

# Appeals

Lenczner Slaght's busy appeals practice contributes significantly to our record of success and to our reputation as a leading Canadian litigation firm.

As we represent the interests of a diverse client base, we are particularly active in pursuing or defending appeals. Our lawyers have argued hundreds of appeals before all appellate courts, including several provincial courts of appeal, the Federal Court of Appeal and the Supreme Court of Canada. Our lawyers have argued some of the leading appellate cases before the Supreme Court of Canada, including on matters of contract law, constitutional law, and conflict of laws.

We have the depth of experience to understand – and deliver – what the appellate courts look for as they engage in reviews of lower court or tribunal decisions. As a result, our litigators are trusted in appellate courts.

Our firm's credibility as leading litigators is particularly valuable in an appeal setting, where much depends on accuracy, clarity and the ability to locate and define the important issues to be considered. Our success in bringing these factors to bear has long paid dividends when it comes to persuading the court of a client's position.

In developing the appellate experience throughout the firm we follow the same approach as we do in our trial practice: we expose our younger associates – many of whom clerked at the Superior Court, Court of Appeal or the Supreme Court of Canada – to a wide variety of appeals and appellate issues. By building on their skills and early insights into appellate practice, we extend the breadth of experience we can draw upon in meeting the appeals needs of our clients.

## RECOGNITION

- ▶ Best Lawyers in Canada (2021-2024)  
 Appellate Practice, Corporate & Commercial Litigation, Health Care Law, Administrative and Public Law (2022)
- ▶ Best Lawyers in Canada (2020)  
 Toronto "Lawyer of the Year" in Appellate Practice
- ▶ Best Lawyers in Canada (2006-2021)  
 Alternative Dispute Resolution, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director & Officer Liability, Intellectual Property, Legal Malpractice, Personal Injury Litigation, Product Liability, Securities
- ▶ Best Lawyers in Canada (2006-2024)  
 Administrative & Public Law, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director and Officer Liability Practice, Health Care Law, Intellectual Property, Legal Malpractice,

Medical Negligence, Personal Injury Litigation, Product Liability, Securities

- **Best Lawyers in Canada (2006-2024)**  
Alternative Dispute Resolution, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director & Officer Liability, Health Care Law, Insolvency & Financial Restructuring, Legal Malpractice, Medical Negligence, Securities
- **Best Lawyers in Canada (2014, 2014)**  
Appellate Practice, Health Care Law, Medical Negligence
- **Best Lawyers in Canada (2015)**  
Toronto "Lawyer of the Year" in Appellate Practice
- **Best Lawyers in Canada (2017-2024)**  
Administrative & Public Law, Alternative Dispute Resolution, Appellate Practice, Corporate & Commercial Litigation, Defamation & Media, Intellectual Property, International Arbitration

## SELECT CASES

- **Castillo v Xela Enterprises Ltd** – Counsel to the court-appointed receiver in contempt proceedings on the Commercial List. Successfully obtained a finding of civil contempt and a full indemnity costs award – both of which were upheld on appeal.
- **Wasylyk v Simcoe (County)** – Successful counsel to the plaintiff in upholding a trial judgment imposing liability on the Corporation of the County of Simcoe for failing to keep a roadway in a reasonable state of repair. The Court of Appeal for Ontario agreed that the plaintiff/respondent was not contributorily negligent and affirmed judgment in the amount of \$16,000,000.
- **Puma SE v Caterpillar Inc** – Co-counsel to Puma in an application for leave to appeal to the Supreme Court of Canada arising from Caterpillar's opposition to Puma's trademark application for PROCAT on the basis that it is confusing with Caterpillar's registered design trademark (CAT & Triangle Design).
- **Boyer v Callidus Capital Corporation** – Counsel to a former employee at Callidus Capital Corporation, who commenced a wrongful dismissal claim in 2017. Callidus counterclaimed against our client for \$150 million, which we successfully argued to have dismissed as an "Anti-SLAPP" proceeding at the Court of Appeal. We then obtained summary judgment in the main employment action for over \$1.3 million plus interest.
- **Dramel Limited v Multani** – Counsel to the successful mortgage lender in a motion to lift an interim stay of enforcement obtained by the borrowers. As well, in a series of court decisions confirming the validity of the mortgage agreements and the enforceability of a significant commercial mortgage subject to a forbearance agreement.
- **Hummel Properties Inc v Niagara-on-the-Lake (Town)** – Counsel to the Interveners in an application involving municipal planning law. Successfully argued that the lower court's interpretation and application of the Planning Act was overbroad. This decision was the first appellate court to confirm that two ICBLs cannot apply to the same land within the statutory cooling off period even if they are enacted for different purposes.

- **MDS v Factory Mutual** – Counsel to the intervenor Insurance Bureau of Canada in widely anticipated appeal overturning trial decision that had awarded significant business interruption losses to the Insured under an all-risks policy which had arisen from the shutdown of nuclear reactor and had interrupted a supply of isotopes to the Insured.
- **Grant Thornton v New Brunswick** – Counsel to Grant Thornton in a successful appeal to the Supreme Court of Canada clarifying the rule of discoverability in limitation periods law across Canada.
- **College of Psychologists of Ontario v Ontario (Health Professions Appeal and Review Board)** – Counsel to the College of Psychologists of Ontario in a successful appeal from a decision of the Health Professions Appeal and Review Board regarding registration.
- **King v Gannage** – Counsel in the successful defense of a judicial review before the Divisional Court of a Health Professions Appeal and Review Board decision regarding a physician's use of complementary/alternative medicine.
- **12178711 Canada Inc v Wilks Brothers, LLC** – Counsel to G2S2 Capital Inc., a significant creditor, in connection with a contested *CBCA* restructuring of Calfrac Well Services Ltd.
- **Ioana Huma et al v Gregory Sue-A-Quan et al** – Counsel for physicians in a medical malpractice action. Parties entered into settlement. Plaintiffs resiled from the settlement. Successfully moved to enforce settlement and upheld result on appeal.
- **Friends of Toronto Public Cemeteries Inc v Public Guardian and Trustee** – Counsel to the successful appellant Mount Pleasant Group of Cemeteries before the Court of Appeal for Ontario overturning a decision regarding the interpretation of historical corporate governance legislation related to one of Toronto's iconic historical landmarks.
- **Icona Hospitality v 2748355 Canada Inc et al** – Counsel to a major real estate development company on appeal in a dispute relating to a large residential development and the interpretation of a restrictive covenant agreement.
- **Presley v Van Dusen** – Counsel to the homeowners in a successful appeal to determine a question of law that the limitation period did not expire prior to the commencement of the action based on the appropriateness requirement of the discoverability provisions in the *Limitations Act, 2002*.
- **McCabe v Roman Catholic Episcopal Corporation** – Counsel to the successful respondent before the Ontario Court of Appeal.
- **Loranger v Tobey et al** – Counsel to the respondents in an appeal from a decision of the Small Claims Court arising from the sale of a used motor vehicle.
- **Rooplal v Toronto Transit Commission** – Counsel to the Toronto Transit Commission in an appeal about the applicability of limitation periods to claims for unidentified motor vehicle coverage.
- **DLF Solutions Inc v Maple Leaf Sports & Entertainment Ltd** – Counsel in the successful defence of owner of the Toronto Raptors at trial of an action and on appeal alleging breach of contract with respect to the sale and reconfiguration of courtside seats.

- **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.
- **Western Larch Ltd v Di Poce Management Ltd** – Counsel to the successful moving party/defendants on a motion for summary judgment, dismissing an \$80 million claim alleging that a shotgun buy/sell offer did not comply with the parties' partnership agreement and amounted to a breach of fiduciary duty and oppression. Successful in upholding the result on appeal. Also successful in opposing a motion for an injunction to prevent the completion of a transaction mandated by a shotgun buy/sell offer.
- **Mock Appeal** – Retained by appeal counsel to conduct a mock appeal for an infringement case involving a patented wellbore completion method.
- **Warkentin v BMO Nesbitt Burns Inc. and Ryan** – Counsel to the Respondents, Nesbitt Burns and Ryan, in an appeal in the Manitoba Court of Appeal in which the Court dismissed the appeal.
- **Stanbarr Services Limited et al. v. 2413913 Ontario Limited et al.** – Counsel to the Appellant, 2413913, on two successful appeals in the Ontario Court of Appeal over issues of mortgage enforcement, priorities and registration of title principles.
- **North Elgin Centre Inc v McDonald's Restaurants of Canada** – Counsel to the Appellant, McDonald's, on a successful appeal at the Ontario Court of Appeal over the renewal of a commercial lease.
- **Experian v BDC** – Counsel to Experian in an appeal to the Court of Appeal for Ontario heard February 13, 2018. Appeal was resolved before Judgment.
- **Rutman v Rabinowitz** – Counsel to the respondent on an appeal in a seminal internet defamation case. The Court of Appeal for Ontario clarified the law of concerted action liability and upheld a very large damages awards for what it characterized as a prolonged, persistent and vicious internet campaign.
- **Monteith Mineralized Solutions Inc v. Nu-Gro Ltd.** – Counsel to the successful appellants/defendants in obtaining a stay of the action from the Divisional Court in a dispute over an alleged breach of a distribution agreement.
- **Jeffery v London Life Insurance Company** – Counsel to the Law Foundation of Ontario successfully responding to an appeal regarding the payment of its levy in a class action.
- **Bell Canada/National Football League v Canadian Radio-television and Telecommunications Commission** – Counsel to the interveners ACTRA and the Association of Canadian advertisers in appeals from the CRTC's Super Bowl simultaneous advertisement substitution ban.
- **Fenwick v Concierge Auctions, ULC** – Counsel on a successful appeal at the Ontario Court of Appeal seeking to recover the deposit on an abortive real estate transaction
- **1162251 Ontario Limited v 833960 Ontario Limited (M-Plan Consulting)** – Counsel on a successful appeal at the Ontario Court of Appeal seeking to enforce a debt secured by a guarantee and a general security agreement
- **ES v Joannou** – Counsel to a psychiatrist in an appeal raising the novel issue of the jurisdiction of the Consent and Capacity Board to grant

remedies under the *Charter of Rights and Freedoms*. Successfully responded to the appeal.

- **6524443 Canada Inc v Toronto (City)** – Counsel to the Appellant Brookfield on appeal at the Ontario Court of Appeal seeking leave to Appeal from an Arbitration Award.
- **Google Inc v Equustek Solutions Inc** – Counsel to Google in an appeal to the Supreme Court of Canada from decisions of the Supreme Court of British Columbia and British Columbia Court of Appeal in a novel case regarding the limits to be placed on injunctions granted against non-parties.
- **The Board of Regents of Victoria University v GE Canada Real Estate Equity** – Counsel to GE Canada Real Estate Equity in an appeal to the Superior Court of Justice and to the Court of Appeal from an arbitration award over the determination of ground lease rent for a prominent Bloor Street property.
- **Venngo Inc v Concierge Connection Inc cob as Perkopolis** – Counsel to Venngo in an appeal to the Federal Court of Appeal and a leave to appeal application to the Supreme Court of Canada of a decision relating to trademark infringement and passing off.
- **Conférence des juges de paix magistrats du Québec v Quebec (Attorney General)** – Counsel to the intervener Association of Justices of the Peace of Ontario in an appeal to the Supreme Court of Canada regarding judicial compensation.
- **World Bank Group v Wallace** – Counsel to an international organization in an appeal at the Supreme Court of Canada relating to the immunities of international organizations in criminal proceedings.
- **Re Sino-Forest Corporation** – Counsel for the defendant auditors of Sino-Forest Corporation in connection with a shareholder class action claiming damages in order of \$9 billion on behalf of primary and secondary market purchasers and debt-holders. Successfully resolved proceeding and coordinated precedent setting settlement approval of a Canadian class action within the context of an ongoing CCAA proceeding. Counsel in appeals from settlement approval to the Court of Appeal and Supreme Court of Canada, both of which were dismissed.
- **Crookes v Newton** – Counsel to an intervener in an appeal to the Supreme Court of Canada regarding the novel question of whether an internet hyperlink to a defamatory statement constitutes republication of the defamation.
- **Lapointe Rosenstein Marchand Melançon LLP v Cassels Brock & Blackwell LLP** – Counsel to the successful respondent, Cassels Brock & Blackwell LLP, in an appeal to the Supreme Court of Canada relating to the jurisdiction of Ontario courts over a third-party claim.
- **Bhasin v Hrynew** – Counsel to the respondents in the Supreme Court of Canada regarding an Alberta action involving a claim for breach of an implied duty of good faith, conspiracy and inducing breach of contract in respect of a commercial agreement.
- **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 Trust was successful after a lengthy trial. The Court of

Appeal affirmed the trial judge's decision and found that Barclays' notice terminating the swap transaction was invalid because of Barclays' misrepresentation and bad faith.

- **Mendlowitz v Chiang** – Counsel to an individual in a series of complex proceedings relating to the enforcement of a foreign judgment, bankruptcy, and contempt of court.  
In the course of the proceeding, Lenczner Slaght was counsel to the defendant on several trials, motions, and appeals, including in what has become one of the leading cases on civil contempt.
- **Gentra Canada Investments Inc v Lipson** – Counsel to successful plaintiff/respondent on an appeal from complex motion for summary judgment. Appeal raised issues of law involving the assignment of two mortgages and a cause of action in solicitors' negligence.
- **Re Coventree Inc** – Counsel to a former director and officer of Coventree Inc. in a regulatory proceeding before the Ontario Securities Commission in connection with disclosure obligations surrounding the collapse of the Asset Backed Commercial Paper (ABCP) market in Canada. Counsel in appeals to the Divisional Court and Court of Appeal.
- **Timpano v Hurst** – Counsel to successful defendant general surgeon on a dismissal of an appeal and at the trial of a medical negligence action involving a patient who suffered post-surgical complications and died.
- **UBS Securities Canada, Inc v Sands Brothers Canada, Ltd** – Counsel on an appeal from a trial of an application to enforce an agreement to sell securities which were subsequently converted to shares of the TSX.
- **Senger v Lachman** – Counsel on successful appeal of the dismissal of an action based on a faulty jury charge. A new trial was ordered.
- **RBC Dominion Securities Inc v Merrill Lynch Canada Inc** – Counsel to RBC on injunction, trial, appeal and at the Supreme Court of Canada in respect of an action against departing investment advisors for a competitor.
- **1193430 Ontario Inc v Boa-Franc Inc** – Counsel in a trial and successful appeal of a contractual dispute involving the termination of a distributorship agreement.
- **2363523 Ontario Inc v Nowack** – Counsel on an appeal arising from a finding of contempt.
- **Sky Solar (Canada) Ltd v Marnoch Electrical Services Inc** – Counsel to the claimant in an appeal of an arbitration decision relating to installation of electrical transformers.
- **Bradshaw v Langley** – Counsel to the successful respondents on an appeal from a summary judgment motion in a family law matter involving the division of assets and a dispute over whether those assets were held in trust. In June 2015, the matter proceeded to a successful two week trial and award of \$8 million judgement.
- **Sutton v Balinsky** – Counsel to the non-party appellant in a dispute over production of financial records for purposes of a valuation of a commercial enterprise.
- **Iskander v BMO Nesbitt Burns Inc** – Counsel to the successful appellants, BMO Nesbitt Burns Inc. and BMO Trust Company, on an appeal related to withholding tax payable upon transfer of securities from a Registered Account Savings Plan account.
- **Law Society of Upper Canada v Groia** – Counsel to the Law Society of



Upper Canada in the prosecution of a lawyer for professional misconduct. A three member panel of the Divisional Court affirmed the decision of an Appeal Panel of the Law Society of Upper Canada that found the lawyer had committed acts of professional misconduct. The Divisional Court also confirmed his penalty of a one month suspension and its \$200,000 costs award in favour of the law society.

- **Moore v Getahun** – Counsel on appeal for the defendant physician in a proceeding alleging negligence in the treatment of a fractured wrist. The Court of Appeal's decision provided important guidance on the role of counsel in the preparation of expert reports and the limits on the production at trial of information from an expert witness's file.
- **Estate Trustee During Litigation for the Estate of Paul Penna v Landen** – Counsel to Estate Trustee During Litigation of the Paul Penna Estate in a series of proceedings, including two appeals to the Ontario Court of Appeal and a contempt trial, arising out of a massive fraud perpetrated by former Estate Trustee in his administration of the Estate.
- **Law Society of Upper Canada v Opara** – Counsel to the Law Society of Upper Canada in a successful appeal of a decision concerning unprofessional conduct by a barrister.
- **Achilles Motors Limited v 1717222 Ontario Inc** – Counsel to successful respondent in application and appeal of a matter involving the interpretation of provisions of the *Business Corporations Act* as applied to an agreement of purchase and sale.
- **Livent Inc v Deloitte & Touche LLP** – Counsel to Deloitte & Touche LLP for the appeal to the Court of Appeal and the Supreme Court of Canada from a trial judgment awarding substantial damages against an accounting firm for the audit of the financial statements of Livent Inc.
- **McCormick v Fasken Martineau Dumoulin** – Counsel to the interveners, Canada's six largest accounting firms, on an appeal before the Supreme Court of Canada over whether a partner is an employee of a partnership for the purposes of human rights legislation.
- **Alfred Wegener Institute v ALCI Aviation Ltd** – Counsel to Alfred Wegener Institute in a successful defence of an appeal before the Court of Appeal after obtaining an Order recognizing and enforcing an international commercial arbitral award.
- **Union Carbide Canada Inc v Bombardier Inc** – Counsel to an intervenor in an appeal to the Supreme Court of Canada regarding settlement privilege in mediation.
- **Goldhar v Ha'aretz** – Counsel to the plaintiff in a defamation action involving the online publication of an article by an Israeli newspaper. Successful in responding to a motion and an appeal to stay the action due to lack of jurisdiction.
- **HSBC Bank Canada v Fuss** – Counsel in an appeal from a trial judgment relating to the tort of unlawful conduct conspiracy.
- **Merino v Klue** – Counsel to the plaintiffs/appellants in an appeal regarding the deductibility of a non-pecuniary benefit under an automobile policy of insurance.
- **Wells Fargo v Best Theratronics** – Counsel to a debtor a claim for breach of contract and enforcement of security against accounts receivable, including on a motion for summary judgment and appeal.
- **Dundas v Zurich Canada** – Counsel to the successful appellants in an appeal concerning the limitation period for a claim against an insurer for allegedly delaying settlement of the claims of third parties against its

insured and failing to pay the policy limits into an interest-bearing account to accrue for the benefit of the third parties.

- **Bollman v Soenen** – Counsel to the defendant physician in a medical negligence action at trial and on appeal in a matter relating to the treatment of menorrhagia.
- **Southcott Estates Inc v Toronto Catholic District School Board** – Counsel for appellant/respondent on cross-appeal, Southcott Estates Inc., on an appeal to the Supreme Court of Canada regarding the duty to mitigate losses and the availability of the remedy of specific performance in a breach of contract action.
- **Cytrynbaum v Look** – Counsel to defendants/applicants, Michael Cytrynbaum and First Fiscal Management Ltd., in an application, and on appeal, for advancement of legal expenses in an action alleging breach of fiduciary duties and unjust enrichment in connection with the sale of a company's assets.
- **Volochay v College of Massage Therapists of Ontario** – Counsel to the College of Massage Therapists of Ontario, on a successful appeal of the issue as to whether the application judge was wrong in principle to grant judicial review and quash two decisions of the College's investigatory bodies.
- **The Superintendent of Bankruptcy v 407 ETR Concession Company Ltd** – Counsel to 407 ETR before the Supreme Court of Canada in a division of powers case regarding the *Bankruptcy and Insolvency Act*.
- **Law Society of Upper Canada v Ross** – Counsel for the Law Society in an appeal from a Discipline Committee decision.
- **Ortolan v Hotel-Dieu Grace Hospital** – Counsel to appellant physician on a successful appeal to Court of Appeal from a trial judgment awarding damages to plaintiffs for medical negligence arising from a surgical procedure.
- **Romspen Investment Corporation v Woods Property Development Inc** – Counsel to appellant Home Depot on appeal to Court of Appeal from an Order of a Commercial Court judge, approving Receiver's sale of property upon which Home Depot's store was situated. Appeal allowed. Order set aside.
- **General Electric Canada Co v Aviva Canada, Inc** – Counsel for the insured in an application and appeal concerning insurer's duty to investigate and defend claims arising from the historical release of contamination pursuant to historical insurance policies.
- **Piedra v Copper Mesa Mining Corp** – Counsel to TSX defendants in a mining case involving allegations of negligence. Successfully moved to strike the statement of claim without leave to amend. The decision was upheld on appeal.
- **Ault v Canada (Attorney General)** – Counsel to the Attorney General of Canada in a negligent misrepresentation action relating to pension benefits. Successful appeal of the trial judge's apportionment of damages.
- **Weisz v Four Seasons Holdings Inc** – Counsel in an application for leave to appeal and appeal from a decision of an arbitrator in a constructive dismissal action.



- **Commissioner, Ontario Provincial Police v MacDonald** – Counsel for Commissioner of the OPP in judicial review proceedings in the Divisional Court and Court of Appeal for Ontario relating to hearings under the *Police Services Act*.
- **Sagl v Chubb Insurance Company of Canada** – Counsel in the defence of an insurance claim at trial on the basis of arson and misrepresentation. Successful in having trial judgment set aside on appeal due to failure of trial judge to make vital credibility findings.
- **Marcoccia v Ford Credit Canada Limited** – Counsel to Ford Credit Canada in an appeal concerning the apportionment of liability and reasonableness of damages awarded by jury.
- **Bikur Cholim Jewish Volunteer Services v Langston** – Counsel in an appeal addressing complex limitation issues in an estate proceeding.
- **Graf v Preddie** – Counsel to successful respondent on an appeal from a judgment finding breach of a fundamental term of a tenancy contract.
- **Reservoir Group Partnership v 1304613 Ontario Inc** – Counsel in a successful trial of an action enforcing restrictive covenants and non-solicitation clause. Successful appeal of an award of damages and cross-appeal on issues of liability arising from breach of restrictive covenants.
- **Juol Sands Inc v Humberplex Developments Inc** – Counsel in a successful appeal of an order discharging the respondent from its obligation to pay municipal levies.
- **Blue Star Trailer Rentals Inc v 407 ETR Concession Co** – Counsel in a successful appeal, holding 407 ETR was permitted to charge tolls for transport truck trailers under the *Highway 407 Act*.
- **Precious Metal Capital Corp v Smith** – Counsel in an appeal concerning the jurisdiction of the Court relating to a foreign mine.
- **Smith v Toronto Police Association** – Counsel in application to declare the actions of a non-share capital corporation to be *ultra vires* the corporation's constitution. On appeal, the Court of Appeal affirmed that the actions were *ultra vires*.
- **McDonald's Restaurants of Canada Ltd v The Corporation of the City of Toronto** – Counsel to the McDonald's in a successful appeal before the Ontario Municipal Board from the decision of Council for the City of Toronto to enact an Official Plan Amendment.
- **Meady v Greyhound Canada Transportation Corp** – Counsel for a physician in an action relating to a bus crash that had occurred as a result of conduct of a patient. Successful in opposing a motion to add the physician to the action, and in precedent-setting appeal regarding the interpretation of the *Limitations Act, 2002* and the doctrine of special circumstances.
- **GM v Alter** – Counsel for defendant physicians in an action relating to the *in utero* infection of a baby with HIV. Contested hearing and appeal concerning the scope and interpretation of a settlement offer, and whether it should be presumed to include a right to structure the lump sum payment.
- **Walker v Ritchie** – Counsel in an appeal to the Supreme Court of Canada on the issue of cost premiums.
- **Rexdale Singh Sabha Religious Centre v Chattha** – Counsel in a successful appeal from a decision setting the membership of a non-share capital corporation on the basis that proper procedure had not been followed.

- **Impact Tool & Mould Inc (Estate Trustee of) v Impact Tool & Mould Inc (Interim Receiver of)** – Counsel in an appeal regarding the discretion of the court to restrict the ability of a trustee in bankruptcy to provide the inspectors and creditors of the bankrupt estate with access to books, records and other documents of the bankrupt.
- **Tantawy v Casa Verde** – Counsel for a physician on a motion to prevent the addition of a physician to a medical negligence action beyond the relevant limitation period. Successful on the motion and on appeal.
- **Malpass v Morrison** – Counsel in respect of an appeal of a trial judgment arising from an aborted real estate transaction.
- **Ferrara v Tabatabai** – Counsel in an appeal concerning oppression remedy claims.
- **Giroux Estate v Trillium Health Centre** – Counsel to a physician in a medical negligence action, which included an appeal dealing the doctrine of fraudulent concealment and the limitation period applicable to claims by estates.
- **CB v Sawadsky** – Counsel to a physician alleged to have failed to advise patient of her right to counsel under the *Mental Health Act* and the *Charter of Rights and Freedoms* when detaining the patient for psychiatric assessment. Successful at trial and on appeal.
- **407 ETR Concession Co v Ontario** – Counsel to the successful 407 ETR in an arbitration and appeal concerning the entitlement of the 407 ETR to raise tolls without the province's approval.
- **Hercules v Sunnybrook and Women's College Health Sciences Centre** – Counsel to two physicians on a successful motion and appeal for summary judgment in a medical negligence action.
- **Montreal Trust Co of Canada v Call-Net Enterprises Inc** – Counsel to Call-Net Enterprises in a successful defence at trial and on appeal of claim by former senior executives that they were entitled to benefits as a result of a change of control resulting from proxy battle.
- **Liberty Mutual Insurance Co v Hollinger Inc** – Counsel in an appeal of an insurance application concerning the obligation of the insurer to defend claim of intentional discrimination.
- **Canada (Information Commissioner) v Canada (Minister of the Environment)** – Counsel to Ethyl Canada in an appeal to the Federal Court of Appeal regarding the interpretation of the *Access to Information Act* and cabinet document privilege.
- **Sutherland v Birks** – Counsel in a successful oppression application at trial and appeal on behalf of two shareholders in a family foundation for buy-out of shares and other equitable relief.
- **John E Dodge Holdings Ltd v 805062 Ontario Ltd** – Counsel to a hotel builder in successful action and subsequent appeal for specific performance of a commercial real estate transaction.
- **1098748 Ontario Ltd v Loblaws Inc** – Counsel in an appeal regarding the interpretation of a commercial lease.
- **Stevens v The Globe and Mail** – Counsel to the appellants in an appeal from a trial decision in which the trial judge refused to deduct statutory severance under the *Employment Standards Act* from an award of damages for wrongful dismissal. The appellant was successful in overturning this aspect of the judge's decision, and this became a leading case on this issue.
- **Aviva Insurance Company v Lombard General Insurance** – Counsel

at trial and appeal for Lombard General Insurance Company of Canada regarding the claims of equitable restitution and contribution for losses arising from a fire in a Toronto apartment building.

- **Visagie v TVX Gold Inc** – Counsel to the respondents on an appeal and cross-appeal in an action for breach of a confidentiality agreement, breach of confidence and breach of fiduciary duty arising out of a joint venture between the parties for the acquisition and operation of certain gold mines in Greece.
- **Law Society of Upper Canada v Neinstein** – Counsel to the Law Society of Upper Canada in connection with appeals to the Divisional Court and Court of Appeal for Ontario on a professional discipline matter.
- **Jajo v Ontario (Transportation)** – Counsel to the applicant in a successful judicial review application challenging the Government's decision to revoke license to practice a profession. (*Prior to joining Lenczner Slaght*)
- **Attorney General of Canada v Harris Corporation** – Counsel to the Attorney General of Canada in a judicial review application to the Federal Court of Appeal arising from a complaint before the International Trade Tribunal in respect of a procurement on behalf of the Royal Canadian Mounted Police.
- **Karagiannis v Riapov** – Counsel to the appellant Nicholas Danikas on the successful appeal of an order dismissing the action for delay.
- **Saleh v Nebel** – Counsel to the cross appellant Ludwig Nebel on the successful appeal of the trial judge's decision to deny costs to the successful defendant.
- **1512-11015 (Re)** – Represented a father and his disabled son on a pro bono basis in an appeal concerning disability support payments from the Government of Ontario. The father was awarded the maximum amount of benefits retroactive to the date of his application. (*Prior to joining Lenczner Slaght*)

## SELECT PUBLICATIONS AND PRESENTATIONS

- **Your Essential Guide to Appellate Advocacy** – Paul-Erik Veel chaired the OBA's program on effective appellate advocacy.
- **Dirty Tricks of Appellate Advocacy?** – Ian Binnie was invited to make a keynote address at The Advocates' Society's program titled "Dirty Tricks of Appellate Advocacy?" hosted by its new Appellate Advocacy Practice Group.
- **Appeals: Principles & Practice** – Tom Curry taught University of Toronto law students about *Appellate Advocacy*.
- **Alive and well: Construction Lien Act deemed trust after bankruptcy** – Matthew Lerner and Scott Rollwagen co-authored the article *Alive and well: Construction Lien Act deemed trust after bankruptcy* in The Lawyer's Daily February 8, 2019 edition. They discuss the recent decision in *Guarantee Company of North America v Royal Bank of Canada* that has upset the long-standing conventional wisdom among bankruptcy and insolvency practitioners in Ontario about the fate of provincially-created statutory trusts in bankruptcy.
- **Ontario Court of Appeal Rules in Heller v Uber Technologies Inc: A Sensible Result with Challenging Implications** – Paul-Erik's article *Ontario Court of Appeal Rules in Heller v Uber Technologies Inc: A Sensible Result with Challenging Implications*

appeared in the Class Actions Law section of the Ontario Bar Association.

- **Successful Civil Appeals** – Monique Jilesen presented at OBA's program on Successful Civil Appeals. She spoke on the topic of writing a persuasive factum.
- **Are courts of appeal becoming Bleak Houses?** – Scott Rollwagen's article *Are courts of appeal becoming Bleak Houses?* appeared in the October 16, 2017 issue of Law Times. Scott discusses the serious implications of Canadian appellate courts' steadily increasing willingness to defer to first instance decision-makers.
- **The Appeal: The Travel Ban on Trial in the Supreme Court of Stratford** – Peter Griffin appeared at Stratford Festival's Forum Showcase on September 30, 2017. He acted as counsel to Romeo in the Appeal of Prince Escalus' executive order banishing Romeo from Verona. Peter cross-examined the Right Honourable Adrienne Clarkson appearing as the expert witness and challenged the legality of the travel ban.
- **Appellate Pratfalls - Hear directly from The Hon. W. Ian C. Binnie** – Ian Binnie presented on the topic at The Advocates' Society Spring Symposium, Advocacy in the Real World: Practical Tips, Updates and Strategies, on April 26, 2013.

## BLOG POSTS

- **Ontario Court of Appeal Restricts Municipality's Use of Interim Control By-Laws** – In a recent decision, *Hummel Properties Inc v Niagara-on-the-Lake (Town)*, the Ontario Court of Appeal affirmed that the Town of Niagara-on-the-Lake's enactment of an interim control by-law ("ICBL") was illegal. The decision, summarized below, has important implications for municipalities, developers, and builders across Ontario.
- **Deference to 1968** – The Court of Appeal for Ontario has once again reaffirmed the deference afforded to first instance judges in cases of contractual interpretation that rely heavily on the factual matrix—even where the underlying facts and history are unique.
- **Hash-ing It Out: SCC Will Hear Challenge to Constitutionality of Quebec Legislation Banning Personal Possession and Cultivation of Cannabis** – The Supreme Court of Canada recently granted leave to appeal in the decision of *Murray-Hall c Procureure generale du Quebec*, opening the door for the Court to consider the constitutionality of provincial legislation purportedly aimed at regulating cannabis production and possession in the province of Quebec. The case is significant because it focuses on the validity of provincial legislation which directly contradicts federal legislation on the same issue.
- **Getting Leave to the Supreme Court of Canada: 2021 by the Numbers** – Many of you have seen our weekly blog posts that provide predictions as to how likely it is that particular cases will get leave to the Supreme Court of Canada. Those predictions are based on a dataset of every Supreme Court leave application decision from January 1, 2018 to the present. While those predictions are one use of our data, it's not the only use. Here we present another: a quantitative year in review of leave applications decided by the Supreme Court of Canada in 2021.
- **The SCC Leave Project: A Machine Learning Algorithm to Predict the Likelihood of Getting Leave to the Supreme Court of Canada** – In the spring of 2020, we posted an analysis of the Supreme Court of Canada's 2019 Year in Review and summarized some of the statistics

found in that document. Unfortunately, the general statistics found in the 2019 Year Review were high level and limited the analysis we could provide about what was happening at the Supreme Court of Canada. We also could not find any publicly available and current datasets that would allow us to provide a more detailed analysis.

- **Getting Leave to Appeal to the Supreme Court: Empirical Insights from Tax Cases** – As I have posted before, I’m a fan of using empirical data to inform legal practice. Much as the evidence-based medicine movement has taken hold in the field of medicine, the practice of law should, wherever possible, rely on objective data to inform our decision-making. Unfortunately, empirical legal work remains at an early stage. While there are some academics embracing empirical analysis, much of legal academic scholarship does not involve the quantitative analysis of empirical data. In my view, it is important for lawyers to test our intuitions whenever we can by reference to whatever data is available.
- **The Supreme Court of Canada’s Holiday Present: Simpler Rules for 2021** – The Supreme Court of Canada has announced important changes to the *Rules of the Supreme Court of Canada* that will take effect on January 27, 2021. The amendments were published in the Canada Gazette here, and the Supreme Court of Canada has also published a plain language guide for these amendments here. While these changes are fairly minor in the grand scheme of Supreme Court practice, they will simplify the process for seeking leave to the Supreme Court of Canada.
- **A Quantitative Look at the Supreme Court of Canada** – Lawyers are trained to do close and careful reading of cases. We are experts in textual analysis of individual decisions, and we can spend hours arguing over what individual paragraphs in Supreme Court of Canada decisions mean. Yet while individual decisions are important, so are the aggregate trends. Quantitative data can reveal important information that lawyers can use to engage in more effective advocacy and better inform our clients as to what to expect.
- **The limits of applications: when are trials necessary in contractual disputes?** – The Ontario *Rules of Civil Procedure* allow for certain matters to proceed by way of application, where a court can determine a discrete legal issue without the need for a full trial. Although an application can be an expeditious and cost-effective way to resolve a legal dispute, lawyers should be careful to ensure the issues in the case are the proper subject matter of an application. The Ontario Court of Appeal’s decision in *Jackson v Solar Income Fund Inc* is an important reminder of the limits of an application and the court’s unwillingness to make rulings on the basis of a limited evidentiary record.
- **Appealing Commercial Decisions: Where To?** – Businesses need to be able to resolve disputes quickly and effectively. For that reason, the Ontario *Business Corporations Act* (the “OBCA”) provides that any appeal of an order made under the OBCA lies to the Divisional Court (a special branch of the Superior Court of Justice), instead of the Court of Appeal. In theory, appeals to the Divisional Court are resolved more quickly than appeals to the Court of Appeal.
- **Can losing a summary judgment motion hurt you at trial?** – In *Hryniak v. Mauldin*, the Supreme Court of Canada called for a “culture shift” in the legal community’s approach to adjudicating disputes. Justice Karakatsanis provided a clear directive: summary judgment is a “legitimate alternative for adjudicating and resolving legal disputes”. It is not merely a “tool used to weed out clearly unmeritorious claims or defences.”
- **Plaintiffs Hit The Jackpot at the Ontario Court of Appeal** – At the risk

of stating the obvious, gambling is unpredictable. Most people would agree that law is different. We think of law as being a predictable discipline governed by rules. Or at least we want to think that it is. A recent decision of the Ontario Court of Appeal—one that fittingly involves gambling—reminds us, however that predictability is not the only principle that courts value.

➤ **A change in law, but not in fact?** – Law and fact, deference and correctness seem no less muddled than ever, as judges begin to interpret the Supreme Court's decision in *Sattva Capital Corp v. Creston Moly Corp*, 2014 SCC 53. In *Sattva Capital*, the Court held that pure contractual interpretation matters generally raise issues of mixed fact and law requiring deference, unless it is possible to clearly identify extricable issues of law.

➤ **Court of Appeal Reaffirms Gatekeeping Function For Potential Experts** – The Court of Appeal has affirmed the robust gatekeeping function to be exercised by trial courts in the admission of expert evidence (*Meady v. Greyhound*, 2015 ONCA 6).

In *Meady*, the plaintiffs sought to introduce expert evidence on the standard of care of a bus driver and police officers following an incident where a mentally ill individual (Mr. Davis) boarded a Greyhound bus and during the journey grabbed the steering wheel, causing the bus to crash into a ditch. One person was killed and numerous others were injured in the crash.

The plaintiffs sought to use expert evidence to advance the following theories:

1. the bus driver should have slowed down when the passenger approached the driver; and
2. the police officers who interacted with individual should not have allowed him to board the bus.

The trial judge rejected the proposed expert on the standard of care of the bus driver as unnecessary and going to the ultimate issue (i.e., was the bus driver negligent?). The proposed expert on police conduct was also excluded on the basis of necessity.

In upholding the trial judgment, the Court of Appeal noted that while the standard of care applicable to professionals typically requires expert evidence, expert evidence is not required for non-technical matters of which an ordinary person would have knowledge. Matters related to the exercise of police powers of investigation, arrest and detention and police interactions with the public falling short of coercion, were found to be part of the daily diet of judges of the Superior Court.

With respect both the bus driver and police officers, the trial judge did allow evidence on applicable policies and procedures in place at the time. This was treated as fact evidence, and not as opinion evidence going to whether the bus driver or police officers met the standard of care.

The Court of Appeal also stressed the need for deference to a trial judge's exercise of discretion with respect to excluding expert evidence found to be unnecessary.

The Court of Appeal affirmation of the trial judge's discretion is also in line with recent Supreme Court direction to clamp down on unnecessary expert evidence (see *Masterpiece Inc. v. Alavida Lifestyles Inc.*, 2011 SCC 27)

- Research contributed by George White, 2014/2015 Fox Scholar

➤ **When are costs awarded for travel disbursements for out-of-town lawyers?** –



Its trite law that an unsuccessful litigant generally pays the successful party's costs. But what happens when the winner hired lawyers from out-of-town who had to travel regularly for the case?

- **Court of Appeal makes certification of class actions for overtime pay more difficult** – Canadian Courts have been faced in recent years with a number of class actions in which employees allege that their employer improperly misclassified them as ineligible for overtime pay. The Ontario Court of Appeal's recent decision in *Brown v. Canadian Imperial Bank of Commerce* makes it more difficult for such claims to proceed as class actions.
- **When Enough is Enough: Court of Appeal takes hard line on delay** – Lazy litigants beware: not only is your (in)action subject to a dismissal motion under Rule 24 of the *Rules of Civil Procedure*, it is also subject to the court's inherent jurisdiction.
- **Is Paper What Ails the Justice System?** – At least one Superior Court judge seems to think so. In a decision on costs, Justice David Brown made the following comment regarding the claims for photocopying:

### SELECT NEWS ARTICLES

- **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 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.
- **Court of Appeal orders new trial due to judge's insufficient reasons** – Ian MacLeod is mentioned in the article titled "*Court of Appeal orders new trial due to judge's insufficient reasons*", which appeared in the November issue of the Canadian Lawyer Magazine.
- **Decision on sufficiency of reasons highlights need to be specific in submissions: lawyer** – Ian MacLeod is quoted in The Lawyer's Daily article *Decision on sufficiency of reasons highlights need to be specific in submissions: lawyer*. The article discusses the Ontario Court of Appeal's decision to order a new trial because the trial judge's reasons for his decisions were insufficient to form the basis for a "meaningful" appellate review.
- **Court of Appeal orders new trial due to lower-court judge's insufficient reasons** – Ian MacLeod was interviewed for the Law Times article *Court of Appeal orders new trial due to lower-court judge's insufficient reasons*. The article discusses the Court of Appeal's decision to order a new trial in a civil case concerning Crown liability.
- **Best Lawyers in Canada Recognizes Lenczner Slaght's Litigation Expertise** – Lenczner Slaght is proud to announce that 33 of our expert litigators are recognized in *Best Lawyers in Canada 2021*. Our lawyers received a total of 128 rankings, up from 100 in 2020.
- **Court of Appeal Delivers Important Decision Regarding Toronto's Historical Landmark Mount Pleasant Cemetery** – Our expert litigators were successful in persuading a three-judge panel of the Ontario Court of Appeal to overturn a lower-court decision in *Friends of Toronto Public Cemeteries v Mount Pleasant Group of Cemeteries*.
- **Best Lawyers in Canada Recognizes Lenczner Slaght with 100 Rankings** –

In the latest edition of *Best Lawyers in Canada*, 28 Lenczner Slaght lawyers earned a total of 100 rankings, up from 86 in 2019.

- **Lenczner Slaght Litigators Ranked in Best Lawyers in Canada –** Canada's leading litigation firm is proud to announce that 25 of the firm's 58 lawyers have been recognized in the *Best Lawyers in Canada 2019* publication across multiple categories.
- **McDonald's lease dispute highlights need for reasonable notice in revocation of waiver –** Andrew Parley is quoted in the Lawyer's Daily article *McDonald's lease dispute highlights need for reasonable notice in revocation of waiver* on February 6, 2018. Andrew comments on the recent Ontario Court of Appeal decision in *North Elgin Centre Inc v McDonald's Restaurants of Canada Limited*. Andrew, Ronald Slaght, and Margaret Robbins are counsel for McDonald's.
- **Lenczner Slaght Ranked Among the Best –** Almost half of the leading litigation firm's lawyers are recognized in the *Best Lawyers in Canada*.
- **Decision brings clarity to Limitations Act –** Tom Curry was quoted in the Law Times article *Decision brings clarity to Limitations Act* on May 8, 2017.
- **Supreme Court hears arguments in case pitting Google against B.C. firm –** William C. McDowell was quoted in the Globe and Mail article *Supreme Court hears arguments in case pitting Google against B.C. firm* on December 6, 2016.
- **Ontario makes a call, U.S. on hold –** Monique Jilesen is quoted in the article *Ontario makes a call, U.S. on hold* from the July 2016 issue of *The Bottom Line*.
- **Three Lenczner Slaght cases featured in Lexpert's Top 10 Business Decisions of 2015 –** Canada's leading litigation practice acted as counsel on the top case in Lexpert's annual ranking
- **Divisional Court Dismisses Groia Appeal –** Tom Curry, Jaan Lilles and Andrew Porter acted as counsel for the Law Society of Upper Canada.
- **Lenczner Slaght Welcomes Four New Associates –** Canada's leading litigation practice grows to 53 lawyers.
- **23 Lenczner Slaght Lawyers Ranked Among the Best –** Nearly half of the firm's 49 lawyers are ranked as leading practitioners and two named "Lawyer of the Year" in the latest Best Lawyers in Canada Directory.
- **Lenczner Slaght Increases Rankings in 2014 Lexpert Directory –** Canada's leading litigation practice continues to add new names to the list.
- **Lenczner Slaght in Top Tier and 11 Lawyers Ranked as Stars –** Canada's leading litigation practice also wins two national impact cases.