



# JOHN JUDGE

## ARBITRATOR

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## CONSTRUCTION & INFRASTRUCTURE

John Judge is a leading independent arbitrator specialising in international commercial disputes. He was at Stikeman Elliott LLP in Toronto for 35 years where he left in 2013 as senior partner to launch his arbitrator practice. He then became a member of 39 Essex Chambers (London) until 2020 when he joined Int Arb Arbitrators.

He is also a founding member of Arbitration Place (Toronto). John has sat as arbitrator and chair on substantial international disputes under ICC, LCIA, ICDR, SIAC, BCICAC and AdHoc rules in a variety of seats including London, New York, Paris, Houston, Washington, Canada and the Middle-East.

He is experienced as arbitrator and counsel in large engineering and construction disputes and arbitrations ranging from complex industrial plants including sophisticated cogeneration and hydro-electric facilities, nuclear generation and waste disposal facilities, oil and gas facilities and pipelines, offshore drilling platforms and FPSOs, complex petrochemical plants including copolymer and aromatics plants, mines and gold milling plants, paper mills to air-separation plants, as well as commercial buildings and residential projects including condominium and apartment buildings

## PRACTICE AREAS

- Investor-State
- Construction, Engineering & Infrastructure
- Insurance
- Mining, Energy, Oil & Gas
- IT & Telecommunications
- Banking & Finance
- Transport

## ARBITRAL APPOINTMENTS

### As Arbitrator

- Appointed as a party nominated arbitrator in a series of seven LCIA arbitration seated in London between the Greek and Turkish subsidiaries of a large Canadian gold mining company and a Swiss trading company regarding disputes in respect of seven off-take agreements for the production at a Greek and Turkish mine. June 2020
- Appointed as Chair of an ICC Tribunal in a substantial arbitration seated in London between a Ghana-based power generation company and a South African engineering and construction company regarding claims arising from design and construction of a 350 MW combined cycle gas power plant with a wide array of claims and cross-claims of approx. USD 235 million;
- Appointed Sole Arbitrator of an ICC arbitration seated in Atlanta under New York law between an American subsidiary of a Swiss parent company and a Chinese company regarding their rights under a Supply agreement;
- Appointed as Chair of an ICC Tribunal in a substantial arbitration between a Brazilian oil company and a Brazilian engineering company for the design and build of production modules for eight FPSO vessels for use in an oil and gas deep-water project with amended claims and cross-claims in excess of USD 653 million (New York seat);
- Appointed as a party nominated arbitrator by large multinational oil companies in an ad hoc arbitration involving a Canadian provincial government relating to a gas royalty dispute with claims in excess of CAD \$ 500 million (with V.V.Veeder QC, chair);
- Appointed Chair of an ICC Tribunal for a substantial joint venture dispute seated in New York and governed by English law between a large Venezuelan engineering firm and a large public German engineering and manufacturing group regarding a Venezuelan petrochemicals by-product facility (with co-arbitrators Benno Kimmelman and Andrew White Q.C.);
- Appointed as co-arbitrator in an ICC arbitration seated in Paris between a Middle Eastern state with its relevant ministry and private corporate entities from another Middle Eastern state regarding disputes arising from an oil and gas joint production and sharing agreement and issues of force majeure during civil unrest and war (with W. Peter and K. Hober);
- Appointed as Chair of an ICC arbitration seated in London between an Australian technology services company and a large multinational mining company regarding a dispute in connection with services provided for a large African mining operation;
- Appointed as a party nominated arbitrator in a SIAC arbitration, seated in Singapore under Singaporean law, between a large Korean-French joint venture and an American corporation for the design and construction of an aromatics plant in a substantial industrial refinery project in Korea with claims based in breach of contract and fraud (with H. Heilbron QC and D. Jones);
- Appointed Chair of an ad hoc UNCITRAL arbitration in an oil and gas royalty dispute between a large British based gas corporation and American oil companies over interests in a large oil and gas field in Kazakhstan (seated in Calgary, governed by Alberta law);
- Appointed as a Sole Arbitrator by a large Swiss Based international mining company and a large Canadian mining company in an ad hoc arbitration regarding a royalty dispute in respect of production for a substantial Peruvian mine;
- Appointed as a chair of an ICDR arbitration seated in Houston involving a dispute between American subsidiary corporations of large South Korean and Chinese corporations involving substantial amounts claimed and counterclaimed regarding the design and manufacture of ten large oil rigs and platforms for use in the Gulf of Mexico under contracts governed by Texas law;

- Appointed as party nominated arbitrator in mining dispute between Canadian public mining companies and their Australian subsidiaries regarding a royalty agreement and right of first refusal in respect of an Australian gold mine;
- Appointed as Sole Arbitrator in an ADRIAC arbitration between the Canadian subsidiary of an American engineering company and a German company regarding the alleged negligent design, construction and operation of a large waste management facility in Toronto;
- Appointed Sole Arbitrator in a substantial ad hoc arbitration in excess of \$100 million in a joint venture mining dispute between American and Chinese owned Canadian subsidiary corporations regarding the development, construction and operation of a substantial iron ore mine in Quebec;
- Appointed Sole Arbitrator in an ICC arbitration seated in New York governed by New York law for a dispute between a Spanish company and a Chinese corporation regarding the purchase and sale of shares and assets of a Chinese silicon manufacturing company;
- Appointed as party nominated arbitrator in an insurance coverage dispute involving London insurers and a Caribbean state owned electric facility regarding a catastrophic failure and loss at the island state's sole power plant;
- Appointed as Emergency Arbitrator by the ICDR regarding an application for emergency interim measures in a dispute between the Gulf Co-operating Council and ICANN regarding the proposed delegation of generic top level domain name, which dispute was governed by California law;
- Appointed as co-arbitrator in a BCICAC arbitration between a Hong Kong based mining company and a Canadian mining company regarding the acquisition of a gold mine located in Ecuador (with chair Jean Kalicki);
- ICC Arbitration – acted as a co-arbitrator in a substantial ICC arbitration claim between a public Canadian forestry company and a large German corporation for breach of contract, and related insurance issues, in the supply of large industrial machinery by the German supplier for a plant in Northern Ontario, which allegedly caused a catastrophic fire and damages of \$60 million (with chair VVveeder QC);
- Appointed as sole arbitrator in a large ad hoc telecom dispute between large Canadian telecom companies arising from a complex M&A transaction;
- Appointed as a Sole Arbitrator by major Canadian telecom companies regarding a dispute over the management and use of dark fibers within a major fiber optic telecommunications cable network, including complex jurisdictional issues within the arbitration;
- Appointed as a co-arbitrator in an LCIA arbitration of a dispute arising between foreign owned Kazakh entities in respect of the design and construction of a major oil rig for use in the Caspian Sea;
- Appointed by LCIA Court as an arbitrator in a dispute amongst an owner, contractor and subcontractor in respect of the design and construction of a liquefied natural gas terminal in Canada;
- Appointed Chair of an ad hoc domestic arbitration in a mining dispute between two public mining companies regarding joint venture and custom milling agreements;
- Appointed Sole Arbitrator in an ad hoc domestic arbitration between a junior mining company and the Canadian subsidiary of an Australian mining company with respect to an option and development agreement for an Ontario gold mining property;
- Appointed as a Sole Arbitrator in an ICC arbitration between a Bahraini company and a Texas company regarding the supply of a sophisticated pharmaceutical manufacturing plant and equipment for operation in Bahrain, governed by Texas law with claims based in breach of contract and fraud;

- Appointed Chair of an ICDR arbitration seated in New York between a large American chemical manufacturer and a large French manufacturer relating to a supply swap agreement governed by New York law (with co-arbitrator John Townsend);
- Appointed as a party nominated arbitrator in an ad hoc UNCITRAL arbitration by a state owned entities of the United States and the state of Malawi in a dispute with a Danish company over a major infrastructure project;
- Appointed as a party nominated arbitrator in an ad hoc arbitration between a large Canadian municipality and a waste management company regarding a dispute involving the operation of a waste management facility;
- Appointed as Sole Arbitrator in a pension dispute involving a senior corporate executive and the Canadian subsidiary of a large international consulting firm regarding the entitlement to various pension benefits;
- Appointed Sole Arbitrator in an ICC arbitration seated in New York between a well-known American plane manufacturer and Dubai based parties regarding a jet plane lease dispute governed by Kansas law;
- Appointed as a Sole Arbitrator in an ad hoc arbitration between an Ontario municipality and an alternative energy company regarding a claim for force majeure in connection with the construction of wind turbines pursuant to a lease of lands in Northern Ontario;
- Appointed by the ICDR as Sole Arbitrator for a franchise arbitration seated in Toronto between a Canadian subsidiary of a large international corporation and a Toronto based franchise holder;
- Appointed an Expert by the ICDR for an Expert Determination in an ICANN gTLD String Confusion Objection Dispute between two large American technology companies with respect to a determination in respect of alleged confusion between two new applied for generic top level domains to be issued by ICANN;
- Appointed as a co-arbitrator in a Dubai arbitration under the rules of the Dubai International Arbitration Centre for a project management dispute between two prominent companies for a major high profile project in Dubai;
- ICC Arbitration – co-arbitrator in fundamental breach of contract claim between Canadian and English corporations for large industrial machinery manufactured in Canada for installation at a U.K. plant;
- Appointed as Sole Arbitrator in an ad hoc arbitration involving a software development and implementation dispute between a Canadian software company and an American radio broadcasting company;
- Appointed Sole Arbitrator in connection with an ad hoc domestic arbitration pursuant to a commercial lease regarding the determination of rent for a lease extension involving a major Toronto property developer and a commercial tenant;
- Acted as co-arbitrator in an international ad hoc arbitration regarding a private equity investment dispute governed by El Salvador law between a Canadian investment firm and an El Salvador manufacturing business which had moved from Ontario. Issues related to fundamental breach of agreements and repudiation in the context of certain put rights;
- Appointed sole arbitrator in an ad hoc arbitration for a joint venture contract dispute between the Canadian subsidiaries of a foreign based developer and an American financial institution which involved a high profile development property at Bloor and Yonge Street in the heart of Toronto.

## As Counsel

- Lead counsel to American investors, Bilcon of Delaware Inc. and its shareholders in successfully resisting a Canadian Federal Court application by the Government of Canada to set aside a NAFTA award on jurisdiction and liability in favour of the American investors. Decision of the Federal Court released May 2018, and reported as *Canada (Attorney General) v. Clayton*, 2018 FC 436 (CanLii); Lead counsel for Crystallex International in the Superior Court of Ontario for the recognition and enforcement of a US\$ 1.2 billion award rendered against the state of Venezuela. Decision reported as *Crystallex International Corporation v Bolivarian Republic of Venezuela*, 2016 ONSC 4693 (CanLII);
- Appointed as lead Canadian counsel in a dispute involving a Canadian agency and a Middle Eastern state with respect to a major arms contract and the prospective enforcement proceedings in Canada;
- Counsel to Korean companies in responding to an application in the Superior Court of Ontario to set aside an international commercial arbitration award delivered in Toronto regarding an African mining project involving a joint venture company in which a Canadian public mining company has an interest;
- Counsel to a Canadian corporation and its HNW owner in a London Maritime Arbitrators Association arbitration against an Italian yacht manufacturer regarding breaches of a contract with respect to the design and build of a super yacht;
- Counsel to a Canadian public mining corporation with respect to the enforcement issues in Ontario for an ICSID Award obtained by a Turkish company against the Kyrgyz Republic and its state owned entity which owned shares in the Canadian mining company;
- Counsel to a Canadian public mining corporation in connection with an investor-state dispute involving mining operations in a Central American country;
- Counsel to a French nuclear organization in a large contract dispute and arbitration with Atomic Energy of Canada Limited over development and installation of certain nuclear medical isotope waste facilities. The case involved difficult issues of contract interpretation and complex evidence regarding nuclear engineering and processes related to claims for fundamental breach of contract in the construction of the nuclear waste facility;
- Counsel for a Canadian Olympic athlete when her selection to Canada's summer Olympic Team was challenged in an arbitration under the SDRCC, successfully resisting the challenge;
- Counsel to a large international software company in an ad hoc arbitration over alleged fundamental breach of contract for an enterprise business software license and implementation agreement;
- Co-counsel in an LCIA arbitration seated in London for a Canadian investment corporation in an investment contract dispute with a Ukrainian corporation over a property development in the Ukraine;
- Counsel to a Dubai Engineering company in an ad hoc arbitration against an Ontario corporation for breach of contract in connection with a supply agreement.

## DIRECTORIES AND LEGAL PUBLICATIONS

John's expertise has been recognized nationally and internationally

- **Chambers and Partners**, 2012, 2013, 2014, 2015, 2016, 2017, 2018 and 2019 ranked in Canada for Dispute Resolution: Arbitration (Band One), and Dispute Resolution: Most in Demand Arbitrators in Canada (Band One) with the following comments:

"is a highly experienced commercial arbitrator who garners praise as a "very capable and thoughtful practitioner who certainly has a great international practice." He is often appointed in corporate and commercial cases under both ad hoc and institutional rules. He is further noted for his expertise in technology disputes"(2019).

"The highly respected John Judge is 'right at the very top' for international arbitration. He is involved in a wide variety of disputes, including arbitrations involving the mining, oil and gas and technology sectors".

- International **Who's Who Legal** of Commercial Arbitration 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020.

## MEDIATION & DISPUTE BOARDS

John acts as a mediator in commercial disputes.

He is experienced in the use of interest-based and principled-based mediation techniques to achieve a high level of success in the resolution of commercial disputes.

John's lengthy experience as counsel and also as arbitrator assists in providing insights into the dynamics of complex commercial disputes and the interplay of the legal, commercial and interpersonal\emotional issues which drive disputes and impede negotiated resolutions.

As mediator, he works with the parties and their counsel in advance of the mediation to ensure adequate and timely disclosure of forensic facts, documents and legal positions relied upon by the parties in support of their case, as well as the confidential disclosure of important underlying factors which may affect negotiation dynamics, including authority to settle and insurance.

John requires sufficient advanced disclosure of material aspects of the case of each party to be able to assess the strengths and weaknesses of the case of each party, their respective interests underlying the dispute and potential barriers to settlement, including missing parties, outstanding information, cultural differences and biases, and any cognitive or emotional issues which may affect the approach by the parties to a negotiated resolution.

His mediation experience encompasses disputes in the following areas: commercial contracts; licensing disputes; shareholder and partnership disputes; complex construction and engineering disputes; insurance coverage disputes; reinsurance disputes; technology and product liability disputes; professional negligence matters; real estate development disputes.

John's broad dispute experience in key industries such as mining, oil and gas, construction, engineering, and technology also enables him to more effectively mediate and resolve disputes related to these industries.

## PROFESSIONAL QUALIFICATIONS

- FCI Arb (2006)
- University of Toronto (LL.B 1975, BA 1972)
- Bar Admission: Ontario, 1977

## PROFESSIONAL ASSOCIATIONS

- Fellow of the Chartered Institute (FCI Arb)
- Member of London Court of International Arbitration (LCIA)
- Past Vice-President of its North American Users Council (2007-2013)
- ICC Canada, Past Member of the Executive
- Member of the Institute for Trans-National Arbitration, (Dallas Advisory Board Member)
- Member of the Canadian Panel of Arbitrators for the International Chamber of Commerce
- Panel Member for the International Centre for Dispute Resolution (international arm of the AAA)
- Panel Member of the Singapore International Arbitration Centre and also Kuala Lumpur Regional Arbitration Centre
- Member of ICCA, International Council for Commercial Arbitration, The Hague
- Founding Member of the Arbitration Roundtable of Toronto and the Toronto Commercial Arbitration Society, for which he is the immediate Past Chair
- Member of the London International Arbitration Club
- Founding Member of Arbitration Place in Toronto
- Member of The Advocates' Society (past Director 1987-89, 1992)
- Canadian Bar Association
- American Bar Association
- International Bar Association
- Previous director and past president (2006-2007) of The Sopinka Cup Society
- Sponsor of the Canadian National Trial Advocacy Moot Competition for Law Schools
- Past Instructor at the annual Osgoode Hall intensive Trial Advocacy Program, Toronto

## PUBLICATIONS & SPEAKING ENGAGEMENTS

Mr Judge has written many articles and spoken on a wide variety of legal and advisory issues. His most recent and notable examples include:

- Speaker, Latham & Watkins Energy Conference, Energy Disputes in a Disrupted World, during London International Disputes Week, 9 May 2019;
- CDR Spring Arbitration Symposium, London, UK, 26 April 2018, 'Who Owns the Arbitration,' speaker providing perspective of the arbitrator;
- Author of 'Arbitral Advocacy' a chapter in 'A Practitioner's Guide to Commercial Arbitration', ed. M Huberman, Irwin Law, 2017;
- Co-Author of Canadian chapter in Getting the Deal Through- Arbitration 2010, 2011, 2012 and 2013.