



Education

Queen's University (2010) JD
(Dean's Honours List)
Queen's International Study Centre
(UK) (2008) Certificate in Public
International Law (Dean's Honours
List)
University of Toronto (2007) BA
(Honours - International Relations
and Economics)

Bar Admissions

Ontario (2011)

Practice Areas

Appeals
Arbitration
Class Actions
Commercial Litigation
Defamation and Media
Injunctions
Insolvency and Restructuring
Product Liability
Professional Liability and Regulation
Public Law
Securities Litigation

Contact

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Brian Kolenda

BRIAN KOLENDA

is a partner at Lenczner Slaght.

"Brian has proven himself to be an exceptional advocate, a strong project manager, and a trusted advisor who gives practical advice in the face of complex issues." — *Client*

Brian's civil litigation practice includes a wide range of disputes, from complex business disputes to civil fraud and from professional negligence to defamation. His clients have included Canadian and foreign public and private companies (large and small), professionals (doctors, lawyers, auditors, accountants and securities professionals), non-governmental bodies, governments and regulators. He has a particular interest in cases involving fraud, securities and complex financial instruments.

Brian has experience prosecuting and defending claims at trial and on appeal. He has appeared before the Court of Appeal for Ontario, the Ontario Superior Court of Justice and the Federal Court as well as administrative tribunals.

A top student at Queen's Law, Brian was the Editor-in-Chief of the Queen's Law Journal and earned two major academic awards and prizes for the highest standing in several courses. Brian was a member of the Queen's Law Jessup International Law moot team and now coaches the Queen's Law Ontario Trial Lawyers' Association Moot team. He also regularly acts as a judge at the Jessup moot and teaches international law in the Department of Political Science at the University of Toronto.

For many years, Brian was among the firm's lawyers who assisted the Legal Aid Ontario's Refugee Law Office on behalf of clients seeking emergency stays of deportation.

RECOGNITION

- Lexpert Rising Stars (2022)
Leading Lawyers Under 40
- Best Lawyers in Canada (2022-2024)
Corporate & Commercial Litigation, Defamation & Media Law
- Borden Ladner Gervais Professional Excellence Award (2010)
Queen's University

- **Canadian Legal Lexpert® Directory (2019-2024)**
Class Actions, Litigation - Corporate Commercial, Litigation - Securities, Professional Liability (2019)
- **Dan Soberman Outstanding Young Alumni Award (2018)**
Queen's University
- **Lexpert Special Edition: Canada's Leading Litigation Lawyers (2023)**
- **McCarthy Tetrault Leadership Award**
Queen's University
- **The Legal 500 Canada (2022-2024)**
Dispute Resolution (New Generation Partner)
- **Who's Who Legal: Litigation (2018-2022)**
Future Leader
- **Who's Who Legal: Canada (2023)**
Litigation (Future Leader)

SELECT CASES

- **Bluemoon Capital Ltd v Ceridian HCM Holding Inc et al** – Counsel to applicant in Norwich application seeking information relating to the acquisition of Lifeworks.
- **Confidential Matter** – Counsel to investor in arbitration regarding oppression and dissent claims.
- **Urban Mechanical Contracting Ltd et al v Zurich Insurance Company Ltd** – Counsel to Zurich in an appeal from several applications brought by the lenders and subcontractors on the St. Michael's Hospital Redevelopment Project in Toronto. The lenders and subcontractors sought to prevent Zurich from seeking rescission of surety bonds worth nearly \$300 million in a separate action. The Court of Appeal dismissed the appeal, allowing Zurich to continue with its action for rescission.
- **Fleming v York University** – Counsel to York University in judgment enforcement proceedings arising from a multi-million dollar fraud against the University. Most recently, successfully resisted an application by a judgment debtor which sought to draw down equity in assets available to York for enforcement purposes.
- **2615975 Ontario Limited v Canopy Rivers Inc. (In the Matter of a Plan of Compromise or Arrangement of PharmHouse Inc.)** – Counsel for Canopy Growth Corporation in an insolvency of PharmHouse Inc., a cannabis greenhouse joint venture.
- **Product Liability** – Defence of a product liability action including allegation of negligent design and manufacture of a multi-million-dollar electric arc furnace.
- **Industrial Alliance Securities Inc v Kunicyn** – Counsel to an investment advisor in an employment dispute arising from a regulatory investigation.
- **Pliteq Inc v Sof Surfaces Inc** – Counsel to the defendant (plaintiff by counterclaim), Sof Surfaces Inc., in a bet-the-company commercial and intellectual property litigation, involving claims of trademark infringement and unfair competition claims under the Trademark Act and Competition Act and common law.

- **Fiera Private Debt Inc et al v Private Debt Partners et al** – Counsel to the defendants (plaintiffs by counterclaim) in an action alleging conspiracy and breach of fiduciary duties by former employees of a company. The counterclaim alleges that the plaintiffs have engaged in constructive dismissal and promulgated defamatory comments.
- **Zurich Insurance Company Ltd v 2442931 Ontario Inc, Bondfield Construction Company Limited, John Aquino, Vasos Georgiou and Unity Health Toronto** – Counsel to Zurich in an action to rescind surety bonds worth nearly \$300 million, and to recover over \$68 million, due to collusion and misrepresentations in the bidding process for the St. Michael's Hospital Redevelopment Project in Toronto.
- **Chelin v Carr** – Counsel to the defendant accounting firm in a claim alleging negligence and breach of trust against a former partner of the firm.
- **Panacci v Volkswagen** – Counsel to the plaintiff in a certified class action related to timing chain tensioners.
- **Healthy Body Services Inc v Raytek Communications** – Counsel to the plaintiff in the trial and appeal of an action to recover proceeds of fraud alleged to have been knowingly received from a convicted fraudster.
- **Re 144 Park Ltd** – Counsel to a purchaser in a successful proceeding to oppose a *Construction Lien Act* Trustee's attempt to disclaim several agreements of purchase and sale.
- **In the Matter of Benedict Cheng et al** – Counsel to the respondent in Ontario Securities Commission proceedings alleging tipping in an insider trading matter. The proceedings were resolved by way of settlement.
- **Kalra v Mercedes Benz-Canada Inc** – Counsel to the plaintiff in a certified class action related to emissions technology. The parties have recently reached a settlement, which is subject to Court approval.
- **Baldwin v Imperial Metals Corporation** – Counsel to the defendant Imperial Metals Corporation in a class action relating to alleged breaches of the Securities Act in connection with a breach of...
- **York University v Markicevic** – Counsel to plaintiff University in a successful trial of an action arising from fraud by senior university executives in connection with construction and...
- **Ferrero SpA v 218587 Ontario Limited** – Counsel to the defendant in a proceeding relating to the sale of food products containing the plaintiff's trademark. Successfully opposed an inter...
- **Re Ernst &Young LLP (Sino-Forest and Zungui Haixi)** – Counsel to the respondent auditor in two proceedings brought by the Ontario Securities Commission under the Securities Act resulting in the first no...
- **Bennett v Bennett Environmental** – Counsel to the plaintiff in successful proceedings for advancement of funds to pay legal fees relating to criminal charges. The Court's decisions in...
- **Éditions Écosociété Inc v Banro Corp** – Counsel to the appellant in the Supreme Court of Canada in an interjurisdictional defamation matter. The Court's decision in this case is one of its leading precedents in the application of public law to defamation.
- **Barclays Bank v Metcalfe & Mansfield (Devonshire Trust)** – Counsel to Devonshire Trust in a case arising out of the disruption of the Canadian Asset Backed Commercial Paper market in August 2007. Devonshire...
- **Terracap v Credit Andorra** – Counsel to the plaintiff in action to recover escrow funds from aborted real estate transaction. Successfully opposed a motion to stay the action on the...

- **Inukshuk Wireless Partnership v 4253311 Canada Inc** – Counsel to the defendants in an action relating to an alleged breach of an agreement to convey radio wave spectrum licenses.
- **College of Massage Therapists of Ontario v Heaven** – Counsel to the College of Massage Therapists in Discipline Committee hearing concerning allegations of practicing while suspended. Hearing proceeded on...
- **Zaniewicz and Clarke v Zungui Haixi Corporation** – Counsel for one of the defendants in a shareholder class action alleging that the defendant company's public offering prospectus and other disclosure...
- **Allied Systems (Canada) Company v Honda Canada Inc** – Counsel to applicant in proceedings seeking declaratory relief for breach of a transportation contract.
- **Elfarnawani v International Olympic Committee** – Counsel to the IOC in an action brought in Ontario by the plaintiff arising out of the IOC's decision to declare the plaintiff persona-non grata in the...
- **College of Massage Therapists of Ontario v Kamoulakos** – Prosecutor for The College of Massage Therapists in Discipline Committee hearing concerning allegations of, among other things, practicing while suspended...
- **Smith v Lattuca** – Counsel to the defendant physicians in a medical negligence proceedings. Successfully opposed a motion by the plaintiff to extend the deadline to...

SELECT PUBLICATIONS AND PRESENTATIONS

- **Canadian Contract Law: Essential Updates and Practical Analysis** – Brian Kolenda was invited to share his expertise at Osgoode PD's "National Annual Symposium on Canadian Contract Law". Brian discussed *Recent Developments on Good Faith in Contracts*.
- **The Twelve-Minute Civil Litigator 2022** – Brian Kolenda shared his expertise at the Law Society of Ontario's annual program, "The Twelve-Minute Civil Litigator". Brian presented on *Injunctive Relief in the Age of Cryptocurrency*.
- **2022 ARIL Virtual Conference** – Brian Kolenda shared his expertise at the 2022 ARIL Virtual Conference. He presented on the panel "*To Supply or Not to Supply: What are the Questions?*".
- **An Evening with the Commercial Bench** – Brian Kolenda co-hosted The Advocates' Society's program titled *An Evening with the Commercial Bench*. The program included a judicial panel discussion on recent developments in commercial matters including practical advice.
- **The Litigator's Guide To the Business of Law** – Brian Kolenda co-chaired The Advocates' Society program titled "The Litigator's Guide To the Business of Law". The program helped guide mid-career litigators who are new to department leadership or are looking to enter into this role. Monique Jilesen also attended and shared her expertise as a panelist.
- **Shutting Off the Tap: When Can (and Should) Suppliers Seek to Cut Off Post-Filing Supply?** – Brian Kolenda and Christopher Yung co-authored the article "*Shutting Off the Tap: When Can (and Should) Suppliers Seek to Cut Off Post-Filing Supply?*", published in the 19th Annual Review of Insolvency Law.
- **Surviving a Breakup: Dealing with Departing (and New!) Employees, Confidential Information, and IP** – Sana Halwani, Monique Jilesen, Brian Kolenda, and Sarah Millar presented at the GC Forum's Q3 event

on October 3.

- **Eighth Annual Securities Symposium** – Brian Kolenda presented at the 8th Annual Securities Symposium. Discussions included emerging issues in the securities industry such as Class Actions, Cryptocurrencies, Corruption, and Cannabis.
- **Your Profession, Your Future: The Future of Media and the Law** – Brian Kolenda was a program chair for The Advocates' Society's panel discussion on how to manage the media in high profile cases, how to take a...
- **To Start I'll Have the Judgment, and For My Main Course, the Embassy** – Brian Kolenda moderated a panel discussion on foreign sovereign immunity at the ABA Section of International Law 2017 Spring Meeting in Washington, DC...
- **Home Field Advantage - How Canadian Courts Take and Impose Jurisdiction for Online Conduct** – Brian Kolenda spoke at ALAI Canada's conference on how Canadian courts take and impose jurisdiction for online conduct.
- **Act fast to lift automatic stay of proceedings** – Brian Kolenda authored the article Act fast to lift automatic stay of proceedings which examines Bank of Montreal v Bumper Development Corp for the...
- **Surveillance disclosure tightens** – Brian Kolenda's article appears in the May 1, 2015 issue of the Lawyers Weekly published by Lexis Nexis Canada Inc. This article discusses the decision in...

BLOG POSTS

- **Bars or Bytes? Exploring the Implications of a Track that Drake Might (or Might Not) Have Created** – Did Drake respond to an alleged feud with fellow artists, including Kendrick Lamar and Rick Ross? As reported by the LA Times, a track titled 'Push Ups (Drop and Give Me 50)' appeared online recently, taking aim at Lamar and several of his recent musical collaborators. However, this track remained unclaimed on any of Drake's official platforms, causing some to question whether this track was fan-generated using artificial intelligence. This cynicism may be justified: Drake is reportedly no stranger to having to denounce fan-generated songs, and Lamar's rumoured response was actually the work of artificial intelligence and another rapper.
- **Annual Review of Insolvency Law Virtual Conference: 2022** – On February 4, 2022, CAIRP held its 19th Annual Review of Insolvency Law. The conference brought together insolvency law practitioners from across Canada for a showcase of papers authored for the latest edition of the *Annual Review of Insolvency Law* publication. The journal itself is now available in full on CanLII. Each panel was anchored by an ARIL paper whose author(s) led spirited discussions on contested topics important to the future of the insolvency practice.
- **There's No Business Like Show Business: Cineplex Awarded \$1.24 Billion in Busted Deal Lawsuit** – At the outbreak of the COVID-19 pandemic, a buyer of any business, particularly a theater operation heavily affected by public health restrictions, might understandably ask themselves; "Can I walk away from the deal?"
- **Supreme Court of Canada Opens the Door to Claims Against Corporations for Breaches of International Law** – In its February 28, 2020 decision, *Nevsun Resources Ltd v Araya*, the Supreme Court of Canada allowed a claim by three Eritrean citizens against a British Columbia corporation operating in Eritrea to proceed. Canadian (and international) corporations with international operations in high risk

jurisdictions should take note.

- **Breach of privacy or plain old defamation? Ontario Court recognizes “false light” privacy tort** – In the late 2019 decision in *V.M.Y. v S.H.G.*, Justice Kristjanson of the Ontario Superior Court of Justice for the first time recognized the tort of “publicity placing a person in a false light” in Canadian law. But do we need yet another invasion of privacy tort?
- **LCO recommendations point to meaningful change in class actions** – The July 17, 2019 final report of the Law Commission of Ontario into class actions has the potential to impact significantly on the prosecution and defence of class actions in Ontario.
- **Class Actions: Settling at the court’s discretion** – Parties to class action settlements often settle, at least in part, to avoid the ordinary uncertainty of litigation. Courts have long emphasized that while they retain discretion to supervise payments of lawyers’ fees as part of a settlement, the settlement approval process will not entail the Court re-writing a settlement that it is not prepared to approve.
- **Can you defame someone just by hitting “reply” to an email?** – Pierre Lebel didn’t like that Miranda Dyck was following his daughter on Twitter. Mr. Lebel sent an email to Andre Picotte (and several others). Mr. Lebel asked Mr. Picotte to email Ms. Dyck asking that she un-follow Mr. Lebel’s daughter.
- **SCC says “not yet” to further admin law reform** – Yesterday’s decision from the *Supreme Court of Canada in Wilson v. AECL* will no doubt generate (and has already generated: e.g. here, here) significant commentary.
- **Recent Decisions Create Uncertainty in State Immunity from Enforcement in Ontario** – Foreign states are rarely sued in domestic courts. In Canada, that is generally so for a single, good, reason: the *State Immunity Act*, (“SIA”). That statute, implementing the international law doctrine of state immunity into Canadian law, grants virtually all states immunity in respect of (most) non-commercial dealings.
- **The first (tentative) steps toward the application of Sattva in Ontario** – The Supreme Court of Canada’s decision in *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 (*Sattva*) appeared to herald a new era of deference to arbitrators: on at least ordinary questions of law, courts are now to review arbitration awards on a reasonableness standard.

SELECT NEWS ARTICLES

- **The 2024 Lexpert Directory Recognizes Lenczner Slaght’s Litigation Excellence** – Lenczner Slaght’s litigators continue to be recognized by their peers as the foremost practitioners in their fields.
- **Lexpert Recognizes Lenczner Slaght’s Litigation Strength** – An increasing number of our expert litigators continue to be recognized as the foremost lawyers in their fields by peers and senior members of the legal profession.
- **Lenczner Slaght Stands Out as a Top-Tier Litigation Firm in Legal 500 Canada** – Canada’s leading litigation firm is once again recognized as a “litigation powerhouse” according to *Legal 500 Canada*.

- **Lenczner Slaght Litigators Recognized as Best Lawyers in Canada –** In the latest edition of *Best Lawyers in Canada*, 41 of our expert litigators are recognized for their expertise across 24 practice areas. The following lawyers have also been recognized as “Lawyer of the Year” for receiving the highest overall peer-feedback in their practice areas in Toronto.
- **Lenczner Slaght’s Litigation Excellence Recognized in 2023 Lexpert Directory –** Following comprehensive peer review surveys and interviews with senior members in the legal profession, the 2023 *Canadian Legal Lexpert Directory* has recognized 31 of the firm’s expert litigators for their experience, knowledge, and precision, with 108 rankings spanning 17 practice areas.
- **Brian Kolenda Named a 2022 Lexpert Rising Star –** Brian Kolenda was recognized as a 2022 Lexpert Rising Star at last night’s award ceremony at the Liberty Grand in Toronto.
- **Lenczner Slaght Stands Out as a “Litigation Powerhouse” in Legal 500 Canada –** Canada’s leading litigation firm is once again ranked in Tier 1 for Dispute Resolution by *Legal 500 Canada*.
- **Lenczner Slaght Litigators Recognized Among the Best Lawyers in Canada –** In the latest edition of *Best Lawyers in Canada*, 39 of our expert litigators are recognized by their peers for their expertise across 24 practice areas.
- **Queen’s Wins Provincial Trial Advocacy Moot –** Our expert litigators, Brian Kolenda and Jonathan Chen, coached the winning team at the 2022 Ontario Trial Lawyers' Association Cup.
- **The 2022 Lexpert Directory Recognizes Lenczner Slaght’s Litigation Excellence –** 31 of our expert litigators are recognized by their peers as the foremost practitioners across 18 fields.
- **Canadian Decision Offers Roadmap on M&A Obligations During a Pandemic –** In a law.com article, Eli S. Lederman and Brian Kolenda share their expert insights on the decision in *Cineplex v Cineworld*, which will provide clarification on where else in contracts the pandemic would impact contractual obligations.
- **Mercedes-Benz Settles Canadian Diesel Emissions Class Action –** Daimler AG and its Canadian and American Mercedes-Benz subsidiaries have agreed to settle a class proceeding concerning approximately 83,000 “BlueTEC” diesel vehicles in Canada. The proposed settlement provides for cash payments and other benefits to current and former owners and lessees.
- **Legal 500 Highlights Lenczner Slaght’s Litigation Dominance –** Legal 500 recognizes Canada’s leading litigation firm as “a regular fixture in the country’s ground-breaking contentious cases”.
- **Lenczner Slaght Litigators Appointed to The Advocates’ Society’s Leadership –** We are pleased to announce that Brian Kolenda, Andrew Parley, Shara Roy, Nina Bombier, Larry Thacker and Anne Posno have been elected to prominent leadership positions at The Advocates’ Society, a preeminent organization dedicated to promoting effective advocacy and access to justice.
- **Lenczner Slaght Litigators Ranked Among Best Lawyers in Canada –** In the latest edition of *Best Lawyers in Canada*, 37 of our expert litigators are recognized for their expertise across 25 practice areas.
- **The 2021 Lexpert Directory Recognizes 30 Lenczner Slaght Lawyers –** An increasing number of our expert litigators are recognized by their peers as the foremost practitioners in their fields.
- **The Secret Bondfield Files: Records Outline Alleged Kickbacks Between Former Executives Over St. Michael’s Hospital Bid –** In a recent Globe and Mail article, Matthew Lerner and Brian Kolenda are

quoted regarding their involvement in litigation between Zurich Insurance and Bondfield and Toronto's St. Michael's Hospital.

- **Lenczner Slaght Litigators Elected to The Advocates' Society's Leadership** – We are pleased to announce that Anne Posno, Nina Bombier and Shara Roy have been elected to prominent executive positions at The Advocates' Society, a preeminent organization dedicated to promoting effective advocacy and access to justice. Peter J. Osborne, Brian Kolenda, and Chris Kinnear Hunter will also be continuing their terms in their leadership positions.
- **Lexpert Highlights Lenczner Slaght's Professional Excellence** – Lenczner Slaght's litigators continue to be recognized by their peers as the foremost practitioners in their fields.
- **Lenczner Slaght's R&R Lounge Receives Precedent Innovation Award** – Precedent Magazine recognizes Lenczner Slaght's R&R Lounge among the innovative people, projects and ideas that are actively improving the legal profession.
- **The 2019 Lexpert Directory Recognizes Lenczner Slaght with 89 Rankings** – An increasing number of our expert litigators are recognized by their peers as the foremost practitioners in their fields.
- **Who's Who Legal Recognizes Lenczner Slaght's Litigation Dominance** – Eight Lenczner Slaght lawyers are recognized globally for their superb litigation expertise.
- **Queen's Law Celebrates Brian Kolenda** – Brian Kolenda was recognized by his alma mater as a rising star among Canadian trial lawyers.
- **Lenczner Slaght Names Brian Kolenda as a New Partner** – We are proud to welcome Brian Kolenda to the partnership.
- **Top 10 Decisions with Cross-Border Impact** – *Goldhar v Ha'aretz* is named in Lexpert's Top 10 Decisions with Cross-Border Impact as one of the cases with important implications in the United States. Lenczner Slaght's William C. McDowell and Brian Kolenda are mentioned as counsel to the plaintiff, Mitchell Goldhar. Will is also quoted in the article.
- **Lenczner Slaght and Koskie Minsky Commence Class Action Against Nissan Canada Inc.** – The two firms have combined forces and launched a class proceeding against Nissan, and other defendants, alleging that certain Nissan models contain a dangerous engine defect.
- **York University Succeeds in Fraud Claim Against Former Executive** – Following a lengthy trial, the Ontario Superior Court of Justice has determined that former York employees played key roles in several significant frauds.
- **Lenczner Slaght Lawyers Serve As Jessup Moot Judges** – Canadian Rounds of the Philip C. Jessup International Law Moot Court Taking Place in Halifax.
- **Lenczner Slaght Celebrates the Winners of Western Law's 2014 Lenczner Slaght Advocacy Competition in Legal Ethics Moot** – Lenczner Slaght is a proud supporter of Western Law's 5th annual "Lenczner Slaght Advocacy Competition in Legal Ethics and Professionalism Moot".
- **Incoming Summer Student Advances at Jessup Moot** – Congratulations to the Queen's University team in obtaining Silver in the final rounds of the White & Case Canadian National Division Qualifying Tournament of the 2013 Jessup Moot. The Queen's team, including incoming summer student, Laura Robinson, advanced to the international rounds in Washington, D.C. Laura was recognized in the Top 25 Oralists Rankings.

PROFESSIONAL ACTIVITIES

- The Advocates' Society
Member-at-Large of the Commercial Litigation Practice Group, +10
Standing Committee Member
- Securities Proceedings Advisory Committee
- OTLA Trial Advocacy Moot, Queen's University
Coach
- Canadian Bar Association
- Ontario Bar Association
- University of Toronto
Sessional Lecturer (Department of Political Science) - International Law
(Former)