

LEXPERT®

CANADA'S LEADING LAWYERS
LEXPERT.CA > ISSUE 23.04

SPECIAL EDITION: LITIGATION 2022

DYNAMICS OF LAW

THE EVOLUTION OF
CLASS ACTIONS,
MASS TORTS, AND
ALTERNATIVE DISPUTE
RESOLUTION



MASS TORT TREND
Tempting new tool
for litigators

APPEAL OF ADR
Pandemic catalyst for surge
in mediation and arbitration

CLASS ACTION CLOCK
Pendulum swings toward
fewer certifications

Sometimes litigation is the best choice

Most businesspeople hate litigation and would prefer to focus on running their businesses. The cost, slowness, and lack of confidentiality when fighting in court make alternatives welcome.

“The use of ADR generally produces a resolution more quickly than using a court system that can be backlogged,” says Rachael Saab at Torys LLP (p. 16).

Michelle Awad at McInnes Cooper says the pandemic made the potential advantages of ADR even more apparent, especially as technology for remote proceedings offered even more flexibility (p. 16). Even mundane technological developments can make ADR seem more appealing. Lawrence Thacker at Lenczner Slaght LLP says international arbitration rules often have a “well-thought-out” system for numbering and ordering documents, making it easier to put together a hyperlinked electronic record (p. 20).

But the fact that court proceedings are so public is one of the biggest reasons many businesses want to steer clear. “There are sometimes cases where both sides don’t want anything in the public realm, so they’ll agree to arbitrate,” says Thacker.

But therein lies the rub. Because ADR occurs behind closed doors, only the parties to the dispute benefit from the results.

In this issue, we also provide the top ten business decisions (p. 26), which represent how courts are providing not just resolutions for the parties but also precedents for Canadian business.

Our list of top cases includes a class action against CIBC for overtime pay, a decision on whether plaintiffs should receive an injunction against “Freedom Convoy” defendants who were attempting to dissipate funds, a request to approve a remediation agreement for SNC-Lavalin, and a corporate governance question in the Rogers family dispute.

These cases will not just provide a resolution to the parties. Publicly reported decisions can help businesspeople who face similar circumstances avoid a fight.

This advantage may be cold comfort for those involved in protracted litigation. We should not expect businesses to help develop the law. But as any litigator would attest, sometimes a public dispute is the only option.

The litigators in these pages can help their clients decide when that time has come – and if it has, how to achieve the best results.

Tim Wilbur, global managing editor

LEXPERT

fortuna favet fortibus

ISSUE 23.04 > NOVEMBER

GLOBAL MANAGING EDITOR

Tim Wilbur

SENIOR EDITOR

Zena Olijnyk

EDITOR

Aidan Macnab

PRODUCTION PROCESS LEAD

Alina Leigh

PRODUCTION EDITORS

Wen-Ching Shang, Christina Jelinek

WRITERS

Bernise Carolino, Jason Tan, Angelica Dino, Kiezsza Cruz, Lucy Saddleton

DESIGNERS

Khaye Cortez, Loiza Razon

PRESIDENT

Tim Duce

BUSINESS DEVELOPMENT DIRECTOR

Lynda Fenton

SENIOR BUSINESS DEVELOPMENT MANAGER

Steffanie Munroe

BUSINESS DEVELOPMENT MANAGER

Maurice Phillips

ACCOUNT EXECUTIVE

Matthew Oriel

Lexpert Special Edition Magazine is published four times a year. KEY MEDIA and the KEY MEDIA logo are trademarks of Key Media IP Limited, and used under licence by KM Business Information Canada Ltd.

LEXPERT is a trademark of KM Business Information Canada Ltd.

KM Business Information Canada Ltd
317 Adelaide Street West, Suite 910
Toronto, ON M5V 1P9
Tel: (416) 609-8000 Fax: (416) 609-5840

Website: www.lexpert.ca
All rights reserved. Contents may not be reprinted without written permission.
Lexpert® Magazine is printed in Canada.

PUBLICATION MAIL REGISTRATION
NO. 41261516. ISSN1488-6553
Copyright© KM Business Information Canada Ltd
All rights reserved.
GST/HST#: 79989 8465 RC-0001

EDITORIAL INQUIRIES

tim.wilbur@keymedia.com

SUBSCRIPTIONS/ADDRESS CHANGES

Contact: Donnabel Reyes at (647) 374-4536 ext. 243 or email donnabel.reyes@keymedia.com. Annual subscription costs C\$175. To change your subscription address, please send your new address along with a copy of your mailing label(s) to the Subscription Dept., at the address indicated above. For all other circulation inquiries, please email Donnabel Reyes.



Lexpert-ranked leading litigation lawyers



Clarke, Dominic T. Blaney McMurtry LLP > (416) 593-3968 dclarke@blaney.com

Dominic practises principally in the area of insurance litigation encompassing both coverage and defence matters. A “go-to” counsel for insurers both nationally and internationally, Dominic’s expertise is sought out on large and complex coverage claims. He specializes in advising and representing insurers with respect to commercial general liability, directors’ and officers’ liability, and commercial property policies. He has significant experience in the defence of products liability and sexual abuse litigation. A force in the courtroom, he has appeared in the Ontario Superior Court of Justice and the Ontario Court of Appeal. A leading expert in insurance coverage and reinsurance matters, Dominic is a frequent lecturer and is hailed as “very experienced, very agreeable and highly competent” by *Who’s Who Legal*, with respondents drawing praise for his litigation practice, especially in coverage disputes. He has published numerous thought leadership pieces in his over three decades of practice.



Empke, W. Colin Blaney McMurtry LLP > (416) 593-2988 cempke@blaney.com

Colin Empke’s primary practice area relates to insurance coverage opinions, coverage litigation, and appellate litigation services in relation to liability policies of every description, including commercial general liability, automobile, homeowner, and D&O policies. His secondary practice area involves insurance-related defence work and subrogation claims, representing insured persons in all manner of personal injury and property damage cases. Colin appears regularly before the Ontario Courts and Court of Appeal. Colin has many reported cases on issues of interest to the insurance industry. Colin is widely published on insurance coverage issues and speaks regularly on insurance-related topics. He has authored papers for or presented lectures at the Ontario Bar Association, the Canadian Institute, Canadian Defence Lawyers, Defense Research Institute, Osgoode Hall Professional Development, University of Western Ontario, Ontario Risk and Insurance Managers Society, and the Insurance Institute of Ontario. LL.B, University of New Brunswick; called to the Bar of Ontario, 1997.



Arman, Varoujan Blaney McMurtry LLP > (416) 596-2884 varman@blaney.com

Varoujan Arman is a partner in the firm’s Commercial Litigation group and co-Chair of the firm’s Fraud, Investigation, Recovery, and Enforcement (FIRE) group. In addition to his law degree, Varoujan also holds the designation CFI, as an Accredited Certified Forensic Investigator in fraud matters. Varoujan’s clients rely on him to guide them through the complex world of commercial litigation. Known among his clients and colleagues as a prompt, dependable, and fearless advocate, Varoujan is equally persuasive in the boardroom as he is in the courtroom. Clients with matters ranging from shareholder disputes and oppression claims, debt collection, and enforcement of foreign judgments, to construction law, lease disputes, and regulatory matters benefit from Varoujan’s practical and cost-effective approach to litigation. Varoujan assesses strengths and weaknesses early on to pinpoint the optimal strategy for any case. Varoujan appears regularly before the Superior Court of Justice in Toronto and various surrounding jurisdictions. Varoujan also appears frequently at the Divisional Court and Court of Appeal for Ontario. **LAWYER TO WATCH**