



Mitch Koczerginski

Associate
Toronto

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education and year of call

- Called to the Ontario bar - 2015
- University of Ottawa, J.D., *cum laude* - 2014
- Michigan State University, J.D., *cum laude* - 2014
- University of Western Ontario, B.A. (Philosophy) - 2010

practice areas

privacy and data protection
business litigation
construction litigation
defamation and libel
freedom of information and access to information
cybersecurity
franchise and distribution
franchising and distribution disputes
litigation
leasing
construction

industries

construction
commercial real estate
franchising and distribution
manufacturing, distribution and retail

profile

Mitch is an associate in the Advocacy and Litigation Group. He practices corporate and commercial litigation with a focus on franchising and distribution, construction and commercial real estate disputes.

Mitch routinely represents franchisors in rescission claims brought by franchisees. Mitch also has extensive experience advising foreign and domestic manufacturers and distributors following the termination of distribution agreements. He has handled a number of termination disputes, including those involving claims of wrongful termination, breach of contract, bad faith, fraud, misrepresentation, breach of non-compete and confidentiality covenants and licensing issues.

Mitch represents developers, landlords and tenants in commercial leasing and purchase and sale disputes. Mitch's experience also includes construction lien and breach of contract claims as well as negligence claims against design professionals.

Mitch also maintains a broad commercial litigation practice where he acts for financial institutions and other businesses. He has experience in bankruptcy, breach of contract, and fraud claims, among others. In addition to Canadian clients, Mitch routinely represents American and other foreign entities that are parties to disputes in Canada.

Further to his litigation work, Mitch has a strong background in privacy law and regularly advises and represents clients in connection with privacy and data breaches involving payment card information, personal information, health information and sensitive business information. Mitch has experience drafting and reviewing privacy policies, conducting privacy impact assessments and responding to access to information requests. Mitch has made a number of submissions to various provincial

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Privacy Commissioners as well as the Privacy Commissioner of Canada on a variety of matters, including breach reporting and access to information appeals.

Mitch joined the firm as a summer student and articulated with the firm before his call to the Ontario bar in 2015. He received his BA from the University of Western Ontario and a JD from both the University of Ottawa and Michigan State University.

directorships and professional associations

- Franchise Law Section Executive for 2018-2019
 - Appointed as Newsletter Editor

representative matters

Representative litigation matters that Mitch has been involved in:

- Representing a commercial landlord in response to an application for relief from forfeiture following a tenant's failure to exercise an option to renew a lease in accordance with its terms.
- Representing a subcontractor in a construction dispute against a general contractor and municipal owner.
- Representing a Canadian business in a dispute regarding the sale of livestock to a U.S. purchaser.
- Defending a corporation and certain officers and directors in an oppression action commenced by a director and shareholder.
- Defending a general contractor in a construction dispute regarding the alleged non-return of rental equipment at the conclusion of a construction project.
- Defending a general contractor in a construction dispute regarding the alleged non-payment of extras charged in connection with a construction project.
- Representing an employer in a dispute against its employee benefits provider for charges incurred by non-employees.
- Representing a creditor in a dispute against a debtor for enforcement of a demand promissory note.
- Representing a subcontractor in a dispute against a general contractor for non-payment following the failure of a municipality to grant necessary permits in connection with a development.
- Defending a manufacturer in a product liability dispute regarding alleged product defects resulting in significant damage to personal property.
- Defending a mining company in a dispute regarding royalties

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allegedly due pursuant to a Net Smelter Royalty Agreement.

- Defending an owner and general contractor in a construction lien action commenced by a subcontractor alleging damages resulting from a change in the scope of the subcontract.
- Representing an auto-recycling company in a dispute against a seller of auto parts that were not as valuable as initially represented.
- Defending a franchisor against a franchisee purporting to rescind the franchise agreement on the basis that the franchisor provided a deficient disclosure document.
- Representing a Canadian distributor against a US supplier following the termination of the distribution agreement without providing sufficient notice of termination.

Reported decisions that Mitch has been involved in:

- Subway Franchise Restaurants v. BMO Life Assurance Co., 2020 ONSC 371
- *Singh v. PCPO*, 2018 ONSC 203
- *Dosanjh v. Maple Leaf Sports*, 2016 ONSC 8005

Representative privacy matters that Mitch has been involved in:

- Conducting privacy impact assessments to evaluate whether the business processes of an organization comply with FIPPA.
- Representing a government institution in an appeal before the Information and Privacy Commissioner of Ontario regarding an access to information request.
- Representing a corporation in an appeal before the Information and Privacy Commissioner of Ontario regarding an access to information request.
- Representing a government institution in an appeal before the Office of the Privacy Commissioner of Canada regarding an access to information request.
- Representing a corporation in an appeal before the Information and Privacy Commissioner of Ontario regarding an access to information request.
- Reviewing and drafting privacy policies for organizations conducting business in Canada.
- Representing the purchaser in its acquisition of a company in respect of privacy provisions in the share purchase agreement.

awards and rankings

- University of Ottawa Faculty of Law, Dean's list

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- Michigan State University College of Law, Dean's list

publications

May 28, 2020

The road to a "new normal": contact tracing and privacy considerations in Canada
Privacy and Data Protection Bulletin


May 13, 2020

9 Things You Should Do Right Now to Protect Your Franchise System During the COVID-19 Pandemic
Franchise and Distribution Bulletin

March 2020

Caught by Release: Franchisees Can't Have Their Cake and Eat It Too
Franchise and Distribution Bulletin

January 2020

Franchising in Canada: 2019 Year in Review 

November 2019

One-Year Anniversary of Mandatory Data Breach Reporting: Lessons the OPC Has Learned and What Businesses Need to Know
Privacy and Cybersecurity Bulletin

January 2019

The Privacy Commissioner's Guide to Protecting Personal Information in Cannabis Transactions
Privacy Bulletin

November 2018

A Word of Warning to Franchisors – ADR Provisions May Postpone the Limitation Period for Rescission
Franchise and Distribution Bulletin

November 2018

Trick or...Breach? PIPEDA's Breach Reporting Requirements Come Into Force on November 1, 2018
Privacy Law Bulletin

August 2018

Is your Privilege Protected? Ontario Court Revisits Doctrine of "Implied Waiver of Privilege" in Recent Decision
Litigation Bulletin

June 2018

SCC Says Judges Have No Business Reviewing Decisions of Voluntary Associations
Litigation and Administrative Law Bulletin

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May 2018

PIPEDA's Breach Reporting Requirements Finalized, to Come Into Force November 1, 2018
Privacy Bulletin

April 2018

Recent Privacy Concerns Call for Increased Transparency and Control
Privacy and Data Security Bulletin

March 2018

If Online Reputation is Everything, Who Wants a Do-Over?
Privacy Bulletin

October 2017

Cybersecurity – The Legal Landscape in Canada
Cybersecurity Bulletin

September 2017

Sneak Peek at PIPEDA's Breach Reporting Requirements - Proposed Regulations Released for Comment
Cybersecurity Bulletin

August 2017

Server Location Not Definitive in Determining Jurisdiction Over Foreign Defendant
Litigation Bulletin

July 2017

Release Me: Ontario Court of Appeal Clarifies When Franchisors Can Enforce Releases
Litigation Bulletin

June 2017

Supreme Court of Canada Turns the Other Cheek: Facebook's "Terms and Conditions" – Forum Selection Clause Unenforceable
Litigation and Privacy Bulletin

June 2017

Ontario Court of Appeal to Franchisors: "Comply with your disclosure requirements, or else..."
Litigation, Franchise and Distribution Bulletin

May 2017

Changing Workplaces Review Final Report – Who Must Bargain with Franchise Employees?
Business Law, Labour and Employment, Franchising and Distribution Bulletin

January 2017

Are You Ready for CASL's Private Right of Action?
Privacy and Class Action Bulletin

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December 2016

The Cybersecurity Implications of Driverless Cars
Cybersecurity Bulletin

November 2016

"Going Dark" – No Easy Answers on the Cybersecurity Horizon
Cybersecurity Bulletin Canadian Corporate Counsel, Volume 25, Number 7 Watch a video synopsis of this article here

August 2016

A Good Liability Exclusion Clause Can Protect You From A Bad Termination Of Contract
Litigation Bulletin

May 2016

Cybersecurity and the Internet of Things
Article reprinted from the May 2016, Volume 13, Number 6 issue of Canadian Privacy Law Review; This article was first published in Canadian Corporate Counsel, a Thomson Reuters Canada publication

March 2016

Decrypting the iPhone - Everybody's Got Something to Hide, Except Me and My Monkey
Privacy and Cybersecurity Bulletin

February 2016

Introducing Safe Harbour 2.0: the EU-US Privacy Shield
Privacy Bulletin

February 2016

The Privacy Commissioner's Annual Report on the *Privacy Act*
Privacy Bulletin

February 2016

Can you keep a secret? The courts recognize a new tort for public disclosure of private facts
Privacy Bulletin
Internet and E-Commerce Law in Canada

December 2015

Who Drives Whom? Driverless Car Pilot Project to Hit the Road in Ontario in 2016
Automotive Bulletin

November 2015

Does "Privilege of the Law of Evidence" Include Solicitor-Client Documents?
Privacy Bulletin

November 2015

Bring Your Own Device ("BYOD") Programs: Strategic Considerations to Reconcile Security and Privacy Issues

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Privacy Bulletin

October 2015

Safe Harbour Not Safe Enough: Data Transfers From E.U. To U.S. Out To Sea
Privacy Bulletin

May 2015

Monitoring the Mayor – B.C. Mayor alleges that computer monitoring violated his privacy
Privacy Bulletin

September 2014

Bring Your Own Device (BYOD) – A Primer for Employers
Employment and Labour Bulletin

presentations

November 19, 2019

Access to Information Requests and Practical Considerations for Not-for-Profit and Charitable Organizations
OBA Charity and Not-For-Profit Law Program

November 14, 2017

Updates on the Case Law
McMillan's Second Annual Privacy, Cybersecurity and Data Protection Seminar, Toronto, Ontario