

# Gordon L. Tarnowsky

## Partner



LL.B, B.Comm

Partner

Year of Call: 1989 (Alberta)

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As a partner in the Litigation - Dispute Resolution Group in Calgary, Gord's practice focuses on the resolution of corporate, commercial and energy industry disputes. He is the past National Chair and Calgary Leader of the Firm's Alternative Dispute Resolution Group.

Gord is able to draw upon 25 years of experience as a problem solver in a broad spectrum of disputes. This dispute resolution experience – employing ADR mechanisms (negotiation, mediation and arbitration) as well as traditional litigation – allows Gord to provide clients with considered strategic advice and representation in order to achieve effective and efficient business results. He has served as counsel in numerous domestic and international arbitrations and in the private and judicial mediation of commercial disputes. Gord has also been retained by clients to act as “settlement counsel” to work independent of the litigation team to assist in the resolution of significant litigation matters. He has been recognized as a leading Canadian lawyer in Dispute Resolution in the *Chambers Global Guide to The World's Leading Lawyers for Business* and is a member of the Western Canada Commercial Arbitration Society. In litigation matters, Gord has appeared before all levels of the Alberta Courts and has also represented clients before the Alberta Securities Commission and the Federal Court of Canada.

Gord has extensive experience in the energy industry and the resolution of disputes concerning industry relationships and agreements including: joint venture agreements, farmout agreements, wide area farmout agreements, area of mutual interest (AMI) agreements, pipeline construction, ownership and operating agreements, facility construction, ownership and operating agreements, unit agreements, gas purchase and sale agreements, electricity purchase and sale agreements, natural gas liquids (NGL) purchase and sale agreements, oil and gas asset purchase and sale agreements, energy company share purchase and sale agreements, royalty agreements, energy development financing agreements, gas gathering, transportation and processing agreements, oil transportation agreements, gas storage agreements, gas aggregator agreements, energy financial and derivative contracts, international joint operating agreements (JOAs), seismic licensing agreements, confidentiality agreements, pipeline right of way / easement agreements, various oilfield service agreements and general commercial and fiduciary relationships. His energy experience includes litigating and arbitrating disputes arising under such relationships as well as in relation to rights of first refusal (and other restrictions on dispositions), product allocation and accounting disputes, environmental liabilities, large and catastrophic losses arising from pipeline and facility failures, and land disputes, including those arising from production on aboriginal lands.

Gord's practice also regularly includes serving as counsel in corporate and securities related disputes including oppression, derivative and fair value proceedings, plans of arrangement, hostile takeovers and proxy battles. He has also served as counsel in proceedings before the Alberta Courts and the Federal Court of Canada relating to the protection of various types of intellectual property including patents, copyright, trade secrets and other proprietary and confidential commercial information.

Gord joined the firm as an articling student in 1989, after clerking with the Alberta Court of Appeal and Court of Queen's Bench.

## Areas of Focus

### Practices

- Aboriginal Law (Canada)
- Aboriginal Litigation
- Alternative Dispute Resolution (ADR)
- Appellate Advocacy
- Arbitration
- Dispute Risk Management
- Energy Advocacy
- Energy Litigation
- Environment and Natural Resources
- Environmental Litigation
- Intellectual Property and Technology
- Intellectual Property Litigation
- International Commercial Arbitration
- Litigation and Dispute Resolution
- Mediation
- Securities and Shareholder Litigation

### Industry sectors

- Chemicals and Petrochemicals
- Electricity
- Energy
- Manufacturing
- Mining
- Mining Litigation and Dispute Resolution

- Oil and Gas

## Education

- University of Saskatchewan, LL.B. (with Distinction), 1988
- University of Saskatchewan, B.Comm. (with Distinction), 1987
- Advanced Negotiation: Difficult Conversations, Harvard Negotiation Institute (June 2009)
- Negotiation Workshop for Lawyers, Harvard Negotiation Institute (June 2007)
- Advanced Negotiation and Mediation Training (January 5, 2006)

## Experience

- Representing Imperial Oil Resources Limited and another major oil and gas company in respect of trespass and royalty claims valued at approximately \$2 billion advanced by a number of Indian Bands seeking declarations that oil and gas leases dating back 60 years are void and claiming restoration of the value of all oil and gas produced and to be produced
- Representing Canadian power producer in arbitration of gas pricing dispute with natural gas supplier
- Representing number of oil and gas companies in multiple disputes concerning operations and accounting issues under natural gas and natural gas liquids handling and processing agreements
- Representing number of oil and gas companies in multiple disputes concerning the operation of rights of first refusal (ROFRs)
- Representing a party in an international arbitration of a US\$ 1 Billion claim concerning a gas field in Eastern Europe
- Representing parties in respect of a dispute under a farmout agreement with respect to earning obligations and breaches of the agreement
- Counsel to the Canadian affiliates of a multi-national waste management company in the arbitration of a multi-million dollar royalty dispute
- Acted as settlement counsel on behalf of a party in resolving multi-million dollar disputes being litigated in the Alberta Courts
- Has represented numerous clients in corporate and securities litigation matters including shareholder disputes, dissent and appraisal proceedings, oppression actions, plans of arrangement, hostile takeovers, proxy battles, and corporate governance matters
- Counsel to an international pipeline company in a US\$15 million dollar UNCITRAL arbitration of a contract dispute with a Venezuelan agent
- Counsel to Bronco Energy Ltd. with respect to its acquisition by Legacy Oil + Gas Inc. for \$36 million

- Counsel to the Canadian affiliate of a major global oilfield services provider in advancing claims against a competitor and former employees in relation to the alleged misappropriation of confidential and proprietary technology and commercial information, breach of copyright and passing off
- Counsel to a multinational industrial equipment manufacturer in a multi-million Euro ICC arbitration against a German equipment supplier concerning mining equipment failures at a Chilean mining operation
- Representing the Canadian affiliate of a major global oilfield services provider in defending a claim and advancing a counterclaim in the Federal Court of Canada in relation to patented and proprietary oilfield technology
- Counsel to an oilfield services provider in the successful application for and execution of an Anton Piller Order against a competitor and former employees arising from the misappropriation of corporate information and unlawful competition
- Counsel to gas pipeline owners in respect of multi-million dollar litigation arising from pipeline failures related to design and construction practices
- Counsel to gas facility owner/operator in respect of multi-million dollar litigation concerning operatorship and accounting practices under facility operating agreements that was resolved through negotiation
- Counsel to a major oil and gas company in international gas pricing arbitrations
- Counsel to a number of Canadian oil and gas companies in respect of the bankruptcy of Enron Corp. and resulting litigation concerning gas and financial contracts in Canada
- Counsel to a major oil and gas company in the successful mediation of a multi-million dollar dispute in relation to the purchase and sale of producing property and facilities
- Counsel to a U.S. based owner of co-generation facilities in the successful negotiation of disputes concerning the termination of international gas purchase contracts as a result of the deregulation of the electricity industry in the U.S. Northeast
- Regularly counsels clients in the drafting and negotiation of the dispute resolution provisions of commercial agreements

## Presentations

- Presenter "Getting the Right ADR Clauses into Your Business Agreements", ADR Institute of Canada, Inc. Annual Conference, September 23, 2010
- Presenter, "Facilitating Settlement: The Use of Settlement Counsel and Risk Analysis," Webcast, Canadian Bar Association Online Continuing Legal Education Program, January 26, 2010
- Presenter, "Settlement Counsel," ADR Institute of Canada, Inc. Annual Conference, October 17, 2008
- Presenter, "The Use of Experts in Arbitration and Mediation," Alberta Arbitration and Mediation Society's Annual Conference, April 28, 2007
- Presenter, "The Use of Experts in Arbitration and Mediation," ADR Institute of Canada, Inc. ADR Energy! Conference, November 17, 2006

- Presenter, "Restrictions on Disposition in the Oil and Gas Industry: The Extinction of the Species?" paper delivered at the 45th Annual Canadian Petroleum Law Foundation Research Seminar in Oil and Gas Law, Jasper, Alberta, June 15, 2006
- Presenter, "Update on Managing Conflicts of Interest Post-R. v. Neil: Is the 'Bright Line' Blinding," presentation to the Corporate Counsel Section, Canadian Bar Association, Alberta Branch, September 21, 2005

## In the Media

- « *Conseiller en règlement de différends - Une voie d'avenir?* », *Le Journal publication*, Barreau du Québec, March 2009

## Insights

- Settlement Counsel - A New Approach to Resolving Difficult Issues
- "Restrictions on Disposition in the Oil and Gas Industry: The Extinction of the Species?", 44 *Alberta Law Rev.* 477, paper delivered at the 45th Annual Canadian Petroleum Law Foundation Research Seminar in Oil and Gas Law, Jasper, Alberta, June 15, 2006

## Activities and Affiliations

- Advisory Board Member of the Institute for Transnational Arbitration
- Member of Alberta Arbitration and Mediation Society
- Member of the Canadian Bar Association
- Past National Chair FMC Law ADR Group
- Past Member of the FMC Calgary Board

## Community Involvement and Pro Bono

- Director, Calgary Catholic Immigration Society

## Teaching Roles

- Guest lecturer, College of Law, University of Calgary, "Conflicts of Interest", October 2008 and 2009
- Guest lecturer, College of Law, University of Saskatchewan, "Negotiating Ethics and Best Practices", October 12, 2006