# Top Takeaways in Commercial Litigation, 2019

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On February 25, 2020, The Advocates' Society hosted its annual "Top Cases in Commercial Litigation" program, moderated by Cynthia Spry (Babin Bessner Spry LLP). Eric Brousseau (Ross Barristers Professional Corporation), Sinziana Hennig (Stikeman Elliott LLP) and Kyle Kuepfer (Fogler, Rubinoff LLP) presented on several commercial law cases from the past year or so. Two of those cases were:

- *Alectra Utilities Corporation v. Solar Power Network Inc.* 2019 ONCA 254; and
- *Wright v. Urbanek* 2019 ONCA 823.

In these cases, there were two takeaways for litigators that particularly stood out.

**Forewarned is Forearmed**

Your pre-litigation decisions will inform your client's future options. In *Alectra Utilities*, the Court of Appeal refused to overturn an arbitrator's decision where the arbitrator acted within their jurisdiction and where the arbitration agreement excluded a right of appeal. If you do not intend to include a right of appeal in your arbitration agreement, you should discuss that intention with your client so as to avoid an unpleasant surprise later on.

**Make Your Claims as Simple as Possible, But No Simpler**

It is essential to include necessary causes of action in your pleading, but don't overplead. In *Wright*, the Court of Appeal ruled that even if an issue is decided without a related cause of action having been pleaded, trying to re-litigate that issue later on may be an abuse of process. To avoid this issue, your instinct may be to plead every possible cause of action. However, as Ms. Hennig said, *"one of the issues with pleading all the claims is, at some point, all of the 'in the alternative' arguments will undercut each other"*. It is important to decide what your case is – and what your case is not – at an early stage and to ensure that your client understands what issues may be adjudicated, even if they are not pleaded.