



## Bevan Brooksbank

### Associé

T 416.367.6604  
F 416.367.6749  
Toronto  
[BBrooksbank@blg.com](mailto:BBrooksbank@blg.com)  
[LinkedIn](#)

[Différends contractuels](#)  
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Bevan maintains a broad commercial litigation practice, providing time-sensitive effective advocacy and advice to clients. He possesses particular expertise in the Canadian automotive sector. In addition, he also represents clients in regards to complex shareholder and contractual disputes, oppression remedy litigation and franchise disputes.

Bevan acts for companies, receivers and court officers with respect to insolvency litigation on the Commercial List. He also possesses extensive experience and familiarity with respect to urgent injunctive relief, such as interlocutory injunctions, preservation, *Mareva* and *Anton Piller* Orders.

Bevan advises and advocates on behalf of clients involved in cross-border and complex commercial disputes. This rests on his substantial experience acting as counsel on applications to enforce or set aside arbitral awards, enforce foreign judgments, address letters rogatory, and contest multinational claims on the basis of jurisdiction.

He frequently appears before the Commercial List of the Superior Court in Toronto on motions, applications and trials, and has otherwise appeared before all levels of courts in Ontario. Bevan also acts for clients in the context of commercial arbitrations.

From 2014-15, Bevan was seconded to Volkswagen Group Canada. He reported to the general counsel and advised on product liability, dealer advisory and commercial matters.

## Experience

- Commercial Disputes
  - Acted successfully in enforcing a foreign judgment in Ontario, and defeating defences of natural justice and public policy
  - Defeated a motion to impose a certificate of pending litigation over a disputed property, in the context of an action over the existence of a partnership (*HK United Construction v. Malanca et al*, 2022 ONSC 6783 (Commercial List))
  - Acting on behalf of a global engineering company in an action concerning the conversion of an energy plant
  - Acted on behalf of foreign defendants to successfully stay an action in Canada alleging misappropriation of intellectual property, on the basis of a lack of jurisdiction
  - Acted for a global gold mining company at trial on the Commercial List with respect to the interpretation of a supply agreement. Secured findings of contempt of Court Orders, and associated sanction, on behalf of investors with regard to a fraudulent real estate investment scheme (*Citti v. Klein*, 2022 ONSC 293 (Commercial List) and 2020 ONSC 2228 )
  - Defeated an application to set aside an arbitral award for funds owing under a share purchase agreement
  - Successfully acted for a commercial tenant with respect to summary judgment on intercompany liabilities (see *De Groot Real Estate v. Scribes Inc.*, 2018 ONSC 870).
  - Successfully stayed a claim concerning a lease dispute, and referring the parties to arbitration
  - Acted at trial before the Superior Court of Justice (Commercial List) on oppression remedy and conspiracy claims (see *D'Addario v. EnGlobe Corp.*, 2012 ONSC 1918 (Commercial List) aff'd 2014 ONCA 376 (C.A.) and assisted in preparation for trial before the Commercial List concerning interpretation of a credit-default swap agreement in the asset-backed commercial paper market
  - Acted with respect to class proceedings in the franchise sector (see *1250264 Ontario Inc. v. Pet Valu Canada Inc.*, 2013 ONCA 279 (C.A.) reversing 2012 ONSC 4317 (S.C.J.), *Fairview Donut Inc. v. The TDL Group Corp.*, 2012 ONSC 1252 (S.C.J.) aff'd 2012 ONCA 867 (C.A.)
- Insolvency
  - Acted for a surety client on the CCAA proceedings of Just Energy and Boreal Partners
  - Acted successfully on behalf of Deloitte Restructuring, as sales officer, in setting aside a purported lease termination in the context of a sales process (*RBC v. Oxford Medical Imaging*, 2019 ONSC 1020 (Commercial List))
  - Acted on behalf of a foreign investment trust and limited partnership concerning a motion to appoint a receiver over a winding up process
  - Acted for a bank to appoint a receiver, and obtain court approval of a truncated sale process transaction
  - Act for companies in *Companies' Creditors Arrangement Act* litigation (such as the Sears Canada, Carillion, US Steel, and Just Energy insolvencies)
- Injunctions
  - Obtained an *ex parte* preservation order over a specific fund (Rule 45.02) in connection with the repudiation of a service agreement
  - Acted on behalf of a major automotive manufacturer to contest and pursue an injunction over labour blockades of its manufacturing facility, and on behalf of a Fortune 500 online sales company to obtain an injunctive Order to return proprietary and sensitive materials held by a departing executive

- Act for clients in seeking interlocutory, *Mareva*, and *Anton Piller* injunctions in the banking, construction, franchise, healthcare and telecommunications industries (see for example *Bell Canada v. Cogeco Cable Canada*, 2016 ONSC 6044).
- Automotive
  - Act for and advise Canadian automobile manufacturers with respect to risk management and arbitrations brought nationally under the National Automobile Dealer Arbitration Program (NADAP). Brands represented include Volkswagen, Audi, Porsche, Lamborghini, Fiat Chrysler/Stellantis, Toyota, Hyundai and Kia
  - Successfully defeated a motion for certification of a proposed class action on behalf of a major automotive manufacturer and distributor (*Kane v FCA US LLC et al*, 2022 SKQB 69)
  - Successfully acted for an automotive manufacturer in setting aside an arbitral award on the basis of jurisdiction (*FCA Canada Inc. v. Pajunen*, 2017 ONSC 7223)

## Insights Rollup

- Auteur, « Zoom hearings: Just one consideration when assessing jurisdiction », article de BLG, avril 2023
- Auteur, « Ontario Court of Appeal rules on arbitrator's power to grant summary judgment motion under Arbitration Act », article de BLG, mars 2023
- Le modèle de vente au détail des concessionnaires automobiles est en plein bouleversement, points de vue de BLG, avril 2021
- Auteur, « Where to Draw the Line on Pre-Certification Discovery: *Karasik v. Yahoo* », article de BLG, octobre 2019
- Author, "Summary Judgement on Six-Packs: *Hughes v. LCBO*," BLG Publications, June 2019
- Auteur, « *Bennett v. Hydro One: The Divisional Court Cuts the Power to a Systemic Negligence Class Action* », article de BLG, février 2019
- Auteur, « When is a Promissory Note a Security and Not a Loan? », article de BLG, novembre 2018
- Speaker, "Update on Arbitral Jurisdiction", ADR Institute of Canada Annual National Conference, October, 2018
- Auteur, « "Technically and Substantively Unfair": The Case against Case Splitting in Secondary Market Class Actions », article de BLG, septembre 2018
- Auteur, « Certainty trumps Equity: the continuing saga of *Yaiguaje v. Chevron Corporation* », article de BLG, juin 2018
- Auteur, « International Insurance and Uber Drivers: The Ontario Courts Reinforce the Competence Principle », article de BLG, mars 2018
- Auteur, « Wind-downs, Retainers And Releases: The Ontario Court Of Appeal Decision In *Trillium Motor World* », article de BLG, juillet 2017
- Speaker, "Dealer Relations and Litigation Update", BLG Automotive Industry Seminar, June 2017
- Speaker, "NADAP and Industry Arbitrations," ADR Institute of Canada Annual National Conference, October 13, 2016
- Auteur, « Less is Not Always More: The Court of Appeal Addresses a Consortium Carriage Fight », article de BLG, juillet 2016
- Auteur, « Contribution and Causation: The *IPEX Case* », article de BLG, juin 2016
- Speaker, "Dealer Litigation Update: Parent Liability, Disclosure and NADAP," BLG Automotive Industry Seminar, June 8, 2016
- Auteur, « Court of Appeal Provides Guidance on Common Issues and Franchisors' Duty of Good Faith », article de BLG, janvier 2016

- Author, "An Unassailable Right to Speak: Class Communications, Opt-out Rights, and the Class Proceedings Act," The Canadian Class Action Review, Irwin Law
- Author, "An Unconscionable Thing for One to Do Towards the Other: The Doctrine of Fraudulent Concealment," The Canadian Bar Review
- Author, "NADAP: An ADR System in the Canadian Automobile Industry", Commercial Litigation and Arbitration Review
- Author, "Something More: Promoters, Advisors and secondary market class proceedings" Class Action Defence Quarterly
- Contributor, THE EXCHANGE: BLG's Financial Institutions Litigation Blog
- Speaker, "Settlement Approval: the Belobaba Trilogy," BLG Class Actions Seminar

## Beyond our Walls

### Professional Involvement

- Member, Canadian Bar Association
- Member, Ontario Bar Association (past executive committee member, Class Actions section)
- Member, The Advocates' Society
- Member, Osgoode Society for Canadian Legal History
- Member, IADC (International Association of Defence Counsel), Business Litigation and International Committees

### Community Involvement

- Board of Directors (Governance Committee), Tafelmusik Baroque Orchestra
- Board of Directors, Osgoode Society

## Bar Admission & Education

- Ontario, 2009
- LLB, Faculté de droit Osgoode Hall de l'Université York, 2008
- BA (Hons.), Université Queen's, 2005

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pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

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