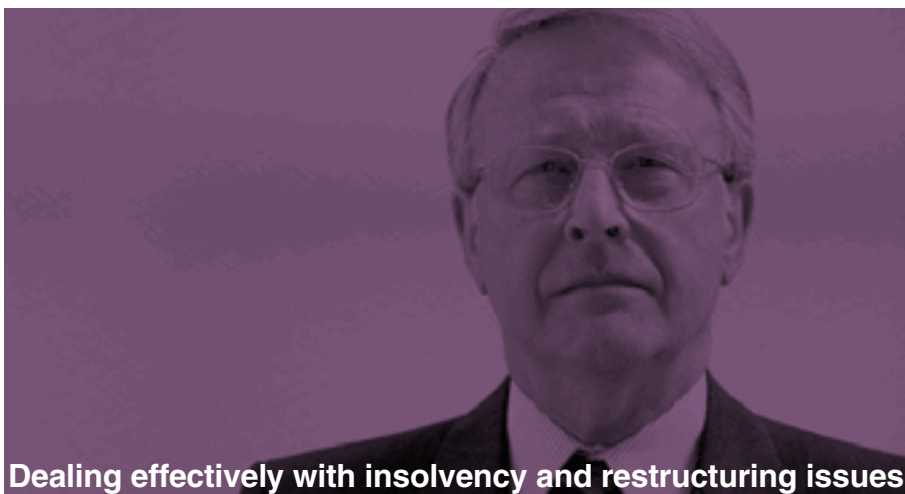


# MITIGATING INSOLVENCY RISKS

December 11 & 12, 2008, Toronto



## who should attend

Commercial, Insolvency and Restructuring Lawyers  
In-house Counsel  
Senior Lenders and Special Loan Managers  
Trustees and Receivers  
Chief Restructuring Officers  
Corporate Recovery Managers

## participating organizations

Bennett Jones LLP  
Blake, Cassels & Graydon LLP  
Borden Ladner Gervais LLP  
Cassels Brock & Blackwell LLP  
Goodmans LLP  
Department of Justice CANADA  
Heenan Blaikie LLP  
KPMG LLP  
McMillan LLP  
Miller Thomson LLP  
Stikeman Elliott LLP



Course Leader  
Jeffrey B. Gollob,  
McMillan LLP



Nicholas Brearton,  
KPMG LLP



William Burden,  
Cassels Brock & Blackwell LLP



David R. Byers,  
Stikeman Elliott LLP



Robert J. Chadwick,  
Goodmans LLP



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



Kenneth David Kraft,  
Heenan Blaikie LLP



Michael J. MacNaughton,  
Borden Ladner Gervais LLP

## course highlights

- Examine what can be done to reduce the potential loss from bankruptcy before it strikes
- Learn about the impact the current market has had on restructurings
- Gain a better understanding of the risks involved in cross-border insolvencies & restructurings
- Get the latest on recent case law impacting D&O risks in insolvency
- Learn how to effectively deal with initial CCAA orders
- Gain insight on asset-backed commercial paper restructuring
- Examine class actions against a debtor in CCAA proceedings
- Hear about the issues that can arise in criminal investigations in bankruptcy
- Discover how to manage the risks related to priorities, subordination and classification of creditors
- Hear best practices for improving chances of recovery and mitigating the risks involved



Margaret Sims,  
Miller Thomson LLP



S. Richard Orzy,  
Bennett Jones LLP

## as well as:

Diane Winters,  
Department of Justice Canada

# FACULTY

## COURSE LEADER

### JEFFREY B. GOLLOB

Jeff Gollob is Counsel to McMillan LLP. He spent 20 years as a partner in the firm, during which his practice focused primarily on business restructuring, bankruptcy, insolvency and financing matters. He has broad experience advising financial institutions, corporations and insolvency accountants on business restructurings, debt enforcement and financing matters.

## CO-LECTURERS

### NICHOLAS BREARTON

Nicholas Brearton is a Partner in the Advisory practice of KPMG LLP and a Senior Vice President of KPMG Inc. Since 1985, he has practiced exclusively in the area of corporate restructurings and insolvencies, including business viability assessments, the development of business plans and strategies, monitoring engagements, formal and informal corporate restructurings, and corporate insolvencies in Canada, the United States and other foreign jurisdictions.

### WILLIAM BURDEN

William Burden, a Partner at Cassels Brock & Blackwell LLP, practises in the area of commercial litigation with an emphasis on contractual disputes and shareholder remedies. He has extensive trial (both in the courts and before various tribunals) and appellate experience and has been involved in a number of arbitrations involving interpretations of contracts.

### DAVID R. BYERS

David Byers is Head of the Litigation Department in the Toronto office of Stikeman Elliott LLP and Co-Chair of the firm's litigation practice nationally. He maintains a general civil litigation practice with emphasis on corporate commercial, products liability, arbitration, securities, insurance and insolvency.

### ROBERT J. CHADWICK

Robert J. Chadwick is a Partner and a member of the Executive Committee of Goodmans LLP. He practices corporate and commercial law and in the areas of corporate restructuring and insolvency, financial services and private equity law. He focuses his practice on corporate, banking, private equity, insolvency and reorganization law and mergers and acquisitions.

### PAMELA L. J. HUFF

Pamela Huff is a Partner in the Restructuring & Insolvency Group at Blakes. She is experienced in all areas of insolvency practice, including both the litigation and commercial aspects of work-outs, reorganizations, receiverships and other enforcement of security.

### KENNETH KRAFT

Kenneth Kraft is a Partner at Heenan Blaikie LLP. A member of their Financial Services Law Group, he focuses his practice on insolvency and finance, both secured and unsecured. Acting for lenders as well as borrowers, his expertise encompasses receiverships, informal work-outs and all manner of restructurings.

### MICHAEL J. MACNAUGHTON

Michael MacNaughton is a Partner of Borden Ladner Gervais and a member of the firm's insolvency and restructuring group. He advises lenders, creditors, debtors and insolvency professionals with respect to bankruptcy, insolvency and restructuring matters.

### S. RICHARD ORZY

Rick Orzy is the Co-Leader of the national Bankruptcy and Restructuring practice of Bennett Jones LLP. His practice covers the entire range of restructuring and bankruptcy, acting for creditors and debtors. He is especially noted for his preeminent Canadian practice representing bondholders of all types, as well as major foreign creditors and court officers, in many of Canada's largest restructurings.

### MARGARET SIMS

Margaret Sims is a Partner with Miller Thomson LLP. She practices commercial litigation with a focus on bankruptcy, insolvency and restructuring matters, and commercial disputes. She has represented Court appointed monitors and receivers, trustees, directors, debtors, creditors, suppliers and customers in the insolvency context.

### DIANE WINTERS

Diane Winters is General Counsel, Department of Justice CANADA. Her practice focuses on the areas of insolvency, bankruptcy and receivership law as well as Crown and Tax law. She has been responsible for complex insolvency cases and cases involving claims against the CRA and OSB, as well as class action proceed-

## COURSE PROGRAM

### WHAT TO DO BEFORE THE SIGNS OF INSOLVENCY ARE APPARENT: AVOIDING THE RISK OF BANKRUPTCY

This session will present a discussion from both the debtor's and creditors' perspective on how to prepare oneself for an impending bankruptcy, examining what can be done to reduce the potential loss from bankruptcy before it strikes.

- Red flags: telltale signs of trouble
- Pre-proceeding issues of debtor:
  - Reporting
  - Proactively managing defaults
  - Communication
  - Managing different stakeholders' interests
  - Developing a restructuring game plan
- Pre-proceeding issues of creditor:
  - Monitoring and reporting
  - Credit restructuring
  - Dealing with other stakeholders
  - Developing and implementing a restructuring plan and other alternatives

### CURRENT MARKET CONDITIONS AND THEIR IMPACT ON CORPORATE RESTRUCTURINGS

Recent market conditions, including a tightened credit market, slower economy, increased input costs, and a high dollar, have resulted in a growing number of insolvencies and restructurings. However, some of the approaches and tools utilized in successful restructurings during the last few years may not be as effective today. This session will examine the impact the current market has on corporate restructurings.

- Overview of current economic and credit market conditions
- Developing a restructuring game plan in today's market
- Restructuring issues including collective agreements, pension plans, debt forgiveness and conversion, and stakeholder communications
- Responsibilities of directors and officers in a restructuring or insolvency
- Lessons learned from recent insolvency proceedings

## MITIGATING RISKS IN CROSS-BORDER INSOLVENCIES & RESTRUCTURINGS

Commercial insolvencies and restructurings are challenging at the best of times, but when such events occur in a cross-border context another layer of complexity and potential pitfalls are added to the equation. This session will examine the risks involved in cross-border insolvencies and restructurings and how to go about mitigating them.

- Review of the current cross-border restructurings
- Framework of cross-border proceedings in Canada and the U.S.: key differences and implications between the U.S. and Canadian systems
- Section 18.6 of CCAA: the current Canadian cross-border insolvency regime
- Managing concurrent proceedings and procedural harmonization
- Cross-border risks and challenges
- The United States Bankruptcy Code as it applies to cross-border insolvencies
- Managing cross-border protocols and co-ordination
- Being prepared for differences between jurisdictions: using jurisdiction to your advantage

## D&O RIGHTS, OBLIGATIONS AND LIABILITIES IN INSOLVENCY: MITIGATING THE RISKS

The threat of liability for actions taken by directors and officers in the carrying out of their duties has grown tremendously in the last decade. That is why it is imperative for directors and officers to have a clear understanding of their rights, obligations and liabilities in insolvency, in order that they can mitigate the substantial risks involved.

- Director and officers' duties to a corporation and bondholders in insolvency
- Recent case law impacting D&O risks in insolvency
- Indemnification and insurance
- Duty of care owed by directors in a corporate insolvency: recent developments
- Advising the board of directors in a restructuring

## DEALING WITH INITIAL CCAA ORDERS

In an insolvency scenario, whether from a debtor or creditor perspective, you will have to deal with numerous initial CCAA orders each of which with the potential to knock even the most carefully prepared plans off track. This session will examine the far reaching implications of these provisions from a practical perspective.

- Dealing with the general and specific issues in initial CCAA orders
- Types of initial CCAA orders
- Handling the challenges in initial CCAA orders
- Obtaining initial orders from the court that go far beyond previously established legal norms
- Best practices for responding to CCAA orders

## ASSET-BACKED COMMERCIAL PAPER (ABCP) RESTRUCTURING

Earlier this year, the Ontario Superior Court granted creditor protection to issuers of non-bank sponsored asset-backed commercial paper under the Companies' Creditors Arrangement Act, resulting in arguably the largest restructuring in Canadian history. This session will look at the fallout from this decision and the impact that it has had or may have for subsequent restructurings.

- Will the ABCP restructuring be a precedent for others, or was it simply too unique?
- Was the CCAA stretched too far this time?
- The implications of the ABCP restructuring for releases of and by third parties under the CCAA.
- What will be the impact on debt ratings? Can anything ever again be said to be bankruptcy remote or truly 'siloed'?
- Timing issues and concerns in restructurings that are accomplished primarily behind closed doors prior to filing.
- Applying lessons learned

## CLASS ACTIONS AGAINST A DEBTOR IN CCAA PROCEEDINGS

The issue most litigated by creditors surrounding the CCAA provision that provides protection to a company in financial difficulty against its creditors concerns the classification of creditors, as the CCAA does not contain any specific guidelines on how to determine the various classes of creditors and as such the final determination is subject to the Court's discretion. This session will examine class actions against a debtor in CCAA proceedings.

- Lessons learned from recent class actions
- Class action against directors in insolvency situations
- Combating creation of classes proposed by the debtor seeking to stack a class so as to ensure the requisite voter approval
- The test to be applied to determine classes of creditors: manipulating the "commonality of interest" test

## ADDRESSING IMPROPER TRANSACTIONS AND CRIMINAL INVESTIGATIONS

This session will address civil remedies applicable to improper transactions and asset recovery strategies along with a discussion of criminal investigations in bankruptcy cases.

- Asset recovery strategies
- Investigative tools
- Tracking down and challenging fraudulent transactions
- Civil remedies
- Criminal prosecutions in bankruptcy cases

## MANAGING THE RISKS RELATED TO PRIORITIES, SUBORDINATION AND CLASSIFICATION OF CREDITORS

Secured creditor claims can be significantly affected in insolvency proceedings. This session will look at the latest developments with respect to priorities, subordination, consolidation classification of creditors, the risks involved for creditors and what can be done to protect their claims.

- Amendments to the Bankruptcy and Insolvency Act and the Companies' Creditors Arrangement Act
- Statutory priorities
- The latest case law affecting the ranking of secured claims
- Court-ordered priorities: recent jurisprudence
- Equitable subordination
- Classification issues
- Substantive consolidation

## MITIGATING THE RISKS OF UNSECURED CREDITORS

This session examines the usually unenviable position of being an unsecured creditor in the event of bankruptcy and provides insights into the remedies available to them and best practices for improving their chances of recovery and mitigating the risks involved.

- Remedies available to unsecured creditors
- Strategies to react to an impending insolvency
- Pros and cons of initiating bankruptcy proceedings as an unsecured creditor
- How restructuring can impact unsecured suppliers
- How restructuring can impact customers (including issues related to customer tooling)
- The stay of proceedings
- Contract termination issues
- The oppression remedy

# MULTIMEDIA PRESENTATIONS

Register for Mitigating Insolvency Risks and we will give you free of charge a CD-ROM comprising the following virtual presentations from recent Federated Press courses and conferences. Presented in their entirety with complete audio and accompanying PowerPoint slides totaling 291 minutes of expert learning, these presentations are an added bonus to this year's course. Bear in mind that these presenters are not necessarily those that you will see and hear at this year's course.

## Valuing Financially Troubled Companies

Howard Cappell,  
*Fong and Partners Inc.*  
Time: 35 Slides: 7

## Addressing Pension Legal Risks in M&As & Restructurings

Kathryn Bush,  
*Blake, Cassels & Graydon LLP*  
Time: 52 Slides: 12

## Remedies of a Secured Creditor: A Bailiff's Perspective on What Actually Happens From Start to Finish

Earl Boeko,  
*Sterling Bailiffs Inc.*  
Time: 37

## Paid-Up Capital and Internal Reorganizations

William J. Bies,  
*Fasken Matineau DuMoulin LLP*  
Time: 13 Slides: 25

## The Shifting Sands in the "Vicinity of Insolvency"

William J. Kenny, Q.C.,  
*Miller Thomson LLP*  
Time: 48 Slides: 60

## Debt Restructuring

Kathleen S. M. Hanley & David Fox,  
*Fasken Martineau DuMoulin LLP*  
Time: 32 Slides: 28

## Reorganizations of Mutual Fund Trusts

Kenneth Snider,  
*Blake, Cassels & Graydon LLP*  
Time: 42 Slides: 75

## Exchangeable Share Transactions

Dov B. Begun,  
*Olser, Hoskin & Harcourt LLP*  
Time: 32

Audio/Video segments clickable slide by slide  
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**Location:** Metropolitan Hotel, 108 Chestnut Street, Toronto, Ontario, M5G 1R3

**Cost:** The attendance fee for the course is \$1825 per person and covers attendance for one person and the lecturers' presentation material. The fee further includes lunch on the first day, morning coffee on both days and refreshments during all breaks. You may purchase a Proceedings CD-ROM containing edited actual proceedings and materials from the course.

**Time:** Course registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at noon.

**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 November 28, 2008. No refunds will be issued after this date. Please note that a 15% service charge will be held in case of a cancellation.

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## TO REGISTER FOR MITIGATING INSOLVENCY RISKS

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