

# THE INTENSIVE SHORT COURSE IN SECURED LENDING AND DEBT FINANCE

Enhance your knowledge and skills in commercial lending.

Financing transactions are becoming increasingly complex. To maximize your value to clients, you must have a solid grasp on the core **legal** and **business** issues. In this intensive and interactive program, you will:

- Get a crucial overview of debt financing products and how they reflect the current business climate
- Learn the essential steps and legal components of a financing transaction, with a focus on strategic and tactical concerns
- Receive practical advice and tips on negotiating and drafting legal documents effectively
- Gain expert insights and best practices on hot topics and emerging trends

Register today at:

[osgoodepd.ca/secured-lending](https://osgoodepd.ca/secured-lending)

## PROGRAM CHAIRS

Eric Belli-Bivar  
DLA Piper (Canada) LLP

Don Waters  
McMillan LLP

## REGISTRATION OPTIONS

October 13 – 14, 2021  
Online – Live, Interactive  
9:00 a.m. – 4:30 p.m. ET

OR

November 25 – 26, 2021  
Online Replay  
9:00 a.m. – 4:30 p.m. ET

*Can't make the date?*  
Registration includes 120-day unlimited, online access to the recorded program.

# Drawing on the expertise and experience of leading lawyers and experts, including:

## Program Chairs



### Eric Belli-Bivar

Partner, DLA Piper (Canada) LLP

Eric practises in the Debt Finance Group with an emphasis on debt finance, secured lending, FinTech, structured finance and payment systems and products. Eric advises lenders, borrowers, funds and sponsors, including regulated financial institutions and international financial market participants. Eric has been recognized as a leading finance and banking lawyer by Lexpert, Best Lawyers (Canada), Chambers, the Legal 500 Canada Guide, the International Financial Law Review and, for several years, as an Acritas Star.



### Don Waters

Partner, McMillan LLP

Don's practice focuses on corporate debt finance and structured finance transactions, including asset-based lending, syndicated lending, cross-border debt financings, securitization and project finance transactions. Having worked at a Japanese firm in Tokyo, Don co-chair's his firm's Japan practice group and acts for Japanese financial institutions and corporations. Don has been repeatedly recognized as a leading lawyer by Best Lawyers (Canada), the Canadian Legal Lexpert Directory and in IFLR1000.

## Program Faculty

### Darcy Ammerman

McMillan LLP

### Jason Arbuck

Cassels Brock & Blackwell LLP

### Nick Bassi

Vice President, Underwriting and Portfolio Management, Frontwell Capital Partners

### Michelle Boodhoo

McMillan LLP

### Chris Burr

Blake, Cassels & Graydon LLP

### Ken Bursey

Associate General Counsel and Managing Director, Capital Markets – Corporate Banking, Legal & Regulatory Compliance, BMO Financial Group

### Aman Cheema

Vice President, Loan Syndications, TD Securities

### John Estey

President, Stonebridge Lease Financing Corporation

### David Ferris

Fasken Martineau DuMoulin LLP

### Pat Forgione

McMillan LLP

### Jill Fraser

Aird & Berlis LLP

### Auriol Marasco

Blake, Cassels & Graydon LLP

### Tim Murray

Managing Director, Corporate Banking, RBC Capital Markets

### Emily O'Donohue

Director and Associate General Counsel, Derivatives, Ontario Teachers' Pension Plan (OTPP)

### Meaghan Obee Tower

Stikeman Elliott LLP

### James Padwick

Wildeboer Dellelce LLP

### Candace Pallone

McCarthy Tétrault LLP

### Karen Patey

Managing Director – Asset Based Lending, North American Commercial Banking, BMO Financial Group

### Mark Saraiva

Executive Director, Loan Syndications, Corporate Banking, CIBC Capital Markets

### Noah Schein

Norton Rose Fulbright Canada LLP

### Trevor Simpson, MBA, CPA, CMA

Associate Partner, FirePower Capital

### Leanne Williams

Thornton Grout Finnigan LLP

### Andrew Winter

Director, IBOR Transition Office, BMO Financial Group

*“Excellent. Great instructors and excellent topics [which] were very well put together and interesting.”*

**Michael Gillis**, Cox & Palmer LLP

*“Excellent. Very informative.”*

**Luciano Butera**, EVP & Chief Operating Officer, TRADE X

# THE INTENSIVE SHORT COURSE IN Secured Lending and Debt Finance

In today's uncertain economy, it is **critical that counsel and financial services professionals** have a solid understanding of the key legal issues and risks in today's commercial loan transactions and have the necessary tools to address them.

Join the ranks of 400+ professionals who completed this intensive *OsgoodePD* program and get the **practice-ready knowledge and skills** you need to succeed in current market conditions. A faculty of legal and banking experts will share their knowledge, techniques and strategies to help you to make more efficient and sound decisions with greater confidence.

## You will:

- Gain a firm grasp of the most common legal risks in a financing transaction, along with best practices for handling them in competitive business conditions
- Review a range of alternative financing vehicles, including equipment lease financing
- Comprehend which loan and credit agreement clauses are the most important and why
- Deepen your understanding of the ISDA Master Agreement and Schedules
- Explore the evolving landscape of Fintech and SaaS secured lending
- Analyze critical issues to ensure proper perfection, and when considering enforcement
- Review key considerations, and sticking points, when drafting or interpreting opinions

**PLUS!** Registration includes complimentary access to **What Corporate Commercial Lawyers Need to Know About Enforcing Security: A Litigators' Perspective**, an online module designed to provide you with a practical overview of how to navigate enforcement of security.

## Who Should Attend

- Junior to mid-level lawyers in corporate/commercial or financial services law
- Professionals who want a solid understanding of loan agreements/transactions
- Professionals working with financial institutions, merchant banks, asset-based lenders and leasing companies
- Insolvency, litigation or government professionals seeking to gain a greater understanding of market conditions in commercial financing transactions
- Management involved in negotiating deals involving commercial financing
- Professionals involved with loan documentation, lending and credit facilities
- Consultants

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[osgoodepd.ca/secured-lending](https://osgoodepd.ca/secured-lending)

# Agenda

**DAY 1 – OCTOBER 13, 2021**

**9:00 a.m. – 4:15 p.m. ET**

(Online – Live, Interactive)

**9:00 a.m.**

**Chairs' Welcome and Opening Remarks**

**9:15 a.m.**

**Working with the Commitment Letter and Term Sheet**

**Michelle Boodhoo**, McMillan LLP

**Ken Bursey**, Associate General Counsel and Managing Director, Capital Markets – Corporate Banking, Legal & Regulatory Compliance, BMO Financial Group

- The roles and objectives of the lender, borrower and counsel in a deal – who does what?
- Essential terms and requirements: binding and non-binding commitment letters, fees letter, term sheet, etc.
- Considerations when structuring the deal
- Key issues for borrowers and lenders
- Jurisdiction – the practical issues

**10:15 a.m.**

**Health Break**

**10:30 a.m.**

**Conducting Effective Due Diligence**

**David Ferris**, Fasken Martineau DuMoulin LLP

- Checklist of critical items
- The objectives of due diligence in a financing transaction
- Getting started – addressing key areas of concern
- Use of diligence certificates
- How to best advise clients when issues arise

11:15 a.m.

## Negotiating and Drafting the Credit Agreement

**Eric Belli-Bivar**, DLA Piper (Canada) LLP

**Don Waters**, McMillan LLP

In a hands-on fashion, your program co-chairs will walk you through the key clauses of a loan agreement and offer practical advice on negotiating and drafting the agreement.

- Establishing the facility – includes revolving versus term; swingline; fixed versus floating; Canadian prime, US base rate, LIBOR; banker's acceptances; Letters of Credit subfacilities
- Conditions precedent
- Representations and warranties
- Covenants – positive and negative
- Events of default and grace periods, including cross-default
- Payout letters
- Agency and lending provisions – includes yank-a-bank provisions; market disruption, increased costs
- Practice management tips
- Drafting techniques and interpretation of contract clauses
- Effective use of boilerplates in credit agreements
- Identifying and managing risks

**NOTE: At 12:00 p.m. ET, a Lunch Break will be taken for 60 mins.**

2:00 p.m.

## Taking Effective Security

**Darcy Ammerman**, McMillan LLP

**Noah Schein**, Norton Rose Fulbright Canada LLP

- Key legal issues and concerns from both lenders' and borrowers' perspectives
- The importance of running searches
- Types of security and how they are perfected
  - "All Assets" Liens
  - Pledges of securities
  - Control agreements for uncertificated securities and the *Ontario Securities Transfer Act, 2006*

- Real property security – an overview
- Other types of security-related issues
  - PPSA Acknowledgements
  - Implied subordination under the PPSA
  - Landlord agreements
  - Blocked Account Agreements
- Registration issues and pitfalls and enforcement issues

3:00 p.m.

## Health Break

3:15 p.m.

## Priorities, Subordination Agreements and Intercreditor Agreements

**Chris Burr**, Blake, Cassels & Graydon LLP

**Pat Forgione**, McMillan LLP

- Key differences between mezzanine, second lien and other forms of lending
- Recent developments in the Canadian market
- Understanding the contractual and statutory rights of the parties
- Enforceability of waivers
- Security issues and protecting priority
- Issues arising from financing cross-border entities
- Strategies to improve recovery prospects
- Purpose and goal of the agreements, including key structuring issues and critical negotiation points
- Enforcement actions and triggering events
- Payment blockage
- Sales of collateral

4:15 p.m.

## DAY 1 CONCLUDES

DAY 2 – OCTOBER 14, 2021

9:00 a.m. – 4:30 p.m. ET  
(Online – Live, Interactive)

9:00 a.m.

## The Canadian Debt Financing Market – An Overview

**Aman Cheema**, Vice President, Loan Syndications, TD Securities

**Tim Murray**, Managing Director, Corporate Banking, RBC Capital Markets

**Mark Saraiva**, Executive Director, Loan Syndications, Corporate Banking, CIBC Capital Markets

Get an essential overview of the structure and operations of the Canadian debt financing market, including:

- The impact of international lending concerns from the Canadian perspective
- Who are the key players and what are the differences in how they approach the market?
- Which types of products are currently being offered?
- Which elements of the deal are critical to lenders now?

9:45 a.m.

## Asset-Based Lending (ABL)

**Jason Arbuck**, Cassels Brock & Blackwell LLP

**Nick Bassi**, Vice President, Underwriting and Portfolio Management, Frontwell Capital Partners

**Karen Patey**, Managing Director – Asset Based Lending, North American Commercial Banking, BMO Financial Group

- Pros and cons of ABL versus traditional financing
- Survey of ABL structures in Canada
- Business issues relating to eligible collateral
- Documenting and taking security for an ABL deal
- Industry developments and their impact on transactions
- Cross-border issues you need to be aware of
- Recent legal developments impacting ABL

10:35 a.m.

## Health Break

10:45 a.m.

### Equipment Lease Financing in Today's Loan Transactions

**John Estey**, President, Stonebridge Lease Financing Corporation

**Jill Fraser**, Aird & Berlis LLP

Companies often seek alternative finance options. The equipment finance industry provides such an alternative. This session will provide you with a business-focused understanding of the equipment finance industry to help with advising clients on equipment financing and on entering into leases generally, including:

- What are the key business factors that equipment financiers focus on and how do these find expression in the finance documentation?
- Drafting considerations in dovetailing the equipment finance into a firm's overall debt strategy
- Understanding the common credit requirements and identifying new trends in the industry
- Negotiation strategies for borrowers
- Current PPSA requirements
- Problems posed by aircraft, motor vehicles and trucking fleets
- Conflicts of law arising where assets move between jurisdictions
- Where to perfect the relevant security interests

11:45 a.m.

## Lunch Break

12:45 p.m.

### Essential LIBOR Update: What's Happening?

**Andrew Winter**, Director, IBOR Transition Office, BMO Financial Group

- Key overview of the London Interbank Offered Rate (LIBOR) – what happened and what's the plan?
- Ramifications of the scheduled phase-out of LIBOR
- Essential updates and next steps
- Potential alternatives to LIBOR, includes Secured Overnight Financing Rate (SOFR),

Canadian benchmarks, and incorporating revised floating rate loans

- Practical considerations when drafting loan documents – the "amendment approach" vs. the "hardwired approach" and what to watch out for
- A distinctly Canadian concern: what's happening with CDOR?

1:30 p.m.

### Fintech and SaaS Secured Lending

**James Padwick**, Wildeboer Dellelce LLP

**Trevor Simpson, MBA, CPA, CMA**, Associate Partner, FirePower Capital

- Overview of lending to start-ups and Fintechs
- How lending to Fintech and SaaS compares to traditional lending – all IP, nothing tangible to take security over
- Canadian vs. US practices and trends
- How you take security
- What banks are looking for
- Key issues and pitfalls to watch out for

2:30 p.m.

## Health Break

2:45 p.m.

### A Practical Understanding of the ISDA Master Agreement and Schedules

**Emily O'Donohue**, Director and Associate General Counsel, Derivatives, Ontario Teachers' Pension Plan (OTPP)

**Candace Pallone**, McCarthy Tétrault LLP

- Uses of Derivatives for Borrowers
- Architecture of the ISDA Master Agreement, Schedules, Confirmations and the Credit Support Annex
- ISDA's relationship to the Credit Agreement
- Key provisions to be negotiated

3:30 p.m.

### Providing Opinions: Tips & Traps – What Works, What Doesn't

**Auriol Marasco**, Blake, Cassels & Graydon LLP

**Meaghan Obee Tower**, Stikeman Elliott LLP

This practical and interactive session covers the

essential function of opinions in commercial lending, including the most common types of opinions, the most-frequently negotiated points, and the following crucial topics:

- Key issues in multi-jurisdictional opinions
- Special issues involving PPSA opinions, including: investment property – perfection by control; cash collateral; special property (licenses, intellectual property, etc.); anti-assignment clauses
- True sale and non-consolidation opinions
- Opinion issues in virtual closings
- Negotiating qualifications and assumptions: how much is too much?
- The process of negotiating and drafting opinions, includes tips and best practices

4:30 p.m.

## PROGRAM CONCLUDES

# Online Module

Included with your registration, this Online Module features experienced litigators who will provide you with a practical overview of how to navigate enforcement of security. *We recommend viewing this Online Module after the program concludes.*

### What Corporate Commercial Lawyers Need to Know About Enforcing Security: A Litigators' Perspective

(90 mins, on-demand, recorded in 2020)

**Chris Burr**, Blake, Cassels & Graydon LLP

**Leanne Williams**, Thornton Grout Finnigan LLP

- A practical survey of this ever-evolving and complex area of law
- Troubleshooting techniques to identify key issues and to assess strategic responses and tactics
- A walk-through of the key legal risks and concerns you have to be ready to manage
- Best practices when negotiating drafting forbearance agreements
- Strategies for identifying and responding to indicators of pending insolvency, restructuring, or troublesome indebtedness

“Excellent. Very knowledgeable speakers. Covered a lot of material efficiently.”

Ari Shack  
Affinity Law Group

“Very engaging and intimate, great speakers and important practical skills and real-life examples.”

Iana Namestnikova  
Caravel Law

“Presentations were engaging and well-organized. Appreciated receiving perspective from financial institutions. Very enjoyable overall.”

Leandro Zylberman  
Counsel, Corporate, Great-West Life

“I found it very useful to have a comprehensive overview of the different types of facilities. Loved the credit agreement presentation [and] the opinions session was great/valuable. Great speakers for all sessions [including] the presence of industry speakers.”

Tracie Allan  
AVP & Managing Counsel, Sun Life

## Registration Details

**Early Bird Fee per Delegate: \$1,295 plus HST to July 30, 2021**

**Fee per Delegate: \$1,495 plus HST**

**Newly Licensed\*: \$747.50 plus HST**

\* This fee applies to newly licensed professionals within the past 2 years

Fee includes online attendance, electronic program materials and 120-day unlimited online access to program archive. Group discounts and financial assistance are available. Visit [www.osgoodepd.ca/financial-assistance](http://www.osgoodepd.ca/financial-assistance) for details.

### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.

### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund is available if a cancellation request is received in writing 14 days prior to the program date. If a cancellation request is made with less than 14 days notice, a \$75 administration fee will apply. No other refund is available.



OsgoodePD has been approved as an Accredited Provider of Professionalism Content by the LSO.



Eligible CPD Hours – LSO (ON)

Program: 12h 30m CPD (11h 45m Substantive, 45m Professionalism)

Online Module: 1h 30m CPD (1h 30m Substantive)

Total: 14h CPD (13h 15m Substantive; 45m Professionalism)



This program is approved for LAWPRO Risk Management Credit.

OsgoodePD programs may be eligible for CPD/MCLE credits in other Canadian and US jurisdictions. To inquire about credit eligibility, please contact [cpd@osgoode.yorku.ca](mailto:cpd@osgoode.yorku.ca).



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## The Intensive Short Course in Secured Lending and Debt Finance

Register today at:

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