



David Tupper

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Profile

David Tupper practises in the Litigation & Dispute Resolution Group. His practice involves all aspects of corporate/commercial litigation with an emphasis on securities law, construction law, insurance law, environmental law and oil and gas law. He has appeared before all levels of courts in Alberta, in applications, trials and appeals, and has appeared in the Federal Court and the Federal Court of Appeal.

David has acted as counsel for plaintiffs and defendants in construction disputes involving engineering, builder and architectural issues. The construction projects at issue have included oil sands facilities, roadways, bridges, buildings, manufacturing plants, and energy facilities. Issues have included delay, cost overruns, deficient construction, deficient design, and negligent estimates. Many of the matters have been worth hundreds of millions of dollars and have involved hundreds of thousands of documents. The matters have been dealt with both by way of arbitration and in the courts.

In the securities area, David has acted for both the acquiror and the target in hostile takeovers, and has frequently appeared before the Securities Commission of Alberta to attack or defend Shareholder Rights Plans. He has acted in dozens of arrangements, including the Suncor/Petro-Canada arrangement, and has successfully defeated challenges to those arrangements by adverse parties. David has also acted for management, and for dissident groups, in proxy contests and related court challenges. He has had significant experience in oppression cases, including disputes over the entitlements of shareholders and holders of debt instruments.

In the insurance area, David has acted as counsel in subrogation actions, coverage actions, and liability defence matters, involving property, liability, and life insurance policies. He has also prepared coverage opinions dealing with numerous issues involving property and liability policies and reinsurance losses of very significant magnitude.

In the oil and gas area, David has given advice, led litigation, and conducted trials in a range of matters involving contractual disputes, unitization, pooling, farmouts, processing agreements and other issues.

David also acts in the environmental area, and has provided advice on large and small matters, including one of the largest pieces of environmental litigation ever brought before Alberta courts, and in disputes relating to gas station contamination, oil spills on waterways, and coverage for environmental claims.

David was selected as Alberta Litigator of the Year by Benchmark Litigation in 2017, and was chosen by Best Lawyers as the Calgary Class action Lawyer of the Year in 2017.

David is ranked in Band 2 of *Chambers Global: The World's Leading Lawyers for Business* as a leading Alberta business litigator and has been recognized as having a "tremendous ability to listen to clients, understand the issues, and convert that to a successful strategy" and as "smart, effective, no-nonsense and moves very quickly". David is listed as one of the elite 500 lawyers in the Legal 500 Canadian Guide (for dispute resolution). He is a repeatedly recommended commercial litigator in Lexpert. He is also listed in "*Lexpert's Special Edition on Litigation: Canada's Leading Litigation Lawyers*", and is ranked as a leading corporate commercial cross-border litigation lawyer in Canada in 2014 and 2013 by Lexpert. He is ranked as an Alberta Litigation star in the Benchmark Litigation rankings in commercial, construction, insurance and energy litigation. He is also in the elite "*Honourable Mention*" category for those lawyers uniformly recommended. David is ranked as one of the "*Best Lawyers in Canada*" in Class Action Litigation, Insurance Law, Product Liability Law, Corporate and Commercial Litigation, Alternative Dispute Resolution, Appellate practice and Directors & Officers liability categories for a number of years. He has also been listed in "*Who's Who Legal: Insurance & Reinsurance*" as being among the world's leading insurance & reinsurance lawyers, is ranked in *Who's Who Legal* as a leading commercial litigator. David was named as one of the "Top 40 Under 40" by *Calgary Inc.* magazine in September 2005. In his free time, David is active in many volunteer organizations.

SELECT EXPERIENCE

Among the matters in which David has been involved are the following:

Securities

- Litigation counsel to Suncor in its hostile takeover of Canadian Oil Sands.
- Litigation counsel to Suncor in its arrangement with Petro-Canada. Acted in a novel and precedent-setting oppression litigation case, leading to trial in which David successfully acted for Agrium in a suit against its commercial partners in a business.
- Acted for EPCOR Utilities Inc., and Capital Power Corporation in successful defence of an injunction brought by a former chair of the Alberta Securities Commission, seeking to enjoin a \$3 billion transaction on the basis of deficient approval by the shareholder of EPCOR and the City of Edmonton.
- Acted for EPCOR Utilities Inc., and Capital Power Corporation to successfully defend an application brought by a number of Unions seeking to overturn the \$2.8 billion transaction involving the creation of Capital Power Corporation and its initial public offering.
- Acted for dissident group in proxy contest for control of the board of a significant energy company. The dissident group won the proxy contest.
- Acted as litigation counsel to Independent Chair in a proxy contest involving a widely held private company.
- Acted on a number of occasions for management in proxy contests over board election of dissident directors of prominent Calgary companies.
- Defence of Canada Southern Petroleum Ltd. in a Securities Commission application brought by Petro Canada to cease trade the shareholder rights plan of Canada Southern, in the context of a hostile take-over bid made by Petro Canada for Canada Southern. Canada Southern was ultimately acquired by Canadian Oil Sands Trust, in a friendly bid.
- Acted in an application before the Securities Commission for Mercator Minerals Ltd. to cease trade the shareholder rights plan of Tyler Resources Inc., in the context of a hostile bid made by Mercator for Tyler.

- Appeared in a large number of successful applications for arrangements involving numerous energy companies, including arrangements that were challenged by securityholders or other interested parties.
- Acted for an energy company in a dispute over entitlement of debentureholders in a change of control. Trial was ordered to take place six weeks from the filing of pleadings.

Construction Dispute Resolution

- Acted in a number of arbitrations related to claims of cost overruns and delays in construction of a large oil sands facility.
- Acted for AMEC Foster Wheeler in a long litigation involving construction of a magnesium oxide plant in Jordan.
- Acted in a South American mine arbitration with a value of \$550 million, involving losses caused by deficient design.
- Acted in a long international commercial arbitration with a value of over C\$800-million, involving construction issues and insurance issues in the oil sands.
- Acted in a \$250 million arbitration involving cost overruns and delays in a petroleum plant.
- Several actions as plaintiff's counsel relating to negligent design and maintenance of compressors.
- Defence of an engineer in litigation relating to negligent design and build of a roadway.
- Defence of an architect relating to negligent design of a recreational complex.
- Acted for a contractor in a dispute with multiple parties as to validity of builders' liens and the timing of filing.
- Acted for a multinational construction company in defence of allegations of negligent design and gross negligence in project management relating to an international construction project.
- Represented a large oil sands company in a multimillion-dollar dispute over the applicability and validity of a cancellation provision in a construction contract.
- Counsel to a multinational energy company in a contractual dispute regarding the design, supply and installation of components for a major project in the Alberta oil sands.
- Acted for a contracting firm in litigation involving a government owner and an engineering firm. This matter involved interpretation of a design-specified contract evaluation of construction practices against industry standards.
- Acted for a company in a suit over deficiencies related to construction of its headquarters building.

Commercial Litigation

- Obtained an injunction for a large retail company preventing a former employee from using confidential information, and from competing, with the company.
- Defence of an action for Agrium leading to judgment after trial, involving, among other things, allegations that Agrium breached a change of control agreement relating to the grant of options and the valuation of those options.

- Defence of an action for Nexen, leading to trial, in which Nexen successfully defended against allegations of breach of an employment contract.
- Successful defence of a large multinational company against allegations that it defectively designed and manufactured an electric blanket, leading to fire.
- Acted for a manufacturer of oilfield equipment in a dispute over intellectual property rights attached to that equipment.
- Acted for a safety company in a matter leading to a favourable trial judgment in which allegations were made of breach of fiduciary duty and theft of confidential information.
- Acted for the creditor of an insolvent oil field service company to advance bankruptcy claims, resulting in a settlement at nearly full value.
- Acted for a creditor seeking to lift the statutory stay of proceedings in CCAA proceedings to allow independent litigation to be advanced; succeeded in obtaining such an order and ultimately resolving the matter.
- Acted for a mid-size oil and gas company in distress resulting in an order granting CCAA protection and the staged wind-up of that company.

Oil & Gas

- Acted in an arbitration with respect to pipeline cost of service arrangements.
- Acted in a commercial arbitration relating to pipeline construction standards and deficiencies.
- Successfully appeared for Hunt Oil Company, in its application before the Alberta Energy Regulator for an order approved enhanced recovery of a number of productive wells. The application was challenged by a significant energy company and a hearing held in which Hunt was wholly successful.
- Acted for Dominion Exploration Canada Ltd. in a dispute over ownership of a gas well involving unitization and contractual issues, leading to trial, in which judgment was given for Dominion.
- Acted in a dispute over gas plant processing fees and allocation of capacity.
- Acted in a dispute over lapse of freehold leases and offset wells.

Environmental & Regulatory

- Acted for a large multinational energy company in a dispute over historic contamination arising from refinery lands.
- Acted in an arbitration over damages arising from contamination.
- Defended an appeal of an arbitration decision relating to lease obligations to clean-up.
- Acted for an oil and gas company in a dispute relating to alleged contamination of a hotel property.

Insurance

- Acts as an Umpire pursuant to the *Insurance Act* in valuation disputes.

- Acted as coverage counsel for a liability insurer in a significant dispute over the oil sands.
- Provided coverage advice with respect to diverse risks and unique or standard form policies in a variety of industries, in Canada and across the world. The opinions have considered issues relating to losses involving manufacturing plants, tailings dams, co-generation facilities, sulphur plants, oil well blowouts, ammonia plants, oil sands production facilities, gold mines, oil refineries, chemical plants, trucking operations, drilling rigs, oil batteries, gas plants, coal mines, transformer stations, pipelines, turbines, copper mines, warehouses, apartment buildings, and myriad other circumstances. The losses have occurred in North America, South America, Europe, Australia, and Asia.
- Provided numerous opinions dealing with the obligation to disclose material facts, and the consequences of non-disclosure of such facts.
- Acted in a coverage dispute relating to faulty design and workmanship, corrosion, wear and tear, latent defect and erosion exclusion in a property policy in a matter involving the interjection of chemicals into a plant.
- Acted for a life insurer in defence of a coverage claim relating to the definition of “accidental” in the context of accidental death benefits.
- Acted in a subrogation action arising because of a compressor explosion, causing property damage and loss of profits.
- Acted in a recovery action arising from an explosion and fire at a gas processing plant. Limitation of liability clauses were at issue.
- Defended a scaffolding company in relation to claims of poor workmanship leading to paint overspray on adjacent property.
- Acted for an engineering firm in defence of an action alleging breach of duty in the assessment of soil conditions and design of a building foundation.
- Acted for an electrical company in defence of allegations that a defective transformer station caused a fire that destroyed a number of high value condominium complexes.

PROFESSIONAL ACTIVITIES

2013-2015 – Member of the Professional Responsibility Committee of the Law Society of Alberta.

2009-2013 – Member of the Civil Practice Advisory Committee of the Law Society of Alberta.

2009-2012 – Co-founder and Member of the Retention of Women Working Committee of the Law Society of Alberta.

Since 2007 – Instructor CPLED Chambers Advocacy, Ethics components.

Since 1996 – Volunteer with Calgary Legal Guidance.

AWARDS AND RECOGNITION

David is recognized for his expertise in litigation in the following publications:

- *Benchmark Canada*: Alberta Litigator of the Year – 2017

- *Best Lawyers' Calgary Class Action Litigation Lawyer of the Year for 2017.*
- *Chambers Global: The World's Leading Lawyers for Business - 2009-2017 (Alberta - Dispute Resolution):* "David Tupper 'is a prominent name' in litigation in Alberta and is praised by clients for his wide-ranging skill set...." Other comments include: "very well-reasoned, very persuasive, and a very calm court presence," "has a tremendous ability to listen to clients, understand the issues and convert that to a successful strategy" and "smart, effective, no nonsense and moves very quickly."
- *Chambers Canada: Canada's Leading Lawyers for Business 2017 (Alberta - Dispute Resolution; Canada - Insurance: Dispute Resolution)*
- *Who's Who Legal: Insurance & Reinsurance - 2015 and 2016 (Insurance & Reinsurance); Who's Who Legal: 2016 (Commercial Litigation)*
- *The Canadian Legal Lexpert Directory - 2014-2016 (Repeatedly Recommended in Litigation - Corporate Commercial); 2016 (Repeatedly Recommended in Litigation - Commercial Insurance)*
- *The Legal 500 Canada 2015 - 2017 (listed in the elite "Leading Lawyers in Canada" list for Dispute Resolution)*
- *Benchmark Canada: The Definitive Guide to Canada's Leading Litigation Firms and Attorneys - 2013-2016 (Litigation Star - Construction; Energy and Natural Resources; Insurance; General Commercial).* "David has an ability to anticipate and in certain instances defuse situations before they become major issues. With that said, I did get the opportunity to see him in the court room and I was very glad he was on my side!"
- *The Best Lawyers in Canada - 2011 - 2016 (Corporate and Commercial Litigation, Alternative Dispute Resolution, Class Action Litigation, Insurance Law, Product Liability Law, Appellate Law and Directors & Officers Liability)*
- *Lexpert's Special Edition on Litigation: Canada's Leading Litigation Lawyers - 2013-2016 (Ranked Lawyer)*
- *The Lexpert Guide to the Leading US/Canada Cross-Border Litigation Lawyers in Canada - 2013-2016 (Ranked as a Litigation Lawyer to Watch)*

PROFESSIONAL ACTIVITIES

David regularly speaks at conferences throughout Canada on topics that impact the areas of law in which he practices. He is also active in many volunteer organizations.

EDUCATION

Admitted to the Alberta Bar – 1996
LL.B., University of Toronto – 1995
B.A., University of Alberta – 1991