



# Mendy M. Chernos

Partner

Calgary

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

t. +1 403-260-3595

## Bar Admission

Alberta 1984

## Law School

University of Toronto

## Practices

Disputes  
Class Actions  
Corporate Commercial Litigation  
Insurance Litigation  
Products Liability  
Public Law  
Securities Litigation  
Tax Disputes  
Tax Planning  
Alternative Dispute Resolution

## Industries

Hospitality  
Energy & Infrastructure  
Oil & Gas  
Insurance & Reinsurance

Mendy Chernos is a partner in our Litigation Group in Calgary. He practises corporate and securities litigation; energy and resources litigation; product liability and construction litigation; commercial litigation; income tax litigation; real property, landlord/tenant and franchise litigation; commercial and banking litigation; insurance litigation; administrative law litigation; class action defence; and commercial arbitration and mediation (including in all such areas). He is recognized as a leader in the area of Commercial Litigation (Alberta) in *Chambers Canada* and as an Alberta "Litigation Star" by *Benchmark Canada*.

## Experience & Selected Cases

- **Corporate and Securities Litigation** - Extensive experience in disputes involving corporate and securities issues including takeovers, proxy contests, reorganizations, relationships between affiliated corporations, shareholder disputes, director and officer duties, oppression remedies, accounting practices, share valuations and public securities matters. Cases include *Ashton Mining of Canada Inc. v. Stornoway Diamond Corporation et al* (defence of lock-up agreement between a bidder and controlling shareholder in an unsolicited take-over), *Harbert Distressed Investment Master Fund, Ltd. et al v. Calpine Canada Energy Finance II ULC et al* (defence of a several hundred million dollar oppression claim by bondholders), *Big Bear Exploration Ltd. v. Blue Range Resource Corporation et al* (defence of unsolicited take-over bid), *West Central Capital Corporation v. Prize Energy Inc. et al* (modification of terms of plan of arrangement as a result of competing unsolicited takeover bid), *Alberta Securities Commission Board Hearing* with respect to determining accounting qualifications for auditing financial statements of reporting issuers, *Okabe North America Inc. et al v. Delta Hotels Limited et al* (defence of corporate defendants and their common directors and officers respecting challenges to multiple cross-directorships and offices), *in re TransCanada Pipelines Limited and TransCanada Corporation* (court approval of TransCanada 2003 Plan of Arrangement), and *in re First Calgary Petroleum Ltd.* (adjournment of special and annual general meeting of shareholders).
- **Energy and Resources Litigation** - Substantial experience in disputes concerning oil and gas and electrical and wind power issues including the interpretation and enforcement of standard (including CAPL Operating Procedure and PASC Accounting Procedure) and unique contracts, the rights and obligations of operators and joint venture participants in domestic, international and offshore exploration development, production and transportation projects, the enforcement of accounting and payment requirements, the acquisition and disposition of interests, and plant and equipment construction, operation, fires and failures. Considerable experience working with domestic and international industry experts, including accounting, economic, engineering, oilfield, power and regulatory experts. Cases include *TransCanada Energy Ltd. et al v. ENMAX Corporation et al* (defence of judicial review of terms and conditions for assessment of power project

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proposal), *Two Forty Engineering Ltd. and The Royal Bank of Canada v. Baton Rouge Holdings Ltd. et al* (interpretation of CAPL right of first refusal provisions), *Paramount Resources Ltd. et al v. Imperial Oil Resources Ltd. et al* (interpretation of natural gas rights agreements), *Murphy Atlantic Offshore Oil Company Ltd. and Canada Hibernia Holding Corporation v. Norsk Hydro Produksjon as. et al* (interpretation and enforcement of transportation and transshipment rights and obligations relating to the development of the Hibernia field), *PanCanadian Petroleum Limited v. Nova Scotia Resources (Ventures) Limited* (treatment of confidential information respecting oil and gas operations offshore Nova Scotia), *Trident 88 Exploration Ltd. v. Odyssey Petroleum Corporation* (defence of \$50 million claim respecting a joint venture for the redevelopment of a Ukrainian oilfield), and various confidential but material arbitration matters involving producers, shippers and pipelines.

- **Product Liability and Construction Litigation** - Extensive experience in disputes concerning the distribution and sale of various industrial and consumer products, including in relation to product recalls and replacements, facility and equipment failures, and significant claims for direct and consequential losses, with particular expertise in pipe, field and plant construction and equipment failures claims. Cases include *Canadian Natural Resources Limited v. Emco Corporation et al* (defence of \$60 million claim for sale of allegedly defective pipe to an oil sands construction project) and *Alberta & Orient Glycol Company Limited v. Ace Ina Insurance et al* (\$56 million reactor failure claim).
- **Income Tax Litigation** - Extensive experience in income tax related litigation including reassessments of major transactions on GAAR, agency, non-partnership, non-loan and sham grounds, and rectification of transactions for tax purposes. Cases include *Interprovincial Pipe Line Inc. and IPL Energy Inc. v. Minister of National Revenue* (defence of privilege of auditor's records under the *Income Tax Act*) and *TransCanada Pipelines Limited v. Minister of National Revenue* (ability of taxpayer to appeal reassessed issues separately).
- **Landlord and Tenant, Real Property and Franchise Litigation** - Extensive experience in disputes involving the interpretation, enforcement and termination of leases, agreements of purchase and sale and franchise agreements, and the rights and obligations of property owners, developers, landlords and tenants, and franchisors and franchisees, including in complex commercial ownership and leasehold scenarios such as office towers, industrial facilities and shopping centres (including with respect to permitted uses, environmental contamination, continuous occupation, disclosure obligations, and marketing strategies). Represented landlords, tenants, developers, retailers, franchisors and

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franchisees. Cases include *Oxford Development Group Inc. et al v. The Saskatchewan Drug and Stationery Company Limited et al* (lease misrepresentation) and *Elbow Valley Development Corporation v. WRD Berger Construction Ltd.* (builders' lien period).

- **Commercial and Banking Litigation** - Extensive experience in various facets of commercial and contract litigation, including with respect to real estate disputes, employment matters, debtor creditor and priority contests, franchise disputes, banking (including constitutional banking related) issues, bankruptcy matters, estate litigation and commercial arbitration. Cases include *Jeffery Waterous v. The Bank of Nova Scotia* (defence of claims arising from securities businesses), *Highland Glen Explorations Limited v. Montreal Trust Company of Canada et al* (defence of claims arising from royalty/trust administration agreements), *Alberta Treasury Branches v. West Edmonton Mall Property Inc. et al* (determination of issues pertaining to financing and operation of major commercial mall), *Bank of Montreal v. Peddle* (rights and obligations under credit card agreements), and various defences of the Province of Alberta respecting the constitutionality of the Alberta Treasury Branches.
- **Insurance** - Considerable insurance defence experience in various tort, contract and related claims, for various property, economic and business interruption losses, including in the context of industrial and oil and gas related catastrophes, facilities failures and shutdowns, and construction projects. Extensive representation of insurers and insureds in coverage claims under various types of policies, including significant claims involving multiple layers of insurance and reinsurance. Cases include *Tonko Development Corp. v. Allianz Insurance Company of Canada* (coverage dispute for losses arising from catastrophic fire) and *Kingsway General Insurance Company v. Her Majesty The Queen In Right of Alberta* (defence of challenge to the Province of Alberta's automobile insurance premium freeze) and *Alberta & Orient Glycol Company Limited v. Ace Ina Insurance et al* (\$56 million property coverage claim).
- **Class Action Litigation** - Considerable class action defence experience in various types of claims, including securities, director and officer liability, consumer charges and product liability class action claims, and cases involving multiple Canadian and cross-border US jurisdictions, as well as corollary Securities Commission proceedings. Cases include *Debby Allen v. Direct Energy Marketing Ltd.* (certification and settlement approval hearings).
- **Administrative Law Litigation** – Considerable experience in advising on and litigating matters pertaining to proper delegation of authority, bias, scope of review, and representation of governments, tribunals, professional societies, members of associations and sports leagues and other delegated bodies. Cases include *TransCanada Energy Ltd. et al v. ENMAX Corporation et al* (defence of judicial review of terms and

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conditions for assessment of power project proposal).

- **Court and Administrative Tribunal Experience**
  - Appearances/applications before all levels of courts in Alberta, the Supreme Court of Nova Scotia, the British Columbia Court of Appeal, the Federal Court of Canada, the Tax Court of Canada, the Federal Court of Appeal, the Supreme Court of Canada and administrative bodies including the Alberta and British Columbia Securities Commissions and various professional discipline tribunals.
- **Arbitration/ADR Experience** – Extensive domestic and international arbitration, mediation and "med-arb" experience, including representation of parties before arbitral panels and sole arbitrators, including as appointed by recognized arbitral bodies, such as the International Court of Commerce, advising arbitrators in the conduct of arbitrations, and acting as arbitrator. Subject matter of major arbitrations includes domestic, international and offshore energy and power exploration, development, processing, marketing, pricing, delivery and transportation issues; construction, commissioning and operational issues at resource processing fields and facilities; contractual interpretation issues; real estate development and servicing issues; lease performance, rate and renewal issues; and banking issues. Additional experience in cases respecting whether matters should proceed in court or arbitration proceedings, including *Olymel S.E.C. v. Premium Brands Inc. et al* . Substantial mediation experience as well, including extremely complex, multi-party and extended mediation processes.

## Presentations & Publications

1990 - Speaker to the Canadian Bar Association, Civil Litigation South Alberta Section in April 1990 regarding "Third Party Proceedings in Alberta"

1991 - Presentation to clients on "Landlord Remedies" 1992 Speaker to the Canadian Bar Association, Corporate Counsel, South Alberta Section in November, 1992 regarding "How Exposed is your Corporate Veil? Some Comments about Safe Corporate Relations for the 90's"

1994 - Speaker to the Canadian Bar Association, Corporate Counsel South Alberta Section in October 1994 regarding "Corporate Counsel and Solicitor-Client Privilege: How to Guard your Privileged Status"

1995 - "Corporate Counsel and Solicitor-Client Privilege", April 1995 edition of The National

1995 - "Corporate Counsel and Solicitor-Client Privilege: How to Guard Your Privileged Status", June 1995 edition of Inside Counsel

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1996-1997 - Presentations to clients on "Record Retention Policies"

1997 - Speaker to the Tax Executives Institute on "Solicitor-Client Privilege Pertaining to Income Tax Issues"

1994-1999 - Presentations to clients on "Solicitor-Client Privilege Pertaining to Income Tax Issues"

2000 - Speaker to the Canadian Bar Association, Insurance, South Alberta Section in March, 2000 regarding "Recent Issues Pertaining to Privilege"

2000 - Presentation to clients in November, 2000 on "Settlement in the Tax Court Process"

2001 - "Pre-Trial Strategies – Requests to Admit", May 2001 edition, No. 2, McCarthy Tétrault on Tax Disputes 2001 "Responding to Audit Inquiries", November 2001 edition of The National

2001-2003 - Presentations to clients on "Arbitration Matters"

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 - "Solicitor Client Privilege and the Response to Audit Enquiries in the New Millennium: The Joint Policy Statement Revisited", Annual Review of Civil Litigation, 2002 2004 "Confidentiality in an ADR Oil and Gas Context", 2005 Oil and Gas Report (Chartered Institute of Arbitrators World Petroleum Congress)

2005 - "Recent Developments in Cross Border Corporate Litigation", Lexpert, October 2005

2005 - Presentations to clients on "Civil Liability for Securities Matters" and on "Secondary Market Liability"

2006 - "Recent Watershed Developments in Oppression Remedies and Shareholder Activism", Annual Review of Civil Litigation, 2006

2007 - Presentation to Canadian Corporate Counsel Association on "Maintaining and Maximizing Privilege", May 2007

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2007 - "Common Interest Privilege in Canadian Commercial Transactions – Is it a "Done Deal"?", Canadian Corporate Counsel Association 19th Annual Meeting Papers, August 2007

2007 - Presentation to Canadian Corporate Counsel Association 19th Annual Meeting on "Matters of Privilege for Corporate Counsel", August 2007

2008 - Presentations to clients on "Privilege Issues in the Commercial Context", January 2008

2008 - "Common Interest Privilege Applied Again in the Context of Commercial Transactions: The BC Court of Appeal Endorses the Growing Recognition of Privilege for Commercial Counterparties", January 2008 edition, McCarthy Tétrault Business Law Quarterly

2009 - Presentation to clients on "Internal Investigations", January 2009

2009 - "Alberta Court of Appeal Extends Judicial Deference to Securities Commission", April 2009 edition, McCarthy Tétrault Business Law Quarterly

2015 - Presentation to the Canadian Bar Association by National Webinar on "Time to Reconsider: The Future Crimes and Fraud Exception to Solicitor-Client Privilege", September 2015

2016 - "The Risks and Benefits of Mandatory Preliminary Meeting Between Senior Representatives", February 2016 edition, ADR Perspectives

2016 - "Time to Reconsider: The Future Crimes Exception to Solicitor - Client Privilege", Annual Review of Civil Litigation, 2016

2016 - Presentation to the Canadian Bar Association by National Webinar on "Update on Solicitor - Client and Litigation Privilege", December 2016

2018 - "Bilcon of Delaware et al v. Government of Canada: NAFTA has Teeth, and Decisions Have Consequences", The International Arbitration Blog, August 15, 2018

2019 - Presentation to the Canadian Bar Association by National Webinar on "Waiving Solicitor-Client Privilege: Tips and Traps", April 2019

## Teaching Experience

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- Senior Instructor at various Trial Advocacy Courses, at McCarthy Tétrault LLP and University of Calgary Faculty of Law
- Senior Instructor at Examination of Discovery Courses, at McCarthy Tétrault LLP
- Lecturer to University of Calgary Faculty of Law Arbitration Course, on "Privilege, Confidentiality and Privacy in Arbitrations"
- Lead instructor on the Art of Pleadings, at McCarthy Tétrault LLP
- Lead instructor on Safe and Effective Practice, at McCarthy Tétrault LLP
- Lead coach and judge for various University of Calgary Faculty of Law mooting teams

## Awards & Rankings

### Commercial Litigation (Alberta)

Chambers Canada

### Benchmark Litigation - Canada

Litigation Star: Insurance, Dispute resolution, Securities, Product liability and recall, Tax disputes, Commercial and Class action

### Chambers Canada

Leading Lawyer: Litigation: General Commercial - Alberta

### Acritas Star

"Stand-out lawyer"

## Recent Experience

- Centrica plc enters agreement to sell Direct Energy to NRG Energy for US\$3.625B

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## Recent Insights

- **Bilcon of Delaware et al v Government of Canada: NAFTA has Teeth, and Decisions Have Consequences**

August 15, 2018