

March 5 & 6, 2012, Toronto

Two-Day Event!

# 8<sup>th</sup> Directors' and Officers' Liability

New liability risks in the current regulatory environment

APPLICABLE TOWARD CPD REQUIREMENT

**Workshop Included: Business Restructuring, Insolvency & Bankruptcy**

## participating organizations

Chartwell Seniors Housing REIT  
Chubb Insurance Company of Canada  
Davies Ward Phillips & Vineberg LLP  
Farris, Vaughan, Wills & Murphy LLP  
Heenan Blaikie LLP  
Metrolinx  
Ogilvy Renault LLP  
Ontario Securities Commission  
Strikeman Elliot LLP  
TD Insurance  
WeirFoulds LLP

## who should attend

Corporate Directors & Officers; CFOs; Compliance Officers; Risk Managers; Senior In-House Counsel; Lawyers involved in D&O Liability, Corporate Governance & Litigation; D&O Insurance Executives & Brokers

## course highlights

- Hear from some of the sharpest legal minds in Canada and the U.S. as they discuss liability issues facing directors and officers
- Learn about directors' and officers' exposure under corporate law and find out what directors and officers must do to protect themselves against lawsuits
- Find out where regulators are focusing their attention, the areas of increased exposure and best practices for risk mitigation
- Examine the D&O issues arising from M&As and the areas to be addressed to protect directors and officers

"This course enhanced my understanding of D&O's responsibilities."

"Great presentations from both legal and practical standpoints."

"Excellent faculty..."

### Course Leader

Alan  
L.W. D'Silva,  
Stikeman Elliott  
LLP



### Course Leader

John Sterling,  
Ogilvy Renault  
LLP



Subrata  
Bhattacharjee,  
Heenan Blaikie  
LLP



Jonathan  
Boulakia,  
Chartwell  
Seniors  
Housing REIT



James Doris,  
Davies Ward  
Phillips & Vine-  
berg LLP



Bryan Finlay,  
Q.C.,  
WeirFoulds LLP



Mitchell  
H. Gropper,  
Farris, Vaughan,  
Wills & Murphy  
LLP



Eleni Maroudas,  
Chubb Insur-  
ance Company  
of Canada



William  
McClelland,  
TD Insurance



Usman  
M. Sheikh,  
Ontario  
Securities  
Commission



as well as:

Heather Platt,  
Metrolinx

# FACULTY

## COURSE LEADERS

### ALAN L.W. D'SILVA

Alan L.W. D'Silva is Partner at **Stikeman Elliott LLP**. He has a diverse commercial litigation practice spanning numerous practice areas.

### JOHN STERLING

John Stirling is Senior Partner with **Ogilvy Renault LLP**. He focuses on corporate and commercial law, M&As and financing.

## CO-LECTURERS

### SUBRATA BHATTACHARJEE

Subrata Bhattacharjee is Partner at **Heenan Blaikie LLP** and Co-Chair of the firm's National Trade and Competition group and partner in the Toronto Litigation group.

### JONATHAN BOULAKIA

Jonathan Boulakia is Senior VP & General Counsel at **Chartwell Seniors Housing REIT**. He is responsible for the oversight of all legal matters at Chartwell.

### JAMES DORIS

James Doris is a partner in the litigation department at **Davies Ward Phillips & Vineberg LLP**. He has a corporate & commercial litigation practice.

### BRYAN FINLAY, Q.C.

Bryan Finlay, Q.C. is a senior trial and appellate Counsel at **WeirFoulds LLP** and recognized by Lexpert for his directors' & officers' liability expertise.

### MITCHELL H. GROPPER

Mitchell H. Gropper is a Partner with **Farris, Vaughan, Wills & Murphy LLP**. His practice includes giving advice to boards of directors and independent committees of boards of directors.

### ELENI MAROUDAS

Eleni Maroudas is Corporate Counsel for **Chubb Insurance Company of Canada**.

### WILLIAM MCCLELLAND

William McClelland is Litigation Management Lawyer, Legal Services (Claims), for **TD Insurance**. He manages their relationship with external counsel for claims litigation and provides legal support for Claims operations.

### HEATHER PLATT

Heather Platt is Senior Legal Counsel with **Metrolinx**, a provincial crown agency responsible for the integration of public transit services in the Greater Toronto and Hamilton Area.

### USMAN M. SHEIKH

Usman M. Sheikh is Litigation Counsel with the Enforcement Branch of the **Ontario Securities Commission**.

# COURSE PROGRAM

## D&O EXPOSURE & THE BUSINESS JUDGMENT RULE

Directors and officers are facing increased exposure to regulatory and even criminal liability. The standard of care imposed on directors & officers has been codified in most corporate legislation in Canada, as well as the Criminal Code. This session will examine D&O exposure under Canadian laws, the duties of directors and the working of the Business Judgment Rule.

- Invoking the 'business judgment rule' in defense of a claim
- D&O liability and Bill C-45
- Corporate guilt and the 'directing mind'
- Directors' obligations and liability in the oppression remedy context
- Oppression remedy: conditions required for granting relief
- In the corporation's interest: derivative lawsuits

## SECURITIES LITIGATION & ENFORCEMENT

Canadian and U.S. securities regulators have stepped up compliance enforcement activities and enacted changes that have opened the doors to lawsuits by shareholders as well as private investors. Directors are also being named as co-defendants in more securities class actions. This session will examine where regulators are focusing their attention, the areas of increased exposure and best practices for risk mitigation.

- Civil liability from the Securities Act: liability for non-compliance with securities legislation
- Potential liability for prospectus misstatements or omissions
- Civil liability for misrepresentation in continuous disclosure documents
- Obligations applicable to insiders
- Lawsuits under section 11 of the U.S. Securities Act

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

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

## D&O LIABILITY IN EXECUTIVE COMPENSATION CASES

Are executive compensation scandals Canada-bound? This presentation will examine the exposure, executive compensation disclosure and compliance standards and the risk mitigation actions that can be taken.

- Disclosure and transparency in executive compensation
- Understanding the implications of backdating and “springboarding”
- Executive compensation governance: potential D&O liability
- The controversy over performance target disclosure
- Recent case law in the area of executive compensation and board responsibility

## DIRECTORS’ AND OFFICERS’ LIABILITY UNDER THE COMPETITION ACT

This session will examine emerging risks for D&Os under the Competition Act and possible defenses to such actions.

- Risks for directors and officers under the Competition Act: recent developments of the Competition Bureau
- The laying of charges against D&Os personally in price fixing situations
- The risk of liability in corporate restructuring
- Potential liability of Canadian D&Os under U.S. antitrust laws

## D&O LIABILITY IN CANADIAN SUBSIDIARIES

This session will discuss subsidiary risks and liability management.

- Disclosure and confidentiality
- Parent / subsidiary agreements
- Transfer pricing
- Constituency boards
- Unanimous shareholder agreements
- Indemnification / insurance

## MULTI-JURISDICTIONAL ISSUES FOR D&O LIABILITIES

With increased economic integration among Canada, the U.S. and the EU, a growing number of Canadian corporations and senior business executives can expect to be governed not simply by domestic legislation and regulatory authorities, but also by laws and authorities of foreign jurisdictions. This session will examine D&O liability risks associated with increased global litigation and enforcement.

- Dealing with the increased exposure risks of being sued abroad
- D&O liability in Canadian subsidiaries
- Protection for D&Os from companies with operations outside Canada
- Handling claims filed by foreign regulators
- Protecting against self-incrimination in cross-border proceedings
- Where the SEC is focusing its enforcement activities

## ENVIRONMENTAL LIABILITY OF DIRECTORS & OFFICERS

This presentation will discuss D&O environmental liability and best practices for due diligence and risk management.

- “Strict liability” in environmental violations
- Environmental Protection Act Section 280
- Due diligence and internal prevention systems
- Retroactive and joint and several liability

## PROTECTING AGAINST SELF-INCRIMINATION IN CROSS-BORDER PROCEEDINGS

This session will highlight key issues and what corporations and senior business executives need to know to protect their rights in multiple jurisdictions

- Differing competition regimes in Canada, the U.S. and elsewhere
- Protections against self-incrimination in each regime
- How information-sharing provisions can prejudice protection against self-incrimination
- What the future holds

## NEGOTIATING D&O INDEMNIFICATION

This presentation will highlight the importance of D&O indemnification and will highlight the important things to look for in an indemnification agreement.

- The fundamentals of D&O liability coverage
- The latest trends in indemnification
- Determining the amount of coverage directors & officers need
- Pitfalls in indemnification agreements
- Exclusions from coverage

## DOCUMENT RETENTION DESTRUCTION AND PRODUCTION

This session will discuss best practices in the event of claims or suits involving the corporation.

- Search & seizure preparedness
- Document retention requirements
- Negotiating the terms of an order or request
- Conducting an internal investigation: immunity
- Litigation readiness

## WORKSHOP

### BUSINESS RESTRUCTURING, INSOLVENCY & BANKRUPTCY

The directors and officers of businesses in financial distress face exposure to lawsuits brought by shareholders, bankruptcy trustees, federal or statutory receivers and debtors-in-possession. Learn about the issues that come into play affecting D&O liability during business restructuring, insolvency and bankruptcy and the best strategies for securing protection.

- Restructuring under CCAA, BIA or Chapter 11 in the U.S.
- Scrutiny of actions taken near the point of insolvency
- Enforceability of priority of payment provisions in bankruptcy
- Sources of statutory liability more likely to arise in the context of insolvency
- Canadian case law: heightened duty of diligence when a corporation is in financial difficulty

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.

**Corporate Law Exposure & the Business Judgment Rule**

Markus Koehnen,  
McMillan LLP

**Securities Class Action Exposure**

Jeffrey S. Leon,  
Bennett Jones LLP

**Employment Law Liability of Directors and Officers**

George Waggott,  
McMillan LLP

**Negotiating D&O Insurance and Indemnification**

Crawford G. Smith,  
Torys LLP

**D&O Liability In Canadian Subsidiaries**

Bryan D. Wylanko,  
Federal Express Canada Ltd.

**Protecting Against Self-Incrimination in Cross-Border Proceedings**

Lisa C. Munro,  
Lerners LLP

**Risk Oversight Monitoring and Reporting**

Palma Barbieri,  
Canadian Tire Corporation, Limited

**Boards in Action: Practical Ways to Identify and Mitigate Risk**

Pierre Saint-Laurent,  
AssetCounsel Inc.

**Practical Lessons for Avoiding and Prevailing in Litigation**

Patrick J. Sullivan & Robert W. Taylor,  
Taylor Veinotte Sullivan Barristers

**Best Practices for Continuous Disclosure**

Jeffrey A. Read,  
Fraser Milner Casgrain LLP

**Environmental Liability of Directors & Officers**

Kate Chisholm,  
EPCOR Utilities Inc.

**Key Regulatory Initiatives: Ensuring You Comply with New Governance Disclosure Regulations**

Cory Kent,  
Lang Michener LLP

**Securities Litigation & Enforcement**

James A. Hodgson, *Ogilvy Renault LLP*;  
Usman M. Sheikh, *Ontario Securities Commission*

**Managing Shareholders & Shareholder Activism**

Norman Findlay,  
Cassels Brock & Blackwell LLP

**Foreign Exposure: D&O Beyond Canadian Borders**

Thomas G. Heintzman, O.C., Q.C.,  
McCarthy Tétrault LLP

**Going Private Transactions**

Peter C. Goode,  
McCarthy Tétrault LLP

**Helping the Board Manage Risk**

John F. Cairns,  
Chubb Insurance Company of Canada

**Ensuring Legal and Ethical Behavior by the Corporation and the Board**

Derek S.T. Baldwin,  
IBIS Corporation

**Document Retention/Desruction/Production**

Kelly Friedman, *Ogilvy Renault LLP*;  
David Stewart, *Deloitte & Touche LLP*

**D&O Liability in Mergers and Acquisitions**

James W. E. Doris,  
Davies Ward Phillips & Viveberg LLP

**Corporate Record Management**

Frank Walwyn,  
WeirFoulds LLP

**10 Questions Directors Should Ask About Information Technology**

Paul Zonneveld,  
Deloitte & Touche LLP

**Oversight of Internal Controls**

Donald (Don) J. DeGrandis,  
TransCanada PipeLines Limited

**Roles and Liability Issues in Due Diligence**

Dana M. Peebles,  
McCarthy Tétrault LLP

**Directors' & Officers' Criminal and Environmental Liability**

Bruce McMeekin,  
Miller Thomson 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:** Novotel Toronto Centre Hotel, 45 The Esplanade, Toronto, ON, M5E 1W2

**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 February 22, 2012. No refunds will be issued after this date.

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

**Payment must be received prior to February 28, 2012**

**Phone: 1-800-363-0722 Toronto: (416) 665-6868 Fax: (416) 665-7733**

**TO REGISTER FOR DIRECTORS' AND OFFICERS' LIABILITY**

Name \_\_\_\_\_  
 Title \_\_\_\_\_ Department \_\_\_\_\_  
 Approving Manager Name \_\_\_\_\_  
 Approving Manager Title \_\_\_\_\_  
 Organization \_\_\_\_\_  
 Address \_\_\_\_\_  
 City \_\_\_\_\_ Province \_\_\_\_\_ Postal Code \_\_\_\_\_  
 Telephone \_\_\_\_\_ Fax \_\_\_\_\_ e-mail \_\_\_\_\_  
 Please bill my credit card:  AMEX  VISA  Mastercard  
 # \_\_\_\_\_ Expiration date: \_\_\_\_ / \_\_\_\_  
 Signature : \_\_\_\_\_  
 Payment enclosed:  Please invoice. PO Number: \_\_\_\_\_

**REGISTRATION COSTS**

NUMBER OF PARTICIPANTS:   
 COURSE: \$1975  
 COURSE + PROCEEDINGS CD-ROM:  
 \$1975 + \$175 = \$2150  
 PROCEEDINGS CD-ROM: \$599  
 NOTE: Please add 13% HST to all prices.  
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