



C. KEMM YATES, Q.C.

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For over 40 years, Kemm was an energy lawyer who practised regulatory litigation and arbitration in matters primarily relating to the natural gas, oil and electricity industries. He retired from the partnership of Blake, Cassels & Graydon LLP, effective January 1, 2018.

Kemm represented energy utility, pipeline, producer and customer interests in diverse proceedings, including facilities, tolls and tariffs, environmental, and energy export cases, before Canada's National Energy Board and various provincial regulatory tribunals.

Kemm has acted as counsel or adjudicator in arbitration proceedings relating to natural gas and power pricing, pipeline tariffs, asset evaluation, and legal contractual issues. He has also acted as counsel at all levels of Superior and Appellate courts.

SELECT EXPERIENCE:

Arbitration

Arbitration experience includes, as arbitrator:

- A dispute between the Alberta Electricity Balancing Pool and a power generator over the valuation of assets.
- A dispute between the Balancing Pool and a power generator involving Issues related to interpretation of specific provisions of a Power Purchase Agreement.
- A dispute between two energy producers involving issues related to enforcement of a contract of purchase and sale of natural gas in the context of a gas over bitumen controversy, including issues of force majeure, injunctive relief and damages.
- A dispute between a U.S. pipeline and a Canadian natural gas exporter, involving issues related to international gas pricing pursuant to a contractual formula.

Arbitration experience, as counsel, includes:

- A dispute between a gas storage company and a gas producer (characterization of natural gas under contract of purchase and sale of storage facility).
- A dispute between an oil pipeline and its shippers (rate of return on equity investment; compounding of interest; limitations of action).
- A dispute between a seller and buyer of natural gas (natural gas pricing).
- A dispute between a seller of natural gas and a local distribution company (natural gas pricing).
- A dispute between two oil and gas producers (contractual interpretation on sale of assets).

Regulatory Litigation

Kemm represented energy producer, pipeline and consumer interests before Canada's National Energy Board for over 40 years. Cases involved legal, contractual, economic, financial, constitutional, jurisdictional and environmental issues and included applications for approval of facilities, licensing of natural gas exports, utility cost of capital, determination of pipeline tolls and tariffs, assessment of resource supply and requirements, and pipeline bypass.

At the provincial level, Kemm has extensive experience as counsel before Alberta energy regulators. Representing various producer, transporter, utility and consumer interests, Kemm appeared in proceedings relating to the setting of gas and electric power utility rates and tariff provisions, the permitting of facilities (oil sands plants, oil and gas pipelines, gas processing facilities and petrochemical plants, all involving application and interpretation of environmental legislation) the removal of gas from Alberta, and the determination of energy supply and requirements. Kemm also represented clients before the Ontario Energy Board, the British Columbia Utilities Commission, the Public Utilities Board of the Northwest Territories and the Manitoba Public Utilities Board.

- Lead regulatory counsel in applications to the National Energy Board for approval of a 4500 km pipeline to transport crude oil from Alberta to Québec and New Brunswick, and related gas transmission facilities (2013-2017).
- Lead counsel to a major gas transmission pipeline in numerous applications to the National Energy Board for approval of rates, tolls and tariffs, involving the full range of economic regulation issues including tolling and cost of capital (2000-2017).
- Counsel to energy producing companies and industry associations (CAPP and predecessors) with respect to numerous interventions in toll and facility proceedings of major oil and gas pipelines (TransCanada PipeLines Limited (now TC Energy), Enbridge Pipelines Inc., Maritimes & Northeast Pipelines, Foothills Pipe Lines Ltd., Trans Québec & Maritimes Pipeline Inc., Westcoast Energy Inc.).
- Counsel to BC Gas Utility Ltd., gas producers and shippers in respect of applications relating to tolls and access on Westcoast Energy Inc. pipelines.
- Counsel to various natural gas and oil producers in respect of numerous applications to federal and provincial regulatory authorities for approval of energy exploration, production and transmission facilities.
- Lead regulatory counsel to Alliance Pipeline Ltd. in respect of its application to the National Energy Board for approval of a 2300 kilometre greenfield pipeline from northeast British Columbia to Chicago, U.S.A. (1997-2000).
- Counsel to TransGas Limited and Saskatchewan affiliates with respect to tolling and facilities matters within federal jurisdiction

AWARDS & RECOGNITION

The Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada 2000-2019 (Energy (Oil & Gas) (Most Frequently Recommended))

2017 Lexpert Guide to the Leading US/Canada Cross-Border Corporate Lawyers in Canada (Energy: Oil & Gas)

The Lexpert Guide to the 100 Most Creative Lawyers in Canada (published 2006)

Chambers Canada: Canada's Leading Lawyers for Business 2018 (Energy: Oil & Gas (Band 1), Energy: Provincial Regulatory & Litigation-Alberta (Band 1))

Chambers Global: The World's Leading Lawyers for Business 2018 (Energy & Natural Resources)

The Best Lawyers in Canada 2014-2017 (Energy Regulatory Law, Natural Resources Law and Alternative Dispute Resolution)

Best Lawyers Calgary Energy Regulatory Law Lawyer of the Year 2010/2014

Best Lawyers Calgary Natural Resources Law Lawyer of the Year 2011

Who's Who Legal: Canada 2013-2018 (Most Highly Regarded Individual Energy)

The Legal 500 2017 Energy (Oil & Gas) (Leading Lawyer)

MEMBERSHIPS

- Law Society of Alberta
- Canadian Bar Association
- CECA (Calgary Energy & Commercial Arbitrators)

PUBLICATIONS

- Risk Allocation Through Regulation: Allocating and Absorbing Risk in a Complex Business Environment; Twelfth Annual Canadian Energy Law Forum, Toronto, Ontario, May 8, 2018
- The Life and Death of Social Licence: A Legal Perspective; 2017 Energy Regulatory Forum, Calgary, Alberta, June 6, 2017
- *Tips from the Trenches: A Guide for Regulators*; Canadian Association of Members of Public Utility Tribunals, 2016-2020 Energy Regulation Course, Queen's University, Kingston, Ontario
- National Energy Board Procedural Reform—Round 2 Goes to the Regulator, C. Kemm Yates, Q.C. and Sarah Nykolaishen, *Energy Regulation Quarterly*, 2016 Vol. 3.
- Utility Death Spiral? Utility Asset Disposition, Asset Underutilization and Stranded Costs: Recent Developments and Stakeholder Reactions; Ninth Annual Canadian Energy Law Forum, Wallace, Nova Scotia, May 8, 2014
- Legal Principles and Hearing Strategy; Law and Policy of Energy Utility Regulation in Alberta, University of Alberta Faculty of Law, January 25, 2011.
- "Recent Regulatory and Legislative Developments of Interest to Oil and Gas Lawyers" (2001), 39 *Alberta Law Review* 260 (with Marie H. Buchinski).
- "Alternative Dispute Resolution: Use and Abuse of Information and Specialized Knowledge", (1995), 33 *Alberta Law Review* 301 (with Judith A. Snider).

- “The Effect of the North American Free Trade Agreement on the Oil and Gas Laws of Canada” (1995), Oceana Publications, Inc. (with Bernard J. Roth).
- “NAFTA and Canada-United States Trade in Natural Gas: Will the Regulators Let it Make a Difference?” (1994), 6 *Oil and Gas Law and Taxation Review* 171.
- “Alberta Gas in United States Markets: Canadian and American Perspectives on Competition, Constitutional and Contract Enforcement Issues” (1991), 30 *Alberta Law Review* 219 (with Patrick J. Keeley).
- “Whither the Woodshed?: Counsel/Witness Relations in Regulatory Proceedings” (1988), 1 *Canadian Journal of Administrative Law and Practice* 183.
- “Bypass: A Giant Step Toward Natural Gas Deregulation”, *The Canadian Business Law Newsletter* (April 1987).
- “The Lawyer in the Regulatory Process” (1980), 18 *Alberta Law Review* 70.

EDUCATION

J.D., University of Toronto (1973)

B.A., McGill University, Montréal QC (1969)