

# THE INTENSIVE SHORT COURSE IN SECURED LENDING AND DEBT FINANCE

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

Iana Namestnikova, Caravel Law

## Level up your knowledge and skills in commercial lending.

Commercial and debt financing transactions are 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:

- Review the Canadian debt financing market and products and comprehend 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
- Acquire practical advice and tips from lawyers and bankers on negotiating and drafting legal documents effectively
- Gain expert insights and best practices for navigating impacts arising from the 2023 bank crisis

Register today at:

[osgoodepd.ca/securedlending](https://osgoodepd.ca/securedlending)

## PROGRAM CHAIRS

Eric Belli-Bivar  
DLA Piper (Canada) LLP

Don Waters  
McMillan LLP

## REGISTRATION OPTIONS

November 22 – 23, 2023

### In-Person

Some in-person and some online learning  
1 Dundas Street West, 26th floor,  
Toronto, ON

OR

### Online

All online; combination of live and asynchronous learning

January 17 – 18, 2024

### Online (Replay)

9:00 a.m. – 4:30 p.m. ET

### Can't attend live?

Registration includes 120-day unlimited, online access to the recorded program.

# 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 commercial loan and debt transactions and acquire the necessary tools to address them.

Join the ranks of 500+ professionals who have 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 effective decisions with greater confidence.

## You will:

- Gain a firm grasp of the most challenging legal risks in a financing or debt transaction, along with best practices for handling them in competitive business conditions
- Review a range of alternative financing vehicles, including equipment lease financing
- Learn 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 the online module *What Corporate Commercial Lawyers Need to Know About Enforcing Security: A Litigators' Perspective*, designed to provide you with a practical overview of how to navigate the 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 impacting commercial financing transactions
- Management involved with negotiating deals that include commercial financing
- Professionals involved with loan documentation, lending and credit facilities
- Consultants

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# Agenda

DAY 1 – NOVEMBER 22, 2023

9:00 a.m.

Chairs' Welcome and Opening Remarks

9:10 a.m.

The Canadian Debt Financing Market –  
An Overview

**Ryan Mrozek**, Director, Commercial Banking,  
TD Securities

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

**Tracey Vernelli**, Managing Director & Head,  
Loan Syndications, BMO 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

10:10 a.m.

Health Break

10:20 a.m.

Working with the Commitment Letter and  
Term Sheet

**Michelle Boodhoo**, McMillan LLP

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

- Roles and objectives of 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

11:20 a.m.

### Health Break

11:30 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

12:30 p.m.

### Lunch Break

1:30 p.m.

### Negotiating and Drafting the Credit Agreement and Constructing a Closing Checklist

**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 and on constructing a closing checklist.

- Establishing the facility – revolving versus term; swingline; fixed versus floating; Canadian prime, US base rate, LIBOR/SOFR; banker's acceptances; Letters of Credit subfacilities
- Conditions precedent
- Representations and warranties
- Covenants – positive and negative
- Events of default, grace periods, 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

- How to construct a closing checklist from the term sheet, commitment letter and loan agreement
- Review a 'checklist' of the closing agenda (the A – Z of a transaction)

**NOTE: there will be a 15 minute break during this session.**

3:30 p.m.

### Taking Effective Security

**Darcy Ammerman**, McMillan 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

4:30 p.m.

### DAY 1 CONCLUDES

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

**Leandro Zylberman**  
Senior Counsel, Corporate, Canada Life

NOVEMBER 23, 2023 – DAY 2

9:00 a.m.

### Asset-Based Lending (ABL)

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

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

**Robert Kizell**, Managing Director and Head, Asset Based Lending, Corporate Client Group, Royal Bank of Canada

- 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

10:00 a.m.

### Health Break

10:10 a.m.

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

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

**Jill Fraser**, Aird & Berlis LLP

The equipment finance industry provides companies with alternative finance options. This session will provide you with a business-focused understanding of the 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

**11:10 a.m.**

### Health Break

**11:15 a.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
- Key structuring issues and critical negotiation points
- Enforcement actions and triggering events
- Payment blockage
- Sales of collateral

**12:15 p.m.**

### Lunch Break

**1:00 p.m.**

### Alternative Reference Rates: What's Happening in the Interest Rate Market?

**Catherine Doyle**, Blake, Cassels & Graydon LLP

- Recap of SOFR and LIBOR and overview of CARR language
- Summary of the Canadian Dollar Offered Rate (CDOR). What happened and what's the plan? Ramifications of the scheduled phase-out of CDOR
- Potential alternatives to CDOR, includes Canadian Overnight Repo Rate Average (CORRA), Canadian benchmarks, and incorporating revised floating rate loans, GBP Sonia, Euro-rate

- Practical considerations when drafting loan documents – the “amendment approach” vs. the “hardwired approach” and what to watch out for

**1:45 p.m.**

### Fintech and SaaS Secured Lending

**James Padwick**, DLA Piper (Canada) LLP

**Trevor Simpson**, Partner, Private Debt, 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
- Changes in light of Silicon Valley Bank events
- 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

**2:40 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

**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

**3:25 p.m.**

### Health Break

**3:30 p.m.**

### Providing Opinions: Tips and Traps

**Andie Lipetz**, Stikeman Elliott LLP

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

Get a practical overview of the essential function of opinions in commercial lending, including the most common types of opinions,

the most-frequently negotiated points and crucial topics including:

- 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 the 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

- Practical understanding of this ever-evolving and complex area of law
- Troubleshooting techniques to identify key issues and assess strategic responses and tactics
- Walk-through of 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

**Register today at:**

[osgoodepd.ca/  
securedlending](https://osgoodepd.ca/securedlending)

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

## Program Chairs



**Eric Belli-Bivar**

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, Legal 500 Canada Guide, International Financial Law Review and, for several years, as an Acritas Star.



**Don Waters**

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), Canadian Legal Lexpert Directory and 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

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Partner, Private Debt, FirePower Capital

**Tracey Vernelli**

Managing Director & Head, Loan Syndications, BMO Capital Markets

**Leanne Williams**

Thornton Grout Finnigan LLP

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

**Michael Gillis**, Cox & Palmer LLP

*“Excellent. Very informative.”*

**Luciano Butera**, President, TRADE X



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

Ari Shack  
Affinity Law Group

“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

“Very good. Your instructors were excellent. Sessions were very useful [and] day 2 was great when there was a lawyer and a banker or in-house [person] – this gave great legal and business insight.”

Rachael Andrew  
Director and Legal Counsel,  
Cortland Credit Group Inc.

## Registration Details

**Fee per Delegate: \$1,495 + TAX**

**Newly Licensed\*: \$747.50 + TAX**

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

Fee includes program registration, electronic program materials and 120-day unlimited online access to program archive. Group discounts and financial assistance available. Visit [www.osgoodepd.ca/group-discounts](http://www.osgoodepd.ca/group-discounts) 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: 13h 5m CPD (12h 5m Substantive, 1h Professionalism)

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

Total: 14h 35m CPD (13h 35m Substantive; 1h Professionalism)



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This program is approved for LAWPRO Risk Management Credit.

Register today at:

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Email: [osgoodepd@osgoode.yorku.ca](mailto:osgoodepd@osgoode.yorku.ca)



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

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