



SCOTT KUGLER


Partner


National Lead - Class Action Defence Group (Canada)

National Lead - Commercial Litigation Practice Group (Canada)

Speaks: English

Year of Call: 2001 - Ontario

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Scott Kugler

Scott Kugler is a partner in Gowling WLG's Toronto office, and head of the firm's national Class Action Defence Group and its national Commercial Litigation Practice Group.

Scott's practice is focused on complex commercial disputes, including class actions

(primarily in the areas of securities, competition law/antitrust, and product liability), shareholder disputes, claims against directors/officers and multi-faceted corporate litigation often involving the oppression remedy. He also has considerable experience handling broker/dealer disputes (civil and regulatory), product liability cases, franchise disputes, and dealer/distributor disputes.

Complex cases require creative approaches to achieve the best possible outcomes. Scott prides himself on being able to get to the heart of a case quickly and develop a strategy that will maximize his client's chances of success. His focused and practical approach has resulted in his clients obtaining excellent outcomes through litigation, negotiation, mediation, arbitration, or a combination of them depending on the nature of the dispute and the client's preferences.

Scott Kugler is "particularly skilled and knowledgeable at advancing litigation while remaining commercially-minded." *Chambers (Canada)*

Scott also understands that the process is important to clients. He is trusted by his clients to provide clear, timely and practical advice. He works closely with clients to ensure that they understand the issues as well as the strategy for achieving the best possible outcome in the circumstances.

Scott is a Chambers (Canada)-ranked lawyer in the area of Dispute Resolution: Class Action (Defence). He has also been recognized by Lexpert for securities litigation, class actions, corporate commercial litigation and mining litigation, Legal 500 for dispute resolution, Benchmark Canada for class actions, and The Best Lawyers in Canada for corporate commercial litigation and class actions. In 2014, he was included on Lexpert magazine's list of Rising Stars: Leading Lawyers Under 40 for 2014.

Expertise

Financial Institutions & Services

Retail, Leisure & Hotels

Natural Resources

Automotive

Competition Law & Antitrust

Private Equity

Class Actions

Commercial Litigation

Product Liability

Insurance & Professional Liability

International Arbitration

Securities Litigation

Career & Recognition

2020

September
Chambers Canada 2021

August
Best Lawyers in Canada 2021

April
Canadian Legal Lexpert Directory 2020

March
Lexpert Special Edition: Mining 2020

2019

November
Legal 500 Canada 2020

September
Chambers Canada 2020

August
The Best Lawyers in Canada 2020

April
Canadian Legal Lexpert Directory 2019

2018

December
Legal 500 Canada 2019

September
Lexpert's Leading Canadian Lawyers in Global Mining 2018/2019

August

The Best Lawyers in Canada 2019

April

Canadian Legal Lexpert Directory 2018

2017

December

Legal 500 Canada 2018

September

Lexpert's Leading Canadian Lawyers in Global Mining 2017/2018

August

The Best Lawyers in Canada 2018

May

Canadian Legal Lexpert Directory 2017

2016

November

Legal 500 Canada 2017

September

Lexpert's Leading Canadian Lawyers in Global Mining 2016/2017

August

The Best Lawyers in Canada 2017

June

Canadian Legal Lexpert Directory 2016

April

Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms &
Attorneys 2016

2015

October

Lexpert's Leading Canadian Lawyers in Global Mining, 2015-2016

September

The Best Lawyers in Canada 2016

July

Canadian Legal Lexpert Directory 2015

April

Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms &
Attorneys 2015

2014

December

Lexpert 2014 Rising Stars: Leading Lawyers Under 40

September

The Best Lawyers in Canada 2015

July

Canadian Legal Lexpert Directory 2014

April

Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms &
Attorneys 2014

2001

Year of Call, Ontario

Osgoode Hall Law School, LLB

University of Toronto, BA in Economics

Memberships

- American Bar Association
- Canadian Bar Association
- Ontario Bar Association
- The Advocates' Society

Representative Work

Securities:

- **SNC-Lavalin Class Actions:** Defended the former CEO of SNC-Lavalin in class actions in Ontario and Quebec. Investors sued the company and its officers and directors for approximately \$1 billion in under secondary market liability legislation. They alleged damages caused by misrepresentations in various SNC-Lavalin public documents. The action was certified as a class action, but with a much narrower scope than the plaintiffs sought in the Statement of Claim. The defendants were successful in defeating a motion by plaintiffs to amend the Statement of Claim and defeating a motion for leave to appeal from that decision. The claim has been settled.
- **Penn West Class Actions** - Defended Penn West Petroleum and a number of current and former directors and officers of the company against multiple shareholder class actions in Canada. A parallel class action was commenced in the United States. Shareholders claimed to have suffered damages as a result of a drop in the stock price that occurred after the company announced, among other things, that it would be restating some of its financial statements. The claim has been settled.
- **Poseidon Class Actions:** Defended Poseidon and its directors and officers against class actions and multiple other actions in which shareholders assert both primary and

secondary market claims arising from the company's announcement that approximately \$100 million in revenue was improperly recognized. Class actions were commenced in Alberta, Ontario, Quebec and New York. The Poseidon litigation also involved CCAA proceedings and regulatory proceedings. The claim has been settled.

- **Colt Resources Class Action** - Defending Colt Resources and two of its directors against a shareholder class action alleging that the company failed to make timely disclosure of a material change and subsequently made misrepresentations in its disclosure documents. The plaintiffs were granted leave to proceed with claims under s. 138.3 of the Securities Act, but with a much narrower scope than the plaintiffs sought in the Statement of Claim.
- **Convertible Debenture Pricing** - Represented a hedge fund in a dispute with the issuer of convertible debentures concerning the conversion price of the debentures. Our client was entirely successful in obtaining a court order requiring the issuer to pay the conversion price that our client had sought.
- **Disclosure / Insider Trading** - Represented a publicly traded company in a regulatory investigation in which the OSC alleged that the company's disclosure was deficient and that some of its key executives traded while in possession of material undisclosed information. Ultimately, proceedings were not commenced.
- **Insider Trading** - Represented the President of a public company in proceedings commenced by the OSC in which it was alleged that he had traded while in possession of material undisclosed information. A settlement was approved by the OSC in a decision that is widely cited as setting out the applicable principles for a settlement approval hearing.
- **Investment Advisors** - Represented multiple investment advisors and portfolio managers at a leading Canadian financial institution in a regulatory matter involving IIROC. Our clients were entirely successful in concluding the matter without formal proceedings being commenced any of them.
- **Investment Advisor** - Represented investment advisor at an established securities dealer in regulatory proceedings relating to allegations that the broker had failed to properly advise certain clients and had entered into private dealings with those clients. The proceedings were settled.
- **Dealer Liability** - Represented a securities dealer in multiple civil proceedings by investors who lost considerable sums of money as a result of investing in an unapproved product that was brought to their attention by some of the dealer's representatives. These actions were settled.
- **Greenstar Class Action** - Defended four former officers and directors of Greenstar

against a class action in Ontario alleging misrepresentation in its offering documents relating to its operations in China. The claim has been settled.

- **Barkerville Class Action** - Defended Barkerville and two of its former directors and officers against a securities class action relating to alleged misrepresentations concerning geological reports issues in regard to the company's mining properties. The claim has been settled.
- **Armtec Class Actions** - Defended a publicly traded infrastructure company and its directors and officers in class actions commenced in Ontario and Quebec by primary and secondary market investors for approximately \$100 million. The plaintiffs alleged that the prospectus and certain public statements contained misrepresentations about the sustainability of the company's dividend. The claim has been settled.
- **Atlas Cold Storage Class Action** - Defended the CFO of a publicly traded income trust in a class action commenced in Ontario by primary and secondary market investors for approximately \$343 million. The plaintiffs alleged that the prospectus, as well as various financial statements and press releases, contained misrepresentations about the finances of the income trust. The claim has been settled.
- **Portus Class Action** - Defended four investment dealers in class actions commenced by investors for an unspecified amount that was expected to be close to \$100 million. The plaintiffs alleged that the Portus hedge fund was a sham and that the investment dealers were complicit in the furtherance of the sham. The defendants were successful in striking out most of the claim on a preliminary motion, following which a settlement was reached.
- **YBM Magnex Class Action** - Defended the former auditor of YBM Magnex in two class actions commenced by primary and secondary market investors for approximately \$360 million. The plaintiffs alleged that YBM Magnex was used to carry out a multi-layered conspiracy and fraud for several purposes including obtaining improper gains by financial statement misrepresentation and manipulation. The actions were settled by all defendants prior to certification.

Competition / Anti-Trust:

- **"Capacity" Class Actions** - Representing a U.S. airline in class actions commenced in multiple jurisdictions in Canada in which plaintiffs allege that the defendant airlines conspired to limit the increase in capacity in the airline industry in order to drive higher prices and higher margins.
- **"Fuel Surcharge" Class Actions** - Representing a U.S. airline in class actions commenced in Ontario on behalf of all persons who purchased a ticket for trans-Atlantic

or trans-Pacific air travel. The plaintiffs allege that the defendants participated in a worldwide price-fixing conspiracy in relation to fuel surcharges that were applied to airline tickets. The plaintiffs have claimed approximately \$200 million in damages.

- **"Prescription Drug" Class Action** - Defending a drug company in a class action in Federal Court commenced by consumers in Canada who purchased prescription drugs that they allege were priced at higher than competitive levels due to an alleged price-fixing conspiracy between drug companies.
- **"Drywall" Class Actions** - Defending a leading US drywall manufacturer against class actions in Ontario and Quebec relating to an alleged conspiracy to increase the price of drywall throughout North America.
- **"Resistors" Class Actions** - Defending a Japanese based resistor manufacturer against a class action in Ontario relating to an alleged conspiracy to increase the price of resistors throughout the world.
- **"LCD" Class Actions** - Represented a Taiwanese manufacturer of LCDs in class actions commenced in Ontario and B.C. on behalf of direct and indirect purchasers of LCDs. The plaintiffs alleged that the defendants participated in a worldwide price-fixing conspiracy in relation to LCDs. The plaintiffs claimed approximately \$150 million in damages. The action has been settled.
- **"Consumer Product Engines" Class Actions** - Represented an international manufacturer and distributor of consumer product engines in class actions commenced in Ontario and Quebec on behalf of all persons who purchased engines or products containing the engines. The plaintiffs allege that the manufacturer falsely advertised the attributes of the engines.
- **"SRAM" Class Actions** - Represented a U.S. manufacturer of SRAM in class actions commenced in Ontario, Quebec and B.C. on behalf of direct and indirect purchasers of SRAM. Plaintiffs alleged that the defendants participated in a worldwide price-fixing conspiracy in relation to SRAM and claimed approximately \$400 million in damages. In advance of the certification motion, the plaintiffs brought a motion for production by the defendants of unredacted materials in their possession from the parallel U.S. proceeding. The defendants successfully resisted this motion, as well as a similar motion in the U.S. The action has been settled.
- **"Automotive Cross Border Pricing Disparity" Class Actions** - Represented a leading automobile manufacturer in a class action commenced in Ontario on behalf of all persons who purchased automobiles in Canada at prices higher than were available in the US. We were entirely successful in negotiating a dismissal of the action against our client.

Shareholder / Partnership Disputes

- **Share Valuation Dispute** - Defending a public company in a valuation dispute with a former C-Suite shareholder regarding the price at which the shareholder was required to sell its shares to the company.
- **Dispute re Issuance of Convertible Debt to Related Parties** - Defending the directors and officers of a leading water purification company against a claim commenced by minority shareholders claiming that a convertible debt issuance was oppressive and breached statutory requirements applicable to non-arms' length transactions.
- **M&A Dispute re Earnout Payments** - Representing the vendors in a dispute with the purchaser of a large consumer products business involving a dispute over the interpretation of the transaction documents relating to Earnout calculations.
- **M&A Dispute re Obligation to Close** - Representing the vendor in a dispute with the purchaser about whether the conditions for closing had occurred. Through effective negotiation, the purchaser backed off insisting on closing saving our client millions of dollars.
- **M&A Dispute re Misrepresentations** - Defending a company and its principals against a claim brought by the purchasers of the defendant company's pharmacy business. The purchasers claimed that certain representations were false and that certain covenants were not fulfilled.
- **M&A Dispute re Reps and Warranties Insurance** - Assisting an insurer to investigate and defend claims against its R&W insurance policy dealing with alleged breach of representations in the purchase agreement.
- **M&A Advisory** - Advisory work for a leading underwriter with respect to its domestic obligations to clients and third parties for the purposes of an international arbitration.
- **Oppression on Business Shut Down** - Defending the majority shareholder, and the directors and officers, of a national automobile repair business against claims of oppression by minority shareholders who allege that the business was shut down without their approval and contrary to statutory requirements.
- **Real Estate Company** - Defending multiple shareholders of a leading real estate and development company in a shareholder dispute involving the oppression remedy.
- **Real Estate Company** - Working with a 50% shareholder of a very significant real estate company to avoid litigation by restructuring the business to provide for a separation of the owners' interests.
- **Tier 1 Automotive Supplier** - Representing a shareholder of a Tier 1 automotive

supplier in an action involving claims of wrongful dismissal and oppression.

- **Shareholder Activism** - Represented Land & Buildings Investment Management LLC, a high profile activist investor, in an urgent proceeding at the Ontario Securities Commission (OSC) to contest a decision of the Toronto Stock Exchange that would have permitted Hudson's Bay Company to complete a very complex and dilutive share issuance within the context of a multi-billion dollar transaction. Our client was entirely successful in the only contested motion argued at the OSC and subsequently negotiated a settlement.
- **Private Health Care Company** - Represented a key shareholder of a private health care company in a dispute with its other key shareholder over the management and control of the company. The dispute was resolved prior to court proceedings being commenced.
- **Private Health Care Company** - Represented shareholders of a closely-held private health care company in a dispute with other shareholders who had joined the company as a result of a merger. The unanimous shareholders' agreement did not contain a buy-sell provision or other contractual mechanism that would allow for the resolution of the shareholder dispute, but we obtained a court order forcing the other shareholders to sell their shares to our clients. The terms of sale were resolved out of court.
- **Building Supply Company** - Defended one of the partners of a partnership in a dispute with its former partner regarding the validity of a buy-sell offer and the conduct of the partners in relation to the buy-sell offer. The former partner applied to the court for an injunction to block the buy-sell offer from closing but we successfully resisted that motion and the transaction was completed.

Privacy

- **Privacy Class Action** - Defending a leading technology company in a class action by consumers who claim that mobile phone companies had access to, and accessed, their user information and confidential data under alleged data sharing agreements with Facebook.
- **Privacy Class Action** - Defending a leading cloud storage and services company in a class action by customers of a financial institution whose data was accessed in a cyberattack on the financial institution.

Insurance

- **HST Class Action** - Defending a leading insurer in a class action by policy holders alleging that their SABS benefits were incorrectly calculated due to alleged inclusion of

HST in benefits calculations. Our client was entirely successful in having the claim struck out on jurisdictional grounds.

Municipal

- **Highway Class Action** - Defending a municipality in a class action by persons who were involved in accidents on a highway alleging that the highway was unsafe for vehicular use.

Corporate Commercial Disputes

- **Employment Class Action** - Defended a leading technology company in a class action by couriers who claim to be employees rather than independent contractors.
- **Renewable Energy** - Defending a renewable energy company and its directors against a claim by a minority shareholder claiming oppression by the majority shareholder and by the directors and breach of an unsigned "agreement".
- **Condominiums** - Defending a condominium corporation and its directors against a claim by multiple large tenants in respect of a dispute over the parking arrangements at the location and over the tenant's desire to erect a pylon site.
- **Employment** - Defended a prominent sports club against a claim brought by a member who was challenging the club's decision to suspend his membership for breach of the club's rules.

Franchise Disputes

- **Disclosure** - Defended multiple claims against franchisors against the of franchisees and former franchisees relating to alleged misrepresentations and deficiencies in the disclosure documents.
- **Disclosure** - Represented the first franchisee in a newly established franchise business in a rescission claim against the franchisor relating to alleged deficiencies in the disclosure document. A settlement was achieved.
- **Disclosure / Misrepresentations** - Defended an individual who is alleged to be a franchisor's associate in a claim by a franchisee relating to alleged deficiencies in the disclosure document as well as alleged misrepresentations made prior to entering into the franchise agreement. A settlement was achieved.
- **Real Estate** - Represented a franchisor in a dispute with a former franchisee concerning land control over the former franchise location. The court enforced our client's rights under a land control agreement with the former franchisee and awarded our client control over the property. The decision was upheld by the Court of Appeal.

Administrative Law

- Judicial Review - Represented the manufacturer of Chobani Greek yogurt in a high profile dispute regarding a test marketing permit that had been issued by the Minister of International Trade that allowed limited quantities of Chobani to be imported into Canada duty-free. The applicants contended that the import permit was unreasonable because the imports threatened Canada's supply management system and argued to have the import permit struck down. The court dismissed the applications and ruled that the applicants all lacked standing.