

**OSGOODE**

OSGOODE HALL LAW SCHOOL  
YORK UNIVERSITY

Professional Development  
**CLE**

Taught by over 25 leading  
M&A practitioners using  
a multi-issue acquisition  
case study

## 5th Annual M&A Skills Boot Camp

This unique program will help you to master the essentials of M&A skills, while providing a comprehensive overview of a M&A transaction. Topics include:

- Understanding the interests and objectives of your client
- Project management essentials for running the deal
- Ethics in a transaction
- Identifying conflicts of interest
- Knowing how to use and how to draft preliminary deal agreements
- Use of due diligence information in negotiating the deal
- The forms a transaction can take and how they differ
- Factors to consider when structuring the deal, including tax issues
- Anticipating timing issues, negotiation challenges and logistical difficulties
- Strategies for handling corporate governance and regulatory issues
- Emerging regulatory issues and risks
- Protecting your client with adequate representations, warranties and indemnities
- Managing risk in international transactions
- Structuring and planning issues in international deals
- Conventions for drafting and negotiating opinions
- The dynamics and logistics of closing

### Course Leader

David A. Seville, Partner, Torys LLP



### DATES & TIME

April 9 - 10, 2012

8:30 a.m. - 5:30 p.m. EDT/EST

### LOCATION

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

Conference  
Webcast  
Available

Public CLE Seminars

Customized CLE Programs

Skills Training & Certification

ITAW

Professional LLM

Register now at  
[www.osgoodepd.ca](http://www.osgoodepd.ca)

**YORK**  
UNIVERSITÉ  
UNIVERSITY  
**U**  
redefine THE POSSIBLE.



# 5th Annual M&A Skills Boot Camp

**"This has been the most valuable Osgoode course I have attended. Great content and speakers."**

**Sarah J. Ennor, Senior Counsel and Vice-President, BMO Financial Group**

In order to complete an acquisition in today's M&A market, lawyers need a clear understanding of the client's business goals, and how to structure and negotiate a deal which meets those goals. They need to learn how to successfully execute the deal and manage the risks to their clients and their firms. And they need to do it on time. Mastery of these fundamental tenets of transactional practice is critical to lawyers who are striving to become tomorrow's M&A leaders.

This two-day, intensive *Osgoode Professional Development* boot camp is designed to teach lawyers how to run a M&A transaction from its inception through to closing. Built around a hypothetical corporate acquisition, the program features high level instruction, demonstrations, negotiation strategies and lively discussion. You'll gain important insights and key strategies required for M&A success, including:

- Gathering the information you need
- Understanding the Rules of Professional Conduct in negotiating the deal
- Techniques for managing conflict
- Purpose and effect of preliminary documents
- Mitigating risks through appropriate due diligence
- Choosing the right form for the transaction
- Securities issues impacting the transaction
- Negotiating representations, warranties, covenants and conditions and indemnities
- Competition/antitrust issues in M&A
- Investment Canada considerations
- What is different about international deals?
- Managing governance and process matters
- Negotiating opinions
- Handling closing issues and post-closing disputes

Whether you're a junior transactional lawyer or practice in another area, you'll come away from this program with a thorough understanding of the key principles and techniques you need to know to confidently deal with the issues that may arise in the context of the negotiated transaction.

**Register now by visiting [www.osgoodepd.ca](http://www.osgoodepd.ca), calling 416.597.9724 or 1.888.923.3394, emailing [opd-registration@osgoode.yorku.ca](mailto:opd-registration@osgoode.yorku.ca) or faxing 416.597.9736.**

## Course Leader

David A. Seville, Torys LLP

## Faculty

Michael D. Amm, Torys LLP

Jason (Jake) Bullen, Cassels Brock & Blackwell LLP

Richard F.D. Corley, Blake, Cassels & Graydon LLP

Dolores Di Felice, Borden Ladner Gervais LLP

Paul G. Findlay, Borden Ladner Gervais LLP

Michael J. Fortier, Torys LLP

Robert O. Hansen, McCarthy Tétrault LLP

Darryl R. Hiscocks, McMillan LLP

S. Brian Levett, Norton Rose Canada LLP

Thomas A. McKee, Blake, Cassels & Graydon LLP

Paul A.D. Mingay, Borden Ladner Gervais LLP

J. Alexander Moore, Davies Ward Phillips & Vineberg LLP

Margaret T. Nelligan, Aird & Berlis LLP

Jon Northup, Goodmans LLP

Shannon O'Hearn, Ontario Securities Commission

Mark Opashinov, McMillan LLP

Ian G. Putnam, Stikeman Elliott LLP

Daniel Raglan, Torys LLP (New York)

Karen Shaver, McMillan LLP

Michael J. Siftala, Torys LLP

Kent E. Thomson, Davies Ward Phillips & Vineberg LLP

Troy Ungerman, Norton Rose Canada LLP

# Agenda

---

**Day One: Monday, April 9, 2012**

**8:00 Registration and Continental Breakfast**

**8:30 Welcome and Introduction from Course Leader**

David A. Seville, Torys LLP

**8:35 Overview and Getting Started**

David A. Seville, Torys LLP

Robert O. Hansen, McCarthy Tétrault LLP

- Understanding the deal and client objectives
- Project management essentials for running a deal
- Use of precedents and other resources
- Keeping clients informed through effective communication

**Ethics and Professional Responsibilities**

- Ethics in a transaction
  - duty to negotiate in good faith
  - consequences of allowing the other party to be misled
  - impact of the Rules of Professional Conduct
- Conflicts of Interest
  - understanding your duties and responsibilities
  - identifying conflicts of interest
  - techniques for managing conflicts

**Preliminary Documents - Confidentiality Agreements & Letters of Intent**

- Purpose and effect
- Key negotiated clauses in Confidentiality Agreements
- Key negotiated clauses in Letters of Intent
- Case law update

**10:30 Refreshment Break**

**10:45 Effective Due Diligence**

Jason (Jake) Bullen, Cassels Brock & Blackwell LLP

- Purpose and importance
- Understanding client expectations
- Planning and staffing
- Co-ordinating with business and financial diligence
- Spotting the “red flags”
- Potential losses and liabilities as a result of deficient due diligence
- Reporting results to the client

**12:00 Networking Luncheon**

**1:00 Structuring the Deal**

Jon Northup, Goodmans LLP

Paul A.D. Mingay, Borden Ladner Gervais LLP

Ian G. Putnam, Stikeman Elliott LLP

Experienced counsel will walk you through the basic transaction structures, including securities law considerations and tax implications.

- Factors to consider when structuring the deal
- How to anticipate timing issues, logistical difficulties, business and legal issues
- What forms can a transaction take and how do they differ?
  - share/asset purchases
  - take-over bids
  - amalgamations
  - plans of arrangement

**3:00 Refreshment Break**

**3:15 Managing Regulatory Risk**

Mark Opashinov, McMillan LLP

- Competition/antitrust issues in M&A
- Allocating competition law risk
- The merger review process
- Investment Canada considerations
- Emerging issues and trends

**4:00 Managing Risk in International Transactions**

Michael D. Amm, Torys LLP

Daniel Raglan, Torys LLP (New York)

- What is different about international deals?
- Determining the role of Canadian and foreign counsel in international deals
- Structuring and tax planning issues
- Managing the *Hart-Scott-Rodino Act* pre-merger notification and review process and other regulatory approvals
- Foreign investment review/national security considerations – *U.S. Foreign Investment and National Security Act of 2007*
- Securities law issues – takeover bids, proxy rules and MJDS
- Recent case law developments in Delaware law relating to mergers and acquisitions and duties of directors
- Governing law and dispute resolution
- Anti-bribery/corruption

**5:30 Day One Adjourns**

# Agenda

**Day Two: Tuesday, April 10, 2012**

**8:00 Continental Breakfast**

**8:30 Recap and Introduction from the Course Leader**

David A. Seville, Torys LLP

**8:35 Overview of Acquisition Agreements and Negotiating the Fundamentals**

S. Brian Levett, Norton Rose Canada LLP

Thomas A. McKee, Blake, Cassels & Graydon LLP

J. Alexander Moore, Davies Ward Phillips & Vineberg LLP

This session will commence with an overview of how share and asset purchase agreements are structured, and then, using precedents, review key negotiated clauses and negotiation techniques.

**Acquisition Agreements**

- Share Purchase Agreement overview
- Asset Purchase Agreement overview

**Representations and Warranties**

- How representations and warranties are used to obtain information, allocate risk and achieve the maximum protection and the minimum risk for the client
- What is reasonable to ask for and why/why not?
- Due diligence to support representations and warranties
- Survival of representations and warranties
  - effect of closing, what is a reasonable survival period?
- Bring-down certificates
  - why they are necessary, who should sign them?

**Covenants and Conditions**

- Implications of failure to perform
  - covenants to be satisfied prior to closing
  - covenants to be satisfied after closing
- Standards of performance
  - best efforts, reasonable efforts, commercial efforts
- Conditions of closing
  - what is appropriate?

**Indemnities**

- When is indemnification appropriate?
  - risk allocation where uncertainty exists
  - damages for failure to perform

- Limits on indemnification
  - minimum threshold/maximum liability
- Indemnity procedure
  - carriage of litigation
- Enforceability issues

**Termination and Recourse**

- Termination rights
- Effect of termination
- Termination Fees
- Recourse

**10:30 Refreshment Break**

**10:45 Employment Law, and Pensions and Benefits Issues**

Karen Shaver, McMillan LLP

Darryl R. Hiscocks, McMillan LLP

- Key issues in pensions and benefits due diligence
- Different ways pensions and benefits are handled in acquisition transactions
- Impact of collective agreements in acquisition transactions
- Termination and severance issues
- Pay equity, workplace safety, and insurance and other statutory obligations
- Privacy issues
- Emerging issues and trends

**12:00 Networking Luncheon**

**1:00 Corporate Governance Matters and Regulatory Update**

Kent E. Thomson, Davies Ward Phillips & Vineberg LLP

Michael J. Siltala, Torys LLP

Shannon O'Hearn, Senior Legal Counsel, Mergers & Acquisitions, Ontario Securities Commission

- The application of the public interest mandate in M&A transactions
- Governance and process considerations
  - directors' duties in considering and approving a transaction
  - special/independent committees
  - fairness opinions
  - defensive tactics
- Shareholder approval requirements
- Case law update

**2:15 Refreshment Break**

# Agenda

## 2:30 Assessing IT and Intellectual Property Ownership

**Richard F.D. Corley**, Blake, Cassels & Graydon LLP

- Key issues in IT and IP due diligence
- Establishing and implementing a due diligence plan
- Avoiding common IT/IP pitfalls
- Assessing IP ownership and exposure
- Open source and other software licences
- Emerging issues and trends

## 3:15 Identifying and Litigating Environmental Risks

**Michael J. Fortier**, Torys LLP

- Breadth of risk and scope of due diligence
- Increasing importance of climate-related risk
- Using technical consultants effectively
- Documenting the exercise

## 4:00 Legal Opinions

**Margaret T. Nelligan**, Aird & Berlis LLP

**Paul G. Findlay**, Borden Ladner Gervais LLP

- When are particular opinions appropriate to be given or required?
  - who should they come from?
  - enforceability opinions/qualifications
- A practical approach to opinion negotiation
  - the time and cost involved in giving certain opinions
- Opinions vs. due diligence vs. terms
- Conventions for drafting and negotiating
- Qualifications
- Wraparound opinions

## 4:45 Closing and Post-Closing Logistics: Best Practices

**Dolores Di Felice**, Borden Ladner Gervais LLP

**Troy Ungerman**, Norton Rose Canada LLP

- The dynamics and logistics of closing
  - anticipating issues and logjams
  - orchestrating the closing
- Developing the closing agenda
- Payments mechanics, electronic transfers and the *Large Value Transfer System*
- Escrow agreements and holdbacks
- Reporting to the client
- Debriefing the client on lessons learned
- Handling post-closing disputes

## 5:30 Course Concludes



**Course Leader David A. Seville** is a partner in the Toronto office of Torys LLP. He practices a broad range of corporate and securities law, with a focus on public and private mergers and acquisitions, private equity and corporate finance. He has represented clients such as Ontario Teachers' Pension Plan Board, Birch

Hill Equity Partners, Platinum Equity Partners, Centre Partners, Manulife Financial, Scotiabank, The Woodbridge Company Limited, Thomson Reuters, CTVglobemedia and The Globe and Mail, on various acquisitions and divestitures. David received his LLB in 1996 from Dalhousie University and a BA (Economics) in 1993 from Laurentian University. He has practiced at Torys LLP since his admission to the Ontario bar in 1998.

### Who Should Attend

- Lawyers practising in
  - M&A
  - Corporate Finance
  - Securities
- Executives involved in M&A negotiations
- In-house counsel
- Government and regulatory representatives

# Registration

Please complete all registrant information.

Innovation and deal certainty are critical in today's markets

Register me for:  5th Annual M&A Skills Boot Camp

I will attend:  On site  Via webcast (single viewer)

Unable to attend? The live webcast and/or program materials are available within 5 business days following the program. Please contact us to order.

## Fee Per Delegate

**Course Only: \$1595 plus 13% HST for a total of \$ 1802.35.**

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available for both on site and webcast participants. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance and CPD credits.



**LSUC (ON) CPD:** pending; approved with the **Barreau du Québec, BC CPD, Law Society of New Brunswick, Northwest Territories, Nunavut and Manitoba** for 15.0 credit hours; the **New York CLE Board** for 17.5 credit hours in the Area of

**CPD Credits** Professional Practice for transitional and non-transitional lawyers. Eligible for CLE/Insurance Premium Credits Program offered by the **Law Society of PEI** and for Alberta CPD credit with the **Law Society of Alberta**. Questions? E-mail: [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca) or refer to the program website.

## Interested in Custom and In-house Programs?

Osgoode Professional Development also offers many of its programs in-house and can customize some programs to your specific needs. If you would like further information, please contact Heather Gore, Program & Business Development Lawyer, at 416.597.8847 or [custom@osgoode.yorku.ca](mailto:custom@osgoode.yorku.ca) or visit [www.osgoodepd.ca](http://www.osgoodepd.ca).

## 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's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

## Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 14 days prior to the program date. No other refund is available.

## Dates & Time

**April 9 - 10, 2012  
8:30 a.m. - 5:30 p.m.**

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

Dress is business casual.

## Location

**Osgoode Professional Development  
Downtown Toronto Conference Centre**

1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3

## Registrant Information

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm/Company: \_\_\_\_\_

Practice Area: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ Prov: \_\_\_\_\_ Postal Code: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax \_\_\_\_\_

Email: \_\_\_\_\_

- Add me to your mailing list  
 Delete me from your mailing list  
 I do not wish to be contacted by e-mail

Priority Service Code  
(from mailing label below)

1 1 6 5 E M

## Payment Options

- Cheque enclosed (payable to York University — HST# R119306736)  
 Bill my credit card:  VISA  Mastercard

Card# \_\_\_\_\_ Expiry: \_\_\_\_\_

Signature: \_\_\_\_\_ Payment amount: \$ \_\_\_\_\_

Public CLE Seminars

Customized CLE Programs

Skills Training & Certification

ITAW

Professional LLM

**OSGOODE**

OSGOODE HALL LAW SCHOOL  
YORK UNIVERSITY

**Professional Development**  
**CLE**

## 4 Convenient Ways to Register

- MAIL** your registration form to:  
Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3
- ONLINE** at  
[www.osgoodepd.ca](http://www.osgoodepd.ca)
- FAX** your registration to  
416.597.9736
- CALL US** at 416.597.9724  
or 1.888.923.3394