

Barbara L. Grossman

Partner



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Overview

As a partner in Dentons Canada LLP's Litigation and Dispute Resolution practice group, Barbara practises in all areas of commercial litigation, including class actions, with an emphasis on insolvency, banking and finance, and real estate litigation. Barbara also has extensive experience in the areas of professional liability, intellectual property litigation, estate, trust and pension litigation, litigation in the aviation industry and injunctions and other extraordinary remedies.

Barbara has appeared as lead counsel on mediations, arbitrations, before administrative tribunals and in leading cases at all levels of trial and appellate courts, including the Supreme Court of Canada, and is experienced in cross-border and complex multi-party litigation.

Barbara started her litigation career as a Clerk to the Chief Justice of the High Court of Ontario. Since 1990 she has been certified by The Law Society of Upper Canada as a specialist in civil litigation.

Experience

- **Financial Recovery Strategies, LLC (“FRS”):** Counsel to FRS, one of the third party claim filers in the cathode ray tube class action, in an appeal on behalf of various class members, resulting in remanding various claims to the claims administrator for further consideration to receive a portion of the net settlement proceeds (*Fanshawe College v. Hitachi, Ltd.*, 2021 ONSC 140).
- **P3 Developer and General Contractor:** Successfully resolving a P3 dispute that was the subject of arbitration and litigation proceedings.
- **Confidential clients:** Representing stakeholders in the litigation aspects of numerous Canadian insolvencies.
- **Commercial Landlords and Tenants:** Successfully representing in rent arbitrations to determine current fair market rent for renewal terms.
- **Lenders, vendors, purchasers, landlords and tenants:** Advising and litigating for parties in connection with all aspects of real estate disputes, including the interpretation, rectification, enforcement and default

remedies in relation to mortgages, agreements of purchase and sale, options, P3 transactions, and commercial lease transactions.

- **Financial institutions and other creditors:** Advising and representing parties in connection with litigation concerning creditors' rights, security enforcement issues, lender liability and oppression claims, including numerous cases concerning the interpretation, priorities and payment obligations and remedies under letters of credit, cheques and other negotiable instruments, guarantees, loan commitments and agreements, and real and personal property security.
- **Confidential clients:** Litigating numerous cases in the estate, trust and pension areas, including the litigation aspects of contested interpretations, motions for advice and directions, and the litigation aspects of pension windups and surplus sharing issues.
- **Authors, publishers and businesses:** Successfully advising on and litigating copyright and trade-mark infringement and related claims.
- **Plaintiffs and defendants:** Advising and litigating in connection with professional liability claims against auditors, lawyers, customs brokers and retail securities brokers.
- **Aircraft lessors:** Representing in connection with the insolvency of Canada 3000 in a case that was litigated up to the Supreme Court of Canada concerning statutory joint and several liability and priority issues in relation to statutory aircraft seizure and detention rights of Canada's navigation and airport authorities.
- **Airport:** Successfully defending in multi-party litigation arising out of a fatal airplane crash following take-off.
- **Tenor Capital Management:** Acting as counsel to the DIP lender to Crystallex International Corporation in its CCAA / Chapter 15 proceedings.
- **Vendor:** Successfully representing the vendor in the arbitration of a commercial real estate option dispute concerning the exercise of the option.
- **Canadian financial institution and securities broker:** Advising in connection with Asset Backed Commercial Paper.
- **Confidential client:** Defending an Ontario class action by medical fellows arising out of Canada Revenue Agency ruling that their fellowship income is employment income subject to employee withholdings for income tax, EI and CPP.
- **Major Canadian financial institution:** Successfully defending in an Ontario class action by customers who alleged GST was improperly charged on certain fees.
- **Confidential clients:** Working as co-lead counsel in two successful appeals to the Supreme Court of Canada in a class action concerning restitution claims in relation to criminal rates of interest (one of the decisions was ranked among the top ten suits of 2004 by LEXPERT), and numerous other cases concerning interest rates.
- **Pichette:** Settling a major class action against Toronto Hydro and all municipal electrical utilities in Ontario for restitution of late payment penalties they charged. The class action involved both a plaintiff and defendant class and the settlement terms were novel with respect to the defendant class opt out rights etc. Defendant class actions are rare and certified and settled defendant class actions are even rarer; *Pichette v. Toronto Hydro*, 2010 CanLII 4060 (ONSC)
- **Teachers, OPT and New Jersey Department of Treasury:** Representing US representative plaintiffs in the cross-border settlement of the Nortel class actions.
- **Author and publisher of the Harry Potter novels and Pottermore website in Canada:** Successfully representing in connection with all Canadian copyright protection issues and embargo enforcement rights and remedies, including winning a number of injunctions to protect the copyright in and pre-release date confidentiality of the Harry Potter novels.
- **Religious employer:** Defending in a landmark human rights appeal dealing with the interpretation of the

Ontario Human Rights Code and the rights of religious employers to engage in faith-based hiring, and to insist upon religious adherence as a condition of employment.

- **Major Canadian financial institution:** Successfully defending in multi-party litigation that was favourably settled at mediation arising out of a leveraged buyout of a major public company retailer that led to its immediate insolvency.
- **Commercial landlord:** Representing in multi-party litigation arising out of the allocation of realty taxes to tenants that was favourably settled at mediation.
- **Publisher:** Successfully representing in the first Canadian decision to interpret the “Dickens provision” in the *Copyright Act*.
- **US Fortune 500 corporations:** Successfully representing to stop cyber-squatting and website infringements by Canadian parties.
- **Auditors:** Successfully defending in multi-party negligence and misrepresentation claim arising out of the purchase of a business in a case that was settled without payment by the auditors.
- **Pension plan sponsor:** Successfully defending in the leading Ontario appellate case dealing with a novel issue concerning surplus dilutions resulting from plan mergers on the sale of a business.
- **Credit union minority shareholders of a trust company:** Successfully representing in their shareholder oppression claim that was favourably settled at mediation.
- **Financial institution assignee:** Successfully defending in a claim that was favourably settled at mediation in the litigation arising out of the lease financing by MFP Financial in the City of Waterloo.
- **Non-APERT subclass:** Successfully representing in the class action settlement involving the Royal Trust Pension Plan.
- **International Swaps and Derivatives Association, Inc. (“ISDA”):** Successfully representing an intervener in an Ontario appeal concerning the interpretation of the statutory definition of “eligible financial contract”.

Recognition

First recognized in 2013, Barbara has been commended for her extensive knowledge and experience in a variety of respected publications, including:

- *The Best Lawyers in Canada:* Corporate and Commercial Litigation
- *Martindale-Hubbell:* Distinguished SM Peer Review Rating

Honors and Awards

- Certified by *The Law Society of Upper Canada* as a specialist in civil litigation since 1990

In the Media

- Quoted in "Tackling modern slavery", *International Bar Association*, March 7, 2019
- Mentioned in "Flip Your Wig for Justice launches at Faculty of Law", April 3, 2014
- Quoted in "Lawyers flip their wigs today", *Lexpert*, March 6, 2014
- Quoted in "PBSC Tax Advocacy Project with Dentons Canada LLP", Pro Bono Students Canada, September 25, 2013
- Featured in "Pro Bono Law Ontario 5th Anniversary Video", December 7, 2012

- Quoted in "FMC is honoured with the 2012 Canadian National Pro Bono Law Firm Award - Recognizing outstanding achievement in pro bono legal services", November 2012
- Quoted in "Pro bono: good for law students and good for the community," *The Law Student And Associate Recruitment Guide*, March 2012
- Quoted in "Cy Près to Be a Big Topic of Discourse in Quebec," *Financial Post*, December 2011
- Quoted in "Business Booming for Legal Profession: Early Stages," *Legal Post*, December 2009
- Quoted in "In-house Advisor: Crisis Management - Back from the Brink," *Lexpert*, April 2009
- Quoted in "Coping with Catastrophe," CCCA *Canadian Corporate Counsel Association Magazine*, 2008

Insights

- "Adverse possession does not require inconsistent use", *Legal Alert*, Volume 36, No.5, August, 2017
- "Deconstructing the option to renew/extend clause", 2017 ICSC Canadian Law Conference Breakfast Roundtable, Toronto, Canada, April 28, 2017
- "ONCA reverses negligent misrepresentation ruling", *Legal Alert*, Volume 35, No. 11, February 2017
- "Supreme Court rules discounts caught by s. 8 of *Interest Act*", *Legal Alert*, Volume 35, No.9, January 13, 2017
- "Supreme Court of Canada confirms judges' jurisdiction to sit extra-provincially without video link", *International Law Office*, November 8, 2016
- Co-author, "New developments in the law of options", *Legal Alert*, Volume 35, No. 4, July 2016
- "Settlement Essentials - Rule 49 Offers", *Ontario Bar Association*, September 28, 2015
- "Equitable remedies available in commercial real estate transactions", *Legal Alert*, Volume 34, No.6, September 2015
- "SCC rules on expert witness independence and impartiality", *International Law Office*, June 2, 2015
- "Appeal court confirms judge's inherent jurisdiction to sit outside home territory", *International Law Office*, April 7, 2015
- "Supreme court considers good faith contractual performance", *Legal Alert*, Volume 34, No.1, April 2015
- "SCC clarifies law of contract interpretation", *Legal Alert*, December 2014
- "British Columbia appeal court sets territorial jurisdiction limits for superior courts", *International Law Office*, December 2, 2014
- "Supreme Court introduces duty of honest contractual performance", *International Law Office*, November 25, 2014
- "Court Rejects Expert Evidence for Lack of Independence", *Construction Law Letter*, November/December 2012
- "Expert Independence is Requirement of Admissibility, Court Rules", *International Law Office*, August 2012
- "Simplifying the Arbitration Process for Renewal or Extension Rent: Achieving a Simple, Effective and Cost-Efficient Process for Determining Rent", *Law Society of Upper Canada's Six- Minute Commercial Leasing Lawyer*, February 15, 2012
- Binding Arbitration Common In Determining Renewal Rent

- Arbitrating Renewal Rent: Drafting The Appropriate Renewal Arbitration Provision
- Getting the Deal Through - Air Transport 2011
- Damages: *Highway Properties v. Kelly, Douglas & Co.* — Recent Developments, Shopping Centre Leases, Second Edition (Haber, 2008)
- Recent Developments in Canada Relating to Privilege and Conflicts
- Understanding Notice Clauses
- Recognition and Enforcement of U.S. Class Action Decisions in Canada
- Supreme Court Resolves Aviation Remedy Issues
- Tortious Liability for Inducing Breach of Contract and the Oppression Remedy - The New Frontier for Circumventing the Corporate Veil, Six-Minute Commercial Leasing Lawyer 2006 (The Law Society of Upper Canada)
- Understanding The Harry Potter Injunction: Protecting Copyright and Confidential Information
- Supreme Court Refines Test for Unjust Enrichment Claims
- *Cummings v. Cummings* Revisited
- Specific Mortgage Enforcement Issues
- Good Faith in Real Property Law in Canada: Recent Developments
- Latest on Tenants Inducing Breach of Lease - Liability of Officers and Directors
- Class Action Legislation and Its Impact on Litigation Against Accountants
- Interlocutory Injunctions
- The Impact of Ontario's Class Action Legislation on Financial and Other Commercial Litigation
- Criminal Rates of Interest
- Creditors with an Interest in Real Estate: Landlords, Tenants, Mortgagees and Construction Lien Claimants
- The Bankrupt or Insolvent Franchisee: The Implications of the New Bankruptcy and Insolvency Act for Franchisors
- Impact of Insolvency Proceedings on Commercial Litigation
- Criminal Rates of Interest

Activities and Affiliations

- 2007-2008 Chair, The Advocates' Society Standing Committee on Advocacy and Practice
- 2005-2008 Director, The Advocates' Society
- 2006-2008 Trustee, Sir William Campbell Foundation
- 2006-2008 Member, Bench and Bar Committee for the Toronto Estates List, Ontario Superior Court of Justice
- Member, Canadian Bar Association, Toronto Lawyers' Association and The Advocates' Society
- Past member of Civil Litigation Specialty Committee of the Law Society of Upper Canada's Specialist Certification Program

Community Involvement and Pro Bono

Current Firm Activities

- Chair, Ontario Pro Bono Committee

Teaching Roles

- Moot Judge, Out on Bay Street Moot, September 2015 and 2016
- Workshop Leader in OBA (YLD) Oral Advocacy Bootcamp, October 15, 2015 and November 28, 2016
- Invited to participate as a mentor in The Advocates' Society's 2007, 2009, 2011, 2013 and 2015 conferences for women in litigation to lead discussions on various practical tips and strategies for dealing with gender obstacles to becoming a successful advocate
- Guest teaching for many years in the Osgoode Hall Law School LL.M. programmes in Civil Litigation and in Real Estate (leasing)
- Has taught trial advocacy at Osgoode Hall Law School to lawyers (Intensive Trial Advocacy Workshop) and law students for many years

Presentations

Frequent speaker on various aspects of commercial litigation, including, most recently:

- Speaker, "Hot Topics in Arbitration", ADRIC 2017: ADR & Access to Justice, St. John's, October 18-20, 2017
- Panel Moderator, "The Latest in US Law Firm and In-House Pro Bono", 6th National Pro Bono Conference: Innovations in Action, September 30, 2016
- Presenter, "Settlement Essentials – Rule 49 Offers", OBA, September 28, 2015
- Panelist, "Improving access to Justice", Flip Your Wig coalition's CPD panel, April 8, 2015
- Presenter, "May it Please the Court (and the Law Society): Civility as a Responsibility and Strategy", Continuing Professional Development Bootcamp, November 14, 2012
- Roundtable leader at ICSC Canadian Shopping Centre Law Conference 2010, 2011, 2012, 2013 and 2017 on default remedies, civility and dealing with the difficult client, and options
- Presenter, "Simplifying the Arbitration Process for Renewal or Extension Rent: Achieving a Simple, Effective and Cost-Efficient Process for Determining Rent", The Six-Minute Commercial Leasing Lawyer, The Law Society of Upper Canada, February 15, 2012
- Presenter, "Arbitrating Renewal Rent: Drafting The Appropriate Renewal Arbitration Provision," The Six-Minute Commercial Leasing Lawyer, The Law Society of Upper Canada, February 2011
- Presenter, "Class Actions: Settlements," TCHC Legal Conference, Toronto, April 21, 2009
- Presenter, The Advocates' Society Toronto Court House Series, "Objection!" February 12, 2009
- Presenter, "Mastering the Art of Appellate Advocacy," The Advocates Society Thunder Bay Court House Series – How to Win Cases, Thunder Bay, February 20, 2008
- Panel Moderator, "Keeping The Kimono Closed-Confidentiality and Privilege Issues in E-Document Management," The Advocates' Society Fall Convention, November 15-18, 2007
- Presenter, "Enforcement in Canada - Intellectual Property Law," The Erie Institute of Law, C.L.E Conference

in Buffalo, September 27, 2007

- Presenter, "Understanding Notice Clauses," The Six-Minute Commercial Leasing Lawyer 2007, Law Society of Upper Canada, February 21, 2007
- Presenter, "Crisis Management - Your Role in a Corporate Crisis," Staying One Step Ahead: Important Considerations for Corporate Counsel Conference (FMC), November 16, 2006
- Presenter, "International Injunction Readiness for Anticipated Crisis," The *Martindale-Hubbell* Counsel to Counsel Conference - Chicago: Managing Crisis and Mitigating Risk, September 12-13, 2006
- Presenter, "Inducing Breach of Contract and Tortious Liability for Breach - The New Frontier": Paper delivered at the Law Society of Upper Canada, Six-Minute Leasing Lawyer (2006), February 15, 2006
- Presenter, "Recent Developments in Canada Relating to Privilege and Conflicts," Paper delivered at the Association of Corporate Counsel of America (ACC), New York City, November 3, 2005
- Presenter, "Specific Mortgage Enforcement Issues," Paper delivered at the Ontario Bar Association seminar – Everything You Always Wanted to Know about Mortgages (And Were Afraid to Ask) a.k.a. The Joy (and Agony) of Mortgages, March 9, 2004
- Presenter, "Good Faith in Real Property Law in Canada: Recent Developments," Paper delivered at the Law Society of Upper Canada, Gavel to Gavel III, December 5, 2001

Areas of focus

Practices

- Alternative Dispute Resolution (ADR)
- Appellate Advocacy
- Arbitration
- Class Action Defense
- Commercial Development
- Commercial Litigation
- Defamation and Reputation Management
- Dispute Risk Management
- Financial Services Litigation
- Hedge Funds
- Insolvency Litigation and Enforcement
- Intellectual Property and Technology
- Intellectual Property Litigation
- IP and the Internet
- Litigation and Dispute Resolution
- Mediation
- Pensions, Benefits and Executive Compensation

- Pensions and Benefits Disputes
- Pensions and Retirement Plans
- Professional Liability Litigation
- Real Estate
- Real Estate Finance
- Real Estate Investments
- Real Estate Joint Ventures, Partnerships and Other Co-Ownerships
- Real Estate Leasing Occupation and Operation
- Real Estate Litigation and Dispute Resolution
- Restructuring, Insolvency and Bankruptcy
- Sales Practices
- Trade Secrets Litigation
- Trademark and Copyright Litigation
- Trust and Estate Litigation

Industry sectors

- Accounting Firms
- Automotive
- Aviation and Aerospace
- Commercial Banks
- Distressed Asset Investors
- Film & Television
- Financial Institutions
- Insurance
- Investment Banks and Broker Dealers
- Law Firms
- Media and Entertainment
- Nonprofit Entities
- Professional Services
- Publishing
- Retail
- Transportation

Education

- Osgoode Hall, 1979, LLB
- Clerk to the Chief Justice of the High Court of Ontario, 1981-1982
- University of Toronto, (2 years undergraduate, 1974-1976)

Admissions and qualifications

- Ontario, 1981

Languages

- English