5th Essentials of Commercial Contracts

Learn practical drafting techniques

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

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

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

APPLICABLE TOWARD CPD REQUIREMENT

“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.”

As well as:
- Geoff Hall, McCarthy Tétrault LLP
- Brian Baum, Citibank Canada
- Marc Valencia, Corby Distilleries Limited
AGREEMENTS

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

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

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

CO-FACULTY

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

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.

TERESA A. REGULY
Teresa Reguly’s practice at Torys LLP focuses on advising clients with regulated products. She advises on IP and regulatory issues.

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.

JESSLYN G. MAURIER
Jesslyn Maurier’s practice at Bennett Jones LLP focuses on corporate commercial law.

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.

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

SHELDON BURSHEIT
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 Computer & IT Law and Technology Transactions areas.

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

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

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

ELISABETH SYMONS
Elisabeth Symons is a Partner with Miller Thomson LLP.

BRIAN BAUM
Brian Baum is Senior Counsel, Vice-President Corporate & Securities practice with AECON Group Inc.

GREG MCLWAIN
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.

ELISABETH SYMONS
Elisabeth Symons is a Partner with Miller Thomson LLP.

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

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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. Souliard,
  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 Waki,
  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 Styzen,
  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. Souliard,
  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 Waki,
  Torys LLP

**REGISTRATION COSTS**

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