

2nd Western Canada Advanced Forum

COMMERCIAL INSOLVENCY and RESTRUCTURING

Managing Client Expectations in a Recessionary Environment

September 14 – 15, 2009 | TELUS Convention Centre | Calgary



Leading local and cross jurisdictional insolvency and restructuring professionals will provide you with critical practice insights on recent developments as they discuss these and other hot button topics:

- Assessing what contributes to a successful proposal or plan
- The judiciary's analysis of recent *BIA* and *CCAA* cases
- Addressing taxation issues in liquidations and restructurings
- Using *Anton Pillar* orders and *Mareva* injunctions to recover assets
- The impact of collective bargaining on restructuring negotiations
- Structuring a cross-border sale of an insolvent business

and much more...

PROGRAM CO-CHAIRS

Tom Cumming
Partner
Gowling Lafleur Henderson LLP

David Mann
Partner
Fraser Milner Casgrain LLP

POST CONFERENCE WORKSHOP September 15, 2009

Fundamentals of Canadian
Insolvency and Restructuring Law

Kelly Bourassa
Lawyer
Blake, Cassels & Graydon LLP
(Calgary)

Jeffrey Oliver
Lawyer
Blake, Cassels & Graydon LLP
(Vancouver)

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Dear Colleague,

Western Canada has seen a tremendous resurgence in insolvency and restructuring activity. Transaction professionals are now forced to switch gears, increasingly devoting their efforts to preserving businesses rather than growing them. The global credit crunch, Alberta's energy royalty program, plummeting energy prices and overexpansion of real estate projects have exacerbated this situation.

Before Canada's financial health returns, *Bill C-12* will likely become law, amending the *Bankruptcy and Insolvency Act (BIA)*, the *Companies' Creditors Arrangement Act (CCAA)*, and changing the landscape for insolvency and restructuring professionals.

With courts on both sides of the border recognizing jurisdiction of each other's insolvency laws and systems, practitioners have increasing business opportunities and learning challenges in a continent-wide market.

Insight's 2nd Western Canada Advanced Forum on COMMERCIAL INSOLVENCY and RESTRUCTURING will provide you with solutions to the myriad of problems and issues you are likely encountering as a bankruptcy, insolvency and restructuring professional. We have created a program where you can network with your peers, and hear from a distinguished faculty of leading experts who will address these and many other hot button topics:

- Enhancing asset values of distressed companies through creative restructuring
- Pros and cons of using *CCAA* or *BIA* to liquidate the business or run it as a *DIP (debtor in possession)* going concern
- The impact of the proposed amendments to the *BIA* and *CCAA*
- Successful recovery strategies for the energy sector
- Current developments in cross-border proceedings
- Protecting public companies' boards from liability
- Quickly and effectively detecting, preventing and unraveling fraud on creditors



Tom Cumming
Partner
Gowling Lafleur Henderson LLP



David Mann
Partner
Fraser Milner Casgrain LLP

Sponsorship Opportunities

If you are interested in displaying your company's products or services to high level key decision makers within your target audience, please contact **Gene Beil** at 416-642-6129 or Gene.Beil@incisivemedia.com

WHO SHOULD ATTEND

- Insolvency and Restructuring Lawyers
- In-House Counsel
- Business and Litigation Lawyers
- Receivers, Trustees, Monitors and Other Insolvency Professionals
- Corporate Recovery Managers and Directors
- Credit Risk Managers and Directors
- Work-Out and Special Loans Managers and Directors
- Business Regeneration and Turnaround Specialists
- Special Loans Managers and Directors
- Lenders, Credit Grantors, Venture Capital and Private Equity Investors
- Directors and Managers of Energy Contracts
- Energy Procurement Managers
- Senior Executives from the Energy Industry
- Corporate Directors and Officers

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8:10 | 8:55

Continental Breakfast

8:55 | 9:00

Welcoming Remarks from Insight

9:00 | 9:10

Welcoming Remarks from the Co-Chairs

Tom Cumming

Partner, Gowling Lafleur Henderson LLP

David Mann

Partner, Fraser Milner Casgrain LLP

9:10 | 10:15

The Judiciary's Outlook on Insolvency and Restructuring Litigation: Looking Beyond the 2010 Horizon

Moderator and Panelist

Peter Jull, Q.C.

Partner, Gowling Lafleur Henderson LLP

The Honourable Madame Justice Barbara Romaine

Alberta Court of Queen's Bench

The Honourable Madame Justice J.E. Topolniski

Alberta Court of Queen's Bench

The Honourable Mr. Justice David F. Tysoe

British Columbia Court of Appeal

- What the courts expect from the insolvency bar in counsel's appearances and conduct: the "do's and don'ts" of litigating insolvency cases
- Can and should the courts play a more proactive and interventionist role in determining legislative standards and interpretation?
- The judiciary's analysis of recent *CCAA* cases
 - spotting the trends
 - harmonizing inter-provincial and cross border decisions to achieve consistency
 - forecasting future developments
- Assessing what contributes to a successful proposal or plan
- The impact of *Chapter 15* of the *U.S. Bankruptcy Code* in Canada
- An overview of and analysis of recent Canadian case law of importance to insolvency professionals
- Notice periods for initial applications

10:30 | 10:45

Networking Coffee Break

10:45 | 11:30

Legislative Reform in Canada: A Status Report on BIA and CCAA Amendments and Implementation

Kelly Bourassa

Lawyer, Blake, Cassels & Graydon LLP

Lynda M. Colley

Senior Policy Analyst

*Office of the Superintendent of Bankruptcy
Industry Canada*

- Updating the status of the *BIA* and *CCAA* amendments
- An overview of the principal amendments and their expected impact on insolvency and restructuring practices
 - supplier rights
 - lender rights
 - trustee and receiver obligations

- interim *DIP* financing and executory contracts

- eligible financial contracts

- An analysis of recent *BIA* amendments and what they mean for pensions
- A status report on the *WEPPA* (*Wage Earner Protection Program Act*) and *BIA* changes on employees' super-priorities one year later

11:30 | 1:00

PANEL

Current Developments in Cross-Border Proceedings

Moderator and Panelist

John McLean

Partner, Gowling Lafleur Henderson LLP (Vancouver)

Kenneth Lenz

Partner, Bennett Jones LLP

Aaron L. Hammer

*Partner, Coordinator, Bankruptcy, Corporate Reorganization and Creditors' Rights Practice Group
Freeborn & Peters LLP (Chicago)*

Deryck Helkaa

Vice President

Ernst & Young LLP

David Mann

Partner, Fraser Milner Casgrain LLP

- Recognition mechanisms under *Chapter 15* of the *U.S. Bankruptcy Code*
- Determining whether a recognition order is sufficient or a separate cross-border proceeding is required
- Differences between *Chapter 15* and *Chapter 11* applications of the *U.S. Bankruptcy Code*
- Harmonizing cross-border concurrent proceedings
- Developing and implementing an effective cross-border team strategy in collaborating with local counsel and agents
- Analysing the amendments to the *CCAA* (the new Part IV) and *BIA* (Part XIII) based on the *UNCITRAL* Model Law on Cross-Border Insolvency
- Case studies of significant cross-border plans, proceedings and court decisions
- Selecting the proper forum: addressing jurisdictional and conflict of law issues
- Cross-border reciprocal enforcement of judgments
- Structuring a cross-border sale of an insolvent business

1:00 | 2:00

Networking Luncheon

2:00 | 2:30

KEYNOTE ADDRESS

Economic Forecast Report: Crystal Ball Gazing into the Next Decade and Beyond

Todd Hirsch

Senior Economist

Alberta Treasury Branches (Edmonton)

2:30 | 3:45

Examining the Trouble Spots and Effective Recovery Strategies in Real Estate and Construction Project Development

Darren R. Bieganek

Partner, Duncan & Craig LLP (Edmonton)

Dean Hutchison

Lawyer, McCarthy Tétrault LLP

Steven J. Weisz

Partner, Restructuring and Insolvency Practice Group
Blake, Cassels & Graydon LLP (Toronto)

- Examining the life cycle of a construction claim and the impact of receivership prior to resolution of the claim
- Protecting subcontractors and employees when the project is in receivership
- *DIP* and forward financing to save the project in receivership
- Rights and obligations of landlord, tenant and subtenant
- Resolving priority and lien claim issues during liquidation
- Mortgage enforcement considerations
- The role of the monitor
- Recommended risk reduction practices in the project development pre-construction phase
- Case studies of recent real estate project insolvencies

3:45 | 4:00

Networking Refreshment Break

4:00 | 4:30

Addressing Taxation Issues in Restructurings and Liquidations

Greg Lindsey, CA

Partner, Felesky Flynn LLP

A restructuring in any insolvency may trigger adverse tax consequences and potential opportunities. Structuring the transactions in order to avoid these consequences or take advantage of such opportunities can reap significant benefits to the stakeholders. In this session, a leading tax lawyer and chartered accountant will walk you through certain restructuring or liquidation scenarios in an insolvency context

- *Section 80* and other relevant provisions of the *Income Tax Act (Canada)*
- Preserving tax pools
- Distress preferred shares

4:30 | 5:15

Preventing, Detecting and Unraveling Fraud in Insolvency Proceedings and Transactions

Gina Campbell

Senior Manager
Deloitte and Touche LLP

Matthew Lindsay

Managing Partner
Fraser Milner Casgrain LLP

- Spotting the warning signs for fraud-tainted dealings and transactions
- Chasing the rogue and tracing assets: cross-border issues
- Working with law enforcement and criminal lawyers as an effective team
- What insolvency and restructuring professionals need to know about computer forensics in fraud detection
- Getting financial institutions' cooperation for obtaining banking records and statements
- Using *Anton Pillar* orders, *Mareva* injunctions and other interlocutory, equitable and self-help remedies to recover assets "going out the back door"
- Setting aside fraudulent transactions and preferences
- Recent case studies and court decisions

5:15

Conference Adjourns

TUESDAY | SEPTEMBER 15, 2009

8:15 | 8:50

Continental Breakfast

8:50 | 9:00

Co-Chairs' Opening Remarks

9:00 | 10:00

Employee Entitlements, Pension Funding, Liabilities and Other Priority Issues

Victor Kroeger

Partner and Senior Vice President
Deloitte and Touche LLP

Ken Rosenberg

Partner, Paliare Roland Rosenberg Rothstein (Toronto) LLP

- Court-ordered, equitable, debt and contractual subordination
- How will legislative reform change the treatment of successor employer obligations post the Supreme Court of Canada decision in *TCT Logistics* and pension priority entitlement?
- Indemnification protection of the receiver and bankruptcy trustee from employee entitlements and pension claims
- Funding pensions during insolvency
- The role of pension funds in restructurings
- The impact of collective bargaining on restructuring negotiations
- Case law update and latest developments on priority issues involving crown claims, deemed trusts, eligible financial contracts, unpaid suppliers and *PPSA* purchase money security interests
- Super priority claims issues arising in *DIP* financing
- Best practices in negotiating and drafting postponement and subordination agreements

10:00 | 10:15

Networking Coffee Break

10:15 | 11:00

Responding to the Challenges in the Energy and Oil and Gas Sectors

Tom Cumming

Partner, Gowling Lafleur Henderson LLP

Chris Simard

Partner, Bennett Jones LLP

- Assessing the impact of Alberta royalty schemes and federal government taxation of royalty/energy trusts
- Successful survival strategies for junior producers in the current credit crisis environment
- Examining cross-border takeover opportunities
- Counter-party credit issues in energy contracts
- Reinvestment and future drilling issues
- Case studies of recent restructurings in the oil, gas and energy sectors in the aftermath

11:00 | 11:45

Exploiting Opportunities in Distressed Company Transactions

Nicholas Brearton

Partner
KPMG (Toronto)

Aaron Singer

Partner, Clark Wilson LLP (Vancouver)

- Strategies to maximize asset values during distressed company restructuring or positioning for M&A

- Identifying distressed companies well-positioned for turnaround or take over
- Restoring the distressed company's operational health
- Financing options and alternatives
- Dealing with the distressed company's employees
- Corporate governance issues
- Pre-and post integration challenges in distressed company M&A transactions

11:45 | 1:00

PANEL

Hitting the Hot Spots, Troubleshooting and Trends in Insolvency and Restructuring: A Coast to Coast Update

Moderator and Panelist:

Doug S. Nishimura

Partner, Burnet Duckworth Palmer LLP

William Skelly

Partner, Heenan Blaikie LLP (Vancouver)

Denis St. Onge

Partner, Gowling Lafleur Henderson LLP (Montreal)

Stephen Kingston

Partner, McInnes Cooper (Halifax)

Robert Thornton

Partner, Thornton Grout Finnigan LLP

- Is the CCAA or BIA the more appropriate mechanism for liquidations?

- Analyzing the Newfoundland and Labrador Supreme Court decision in *Re Humber Valley Resort Corporation* and the British Columbia Court of Appeal decision of *Cliffs Over Maple Bay Investment Ltd.*
- The future role of the receiver and monitor post BIA and CIA reform
- Creative uses of forbearance and standstill agreements
- Advancing oppression remedy cases as a valuable tool for the insolvency litigator in the aftermath of *Peoples*, *BCE* and *Hollinger*
- Repairing defective creditor security and receiver/bankruptcy trustee contestation
- Pre-arranged and same day receivership sales
- A national survey on significant restructurings: Avoiding the traps and pitfalls in obtaining CCAA orders
- Identifying industry sectors and regional zones in Canada most vulnerable to distress and most likely to recover
- Update on and impact of the Supreme Court of Canada decision in *BCE* in the context of insolvency proceedings
 - shareholders' rights
 - bondholders' and creditors' rights
 - advising the board on directors' obligations
 - corporate governance
- Forecasting trends and opportunities for insolvency and restructuring professionals in Canada

1:00

Co-Chairs' Closing Remarks and Conference Concludes

SEPTEMBER 15, 2009 | POST CONFERENCE WORKSHOP

2:00 P.M. | 5:00 P.M. (with a refreshment break and a light luncheon will be served to workshop delegates from 1:00 to 2:00 P.M.)

FUNDAMENTALS OF CANADIAN INSOLVENCY AND RESTRUCTURING LAW

Kelly Bourassa

Lawyer, Blake, Cassels & Graydon LLP (Calgary)

Jeffrey Oliver

Lawyer, Blake, Cassels & Graydon LLP (Vancouver)

Many Alberta and other Western Canadian corporate solicitors and litigators are now returning to insolvency law practice, a field long forgotten in the boom years. How can you quickly get up to speed or get started if this is a new practice area for you?

With the statutory intricacies of the CCAA, BIA and WURA, variation in interpretation of the CCAA from province to province, the relationship between various regimes and strategic considerations; insolvency law is a highly specialized and complex practice.

This interactive, hands-on, half-day workshop will provide the fundamentals of Canadian bankruptcy, insolvency and restructuring law with a focus on identifying the key differences among the bankruptcy statutes and utilizing the different regimes to obtain the best results for stakeholders. Statutes to be covered include:

- *Bankruptcy and Insolvency Act*
- *Companies' Creditors Arrangement Act*
- *Canadian Business Corporations Act*
- Provincial legislation including the *Fraudulent Preferences Act*

The workshop will also introduce you to exciting opportunities in distressed company turnarounds, takeovers and cross-border insolvencies and restructurings requiring the intervention of a Canadian lawyer.

Kelly Bourassa is an Associate in the Restructuring & Insolvency Group of the Blake, Cassels & Graydon LLP Calgary office. She is an experienced insolvency lawyer whose practice focuses on all aspects of commercial reorganizations, work-outs, receiverships and other enforcement of security. She has represented many different parties affected by the insolvency process, including debtors, purchasers, lending syndicates, secured and unsecured creditors, receivers, monitors and trustees. Before joining Blakes, Kelly acted as the adviser to the chairperson of the Senate Committee on Banking, Trade & Commerce in its review of Canadian bankruptcy and insolvency legislation.

Jeffrey Oliver is an Associate in the Vancouver office of Blake, Cassels & Graydon LLP and practices in the Restructuring & Insolvency, Tax and Litigation Groups. He has acted for trustees, secured and unsecured creditors and as an inspector under the *Bankruptcy and Insolvency Act* in Division I proposals and bankruptcies. Under the *Companies' Creditors Arrangement Act*, he has acted for both secured and unsecured creditors, as well as purchasers of assets. Jeffrey also routinely acts on behalf of equipment financiers and other lenders on secured asset realizations and has acted on behalf of commercial landlords in a variety of insolvency scenarios. He is a regular contributor to legal education in British Columbia, having authored several papers on insolvency and commercial litigation issues.

