

4th

Environmental Deal-breakers in Real Estate and Business Transactions

Avoiding key environmental liabilities in purchase, sale and lease transactions

Workshop Included: Dealing With Environmental Risk In Industrial And Commercial Leasing

participating organizations

Blaney McMurty LLP
Borden Ladner Gervais LLP
Davis LLP
Fasken Martineau DuMoulin LLP
Goodmans LLP
Marsh Canada
Miller Thomson LLP
Osler Hoskin & Harcourt LLP
Saxe Law Office
Torys LLP
Willms & Shier Environmental Lawyers LLP

who should attend

Lawyers in Commercial & Industrial Real Estate or Environmental Practice; Developers; Property Owners; M&A Specialists; Manufacturers; Finance & Lending Officers; Real Estate Investors; Insurers

course highlights

- Discover how to structure the transaction to allocate environmental liability
- Learn how to conduct effective environmental due diligence in the context of a real estate transaction
- Examine how to create an ironclad defence in case of contractual disputes
- Discover how contractual provisions can be used to mitigate liability associated with redevelopment of contaminated sites
- Learn how to negotiate environmental problems in purchase and sale agreements
- Learn about the most important drafting measures to protect landlords and tenants in commercial lease agreements



Course Leader
Rosalind Cooper,
Fasken Martineau DuMoulin LLP



Janet Bobechko,
Blaney McMurty LLP



Rick Coburn,
Borden Ladner Gervais LLP



David Crocker,
Davis LLP



Catherine Lyons,
Goodmans LLP



George Boire,
Marsh Canada



Bryan J. Buttigieg,
Miller Thomson LLP



C.W. Daniel Kirby,
Osler Hoskin & Harcourt LLP



Dianne Saxe,
Saxe Law Office



Michael Fortier,
Torys LLP



Marc McAre,
Willms & Shier Environmental Lawyers LLP

FACULTY

COURSE LEADER

ROSALIND COOPER

Rosalind H. Cooper is a partner with **Fasken Martineau Dumoulin LLP** and Director of the Toronto office's Environmental Practice Group. She has extensive experience advising on all environmental regulatory issues.

CO-LECTURERS

JANET BOBECHKO

Janet Bobechko is a partner at **Blaney McMurtry LLP**. She has been on the Canadian Brownfield Network-Advisory Panel since its inception to 2009. Her practice deals exclusively with all aspects of environmental law.

RICK COBURN

Rick Coburn is a partner at **Borden Ladner Gervais LLP**. He practises environmental law, with an emphasis on environmental aspects of Brownfields development, corporate acquisitions and financing.

DAVID CROCKER

David Crocker is with **Davis LLP**. His practice involves all areas of environmental law. He reviews and revises environmental assessment audits in the context of corporate M&As, real estate transactions and corporate reorganizations.

CATHERINE LYONS

Kate Lyons is a partner at **Goodmans LLP**. Her environmental expertise extends to providing advice on corporate transactions involving the evaluation and allocation of environmental risks and costs.

GEORGE BOIRE

George Boire is the Environmental Practice Leader for **Marsh Canada**. His responsibilities include managing the operations, acting as a senior advisor.

C.W. DANIEL KIRBY

Dan Kirby is a partner at **Osler, Hoskin & Harcourt LLP** and Co-Chair in the firm's Environmental Law Group.

BRYAN J. BUTTIGIEG

Bryan Buttigieg of **Miller Thomson**, practices commercial litigation and environmental law. He has represented clients in litigation arising out of the sale, purchase and use of contaminated property.

DIANNE SAXE

One of Canada's first Certified Specialists in Environmental Law, Dianne Saxe of **Saxe Law Office** has 33 years of experience in all areas of environmental law and litigation.

MICHAEL FORTIER

Michael Fortier is a partner at **Torys LLP**. His practice focuses on assisting buyers, sellers, investors, underwriters and others through all environmental aspects of deals.

MARC MCAREE

Marc McAree with **Willms & Shier** practises environmental, land use planning and municipal law and civil litigation.

COURSE PROGRAM

STRUCTURING THE TRANSACTION TO ALLOCATE ENVIRONMENTAL LIABILITY

Environmental liabilities are unique and complex. General provisions of agreements are unlikely to effectively deal with environment liabilities. Special contract terms will be required. This discussion explains key environmental liabilities and outlines options for allocating them within a contract.

- The limits of contractual protection
- Site investigation: avoiding surprises and what to do about them
- Resolving ambiguity in contract terms dealing with environmental risk
- Dealing with significant environmental issues identified during due diligence period
- Dealing with offsite liability
- Liability to successors in title

CONDUCTING A THOROUGH ENVIRONMENTAL DUE DILIGENCE: HOW MUCH IS ENOUGH?

In light of the wide array of environmental laws and regulations in place, it is essential for prospective purchasers to have an understanding of whether the underlying property is contaminated, the degree of contamination and what effect contamination will have on the transaction. This session will look at environmental due diligence and how far the purchaser or lender should go.

- The innocent purchaser defence
- What is "reasonable" in the context of making reasonable inquiries to determine the nature and extent of contamination
- Lender liability issues
- Conducting environmental site assessments
- The role of consultants in the due diligence process

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 Real Estate Channel, a much broader resource representing hundreds of hours of interactive multimedia lectures on leading edge Real Estate topics as delivered at our many recent Real Estate conferences and courses.



SO YOU'VE BOUGHT DIRTY PROPERTY: DEALING WITH LIABILITY AND TIPS FOR REDEVELOPMENT

Brownfield redevelopment has for too long had a undeserved reputation of being high risk and burdened with uncertainty. The perception is that almost anyone associated with a brownfield development can be held liable for problems with a site, often with no time limit. This discussion details potential contaminated site liability and how to overcome these issues in the redevelopment process.

- Who faces liability as an owner or operator at common law?
- The MOE's approach to remediation orders
- Provincial prohibitions on changing use and building on contaminated lands
- Municipal policies and brownfield redevelopment
- Risk assessment vs. clean-up: practical and legal issues
- Tips for mitigating legal risks in redevelopment

ENVIRONMENTAL RISK AND SECURITIES DISCLOSURE

While it has been clear for some time that NI 51-102 requires issuers to disclose material information about environmental matters in their financial statements, MD&A and the annual information form, more recent discussion has focussed on the content and extent of such disclosure. This discussion addresses the pitfalls that can arise when too much or too little disclosure occurs.

- The concept of "materiality" in continuous disclosure documents
- Environmental liability and critical accounting estimates
- Asset retirement obligations
- Environmental disclosure in initial offering documents
- Financial and operational effects of environmental protection requirements
- OSC and SEC rules, including the impact of CEO and CFO certifications on environmental disclosure

WORKING WITH ENVIRONMENTAL CONSULTANTS ON CONTAMINATED SITES

Many consultants insist on contracts that limit their liability. The terms and conditions of some contracts even provide that clients must indemnify and hold the consultants harmless, even against the consultant's own negligence. The net effect is that the client bears virtually all the risk of anything that may happen on the site, no matter how negligent the consultant. This discussion details the legal basis for the growing concern and how consultants and their clients can avoid such liability.

- Consultant's liability for negligence
- Legal protection for consultant negligence
- Strict liability for consultants for environmental cleanup
- Negotiating more balanced terms and conditions

ADDRESSING ENVIRONMENTAL ISSUES IN NEGOTIATING PURCHASE AND SALE AGREEMENTS

This discussion details the transaction structures a purchaser can implement to assess, limit and manage its environmental liabilities on acquiring property.

- Transfer of assets deal
- Forming a subsidiary to acquire the property
- Establishing a limited liability company
- Lease agreements
- Due diligence

DEALING WITH SPECIFIC CONTAMINANTS AND SITUATIONS FOLLOWING AN AUDIT

Once the audit has found environmental concerns, the question becomes how to deal with the problem in the context of the purchase, lease or financing agreement. This discussion details some of the more common environmental concerns that arise from an audit and their impact on the real estate transaction.

- Negotiation of corrective action plans for leaking underground storage tanks
- Negotiating the purchase price based on the result of the due diligence process
- Asbestos removal
- Dealing with Polychlorinated biphenyls in the transaction
- Indoor air quality

NAVIGATING THE ONTARIO GOVERNMENT'S ENVIRONMENTAL ASSESSMENT PROCESS

Dealing with environmental assessments when buying government land can be a daunting and complicated task. This discussion details the implications of environmental assessment process when purchasing government lands.

- Knowing your rights and obligations
- Working with the government to negotiate an outcome you can live with
- Duty to consult the Aboriginal community
- Dealing with heritage issues
- Current trends in environmental assessments: where is the assessment process heading?

USING INSURANCE TO MITIGATE THE COSTS OF ENVIRONMENTAL RISKS

This discussion details the use of insurance to cover potential environmental liability issues in real estate transactions.

- When insurance can be used to cover environmental cleanups
- Under what conditions will cleanup costs be rejected
- Common exclusions from insurance coverage and subtle exclusions you may not be aware of
- Obtaining coverage for undisclosed problems at the time of obtaining the policy

WORKSHOP

DEALING WITH ENVIRONMENTAL RISK IN INDUSTRIAL AND COMMERCIAL LEASING

How are environmental issues negotiated into commercial lease agreements and what concerns should a landlord or tenant be aware of? Understanding the nature of environmental problems that may be encountered when structuring a lease agreement is essential to avoid the risk of facing huge environmental liabilities and exorbitant cleanup costs. This presentation details environmental issues associated with leasing.

- Liability and responsibility for contaminated projects
- Conducting pre-lease due diligence
- Landlord representations and warranties regarding environmental conditions
- Tenant representations and warranties regarding operations as to environmental use
- Landlord pre-delivery obligations regarding environmental condition
- Impact of environmental conditions on tenant repair obligations
- Impact of tenant's environmental use on landlord repair 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.

Brownfields Redevelopment

Dr. Andrew Panko,
Associated Brownfields Inc.

Remedial Technologies And Their Application In Brownfield Projects

Didier Lapointe,
Jacques Whitford Ltd.

Site Assembly: The Use Of Conditional Contracts And Options

Edward M. Perlmutter,
Blakes, Cassels & Graydon LLP

City Of Kitchener's Coal Tar Remediation Project

Dave Innocente,
MTE Consultants Inc.

Putting Private Equity To Work

David Harper,
Kilmer Brownfield Equity Fund L.P.

Security Issues For Landlords & Tenants In Commercial Leases

Gordon Love,
Vaughan, Wills & Murphy LLP

Environmental Issues & Architectural Solutions

Les Klein,
Quadrangle Architects

Assemble & Cultivate Brownfield Knowledge: The Municipal Advantage

Mike Bingham,
City of Hamilton

Legal Status Of Landlord & Tenant

Craig S. Harkness,
Osler, Hoskin & Harcourt LLP

Conducting An Environmental Assessment

Ed Rodrigues,
Golder Associates

Analyzing The Financial Feasibility Of A Development Project: Operating Budget

G. John Fleming,
Altus Helyar Cost Consulting

Best Practices Solutions To Deal With Threatening Issues

Margaret Knowles,
Morguard Investments Ltd.

Green Leases For Healthy Buildings

Michael Glassco,
Theodor Sterling Associates Ltd.

Public-Private Partnership Development

Donna Mayer,
Canada Mortgage Housing Corporation

Insurance Issues In Leasing

Jennifer Elford,
Aon Reed Stenhouse Inc.

Structuring The Transaction To Allocate Environmental Liability

Gary A. Letcher,
Edwards, Kenny & Bray LLP

So You've Bought Dirty Property: Dealing With Liability & Tips For Redevelopment

Bradley Gilmour,
Bennett Jones LLP

Working With Environment Consultants On Contaminated Sites

Bradley Gilmour,
Bennett Jones LLP

Conducting A Thorough Due Diligence: How Much Is Enough

Duff Harper,
Blake, Cassels & Graydon LLP

Addressing Environmental Issues In Negotiating Purchase & Sale Agreements

Kathleen Kendrick,
Miller Thomson LLP

Dealing With Specific Contaminants And Situations Following An Audit

Heather Charbonneau & Gary Chan,
Stantec Consulting Ltd.

Navigating The Provincial Environmental Process

Will Gaherty,
Pottinger Gaherty Environmental Consultants Ltd.

Dealing With Environmental Risk In Industrial Leasing

Colin Lipsett,
Davis LLP

Constructing The Business Case For A Brownfields Project

Jonathan Hack,
IBI Group

Ontario's Programs & Initiatives To Facilitate Brownfields Redevelopment

Hon Q. Lu,
Ministry Of Municipal Affairs And Housing

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: Metropolitan Hotel, 108 Chestnut Street, Toronto, Ontario, M5G 1R3

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 January 19, 2011. 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.

Payment must be received prior to January 25, 2011

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