

"This is a great 'refresher' course - would recommend."

"This course provided a good perspective and background on potential issues that could arise."

"Provided a new perspective for me."

Attendance at this course can be reported as 11.0 hours of Continuing Professional Development (CPD) to the Law Society of British Columbia

# 2<sup>nd</sup> Essentials of Commercial Contracts

October 14 & 15, 2010, Calgary

Two-Day Event!

**Workshop Included: Commercial contract dispute resolution**

## participating organizations

Bennett Jones LLP  
McCarthy Tetrault LLP  
Davis LLP  
Borden Ladner Gervais LLP  
Fasken Martineau DuMoulin LLP  
Stikeman Elliot LLP  
Macleod Dixon LLP  
MacPherson Leslie & Tyerman LLP  
Brownlee LLP

## who should attend

Corporate/Commercial Lawyers, Paralegals, Contract Managers

## course highlights

- Key issues with respect to the law of contract
- Key principles of good drafting technique: commercial contract format and structure
- Customizing agreements to reflect your objectives
- Troubleshooting during the contracting process
- Recent and impending legislation impacting contract drafting
- Overview of the practical use and application of boilerplate clauses
- Drafting techniques to improve your protection
- Best practices for crafting litigation-proof opinions
- Drafting enforceable rights, obligation and exclusion/limitation clauses: common errors to avoid
- Drafting dispute resolution clauses: deciding on a model



**Course Leader**  
George Kelly,  
Borden Ladner  
Gervais LLP



Scott D. Whitby,  
MacPherson  
Leslie &  
Tyerman LLP



Matthew Peters,  
McCarthy  
Tetrault LLP



Laura M.  
Safran, Q.C.,  
Davis LLP



Glen B. Scott,  
Q.C.,  
Brownlee LLP



Bryan C.  
Haynes,  
Bennett Jones  
LLP



Michael  
Styczen,  
Stikeman Elliot  
LLP



Christopher M.  
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Macleod Dixon  
LLP



Stephen D.  
Burns,  
Bennett Jones  
LLP



Alex Kotkas,  
Fasken  
Martineau  
DuMoulin LLP

## FACULTY

### COURSE LEADER

#### GEORGE KELLY

George Kelly of **Borden Ladner Gervais LLP** is a senior corporate and securities lawyer practicing in the M&As, corporate finance and commercial transactions areas.

### CO-LECTURERS

#### SCOTT D. WHITBY

Scott Whitby of **MacPherson Leslie & Tyerman LLP** focuses on corporate and commercial matters and business transactions involving the oil, natural gas and electricity industries.

#### MATTHEW PETERS

Matthew Peters is the Regional Managing Partner at **McCarthy Terault LLP** and a partner in the Technology Group in Vancouver.

#### LAURA M. SAFRAN, Q.C.

Laura M. Safran, Q.C., is a partner at **David LLP's** Calgary office and specializes in the areas of aviation, corporate/commercial, intellectual property and technology law.

#### GLEN B. SCOTT, Q.C.

Glen B. Scott, Q.C., is a partner at **Brownlee LLP**. His specific experience includes being a counsel to public and private real estate development and holding companies.

#### BRYAN C. HAYNES

Bryan Haynes is co-leader of **Bennett Jones'** corporate commercial practice.

#### MICHAEL STYCZEN

Michael Styczen of **Stikeman Elliot LLP** is a member of the Commercial Energy Group and his practice is focused on the energy, pipeline and electricity industries.

#### CHRISTOPHER M. WOLFENBERG

Chris Wolfenberg of **Macleod Dixon LLP** practices corporate and securities law, focusing on public and private financing transactions, M&As, reorganizations and other corporate transactions.

#### STEPHEN D. BURNS

Stephen Burns is a partner at **Bennett Jones LLP**, his practice focuses primarily on outsourcing, IT procurement, information and privacy law, technology transactions and the commercialization of intellectual property.

#### ALEX KOTKAS

Alex Kotkas is a senior litigator in **Fasken Martineau DuMoulin's** Calgary office. He is the former head of the litigation group in Calgary and also serves on various national and regional committees within the firm.

## COURSE PROGRAM

### DRAFTING EXCLUSION CLAUSES: IMPACT OF CURRENT CASE LAW

The recent Supreme Court's decision in *Tercon Contractors Ltd. v. British Columbia* marks an important development in the law of contract, as the Court rejected the doctrine of fundamental breach, substituting a three-stage test of the enforceability of an exclusion-of-liability clause. This session will look at the drafting and enforceability of exclusion clauses in light of the Supreme Court ruling, providing drafting tips from a litigation perspective, focussing on how exclusion clauses should be structured to have a maximum impact in any dispute that may arise.

- Three stage test that considers whether the clause actually applies to the type of breach that is alleged, unconscionability and public policy
- Enforceability of exclusion clauses: key-drafting concerns from a litigation perspective
- The doctrine of "fundamental breach"

### THE STRUCTURE AND FORMAT OF COMMERCIAL CONTRACTS: STRATEGIES IN DRAFTING CONTRACTUAL PROVISIONS

This session will discuss the upfront considerations and practical drafting techniques that are necessary to successfully convert an idea or term sheet into a formal written agreement that will withstand the test of time. Learn best practices for drafting commercial agreements that will reflect your current business deal, having regard to future contingencies.

- Key principles of good drafting technique: commercial contract format and structure
- The legal framework of a contract
- Drafting issues/objectives
- Papering the deal: how to translate the "deal" to paper
- Troubleshooting during the contracting process
- Tools for risk allocation and mitigation
- Customizing agreements to reflect your objectives

### SUPPLEMENTARY COURSE MATERIAL

Federated Press is now providing delegates with access to an innovative new database containing at least 25 interactive multimedia presentations by leading experts and approximately 20 hours of lectures on the topics covered by this course, including all slides and speakers' papers. See the list of presentations on page 4.

Delegates will also receive a trial subscription to the Business Law Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge Business Law topics as delivered at our many recent Business Law conferences and courses.



## DRAFTING AND USE OF BOILERPLATE CLAUSES

Boilerplate clauses are extremely important in the interpretation of commercial agreements. Knowing which boilerplate clauses to include, understanding what they mean (and don't mean) and how they should be drafted should be given careful consideration. This session will look at the most common type of boilerplate clauses and provide you with best practices for drafting effective clauses.

- Common boilerplate clauses
- Drafting with boilerplate
- Adapting standard wording that many business contracts use
- Drafting techniques to improve your protection
- Interpretation of boilerplate clauses

## PRE-TRANSACTION AND EARLY STAGE AGREEMENTS

Drafting and negotiating clear, effective and watertight commercial contracts requires that you be fully prepared for all potentialities that can arise during the process. In order to be successful, there needs to be detailed attention paid to the processes before the actual deal is inked. This session will look at best practices in drafting pre-transaction and early stage agreements.

- Key considerations and best practices for pre-transaction and early stage agreements
- Pre-contract documents and enforceability
- Drafting expressions of interest, memorandum's of understanding, letters of intent, term sheets, confidentiality agreements
- How and when to use a letter of intent
- Binding vs. non binding pre-transaction agreements

## DRAFTING NON-COMPETITION PROVISIONS IN COMMERCIAL CONTRACTS

Great care must be taken when drafting non-competition clauses, as courts are very reluctant to enforce non-compete agreements that are unreasonable or otherwise not carefully drafted. The enforceability of a non-competition clause will depend on whether the restriction is reasonable between the parties, and in the public interest, as there must be a balance between enforcing contractual obligations and promoting free and open competition through discouraging unreasonable restraints on trade.

- The legal context of non-competition agreements
- Key terms and conditions
- Determining "reasonableness" in drafting non-competition agreements

## DRAFTING OPINIONS FOR COMMERCIAL TRANSACTIONS

Ongoing legislative developments, an increase in e-commerce and cross-border deals being entered into by businesses of all sizes and the increasing complexity of commercial agreements in general have heightened the need for the preparation of legal opinions in the commercial agreement drafting process. This session will examine the opinion drafting process.

- Best practices for crafting opinions
- Key considerations when drafting or requesting an opinion
- Drafting opinions for cross-border commercial agreements
- Drafting opinions for securities and financing transactions
- Challenges in drafting "non-standard" opinions

## DRAFTING INTERNATIONAL COMMERCIAL AGREEMENTS

Drafting precise commercial agreements plays a vital role in achieving successful international business results, as disputes about the interpretation of written contracts are one of the largest sources of commercial litigation. This session will deal with the practical drafting techniques necessary to successfully convert an international transaction or deal into a bulletproof written agreement.

- Pre-negotiation due diligence and preparations
- Principles of good drafting technique
- Key contract terms and provisions
- Key elements and clauses in international contracts

## DEALING WITH CHANGE AND ALLOCATING RISK IN COMMERCIAL AGREEMENTS

The issue of change management has become one of the most frequent and least planned for areas in large commercial transactions. This combined with a reasoned risk allocation approach can result in a long-term successful relationship between all parties to the agreement. This session will examine best practices for dealing with the key types of change that can be expected during the life of a commercial agreement and how best to allocate the resulting risks.

- Key types of change to anticipate in commercial agreements
- Different mechanisms to address change
- Identifying, analyzing, responding to and controlling risk factors to best achieve the objectives of all parties
- Allocating specific risks based on an analysis of which party is best able to evaluate, control, manage and assume the risk
- Risk identification process

## DRAFTING RIGHTS, OBLIGATIONS, EXCLUSION AND LIMITATION CLAUSES

With the high degree of risk present in today's business environment, well-drafted commercial contracts should contain effective rights, obligations, exclusion and limitation clauses, which seek to clarify each party's role in the business relationship, clarify the restrictions, if any, on each party's business operations and place a cap on total legal liability. This session will examine rights, obligation, exclusion and limitation clauses, and their interpretation and enforceability.

- Drafting enforceable rights, obligation and exclusion/limitation clauses: common errors to avoid
- Factors courts and tribunals take into account when interpreting and ruling on the enforceability of exclusion clauses
- Trend in favour of upholding rights, obligations, limitation and exclusion clauses
- Recent case law and the regulation of limitation and exclusion clauses
- Reasons why these clauses are struck down

## WORKSHOP

### COMMERCIAL CONTRACT DISPUTE RESOLUTION

Contract disputes are the most problematic aspects of contract administration, especially considering the heightened risk of civil and criminal litigation in today's environment. Therefore, it is prudent to establish clear and effective strategies for resolving disputes in any commercial agreements. This workshop will explore the prominent issues faced in resolving disputes in business contracts and will provide practical strategies for avoiding and winning such disputes.

- Drafting dispute resolution clauses: deciding on a model
- Determining what warranties and indemnities are needed
- Resolving business disputes through litigation or alternatives
- The workings of the doctrine of frustration
- The inclusion of constructive performance obligations

## MULTIMEDIA PRESENTATIONS

Your registration includes an interactive multimedia database comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio or video and accompanying slides. You may also purchase the multimedia proceedings of the course which will be available on CD-ROM 60 days after the course.

### Practical Drafting Techniques for Contracts and Agreements

C. Ian Kyer,  
Fasken Martineau DuMoulin LLP

### Confidentiality Agreements and Letters of Intent

D. George Kelly,  
Borden Ladner Gervais LLP

### Outsourcing Agreement Negotiations

George A. Wowk,  
Burnet, Duckworth & Palmer LLP

### Unanimous Shareholder Agreements - Practical Considerations

Chip Johnston,  
Bennett Jones LLP

### Employment Agreements: What You Need to Know

Joseph Shaw,  
Bull, Housser & Tupper LLP

### IP License Agreements

Martin P.J. Kratz,  
Bennett Jones LLP

### Electronic Contracts

Martin P.J. Kratz,  
Bennett Jones LLP

### Drafting Contracts and Agreements

Karen G. Corraini,  
Xenon Pharmaceuticals Inc.

### Negotiating Acquisition Agreements

Valerie C. Mann,  
Lawson Lundell LLP

### Securities Agreements

Jonathan S. Drance,  
Stikeman Elliott LLP

### Practical Negotiating Techniques for Contracts and Agreements

C. Ian Kyer,  
Fasken Martineau DuMoulin LLP

### Negotiating & Managing Intellectual Property Issues in Contracts

Jeff Mackwood,  
National Research Council of Canada,  
Institute for Aerospace Research

### Impact of Treaties and Conventions on Business Agreements: Avoiding Pitfalls

Lawrence L. Herman,  
Cassels Brock & Blackwell LLP

### Developing Strategic Contracting

Fred Lawlor,  
Fairmont Raffles Hotels International

### Negotiating & Structuring International Joint Ventures & Strategic Alliances Agreements

Mark A. Trachuk,  
Osler, Hoskin & Harcourt LLP

### Service Level Agreements

Scott Kitching,  
Ceridian Canada Ltd.

### Negotiating Loan, Credit & Other Financing Agreements

Jon J. Holmstrom,  
Fasken Martineau DuMoulin LLP

### International Funding & Lending Transactions

A. Keith Tuomi,  
The Bank of Nova Scotia

### Boilerplate Unlocking the Mysteries of the 'Standard Clause'

Colleen Spring Zimmerman,  
Borden Ladner Gervais LLP

### Drafting Effective Employment Agreements

Barry A. Kuretzky, Partner,  
Kuretzky Vassos LLP

### International and Cross-Border Agreements

Sterling G. Koch, Director & General Counsel,  
Regulatory & Legal Affairs,  
TransAlta Corporation

### Representations & Warranties in Intellectual Property Licensing Agreements

Peter S. Newell,  
Ogilvy Renault

### Joint Venture and Strategic Alliance Agreements

Ruby E. Barber,  
Bell Canada

### Negotiating Shareholder's Agreements

Gary Solway,  
Bennett Jones LLP

### Customs and trade Remedy Impact on Commercial Transaction

Darrel H. Pearson,  
Gottlieb & Pearson

**Registration:** To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

**Location:** Calgary Marriott Hotel, 110 9th Avenue, SE, Calgary, Alberta, T2G 5A6

**Conditions:** Registration covers attendance for one person, the supplementary course material as described in this document, lunch on both days, morning coffee on both days and refreshments during all breaks. The proceedings of the course will be captured on audio or video. Multimedia proceedings with all slides and handouts can be purchased separately on a CD-ROM which will also include the course material.

**Time:** This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

**Cancellation:** Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to October 1, 2010. No refunds will be issued after this date. Please note that a 15% service charge will be held in case of a cancellation.

**Discounts:** Federated Press has special team discounts. Groups of 3 or more from the same organization receive 15%. For larger groups please call.

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### TO REGISTER FOR ESSENTIALS OF COMMERCIAL CONTRACTS

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 Approving Manager Title \_\_\_\_\_  
 Organization \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ e-mail \_\_\_\_\_  
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