

HAROLD H. MacKAY, O.C., S.O.M., Q.C.

Harold H. MacKay of Regina, Saskatchewan is an arbitrator and lawyer, a corporate director and governance advisor, and a contributor to Canadian public policy.

Alternative Dispute Resolution

Mr. MacKay is actively involved in alternative dispute resolution including both arbitration and mediation. He is cited in the Canadian Legal Expert Directory as “Consistently Recommended” in international commercial arbitration matters and is a member of the Western Canada Commercial Arbitration Society, www.wccas.ca.

He has acted:

- as mediator, and as sole arbitrator and as a member and Chair of arbitration panels (including as Chair)
- in domestic and international commercial arbitration proceedings, with a focus on energy and other resource matters
- in private sector commercial disputes, including:
 - questions of contract interpretation, force majeure claims and the determination of liability and remedies for contract breach
 - oil and gas and mineral pricing proceedings
 - the reset of royalties and other amounts payable under long term commercial agreements
 - the revision of contract escalation formulae
 - the resolution of accounting and other financial disputes
- in a dispute between the Governments of Alberta and Canada relating to Canada’s federal-provincial fiscal arrangements

Illustrative arbitration experience follows:

- Chair of a tribunal in a gas pricing dispute between a consortium of Canadian producers and several United States electrical utilities, including issues of contract interpretation and establishing a new pricing formula.

- Member of a panel that adjudicated a dispute between the Governments of Canada and Alberta in respect of Alberta's entitlement to stabilization payments under applicable federal legislation.
- Chair of a panel in final offer commercial arbitrations between two large multi-national energy companies involving liability and damages issues arising out of energy trading joint venture agreements in Canada and the United States.
- Sole arbitrator in a dispute between mineral owners and lessees to reset royalties payable under long term mineral leases.
- Member of a panel to determine liability and quantum in a dispute involving a claim that the purchaser under a long-term agreement took substantially less than contractually specified amounts.
- Chair of a panel to resolve a gas pricing dispute under an agreement for the sale of Nova Scotia offshore gas, including the establishment of a replacement pricing mechanism.
- Chair of a panel to fix the amount payable by an energy company to a drilling rig contractor in an extension term of an off-shore drilling agreement.
- Chair of a panel to determine the manner in which a mineral royalty should be calculated where escalation indices had been discontinued.
- Member of a panel in a dispute involving the right of a supplier of primary materials to terminate a supply contract with a manufacturer, requiring determinations of complex accounting issues with expert evidence.
- Sole arbitrator in disputes involving claims of force majeure under a commodity supply contract and a pipeline joint venture project agreement
- Chair of a panel in a dispute involving payment and financial issues under an offshore oil and gas joint venture operating agreement.
- Member (and Chair) of panels adjudicating disputes under Alberta Power Purchase Arrangements.
- Member of a panel in final offer UNCITRAL proceedings to settle the terms of an offshore oil processing agreement.
- Chair of a panel in a dispute arising under a construction project settlement agreement.
- Chair of a panel in an ICC arbitration regarding the termination of a South American oil and gas exploration agreement.

References and further detail are available on request.

Legal Practice

Mr. MacKay was until May, 2018 counsel to MLT Aikins LLP, a major Western Canadian law firm. Mr. MacKay's legal practice concentrated on aspects of business and resource law, including:

- advising companies in the mining, oil and gas, forestry and manufacturing sectors
- the representation of widely-held corporations, Crown corporations, private companies and not-for-profit organizations, both in Canada and abroad
- industrial and resource project development

He has also assisted clients in managing their interests in significant litigation and regulatory proceedings in Canada and the United States.

Governance Advisor and Corporate Director

- (a) Governance advisor to public and private for-profit companies, industry associations, governments and government-owned corporations and not-for-profit bodies.
 - Appointed Fellow of the Institute of Corporate Directors (2013)
- (b) In the private sector, Mr. MacKay has been a director of the following companies:
 - The Toronto-Dominion Bank (TSX and NYSE), a Canadian chartered bank
 - non-executive Chairman, Domtar Corporation (NYSE), a pulp and paper maker
 - The Mosaic Company (NYSE), an international mining and fertilizer company
 - Canada Life Financial Corporation (TSX), an international insurer
 - IPSCO Inc. (TSX/NASDAQ and NYSE), a North American steel and pipe producer
 - Merfin International Ltd. (TSX), an air-laid paper manufacturer
 - The Vigoro Corporation (NYSE), a fertilizer company

- IMC Global Inc. (NYSE), a fertilizer company
 - Uranerz Exploration and Mining Limited, a privately-held uranium and gold explorer and developer
- (c) In the public sector, he is presently a director of the Capital Markets Authority Implementation Organization

He has also served as a director of:

- Bank of Canada, Canada's central bank, including service as lead director
- Federal Business Development Bank (now Business Development Bank of Canada), including service as Board Chair

Public Policy

Mr. MacKay has extensive experience in public policy issues.

- Author, Saskatchewan Post-Secondary Education Report
- Chair, Task Force on the Future of the Canadian Financial Services Sector
- Clifford Clark Visiting Economist, Department of Finance of Canada
- Past Chair, Saskatchewan Institute of Public Policy
- Policy Fellow in the Johnson Shoyama Graduate School of Public Policy

National and Provincial Service

- Past governor of the Donner Canadian Foundation, a philanthropic foundation
- Past president of Ranch Ehrlo Society, a non-profit corporation working with emotionally disturbed children
- Founding Co-chair of the Provincial Action Committee on the Economy in Saskatchewan
- Past Governor of the Council for Canadian Unity
- Chair of a corporate fundraising campaign for the construction of the First Nations University of Canada campus

- Member, Levene Graduate School of Business Advisory Board to the Dean
- Trustee, Government House Foundation

Professional

- Past chairman of the Saskatchewan Branch of the Canadian Bar Association and a member of the CBA Council
- Former governor of the Canadian Tax Foundation

Awards and Recognitions

- Queen's Counsel (1980)
- University of Saskatchewan Alumni Award of Achievement (2000) in recognition of contribution to the legal profession, the community and the University
- Officer of the Order of Canada (2002)
- Doctor of Laws (*honoris causa*), University of Regina (2002)
- Canadian Bar Association, Saskatchewan Branch, Distinguished Service Award (2006)
- Saskatchewan Order of Merit (2009)
- Peter Lougheed Award for Leadership in Public Policy (2013)

Education

- Bachelor of Arts (economics and political science) with great distinction from the University of Saskatchewan (1960)
- Bachelor of Laws from Dalhousie University (1963):
 - Dalhousie University Medal in Law

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