



## Benjamin M. Bathgate

Co-Chair, Fraud Law  
Co-Chair, White Collar Defence and Government Investigations  
Toronto

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ben.bathgate@mcmillan.ca

### education and year of call

- Called to the Ontario bar - 2005
- Dalhousie University, LLB - 2004
- Bucerius Law School (Hamburg, Germany) - 2003
- University of Toronto, BA (Hons. with High Distinction) - 2001

### practice areas

fraud law  
litigation  
business litigation  
franchise and distribution  
franchising and distribution disputes  
leasing  
appellate advocacy  
arbitration  
product liability  
defamation and libel

### industries

banking, finance and insurance  
manufacturing, distribution and retail  
franchising and distribution  
retail  
commercial real estate

### profile

Ben is a partner in the firm's Litigation and Dispute Resolution Group, and Co-Chair of the Fraud Law Group and the White Collar Defence and Government Investigations Group (ranked by *Chambers Canada*). He has been recognized by *Lexpert Canada* as a Leading Lawyer to Watch in the area of Corporate Commercial Litigation.

Ben's practice is focused on complex corporate and commercial litigation in the manufacturing, distribution and the banking and financial services industries. Ben has expertise in several specialized areas of litigation, including commercial fraud, transactional disputes, professional liability (D&O claims) and franchise disputes.

Ben is a co-editor and co-author of "*The Essential Guide to Settlement in Canada*" (published in 2013 by LexisNexis Butterworths Canada), a valuable practice manual designed for in-house counsel focused exclusively on the topic of settlement in Canada, which has been cited as an authoritative text by the Courts. Ben has presented extensively on this topic and regularly advises clients on settlement strategy, early case assessment and risk management. He is a co-lead of the firm's [Crisis Response Service](#) and the Commercial Litigation Presentation Series.

Ben has built a diverse client base including both foreign and domestic companies. His clients include retailers, consumer products manufacturers and distributors, franchisors, consulates, embassies, insurance companies, telecommunications companies and banking and financial services institutions.

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Ben has successfully represented clients at all levels of court in Canada, including the Court of Appeal for Ontario and the Supreme Court of Canada. Ben has also appeared as counsel in arbitrations and before various Boards and Tribunals.

Ben has been interviewed on changes in securities regulations and his writing on what is now Ontario's Apology Act has been considered in the Ontario Legislature and in legislative committees.

## directorships and professional associations

- Ontario Bar Association, The Franchise Law Section
- Canadian Franchise Association
- International Franchise Association
- The American Chamber of Commerce in Canada
- Advocates' Society

## representative matters

- Represented several former officers of Sino-Forest Corporation before the Ontario Securities Commission in one of Canada's largest ever securities fraud proceedings, spanning 180 hearing days and relating to \$3 billion in Canadian-raised capital;
- Defending a seller from US \$60 million in breach of representation and fraud claims arising from a US \$560 million share sale of an aerospace manufacturing company;
- Litigating claims totaling US \$125 million for breach of contract, breach of privacy/confidentiality and conspiracy, arising from a lease termination in one of the largest cinema projects in the Middle East;
- Represented a large merchant bank in prosecuting a \$30 million set of claims for fraud and conspiracy arising from a failed international wood processing joint venture;
- Prosecuted and succeeded at trial on a complex 12-year, multi-transfer fraudulent conveyance action seeking repayment on behalf of a European banking client and other creditors on debt totaling \$15 million;
- Defended a land development company and its officers from \$15 million in claims of fraud and oppression;
- Represented an international telecommunications company in defending a misleading advertising claim, which involved questions on the sufficiency of disclaimer language used on scrolling Internet pages;
- Represented an international insurer against a \$20 million

claim in a failed merger transaction;

- Represented a commercial restaurant tenant in obtaining a precedent-setting trial decision enforcing an oral lease and an oral option to purchase land against a landlord;
- Represented numerous national banking and retail clients in claims against landlords seeking to enforce restrictive covenants (including injunctive relief), recover operating cost payments and obtain rent abatements;
- Represented numerous landlords and commercial tenants in real estate and leasing disputes (including trials), involving remedies of specific performance, injunctive relief, damages, distress, bailment and relief from forfeiture;
- Defended numerous consumer electronics and household products manufacturers, wholesalers, retailers and distributors from breach of contract, occupier liability and product liability claims;
- Defended numerous franchisors and distributors from various claims, including claims: seeking rescission remedies for late or allegedly deficient disclosure; alleging failure to disclose material facts; alleging misrepresentations in the disclosure document or in the statement of material change; and for alleging breach of the obligation of fair dealing;
- Defended an internet advertising company and a large international insurer against oppression remedy and employment law claims brought by former managers and executives;

## **Representative Superior Court and Appellate Court Decisions**

- *Noranco v MidOcean Partners III*, (2019) ONSC 1173 (Ont. S.C.J.) — successfully obtained an indemnification order for the advance payment of a defendant officer's legal expenses, within a broader fraud proceeding.
- *Ewert v Denso Corporation*, (2017) BCSC 973 (BCSC) — defence counsel in settlement approval hearings for a national auto parts class action.
- *Bell Canada v. Cogeco Cable Canada*, (2016) ONSC 6044 (Ont. S.C.J.) – defended interlocutory and permanent injunctions on allegedly misleading advertising statements for a telecommunications client, and dealt with questions on the sufficiency of disclaimer language within Internet advertisements.
- *Bayerische Landesbank Girozentrale v. Rosen Ridge Farms Ltd., et. al.*, (2015) ONSC 27 (Ont. S.C.J.) – successfully obtained a trial decision in a complex fraudulent conveyance action, overturning a sham trust agreement and unwinding a

series of real property transfers.

- *Rehman International Ltd. v. Royal Bank of Canada*, (2013) CarswellOnt 9203 (Ont. S.C.J.) – successfully opposed an action seeking to realize upon fraudulent instruments, and succeeded in prosecuting the bank's counterclaim at trial and in piercing the corporate veil.
- *Thorne v. AXA Canada Inc. et. al.*, (2012) ONSC 2409 (Ont. S.C.J.) - successfully opposed a Divisional Court appeal seeking the right to examine the President and CEO of a large defendant insurer.
- *Lechuga 1 Ltd. v. Lettuce Eatery Development Inc.*, (2011) CarswellOnt 8213 (Ont. S.C.J.) – opposed an application brought by three franchisees under the Arthur Wishart Act (Franchise Disclosure) claiming rights of rescission for allegedly deficient disclosure and successfully obtained an order converting the application into an action.
- *Sigrist v. McLean*, (2011) CarswellOnt 14424 (Ont. S.C.J.) – successfully obtained a trial decision enforcing an oral lease and an oral option to purchase a commercial property, overturning an illegal distress and obtaining an award of damages, including punitive damages.
- *Batkov v. Starwood Industries Global Corp.*, (2010) CarswellOnt 10090 (Ont. S.C.J. Div. Ct.) – successfully opposed a Divisional Court appeal and upheld an order granting an administrative dismissal of a \$15 million action brought against a banking client, upholding a multi-million dollar share purchase transaction.
- *Sincies Chimentin S.p.A. (Trustee of) v. King* (2010) CarswellOnt 8996 (Ont. S.C.J.) – defended an action and a summary judgment motion seeking to enforce a foreign judgment in Ontario on grounds of jurisdiction, natural justice and public policy.
- *R.S.W.H. Vegetable Farmers Inc. and 1427868 Ontario Ltd. v. Bayerische Landesbank Girozentrale and Ontario Peninsula Farms Ltd.*, 2010 CanLII 69207 (S.C.C.) – successfully opposed an application for leave to appeal to the Supreme Court of Canada with respect to a proceeding under the Farm Debt Mediation Act, which sought to render null and void the enforcement of a registered bank charge.
- *Strassle Informationssysteme Holding GmbH (Trustee of) v. Sieber*, (2010) ONCA 604 (CanLII) (Ont. C.A.) – successfully defended a challenge to an Ontario Judgment enforcing a foreign banking client's award in Europe, and successfully opposed the subsequent appeal in the Court of Appeal for Ontario.
- *Bayerische Landesbank Girozentrale v. Sieber*, 2008 CanLII 28753 (ON S.C.) – successfully set aside an earlier

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dismissal of a complex fraudulent conveyance claim.

## awards and rankings

- Recognized in the 2019 Canadian Legal Lexpert Directory as a Leading Lawyer to Watch in the area of Litigation – Corporate Commercial

## media mentions

- "[OSC wants a more transparent fixed-income market](#)" by Allan Tony, June 26, 2015
- "Don't be tempted to tip." *Canadian Lawyer*, June 17, 2015

## publications

### May 2018

Guide to Tracing Assets Around the World 2018  
TerraLex

### June 2017

What's in a Name? When Profit Sharing "Insurance" is not Insurance under the *Insurance Act*  
Litigation Bulletin

### March 2015

The Perils of Ignoring Faulty Offers to Settle: Expanded Discretion under Rule 49  
Litigation Bulletin

### December 2013

The Essential Guide to Settlement in Canada  
LexisNexis Canada

### Winter 2013

*The Essential Guide to Settlement in Canada*  
Co-editor and Co-author, Published by LexisNexis Butterworths Canada

## presentations

### April 4, 2018

Unique Perspectives and Opportunities for "Big Data" - Predictive Analytics Program  
TerraLex Webinar

### November 21, 2017

Matter Management Platform and e-discovery Tools  
Client Presentation

### October 5, 2017

Effective Crisis Response: A multi-disciplinary perspective  
Association of Corporate Counsel

### May 2, 2017

Fraudulent Preferences and Conveyances: From Detection to



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Judicial Remedies  
ACFI Annual Fraud Conference, Toronto, Ontario

**January 25, 2016**

Commercial Lease Remedies in Canada  
Client presentation

**November 2015**

Managing your work and your time as a litigator  
McMillan junior associate training

**September 2015**

Commercial Lease Remedies 101  
McMillan Corporate Counsel Presentation

**May 2014**

Associate Career Development Planning  
McMillan in-house presentation

**March 2014**

Should it Stay or Should it Go? Document Management and  
Litigation Holds  
Client presentation

**March 2014**

An Overview of Franchise Law in Ontario:  
A Litigator Perspective  
Ontario Bar Association - Ontario/New York Legal Summit

**February 2014**

Franchise Law 101  
Client presentation