

# The Advanced Program in Corporate Insolvency and Restructuring

Attend this timely program and get practical updates on key issues, including:

- Insolvency practice in Canada after the ABCP Case
- Rights and duties of Directors and Officers of corporations facing the prospect of insolvency post-BCE
- Substantive law changes and strategic issues arising from key amendments to the *BIA* and *CCAA*
- Innovative restructuring options available to debtors and creditors
- Protecting and realizing on secured creditor's assets
- Developments under the U.S. Bankruptcy Code—what Canadian practitioners need to know
- Navigating cross-border insolvencies
- Sale of assets under *CCAA* and Chapter 11
- The evolving role of financial advisors in distressed situations

## Judges' Panel

The Hon. Justice Colin L. Campbell, Superior Court of Justice (Ontario)

The Hon. Justice Geoffrey B. Morawetz, Superior Court of Justice (Ontario)

## Course Leaders

Michael J. MacNaughton, Borden Ladner Gervais LLP

Scott A. Bomhof, Torys LLP



## DATES & TIMES

December 11 - 12, 2008

9:00 a.m. - 4:30 p.m. EDT/EST

## LOCATION

Osgoode Professional  
Development Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON

Live webcast  
available



# The Advanced Program in Corporate Insolvency and Restructuring

Insolvency and restructuring practice is changing rapidly. The global credit crunch, volatile oil prices and falling consumer demand have reverberated throughout Canada and the United States, and insolvencies and restructurings are on the rise. At the same time, the Bill C-12 amendments to the *Bankruptcy and Insolvency Act (BIA)* and the *Companies' Creditors Arrangement Act (CCAA)* that will come into effect later this year will have a profound impact on strategies in commercial insolvencies.

**The Advanced Program in Corporate Insolvency and Restructuring** will be taught by a faculty of highly experienced corporate insolvency practitioners who will give you analysis of the current law on each topic as well as the practical impact of the reforms and case law relevant to that topic. Hear about:

- The impact of the ABCP case on insolvency restructurings going forward
- Directors' and Officers' rights, obligations and liabilities and mitigation strategies in insolvencies
- Rights and remedies of secured creditors and creative enforcement techniques
- Key amendments to the *BIA* and *CCAA* and their implications
- Managing creditor's risks relating to priorities, subordination and classification
- Perspectives from the Bench on the important issues in insolvency and restructuring today
- Application of the U.S. Bankruptcy Code in cross-border insolvencies
- Trends and issues in cross-border restructurings
- Traditional and evolving asset sales processes
- The changing role of financial advisors in today's changing economic environment

Participants will come away with a thorough understanding of the key principles and techniques that they need to know to confidently deal with the complex issues that arise in the context of an insolvency or restructuring.

**Don't delay; spaces will go quickly. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca), call 416.597.9725 or 1.888.923.3394, email [opd@osgoode.yorku.ca](mailto:opd@osgoode.yorku.ca) or fax 416.597.9736 to reserve your place today.**

## Course Leaders

**Michael J. MacNaughton**  
Borden Ladner Gervais LLP

**Scott A. Bomhof**  
Torys LLP

## Faculty

Alison D. Bauer, Torys LLP (New York)  
The Hon. Justice Colin L. Campbell  
Superior Court of Justice (Ontario)  
Robert J. Chadwick, Goodmans LLP  
Ken Coleman, Allen & Overy LLP (New York)  
Mario Forte, Ogilvy Renault LLP  
Craig J. Hill, Borden Ladner Gervais LLP  
Pamela L. Huff, Blake Cassels & Graydon LLP  
Hassan Jaffer, Grant Thornton Limited  
Edmond F.B. Lamek, Fasken Martineau  
DuMoulin LLP  
Natasha MacParland, Davies Ward Phillips &  
Vineberg LLP  
Alex MacFarlane, Fraser Milner Casgrain LLP

Grant B. Moffat, ThorntonGroutFinnigan LLP  
Richard A. Morawetz, Alvarez & Marsal  
Canada ULC  
The Hon. Justice Geoffrey B. Morawetz  
Superior Court of Justice (Ontario)  
Alex Morrison, Ernst & Young Inc.  
Fred Myers, Goodmans LLP  
Elizabeth Pillon, Stikeman Elliott LLP  
David Planques, PricewaterhouseCoopers LLP  
David R. Seligman, P.C., Kirkland & Ellis LLP  
(Chicago)  
Edward A. Sellers, Osler, Hoskin & Harcourt LLP  
Kent E. Thomson, Davies Ward Phillips &  
Vineberg LLP

## Agenda [Day One]

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### 8:30 Registration and Continental Breakfast

### 9:00 Welcome and Introduction from the Course Leaders

**Michael J. MacNaughton**, Borden Ladner Gervais LLP

**Scott A. Bomhof**, Torys LLP

### 9:15 The ABCP Case – Impact of the Court’s Decision on Insolvency Practice

**Fred Myers**, Goodmans LLP

**Mario Forte**, Ogilvy Renault LLP

The Ontario Court of Appeal’s decision in *Re Metcalfe & Mansfield Alternative Investments II Corp.* not only makes clear that third party releases can be included in a plan but sets out a coherent explanation of the scope and purpose of the CCAA. The recent decision by the Supreme Court of Canada to not hear a challenge to the *Re: Metcalfe* decision sets the course for managing parties in cases of future financial meltdowns. Experienced counsel will discuss the legal underpinnings of the ABCP restructuring plan, the court decisions and how they will benefit complex restructurings in Canada. There will be ample time for questions and discussion.

### 10:45 Refreshment Break

### 11:00 Shareholders’ Rights and Directors’ Duties in a Restructuring Environment

**Kent E. Thomson**, Davies Ward Phillips & Vineberg LLP

**Edward A. Sellers**, Osler, Hoskin & Harcourt LLP

Shareholders’ rights and the nature, scope and extent of directors’ duties generally and in a restructuring context continue to generate debate and concern. Experienced counsel will discuss how the courts have recently addressed these issues and the impact of these developments on corporate actions and practice, including:

- Case law update-*BCE/Peoples/Stelco*
- What are the practical tests for a board to determine if a corporation is likely to become or has entered insolvency?

- Rights and duties of directors of corporations that face the prospect of insolvency
- Proactive management of potential liability risks for directors
- Possible expansion of the class of beneficiaries owed duties in the context of an insolvency
- Potential actions against directors

### 12:15 Restructuring Options

**Robert J. Chadwick**, Goodmans LLP

**Alex Morrison**, Ernst & Young Inc.

The availability of different statutory regimes and their flexibility give debtors and creditors a variety of restructuring options including prepackaged arrangements, creditor initiated arrangements, plans of arrangement under Corporation statutes, and out of court arrangements among others. Hear from two practitioners about innovative restructuring techniques, their pros and cons, and the factors that influence debtor and creditor choices.

### 1:00 Luncheon

### 2:00 Key Amendments to the BIA and the CCAA – How Will They Change Restructuring Practice?

**Alex MacFarlane**, Fraser Milner Casgrain LLP

**Craig J. Hill**, Borden Ladner Gervais LLP

Long awaited changes to the BIA and CCAA are anticipated to come into force by the end of the year. Get a thorough overview of the substantive law changes and strategic issues you need to know to protect your client’s interests.

- Contract Rejection
- Asset Sales
- DIP financing
- Remedies
- Restructuring with existing collective agreements
- New receivership provisions
- Treatment of equity claims
- Protection of professionals

**3:30 Refreshment Break**

**3:45 Priorities, Subordination and Classification**

**Grant B. Moffat**, ThorntonGroutFinnigan LLP

**Edmond F. B. Lamek**, Fasken Martineau

DuMoulin LLP

Secured creditors need to be ever-vigilant on priority pitfalls and the evolving law. This session will ensure that you are up-to-speed on the latest nuances.

- Court ordered or equitable subordination
- Debt subordination
- Contractual or consensual subordination
- Other priority issues
- Case law update

**4:30 Day One Adjourns**

**7:45 Continental Breakfast**

**8:15 Recap from the Chairs**

**Michael J. MacNaughton**, Borden Ladner Gervais LLP

**Scott A. Bomhof**, Torys LLP

**8:30 Judges' Panel**

**Moderators:**

**Michael J. MacNaughton**, Borden Ladner Gervais LLP

**Scott A. Bomhof**, Torys LLP

**Panelists:**

**The Hon. Justice Geoffrey B. Morawetz**

**The Hon. Justice Colin L. Campbell**

These judges of the Superior Court of Justice (Commercial List), will address what they consider are the key issues and challenges in insolvency and restructuring today.

*Ample time will be provided for questions from the delegates.*

**9:45 Refreshment Break**

**10:00 The U.S. Bankruptcy Code: The Latest Developments**

**David R. Seligman, P.C.**, Kirkland and Ellis LLP (Chicago)

**Elizabeth Pillon**, Stikeman Elliott LLP

Increasingly, Canadian lawyers may find themselves as counsel to U.S. debtors or lenders. They need to know about the *U.S. Bankruptcy Code*, the latest developments regarding how plans of arrangement are confirmed and the different players in the Canadian and U.S. systems. Experienced counsel will discuss the most current issues and strategies, including:

- Automatic stay
- First day orders
- Administrative priority
- The U.S. Trustee
- The UCC and the possibility of other committees
- Asset sales

- Plans, classification, priorities and cramdown
- Preferences, fraudulent transactions and other actions in the days leading up to the insolvency filing

## 10:45 Navigating Cross-Border Issues

**Ken Coleman, Allen & Overy LLP**  
(New York)

**Natasha MacParland, Davies Ward Phillips & Vineberg LLP**

Canadian and U.S. courts have shown an increasing willingness to cooperate in cross border insolvencies in order to facilitate cross border restructuring. Increased harmonization and cooperation is expected to continue particularly in light of the proposed amendments to the *BIA* and *CCAA* dealing with foreign insolvency proceedings. Get a complete overview of the latest developments in U.S.- Canada cross-border insolvencies, including:

- Use and application of S. 18.6 (1) of the *CCAA*
- Part XIII of the *BIA*-objectives and application
- Jurisdiction of the Court
- Recognizing proceedings under Chapter 15 of the *U.S. Bankruptcy Code*
- Concurrent proceedings and procedural harmonization
  - cross-border protocols and co-ordination
- Case law updates

## 12:00 Luncheon

## 1:00 Asset Sales in Domestic and Cross-Border Transactions

**Pamela L. Huff, Blake Cassels & Graydon LLP**

**Alison D. Bauer, Torys LLP (New York)**

Managing a successful cross-border insolvency or restructuring requires knowledge of Canada's unique insolvency environment as well as how to integrate Canadian and U.S. proceedings. In Canada, the number of larger cross-border companies restructuring or selling under the *CCAA* is increasing; the *CCAA* offers more flexibility to manoeuvre than its U.S. counterpart under Chapter 11. Amendments have been proposed in Canada, however, that will harmonize

the processes. Experienced Canadian and U.S. counsel will give you a practical overview of the regime and how it works in practice.

- Traditional Canadian Sales Processes
- Stalking Horses and Auction Processes in Canada
- 363 Sales in the US
- Co-ordination of US and Canadian Sales Processes

## 2:00 The Changing Role of Financial Advisors

**Richard A. Morawetz, Managing Director**  
**Alvarez & Marsal Canada ULC**

**Hassan Jaffer, Grant Thornton LLP**

**David Planques, PricewaterhouseCoopers LLP**

The roles and responsibilities of financial advisors in distressed situations in Canada continues to develop. Hear from these leading practitioners about acting as a CRO or Monitor, or advising debtors, senior lenders, subordinate lenders or equity investors in today's changing economic environment.

## 3:00 Program Concludes

### Who Should Attend

- General corporate/commercial lawyers
- Litigation lawyers
- In-house counsel
- Asset based lending lawyers
- Chief restructuring officers
- Turnaround and restructuring executives
- Trustees
- Senior lenders
- Special loans officers

# Registration

**Yes.** Register me for: *The Advanced Program in Corporate Insolvency and Restructuring*

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## Fee Per Delegate

\$1395 plus 5% GST for a total of \$1464.75.

Fees include attendance, program materials, continental breakfast, lunch, and break refreshments.

Please inquire about group discounts, financial assistance and CLE credits.

The fee is for a single webcast viewer. For larger groups, please contact us.

## CLE Credits

Approved in accordance with the requirements of the NY CLE Board for transitional and non-transitional lawyers.

Note: NY CLE Credits are not available for webcast participants.

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## Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

## Dates & Times

December 11 - 12, 2008

Day One: 9:00 a.m. - 4:30 p.m. EDT/EST

Day Two: 8:15 a.m. - 3:00 p.m. EDT/EST

Please arrive a half hour early on Day One for sign-in and material pick-up.

Dress is business casual.

## Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute a full refund (less \$50 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

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