



ANNUAL REVIEW OF
INSOLVENCY LAW

10th conference

NATIONAL CENTRE FOR BUSINESS LAW

FEBRUARY 8, 2013, MONTRÉAL, QUÉBEC

Conference Co-Chairs:

Mr. Justice Clément Gascon, Québec Court of Appeal

Mr. Justice Robert Mongeon, Québec Superior Court

Jean-Daniel Breton, Ernst & Young Inc., Montréal, IIC

Dr. Janis Sarra, UBC Faculty of Law and Peter Wall Institute for Advanced Studies, Vancouver, IIC, Co-editor in Chief, Annual Review of Insolvency Law, UBC

THURSDAY FEBRUARY 7, 2013

LE PARQUET, 1000, PLACE JEAN-PAUL-RIOPELLE, MONTRÉAL

6:00 pm - 7:15 pm **OPENING RECEPTION**

Reception co-hosted by Borden Ladner Gervais LLP and PwC

FRIDAY FEBRUARY 8, 2013

PALAIS DES CONGRÈS DE MONTRÉAL, 159, RUE SAINT-ANTOINE OUEST, MONTRÉAL

7:15 am Breakfast, Palais des Congrès

8:00 am Welcome **Mr. Justice Clément Gascon**, Québec Court of Appeal, Conference Co-chair

8:15 am Keynote speaker

9:00 am - 9:50 am **Plenary Panel - 10 years of the Annual Review of Insolvency Law**

Chair: **Mr. Justice Mark Schrager**, Québec Superior Court

Dr. Janis Sarra, UBC Faculty of Law and Peter Wall Institute for Advanced Studies, IIC

Reflections on the Changing Framework of Insolvency Restructurings

Madam Justice Barbara Romaine, Alberta Court of Queen's Bench

Reflections on Sovereignty and Comity: Ten Years Later

Neil Narfason, Ernst & Young Inc., Calgary, CIRP, IIC

Reflections on the Evolving Role of the Monitor and the Question of Monitor Independence

Natasha MacParland, Davies Ward Phillips & Vineberg LLP, Toronto

Directors, Officers and Governance Ten Years Later

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10:00 am - 10:50 am CONCURRENT PANELS

PANEL A After the Supremes, Part I - Indalex
Chair: **Madam Justice Georgina Jackson**, Saskatchewan Court of Appeal
Barry Wadsworth, Canadian Autoworkers Union, Toronto
Natasha VandenHoven, Davies Ward Phillips & Vineberg LLP, Toronto
Sean Dunphy, Russell Hill Advisory Services Inc, Toronto, IIC
Dr. Ronald Davis, UBC Faculty of Law, Vancouver

PANEL B A Catalyst for What?
Chair: **Mr. Justice Herman Wilton-Siegel**, Ontario Superior Court
Kibben Jackson, Fasken Martineau DuMoulin LLP, Vancouver, IIC and **Mica Arlette**, PwC, Toronto, CIRP, *Critical Thinking: Supply, Credit and Other Critical Supplier Considerations in CCAA Proceedings*, co-authored with Danielle Toigo, Fasken Martineau DuMoulin LLP
Helen Sevenoaks and **Steven Dvorak**, Bull, Housser & Tupper LLP, Vancouver,
Section 11.4 CCAA and Beyond: A "Critical" Look at Critical Supplier Orders and the Payment of Pre-filing Claims
Peter Rubin, Blakes LLP, Vancouver

PANEL C Best Practices in Consumer Insolvencies
Chair: **Madam Justice Adèle Kent**, Alberta Court of Queen's Bench
Guylaine Houle, Pierre Roy & Accociés Inc., Montréal, BCL, CIRP,
The End of Insolvency Marketing as We Know It
Registrar Michael J. Bray, (Ret.) Court of Queen's Bench of New Brunswick and Professor **Micheline Gleixner**,
Université de Moncton Faculté de droit, Canadian Consumer Insolvency: The Implementation of Emerging International Best Practices
Professor Stephanie Ben-Ishai, Osgoode Hall Law School, Toronto, IIC

10:50 am HEALTH BREAK

11:00 am - 11:50 am CONCURRENT PANELS

PANEL D After the Supremes Part II - Environmental Claims in Insolvency Proceedings
Chair: **Mr. Justice David Tysoe**, British Columbia Court of Appeal
Dianne Saxe, Saxe Law Office, Toronto
Anna Lund, PhD student, UBC, *Environmental Issues in Abitibi's Insolvency, Examining the Regulator-Creditor and Past-Operations Expense Tests*
Sylvain Rigaud, Norton Rose Canada, Montréal, IIC
Philippe Bélanger, McCarthy Tétrault, Montréal, IIC

PANEL E Unsecured Creditors' Committees in Canadian Proceedings
Chair: **Madam Justice Juliana Topolniski**, Alberta Court of Queen's Bench
Tevia Jeffries, Fraser Milner Casgrain LLP, Vancouver, *Unsecured Creditors' Committees in Canada and the United States: Does the Canadian Monitor Play a More Effective Role in Restructuring?*
Jay Carfagnini, Goodmans LLP, Toronto, IIC
Elizabeth Pillon, Stikeman Elliott LLP, Toronto, IIC
Raymond Massi, RSM Richter, Montréal, CIRP, IIC

PANEL F Wagering on the Wage Earner Protection Program
Chair: **Madam Justice Lynne Leitch**, Ontario Superior Court of Justice
Jean-Daniel Breton, Ernst & Young Inc., Montréal, CIRP, IIC, *WEPPA - What Ails It and Can It Be Fixed?*
Darren Crocker, BDO Canada Limited, Edmonton, CIRP
Naida Kornuta, MNP Ltd., Saskatoon, CIRP

12:00 pm - 12:30 pm CONCURRENT SESSIONS

PANEL G Case Comment Georges Marciano
Chair: **Madam Justice Jo Anne Strekat**, Alberta Court of Queen's Bench
Bernard Boucher, Blake, Cassels & Graydon, LLP, Montréal, *Case Comment Québec Court of Appeal Judgment in Georges Marciano*
Bernard Brunet, PwC, Montréal
Julie Himo, Norton Rose Canada, Montréal

PANEL H Case Comment New Page Port Hawkesbury
Chair: **Mr. Justice Pierre Dalphond**, Québec Court of Appeal
Mathew Harris, Deloitte, IIC and **John Stringer**, McInnes Cooper, Halifax, IIC, *Case Comment New Page Port Hawkesbury proceedings*, co-authored with Ben Dunford, McInnes Cooper, Halifax

PANEL I Consumer Bankruptcy and Coerced Debt
Chair: **Madam Justice Myra Bielby**, Alberta Court of Appeal
Professor Angela Littwin, School of Law, University of Texas at Austin, *Escaping Battered Credit*
Karen Fellowes, Davis LLP, Calgary

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12:35 pm LUNCH
Introduction of keynote speaker, **Mr. Justice Robert Mongeon**, Québec Superior Court, conference co-chair
Keynote speaker

2:00 pm - 2:45pm CONCURRENT PANELS

PANEL J Charting a New Course
Chair: **Madam Justice Shelley Fitzpatrick**, British Columbia Supreme Court
Robert Thornton, IIC and **D. J. Miller**, Thornton Grout Finnigan LLP, Toronto; **Hugh O'Reilly** and **Amanda Darrach**, Cavalluzzo Hayes Shilton McIntyre & Cornish, Toronto, *Charting A New Course: Best Practices When Dealing with Employees, Retirees and Union Stakeholders in a Restructuring*

PANEL K Rainbows and Pots of Gold
Chair: **Madam Justice Karen Horner**, Alberta Court of Queen's Bench
Derrick Tay, Gowling Lafleur Henderson LLP, Toronto, IIC, *Friend or Foe – Distressed Debt Investors in the Canadian Insolvency World*
Andrew J.F. Kent, McMillan LLP, Toronto, IIC, *Crystallex: Fighting Over the Rainbow*
Sylvain Vauclair, Woods LLP, Montréal, IIC
Paul Casey, Deloitte, Toronto, CIRP

PANEL L Real Estate Woes
Chair: **Mr. Justice Robert Sewell**, British Columbia Supreme Court
Jeffrey Oliver, Gowling Lafleur Henderson LLP, Calgary, *Straw Borrower Mortgage Fraud and the BIA: Real Estate Boom to Bankruptcy Bust?*
William Skelly, Heenan Blaikie LLP, Vancouver, IIC, *To Forbear (or Not): The Inevitable Question*, co-authored with Benjamin La Borie
Steve Graff, Aird & Berlis LLP, Toronto, *Issues in the Prizm Proceedings*
Deryck Helkaa, FTI Consulting Canada Inc., Calgary, IIC

2:55 pm - 3:45 pm CONCURRENT PANELS

PANEL M Court to Court Cooperation
Chair: **Mr. Justice Geoffrey Morawetz**, Ontario Superior Court of Justice
Mr. Justice Paul Heath, High Court of New Zealand, New Zealand, *Where's the Gold? The Case of the Missing Bullion*
Mr. Justice Alastair Norris, UK High Court, London
Jenny Clift, UNCITRAL, Vienna, Austria

PANEL N Recent Challenges in Insolvency Proceedings
Chair: **Mr. Justice Frank Newbould**, Ontario Superior Court
Martin Rosenthal, Ernst & Young Inc., Montréal, IIC, *Sales Process Dynamics – The Monitor's Perspective*
Marc Duchesne, Borden Ladner Gervais LLP, Montréal, IIC, *The Scope of the Regulatory Carve Out in the CCAA* co-authored with Michael MacNaughton, Borden Ladner Gervais LLP, Toronto
Toni Vanderlaan, FTI Consulting Canada Inc, Toronto, *Bitter Bidders and Extreme Sport Bidding*
Alan Hutchens, Alvarez & Marsal, Toronto

PANEL O Cultural Considerations in Cross-Border Proceedings
Chair: **Madam Justice Chantal Corriveau**, Québec Superior Court
Allan Nackan, Farber Financial Group, Toronto, CIRP, **Paul J. Keenan Jr.**, Greenberg Traurig P.A., US
Jean Baron, SCP Caviglioli-Baron-Fourquie, France, and **Rodrigo Callejas Aquino**, Carrillo y Asociados, Guatemala, *Cultural Matters in Fashioning a Cross-Border Workout*

3:55 pm - 4:40 pm CONCURRENT PANELS

PANEL P A Matter of Life and Death
Chair: **Mr. Justice Paul Walker**, Supreme Court of British Columbia
Gordon Dunning, Assuris, Toronto, IIC, **Geoff Hall** and **James Gage**, McCarthy Tétrault LLP, Toronto, IIC, *A Matter of Life and Death, Life Insurance Companies and the Meaning of "Insolvency" under the Winding-Up Act and Restructuring Act*
Stephanie Greer, Assuris, Toronto

PANEL Q Securities Firm Bankruptcies
Chair: **Mr. Justice Louis Guin**, Québec Superior Court
Craig Hill, Borden Ladner Gervais LLP, Toronto, IIC, *Securities Firm Bankruptcies and Part XII of the BIA*
Brian Denega, Ernst & Young Inc., Toronto, IIC
Rosanne Rezel, Canadian Investor Protection Fund
Elizabeth Murphy, KPMG, Toronto

PANEL R Sovereign Bankruptcy
Chair: **Mr. Justice Colin Campbell**, Ontario Superior Court
Dr. Ignacio Tirado, Universidad Autonoma de Madrid, Spain, *Sovereign Insolvency in the Euro Zone, Public Law and Private Remedies*
Professor Mitu Gulati, Duke University School of Law
Professor Anna Gelpert, American University Washington College of Law, Washington DC



FRIDAY FEBRUARY 8, 2013

PALAIS DES CONGRÈS DE MONTRÉAL, 159, RUE SAINT-ANTOINE OUEST, MONTRÉAL

4:45 pm Plenary Session A Toast to the Honourable Lloyd Houlden
Mr. Justice Geoffrey Morawetz, Ontario Superior Court of Justice
The Honourable James Farley, McCarthy Tétrault LLP, Toronto, IIC

5:00 pm Closing thanks **Madam Justice Barbara Romaine**, Alberta Court of Queen's Bench and Co-Editor in Chief, Annual Review of Insolvency Law, 2012
Conference Ends

7:00 pm Conference dinner

**ALL CONFERENCE PARTICIPANTS ARE INVITED TO DINNER
AT THE ATRIUM OF THE HOTEL INTERCONTINENTAL**



Hosted by Fraser Milner Casgrain LLP
Intercontinental Montréal, 360 Saint-Antoine Street West, Montréal



REGISTRATION

Conference fee is \$950 (plus applicable taxes), \$200 for Judges, articling students, full time academics /Juges, étudiants stagiaires et professeurs à temps plein. To register for **the Annual Review of Insolvency Law Conference** visit www.aril2013.ca.

The complete program will qualify for 7 MPD hours for CAIRP members / le programme complet donne droit à 7 heures de PPO pour les membres de l'ACPIR. This event also qualifies for CLE credits in British Columbia, Alberta and Ontario. For information on CLE credits in any other province or territory, please contact Michelle Burchill at burchill@law.ubc.ca. There are a limited number of subsidized places for practitioners for whom cost is a barrier, please contact Janis Sarra (Janis.sarra@pwias.ubc.ca). Quelques places sont disponibles pour les personnes pour qui le coût pourrait être un obstacle. Si c'est le cas, SVP communiquez avec Janis Sarra (Janis.sarra@pwias.ubc.ca).

For more information please contact /pour tout information n'hésitez pas à communiquer avec Michelle Burchill, 604-822-5018 or/ou burchill@law.ubc.ca.

ACCOMMODATION

Intercontinental Montréal, 360 Saint-Antoine Street West, Montréal, Québec, Canada, H2Y 3X4

Room Rates (must reserve before January 7, 2013):

Deluxe Irresistable Single or Double Occupancy plus taxes	\$159.00
Club InterContinental Single or Double Occupancy plus taxes	\$219.00
Iconic Tourelle Suite Single or Double Occupancy plus taxes	\$259.00

Each delegate is responsible for making their own individual reservations. Please contact the Reservations Department by phone: (514) 847.8525 or toll free from Canada and USA: 1.800.361.3600, by fax: (514) 847.8730.

Callers must identify themselves as being with the Annual Review of Insolvency Law in order to qualify for the group rate and must call prior to January 7, 2013. Room rates cannot be changed at check-in/check-out times for delegates who fail to identify their affiliation at the time of reservation.

On-line bookings can be made at <https://resweb.passkey.com/go/UCBFacultyofLAW>.



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