

Includes 2020 Updates

# THE INTENSIVE SHORT COURSE IN SECURED LENDING & DEBT FINANCE

## Your deep dive into commercial lending.

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

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

Register today at:

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

## Program Chairs

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

**Don Waters**  
McMillan LLP

## Date and Time

September 23 – 24, 2020  
9:00 a.m. – 4:15 p.m. & 4:45 p.m. EDT  
Online – live, interactive  
(includes 120-day program access)

ONLINE REPLAY:  
November 5 – 6, 2020  
9:00 a.m. – 4:15 p.m. & 4:45 p.m. EST  
(includes 120-day program access)



# 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 Corporate Finance, with an emphasis on debt finance, secured lending, structured finance and derivatives. Called to the bars in both Ontario and in British Columbia, he advises credit providers and consumers including Canadian and foreign banks and other financial institutions. Eric has been repeatedly recognized as a leading banking and finance lawyer and practitioner by Best Lawyers (Canada), Chambers Global, the International Financial Law Review and also in Euromoney's Guide to the World's Leading Banking Lawyers.



**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 Expert Directory and in IFLR1000.

## Program Faculty

**Darcy Ammerman**

McMillan LLP

**Jason Arbuck**

Cassels Brock & Blackwell LLP

**Matthew Ayearst**

Vice President, IBOR Transition Office, BMO Capital Markets, Regulatory Transformation, BMO Financial Group

**Alison Beer**

Legal Counsel, Ontario Securities Commission (OSC), Derivatives Branch

**Chris Burr**

Blake, Cassels & Graydon LLP

**Ken Bursey**

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

**John Estey**

President, Stonebridge Lease Financing Corporation

**David Ferris**

Fasken Martineau DuMoulin LLP

**Dan Flaro, CFA**

President, Pivot Financial Inc.

**Pat Forgione**

McMillan LLP

**Jill Fraser**

Aird & Berlis LLP

**Ben Freeman, CPA, CA, CFA**

Vice President, Loan Syndications, TD Securities

**Ilan Jacobson, HonBSc, MBA**

Founding Partner & CEO, FirePower Capital

**Auriol Marasco**

Blake, Cassels & Graydon LLP

**Tim Murray**

Managing Director, Corporate Banking, RBC Capital Markets

**Meaghan Obee Tower**

Stikeman Elliott LLP

**James Padwick**

Wildeboer Dellelce LLP

**Karen Patey**

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

**Stephanie Robinson**

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

**Mark Saraiva**

Director, Loan Syndications, Corporate Banking, CIBC Capital Markets

**Britt Sargent**

Osler Hoskin & Harcourt LLP

**Noah Schein**

Norton Rose Fulbright Canada LLP

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

Mike Gillis, Cox & Palmer LLP

# THE INTENSIVE SHORT COURSE IN Secured Lending & Debt Finance

## Acquire the skills and knowledge you need to succeed in today's competitive environment. You will:

- Deepen your understanding of the ISDA Master Agreement and Schedules
- Gain a firm grasp of the most challenging legal risks in a financing transaction, along with best practices for handling them
- Review a range of alternative financing vehicles, including equipment lease financing
- Understand which loan and credit agreement clauses are the most important and why
- Explore the evolving landscape of Fintech and SaaS secured lending

**PLUS!** Get your top questions addressed in a collegial environment.

## Topics Include

- Canadian debt financing overview – includes current and emerging debt financing products and how they reflect the current business climate and trends
- Essential legal components of a financing transaction, with a focus on strategic and tactical concerns
- Effective techniques when negotiating and drafting credit agreements
- Critical issues to ensure proper perfection, and when considering enforcement
- Key considerations when drafting or interpreting opinions

## Who Should Attend

- Junior and mid-level lawyers in corporate/commercial or financial services law
- Professionals who want a solid understanding of loan agreements/transactions
- Professionals at financial institutions, insurance companies, merchant banks, asset-based lenders, leasing companies and credit unions
- Insolvency, litigation or government professionals seeking to acquire 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

# Agenda

SEPTEMBER 23, 2020 – DAY 1

9:00 a.m. – 4:15 p.m. EDT

Online – live, interactive  
(includes 120-day program access)

9:00 a.m.

Chairs' Welcome & Opening Remarks

9:15 a.m.

Working with the Commitment Letter  
and Term Sheet

**Ken Bursey**, Senior Counsel & Director,  
Capital Markets – Corporate Banking,  
Legal and 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.  
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

*“Excellent. Very informative.”*

**Luciano Butera**, Director of Legal & Risk, Canada, NextGear Capital

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, our 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
  - 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, includes cross-default
- Payout letters
- Agency and lending provisions
  - 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

12:00 p.m.  
Lunch Break

1:00 p.m.

## Negotiating and Drafting the Credit Agreement (Cont'd)

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

**Don Waters**, McMillan LLP

2:00 p.m.

## Taking Effective Security

**Darcy Ammerman**, McMillan LLP

**Noah Schein**, Norton Rose Fulbright 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
- Enforcing and realizing on security – overview and considerations

3:00 p.m.  
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
- Issues arising from financing cross-border entities
- Protecting priority
- Strategies to improve recovery prospects

- Purpose and goal of the agreements
- Critical negotiation points?
- Key structuring issues
- Enforcement actions and triggering events
- Payment blockage
- Sales of collateral

4:15 p.m.  
DAY 1 CONCLUDES

SEPTEMBER 24, 2020 – DAY 2  
9:00 a.m. – 4:45 p.m. EDT  
Online – live, interactive  
(includes 120-day program access)

9:00 a.m.

## The Canadian Debt Financing Market – An Overview

**Ben Freeman, CPA, CA, CFA**,

Vice President, Loan Syndications, TD Securities

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

**Mark Saraiva**, 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

**Dan Flaro, CFA**, President, Pivot Financial Inc.

**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

**10:30 a.m.**  
**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 focus on providing a business-focused understanding of the equipment finance industry that will help in advising clients both on the financing of equipment 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 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?

**Matthew Ayearst**, Vice President, IBOR Transition Office, BMO Capital Markets, Regulatory Transformation, BMO Financial Group

**Stephanie Robinson**, Associate General Counsel & Managing Director, Capital Markets – Global Corporate Banking, Legal and Regulatory Compliance, 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

**1:30 p.m.**

### Fintech & SaaS Secured Lending

**Ilan Jacobson, HonBSc, MBA**, Founding Partner & CEO, FirePower Capital

**James Padwick**, Wildeboer Dellelce LLP

- 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.**  
**Break**

**2:45 p.m.**

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

**Alison Beer**, Legal Counsel, Ontario Securities Commission, Derivatives Branch

**Britt Sargent**, Osler Hoskin & Harcourt 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 you need to know about, 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

**4:45 p.m.**  
**PROGRAM CONCLUDES**

“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  
Legal Consultant, Advanced Analytics, Deloitte

“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 & Senior Counsel, Sun Life Financial

## Registration Details

### Fee Per Delegate

Regular Price: **\$1,495 + HST**

Newly Licensed (2017 – current) Price: **50% off regular rate**

### New Bundle Pricing for program + Advanced Secured Lending:

Bundle: **\$1,995 + HST for program + Advanced Secured Lending**

Fee includes attendance, program materials and 120-day program access. 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.



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