

5th Essentials of Commercial Contracts

Learn practical drafting techniques

June 4 & 5, 2012, Toronto
Two-Day Event!

APPLICABLE TOWARD CPD REQUIREMENT



Workshop Included: Commercial Contract Dispute Resolution participating organizations

AECON Group Inc.
Baker & McKenzie LLP
Bennett Jones LLP
Blake, Cassels & Graydon LLP
Cisco Systems
Citibank Canada
Corby Distilleries Limited

Fidelity National Information Services
McCarthy Tétrault LLP
McMillan LLP
Miller Thomson LLP
Stikeman Elliott LLP
Torys LLP

who should attend

Corporate/Commercial Lawyers, Paralegals, Contract Managers

course highlights

- Key issues with respect to the law of contract
- Key principles of good drafting technique: commercial contract format and structure
- Customizing agreements to reflect your objectives
- Troubleshooting during the contracting process
- Recent and impending legislation impacting contract drafting
- Overview of the practical use and application of boilerplate clauses
- Drafting techniques to improve your protection

"This course gave me further insight into provincial/federal issues & thoughts on international arbitration & dispute resolution clause drafting."

"Extremely beneficial. A well rounded overview of contract law - the expertise & sharing of experiences is invaluable."

"This course helped me in understanding the key aspects to consider when preparing a commercial contract."

"This is a great 'refresher' course - would recommend."

Course Leader
Frank DeLuca,
Baker & McKenzie LLP



Sean
S. Caragata,
Cisco Systems



Hugh
F. Hamilton,
Fidelity National
Information
Services



Sheldon
Burshtein,
Blake, Cassels
& Graydon LLP



Richard Corley,
Blake, Cassels
& Graydon LLP



J. Fraser Mann,
Miller Thomson
LLP



Elisabeth
Symons,
Miller Thomson
LLP



Greg McIlwain,
McMillan LLP



Teresa
A. Reguly,
Torys LLP



Jesslyn
G. Maurier,
Bennett
Jones LLP



Jason Kroft,
Stikeman
Elliott LLP



Brian Swartz,
AECON Group
Inc.



as well as:

Geoff Hall,
McCarthy
Tétrault LLP

Brian Baum,
Citibank
Canada

Marc Valencia,
Corby Distill-
eries Limited

FACULTY

COURSE LEADER

FRANK DELUCA

Frank DeLuca is a partner in the **Baker & McKenzie** Corporate & Securities practice group in Toronto.

CO-LECTURERS

SEAN S. CARAGATA

Sean Caragata of **Cisco Systems** is a commercial and IT lawyer with broad general counsel background, having extensive experience negotiating complex commercial sales, service and licensing transactions.

HUGH F. HAMILTON

Hugh Hamilton is Associate General Counsel with **Fidelity National Information Services**, leading the legal team providing in-house services to the International Division.

SHELDON BURSSTEIN

Sheldon Burshtein is a Partner of **Blake, Cassels & Graydon LLP**. He is a member of the firm's IP, IT, Life Sciences, Sports & Entertainment, Franchising and ADR Groups. He is recognized by L'Expert for his work in the IP, Computer & IT Law and Technology Transactions areas.

RICHARD CORLEY

Richard Corley's practice at **Blake, Cassels & Graydon LLP** is focused on the intersection of law & technology, focusing on the clean technology and IT industries. He is recognized by L'Expert for his work in the Computer & IT Law and Technology Transactions areas.

GEOFF HALL

Geoff R. Hall is a partner in the Litigation Group at **McCarthy Tetrault LLP**. His practice focuses primarily on corporate/commercial litigation.

J. FRASER MANN

J. Fraser Mann is a Partner with **Miller Thomson LLP**. He has more than 25 years of experience in technology and IP law. He is recognized by L'Expert for his work in the computer & IT Law and Technology Transactions areas.

ELISABETH SYMONS

Elisabeth Symons is a Partner with **Miller Thomson LLP**.

GREG MCILWAIN

Greg McIlwain is a Partner in the Business Law Group with **McMillan LLP**. His practice focuses on transactions involving international

and domestic M&As, divestitures, reorganizations & joint ventures.

TERESA A. REGULY

Teresa Reguly's practice at **Torys LLP** focuses on advising clients with regulated products. She advises on IP and regulatory issues.

JESSLYN G. MAURIER

Jesslyn Maurier's practice at **Bennett Jones LLP** focuses on corporate commercial law.

JASON KROFT

Jason Kroft is a corporate law partner practising in the Toronto office of **Stikeman Elliott**.

BRIAN SWARTZ

Brian Swartz is Senior Vice-President Legal & Commercial Services with **AECON Group Inc.**

MARC VALENCIA

Marc Valencia is General Counsel, Corporate Secretary and VP, Public Affairs at **Corby Distilleries Limited**.

BRIAN BAUM

Brian Baum is Senior Counsel, Vice-President at **Citibank Canada**.

COURSE PROGRAM

STRATEGIES IN DRAFTING CONTRACTUAL PROVISIONS

This session will discuss the upfront considerations and practical drafting techniques that are necessary to successfully convert an idea or term sheet into a formal written agreement that will withstand the test of time.

- Best practices for drafting commercial agreements that reflect current business deal, having regard to future contingencies
- Fundamental "big-picture" considerations
- Papering the deal: how to translate the "deal" to paper
- Troubleshooting during the contracting process
- Tools for risk allocation and mitigation

DRAFTING INTERNATIONAL COMMERCIAL AGREEMENTS

Drafting precise commercial agreements plays a vital role in achieving successful international business results. This session will deal with the practical drafting techniques necessary to successfully convert an international transaction or deal into a bulletproof written agreement.

- Pre-negotiation due diligence and preparations
- Principles of good drafting technique
- Key contract terms and provisions
- Key elements and clauses in international contracts

SUPPLEMENTARY COURSE MATERIAL

Federated Press is now providing delegates with access to an innovative new database containing at least 25 interactive multimedia presentations by leading experts and approximately 20 hours of lectures on the topics covered by this course, including all slides and speakers' papers. See the list of presentations on page 4.

Delegates will also receive a trial subscription to the Legal Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge Legal topics as delivered at our many recent Legal conferences and courses.

- *This program can be applied towards 10 of the 12 hours of annual Continuing Professional Development (CPD) required by the Law Society of Upper Canada. Please note that these CPD hours are not accredited for the New Member Requirement.*
- *For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Law Society of Alberta.*
- *Attendance at this course can be reported as 10 hours of Continuing Professional Development (CPD) to the Law Society of B.C.*
- *The Barreau du Québec automatically accredits training activities held outside the Province of Quebec and accredited by another Law Society which has adopted MCLE for its members.*

DRAFTING & USE OF BOILERPLATE CLAUSES

Knowing which boilerplate clauses to include, understanding what they mean and how they should be drafted should be given careful consideration. This session will look at common types of boilerplate clauses and provide best practices for drafting effective clauses.

- Common boilerplate clauses
- Drafting boilerplate clauses
- Adapting standard wording that many business contracts use
- Drafting techniques to improve your protection

PRE-TRANSACTION & EARLY STAGE AGREEMENTS

Drafting and negotiating clear, watertight commercial contracts requires that you be fully prepared for all potentialities that can arise during the process. Detailed attention must be paid to the processes before the actual deal is inked. This session will look at best practices in drafting pre-transaction and early stage agreements.

- Key considerations for pre-transaction and early stage agreements
- Pre-contract documents and enforceability
- How and when to use a letter of intent
- Disclosure obligations for public companies

DRAFTING NON-COMPETITION PROVISIONS

The enforceability of a non-competition clause will depend on whether the restriction is reasonable and in the public interest, as there must be a balance between enforcing contractual obligations and promoting free and open competition through discouraging unreasonable restraints on trade. This session will look at the care needed in drafting non-competition clauses.

- The legal context of non-competition agreements
- Key terms and conditions
- Determining "reasonableness"

PANEL DISCUSSION: LEGAL FRAMEWORK FOR DRAFTING COMMERCIAL AGREEMENTS

This panel discussion will examine the legal framework, including legislative and judicial developments, impacting the drafting of various types of commercial agreements.

- Overview of current legal framework for commercial agreements
- Recent and impending legislation impacting contract drafting
- Trends in regulations affecting commercial agreements
- Protecting your company from litigation and anticipate legal pitfalls

CASE STUDY: PRACTICAL CONSIDERATIONS IN COMMERCIAL CONTRACTS

This case study presentation will examine key pre-transaction issues, looking at international agreements and risk allocation processes.

- Setting the stage for ongoing relations between the parties: clarifying objectives and setting strategy
- Dealing with sale of goods and IP licensing
- How to address legal and regulatory compliance issues
- Letters of intent and MOUs
- Avoiding drafting pitfalls in international agreements

IT AGREEMENTS

The rapid evolution of IT, as well as the laws that apply to it, have made the IT contracting process ever more complex. This session will examine key considerations in IT licensing and service agreements.

- Various models for licensing software
- Overlap between licenses and service agreements
- Pricing and payment terms
- Service level metrics and remedies for non-compliance

RISK ALLOCATION IN COMMERCIAL AGREEMENTS

This session will examine the process of identifying, analyzing, responding to and allocating risks inherent in business agreements, as well as how to avoid or mitigate them through proper negotiating and drafting practices.

- Identifying, analyzing, responding to and controlling risk factors
- Risk identification process: assessing risks prior to entering contracts
- Representations and warranties
- Indemnities and covenants

DRAFTING RIGHTS, OBLIGATIONS, EXCLUSION AND LIMITATION CLAUSES

With the high degree of risk in today's business environment, well-drafted commercial contracts should contain effective rights, obligations, exclusion & limitation clauses, which clarify each party's role in the relationship. This session will examine these rights, obligation, exclusion and limitation clauses, and their interpretation and enforceability.

- Key rights and obligations contained in most commercial contracts
- Review of current practice on limitation of liability and liability exclusion clauses
- Warranty disclaimers and warranty remedy approaches
- Risk mitigation approaches and applicability

DRAFTING EXCLUSION CLAUSES: IMPACT OF CURRENT CASE LAW

The Supreme Court's decision in *Tercon Contractors Ltd. v. BC* marks an important development in the law of contract. This session will look at the drafting & enforceability of exclusion clauses in light of the Supreme Court ruling, providing drafting tips from a litigation perspective.

- Three stage test that considers whether a clause applies to the type of breach alleged, unconscionability and public policy
- Enforceability of exclusion clauses
- The doctrine of "fundamental breach"

WORKSHOP

COMMERCIAL CONTRACT DISPUTE RESOLUTION

This workshop will explore the prominent issues faced in resolving disputes in business contracts and will provide practical strategies for avoiding and winning such disputes.

- Drafting dispute resolution clauses: deciding on a model
- Determining what warranties and indemnities are needed
- Resolving business disputes through litigation or alternatives
- The workings of the doctrine of frustration

Your registration includes an interactive multimedia database comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio or video and accompanying slides. You may also purchase the multimedia proceedings of the course which will be available on CD-ROM 60 days after the course.

**Drafting Exclusion Clauses:
Impact of Current Case Law**

Gary D. Graham,
Gowling Lafleur Henderson LLP

**Legal Framework for Drafting
Commercial Agreements**

Pierre L. Soulard,
Norton Rose OR LLP

Drafting Non-Competition Provisions

Richard D. Leblanc,
Miller Thomson LLP

**Case Study: Practical
Considerations in Contracts**

Sean S. Caragata,
Cisco Systems

Risk Allocation in Commercial Agreements

Marlene J. Kane,
McMillan Binch LLP

**Competition Act & Investment Canada
Act Provisions in M&A Agreements**

Omar Wakil,
Torys LLP

**Drafting Opinions for Commercial
Transactions**

Jill P. Fraser,
Aird & Berlis LLP

**The Structure and Format of Commercial
Contracts: Strategies in Drafting
Contractual Provisions**

Laura M. Safran, Q.C.,
Davies LLP

Drafting & Use of Boilerplate Provisions

Michael Styczen,
Stikeman Elliott LLP

Pre-Transaction & Early Stage Agreements

George Kelly,
Borden Ladner Gervais LLP

**Drafting Rights, Obligations,
Exclusions & Limitation Clauses**

Stephen D. Burns & Sebastien A. Gittens,
Bennett Jones LLP

International Commercial Agreements

Bryan C. Haynes,
Bennett Jones LLP

**Dealing with Change and Allocating
Risk in Commercial Agreements**

Matthew Peters,
McCarthy Tetrault LLP

Arbitration Clauses

Pierre L. Soulard,
Ogilvy Renault LLP

**Drafting Exclusion Clauses: Impact
of Supreme Court Ruling in Tercon**

Gary D. Graham & John Bassindale,
Gowling Lafleur Henderson LLP

Commercial Contract Dispute Resolution

Stuart Svonkin,
Torys LLP

**Drafting Competition and Investment
Canada Act Provisions in M&A Contracts**

Omar Wakil,
Torys LLP

**Practical Drafting Techniques for
Contracts & Agreements**

George Begic,
Deloitte & Touche LLP

**Confidentiality Agreements
& Letters of Intent**

Brian D. Wylynko, *Federal Express Canada Ltd.*;
Colin K. Sam, *Aecon Group Inc.*

Electronic Contracts

Mark J. McCans,
Blake Cassels & Graydon LLP

**Practical Negotiating Techniques
for Contracts and Agreements**

C. Ian Kyer,
Fasken Martineau DuMoulin LLP

International & Cross-Border Agreements

David B. Buchanan,
Miller Thomson LLP

**Joint Ventures & Strategic
Alliance Agreements**

Ruby E. Barber,
Bell Canada

**Dispute Resolution for
International Transactions**

Jamal Hejazi,
Gowlings LLP

IP Licensing Agreements

Stuart Ash,
Gowling Lafleur Henderson LLP

Registration: To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

Location: Novotel Toronto Centre Hotel, 45 The Esplanade, Toronto, ON, M5E 1W2

Conditions: Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video. Multimedia proceedings with all slides and handouts can be purchased separately on a CD-ROM which will also include the course material.

Time: This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

Cancellation: Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to May 24, 2012. No refunds will be issued after this date.

Discounts: Federated Press has special team discounts. Groups of 3 or more from the same organization receive 15%. For larger groups please call.

Payment must be received prior to May 30, 2012

Phone: 1-800-363-0722 Toronto: (416) 665-6868 Fax: (416) 665-7733

TO REGISTER FOR ESSENTIALS OF COMMERCIAL CONTRACTS

REGISTRATION COSTS

Name _____
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 Please bill my credit card: AMEX VISA Mastercard
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NUMBER OF PARTICIPANTS:
 COURSE: \$1975
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 PROCEEDINGS CD-ROM: \$599
 NOTE: Please add 13% HST to all prices.
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