

**OSGOODE**

OSGOODE HALL LAW SCHOOL  
YORK UNIVERSITY

Professional Development  
**LLM**



## Part-time LLM Specializing in Real Property Law

Available via Distance Learning

### **DIRECTOR**

**Jeffrey Lem**  
Davies Ward Phillips &  
Vineberg LLP

### **FACULTY WILL INCLUDE**

**Craig Carter**  
Fasken Martineau DuMoulin LLP

**Duncan Glaholt**  
Glaholt LLP

**Ronald Goldenberg**  
Fraser Milner Casgrain LLP

**Marc McAree**  
Willms & Shier Environmental  
Lawyers LLP

**Stephen Ruby**  
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**Bruce Ziff**  
Professor, University of  
Alberta Faculty of Law

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**YORK**  
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**redefine THE POSSIBLE.**

This two-year, part-time program will give practising real estate lawyers an opportunity to explore key topics and emerging issues in real property transactions. Today's real property matters are cross-disciplinary and cross-jurisdictional, with greater sophistication and risk than ever before. Although focussed predominantly on Canadian common law jurisdictions (with an emphasis on Ontario in some courses) the program will deliberately draw upon the relevant law in Quebec, the US and beyond.

## THE CURRICULUM

There are two options for completing this degree. Each option requires the completion of 36 credits.

- Option I**
- 24 credits of required coursework in the Real Property program
  - 6 credits of coursework chosen from the optional courses in the Real Property program
  - The Advanced Legal Research Workshop [GSLaw 6101, 1 credit]; and
  - An independent Major Research Paper (approximately 70 pages).
- Option II**
- 24 credits of required coursework in the Real Property program
  - 12 credits of coursework chosen from the optional courses in the Real Property program
  - A significant research paper (30 pages) completed for one of the courses.

## COURSE DESCRIPTIONS

### Required Courses

#### Advanced Real Property Fundamentals [6 credits]

The function of this course is to provide key "heuristics" or learning tools that will aid students in the more specialized courses that follow in the program. Students will inquire into the core values that influence land law; explore the origins, sources, and development of the law; and outline the structural components of the current law of real property. The existing Canadian common law will be assessed from a variety of analytical perspectives, including by means of comparison with other property regimes found in both developed and developing states. Regimes that could be used for comparison include civil law systems such as Quebec, Aboriginal ideas of ownership both in Canada and abroad, and systems in countries such as Russia and other parts of the former Soviet Union which recently have had to construct new property-rights regimes from scratch. This course will address the theories that support private ownership of resources (economic efficiency, utilitarianism, labour theory, etc.), and the modes of inquiry, such as law and economics, that can be used to explain and assess current real property law and how and why Canadian real property lawyers currently do what they do. Overall, this course will challenge some of the basic assumptions that we have about how to look at Canadian real property law, what that law is supposed to achieve, and how successfully the law and its practice actually achieve those goals. This course will be taught in an intensive manner by one of Canada's foremost real property law professors.

#### Current Issues in Real Estate Transactions [6 credits]

This course is designed to provide the real estate practitioner

with exposure to leading-edge transactions and current practice issues facing real estate lawyers today. Transactions profiled will include "private-public partnership" infrastructure deals, inter-affiliate land transfer tax deferral and cancellation deals, hotel acquisition and financing transactions, and bankruptcy and CCAA transactions involving real property. In addition to a review of such selected transactions, the course will specifically review best practices in the use of title insurance in modern commercial transactions, with a detailed review and comparison of the common title endorsements and policies currently being offered by Canadian underwriters, a review of the latest ALTA standard policies and endorsements; and a comparative overview of the title insurance industry in other jurisdictions. The course also reviews and critically analyzes recent leading-edge real property priority and title issues, including new and continuing issues in LTCQ and electronic registration, re-vamped forty-year searching under the Registry Act; the possibility of expropriation without compensation, the theory behind "21-day bounces" under the Land Titles Act, title fraud cases and the legislative responses thereto, and the modern title opinion. The course will be taught by renowned practicing real estate lawyers using practical multi-property transactions as examples.

#### Taxation of Real Property [3 credits]

Arguably nothing drives modern real estate structures and transaction planning more than tax considerations, many of which are not only intricate and complex, but often also competing with commercial considerations and with each other. Tax planning in the real property context requires expertise not only in the fundamentals of real property, but also in the plethora of tax regimes that apply to even the seemingly most simple of real estate transactions. This course will cover policy, compliance and planning relating to: realty

taxes and dealings with MPAC; domestic income tax; municipal and provincial and land transfer taxes; Goods and Services Tax; US taxation issues relating to Canadian real property; and withholding taxes payable on rents, sales proceeds and interest payments made to non-residents in respect of Canadian real property.

### **Real Property Vehicles and Structures [3 credits]**

The variety of vehicles and structures currently used for land ownership and development in Canada reflects the sophistication of modern tax planning, liability limitation, capital market demands and a variety of historical considerations. This course considers the characteristics and uses of corporations, special purpose vehicles, statutory special companies, non-profit corporations, trusts, REITS, partnerships, joint ventures, public-private partnerships, co-ownerships, pension fund ownership, securitizations, mezzanine lending structures, sale and leaseback transactions, back-to-back loan transactions, and private equity structures that are currently common in Ontario. The course will also explore the ubiquitous use of nominees and bare trustees to hold registered title and the peculiar tax, liability and Interest Act regimes that attach thereto. The course will also compare the characteristics of unlimited liability companies from Nova Scotia, Alberta and British Columbia and their use by US investors in Canadian real estate, and will consider certain "bankruptcy remote" structures designed to insulate entities from consolidation in bankruptcy proceedings. Alternate and emerging structures from the US and elsewhere are also considered.

### **Mortgage Financing [3 credits]**

Even as financing structures become ever more sophisticated, real property remains the universal collateral of choice and the mortgage, by any other name, the primary instrument securing real property. This course will cover the various aspects of mortgage financing in Canada, including the law of interest, the different types of real estate security instruments, related personal property security issues and the interaction between real property and PPSA regimes, and the new rules regarding the regulation of mortgage lenders. The course will also address mortgage law in troubled times, including mortgage realization techniques, remedies and lender liability. Mortgage market financing will be covered including sale of mortgage portfolios, secondary mortgage markets and sub-prime lending (including a detailed comparison between the US and Canadian reaction to the same sub-prime lending conditions). More exotic real estate debt financing models will be covered, including derivatives and other specialized debt and mortgage structures, such as bond financings, construction lending, defeasance A/B notes, pari passu loans, convertible debentures, and securitization. Special consideration of cross border mortgage transactions will provide an overview of issues faced by US lenders advancing on the security of Canadian mortgages.

### **Leasing of Real Property [3 credits]**

This course will canvass the historic fundamental tenets of real property leasing and provide an in-depth review of different types of commercial leases currently available in Canada, including: industrial, commercial and retail leases; specialty leases used for real estate conveyancing, tax planning and financial structuring. Not only will this course review the different types of leases currently in use in the Canadian market, the course will also consider specific lease provisions common to all commercial leases such as: transfers; defaults; operating covenants; damage and destruction; measurement standards; renewals and extensions, leasehold improvements and tenant inducements; remedies, etc. Specific and timely attention will be given to landlord strategies in the face of the BIA and CCAA proceedings for tenants, as well as ways landlords can protect against such insolvencies after the Supreme Court decision in *Crystalline*. The course will also consider specific negotiating strategies from both the landlord and tenant perspectives and will canvass differences between US and Canadian approaches to commercial leasing.

### **Environmental Considerations in Real Property Transactions and Development [3 credits]**

Environmental issues pose perhaps the most substantial single risk to real property transactions and development. This course will start with a review of the legal framework governing the investigation, remediation and development of contaminated sites including property and structures. Relevant government legislation and policies affecting redevelopment of contaminated sites will be discussed (the so-called "Brownfields" legislation). Environmental aspects of transactions, financing and remediation agreements depend on knowledge of both statutory and common law. The course will cover drafting of agreements from the perspectives of vendor, purchaser, landlord, tenant and lender. The drafting of agreements will be illustrated with reference to both statutory and case law, and real world examples. The course will also canvass briefly the environmental insurance currently available for spills and other conditions as well as provide the real estate lawyer with a comparative overview of CERCLA and other US environmental statutes.

### **Optional Courses**

#### **Construction Law [3 credits]**

Although construction law is rapidly becoming a discipline in and of itself, a knowledge of basic construction contracts and construction liens is essential for all real property practitioners intent on understanding a real estate development project from acquisition through to lease-out. Whether the project is a renovation of an existing building, the construction of leasehold improvements, or the development of a major infrastructure development project, the construction contract remains the pivotal agreement. This course will provide an overview of major types of common construction contracts, such as the CCDC2 and CAA14, as well as the negotiation and preparation of such construction contracts and related agreements. This course

will also cover ancillary construction contract issues such as the subcontract relationship, change orders and extras, different forms of construction bonds and other surety arrangements, as well as liabilities and remedies for delay. The course will provide an overview of current construction lien legislation, from the registration of the initial notice of the lien, through to the registration of notice of claim, the doctrine of sheltering, and ultimate enforcement of the lien. Related construction lien issues such as the statutory trust fund and comparative priorities of construction liens versus mortgages and purchasers, will also be considered, as will a comparative overview of mechanics' lien regimes in other jurisdictions.

### **Condominium Law [3 credits]**

The popularity of stratified title is growing exponentially, not only in its traditional base of residential housing stock, but also more commonly in mixed retail and other commercial developments. This course will cover the development of the law of condominium and strata title in Canada, with a focus on the new Ontario Condominium Act. The course will examine the various intricacies of condominium title from the perspective of the developer, the purchaser, the mortgage lender and the condominium corporation. Specific consideration will be given to the drafting and review of condominium declarations, plans and by-laws, etc. and the administration of condominium corporations. The course will also canvass the increasing use of the new specialty condominium and condominium-like scenarios such as leasehold condominiums, vacant land condominiums, time-shares, co-operatives, and POTLs. Legislative reforms in condominium law and the resulting opportunities to use condominium structures in addressing Canada's archaic law of positive covenants are also explored. Special attention will be given to the standards and skills that are necessary to deal with issues unique to condominium practice such as the so-called "phantom mortgage", interim occupation, common area elements, and condominium liens.

### **Land Use Regulations and Property Development [3 credits]**

The acquisition and financing of vacant land is the first and often easiest part of property development. Much of the value-added

in any real estate project is the conversion of such vacant land to alternative and more profitable legal uses. This course will provide an overview of the law of land use regulation in Ontario, with an emphasis on the processes, negotiations and contracts involved in converting raw land to a residential subdivision, mixed use development or commercial project. Topics reviewed will include issues relating to the subdivision of land such as: considerations in choosing between subdivision, severance or condominium; the elements of the severance process; drafting and getting approvals for a plan of subdivision; financing issues; phased and interconnected subdivisions; etc. The course will also cover the transformation of legal uses including: the concept of legal non-conforming use, site plan agreements, municipal development agreements, dedications in lieu, development charges, minor variances, re-zoning applications, the historical and modern role of the Ontario Municipal Board and the new local equivalents thereto, etc. This unique course will combine municipal law with an understanding of the business aspects of bringing raw land or infill to market.

### **Real Estate Remedies and Litigation [3 Credits]**

Real estate lawyers taking this course will be exposed to an overview of the issues affecting a real estate agreement of purchase and sale in dispute, including: the art, science, timing and purpose of title requisitions; considerations of good faith, both in the making of the agreement of purchase and sale and in its performance; specific performance and damage calculation for breaches of contract. The course also addresses, in a perhaps most timely manner, the myth and reality of "tendering", with articles, precedents and best practices on point assembled into a "tender kit" to assist practitioners forced suddenly into a tendering situation or who find themselves suddenly being tendered upon. The course, taught by a leading real estate litigator, also explores real estate specific litigation issues such as the modern certificate of lis pendens, sheriff's sales under writs of execution, the requirement to "close and sue", anticipatory breach, the availability of specific performance after the Supreme Court of Canada's obiter in *Semalbhago*, and the modern timing and calculation of real estate damages.

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## **TUITION AND FEES**

Tuition and fees for the Part-time LLM program are \$17, 280. This includes required course materials. Light meals are provided for students attending classes in person at our downtown Toronto location. Tuition fees are set by the York University Board of Governors and are subject to change at any time. The amount above is the current estimated cost for the programs commencing in 2008/2009.

## **FOR MORE INFORMATION CONTACT**

**Sophie Seventikidis** Admissions and Client Services Assistant | ☎ 416.673.4670 📧 [admissions-opd@osgoode.yorku.ca](mailto:admissions-opd@osgoode.yorku.ca)

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1 Dundas Street West | Suite 2600, Toronto, ON Canada M5G 1Z3 | tel: 416.597.9724/1.888.923.3394 | [www.osgoodepd.ca](http://www.osgoodepd.ca)