



# Michael D. Briggs

**Partner**

Calgary

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

t. +1 403-260-3556

## Bar Admission

Alberta 1997  
Northwest Territories 2016  
Nunavut 2016

## Law School

University of Calgary

## Practices

Construction  
Disputes  
Class Actions  
Corporate Commercial Litigation  
Products Liability

## Industries

Hospitality  
Energy & Infrastructure  
Oil & Gas

Michael Briggs is a partner in our Litigation Group in Calgary, as well as a member of our International Arbitration Group and National Securities Litigation Group. Michael's practice is focussed on complex corporate/commercial litigation, including construction and oil 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, Queen's Bench Division, Commercial Court and the Supreme Court of the Commonwealth of the Bahamas as the lead instructing solicitor. He has a wealth of experience managing all aspects of disputes, from initial strategy through pleading, records disclosure, discovery questioning, interlocutory applications, trials and appeals, and also regularly writes and presents on a variety of substantive and procedural litigation topics.

Michael is regularly consulted for advice both on "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.

## Corporate/Commercial/Securities Litigation

Michael has extensive experience in disputes involving corporate issues such as shareholder rights and remedies (including dissenting shareholder actions); directors and officers duties, including fiduciary duties; oppression and derivative remedies; and breach of confidence and non-competition actions.

Michael also has substantial experience in a wide variety of commercial actions including plans of arrangement; share and/or asset purchase conflicts; technology and intellectual property matters; non-competition and confidentiality enforcement; development and construction issues; real estate transactions; and commercial landlord and tenant claims. His experience includes:

- *Cross-Strait v. Sunshine Oilsands* - Defence of a claim by a shareholder

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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. v. 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 v. 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 v. 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

Michael has wide ranging experience in a variety of actions and issues related to oil and gas concerns including both upstream and midstream facilities as well as oilsands facilities; electrical generation and distribution by both conventional (i.e., coal) and “clean” methods (i.e., wind and hydro generation); enforcement and interpretation of standard and unique contracts; enforcement of accounting and audit procedures; rights and obligations of joint venturers and operators in local and international projects; and equipment failures, fires and plant construction. His experience includes:

- *BP v. Bankers Petroleum Albania* - Defence of an approximately US \$50M claim relating to termination of a heavy oil supply contract.
- *CNRL v. Emco Corporation et al.* - Defence of an approximately \$60M

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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

Michael has extensive experience in a wide number of areas, including hospitality oriented litigation; actions in a variety of fields dealing with both tort and contract based claims; personal, property and economic loss claims; and income tax litigation including in relation to reassessments by the Crown against clients based on the General Anti-Avoidance Rule, agency arguments and "sham" transactions. His experience includes:

- *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. v. 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-

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client costs to Oxford.

- *Laxdale Realty Inc. v. 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 v. 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.

## Records Retention

Michael is experienced in leading the development of and preparing comprehensive records retention plans. He Chaired the committee that established our firm's national records retention plan. He has also consulted on and developed records retention plans for various clients, including for public and private corporations.

He is also experienced in addressing issues related to records retention or lack thereof such as spoliation claims and related consequences and evidence preservation and presentation.

## Arbitration/Alternative Dispute Resolution Experience

Michael's domestic and international arbitration experience includes representation of parties before arbitral panels and sole arbitrators, including as appointed by recognized arbitral bodies, such as the International Court of Commerce. The subject matter of major arbitrations handled includes domestic and international energy exploration, development, processing, marketing, pricing, delivery and transportation issues; construction, commissioning and operational issues at resource processing fields and facilities; contractual interpretation issues; and real estate development and servicing issues. His experience includes:

- *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. Responsible for conducting primary witness interviews and preparing an application for security for costs, a remedy rarely sought before the ICC.

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## Other Cases of Interest

- *Watts v. 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 unadjudicated 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 v. 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.

## Presentations & Publications

- 2019: "Arbitrability Exception Struck Down" – article written for the International Arbitration Group
- 2018: "Litigation Funding Agreements: Does The Federal Court Lack Jurisdiction to Approve Third Party Funding Agreement?" – article written for the International Arbitration Group
- 2017: "Canada—choosing the review process for an arbitral award ( *Newfoundland and Labrador v. ExxonMobil Canada Properties*)" – article written for Lexpert UK
- 2017: "*Newfoundland v. ExxonMobil*: Court Dismisses Set-Aside Application Calling Parties 'well;-advised, sophisticated'" – article written for the International Arbitration Group
- 2016: "Understanding Limitations" presented to client's in-house counsel group as well as real property and oil & gas groups.
- 2015: "Common Interest Privilege's Evolution" presented to in-house counsel.
- 2012: "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.
- 2009: "Social Host Liability" for parents and faculty of West Island College.
- 2007: "An Overview of Records Relation Issues" for the February 2008 edition of Litigation Co-Counsel.

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- 2007: "Common Interest Privilege in Canadian Commercial Transactions – Is it a 'Done Deal'?" for the August 2007 Canadian Corporate Counsel Association Annual Meeting.
- 2007: "Shareholders Disputes – Financing Right of First Refusal" for the July 2007 addition of Litigation Co-Counsel.
- 2007: "Record Retention: Managing The Risk" for The Canadian Corporate Counsel Association Seminar, May 2007.
- 2006: "Recent Watershed Developments in Oppression Remedies and Shareholder Activism," for The Annual Review of Civil Litigation, 2006.
- 2005: "Mastering the Art of Successful Negotiation, Mediation and Arbitration – A Précis of Process, Strategy and Tactics" for the May 2005 Insight Conference.
- 2003: "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.
- 2003: "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.

## Recent Insights

- **Divided No Longer: Admissibility of New Evidence on Appeals from UNCITRAL Arbitrations Determined According to Domestic Law**  
April 07, 2020
- **A Divided Court: ONSC Sets Stage for Ruling on Admissibility of New Expert Evidence on Appeals from UNCITRAL Arbitrations**  
February 05, 2020
- **Arbitrability Exception Struck Down**  
February 06, 2019
- **Litigation Funding Agreements: Does the Federal Court Lack Jurisdiction to Approve Third Party Funding Agreements?**  
August 22, 2018