government cleared the air six weeks to two months early," he said.

David C. Filmon, partner and head of its securities law practice group, said Aikins has been able to develop its expertise in an area that would typically be serviced by larger firms. But because it's doing it at a small-cap level, Aikins has been able to stay under the radar of most competitors. He said there are unique regulatory hurdles to clear with its REIT clients, as opposed to others in the sector, because they started out as junior capital pool companies with very little history and next-to-no assets, yet they were able to raise "material amounts of" money and grow very quickly.

Also known as JCPs, these shell companies raise seed capital based on the strength of their management and have 18 months from their inception to make a qualifying transaction. The JCP model allows young firms to go public more quickly and economically than the traditional initial public offering route.

"It's a really neat vehicle to get you a public shell and turn it into an income trust and take advantage of the financing opportunities," Filmon said.

He said the income trust work is complicated, combining a qualifying transaction and a conversion to an income trust as well as dealing with the TSX Venture Exchange. It involves in-depth tax structuring, securities and corporate transactional work, disclosure and acquisition documentation, merger and acquisition work, plus a prospectus or private placement offering.

"As financing vehicles, they've been well accepted. Some brokers in Toronto, in particular, have really embraced them," he said.

Allan Fineblit, CEO of The Law Society of Manitoba, praised Aikins for developing a national reputation for its work in the income trust area and says the competitive price structure of legal services in the province should help it and other local firms get a leg up on national firms in such instances.

"They don't have the high overhead costs in Winnipeg that other cities do," he said.

Filmon notes the legal work comes in cycles with REITS and says \$350 million in capital can be leveraged to buy about three times as much real estate.

"There's a lot of legal work in spending \$1 billion," he said.

Filmon said while the company hasn't undergone any drastic reorganization recently, it has refocused its efforts on what has become a significant new revenue stream.

"We've grown our experience in the tax and income trust securities side of things that we wouldn't have had before," he said.

Thorsteinson said he was so impressed with Aikins' work that he recommended the firm to Toronto-based Whiterock REIT, where he serves as chairman of the board of trustees.

"It's quite a sophisticated sequence of events to get to the REIT status. Filmon and the securities law group at Aikins have become the experts," he said.

He said Whiterock could have used one of the national firms but opted for Aikins because it has its finger on the pulse on the sector.

"For this particular type of transaction, (Aikins) is better. They're specialized in it," he said.

Kevin Strong, manager of the Winnipeg office of the TSX Venture Exchange, said the lawyers at Aikins certainly appear to be the "go-to guys" when it comes to income trusts.

"Half of the income trusts on the Venture Exchange are Manitoba-based, and Aikins was involved in every one of them," he said, noting REITs trail only mining and oil and gas companies in terms of raising capital on the junior exchange.