



## Derek D. Ricci

Partner

### Office

Toronto

### Tel

416.367.7471

### Email

dricci@dwpv.com

### Expertise

Commercial Litigation  
Class Actions  
Dispute Resolution  
Investigations and White Collar  
Defence

### Bar Admissions

Ontario, 2006

“Derek is the type of litigator you want whenever you have a difficult dispute.”

Client – *Chambers Canada*

Derek positions his clients for success with his extensive experience litigating a wide range of complex commercial disputes, including mining, telecommunications, fraud and securities cases, class actions, competition and product liability cases. They praise his ability to “think about the business realities and complications of enduring litigation”. (*Chambers Canada*)

He has been lead counsel on several trials, appeals and motions before a variety of courts and tribunals across Canada, including trial and appellate courts in various provinces, the Ontario Securities Commission and the Competition Tribunal. These have included numerous precedent-setting motions, trials and appeals for high-profile corporations. Derek also has extensive experience in commercial arbitration, both domestically and internationally.

Derek is the sole representative for Toronto of ICC FraudNet, an invitation-only global network of fraud and asset recovery legal specialists administered by the International Chamber of Commerce. He is also a frequent author and speaker for continuing education programs on commercial litigation and advocacy.

## REPRESENTATIVE WORK

### Engine Capital LP

Acted for U.S. activist shareholder Engine Capital LP in connection with its successful proxy contest at Dye & Durham Limited, a TSX-listed global provider of legal software and technology solutions, resulting in the election of Engine’s entire slate of six directors to the seven-person board and the resignation of the incumbent CEO.

### Saline Investments Ltd.

Acted for Saline Investments Ltd. in successfully defending against enforcement proceedings commenced by the Ontario Securities Commission alleging violations of the Securities Act (Ontario) in respect of certain short selling and securities lending transactions.

### Shaw Communications Inc.

Successfully acted for Shaw Communications in landmark trial and appellate proceedings in which the Government of Canada challenged the company’s C\$26-billion merger with Rogers Communications, the largest contested merger case ever heard in this country. This case was named the #1 business decision of 2023 by *Law360 Canada* and one of *Lexpert’s* Top 10 Business Decisions of 2023.

### Confidential client

Acted for the claimant in a C\$1.1-billion ICC arbitration regarding a major Canadian infrastructure project.

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### **Elliott Investment Management L.P.**

Acted for Elliott Investment Management L.P. in its accumulation of a material stake in Suncor Energy and subsequent engagement with Suncor culminating in an agreement (i) to appoint three new directors immediately with a potential fourth to be added depending on Suncor's performance against its peers, (ii) to participate on Suncor's CEO search committee, and (iii) to form a board committee to conduct a strategic review of Suncor's downstream retail business.

### **Centerra Gold Inc.**

Acted for the special committee of independent directors of Centerra Gold Inc. in successfully obtaining approval of a contested plan of arrangement under the *Canada Business Corporations Act* in relation to the global arrangement agreement between Centerra, Kyrgyzaltyn JSC and the Government of the Kyrgyz Republic.

### **Hostess Brands LLC**

Acting for Hostess Brands LLC in pursuing claims valued at approximately C\$109 million arising from its C\$425-million acquisition of Voortman Cookies Limited in 2020.

### **TransAlta Corporation**

Acted for TransAlta Corporation in defending an oppression action brought by Mangrove Partners, a minority shareholder. Mangrove sought to set aside a \$750-million strategic transaction entered into between TransAlta and Brookfield Renewable Partners.

### **Willoughby Asset Management Inc.**

Acting for Willoughby Asset Management Inc., a large unitholder, in connection with Bridging Finance Inc.'s court-appointed receivership proceedings amidst allegations of fraud and misconduct.

### **Vale Canada Limited**

Acting for Vale Canada Limited in a proceeding before the Ontario Superior Court of Justice (Commercial List) involving claims for damages by Vale of more than \$650 million in connection with alleged breaches by Solway Group, an Eastern European mining company, of various royalty agreements relating to a nickel mining project in Guatemala.

### **The Federal Republic of Nigeria**

Acting on behalf of the Federal Republic of Nigeria in Canadian proceedings involving the country's efforts to recover assets, including a private jet, from the key figure in the "Malabu Oil Scandal," one of Africa's biggest corruption cases.

### **Confidential Client**

Acting for a large international bank in connection with an alleged global price-fixing conspiracy related to supra-sovereign, sovereign and agency bonds (SSA bonds).

### **TransAlta Corporation**

Acted for TransAlta Corporation in defending successfully "public interest" proceedings initiated against TransAlta by Mangrove Partners before the Ontario Securities Commission and Alberta Securities Commission in respect of the election of Directors of TransAlta at its Annual Meeting on April 26, 2019, and

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concerning a \$750 million financing transaction entered into between TransAlta and Brookfield Renewable Partners.

## **American International Group Inc.**

Acted for a subsidiary of American International Group Inc. in successfully defending a court application brought by The Walt Disney Company regarding the arbitration of a substantial insurance coverage dispute.

## **Vale Canada Limited**

Acted for Vale Canada Limited and its affiliates in defending contractual claims before the Supreme Court of Newfoundland and Labrador in an amount of almost C\$500 million that were asserted by the Plaintiff under an Option Agreement pertaining to the Voisey's Bay Nickel Project. This case was settled in September, 2018, at the end of the first week of a four month trial that would have involved dozens of lay and expert witnesses. This was the first "hybrid trial" and first electronic trial ever conducted in the Province of Newfoundland and Labrador.

## **Confidential Client**

Acted for a blockchain company in connection with confidential enforcement matters before Canadian securities authorities.

## **Giant Tiger Stores Limited**

Acting for Giant Tiger Stores Limited in its defence of multiple class proceedings commenced across Canada (including Ontario, British Columbia, Saskatchewan, Alberta, Manitoba, Québec and the Federal Court) relating to alleged price-fixing of commercial bread products in Canada at the wholesale and retail levels.

## **Khan Resources Inc.**

Acted for Khan Resources Inc. in proceedings before the Ontario Superior Court of Justice and Court of Appeal in connection with a C\$200-million claim related to the expropriation of Khan's uranium mining interests in Mongolia.

## **Zimmer Biomet Holdings, Inc.**

Acting for Zimmer Biomet Holdings, Inc. in defending class action proceedings in the Superior Court of Ontario concerning alleged defects in Biomet's metal-on-metal hip replacement and resurfacing devices.

## **Staples, Inc.**

Acted for Staples, Inc. in connection with the Competition Bureau's challenge to its proposed \$6.3 billion acquisition of Office Depot, Inc.

## **Nevsun Resources Ltd.**

Acted for Nevsun Resources Limited in defending cross-border securities class actions in Canada and the United States. This litigation was resolved successfully following mediations in New York and Los Angeles.

## **National Energy Corporation**

Acted for National Energy Corporation (operating as National Home Services) with respect to a private action before the Ontario Superior Court concerning allegations of misleading advertising contrary to the *Competition Act*. The claim was brought by Reliance Comfort Limited Partnership, a competitor to National

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and a respondent in proceedings before the Competition Tribunal in one of Canada's significant abuse of dominance cases.

### **Stingray Group Inc.**

Acted for Stingray Group Inc. in a \$50-million claim against its franchisor in a fast-tracked action before the Commercial List of the Ontario Superior Court of Justice.

### **Syndicate of underwriters**

Acted for a syndicate of underwriters in defending a securities class action in the Superior Court of Ontario arising from the IPO of Zungui Haixi Corporation, a China-based issuer.

### **Ontario Lottery and Gaming Corporation**

Acted successfully for Ontario Lottery and Gaming Corporation and the operators of Fallsview Casino in obtaining summary judgment dismissing a \$14 million claim alleging irregularities with the roulette gaming at Fallsview Casino.

### **Domino's Pizza of Canada Ltd.**

Acting for Domino's Pizza of Canada Ltd. in connection with various matters, including a precedent setting motion concerning discovery rights.

### **Coventree Inc.**

Acted for Coventree Inc. in defending enforcement proceedings brought against Coventree and two of its officers by Staff of the Ontario Securities Commission following the collapse of the \$35-billion asset-backed securities market in August 2007. A number of allegations made against Coventree were dismissed following a lengthy trial at the OSC. This was the only matter that proceeded to trial following the collapse of the ABCP market in 2007.

### **MI Developments, Inc.**

Acted for MI Developments, Inc. (MID) in its successful defence of applications made by minority shareholders of MID to the Ontario Securities Commission by seeking orders denying MID the use of various securities law exemptions and seeking to require MID to obtain minority shareholder approval before proceeding with proposed related party transactions with Magna Entertainment Corp.

### **Barrick Gold Corporation**

Acted for Barrick Gold Corporation in defending successfully claims asserted against Barrick by Newmont Mining Corporation (now known as Newmont Goldcorp Corporation) and St. Andrew Goldfields Ltd. in respect of royalty and other agreements entered into in conjunction with the sale of a sizeable operating mine in Northern Ontario. The claims asserted against Barrick were dismissed following a highly expedited trial in the Superior Court of Ontario that was conducted in the absence of pleadings and discoveries.

### **Eugene Melnyk**

Acted for Eugene Melnyk, the founder of Biovail and the owner of the Ottawa Senators, in defending enforcement proceedings before the Ontario Securities Commission arising from an "earnings warning" issued by Biovail in 2003. This case resulted in a lengthy trial before the OSC, following which many of the allegations made against Mr. Melnyk were dismissed.

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## **Merrill Lynch Canada Finance Company**

Acted for Merrill Lynch Canada Finance Company in its renewal of its \$5-billion medium term note program.

## **BHP Billiton**

Acted for BHP Billiton in connection with its \$274-million all-cash acquisition of Anglo Potash Ltd. by way of a plan of arrangement.

## **Pioneer Metals Corporation**

Acted in the successful representation of Pioneer Metals Corporation (a wholly owned subsidiary of Barrick Gold Corporation) in connection with a dispute over a multi-billion dollar mining project at Galore Creek, one of the largest undeveloped copper-gold-silver projects in North America.

## **MI Developments Inc.**

Acted for a subsidiary of Magna International Inc. in defending successfully a precedent-setting oppression application brought against it before the Ontario Superior Court by Greenlight Capital Corporation and its founder, David Einhorn. Magna prevailed at trial, as well as on appeal in the Divisional Court of Ontario and Ontario Court of Appeal.

## **Xstrata plc**

Acted for Xstrata plc in its unsolicited takeover bid for Falconbridge Ltd. valuing Falconbridge at \$24.1 billion. At the time of announcement, this transaction was the largest unsolicited takeover bid ever made in the global mining sector and its successful completion made Xstrata the world's fifth-largest mining company.

## **RECOGNITIONS**

*Chambers Canada: Canada's Leading Lawyers for Business*—Litigation, General Commercial: Ontario

Litigation Counsel of America, Fellow

*Lexpert Rising Stars: Leading Lawyers Under 40*

Benchmark Litigation Canada Awards—Emerging Talent of the Year Award (2018)

Benchmark Litigation Canada Awards—Impact Case of the Year (2019, 2023)

*Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms & Attorneys*—Commercial (Litigation Star); Securities (Litigation Star)

The Canadian Law Awards—Commercial Litigation Team of the Year (2023)

*The Best Lawyers in Canada*—Class Action Litigation; Corporate and Commercial Litigation

*The Legal 500 Canada*—Dispute Resolution: Ontario (Leading Partner)

*Lexpert Special Edition: Litigation*

Telfer School of Management—Young Achievers Award (2019)

*The Canadian Legal Lexpert Directory*—Class Actions; Litigation: Corporate

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Commercial; Litigation: Securities

*Who's Who Legal: Commercial Litigation*—Commercial Litigation; *Who's Who Legal: Canada*—Commercial Litigation

*Law360 Canada*—Top Business Decision (2023)

Chambers Canada Award—Litigation Firm of the Year (2018)

*Chambers Canada: Canada's Leading Lawyers for Business*—Litigation, General Commercial Department: Ontario (Band 1 for firm)

## INSIGHTS

Ontario Bar Association, 12th Annual Professionalism Issues for Business Lawyers, "Advising Boards of Directors: Best Practices for Managing Conflicts of Interest and Effective Use of Special Committees"; Toronto, ON  
Dec. 05, 2024

Making a Profit Is Not Illegal: Capital Markets Tribunal Dismisses Enforcement Proceedings Finding Borrowed Free Trading Shares Remain Unaffected By Pledge of Restricted Shares  
Nov. 11, 2024

Interview, *The Globe and Mail*, "Tribunal dismisses OSC allegations of abusive short-selling against Cormark, citing 'overreach'"; Web Publication  
Nov. 11, 2024

Québec Court Tackles Novel Issues During Approval of the Second Remediation Agreement (a.k.a. Deferred Prosecution Agreement) Under the Canadian *Criminal Code*  
May 23, 2023

Davies Governance Insights – September 2022, contributor  
Sept. 06, 2022

If It Ain't Broke... Davies Comments on Draft Capital Markets Act  
Feb. 25, 2022

OECD Report: The Role of Corporations in Fighting White Collar Crime Enablers  
Apr. 12, 2021

The Advocates' Society, "Top Cases in Commercial Litigation"; Webcast  
Feb. 25, 2021

Buyer Beware: In Canada's First COVID-19 "Busted Deal" Decision, Court Finds That Duo Bank Cannot Terminate Its Acquisition of Fairstone Financial  
Dec. 15, 2020

Davies Highlights Concerns with Proposals to Modernize Ontario's Capital Markets  
Sept. 09, 2020

## EDUCATION

University of Western Ontario, LLB (with Distinction, Dean's List), 2005  
University of Ottawa, BComm (English & French) (Cum Laude), 2002

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## **PROFESSIONAL AFFILIATIONS**

ICC FraudNet  
Ontario Bar Association  
The Advocates' Society  
Toronto Lawyers Association

## **COMMUNITY INVOLVEMENT**

Minor hockey, volunteer goalie coach  
Ontario Securities Commission, Litigation Assistance Program, volunteer counsel  
The Advocates' Society, Commercial Litigation Practice Group, former Co-Chair  
University of Ottawa, Executive Mentorship Program