



**David (E. David) D. Tavender, Q.C.**  
 Partner Emeritus

David is senior litigation counsel in Dentons Canada LLP. He has extensive experience in civil commercial litigation and dispute resolution. David has conducted numerous major trials and appeals and his appearances include cases before the Alberta Courts, the Federal Court of Canada and the Supreme Court of Canada.

David is active in the alternative dispute resolution field and has served as a neutral and as counsel on commercial arbitrations and mediations. He is a mediator and arbitrator with ADR Chambers. He has participated in a number of investigations and inquiries.

He joined the firm as an articling student in 1963, and was appointed Queen's Counsel in 1978. He is a Fellow of the American College of Trial Lawyers. He has been recognized as a leading litigation and dispute resolution lawyer by a number of well-respected legal rankings publications.

**Experience**

- Acting as a sole arbitrator in the valuation of shares in a privately held crane rental business
- Conducted an independent investigation as to whether the activities of a senior executive in a large public company constituted a breach of the executive's duty of loyalty and honesty justifying summary termination
- Acted for the Province of Alberta in 2010 and 2011 in references to the Courts of Appeal of Quebec and Alberta and to the Supreme Court of Canada on the constitutionality of proposed federal legislation to create a single national securities regulatory system. A unanimous decision was rendered by the Supreme Court of Canada expressing the opinion that the proposed legislation was ultra vires.
- Acting as a party-appointed arbitrator in 2010 and ongoing in a multi-million dollar force majeure claim under a power purchase agreement
- Acted as a mediator in 2011 in a corporate oppression dispute involving the transfer of corporate assets to an insider
- Chairman of an arbitration tribunal in 2009-2010 in a multi-million dollar dispute involving the change of indices for payment calculations under a power purchase agreement
- Party-appointed arbitrator in 2009 involving the determination of royalty calculations under oil sands leases with the Province of Alberta
- Acting as counsel in defending trespass and royalty claims exceeding \$1 billion arising out of the production of oil and gas on aboriginal lands (Samson Indian Band et al v. Imperial Oil Resources et al, 2000 and ongoing)

**Contact information**

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**Areas of focus**

**Practices**

- Alternative Dispute Resolution (ADR)
- Appellate Advocacy
- Arbitration
- Constitutional Law, including Aboriginal and Native Law
- Construction and Engineering Disputes
- Energy Litigation
- Internal Investigations
- International Commercial Arbitration
- Litigation and Dispute Resolution
- Mediation
- Real Estate
- Real Estate Litigation and Dispute Resolution
- Securities and Shareholder Litigation

**Industry sectors**

- Energy
- Mining
- Mining Litigation and Dispute Resolution

**Education**

University of Alberta, 1963, LL.B  
 University of Toronto, 1960, BA (Hons)  
 Appointed Queen's Counsel, 1978  
 Received training in principled negotiation and mediation from the Harvard Program on Negotiation and Mediation at the Harvard Law School, 1994

## Languages

English

- Acted as counsel in the Trial Division and Court of Appeal of the Federal Court of Canada in a successful judicial review application of the decisions of Indian Oil & Gas Canada relating to oil and gas royalty payment obligations on aboriginal lands (Imperial Oil Resources Limited v. Canada)
- Acting as one of three arbitrators in a lengthy, complex arbitration arising out of the termination of Gas Sales Service Agreements with damage claims of approximately \$460 million (U.S.). The details of the arbitration and the parties are confidential. This has been a very lengthy and complex arbitration with hearings split between Houston and Calgary and a vast amount of material to digest.
- Acted as a mediator in successfully resolving disputes arising out of a grant by a franchisor of new, competing franchise rights in close proximity to an existing franchise (2005)
- Defended a number of Court of Appeal and Queen's Bench Justices in obtaining and sustaining on appeal a striking out of a Statement of Claim attacking a series of prior decisions rendered by the Justices, leave to the S.C.C. denied (Gramaglia v. McFadyen et al, 2004-2006)
- Acted as counsel in a multi-million dollar international arbitration under the UNCITRAL Rules involving the rates to be paid under optional extensions of an offshore drilling rig contract (2004/2005)
- Acted as chairman of an arbitration tribunal in 2004 involving gas shut-in orders imposed by the Alberta Energy and Utilities Board that led to delivery interruptions to a U.S. purchaser and royalty force majeure claims
- Acted as a mediator in 2002 in a successfully resolved multi-million dollar dispute over a construction contract relating to the installation of a conveyor belt in a coal mine
- Acted as counsel for six underwriters in defending a prospective misrepresentation claim and multiple individual claims brought in three provinces after the closing of a \$15 million offering by an energy company that failed (Delf v. Merit Energy et al, 2001)
- Acted as a party-appointed arbitrator in 2001 in an international arbitration conducted under the American Arbitration Association Rules involving claims for substantial damages arising out of alleged breaches of an E-commerce Software License Agreement (2001)
- Acted for Respondents (Plaintiffs) in an action in the Alberta Court of Appeal to maintain a cause of action to trace and recover funds based on allegations of bribery (Alberta Treasury Branches v. Leahy et al)
- Defended fair value and oppression proceedings under the Canada Business Corporations Act relating to the fair value of dissenting shares in a publicly traded corporation (LSI Logic v. Logani et al)
- Acted as counsel in a judicial review of the administrative, disciplinary and constitutional powers of a chief judge of the Provincial Court of Alberta (Riley v. Wachowich)
- Acted as counsel for Plaintiffs in an Alberta Court of Queen's Bench Action to recover damages and lost oil production arising out of a major fire at the Syncrude Refinery at Fort McMurray, Alberta with a trial on liability in 1992-1994 and a subsequent settlement as a result of mediation (Esso Resources et al v. Stearns Catalytic et al)
- Acted as Plaintiff's counsel in the successful recovery of substantial damages for the developers of the Mt. Allen Olympic Ski Facility as a result of a breach of confidentiality and interference with rights to intellectual property (Pharand Ski Corporation v. Province of Alberta, 1991)
- Acted in the Court of Appeal of Alberta and the Supreme Court of Canada in respect of constitutional and Charter challenges to French language education rights in Alberta (Mahe v. Province of Alberta)
- Acted as counsel in successfully defending a multi-million dollar damage claim arising out of a valve failure in the Nova Pipeline System in the Alberta Court of Queen's Bench, sustained by the Alberta Court of Appeal, leave to the Supreme Court of Canada denied (Nova v. Guelph Engineering Company et al)

- Acted as an arbitrator on four free trade dispute resolution panels under the Canada-U.S. Free Trade Agreement

## Recognition

- Recognized by *Chambers Global: The Guide to the World's Leading Lawyers for Business 2013* as a leading lawyer in the areas of Dispute Resolution – Alberta and Dispute Resolution – Arbitration
- Recognized by the *LEXPERT 2012 Guide to the Leading U.S./Canada Cross-Border Litigation Lawyers in Canada* in the areas of Corporate Commercial Litigation and International Commercial Arbitration
- Recipient of one of Lexpert's 2012 Zenith Awards for Leadership Through Change honouring lawyers who have been practising for 40 years or more
- Rated AV Preeminent in 2012 by *LexisNexis Martindale-Hubbell*
- Recommended by *Best Lawyers in Canada 2013* as one of Canada's leading lawyers in the areas of Alternative Dispute Resolution (Arbitration), Bet-the-Company Litigation, Corporate and Commercial Litigation, Director and Officer Liability, International Arbitration, and Product Liability Law
- Recognized by the *2012 International Who's Who of Business Lawyers ("Who's Who Legal")* in the area of Commercial Litigation
- Recommended by *PLC Which lawyer?* in the *PLC Dispute Resolution multi-jurisdictional guide 2012* in the areas of Dispute Resolution and International Arbitration
- Recommended by *The 2012 Canadian Legal LEXPERT Directory* as one of Canada's "Consistently Recommended" lawyers in the areas of Corporate and Commercial Litigation and International Commercial Arbitration; also recognized as a "Repeatedly Recommended" Canadian lawyer in the areas of Directors' & Officers' Liability Litigation and Securities Litigation
- Highly recommended by *Chambers Global: The World's Leading Lawyers for Business 2012* as one of Canada's pre-eminent lawyers in the areas of Dispute Resolution and ADR
- Selected as *Best Lawyer's 2012* Calgary International Arbitration Lawyer of the Year
- Recommended by *The 2011 Canadian Legal LEXPERT Directory* as one of Canada's "Most Frequently Recommended" lawyers in the areas of Corporate and Commercial Litigation and Directors' & Officers' Liability Litigation; also regarded as one of the leading Canadian lawyers in the area of International Commercial Arbitration, Product Liability Litigation, Securities Litigation and Professional Liability
- Recognized as one of 50 Bet-the-Company Litigators by *Best Lawyers in Canada, 2007*
- One of Canada's 25 top corporate litigation lawyers (*LEXPERT*, July/August 2002)
- Appointed to the Roster of Arbitration Organizations, including ADR Chambers, the ICC Canadian National Committee's Roster of Arbitrators, the CPR Institute of Dispute Resolution's International Panel of Neutrals and others
- Fellow of the American College of Trial Lawyers, 1995
- Appointed Queen's Counsel, 1978

## Insights

- **"Roadmap to Adequate, Effective Access to Justice", Pro Bono Law Alberta's conference with law firm managing partners, Calgary, March 2012**
- "Proactive Case Management in Arbitrations" published in 2010 CPR's *Alternatives Journal*, Vol. 28, No. 7, p. 143 and No. 8, p. 163
- "Discussion Paper on the Impartiality and Independence of Arbitrators" presented at the

ADR Institute of Canada conference in Vancouver on November 19, 2004

- "Institutional or Ad Hoc Arbitration?" paper at the International Commercial Arbitration Seminar sponsored by the Canadian Foundation for Dispute Resolution and the Calgary Chamber of Commerce delivered on June 21, 2000
- "Considerations of Fairness in the Context of International Commercial Arbitration", (1996) 34 *Alta. L. Rev.* 509 with an update paper delivered at the Environmental Law Symposium on Arbitration of International Energy Disputes in Houston in 1998

## Activities and Affiliations

- Member of the Law Society of Alberta
- Member of the Calgary Bar Association
- Member of the Canadian Bar Association
- Vice-Chairman of The Canadian Bar Association Task Force on the Civil Justice System in Canada, Civil Justice Reform
- Member of the CBA's Implementation Committee
- Chair of the CBA Alberta Branch Implementation Committee
- Former Director of the Canadian Foundation for Dispute Resolution
- Member of the Dean's Community Council of the Law School at the University of Calgary

## Community Involvement and Pro Bono

- Volunteer Participant of the Law Society's Lawyer Referral Service
- Former Director of The Banff Centre Foundation
- Former Councillor of the Canada West Foundation
- Honorary Fellow and former Governor and Chairman of the Glenbow-Alberta Institute
- Member and former Director of the Calgary Golf and Country Club
- Member of The Ranchmen's Club and the Glencoe Club

## Presentations

- "Roadmap to Adequate, Effective Access to Justice" delivered to Pro Bono Law Alberta's meeting with managing partners on March 29, 2012.
- "Testing the Limits of Arbitrator Bias", Alberta Arbitration and Mediation Society Conference, Edmonton, May 2012
- "Roadmap to Adequate, Effective Access to Justice", Pro Bono Law Alberta's conference with law firm managing partners, Calgary, March 2012
- "Fast Tracking Arbitrations Without Sacrificing Fairness", September 25, 2007
- "An Alberta Practitioner's Perspective on Settlement Negotiations in Complex Securities Litigation", delivered at the Canadian Institute's Third Annual Advanced Forum on Securities Litigation in Toronto (November 17-19, 2003)
- "An Alberta Perspective on Mediation in Energy Disputes", delivered to the Conference on International Commercial Arbitration and Energy Disputes – A Global Perspective sponsored by the ICC and the CBA in Calgary (May 29-30, 2003)
- "Canada-Quebec Wake-up Call: The Need for a Principled Negotiation Strategy", delivered to the Canadian Association of Petroleum Landmen in October, 1996
- "How Lawyers Add Value in ADR" (with G.F. Scott, Q.C.) presented at the Joint Meeting of the Alberta and British Columbia branches of the Canadian Bar Association, 1996