

# Tom (Thomas) P. O'Leary

## Partner



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Calgary

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## Overview

Tom practices Litigation and Dispute Resolution and has done so for over 25 years. He has extensive experience in a broad range of commercial, financial and energy related matters. These include acting as counsel in significant contract, construction, securities and real estate related disputes.

A former co-chair of Dentons' Litigation and Dispute Resolution Group, Tom has undergone extensive training in negotiation and alternative dispute resolution. He has participated in numerous mediations and other dispute resolution processes, conducting numerous arbitrations, trials, appeals and regulatory hearings. Tom has represented clients before numerous administrative tribunals, all levels of Court of Alberta and the Federal Court of Canada.

## Experience

- **Confidential client:** Successful dismissal, at the Alberta Court of Appeal, of a multi-million dollar claim arising from a failed real estate transaction.
- **Major oil and gas company:** Conducting the successful defence at trial for a Right of First Refusal claim that sought to block a CA\$860 million sale.
- **Investment Dealer:** Successfully defending at trial of a multi-million dollar claim for wrongful dismissal, bad faith by a former employee.
- **Investment dealers and brokerages:** Regular advice and representation in connection with both regulatory and litigation matters.
- **Major pipeline company:** Advising and conducting two, two week hearings on abandonment cost funding before the National Energy Board.
- **Confidential client:** Defending a consultant against claims of negligence in a CA\$60 million claim arising from the construction of a large condominium complex in Fort McMurray, Alberta.
- **Confidential client:** Conducting a successful arbitration in a shareholders dispute, in closely held

corporation with significant assets.

- **Major multi-national oil and gas company:** Advising in connection with a company acting as operator, under a series of complex multi-billion dollar oilsands joint venture agreements, on numerous contentious issues relating to operatorship and joint venture obligations.
- **Confidential client:** Representation of developer in major arbitration proceedings related to historical pollution, mitigation of same, and contractual entitlement to a \$20 million contingency fund.
- **Confidential clients:** Advising in connection with numerous retainers dealing with pollution-related disputes acting on behalf of alleged polluters, successors and victims.
- **Confidential client:** Prosecuting claims, defending counterclaim and concluding settlement in a complex, long running and fractious dispute over beneficial ownership of a Calgary hospitality establishment and associated real estate.
- **Multi-national oil and gas company:** Advising in connection with force majeure rights and obligations arising from pipeline service disruptions.
- **Oil and gas royalty owners:** Advising in connection with various disputes involving the interpretation of offset and royalty provisions and calculation of royalties payable.
- **Oil and gas company:** Advising in connection with claims for extra compensation in excess of CA\$3 million under a construction contract relating to the pipelining and tying in of various producing wells.
- **Confidential client:** Defending claims in excess of CA\$500 million on behalf of one of many parties sued as a result of the premature breakdown and inadequate performance of coatings used on a major maritime energy project involving both on-shore and off-shore facilities.
- **Insurer:** Advising in connection with denying insurance coverage in relation to an Illinois class action.
- **Oil and gas facility owners:** Advising in connection with disputes over the interpretation of service and supply agreements.
- **Gas processing facility operator:** Representing a processing facility operator in connection with a claim for over CA\$5 million in damages.
- **Mortgage broker:** Defending claims arising from allegedly fraudulent land sale “flipping” transactions
- **Confidential client:** Advising and representing the developer of an international merchant electricity power line in regulatory appeals and litigation proceedings relating to facility development.
- **Confidential clients:** Advising two of the three successful applicants before the Board in the CBM Review Hearing.
- **Confidential client:** Advising in connection with the successful dismissal, sustained by the Alberta Court of Appeal, of a class action seeking in excess of CA\$100 million, based on allegations to recover insurance deductibles charged by automobile insurers in Alberta dating back to 1974.
- **Confidential client:** Prosecuting a substantial subrogated claim against various parties arising from a catastrophic explosion and fire at a remote oil and gas battery.
- **Confidential client:** Defending allegations of land titles fraud in the context of a transfer of commercial real estate.
- **Insurers:** Advising in connection with complex coverage and choice of forum issues in the context of multi-million dollar claims arising from pollution allegedly emanating from producing oil wells in Beverly Hills, California.
- **Major shareholder:** Defending a major shareholder of a closely held corporation in fair value and oppression proceedings under the *Alberta Business Corporations Act*.

- **Insurer:** Successfully defending a daycare in a highly publicized two week trial arising from the death of an infant.
- **Insurers:** Advising in connection with complex issues concerning overlapping coverages and underinsured losses in a multi-million dollar claim arising from an oil rig fire in the United States.
- **Operator of a gas plant:** Defending in an action for negligence arising from a compressor malfunction and fire.
- **Confidential client:** Obtaining a significant recovery against commercial hosts on behalf of a plaintiff severely injured by a drunk driver.
- **Securities brokerage:** Advising in connection with a class action relating to alleged overstatement of oil and gas reserves by a publicly traded company.
- **Major telecommunications service provider:** Defending in a dispute arising from the interpretation of agreements under which satellite transponder capacity was procured.
- **Shareholders of a closely held corporation:** Advising in connection with an action to compel a shareholders meeting despite the objection of dissenting shareholders.
- **Major oil and gas company :** Advising in connection with a multi-million dollar insurance claim arising from defects in custom manufactured, multi-million dollar equipment intended for offshore use.
- **Confidential client:** Prosecuting significant economic loss claims arising from a fire aboard a leased offshore drilling rig.
- **Pulp mill owner:** Defending against a claim for over CA\$6 million in extra compensation under a construction contract concerning from the remediation of an effluent settling basin.
- **Insurer:** Successfully defending at the trial and appellate levels on a claim for insurance coverage and a defence made by a clergy member sued for damages due to alleged sexual assaults.
- **Gas producer seeking pipeline transportation access:** Representing a producer in connection with seeking pipeline transportation access in a common carrier application before the Energy Resources Conservation Board.

## Recognition

- Recognized in *The Best Lawyers in Canada* as one of Canada's leading lawyers in Alternative Dispute Resolution Law (2016–2020), Corporate and Commercial Litigation (2016–2020) and Energy Law (2016–2020)
- *Martindale-Hubbell* BV Distinguished Peer Review Rating

## Insights

- Co-authored with Martha Harrison, Chapter 10 ("Canada") in *The International Arbitration Review - Edition 6*, June 2015, Law Business Research Ltd.
- "Recent Decisions on Arbitral Jurisdiction: Stay and Appeal Issues", *GAR Arbitration Review of the Americas 2014*, October 2013
- Co-author, "Canada" in James H Carter, ed, *The International Arbitration Review*, 4th ed (London: Law Business Research Ltd., 2013)
- Regulatory and Liability Issues in Horizontal Multi-Stage Fracturing (Alberta Law Review, Volume 50, No. 2 (December 2012) at pg. 403)
- "Arbitral Jurisdiction in Canada: Recent Decisions", *GAR Arbitration Review of the Americas 2013*, November

2012

- "International Commercial Arbitration Award Enforced Despite Lack of Reasons", *Possibilities* - CBA National Alternative Dispute Resolution Section Newsletter, July 2012
- "Supreme Court of Canada Sends Dispute to Arbitration Despite Defence on Merits", Focus on Alternative Dispute Resolution, May 2012
- Focus on Energy: AEUB Opens The Door For CBM Development On Split-Title Lands, March 2007
- You're Either In or You're Out
- The Duty to Defend and Its Applicability in Sexual Tort Cases

## Activities and Affiliations

- Member of the Canadian Bar Association and Calgary Bar Association
- Member of the American Bar Association, Litigation Section

## Community Involvement and Pro Bono

- Current member of the Calgary Stampede Board of Directors (2010-present), Chair of Pension Committee, past-Chair of the Governance Committee and member of various other Board Committees
- Current director of Elbow Park Residents Association (2005-2010, 2018)

## Presentations

- Sessional Instructor, Legal Education Society 34th and 36th Annual Intensive Trial Advocacy Seminar, June 2016, June 2018
- "Update on Hydraulic Fracturing: Preparing for "Gasland 2", CBA Presentation, November 2012
- "Regulatory and Liability Issues in Horizontal Multi-Stage Fracturing", 4th Annual NE BC Gas Summit, September 2012
- "Regulatory and Liability Issues in Horizontal Multi-Stage Fracturing", 4th Annual Saskatchewan Oil & Gas Forum, June 2012
- "Regulatory and Liability Issues in Horizontal Multi-Stage Fracturing", Canadian Energy Law Foundation 51st Annual Jasper Research Seminar, 2012
- "Regulation of and Legal Risks Arising from Hydraulic Fracturing", Insight 4th Annual Saskatchewan Oil and Gas Forum, 2012
- "*Force Majeure* and Natural Gas Contracts", Insight Energy Contracts Conference, September 2008
- Numerous other presentations to clients, local section of Canadian Bar Association, and professional groups on various subjects including Contractual Indemnity Clauses, Force Majeure, Contractual Good Faith, Coalbed Methane Development and various aspects of Insurance Law

## Areas of focus

### Practices

- Alternative Dispute Resolution (ADR)

- Arbitration
- Class Action Defense
- Commercial Litigation
- Energy Advocacy
- Energy Litigation
- Litigation and Dispute Resolution

## Industry sectors

- Energy
- Insurance
- Insurance Litigation and Arbitration

## Education

- University of British Columbia, 1990, LLB
- University of Western Ontario, 1987, BA
- "Negotiation Workshop: Tools for Preparing and Negotiating Effectively", Harvard Negotiation Institute, 2011
- Trained in litigation risk analysis (TreeAge ProTm) by Litigation Risk Analysis Inc., 2010

## Admissions and qualifications

- Alberta, 1991

## Languages

- English