

THE INTENSIVE SHORT COURSE IN SECURED LENDING AND DEBT FINANCE

Program Chairs

Eric Belli-Bivar

Partner, DLA Piper (Canada) LLP

Don M.E. Waters

Partner, McMillan LLP

Program Details

DATE AND TIMES

November 9, 2017

8:30am – 5:00pm EST

November 10, 2017

8:30am – 12:30pm EST

In Person or Webcast

Advanced Workshop:

November 10, 2017

1:30pm – 4:30pm

In Person Only

LOCATION

**Osgoode Professional
Development**

1 Dundas St. West, 26th Floor
Toronto, ON

ONLINE REPLAY

December 14 & 15, 2017

A “deep dive” into commercial lending.

Secured lending and debt financing transactions have become increasingly complex. In order to maximize your value to clients, you must have a comprehensive understanding of the foundational legal and business issues. Through this program, you will:

- Gain a thorough overview of today's debt financing products and how they reflect the current business climate
- Go step-by-step through the essential legal components of a financing transaction, with a focus on strategic and tactical concerns
- Receive practical advice on negotiating and drafting legal documents

Register today at:

osgoodepd.ca/secured-lending



THE INTENSIVE SHORT COURSE IN Secured Lending And Debt Finance

Through this program, you will:

- Deepen your understanding of the ISDA Master Agreement and Schedules
- Gain a firm grasp of the most challenging legal risks in a financing transaction and best practices for handling them
- Explore a range of available alternative financing vehicles, including equipment lease financing
- Understand which are most important clauses of loan and credit agreements and why

PLUS! Complete all of your Professionalism CPD hours and gain valuable insights from senior lawyers in the optional ***“Ethical and Professional Issues in Secured Lending and Debt Finance”*** post-course workshop.

Topics Include

- A thorough overview of today’s debt financing products and how they reflect the current business climate
- Gain a firm grasp of the most challenging legal risks in a financing transaction and best practices for handling them
- The essential legal components of a financing transaction, with a focus on strategic and tactical concerns
- Key provisions to be negotiated in the ISDA Master Agreement and Schedules
- Practical advice on negotiating and drafting credit agreements
- Key issues to ensure proper perfection with secured lending transactions
- Explore the range of available alternative financing vehicles, including equipment lease financing

Who Should Attend?

- Junior and mid-level lawyers practicing corporate/commercial and financial services law
- Counsel who practice in related areas who need a solid understanding of loan agreements/transactions
- In-house counsel at financial institutions, insurance companies, merchant banks, asset-based lenders, leasing companies and credit unions
- Senior Management involved in negotiating secured lending or debt financing deals
- Insolvency, litigation or government counsel seeking to gain a greater understanding of what is market in a secured lending or debt financing transaction
- Documentation, lending and credit officers involved in documenting loans
- Risk managers at financial institutions

Agenda

THURSDAY, NOVEMBER 9, 2017
DAY 1 (8:30 a.m. - 5:00 p.m.)

8:00 a.m.

Registration and Light Breakfast for On-site Participants and Sign-in for Online Participants

8:30 a.m.

Chairs’ Opening Remarks

Don M.E. Waters, McMillan LLP

Eric Belli-Bivar, DLA Piper (Canada) LLP

8:40 a.m.

The Canadian Debt Financing Market – An Overview

Tim Murray, Managing Director, Corporate Banking, RBC Capital Markets

Sunny Dhillon, Director, Loan Syndications and Investment Banking, TD Securities

Mark Saraiva, Director, CIBC Capital Markets

Get an overview of the structure and operations of the Canadian debt financing market, including:

- The impact of international lending concerns from the Canadian perspective
- Who are the key players and what are the differences in how they approach the market?
- What types of products are currently being offered?
- What elements of the deal are critical to lenders now?
- Basel III capital requirements

9:45 a.m.

Working with the Commitment Letter and Term Sheet

Stephanie Robinson, Associate General Counsel and Managing Director, Capital Markets – Corporate Banking, BMO Financial Group

- The roles and objectives of the lender, borrower and counsel in a deal – who does what?

- Essential terms and requirements
 - Binding and non-binding commitment letters, fees letter, term sheet, etc.
- Considerations when structuring the deal
- Key issues for borrowers and lenders
- Choosing the right borrowing entity
- Types of facility
- Jurisdiction – the practical issues

10:30 a.m.

Refreshment Break

10:45 a.m.

Conducting Effective Due Diligence

David H. Ferris, Fasken Martineau DuMoulin LLP

- Checklist of critical items
- The objectives of due diligence in a financing transaction
- Getting started – addressing key areas of concern
- Use of diligence certificates
- How to best advise clients when issues arise

11:30 a.m.

A Practical Understanding the ISDA Master Agreement and Schedules

Alison M. Beer, Stikeman Elliott LLP

Lisa Mantello, Goodmans LLP

- Brief history of why the ISDA Master Agreement and Schedules have been developed and its use case
- Architecture of the ISDA Master Agreement and Schedules and why would a company be using them?
- ISDA's relationship to the Credit Agreement
- Key provisions to be negotiated

12:15 p.m.

Luncheon

1:00 p.m.

Negotiating and Drafting the Credit Agreement

Don M.E. Waters, McMillan LLP

Eric Belli-Bivar, DLA Piper (Canada) LLP

In a hands-on fashion, our program co-chairs will walk you through the key clauses of a loan agreement and offer practical advice on negotiating and drafting the agreement.

- Establishing the facility
 - Revolving versus term
 - Swingline
 - Fixed versus floating
 - Canadian prime, US base rate, LIBOR
 - Banker's acceptances
 - Letters of Credit subfacilities
- Conditions precedent
- Representations and warranties
- Covenants
 - Positive and negative
- Events of default and grace periods
 - Cross-default
- Payout letters
- Agency and lending provisions
 - Yank-a-bank provisions
 - Market disruption, increased costs
- Practice management tips
- Drafting techniques and interpretation of contract clauses
- Effective use of boilerplates in credit agreements
- Identifying and managing risks

2:45 p.m.

Refreshment Break

3:00 p.m.

Taking Effective Security

Meaghan Obee Tower, Stikeman Elliott LLP

- Key legal issues and concerns from both lenders' and borrowers' perspectives
- The importance of running searches
- Types of security and how they are perfected
 - "All Assets" Liens
 - Pledges of securities
 - Control agreements for uncertificated securities and the Securities Transfer Act, 2006 (Ontario)
 - Real property security – an overview
- Other types of security-related issues
 - PPSA Acknowledgements
 - Implied subordination under the PPSA
 - Landlord agreements
 - Blocked Account Agreements

- Registration issues and pitfalls

4:00 p.m.

Priorities, Subordination Agreements and Intercreditor Agreements

Pat Forgione, McMillan LLP

Chris Burr, Blake, Cassels & Graydon LLP

- The key differences between mezzanine, second lien and other forms of lending
- Recent developments in the Canadian market
- Understanding the contractual and statutory rights of the parties
- Enforceability of waivers
- Security issues
- Issues arising from financing cross-border entities
- Protecting priority
- Strategies to improve recovery prospects
- Purpose and goal of the agreements
- Critical negotiation points?
- Key structuring issues
- Enforcement actions and triggering events
- Payment blockage
- Sales of collateral

5:00 p.m.

Conclusion

THURSDAY, NOVEMBER 10, 2017
DAY 2 (8:30 a.m. - 12:30 p.m.)

8:00 a.m.

Registration and Light Breakfast for On-site Participants and Sign-in for Online Participants

8:30 a.m.

Chair's Opening Remarks

8:35 a.m.

Asset-Based Lending

Howard S. Silverman, Borden Ladner Gervais LLP

Edward Lynch, Head of Underwriting and New Business Development, Asset Based Lending, RBC Capital Markets

- The pros and cons of ABL versus traditional financing

- Survey of ABL structures in Canada
- Business issues relating to eligible collateral
- Documenting and taking security for an ABL deal
- Industry developments and their impact on transactions
- Cross-border issues you need to be aware of
- Recent legal developments impacting ABL

9:15 a.m.

Equipment Lease Financing in Today's Loan Transactions

Jill P. Fraser, Aird & Berlis LLP

John Estey, President, Stonebridge Lease Financing Corporation

Companies often seek alternative finance options. The equipment finance industry provides such an alternative. This session will focus on providing a business-focused understanding of the equipment finance industry that will help in advising clients both on the financing of equipment and on entering into leases generally.

- What are the key business factors that equipment financiers focus on and how do these find expression in the finance documentation?
- Drafting considerations in dovetailing the equipment finance into a firm's overall debt strategy
- Understanding the common credit requirements Identifying new trends in the industry
- Negotiation strategies for borrowers
- Current PPSA requirements
- Problems posed by aircraft, motor vehicles and trucking fleets
- Conflicts of law arising where assets move between jurisdictions
- Where to perfect the relevant security interests

10:15 a.m.

Refreshment Break

10:30 a.m.

Enforcing and Realizing on Security

Bruce E. Darlington, DLA Piper (Canada) LLP

Leanne M. Williams, Thornton Grout Finnigan LLP

- Strategic and tactical concerns in enforcing security and in negotiating and drafting forbearance agreements
- What corporate/commercial lawyers must understand about enforcing security: a litigator's perspective
- Is insolvency pending? Looking for and responding to indicators and strategic considerations in anticipation of restructuring

11:15 a.m.

Providing Opinions: Tips and Traps – What Works, What Doesn't

Robert Scavone, McMillan LLP

Francesca Guolo, Goodmans LLP

- Key issues in multi-jurisdictional opinions
- Special issues involving PPSA opinions, including:
 - Investment property – perfection by control
 - Cash collateral
 - Special property (licenses, intellectual property, etc.)
- Anti-assignment clauses
- True sale and non-consolidation and opinions
- Opinion issues in virtual closings
- Negotiating qualifications and assumptions: how much is too much?
- Tips and traps when negotiating and drafting opinions

12:30 p.m.

Conclusion

THURSDAY, NOVEMBER 10, 2017
DAY 2 (1:30 p.m. - 4:30 p.m.)

OPTIONAL WORKSHOP: ETHICAL AND PROFESSIONAL ISSUES IN SECURED LENDING AND DEBT FINANCE

Michael Disney, Davies Ward Phillips & Vineberg LLP

Andrew J. F. Kent, McMillan LLP

Daphne J. MacKenzie, Stikeman Elliott LLP

- You are negotiating a credit agreement as counsel to the lender or the borrower and you discover that a key business term is erroneously drafted and does not reflect the clear understanding between the parties. Do you have any obligation to disclose the error if it is not to your client's advantage? What can you disclose, what must you disclose and what must you not disclose?
- You are acting as counsel to the agent in a syndicated credit facility that is distressed, and two or more groups of lenders in the syndicate are disputing the appropriate course of action. How do you manage the restructuring of the credit facility while addressing the dispute among the lenders? What are your obligations to the agent and to the other lenders?

These are only two of the challenging problems which counsel on either side of a transaction can expect to encounter at one time or another in negotiating a commercial loan finance transaction. This workshop will provide a unique opportunity to explore – with the help of a stellar team of instructors – a number of realistic, thought-provoking situations in light of the ethical and professional issues they raise.

Enhance your ability to make the right decisions, to best serve your clients and to avoid a host of costly pitfalls.

Register today at:

[osgoodepd.ca/
secured-lending](http://osgoodepd.ca/secured-lending)

Drawing on the expertise and experience of leading lawyers and experts, including:

Program Directors



Eric Belli-Bivar

Partner, DLA Piper (Canada) LLP



Don M.E. Waters

Partner, McMillan LLP

Program Faculty

Alison M. Beer

Stikeman Elliott LLP

Eric Belli-Bivar

DLA Piper (Canada) LLP

Chris Burr

Blake, Cassels & Graydon LLP

Bruce E. Darlington

DLA Piper (Canada) LLP

Sunny Dhillon

Director, Loan Syndications and Investment Banking, TD Securities

Michael Disney

Davies Ward Phillips & Vineberg LLP

John Estey

President, Stonebridge Lease Financing Corporation

David H. Ferris

Fasken Martineau DuMoulin LLP

Jill P. Fraser

Aird & Berlis LLP

Pat Forgione

McMillan LLP

Francesca Guolo

Goodmans LLP

Andrew J. F. Kent

McMillan LLP

Edward Lynch

Head of Underwriting and New Business Development, Asset Based Lending, RBC Capital Markets

Daphne J. MacKenzie

Stikeman Elliott LLP

Lisa Mantello

Goodmans LLP

Tim Murray

Managing Director, Corporate Banking, RBC Capital Markets

Meaghan Obee Tower

Stikeman Elliott LLP

Stephanie Robinson

Associate General Counsel and Managing Director, Capital Markets – Corporate Banking, BMO Financial Group

Mark Saraiva

Director, CIBC Capital Markets

Robert Scavone

McMillan LLP

Howard S. Silverman

Borden Ladner Gervais LLP

Don M.E. Waters

Partner, McMillan LLP

Leanne M. Williams

Thornton Grout Finnigan LLP

Register today at:
osgoodepd.ca/secured-lending

Program

“Presentations were engaging and well organized. Very enjoyable overall.”

2016 participant

“Overall, the speakers were excellent, very knowledgeable and able to effectively communicate the material. The topics were relevant.”

2016 participant

“Client / banker’s point of view and industry insights were the best things about this program.”

2016 participant

Workshop

“Very engaging and intimate, great speakers and important practical skills and real life examples.”

Iana Namestnikova, Associate, McMillan LLP

“I liked the format and would recommend this workshop.”

2016 participant

Registration Details

Fee per Delegate

Program Only: \$1295 plus HST

Program & Workshop: \$1495 plus HST

Workshop Only: \$295 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca/group-discounts for details. Please inquire about financial assistance.

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.

Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days’ notice, a \$75 administration fee will apply. No other refund is available.



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSUC.



Eligible CPD Hours:

Program: LSUC (ON): 11h 30m (10h Substantive, 1h 30m Professionalism);

Workshop: LSUC (ON): 3h (3h 00m Professionalism)

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian jurisdictions. To inquire about credit eligibility, please contact cpd@osgoode.yorku.ca



osgoodepd.ca

Osgoode Professional Development



416.597.9724

1 Dundas Street West, Suite 2600



@OsgoodePD

Toronto, ON Canada M5G 1Z3



The Intensive Short Course In Secured Lending And Debt Finance

Register today at:

osgoodepd.ca/secured-lending