

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

*Dispute Resolution and Advocacy*

**PARTNER**

*"With 51 years of litigation experience and over 25 years specializing in commercial litigation and arbitration, both as counsel and arbitrator, I bring a senior and knowledgeable perspective to any commercial dispute."*

**Direct Phone:** 416.601.2350

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## PROFESSIONAL HISTORY

- ◆ Mr. Cherniak's practice is restricted to arbitrations and mediations and trial and appellate work, in a broad spectrum of complex commercial, insurance and public litigation and arbitration. Mr. Cherniak is a member (and Past Chair) of the Toronto Commercial Arbitration Society (TCAS) and a member of the arbitration practice at 3 Verulam Buildings in London, UK.
- ◆ Partner, Lerners LLP
- ◆ Bencher, The Law Society of Upper Canada and Chair and Vice –Chair of Proceedings Authorization Committee, 1999 - 2007
- ◆ Fellow, The Chartered Institute of Arbitrators
- ◆ Fellow, International Academy of Trial Lawyers
- ◆ Fellow, American College of Trial Lawyers
- ◆ Panel Member, International Arbitrations, International Centre for Dispute Resolution (ICDR/AAA)
- ◆ Member, Canadian Roster of Arbitrators, International Chamber of Commerce (ICC)
- ◆ Mr. Cherniak is listed as a leading lawyer in commercial arbitration or litigation in the following publications:
  - ◆ The Legal Media Group Guide to the World's Leading Experts in Commercial Arbitration
  - ◆ Chambers Canada
  - ◆ Who's Who Legal
  - ◆ Lexpert
  - ◆ Best Lawyers in Canada

## AREAS OF FOCUS

- ◆ Appellate Advocacy
- ◆ Constitutional and Charter Challenges and Remedies
- ◆ Administrative and Public Law, Tribunals and Commissions
- ◆ Business and Contractual Disputes
- ◆ Commercial Arbitrations
- ◆ Shareholder Disputes
- ◆ Professional Negligence and Discipline
- ◆ Directors' and Officers' Liability
- ◆ Constitutional and Charter Challenges and Remedies

## ARBITRATION/MEDIATION EXPERIENCE

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225 King Street West, Suite 1600 Toronto, ON M5V 3M2

- ◆ 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); 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; a dispute between a Canadian First Nation and the Ontario government over issues relating to a casino; and a LCIA arbitration between a B.C. company and a Swiss financial group over a mining investment in Mexico.
- ◆ 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; 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); and several international franchisee/franchisor disputes (ICDR).

## ACHIEVEMENTS

- ◆ 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)
- ◆ 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)

## PUBLIC LAW AND HIGH PROFILE CASES (SELECTION)

### ***Groia v. Law Society of Upper Canada*, 2018 SCC 27, 2018 CarswellOnt 8700, 2018 CarswellOnt 8701**

- ◆ conduct of counsel and charter issues
- ◆ represented Joseph Groia

### ***ClubLink v. Town of Oakville*, 2019 ONCA 827, 2019 CarswellOnt 17137 *Town of Oakville v. ClubLink*, 2019 ONCA 826, 2019 CarswellOnt 17136**

- ◆ Heritage Act and municipal powers issues
- ◆ represented ClubLink, which was successful before Morgan J.

### ***Langenfeld v. Toronto Police Services Board and Toronto Police Chief Mark Saunders*, 2019 ONCA 716, 2019 CarswellOnt 14511**

- ◆ whether the TPS instituting a screening process at Headquarters violated the Charter
- ◆ represented Chief Saunders on appeal

## LERNERS

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**National Steel Car Limited v. Independent Electricity System Operator, 2019 ONCA 929, 2019 CarswellOnt 19614**

- ◆ whether IESO electricity charges to consumers violate provincial powers as a tax
- ◆ represented National Steel Car on appeal from a Rule 25 motion

**Represented Conrad Black in various litigations, 2006-2017, including *Breeden v. Black*, 2012 SCC 19 (decided in Black's favour in Supreme Court of Canada)**

**Represented the Canadian Red Cross in the Krever Inquiry, 1990-1995**

**Acted as Independent Counsel in the Canadian Judicial Council Inquiry that resulted in the recommendation that Justice Cosgrove be removed from the bench.**

**Acted for Air Canada against WestJet over WestJet's unauthorized access to Air Canada's confidential flight booking information.**

## NOTEWORTHY CASES

- ◆ National Steel Car Limited v. Independent Electricity System Operator, 2019 ONCA 929, 2019 CarswellOnt 19614
- ◆ Clublink Corporation ULC v. Oakville (Town), 2019 ONCA 827, 2019 CarswellOnt 17137
- ◆ Oakville (Town) v. Clublink Corporation ULC, 2019 ONCA 826, 2019 CarswellOnt 17136
- ◆ Langenfeld v. Toronto Police Services Board, 2019 ONCA 716, 2019 CarswellOnt 14511
- ◆ Groia v. Law Society of Upper Canada, 2018 SCC 27, 2018 CarswellOnt 8700, 2018 CarswellOnt 8701
- ◆ Clublink v. Town of Oakville, 2018 ONSC 7395
- ◆ Town of Oakville v. Clublink, 2018 ONSC 6386
- ◆ ICP v. JCP, 2018 ONSC 4075, 2018 CarswellOnt 10642
- ◆ Groia v. Law Society of Upper Canada, 2018 SCC 27, 2018 CarswellOnt 8700, 2018 CarswellOnt 8701
- ◆ Elginbay Corp. v. Richmond Hill (Town), [2018] S.C.C.A. No. 101, 2018 CarswellOnt 7388
- ◆ Chechui v. Nieman, 2017 ONCA 911, 2017 CarswellOnt 18375
- ◆ Bonello v. Gores Landing Marina (1986) Limited, 2017 ONCA 632, 2017 CarswellOnt 11969
- ◆ Saumur (Litigation guardian of) v. Antoniak, 2016 ONCA 851, 2016 CarswellOnt 18073
- ◆ Groia v. Law Society of Upper Canada, [2016] S.C.C.A. No. 310, 2016 CarswellOnt 14118
- ◆ Groia v. Law Society of Upper Canada, 2016 ONCA 471, 2016 CarswellOnt 9453
- ◆ Spence v. BMO Trust Co. 2016 ONCA 286, 2016 CarswellOnt 5888
- ◆ Spence Estate (Re), 2016 ONCA 196
- ◆ Groia v. Law Society of Upper Canada, 2015 ONSC 1680, 2015 CarswellOnt 3644
- ◆ Groia v. Law Society of Upper Canada, 2015 ONSC 686, 2015 CarswellOnt 1238
- ◆ Morassut v. Jaczynski Estate, 2015 ONSC 502, 2015 CarswellOnt 702
- ◆ Sant (Litigation guardian of) v. Sekhon, 2014 ONCA 623, 2014 CarswellOnt 12142
- ◆ Sant v. Sekhon, 2014 ONCA 623
- ◆ Law Society of Upper Canada v. Groia, 2014 ONLSTA 11, 2014 CarswellOnt 19255
- ◆ Amyotrophic Lateral Sclerosis Society of Essex v. Windsor, 2013 ONCA 254
- ◆ Breeden v. Black, 2012 SCC 19
- ◆ Locking v. Armtec Infrastructure Inc., 2012 ONCA 774, 2012 CarswellOnt 14175
- ◆ Hollinger Inc., Re, 2012 ONSC 5107, 2012 CarswellOnt 11499
- ◆ Black v. Breeden, 2012 CarswellOnt 4272
- ◆ Pattison Outdoor Advertising LP v. Toronto (City), 2012 ONCA 212, 2012 CarswellOnt 3861
- ◆ Black v. Colson, [2011] S.C.C.A. No. 473, 2011 CarswellOnt 12806
- ◆ Wolfe v. Wyeth, 2011 ONCA 347, 2011 CarswellOnt 2996
- ◆ Black v. Breeden, [2010] S.C.C.A. No. 387, 2010 CarswellOnt 8546
- ◆ Black v. Breeden, 2010 ONCA 547, 2010 CarswellOnt 5877
- ◆ Black v. Breeden 2009 CanLII 24635 (ONSC), 2009 CarswellOnt 2707
- ◆ Marcoccia (Litigation Guardian of) v. Gill, 2009 ONCA 317, 2009 CarswellOnt 2067

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- ◆ *Marcoccia v. Ford Credit Canada Limited*, [2009] O.J. No. 1548 (C.A.)
- ◆ *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.)
- ◆ *Sandhu (Litigation Guardian of) v. Wellington Place Apartments*, [2008] O.J. No. 1148 (C.A.)
- ◆ *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.)
- ◆ *Jazz Air v. Toronto Port Authority*, [2006] F.C.J. No. 1155 (F.C.)
- ◆ *Waterloo (City) v. Wolfrain* (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.)
- ◆ *Air Canada v. WestJet Airlines Ltd.*, (2006), Ont. S.C.J., 267 D.L.R. (4th) 483
- ◆ *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.)
- ◆ *Chaoulli v. Quebec (Attorney General)*, [2005] S.C. J. No. 33 (S.C.C.)
- ◆ *HSBC Securities (Canada) Inc. v. Davies, Ward & Beck* (2004), 2004 CarswellOnt 3777 (Ont. S.C.J.)
- ◆ *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.)
- ◆ *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
- ◆ *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

## SELECTED PRESENTATIONS/PUBLICATIONS

- ◆ *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
- ◆ *The Good Old Days*, *Advocates' Journal* Summer, 2018
- ◆ 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
- ◆ *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
- ◆ *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

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- ◆ Arbitrator Disclosure, ADR Perspectives, May 2016
- ◆ "Toronto arbitration profile bolstered", AdvocateDaily.com, May 30, 2013
- ◆ "Uniform arbitration law needed in Canada", AdvocateDaily.com, April 22, 2013
- ◆ "The danger of non-disclosure", The Lawyers Weekly, March 29, 2013
- ◆ Arbitrator Disclosure – It's More (and Less) Than the Conflict Search, Lawyers Weekly, March 28, 2013
- ◆ "Balancing the duty to disclose", AdvocateDaily.com, March 26, 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 Canadian Institute of Arbitrators and TCAS, November 1, 2012, Toronto
- ◆ On Being a Commercial Arbitrator: Lessons Learned - Canadian Arbitration and Mediation Journal, Spring/Summer 2012
- ◆ Faculty Member, ICDR Miami 2012 Conference: Dispute Resolution in North America;
- ◆ 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
- ◆ 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
- ◆ 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, 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
- ◆ 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
- ◆ 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
- ◆ 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

## EDUCATION

- ◆ Osgoode Hall Law School (LLB), 1960
- ◆ Gold Medalist, Osgoode Hall Law School, 1960

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- ◆ University of Western Ontario (BA), 1956

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