

Benjamin M. Bathgate

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Practice Areas

Commercial Litigation

Litigation & Dispute

Resolution

Fraud & Anti-Corruption

International/Cross Border

Benjamin M. Bathgate is the Chair of the Commercial Litigation Practice Group at WeirFoulds LLP. His practice focuses on complex, high stakes corporate and commercial litigation and providing his clients with trusted advice on pre-litigation investigations and emergency relief in the courts.

Ben has significant expertise in and regularly advises on matters relating to commercial fraud, injunctions, asset tracing and recovery, internal and government investigations (cross-border and national) and transactional disputes. He has been lead counsel in a number of precedent-setting cases, including cross-border digital asset tracing and seizure proceedings. Ben successfully obtained the first reported Anton Piller Order (Civil Search and Seizure) on cryptocurrency in Canada, a case that was the feature story in *Bloomberg Businessweek* (May 19, 2022). He speaks and consults regularly on cryptocurrency frauds and asset tracing as part of his cross-border practice, and has interviewed with leading publications in the field including *CoinDesk*, *CoinDesk TV*, *Canadian Lawyer*, *Yahoo Finance*, *Bloomberg Law* and *Bloomberg Business*.

Ben is a leading corporate commercial litigator who has built a far-reaching cross-border practice and network, including foreign lawyer contacts, investigators, forensic experts and other specialized service providers. He prides himself on building cross-disciplinary teams that provide practical, multi-jurisdictional solutions for business challenges facing a diverse global client base. These foreign and domestic companies include: banking and financial services institutions; investment companies/funds; consumer products manufacturers and distributors; retailers; franchisors; consulates; embassies; insurance companies; land developers; tech companies; and telecommunications companies.

Ben has been recognized by *Who's Who Legal* as a "pre-eminent name of the next generation" and "Future Leader" in Commercial Litigation, by *Legal 500 Canada* as a "Next Generation Partner" in Dispute Resolution, by the *Canadian Legal Expert Directory* as a "Leading Lawyer to Watch" in Corporate Commercial Litigation, and as a "Future Star" by *Benchmark Litigation*.

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Ben has considerable experience representing clients at all levels of court in Canada, including the Court of Appeal for Ontario and the Supreme Court of Canada, and has been lead counsel in a number of precedent-setting cases. He is unique among commercial/civil litigators due to his considerable experience in contempt proceedings and leading private prosecutions (the private laying and prosecution of criminal charges). He appears regularly as counsel in domestic and cross-border disputes, leading teams in complex arbitrations and before various boards and tribunals.

Ben co-authors the Canadian Chapter of Chambers Global's *International Fraud and Asset Tracing Guide (Trends: Cybercrime and Cryptocurrency)*, and its *Anti-Corruption Guide*. He is faculty for Osgoode Law School's Web3, Blockchain and Metaverse Law certificate course: *Global Enforcement Trends in Web3*. He is a co-author and co-editor of *The Essential Guide to Settlement in Canada*, a practice manual designed for in-house counsel, which is cited as an authoritative text by the courts. His writing on what is now *Ontario's Apology Act* was considered by the Ontario Legislature and in legislative committees.

Called to the Bar	Education	Affiliations
<ul style="list-style-type: none">• Ontario (2005)	<ul style="list-style-type: none">• Dalhousie University, Juris Doctor, 2004• Bucerius Law School (Hamburg, Germany), International and Comparative Business Law Program, 2003• University of Toronto, Bachelor of Arts (Honours with Distinction), 2001	<ul style="list-style-type: none">• Ontario Bar Association, The Franchise Law Section• Canadian Franchise Association• International Franchise Association• The American Chamber of Commerce in Canada• The Advocates' Society

Notable Mandates

- Represented several former officers of Sino-Forest Corporation before the Ontario Securities Commission in one of Canada's largest ever securities fraud proceedings, spanning 180 hearing days and relating to \$3 billion in Canadian-raised capital;
- Successfully obtained and executed the first reported Anton Piller Order (Civil Search and Seizure) on cryptocurrency in Canada, and argued Canada's first case, and one of the world's first cases, considering attacks against smart contracts (on a blockchain) and user interactions on decentralized finance (DeFi) trading platforms;
- Successfully obtained injunctive relief seeking the tracing, accounting, freezing, preservation, custody and disposition of tens of millions of dollars in various forms of cryptocurrency, including submissions on the character of digital assets, implications arising from their transfer and disposition and obtaining disclosure from digital asset platforms, exchanges and wallet service providers with respect to transiting funds (Norwich Orders);
- Defended against injunctive relief seeking the tracing, custody, valuation and disposition of tens of millions of dollars in cryptocurrency, including submissions on the nature of the digital asset, its custody/insurance and its risk of dissipation;
- Defending a seller from US \$60 million in breach of representation and fraud claims arising from a US \$560 million share sale of an aerospace manufacturing company;
- Litigated claims totaling US \$125 million for breach of contract, breach of

privacy/confidentiality and conspiracy, arising from a lease termination in one of the largest cinema projects in the Middle East;

- Represented a large merchant bank in prosecuting a \$30 million set of claims for fraud and conspiracy arising from a failed international wood processing joint venture situated in Ukraine;
- Prosecuted and succeeded at trial on a complex 12-year, multi-transfer fraudulent conveyance action seeking repayment on behalf of a European banking client and other creditors on debt totaling \$15 million;
- Defended a land development company and its officers from \$15 million in claims of fraud and oppression;
- Represented an international telecommunications company in defending a misleading advertising claim, which involved questions on the sufficiency of disclaimer language used on scrolling Internet pages;
- Represented an international insurer against a \$20 million claim in a failed merger transaction;
- Represented a commercial restaurant tenant in obtaining a precedent-setting trial decision enforcing an oral lease and an oral option to purchase land against a landlord;
- Represented numerous national banking and retail clients in claims against landlords seeking to enforce restrictive covenants (including injunctive relief), recover operating cost payments and obtain rent abatements;
- Represented numerous landlords and commercial tenants in real estate and leasing disputes (including trials), involving remedies of specific performance, injunctive relief, damages, distress, bailment and relief from forfeiture;
- Defended numerous consumer electronics and household products manufacturers, wholesalers, retailers and distributors from breach of contract, occupier liability and product liability claims;
- Defended numerous franchisors and distributors from various claims, including claims: seeking rescission remedies for late or allegedly deficient disclosure; alleging failure to disclose material facts; alleging misrepresentations in the disclosure document or in the statement of material change; and for alleging breach of the obligation of fair dealing;
- Defended an internet advertising company and a large international insurer against oppression remedy and employment law claims brought by former managers and executives.

Reported Cases

- *Spasiw et al v. Quality Green Inc. et al*, (2023) ONSC 4422 (CanLII) – Successfully enforced an arbitration clause based on arguments that the “pith and substance” of the claims were contractual in nature and governed by the clause, and succeeded in avoiding *Charter* and other arguments seeking to pursue related fraud and oppression claims in the courts.
- *Cicada 137 LLC v. Medjedovic*, (2022) ONSC 369 (CanLII) – Successfully obtained an Anton Piller Order (Civil Search and Seizure) over tens of millions in cryptocurrency assets, arguing issues including: the nature of digital assets for property seizures; how the law should interpret flash loans and smart contracts on a blockchain in decentralized finance (DeFi) trading platforms; and countering the defence of “Code is Law”.
- *Noranco v MidOcean Partners III*, (2019) ONSC 1173 (Ont. S.C.J.) – Successfully obtained an indemnification order for the advance payment of a defendant officer’s legal expenses, within a broader fraud proceeding.
- *Fady Samaha v. Yamashita Rubber Co. et al*, 2019 ONSC 3192 and *Ewert v Denso Corporation*, (2017) BCSC 973 (BCSC) – Defence counsel in settlement approval hearings for a national

auto parts class action alleging price fixing.

- *Samuels v Attorney General (Canada)*, 2016 ONSC 7937 – Successfully stayed and defended a civil fraud proceeding against a large telecommunications company, pending the outcome of criminal proceedings against the plaintiff, and upheld ruling on appeal.
- *Bell Canada v. Cogeco Cable Canada*, (2016) ONSC 6044 (Ont. S.C.J.) – Defended interlocutory and permanent injunctions on allegedly misleading advertising statements for a telecommunications client, and dealt with questions on the sufficiency of disclaimer language within Internet advertisements.
- *Bayerische Landesbank Girozentrale v. Rosen Ridge Farms Ltd., et. al.*, (2015) ONSC 27 (Ont. S.C.J.) – Successfully obtained a trial decision in a complex fraudulent conveyance action, overturning a sham trust agreement and unwinding a series of real property transfers.
- *Rehman International Ltd. v. Royal Bank of Canada*, (2013) CarswellOnt 9203 (Ont. S.C.J.) – Successfully opposed an action seeking to realize upon fraudulent instruments, and succeeded in prosecuting the bank's counterclaim at trial and in piercing the corporate veil.
- *Thorne v. AXA Canada Inc. et. al.*, (2012) ONSC 2409 (Ont. S.C.J.) – Successfully opposed a Divisional Court appeal seeking the right to examine the President and CEO of a large defendant insurer.
- *Lechuga 1 Ltd. v. Lettuce Eatery Development Inc.*, (2011) CarswellOnt 8213 (Ont. S.C.J.) – Opposed an application brought by three franchisees under the Arthur Wishart Act (Franchise Disclosure) claiming rights of rescission for allegedly deficient disclosure and successfully obtained an order converting the application into an action.
- *Sigrist v. McLean*, (2011) CarswellOnt 14424 (Ont. S.C.J.) – Successfully obtained a trial decision enforcing an oral lease and an oral option to purchase a commercial property, overturning an illegal distress and obtaining an award of damages, including punitive damages.
- *Batkov v. Starwood Industries Global Corp.*, (2010) CarswellOnt 10090 (Ont. S.C.J. Div. Ct.) – Successfully opposed a Divisional Court appeal and upheld an order granting an administrative dismissal of a \$15 million action brought against a banking client, upholding a multi-million dollar share purchase transaction.
- *Sincies Chimentin S.p.A. (Trustee of) v. King* (2010) CarswellOnt 8996 (Ont. S.C.J.) – Defended an action and a summary judgment motion seeking to enforce a foreign judgment in Ontario on grounds of jurisdiction, natural justice and public policy.
- *R.S.W.H. Vegetable Farmers Inc. and 1427868 Ontario Ltd. v. Bayerische Landesbank Girozentrale and Ontario Peninsula Farms Ltd.*, 2010 CanLII 69207 (S.C.C.) – Successfully opposed an application for leave to appeal to the Supreme Court of Canada with respect to a proceeding under the Farm Debt Mediation Act, which sought to render null and void the enforcement of a registered bank charge.
- *Strassle Informationssysteme Holding GmbH (Trustee of) v. Sieber*, (2010) ONCA 604 (CanLII) (Ont. C.A.) – Successfully defended a challenge to an Ontario Judgment enforcing a foreign banking client's award in Europe, and successfully opposed the subsequent appeal in the Court of Appeal for Ontario.
- *Bayerische Landesbank Girozentrale v. Sieber*, 2008 CanLII 28753 (ON S.C.) – Successfully set aside an earlier dismissal of a complex fraudulent conveyance claim.

Awards

- Recognized by *Who's Who Legal* as a Future Leader in Commercial Litigation (2023, 2024)
- Recognized in the *2023 Benchmark Litigation: Canada Guide* as a Future Star

- Recognized in the *2022 Benchmark Litigation: Canada Guide* as a Future Star
- Listed in the *Legal 500 Canada 2022* as a Next Generation Partner – Dispute Resolution
- Listed in the *Legal 500 Canada 2021* as a Next Generation Partner – Dispute Resolution
- Listed in the *Legal 500 Canada 2020* as a “Next Generation Partner” – Dispute Resolution
- Recognized in the *2019 Canadian Legal Expert Directory* as a Leading Lawyer to Watch in the area of Litigation – Corporate Commercial

Speaking Engagements

- Faculty, the Osgoode Law Certificate in “Web3, Blockchain and Metaverse Law: Global Enforcement Trends in Web3”, Osgoode Hall Law School, October 2024
- Speaker, “Decentralized Autonomous Organizations (DAOs): Overcoming the Challenges of Managing Clients and Preventing Fraud in a Purely Decentralized 'Entity'”, The C5 Group, Annual Crypto and Digital Asset Fraud & Recovery Conference, London, UK, April 25, 2024
- Faculty, the Osgoode Law Certificate in “Web3, Blockchain and Metaverse Law: Global Enforcement Trends in Web3”, Osgoode Hall Law School, October 2023
- Speaker, “Crypto and Digital Asset Fraud: New Precedents in Civil Recovery”, The C5 Group, Annual Crypto and Digital Asset Fraud & Recovery Conference, London, UK, June 2023
- Speaker, “White Collar Crime for Litigators Program: Digital Fraud and Asset Tracing in the Crypto Era”, Law Society of Ontario, May 9, 2023
- Panelist, “Trends and Developments in Cryptocurrency: What the Experts are Seeing in the Tracing, Seizing and Safeguarding of Digital Assets, and Why So Much Value is Being Lost”, McMillan LLP, April 25, 2023
- Speaker, “Blockchain - Recent Wave of Bankruptcies and Impact of Centralised versus Decentralised Model”, Chambers Global Practice Guides Tech Summit 2023, March 8, 2023
- Speaker, “New Developments on Crypto Freezing, Tracing, Search and Seizures and the Code is Law Debate”, Association of Corporate Counsel, September 28, 2022
- Speaker, “Cryptocurrency, Digital Asset Tracing and Global Enforcement Trends and Is Regulation of the Market on the Horizon and ESG Disputes and Crystal Ball Gazing”, TerraLex IDR and RIWCCC Joint Meeting – Roundtable Discussion, June 7-13, 2022
- Speaker, “CFAAR (Crypto Fraud and Asset Recovery Group) and New Precedents on Crypto Search and Seizures and the Code is Law Debate”, Webcast, May 17, 2022
- Speaker, “Persuasive Advocacy in a Virtual Hearing”, TerraLex Virtual Hearings Webinar Series, September 2020
- Speaker, “Litigation Funding Overview”, TerraLex Virtual Global Meeting, Webinar, October 2018
- Speaker, “Unique Perspectives and Opportunities for 'Big Data'”, TerraLex Webinar, April 4, 2018
- Speaker, “Effective Crisis Response: A multi-disciplinary perspective”, Association of Corporate Counsel, October 5, 2017
- Speaker, “Fraudulent Preferences and Conveyances: From Detection to Judicial Remedies”, ACFI Annual Fraud Conference, Toronto, May 2, 2017
- Speaker, “Should it Stay or Should it Go Part II: Litigation Hold”, McMillan Corporate Counsel Webcast, October 2016
- Speaker, “Litigation Holds and Document Preservation”, McMillan Corporate Counsel

Presentation, May 2016

- Speaker, "Best Practices in Document Management: Part I", McMillan Corporate Counsel Webcast, April 2016
- Speaker, "Commercial Lease Remedies 101", McMillan Corporate Counsel Presentation, September 2015
- Speaker, "Associate Career Development Planning", McMillan in-house presentation, May 2014
- Speaker, "An Overview of Franchise Law in Ontario: A Litigator Perspective", Ontario/New York Legal Summit, Ontario Bar Association, March 2014
- Speaker, "Making Settlements Stick: A Guide to Settlement", McMillan Corporate Counsel CPD Series, Fall 2013
- Speaker, "Recent Developments in Franchising and Distribution Law", McMillan in-house presentation, January 2013
- Speaker, "Recent Developments in Franchising and Distribution Law", McMillan Corporate Counsel CPD Series, Fall 2012

Additional Publications:

- ["Is The Sun Setting On Perceived DAO 'Immunity?'"](#) Law360 Canada (July 12, 2023)
- "DeFi Platform Mango Loses \$117 Million in Smart Contract Exploit: Avraham Eisenberg Arrested and Sued", McMillan LLP (February 2023)
- ["Franchising in Canada: 2022 Year in Review"](#), (January 2023)
- ["Anti-Corruption 2023 Guide \(Canada Chapter\)"](#), Chambers and Partners (January 2023)
- "DeFi Platform Mango Loses \$117 Million in Smart Contract Exploit: Is Mango's Settlement with the Exploiter Enforceable and What Does it Mean for DAOs?", McMillan LLP (November 2022)
- "DeFi Platform Mango Loses \$117 Million in Smart Contract Exploit: Are DAOs Responsible for Bad Smart Contracts?", McMillan LLP (October 2022)
- ["International Fraud & Asset Tracing 2022 \(Canada Chapter\)"](#), Chambers and Partners (June 2022)
- ["Anti-Corruption 2022 Guide \(Canada Chapter\)"](#), Chambers and Partners (January 2022)
- ["International Fraud & Asset Tracing 2021 \(Canada Chapter\)"](#), Chambers and Partners (April 2021)
- ["Anti-Corruption 2021 \(Canada Chapter\)"](#), Chambers and Partners (January 2021)
- ["Anti-Corruption 2019 Second Edition \(Canada Chapter\)"](#), Chambers and Partners (December 2019)
- ["Anti-Corruption 2019 Guide"](#), Chambers and Partners (December 2018)
- ["Guide to Tracing Assets Around the World 2018"](#), TerraLex (May 2018)
- ["The Essential Guide to Settlement in Canada"](#), Published by LexisNexis, Canada (Winter 2013)

Media Mentions:

- ["Mango Market Exploiter's Arrest Is 'Chilling Effect' on DAOs: Lawyer,"](#) CoinDesk TV (February 3, 2023)
- ["Mango Markets Exploiter Thought a DAO Protected Him. Then US Courts Showed Up,"](#) by Danny Nelson, CoinDesk (January 31, 2023)

- [“Ethan Lou: A Hamilton teen genius 'hacked' millions in crypto — but he may not be in the wrong,”](#) by Ethan Lou, Financial Post (June 15, 2022)
- [“The Math Prodigy Whose Hack Upended DeFi Won't Give Back His Millions,”](#) by Christopher Beam, Bloomberg Businessweek (May 19, 2022)
- [“Code is law' defence to be tested in case of allegedly stolen crypto,”](#) by Aidan Macnab, Canadian Lawyer Magazine (March 17, 2022)
- [“OSC wants a more transparent fixed-income market”](#) by Allan Tony, Advisor's Edge (June 26, 2015)
- “Don't be tempted to tip,” Canadian Lawyer (June 17, 2015)

Publications

- Rule of Law '1', Code is Law 'O': Eisenberg Convicted in Mango Markets Criminal Trial after He Shies Away from Testifying, April 19, 2024
- Commercial Litigation Insights: Securities Enforcement? But They're Crypto Tokens, Not Shares..., February 07, 2024
- Cryptocurrency 'Regulation by Enforcement' as Hot as Ever: What's to come from Securities Regulators in 2024?, February 05, 2024
- Postponement of Long-Awaited Mango Markets Criminal Trial on the Heels of SBF Guilty Verdict: What's to Come?, November 27, 2023