

# EARL A. CHERNIAK, LLD, K.C., FCI.ARB

Arbitration

PARTNER

*"With 51 years of litigation experience and over 30 years specializing in commercial litigation and arbitration, I bring a senior and knowledgeable perspective to any commercial dispute."*

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## OVERVIEW

Earl A. Cherniak, K.C., LL.B., FCIArb is one of Canada's leading trial and Appellate Counsel. He is also recognized as a leader in Alternative Dispute Resolution. With over 50 years of litigation experience and over 30 years of specializing in commercial litigation and arbitration, as counsel and arbitrator, he brings a senior and knowledgeable perspective to any commercial dispute.

He was an elected Benchers of the Law Society of Upper Canada (1999–2007) and served as Chair of the Proceedings Authorization Committee and Chair of a task force studying multi-disciplinary practices. He was a commissioner of the Ontario Law Reform Commission (1986-1992). He is an elected Fellow of both the American College of Trial Lawyers and the International Academy of Trial Lawyers. He was awarded The Advocates' Society Medal in 1996 and is a past president of the Society. Mr. Cherniak was the first recipient of the Ontario Bar Association Award for Excellence in Civil Litigation. In 2001, he was appointed a member of the (Federal) Judicial Compensation and Benefits Commission, as the nominee of the Judiciary and served in that capacity until his term expired in 2007. He was appointed Independent Counsel by the Canadian Judicial Council to inquire into the conduct of a Superior Court Judge.

Mr. Cherniak is an honorary North American member of the (UK) Commercial Bar Association. He is a member of the London Court of International Arbitration, the Canadian roster of arbitrators of the International Chamber of Commerce and the ADR Institute of Canada. He is a fellow of the Chartered Institute of Arbitrators and the Litigation Counsel of America, and a member of the international panel of arbitrators for the International Centre for Dispute Resolution (ICDR), the international division of the American Arbitration Association.

He is Past Chair of the Toronto Commercial Arbitration Society (TCAS).

## PUBLICATIONS AND APPEARANCES

Mr. Cherniak is listed as a leading lawyer in commercial arbitration and dispute resolution in The Legal Media Group Guide to the World's Leading Experts in Commercial Arbitration and the Practical Law "Which Lawyer" year book, as well as a leading litigator in Chambers Global, Who's Who Legal, Global Counsel and Lexpert. Mr. Cherniak has written and lectured extensively on a variety of legal subjects.

### Recent publications and appearances include:

- ◆ The Independent Arbitrator: Challenging Arbitrator Independence (with Rebecca Shoom)(ADR Perspectives September 10, 2019)
- ◆ The Implications of the Groia Case (October 11, 2018, Windsor Ontario)
- ◆ Faculty member, "Exercising Professionalism and Civility", The Advocates' Society, December 18, 2017
- ◆ Panellist "Domestic Arbitration in Canada: Major Cases and Trends", Chartered Institute of Arbitrators – Canada Branch 5th Annual Symposium, September 28, 2017
- ◆ Arbitrator Disclosure (ADR Perspectives, May 2016)
- ◆ Review of Confidentiality in Arbitration for McGill Law Journal (April 2016)
- ◆ Arbitration Clauses: Time Crafting Clauses Well Spent (Lawyers Weekly, February 12, 2016)
- ◆ Sattva Revisited (Advocates Journal, Fall 2015)
- ◆ Panellist, Commercial Arbitration 2015, June 5, 2015, Vancouver
- ◆ A Sea Change in the Interpretation of Contracts (and much more)(Law Times, August 18, 2014)
- ◆ Confidentiality in Arbitration (Advocate Daily, April 2014)

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- ◆ Toronto as a Commercial Arbitration Centre (Law Times, February 3, 2014)
- ◆ Why Do Parties Arbitrate?, ADR Institute of Alberta (ADRIA) Conference Calgary, Alberta, June 6-7, 2013
- ◆ Arbitrator Disclosure – It's More (and Less) Than the Conflict Search (Lawyers Weekly, March 28, 2013)
- ◆ Proportionality, Case Management and Summary Judgment in the Ontario Courts: Lessons for the Arbitration Community (The Tribunal, Arbitration Place Quarterly Newsletter, January 2013)
- ◆ Panellist, International Arbitration Strategies, sponsored by The Chartered Institute of Arbitrators and TCAS, November 1, 2012, Toronto
- ◆ Faculty Member, ICDR Miami 2012 Conference: Dispute Resolution in North America
- ◆ On Being a Commercial Arbitrator: Lessons Learned, Canadian Arbitration and Mediation Journal, Spring/Summer 2012
- ◆ An Unpredictable Battleground: Twelve Years of the Class Action Carriage Motion in Canada (with Louise Moher) – Class Action Symposium April 2012
- ◆ Appellate Advocacy in the Supreme Court of Canada, Canadian Defence Lawyers Conference, Vancouver, B.C.-June 4-5, 2009
- ◆ The Future of Compensatory, Aggravated and Punitive Damages Post Honda (paper and oral notes) - Employment Law Summit October 30, 2008
- ◆ Defending a Case for Aggravated and Punitive Damages - CLE June 10, 2008
- ◆ Practical Advocacy Land Mines – Handling Surprises at Trial – April 19, 2005
- ◆ Reflections on the Charter, Ontario Bar Association, October 15, 2004
- ◆ Privilege Issues and the Barrister's Brief, The Advocates' Society (The Art of Persuasion) April 2, 2004, Earl A. Cherniak, K.C. and Christine Snow, and John Lorn McDougall Q.C. and Susan Kushneryk

## ARBITRATION AND MEDIATION

### Recent ongoing commercial arbitration as counsel:

- ◆ A confidential arbitration involving a shareholder dispute between the shareholders of a major Canadian group of companies, eventually resolved after many years and many hearings.
- ◆ A dispute between a municipality and a landlord over the interpretation of commercial leases.

### 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 energy companies over the catastrophic failure of a transformer involving considerable damages
- ◆ a dispute between energy companies over the catastrophic failure of a transformer involving considerable damages
- ◆ a dispute between the Ontario Government and the long term lessee of a toll highway (panel member)
- ◆ 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 dispute between 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 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)

## LERNERS

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- ◆ 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)
- ◆ a dispute between parties to a joint venture agreement (sole arbitrator)
- ◆ a dispute between Canadian investors and a Chinese manufacturing entity over a shareholders' agreement (sole arbitrator)
- ◆ a dispute between a Canadian First Nation and the Ontario Government over issues relating to a casino (sole arbitrator)
- ◆ an LCIA arbitration between a B.C. company and a Swiss financial group over a mining investment in Mexico
- ◆ a rate arbitration in the coal industry (panel member)
- ◆ a rate dispute in the coal industry
- ◆ several shareholder disputes and interpretations of joint venture agreements
- ◆ an energy dispute in Newfoundland between the province and energy suppliers (panel member)
- ◆ a dispute between a Spanish distributor and a Canadian pharmaceutical manufacturer (sole arbitrator)
- ◆ a dispute between an American supplier and a Canadian distributor in the hardware industry (sole arbitrator)(ICDR)
- ◆ an oil and gas arbitration between a Provincial Government and Canadian energy companies (panel member)

#### **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 the City of Toronto and a developer
- ◆ a class action suit in securities litigation
- ◆ a dispute between Air France and passengers following a plane crash in Toronto
- ◆ a dispute between a financial institution and the Canadian Government over the interpretation of an agreement for the sale of a government run entity
- ◆ a dispute between a Danish purveyor of fine jewellery and a Canadian licensee/ franchisee (ICDR retainer)
- ◆ several international franchisee/franchisor disputes (ICDR)

## **PROFESSIONAL HISTORY**

- ◆ Partner, Lerners LLP
- ◆ Member of the arbitration practice at 3 Verulam Buildings, barristers' chambers in London, UK
- ◆ Benchler, The Law Society of Upper Canada and Chair and Vice-Chair of the Proceedings Authorization Committee (1999-2007)
- ◆ Fellow, American College of Trial Lawyers
- ◆ Fellow, International Academy of Trial Lawyers
- ◆ Fellow, the Chartered Institute of Arbitrators
- ◆ Panel Member, International Arbitrations, International Centre for Dispute Resolution (ICDR/AAA)
- ◆ Member, Canadian Roster of Arbitrators, International Chamber of Commerce (ICC)
- ◆ Member (Past Chair), Toronto Commercial Arbitration Society

## **ACHIEVEMENTS AND RECOGNITIONS**

- ◆ Ranked in Chambers Canada in the area of Most in Demand Arbitrators (2021)
- ◆ Selected by peers for inclusion in the 2020 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada
- ◆ Selected by peers for inclusion in The Best Lawyers in Canada for Administrative and Public Law, Alternative Dispute Resolution, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate and Commercial Litigation, Defamation and Media Law, Director and Officer Liability Practice, International Arbitration, Legal Malpractice Law, Product Liability Law, Securities Law
- ◆ Honorary Doctor of Laws, Law Society Ontario (2019)
- ◆ Selected by peers for inclusion in the Canadian Legal Lexpert Directory, 2021-2022
- ◆ Selected by peers for inclusion in the 2019 Lexpert/Report on Business Special Edition: Canada's Leading Litigation Lawyers
- ◆ Selected by peers for inclusion in the 2016 Lexpert Guide to the U.S./Canadian Cross-Border Litigation Lawyers in Canada
- ◆ Toronto Lawyers Association Award of Distinction (2015)

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- ◆ Lexpert Zenith Award (2012)
- ◆ 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
- ◆ First recipient of the Ontario Bar Association Award for Excellence in Civil Litigation (2004)
- ◆ The Advocates' Society Medal (1996)
- ◆ President, The Advocates' Society (1979-1980)
- ◆ Appointed Queen's Counsel (1974)
- ◆ Gold Medalist, Osgoode Hall Law School (1960)

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