



# Sarit E. Batner

## Partner

Toronto

[sbatner@mccarthy.ca](mailto:sbatner@mccarthy.ca)

t. +1 416-601-7756

## Bar Admission

Ontario 2000

## Law School

University of Toronto

## Practices

Disputes

Appellate Litigation

Professional Liability

## Industries

Franchise & Distribution

Sarit E. Batner is a partner in McCarthy Tétrault LLP's Toronto Litigation Group, and is a member of the firm's Board of Partners. She maintains a significant trial and appellant litigation practice, with a focus on complex commercial litigation and arbitrations.

Sarit has extensive trial and appellate experience in cases considering breach of contract, shareholder disputes, taxation, oppression, professional negligence and breaches of fiduciary duties.

Sarit has experience before courts of appeal, including as lead counsel before the Supreme Court of Canada, and trial courts with juries, arbitration panels, administrative and regulatory tribunals. She has a particular interest in professional liability matters, having acted as counsel for doctors as well as engineers, accountants and lawyers, in a wide variety of cases. Set out below are some of the trials and appeals in which she has been counsel, as well as some of Sarit's other recent cases before the courts.

Sarit has a record of success before all levels of courts in Ontario and often speaks and writes on matters of substantive law and procedure. She also teaches Trial Advocacy to both students and lawyers at the University of Toronto Law School and at Osgoode Hall's annual Intensive Trial Advocacy Workshop. She is frequently invited to speak at legal conferences.

The current edition of *Lexpert / American Lawyer Guide to the Leading 500 Lawyers in Canada* lists Sarit as a leading lawyer in the area of Corporate Commercial Litigation. She is also listed as a leading lawyer in the current edition of *Chambers Canada* in the area of Litigation: General Commercial (Ontario). She is listed as a leading lawyer in the current edition of *Canadian Legal Lexpert Directory* in Professional Liability, Litigation: Corporate Commercial and Medical Negligence. She is also listed as a litigation star in the current edition of *Benchmark Litigation: Guide to Canada's Leading Firms and Attorneys*.

In 2018, Sarit was named a winner of the *Lexpert Zenith Award*. This prestigious award recognizes leaders in the legal profession who have achieved mid-career excellence. *Benchmark Canada* named Sarit as one of the Top 50 Trial Lawyers in Canada, as well as, one of the Top 25 Women in Canadian Litigation for six consecutive years. In 2013, she also received the Rising Star in Litigation Award at *Euromoney Legal Media Group's* Americas Women in Business Law Awards and was selected by *Lexpert* as one of the Rising Stars – Leading Lawyers under 40.

Sarit obtained a B.Sc. with Distinction in Mathematics and was awarded the Gold Medal in Sciences from the University of Western Ontario in 1995. She obtained a JD from the University of Toronto in 1998, and was

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made a partner in 2006.

## SELECTED APPEALS

- *Fram Elgin Mills v. Romandale Farms Limited* – 2016 – successfully quashing appeal for want of jurisdiction
- *Konig v. East West Plastics* – 2015 – successful appeal following a long trial (Commercial List) involving oppression remedy and breach of fiduciary duty
- *Merck & Co v. Apotex* – 2015 – successfully upheld trial decision granting Merck over \$200 million dollars in damages for patent infringement
- *AbbVie Corporation v. Janssen Inc.* – 2014 – lead counsel in successful motion opposing stay of proceedings before Federal Court of Appeal
- *Bruno Furniture v. Hryniak et al; Mauldin et al v. Hryniak et al* (“Combined Air”) – 2014 – lead counsel in Supreme Court of Canada appeal concerning summary judgment and access to justice; arising out of landmark decision from Ontario Court of Appeal setting the law on summary judgment in Ontario
- *Konig v. East West Plastics* – 2014 – appeal following a long trial (Commercial List) involving oppression remedy and breach of fiduciary duty (decision pending)
- *Miller Paving ats Moore* – 2013 – Environmental appeal re nuisance, negligence and trespass claims
- *Manary v. Strban* – 2013 – trial and appeal involving ascending aortic dissection in a 35 year old pregnant woman diagnosed with pulmonary emboli
- *Air Canada v. Porter Airline* – 2011/2012 – Judicial Review Application and Appeal regarding access to the Toronto Island Airport
- *Merck & Co vs. Apotex* – 2011 – successfully upheld trial decision declaring Merck’s patent valid and infringed by Apotex involving the drug LOVASTATIN
- *Bofaro v. Dowd* – 2010 – successful trial decision upheld by Court of Appeal in case involving laparoscopic assisted vaginal hysterectomy resulting in bowel perforation, sepsis and a fistula
- *Stantec Consulting Ltd. ats Mladenov Group Enterprises Ltd.* – 2008/2009 – successful dismissal of action, upheld in the Court of Appeal, on behalf of Stantec, an environmental consultant being sued for millions of dollars in respect of an environmental report it provided to the

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plaintiff

- *Paxton v. Ramji* – 2006/2008 – successful long compromised baby trial raising issues of wrongful life -successful at the Court of Appeal - leave to Supreme Court of Canada denied
- *Jackiewicz ats Kennedy* – 2004 – successful in the Court of Appeal in resisting appeal involving laproscopic surgery resulting in bowel perforation
- *Rive v. Newton* – 2001 – successful trial decision upheld by Court of Appeal in case involving a tax issue of whether GST was applicable on a sale of land

## SELECTED TRIALS AND INJUNCTIONS

- *Peller v. Ogilvie-Harris* – 2018 - successful medical negligence trial concerning complete severance of ulnar nerve during elbow arthroscopy
- *John Hancock Financial Services (US arm of Manulife) v. Infinite Media* – 2017 - successful injunction re: shut down by service provider of John Hancock's key knowledge management system
- *Ferreira v. St. Mary's General Hospital* – 2017 – successful injunction re: end of life proceedings
- *Sharma v. Ryerson University* – 2017 – appeal re: student accommodation and allegations of discrimination
- *Twelve Gates v. Eminence Living* - 2017 – successful setting aside of 3 certificates of pending litigation
- *Orr v. Ngai* 2016 – successful medical trial in a case against multiple internists concerning missed diagnosis blood disorder
- *Mohan v. Daly* – 2016 – successful medical trial in a against obstetrician concerning brachial plexus injury following shoulder dystocia
- *Fram Elgin Mills 90 Inc. v. Romandale Farms Limited* – 2015 – successful omnibus motion in \$200 million land dispute concerning issues of pleadings, limitation period, joinder
- *Lee v. Lee* – 2015 – successful long medical negligence trial concerning death of young man following aortic dissection
- *AbbVie Corporation v. Janssen Inc.* – 2014 – co-lead counsel in successful injunction trial involving patent dispute over Janssen's drug STELARA.
- *AbbVie Corporation v. Janssen Inc.* – successful Injunction Trial and Stay Motion regarding dispute over patent infringement

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- *IMAX v. Tsui et al* – 2014 – lead counsel in successful trial, as well as Anton Piller Injunction and contempt proceedings, arising from former employees' alleged theft of confidential information and trade secrets
- *Pegado ats Todd* – 2014 – successful trial in case involving infective myocarditis
- *Allergan v. Apotex* – 2013 – lead counsel in successful injunction motion against Apotex involving Allergan's drug LATISSE
- *Merck & Co v. Apotex* – 2013 – successfully granted Merck over \$200 million dollars in damages for patent infringement
- *Suzuki Canada Inc.* – lead counsel in Suzuki Canada's restructuring to exit the Canadian automotive market and in national, multiparty litigation involving 48 dealers
- *Bogdon v. Folman* – 2012 – successful long trial involving care by a physician of a young child with hypoglycaemia
- *R. v. Dunn et al* – 2012 – successful criminal fraud trial in defence of former CEO of Nortel
- *Merck & Co v. Apotex* – 2010 – successfully declared Merck's patent valid and infringed by Apotex involving the drug LOVASTATIN
- *Stoneleigh Motors et al v General Motors of Canada Limited* - 2010 ONSC 1965 (CanLII), 2010 ONSC 3045 (CanLII) - counsel to plaintiffs in national multi-party action against GMCL for re-instatement and damages arising out of mass termination in 2009 restructuring (action settled, combination of reinstatements and cash payments)
- *Aquafor v. Calder Engineering* – 2010 – successful trial (Commercial List) involving breach of fiduciary duty, misappropriation of corporate opportunities, misuse of confidential information and competing oppression claims brought against two departing engineers
- *Smith v. McLinden* – 2009 – successful trial involving a missed diagnosis by an emergency room physician, an internist and a neurologist of an intracranial hemorrhage
- *Barr v. Rahimpour* – 2009 – successful trial involving prescription of Alesse to 42 year old woman for treatment of menorrhagia who developed pulmonary emboli from the drug
- *Wilding v. Vilos* – 2009 – successful jury trial involving bilateral laparoscopic oophorectomy which resulted in bowel perforations, sepsis and multiple fistulas
- *Bletsoe Enterprises Inc. et al v. Sobeyes Capital Incorporated* – 2008 CanLII 61235 - Counsel to IGA dealers in \$45 million multi party breach

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of contract action against Sobeys Capital (action settled on basis of cash payments and new dealer agreements)

- *Bafaro v. Dowd* – 2008 – successful trial involving laparoscopic assisted vaginal hysterectomy resulting in bowel perforation, sepsis and a fistula
- *Bruno v. Birss* – 2008 – successful trial involving failure to order a follow up ultrasound during pregnancy where the infant was born with no hands and missing one foot
- *Circor v. IFC* - 2007/2008 – successful 3 month trial in breach of fiduciary duty/breach of contract case arising out of the departure of senior management personnel who misappropriated confidential and proprietary information and with it set up a successful, competing business
- *Canpages Inc. v. Quebecor Media Inc.* – 2008 – successfully obtaining interim and interlocutory injunctions to prevent Quebecor for competing in various markets for business in telephone directories
- *Soper v. Curridor* – 2007/2008 – successful long trial involving a schizophrenic who tried to flee hospital by jumping out the window, and became a quadriplegic - the case was against the physicians who moved him for causing the paralysis by failing to immobilize his neck (the case was won on causation, on the basis of the neurosurgical evidence)
- *Frederick Harris Music Company (the publishing arm of the Royal Conservatory of Music) v. Novus Via Music Group Inc.* – 2007 – successful resistance of interim and interlocutory injunctions arising from allegations of breach of fiduciary duty, breach of contract and theft of a corporate opportunity
- *Armstrong v. McCall* - 2007 – successful trial involving foot and ankle surgery by an orthoped which was complicated and resulted in infection and an inability to walk
- *Walters v. Bernstein* – 2005 – successful long trial against a prominent Toronto obstetrician involving delay in the diagnosis of breast cancer during and post-partum in a woman with three young children, who passed away
- *Barbiero v Sleightholm* – 2004 – successful trial involving laser hair removal which resulted in scarring
- *Kovacich v. Baxter* – 2004 – successful trial arising out of a live donor nephrectomy in which the plaintiff gave his kidney to his sister and went on to develop necrotizing fasciitis (flesh-eating disease) and became critically ill, losing much of his torso
- *Wadood v. Cowal* – 2003 – successful trial involving a ruptured uterus post an attempted vaginal birth after caesarean section

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- *Smyth v. Waterfall* – 2003 – successful jury trial involving an esophageal rupture post a dilatation procedure
- *Watkins v Griffioen* – 2003 – successful jury trial arising out of the death of a 60 year old man from heart issues being treated by his physician
- *Brigantino v. Csanadi* – 2002 – successful long trial arising out of the delay of diagnosis of a dislocated lunate bone resulting in permanent injury to a carpenter
- *Hood v. Lamont* – 2001 – successful trial of a woman who, during her birth, encountered shoulder dystocia resulting in significant disfigurement and impairment
- *Lite-Way Subs ats Chung* – 2001 – successful trial involving a franchisor/franchisee dispute where the issues were fundamental breach of contract, fraudulent misrepresentation and solicitor's negligence
- *O'Connell v. Williams* – 2001 – successful long trial involving a lizfranc fracture dislocation in the foot which resulted in an amputation
- *Lizert v. Kruger* – 2000 – successful trial involving a missed diagnosis of a myocardial infarction

Some of Sarit's clients include the Canadian Medical Protective Association (doctors' defence organization), Suzuki Canada Inc., AbbVie Corporation, Canadian Helicopters Limited, Mueller Industries, Ingersoll-Rand and Manulife.

## Awards & Rankings

### Chambers Canada

Leading Lawyer: Litigation - General Commercial (Ontario)

### Lexpert / American Lawyer Guide to the Leading 500 Lawyers in Canada

Leading Lawyer: Corporate Commercial Litigation

### Canadian Legal Lexpert Directory

Leading Lawyer: Class Actions; Professional Liability, Litigation - Corporate Commercial and Directors' & Officers' Liability; Medical Negligence; Professional Liability

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## **Benchmark Litigation: Guide to Canada's Leading Firms and Attorneys**

Litigation Star

## **Benchmark Canada - 2017**

Top 50 Trial Lawyers in Canada

## **Benchmark Canada - 2014 - 2019**

Top 25 Women in Canadian Litigation

## **Benchmark Litigation - Canada**

Litigation Star: Dispute resolution, Commercial and Franchise

## **Euromoney Legal Media Group's Americas Women in Business Law**

Rising Star: Litigation

## **Lexpert**

Rising Stars – Leading Lawyers under 40

## **Lexpert**

Zenith Award for Mid-Career Excellence

## **Best Lawyers in Canada**

Leading Lawyer in the areas of Corporate and Commercial Litigation and Medical Negligence

## **Best Lawyers in Canada - 2020**

"Lawyer of the Year" in the area of Medical Negligence (Toronto)

## **Acritas Stars - 2020**

"Stand-out lawyer"

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## Recent Experience

- **Romandale Farms Inc. successful in long-standing dispute surrounding ownership of 280 acres in Markham, Ontario**  
September 13, 2019
- **Stelco Inc. emerges from CCAA proceedings**  
June 30, 2017
- **Access Copyright files counterclaim against school boards across eight Canadian provinces and three territories for unpaid copyright tariff royalties**
- **Ontario Court of Appeal clarifies test for distinguishing final and interlocutory orders**