

5th Environmental Deal-breakers in Real Estate and Business Transactions

sponsored by:



Avoiding key environmental liabilities in purchase, sale and lease transactions

"Good opportunity to share experiences with other in-house counsels and colleagues in private practice."

"Learned things I can use in ongoing work."

"Good overview of the topics."

April 26 & 27, 2011, Vancouver

Two-Day Event!

Workshop Included: Structuring The Transaction To Allocate Environmental Liability

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

participating organizations

Bennett Jones LLP
Blake, Cassels & Graydon LLP
Borden Ladner Gervais LLP
Edwards, Kenny & Bray LLP
Golder Associates Ltd.
Houlihan & Associates
Miller Thomson LLP
Pottinger Gaherty Environmental Consultants Ltd.
TransLink
Willms & Shier Environmental Lawyers LLP

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
Gary A. Letcher,
Edwards, Kenny
& Bray LLP



Paul R. Cassidy,
Blake, Cassels
& Graydon LLP



Phil Christie,
TransLink



Tony Crossman,
Miller Thomson
LLP



Brad Gilmour,
Bennett Jones
LLP



Patricia
Houlihan,
Houlihan &
Associates



Marc Mcaree,
Willms & Shier
Environmental
Lawyers LLP



Deborah
Overholt,
Borden Ladner
Gervais LLP



Guy Patrick,
Golder Associ-
ates Ltd.

as well as:
Will Gaherty,
Pottinger
Gaherty
Environmental
Consultants Ltd.

FACULTY

COURSE LEADER

GARY A. LETCHER

Gary Letcher is a partner at **Edwards, Kenny & Bray LLP**, with a practice in environmental law and civil litigation. Mr. Letcher has been at the forefront of environmental law and sustainability issues in Western Canada for over 30 years.

CO-LECTURERS

PAUL R. CASSIDY

Paul R. Cassidy is a Partner at **Blake, Cassels & Graydon LLP**. He is one of Canada's leading environmental lawyers.

PHIL CHRISTIE

Phil Christie is Vice President Real Estate at **TransLink**, where he is responsible for the management of land and property assets.

TONY CROSSMAN

Tony Crossman is a partner and chair of **Miller Thomson LLP's** National Environmental Law Group, with his practice focus being on Western Canada and the Yukon.

WILL GAHERTY

Will Gaherty is President and a co-founder of **Pottinger Gaherty Environmental Consultants Ltd.**, a firm with offices in B.C. and Ontario.

BRAD GILMOUR

Brad Gilmour is a Partner at **Bennett Jones LLP**. His law practice focuses primarily on environmental, energy, regulatory and aboriginal law.

PATRICIA HOULIHAN

Patricia Houlihan is the Founder of **Houlihan & Associates**.

MARC MCAREE

Marc Mcaree is a Partner at **Willms & Shier Environmental Lawyers LLP**. He is an Environmental Law Specialist, Certified by the Law Society of Upper Canada.

DEBORAH OVERHOLT

Deborah Overholt has over 20 years experience as a lawyer and currently is the Regional Managing Partner of the Vancouver office of **Borden Ladner Gervais LLP**.

GUY PATRICK

Guy Patrick is a Senior Hydrogeologist and Principal with **Golder Associates Ltd.**

COURSE PROGRAM

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 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

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

Brownfield redevelopment has 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

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.



Attendance at this program can be reported as 8.0 hours of Continuing Professional Development (CPD) to the Law Society of B.C.

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: the impact of CEO and CFO certifications on environmental disclosure

WORKING WITH ENVIRONMENTAL CONSULTANTS ON CONTAMINATED SITES: TRANSLINK’S PERSPECTIVE

As a transportation infrastructure developer and land owner and lessee Translink is beginning to more fully appreciate the importance of approaching environmental cleanup from the value added perspective. If environmental work on contaminated sites is approached carefully, costs can be reduced, certainty for the purchaser or developer can be increased and surplus site revenue will grow.

- Cleanup of contaminated sites in support of transportation infrastructure and real estate programs
- Procurement issues: legal protection for environmental consultants
- Negotiating balanced terms and conditions
- Risk management

ADDRESSING ENVIRONMENTAL ISSUES IN NEGOTIATING PURCHASE AND SALE AGREEMENTS

This discussion details the transaction structures that 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 ENVIRONMENTAL ASSESSMENT PROCESS

Dealing with environmental assessments when buying government land can be a daunting and complicated task. This session examines the process.

- 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
- Conditions under which cleanup costs will 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

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

WORKSHOP

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

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

Andrew Panko,
Associated Brownfields Inc.

Site Assembly: The Use Of Conditional Contracts And Options

Edward M. Perlmutter,
Blakes, Cassels & Graydon LLP

Remedial Technologies And Their Application In Brownfield Projects

Didier Lapointe,
Jacques Whitford Ltd.

Security Issues For Landlords & Tenants In Commercial Leases

Gordon Love,
Vaughan, Wills & Murphy LLP

Environmental Issues & Architectural Solutions

Les Klein,
Quadrangle Architects

Conducting An Environmental Assessment

Ed Rodrigues,
Golder Associates

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

City Of Kitchener's Coal Tar Remediation Project

Dave Innocente,
MTE Consultants Inc.

Assemble & Cultivate Brownfield Knowledge: The Municipal Advantage

Mike Bingham,
City of Hamilton

Legal Status Of Landlord & Tenant

Craig S. Harkness,
Osler, Hoskin & Harcourt LLP

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.

Public-Private Partnership Development

Donna Mayer,
Canada Mortgage Housing Corporation

Green Leases For Healthy Buildings

Michael Glassco,
Theodor Sterling Associates Ltd.

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

Environmental Concerns in Leasing

Rachel J. Hamilton & Jennifer Cleall,
Davis 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: Metropolitan Hotel Vancouver, 645 Howe Street, Vancouver, BC, V6C 2Y9

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 April 13, 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 April 19, 2011

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