

The Honourable Clifton D. O'Brien, Q.C.

Commercial Arbitration; ADR



Cliff O'Brien

Commercial Arbitration; ADR

Office 403-259-8507
Cell 587-897-0579
Email obriencl@shaw.ca

600, 440 – 2nd Ave. S.W.
Calgary, AB T2P 5E9

Cliff O'Brien served as a member of the Courts of Appeal of Alberta, the Northwest Territories and Nunavut from 2005-2014. He previously carried on a litigation practice in the courts and in commercial arbitration. He was the senior litigation partner in Bennett Jones, a national law firm, and was chairman of the law firm for seven years.

Cliff obtained his law degree (LL.B. with distinction) from the University of Alberta in 1962. He was awarded the Chief Justice Horace Harvey Gold Medal in Law.

Cliff articulated with the firm of Bennett Jones in Calgary, then known as Chambers, Might, Saucier, Peacock, Jones, Black & Gain. He was admitted to the partnership in 1971, and subsequently served as head of the litigation department and chair of the firm's executive committee. For more than 40 years he practised in the area of civil litigation, appearing regularly before all the courts of Alberta, the Supreme Court of Canada, the federal courts, and the courts of Ontario, British Columbia, and the Northwest Territories. As well, he frequently appeared before regulatory tribunals, such as the Competition Bureau and the National Energy Board. In the latter years of his practice, he was extensively involved in commercial arbitrations, sometimes as counsel and other times as an arbitrator.

Cliff was designated a Queen's Counsel in 1980, and in 1987 was elected a Fellow of the American College of Trial Lawyers. In 2002, Lexpert named him as one of Canada's top 25 corporate litigators.

Cliff served as a bencher of the Law Society of Alberta from 1980 - 1984, and was a representative of the Law Society on the Rules of Court Committee, and a member of the Practice Advisory Committee. He has been a panellist and lecturer at professional seminars conducted by the Legal Education Society of Alberta and by the Alberta Branch of the Canadian Bar Association. He was a founding member and Trustee of the Sheldon Chumir Foundation for Ethics in Leadership, and has served as a member of a number of community and charitable organizations.

Since his retirement from the Court, Cliff practices as an independent commercial Arbitrator and Mediator. He is a member of the Calgary Energy and Commercial Arbitrators ("CECA"), an association of independent arbitrators and mediators. CECA provides parties with access to leading arbitrators and mediators based in Calgary, each of whom has long expertise in arbitration and other forms of dispute resolution. CECA arbitrators focus particularly on issues involving the energy industry but more generally involving commercial disputes of all types. Members of the CECA are available to accept appointments to either arbitrate or mediate disputes, (www.calarbs.com).

ADR Experience and Qualifications

- As a judge, Justice O'Brien was involved in dealing with several hundred appeals on a wide variety of issues. The Alberta Court of Appeal hears appeals from trial courts in Alberta, as well as from various tribunals including the Alberta Utilities Commission and the Alberta Securities Commission.

- Before his appointment to the Courts, Cliff was involved either as a counsel or an arbitrator in numerous complex commercial arbitrations involving very substantial claims. The disputes related to matters of contractual interpretations, insurance claims, force majeure, property rights and rental rates, natural gas pricing, telecommunications including internet, etc.
- As counsel conducting civil litigation, Cliff acted in commercial and business disputes of all types. He was particularly involved in the restructuring of energy and property companies under the Companies' Creditors Arrangement Act (CCAA).

Representative Cases acting as counsel before appointment

1. *ATCO Gas & Pipelines Ltd v Alberta (Energy & Utilities Board)*, [2006] 1 SCR 140, 2006 SCC 4, [2006] SCJ No 4
(property rights upon withdrawal of assets from rate base)
2. *Petrogas Processing Ltd v Westcoast Transmission Company Ltd*, 1989 ABCA 66, [1989] 4 WWR 272, 66 Alta LR (2d) 254, 95 AR 112
(take or pay obligations under a gas purchase agreement)
3. *BPI Resources Ltd v Merrill Lynch Canada Inc*, 1989 ABCA 106, 67 Alta LR (2d) 97, 95 AR 211
(securities issues)
4. *Premji v Amoco Acquisition Company Ltd*, 1988 ABCA 273, 61 Alta LR (2d) 279, 92 AR 155
(restructuring and arrangement under the Canada Business Corporations Act); Leave to Appeal to the SCC denied: [1988] SCCA No 297.
5. *McNamara Construction et al v The Queen*, [1977] 2 SCR 654, 75 DLR (3d) 273; 13 NR 181
(contract and constitutional issues)

6. *Ellis v Friedland*, 2000 ABQB 657, [2001] 2 WWR 130; 273 AR 35, 88 Alta LR (3d) 133
(interpretation of employment contract)
7. *Norcen International Ltd v Suncor Inc*, 1986 ABCA 22, 42 Alta LR (2d) 413, 67 AR 34
(oil sands royalty dispute)
8. *Fidelity Management v Gulf Canada Resources Ltd*, [1996] OJ No 2508, 27 BLR (2d) 135,
64 ACWS (3d) 328
(dividend/ preference shares issues under Canada Business Corporations Act)
9. *Klewchuck v Switzer*, 2003 ABCA 187, [2003] 11 WWR 284, 19 Alta LR (4th) 15, 330 AR
40, 36 BLR (3d) 114
(business dispute/ frustration of contract)
10. *Canada (Director of Investigation and Research) v Air Canada*, [1994] 1 FC 154, [1993]
FCJ No 721; Leave to Appeal to the SCC denied: [1993] SCCA No 344.
(administrative law, competition law; jurisdiction)
11. *Banco Ambrosiano Holdings S.A. v. Dunkeld Ranching Ltd (Alta CA)*, [1987] AJ No
1151, 85 AR 278; Leave to Appeal to the SCC denied: [1988] SCCA No 127.
(tracing, Mareva injunctions and Anton Pillar orders)
12. *Alberta (Attorney General) v. Westcoast Energy Inc*, [1997] FCJ No 77, [1997] ACF no
77, 208 NR 154.
(jurisdictional issues in respect to construction and operation of a natural gas pipeline)

Representative Clients

Among the clients Cliff represented before his appointment to the Alberta Court of Appeal were Shell Canada, Suncor, Petro Canada, Encana, B.P. Canada, Atco, TransAlta, Westcoast Transmission, Trans Mountain Pipeline, Nova Chemicals, Agrium, Ernest & Young, Royal Bank of

Canada, Canadian Imperial Bank, Bank of Montreal, Dominion Securities, Merrill Lynch, and West
Edmonton Mall.