

STEPHEN BROWN-OKRUHLIK

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Stephen Brown-Okruhlik is an experienced commercial litigator. His practice is focused on corporate stakeholder disputes, securities litigation and insolvency. He regularly represents businesses, banks, investment funds and other corporate stakeholders in high stakes litigation. He also provides advice to clients in connection with contentious corporate M&A matters and financing transactions.

Stephen has extensive experience with creditors' remedies, complex debt instruments, derivatives, corporate stakeholder disputes, M&A litigation, fraud, contested transactions, injunctions, jurisdiction challenges, international arbitrations and cross-border insolvencies. He regularly acts for creditors, court officers and debtor-in-possession (DIP) lenders in insolvency proceedings under the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. Stephen has represented clients in significant recent Canadian and cross-border insolvency proceedings, including *Re Nortel Networks Ltd.*, *Re Sears Canada Inc.* and *Re Green Growth Brands Inc.* He also appeared before the Ontario Securities Commission in *Re Aurora Cannabis*, the seminal Canadian case about shareholder rights plans (poison pills).

Stephen is active in the commercial litigation and insolvency bar. He is a member of the Executive Committee of the Ontario Bar Association's Insolvency Section and is a member of the Commercial & Business Litigation Committee of the American Bar Association and is Co-Chair of the M&A Litigation Subcommittee.

Email: stephen.brown-okruhlik@mcmillan.ca

Expertise: Banking & Finance, Corporate Commercial Litigation, Investment Funds & Asset Management, Litigation & Dispute Resolution, Restructuring & Insolvency

Location: Toronto

Phone: 416.865.7043

Position/Title: Partner, Litigation & Dispute Resolution

Directorships & Affiliations:

- Co-Chair of the M&A Litigation Subcommittee of the American Bar Association

- Toronto Lawyers Association – Sponsorship Committee
- Ontario Bar Association - Insolvency Section Executive Committee
- Canadian Bar Association
- Canadian Counsel for the Americas
- American Bar Association, Commercial & Business Litigation Committee

Publications:

- "[A Recipe for Good Governance](#)," Ivey Business Journal (September 2017)
- "Director's Liability: A Worldwide Review (3rd Ed)," Chapter on Canada Wolters Kluwer, International Bar Association Series (Edited by Alexander Loos, 2016), ISBN 978-90-411-5835-2 (September 2016)
- "[Recent Decisions Confirm Broad Powers of Trustees to Examine Witness and Compel Documents Under the BIA](#)," Ontario Bar Association - Insolvency Law Section (March 2016)
- "[Lift Stay Motion More Likely to Succeed in a Liquidating CCAA](#)," Jeffrey Levine and Stephen Brown-Okruhlik, OBA Insolvency Section (January 8, 2014)
- "Recent Developments in Class Action Certification in Canada," FDCC 2014 Annual Meeting (2014)

Education & Admissions:

Degree: Called to the Ontario bar

Year: 2014

Degree: JD (cum laude)

University: University of Ottawa

Year: 2013

Degree: MA

University: University of Toronto

Year: 2009

Degree: BA (Honours)

University: McGill University

Year: 2007

Rankings & Recognition:

- Recognized by *Best Lawyers in Canada* (2022) as a 'One to Watch' in the area of Insolvency and Financial Restructuring
- Werner Zdouc Prize for Top Oralist in the 2012 World Trade Organization Moot Competition, Montpellier, France

Speaking Engagements:

- Privilege in M&A Transactions, Commercial List Users' Committee 2021 Education Day Conference, Panelist
- <https://vimeo.com/ontariobarassociation/download/563154709/d5a6c71244>

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- Legal and Accounting Aspects of Earnouts, Greater Toronto Area Accountants Network, Program Presenter
 - May 18, 2021
 - <https://www.tlaonline.ca/viewEvent.html?productId=6679>

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- Top Practice Tips for the Commercial List, Toronto Lawyers Association, Panel Discussion Moderator
 - March 17, 2021
 - <https://www.tlaonline.ca/viewEvent.html?productId=6679>

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- Litigation Funding in Insolvency Proceedings, Presented by the Ontario Bar Association, Insolvency Section, Program Chair
 - November 2020

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- Looming Crisis Speaker Series Part 1: United States-Mexico Canada Agreement, Presented by the Ontario Bar Association, Insolvency Section, Program Chair
 - January 2019

Representative Matters: Representative matters that Stephen has been involved in:

- Representing private equity portfolio entities in a dispute with a former managing partner.
- Represented a secured creditor, shareholder, DIP lender and stalking horse bidder in CCAA proceeding of TSX-listed cannabis company with US operations.
- Representing a US landlord in a contested claim against the estate of a Canadian telecoms giant in connection with a Texas lease.
- Representing a European luxury sports car manufacturer in an action by its former Canadian distributor for breach of contract and other causes of action related to the termination of a distribution agreement.

- Representing the former CFO of a multi-national aerospace parts manufacturer in a claim for alleged breach of his fiduciary duty to his former employer and alleged breach of reps and warranties as a vendor of the company under a share purchase agreement.
- Representing a lender in a contested application to appoint a receiver and to approve a sale process where a third party claimed a constructive trust over the debtors' property in separate litigation.
- Representing equity holders in the CCAA proceeding of a Canadian retail giant.
- Representing a major Canadian cannabis producer before the Ontario and Saskatchewan securities regulators in connection with its hostile takeover bid for another cannabis producer.
- Representing a US based DIP lender in a cross-border insolvency proceeding.
- Representing a US investment bank in a CCAA proceeding before the Alberta Court of Queen's Bench to enforce the bank's contractual rights.
- Representing a general contractor in an action against a regional government before the Ontario Superior Court of Justice for the wrongful termination of a contract for the construction of a water storage facility.
- Representing a Turkish company with a foreign arbitral award in enforcement and recognition proceedings against a foreign state in Ontario before lower and appeal courts.
- Representing a tenant in a ground lease before the Ontario Court of Appeal in a dispute regarding a rent reset provision.
- Representing a Chinese manufacturer in an arbitration pursuant to the Singapore International Arbitration Centre rules in a contract termination dispute.
- Defending a national grocery chain in an action by the receiver of an insolvent service provider for unpaid fees.
- Representing the Ontario court-appointed receiver in a cross-border insolvency involving assets in Colombia.
- Defending an Indian company in an emergency anti-suit injunction motion before the Ontario Superior Court of Justice.
- Representing an Indian company in a motion to stay proceedings brought by a Canadian litigant before the Ontario Superior Court of Justice for lack of jurisdiction.
- Defending a landlord before the Ontario Court of Appeal and Ontario Superior Court of Justice in a lease termination dispute.
- Representing the receiver and trustee-in-bankruptcy in litigation against contractors and former management of an insolvent Canadian service provider.
- Defending an application to enforce a tail provision in a financial services contract against an insolvent company before the Alberta Court of Queen's bench.

- Representing the foreign manufacturer and distributor of a tower crane at an Ontario coroner's inquest.
- Representing a junior mining company resisting an application for certain easement rights on its property before the Ontario Mining and Lands Commissioner.

Selected cases Stephen has been involved in:

- *Re Just Energy Group* – Representing a commodity supplier in the CCAA proceeding of a Canadian energy company related to an extreme weather event in Texas.
- *Re Green Growth Brands Inc.*, 2020 ONSC 3565 – Represented a secured creditor, shareholder, DIP lender and stalking horse bidder in a contested CCAA proceeding for a TSX-listed cannabis company with US operations.
- *Re Tailored Brands, Inc. et. al.* – Represented the agent to the DIP lenders in the Canadian recognition of a US Chapter 11 proceeding of a major international clothing retailer.
- *Re Nortel Networks Corporation et. al.*, 2019 ONSC 3010 – Appealed the decision of a claims officer in a major cross-border insolvency proceeding involving the interpretation of a damages provisions under a lease governed by Texas law and a guarantee governed by New York law.
- *Unlimited Motors Inc. v. Automobili Lamborghini SpA*, 2019 ONSC 1423 – Successfully resisted a motion by the plaintiff to avoid administrative dismissal of a \$30,000,000 claim related to the termination of a distribution agreement.
- *Noranco Inc. v. MidOcean Partners III, L.P., et. al.*, 2019 ONSC 1173 – Successfully brought a motion to enforce the right of a former CFO of a multi-national aerospace parts manufacturer to receive advance payment of legal costs to defend an action by his former employer for breach of his fiduciary duty to the company, among other things.
- *American Iron & Metal Inc. v. 1340923 Ontario Inc. et. al.*, 2018 ONSC 2810 – Overcame the objections of a third party to the appointment of a receiver and the approval of a sale process where the third party claimed a constructive trust over the debtors' property in separate litigation.
- *Kingdom Construction Limited v. Regional Municipality of Niagara*, 2018 ONSC 29 – obtained \$2.37M judgment for a contractor that was unlawfully terminated by the owner of a construction project.
- *Re Aurora Cannabis Inc.*, 2018 ONSEC 10 – successfully represented a major Canadian cannabis producer in a joint hearing before the Ontario Securities Commission and the Financial and Consumer Affairs Authority of Saskatchewan in an application for an order cease trading a shareholder rights plan as well as other relief, and successfully resisted related cross-applications.
- *Belokon v. Kyrgyz Republic*, 2016 ONCA 981 - appeal to the Ontario Court of Appeal regarding issues of the interpretation of a contract governed by foreign law and principles of purchase money resulting trusts.

- *Entes v Kyrgyz Republic*, 2016 ONSC 7221 - obtained recognition in Ontario of a foreign arbitral award in favour of a Turkish company against a foreign state.
- *Belokon v. Kyrgyz Republic*, 2016 ONSC 4506 – represented a foreign judgment creditor in an application for enforcement against certain assets in Ontario where beneficial ownership was in dispute.
- *Board of Regents of Victoria University v. GE Canada Real Estate Equity*, 2016 ONCA 646 – successfully resisted appeal of a lower court decision overturning a commercial real estate rent reset arbitral award.
- *Octagon Capital Corp. v. Niko Resources Ltd.*, 2016 ONSC 3946 – successfully defended a company in an application to enforce a tail provision in a financial services contract.
- *2249740 Ontario Inc. v. Morguard Elgin Ltd.*, 2015 ONCA 605 – successfully appealed a summary judgment decision, including findings of bad faith, against a landlord in relation to the termination of a lease.
- *SHS Services Management Inc./Gestion Des Services SHS Inc., Re*, 2015 ONSC 2798 – motion to compel sub-contractors of insolvent service provider to remit funds to court-appointed receiver.
- *Veritas Investment Research Corp. v. Indiabulls Real Estate Ltd.*, 2015 ONSC 6040 – successfully resisted an emergency anti-suit injunction motion to enjoin proceedings before the Delhi High Court on behalf of two Indian companies.

Industries: Banking & Finance, Investment Funds & Asset Management

Practices: Litigation & Dispute Resolution, Restructuring & Insolvency, Corporate Commercial Litigation