



THE HONOURABLE ROGER P. KERANS FCI Arb, C. Arb

After 27 years as a trial and appeal judge in Canada, Mr. Kerans since 1998 has worked as a mediator, arbitrator, law school teacher, and author, and has been engaged to conduct several inquiries and special studies. Some details follow but more can be found on his website: <http://www.kerans.ca>.

Arbitration:

Calling on his experience as a judge, plus the special training offered by the *Chartered Institute of Arbitrators*, London, Mr. Kerans has regularly acted as an arbitrator since 1997. He is now a Fellow of the Institute. In 2002 he attended a workshop in Paris for senior arbitrators sponsored by the ICC. In 2001, he was named to the Canadian roster of the International Chamber of Commerce's *International Court of Arbitration*, Paris. He is now a member of the Executive Committee of the Canadian Branch. He has been named by the ICC to conduct international commercial arbitrations. He is also on the arbitration rosters of the *National Arbitration Forum*, Minneapolis, and the *B.C. International Commercial Arbitration Centre*, Vancouver, and has been granted the right to call himself a Chartered Arbitrator (C.Arb) by the ADR Institute of Canada. He is also on the arbitration rosters of NADAP and Mutual Fund Dealers of Canada. He has conducted several dozen arbitrations as a sole arbitrator, chair, or member of a panel.

The details of arbitrations conducted by Mr. Kerans are of course all confidential, but it can be said he has arbitrated or is in the process of arbitrating many different forms of commercial disputes, including franchise agreements, agreements respecting the sale of a business or land, partnership buy-sell agreements; and disputes in the oil and gas and power generation industries, including gas price agreements, and disputes raising *force majeure* claims; and employment cases, construction, engineering, and leasing disputes; and also personal injury disputes and insurance disputes, including premium disputes, excess coverage disputes, and cases where claims exceed coverage, i.e. where a defendant is under-insured. He also has arbitrated internet domain-name disputes. To date no judicial review has been sought of any of his decisions as arbitrator, and all decisions have been sent promptly to the parties.

Mediation:

Kerans has been very active in interests-based mediation (ADR). Since his retirement from the Bench, he has conducted about 600 mediations involving total claims in excess of \$CDN .6 billion. Almost 700 lawyers all over North America have appeared on his mediations or arbitrations.

Over 90% of the disputes mediated have settled. The issues mediated have ranged over the entire list of non-matrimonial legal disputes - from libel through personal injury and professional negligence to fraud, construction disputes, employment cases, insurance coverage disputes, human rights cases, commercial disputes, and oil and gas disputes. He does not do family mediation.

Mr. Kerans studied mediation at Harvard Law School Program of Instruction for Lawyers. He has delivered papers on the subject of ADR at seminars organised by the BC Trial Lawyers Association, Royal Roads University, the Canadian Institute for the Administration of Justice, the National Judicial Institute, the Canadian Human Rights Commission, and the Calgary Chamber of Commerce. He has attended many American Bar Association ADR subsection annual meetings.

He is a member of the ADR Advisory Council of the Canadian Human Rights Commission, and a member of the BC Mediation Society and the Alberta Arbitration and Mediation Society.

Fairness Audits:

In 2004 Mr. Kerans branched into fairness audits. These are a form of neutral evaluation, not unlike appellate work. While he had to develop a knowledge of modern procurement practices, he found the most useful experience to be 17 years as an appellate judge, because much of the work of an appellate judge may be described as review for fairness. Indeed, he had while yet a judge written a book, called *Standards of Review*, dealing in part with the idea of review for fairness, a work which is regularly quoted by the Supreme Court of Canada, and other appeal courts. A second edition shall soon be published. He may be described as Canada's leading expert on this topic.

Other Experience:

Mr. Kerans was appointed a Judge in 1970. For the next ten years, he was a Trial Judge with the District Court and Queen's Bench in Alberta. He was elevated to the Court of Appeal of Alberta in 1980, and served on that Court until his retirement from the Bench in 1997. He was also for many years a deputy judge of the Yukon Supreme Court.

Mr. Kerans has conducted three judicial inquiries. He has also been consulted by Europe to do a study of the magistrates in Malawi, and by Canada to assess studies about methods to calculate required judicial manpower. In 2004 he served on a Commission mandated to fix judicial compensation for Yukon Territorial Court judges.

During his 17 years on the Court of Appeal, Mr. Kerans was the author of many well-known and highly-respected decisions. He wrote several important oil and gas law decisions and, having been appointed to the Court of Appeal just before the advent of the Charter, participated in several famous early Charter cases. In addition to almost 1,000 published opinions, he has written occasionally for law reviews. One study reported that Mr. Kerans was quoted with approval by the Supreme Court of Canada more often than any other Western Judge. Another said that some of his decisions "have gained currency second only to the Supreme Court of Canada."

In the course of his career as a judge, Mr. Kerans participated in many decisions that have become important precedents in the area of oil & gas law, contract law, and insurance law. In the petrochemical field, these include several decisions now often cited for the rule of law first stated in them. In the contracts field, Mr. Kerans participated in several well-known cases involving construction claims, including the explosion of the Empress Gas Plant and the collapse of the rollercoaster at West Edmonton Mall. He also articulated several rules about contracts that are now widely accepted.

Active in judicial administration throughout his career as a judge, Mr. Kerans was Associate Chief Judge of the District Court of Alberta from 1975 until 1979, when the Court was merged with the Court of Queen's Bench. He established for his court a modern hearing list management system, now used by all Alberta, and many other courts. His interest in modernization of courts led him to advocate Court mergers and other structural changes. The merger of the Courts in Alberta established a model followed in every Canadian jurisdiction.

A student of the French language for many years, Mr. Kerans passed the official bilingualism examination on July 28th, 1986, and soon afterwards presided at the first appellate hearing in the history of Alberta conducted entirely in French.

Mr. Kerans' interest in judicial administration led him to publish a book, in 1994, entitled Standards of Review Employed by Appellate Courts (Juriliber), which is the first book-length study of that topic that analyzes both American and Commonwealth cases. The Second Edition will be published in 2006.

Mr. Kerans taught Charter law, jurisprudence, and court management at judicial seminars for over two decades. He was a founding member of the organizing committee for the Canadian Appellate Judges Seminar, and, for many years, was a director of the Legal Education Society of Alberta. He has lectured to the Bar and the public on a variety of topics. He is now a lecturer at the Law Faculty, University of Victoria, where he teaches Oil and Gas law.

He is also a Director of Maritime Awards Society of Canada, and was in 2004 Chair of a Workshop for Lawyers on the topics of BC Offshore, Perils and Possibilities. Details at <http://maritimeawards.ca/lawyers/start.html>.

Mr. Kerans continues to be called upon to address professional groups and the public on law-related topics. On his website there is a list of the more than 100 articles and addresses he has given.

For some years after his retirement from the bench, Mr. Kerans was engaged from time to time by the Globe and Mail to comment in its editorial pages on legal issues.

An early student of computers, Mr. Kerans has also lectured on various topics in this area. He has also established, with the cooperation of the Alberta government, a programme for reading appeal books on computers. He is co-manager of an international email discussion list exclusively for judges, with over 300 members from every continent.

Born in Lashburn, Saskatchewan, Mr. Kerans lived as a youth both in Edmonton and Calgary, as well as Saskatchewan. He took his arts and law at the University of Alberta. In 1975, he was asked to move to Calgary to take up his duties as Associate Chief Judge, after residing for 30 years in Edmonton as a student, lawyer and judge.

His community involvement turned for years on the Kidney Foundation of Canada. After founding the Alberta Branch, he was National President of that organization from 1975 to 1976. He was also active in partisan and civic politics before his appointment to the Bench. Prior to his appointment to the Bench, Mr. Kerans practised law in Edmonton for 13 years, latterly with the firm of Ogilvie & Co. After his appointment, he was Counsel to Borden Ladner Gervais LLP at Calgary for five years, before retiring from active practice to focus on mediation and arbitration.