

# 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."*

**Direct Phone:** 416.601.2363  
**Direct Fax:** 416.867.2433  
**Email:** [ckuehl@lerners.ca](mailto:ckuehl@lerners.ca)  
**Website:** [www.lerners.ca](http://www.lerners.ca)



## REPRESENTATIVE WORK

Cynthia Kuehl is a partner at Lerners LLP, with more than 18 years of experience. Her practice focuses exclusively on litigation and dispute resolution, including appellate advocacy, in a wide range of areas including commercial litigation and arbitration, health law, public and administrative law and professional regulation. She has extensive trial and appellate experience at all levels, including the Supreme Court of Canada.

She acts as Independent Legal Counsel to regulated health tribunal, a role which involves providing substantive legal advice during hearing and procedural training to the members of the Discipline Committee. She also assisted the Independent Counsel to the Canadian Judicial Committee at the Inquiry into Justice Cosgrove.

Cynthia has recently completed the educational requirements for the ADR Institute of Canada's Q.Arb designation.

## LEADERSHIP POSITIONS AND COMMUNITY CONTRIBUTIONS

- ◆ Co-Chair, University Tribunal for the Office of Appeals, Discipline and Faculty Grievances, University of Toronto (2019 to present)
- ◆ Executive Committee, Lerners LLP (2018-2019)
- ◆ Assistant Program Director, TCAS Gold Standard Course on Commercial Litigation (Sept. 2018-May 2019)
- ◆ Deputy Practice Group Leader, Health Law Group, Lerners LLP (2013-2018)
- ◆ Practice Group Leader, Appellate Advocacy Group, Lerners LLP (2010-2013)
- ◆ Member, NAFTA Article 2022 Advisory Committee on Private Commercial Disputes (2016-present)
- ◆ Member, CBA Committee for the Consultation to the Canadian Judicial Council on its Discipline Process (2014-2016)

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- ◆ Co-Chair, Arbitration and Mediation Practice Group, The Advocates' Society (2013-2016)
- ◆ Ontario Bar Association Health Law Section, Past Executive Member (2008-2011)
- ◆ Medico-Legal Society of Toronto, Past Council Member (2009-2012)
- ◆ Former Board Member and President of the Board of Directors of Bond Child and Family Development

## NOTEWORTHY CASES

- ◆ *Rankin v. JJ*, 2018 SCC 19 – Acted for the plaintiff/respondent in this appeal on duty of care and illegality
- ◆ *Richmond Hill v. Elginbay Corp.*, 2018 ONCA 72 (leave to appeal pending) – Acted for the appellant in this appeal involving judicial review of a decision of the Ontario Municipal Board
- ◆ *Babjak v. Karas*, 2018 ONSC 2093 – Acted for the successful defendant in this summary judgment motion based on passage of the limitation period
- ◆ *6524443 v. Toronto (City)*, 2017 ONCA 486 – Acted for the City of Toronto on the successful enforcement of an arbitration clause limiting appeal rights
- ◆ *Douez v. Facebook, Inc.*, 2017 SCC 33 – Acted for the intervener, the Canadian Civil Liberties Association, in this appeal which considered the enforceability of forum selection clauses in online contracts of adhesion
- ◆ *Hercules Moulded Products v. Foster*, 2017 ONCA 445 – Acted for the successful defendant title insurer on this appeal involving interpretation of particular insurance contract provisions
- ◆ *Moore v. Getahun et al* (2014, SC) – Counsel in this 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, C.A.) – Acted as appellate counsel with Peter Kryworuk in the successful response to an appeal of a medical malpractice jury decision
- ◆ *Tomeh v. Cheah*, 2013 ONSC 6074 – Acted as trial counsel in a medical malpractice claim
- ◆ *Canada Trust Company v. Browne*, 2012 ONCA 862 – Acted with Earl Cherniak as counsel to the Children's Lawyer on this appeal involving a variation of a trust affecting minors
- ◆ *Toronto (City) ats 1784049 Ontario Limited*, 2010 ONSC 1204- Acted as counsel to the City on this successful motion of return of a privileged report, removal of counsel of record, and for the application to be struck
- ◆ *Randall et al. v. Koziar* (2009, S.C.J.; 2010, CA) - Acted with Anne Spafford as counsel to physicians in a lengthy trial arising from the birth of an injured infant. The trial judge dismissed the action, but the matter was remitted to a new trial following appeal
- ◆ *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 before the full CJC in a hearing in March, 2009
- ◆ *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*
- ◆ *Stoody v. Kennedy et al.*, 2003 CanLii 18765 (SCJ); 2005 CanLii 7647 (CA) – Acted as trial and appeal counsel for a director and the officers of a corporation, arising from a claim of a dismissed employee for oppression
- ◆ *Alakoozi v. Hospital of Sick Children*, 2002 CanLii 13232 (ONSC); 2004 CanLii 8394 (CA)- Acted with senior counsel as trial and appeal counsel in respect of a claim against defendant physicians following the death of a child post-tonsillectomy

## AWARDS/RECOGNITION

- ◆ Certified as a Specialist in Civil Litigation by the Law Society of Ontario
- ◆ Recognized in Chambers Canada in the area of Healthcare - Contentious (2021)
- ◆ Recognized in Who's Who Legal: Global (2020) in the Healthcare category
- ◆ Ranked in Chambers Canada in the area of Healthcare law (2020)
- ◆ Recognized as a leading litigator in the Lexpert Special Edition - Canada's Leading Litigation Lawyers (2018-2019)
- ◆ Recognized in Chambers Canada in the area of Healthcare law (2019)
- ◆ Recognized by Benchmark Canada as a "Litigation Star" in Health Law (2016-2018) and Dispute Resolution (2020)
- ◆ 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)
- ◆ Recognized and recommended by Lexpert as a leading lawyer in the areas of Medical Negligence, Corporate Commercial Litigation and Professional Liability (2014-2020)
- ◆ Selected by her peers to be included in Best Lawyers in Canada for Commercial Litigation (2013-2021), Health Care Law (2015-2021), Medical Negligence (2019-2021), Administrative and Public Law (2021), Appellate Practice (2021), Director and Officer Liability Practice (2021) and Professional Malpractice Law (2021)
- ◆ 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 Upper Canada, 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:

- ◆ Co-editor, "Examinations: An Appellate Review and Forecast for 2020" (a Lerner's publication), February 14, 2020
- ◆ "Discoveries: An Update for Litigators", Chair and Panel Moderator, Law Society of Ontario, October 7, 2019
- ◆ "Intensive Trial Advocacy Workshop", Instructor, Osgoode Professional Development, July 7-13, 2019
- ◆ "Finding, Retaining and Working with Experts", Speaker, The Advocates' Society program, Examining and Cross-examining Experts, May 29, 2019
- ◆ Co-author, "Land Lease Arbitrations", Annual Civil Review, 2015
- ◆ "Beyond the Borders: Emerging Issues in Business Litigation", Speaker, DRI International/DRI Commercial Litigation Committee Seminar, June 5, 2015
- ◆ "Interpreting standards of proof and review in health law" The Lawyers Weekly, May 1, 2009
- ◆ "How to go for broke – without going broke – on appeal", co-authored with Jasmine Akbarali, The Lawyers Weekly, August 28, 2008
- ◆ "Clinical Trials: Legal and Ethical Implications of Human Research", co-authored with Brian Butler, presented at the Canadian Institute, April 4, 2000

## PROFESSIONAL EXPERIENCE

- ◆ Partner, Lerner's LLP (2007 - present)

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- ◆ Associate lawyer, Lerner LLP (2000 to 2007)

## PROFESSIONAL MEMBERSHIPS

- ◆ Fellow, Litigation Counsel of America
- ◆ The Advocates' Society
- ◆ Toronto Commercial Arbitration Society
- ◆ Ontario Bar Association
- ◆ Law Society of Ontario

## EDUCATION

- ◆ Masters of Laws, in Health Law (2006)
- ◆ Admitted to Ontario Bar (2000)
- ◆ Bachelor of Laws, The University of Toronto (1998)
- ◆ Bachelor of Arts (Major in English and History), Trent University, Peterborough (1995)