

JSS BARRISTERS

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Bryan obtained his business degree from the University of Regina along with the University Prize for the highest average marks in the faculty. In 1992, he obtained his law degree from Osgoode Hall Law School in Toronto, and began his legal career by articling in Calgary with a major international law firm, Blake, Cassels & Graydon LLP. After 5½ years as an associate, he was a Blakes partner for 10 years. As of January 1, 2009, Bryan joined Jensen Shawa Solomon Duguid Hawkes LLP, was its Managing Partner for 2013 to 2014, and since then has been the Firm Chairperson.

In 2014, Bryan was appointed as Queen’s Counsel, and as a Fellow of the UK-based Chartered Institute of Arbitrators. For arbitration and commercial disputes, Bryan is recognized by Benchmark as a Litigation Star and by Who’s Who Legal as an expert. He is a member of the Western Canada Commercial Arbitration Society.

As counsel or as arbitrator, Bryan focuses exclusively on the resolution of corporate and commercial disputes.

For his experience as arbitrator, see also “Arbitration” below and “Arbitrations” at

<http://www.jssbarristers.ca/pages/people/duguid-bryan.cfm>.

As lead or sole counsel, he represents international and domestic corporations (commonly the largest and leading in their industries), but also privately-held start-ups and individuals.

In 2016, Bryan was lead counsel representing TransCanada Energy Ltd. and ASTC Power Partnership in disputes related to the termination of Power Purchase Arrangements, including proceedings that have been described as undoubtedly “one of the more complex and high profile judicial review proceedings” ever commenced in Alberta.

Bryan has extensive experience as an advocate and advisor, including as arbitration counsel, trial lawyer and appellate counsel on high stakes and high profile matters before all levels of

the courts of Alberta, arbitral panels, sole arbitrators, the Alberta Utilities Commission (AUC), and the Federal Court of Canada and has acted on both sides of applications for leave to the Supreme Court of Canada, including an early 2015 decision that he obtained on behalf of Shell Canada Limited, dismissing an application for leave to appeal.

Often, Bryan is retained on complex, factually- and document-intensive disputes involving at least tens of millions of dollars, such as the following recent arbitral disputes, on which he was lead counsel (of a team of colleagues from his firm) from the outset to the ultimate hearing:

- One week hearing in October 2011 (\$50 million)
- Two week hearing in May 2012 (\$40 million)
- One week hearing in September 2012 (\$45 million)
- Two week hearing resolved on the eve of the hearing in February 2014 (\$45 million)
- One week hearing in June 2014 (well over \$100 million)

Generally, Bryan's approach to disputes of that nature is driven by his experience with numerous fast-tracked arbitral disputes and his strongly-held beliefs in the importance and benefits of:

- Ensuring clarity on (instead of assuming an understanding of) the goals of the client(s)
- Determining at the outset the prospects of success, quantum, and estimated legal costs, and taking the proactive responsibility to update those assessments with the client if necessary as the matter unfolds
- Setting at the outset an overall strategy to maximize the chances of success on each unique dispute, to be used as the guide for all decisions
- Using rigorous project management skills to organize and execute on the plan
- Expressing complex concepts and arguments in clear and simple terms
- Advancing only the positions that have a reasonable prospect of success
- Communicating responsively and continually with the client
- Delegating to the lawyer most appropriate to the task, taking into account skills and experience, and seeking to maximize the result at the lowest cost
- Capitalizing to extent possible on the client's own resources

Sample experience in main practice areas includes:

Construction Disputes

- Lead counsel representing corporations such as Johns Manville, Husky Energy Inc., Gulf Chemicals & Metallurgical Corporation, EPCM firms and suppliers, in trial, appellate, and arbitral proceedings involving projects such as pipeline, oilsands and facility construction disputes over tens of millions of dollars of complex claims about delay, cost overruns, lost profits, project cancellation, liens, and other issues.
- Significant experience with major, highly-technical, document-heavy, fast-tracked construction and force majeure disputes from start-to-finish in months.

Regulatory and Administrative Law Matters (Power Industry)

- Lead counsel for TransCanada Energy Ltd. and ASTC Power Partnership in administrative law proceedings regarding the termination of Power Purchase Arrangements involving an alleged amount of \$2 billion.
- Lead counsel for the Independent Power Producers Society of Alberta (comprised of all major power generation companies in Alberta) on various matters including precedent-setting rule-objection hearings, with wide-spread industry ramifications, that were amongst the first major matters in front of the AUC after its creation as of January 1, 2008.
- Represent and advise clients in the electricity industry in respect of investigations and other activities of the Alberta Market Surveillance Administrator (MSA), and whether such activities are within its statutory mandate and jurisdiction. Successfully advanced the first challenge/complaint over the conduct of the MSA, resulting in a decision by the chair of the (former) Alberta Energy and Utilities Board that the conduct of the MSA was “inappropriate” and a breach of its duty to act in a fair and responsible manner.
- Consulted by a variety of clients to provide input and comment to the legislators on statutory and regulatory developments in the electricity industry, including consultations regarding the *Electric Utilities Act* Section 6 Committee to develop principles to better define “fair, efficient, and openly competitive”, the draft *Alberta Utilities Commission Act*, and draft versions of the *Market Surveillance Regulation* proposed in 2006 and 2007, and advice to clients as the legislative framework evolved.

Arbitration

- Full-ranging experience as lead or sole counsel in arbitration proceedings and hearings in various industries, including Power Purchase Arrangement arbitrations in the Alberta electricity industry and construction disputes.

- Successfully represented TransCanada Energy Ltd. and ASTC Power Partnership in obtaining a decision of the Chief Justice of the Court of Queen's Bench of Alberta, appointing arbitrators and dismissing an application to stay arbitrations commenced in relation to the termination of Power Purchase Arrangements.
- Advising on the drafting of arbitral and other dispute resolution provisions.
- Admitted as a Fellow (FCIArb) of the worldwide London, UK-based Chartered Institute of Arbitrators.
- Appointed as sole arbitrator on a construction dispute.
- Appointed to arbitral panel in construction dispute, involving claims totalling approximately \$20 million in respect of a gas processing facility.
- Appointed as sole arbitrator for a long term commercial lease dispute.
- Appointed as sole arbitrator for franchise disputes.
- Chair of Sub-Group and member of Steering Committee of the Uniform Law Conference of Canada (ULCC), Domestic Arbitration Legislation Group, that prepared a new uniform *Arbitration Act* for all of the provinces and territories in Canada, approved by the ULCC in November 2016.
- Appointed in 2016 by the Minister of International Trade on behalf of the federal government of Canada, to the North American Free Trade Agreement Advisory Committee on Private Commercial Disputes, also known as the NAFTA 2022 Committee. The Committee reports and provides recommendations to the NAFTA Commission on the availability, use and effectiveness of arbitration and other procedures for resolving private international commercial disputes in the free trade area.
- Member of the Western Canada Commercial Arbitration Society, comprised of some of Western Canada's most experienced domestic and international commercial arbitrators.
- Founding Co-Editor of newsletter published by ADR Institute of Canada, Inc. (ADRIC), entitled *ADR Perspectives*.
- Recognized by Benchmark as a Litigation Star in arbitration.
- Recognized by Who's Who Legal as an expert in arbitration.
- Served as member of Board of Directors of ADR Institute of Alberta (ADRIA).
- Obtained Certificate in Arbitration by ADRIA.

- Appointed to the arbitrator rosters of institutions including ADRIAC, ADRIA, and the American Dispute Resolution Center, Inc.

International Dispute Resolution

- Lead counsel to Shell Canada Limited (Shell) in response to an application for the Alberta Court of Queen's Bench to authorize testimony to be obtained from a Shell representative. The letters rogatory application was brought in Calgary on behalf of plaintiffs in a multi-jurisdictional class action consisting of over 50 actions in the United States, consolidated before the Kansas Courts. Shell was not a party to the U.S. proceedings, which sought billions of dollars from a number of United States companies. The decision of the Chief Justice represented substantial success on behalf of Shell.
- Represented an Indonesian body corporate in a USD \$2 billion claim arising from the misappropriation of corporate opportunity in the nature of mining concessions in the Republic of Indonesia, involving issues of jurisdiction and proper forum, technical mining issues, complex comparative corporate law questions, and a variety of causes of action.
- Represented a large Calgary-based multinational and certain of its affiliates in proceedings brought by an Ontario corporation seeking to have the Alberta Court recognize and enforce an international arbitral award against a Middle Eastern country in an amount exceeding \$26 million. Various motions were successfully brought to resist the recognition and enforcement of the arbitral award and to set aside the *ex parte* Order allowing pre-judgment issuance of garnishee summons.
- Lead counsel in cross-border litigation involving tens of millions of dollars arising from a claim that a long-term natural gas purchase and sale agreement had been frustrated or repudiated. Dispute fought on parallel tracks before the Courts of Alberta and Massachusetts, with simultaneous jurisdictional and forum challenges, involving a variety of questions of private international law, settled ultimately by the Alberta Court of Appeal.

Oil & Gas Disputes

- Counsel on a range of disputes including long term natural gas agreements, technical issues regarding the transportation and blending of heavy oil, gas processing fees, operatorship issues and challenges, royalty agreements, the misuse of confidential information, CO & O and JV agreements, ROFRs, drainage disputes, joint interest billings, and seismic data.

Bryan publishes and presents frequently on arbitral, power, international, construction, and oil and gas topics, and he has often appeared in the media through comments on judicial decisions (see "Presentations & Publications" at <http://www.jssbarristers.ca/pages/people/duguid-bryan.cfm>).

In addition to having served on the Board of ADRIA, Bryan was the Vice-Chair of the Advisory Board of The Children's Wish Foundation of Canada (Alberta and N.W.T Chapter), and a member of the Advisory Board of ThinkFirst Foundation of Canada (Calgary Chapter). In 2014, Bryan was recognized for 20 years of volunteer service with Calgary Legal Guidance, which provides legal assistance and information to disadvantaged persons who would not otherwise have access to such services. In 2015, he became involved with the Kids Cancer Care Foundation of Alberta as a member of the Board, and of the Nominations & Governance and Evaluations & Compensation Committees, and he is now Chair of the Evaluations & Compensation Committee.

In his earlier life, Bryan used his second degree black belt in Kempo karate to teach and train (and to put himself through law school by "bouncing" at Ye Olde Brunswick House in Toronto). Now, he enjoys skiing, travelling, and hiking.

Bryan is also an avid cyclist. He was a National Rider for the Sears National Kids Cancer Ride which saw him cycling as part of a team from Vancouver to Halifax in twelve days in June 2009 to raise awareness and funds for kids cancer. Bryan continues to cycle in support of this cause. Since 2009, he has travelled more kilometres annually on his cycle than in his car.