

Brian Moher, Barrister

Professional Profile: *Updated September 2016*

CONTACT:

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A. PROFILE OVERVIEW:

Brian was called to the Ontario Bar in 2005.

His practice is focused on complex litigation and the development of new law. His successes go beyond the simple recognition of his clients' rights, but also the enforcement, expression, and protection of those rights.

The simple existence of a right under the law is meaningless without the client's ability to actively enjoy a particular legal right, privilege, or protection.

Brian's practice flexibly permits him to serve his clients (whether they be professionals or those wronged by professionals) in all different capacities.

His work includes the defence or prosecution of professionals of all varieties, and in any forum.

Brian's most noteworthy accomplishments have arisen out of:

- administrative law and civil rights in all capacities;
 - professional liability matters and tribunal hearings;
 - professional regulation, including representation of both professionals or their clients;
and
 - technicalities relating to procedure and jurisdiction;
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B. SELECTION OF REPORTED DECISIONS:

Appellate Work / Judicial Reviews – Selected Samples:

Decision	Court
<i>College of Optometrists (Ontario) v. SHS Optical Ltd.</i> , 2009 CarswellOnt 3395 (S.C.C.)	Supreme Court of Canada
<i>College of Optometrists (Ontario) v. SHS Optical Ltd.</i> , 2009 CarswellOnt 3393 (S.C.C.)	Supreme Court of Canada
<p>In <u><i>College of Optometrists (Ontario) v. SHS Optical Ltd.</i></u> series of decisions, Brian successfully obtained the highest contempt fine imposed in Canadian legal history, and subsequently defended multiple appeals by the contemnor.</p> <p>The matter concerned an optician who was dispensing eyewear without prescriptions. The result was a fine of approximately \$17,000,000, imprisonment of the optician for 1 year, and house arrest of the optician's spouse for 6 months.</p>	
Decision	Court
<i>College of Optometrists (Ontario) v. SHS Optical Ltd.</i> , 2008 CarswellOnt 6073 (C.A.)	Court of Appeal
<i>College of Optometrists (Ontario) v. SHS Optical Ltd.</i> , 2009 CarswellOnt 86 (C.A.)	Court of Appeal
Decision	Court
<i>Asa v. University Health Network</i> , 2016 ONSC 439 (Div. Ct.)	Divisional Court
<i>Asa and Ezzat v University Health Network</i> , 2015 ONSC 5389 (Div. Ct.)	Divisional Court
<p>In <u><i>Asa v. University Health Network</i></u> series, Brian obtained the <u>first</u> decision from a Court in Canada granting Judicial Review of a Hospital's internal administration on the basis of the public importance of the issues before the Court.</p> <p>In this matter, the Court accepted that the effect on the public at large by the Hospital's internal investigation and resulting findings against his Cancer Research clients necessitated judicial intervention.</p> <p>Brian was successful in this Judicial Review application, with Hospital's allegations of falsification and fabrication of scientific data in published journal articles set aside, and Hospital's decision on sanctions (only) remitted for reconsideration.</p>	
<i>Katsoulakos v. Assn. of Professional Engineers of Ontario</i> , 2014 ONSC 5440 (Div. Ct.)	Divisional Court
<i>Katsoulakos v. Assn. of Professional Engineers of Ontario</i> , 2014 CarswellOnt 7989 (Div. Ct.)	Divisional Court
<p>In <u><i>Katsoulakos v. Assn. of Professional Engineers of Ontario</i></u> series, Brian successfully appealed a discipline decision against his clients, despite no evidence being adduced in defence of his clients at the discipline hearing.</p>	

The discipline committee's conviction of his clients was overturned remitted to the regulatory body on the basis that:

"[T]he obligation is on the professional association to specify the allegations of professional misconduct with reasonable particularity, not on the member to discern from the general 'subject matter' of the circumstances what he may or may not be alleged to have done wrong."

College of Physicians and Surgeons of Ontario v. Rathe, 2013 CarswellOnt 3765 (Div. Ct.)

Divisional Court

Class & Group Actions – Selected Samples:

Case	Forum
<p><i>Andersen v. St. Jude Medical Inc.</i>, 2012 CarswellOnt 8061 (S.C.J.)</p> <p>Brian was amongst the counsel who represented the plaintiff-class in a trial that extended beyond 1 and ½ years.</p>	Class Action Trial
<i>Andersen v. St. Jude Medical Inc.</i> , 2008 CarswellOnt 6668 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2008 CarswellOnt 3629 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2008 CarswellOnt 6666 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2008 CarswellOnt 6667 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2008 CarswellOnt 6654 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2007 CarswellOnt 9592 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2007 CarswellOnt 9436 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2007 CarswellOnt 9732 (S.C.J.)	Interlocutory Motion
<i>Andersen v. St. Jude Medical Inc.</i> , 2007 CarswellOnt 9589 (S.C.J.)	Interlocutory Motion
<i>Taylor v. Canada (Attorney General)</i> , 2010 CarswellOnt 10538 (S.C.J.)	Interlocutory Motion
<i>Baric v. Tomalk</i> , 2006 CarswellOnt 1347 (S.C.J.)	Interlocutory Motion
<i>Quenneville et al. v. Volkswagen et al</i> , 2016 ONSC 4607 (Sup. Ct. Jus.)	Contempt Motion
<p>In <i>Quenneville</i>, Brian successfully defended a contempt motion brought against a law firm, and two lawyers, arising out of a class action carriage battle. All three of the defendants were acquitted.</p> <p>This matter arose out of a carriage battle over the Volkswagen emissions scandal. Contempt was alleged against 2 lawyers and their law firm. The allegations of contempt were brought by a Consortium of law firms over emails sent to potential members of a class action against Volkswagen after Carriage had been awarded to the Consortium.</p> <p>The Consortium's argument relied upon communications sent after prior findings by the Court that similar communications were against the Court's previous orders.</p>	

Civil and Administrative Law Decisions – Selected Samples:

Case	Nature of Matter
<p>Brian has obtained success in a variety of Administrative Law matters, unique in their variety and forums, including several Contempt Motions, as well as a Charter Challenge.</p>	
<p><i>Quenneville v. Volkswagen</i>, 2016 ONSC 4607 (CanLII)</p>	<p>Contempt Motion (See above, under “Class & Group Actions”)</p>
<p><i>2217758 Ontario Inc. v. Ontario (Attorney General) et al.</i>, 2015 ONSC 1 (S.C.J.)</p>	<p>Successful defence of a Charter Challenge</p>
<p>Brian has represented his clients’ interests in numerous Coroner’s Inquests, a small selection of which are set out below.</p>	
<p><i>Hamilton (Re)</i>, 2012 CanLII 97339 (ON OCCO)</p>	<p>Coroner’s Inquest</p>
<p><i>Osaе (Re)</i>, 2012 CanLII 70988 (ON OCCO)</p>	<p>Coroner’s Inquest</p>
<p><i>Novak (Re)</i>, 2006 CanLII 81569 (ON OCCO)</p>	<p>Coroner’s Inquest</p>
<p><i>Stevenson (Re)</i>, 2004 CanLII 72808 (ON OCCO)</p>	<p>Coroner’s Inquest</p>
<p>As a corollary to his Professional Regulatory work, Brian has appeared very many times before the Health Professions Appeal and Review Board, with only a portion of his later decisions being reported.</p>	
<p><i>HA v. JC</i>, 2015 CanLII 64534 (ON HPARB)</p>	<p>Complainants</p>
<p><i>HA v. SW</i>, 2015 CanLII 64533 (ON HPARB)</p>	<p>Complainants</p>
<p>In the “<u>H.A.</u>” matters, Brian represented the parents of a 22 day-old child who died subsequent to being circumcised.</p> <p>Widely reported in the media, nationally and internationally, the deceased child’s “voice” resonated with families, healthcare professionals, and many other people from all walks of life.</p> <p>Support for his clients flooded in from the global community, ranging from newspaper editors, television media personalities, as well as a broad spectrum of community members in various countries around the World.</p>	
<p><i>N v. MPG</i>, 2013 CanLII 78568 (ON HPARB)</p>	<p>Professionals</p>
<p><i>REC v. AG</i>, 2013 CanLII 17457 (ON HPARB)</p>	<p>Professionals</p>
<p><i>EP v. DTF</i>, 2013 CanLII 54673 (ON HPARB)</p>	<p>Professionals</p>
<p><i>RB v. JGGP</i>, 2012 CanLII 44206 (ON HPARB)</p>	<p>Professionals</p>
<p><i>OB v. SB</i>, 2012 CanLII 81461 (ON HPARB)</p>	<p>Professionals</p>
<p><i>DG v. BMG</i>, 2011 CanLII 34276 (ON HPARB)</p>	<p>Professionals</p>

Professional Regulatory:

- Although a number of Brian's professional regulatory proceedings have resulted in published decisions and/or news-media attention, for the sake of confidentiality, these matters have been specifically omitted.