

Insurance

In this highly developed practice area, we cover all facets of insurance litigation. Our lawyers draw on extensive trial and appellate experience to advise clients on the spectrum of policy, coverage and defence matters.

With over three decades of experience, Lenczner Slaght has a proven record in litigating coverage cases among and against insurers involving issues including trigger of coverage, allocation of defence and indemnity, covered/excluded claims, obligations among primary and excess insurers, reinsurance, drop-down matters and run-off coverage.

We have provided counsel in reinsurance disputes in many forums and are frequently engaged in cases where insurance carriers face questions around policy interpretation, bad faith, punitive damages, and other areas of insurance, including alienated premises exclusion, cleanup costs as damages, expected or intended damage or injury, known loss, late notice, "other insurance" issues, owned property exclusions, post-acquisition coverage and pollution exclusion (sudden and accidental, as well as absolute).

Drawing on our litigation experience, we are also retained to defend significant matters including class action defence, disputed directors' and officers' liability, environmental and property damage claims, large product liability claims, professional negligence and all manner of commercial liabilities.

No matter how challenging the dispute, we're ready to help.

RECOGNITION

- Insurance Business Canada (2021)
5-Star Insurance Law Firm
- Chambers Canada (2024)
Insurance: Dispute Resolution (Nationwide)
- The Legal 500 Canada (2023-2024)
Insurance (Recommended Lawyer)
- Best Lawyers in Canada (2022-2024)
Ones to Watch – Administrative & Public Law, Corporate & Commercial Litigation , Health Care Law, Insurance Law, Medical Negligence
- The Legal 500 Canada (2019, 2021-2024)
Insurance (Leading Lawyer)
- The Legal 500 Canada (2019-2022)
Insurance (Leading Lawyer)

- **Best Lawyers in Canada (2014-2024)**
Corporate & Commercial Litigation, Health Care Law, Insurance, Medical Negligence, Product Liability
- **Canadian Legal Lexpert® Directory (2014-2024)**
Litigation - Commercial Insurance, Litigation - Corporate Commercial, Litigation - Product Liability, Medical Negligence, Professional Liability
- **Practical Law Company (2011)**
Canada - Insurance: contentious

SELECT CASES

- **NORR Limited v Encon Group et al** – Counsel to an architecture firm in a coverage dispute with its insurer regarding a large scale construction project.
- **XL Insurance Company SE et al v ACE INA Insurance Company of Canada** – Counsel to a major casualty insurer in an insurance action claiming coverage and defence costs arising from various environmental professional proceedings.
- **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.
- **Commercial Arbitration** – Counsel to a re-insurance company respondent in an international, multi-party coverage and allocation dispute.
- **Loblaw Companies Limited et al v Royal & Sun Alliance Insurance Company of Canada et al** – Application and appeal counsel to AIG Canada in a duty to defend and coverage matter related to opiate class proceedings.
- **Dentons v Trisura Guarantee** – Counsel for the insured applicant seeking coverage for a social engineering fraud under a computer fraud rider policy.
- **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.
- **Commercial Arbitration** – Counsel for the insurer in an arbitration concerning a contractual dispute and the appropriate methodology for the valuation of foreign oil reserves.
- **TTC v General Electric Canada et al.** – Counsel for defendant in claim for property damage and environmental clean-up costs arising from TCE contamination caused by historical industrial operations.
- **Martin v American International Assurance Life Co. (SCC)** – Counsel to insurer in appeal at the Supreme Court of Canada concerning interpretation of accidental death benefit in life insurance policy.
- **Nodel v Stewart Title Guaranty Company** – Counsel to the respondent insurer in an application regarding coverage under a title insurance policy.
- **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.
- **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.

- **Pastore v Aviva Canada Inc** – Counsel for successful appellant on matter regarding the proper interpretation of the *Statutory Accident Benefits Schedule* of the *Insurance Act* and the scope of judicial review of decisions made in that context.
- **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.
- **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.
- **Crown Life Insurance Co v Canada Life Assurance Co** – Counsel for the Canada Life Assurance Co in a dispute surrounding the interpretation of an indemnity provision in an agreement for purchase and sale.
- **Alofs v Temple Insurance Co** – Counsel in a successful proceeding to obtain declaratory relief for coverage under liability insurance policy.
- **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.
- **Hague v Liberty Mutual Insurance Co** – Counsel a large insurance company in a class proceeding.
- **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.
- **Vitez v GE Canada et al** – Counsel for defendant in claim for personal health issues allegedly related to TCE contamination.
- **GE Canada v Continental Insurance Company et al** – Counsel for applicant seeking defence and indemnity under historical insurance policy for environmental contamination claims.
- **Northstar Aerospace Inc v GE Canada et al** – Counsel for defendant in claim for contribution and indemnity arising from class action for TCE contamination in Cambridge, Ontario.
- **XL Insurance Company SE v ACE INA Insurance** – Counsel to ACE defending claim for defence and indemnity for environmental contamination actions.
- **Regional Municipality of Waterloo v GE Canada et al** – Counsel for defendant in claim for property damages, clean-up costs and indemnification arising from TCE contamination.
- **GE Canada v Aviva Canada Inc et al** – Counsel to GE Canada claiming for indemnity for environmental investigations and remediation related to PCB contamination.

SELECT PUBLICATIONS AND PRESENTATIONS

- **A 2023 Snapshot: Through the Lens of Lenczner Slaght** – Lenczner Slaght launches *A 2023 Snapshot*, a look at the most significant developments, decisions, business takeaways, and trends in litigation from the last year, across 15 practice areas. Revisit 2023 and look ahead

to 2024 through the lens of our expert litigators.

- **Perspectives on Jury Trials Across Canada** – Nina Bombier will lead and share her expertise at The Advocates' Society's program titled *Perspectives on Jury Trials Across Canada*.
- **Business, Interrupted: Insurance Litigation & COVID-19** – Nina Bombier was Chair of The Advocates' Society program *Business, Interrupted: Insurance Litigation & COVID-19*. Nina led a discussion on the latest developments with business interruption disputes across Canada.
- **Insurance Coverage Disputes and Litigation** – Nina Bombier shared her expertise at OsgoodePD's program *Insurance Coverage Disputes and Litigation*. Nina discussed "Ethical and Professional Issues For Counsel in Insurance Disputes".
- **COVID-19 Restart Series: How the Pandemic May Impact the Canadian Legal Landscape in the Short and Long Term** – Monique Jilesen and Scott Rollwagen led a Mondaq webinar on *How the Pandemic May Impact the Canadian Legal Landscape in the Short and Long Term*. Monique and Scott discussed the potential legal issues surrounding the pandemic now and in the future.
- **Insurance Litigation and Disputes – A Look at the COVID-19 Fallout** – Nina Bombier shared her expertise on Canadian Lawyer's webinar "*Insurance Litigation and Disputes – A Look at the COVID-19 Fallout*." The panel examined what types of actions are likely to move forward, potential liability exposures, and what sectors are most likely to be impacted.
- **Successful Advocacy in Insurance Mediations** – Matthew B. Lerner spoke at OsgoodePD's program on the panel "Advocacy at the Mediation, Part 2 (After the Opening: Crucial Turning Points and Breaking Impasses)". He shared his expertise on finding creative solutions and approaches to commonly-encountered problems in mediations.
- **Decision clarifies dispute resolution for international insurance policies** – Nina Bombier authored the article *Decision clarifies dispute resolution for international insurance policies* which appeared in the Lawyer's Daily on February 2, 2018. This article discusses the Ontario Court of Appeal decision in *Trade Finance Solutions Inc. v Equinox Global Limited* 2018 ONCA 12 which reinforces that deference will be granted to mandatory arbitration clauses and clears up the uncertainty around application of domestic Action Against Insurer clauses in international insurance policies.
- **Successful Advocacy in Insurance Mediations** – Risa Kirshblum demonstrated mediation advocacy approaches by video on the panel "Advocacy at the Mediation, Part 2 (After the Opening: Crucial Turning Points and Breaking Impasses)".
- **Expert Evidence in Personal Injury Cases: Winning Strategies and Techniques** – Nina Bombier spoke at Osgoode's program *Expert Evidence in Personal Injury Cases: Winning Strategies and Techniques*, which took place December 10, 2015.
- **Liability limited by covenant** – Nina Bombier's article appeared in the June 12, 2015 issue of the *Lawyers Weekly* published by Lexis Nexis Canada Inc. The article discussed a recent decision which affirmed that a covenant to insure will operate as a transfer of risk, and that non-contracting parties can be protected by this transfer despite the lack of privity.

- **The perils of waiting** – Early determination of coverage issues can be essential, appeal court ruling shows
- **10th Annual Update on Personal Injury Law and Practice** – Matthew Sammon spoke at OsgoodePD's 10th Annual Update on Personal Injury Law and Practice.
- **The Dangers of Voluntary Compliance** – Nina Bombier co-authored the article *The Dangers of Voluntary Compliance* which appeared in the May 9, 2014 issue of The Lawyers Weekly.
- **General Electric Canada Company v. Aviva Canada, Inc.** – Nina Bombier authored "*General Electric Canada Company v. Aviva Canada, Inc.*", a case comment on representation of the appellant at the Ontario Court of Appeal for Take Five, Ontario Edition: On Point Legal Research.

BLOG POSTS

- **Loblaw Companies Limited et al v Royal & Sun Alliance Insurance Company of Canada et al** – In Canada, numerous class proceedings have launched on behalf of governments and individuals against entities involved in the manufacture and distribution of opioids. These actions claim wrongful acts and damages that extend over 23 years, raising important legal questions for the insurers of these entities as to the extent of their obligation to defend the proceedings on behalf of their insureds.
- **MDS Inc v Factory Mutual Insurance Company: Loss of Use is Not “Physical Damage” Under Exception to an Exclusion in an All-Risks Policy** – On September 3, 2021, the Ontario Court of Appeal (“ONCA”) released its decision in *MDS Inc v Factory Mutual Insurance Company*, which considered the proper interpretation of corrosion exclusions and resulting damage exceptions in standard-form property and casualty insurance policies.
- **Disappointed No Longer: Supreme Court Clarifies the Interplay between Insurance Act Beneficiary Designations and Unjust Enrichment** – Last Friday, the Supreme Court of Canada released its long-awaited decision in the case of *Moore v Sweet*, and settled a troubling issue in the trusts and estates world: the case of the disappointed life insurance beneficiary.
- **Constructive Trusts in Life Insurance Cases: Supreme Court to Clarify Remedies for Disappointed Beneficiary Case** – “Disappointed beneficiary” claims over life insurance proceeds have resulted in a complex body of case law combining elements of family law, trusts and insurance law.
- **Insurance Policy Covers Defence Costs Incurred for Directors and Officers in Security Regulators’ Investigation** – As regulatory investigations and litigation against corporate directors and officers become increasingly complex and extensive, insurance policies covering defence costs are all the more important. But how far does this coverage stretch? The recent decision of *Liberty Silver v Liberty Insurance* demonstrates the significant value these policies can provide in covering an early and proactive legal defence. The court rejected the Insurer’s narrow and technical interpretation of the insurance policy, and affirmed that legal costs incurred on behalf of senior officers and directors to respond to an Investigative Order by security regulators, even before any formal charges or accusations were laid, were covered.
- **The Supreme Court Puts Down its Legal Dictionary** – Sometimes small disputes about technical matters unearth deeper truths about how

the law works. This happened in a decision released on January 27, 2017 by the Supreme Court of Canada. *Sabean v Portage La Prairie Mutual Insurance Co* on its face concerned a narrow issue of interpretation defining amounts payable under automobile insurance policies. In resolving this issue, the Court bumped into a much more general issue concerning whether and how jurisprudence influences the meaning of words used in private contracts.

- **Who do you trust with your car?** – A recent decision of the Ontario Court of Appeal makes the question of who you trust with your car more difficult to answer.
- **Versa Fittings ruling underscores high bar to relieve insurer of duty to defend** – The recent decision of the Ontario Superior Court in *Versa Fittings v. Berkley Insurance Co.* (2015 ONSC 1756) reinforces that a Rule 21 motion is an expedient way to secure a ruling on whether an insurers duty to defend has been triggered.
- **Know Thy Client** – The Court of Appeal recently released a decision that serves as a reminder to all counsel: never lose sight of who you act for.

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.
- **Chambers Canada Recognizes Lenczner Slaght as a Top-Tier Litigation Firm** – Canada’s leading litigation firm and its expert litigators continue to be recognized by world-renowned directory, Chambers & Partners.
- **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.
- **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.
- **Lenczner Slaght Litigators Elected to The Advocates’ Society’s Leadership** – We are pleased to announce that Brendan Morrison, Christopher Yung, Paul-Erik Veel, Andrew Parley, Nina Bombier, and Anne Posno will be serving prominent executive positions at The Advocates’ Society, a preeminent organization dedicated to promoting effective advocacy and access to justice.

- **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.
 - **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.
 - **Chambers Canada Recognizes Lenczner Slaght's Litigation Excellence** – Canada's leading litigation firm and its expert litigators continue to advance their position in the latest edition of world-renowned directory, Chambers & Partners.
 - **Legal 500 Recognizes Lenczner Slaght's Top-Tier Litigation Expertise** – Canada's leading litigation firm is "recognized across the country as a force in complex disputes" according to Legal 500.
 - **Lenczner Slaght Recognized as a Top-Tier Litigation Firm by Chambers Canada** – Canada's leading litigation firm and its expert litigators continue to be recognized by world-renowned directory, Chambers & Partners.
 - **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.
 - **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.
 - **Chambers Canada Recognizes Lenczner Slaght as a Top-Tier Litigation Firm** – Canada's leading litigation firm and its expert litigators continue to advance their position in the latest edition of world-renowned directory, Chambers Canada, with nine new rankings.
 - **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.
 - **Still much to be determined on insurance coverage after cyberattacks** – Sean Lewis is quoted in the Law times article "*Still much to be determined on insurance coverage after cyberattacks*" on August 12, 2019. This article discusses case law related to cybersecurity insurance coverage.
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- **OBA Honours Glenn Smith's Excellence in Insurance Law** – Lenczner Slaght is proud to announce that Glenn Smith is one of the recipients of the 14th Annual Ontario Bar Association Award for

Excellence in Insurance Law.

- **Firm in \$1.7-million dispute with insurer** – Nina Bombier is quoted in the Law Times article “*Firm in \$1.7-million dispute with insurer*” on January 21, 2019. This article discusses the recent decision in *Dentons Canada LLP v. Trisura Guarantee Insurance Company*.
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- **Lexpert Recognizes Lenczner Slaght’s Professional Excellence** – An increasing number of the firm’s lawyers have been ranked by their peers as leading practitioners in their field.
- **Lenczner Slaght Ranked Among the Best** – Almost half of the leading litigation firm’s lawyers are recognized in the *Best Lawyers in Canada*.
- **Lenczner Slaght Shines in 2017 Lexpert Rankings** – Lenczner Slaght’s litigators continue to be recognized by their peers as leading practitioners in their fields according to the 2017 Canadian Legal Lexpert Directory.
- **Jonathan Chen Joins Lenczner Slaght** – Canada’s leading litigation firm continues to attract top talent.
- **Top court widens scope for appeals of insurance contract disputes** – Nina Bombier is quoted in the article *Top court widens scope for appeals of insurance contract disputes* on Canadian Lawyer’s website. The article focuses on the September 15, 2016 decision reached in *Ledcor Construction Ltd. v. Northbridge Indemnity Insurance Co.*
- **Lenczner Slaght Lawyers Repeatedly Ranked Among the Best** – Half of the firm’s lawyers are ranked as leading practitioners and three named “Lawyer of the Year” in the latest Best Lawyers in Canada Directory.
- **20 Lenczner Slaght Lawyers Recognized in 2015 Lexpert Directory** – Recognized by Canadian Legal Lexpert® Directory as leading practitioners.
- **Appeal court weighs in on duties of counsel appointed by insurers** – Nina Bombier was quoted in Law Times in relation to the Court of Appeal decision in *Mallory v. Werkmann Estate*, 2015 ONCA 71, which reinforces how the duty of loyalty and good faith owed by defence counsel to the insured client must trump the interests of the insurer that appoints and pays for counsel.
- **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 Welcomes Two New Partners** – Canada’s leading litigation practice grows to 20 partners with newest additions.
- **Lenczner Slaght Lawyers Win Top Peer Ratings** – Recognized by Canadian Legal Lexpert Directory as leading practitioners.