

NATIONAL CENTRE FOR BUSINESS LAW

SCHOLARSHIP | EDUCATION | ENGAGING THE BUSINESS COMMUNITY

2008 ANNUAL REPORT



UNIVERSITY OF BRITISH COLUMBIA
NATIONAL CENTRE
FOR BUSINESS LAW

JUNE 2008

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A YEAR IN REVIEW

A MESSAGE FROM THE HONOURABLE FRANK IACOBUCCI



One of the overarching goals of the National Centre for Business Law is to connect and involve major players from business, legal practice and education, as well as policy makers and members of the judiciary in an intellectual exchange for the advancement of business law policy. As it celebrates its first eighteen months of operation, the National Centre for Business Law can take great pride in the progress made towards promoting an engaged and active national business law community. The Centre has advanced its ongoing mission to foster an environment where new ideas are shared in an interdisciplinary forum.

Over the past year, the Centre's affiliated scholars have published some innovative and thoughtful scholarship in a broad range of subject areas: securities law, corporate governance, pension fund management, international trade law, insolvency law, and tax treaties. The Centre hosted its first senior executive in residence, Harold Meyerman, and plans are well underway for our executive in residence for the upcoming year, Mr. Thomas d'Acquino. Its business law speakers' series and its special events, such as the roundtable discussion on the BCE judgments, are indicative of the Centre's community-building and educational efforts. Through funds made available by the TSX Capital Markets Research Initiative, the Centre was able to fund two more research projects in its second year, with additional projects funded for 2008-2009.

The National Centre for Business Law continues to set ambitious targets for the coming years. Discourse, education and scholarship remain the key focus in the Centre's activities and I encourage you to contribute to the Centre's continuing success.

I would like to thank the incomparable Dr. Janis Sarra for serving for almost three years as the head of this initiative and then as the first Director of the National Centre. I also welcome the two new Co-Directors, Professor Mary Condon of Osgoode Law School and visiting Owen Chair at UBC Faculty of Law for 2009 and Assistant Professor Cristie Ford. I look forward to working closely with them in the coming year.

THE HONOURABLE FRANK IACOBUCCI QC, LL.D

The Honourable Frank Iacobucci retired as a Justice of the Supreme Court of Canada in 2004 and joined Torys as Counsel. He is currently the Chair of the Board of Directors of Torstar Corporation and Chair of the Dean's Advisory Committee for the National Centre for Business Law.

PLATINUM AFFILIATE OF THE
NATIONAL CENTRE FOR BUSINESS LAW

**FASKEN
MARTINEAU**

DIRECTOR'S MESSAGE

FOUNDING GOLD AFFILIATES
OF THE NATIONAL CENTRE FOR
BUSINESS LAW



The National Centre for Business Law has had an extraordinary year of intellectual engagement, scholarship and community exchange. Its scholars have published books on business organizations, contract law, pension fund management in capital markets and commercial insolvency law. Affiliated scholars are participating at the United Nations Commission on International Trade Law, engaged in judicial training in commercial and corporate law, appearing as expert witnesses before the Senate Committee on Banking, Trade and Commerce, and advising domestic and international governments on development of business law policy.

The Centre continued its Business Law Speakers' series in Vancouver and hosted the first Speakers' series in Calgary in spring 2008, featuring scholars from across Canada and the United States. The Centre hosted a successful Conference on the Olympic Games and Economic Sustainability and organized four high level policy discussions on securities law in global capital markets in Montréal, Toronto, Calgary and Vancouver. The Centre also held a highly successful Symposium on Wind Energy and a Conference on Insolvency Law, generating timely debate on a range of issues. The first students graduated in May 2008 from the Business Law Concentration at UBC Faculty of Law, a new program as part of the LL.B. degree for students with a strong interest in business law.

Our second year of activities has been greatly assisted by the involvement of legal scholars, business leaders, legal practitioners, in-house counsel, government policy makers and members of the judiciary. We thank them for their tremendous support through the contribution of financial resources, support of innovative comparative research, and participation in policy discussions on a broad range of issues, from international trade to the future of Canadian capital markets.

In particular, we thank our affiliated members, whose vision and support has made the Centre a success. Our newest affiliate, Fasken Martineau LLP, particularly merits note, as its generous contribution at the Platinum level will allow the Centre to invite a senior visiting scholar to UBC Faculty of Law each year.

I depart June 30, 2008, for one year sabbatical. My very special thanks to members of the Dean's Advisory Committee, whose insight and leadership has nurtured the National Centre; it has been a tremendous pleasure working with them. Effective July 1, 2008, the Centre welcomes its new Co-Directors, Professor Mary Condon of Osgoode Law School, who will visit UBC Law as the Owen Chair and Assistant Professor Cristie Ford, UBC Faculty of Law. Their commitment and vision will continue to advance the Centre's goals of excellence in research, teaching and community engagement.

Dr. Janis Sarra

Director, National Centre for Business Law

The National Centre was established in 2006. Its mission is to develop a world-class centre for business law scholarship and teaching, and to create a place where challenging ideas are discussed in an honest and open forum to advance the development of business law policy appropriate for a leading market economy.

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THE McLEAN McCUAIG
FOUNDATION

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The Private Life of Environmental Treaties

Natasha Affolder, Assistant Professor

LL.B. (Alberta); BCL (Oxon); D. Phil. (Oxon)



For multilateral environmental agreements to be effective, they must alter the behaviour of actors other than states. As private business corporations are often the ultimate regulatory targets of such agreements, these treaties must influence the investment behaviour of corporations if their aims are to be achieved. Transnational advocacy networks complement their efforts to alter state conduct with campaigns that rely on market forces to influence corporate behaviour. Lenders, investors, shareholders, and insurers are also increasingly sensitive to the need to be seen to finance and support corporate activities that comply with international environmental norms. At the same time, legal scholars have failed to expand their assessment of treaty effectiveness beyond the

confines of the state to account for corporate interactions with treaty norms. Corporations in the extractive industries are interacting directly with World Heritage Convention, often bypassing the state in such interactions. Theories of international treaty effectiveness and of private environmental governance have yet to catch up with this reality. For a copy of Dr. Affolder's study, contact businesslaw@law.ubc.ca.

Dr. Affolder teaches International Business Transactions, Land Use Planning and Sustainable Development Law at UBC Faculty of Law. Her current research includes the international processes for defining areas off-limits to mining, international law, land use planning, and project finance law.

The New Face of CEFTA and its Dispute Resolution Mechanisms

Ljiljana Biukovic, Assistant Professor

LL.B. (University of Belgrade); LL.M. (Central European University, Budapest); LL.M., Ph.D. (Brit. Col.)

The Central European Free Trade Agreement (CEFTA) underwent substantive amendments in December 2006 when Moldova and several countries in the Western Balkans joined as full members. The modernization of CEFTA's dispute settlement mechanism follows two general trends in the evolution of international trade dispute settlement—the increasing judicialization of dispute resolution mechanisms and the growing prevalence of the compulsory jurisdiction of international tribunals.

CEFTA 2006 has the elements of a workable, efficient dispute settlement mechanism. The increased judicialization of CEFTA 2006 is the result of three factors. First, since the EU has been the facilitator of and the driving force behind the establishment of CEFTA, the provisions of those agreements were drafted to comply with the EC Treaty and with the bilateral association agreements concluded between the EU and each member of CEFTA as a means of ensuring that the member countries would meet their obligations under those agreements and would be ready for EU membership. Accordingly, CEFTA's dispute resolution provisions are similar to those that the EU has used with third countries since 2000 and are more in line with WTO practice—judicialization. There was a need to ensure that trade disputes between countries that were not used to cooperating with each other would be resolved efficiently and that awards made in those disputes would be final, binding and enforceable. CEFTA's scope has changed with the accession of the Western Balkan countries to the treaty. Because not all of those countries were members of the WTO, it was not possible to rely, as previously, on the WTO's much more structured and enforceable mechanism in settlement of CEFTA disputes. CEFTA 2006 therefore includes certain dispute resolution provisions that have been tailored to provide additional detailed substantive and procedural rules independent of the WTO rules. Given the fact that CEFTA focuses primarily on trade among member states at similar levels of economic development, it will be interesting to see how workable the CEFTA provision on the mutual exclusivity of proceedings before the WTO and CEFTA tribunals turns out to be. Another issue is whether CEFTA 2006 has established an efficient dispute resolution model. The development of CEFTA's institutional scope and dis-

pute resolution mechanism were influenced by the anticipation by the EU and the rest of the international community that, for historical reasons, the new CEFTA members from the Western Balkans would lack a commitment to cooperate and integrate.

Consequently, the dispute resolution mechanism has drawn away from the political and quasi-judicative models preferred by the EU towards the more judicialized WTO model. The more robust dispute settlement clauses of the modified CEFTA are intended to provide better support for the integration by improving the effectiveness of dispute settlement through minimalization of reliance on national governments' political will and commitment to integration and communitarian law. For a treaty of a transitional nature that is limited by a net of bilateral association agreements, the 2006 modifications can be counted as an important improvement. For a copy of Dr. Biukovic's study, contact businesslaw@law.ubc.ca.



Dr. Biukovic specializes in contracts, European Union law, external relations of the European Union and Global Law at UBC Faculty of Law. Recent publications include: "European Community in Disputes before WTO Tribunals: Challenges of Co-existence of Regional Trade Agreements" (Waseda Proceedings of Comparative Law); and "Compliance with International Treaties: Selective Adaptation Analysis" (The Canadian Yearbook of International Law).

Market and Regulatory Responses to Instability in Financial Products Markets

Janis Sarra, Professor & Director of the National Centre for Business Law

B.A. (Hon); M.A. (Hons.) (Toronto); LL.B., LL.M., S.J.D. (Toronto)



The current difficulties in the financial sector have highlighted some of the vulnerabilities of financial globalization and the risks inherent in rapid development of innovative financial products. Management of risk is a critical feature of financial products, and three features are particularly important: the allocation of risk, transparency, and control. Decreased long-term real interest rates globally led investors to search for higher yield, generating increased willingness to take on risk, which in turn led to rapid growth in the development of

complex structured financial products, such as collateralized debt obligations and asset-backed commercial paper (ABCP). The structure of many of these products resulted in little transparency of the risks inherent in the underlying assets, and little monitoring.

With the downgrade of these products post the US subprime crisis and the drying up of ABCP markets, there have been significantly tighter credit conditions; widening yield spreads; lack of liquidity; deleveraging by financial institutions; and overall market uncertainty. There has also been a decoupling of investment and risk through equity derivatives and credit derivatives, which may skew incentive structures. Greater transparency

is required so that investors can appropriately price investments and assess their risk based on differing risk capacities. Financial institutions have moved towards greater transparency, revealing more of their exposures, and have taken steps to rebuild capital, which has helped to settle markets.

Given reputational risk, rating agencies have strong incentives to improve the quality and information content of their ratings for complex financial instruments, but investors are ultimately responsible for understanding and managing credit risk in their portfolios. Proposed amendments to the *Bank of Canada Act* and recent creative uses of existing restructuring statutes raise interesting questions regarding the appropriate market and regulatory responses to the problems posed by structured financial products.

Dr. Sarra's recent publications include Rescue! The Companies' Creditors Arrangement Act (Toronto, Carswell, 2007); Business Organizations: Principles, Policy and Practice (Emond Publications, 2008), with R. Yalden et al; The 2008 Annotated Bankruptcy and Insolvency Act, with the Honourable Lloyd Houlden and the Honourable Geoffrey Morawetz, (Carswell, 2007); "Conceptualizing Disclosure Regimes in Global Capital Markets," (University of Texas Law School International Journal of Comparative Law, 2007); "Maidum's Challenge, Legal and Governance Issues in Dealing with Cross-Border Business Enterprise Group Insolvencies" (2008) 2 International Insolvency Review; "Drawing Aside the Corporate Veil: Director Liability in Canada" (2008, Kluwer, London) and "Selecting the Judicial Tool to get the Job Done: An Examination of Statutory Interpretation, Discretionary Power and Inherent Jurisdiction in Insolvency Matters," co-authored with Madam Justice Georgina Jackson, in Annual Review of Insolvency Law (Carswell Thomson, 2008).

Contract Law

Bruce MacDougall, Professor

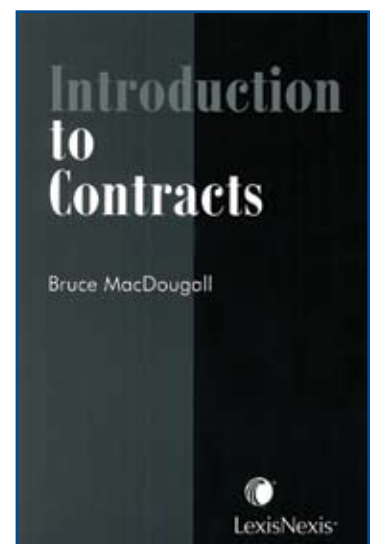
B.A. (Hons.) (Acadia); B.A. (Juris.) (Oxford); LL.B. (Dalhousie); B.C.L. (Oxford); M.A. (Oxford)



Introduction to Contracts, 2007 is a primer covering the law of contracts in Canadian common law jurisdictions. It focuses on the leading authorities and significant statute law and renders contracts concepts accessible and understandable. It is comprehensive in scope and situates contract law within other areas of the law of obligations, including torts and restitution. The text also contains helpful charts summarizing important aspects of the law of contracts (Lexis/Nexis).

Professor MacDougall studied at Oxford University as a Rhodes Scholar and served as Law Clerk at the Supreme Court of Canada for Mr. Justice Gerald Le Dain from 1986-87. Professor MacDougall teaches secured transactions, contract law and commercial transactions at UBC Faculty of Law. He served as Distinguished Research Fellow at King's College, London in 2001 and previously practised law in Toronto and Vancouver.

***Introduction to Contracts* is available online through the LexisNexis online bookstore at www.lexisnexis.ca/bookstore/.**



Pension Funds' Corporate Governance Activity: Democracy and Accountability

Ronald B. Davis, Associate Professor
LL.B. (Toronto); S.J.D. (Toronto)



Pension funds own significant shares of the world's largest corporations. However, the beneficiaries of pensions often have little or no say in corporate governance issues, in spite of their status as owners and even though the environmental, social, and economic performance of these corporations will impact not only their retirement accounts, but also the very world into which they will retire.

Democratizing Pension Funds analyzes the reasons for this passivity, pointing to conflicts of interest with respect to corporate governance activity in pension

plans and also to limitations in corporate, securities, and pension law. These conflicts of interest can be addressed by giving plan members a voice in pension plan governance, as well as making the pension plan accountable to them. A series of legal reforms are necessary to implement accountability. There is a need for democracy and accountability in the governance of trillions of dollars of plan members' pension plan assets in order to enhance the legitimacy of the present, mostly unaccountable, corporate governance decisions made by these plans.

Dr. Davis is a nationally recognized expert in pension law. His research and teaching expertise extends also to corporate law, corporate governance, law and economics, and trust law. He has recently written a major research report, "Protecting the Fund," and co-authored another, "Analysis of Factors Leading to Restructurings and Insolvency and Their Effects on Pension Plan Wind-ups and Closures" for the Ontario Expert Commission on Pensions. He is co-author of Robert Yalden, et al, Business Organizations: Policies, Procedures and Practices (Toronto: Emond Montgomery Publications Inc., 2008), principally responsible for three chapters: "Concepts and Principles," "Governance Through Liability," and "The Oppression Remedy and Wind-up." Recent publications also include: "The Way Forward: The Policy Implications of the Supreme Court Decision in TCT Logistics," (2007) 44 Canadian Business Law Journal 357; and Democratizing Pension Funds: Corporate Governance and Accountability (UBC Press, 2008).



Democratizing Pension Funds: Corporate Governance and Accountability is available online through the University of British Columbia Press website at www.ubcpres.ca.

New Governance, Compliance, and Principles-Based Securities Regulation

Cristie Ford, Assistant Professor
B.A. (UVic); LL.B. (UVic); LL.M. (Columbia); J.S.D. Candidate (Columbia)



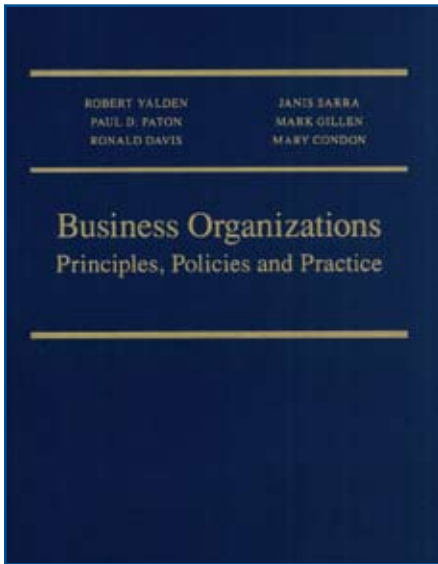
British Columbia's principles-based securities regulatory initiative should be placed in an international and historical context, looking at the origins of principles-based regulation in the aftermath of Enron and other scandals, and comparing it to the UK Financial Services Authority's leading example.

It must also be analyzed in light of theoretical discussions about rules-based and principles-based systems. British Columbia's innovative proposals for a principles-based securities regime can be viewed through the lens of New Governance theory. BC's approach is significant in that its outcome-

oriented, collaborative, pragmatic, and open-ended methods share features with promising New Governance approaches to regulation and public problem-solving more generally.

Principles-based regulation is especially noteworthy with regard to firm compliance processes, because it seeks to engage firms in their own endogenous learning about compliance. Moreover, New Governance is a necessary complement to principles-based securities regulation. It provides a rational, systematic means through which industry learning and the input of third party stakeholders can fill in the content of otherwise vague principles. Responses are needed to some of the challenges arising from applying New Governance theory to the specific context of securities regulation. Those challenges include: justifying imposing on industry the costs of articulating the content of principles *ex post*, as opposed to rules that impose costs on regulators and legislators *ex ante*; reconciling light touch regulation with a rolling best practices rulemaking regime; confirming that industry has incentives to innovate, particularly in compliance processes; and identifying means for addressing capacity issues associated with requiring diverse industry actors to interpret principles for themselves. Professor Ford's article can be found at (2008) 45:1 American Bus. L.J.1 or contact businesslaw@law.ubc.ca.

Assistant Professor Ford teaches Securities Regulation, Corporations, and New Trends in Regulatory Design at UBC Faculty of Law. Her research includes securities regulation and corporate governance. Recent publications include: "Corporate Corruption and Reform Undertakings: A New Approach to an Old Problem" (2008) Cornell Int'l L. J. (with David Hess); and "How Should We Teach Securities Regulation in a Fast-Moving World?" (2008) 46:1 Canadian Bus. L. Rev. She is currently organizing a conference of international scholars to be held in Vancouver in spring 2009 on the subject of New Governance and the Business Organization. Prior to teaching she practised law at Guild, Yule and Company in Vancouver and at Davis Polk & Wardwell in New York. Effective July 1, 2008 she will serve as co-director of the National Centre for Business Law for 2008-2009.



Business Organizations, Policies, Principles and Practice is available online through the Emond Montgomery website at www.emp.ca

Business Organizations, Policies, Principles and Practice

Professors Ronald Davis and Janis Sarra, with co-authors Robert Yalden, Mark Gillen, Mary Condon and Paul Paton published a comprehensive text on corporate law in 2008. Business organizations are an integral part of modern life. As business organizations evolve, the law that gives life to them and regulates their conduct continues to evolve. So does thinking about how best to structure that law. There is renewed interest from decision makers and commentators in embracing and expanding the category of those concerned with the conduct of businesses; nowhere more evident than in the Supreme Court of Canada's judgment in *Peoples Department Stores v. Wise*.

Another source for much contemporary debate about the role and objectives of business organizations is the series of frauds and manipulations in recent years. They raised important issues about the relationships among the various bodies of law that purport to create normative frameworks for activities at various points in the

business cycle, such as corporate law, securities law, and insolvency law; and an active debate concerning the role that corporate law, securities law, and criminal law should each play in regulating corporate conduct.

The text provides a sound grounding in the fundamentals of the law governing business organizations. Chapters explore issues associated with the forms of business organization, such as partnerships, corporations and business trusts. Subsequent chapters focus on capitalization of the corporation, corporate governance, the interaction of corporate and securities law, the oppression remedy and other public and private actions, mergers and acquisitions, and the financially distressed corporation. The text is intended to serve as a resource for practitioners and legal scholars to explore issues in greater depth (Toronto, Emond Montgomery, 2008).

FACULTY



Joost Blom, QC, Professor
B.A. (Brit. Col.); LL.B. (Brit. Col.); B.C.L. (Oxon.); LL.M. (Harv.)

Professor Joost Blom's research expertise is in economic torts, covering breach of confidence and negligent misrepresentation.

He continues to publish the Annual Review of Private International Law Cases for the Canadian Yearbook of International Law and teaches conflict of laws, contracts and transnational law.



Pitman Potter, Professor & Director of the Institute of Asian Research

B.A. (George Washington); J.D. (Washington); Ph.D. (Washington)
Dr. Potter's teaching and research at UBC Faculty of Law are focused

on the People's Republic of China and Taiwan law and policy in the areas of foreign trade and investment, dispute resolution, intellectual property, contracts, business regulation, and human rights. In addition to his academic activities, Dr. Potter is admitted to the practice of law in British Columbia, Washington and California, and serves as a consultant to the Canadian national law firm of Borden Ladner Gervais LLP. He is Director of the Institute for Asian Research at the University of British Columbia. As a Chartered Arbitrator, Dr. Potter is engaged in international trade

arbitration work involving China. He is a member of the Board of Directors of the Canada China Business Council and the Asia Pacific Foundation of Canada.



Ian Townsend-Gault, Associate Professor & Director, Centre for Asian Legal Studies

LL.B. (University Of Dundee)

Professor Townsend-Gault is a CSCAP Canada Representative

of the Study Group on Capacity Building for Maritime Security Co-operation and Convenor for the Sub-Group on Legal Issues of the Council for Security Co-operation in the Asia Pacific. He teaches global law, international law, international law of marine resources, introduction to Asian legal systems, and transnational law.



Shigenori Matsui, Professor
LL.B. (Kyoto); LL.M (Kyoto); J.S.D. (Stanford); LL.D (Kyoto)

Professor Shigenori Matsui joined UBC Faculty of Law in January 2006 as Director of Japanese Legal Studies. He is an internationally-renowned expert

in the fields of Constitutional Law, Internet Law, Law and Medicine, and Mass-Media Law. Professor Matsui comes to UBC from Osaka University

Law School where he worked as a full professor and served as Associate Dean for the Law School. He has taught courses in Mass Media Law, Freedom of Information Law, Internet Law, Law and Medicine, Comparative Constitutional Law, and Constitutional Law. Professor Matsui also served for the Japanese Government as a member of the National Freedom of Information Board. Professor Matsui is currently researching and writing on business law in Japan.



Mira Sundara Rajan, Assistant Professor

B.A. (McGill); LL.B. (Osgoode); LL.M. (UBC); DPhil. (Oxford)

Professor Mira Sundara Rajan researches and teaches intellectual property law. Her current

research includes technology and intellectual property and globalization.



Claire Young, Professor & Senior Associate Dean, Academic Affairs

LL.B. (London School of Economics); LL.M. (Brit. Col.)

Professor Claire Young teaches tax law and currently serves as

Senior Associate Dean, Academic Affairs.

SCHOLARSHIP

The National Centre for Business Law is fostering relationships with the business and legal community internationally. Faculty associated with the National Centre for Business Law are engaged in activities in partnership with legal and business scholars across the world.



Professor Jay Westbrook (right), Visiting Scholar with Professor Ronald Davis (left) and David Wood, Chair, Vancouver Insolvency Discussion Group

VISITING SCHOLAR IN RESIDENCE

Jay L. Westbrook, Benno C. Schmidt Chair of Business Law, University of Texas School of Law
B.A., J.D. (Un. of Texas at Austin)

The Centre was honoured to have one of the US's leading scholars in empirical research and international and comparative business law studies, Professor Jay Westbrook, as our spring 2008 scholar in residence. Professor Westbrook gave two public talks during his visit. The first, co-hosted by the National Centre and the Insolvency Discussion Group, examined recent developments in US bankruptcy law with the introduction of the 2005 amendments to the US *Bankruptcy Code*. The second talk by Professor Westbrook was a roundtable lunch discussion with senior practitioners and judges on cross-border insolvencies and the UNCITRAL working group on domestic and international corporate group insolvency. The lunch was hosted by David Bowra. Professor Westbrook teaches and writes in commercial law and international business litigation. He was a partner at Surrey & Morse (now Jones, Day) in Washington, D.C. for a number of years. He has served as consultant to the International Monetary Fund and the World Bank. Professor Westbrook was the US Reporter for the American Law Institute's Transnational Insolvency Project and co-head of the United States delegation to the UN (UNCITRAL) conference on cross-border insolvency. He is President of the International Academy of Commercial and Consumer Law. Professor Westbrook is an affiliated scholar with the National Centre for Business Law.

Professors Ronald Davis and Janis Sarra of UBC Law, and Mary Condon and Cynthia Williams of Osgoode Hall are involved in the International Network for Sustainable Financial Markets, a collaboration of pension fund managers, finance sector professionals, scholars, and legal practitioners that are working to develop long-term responses to the current crisis in financial markets, with the goal of improving financial market integrity and efficiency, instilling best practices, and enhancing market stability.

Dr. Pitman Potter and Dr. Ljiljana Biukovic are the lead co-investigators in a major collaborative research initiative on Cross-Cultural and Comparative Research on Dispute Resolution, which addresses the issue of selective adaptation of WTO norms for resolving trade disputes in China, Canada and Japan, with participating scholars in Australia, Japan, Canada, China and the US.

Professor Ian Townsend-Gault participates on the Advisory Committee of the Council for Renewable Energy in the MeKong Region; is a consultant in the Canada-Ukraine Policy Development Project, and is working with the Ministry of Foreign Affairs on legal issues in the Black Sea and Azov Sea. He is also Project Director of Managing Potential Conflicts in the South China Sea.

Dr. Janis Sarra is a member of the Experts Committee of the United Nations Commission on International Trade Law (UNCITRAL) Working Group V, assisting in development of a legislative guide to the global treatment of business enterprise groups in commercial insolvency proceedings. Professor Sarra also worked with INSOL International and legal scholars in ten universities globally to develop an advanced degree in Global Insolvency Practice, launched in June 2008 in Amsterdam and Shanghai.

WESTERN BUSINESS LAW PROFESSORS

On October 20, 2007, the National Centre hosted the Western Business Law Professors Roundtable, with professors from law schools in British Columbia, Alberta and Saskatchewan sharing their current scholarship and discussing the potential for future collaboration of research in business law under the umbrella of the National Centre. Nine professors attended. They are now collaborating on a research project on risk allocation in business law, with a further roundtable planned for January 2009.

VISITING SCHOLARS

The National Centre for Business Law was host to several visiting scholars in the past six months, including Professor Harry Rajak, Sussex School of Law and Professor André Boraine, University of Pretoria Faculty of Law, South Africa, both of whom contributed new scholarship as part of their stay at the National Centre. The Centre also hosted Professors Anil Hargovan, School of Business Law and Taxation, University of New South Wales, Australia; Jason Harris, Faculty of Law, University of Technology, Sydney, Australia; and Professor Vaneeta Patnaik, India, as visiting scholars in February 2008.

TSX GROUP ANNUAL LECTURE

The Efficacy of Deterrence-based Initiatives in Regulation of Capital Markets

Chair: John McCoach, Vice-President TSX Group

TSX Lecturer: Professor Mary Condon, Osgoode Hall Law School

Professor Mary Condon gave the second TSX Lecture on June 4, 2008, at the TSX Group offices in Calgary, Alberta. The research, sponsored by the National Centre under the TSX Capital Markets Initiative, examines the efficacy of deterrence-based initiatives in the regulation of capital markets.

Professor Condon is conducting an empirical study with co-author Dr. Janis Sarra, UBC Faculty of Law, analyzing the kinds of matters that become subject to enforcement proceedings across the country, including insider trading, registrant misconduct and market manipulation. The project conducts a time study over a seven year period from 2000. The study examines the different sanctions that are being imposed by regulators for various kinds of infractions, analyzing differences between outcomes after hearing or settlement. The study is exploring whether there is any correlation between frequency with which sanctions are imposed and the kind of market participant involved.

The research joins issue with the debate about enforcement intensity in Canadian securities markets. The term "enforcement intensity" can be attributed to the work of U.S. academics John Coffee and Howell Jackson, whose work focuses on monetary sanctions. The Condon and Sarra study seeks to look beyond the axis of monetary sanctions, to obtain a picture of the frequency with which monetary sanctions are used in conjunction with, or as a replacement for, non-monetary sanctions, in those Canadian jurisdictions where there is such a choice. This issue is relevant to both enforcement intensity and to the public policy debate as to whether monetary or non-monetary forms of sanctioning can more effectively achieve enforcement goals of deterrence and compliance. It also seeks to locate enforcement intensity in a jurisdiction's broader policy goals of enforcement activity; the capital structure of issuers; the type of retail investor involvement; and the depth of financial services industry.



Mary G. Condon, Associate Professor, Osgoode Hall Law School and Affiliated Scholar, National Centre for Business Law

B.A. (Dublin); M.A., LL.M., S.J.D. (Toronto)

Dr. Condon teaches Securities Regulation and Advanced Securities and directs the part-time LL.M. program specializing in securities law. Dr. Condon's research interests are focused primarily on the regulation of securities markets, investment funds, on-line investing and pensions. Professor Condon is a member of the Ontario Securities Commission's Continuous Disclosure Advisory Committee and was recently appointed a part-time Commissioner of the Ontario Securities Commission. She is also co-author,

with Professor Anita Anand from the University of Toronto and Professor Janis Sarra from UBC Faculty of Law, of *Securities Law in Canada: Cases and Commentary*, and author of "Making Disclosure: Ideas and Interests in Ontario Securities Regulation." Effective July 1, 2008, she will serve as co-director of the National Centre for Business Law for 2008-2009.

TSX CAPITAL MARKETS RESEARCH INITIATIVE

On November 20, 2007, Professor Adam Pritchard, Michigan Law School, and Dr. Janis Sarra, UBC Faculty of Law presented their research on securities law class action suits and D&O insurance premia in Toronto at a roundtable at the TSX Group. Professor Poonam Puri, Osgoode Law School and Shawn McReynolds, Davies, Ward, Philips and Vineberg LLP, served as commentators. Mr. Justice Peter Cumming of the Ontario Superior Court of Justice [Commercial List] chaired the roundtable discussion, attended by 25 practitioners.

Professor Sarra also presented the research results at the National Class Action Conference organized by Osgoode Law School in Toronto on April 10, 2008.

Research Projects for 2008-2009 include

Institutional Reform and Novel Remedies in North American Securities Law Enforcement;

Assistant Professor Cristie L. Ford, UBC Faculty of Law and David Hess, Bank One Corporation Professor of Business Administration, Ross School of Business, University of Michigan. They will present their research at the TSX Lecture in Vancouver on September 22, 2008.

The Role of Competition in Choices of Capital Structure: Transforming Capital Structure by Increasing Competitive Incentives;

Dr. Ronald B. Davis, UBC Faculty of Law

The TSX Advisory Committee consists of: John McCoach, Vice-President the TSX Group; Joe Ovsenek, Silver Standard; Randy Milner, Methanex; Jeff Read, Fraser Milner Casgrain LLP; Stuart Morrow, Davis LLP; Janis Sarra, UBC Faculty of Law; Sven Milelli of McCarthyTétrault; Paul Halpern, Capital Markets Institute, Rotman School of Business, Toronto.

TSX GROUP NATIONAL COUNCIL

The National Centre for Business Law is also a partner in the TSX Group National Council for Capital Markets Research, in collaboration with the Capital Markets Institute of the Rotman School of Management at the University of Toronto.

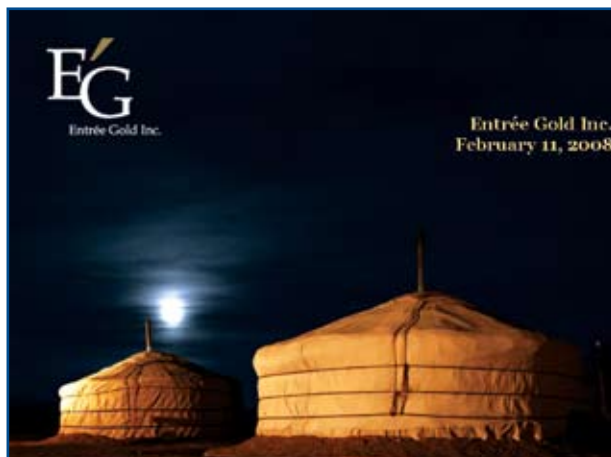
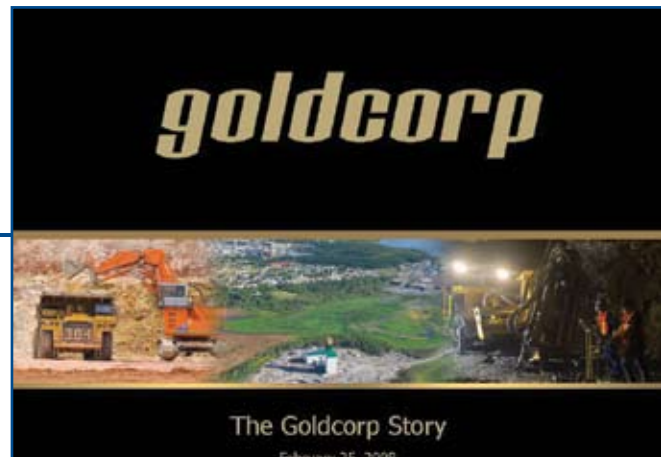
EDUCATION



Led by Peter C. Rozee, Senior Vice President, Teck Cominco, senior officers of Teck Cominco provided cogent advice on strategic acquisitions and discussed the "Teck Cominco legal team" of the Business Law Concentration students' memorandum on financing, corporate, securities and tax law implications.



Anna Tudela, Corporate Secretary, and other senior officers of Goldcorp offered insights to the "Goldcorp legal team" of the Business Law Concentration on financing acquisitions.



Students from the "Entrée Gold legal team" presented their research on the company's strategic options to Greg Crowe, CEO and senior officers of Entrée, in turn receiving helpful comments on how to frame legal memoranda for corporate boards.

BUSINESS LAW CONCENTRATION

In May 2008, UBC Faculty of Law and the National Centre for Business Law celebrated the graduation of the first group of LL.B. students completing the new Business Law Concentration program. There were 17 students that successfully completed the Concentration.

The Concentration has the distinction of providing a specialized business law program, while ensuring that LL.B. students continue to have a well-rounded legal education. The concentration requires completion of six courses in four foundational categories: Business Organizations Law, Business Finance Law, Business Transaction Law, and Business Policy Law. New courses such as Corporate Finance and Capstone Business Transactions have been added to the curriculum to provide students with hands-on experience. Students are exposed to a broad range of foundational legal concepts such as agency, trust and fiduciary obligation, as well as to courses that are particularly relevant to the changing dynamics of business law. Students must also complete two courses in an upper year specialization in business law, such as natural resource law, intellectual property law, taxation, or international trade.

The program also facilitates connections between students and the business law community by integrating classroom learning with participation in seminars in which practitioners and nationally recognized legal scholars discuss current developments in business law.

The key learning objectives of the Business Law Concentration are that students acquire the skills to draw greater connections between business law and professional ethics; develop drafting skills; enhance their legal research and oral advocacy skills; acquire an understanding of different perspectives on business transactions; and develop greater skills in critical thinking, adaptive competence, communication, leadership capacity and scholarly concern for improvement.

The Capstone Course, which is the final requirement to complete the Concentration, was taught for the first time in spring 2008. It was a dynamic and highly labour-intensive transaction-based program, drawing together elements of the prerequisite business law courses. Its success was due in very large measure to the efforts of senior officers and board members at Goldcorp Inc., Teck Cominco, and Entrée Gold, as well as senior officers of CIBC Capital Markets and senior practitioners that served in an advisory capacity. Students were required to serve as legal counsel in securities law, corporate law, tax, employment, mining law, corporate finance, environmental law, and licensing, including drafting memoranda, making presentations to senior legal counsel and directors of the three corporations, and undertaking the legal drafting and negotiation support in an intensive merger and acquisition transaction.

The Capstone Course is designed to be integrative and interdisciplinary, and to incorporate theoretical and practical elements of business law. The course is focused on current transactions, chosen based on the degree to which they bridge the various specialized upper-year courses taken by students in the Business Law Concentration. Our sincere congratulations to the first graduates of the program!



“The Business Law Concentration offers a hands-on course, the Capstone, in which students participate in a simulated business transaction. This course is a great way to explore the legal elements of a transaction. I really enjoyed working with my teammates and discussing our strategies in negotiating a deal. The simulation allowed us to consider the legal issues, as well as the business aspects foremost in the mind of the corporate directors of the company in question. I like the constantly changing, fast-paced environment surrounding business transactions, and the Capstone course has given me a taste for what is to be a business lawyer.”

Catherine Hirbour, Business Law Concentration LL.B.
Graduate, May 2008.

ENGAGING THE COMMUNITY

PUBLIC POLICY FORUMS

Commercial Contracting Symposium

On October 22, the National Centre hosted the Commercial Contracting Symposium, chaired by Madam Justice Risa Levine, British Columbia Court of Appeal, with panelists:

Professor Shannon O'Byrne, University of Alberta, speaking on Good Faith in Commercial Contracting;

Professor Chi Charmody, University of Western Ontario, on The Harmonization of International Commercial Contracting: Some Canadian Considerations; and

Dr. Ljiljana Biukovic, University of British Columbia, speaking on Good Faith in ECJ and WTO Jurisprudence.

Securities Offerings in the Global Marketplace: Europe, United States and Asia

The National Centre hosted a cross-Canada policy roundtable on Securities Offerings in Global Capital Markets with members of Sidley Austin's New York, London and Hong Kong offices, including Mark L. Wiltshire, Mark Walsh, Joseph McLaughlin, Christopher Hilbert, and Paul C. Adams.



Public and private securities markets are becoming even more important domestically and internationally. More than half of the world's investable assets are located outside the US, and the portion of non-US investable assets has been increasing. The total value of equity trading for 2006 on markets worldwide was \$69.8 trillion. Innovations in securities markets and financing practices have enabled companies to raise capital and develop new technologies and economic activity. The implications for investors are important. The roundtables took place in Montréal, Toronto, Calgary and Vancouver on November 13 to 16, 2007.



Facilitators and commentators included: Professor Anita Anand, University of Toronto Faculty of Law; Professor Mary Condon, Osgoode Law School; Professor Stéphane Rousseau, Faculté de droit, Université de Montréal; Professor Kim Brooks, McGill Law School; Professor Ronald B. Davis, UBC Faculty of Law; Professor Keith Yamauchi, Calgary Faculty of Law and Professor Janis Sarra, UBC Faculty of Law.

Mark L. Wiltshire and Christopher Hilbert, Sidley Austin New York

Hong Kong Symposium on Entrepreneurialism in China

The National Centre co-sponsored, with the Asian Institute of International Financial Law, Faculty of Law, University of Hong Kong and the Institute of Asian-Pacific Business Law, University of Hawai'i at Mānoa, a symposium in Hong Kong on October 18, 2007, on Entrepreneurialism, Risk Assessment & Private Investment in China. Professor Robert Paterson of UBC Law spoke on behalf of the National Centre.

U.S. Securities Law Policy Roundtable

There are a number of critically important and timely issues in US securities law. The National Centre hosted the US Securities Law Policy Roundtable on January 25, 2008, in Vancouver, where four leading US securities law scholars presented their current research and four Canadian practitioners offered their views on the implications for Canadian capital markets, creating a lively discussion with roundtable participants.



Professor Cheryl L. Wade, the Dean Harold F. McNiece Professor of Law, St. John's Law School, New York, presented a paper on "Sarbanes-Oxley Five Years Later: Calls for Repeal or Rollback and What the Public Does Not Know," observing that Congress enacted the *Sarbanes-Oxley Act* to restore investor confidence and appease the general public in its outrage regarding corporate greed and malfeasance. She suggested that beyond financial disclosure and accounting matters, the enactment of SOX inspired more ethical and responsible corporate climates in that at least in the immediate months after its passage, SOX moved discussions about corporate ethics from the periphery of corporate discourse to the centre. However,

five years later, the public's outrage has turned into apathy, creating potential new problems for monitoring.

"The patchwork Canadian regulatory framework played a key role in framing the nature of the local debate about our response to the US legislation. The lengthy process associated with trying to implement a harmonized national response meant that parts of the Canadian regulatory package came into effect throughout the period of 2002 through 2006. I do not think it is cynical to suggest that an improvement of the TSX index from the low 6000s in the fall of 2002 to 13000 in early 2007 changed the nature of the political debate around the Canadian response."

Nigel Cave, Partner, Borden Ladner Gervais LLP

Professor Jill Fisch, the T. J. Maloney Professor of Business Law at Fordham Law School, presented a paper on "Cause for Concern: Causation and Federal Securities Fraud," focusing on how the US federal courts have paid increasing attention to the causation requirement in federal securities fraud, culminating in the Supreme Court's decision in *Dura Pharmaceuticals*. However, she observed that courts have not incorporated tort law's treatment of complex issues of causation, yet they should be particularly cognizant of the nature of causation in the securities markets and the extent to which the role and significance of multiple causal factors differ from the common law tort context.

"The manner in which loss causation is dealt with in Canada and the US is materially different. The US Private Securities Litigation Reform Act clarified that loss causation was a required element that the plaintiff had to prove. In Canada, legislation has given the plaintiff the benefit of deemed reliance on the misrepresentation. Notwithstanding this, there has not been a material movement to judicial claims in Canada based on misleading disclosure."

Jeffrey Read, Partner, Fraser Milner Casgrain LLP

Professor Hillary Sale, the F. Arnold Daum Chair in Corporate Finance and Law, University of Iowa, gave a paper titled "Judicial Gatekeepers: The Role of Judges in Class and Derivative Litigation, Monitoring Agency Costs," in which she suggested that judges have, over time, proved to be important litigation gatekeepers in securities and corporate class litigation and, as with other gatekeepers in securities law, function as enablers in that they facilitate the execution of transactions, enabling corporate actors to complete transactions and access the markets. She proposed an increased role for judges in policing aggregate and derivative litigation in the corporate and securities arenas, particularly in the context of settlements.



Hillary Sale, The F. Arnold Daum Chair in Corporate Finance and Law, University of Iowa with Commentator: Robert Cooper, Partner, McCarthy Tétrault LLP, Vancouver

Professor Donna M. Nagy, the C. Ben Dutton Professor of Business Law, Indiana University School of Law, presented a paper titled "Insider Trading a Decade after O'Hagan: The Quiet Demise of the Fiduciary Principle," suggesting that despite the Supreme Court's dictates, fiduciary principles are no longer essential to the offense of insider trading under Rule 10b-5 in the US; rather, they are merely enabling in that they serve to establish deception in connection with a securities transaction when an insider silently exploits the corporation's information for personal profit or when an outsider secretly deprives a principal of the information's exclusive use. Professor Nagy argued that lower courts and the SEC have shown a willingness to disregard fiduciary principles in instances where it is clear that an insider is not misusing the corporation's information. She concluded that the demise of fiduciary principles indicates the jurisprudence is in need of overhaul, whether by Congress or the federal courts charged with interpreting Rule 10b-5.



Donna Nagy, The C. Ben Dutton Professor of Law, Indiana University School of Law with Commentator: Peter O'Callaghan, Partner, Blakes, Cassels & Graydon LLP, Vancouver

The Centre thanks the four senior commentators for their thoughtful analyses of the implications of the papers for Canadian securities law:

Jeffrey Read, Partner, Fraser Milner Casgrain LLP
Robert Cooper, Partner, McCarthy Tétrault LLP
Peter O'Callaghan, Partner, Blake, Cassels & Graydon LLP
Nigel Cave, Partner, Borden Ladner Gervais LLP

International Colloquium on Social Claims in Insolvency

The National Centre co-hosted, with the International Insolvency Institute and INSOL Europe, an International Colloquium on Social Claims in Insolvency on February 21, 2008, attracting 65 scholars, judges and practitioners internationally from 16 countries. Chief Justice Donald Brenner of the British Columbia Supreme Court chaired the symposium. The keynote opening address was given by James Sprayregen, Goldman Sachs, New York.

Judicial Colloquium on Statutory Interpretation

The National Centre hosted a judicial colloquium on statutory interpretation, inherent jurisdiction and judicial discretion, chaired by Chief Justice Donald Brenner, British Columbia Supreme Court. There were 15 commercial judges and appellate court judges from across Canada in attendance, with a paper presented by Madam Justice Georgina Jackson of the Saskatchewan Court of Appeal.

CONFERENCE ON THE OLYMPIC GAMES AND SUSTAINABILITY



The National Centre for Business Law hosted a Conference on Sustainability and the Olympic Games at UBC Law School on March 1, 2008.

The conference was attended by experts in the fields of sport and sustainable development, UBC faculty and students, administrators and legal practitioners.

There were stimulating and informed presentations by the panelists and lively discussions among all those in attendance regarding the major sustainability issues facing the 2010 Olympic Games organizers. The key people who have been given the responsibility for keeping the sustainability promises made at the Bid Stage of the 2010 Games offered their unique insights about the challenges they face in fulfilling their mission of making the 2010 Games the 'Most Sustainable Games Ever.' Panelists included representatives of the governments of Canada and British Columbia, the Four Host First Nations, VANOC, 2010 Legacies Now, and leading sponsors such as Teck Cominco Ltd. They joined commentators and scholars from UBC, the legal community and leading professionals in the community engagement and consensus building field to offer, from their perspectives, how they have

become part of the team responsible for staging a successful Games.

Community leaders shared views and strategies about how to take the opportunity presented by the 2010 Olympic and Paralympic Games a major step forward in the planning, building and operation of a mega event.

If game organizers are successful in this monumental task, then the 2010 Games will be a transformative event for this host region, to the extent that the Games' organizers have acquired and showcased the requisite know-how to successfully balance the triple bottom lines of economic, environmental and social sustainability.

Speakers included:

- Linda Coody, VP, Sustainability, VANOC
- Brian Dolsen, Managing Director, Legacy Initiatives, 2010 Legacies Now
- Brenda Metropolit, Director, Sustainability Division, Environment Canada, Pacific & Yukon Region
- Bruce Dewar, President of 2010 Legacies Now

- Margaret Dickson, Manager of Sustainability Initiatives, VANOC
- Associate Professor Margot Young, UBC Law
- Professor Joseph Weiler, UBC Law
- Susan Archibald, Managing Director, Marketing & Revenue Generation, 2010 Legacies Now
- Allen Soltan, Davis LLP

Joseph Weiler, Professor

B.A. (Hons) (Toronto); LL.B. (Osgoode); LL.M. (California, Berkeley)

Professor Weiler's recent publications include "The Olympic Games, the Law, and the Triple Bottom Line of Sustainability," McGill International Journal of Sustainable Development Law, co-authored with Arun Mohan (2007). Current research includes "Sustainability and the Olympic Movement," with Arun Mohan, funded by VANOC. Professor Weiler organized and co-chaired the Olympic Sustainability Conference. Professor Weiler is an affiliated scholar with the National Centre for Business Law.



Associate Professor Margot Young, UBC Faculty of Law and Paul Manning, Senior Consultant, Four Host First Nation Secretariat



Professor Joseph Weiler, UBC Faculty of Law



Chris Moorhead, Teck Cominco, Leader, Olympic and Paralympic Partnerships and Susan Archibald, Managing Director, Marketing & Revenue Generation, 2010 Legacies Now

INSOLVENCY LAW CONFERENCE

The Annual Review of Insolvency Law Conference, held in February 2008 in Vancouver, attracted more than 325 participants. The conference launched this year's Review, a remarkable collaboration of legal scholars, insolvency practitioners, members of the judiciary, and bankruptcy policy makers, who together offered an in-depth analysis of current issues in Canadian insolvency and bankruptcy law and debated some of the most pressing public policy questions.

The first plenary panel featured private equity financiers, discussing rapidly changing markets and implications for financially distressed businesses. A second plenary panel focused on the treatment of eligible financial contracts, and speakers included Kenneth Thorlakson, Vice President and Assistant General Counsel, Scotiabank, who highlighted the importance of complex financial instruments such as swaps, forwards and other derivatives to the Canadian and global economies.

Conference panels included discussion of complex multi-entity cross-border corporate workouts; recent stalking horse bids in insolvency proceedings; forward shipping contracts and cross-border challenges; the failure of securities and brokerage firms and innovative remedies to address fraudulent conduct; and the challenge of insolvencies of limited partnerships. There was a lively debate regarding the role of the courts in advancing the enabling objectives of commercial insolvency law. The conference examined different aspects of administration of the insolvency system in Canada, including analysis of the issue of fairness and due process in relation to the powers of the Superintendent of Bankruptcy; treatment of goods and services taxes; and fee premium awards.

The conference paid special tribute to Mr. Justice David Tsoe on his appointment to the British Columbia Court of Appeal, whose contributions to commercial insolvency law while on the superior court have helped to develop insolvency law regionally and nationally.

The conference also featured several comparative panels, juxtaposing Canadian law with developments internationally, including analysis of the doctrine of substantive consolidation; treatment of securities law claims in insolvency in Australia, the UK and Canada; and secured transaction and exemption law in different jurisdictions.

The authors and panel members at the conference made an important contribution to the further development of insolvency and bankruptcy public policy. The conference advanced our collective understanding of developing areas of the law, including the growing complexity of cases in an increasingly global market, complex derivatives and other instruments, and challenging issues in respect of post-commencement financing and the treatment of cross-border corporate groups.

Our sincere thank you to platinum sponsor Borden Ladner Gervais LLP, and to gold sponsors Alvarez & Marsal, BDO Dunwoody, Blakes LLP, Fraser Milner Casgrain LLP, The Insolvency Institute of Canada, PricewaterhouseCoopers, KPMG, and Industry Canada for their generous sponsorship of the conference and to the other sponsors for their continuing support. Members of the Review's Advisory Board continue to offer their insights and support of the volume and the conference each year, which is deeply appreciated.

Next year's conference will be held on Friday February 13, 2009, in Banff, Alberta. For more information on the 2009 conference, or to purchase a copy of this year's Annual Review of Insolvency Law, contact Michelle Burchill at businesslaw@law.ubc.ca.



Chief Justice Lance Finch, British Columbia Court of Appeal awarding the Canadian Insolvency Foundation Honourable Lloyd Houlden Fellowship



Madame Justice Barbara Romaine, Calgary Court of Queen's Bench



Jim Grout, Thornton Grout Finnigan LLP and Kelley McKinnon, Head of Litigation, Ontario Securities Commission, speaking on Portus Alternative Asset Management, Novel Remedies



VANOC undertook the challenge of producing financially successful Games with economically sustainable physical legacies. This is best expressed in our mission "To touch the soul of the nation and inspire the world by creating and delivering an extraordinary Olympic & Paralympic experience with lasting legacies."

Mr. Kenneth Bagshaw, Chief Legal Officer, Vancouver Organizing Committee for the 2010 Olympic and Paralympic Winter Games Annual Review of Insolvency Law Conference Keynote speaker: "The Solvency of the 2010 Olympics: Sustainability for the Games and Beyond"

WIND ENERGY SYMPOSIUM



Photo courtesy of TransAlta Wind

Wind Energy is a key component of a sustainable energy future. Globally, installed wind energy capacity is 94,123 MW, with continued growth expected. Canada's installed capacity at the end of 2007 was only 1,768 MW. Less than 1% of Canada's electricity demand is met by wind energy, compared with 20% of Denmark's electricity demand, 9% of Spain's electricity demand and 7% of Germany's electricity demand, according to the Canadian Wind Energy Association. More than 75 business leaders, engineers and legal scholars came together on June 5, 2008 to discuss wind energy at a symposium organized by the National Centre for Business Law and Fraser Milner Casgrain LLP, the first "wind only" energy symposium in Vancouver.

The symposium commenced with a panel on the Competitive Advantage of Wind, featuring David Huggill, Western Canada Policy Manager, Canadian Wind Energy Association, who spoke on how wind energy provides "green" power at a time of increasing demand and consumption of electricity, suggesting that Canada must see wind energy as a strategic resource



Ron Stuber, Fraser Milner Casgrain LLP and David Huggill, Canadian Wind Energy Association

to compete for global investment through a comprehensive strategy. Nan Dai, Senior Resource Planning Engineer, Energy Planning, BC Hydro, discussed BC Hydro's Wind Integration Project. Dr. Janis Sarra served as symposium chair.

The second panel featured two distinguished speakers, discussing how the wind energy industry can be supported. Michel Letellier, President and Chief Executive Officer, Innergex Renewable Energy,

discussed his company's current projects and future plans. He suggested that there is a need for a level commercial playing field in the energy sector, highlighting both existing measures and what is needed for a successful wind energy sector. In this respect, Canada can learn from the experience in Europe in terms of support for sustainable energy. Dr. Yves Gagnon, P.Eng. Chair of the New Brunswick Community Wind Energy Initiative, Professor and K.C. Irving Chair in Sustainable Development, Université de Moncton, spoke on how community wind energy is a viable component of any renewable energy portfolio, including its strength as a local initiative with local ownership. Community wind energy usually has a 15 MW upper limit on the size of wind farms, which are typically connected to local distribution grids. Dr. Gagnon observed that community wind energy maximizes local economic benefits and develops local and community entrepreneurship, but does have a higher cost. Dr. Gagnon observed that community wind energy needs good public policies to be successful, notably standard offer contracts or feed-in tariffs; streamlined integration to the transmission grid; and technical and financial support mechanisms.

Scott Woronuk, General Manager, Hydromax Energy and Vice President, Business Development BC, ENMAX Corporation discussed wind energy and the capital markets, including development cycles, funding options, and return/value expectations in a panel chair by UBC Law Professor Ron Davis on financing wind energy. Ron Stuber, Partner, Fraser Milner Casgrain, LLP discussed project financing, including risk allocation and the intricacies of good project financing. Professor David Duff, Faculty of Law, University of Toronto, discussed fiscal incentives and other public policies to promote wind power development in Canada.



Michael Burns, Chair, Naikun Wind Energy Group

A highlight of the symposium was the keynote speaker, Michael Burns, Chair, Naikun Wind Energy Group, an independent clean energy publicly traded company based in Vancouver. Mr. Burns observed that BC has been importing electricity for five years and a shortfall of 50% of current demand is forecast within 20 years. Off-shore wind energy offers stronger, more consistent wind, resulting in more electricity generated; and combined with access to the grid offers tremendous potential. BC has one of the best offshore wind sites in the world, and Mr. Burns discussed key success factors, as well as concerns for communities that must be met in the overall development of a sustainable clean energy sector.

Dr. Natasha Affolder, UBC Faculty of Law chaired a panel on Regulatory and Community Challenges. Tony Fogarassy, General Counsel, NaiKun Wind Development Inc. gave important insights on the complexities of the wind energy regulatory framework. Susan Wilkins, M.Sc., P. Geo., Vice President, Pottinger Gaherty Environmental Consultants shared her ten rules on effectively dealing with regulatory approvals. Professor Timothy Malloy, UCLA Faculty of Law and Co-Director, Frank G. Wells Environmental Law Clinic, offered cogent insights into wind energy and the regulatory framework. Paul Choudhury, Manager of System Planning and Performance Assessment, British Columbia Transmission Corporation, discussed the unique challenges in transmitting wind energy to communities in need of power. The closing keynote address was given by the Honourable Brian V. Tobin, P.C., former Federal Minister of Industry, and former Premier of Newfoundland & Labrador.

AFFILIATED SCHOLARS

Edward M. Iacobucci, Osler Chair in Business Law, Faculty of Law, University of Toronto

B.A. (Hons.) (Queen's); M.Phil. (Oxon.); LL.B. (Toronto)

Professor Iacobucci was the John M. Olin Visiting Fellow at Columbia University Law School in 2002. Prof. Iacobucci is co-director of the Law and Economics program at Toronto Faculty of Law. His areas of interest include corporate law, competition law, and law and economics more generally. His recent publications include a co-authored book titled *Tying as Quality Control: A Legal and Economic Analysis*, which examines the appropriate role for government in responding to economic shocks.



Kimberley Brooks, Associate Professor & H. Heward Stikeman Chair in the Law of Taxation, McGill University, Faculty of Law

B.A. (Toronto); LL.B. (UBC); LL.M. (Osgoode)

Professor Brooks' current research includes "Toward a Fairer Share of Tax Revenues: A Comparative Look at Canada's Tax Treaty Policy Towards Developing Nations" and "Is there a Continued Use for Tax Sparing?"



Shannon K. O'Byrne, Professor, University of Alberta Faculty of Law

B.A. (Regina); M.A., LL.B., LL.M. (Alberta)

Professor O'Byrne has published in the areas of good faith in contractual performance; recovery of mental distress damages in a breach of contract action; employment law; disclosure duties; and economic justice. Her work has been recognized and cited by the Supreme Court of Canada. Professor O'Byrne teaches contracts law, corporations law and judicial remedies.



Robert Paterson, Professor, University of British Columbia Faculty of Law

LL.B. (Un. Of Wellington); J.S.M. (Stanford)

Professor Paterson is a member of the UBC Advisory Board on International Affairs, the UBC Sustainability/Environment Cluster Committee and was a Visiting Professor, Summer Intellectual

Property Law Program, St. Peter's College, Oxford University, 2007. Professor Paterson teaches corporations and international trade law.



Emily Lee, Hong Kong University Faculty of Law

B.A. (Taiwan); LL.M. (UBC); Ph.D. (UBC)

Professor Lee specializes in commercial, corporate and financial law. Since joining the University of Hong Kong, Faculty of Law in January 2008, she is Research Assistant Professor in insolvency and restructuring law and policy. She taught Chinese Law at UBC and has worked with law firms in Taiwan and Canada. Her recent article entitled "Taiwan's Recent Business Law Development: Financial Holding Companies and the Financial Holding Company Act in Taiwan; U.S. Model, Compared" is forthcoming in *Recent Business Law Development in Asia*, coedited by Professor Pitman Potter, UBC Faculty of Law.



Dr. Masafumi Nakahigashi

LL.D. (Nagoya)

Dr. Nakahigashi is Professor of Law, School of Law, Nagoya University, Japan and Scholar of the University of Nagoya Centre for Asian Legal Exchange. Dr. Nakahigashi is the author or co-author of numerous books, including: *Practice on Shareholders' Capital* (Shin-nihon-hoki: 2006); *UFJ vs. Sumitomo Trust vs. Mitsubishi Tokyo: Legal Risks in M&As* (Nippon-hyeron-sha: 2005); *Revised Commercial Code, Accounting and Tax* (Shin-nihon-hoki: 2d ed., 2004); *Practitioners' Guide: Law and Tax on Corporate Reorganizations* (Seibunsha: 2002); *Practitioners' Guide: Law and Tax on Corporate Divestitures and Mergers* (Seibunsha: 2001); and *Business Combinations, Corporate Governance and Corporate Finance* (Shinzansha: 1999). He is an international affiliated scholar of the National Centre for Business Law.

Dr. Stéphane Rousseau, Chaire en droit des affaires et du commerce international, Faculté de droit, Université de Montréal

LL.B., LL.M. (Laval); S.J.D. (Toronto)

Professeur Rousseau est un spécialiste du droit des sociétés, de la gouvernance d'entreprise, du droit des valeurs mobilières et de l'analyse économique du droit. Le professeur Rousseau est l'auteur de nombreux articles scientifiques

et ouvrages dans ses domaines d'expertise. Il est notamment coauteur du volume *Droit des sociétés par actions - principes fondamentaux*. Il prononce régulièrement des conférences dans les milieux universitaires et professionnels au Canada, de même qu'à l'étranger. Other recent publications include: *Enhancing the Accountability of Credit Rating Agencies in Canada: The Case for a Disclosure-based Regime*, (2006) 51 *Revue de droit de McGill*.



George Triantis, Eli Goldston Professor of Law at Harvard Law School

B.A., J.D. (Toronto); J.S.D. (Stanford)

Professor Triantis' teaching and scholarship are in the fields of contracts, business law and bankruptcy. He formerly held the chairs of Seymour Logan Professor at the University of Chicago and Perre Bowen Professor at the University of Virginia. Triantis began his academic career on the faculties of Law and of Management at the University of Toronto. In 2008, he published "Evidentiary Arbitrage: The Fabrication of Evidence and the Verifiability of Contract Performance" in the *Journal of Law, Economics and Organization*, and "Completing Contracts in the Shadow of Verification Costs" in the *Journal of Legal Studies*, as well as a forthcoming book, *Foundations of Commercial Law*, (2008, Foundation Press). He is a former editor of the *Journal of Law & Economics* and a former director of the American Law and Economics Association. He is currently Vice-Chair of the Avoiding Powers subcommittee of the ABA Business Bankruptcy Committee and a member of the American Law Institute. Triantis is the founder of a pioneering collaborative contract design website ("contractwiki") at Harvard Law School.



Yoshihiro Yamada, Associate Professor, Ritsumeikan University, Japan

LL.M. (Nagoya); LL.D. (Nagoya)

Professor Yamada's research interests include corporate law, securities regulation and commercial law, and he has recently studied the function of shareholder remedies and corporate governance. He was a Visiting Scholar at the National Centre for Business Law in 2007.

VANCOUVER BUSINESS LAW SPEAKER'S SERIES

We thank the following speakers for offering their insights on their research and allowing an opportunity for discussion and debate in the past few months:

Innovative Contracting

George Triantis, Eli Goldston Professor of Law, Harvard Law School

Director and Officer Liability in the Zone of Insolvency, a Comparative Analysis

Professor Harry Rajak, Sussex Law School, United Kingdom

Risk Regulation and its Role in Securities Markets

Mary Condon, Professor of Law, Osgoode Law School, Toronto

The Use of Commercial Law as a Tool for Development

Mahesh Uttamchandani, Senior Counsel, World Bank, Washington, D.C.

Sarbanes-Oxley Now

Ms. Trish Zuccotti, Chief Accounting Officer and Controller, Expedia, Inc., Seattle

Another Way to Develop Shareholder Remedies: A Comparison between Canada & Japan

Yoshishira Yamada, Associate Professor, Ritsumeikan University School of Law, Japan

Principal Protected Notes: A Case Study in the Regulation of Financial Innovation

Christopher Nicholls, Chair in Business Law, University of Western Ontario

An Empirical Examination of the Governance Choices of Income Trusts

Ed Iacobucci, Osler Chair in Business Law, Faculty of Law, University of Toronto

Securities Transfer Act & the Implications for British Columbia

Mohamed Khimji, Assistant Professor, Dalhousie Law School, Halifax

Our Two Systems of Take-Over Bid Regulation & the Hollowing Out of Corporate Canada

Stéphane Rousseau, Chair in Business and Commercial Law, Faculté de droit, Université de Montréal

Global Banks as Global Sustainability Regulators: the Equator Principles

Cynthia Williams, Osler Chair in Business Law, Osgoode Hall Law School, Toronto

CALGARY BUSINESS LAW SPEAKER'S SERIES

The National Centre commenced a speakers' series in Calgary, with the assistance of Bennett Jones LLP, the TSX Group, McLeod Dixon, McCarthy Tétrault and Bell Canada.

Mental Distress Damages in a Breach of Contract Action: Assessing the Supreme Court of Canada's Distinction between Aggravated and General Damages in Fidler

Shannon O'Byrne, Professor, University of Alberta Faculty of Law

Regional Trade Agreements in the EU and Implications for Canada

Ljiljana Biukovic, Assistant Professor, UBC Faculty of Law

Undertipping: Explaining Tax Treaty Negotiations

Kimberley Brooks, Chair in Tax Law, McGill University

Conrad Black's Trial and General Trends in American Regulatory Criminal Prosecutions

Moin Yahya, Associate Professor, University of Alberta Faculty of Law

Regulatory and Market Responses to Instability in Financial Products Markets

Janis Sarra, Director, National Centre for Business Law, UBC Faculty of Law, Vancouver



Tax Newsletter

The National Centre sent out the latest issue of the Centre's Tax Newsletter in March 2008. Associate Professor Kim Brooks, Chair in Taxation Law at McGill Law School and Affiliated Scholar with the National Centre was the Editor of the newsletter, which is distributed to 500 tax practitioners in Canada.

Corporate Counsel discuss Challenges of Cross-Border Labour Issues

Professor Janine Benedet, UBC Faculty of Law gave a talk June 3, 2008, to a dinner meeting of senior in-house corporate counsel on issues facing corporations in attracting and retaining professionals from across borders. Participants offered insights into the topic, as well as advice on future activities of the Centre. David McLean, Chair of CN Rail, generously hosted the evening at the Vancouver Club.

The Implications of the BCE Judgments

On April 17, 2008, the National Centre hosted a lunch time discussion on the five Québec Superior Court judgments released in respect of BCE Inc. featuring Mitchell Gropper of Farris as presenter, with commentary by Janis Sarra, UBC Law.



Michelle Burchill, Project Coordinator National Centre for Business Law

For more information about the Vancouver and Calgary Business Law Speaker's Series, or any other National Centre for Business Law event or program, contact Project Coordinator Michelle Burchill at 604-827.3600 or businesslaw@law.ubc.ca.

UPCOMING EVENTS

September 12

Vancouver Business Law Speaker's Series
Securities Regulation is a 'Deretailized' Marketplace
Professor Donald Langevoort, Georgetown Law School

September 25

Calgary Business Law Speaker's Series
Corporate Finance and Canadian Law
Professor Christopher Nicholls, Chair in Business Law, University of Western Ontario

September 30

Calgary Business Law Speaker's Series
Examining the Behaviour of Independent Boards
Professor Anita Anand, Faculty of Law, University of Toronto

October 6

Vancouver Business Law Speaker's Series
An Explanation and Evaluation of Corporate Governance Reforms in the United States During the First Years of the 21st Century
Professor Harvey Goldschmidt, former Commissioner and General Counsel at the U.S. Securities and Exchange Commission and Dwight Professor of Law at Columbia Law School

October 16

Vancouver Business Law Speaker's Series
The Tax Implications of the Free Movement of Capital Rules in the EU for Canadian Investors and for EU Investors in Canada
Professor Martha O'Brien, Faculty of Law, University of Victoria

October 17

Calgary Business Law Speaker's Series
Developments in Canadian Competition Law
Professor Ralph Winter, Canada Research Chair in Business Economics and Public Policy, University of British Columbia, Sauder School of Business, Strategy and Business Economics Division

October 23

Annual Meeting of the National Centre for Business Law & Reception
UBC Robson Square, Vancouver

October 30

Calgary Business Law Speaker's Series
Litigating in Multiple Jurisdictions as an Offensive or Defensive Tactic
Professor Joost Blom, UBC Faculty of Law

November 28

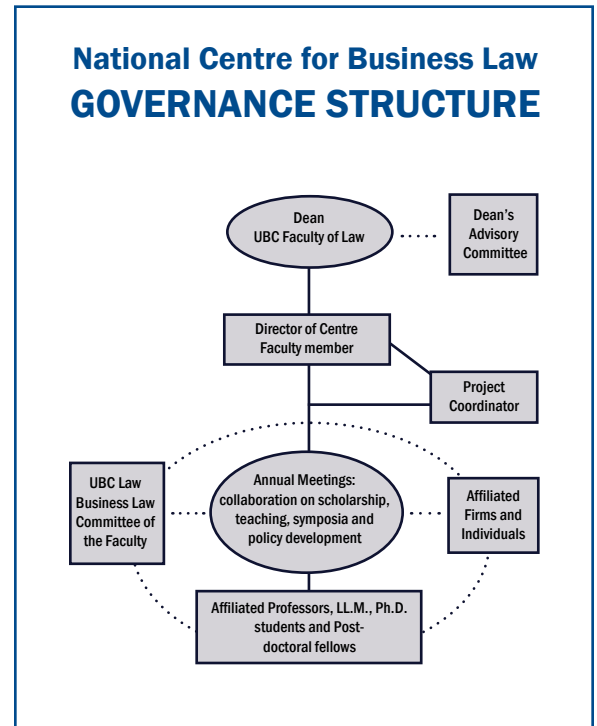
Calgary Business Law Speaker's Series
Developments in the Law of Fraudulent Conveyances and Preferences: the Recent BIA Amendments and Reform of Provincial Law
Professor Tamara Buckwold, University of Alberta Faculty of Law

February 13, 2009

Annual Review of Insolvency Law Conference
Banff, Alberta



The downtown office of the National Centre for Business Law is located at UBC Robson Square, 800 Robson Street, Vancouver, on the corner of Robson Street and Howe.



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