

THE HONOURABLE

# Frank J.C. Newbould, K.C.

Mr. Newbould was appointed to the Ontario Superior Court of Justice in 2006. Until his retirement on June 1, 2017, he was from 2013 the head of the Commercial List in Toronto, the country's leading commercial court tasked with hearing a wide variety of complex cases including domestic and cross-border insolvency matters, corporate amalgamations and reorganizations, proceedings for relief under business corporation legislation, and oppression actions. In 2014, he presided over the first cross-border joint trial with the Delaware Bankruptcy Court in the Nortel insolvency litigation involving the allocation of \$7.3 billion.

Prior to his appointment to the bench, Mr. Newbould was a partner at Borden Ladner Gervais in Toronto with a broad litigation and arbitration practice involving corporate and commercial disputes, banking and insolvency matters, class actions, re-insurance disputes, real estate and estate matters.

Mr. Newbould is counsel to the firm of Thornton Grout Finnigan LLP in Toronto, a panel member of Arbitration Place in Toronto, an Associate Member of South Square Chambers in the UK, a member of the London Court of International Arbitration User's Council, a panel member of the International Centre for Dispute Resolution (ICDR) of the American Arbitration Association, a panel member of the Singapore International Arbitration Centre, a panel member of the BVI Arbitration Centre, a member of the ICC Canada Arbitration Committee, a panel member of P.R.I.M.E. Finance, a member of INSOL International (International Association of Restructuring, Insolvency & Bankruptcy Professionals), a member of the International Insolvency Institute, and a former fellow of the American College of Trial Lawyers. He is a director of Firm Capital Mortgage Investment Corporation, a TSX listed company.

As a judge of the Superior Court of Ontario, Justice Newbould released a large number of reported decisions. The following is a short sample of his decisions:

**1. Fairfield Sentry Ltd. v PricewaterhouseCoopers LLP**

*Fairfield Sentry Ltd. was the largest feeder fund to the Madoff business. It claimed damages of \$5 billion for auditor's negligence arising from the Madoff fraud.*

**2. Re Nortel, 2015 ONSC 2987**

*A joint hearing was held by the Superior Court of Justice (Commercial List) with the U.S. Bankruptcy Court, a first of its kind, to decide the allocation of \$7.3 billion amongst the Canadian, U.S. and EMEA estates of Nortel.*

**3. U.K. Pension Claimants v Nortel**

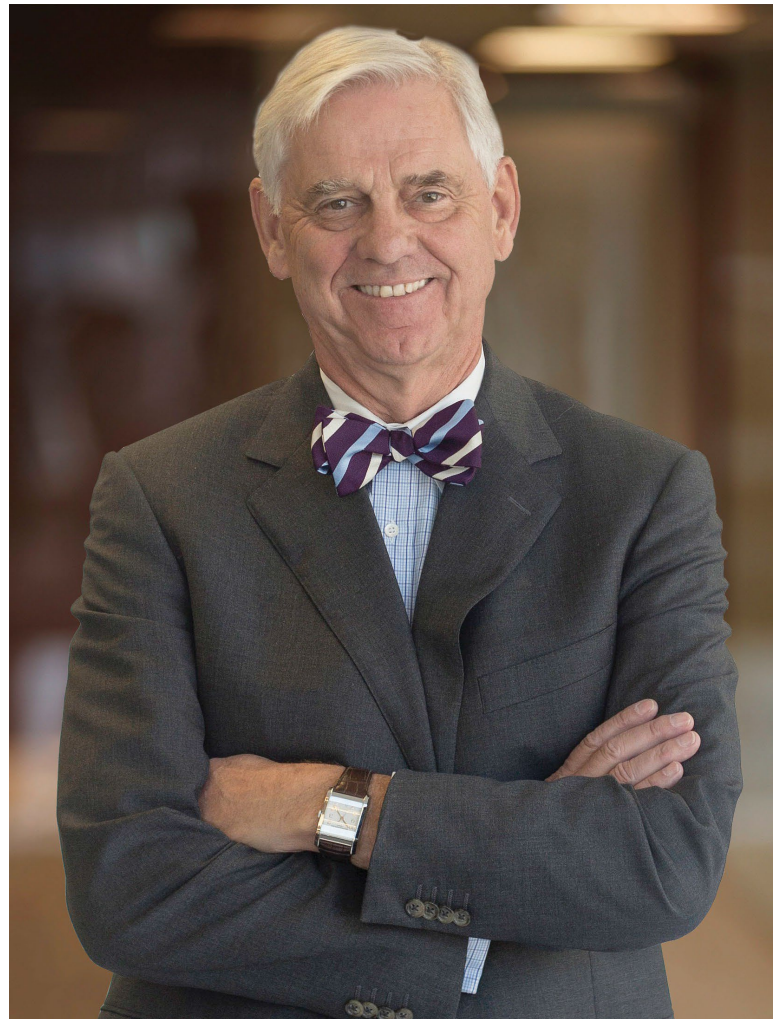
*Claims were made by the UKPC based on the FSD provisions of the U.K. Pensions Act for in excess of \$3 billion, a claim of £495.25 million under a guarantee made by Nortel and a claim of \$150 million under another guarantee made by NNL.*

**Arbitration Place**

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**4. Barclays Bank v. Metcalfe & Mansfield**

*Claim by Barclays for \$1.2 billion arising from the collapse of the asset backed commercial paper market in Canada for an alleged breach of an ISDA agreement relating to leveraged synthetic swap credit agreements between the parties.*

**5. Computershare Trust Co. of Canada v. Crystallex International Corp., Noteholders of Crystallex holding US\$100 million of bonds twice claimed mandatory redemptions based on the inability of Crystallex to develop the Las Cristinas gold project in Venezuela as a result of the takeover of the property by the Venezuelan government.**

**6. Re Crystallex International Corp Insolvency**

*Crystallex obtained creditor protection under Canadian insolvency provisions, and obtained debtor in possession financing to successfully pursue international arbitration against Venezuela for effectively expropriating Crystallex's right its right to develop the Las Cristinas gold project in Venezuela.*

In July 2017, Mr. Newbould joined Arbitration Place and has since been appointed to many arbitrations involving energy projects, offshore wind projects, IT, commercial and financial services disputes, partnership and shareholder disputes, tax disputes, construction and engineering design, real estate development and ground lease disputes.

Attached is a further sample of judicial and arbitration/mediation cases of Mr. Newbould.



ARBITRATION PLACE



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## **Sample of judicial and arbitration/mediation cases**

### **Energy Projects**

1. An arbitration over the placement and installation of wind turbines and facilities in a rural Ontario municipality.
2. An arbitration over fees to be paid for development of an oil and gas venture in Saskatchewan.
3. An arbitration over termination of a FIT program energy contract for installation of solar panels in a series of FIT contracts for a number of sites in Mississauga, and consequential damages.
4. An arbitration over development of an offshore wind farm in Taiwan and consequential damages.

### **IT licensing cases**

1. Verellen v Monaghan Mushrooms Ltd. 2011 ONSC 5820, a dispute over ownership of patent rights.
2. Inukshuk Wireless Partnership v Nextwave Holdco LLC 2013 ONSC 5631, a dispute over ownership of wireless spectrum licences.
3. Re Nortel Networks Corporation, 2015 ONSC 2987, a dispute over ownership of patent rights in the telecommunications industry and the proceeds of their disposition.
4. Re Nortel Networks Corporation, 2016 ONSC 2732, a dispute over breach of a licence agreement for source code transferred with products sold to third parties and consequent damages under the Copyright Act.

### **Real Estate disputes**

1. Several arbitrations involving rental disputes over long-term ground lease renewals, including multi-use properties, high rise commercial and residential properties in downtown Toronto and issues of highest and best use.
2. Arbitration of a corporate dispute over a large real estate project and consequential damages for breach of contract.
3. Arbitration over ownership and valuation of a large real estate holding in Toronto.
4. An arbitration over ownership and management of several residential projects in Eastern Ontario.
5. Several mediations involving real property leases.

### **Construction disputes**

1. Arbitration over a construction management contract and financing of a large commercial and residential development in mid-town Toronto.
2. Arbitration of a dispute regarding a glazing contract for a commercial retail property in mid-town Toronto.
3. Arbitration over disputes as to ownership of large residential construction projects in eastern Toronto and consequential damages.

4. Arbitration over a negligent design and implementation of a military ship's construction software.
5. Arbitration involving a highway construction project in Ontario.

### **Telecommunications**

1. An arbitration over roaming charges to be charged between national telecommunication service providers in Canada.
2. An arbitration over a failed installation of a wide area telecommunications network for a large school board in Metro Toronto and consequential damages.
3. An arbitration between a competitive local exchange carrier and an incumbent local exchange carrier over breaches of an outbound termination services agreement.
4. Several mediations involving software disputes,

### **Corporate disputes and oppression cases**

1. Numerous arbitrations involving shareholder disputes over ownership and management of corporate businesses, land development businesses, insurance agency businesses, securities businesses, an office equipment business, cannabis businesses, a retail shopping centre in the greater GTA and consequential damages.
2. Arbitration over transfer of auto dealerships to a national corporation.
3. Arbitration of a shareholder dispute over an obligation to tender to a ROFR in an international asset management business.
4. Arbitrations over obligations of retiring partners from national accounting and financial services firms and consequent damages.
5. Arbitration over financing obligations amongst partners to a start-up technology company in Toronto, and consequential damages.
6. Numerous mediations involving contractual disputes and corporate and oppression cases in many industries, including the entertainment business, the insurance business, auto dealership businesses, office developments, an infrastructure business, the health industry, employment agreements, an international securities business, and others.

### **Estate disputes**

1. Arbitrations over contested wills and testamentary capacity.
2. Arbitrations over contested real estate portfolios for large holdings in Toronto.
3. Numerous mediations over contested wills and testamentary capacity.

### **Tax issues**

1. An arbitration and mediation over the tax treatment of a butterfly transaction involving the splitting of large high rise residential real estate holdings in downtown Toronto between competing family interests.

### **Statutory interpretation cases**

1. *AMAW v Air Canada*, 2011 ONSC 3190 at para. 73 to 77 which involved the interpretation of the Air Canada Public Participation Act and the application of Canadian rules of statutory interpretation.
2. *Verdellen v Monaghan*, 2011 ONSC 5820 at para. 42 which involved the interpretation of the Patent Act and the presumption against extraterritorial effect.
3. An arbitration in the telecommunications industry between service providers requiring interpretation of the Canadian telecommunications legislation.
4. An arbitration involving the negligent design and implementation of a military ship's construction software, the standard of practice and contractual breaches and a failure to apply statutory rules for design.
5. An arbitration of a contractual dispute between parties to a cannabis distribution agreement, including the interpretation and application of cannabis licensing legislation.