

Applicable toward CPD Requirement

May 13 & 14, 2014, Toronto

9th

# Essentials of Commercial Contracts

"Presentations were hands-on and practical."

"Benefitted by looking at the drafting process from a more risk-based standpoint."

"Helped give context to the direction of contract content and overall broadened my knowledge base."

Learn practical drafting techniques

*Workshop Included: Commercial Contract Dispute Resolution*



**Course Leader**  
Frank DeLuca,  
Cassels Brock  
& Blackwell LLP



J.R. Beaudrie,  
McMillan LLP



George Begic,  
Deloitte LLP



Richard Corley,  
Goodmans LLP



Jill P. Fraser,  
Aird & Berlis  
LLP



Alan Gahtan,  
Gahtan Law  
Office



Mark Johnson,  
Infusion



Rodger  
Madden,  
TELUS  
Communica-  
tions Company



Julie K. Parla,  
McCarthy  
Tétrault LLP



Pierre Soulard,  
Norton Rose  
Fullbright  
Canada LLP



Stephen  
Spracklin,  
Cisco Systems  
Canada Co.



Marc Valencia,  
Corby Spirit and  
Wine Limited



Omar Wakil,  
Torys LLP

## participating organizations

Aird & Berlis LLP  
Cassels Brock & Blackwell LLP  
Cisco Systems Canada Co.  
Corby Spirit and Wine Limited  
Deloitte LLP

Gahtan Law Office  
Goodmans LLP  
Infusion  
McCarthy Tétrault LLP

McMillan LLP  
Norton Rose Fullbright Canada LLP  
TELUS  
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

## COURSE LEADER

### FRANK DELUCA

Frank DeLuca is a Partner at **Cassels Brock & Blackwell LLP**. He has extensive experience in negotiating support, arrangement and voting agreements for public acquisitions and sales and purchase agreements for private acquisitions.

### JILL P. FRASER

Jill Fraser is a Partner at **Aird & Berlis LLP**. She has more than 15 years of experience in corporate and commercial lending transactions.

### PIERRE SOULARD

Pierre Soulard is a Partner at **Norton Rose Fulbright Canada LLP**, practising securities and corporate law.

## CO-LECTURERS

### J.R. BEAUDRIE

J.R. Beaudrie is a Partner at **McMillan LLP**. His practice includes drafting and negotiating commercial agreements in a wide variety of industries.

### GEORGE BEGIC

George Begic is Assistant General Counsel at **Deloitte LLP**. He advises in commercial transactions such as M&As and complex consulting and IT implementation agreements.

### RICHARD CORLEY

Richard Corley is a Partner at **Goodmans LLP**. He has over 25 years of experience in complex outsourcing transactions, technology M&A, joint ventures, cleantech and technology competition law matters.

### ALAN GAHTAN

Alan Gahtan is Founder at **Gahtan Law Offices**. His practice emphasizes technology contracting, outsourcing, Internet and electronic commerce issues.

### MARK JOHNSON

Mark Johnson is General Counsel at **Infusion**, a global software consulting firm with several subsidiaries and offices around the world.

### RODGER MADDEN

Rodger Madden is Associate General Counsel with the Legal Services Department at **TELUS Communications Company**. He provides internal advice in the negotiation, closing and implementation of various transactions.

### JULIE K. PARLA

Julie Parla is a Partner at **McCarthy Tétrault LLP**. Her practice includes infrastructure bid/tender and procurement processes and construction disputes.

### STEPHEN SPRACKLIN

Stephen Spracklin is Senior Corporate Counsel with **Cisco Systems Canada Co.**

### MARC VALENCIA

Marc Valencia is General Counsel, Corporate Secretary and Vice President, Public Affairs, for **Corby Spirit and Wine Limited**.

### OMAR WAKIL

Omar Wakil is a Partner at **Torys LLP** and chair of the firm's Foreign Investment Review Group.

# COURSE PROGRAM

## PRE-TRANSACTION AND EARLY STAGE AGREEMENTS

Negotiating and drafting effective and enforceable contracts requires that you be prepared to address all contingencies that are likely to arise from the commercial relationship. This session will key considerations to be addressed when developing and negotiating pre-transaction and early stage agreements.

- Pre-contractual documents and enforceability
- How and when to use a letter of intent
- Disclosure obligations and the protection of confidential information
- Binding vs. non-binding pre-transaction covenants
- Risks associated with the use of early start agreements

## DRAFTING NON-COMPETITION PROVISIONS

Courts are reluctant to enforce non-compete agreements that are unreasonable or not carefully drafted. This session will examine important factors surrounding these delicate but important agreement provisions.

- Legal context of confidentiality and non-competition agreements
- Key terms and conditions
- "Reasonableness" in drafting non-competition provisions
- Understanding practical considerations in drafting confidentiality agreements

## 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 including 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.



## AV Proceedings

Audio/video segments clickable slide by slide  
Papers and overheads also included  
Print any of the material for your own use

- *This program can be applied towards 9 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 11 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*

## RISK ALLOCATION IN COMMERCIAL AGREEMENTS

This session will examine the process of identifying, analyzing, responding to and controlling risks inherent in business negotiations.

- Assessing risks prior to entering contracts
- Risk identification process and risk registers
- Understanding your client's risk tolerance
- Practical ways to manage risks inside and outside of contracts

## RIGHTS, OBLIGATIONS, EXCLUSIONS AND LIMITATIONS

The focus of this session will include a comprehensive examination of exclusionary and limitation clauses. These types of terms are included in most types of contracts and can have a significant impact on the remedies that are available if the parties do not perform as promised. The session will examine the various techniques that are available to shift or negate responsibility.

- Allocation of responsibility clauses
- Exclusive remedy provisions
- Exclusions of and limitation of liability clauses, and appropriateness of certain exceptions
- Indemnification clauses

## LEGAL FRAMEWORK FOR DRAFTING 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 anticipating legal pitfalls

## DRAFTING OPINIONS FOR COMMERCIAL TRANSACTIONS

Ongoing legislative developments, an increase in e-commerce and cross-border deals being entered into by businesses of all sizes have heightened the need for the preparation of legal opinions in the commercial agreement drafting process. This session will examine the opinion drafting process.

- Best practices for crafting opinions: key considerations
- Types of opinions sought by counsel
- Drafting opinions for secured financing transactions
- Risks involved in opinion drafting

## COMPETITION ACT AND INVESTMENT CANADA ACT PROVISIONS IN M&A AGREEMENTS

This presentation will explore best practices in negotiating & drafting effective Competition Act and Investment Canada Act conditions, representations and covenants used in M&A agreements.

- The Competition Act and Investment Canada Act merger review process
- Understanding the parties' commercial objectives in regulatory provisions
- Risk-shifting techniques
- Case studies from recent M&A agreements

## DRAFTING IT AGREEMENTS

The pervasiveness of information technology has made knowledge of the IT contracting process ever more necessary. This session will discuss key considerations in IT service agreements.

- Key legal issues and negotiating areas in IT services contracts
- Contract structures in the IT world
- Statements of work and the lawyers role
- Other issues: privacy, background checks, export controls, third party and open source software

## PRACTICAL DRAFTING TECHNIQUES FOR CONTRACTS AND AGREEMENTS

This discussion provides a practical overview of key considerations when drafting and negotiating commercial contracts.

- Recent developments in the law of contract
- Key principles of good drafting technique
- The importance of boilerplate provisions
- Effective use of limitation of liability clauses
- Troubleshooting during the contracting process
- Determining what warranties and indemnities are needed

## WORKSHOP

### COMMERCIAL CONTRACT DISPUTE RESOLUTION

It is prudent to establish clear and effective strategies for resolving disputes in any commercial agreements. 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
- Workings of the doctrine of frustration
- Inclusion of constructive performance obligations

# MULTIMEDIA

Your registration includes an interactive multimedia CD-ROM comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio and accompanying slides.

For an additional \$175 to the registration fee, you can receive the multimedia proceedings of this course on CD-ROM, containing all presentations given at this event. If not registered for the event, the cost of this CD, is \$599.

To receive the presentations described below as well as the presentations given at the event, the cost is \$799.

## Strategies in Drafting Contractual Provisions

Kathy I. Pawluk  
Value Creation Inc. - Value Creation Group of Companies

## Drafting International Commercial Agreements

Bryan C. Haynes  
Bennett Jones LLP

## Drafting & Use of Boilerplate Clauses

Cherity L. Smith  
ConocoPhillips Canada

## Risk Allocation in Commercial Agreements

Hanan Campbell  
EPCOR Utilities Inc.

## Drafting Non-Competition Provisions

Andrew G. Kay  
WestJet Airlines

## Legal Framework for Drafting Commercial Agreements

Laura M. Safran, Q.C.  
Davis LLP

## Pre-Transaction & Early Stage Agreements

D. George Kelly  
Borden Ladner Gervais LLP

## Drafting Rights, Obligations, Exclusion & Limitation Clauses

J. Sebastien A. Gittens  
Bennett Jones LLP

## Exclusion Clauses: Impact of Court Rulings

Glen B. Scott, Q.C.  
Brownlee LLP

## Key Issues for IT Agreements

Elisabeth Symons  
Miller Thomson LLP

## Negotiating Multi-Jurisdictional Commercial Agreements

Chika B. Onwuekwe  
Trican Well Service Ltd.

## Case Study: Practical Considerations in Commercial Contracts

Sean S. Caragata  
Cisco Systems

## Negotiating Multi-Licensor Entertainment Contracts

Susan Kelly  
CBC Television

## IT Law and Outsourcing Agreements

Matthew Peters  
McCarthy Tetrault LLP

## Drafting Opinions for Commercial Transactions

Christopher M. Wolfenber  
Macleod Dixon LLP

## Commercial Contract Dispute Resolution

Michael Mestinsek  
Stikeman Elliott LLP

## Documentation for Project Finance: Contracts and Guarantees in Project Finance

Shamshad Madhok  
PricewaterhouseCoopers LLP

## Outsourcing Contracts

C. Ian Kyer  
Fasken Martineau DuMoulin LLP

## Renegotiating Contracts to Fix or Renew

Duncan C. Card  
Bennett Jones LLP

## Software Contracts

Eric Boehm  
Borden Ladner Gervais LLP

## Electronic Contracts

Parna Sabet-Stephenson  
Blake, Cassels & Graydon LLP

## Preparing Bidding Documents: Reducing the Potential for Disputes in Procurement Contracts

Richard Wong  
Osler, Hoskin & Harcourt LLP

## Negotiating and Drafting Cloud Computing Contracts

Andrew Jones  
Sim & McBurney / Sim, Lowman, Ashton & McKay LLP

## Practical Drafting Techniques for Contracts and Agreements

C. Ian Kyer  
Fasken Martineau DuMoulin LLP

## Practical Negotiating Techniques for Contracts & Agreements

Constance L. Crosby  
Cisco Systems

**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 5:00 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 April 30, 2014. No refunds will be issued after this date.

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## TO REGISTER FOR 9TH ESSENTIALS OF COMMERCIAL CONTRACTS

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 Approving Manager Name \_\_\_\_\_  
 Approving Manager Title \_\_\_\_\_  
 Organization \_\_\_\_\_  
 Address \_\_\_\_\_  
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 \$1975 + \$175 = \$2150  
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