



Nick Kennedy

Associate

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Education

BCL/LLB, 2013, McGill University

BA (Honours), 2008, University of Ottawa

Bar Admission

Ontario, 2014

Practice

Nick is a litigator who acts in arbitrations, civil claims and appeals. His practice is broad, with an emphasis on arbitration and litigation in the energy and infrastructure sectors, investor-state arbitration, and commercial litigation and arbitration. Nick’s energy and infrastructure clients include project developers and governments. He also has experience in trade litigation, including proceedings before the Canadian International Trade Tribunal.

In addition to his commercial practice, Nick has substantial experience in public law and constitutional litigation, and in particular litigation related to the division of powers.

Nick’s practice involves a significant advisory and consulting component. He regularly advises on matters related to Indigenous law, public law (including the division of powers and the Canadian Charter of Rights and Freedoms), procurement, and trade matters.

Nick is fluent in French.

Representative Work

- The Green Party of Canada in an investigation into allegations of workplace harassment by three former employees against the Party’s leader Elizabeth May
- Infinito Gold in its ICSID arbitral claim against the Republic of Costa Rica, under the Canada-Costa Rica Bilateral Investment Treaty (BIT), concerning the expropriation of the Crucitas gold mining project
- Government of Yukon in responding to an appeal to the Supreme Court of Canada following the Government’s successful appeal to the Yukon Court of Appeal relating to the land use planning provisions of the Yukon First Nations Final Agreements and the development of a land use plan for the Peel Watershed region
- Canadian Life and Health Insurance Association as an intervener in a reference to the Québec Court of Appeal regarding the constitutional validity of sections 1 to 7 of the *Genetic Non-Discrimination Act*

- Windstream Energy, a U.S. offshore wind project developer, in its successful arbitral NAFTA investment claim against the Government of Canada in connection with Ontario's moratorium on offshore wind development
- Canadian Construction Association, as an intervener, in the Supreme Court of Canada case *Schrenk v. British Columbia*, concerning whether the employment discrimination provisions of the *Human Rights Code* of British Columbia apply to discrimination between employees of arm's-length companies at construction worksites
- a large Canadian construction materials supplier in successfully resisting the imposition of duties at the full amount recommended by the Canada Border Services Agency on gypsum board imported from the United States in a dumping complaint before the Canadian International Trade Tribunal
- Rogers Communications in its successful appeal to the Supreme Court of Canada challenging a municipality's claim to jurisdiction over the siting of cellular telephone towers
- non-utility generators in a successful application and appeal against the Ontario Electricity Financial Corporation (OEFC) in connection with the price escalation mechanism contained in certain power purchase agreements
- ExxonMobil and Murphy Oil in successfully resisting an application by the Government of Canada to set aside a NAFTA arbitral tribunal award in connection with two petroleum extraction projects located off the coast of Newfoundland and Labrador
- a bank in a successful appeal to FINTRAC's Appeals Unit from the imposition of an Administrative Monetary Penalty by FINTRAC for alleged non-compliance with the bank's reporting obligations under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*
- a major Canadian railway in an action before the Ontario Superior Court against a competitor and other named individuals concerning the theft and misuse of its confidential and proprietary information, and a motion for injunctive relief in the context of that action to prevent the further misuse of the confidential information
- East Durham Wind in its successful application for judicial review to the Ontario Divisional Court of municipal bylaws that had the effect of preventing the construction of its 23 MW wind energy project in West Grey, Ontario and interfering with a provincial green energy policy
- an officer of SNC-Lavalin Group Inc. in an Ontario secondary market securities class action concerning the disclosure of SNC-Lavalin's internal controls over financial reporting

Professional Involvement

During law school, Nick was a teaching assistant in Constitutional Law at the McGill Faculty of Law, a law clerk at the Municipal Court of Montreal and was a summer student at the Attorney General of Ontario, Constitutional Law Branch. He also interned for the Somali Rule of Law Program at the United Nations Development Program in Nairobi, Kenya.

Community

While in law school, Nick was a volunteer researcher at the McGill Legal Information Clinic, a research assistant for the Canadian Council for Refugees, and volunteered at the McGill Faculty of Law High School Outreach Program.

While articling with Torys, Nick volunteered for the High School Outreach Program.

Insights

Ontario Government Introduces Bill Repealing Cap and Trade

July 26, 2018

Duty to Consult: Court Provides Guidance on Changing Consultation Plans

July 23, 2018

NAFTA On Hold

July 19, 2018

SCC Affirms Provinces Cannot Impose Tariffs on Interprovincial Trade in Goods

April 23, 2018

Update on NAFTA Renegotiations

April 19, 2018

Canada Establishes Ombudsperson to Investigate Allegations of Human Rights Abuses by Canadian Corporations Abroad

January 26, 2018

SCC: Human Rights Code Protection from Discrimination "Regarding Employment" Applies Outside Employer-Employee Relationships

December 20, 2017

SCC: Judicial Intervention in Modern Treaty Processes Should Promote Negotiation and Reconciliation

December 08, 2017

SCC: Approval to Develop Ski Resort on Sacred Lands Does Not Unlawfully Infringe Ktunaxa's Rights

November 06, 2017

Facilitation Payments Now Prohibited Under *Corruption of Foreign Public Officials Act*

October 31, 2017

The Canadian Institute's 13th Forum on Pharma Patents

October 25, 2016

The Jurisdiction of Tribunals to Hear Charter Issues

Speaker, Supreme Court & Constitutional Litigation Conference, Toronto

February 28, 2014

Climbing Down the Hill: Defamation Law in the Age of the Internet

Co-author, *The Annual Review of Civil Litigation 2013*

December 2013