



Earl A. Cherniak Q.C., FCI.Arb

Partner, Chartered Arbitrator

Appellate Advocacy, Commercial Litigation, Class Proceedings, Health Law Practice Groups

Contact Information

Direct Phone: 416.601.2350

Direct Fax: 416.867.2402

E-mail: echerniak@lerners.ca

Website: www.lerners.ca

Address: 130 Adelaide St. West, Suite 2400, Toronto, ON M5H 3P5

Areas of Practice

Commercial Disputes
Arbitration, as counsel and arbitrator
Mediation
Class Action Proceedings
Appellate Advocacy
Directors and Officers Liability
Product Liability
Public and Administrative and Constitutional Law
Professional Negligence
Aboriginal Law and Land Claims
Shareholder Disputes
Commissions of Inquiry

Noteworthy Cases

Honda Canada Inc. v. Keays (2008), 66 C.C.E.L. (3d) 159 (SCC)

Canadian National Railway Co. v. Royal and Sun Alliance, [2008] 3 S.C.R. 53

Amnesty International Canada and British Columbia Civil Liberties Association v. Chief of the defence staff for the Canadian Forces, Minister of National Defence and Attorney General of Canada (2008), FAC 401 (Fed. C.A.)

Marcoccia v. Ford Credit Canada Limited, [2009] O.J. No. 1548 (C.A.)

Sandhu (Litigation Guardian of) v. Wellington Place Apartments, [2008] O.J. No. 1148 (C.A.)

Canadian National Railway Company v. Royal and Sun Alliance Insurance Company of Canada, 2007 ONCA

Re Ravelston Corp. (2007), 29 C.B.R. (5th) 45, 85 O.R. (3d) 175 (Ont. C.A.)

Re Ravelston Corp. (2007), 29 C.B.R. (5th) 1 (Ont. S.C.J.)

Jazz Air v. Toronto Port Authority, [2007] F.C.J. No. 1268, 160 A.C.W.S. (3d) 604 (F.C.)

Jazz Air v. Toronto Port Authority, [2007] F.C.J. No. 841, 158 A.C.W.S. (3d) 931 (F.C.)

Sun Times Media Group Inc. v. Black, [2007] O.J. No. 795 (Ont. S.C.J.)

Sun Times Media Group Inc. v. Black (2007), 2007 CarswellOnt 2178 (Ont. S.C.J.)

Re Black (2007), 2007 CarswellOnt 2021 (Ont. S.C.J.)

Cosgrove v. Canadian Judicial Council (2007), 361 N.R. 201, 279 D.L.R. (4th) 352 (F.C.C.A.)

Keays v. Honda Canada Inc., 2007 ONCA 564 (CanLII)

Walker v. Ritchie, [2006] 2 S.C.R. 428 • (2006), 273 D.L.R. (4th) 240 • (2006), 217 O.A.C. 374

Pereira v. Hamilton Township Farmers' Mutual Fire Insurance Company, 2006 CanLII 12284 (ON C.A.); 2006 CanLII 20680 (ON C.A.) • (2006), 267 D.L.R. (4th) 690 • (2006), 209 O.A.C. 127

Jazz Air v. Toronto Port Authority, [2006] F.C.J. No. 1155 (F.C.)

Waterloo (City) v. Wolfrail (2006), 270 D.L.R. (4th) 513 (Ont. S.C.J.)

Jazz Air v. Toronto Port Authority, [2006] F.C.J. No. 1053, 294 F.T.R. 278 (F.C.)

Cowles v. Balac, 2006 CanLII 41806 (ON C.A.); *Cowles v. Balac*, 2006 CanLII 34916 (ON C.A.); Leave to Appeal dismissed (31766) 2007 CanLII 6833 (S.C.C.)

Air Canada v. WestJet Airlines Ltd., (2006), Ont. S.C.J., 267 D.L.R. (4th) 483

Cosgrove v. Canadian Judicial Council (2005), 261 D.L.R. (4th) 447 (F.C.)

Re Bell Canada International Inc. (2005), 2005 CarswellOnt 4401 (Ont. S.C.J.)

Re Cavell Insurance Co. (2005), 25 C.C.L.I. (4th) 230 (Ont. S.C.J.)

SOS-Save Our St. Clair Inc. v. Toronto (City) (2005), 204 O.A.C. 63, 78 O.R. (3d) 331 (Ont. S.C.J.)

David Polowin Real Estate Ltd. v. The Dominion of Canada General Insurance Company (2005), 255 D.L.D. (4th) 633 (C.A.)

Chaoulli v. Quebec (Attorney General), [2005] S.C. J. No. 33 (S.C.C.)

HSBC Securities (Canada) Inc. v. Davies, Ward & Beck (2005), 74 O.R. (3d) 295, 249 D.L.R. (4th) 571 (Ont. C.A.)

HSBC Securities (Canada) Inc. v. Davies, Ward & Beck (2004), 2004 CarswellOnt 3777 (Ont. S.C.J.)

Ontario (Ministry of Labour) v. Brampton Brick Ltd. (2004), 189 O.A.C. 44 (Ont. C.A.)

Hollinger International v. Hollinger Inc. (2004), 11 C.P.C. (6th) 245 (Ont. S.C.J.)

Caputo v. Imperial Tobacco Ltd. (2004), 236 D.L.R. (4th) 348, 42 B.L.R. (3d) 276 (S.C.J.)

Childs v. Desormeaux, [2004] O.J. No. 2065 (C.A.)

Mizzi v. Hopkins (2003), 171 O.A.C. 161, 64 O.R. (3d) 365 (Ont. C.A.)

Ferme Gerald Laplante & Fils Ltee v. Grenville Patron Mutual Fire Insurance Co [2002] O.J. No. 4175 (C.A.)

Lyons v. Toronto (Computer Leasing Inquiry - Bellamy Commission), [2004] O.J. No. 648, 183 O.A.C. 273, 47 M.P.L.R. (3d) 82

Royal Trust Corp. v. Fisherman (2001), 55 O.R. (3d) 794 (C.A.), 149 O.A.C. 337, 13 C.P.C. (5th) 223

Toronto-Dominion Bank v. Leigh Instruments Limited (Trustee of) (1999), 45 O.R. (3d) 417 (C.A.)

Whiten v. Pilot Insurance Co., [2002] S.C.R. 595, 209 D.L.R. (4th) 257, 156 O.A.C. 201, 20 B.L.R. (3d) 165, 35 C.C.L.I. (3d)

Chippewas of Sarnia Band v. Canada (Attorney General) (2000), 195 D.L.R. (4th) 135 (Ont. C.A.)

Traynor v. Unum (2003), 65 O.R. 2252 (Ont. S.C.J.), 228 D.L.R. (4th) 228

Hodgkinson v. Simms & Waldman, 97 B.C.L.R. (2d) 1 (S.C.C.), [1994] 9 W.W.R. 609, 22 C.C.L.T. (2d) 1, 117 D.L.R. (4th) 161, 171 N.R. 245, 57 C.P.R. (3d) 1, 16 B.L.R. (2d) 1, 5 E.T.R. (2d) 1, 49 B.C.A.C. 1, 80 W.A.C. 1, [1994] S.C.R. 377, 95 D.T.C. 5135, 6 C.C.L.S. 1

LAC Minerals Ltd. v. International Corona Resources Ltd., [1989] 2 S.C.R. 574 (S.C.C.), 26 C.P.R. (3d) 97, 69 O.R. (2d) 287, 61 D.L.R. (4th) 14, 6 R.P.R. (2d) 139, 44 B.L.R. 1, 33 E.T.R. 1, 101 N.R. 239, 36 O.A.C. 57

Professional Experience

Partner, Lerners LLP
The Law Society of Upper Canada and Chair and Vice –Chair of Proceedings Authorization Committee, 1999 - 2007
Fellow, The Chartered Institute of Arbitrators, July 2006
Panel Member, International Arbitrations, International Centre for Dispute Resolution (ICDR/AAA)
Member, Canadian Roster of Arbitrators, International Chamber of Commerce (ICC)
Roster Member, London Court of International Arbitrators (LCIA)

Mr. Cherniak's practice is restricted to trial and appellate work, and arbitrations, in a broad spectrum of complex commercial, insurance and public litigation. Mr. Cherniak is listed as an expert in commercial arbitration or litigation in the following publications:

The Legal Media Group Guide to the World's Leading Experts in Commercial Arbitration
Chambers Global
Who's Who Legal
Lexpert

Mr. Cherniak has also jointly ventured with John Lorn McDougall, Q.C. of Fraser Milner Casgrain LLP for commercial arbitrations. They are both leading Canadian litigation counsel with many years experience in virtually all areas of commercial litigation and arbitration. Cherniak McDougall's practice in international commercial arbitrations is from 3 Verulam Buildings in London. For more information visit www.3vb.com.

Arbitration/Mediation Experience

Recent and ongoing commercial arbitrations as arbitrator include a dispute between Alberta Oil Sands joint venture and an international group of insurers (chair of panel, settled after 3 months of hearing); a dispute between a steel company and a group of contractors who performed an upgrade (chair of panel); a dispute between a coal mining company and a loading facility (sole arbitrator); a dispute between an electric energy supplier and a manufacturer (chair of panel); a dispute between the Ontario government and the long term lessee of a toll highway (member of the panel); a dispute in the Canadian book publishing industry (sole arbitrator); a dispute between an Ontario municipality and a hydro-electric supplier (sole arbitrator); a dispute between the buyer and seller of a hydro-electric supply company (sole arbitrator); a shareholder dispute in the technology industry (sole arbitrator); a vendor/purchaser dispute in the hydro-electric power supply industry (sole arbitrator); a dispute between two pharmaceutical companies over a distribution agreement; a dispute over dockage rights on the Great Lakes (panel member, ICC arbitration); a dispute between a hospital and a pharmaceutical company; a manufacturer of commercial airplanes and a customer; an ICC arbitration involving a dispute between an American supplier and European entities over a share acquisition agreement (sole arbitrator); a dispute between Canadian companies in the helicopter industry (panel member); a dispute between a Canadian corporation and its directors with an insurer over liability under a directors and officers liability policy following on the bankruptcy of an American subsidiary (sole arbitrator); a dispute between a partner of a major Canadian law firm and the law firm (panel member); a dispute between condominium owners and a developer over the use of the premises (sole arbitrator); a dispute between a significant entity in the Vancouver Olympics and a developer (sole arbitrator); a dispute between a First Nations Band, Ontario Power Generation and an entity of the Ontario government over power generation in Northern Ontario (sole arbitrator); and a dispute between parties to a joint venture agreement (sole arbitrator).

Mediations include a shareholders dispute; claims in a complex insolvency between stakeholders; a dispute between a major supplier and a sub-contractor in the automotive industry; a dispute between Toronto and a developer; and a class action suit in securities litigation.

Achievements

Gold Medalist, Osgoode Hall Law School (1960)
Appointed Queen's Counsel (1974)
President, The Advocates' Society (1979-1980)
Elected Fellow, American College of Trial Lawyers (1982)
Elected Fellow, International Academy of Trial Lawyers (1987)
The Advocates' Society Medal (1996)
First recipient of the Ontario Bar Association Award for Excellence in Civil Litigation (2004)
Recipient of the 2006 Osgoode Hall Law School Alumni Gold Key Award

Selected by peers to be included in The 2006 Lexpert Guide to the 100 Most Creative Lawyers in Canada; The 2010 Lexpert Guide to the U.S./Canadian Cross-Border Litigation Lawyers in Canada; The 2011 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada; and The 2010 Canadian Legal Lexpert Directory
Recognized and selected as one of "The Best Lawyers in Canada" as published by Woodward/White in the United States, since 2006

A Selection of Presentations/Publications

One Arbitrator or Three? (written with J.L. McDougall), Lawyers Weekly, February 2009

The Future of Compensatory, Aggravated and Punitive Damages Post Honda, Employment Law Summit, October 30, 2008

Defending a Case for Aggravated and Punitive Damages, Law Society of Upper Canada, June 10, 2008

Reflections of a Domestic Commercial Arbitrator, The Advocates' Society of Ontario, 2007

Awards, Costs, Appeals in Arbitration, Law Society of Upper Canada, 2007

CBA Conference Panel, International Arbitrations, Vancouver, June 2005

Privilege Issues and the Barrister's Brief, COMBAR Meeting, Barcelona, Spain, June 4-5, 2004; the American College of Trial Lawyers and the Advocates' Society of Ontario joint conference, April 12, 2004.

Professionalism at the Crossroads, COMBAR Meeting, Boston, May 31, 2003; The Advocates' Society Fall Convention, Cancun, Mexico, November 2003.

Selection and Preparation of Experts, The Art & Science of Trial Advocacy, The Advocates' Society American College of Trial Lawyers, May 2, 2003

How to Protect Against A Punitive Damage Award, Canadian Institute Insurance Litigation, June 14, 2002

Advocacy on Appeal, Ontario Trial Lawyers' Association, October 27, 2001

Chippewas of Sarnia Band v. Canada, October 26, 2001, The Canadian Aboriginal Law 2001 Conference, October 25 and 26, 2001

Memberships

Canadian Bar Association

Canadian Institute for the Administration of Justice

The Advocates' Society

American College of Trial Lawyers

International Academy of Trial Lawyers

International Association of Jewish Lawyers & Jurists (Canadian Section)

Osgoode Society

Toronto Lawyers' Club

Toronto Lawn Tennis Club

Member, Honorary Council, London Health Sciences Foundation (1998)

Member and Vice-Chairman, Board of Directors, Victoria Hospital Corporation (1982-1989)

Personal Information

Tennis, Squash, Sailing and Canoeing

