



Peter E.J. Wells, C.S.

Toronto

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education and year of call

- Called to the Ontario bar - 1978
- Queen's University, LLB - 1976
- Queen's University, B.Sc. (Hons. Chemistry and Mathematics) - 1973

practice areas

intellectual property

intellectual property litigation

patents

trademarks

copyright

industrial designs

licensing

confidential information

technology

cybersecurity

industries

food, beverage and agribusiness

pharmaceuticals

applied technology

mining

aviation

transportation

manufacturing, distribution and retail

profile

- Partner since 1981
- Certified by the Law Society of Upper Canada (the governing body for lawyers in Ontario) as a Specialist in Civil Litigation and Intellectual Property Law (Patents, Trade Marks, and Copyright).

For over 35 years, Peter Wells has practiced in the area of civil litigation with a principal focus on intellectual property and cases involving science and technology, such as product liability and environmental cases. He acts as trial and appeal counsel and provides advice and opinions in matters involving contracts relating to technology, intellectual property licenses and agreements including employment contracts for senior technical personnel, intellectual property in the academic setting, confidential information and trade secrets, infringement and validity issues relating to patents, trade-marks, copyrights, and industrial designs.

A number of Peter's cases have involved parallel litigation in other jurisdictions requiring co-ordination with counsel and experts in the United States, Britain, France, Germany and Japan. Peter has acted as counsel in several court applications to obtain evidence in Canada for use in foreign proceedings. He also defends charges under several federal and Ontario statutes including the *Food and Drugs Act*, the *Environmental Protection Act*, the *Occupational Health and Safety Act* and the *Fire Protection and Prevention Act*. Peter also acts as counsel in cases involving estates and trusts, including passing of accounts, applications for advice and directions, challenges to validity of wills, and variations of trusts.

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Peter Wells has appeared as counsel in the Federal Court, the Federal Court of Appeal, and at all levels of courts in Ontario, including the Ontario Court of Justice, the Ontario Superior Court and the Ontario Court of Appeal.

directorships and professional associations

- Advocates' Society
- Canadian Bar Association
- Ontario Bar Association
- Chemical Institute of Canada
- Intellectual Property Institute of Canada (Fellow)
- Toronto Lawyers' Association
- International Union of Pure and Applied Chemistry

representative matters

Peter Wells has represented clients ranging from individuals to major international corporations in a wide variety of disputes including:

Intellectual Property Litigation

- Action to enforce settlement of a copyright claim by a designer of a movie studio;
- Application to obtain declaration under s. 14 of the Copyright Act that estate of author owned the last twenty-five years of the copyright term (the reversionary interest) notwithstanding an outright assignment of the copyright;
- Established the ability to bring a trade-mark infringement proceeding by the simplified application process instead of an action after a successful appeal to the Federal Court of Appeal;
- Counsel in patent infringement actions concerning technologies such as farm equipment, abrasive materials, medical devices, pharmaceuticals and eye care products; chemicals and chemical processes; electronics and electrical systems; automated audience measurement technology, steel making, metal working and processing, lubrication technology; computers, information technology and computer software; video games; household products; personal care products; food products; biotechnology;
- Counsel in Industrial Design cases involving garden equipment, household appliances, bathtubs and furniture;
- Counsel in trade-mark and passing off cases including litigation concerning certification marks and official marks.

Commercial Litigation

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- Acted as counsel for a steel maker in a case brought by a manufacturer against several suppliers and subcontractors alleging that failure of products it manufactured was caused by defects in the steel supplied. There were several expert's reports which were contradictory. Peter obtained the agreement of all counsel to have all the experts attend together in a neutral metallurgical laboratory where they could ask the technician to perform tests which all them could observe together. As a result, the differences between the experts were resolved, and resulted in a conclusion that the product failures were not the result of defects in the steel, but improper processing during manufacturing;
- Application for judicial review in the Federal Court of a decision of the Federal government approving development in a wetland area designated under the Ramsar Convention;
- Trial of action for goods sold and delivered. Consignee of the goods alleged they had never been delivered and that the signature on the waybill was a forgery. Judgment obtained for vendor of goods by proving that the consignee had signed the waybill, but had attempted to disguise his signature;
- Defended financial institution in wrongful dismissal action – proved that employee had engaged in money laundering for relatives;
- Defended claim for alleged improper design of a chemical process which resulted in the plant not meeting design production levels;
- Trial concerning a \$300,000 Ferrari sold by one car dealer to a second dealer whose dealership was under the administration of its creditors. The purchasing dealer was eventually convicted of fraud regarding the transaction, but the creditors of the dealer claimed a prior security interest in the vehicles taken in trade by the selling dealer which entitled them to keep the proceeds of the sale of the Ferrari and to obtain the return of the vehicles taken in trade. Based upon the Bills of Exchange Act and the Personal Property Security Act the selling dealer was found to be entitled to retain the vehicles taken in trade, notwithstanding the security held by the creditors;
- Acted for Russian trader of goods in Ontario proceedings brought by a bank alleging that payments to the Russian trader were the proceeds of a fraud on the bank. Co-ordinated with Swiss lawyers where parallel criminal proceedings had been instituted by the bank. Established that the majority of the payments to the Russian trader preceded the fraud on the Canadian bank resulting in the bank discontinuing proceedings against the Russian trader;

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- Application for declaration whether changes to environmental regulations had retroactive effect with respect to decommissioning process of industrial land;
- Counsel at trial in action by homeowner whose basement was flooded with gasoline leaking from neighbouring gas bar;
- Counsel at trial in a case on behalf of a paint maker for libel against producers of a television programme which claimed that the product was unsafe;
- Counsel at trial in a case on behalf of a group of farmers whose land has been contaminated by emissions from a nearby factory.
- Counsel at trial and on appeal on behalf of a gold miner that had purchased a gold mine subject to a royalty agreement that was not as described in the purchase documents. Established that the purchaser was only responsible to indemnify the seller for the royalty obligation as described in the purchase documents, the seller was responsible for performance of the royalty obligation.
- Counsel at trial, on appeal, and successful opposition to application for leave in motion by state trading company and government minister to have the action dismissed on the basis of the *State Immunity Act*. The activities complained of came within the commercial activity exception.

Estates and Trusts Cases

- Application on behalf of next-of kin to prove heirship when the deceased left no will. Application to remove Public Trustee as administrator of the estate. Passing of accounts went to the Court of Appeal, ending the Public Trustee's long standing practice of treating intestate estates it administered as "Crown Estates" on which it paid interest at 3%, despite earning a significantly higher return;
- Application to vary a trust to permit payments out to grandchildren to finance university education. Obtained special insurance policy to reconstitute the trust in the event of certain contingencies including possibility of certain beneficiaries having issue;
- Passing of accounts in *inter vivos* trust where accounts had never been passed since trust established in the 1950s. Issues of whether certain payments authorized by trust deed and the investment policy employed by trustee;
- Acted for trustees of an estate. Question of which was the last will. Solicitor who had purchased practice from prior solicitor instructed by deceased to make minor revisions to her "last will" made revisions to last will in the file, unaware that prior solicitor had drafted a later will which was not on

file;

- Application to interpret a will, and determine the legal effect of a codicil executed in Florida that did not satisfy the formal requirements of Ontario law.

Regulatory offences

- Defended importer of food products charged with offences under the *Food and Drugs Act*, and *Consumer Packaging and Labelling Act* because he had substituted his registered trademark for the trademark appearing on the goods;
- Defended manager of a hotel operating the hotel under a Receiving Order granted by the Ontario Superior Court on charges under the *Fire Protection and Prevention Act*. Had charges dismissed on the basis that the Crown had failed to obtain leave of the Superior Court under the Receiving Order which prohibited commencement of any proceedings without leave and that the charge was a nullity since it alleged that a demand had been made for information, which the evidence showed was not actually made until the day after the charges were laid;
- Defended a construction company on charges under the *Occupational Health and Safety Act* when a worker was killed. Not guilty verdict obtained on the basis that the contractor had taken all reasonable steps to prevent such an occurrence;
- Defended a crane company charged under the *Occupational Health and Safety Act* when a bridge collapsed as a crane was being taken across the bridge. Collapse due to calculation error by the engineer supervising the works and crane company followed his directions – charges dismissed;
- Acted for a mine charged under the *Occupational Health and Safety Act* when a used compressor flew apart. Established that all reasonable precautions had been taken as compressor had been fully overhauled before being put into service. Failure caused by a prior owner's substitution of a 60 Hz electric drive motor for the original 25 Hz motor without changing the drive pulley, causing the compressor to operate above maximum speed. Documentation for compressor did not indicate the type of electric motor;
- Acted for manufacturer charged under municipal bylaws for discharging material into a sewer at levels above the maximum permitted. Charges dismissed as samples were not representative of the material discharged into the sewer and there was insufficient evidence to determine whether the permissible levels of the discharged material had been exceeded; and,
- Successfully defended chemical manufacturer charged under the *Occupational Health and Safety Act* following an

explosion at its facility.

awards and rankings

- Recognized by *Best Lawyers in Canada (2020)* as a leading lawyer in the area of Intellectual Property Law
- Recognized in *Best Lawyers in Canada (2019)* as a leading lawyer in the area of Intellectual Property Law
- Recognized in *Best Lawyers in Canada (2018)* as a leading lawyer in the area of Intellectual Property Law
- *Martindale-Hubbell* rating: "BV® Distinguished™ 4.4 out of 5"

teaching engagements

- Special Lecturer in Patent Law (2000-2008), University of Windsor Faculty of Law, with Donald H. MacOdrum and Keith Bird.

community involvement

- Member of the Board of ARCH Disability Law Centre (2006-2014; Chair 2007-2013), a specialty community legal aid clinic with a province-wide mandate to defend and advance the equality rights of people with disabilities in Ontario.
- Clinic representative on steering committee dealing with implementation of case management software for clinic system in Ontario.

media mentions

- "[Focus: Where IP intersects with competition law](#)" by Michael McKiernan, *Law Times*, September 26, 2016

publications

October 2019

Compensation for the Employee Inventor
Intellectual Property Bulletin

October 2019

Now We Know Who Owns the Copyright in a Registered Plan of Survey
Intellectual Property Bulletin

September 2019

What Every Owner of a Registered Canadian Trademark Needs to Know
Intellectual Property Bulletin

June 2019

TOP TWELVE THINGS TO KNOW - New Canadian Trademarks Act June 17, 2019
Intellectual Property Bulletin

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October 2018

NAFTA 2.0 (now USMCA) – Intellectual Property Law
Intellectual Property Bulletin

June 2018

Who Owns Copyright in a Registered Plan of Survey – A Brief
Update
Intellectual Property Bulletin

May 2018

Intellectual Property Disputes, Resolutions & Remedies
Volume 5, Ronald E. Dimock, Chapter 18

May 2018

Who Owns the Copyright in a Registered Plan of Survey?
Intellectual Property Bulletin

April 2018

Canada's IP Strategy Announcement – A Litigator's Perspective
Intellectual Property Bulletin

February 2018

What's the use? Federal Court revisits the requirements for use
of a trademark in association with goods
Intellectual Property Bulletin

July 2017

The Promise Doctrine: Invalidated for Want of Utility
Intellectual Property Bulletin

June 2017

The New Frontier of Jurisdiction: Supreme Court of Canada
Upholds Worldwide Injunction Against Google
Litigation Bulletin

June 2017

Could Donald Trump Make America Great Again In Canada?
Intellectual Property Bulletin

May 2017

New Federal Court Notice on Trial Management Guidelines
Intellectual Property Bulletin

February 2017

Why use this slogan anywhere else?
Intellectual Property and Litigation Bulletin

July 2016

It's Time for Your Company's Cyber-health Check-up
Cybersecurity Bulletin

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May 2016

Canadian Chapter of Financier Worldwide Patent & Trademarks
Annual Review 2016
Contributing Editor

March 2016

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

February 2016

Issues in the Preparation and Presentation of Expert Evidence:
An Update
The Advocates' Quarterly
Volume 45, Number 1

February 2016

The Trans-Pacific Partnership (TPP): Implications for Canadian
IP Law
Intellectual Property Bulletin

July 2015

Competition Bureau's Draft *Intellectual Property Enforcement
Guidelines* Provide Welcome Clarity on Bureau Treatment of
Intellectual Property
Competition Bulletin

June 15, 2015

Changing the Equation – The Use of Compound Interest to
Ensure That the Award at Trial Properly Reflects the Amount of
the Loss
TerraLex Connections

April 2015

Issues in the Preparation and Presentation of Expert Evidence
The Advocates' Quarterly
Volume 44, Number 1

March 2015

Playing for Time, or Paying for Time? – The Danger of Delay in
Litigation
Intellectual Property Bulletin

February 2015

Patents & Trademarks: Canada
Financier Worldwide - Annual Review 2015

December 2014

Make up your Mind: Damages & Costs Awarded for Wilful
Trade-Mark Infringement, Failing to Fully Participate in
Proceedings and Disclosing Details of Settlement Discussions
Intellectual Property Bulletin



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September 2014

What happens when they take the "trade" out of trade-marks
Intellectual Property Bulletin

April 2014

Accessible, Proportionate, Timely and Affordable – The
Supreme Court of Canada's Challenge to Bench and Bar in
Hryniak v. Mauldin
The Advocate's Quarterly, Volume 42

February 2014

Opportunity or Difficulty?
Intellectual Property Bulletin