



# KIRSTEN CRAIN

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[Corporate Commercial Litigation and Arbitration](#)

[Public Law Litigation and Arbitration](#)

[Intellectual Property Litigation](#)

[Health Law](#)

## Education / Bar Admissions

LLB (Dean's Honours List), McGill University, 1999

M.Sc. (with Distinction), London School of Economics (London, England), 1996

BA in Economics (with Distinction), McGill University, 1995

Ontario, 2001

## Professional Involvement

Skills Instructor, The Advocates' Society

Co-Chair of The Advocates' Society Women in Litigation Symposium, February 16, 2017, Ottawa

The Advocates' Society 10+ Task Force, 2016-2017

CCLA Awards Committee, 2015 - present

Member, Civil Litigation Updated Conference Committee, County of Carleton Law Association, 2006-2014

Co-Chair, The Advocates' Society Court House Series (Ottawa), 2006-2010

## EXECUTIVE SUMMARY

Kirsten Crain is a partner in BLG's Ottawa office. Kirsten's broad litigation practice includes commercial cases, intellectual property litigation, health sector cases and a wide range of administrative law matters, including litigation before the Patented Medicine Prices Review Board, the Canadian Human Rights Tribunal, and the Health Professions Appeal & Review Board. She has conducted trials and appeals in both Federal Court and in the Ontario Superior Court of Justice.

Kirsten is a regular presenter at The Advocates' Society and Law Society of Ontario conferences.

## REPRESENTATIVE WORK

### Commercial Litigation

- Counsel for corporations in the aerospace sector in a tort claim relating to the renewal of a supply agreement, *2Souce Manufacturing Inc. v. United Technologies Corporation*, ONSC 4409, July 7, 2017.
- Counsel for a corporation in the nuclear science sector and a federal Crown Corporation in an injunction proceeding for the delivery of irradiated cobalt pursuant to a supply agreement, *Best Theratronics Ltd. v. Canadian Nuclear Laboratories Ltd.*, [2016] O.J. No. 2398.
- Trial counsel for a multinational tobacco corporation in class action proceedings relating to the sale of cigarettes, *Letourneau c. JTI-MacDonald Corporation*, [2015] Q.J. No. 4729.
- Counsel for an independent Canadian broadcaster in a tort and breach of contract dispute, *Allarco Entertainment 2008 Inc. v. Rogers Communications Inc.*, [2011] O.J. No. 4686, [2010] O.J. No. 1192.
- Counsel for a research institute in a breach of contract claim relating to a contract for a clinical trial relating to a medical device, *Bexley Trading Inc. v. Ottawa Health Research Institute*, [2009] O.J. No. 1134, [2008] O.J. No. 5258, [2007] O.J. No. 5097, [2007] O.J. No. 196, [2005] O.J. No. 1694.
- Counsel for a municipality in a breach of contract claim in connection with the

construction of a light rail mass transit system, *Siemens Canada Limited, PCL Constructors Canada Inc. and Ottawa LRT Corp. v. The Corporation of the City of Ottawa*, [2008] O.J. No. 3741.

- Counsel for a municipality in a breach of contract claim for the provision of computers and computer services, *Toronto (City) v. MFP Financial Services Ltd.*, [2003] O.J. No. 2532, [2002] O.J. No. 3555, [2002] O.J. No. 2661.
- Counsel for a minority shareholder in an oppression remedy proceeding relating to executive pay practices, *UPM-Kymmene Corp. v. UPM-Kymmene Miramichi Inc.*, [2002] O.J. No. 2412, [2004] O.J. No. 636 (Ont. C.A.), [2001] O.J. No. 4220.

### Intellectual Property Litigation

- Counsel for pharmaceutical companies in a patent infringement case, *Janssen Inc. and Millennium Pharmaceuticals Inc. v. Teva Canada Limited and Minister of Health*.
- Trial counsel for a provincial Crown Corporation in a patent infringement case in the gaming sector, *Safe Gaming Systems v. Atlantic Lottery Corporation and Nova Scotia Provincial Lotteries Corporation*, [2018] F.C.J. No. 567.
- Counsel for a corporation in the mining sector in an intellectual property dispute regarding oilfield technology, *Western Oilfield Equipment Rentals Ltd. v. M-I L.L.C.*, Court File No. T-1056-15.
- Counsel for a corporation in the food and beverage sector in a trademark and tort claim, *LBI Brands Inc. v. Aquaterra Corp.*, [2016] O.J. No. 2836.
- Counsel for a corporation in the mining sector in a patent infringement case, *Garford Pty Ltd. v. Dywidag Systems International, Canada Ltd.*, [2012] F.C.J. No. 234.
- Counsel for a songwriter and production company in a breach of copyright case relating to a song entitled, "Who Let the Dogs Out", *Williams v. Douglas*, [2003] O.J. No. 3009, [2003], O.J. No. 2435.

### Administrative Law

- Counsel to health sector institutions in inquests under the *Coroners Act*.
- Counsel for a federal museum in a pay equity complaints before the Canadian Human Rights Commission, and in a related application for judicial review of a decision by the Commission, *Canadian Museum of Civilization v. Public Service Alliance of Canada*, [2014] F.C.J. No. 289.
- Co-Independent Counsel for an Inquiry Committee of the Canadian Judicial Council in respect of proceedings under the *Judges Act* regarding Justice Lori Douglas.
- Board Counsel to the Patented Medicine Prices and Review Board in respect of pricing proceedings under the *Patent Act*, including: In the Matter of Hoechst Marion Roussel Canada Inc. and the medicine "Nicoderm", PMRPB-99-D10-NICODERM April 9, 2010; in the Matter of sanofi-aventis Canada Inc. and the medicine "Penlac Nail Lacquer", PMRPB-07-D2-PENLAC, January 31, 2011; in the Matter of sanofi Pasteur Limited and the medicines "Quadracel and Pentacel", PMRPB-07-D6-QUADRACEL and PENTACEL, June 14, 2012.
- Counsel for a foreign oil and gas corporation in proceedings before the National Energy Board relating to the approval for a natural gas terminal and pipeline, *Emera Brunswick Pipeline Co. (Re)*, 2007 LNCNEB 3, and subsequent appeal, *Friends of Rockwood Park Inc. v. Emera Inc.*, [2007]

F.C.J. No. 1238 (Fed. C.A.).

- Counsel for regulated health professionals in respect of disciplinary proceedings before various Colleges.
- Counsel for health care professionals in hearings and appeals relating to treatment decisions and involuntary status pursuant to the *Health Care Consent Act*.
- Counsel for hospitals in hearings and appeals relating to privileges disputes pursuant to the *Public Hospitals Act*.

## **PUBLICATIONS & PRESENTATIONS**

- Speaker, "Best Practices in Medical Malpractice Litigation," Law Society of Ontario (Toronto), June 2018.
- Panelist, "Demonstration and Commentary: Examining and Cross-Examining Experts," Advocacy in Ottawa Symposium: Superior Court, Federal Court and Beyond, The Advocates' Society, May 11, 2018.
- Co-Chair, "Women in Litigation Symposium," The Advocates' Society, February 2017.
- Speaker, "Significant Developments in the Law of Expert Evidence (What Every Litigator Needs to Know Now)," CCLA Civil Litigation Conference (Tremblant), November 2015
- Speaker, "At Issue for Civil Litigators – What's Trending Now," Law Society of Upper Canada (Toronto), October 2015
- Speaker, "Reviews and Disclosures of Incidents: Improving Quality of Care for Patients," Ontario Hospital Association (Toronto), June 2015
- Co-Author, "The PMPRB – Canada's Patented Medicines Pricing Controls", *Life Signs — Life Sciences Legal Trends in Canada*, 2014-2015
- Speaker, "Understanding Consent and Capacity Issues in Long Term Care," OANHSS (Thunder Bay), April 2014.
- Speaker, "Credentialing Issues for Smaller, Rural and Northern Hospitals: Documentation and Disclosure of Concerns," The Ontario Hospital Association (Ottawa), January 2014.
- Speaker, "Common Credentialing: Panel," Credentialing Conference for Health Care Providers and Trustees, Ontario Hospital Association, June 2013.
- Moderator, "Mental Health and the Law," The Ontario Hospital Association (Ottawa), May 2013.
- Speaker, "Expert Witness Workshop," The Advocates Society (Ottawa), March 2013.
- Author, "Time to end Expert Immunity in Canada," *The Advocates' Journal*, December 2011.
- Author, "Canada Regulatory Regimes: Tips on Regulatory Issues," *Managing Intellectual Property*, October 2011.
- Contributing Author, "Life Sciences & Chemical Patent Practice in Canada: A Practical Guide," 3rd Edition, *Borden Ladner Gervais LLP*, 2011.

- Speaker, Ontario Trial Lawyers' Association, Female Litigator Panel (Ottawa), March 2010.
- Speaker, "College Proceedings and Coroners' Inquests," Masters of Health Law Administration Series (Ottawa), March 2010.
- Lecturer, "Credentialing and Privileging of Physicians, and Managing Difficult Physicians," University of Ottawa (Telfer School of Management), May 2008.

## **RANKINGS & RECOGNITIONS**

- Recognized in the 2019 (and in 2018 and 2016) edition of *Canadian Legal Lexpert® Directory* (Litigation - Corporate Commercial). Also recognized in the 2018 edition (and since 2017) (Litigation - Public Law) and in the 2018 edition (and since 2013) (Medical Negligence).
- Recognized in the 2019 edition of *Benchmark Canada - The Definitive Guide to Canada's Leading Litigation Firms & Attorneys* as a Future Star.
- Recognized in Acritas Stars 2019: Independently Rated Lawyer (Nominated as a stand-out lawyer by senior in-house counsel).
- Selected by peers for inclusion in the 2019 edition (and since 2016) of *The Best Lawyers in Canada®* (Administrative and Public Law, Corporate and Commercial Litigation, Health Care Law, Medical Negligence).
- Recognized as a leading litigator in the 2018 edition of the *Lexpert®/Report on Business Special Edition on Litigation*.
- Recognized in the 2018 edition (and since 2015) of *Benchmark Canada - The Definitive Guide to Canada's Leading Litigation Firms & Attorneys* as a "Future Star: Ontario."
- Recognized as the 2017 Ottawa Medical Negligence Lawyer of the Year by *The Best Lawyers in Canada®*.

## **ABOUT BORDEN LADNER GERVAIS LLP**

Borden Ladner Gervais LLP (BLG) is a leading, national, full-service Canadian law firm focusing on business law, commercial litigation and arbitration, and intellectual property solutions for our clients. BLG is one of the country's largest law firms with more than 700 lawyers, intellectual property agents and other professionals in five cities across Canada. We assist clients with their legal needs, from major litigation to financing to trademark and patent registration.