

## **Bob Ferguson, CPA, CA, CFF**

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Bob Ferguson is the Principal and founder of BFerguson + Associates Inc., a forensic and investigative accounting boutique in Toronto. After graduating from the University of Alberta in 1984, Bob articulated with a large international public accounting firm in Calgary from 1984 to 1988 and conducted external audits with a focus on the oil and gas industry. Since 1989, Bob has specialized exclusively in forensic accounting, corporate investigations and economic loss calculations. Bob is a Chartered Professional Accountant (legacy Chartered Accountant) and is Certified in Financial Forensics.

Bob has extensive experience acting as an independent expert in the calculation of economic damages. Bob has been retained by plaintiffs and defendants and his experience includes disputes relating to intellectual property, breach of contract, breach of fiduciary duty, shareholder disputes, loss of income, debt recovery and professional negligence. Bob has also been retained by plaintiffs and defendants in class action disputes. His experience in class actions includes quantifying damages, calculating remedies in accordance with settlement agreements, confirming the validity of participating class members and administering settlements.

Bob also has extensive experience conducting and managing investigative engagements for energy companies, major international corporations, law firms, financial institutions, insurance companies, public utilities, commercial real estate companies, distribution firms and all levels of government. Bob has conducted investigations into a variety of issues including: asset misappropriation, stock option backdating, employee misconduct, and fraudulent misrepresentations. Bob has lectured on numerous fraud topics including anti-money laundering, identity theft, red flags to fraudulent activity and managing investigations.

Bob has provided expert testimony in trials and arbitrations in Canada and public utility hearings in the United States.

### **Forensic accounting & fraud investigations**

- **Construction/Oil & Gas-** Retained by joint venture partners to investigate billing practices of various suppliers in connection with a major capital project. The work included detailed searching and review of electronic records, physical records and attendance at the business offices of a number of suppliers to verify details contained in their invoices to the joint venture.
- **Major Capital Project/Oil & Gas-** Retained by the government to investigate allegations of improper behaviour in connection with the expansion of the oil refinery of the state-owned oil and gas company. The investigation included background due diligence on the key construction entities, review of the bidding process, interviews of personnel involved in procurement, review of work performed by internal audit and interviews of senior executives.
- **International/Banking-** Retained by the UN to investigate banking practices at a financial institution operating in a country that was under the oversight of the UN. The investigation involved collection of electronic and physical evidence and preparing a comprehensive electronic database to facilitate the investigation of improper transactions. The database was utilized by the police to trace and recover assets of the financial institution.

## Forensic accounting & fraud investigations (cont'd)

- **Oil & Gas-** Retained by counsel for the independent committee of the board of directors of a publicly traded drilling and well services company to investigate the company's practices with respect to stock-based compensation for employees and management. The work included detailed searching and review of electronic records, physical records and conducting interviews with executives involved in the option granting process.
- **Oil & Gas-** Assisted a publicly listed exploration company with a review and update of its Fraud Risk Assessment. The work included interviews of senior executives and facilitating the fraud risk assessment workshop attended by executives from all lines of business.
- **Oil & Gas-** Retained by the Audit Committee of a publicly traded multi-national oil refining and marketing company to investigate allegations of fraud at its Canadian subsidiary. Conducted a detailed review of commodity trading records, accounting records, electronic evidence, and performed detailed employee interviews to uncover and document a pattern of behaviour that had improperly concealed losses and materially overstated the operating results and assets of the Canadian subsidiary. Presented findings to the Audit Committee.
- **Oil & Gas-** Retained by a publicly traded income trust to conduct a fraud risk assessment with an emphasis on its financial reporting processes. Conducted interviews of senior executives at each of the subsidiaries as well as the parent company.
- **Construction/Major Capital Projects-** Retained by the defendant, that was a large international public company, in connection with defending a class action filed as a result of the public release by the company of adverse information, which was alleged to have been the cause of a decrease in the price of the company's shares. Our comprehensive approach included collecting evidence and conducting interviews in order to understand the internal controls and financial reporting processes in place throughout the relevant time frame.
- **Banking-** Retained to investigate and report on the cause of unexplained balances in balance sheet accounts of a large financial institution. We were retained as a result of unsuccessful attempts to resolve the differences internally. Our systematic and disciplined approach was a critical success factor.
- **Manufacturing-** Retained by external counsel for a public company in connection with a dispute relating to the calculation of deferred compensation arising on the sale of a subsidiary by the public company. The investigation involved a detailed review of accounting records and transactions relating to a three-year period. The investigation uncovered numerous instances of improper accounting treatment of revenues, expenses, and incorrect valuations of work-in-progress.
- **Government-** Retained by a Provincial Government to investigate allegations of improper spending by school board trustees. The investigation included detailed review of disbursements covering approximately five years and interviews with the trustees. Findings were presented to the Minister of Education for the province.

## Forensic accounting & fraud investigations (cont'd)

- **Government-** Retained by counsel on behalf of a Provincial Government to investigate allegations of improper spending by members of the Provincial Legislature. Conducted a detailed review of disbursements covering approximately six years and presented findings in detailed reports that were used to negotiate repayment and restitution.
- **Utilities-** Retained by a large public utility to investigate allegations relating to misuse of the utility's assets by certain senior employees. Conducted a detailed review of corporate cheques, expense reports and corporate credit cards and numerous interviews with peers and subordinates of the individuals under investigation.
- **Agriculture-** Retained by the plaintiffs, a private company that operates a number of grain terminals in Western Canada. Our client alleged losses arising from the premature failure and reconstruction of a grain terminal due to design and installation errors it attributed to the defendants. We were retained to quantify the loss of income suffered during the period that the failed storage silos were removed and replaced by new silos.
- **Manufacturing-** Retained by the purchaser of a manufacturing facility to investigate and confirm the cause of net income short-comings compared to forecasts. We were retained to quantify the economic damages suffered by our client as a result of the failure of the vendors to disclose specific information relating to two key customers, which was manifesting itself in operations failing to meet expectations. The parties reached a settlement midway through the trial.
- **Banking-** Retained by counsel for a client suspicious that their financial advisor at a Canadian chartered bank was involved in inappropriate trading activity that had caused a substantial decline in the value of the client's investment portfolio. Analyzed all activity in the client's accounts and estimated what the performance would have been if the portfolio had been invested in accordance with the client's investment objectives. The expert report assisted counsel to negotiate a favourable settlement without filing the statement of claim.
- **Oil & Gas-** Investigated allegations of breach of fiduciary duty in a joint venture involving the management and use of a gas pipeline. Reviewed correspondence, agreements and financial documents relating to the use of a major pipeline to prepare document briefs that assisted lawyers in the depositions of key employees involved in the deals.
- **Banking-** Retained by the president of a private company that provided trade finance arrangements to small-cap companies. Investigation included analyzing activities and detailed funds tracing to help unravel a fraudulent invoice scheme.
- **Stock Options-** Retained by counsel for the independent committee of the board of a public company to investigate allegations relating to stock compensation transactions. The investigation included collecting and analyzing electronic evidence and physical documents as well as conducting interviews of all parties involved in the stock compensation process.
- **Private Holding Company-** Retained by the president of a privately-owned investment company that discovered improper conduct on the part of a senior executive. Conducted a detailed, comprehensive investigation to determine the extent of the conduct and prepared an expert report that formed the basis for a criminal complaint.

## Forensic accounting & fraud investigations (cont'd)

- **Distribution-** Retained by the Canadian division of an international motion picture, dvd and video tape distributor to investigate compliance with the distribution agreement.
- **Manufacturing-** Retained by a privately-owned multi-national company to investigate operations at a recently acquired subsidiary. Conducted a detailed review of accounting evidence and electronic evidence, including email, to uncover a pattern of behaviour that had improperly benefited the owner-manager of the acquired business to the detriment of the client. Provided documentary evidence that assisted our client in negotiating a reasonable settlement.
- **Commercial Real Estate-** Retained by a large commercial real estate company to investigate allegations of improper conduct, including receipt of secret commissions, by one of its employees. Analyzed numerous transactions involving the suspected employee and conducted a discreet background investigation, all of which contributed to an out-of-court settlement.

## Class actions

- **Insurance-** Retained by counsel for the representative plaintiff in connection with a proposed class action against an insurance company. The insurance company reached an agreement with the class prior to certification and we reviewed the work performed by a team from the insurance company (defendant) to ensure that all affected policyholders were included in the class and that the compensation was properly calculated for the class members in accordance with the terms of settlement.
- **Investment Advisor-** Retained by counsel for the defendant in connection with a class action alleging improper behavior on the part of a particular investment advisor. Provided analysis of trading activity and compared to the Know Your Client ("KYC") forms on file. Provided economic analysis information to assist counsel in negotiating a settlement.
- **Retail Franchise/Distribution-** Retained by counsel for the representative plaintiffs in connection with a class action alleging improper behaviour by the franchisor with respect to pricing of distributed goods and handling of volume discounts. Our role to date has been to provide an affidavit setting out the nature of the economic losses and proposing a methodology for calculating individual or aggregate damages. The matter has been certified and an appeal of the certification is pending.
- **Banking-** Retained by a large financial institution that had become aware of an error in one of its programs, which had resulted in the incorrect calculation of interest due from and/or to customers. The assignment involved various tests to ensure that all affected customers were identified and that the rebate, inclusive of interest from the date of the occurrence of a miscalculation to the date of repayment, was calculated correctly. Extensive use was made of statistically defensible sampling techniques.

## Intellectual property litigation

- **Oil & Gas-** Engaged by the defendant following a court determination that the plaintiff's patent had been infringed by a component in the defendant's product. Analyzed the defendant's accounting system to determine the profit earned from the infringing component. The matter was one of the largest patent infringement claims in Canadian history and involved numerous issues including: apportionment of profits, parasitic sales, the availability of non-infringing alternatives and alternative approaches to the calculation of pre-judgement profits.
- **Pharmaceutical-** Retained by various multi-national pharmaceutical companies, both plaintiffs and defendants, to provide expert accounting evidence relating to intellectual property disputes. Retained by plaintiffs and defendants in connection with the determination of damages and the evaluation of the defendant's profits.
- **Digital Rights-** Retained by the defendant in connection with a dispute relating to sales of data digitized for use in a variety of industrial and consumer electronic devices. We quantified the sales of the relevant digitized information and investigated potentially applicable royalty rates in order to quantify damages.
- **Manufacturing-** Retained by counsel to a multi-national manufacturing defendant corporation to quantify profits from a product allegedly infringing the plaintiff's patent. Analyzed both the manufacturing process and the accounting system and assisted in the collection and cataloguing of evidence for production to the plaintiff.

## Breach of Contract

- **Manufacturing-** Retained by a distributor whose agreement had been terminated by the manufacturer. Analyzed the sales patterns of the company's various product lines to develop an estimate of the sales lost from the termination of the contract. Determined the cost savings from not having made the lost sales and arrived at a loss figure.
- **Telecommunication-** Retained by a reseller of cellular telephone service to investigate allegations of improper behaviour by telecommunication companies in their dealings with resellers of cellular airtime. Analyzed the allocation of revenues and expenses between wholesale and retail operations of certain US-based telecommunication companies.
- **Insurance-** Retained by a large multi-national public company to review its compliance with a settlement agreement with a U.S. state district attorney office. The assignment involved selecting statistically defensible samples to test the inclusion or exclusion of particular customers from the settlement, as well as to test the accuracy of the amounts allocated to included customers.

### Professional career

- June 2020 to present  
Principal, BFerguson + Associates Inc.
- February 2018 to May 2020  
Partner, BDO Canada LLP
- September 2013 to January 2018  
Partner, Ferguson + Mak LLP
- April 2006 to August 2013  
Partner, Ernst & Young LLP
- 2005 to April 2006  
Navigant Consulting (acquired Toronto Office of Kroll Lindquist Avey)
- 1991 to 2005  
Kroll Lindquist Avey (and predecessor firms)
- 1984 to 1991  
KPMG Peat Marwick Thorne (and predecessor firms)

### Education and certifications

- 2000 Specialist designation in Investigative and Forensic Accounting (CA•IFA)
- 1987 Chartered Accountant (CA)
- 1984 Bachelor of Commerce (B.Comm) – University of Alberta

### Professional associations and memberships

- Chartered Professional Accountants Canada (CPAC)
- Chartered Professional Accountants of Ontario (CPAO)
- Chartered Professional Accountants of British Columbia (CPABC)
- Alliance for Excellence in Investigative and Forensic Accounting (IFA)
- Certified in Financial Forensics by the American Institute of Certified Professional Accountants (CFF)

### Selected presentations and teaching experience

- “The New World of Directors: Red Flags to Fraudulent Activity”, The Directors College, January 28, 2012, September 24, 2011, April 9, 2011, January 29, 2011, January 17, 2009, February 9, 2008 and June 2, 2007.
- “Principles and Planning of Investigations”, Association of Certified Fraud Investigators, May 2009.
- “Anti-Money Laundering Update”, Advisor Group, November 2008.
- “Identity Theft: Detection & Prevention”, Telecommunication Security Association, September 2008.
- “Managing Investigations”, Fraud in the Public Sector, Federated Press, March 2008, Toronto.
- Course Leader, 3rd & 4th Annual Fraud in Financial Institutions, Federated Press, April 2007 and January 2008, Toronto.
- “Identifying Vulnerabilities Within Financial Institutions”, Fraud in Financial Institutions, Federated Press, April 2007 and January 2008, Toronto.

## Selected presentations and teaching experience (cont'd)

- “Cost Mis-Charging or Defective Pricing”, Transaction Fraud Seminar, Federated Press, Toronto, January 22, 2007 and April 11, 2007.
- “What To Look For: A Forensic Accounting Perspective”, 2nd Annual Internal Audit Summit, Toronto, October 5, 2004.
- “Advanced Damages – A Study of Intellectual Property Damages”, Kroll Lindquist Avey Annual Conference, June 2003.
- “Intellectual Property Remedies”, various law firms, 2000, 2001 and 2002.
- “Intellectual Property Remedies”, Kroll Lindquist Avey training session, April 7, 2000.
- “Inter-Agency Anti-Graft Seminar”, Republic of the Philippines, March 9 - 13, 1998.
- “Understanding Financial Statements”, on a number of occasions in 1996 and 1997.
- “Forensic Accounting Assistance for Intellectual Property Specialists”, Patent & Trademark Association of BC, November 19, 1996.
- “Valuing Intellectual Property”, Licensing Executive Society, Vancouver Chapter, November 15, 1996. (panel member)
- “Protocol for Fraud Investigation”, Corporate Counsel Section of the BC Bar, October 2, 1996.
- Fraud II, “Cheque Kiting, Arson for Profit, Secret Commissions”, Ontario Police College, Aylmer, ON, November 20, 1995.

## Publications

- “The shape of deception: understanding the fraud triangle”, The Bottom Line, May 2010.
- “Class Actions: ‘Quick and Dirty’ Damage Assessment is Not the Best Way to Go”, The Lawyers Weekly, June 7, 2002.
- “Damages or Accounting of Profits: A Critical Decision in IP Cases”, The Lawyers Weekly, June 9, 2000.

## Expert testimony

In addition to the out-of-court resolution of numerous matters, Bob has qualified as an expert witness on a number of occasions.

- LAI et al v domiKnow, May 2020, Expert testimony at arbitration;
- Extreme Venture Partners Fund I LP et al v Amar Varma et al, Ontario Superior Court of Justice, March 2019, Expert testimony at trial;
- Teva Canada Limited v Pfizer Canada Inc. et al, Federal Court of Canada, March 2016, Expert testimony at trial;
- York Regional Police et al ats Christopher Du Carmur, Ontario Superior Court, March 2016, Expert testimony at trial;
- R. v Mardonet, Ontario Court of Justice, January 2016, Expert testimony at trial;
- Tricor Equity Holdings, Inc. v La Voiture Rapide Ltee et al, Ontario Superior Court of Justice, December 2010, Expert testimony at trial;

### Expert testimony (cont'd)

- Katz Group Canada Inc. ats Norman F. Puhl, Ontario Superior Court of Justice, June 2007, Expert testimony at trial;
- Seniority Arbitration between Crew Schedulers of Air Canada (CAW Canada – Local 2213) and Crew Schedulers of Canadian Airlines (CAW Canada – Local 1990), July 2003, Expert testimony at arbitration;
- Westside Cellular Inc. dba Cellnet v. AirTouch Cellular et al, Public Utility Commission of Ohio, February 1999, Expert testimony at trial;
- Gordon Marbry, Marbry Distributors Limited et al v. Avrecon International Inc., Supreme Court of British Columbia, October 1998, Expert testimony at trial;