

2009 Negotiating and Drafting

MAJOR BUSINESS AGREEMENTS

March 2 – 3, 2009 | Segal Graduate School of Business, Downtown Vancouver



PROGRAM CO-CHAIRS

David Zacks, Q.C.
Partner, Blake, Cassels & Graydon LLP

Robert R. Shouldice
Partner, Borden Ladner Gervais LLP

- Get the inside track and experienced know-how from top lawyers
- Learn critical principals of negotiating and drafting
- Avoid damaging and costly mistakes when drafting your agreements
- Develop creative, effective and bulletproof documents
- Understand how to translate the “deal” to paper while avoiding becoming a prisoner of forms
- Hear about alternative strategies for achieving the client’s or the company’s needs in today’s business climate
- Anticipate and prevent future conflicts through good drafting
- Receive valuable and useful take-aways: precedents, checklists, model agreements

and much more...

Wednesday March 4, 2009 POST CONFERENCE IN-DEPTH WORKSHOPS

A. Step-by-Step Guide to
Structuring and Negotiating Public
Infrastructure Agreements

Doug R. Sanders, P.Eng.
Partner, Borden Ladner Gervais LLP

B. Mergers and Acquisitions in
Trying Times

Jocelyn M. Kelley
Partner, Blake, Cassels & Graydon LLP

Francis Chang
Partner, Blake, Cassels & Graydon LLP

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Dear Colleague,

One of the most important tasks for which clients look to their lawyers is the negotiation and drafting of written agreements that reflect the precise terms of significant business transactions. You design the deal and set the stage for on-going relations. In-house counsel must ensure the agreements are bulletproof and meet the organization's current and future needs. Outside counsel must ensure that agreements achieve the desired objectives of the client.

We are pleased to be working with **Insight** to present the **2009 Negotiating and Drafting MAJOR BUSINESS AGREEMENTS** conference on March 2nd and 3rd in Vancouver.

A roster of highly-sought after lawyers provide detailed, need-to-know information, tips, and advice on negotiating and drafting a wide range of major business agreements to ensure your success.

The conference is popular with corporate counsel and lawyers in private practice. It is also an excellent opportunity to network with colleagues and share resources and information.

We look forward to seeing you in Vancouver on the 2nd and 3rd of March for this practical, information-packed program.

Sincerely,



David Zacks, Q.C.
Partner
Blake, Cassels & Graydon LLP



Robert R. Shouldice
Partner
Borden Ladner Gervais 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 1 866 456-2020 ext. 6143 Gene.Beil@incisivemedia.com**

WHO SHOULD ATTEND

- Corporate/General/In-house Counsel
- Corporate/Commercial Lawyers
- Corporate Executives
- Federal, Provincial and Municipal Lawyers
- Contract Managers/Specialists
- Commercial and Investment Bankers
- Business Consultants and Brokers
- Private Equity Investors

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8:00 | 8:55

Registration and Continental Breakfast

8:55 | 9:00

Welcoming Remarks from Insight

9:00 | 9:15

Co-Chairs' Opening Remarks

David Zacks, Q.C.

Partner

Blake, Cassels & Graydon LLP

Robert R. Shouldice

Partner

Borden Ladner Gervais LLP

9:15 | 10:00

Legislative and Case Law Update: Developments of Note

Lisa A. Peters

Partner

Lawson Lundell LLP

- Recent decisions and developing trends in contract law
 - enforceability of “boilerplate” clauses (such as limitation of liability, entire agreement clauses and liquidated damages clauses)
 - the duty of good faith
 - *force majeure* and frustration of contract
 - fundamental breach
 - privity of contract
 - illegal contracts
- Legislation that drafters need to be aware of

10:00 | 10:45

Pre-Negotiation Planning: Clarifying Objectives and Setting Strategy

Bill Kaplan, Q.C.

Partner

Blake, Cassels & Graydon LLP

- Determining which approach to take: competitive/positional or interest based?
- Tactical considerations: can you “switch” approaches or tactics
- Pre-negotiation preparation
 - defining client objectives
 - issue identification

- issue prioritization and valuation from both perspectives
- managing expectations
- strategizing “trades”
- other pre-negotiation preparation

10:45 | 11:00

Networking Coffee Break

11:00 | 11:45

Making the Most of Early Stage and Pre-Transaction Agreements

Robert R. Shouldice

Partner

Borden Ladner Gervais LLP

- Confidentiality agreements and due process agreements
- Letters of intent and similar
- When and how to properly use these “agreements”
- Key provisions to consider
- Binding versus non-binding terms
- Possibly embracing rather than avoiding binding process terms (ie. Contract A) in M&A auctions and project RFPs
- Duty to negotiate in good faith

11:45 | 12:30

Cross-Border and International Agreements

Cheryl Slusarchuk

Partner

McCarthy Tétrault LLP

- Characteristics and business drivers of cross-border deals
- Threshold issues for negotiating cross-border agreements
- Common structures for cross-border deals
- Protecting your deal and your money
- Key legal issues:
 - pros and cons of jurisdiction and law choices: Delaware, NY, Ontario, BC
 - competition and anti-trust
 - tax and SR&ED
 - IP and privacy
 - employment
- Managing the deal risk in the cross-border and international context

12:30 | 1:45

Networking Lunch

1:45 | 2:30

Purchase and Sale: Asset, Stock and Merger Agreements

Valerie C. Mann

Partner

Lawson Lundell LLP

- Structure of a transaction
- Key considerations in an asset purchase vs. stock purchase vs. merger agreement
- Significant considerations in merger agreements
- Tax implications of asset vs. stock purchases vs. merger agreements
- Structure of an agreement
- Representations and warranties – which ones do you need and why?
- Covenants
- Closing conditions
- Indemnification

2:30 | 3:15

Shareholders' Agreements

Gary R. Sollis

Partner

Fraser Milner Casgrain LLP

- Term sheets and issue lists
- Capital contributions
- Admission of new members
- The board of directors
- Shareholder votes
- Transfer restrictions
- Tag along and drag along rights
- Shareholder competition and sharing information
- Dispute resolution through mediation and arbitration
- Dissolution provisions and mandatory transfers
- Analysis of annotated sample shareholders' agreements

3:15 | 3:30

Networking Refreshment Break

3:30 | 4:15

Loan and Credit Agreements

David Zacks, Q.C.

Partner

Blake, Cassels & Graydon LLP

- Types of lenders
- Types of credit facilities
- Types of lending accommodations and interest rate options
- Pick your battles
 - hierarchy of issues
 - identify goals early
 - articulate the business case
- Types of security, including Bank Act security, PPSA security and guarantees
- Key opinion issues in loan and credit facilities

4:15 | 5:00

Negotiating and Drafting Venture Capital Investment Agreements

Blair J. H. Horn

Partner

Fasken Martineau DuMoulin LLP

- Term sheet
- Shareholder agreement
- Share provisions
- Employment contracts
- Registration rights
- Downround issues
- Founder repurchase and vesting

5:00

Conference Adjourns for the Day

TUESDAY | MARCH 3, 2009

8:15 | 9:00

Continental Breakfast

9:00 | 9:15

Co-Chairs' Opening Remarks

David Zacks, Q.C.

Partner

Blake, Cassels & Graydon LLP

Robert R. Shouldice
Partner
Borden Ladner Gervais LLP

9:15 | 10:00

Underwriting, Subscription and Other Securities Agreements

John E. Stark
Partner
Stikeman Elliott LLP

- Understanding the key elements of underwriting agreements:
 - representations and warranties
 - conditions of closing
 - termination events
 - indemnity provisions
- Special features of cross-border underwriting agreements
- Bought deal underwriting agreements vs. agency underwriting agreements
- Subscription agreements, including accredited investor rules, resale restrictions and more
- Registration rights agreements

10:00 | 10:45

Outsourcing Agreements

Joan Chambers
Partner
Blake Cassels & Graydon LLP

Debra Finlay
Partner
Blake Cassels & Graydon LLP

Outsourcing is often used to leverage outside expertise and infrastructure, defray capital and other costs, and refocus operations on core business areas. While outsourcing can be effective to achieve these objectives, it can also become a high risk area for many organizations. In this session we will examine the following:

- What is outsourcing?
- Service descriptions and business transformation
- Service levels, remedies and benchmarking
- Change management
- Governance
- Subcontractors
- Risk transfer
- End of term obligations

10:45 | 11:00

Networking Coffee Break

11:00 | 11:45

Joint Ventures – Strategic Alliances

Fred R. Pletcher
Partner
Borden Ladner Gervais LLP

- Forms of joint ventures and strategic alliances (contractual, corporate, partnership)
- Common elements of JV arrangements
- Initial contribution/Earn-in
- Governance and control issues
- Funding of the JV/Distributing cash and profits from the JV
- Exit strategies and pre-emptive rights
- Dispute resolution
- Other matters (accounting, taxation, confidentiality, non-competes, spin-off ventures)
- Special concerns for cross-border and international JVs

11:45 | 12:30

Commercial Real Estate Lease Agreements

Stacey J. Handley
Partner
Real Estate Group Leader, Western Division
Lang Michener LLP

- Essential elements of a commercial lease
- Examples of standard leases
 - ground leases
 - design-build
- Implied covenants
- Subleases
- Insurance issues
- Enforcement considerations and remedies
- Top mistakes to avoid
- Statutory considerations
- Checklist for drafting a commercial lease

12:30 | 1:45

Networking Luncheon

1:45 | 2:30

Technology Agreements

Bradley J. Freeman

Partner

Borden Ladner Gervais LLP

- Negotiation objectives, strategies, and practical considerations
- Key provisions – definitions, licence grant, specifications, and schedules
- Special considerations for proprietary rights and confidentiality
- Risk allocation – indemnities, limitations/exclusions, and other remedies
- Termination and post-term rights and obligations

2:30 | 2:45

Networking Refreshment Break

2:45 | 3:30

Employment Agreements: How to Protect your Business

Carman J. Overholt Q.C.

Partner

Fraser Milner Casgrain LLP

- Protection of your business through non-competition; non-solicitation; confidentiality; ownership of intellectual property; arbitration; and other contractual terms
- Use of change of control and stay bonus agreements
- Review of recent case law addressing the duty of good faith and fiduciary duty

- How to ensure a smooth transition upon termination of employment
 - arbitration
 - settlement agreement
 - confidentiality
 - covenants and release of claims
 - indemnities
 - stock options
 - bonus and other incentive compensation
 - pension issues
- Employer remedies in the event of a breach of an employment agreement

3:30 | 4:15

Buying Assets Out of Bankruptcy

William E. J. Skelly

Partner

Heenan Blaikie LLP

- Overview and key considerations
- State of the market
- Legislative framework
 - CCAA
 - BIA
- The role of the monitor or trustee
- Key contractual elements
- Court orders
- Recent case law developments of note

4:15

Co-Chairs' Closing Remarks and Conference Concludes

HERE'S WHAT YOUR PEERS TOLD US ABOUT PAST MBA EVENTS

“ This conference gave me a ‘bird’s-eye’ view of legal risks regarding different agreements.”

David Campbell, TransCanada Corporation

“ I have a much better understanding of terms in legal documents, and why those terms are in the agreements, and the importance of the right ‘wording.’”

Yvonne Lee, Alcan Primary Metal

“ Lots of information – in my opinion, it gave me an excellent idea of the ins and outs of agreements. Will allow me to have more input on any future agreements.”

David Schmidt, Quatsino First Nation

“ Very practical useful tips. It is very useful to know the general considerations in the major kinds of agreements I can expect to come across.”

Winnie Sung, Hungerford Tomy Lawrenson & Nichols

STEP-BY-STEP GUIDE TO STRUCTURING AND NEGOTIATING PUBLIC INFRASTRUCTURE AGREEMENTS

Doug R. Sanders, P.Eng.
Partner, Borden Ladner Gervais LLP

This interactive, hands-on, practical workshop is intended to provide you with essential tools and strategies for successfully structuring and negotiating public infrastructure agreements (P3 and other models).

Topics will include:

- Identifying the appropriate model for your project
- Identifying and drafting key clauses for infrastructure projects
- Successful strategies for structuring agreements
- Key insights and tips for negotiating successful agreements

Doug Sanders is a partner at the Vancouver office of Borden Ladner Gervais, and practices in the areas of Public Private Partnerships and construction contracts (drafting, review and negotiation). He has been counsel in many British Columbia and Alberta PPP transactions. Mr. Sanders is co-author of the book *Practical Law of Architecture, Engineering and Geoscience*, and is a frequent presenter on P3 and related topics at CLE seminars.

12:00 | 1:00 LUNCH WILL BE SERVED FOR DELEGATES ATTENDING BOTH WORKSHOPS

MERGERS AND ACQUISITIONS IN TRYING TIMES

Jocelyn M. Kelley
Partner, Blake, Cassels & Graydon LLP

Francis Chang
Partner, Blake, Cassels & Graydon LLP

We are living in “interesting” times and the nature of deal-making has to change in order to accommodate itself to the new economic realities of today’s business world. This session will provide detailed coverage of how the art of the deal needs to be modified and transformed and of the kind of strategies required to effect good legal and business outcomes in this new reality. Among the key topics to be examined are:

- How the deal is different in challenging times
- Dealing with distressed companies
- Deal protection strategies
- Deal termination

You will have a unique opportunity not only to benefit from the experience and expertise of seasoned practitioners in the field, you will also receive specially prepared materials, and have ample opportunity to ask your questions and to dialogue with peers.

Jocelyn Kelley is a corporate partner in the Vancouver office of Blakes. Her practice consists of advising on business law matters, with a particular emphasis on mergers and acquisitions. Ms. Kelley is the chair of the Current Legal Developments Subcommittee of the Corporate and M&A Law Committee of the International Bar Association.

Francis Chang is a corporate partner in the Vancouver office of Blakes. Mr. Chang has significant experience in the media, private equity, mergers and acquisitions, licensing and entertainment areas. Prior to joining Blakes, he was based in Hong Kong where he worked as the vice-president and deputy general counsel of legal affairs for Star TV, the Asian subsidiary of The News Corporation.

