

ENVIRONMENTAL DEAL-BREAKERS IN REAL ESTATE & BUSINESS TRANSACTIONS

Avoiding key environmental liabilities in purchase,
sale and lease transactions

January 18 & 19, 2010, Toronto
Inaugural Two-Day Event!

*Workshop Included: Dealing with environmental
risk in industrial and commercial leasing*

participating organizations

Blaney McMurtry LLP	Macleod Dixon LLP
Davis LLP	Miller Thomson LLP
Fasken Martineau DuMoulin LLP	Ontario Realty Corporation
Goodmans LLP	Osler, Hoskin & Harcourt LLP
Gowling Lafleur Henderson LLP	Saxe Law Office
GWL Realty Advisors	

who should attend

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

course highlights

- Learn from the top environmental lawyers at Gowling Lafleur Henderson LLP, Fasken Martineau DuMoulin LLP, Ontario Realty Corporation and others
- Discover how to structure the transaction to allocate environmental liability
- Learn how to conduct effective environmental due diligence in the context of a real estate transaction and how to create an iron-clad defence in case of contractual disputes
- Discover how contractual provisions can be used to mitigate liability associated with redevelopment of contaminated sites
- Learn how to negotiate environmental problems in purchase and sale agreements
- Learn about the most important drafting measures to protect landlords and tenants in commercial lease agreements

Course Leader
Rosalind H.
Cooper,
Fasken
Martineau
DuMoulin LLP



Course Leader
David Estrin,
Gowling
Lafleur
Henderson LLP



Bryan
Buttigieg ,
Miller
Thomson LLP



Janet L.
Bobchko,
Blaney
McMurtry LLP



David I.
Crocker,
Davis LLP



J.M. Madeleine
Donahue,
Macleod Dixon
LLP



Peter Johnson,
Ontario Realty
Corporation



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



Kate Lyons,
Goodmans LLP



Dianne Saxe,
Saxe Law
Office



as well as:

Coellen Linkie,
GWL Realty
Advisors

FACULTY

COURSE LEADERS

ROSALIND H. COOPER

Rosalind H. Cooper is a partner with Fasken Martineau Dumoulin LLP and Director of the Toronto office's Environmental Practice Group. She has extensive experience advising on all environmental regulatory issues including exposure to environmental liability, brownfields redevelopment, decommissioning and remediation of contaminated lands, certificates of approval, reporting requirements, various aspects of due diligence, and director and officer liability.

DAVID ESTRIN

David Estrin is recognized as Canada's senior environmental law practitioner and one of Canada's most experienced environmental law specialists. For over 30 years he has advised corporations, government agencies, financial institutions, Aboriginal communities as well as law firms in Canada and the US in all facets of environmental law issues. His book *Business Guide to Environmental Law*, contains a 150 page chapter on "Environmental Law Issues in Property Transactions".

CO-LECTURERS

BRYAN BUTTIGIEG

Bryan Buttigieg practices commercial litigation and environmental law. He has represented corporations and individuals in litigation arising out of the sale, purchase and use of contaminated property. He has provided advice in claims for environmental damages. He also provides advice to purchasers, vendors, landlords, tenants, lenders and investors in transactions involving the purchase and sale of contaminated sites.

JANET BOBECHKO

Janet Bobechko is a partner at Blaney McMurtry LLP. She has been on the Canadian Brownfield Network-Advisory Panel since its inception to 2009. Her practice deals exclusively with all aspects of environmental law with an emphasis on environmental compliance issues arising from federal, provincial and municipal regulatory regimes. A substantial part of her practice involves advising clients in relation to contaminated sites and Brownfield development.

DAVID CROCKER

David Crocker's practice involves all areas of environmental law including issues of waste management and disposal, compliance, environmental assessment and approvals, environmental litigation, due diligence for M&As, real estate transactions, transportation of dangerous goods and occupational health and safety.

MADELEINE DONAHUE

Madeleine Donahue is a Partner and head of environmental practice in Macleod Dixon's Toronto office. She has extensive expertise in corporate-commercial, real estate and financing transactions as well as in regulatory guidance, litigation and defence of civil suits and regulatory orders. She is very accustomed to working as a team member on transactions of every kind and regularly retains and works with environmental and engineering consultants on investigations, due diligence reviews, risk assessments and remediation.

PETER JOHNSON

Peter Johnson is a senior solicitor at Ontario Realty Corporation (ORC), the Ontario government agency that manages the government's

lands, leases, facilities and construction. He specializes in Crown law as it affects property transactions, including the application of the Environmental Assessment Act to and class environmental assessments.

DAN KIRBY

Dan Kirby is a partner at Osler, Hoskin & Harcourt LLP and Co-Chair in the firm's Environmental Law Group. He specializes in environmental law, including environmental civil litigation, charges under environmental statutes, ADR, environmental advice with respect to commercial transactions, corporate disclosure, environmental inspections, investigation, audits, contamination, clean-up, remediation, decommissioning and environmental compliance.

COELLEN LINKIE

Coellen Linkie is Manager of Corporate Environmental Services at GWL Realty Advisors.

KATE LYONS

Kate Lyons is a partner at Goodmans LLP. Her environmental practice had its origin in Brownfield redevelopment. Her environmental expertise extends to providing advice on corporate transactions involving the evaluation and allocation of environmental risks and costs.

DIANNE SAXE

One of Canada's first Certified Specialists in Environmental Law, Dianne Saxe is the only practitioner with a Ph.D. in environmental law, and Canada's leading author on environmental law. She has 33 years of experience in all areas of environmental law and litigation and is a highly acclaimed public speaker, who drafted parts of Ontario's environmental laws.

COURSE PROGRAM

STRUCTURING THE TRANSACTION TO ALLOCATE ENVIRONMENTAL LIABILITY

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

- Understanding environmental liability
- The limits of contractual protection
- Site investigation: avoiding surprises and what to do about them
- Avoiding future litigation: resolving any ambiguity in contract terms dealing with environmental risk
- Options available to purchaser and vendor if significant environmental issues are identified during due diligence period
- Dealing with offsite liability
- Liability to successors in title

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

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

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

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

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

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

ENVIRONMENTAL RISK AND SECURITIES DISCLOSURE

Investors' increasing sensitivity to environmental matters has led securities regulators to begin turning their attention to the disclosure of environmental issues by public issuers to ensure that investors are properly informed. While it has been clear for some time that NI 51-102 requires issuers to disclose material information about environmental matters in their financial statements, MD&A and the annual information form, more recent discussion has focussed on the content and extent of such disclosure. This discussion addresses the pitfalls that can arise when too much or too little disclosure occurs.

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

WORKING WITH ENVIRONMENTAL CONSULTANTS ON CONTAMINATED SITES

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

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

ADDRESSING ENVIRONMENTAL ISSUES IN NEGOTIATING PURCHASE AND SALE AGREEMENTS

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

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

DEALING WITH SPECIFIC CONTAMINANTS AND SITUATIONS FOLLOWING AN AUDIT

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

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

NAVIGATING THE ONTARIO GOVERNMENT'S ENVIRONMENTAL ASSESSMENT PROCESS

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

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

USING INSURANCE TO MITIGATE THE COSTS OF ENVIRONMENTAL RISKS

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

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

WORKSHOP

DEALING WITH ENVIRONMENTAL RISK IN INDUSTRIAL AND COMMERCIAL LEASING

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

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

MULTIMEDIA PRESENTATIONS

Register for Environmental Deal-breakers in Real Estate and Business Transactions and we will give you free of charge a CD-ROM comprising the following virtual presentations from recent Federated Press courses and conferences. Presented in their entirety with complete audio and accompanying PowerPoint slides totaling 708 minutes of expert learning, these presentations are an added bonus to this year's course. Bear in mind that these presenters are not necessarily those that you will see and hear at this year's course.

Environmental Concerns in Leasing

Jennifer Cleall & Rachel J. Hamilton,
Davis LLP
Time: 53 Slides: 42

Legal Status of Landlord & Tenant

Craig S. Harkness,
Osler, Hoskin & Harcourt LLP
Time: 38 Slides: 21

Security Issues for Landlords & Tenants in Commercial Leases

Gordon Love,
Vaughan, Wills & Murphy LLP
Time: 39 Slides: 8

Green Leases for Healthy Buildings

Michael Glassco,
Theodor Sterling Associates Ltd.
Time: 32 Slides: 28

Insurance Issues in Leasing

Jennifer Elford,
Aon Reed Stenhouse Inc.
Time: 25 Slides: 22

Brownfields Redevelopment

Andrew Panko,
Associated Brownfields Inc.
Time: 49 Slides: 94

Site Assembly: The Use of Conditional Contracts and Options

Edward M. Perlmutter,
Blakes, Cassels & Graydon LLP
Time: 46

Remedial Technologies and Their Application in Brownfield Projects

Didier Lapointe,
Jacques Whitford Ltd.
Time: 60

Best Practice Solutions to Deal with Threatening Issues

Margaret Knowles,
Morguard Investments Ltd.
Time: 51

Environmental Issues & Architectural Solutions

Les Klein,
Quadrangle Architects
Time: 34 Slides: 40

The Inside Story on Indoor Air Quality Standards

Sarah V. Powell,
Davies Ward Phillips & Vineberg LLP
Time: 51 Slides: 6

Brownfields & Liability

Janet L. Bobeckho,
Blaney McMurtry LLP
Time: 65 Slides: 40

Conducting an Environmental Assessment

Ed Rodrigues,
Golder Associates
Time: 61 Slides: 23

Ontario's Programs and Initiatives to Facilitate Brownfields Redevelopment

Hon Q. Lu,
Ministry of Municipal Affairs and Housing
Time: 37 Slides: 18

City of Kitchener's Coal Tar Remediation Project

Dave Innocente,
MTE Consultants Inc.
Time: 67

Audio/Video segments clickable slide by slide
Papers and overheads also included
Print any of the material for your own use



Registration: To reserve your place, call Federated Press toll-free at 1-800-363-0722. In Toronto, call (416) 665-6868 or fax to (416) 665-7733. Then mail your payment along with the registration form. Places are limited. Your reservation will be confirmed before the course.

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

Cost: The attendance fee for the course is \$1825 per person and covers attendance for one person and the lecturers' presentation material. The fee further includes lunch on both days, morning coffee on both days and refreshments during all breaks. You may purchase a Proceedings CD-ROM containing edited actual proceedings and materials from the course.

Time: This course is a two-day event. Registration begins at 8:00 a.m. The morning sessions start promptly at 9:00. The second day ends at 4:00 p.m.

Cancellation: Please note that non-attendance at the course does not entitle the registrant to a refund. In the event that a registrant becomes unable to attend following the deadline for cancellation, a substitute attendee may be delegated. Please notify Federated Press of any changes as soon as possible. Federated Press assumes no liability for changes in program content or speakers. A full refund of the attendance fee will be provided upon cancellation in writing received prior to January 5, 2010. No refunds will be issued after this date. Please note that a 15% service charge will be held in case of a cancellation.

Discounts: Federated Press has **special team discounts**. Groups of 3 or more from the same organization receive a **10%** discount. Groups of 7 or more from the same organization receive a **15%** discount.

Payment must be received prior to January 11, 2010

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