

David Wotherspoon

Partner



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Vancouver

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Overview

David Wotherspoon is a partner in and lead of our Litigation and Dispute Resolution group in Vancouver. With a focus on corporate and commercial disputes, David's practice encompasses all areas of litigation and dispute resolution. He has extensive experience in matters that relate to injunctions and Anton Piller orders, defamation and free speech, intellectual property and software disputes, crisis management, professional liability, shareholder disputes and fraud investigations.

David brings more than 25 years of experience and has acted for large institutional clients in a broad range of industry sectors, as well as many early-stage companies and individuals, with particular experience in areas such as technology and intellectual property. David's experience in commercial litigation is guided by the understanding that litigation must first serve the client's business purposes.

David is extensively engaged in pro bono cases, taking on several opportunities to represent those who would otherwise have limited access to the justice system. Many of his cases have involved protecting businesses that have been targeted in a way that requires intense and swift action and often injunctions to safeguard clients' rights.

In the last few years David has received three prestigious awards:

- Recipient of Lexpert Zenith Award "Celebrating Change Agents in Law," 2019
- Recipient of the Harry Rankin QC Pro Bono Award, 2019
- Named one of Canada's Top 25 Most Influential Lawyers in the Corporate Commercial category by *Canadian Lawyer*, 2018

Experience

- **1704604 v. Pointes 2020 SCC 22; Bent v. Platnick 2020 SCC 23:** Appeared as intervenor counsel in the first two anti-SLAPP cases to be heard by the Supreme Court of Canada. Appeared on behalf of a coalition of women's rights group arguing that anti-SLAPP legislation should be interpreted in a way that facilitates the reporting and disclosure of gender based violence.
- **Steven Galloway v. A.B. et al, 2019 BCSC 395:** Represented A.B., the main defendant in a nationally

publicized defamation action, in an application to have her identity protected. Following a sexual assault complaint, the media obtained the claim and published A.B.'s name before the plaintiff served her. There was significant backlash against A.B, including threats to her physical safety. We successfully argued that A.B.'s identity should be protected through an anonymization order, a publication ban, and sealing order, pending trial.

- ***Mother 1 v. Solus Trust Company and others, 2019 BCSC 200***: Representing a minor beneficiary, Child 3, in an estate case in the British Columbia Supreme Court where the deceased died without a will, leaving five children, by five different women, and an estate in excess of CA\$10-million. Successfully defeated the claim of Mother 1 to entitlement to the estate, leaving all funds to the five children.
- ***Hunter v. British Columbia Lottery Corporation, 2018 BCSC 816***: Representing the British Columbia Lottery Corporation in defense of a breach of copyright allegation over its use of the iconic Canadian maple leaf in celebration of Canada's 150th anniversary of Confederation.
- ***Google v. Equustek 2017 SCC 34***: Representing Electronic Frontier Foundation as intervenor in a landmark case involving extraterritorial orders affecting intellectual property and free speech.
- ***Abbotsford (City) v. Shantz 2015 BCSC 1909***: Acting as *pro bono* plaintiff counsel throughout the course of nearly two years of litigation, 15 applications, multiple case management conferences and two appeals. Successful in having sections of the city's bylaws declared unconstitutional as they applied to Abbotsford's Homeless.
- ***Sattva Capital v. Creston Moly 2014 SCC 53***: Representing British Columbia International Commercial Arbitration Centre as intervenor before the Supreme Court of Canada to establish deference for arbitral awards.
- ***Mainstream Canada v. Staniford 2013 BCCA 341***: Counsel to Mainstream Canada in a defamation action against an environmental activist over an anti-salmon farming Internet campaign through trial and appeal.
- **FortisBC**: Advising as counsel throughout Major Unionized Labour Dispute in British Columbia, and throughout a subsequent injunction.
- **Korea Ginseng Corp.**: Advising as counsel to obtain and enforce Federal Court Orders to seize fake Korea Ginseng products.
- **Woodpecker Hardwood Floors**: Advising as counsel to obtain an interlocutory injunction in BC Supreme Court to restrain competitor Wiston International from marketing products under the name "Woodpecker," a trade-mark that Wiston International originally owned.
- ***On Call v. TELUS 2013 BCCA 366***: Advising as counsel in arbitration against an ISP, On Call Internet Services Ltd., in a complex billing disputed. The arbitral award was upheld by the BC Supreme Court and the Court of Appeal.
- ***Air Canada v Canadian Auto Workers Union 2011 BCSC 888***: Counsel to Air Canada in its Supreme Court of British Columbia application for an interlocutory injunction to restraint the Canadian Auto Workers Union from illegal picketing.
- **TELUS**: Advising as counsel as the company obtained an interlocutory injunction against protestors from blocking the road and from preventing its installation of a fibre optic cable.
- **TELUS Communications**: Advising in an advertising dispute in which the Supreme Court of British Columbia declined Bell Mobility's application for injunctions alleging that certain advertisements were false and misleading.
- ***TELUS v. TWU 2005 BCSC 642***: Advising as counsel to TELUS to obtain a breach of confidence injunction restraining the Telecommunications Workers' Union from using materials received under suspicious circumstances in an ongoing labour dispute.
- **Confidential client**: Advising as plaintiffs counsel bringing a claim against the Minister for Public Safety

alleging breach of the constitutional right to freedom of religion for federal prisoners.

- **Confidential client:** Advising over a period of several years to protect personal and private information from being disclosed on a blog.
- **Canadian Pacific Railway:** Advising in its successful application for an interlocutory injunction to restrain illegal picketing and related unlawful acts by Teamsters.
- **BHP Billiton Diamonds Inc.:** Advising in its successful application to the Supreme Court of the Northwest Territories for an interim injunction against a branch of the Public Service Alliance of Canada (PSAC).
- **Novawest Resources Inc v. Anglo American Exploration (Canada) Ltd. et. al. 2006 BCSC 769:** Advising as counsel in the case of *Novawest Resources Ltd. v. Anglo American Exploration (Canada) Ltd.* and Hudson Bay Exploration and Development Company et al.

Recognition

First recognized in 2011, David has been commended for his extensive knowledge and experience in a variety of respected publications, including:

- *The Legal 500 Canada:* Dispute Resolution; Intellectual Property
- *The Best Lawyers in Canada:* Intellectual Property Law; Information Technology Law; Technology Law; Corporate Commercial Litigation
- *The Canadian Legal Lexpert Directory:* Computer & IT Law; Intellectual Property; Litigation: Intellectual Property; Telecommunications; Technology Transactions; Litigation: Defamation & Media
- *Lexpert Special Edition – Canada’s Leading Lawyers:* Litigation; Technology
- *Acritas:* Acritas Star
- *Benchmark Litigation: Canada – Litigation Star:* Intellectual Property; Commercial
- *WTR 1000: The World’s Leading Trademark Professionals:* Anti-counterfeiting; Trademark Enforcement expertise

Honors and Awards

- Recipient, *Lexpert Zenith Award* “Celebrating Change Agents in Law,” 2019
- Recipient, 2019 Harry Rankin, QC Pro Bono award, 2019
- Recipient, Canada’s Top 25 Most Influential Lawyers, 2018
- Access to Justice Award by the Pivot Legal Society, 2014

In the Media

- Featured in “History Project” Peter A. Allard School of Law
- Featured in “Alumni Profile David Wotherspoon”, *Simon Fraser University*
- Featured in “Lawyers evaluate Toronto Maple Leafs’ dispute with Snoop Dogg’s cannabis brand ,” *Business in Vancouver News*, February 5 2019
- Featured in “Justice for B.C.’s homeless,” *Canadian Lawyer Magazine*, April 30, 2018
- Featured in “Dentons adds partner for Vancouver office,” *The Lawyer’s Daily*, March 28, 2018

- Featured in “For the record, March 27, 2018,” *Business in Vancouver*, March 27, 2018
- Quoted in “Building the right legal team for public interest litigation,” *Canadian Lawyer Magazine*, August 31, 2015
- Quoted in “Lawyer argues judge can decree partial fix for Abbotsford homeless,” *Global News*, August 1, 2015
- Quoted in “Manure tactics by Abbotsford, B.C., part of effort to evict homeless: lawyer,” *The Globe and Mail*, July 31, 2015
- Quoted in “Lawyer for Robertson, Meggs wants ‘desperate’ court action tossed ,” *Vancouver Sun*, April 1, 2015
- Quoted in “Fish farm company has beef with industry opponent,” *Herald Business*, January 9, 2012

Insights

- Co-author, "Commercial Arbitration Appeals – The Leave to Appeal Hurdle," *Dentons Commercial Litigation Blog*, June 4, 2021
- Co-author, "The Evolving Impact of Vavilov on Commercial Arbitration," *Dentons Commercial Litigation Blog*, April 20, 2021
- Author, “Dentons represents BC coalition of women’s rights groups in Supreme Court of Canada interventions: a focus on protecting the vulnerable against weaponized SLAPP suits,” *Dentons client alert*, October 27, 2020
- Co-author, “British Columbia’s new Arbitration Act and the VANIAC ,” *Dentons client alert*, September 9, 2020
- Co-author, “Don’t forget the arbitration provision ,” *Dentons client alert*, May 20, 2020
- Co-author, “Considerations for domestic arbitration: Recent changes in Canada,” *Dentons client alert*, April 28, 2020
- Co-author, “Contractual obligations: Lessons learned during the pandemic,” *Dentons client alert*, April 22, 2020
- Co-author, “COVID-19: Evolving government orders and recommendations for individuals and businesses,” *Dentons client alert*, March 27, 2020
- Co-author, “AGMs under the Societies Act during the COVID-19 crisis,” *Dentons client alert*, March 26, 2020
- Co-author, “Supreme Court of Canada redefines approach to review of administrative decisions,” *Dentons client alert*, September 30, 2019
- Author, “Wait! What about that conflict of interest?,” *Dentons client alert*, August 20, 2018
- Co-author, “British Columbia amends its International Commercial Arbitration Act,” *Dentons client alert*, May 29, 2018
- Co-author, "A Paved Cow Path Is Not What We Had in Mind," *Annual Review of Civil Litigation 2020*, *Thomson Reuters*, September 25, 2020
- Co-author, “The Protection of Public Participation Act,” *Bar Talk*, May 29, 2020
- Co-author, "ADR for intellectual property and technology disputes: The virtues of dispute resolution in the context of COVID-19," *Dentons client alert*, May 1, 2020
- Co-author, "Considerations for domestic arbitration: Recent changes in Canada," *Commercial Litigation Blog*, April 28, 2020

- Co-author, “Wait! What about that conflict of interest?,” *The Advocate*, July 2018
- Co-author, “Global order against Google: The first of its kind in the world,” *The Advocates’ Journal*, Winter 2017
- Co-author, “Dealing with Threats to Counsel,” *The Advocate*, May 2016
- Author, “Access to justice at the Super 8: A venue for voices the courts most need to hear,” *Canadian Lawyer Magazine*, November 2015
- Author, “The Last Word: Arbitral Appeals in a Post-Sattva World,” *The Advocate*, July 2015
- Presenter, “Using Injunctions Effectively,” *Pacific Business & Law Institute Seminar*, March 2015
- Presenter, “Corporate Structure and IP Strategy,” *BCIC New Ventures Seminar*, April 2014
- Author, “IP Disputes,” *Outstanding Achievement Award in the Best Publications category for British Columbia Business Disputes from the International Association for Continuing Legal Education*
- Author, “Arbitration to the Rescue: Managing dispute risks in cross-border commercial transactions,” *Lexpert Guide to Leading US/Canada Cross-Border Corporate Lawyers in Canada*, 2011
- Co-author, “Electronic Evidence and E-Discovery,” *LexisNexis Canada*, April 2010
- Author, “Bill C-32: New Proposal to Reform Canadian Copyright Act – A Detailed Review,” *Technology and Intellectual Property Bulletin*, June 2010
- Author, “Injunctions: The Practical Guide to Law, Procedure and Strategy,” *Osgoode Professional Development*, April 2010

Activities and Affiliations

- Director, Child Redress International
- Member, British Columbia Bar, 1992
- Member, Canadian Bar Association

Presentations

- Speaker, “eDiscovery and Electronic Evidence 2020,” The Continuing Legal Education Society of British Columbia, December 9, 2020
- Speaker, “Emphasizing solutions in dispute resolution: a one-hour primer on solving legal disputes,” Dentons webinar, November 18, 2020
- Speaker, “Contract Law: Things you didn’t know you didn’t know,” Dentons webinar, October 7, 2020
- Speaker, “The Protection of Public Participation Act: Stopping Defamation Law Suits as Soon as They Start” November 27, 2019
- Speaker, “Evidence and Advocacy: Skills and Tools for the Courtroom,” Trial Lawyers Association of BC, November 1, 2019
- Speaker, “The future of data regulation – What every business needs to know,” October 3, 2019
- Speaker, “Borderless Research,” The Continuing Legal Education Society of British Columbia, March 12, 2019
- Speaker, “Emphasizing solutions in dispute resolution: a one-hour primer on solving legal disputes,” November 18, 2020

Areas of focus

Practices

- Commercial Litigation
- Constitutional Law, including Aboriginal Law
- Litigation and Dispute Resolution
- Product Liability and Complex Torts
- Securities and Shareholder Litigation
- Alternative Dispute Resolution (ADR)
- Defamation and Reputation Management
- Privacy and Cybersecurity
- Trademarks in Canada

Industry sectors

- Technology
- Information Technology (IT)
- Advertising in Canada

Issues and opportunities

- Transformative Technology and Data Strategy

Education

- University of British Columbia, 1991, LLB
- University of British Columbia, 1988, MA Psychology
- Simon Fraser University, 1986, BA (Honours), Psychology

Admissions and qualifications

- British Columbia, 1992

Languages

- English