

# THE INTENSIVE SHORT COURSE IN SECURED LENDING AND DEBT FINANCE



This comprehensive program will provide counsel and financial services professionals with a “deep dive” into commercial lending. Over one and a half days, you will:

- Get 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
- Deepen your understanding of key privacy and money laundering issues, FINTRAC and the know-your-client rule
- Get practical advice on negotiating and drafting legal documents
- Gain a firm grasp of the most challenging legal risks in a financing transaction and best practices for handling them
- Explore the range of available alternative financing vehicles, including equipment lease financing

**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.

As a **lawyer or financial services professional** you will get a solid understanding of the key legal issues and risks in today’s commercial loan transactions

*“EXCELLENT PRESENTERS WHO WERE ABLE TO PRESENT MATERIAL EFFECTIVELY IN TIME ALLOTTED; VERY WELL ORGANIZED.”*

**Nicholas Gefucia**, *Fasken Martineau DuMoulin LLP (2014)*

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[OSGOODEPD.CA/  
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Get full annual professionalism hours. See reverse for details.

**Webcast Available**

## Chairs

**Eric Belli-Bivar**  
*DLA Piper (Canada) LLP*

**Don Waters**  
*McMillan LLP*

## Dates and Times

October 5, 2016  
8:30 a.m. - 5:00 p.m. EDT  
October 6, 2016  
9:00 a.m. - 12:45 p.m. EDT

## Location

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

## Optional Workshop

October 6, 2016  
1:15 p.m. - 4:15 p.m. EDT

## THE INTENSIVE SHORT COURSE IN SECURED LENDING AND DEBT FINANCE

Debt financing deals are increasingly complex. In today's unsettled economy, it is critical for **counsel and financial services professionals** to have an up-to-date understanding of the foundational legal and business issues.

This intensive one and a half day *OsgoodePD* course will provide you with a comprehensive overview of the key aspects of loan transactions. A faculty of more than 20 experienced lawyers and bankers will share the knowledge, techniques and strategies you need to maximize the value of your services.

*This program will cover:*

- Canadian debt financing, the types of products currently offered and how they reflect the current business climate
- The objectives and requirements of appropriate due diligence
- What every private practitioner and in-house counsel has to know about FINTRAC, the know-your-client rule and privacy issues in the context of lending transactions
- Negotiating and drafting loan documentation from lenders' and borrowers' perspectives
- The clauses of loan and credit agreements that are most important, and why
- Strategic and tactical concerns in taking, perfecting and enforcing security
- Understanding the issues raised by equipment lease financing today
- Current best practices for legal opinions

**Plus!** Don't miss the optional "*Ethical and Professional Issues in Secured Lending and Debt Finance*" post-course workshop, led by expert practitioners in the area of commercial lending.

### 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 in financial institutions, insurance companies, merchant banks, asset-based lenders, leasing companies and credit unions
- Documentation, lending and credit officers involved in documenting loans
- Risk managers in financial institutions

#### Chairs

**Eric Belli-Bivar**

*DLA Piper (Canada) LLP*

**Don Waters**

*McMillan LLP*

#### Faculty

**Chris Burr**

*Blake, Cassels & Graydon LLP*

**Daphne J. MacKenzie**

*Stikeman Elliott LLP*

**Bruce E. Darlington**

*DLA Piper (Canada) LLP*

**Irene Markus**

*Managing Director & Head,  
Loan Syndications, Corporate  
Banking, CIBC Capital Markets*

**Sunny Dhillon**

*Director, Loan Syndications  
and Investment Banking  
TD Securities*

**Tim Murray**

*Managing Director, Corporate  
Banking, RBC Capital Markets*

**Michael Disney**

*Davies Ward Phillips &  
Vineberg LLP*

**Meaghan Obee Tower**

*Stikeman Elliott LLP*

**John Estey**

*President, Stonebridge Lease  
Financing Corporation*

**Caitlin Riddolls**

*Associate Vice President,  
Global AML - Canadian  
Banking and North American  
Direct Channels, TD Bank  
Group*

**David H. Ferris**

*Fasken Martineau DuMoulin  
LLP*

**Stephanie Robinson**

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

**Jill P. Fraser**

*Aird & Berlis LLP*

**Pat Forgione**

*McMillan LLP*

**Francesca Guolo**

*Goodmans LLP*

**Robert Scavone**

*McMillan LLP*

**Andrew J. F. Kent**

*McMillan LLP*

**Howard S. Silverman**

*Borden Ladner Gervais LLP*

**Robert Kizell**

*Managing Director & Head  
Asset Based Lending  
RBC Capital Markets*

**Steven J. Weisz**

*Blake, Cassels & Graydon LLP*

**Leanne M. Williams**

*Thornton Grout Finnigan LLP*

**REGISTER NOW** by visiting  
[osgoodepd.ca/securedlending](https://osgoodepd.ca/securedlending)

Gain the tools and strategies you need to make efficient, sound and confident decisions



## AGENDA

### DAY ONE: WEDNESDAY, OCTOBER 5, 2016

**8:00**

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

**8:30**

#### **Chair's Opening Remarks**

DON WATERS, *McMillan LLP*

ERIC BELLI-BIVAR, *DLA Piper (Canada) LLP*

**8:40**

#### **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*

IRENE MARKUS, *Managing Director & Head, 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?
- Basel III capital requirements

**9:45**

#### **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
- Types of facility
- Jurisdiction - the practical issues

**10:30**

#### **Refreshment Break**

**10:45**

#### **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**

#### **Dealing with Privacy/Money Laundering Issues, FINTRAC and the Know-Your-Client Rule**

CAITLIN RIDDOLLS, *Associate Vice President, Global AML - Canadian Banking and North American Direct Channels, TD Bank*

- Know-Your-Client: What should you know?
  - What are the statutory requirements?
  - Politically exposed foreign persons
  - Relation of the KYC rule to privacy legislation
- What is the risk-based approach?
  - Incorporating it into your compliance framework
- Assessing the money laundering and terrorism financing risk
- Risk-mitigation strategies
  - Enhanced due diligence/updating client identification
  - Additional monitoring/identifying red flags

**12:30**

#### **Lunch**

# AGENDA (Cont'd)

**1:15**

## **Negotiating and Drafting the Credit Agreement**

**DON 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**

## **Refreshment Break**

**3:00**

## **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**

## **Priorities and Intercreditor Arrangements, Second Lien, Subordinated and Mezzanine Lending**

**PAT FORGIONE, *McMillan LLP***

**STEVEN J. WEISZ, *Blake, Cassels & Graydon 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**

## **Day One Concludes**

**DAY TWO: THURSDAY, OCTOBER 6, 2016**

**8:30**

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

**8:55**

## **Chair's Opening Remarks**

**9:00**

## **Asset-Based Lending**

**HOWARD S. SILVERMAN, *Borden Ladner Gervais LLP***

**ROBERT KIZELL, *Managing Director & Head, 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

# AGENDA (Cont'd)

**9:45**

## 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 loan agreements 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

**10:45**

## Refreshment Break

**11:00**

## 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

**11:45**

## 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

**12:45**

## Day Two Concludes

### OPTIONAL POST-COURSE WORKSHOP

#### Ethical and Professional Issues in Secured Lending and Debt Finance

**Thursday, October 6, 2016, 1:15 - 4:15 EDT**

(Lunch will be provided)

Accredited for 3.0 Professionalism CPD hours

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.

# REGISTRATION

## Secured Lending and Debt Finance

Course Only  Course plus Workshop  Workshop only  Online Replay

I will attend:  On site  Via webcast (single viewer)

Unable to attend? Please contact us to order the Materials/Program Archive.

### Fee Per Delegate

Course Only: \$1295 plus HST

Course plus Workshop: \$1495 plus HST

Workshop Only: \$300 plus HST

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available for both on site and webcast participants. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance and CLE credits.



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



### Eligible CPD/MCLE Hours:

**Program Only: LSUC (ON):** 11.5 CPD hours (10.00 Substantive; 1.5 Professionalism)

**Workshop + Program: LSUC (ON):** 14.5 CPD hours (10.00 Substantive; 4.5 Professionalism)

**Workshop Only: LSUC (ON):** 3.0 Professionalism hours

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

## Registrant Information

Please complete all registrant information.

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Firm/Company: \_\_\_\_\_

Practice Area: \_\_\_\_\_

Address: \_\_\_\_\_

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### 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 (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.

### Dates & Times

**October 5, 2016**  
8:30 a.m. - 5:00 p.m. EDT  
**October 6, 2016**  
9:00 a.m. - 12:45 p.m. EDT

**Optional Workshop:**  
**October 6, 2016**  
1:15 p.m. - 4:15 p.m. EDT

**Online Replay:** November 26, 2016

### Location

Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3

Please arrive a half hour early on Day One for sign-in and material pick-up.  
Dress is business casual.



## 4 Convenient Ways to Register

1. **MAIL** your registration form to:  
Osgoode Professional Development  
Downtown Toronto Conference Centre  
1 Dundas St. W., 26th Floor  
Toronto, ON M5G 1Z3
2. **ONLINE** at  
[www.osgoodepd.ca/securedlending](http://www.osgoodepd.ca/securedlending)
3. **FAX** your registration to 416.597.9736
4. **CALL US** at 416.597.9724