

10th

Essentials of Commercial Contracts

Learn practical drafting techniques

Speakers & Participating Organizations



Course Leader
Hanan Campbell,
Epcor Utilities Inc.



Course Leader
Michael Mestinek,
Stikeman Elliott LLP



Stephen D. Burns,
Bennett Jones LLP



Cory S. Exner,
SAP Canada Inc.



Nazeef Muhammad,
Value Creation Group of Companies



Andrew G. Kay,
WestJet Airlines Ltd.



Chika Onwuekwe,
Trican Well Service Ltd.



Lorne O'Reilly,
Superior Propane / Superior Plus Corp.



Justin Pettigrew,
Norton Rose Fulbright Canada LLP



Richard Stobbe,
Field Law LLP

Derek G. Kearl,
MEG Energy Corp.

October 14 & 15, 2014, Calgary

Workshop Included: **Dispute Resolution**

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
- Explore practical considerations to successfully create a written agreement for your international deal

Two-Day Event!

"Presentations were hands-on and practical"

"Helped give context to the direction of contract content and overall broadened my knowledge base"

"Benefitted by looking at the drafting process from a more risk-based standpoint"

COURSE LEADERS

HANAN CAMPBELL

Hanan Campbell is Associate General Counsel at **EPCOR Utilities Inc.** She has been involved in many commercial and transactional matters and her practice focuses on a broad range of activities including mergers and acquisitions, project development, P3, construction projects, corporate structuring and governance and various commercial contracts.

MICHAEL MESTINSEK

Michael Mestinsek is a Partner at **Stikeman Elliott LLP**. He represents domestic and international clients in all areas of commercial litigation and dispute resolution, including matters involving oil and gas, corporate governance and shareholder activism, product liability, class actions, directors and officers liability, securities, commercial real estate, insurance, professional negligence and catastrophic loss.

CO-LECTURERS

STEPHEN D. BURNS

Stephen D. Burns is a Partner at **Bennett Jones LLP**. His practice focuses on energy and agriculture related technology, procurement and outsourcing, IT procurement and outsourcing technology transfers, intellectual property, mergers and acquisitions, and corporate/commercial matters related to technology.

CORY S. EXNER

Cory Exner has served as Associate General Counsel for **SAP Canada Inc.** He has worked with many of Canada's largest companies on licensing and services agreements, and he has utilized a variety of strategies to facilitate the contracting and negotiation process.

ANDREW G. KAY

Andrew G. Kay is Senior Legal Counsel at **WestJet Airlines Ltd.** Following a 5 year career in private practice and 7½ years of in house practice with WestJet, Andrew has recently moved into the position of Director, International Operations for the airline. He is quickly adjusting to blaming everything on legal.

DEREK G. KEARL

Derek G. Kearl is Senior Legal Counsel at **MEG Energy Corp.**

NAZEEF MUHAMMAD

Nazeef Muhammad is Legal Counsel at **Value Creation Group of Companies**. He previously had a corporate commercial practice at the Calgary office of a major international law firm.

CHIKA ONWUEKWE

Chika Onwuekwe is Senior Legal Counsel and team lead on international business transactions and intellectual property matters at **Trican Well Service Ltd.**

LORNE O'REILLY

Lorne O'Reilly is General Counsel at **Superior Plus Corp. / Superior Propane**. His primary focus is to provide legal, corporate secretarial and business support, overseeing all legal matters pertaining to day-to-day operations.

JUSTIN PETTIGREW

Justin Pettigrew is a Partner at Norton Rose Fulbright Canada LLP and practises primarily in the areas of capital markets, corporate finance and mergers and acquisitions.

RICHARD STOBBE

Richard Stobbe is an IP lawyer and trademark agent at **Field Law LLP**. His practice is focussed on software licensing, technology transfer, and IT deals as well as trademark prosecution and e-commerce law.

COURSE PROGRAM

STRATEGIES IN DRAFTING CONTRACTUAL PROVISIONS

This session will discuss the legal and business framework of a contract to be used in conjunction with contract engagement, negotiations and practical drafting in order to ensure that an enforceable agreement is achieved.

- Contract law overview and why we do what we do?
- Negotiations, evidencing and papering the deal
- Assessments of potential issues and troubleshooting
- Risk allocation and mitigation considerations
- Drafting considerations
- Customizing agreements to reflect intentions of the parties

PRE-TRANSACTION & EARLY STAGE AGREEMENTS

Negotiating and drafting effective and enforceable contracts requires that you be prepared to address all contingencies that are likely to arise from the commercial relationship. This session will discuss the steps to be taken to prepare pre-transaction and early stage agreements.

- Pre-contractual documents and enforceability
- How and when to use a letter of intent
- Disclosure obligations and the protection of confidential information
- Binding vs. non-binding pre-transaction covenants

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.



AV Proceedings

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Papers and overheads also included
Print any of the material for your own use

- This program can be applied towards 9 of the 12 hours of annual Continuing Professional Development (CPD) required by the Law Society of Upper Canada. Please note that these CPD hours are not accredited for the New Member Requirement.
- For Alberta lawyers, consider including this course as a CPD learning activity in your mandatory annual Continuing Professional Development Plan as required by the Law Society of Alberta.
- Attendance at this course can be reported as 10 hours of Continuing Professional Development (CPD) to the Law Society of B.C.
- The Barreau du Québec automatically accredits training activities held outside the Province of Quebec and accredited by another Law Society which has adopted MCLE for its members

RISK ALLOCATION IN COMMERCIAL AGREEMENTS

This session will examine the process of identifying, analyzing, responding to and controlling risks inherent in business negotiations.

- Assessing risks prior to entering contracts
- Risk identification process
- Understanding your clients risk tolerance
- Practical ways to manage risks inside and outside of contracts

EXCLUSION CLAUSES: IMPACT OF COURT RULINGS

This session will look at the drafting and enforceability of exclusion clauses, providing drafting tips from a litigation perspective, focussing on how exclusion clauses should be structured.

- Three-stage test that considers whether a clause actually applies to the type of breach that is alleged
- Enforceability of exclusion clauses: key-drafting concerns from a litigation perspective
- Doctrine of “fundamental breach”

DRAFTING OPINIONS FOR COMMERCIAL TRANSACTIONS

An increase in e-commerce and cross-border deals being entered into by businesses of all sizes has heightened the need for the preparation of legal opinions which ought to be considered during the drafting of commercial agreements. This session will examine the opinion drafting process.

- Best practices for crafting opinions
- Key considerations
- Types of opinions sought by counsel
- Securities law considerations in share transactions
- Jurisdictional considerations and risks involved in opinion drafting

DRAFTING IT AGREEMENTS

The pervasiveness of IT has made knowledge of the IT contracting process ever more necessary. This session will discuss key considerations in IT licensing and service agreements.

- Key clauses in IT Agreements
- Various models for licensing software
- Overlap between licenses and service agreements
- Service level metrics and remedies for non-compliance
- Statements of work in IT consulting and the lawyer’s role
- Other issues: privacy, vendor lock-in, third party and open source software

PRACTICAL CONSIDERATIONS IN COMMERCIAL CONTRACTS

This presentation will examine key pre-transaction issues, looking at international agreements and risk allocation processes.

- Setting the stage for ongoing relations between the parties: clarifying objectives and setting strategy
- Dealing with sale of goods and IP licensing
- How to address legal and regulatory compliance issues
- Letters of intent and MOUs
- Avoiding drafting pitfalls in international agreements

CROSS-BORDER AGREEMENTS

Drafting precise commercial agreements play a vital role in achieving successful cross-border business results, as disputes about the interpretation of written contracts are one of the largest sources of commercial litigation. This session will examine legal considerations in drafting cross-border commercial agreements.

- Pre-negotiation due diligence and preparations
- Use of local and Canadian counsel
- Key contract terms and provisions
- Strategies for cross-jurisdictional joint ventures
- Effectively dealing with local laws and governmental requirements
- Identifying and managing special risks in cross-border transactions
- Dispute resolution
- Negotiating with non-English speakers

INTERNATIONAL COMMERCIAL AGREEMENTS

With businesses of all sizes entering into international business agreements, more contracts are negotiated and drafted across international boundaries. This session explore practical drafting techniques necessary to successfully convert an international deal into a bulletproof written agreement from an in-house counsel perspective.

- Pre-negotiation due diligence and preparations
- Characteristics and business drivers of cross-border deals
- Common structures for cross-border deals
- Dealing with local laws, regulatory requirements, local customs and culture
- Identifying and managing special risks in international transactions

DRAFTING CONFIDENTIALITY AND OTHER RESTRICTIVE COVENANT PROVISIONS

Confidentiality agreements constitute an important component of any transaction. Getting this agreement right is key to avoiding the negative consequences to the business of a breach of confidence or disclosure of confidential information.

- Determining what to disclose
- Timing of disclosure
- Two-way disclosure considerations
- Required disclosure to third parties
- Practical drafting considerations

WORKSHOP

DISPUTE RESOLUTION

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
- Workings of the doctrine of frustration
- Inclusion of constructive performance obligations

PROCEEDINGS

Your registration includes an interactive multimedia CD-ROM comprising the following presentations from recent Federated Press courses and conferences. They are presented in their entirety with complete audio and accompanying slides.

For an additional \$175 to the registration fee, you can receive the multimedia proceedings of the course on CD-ROM, containing all presentations given at event. If not registered for the event, the cost of this CD, is \$599.

To receive the presentations described below as well as the presentations given at the event, the cost is \$799.00.

Strategies in Drafting Contractual Provisions

Frank DeLuca
Cassels Brock & Blackwell LLP

Pre-Transaction & Early Stage Agreements

Richard Corley
Blake, Cassels & Graydon LLP

Drafting & Use of Boilerplate Clauses

Diane Brooks
Blaney McMurtry LLP

Exclusion Clauses: Impact of Court Rulings

Alan Gahtan
Gahtan Law Office

Drafting Opinions for Commercial Transactions

Jill P. Fraser
Aird & Berlis LLP

Risk Allocation in Commercial Agreements

J.R. Beaudrie
McMillan LLP

Drafting Rights, Obligations, Exclusion and Limitation Clauses

Teresa A. Reguly
Torys LLP

Panel Discussion: Legal Frameworks for Drafting Commercial Agreements

Pierre Souldard
Norton Rose Canada LLP

Drafting Non-Competition Provisions

Jesslyn G. Maurier
Bennett Jones LLP

Competition Act and Investment Canada Act Provisions in M&A Agreements

Omar Wakil
Torys LLP

Drafting IT Agreements

Mark Johnson
Infusion Development

Case Study: Practical Considerations in Commercial Contracts

Sean S. Caragata
Cisco Systems, Inc.

Exclusion Clauses: Impact of Court Rulings

Glen B. Scott, Q.C.
Brownlee LLP

Legal Framework for Drafting Commercial Agreements

Laura M. Safran, Q.C.
Davis LLP

Drafting International Commercial Agreements

Bryan C. Haynes
Bennett Jones LLP

Strategies in Drafting Contractual Provisions

Kathy I. Pawluk
Value Creation Inc. - Value Creation Group of Companies

Practical Negotiating Techniques for Contracts & Agreements

Constance L. Crosby
Cisco Systems

Confidentiality Agreements and Letters of Intent

Martina Nikolic
Aecon Group Inc.

Joint Venture & Strategic Alliance Agreements

David M. Shaw
Blake Cassels & Graydon LLP

Negotiating Shareholder's Agreements

Gary Solway
Bennett Jones LLP

Drafting and Negotiating a Successful Service Level Agreement

Charles G. Alexander
Citibank Canada

International & Cross-Border Agreements

Dale Scott
General Electric

Electronic Contracts

Parna Sabet-Stephenson
Blake, Cassels & Graydon LLP

Outsourcing Agreement Negotiations

Lisa K. Abe-Oldenburg
Fasken Martineau DuMoulin LLP

Key Clauses to be Aware of in Mining Agreements: Understanding the Legalities of Contract Mining Agreement

Ann Watterworth
Cassels Brock & Blackwell LLP

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: Sheraton Cavalier Calgary Hotel, 2620 32nd Avenue NE, Calgary, AB, T1Y 6B8

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.

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 5:00 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 less 15% administration fee will be provided upon cancellation in writing received prior to October 1, 2014. No refunds will be issued after this date.

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

Payment must be received prior to October 7, 2014

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TO REGISTER FOR 10TH ESSENTIALS OF COMMERCIAL CONTRACTS

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Approving Manager Title _____
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Please bill my credit card: <input type="checkbox"/> AMEX <input type="checkbox"/> VISA <input type="checkbox"/> Mastercard
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COURSE: \$1975
COURSE + PROCEEDINGS CD-ROM: \$1975 + \$175 = \$2150
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