



Byron Shaw

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Bar Admission

Ontario 2009

Law School

University of British Columbia

Practices

Disputes
Appellate Litigation
Class Actions
Corporate Commercial Litigation
Products Liability
Professional Liability
Public Law
Securities Litigation

Industries

Healthcare
Pharmaceutical

Byron Shaw is a partner in our Litigation Group in Toronto. His practice includes complex corporate and commercial litigation, cross-border matters, class actions and public law litigation.

Byron has appeared before the Supreme Court of Canada, the Federal Courts of Canada, all levels of court in Ontario and trial and appellate courts in other Canadian provinces. He has also represented clients before domestic and international commercial arbitration panels and administrative tribunals. While at Paul, Weiss in New York, Byron acted for public and private companies in complex securities and commercial litigation before federal and state courts, as well as antitrust proceedings before the U.S. Department of Justice and Federal Trade Commission.

Byron's commercial litigation experience includes acting as trial counsel for the Canadian retirement savings plan administrator in *Nortel Networks Corporation (Re)*, a case involving the allocation of \$7.3 billion among the Canadian, U.S. and EMEA debtors of Nortel tried simultaneously before judges in Ontario and Delaware. Byron has acted for corporations and individuals in breach of contract matters, investment and employee fraud claims, take-over bid litigation and oppression and other shareholder disputes. Byron has authored peer-reviewed articles on topics in tort and contract law and is a Lecturer in Advanced Contracts at the University of Western Ontario, Faculty of Law.

Byron has considerable experience in class actions in the area of securities, product liability and antitrust. He was counsel to National Bank in a secondary market securities claim dismissed at the leave stage and upheld on appeal: *Goldsmith v. National Bank of Canada*, 2015 ONSC 2746, aff'd 2016 ONCA 22. He acted for a former executive of an insurance company in a securities class action: *Dugal v. Manulife Financial Corporation*, 2013 ONSC 327. Byron has represented pharmaceutical and device companies in cross-border product liability matters and was counsel to the defendants in the first pharmaceutical class action to be defeated on summary judgment in Canada: *Wise v. Abbott Laboratories, Ltd.*, 2016 ONSC 7275. While at Paul, Weiss, Byron assisted with the defence of class actions and shareholder derivative actions in federal and state court as well as antitrust class actions.

Byron is an expert in administrative and constitutional law. He is the co-author of *Constitutional Law*, 5th edition (Toronto: Irwin Law, 2017) with Justice Patrick Monahan and Padraic Ryan. *Constitutional Law* is frequently consulted by Canadian courts including the Supreme Court of Canada and was cited with approval in *Reference re Senate Reform*, [2014] 1 S.C.R. 704 (the "Senate Reform Reference"), *Reference re Supreme Court Act*, ss. 5 and 6, [2014] 1 S.C.R. 433 (the "Nadon Reference"), *Rogers Communications Inc. v. Châteauguay (City)*, [2016] 1 S.C.R. 467 and *Reference re Pan-Canadian Securities Regulation*,

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2018 SCC 48 (the “Pan-Canadian Securities Reference”) Byron has appeared before the Supreme Court in a Charter challenge concerning the right to a jury trial for individuals charged with *Securities Act* offences and a challenge to the legality of an employer’s random alcohol testing policy: *R. v. Peers*, 2017 SCC 13; *R. v. Aitkens*, 2017 SCC 14 and *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, [2013] 2 S.C.R. 458. He has represented corporations, individuals and trade organizations before administrative tribunals and in judicial review proceedings in Ontario, the Federal Court of Canada and New Brunswick. He advises clients across a wide array of industries on federalism and *Charter* matters and has appeared before the Standing Senate Committee on Social Affairs, Science and Technology regarding the implications of proposed federal legislation on freedom of commercial expression.

Byron is also a member of the firm’s medical-defence group and acts for physicians in medical-negligence cases.

A prolific author, Byron has published extensively in fields including constitutional law, conflict of laws and class actions. His articles have been published by the Supreme Court Law Review, Cambridge University Press, the Canadian Business Law Journal, the Canadian Class Actions Review, the U.B.C. Law Review, the Advocates Quarterly and The Advocate. His articles have been cited by trial and appellate courts including the Supreme Court of Canada.

Byron clerked for the Court of Appeal for Ontario in 2008-2009 where he worked with former Associate Chief Justice Dennis O’Connor and Justices Sharpe, Weiler and Gillese. He received his B.A. (Hons.) in Economics from the University of British Columbia in 2005 and his LL.B from the University of British Columbia in 2008.

Byron is the Chair of the Canadian Subcommittee of the Commercial & Business Litigation Committee of the American Bar Association. He is also a member of the Canadian and Ontario Bar Associations and the Advocates Society.

NOTABLE CASES

- *Nortel Networks Corporation (Re)*, 2015 ONSC 2987, leave to appeal denied, 2016 ONCA 332 and 532 B.R. 494 (Del. Bankr. 2015), appeal dismissed, 2017 WL 3816026 (3rd Cir. 2017) – counsel to Canadian creditor interests in cross-border trial and related appeals concerning the allocation of \$7.3 billion amongst the debtor estates of Nortel.
- *Nortel Networks Corporation (Re)*, 2015 ONSC 2987, leave to appeal denied, 2016 ONCA 332 and 532 B.R. 494 (Del. Bankr. 2015), appeal dismissed, 2017 WL 3816026 (3rd Cir. 2017) – counsel to Canadian

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creditor interests in cross-border trial and related appeals concerning the allocation of \$7.3 billion amongst the debtor estates of Nortel.

- *Wise v. Abbott Laboratories, Ltd.*, 2016 ONSC 7275 – represented the defendants in the first pharmaceutical class action to be defeated on summary judgment in Canada.
- *Goldsmith v. National Bank of Canada*, 2015 ONSC 2746, aff'd 2016 ONCA 22 – successfully resisted motion for leave in a secondary market securities claim, upheld on appeal.
- *Dugal, Murphy v. Manulife Financial Corporation*, 2013 ONSC 32 – represented a former CFO on a motion in a class action involving alleged inadequacies in the company's public disclosure.
- *Ont. First Nations L.P. v. Ont. Lottery and Gaming Corp.*, 2013 ONSC 4166 – successfully represented Ontario Lottery and Gaming in a motion to stay an action involving allegations of breach of contract.
- *Dean v. Mister Transmission (International) Limited*, 2011 ONCA 670 – successfully represented Mister Transmission in an appeal before the Ontario Court of Appeal from the dismissal of a consumer class action.
- *R. v. Peers*, 2017 SCC 13; *R. v. Aitkens*, 2017 SCC 14 - counsel for intervener in constitutional challenge regarding right to jury trial for individuals charged with Securities Act offences.
- *Communications, Energy and Paperworkers Union of Canada, Local 30 v. Irving Pulp & Paper, Ltd.*, 2013 SCC 34 – appeal counsel in a challenge to an employer's random alcohol testing policy.
- *Holmes v. White*, 2013 ONSC 4225; *CN v. Holmes*, 2011 ONSC 483 – successfully represented police officers in a motion to dismiss an application to compel an investigation into alleged police misconduct.
- *Air Canada v. Toronto Port Authority*, 2010 FC 774; *Air Canada v. Toronto Port Authority*, 2011 FCA 347 – counsel to Air Canada in a judicial review application and subsequent appeal regarding the granting of slots to commercial passenger airlines at the Toronto Island Airport.
- *Lennox v. Burns*, 2016 ONSC 2993 – successfully defended general surgeon in medical malpractice trial involving allegations of negligence in relation to a colostomy reversal procedure.
- *Fowlow v. Gupta*, 2012 ONSC 6531, aff'd 2014 ONCA 193 – successfully defended vascular surgeon in medical malpractice trial and appeal involving allegations of negligence in relation to a vascular bypass procedure.

PUBLICATIONS

- *Constitutional Law*, 5th ed. (Toronto: Irwin Law, 2017) (co-authored with

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Justice Patrick Monahan and Padraic Ryan).

- *Constitutional Law*, 4th ed. (Toronto: Irwin Law, 2013) (co-authored with Patrick Monahan).
- “*Goldhar v. Haaretz.com: A Product of the Supreme Court’s Unfinished Project to Reform Canadian Private International Law*” (forthcoming in the *Advocates Quarterly*) (co-authored with Scott Robinson).
- “Questions About Leave Test for Secondary Market Claims Remain Unanswered after Court of Appeal Decision in *Rahimi v SouthGobi Resources Ltd*” (2018) 13(1) *Canadian Class Actions Review* 5.
- “A Wise Development? The Growing Trend Towards Summary Judgment in Class Actions” (2017) 47 *Advocates’ Q.* 164 (co-authored with Neil Finkelstein and Brandon Kain).
- “Summary Judgment Prior to Certification in Class Actions: How *Microsoft* and *Hryniak* Have Changed the Landscape” (2015) 44 *Advocates’ Q.* 229 (co-authored with Neil Finkelstein, Brandon Kain and Eric Block).
- “Developments in Private International Law: The 2011-2012 Term - The Unfinished Project of the *Van Breda* Trilogy” (2012), 59 *S.C.L.R.* (2d) 277 (co-authored with Brandon Kain and Elder C. Marques).
- “Mapping the Serbonian Bog: The Territorial Limits of Secondary Market Securities Act Claims Under the Canadian Constitution – Part I” (2012) 53 *Can. Bus. L.J.* 63 (co-authored with Brandon Kain).
- “Mapping the Serbonian Bog: The Territorial Limits of Secondary Market Securities Act Claims under the Canadian Constitution - Part II” (2012) 53 *Can. Bus. L.J.* 233 (co-authored with Brandon Kain).
- “The Impact of Extra-Judicial Service on the Canadian Judiciary: The Need for Reform”, in H.P. Lee, ed. *Judiciaries in Comparative Perspective* (Cambridge: Cambridge University Press, 2011) (co-authored with Patrick Monahan).
- “Indemnities for Acts Done at Another’s Request” (2011) 44(2) *U.B.C. Law Rev.* 331-379.
- “Supreme Court of Canada Affirms the Request Principle in *R. Imperial Tobacco*” (2012) 45(1) *U.B.C. Law Rev.* 247.
- “The Arbitrability of Oppression Claims” (2011) 69(1) *The Advocate* 21.

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Recent Experience

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