

THE INTENSIVE SHORT COURSE IN SECURED LENDING & DEBT FINANCE

Your “deep dive” into commercial lending.

Secured lending and debt financing transactions have become increasingly complex. To maximize your value to clients, you must have a comprehensive understanding of the foundational **legal** and **business** issues. In 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
- Gain expert insights and best practices on hot topics and emerging trends

Register today at:

osgoodepd.ca/secured-lending

Program Chairs

Eric Belli-Bivar
DLA Piper (Canada) LLP

Don M.E. Waters
McMillan LLP

Date and Time

October 10 & 11, 2018
9:00 a.m. – 4:00 p.m. EDT
In Person or Webcast

Online Replay:
November 22 & 23, 2018

Location

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



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

Program Faculty

Alison Beer, Legal Counsel, Ontario Securities Commission, Derivatives Branch

Eric Belli-Bivar, DLA Piper (Canada) LLP

Joyce Bernasek, Osler, Hoskin & Harcourt LLP

Chris Burr, Blake, Cassels & Graydon LLP

Michael Disney, Davies Ward Phillips & Vineberg LLP

John Estey, President, Stonebridge Lease Financing Corporation

David Ferris, Fasken Martineau DuMoulin LLP

Dan Flaro, CFA, SVP, Country Executive, MB Business Capital Canada Inc.

Jill Fraser, Aird & Berlis LLP

Pat Forgione, McMillan LLP

Francesca Guolo, Goodmans LLP

Renée Ho, Director, Loan Syndications, TD Securities

Lisa Mantello, Osler Hoskin & Harcourt LLP

Andrew McFarlane, DLA Piper (Canada) LLP

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

James Padwick, Wildeboer Dellelce LLP

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

David Rozin, Associate Vice President - Technology Banking, Business Services, National Bank of Canada

Mark Saraiva, Director, Loan Syndications, Corporate Banking, CIBC Capital Markets

Howard Silverman, Borden Ladner Gervais LLP

Don M.E. Waters, McMillan LLP

Courtney Wilson, Stikeman Elliott LLP

Program Chairs



Eric Belli-Bivar

Partner, DLA Piper (Canada) LLP

Eric practises in Corporate Finance, with an emphasis on debt finance, secured lending, structured finance and derivatives. Called to the bars in both Ontario and in British Columbia, he advises credit providers and consumers including Canadian and foreign banks and other financial institutions. Eric has been repeatedly recognized as a leading banking and finance lawyer and practitioner by Best Lawyers (Canada), Chambers Global, the International Financial Law Review and also in Euromoney's Guide to the World's Leading Banking Lawyers.



Don M.E. Waters

Partner, McMillan LLP

Don's practice focuses on corporate debt finance and structured finance transactions, including asset-based lending, syndicated lending, cross-border debt financings, securitization and project finance transactions. Having worked at a Japanese firm in Tokyo, Don co-chair's his firm's Japan practice group and acts for Japanese financial institutions and corporations. Don has been repeatedly recognized as a leading lawyer by Best Lawyers (Canada), the Canadian Legal Lexpert Directory and in IFLR1000.

THE INTENSIVE SHORT COURSE IN SECURED LENDING & DEBT FINANCE

Get the skills and knowledge you need to succeed in today's competitive environment. 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, along with practices for handling them
- Explore a range of available alternative financing vehicles, including equipment lease financing
- Understand which clauses are the most important within loan and credit agreements and why

PLUS! Learn about the evolving landscape of Fintech & SaaS Secured Lending

Topics Include

- In-depth overview of Canadian debt financing – including an examination of current and emerging debt financing products and how they reflect the current business climate
- How to identify and navigate the most challenging legal risks in a financing transaction
- Essential legal components of a financing transaction, with a focus on strategic and tactical concerns
- Key provisions to negotiate in the ISDA Master Agreement and Schedules
- Effective techniques when negotiating and drafting credit agreements
- Critical issues to ensure proper perfection
- Understand the range of available alternative financing vehicles, including equipment lease financing

Who Should Attend?

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

Agenda

OCTOBER 10, 2018 – DAY 1
9:00 a.m. – 4:00 p.m. EDT
(In Person or Webcast)

8:30 a.m.

Registration and Continental Breakfast

9:00 a.m.

Chairs' Welcome & Opening Remarks

Eric Belli-Bivar, DLA Piper (Canada) LLP

Don M.E. Waters, McMillan LLP

9:10 a.m.

The Canadian Debt Financing Market – An Overview

Renée Ho, Director, Loan Syndications, TD Securities

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

Mark Saraiva, Director, Loan Syndications, Corporate Banking, 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

10:00 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

11:00 a.m.

Refreshment Break

11:15 a.m.

Conducting Effective Due Diligence

David 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

12:00 p.m.

Negotiating and Drafting the Credit Agreement

Eric Belli-Bivar, DLA Piper (Canada) LLP

Don M.E. Waters, McMillan 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

12:45 p.m.

Networking Luncheon

1:30 p.m.

Negotiating and Drafting the Credit Agreement (Cont'd)

Eric Belli-Bivar, DLA Piper (Canada) LLP

Don M.E. Waters, McMillan LLP

2:30 p.m.

Refreshment Break

2:45 p.m.

Taking Effective Security

James Padwick, Wildeboer Dellelce LLP

Courtney Wilson, 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
- Enforcing and realizing on security – overview and considerations

4:00 p.m.

DAY 1 CONCLUDES

OCTOBER 11, 2018 – DAY 2
9:00 a.m. – 4:00 p.m. EDT
(In Person or Webcast)

8:30 a.m.

Registration and Continental Breakfast

9:00 a.m.

Chairs' Opening Remarks

Eric Belli-Bivar, DLA Piper (Canada) LLP

Don M.E. Waters, McMillan LLP

9:00 a.m.

Priorities, Subordination Agreements and Intercreditor Agreements

Chris Burr, Blake, Cassels & Graydon LLP

Pat Forgione, McMillan LLP

- 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

10:00 a.m.

Asset-Based Lending (ABL)

Dan Flaro, CFA, SVP, Country Executive, MB Business Capital Canada Inc.

Howard Silverman, Borden Ladner Gervais LLP

- 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

10:45 a.m.

Refreshment Break

11:00 a.m.

Equipment Lease Financing in Today's Loan Transactions

John Estey, President, Stonebridge Lease Financing Corporation

Jill Fraser, Aird & Berlis LLP

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

12:00 p.m.

Networking Luncheon

12:45 p.m.

A Practical Understanding the ISDA Master Agreement and Schedules

Alison Beer, Legal Counsel, Ontario Securities Commission, Derivatives Branch

Lisa Mantello, Osler Hoskin & Harcourt LLP

- Uses of Derivatives for Borrowers
- Architecture of the ISDA Master Agreement, Schedules, Confirmations and the Credit Support Annex
- ISDA's relationship to the Credit Agreement
- Key provisions to be negotiated

1:30 p.m.

Fintech & SaaS Secured Lending

Joyce Bernasek, Osler, Hoskin & Harcourt LLP

David Rozin, Associate Vice President -

Technology Banking, Business Services, National Bank of Canada

- Overview of lending to start-ups, fintechs
- How lending to Fintech & SaaS compares to traditional lending
- Canadian vs. US practices and trends
- How you take security
- What banks are looking for
- Key issues and pitfalls to watch out for

2:15 p.m.

Refreshment Break

2:30 p.m.

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

Michael Disney, Davies Ward Phillips & Vineberg LLP

Francesca Guolo, Goodmans LLP

Andrew McFarlane, DLA Piper (Canada) 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 opinions
- Opinion issues in virtual closings
- Negotiating qualifications and assumptions: how much is too much?
- The process of negotiating and drafting opinions

4:00 p.m.

PROGRAM CONCLUDES

Register today at:

osgoodepd.ca/secured-lending

Our program participants say it best:

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

Iana Namestnikova, Associate, Banking & Financial Services Group, Baker McKenzie

“Presentations were engaging and well-organized. Appreciated receiving perspective from financial institutions. Very enjoyable overall.”

Leandro Zylberman, Counsel, Corporate, Great-West Life

“Great speakers for all sessions [including] the presence of industry speakers. I found it very useful to have a comprehensive overview of the different types of facilities. Loved the credit agreement presentation [and] the opinions session was great/valuable.”

Tracie Allan, AVP & Senior Counsel, Sun Life Financial

Registration Details

Fee per Delegate

Early Bird Price: \$1,295 plus HST to June 30, 2018

Regular Price: \$1,395 plus HST

Fees include attendance, program materials, lunch and break refreshments. Group discounts are available. Visit www.osgoodepd.ca 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.



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