

Thomas G. Heintzman OC, QC, FCI Arb

Thomas G. Heintzman specializes in the field of alternative dispute resolution. One of Canada's best-known and most experienced litigators, he has acted as a mediator and counsel in arbitrations. In 1998, he was the mediator for the amalgamation of three of Toronto's major hospitals.

Mr. Heintzman has appeared in court proceedings in Ontario, Newfoundland, Manitoba, British Columbia and New Brunswick and has made numerous appearances before the Supreme Court of Canada. He has been particularly active in commercial disputes relating to securities law and shareholders rights, government contracts, broadcasting and telecommunications, construction and environmental law.

Mr. Heintzman was president of the Canadian Bar Association from 1994 to 1995. He served on the National Executive of the Canadian Bar Association between 1991 and 1996, and was president of the Ontario Bar Association from 1989 to 1990.

Mr. Heintzman was a bencher of the Law Society of Upper Canada for 8 years (2003-2011). In that capacity, he presided over many conduct hearings and pre-hearing conferences and wrote more than 25 decisions.

In 1980, Mr. Heintzman was appointed Queen's Counsel, and in 1998, he was appointed an Officer of the Order of Canada. In 2008, Mr. Heintzman received the Ontario Bar Association Award for Excellence in Civil Litigation.

Mr. Heintzman was educated at Harvard University (1962, BA *cum laude* in economics), the University of London (1967, LLB) and Osgoode Hall Law School (1966, LLB). He was called to the bars of Ontario and Newfoundland in 1968 and 1977, respectively. In 2010 Mr. Heintzman attended the Harvard Law School Negotiation Workshop and in 2011 he was designated MCI Arb by the Chartered Institute of Arbitrators.

Since 2002, Mr. Heintzman has appeared in both LEXPERT/The American Lawyer Guide to the Leading 500 Lawyers in Canada, as well as the Canadian Legal Lexpert Directory, a guide to the leading law firms and practitioners in Canada. He is listed in the 2007-2011 editions of Chambers Global: The World's Leading Lawyers for Business as leading lawyer in the area of dispute resolution. Mr. Heintzman is also listed as one of The Best Lawyers in Canada in the fields of class action litigation, corporate and commercial litigation, administrative and public, director and officer liability, international arbitration, product liability and securities law.

Mr. Heintzman is a member of the Canadian Bar Association, the Advocates' Society, the Inter-American Bar Association, the International Bar Association and l'Association des juristes d'expression française de l'Ontario. He is a fellow of the American College of Trial Lawyers and of the International Academy of Trial Lawyers.

Mr. Heintzman is a director of the National Youth Orchestra of Canada, a past Trustee of the Canadian Outward Bound Wilderness School and Youtheatre Ontario, past Chairman of the Upper Canada College Association and of the Upper Canada College Foundation, a past Governor of Upper Canada College; and past President of the Harvard Club of Toronto. He was a founding summer counsellor and is a past director of Camp Oochigeas Oncology Camp for Children. He is a past director of Alliance Française (Toronto).

Highlights of Mr. Heintzman's litigation career include the following cases:

SUPREME COURT OF CANADA

- ↪ *Reference re Federal Courts Act (Canada): In the Matter of the Broadcasting Act*, 2012 SCC 4 – Whether Internet Service Providers are subject to the *Broadcasting Act*.
- ↪ *Robertson v. Thomson Corp.*, [2006] 2 S.C.R. 363 – Copyright and electronic publishing.
- ↪ *CCH Canadian Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339 – Copyright and legal publishing.
- ↪ *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, [2004] 2 S.C.R. 427 – Copyright and the Internet.
- ↪ *Guarantee Co. of North America v. Gordon Capital Corp.* [1999] 3 S.C.R. 423 – Fidelity bonds.
- ↪ *Provincial Court Judges* [1997] 3 S.C.R.3) – Compensation for judges.
- ↪ *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 – Fiduciary duties.
- ↪ *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739 – CRTC's jurisdiction over installation of cable television.
- ↪ *Telecommunications Workers Union v. CRTC et al*, [1995] 2 S.C.R. 781 – CRTC's procedural practices.
- ↪ *Newfoundland (Attorney-General) v. Churchill Falls (Labrador) Corp.* [1988] 1 S.C.R. 1085 - Government contract.
- ↪ *Upper Churchill Water Right's Revision Act, 1980*, [1984] 1 S.C.R. 297 – Inter-provincial rights.
- ↪ *CRTC v. CTV Television Network et al*, [1982] 1 S.C.R. 530 – CRTC's jurisdiction over content of television programming.
- ↪ *Moore v Johnson*, [1982] 1 S.C.R. 155 – Constitution law re: fishing.
- ↪ *Xerox v. Regional Assessment Comm.*, [1981] 2 S.C.R. 137 – Municipal assessment.
- ↪ *Douglas Aircraft Co. of Canada v. McConnell*, [1980] 1 S.C.R. 245 – Labour relations.
- ↪ *Capital Cities Communications Inc. v. Canada (Radio, Television & Telecommunications Commission)*, [1978] 2 S.C.R. 141 - Regulation of cross-border broadcasting.
- ↪ *Crump Mechanical Contracting Ltd. v. Toronto-Dominion Centre Ltd.*, [1977] 1 S.C.R. 25 – Construction law.
- ↪ *R. v. Imperial Oil Limited*, [1974] S.C.R. 623 – Damage to underwater pipeline.
- ↪ *Dist. Assessor, Cochrane v. Trans-Canada Pipelines*, [1971] S.C.R. 257 – Municipal assessment.

ABORIGINAL LAND CLAIM CASES

- ↪ *Baker Lake (Hamlet) v. Canada* (Minister of Indian Affairs and Northern Development) [1979] 1 F.C. 487 (T.D.).

BROADCASTING AND TELECOMMUNICATIONS

- ↪ *Reference re Federal Courts Act (Canada): In the Matter of the Broadcasting Act*, 2012 SCC 4 – Whether Internet Service Providers are subject to the *Broadcasting Act*.
- ↪ *Public Mobile Inc. v. Canada (Attorney General)*, 2011 FCA 194, 323 D.L.R. (4th) 463 – Validity of Governor in Council's order amending an order of the CRTC under the *Telecommunications Act*.
- ↪ *Canadian Radio-television and Telecommunications Commission*, (2010), 322 D.L.R. (4th) 337; – Whether Internet Service Providers are regulated under the *Broadcasting Act*.
- ↪ *Edmonton (City) v. 360 Networks Canada Ltd.* [2007], 4 F.C.R. 747 (F.C.A.) – Jurisdiction of CRTC over transmission lines in municipal subways.
- ↪ *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers* (2004), 240 D.L.R. (4th) 193 (S.C.C.) – copyright and the Internet.
- ↪ *Federation of Canadian Municipalities v. AT&T Canada Corp* [2003] 3 F.C. 379 (F.C.A.) 200 – Federal/Provincial jurisdiction over telecommunication facilities under municipal roads.
- ↪ *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739 – Jurisdiction of CRTC and Provincial Labour Tribunals to regulate the installation of television cables on telephone lines.
- ↪ *Telecommunications Workers Union v. CRTC et al*, [1995] 2 S.C.R. 781 – Legality of CRTC's procedural practices.
- ↪ *Bell Canada v. Unitel Communications Inc.*, [1993] 1 F.C. 669 (Fed. C.A.) – CRTC's jurisdiction to regulate long-distance telephone service.
- ↪ *Morton v. Asper* (1988), 55 Man. R. (2d) 61 – Dispute over the control of Global Television.
- ↪ *Wah Shing Television & Partners Limited Partnership and Chinavision Canada Corp.* (1984), 13 D.L.R. (4th) 75 (Ont.H.C.) – Jurisdictional limits of Provincial Superior Courts over CRTC decisions.
- ↪ *CRTC v. CTV Television Network et al*, [1982] 1 S.C.R. 530 – CRTC's jurisdiction over content of television programming.
- ↪ *Association for Public Broadcasting in BC v. CRTC*, [1981] F.C. 524 – CRTC's jurisdiction over broadcast licenses.
- ↪ *Challenge Communications Ltd. v. Bell Canada* [1979] 1 F.C. 857 (Fed.C.A.) – CRTC's jurisdiction to regulate telephone inter-connection.
- ↪ *Capital Cities Communications Inc. v. Canada* (Radio, Television & Telecommunications Commission), [1978] 2 S.C.R. 141 – Regulation of cross-border broadcasting.

CLASS ACTIONS

- ↪ *Axiom Plastics Inc. v. E.I. DuPont Canada Company* (2007), 87 O.R. (3d) 352; (2008), 90 O.R. (3d) 72 (Div. Ct.) – Certification of price fixing action.
- ↪ *Frohlinger v. Nortel Networks Corp.*, (2007) 40 C.P.C (6th) 62; - Approval of Class Action settlement

- *1176560 Ontario Limited et al v. The Great Atlantic & Pacific Company of Canada* (2002), 62 O.R. 535; (2004), 70 O.R. (3d) 182 (Div. Ct.) – Certification of a franchise class action.
- *Smith v. Brockton (Municipality) et al*, Court File No. 00-CV-192173CP: Judgment dated March 19, 2001 (unreported) – Counsel for the Province of Ontario in the Walkerton class action.
- *Carom v. Bre-X Minerals Ltd.* (1998) 20 C.P.C. (4th) 163; 41 B.L.R. (2d) 246; (1999), 43 O.R. (3d) 441; (1999), 44 O.R. (3d) 173 (S.C.J.) - Counsel in one of the first securities class actions.
- *Heather Leigh Munro v. Bausch & Lomb Inc. et al*, Court File No. 22610/96 – Counsel in one of the first Ontario class actions certified for settlement purposes.

COMMERCIAL, CORPORATE AND SECURITIES LAW

- *Incorporated Broadcasters Ltd. v. Canwest Global Communications Corp.* (2008), 300 D.L.R. (4th) 577, (Man. Q.B.) - Limitation, fair value, fiduciary duty and *res judicata* principles in relation to oppression claim.
- *A v. Ontario Securities Commission*, [2006] 141 C.R.R. (2d) 79; 144 C.R.R. (2d) 281 – Application of the *Charter* to officer's duty to testify before securities commissions.
- *Mun Realty Inc. v. Ideal Construction Co. Ltd.* (2005), 11 B.L.R. (4th) 148 (Ont. S.C.) - Derivative and dissent rights arising from shareholders' and directors' meetings.
- Jurisdiction of Ontario Court in relation to contract and oppression claims: *Incorporated Broadcasters Ltd. v. Canwest Global Communications Corp.* (2003), 63 O.R. (3d) 431 (C.A.); *ABN Amro Bank NV v. BCE Inc.* (2004), 44 C.B.R. (4th) 25, 1, 25; (Ont. S.C.); also (2004) 44 C.B.R. (4th) 1; (2003) CanLii 64276; *BNP Paribas (Canada) v. BCE Inc.* (C.A.) 559 (Can LII) (Ont. C.A.)
- *HSBC Securities (Canada) Inc. v. Davies, Ward & Beck* [2004] O.T.C. 816; (2004), - Duty of care of solicitor to advise of limitation period in fidelity bond.
- *Niewald v. Thomson, Rogers* [2003] O.J. No. 2798; (2003) Can LII 5798 (Ont. S.C.); - Convenient form for third party claims against foreign law firm.
- *McBride Metal Fabricating Corp. v. H & W Sales Company Inc.* (2002) 59 O.R. (3d) 97, - Alleged fiduciary duty relating to the termination of agency contract
- *Scintilore Explorations Ltd. v. Larch*, (2000) 48 B.L.R. (2d) 248; 107 O.T.C. 161; - Alleged fiduciary duty relating to the staking of the mining claims.
- Counsel in several important oppression and shareholder remedy actions including: *Palmer v. Carling O'Keefe Breweries of Canada Ltd.* (1989), 67 O.R. (2d) 161 (Div.Ct); *Canadian Pacific Ltd.* (1990), 72 O.R. (2d) 545; (1990), 73 O.R. (2d) 212 (H.C.); *GATX Corp. v. Hawker Siddeley Canada Inc.* (1996), 22 B.L.R. (2d) 25; *Lei v. Noble China Inc.* (1996), 34 B.L.R. (2d) 172 (Ont.Gen.Div.); and *Pente Investments Management Ltd. v. Schneider Corp.* (1998) 43 B.L.R. (3d) 46; 42 O.R. (3d) 177 (Ont.C.A.).
- *Instinet Corporation* (1995), 18 OSCB 5439 –OSC proceedings relating to the registration of computerized trading systems in Canada.
- *Trizec Corp.*, [1994] 10 W.W.R. 127 (Alta.Q.B.) – Restructuring of Trizec Corp.
- *Canadian Pacific Ltd.* (1990), 72 O.R. (2d) 545; (1990), 73 O.R. (2d) 212 (H.C.) – Arrangement re: Canadian Pacific.

- ↪ *Morton v. Asper* (1988), 55 Man. R. (2d) 61 – Dispute over the control of Global Television.
- ↪ *Olympia & York Enterprises Ltd. v. Hiram-Walker Resources Ltd.* (1987), 59 O.R. (2d) 254 at 255 (H.C.) - Counsel to Hiram-Walker in the take-over battle relating to that company.
- ↪ *ArmaK Chemical Ltd. v. Canadian National Railway Co.* (1986), 7 C.P.C. (2d) 273 (Ont. H.C.); (1991), 5 O.R. (3d) 1 (Ont. C.A.) – Liability for railway operations.
- ↪ *C.T.C. Dealer Holdings Ltd. and Ont. Securities Commission* (1986), 59 O.R. (2d) 79 (Div.Ct.) - Ontario Securities Commission and Divisional Court proceedings relating to the attempted takeover of Canadian Tire Corporation.
- ↪ *Newfoundland (Attorney-General) v. Churchill Falls (Labrador) Corp.* (1983), 145 A.P.R. 181; 168 A.P.R. 91; [1988] 1 S.C.R. 1085 – Defence of claim by Newfoundland to recall the power sold from Churchill Falls.
- ↪ *Report on the Implications for the Canadian Capital Markets of the Provision by Financial Institutions of Access to Discount Brokerage Services* - October 31, 1983 - Hearings before the Ontario Securities Commission relating to the banking industry's entitlement to undertake discount brokerage services.
- ↪ *Walter E. Heller Financial Corp. v. American General Supply of Canada (1969) Ltd.* (1986), 56 O.R. (2d) 257 (Ont. C.A.) – Ownership of assets of an insolvent debtor.

CONSTITUTIONAL LAW

- ↪ *Mississauga (City) v. Greater Toronto Airports Authority* (2000), 50 O.R. (3d) 641
- ↪ *Provincial Court Judges* [1997] 3 S.C.R. 3.
- ↪ *British Columbia Telephone Co. v. Shaw Cable Systems (B.C.) Ltd.*, [1995] 2 S.C.R. 739.
- ↪ *Telecommunications Workers Union v. CRTC et al*, [1995] 2 S.C.R. 781.
- ↪ *Newfoundland (Attorney-General) v. Churchill Falls (Labrador) Corp.* [1988] 1 S.C.R. 1085.
- ↪ *Upper Churchill Water Right's Revision Act*, 1980, [1984] 1 S.C.R. 297.
- ↪ *Moore v. Johnson*, [1982] 1 S.C.R. 155
- ↪ *CRTC v. CTV Television Network et al*, [1982] 1 S.C.R. 530.
- ↪ *Capital Cities Communications Inc. v. Canada (Radio, Television & Telecommunications Commission)*, [1978] 2 S.C.R. 141.

CONSTRUCTION AND PROCUREMENT LAW

- ↪ *Anderson Consulting v. Canada (Attorney General)* (2001), 150 O.A.C. 177, 2001 Can LII 8587 (Ont. C.A.)
- Alleged conspiracy and negligent misrepresentations in relation to government procurement contract
- ↪ *DaSilva v. Toronto (City of)* (1997) 33 O.R. (3d) 43; (1997) 99 O.A.C. 59; (1997) 39 M.P.L.R. (2d) 188 – Powers of building inspector relating to demolition under City by-law.

- *Crump Mechanical Contracting Ltd. v. Toronto-Dominion Centre Ltd.*, [1977] 1 S.C.R. 25 – Owner’s liability for contractor’s cost of preparing estimate.
- Author of *Goldsmith on Canadian Building Contracts* (4th ed.)

COPYRIGHT

- *Robertson v. Thomson Corp.*, [2006] 2 S.C.R. 363 – Copyright and electronic publishing.
- *CCH Ltd. v. Law Society of Upper Canada*, [2004] 1 S.C.R. 339 – Copyright and electronic publishing.
- *Society of Composers, Authors and Music Publishers of Canada v. Canadian Assn. of Internet Providers*, [2004] 2 S.C.R. 427 – Copyright and the Internet.
- *Pro Arts Inc. v. Compass Craft Ltd.* (1980), 28 O.R. (2d) 242 – Copyright and posters, punitive damages.

ENVIRONMENTAL LAW

- *Labrador Inuit Assn. v. Newfoundland (Minister of Environment and Labour)* (1997), 152 D.L.R. (4th) 50 (Nfld.C.A.) – Environmental assessment of the Voisey’s Bay Project.
- 1992 and 1993 – Counsel to Atomic Energy of Canada Limited in hearings of the Ontario Environmental Assessment Board for approval of Ontario Hydro’s 25-year plan.
- *Canadian National Railway Co. v. Ontario (Director, Environmental Protection Act)* (1992), 87 D.L.R. (4th) 603 (Ont. C.A.) – Responsibility of owners and mortgagees for environmental clean-up.

GOVERNMENT AND PUBLIC AUTHORITIES: CONTRACTS AND CONDUCT

- *Registrar, Alcohol and Gaming Commission of Ontario v. Arena Entertainment* (2007), 228 O.A.C. 287 - Powers of Alcohol and Gaming Commission in relation to applicant's past conduct
- *Freeman-Maloy v. Marsden* (2006), 79 O.R. (3d) 401, (C.A.) - Whether the tort of misfeasance in public office applies to universities
- *Payne v. Wilson* (2002), 162 O.A.C. 48, 2002 Can LII 45002 (Ont. C.A.) - Whether the legality of the government’s decision to sell shares in public utility was rendered moot by subsequent legislation.
- *Anderson Consulting v. Canada (Attorney General)* (2001), 150 O.A.C. 177(C.A.) - Alleged conspiracy and negligent misrepresentations in relation to government procurement contract
- *Del Zotto v. M.N.R.* [2000], 4 F.C. 321 (F.C.A.) - Whether a hearing officer’s decision under the *Income Tax Act* was illegal based on grounds of non-disclosure and bias
- *Libbey Canada v. Ontario (Ministry of Labour)* (1999), 42 O.R. (3d) 417 (C.A.); - Purchasers statutory liability for vacation pay
- *Rahall v. Superintendent of Financial Institutions*, [1999] O.J. No. 3898; (C.A.) – Convenient form for actins against governmental authority

- *Soverign Life Insurance Co. v. Canada (Minister of Finance)* (1997), 135 F.T.R. 81 (F.T.) - Whether Minister of Finance had improperly fettered his discretion or delegated his authority under the *Insurance Companies Act*
- *Newfoundland (Attorney-General) v. Churchill Falls (Labrador) Corp.* (1983), 145 A.P.R. 181; 168 A.P.R. 91; [1988] 1 S.C.R. 1085 – Defence of claim by Newfoundland to recall the power sold from Churchill Falls.

INSURANCE LAW

- *Dunn v. Chubb Insurance Co.* (2010) 97 O.R. (3d) 701; (1999) 75 C.C.L.I. (4th) 29; (2009), ONCA 538 (Ont. C.A.) – Allocation clause in directors’ and officers’ insurance policy.
- *Soverign Life Insurance Co. v. Canada (Minister of Finance)* (1997), 135 F.T.R. 81 (F.T.) - Whether Minister of Finance had improperly fettered his discretion or delegated his authority under the *Insurance Companies Act*
- *Guarantee Co. of North America v. Gordon Capital Corp.* [1993], 3 S.C.R. 423 - Limitation period in fidelity bond

MUNICIPAL TAXATION

- *Xerox v. Regional Assessment Comm.*, [1981] 2 S.C.R. 137.
- *Dist. Assessor, Cochrane v. Trans-Canada Pipelines*, [1971] S.C.R. 257.