

MICHAEL D. BRIGGS



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Michael Briggs is a seasoned litigator with a wealth of experience managing all aspects of disputes, from initial strategy through pleading, records disclosure, discovery questioning, interlocutory applications, trials and appeals. His practice is focused on complex corporate/commercial litigation, including construction and oil and gas litigation, in addition to a wide variety of contractual and shareholder disputes, oppression and derivative actions, as well as fiduciary, fraud and breach of confidence cases.

Michael has appeared as lead counsel before all levels of the Alberta Court, including the Alberta Court of Appeal, as well as the Federal Court, the Supreme Court of the Northwest Territories, the Nunavut Court of Justice and the Nova Scotia Supreme Court. Michael has extensive experience as lead counsel in mediations as well as both domestic and international arbitrations, including the International Chamber of Commerce Court of Arbitration. Michael's international experience also includes appearing before both the English High Court of Justice, King's Bench Division, Commercial Court and the Supreme Court of the Commonwealth of the

Bahamas as lead instructing solicitor.

A regular aspect of Michael's practice is providing counsel on both "litigation proofing" initiatives at their inception, as well as strategy and tactics when disputes are either anticipated or formally underway. For example, Michael was recently involved in setting the strategy that allowed very successful and early resolution of an approximately \$300M dispute with a contractor when a client cancelled one of their projects mid-construction.

Email: michael.briggs@mcmillan.ca

Expertise: Construction & Infrastructure, Corporate Commercial Litigation, Energy, International Arbitration & Cross-Border Litigation, Oil & Gas

Location: Calgary

Phone: 403.531.4704

Position/Title: Partner, Litigation & Dispute Resolution

Directorships & Affiliations:

- Commercial Bar Association, Honorary Overseas Member
- Chartered Institute of Arbitrators, Fellow
- London Court of International Arbitration, Member

Publications:

- "Whose Law is it Anyways? UK Supreme Court Clarifies Choice of Law Test for Arbitration Clauses in International Contracts," International Arbitration Group, republished by LexisNexis Canada in the newsletter that accompanies the Alternative Dispute Resolution Practice Manual (2020)
- "A Divided Court: ONSC Sets Stage for Ruling on Admissibility of New Expert Evidence on Appeals from UNCITRAL Arbitrations," International Arbitration Group Blog, republished by LexisNexis Canada in the newsletter that accompanies the Alternative Dispute Resolution Practice Manual (2020)
- "Canada—choosing the review process for an arbitral award (Newfoundland and Labrador v. ExxonMobil Canada Properties)," Lexpert UK (2017)
- "Newfoundland v. ExxonMobil: Court Dismisses Set-Aside Application Calling Parties 'well;-advised, sophisticated,'" International Arbitration Group Blog (2017)

- “An Overview of Records Relation Issues” 2008 edition of Litigation Co-Counsel (2007)
- “Shareholders Disputes – Financing Right of First Refusal” July 2007 addition of Litigation Co-Counsel (2007)
- “Recent Watershed Developments in Oppression Remedies and Shareholder Activism,” Annual Review of Civil Litigation (2006)

Education & Admissions:

Degree: Called to the Northwest Territories bar

Year: 2016

Degree: Called to the Nunavut bar

Year: 2016

Degree: Called to the Alberta bar

Year: 1997

Degree: LLB

University: University of Calgary

Year: 1996

Media Mentions:

- "[Legal Notes: Blending "pay when paid" clauses with prompt payment regimes,](#)" by John Bleasby, *Daily Commercial News* (December 8, 2022)
- "[Wilks Brothers mounts Supreme Court challenge in ongoing battle with Calfrac,](#)" by Geoffrey Morgan, *Financial Post* (April 14, 2021)

Rankings & Recognition:

- Benchmark Litigation Canada – Litigation Star: Arbitration, Commercial, International Arbitration, Securities
- The Canadian Legal Expert Directory 2022 – Leading Lawyer: Litigation – Corporate Commercial

Speaking Engagements:

- “Adducing Additional Evidence when challenging arbitral jurisdictions” - presentation to The Commercial Bar Association, North American Meeting in Florence, Italy

- 2022

- Panelist at the University of Calgary, Faculty of Law’s Alternative Dispute Resolution presentation.

- 2020

- “Protecting Confidentiality in Oil and Gas Arbitrations,” May 2003, paper presented at the Canadian Bar Association / International Court of Arbitration of the International Chamber of Commerce Third Annual International Commercial Arbitration Conference.

- “Arbitration 101 – A General Guide to Arbitration as a Dispute Resolution Mechanism” for presentation to clients

- 2003

- “The Paper Chase – A Guide to Relevance, Materiality and Document Production/Management” for the January 2003 Legal Education Society of Alberta Conference.

- 2003

- “Understanding Limitations” presented to client’s in-house counsel group as well as real property and oil & gas groups.

- 2016

- “Common Interest Privilege’s Evolution” presented to in-house counsel.

- 2015

- “Litigation v. Arbitration” presented to client’s national in-house counsel group.

- 2012

- “An Overview of Privilege and Its Application to In-House Counsel” presented to a client’s in-house counsel group.

- 2012

- “Social Host Liability” for parents and faculty of West Island College.

- 2009

- “Common Interest Privilege in Canadian Commercial Transactions – Is it a ‘Done Deal’?” for the Canadian Corporate Counsel Association Annual Meeting.

- August 2007

- “Record Retention: Managing the Risk” for The Canadian Corporate Counsel Association Seminar

- May 2007

- “Mastering the Art of Successful Negotiation, Mediation and Arbitration – A Précis of Process, Strategy and Tactics” for the Insight Conference.

- May 2005

Representative Matters: Corporate/Commercial/Securities Litigation

- *Cross-Strait Sunshine Oilsands* – Defence of a claim by a shareholder asserting mandatory repurchase rights against a publicly traded oilsands company.
- *Pavilion Holdings Ltd. v. Bow River Conservancy Ltd. et al.* – Defence of claim by expelled shareholder claiming breach of a unanimous shareholder agreement and oppression. The result was a consent judgment dismissing the claim after only three days of an eight day trial, and awarding the Defendants their full costs.
- *JMLR Holdings Ltd. Petrowest Energy Services Trust* – Defence of a claim of misappropriation of a security interest through conduct of an initial public offering. The result was a discontinuance of the claims against Petrowest at no cost to it.
- *1163580 Alberta Ltd. et al. v. Marble Point Energy Ltd.* – Prosecution of an action to restrain a special meeting to vote on implementing an amalgamation agreement. The result was the transaction was restructured to the satisfaction of the shareholder group in question.
- *Zust Klapatiuk et al.* – Defence of claims relating to interference with rights of first refusal in the context of a unanimous shareholder agreement. The result was a complete dismissal of the plaintiff’s claims and the decision served to further advance the law respecting the legal duties to be observed in these circumstances. The costs award also reflected the first reported application of an inflation multiple since the 1998 revision of the Rules of Court.
- *Lay GeneVest Inc.* – Prosecution of a dissenting shareholder action. In addition to succeeding in obtaining a very favourable result for the client, this case resulted in a judgment which serves to materially advance the rights of beneficial shareholders and further define the duties of good faith owed

by corporations to shareholders in the context of transactions.

Energy and Resources Litigation

- *BP Bankers Petroleum Albania* – Defence of an approximately US \$50M claim relating to termination of a heavy oil supply contract.
- *CNRL Emco Corporation et al.* – Defence of an approximately \$60M claim relating to supply of allegedly defective carbon steel pipe to a major oilsands project.
- *Williams Energy (Canada), Inc. v. Enron Canada Corp.* – Prosecution of a claim relating to collection of damages arising from early termination of a natural gas supply contract.
- *Trident (88) Exploration Ltd. v. Odyssey Petroleum Corporation* – Defence of a \$50 million claim relating to a joint venture for the redevelopment of a Ukrainian oilfield.
- *TransCanada Pipelines Limited and TransCanada Corporation* – Counsel in the conduct of TransCanada's 2003 Plan of Arrangement.

Civil Litigation

- *Arctic Cooperatives v. Dowland Construction et al.* – Defence of a claim relating to replacement of valves at a tank farm in Fort Good Hope, Northwest Territories. The result was a consent dismissal of the claims against our client.
- *Alberta Treasury Branches v. McAdam et al.* – Prosecution of a claim against the directors of a defunct energy company for their failure to disclose environmental liabilities to the lender as part of securing financing for an asset purchase. The matter was resolved prior to trial.
- *Government of Nunavut v. Republic Architecture Inc. et al.* – Defence of a third party claim relating to the construction of the community center in Igloolik, Nunavut. The result was a discontinuance of the claims against our client.
- *Yellowstone Property Consultants Corp. v. Abusalims Holdings Inc. et al.* – Prosecution of a claim for misappropriated funds in a real estate transaction. The result was a judgment on application for the full \$3 million sought, plus interest and costs on a solicitor-and-own-client full indemnity basis, which result was affirmed on appeal with solicitor-client costs awarded in Yellowstone's favour.
- *Marco's Restaurant Ltd. Oxford Properties Group Ltd.* – Defence of a claim arising from termination of a commercial lease. The result was a judgment at summary trial dismissing the claims entirely, with full solicitor-client costs to Oxford.
- *Laxdale Realty Inc. Pasutto's Hotels (1984) Ltd.* – Defence of claims for compensation in context of commission agreement relating to real estate. The result was a complete dismissal of the plaintiff's claim pursuant to a summary judgment application.

- *Bole Jager Industries* – Defence of claims relating to trespass and nuisance in a subdivision construction setting. Successfully obtained a directed judgement (a rare remedy in civil cases) which ultimately resulted in the discontinuance of the claim at no cost to the client.

Arbitration/Alternative Dispute Resolution

- *Domestic Arbitration* – Defended an energy industry related arbitration with an approximately \$100 million enterprise value to our client. The matter was resolved subsequent to records disclosure such that the vast majority of the value was retained by our client.
- *International Chamber of Commerce Court of Arbitration* – Defended a \$30 million US claim relating to an alleged breach of a joint venture agreement for redevelopment of an oilfield in the Ukraine.

Other Cases of Interest

- *Watts Canada Contact Tourism Services Ltd.* – Defence of an appeal by the plaintiff from an order striking her claim for failure to post security for costs for the defendants which involved a unique and previously unjudicated argument that the courts of Alberta had an inherent jurisdiction to order security for costs when the courts deemed it appropriate. This was subsequently included in a revision to the Alberta Rules of Court.
- *Rumi Vesuna TD Waterhouse Group Inc.* – This was one of the first times that the question of the standard of care of a “discount brokerage” to its clients was litigated in Alberta. The plaintiff’s claims were completely dismissed by the court and the ruling has since formed the foundation for successful defences in similar actions raised in Ontario.

Teaching Engagements:

- University of Calgary, Faculty of Law – practice judge for a variety of moots, including the Philip C. Jessup International Law Moot Court Competition, judge for moots and debates such as the McGillivray Moot and the Blackstone Debate, as well as the First Year Moot and the final course moot in Law 693 – eLitigation.

Industries: Construction & Infrastructure, Energy, Oil & Gas

Practices: Corporate Commercial Litigation, International Arbitration & Cross-Border Litigation