

Advanced Corporate Insolvency and Restructuring

Evolving Trends • Key Issues and Risks • Tactics for Success

Attend this timely program and get practical updates on the key issues impacting today's insolvencies and restructurings, including:

- Perspectives from the Bench on the role of professionals in restructurings
- Post *Indalex*: the impact of insolvencies and restructurings on pension plans
- Detection and investigation of fraud in insolvencies
- Procedures for recovering assets at home and abroad
- What obligations do insolvent companies have to cover the costs of environmental cleanups?
- Development of case law resulting from the 2009 *BIA* and *CCAA* amendments
- Understanding how sales processes are done today and the differences between Canadian and U.S. processes
- What factors are considered by the Court in credit bidding?
- Developments in debtor-in-possession financing: *Crystallex/Timminco*
- Trends and evolving issues in cross-border insolvencies
- Ontario's Draft Model Orders – role and impact

A View from the Bench

The Hon. Justice Geoffrey B. Morawetz, Ontario Superior Court of Justice
The Hon. Justice Colin L. Campbell, Ontario Superior Court of Justice

Chairs

Scott A. Bomhof, Torys LLP

Michael J. MacNaughton, Borden Ladner Gervais LLP



DATES & TIMES

November 14 - 15, 2012

9:00 a.m. - 4:45 p.m. EDT/EST

9:00 a.m. - 12:00 p.m. EDT/EST

LOCATION

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

Webcast
available





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In today's economic climate, a solid and up-to-date understanding of insolvency and restructuring is a must

The ongoing global credit crisis and recession continue to create a dangerous combination for turning around companies facing financial distress. Management and their financial and legal advisors continue to be faced with unprecedented challenges. The need for professional advisors to be up-to-date with the latest insolvency trends, case law and best practices has never been greater.

Whether you represent creditors or debtors, it is critical that you have an up-to-date and complete understanding of the latest insolvency and restructuring issues in order to get the best results for your client.

The **Advanced Corporate Insolvency and Restructuring** forum will be taught by a faculty of highly experienced corporate insolvency practitioners who will give you their insights and perspectives on the legal and financial issues developing in this period of intensified activity. Hear about:

- Perspectives from the Bench on the important issues in insolvency and restructuring today
- Post *Indalex*: dealing with the evolving role of unions and pension plan claims under the *BIA* and *CCAA*
- Dealing with fraud in insolvencies
- Who's on the hook for environmental remediation orders under the *BIA* and *CCAA*?
- New case law resulting from the 2009 amendments to the *BIA* and *CCAA*
- Effective use of credit bidding as a defensive strategy in today's tight credit markets
- Understanding recent developments in debtor-in-possession financing
- Staying current with the latest developments re: the U.S. Bankruptcy Code and case law
- The role and impact of Ontario's Model Orders and the UNCITRAL Model Law

Register now by visiting www.osgoodepd.ca, calling 416.597.9724 or 1.888.923.3394, emailing opd-registration@osgoode.yorku.ca or faxing 416.597.9736.

Judges

The Hon. Justice Geoffrey B. Morawetz
Ontario Superior Court of Justice

The Hon. Justice Colin L. Campbell
Ontario Superior Court of Justice

Chairs

Scott A. Bomhof
Torys LLP

Michael J. MacNaughton
Borden Ladner Gervais LLP

Faculty

David Bish, Torys LLP

Ken Coleman, Allen & Overy LLP (New York)

Joseph Coltson, Duff & Phelps Canada Limited

Sean Dunphy, Russell Hill Advisory Services Inc.

Peter Farkas, Duff & Phelps Canada Limited

Sharon S. Hamilton, CA, CIRP, Ernst & Young LLP

Craig Hill, Borden Ladner Gervais LLP

Aubrey E. Kauffman, Fasken Martineau
DuMoulin LLP

Kevin P. McElcheran, McCarthy Tétrault LLP

D.J. Miller, Thornton Grout Finnigan LLP

Richard A. Morawetz, Alvarez & Marsal Canada ULC

Fred Myers, Goodmans LLP

Hugh O'Reilly, Cavalluzzo Hayes Shilton McIntyre
& Cornish LLP

Tony Reyes, Norton Rose Canada LLP

Linc Rogers, Blake, Cassels & Graydon LLP

Wael Rostom, McMillan LLP

Ashley Taylor, Stikeman Elliott LLP

Marc Wasserman, Osler, Hoskin & Harcourt LLP

Agenda

Day One: Wednesday, November 14, 2012

8:30 **Registration and Continental Breakfast**

9:00 **Welcome and Introduction**

Scott A. Bomhof, Torys LLP

Michael J. MacNaughton, Borden Ladner Gervais LLP

9:15 **Special Session: A View from the Bench**

Moderators

Scott A. Bomhof, Torys LLP

Michael J. MacNaughton, Borden Ladner Gervais LLP

Judicial Perspective

Two judges of the Superior Court of Justice (Commercial List),

The Hon. Justice Geoffrey Morawetz and **The Hon. Justice Colin Campbell**, will address issues of importance to those appearing or involved in Commercial List matters.

Ample time will be provided for questions from the delegates.

10:30 **Refreshment Break**

10:45 **The Impact of Insolvencies and Restructurings on Pension Plans: Post *Indalex***

Fred Myers, Goodmans LLP

Ashley Taylor, Stikeman Elliott LLP

D.J. Miller, Thornton Grout Finnigan LLP

Hugh O'Reilly, Cavalluzzo Hayes Shilton McIntyre & Cornish LLP

This panel of experienced market practitioners will examine how the Ontario Court of Appeal decision in *Indalex* has impacted insolvent companies with underfunded pension plans and the procedural steps that must be followed in CCAA proceedings.

- Paramountcy – comparing *Timminco* to *Indalex*
- Litigating against pensioners – identifying the strong points and the weak points
- Whither the presumption of constitutionality in the exercise of discretion under the CCAA
- The evolving role of unions
- Current best practices when dealing with employees and pensioners

11:45 **Dealing with Fraud in Insolvencies**

David Bish, Torys LLP

Peter Farkas, Duff & Phelps Canada Limited

Joseph Coltson, Duff & Phelps Canada Limited

Corporate insolvencies can often have an element of fraud associated with them. Bankruptcy legislation provides effective tools to deal with this issue provided that you know what to look for.

This panel session will help you to understand how to identify the “red flags” when fraud is involved, how to apply the investigative techniques and gather and protect evidence and how to obtain relief for creditors and shareholders.

- How do you detect and investigate?
- Tools for evidence recovery
- Evidence handling and chain of custody
- How do you deal with the wrongdoers?
- Case law update

12:45 **Luncheon**

1:45 **Environmental Liabilities and Insolvent Companies**

Craig Hill, Borden Ladner Gervais LLP

Sean Dunphy, Russell Hill Advisory Services Inc.

In March 2012, the Ontario Superior Court released its decision pertaining to several motions brought against Nortel Networks Corporation (Nortel) by the Ministry of the Environment (MOE) which sought to hold Nortel responsible to remediate environmental contaminants on properties once owned by Nortel but sold off by Nortel under CCAA protection.

The decision of the Court which favoured Nortel and which left the MOE as an unsecured creditor has been appealed to the Supreme Court of Canada.

- What obligations do insolvent companies have to cover the costs of environmental cleanups?
- When does the regulator become just another creditor?
- BIA remediation orders
- CCAA requirements?
- Case law update

2:45 **Refreshment Break**

3:00 **Development of Case Law Resulting from the 2009 Amendments to the BIA and CCAA**

Kevin McElcheran, McCarthy Tétrault LLP

Aubrey E. Kauffman, Fasken Martineau DuMoulin LLP

The 2009 amendments have been in place for two years and practitioners and the Courts have had an opportunity to interpret the new rules. Learn how the Courts have applied the amendments in insolvency applications.

- Assignment of contracts
- Dealing with critical suppliers
- Disclaiming contracts
- Treatment of equity claims
- Case law update

3:45 **Sales Processes and Credit Bidding**

Richard A. Morawetz, Alvarez & Marsal Canada ULC

Marc Wasserman, Osler, Hoskin & Harcourt LLP

Distressed companies under court protection can be attractive targets. In Canada, the sale of an insolvent business is conducted by way of a receivership sale, a CCAA sale or a sale under the BIA. The benefits to the potential successful purchaser can be significant.

Following the recent amendments to the CCAA, credit bidding has come up in a number of recent restructuring cases. In today's restricted credit markets, credit bidding is used as a defensive strategy by secured creditors and provide a number of benefits to secured creditors.

- How are sales processes done today?
- What factors are considered by the court in credit bidding?
- What is the impact of a credit bid on the marketing of the assets?
- How are unencumbered assets dealt with?
- Has the role of the Monitor in a sales process changed?
- Is the Monitor's role different in a credit bid?
- Differences between Canadian and U.S. practices

4:45 **Day One Adjourns**

Agenda [Cont'd]

Day Two: Thursday, November 15, 2012

- 9:00 Recap from the Chairs**
- 9:15 Developments in Debtor-in-Possession Financing**
Linc Rogers, Blake, Cassels & Graydon LLP
Waël Rostom, McMillan LLP
This panel will discuss the *Re Crystallex* case, which has been appealed to the Supreme Court of Canada, as well as:
- Roll-up DIP financing
 - Implications of *Crystallex/Timminco*
 - Special covenants, events of default and remedies in DIP loans
- 10:15 Refreshment Break**
- 10:30 Cross-Border Insolvencies: Trends and Best Practices**
Tony Reyes, Norton Rose Canada LLP
Sharon S. Hamilton CA, CIRP, Ernst & Young LLP
Ken Coleman, Allen & Overy LLP (New York)
Experienced counsel will give you an excellent overview of the U.S. and Canadian regimes, including:
- What you must know about the debtors' business and its debt structure
 - Plenary proceedings in Canada or in the United States: issues and process
 - Ancillary proceedings in Canada or in the United States: issues and process
 - Which is the better model: dual plenary proceedings or one plenary proceeding and ancillary proceedings where necessary?
- 12:00 Program Concludes**



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LSUC (ON) CPD (experienced member): 9.75 CPD hours (9.75 substantive, 0.0 professionalism); approved with the **Barreau du Québec, BC CPD, Manitoba, Law Society of New Brunswick, Northwest Territories, Nunavut, PEI and Saskatchewan** for 9.0 credit hours; the **NSBS CPD** for 9.5 credit hours; **New York CLE Board** for 10.0 credit hours in the Area of 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 or refer to the program website.

Registration

Please complete all registrant information.

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Fee Per Delegate

\$1595 plus 13% HST for a total of \$1802.35.

Fees include attendance, program materials, continental breakfast, lunch (Day 1 only) and break refreshments. Group discounts are available for both on site and webcast participants. Visit www.osgoodepd.ca for details. Please inquire about financial assistance and professional development credits.

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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.

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.

Dates & Times

November 14 - 15, 2012

9:00 a.m. - 4:45 p.m. EDT/EST

9:00 a.m. - 12:00 p.m. EDT/EST

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

Dress is business casual.

Location

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