

# CYNTHIA B. KUEHL

## Appeals

PARTNER

*"A successful appeal requires the study, analysis and interpretation of the factual record and legal principles, the creation of a cohesive argument, and the skilled presentation to a panel of knowledgeable judges. It is the process of detailed preparation culminating in oral argument that has always drawn me to this area of practice."*

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## REPRESENTATIVE WORK

Cynthia is a partner at Lerners LLP, with more than 22 years of civil litigation experience.

Cynthia brings her litigation skill set, honed from years of actual on-her-feet experience, and her common sense approach to problem-solving, to a wide range of areas, including commercial litigation and arbitration, appellate advocacy, public and administrative law, professional regulation and health law. She has appeared as lead counsel at trials, applications and on appeals, and has litigated before every level of court including the Supreme Court of Canada. She regularly acts as independent legal counsel to a number of tribunals, providing substantive legal advice to the tribunal as issues arise during hearings.

Cynthia is certified as a Specialist in Civil Litigation by the Law Society of Ontario, and has her Qualified Arbitrator designation from the ADR Institute of Ontario.

## LEADERSHIP POSITIONS AND COMMUNITY CONTRIBUTIONS

Cynthia has held several leadership positions at Lerners, including serving for two years on the Firm's Executive Committee. Previously, she served as Deputy Practice Group Leader of the Health Law Group (2013-2018), and was a founder and former head of the Appellate Advocacy Group (2010-2013).

In addition to her leadership roles at the firm, she has been and continues to be an active leader in the legal and larger community, serving in the following roles:

- ◆ Member, Board of Directors, The Advocates' Society (2022)
- ◆ Co-Chair, University Tribunal for the Office of Appeals, Discipline and Faculty Grievances, University of Toronto (2019 to present)
- ◆ Assistant Program Director, TCAS Gold Standard Course on Commercial Arbitration (Sept. 2018 to May 2021)
- ◆ Member, NAFTA Article 2022 Advisory Committee on Private Commercial Disputes (2016 to 2018)
- ◆ Member, CBA Committee for the Consultation to the Canadian Judicial Council on its Discipline Process (2014 to 2016)
- ◆ Co-Chair, Arbitration and Mediation Practice Group, The Advocates' Society (2013 to 2016)
- ◆ Ontario Bar Association Health Law Section, Past Executive Member (2008 to 2011)
- ◆ Medico-Legal Society of Toronto, Past Council Member (2009 to 2012)
- ◆ Former Board Member and President of the Board of Directors of Bond Child and Family Development

## NOTEWORTHY CASES

- ◆ ***Eynon v. Simplicity Air***, 2021 ONCA 409 – Appellate counsel on case confirming that employers can be vicariously liable for punitive damages
- ◆ ***County of Wellington v. MPAC, Region 22***, 2021 CanLi 26723 (ON ARB) – Acted for the appellant in a lengthy hearing on municipal assessment and classification for taxation purposes

- ◆ **Tahir v. Mitoff**, 2019 ONSC 7298 - Trial counsel on medical malpractice trial
- ◆ **Langenfeld v. Toronto Police Services Board**, 2019 ONCA 716 -Appellate counsel in case involving whether security measures by the Toronto Police Chief at Police Headquarters violated the applicant's s. 2b rights
- ◆ **ClubLink v. Town of Oakville**, 2018 ONSC 6386; 2018 ONSC 7395; 2019 ONCA 358 -Counsel to the owner of the Glen Abbey Golf Course on applications to interpret provisions of the *Ontario Heritage Act* and to strike certain municipal by-laws. Successful defence on appeal
- ◆ **Rankin v. JJ**, 2018 SCC 19 -Appeal examining the scope of the duty of care, and the defence of illegality.
- ◆ **Richmond Hill v. Elginbay Corp.**, 2018 ONCA 72 -Appeal arising from judicial review of a decision of the Ontario Municipal Board.
- ◆ **6524443 v. Toronto (City)**, 2017 ONCA 486 -Successful enforcement of an arbitration clause limiting appeal rights. Cynthia also acted as counsel on the underlying lengthy arbitration
- ◆ **Douez v. Facebook, Inc.**, 2017 SCC 33 -Intervention by the Canadian Civil Liberties Association in a case which considered the enforceability of forum selection clauses in online contracts of adhesion.
- ◆ **Hercules Moulded Products v. Foster**, 2017 ONCA 445 -Interpretation of title insurance contract provisions
- ◆ **Moore v. Getahun et al**, 2014 ONSC 237 - Trial counsel in this leading case which caused appellate review of expert evidence.
- ◆ **Land Lease Arbitration** (2014-2015) - Arbitration counsel on a complex land lease arbitration which involved the legal interpretation of a lease and the highest and best use to which a property could be made.
- ◆ **Goodwin v. Olupona**, 2013 ONCA 259 - Acted on the successful response to an appeal of a medical malpractice jury decision.
- ◆ **Canada Trust Company v. Browne**, 2012 ONCA 862 - Acted with senior counsel as counsel to the Children's Lawyer on this appeal involving a variation of a trust affecting minors.
- ◆ **Inquiry into Justice Paul Cosgrove** - Assisted Earl A. Cherniak, Q.C., appointed as Independent Counsel by the Canadian Judicial Council ("CJC"), in the response to a constitutional challenge to the Judges Act arising in the inquiry into the conduct of Justice Cosgrove. Following the constitutional challenge, was involved in the presentation of the case to the Inquiry Committee appointed by the CJC to review the conduct of Justice Cosgrove in hearings held in September, 2008. Also appeared with Earl before the full CJC in a hearing in March 2009.
- ◆ **Randall et al. v. Kozlar**, 2009 CanLii 6480; 2010 ONCA 537 - Lengthy trial arising from the birth of an injured infant.
- ◆ **K. v. K.W.G.**, 2008 ONCA 489 - Appeal of a trial decision which had awarded damages against a non-offending parent arising from historic sexual abuse. The Court of Appeal upheld the finding of liability.
- ◆ **Mallais v. Campbell Amusements Inc**, 2007 ONCA 82: Appellate counsel for a plaintiff who had unsuccessfully sued an amusement park operator for injuries she alleged had been sustained during a ride. This was the first case in Ontario to have considered whether an amusement ride was a common carrier
- ◆ **Land Lease Arbitration** (2007-2008) - Acted on a complex land lease arbitration which examined the development potential of a piece of property within the context of determining rents to be paid under the contractual terms of a lease renewal.
- ◆ **SOS - Save Our St. Clair Inc. v. City of Toronto and TTC**, 2005 CanLii 40559 (Div. Ct.)- Counsel with Earl Cherniak to the City of Toronto on this motion for a recusal of a judge who heard an application for judicial review.
- ◆ **Stoody v. Kennedy et al.**, 2005 CanLii 7647 (ONCA) - Acted for a director and the officers of a corporation at trial and on appeal, arising from a claim of a dismissed employee for oppression.

## AWARDS/RECOGNITION

Cynthia is widely recognized for her leading legal expertise, as evidenced by her consistent inclusion in numerous peer and client rated legal publications such as Chambers Canada, the Canadian Legal Lexpert Directory, Benchmark and Best Lawyers. She has also won several awards of note, including a 2017 Lexpert Zenith Award in recognition of her leadership and advocacy skills, and a Lexpert Rising Star Award.

- ◆ Q.Arb designation from the ADR Institute of Ontario.
- ◆ Certified as a Specialist in Civil Litigation by the Law Society of Ontario
- ◆ Recognized in *Chambers Canada* in the area of Healthcare - Contentious
- ◆ Recognized and recommended by *Lexpert* as a leading lawyer in the areas of Commercial Arbitration, Litigation - Corporate Commercial, Litigation - Regulatory & Public, Medical Negligence, Professional Liability
- ◆ Selected by her peers to be included in *Best Lawyers in Canada* for Commercial Litigation , Health Care Law, Medical Negligence, Administrative and Public Law, Appellate Practice, Director and Officer Liability Practice and Professional Malpractice Law
- ◆ Recognized in *Who's Who Legal: Global* (2020-2021) in the Healthcare category
- ◆ Recognized as a leading litigator in the *Lexpert Special Edition - Canada's Leading Litigation Lawyers* (2018-2021)
- ◆ Recognized by Benchmark Canada as a "Litigation Star" in Health Law and Dispute Resolution
- ◆ Lexpert Zenith Award (Celebrating Women) in recognition of exceptional leadership and advocacy skills (2017)
- ◆ Lawyer of the Year, Health Care Law Toronto, Best Lawyers in Canada (2016)
- ◆ Named by Lexpert as a "Litigator to Watch" in its US Guide to the Leading Cross-Border Litigators (2008-2009)
- ◆ Recognized by Lexpert as a "Rising Star" - Canadian Leading Lawyers Under 40 (2008)

## SELECTED PRESENTATIONS/PUBLICATIONS

Cynthia is a regular contributor to educational programming for the Advocates' Society, the Law Society of Ontario, the Intensive Trial Advocacy Workshop, the Toronto Commercial Arbitration Society, and other private and institutional providers. In addition, Cynthia has written on arbitration, litigation and appeal topics, including:

- ◆ "[Conversations About Arbitration: The Essentials](#)", Co-host, June 2022
- ◆ "[A Friendly Reminder: Silence is Still Golden: Render v. ThyssenKrupp Elevator \(Canada Limited\), 2022 ONCA 310](#)", May 2022
- ◆ "[A Brief Lesson on Appellate Arts and Crafts](#)", April 2022
- ◆ Co-Author, "[Rules of Civil Procedure Chapters, Discovery, Rule 29.2 - Proportionality in Discovery](#)" and "[Rules of Civil Procedure Chapters, Trials, Rule 52 - Trial Procedure](#)", September 2021
- ◆ Co-author, "Land Lease Arbitrations", Annual Civil Review, 2017

## PROFESSIONAL EXPERIENCE

- ◆ Partner, Lerners LLP (2007 - present)
- ◆ Associate lawyer, Lerners LLP (2000 to 2007)

## PROFESSIONAL MEMBERSHIPS

- ◆ Fellow - Litigation Counsel of America
- ◆ The Advocates' Society
- ◆ Toronto Commercial Arbitration Society
- ◆ ADR Institute of Ontario
- ◆ Canadian and Ontario Bar Associations
- ◆ Toronto Lawyers Association

## EDUCATION

- ◆ Admitted to Ontario Bar (2000)
- ◆ LL.M , Health Law (2006)
- ◆ LL.B, The University of Toronto (1998)
- ◆ B.A., Trent University, Peterborough (1995)