

The Canadian Institute's 8th Annual

COMMERCIAL LOAN FINANCE & SECURITY

March 1 and 2, 2006
Marriott Bloor Yorkville, Toronto

*The latest techniques for negotiating,
documenting and enforcing security*

Conference Co-Chairs:

Sean C. O'Neill

Partner
McCarthy Tétrault LLP

Kenneth Rosenstein

Partner
Goodman & Carr LLP

New For 2006!

Negotiating intercreditor agreements
between junior and senior lenders

Integrating equipment leasing and
financing with commercial lending

Assessing the risk of legacy costs
before lending

Get valuable information from seasoned lending executives, top lawyers and consultants, including strategies for:

- Maximizing the opportunities of asset-based lending in complex lending situations such as syndicated loans
- Effective strategies to facilitate cross-border lending
- Taking advantage of second lien lending: perspectives from both sides of the border
- Understanding the procedural requirements for syndicated loans
- Lending to non-corporate borrowers including limited partnerships, income trusts, unlimited liability companies and more

Plus!

Receive practical information you can put to use for your clients immediately in these critical pre and post conference seminars:

- A** PPSA and UCC Mini Course: A Comprehensive Guide to Taking, Registering and Perfecting Security in Canada and the United States
- B** Understanding the Business Realities of Specialty Finance Products: A Guide to Better Representation of Borrowers and Lenders
- C** Anatomy of a Secured Transaction: From the Term Sheet to Opinions



This program has been accredited by the Specialty Committees of the Law Society of Upper Canada towards the professional development requirement for certification. Corporate & Commercial Law

Conference: 15 hours

Seminars: 3 hours each

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Why Is This A Must Attend Event For Leading Law Firms And Financial Institutions From Across The Country?

Because only at this conference will you learn the business realities, market trends and strategies to best represent your client as either borrower or lender. From the latest specialty financing products to how to negotiate priority and document security, leading experts give you everything you need to ensure your client's position is secure.

Borrowers, lenders and their legal advisors know exactly how much is at stake in making a commercial loan, and how devastating the consequences of a poorly structured or documented loan agreement can be. Understanding the increasing number of specialty finance products, successfully negotiating intercreditor agreements, and protecting security interests are critical.

Now in its 8th highly successful year, *The Canadian Institute's Commercial Loan Finance & Security* conference provides both in-depth studies of the most critical areas of commercial lending as well as cutting edge sessions on leading trends and financing products. Get practical, up-to-date coverage of all key issues, including:

- Successfully developing inter-creditor arrangements including the right to amend agreements and increase additional debt

- Analyzing how proposed Bills C-55 and C-281 may change the landscape with respect to superpriorities and deemed trusts
- Understanding the increased importance of due diligence for asset based lenders and practical tips on how to ensure your client is protected
- Strategies for taking security in a cross-border lending arrangement
- Assessing non-documented costs such as pension and benefit obligations
- Analyzing how equipment leasing fits into a commercial loan structure with respect to priorities and subordinations
- Developing an enforcement strategy considering the lender, borrower, and unique circumstances of the loan

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DISTINGUISHED FACULTY

Co-Chairs:

Sean C. O'Neill
Partner, McCarthy Tétrault LLP

Kenneth Rosenstein
Partner, Goodman & Carr LLP

Speakers:

Jean E. Anderson
Partner, Goodmans LLP

Gordon D. Baird
Partner, McCarthy Tétrault LLP

Tibor T. Bezeredi
Partner, Fraser Milner Casgrain LLP

David G. Crumbaugh
Partner, Latham & Watkins LLP

Silvana D'Alimonte
Partner, Blake Cassels & Graydon LLP

Wayne Ehgoetz
Senior Vice President
Congress Financial of Canada

David Farmer
Vice President and Underwriter,
Corporate Finance Syndications
BMO Bank of Montreal

David R. Feindel
Partner, McInnes Cooper

Jonathan Fleisher
Partner, Goodman and Carr LLP

Andrew Hatnay
Barrister & Solicitor, Koskie Minsky LLP

Richard T. Higa
Partner, McMillan Binch Mendelsohn LLP

Dan Howat
Senior Vice President
JP Morgan Chase Bank N.A.

Suzanne Leclair
Vice President, Commercial National
Title Solutions, Chicago Title
Insurance Company

Jonathan A. Levin
Partner, Fasken Martineau DuMoulin LLP

Marc Mercier
Partner, Cassels Brock & Blackwell LLP

Peter Milligan
Partner, Osler, Hoskin & Harcourt LLP

Victoria Saxon
Partner, Hodgson Russ LLP

Stewart Somers
Senior Vice President,
Spergel and Associates Inc.

Speaker TBA
Borden Ladner Gervais LLP

Frank Spizzirri
Partner, Cassels Brock & Blackwell LLP

Brian Wright
Partner, Fasken Martineau DuMoulin LLP

Workshop Leaders:

Christopher N. Alam
Partner, Gowling Lafleur Henderson LLP

Michael St. Amant
Managing Director, Subordinate
Financing, Business Development
Bank of Canada

Christian G. Koelbl III
Partner, Hodgson Russ LLP

Douglas McKenzie
Senior Vice President and General Manager
BAL Global Finance Canada
Corporation (Bank of America)

Joel M. Scoler
Partner, McCarthy Tétrault LLP

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Wednesday, March 1, 2006

8:00 Registration Opens and Coffee Served 

9:00 Opening Remarks from the Co-Chair

Sean C. O'Neill
Partner, McCarthy Tétrault LLP

9:15 Negotiating Intercreditor Arrangements Between Senior and Junior Lenders

Jean E. Anderson
Partner, Goodmans LLP

Gordon D. Baird
Partner, McCarthy Tétrault LLP

When dealing with different layers of debt in the capital structure, the key is successful management of the relationship between junior and senior lenders. Experienced counsel present the positions of junior and senior lenders to help you plan strategy.

- Understanding the different perspectives of different lenders
- Successfully developing inter-creditor arrangements including the right to amend agreements and increase additional debt
- Negotiating priority and standstill agreements with senior lenders
- Designing differing workout and exit strategies for differing lenders
- Identifying trigger events for enforcement action

10:15 Networking Coffee Break 

10:30 Mastering Priorities & Superpriorities to Protect Security Interests

Jonathan A. Levin
Partner, Fasken Martineau DuMoulin LLP

Having a solid understanding of the rules of priority is critical to your client's recovery in an enforcement scenario. Find out the latest on who gets what, what the courts have said, and the proposed new superpriority that may jeopardize your client's security.

- Analyzing the impact of the *Limitations Act* to priorities disputes: what the courts have said
- Understanding *Fleetwood v TCT Logistics* decision and its effects on the law of deemed trusts
- Dealing with the inconsistent treatment of GST priority under the BIA and the CCAA
- Proposed new legislation: how will Bills C-55 and C-281 change the landscape?

11:15 Maximizing the Opportunities of Asset Based Lending

Wayne Ehgoetz
Senior Vice President, Congress Financial of Canada

Dan Howat
Senior Vice President, JP Morgan Chase Bank N.A.

The use of asset based lending is increasing in Canada as it provides businesses with working capital not available through traditional bank financing. Learn about the latest trends and how to integrate ABL in complex lending situations such as syndicated loans.

- Leveraging traditional and non-traditional assets to secure financing

- Understanding the increased importance of due diligence for asset based lenders and practical tips to ensure your client is protected
- Tips and techniques to obtain the security your client needs through cash management and blocked account arrangements
- Integrating ABL in complex lending situations including syndicated loans and lending to income trusts

12:15 Networking Luncheon for Delegates & Speakers 

1:30 Taking Advantage of Second Lien Lending – American and Canadian Perspectives

Tibor T. Bezeredi
Partner, Fraser Milner Casgrain LLP

David G. Crumbaugh
Partner, Latham & Watkins LLP (Chicago)

Second lien lending, already occurring frequently in the United States, will increase in Canada. Counsel for both borrowers and lenders will learn how to take advantage of this opportunity while managing the risks.

- Understanding the key differences between second lien lending and other forms of financing
- Analyzing recent trends from the American experience
 - what are the current trends in the American market?
 - how have second lien lenders fared in bankruptcy?
- Reviewing developments in the Canadian market
 - what industry sectors are increasingly relying on second lien lending?
 - will this new financing solution replace mezzanine lending?
- Negotiating inter-creditor arrangements
 - utilizing the divergence of strategy between junior and senior lenders to maximize your client's security position
 - planning an exit strategy

2:30 Networking Refreshment Break 

2:45 Panel Discussion: Tips and Traps in Lending to Non-Corporate Borrowers

Peter Milligan
Partner, Osler, Hoskin & Harcourt LLP

Silvana D'Alimonte
Partner, Blake Cassels & Graydon LLP

David R. Feindel
Partner, McInnes Cooper

Borrowers are no longer just traditional corporations. They may be other types of business organizations such as limited partnerships, unlimited liability companies or income trusts. Expand your client base by learning best practices and risk management for dealing with non-corporate borrowers.

Income Trusts

- Understanding the structure of an income trust from the borrower's and the lender's perspective
- Drafting credit documents and taking security

Limited Partnerships

- Obtaining representations, warranties and covenants from the limited partnership and general partner
- Taking security: issues with respect to collateral and registration

Unlimited Liability Companies

- Understanding the nature of unlimited liability companies in Nova Scotia and Alberta
- Taking and registering security

4:00 Financing Development on First Nations Leasehold Land

Suzanne Leclair

Vice-President, Commercial National Title Solutions
Chicago Title Insurance Company

Vast tracts of First Nations reserve land from British Columbia to Nova Scotia present rich opportunities for development, but raise special financing issues due to title considerations and the unique relationship between First Nations and the Federal Crown. How can lenders ensure their investment is protected?

- Understanding the advantages to developing on First Nations leasehold lands
- Considering the challenges raised by title considerations and the relationship with the Federal Crown
- Making the lending decision: factors to consider
- Using title insurance to protect the investment

5:00 Co-Chair's Recap – Conference Adjourns

Cocktail Reception 

Thursday, March 2, 2006

8:30 Coffee Served

9:00 Opening Remarks from the Co-Chair

Kenneth Rosenstein

Partner, Goodman & Carr LLP

9:15 Effective Strategies for Cross-Border Lending to Keep Funding Flowing Smoothly

Marc Mercier

Partner, Cassels Brock & Blackwell LLP

Victoria Saxon

Partner, Hodgson Russ LLP (Buffalo)

Borrowers are opening up cross-border operations, so they need cross-border facilities to meet their financing needs. As cross-border lending transactions become more and more common, it is essential to understand the key differences between the Canadian and American regime to ensure that funding flows smoothly.

- Strategies for taking security in a cross-border lending arrangement
 - comparing the different approaches to taking collateral security in Canada and the U.S.
 - complying with the search procedures under the UCC and preparing for the changes scheduled for July 1, 2006
- Analyzing the essential elements of U.S. fraudulent conveyance law
- Protecting your client by understanding the framework for Canadian and U.S. insolvency proceedings and how recent changes to U.S. bankruptcy law may alter the process

10:15 Networking Coffee Break

10:30 Assessing the Risk of Legacy Costs Before Lending and Factoring it into the Lending Decision

Andrew Hatnay

Barrister & Solicitor, Koskie Minsky LLP

Recent high profile restructurings have highlighted the huge impact that legacy costs such as pension obligations and health benefits can have on the recovery of secured lenders. Of course, that's after the fact. Take this unique opportunity to learn how to assess the impact of legacy costs before lending, and how to structure your agreements to better manage the risk.

- Understanding legacy costs
 - how do they impact the recovery of creditors?
 - the statutory deemed trust for employer pension contributions
- Strategies for assessing non-documented costs such as pension and benefit obligations
- The impact of the government pension regulator
- Lessons learned from cases in the news

11:15 Negotiating and Drafting Key Provisions in Loan Agreements

Richard T. Higa

Partner, McMillan Binch Mendelsohn LLP

Brian Wright

Partner, Fasken Martineau DuMoulin LLP

It is critical that lending arrangements are carefully negotiated and documented. Errors at this stage can lead to costly losses and litigation down the road. Experienced practitioners provide you with the step by step breakdown of some of the essential provisions of loan agreements.

- Choosing the right structure and documentation for your deal
- Analyzing financial covenants
 - distinguishing between cash-flow tests and balance sheet tests
 - avoiding common drafting pitfalls
- Negotiating third party agreements:
 - landlord consents
 - non-disturbance agreements
 - estoppels and acknowledgements
 - access agreements
 - priority agreements

12:15 Networking Luncheon for Delegates & Speakers

1:30 Key Developments in Syndicated Commercial Lending

David Farmer

Vice President and Underwriter

Corporate Finance Syndications, BMO Bank of Montreal

Speaker TBA

Borden Ladner Gervais LLP

Syndicated commercial lending is on the rise across the country, involving more and more counsel in each transaction. Learn how to best represent your clients in this key session which provides updates on the standardized provisions, procedural tips and new applications for syndicated loans.

- How have the standardized provisions introduced by the Canadian Bankers' Association fared?
 - what benefits have they had provided?
 - what are the disadvantages?
 - why are some organizations still not using them?
- Understanding the procedural requirements
- Using syndicated loans in the context of cross-border lending
- Are there other ways of sharing risk without syndication?

2:30 Networking Refreshment Break

2:45 Integrating Equipment Leasing and Financing with Commercial Lending

Jonathan Fleisher

Partner, Goodman and Carr LLP

Most commercial lending scenarios also involve leased or financed equipment. Whether you represent the lessor or lessee, lender or borrower, it is critical to understand how equipment leasing/financing factors into the lending situation.

- Analyzing how equipment leasing and financing fits into a commercial loan structure
- Drafting considerations for loan agreements
- Understanding the players, their roles and their expectations
- Considering the basic elements in an equipment lease
- Identifying emerging trends in equipment leasing and their effects on the debt market generally

3:30 Identifying and Enforcing Problem Loans

Stewart Somers
Senior Vice President, Spergel and Associates Inc.

Frank Spizzirri
Partner, Cassels, Brock & Blackwell LLP

Proactive protection of your client's interests requires early identification of "problem" loans, early detection of business difficulties, and early steps taken to safeguard your client's position. Learn to what extent you can manage problem loans through relationships with the borrower and other creditors, and when and how you need to put your enforcement strategy into action.

- Recognizing the warning signs of potential problems
- Understanding the role of effective counsel in the relationship between debtor and lenders
- Proactive strategies to protect your client's interests and maximize realization
- Developing an enforcement strategy considering the lender, borrower, and unique circumstances of the loan

4:30 Chair's Closing Remarks Conference Concludes

Pre-Conference Seminars – Tuesday, February 28, 2006

9:00 PPSA and UCC Mini Course: A Comprehensive Guide to Taking, Registering and Perfecting Security in Canada and the United States

A

Christopher N. Alam
Partner, Gowling Lafleur Henderson LLP

Christian G. Koelbl III
Partner, Hodgson Russ LLP

This interactive session will provide delegates with a firm grounding in the essentials of taking, registering and properly perfecting security interests in Canada and the United States. This course presents you with effective tactics that you can put into use for your clients immediately.

- Comparing different manners of taking a security interest
- Determining when and where to register
- Registering security interest: common pitfalls and how to avoid them
- Properly perfecting the interest

2:00 Understanding the Business Realities of Specialty Finance Products: A Guide to Better Representation of Borrowers and Lenders

B

Moderator:
Jonathan Fleisher
Partner, Goodman and Carr LLP

Participants:

Douglas McKenzie
Senior Vice President and General Manager
BAL Global Finance Canada Corporation
(Bank of America)

Michael St. Amant
Managing Director, Subordinate Financing
Business Development, Bank of Canada

Lawyers must understand business realities in order to successfully represent their client either as borrower or lender. Leading members of specialty finance companies will discuss the credit and business factors they review in entering into relationships.

- How their product differs from other products on the market and how they can be integrated with other lenders
- Key credit considerations and exit strategies
- Timing and expectation setting
- Costs of advances

Post-Conference Seminar – Friday, March 3, 2006

9:00 Anatomy of a Secured Transaction: From the Term Sheet to Opinions

C

Joel M. Scoler
Partner, McCarthy Tétrault LLP

Sean C. O'Neill
Partner, McCarthy Tétrault LLP

This intensive workshop received rave reviews from delegates last year. Using a case study, senior banking lawyers provide a comprehensive overview of a secured transaction from beginning to end. You will receive precedent materials and detailed information on the following topics:

- Essential features of a term sheet
- Practical considerations when drafting a credit agreement
- Assembling the necessary security documents: GSA, guarantee, debenture & pledge agreement
- General issues pertaining to inter-creditor agreements
- Fundamentals of opinions



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- Lawyers, Consultants and Accountants dealing with commercial loan activity and insolvency
- In-House Legal Advisors
- Lending Executives and Risk Managers of Financial Institutions
- Insurance Companies, Merchant Banks, Factoring Firms, Asset-Based Lenders, Leasing Companies, Credit Unions, Caisses Populaires and other Financial Services Providers

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