

January 30 & 31, 2012, Toronto

Two-Day Event!

# 6<sup>th</sup> Environmental Deal-Breakers in Real Estate and Business Transactions

Avoiding key environmental liabilities in purchase, sale and lease transactions

**Course Leader**  
Rosalind H. Cooper,  
Fasken Martineau Dumoulin LLP



George Boire,  
Marsh Canada



Janet Bobechko,  
Blaney McMurty LLP



David I. Crocker,  
Davis LLP



Robert M. Fishlock,  
Blake, Cassels & Graydon LLP



Michael Fortier,  
Torys LLP



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



Mark L. Madras,  
Gowling Lafleur Henderson LLP



Vico Paloschi,  
Pinchin Environmental Ltd.



Dianne Saxe,  
Saxe Law Office



John Tidball,  
Miller Thomson LLP



as well as:

Adam Chamberlain,  
Borden Ladner Gervais LLP

## Workshop Included: Structuring the Transaction in Order to Allocate

### participating organizations

Blake, Cassels & Graydon LLP

Blaney McMurty LLP

Borden Ladner Gervais LLP

Davis LLP

Fasken Martineau Dumoulin LLP

Gowling Lafleur Henderson LLP

Marsh Canada

Miller Thomson LLP

Osler, Hoskin & Harcourt LLP

Pinchin Environmental Ltd.

Saxe Law Office

Torys LLP

### 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

- 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
- Examine how to create an ironclad 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

*"Good opportunity to share experiences with other in-house counsels and colleagues in private practice."*

*"Good overview of the topics."*

*"Learned things I can use in ongoing work."*

# FACULTY

## COURSE LEADER

### 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.

## CO-LECTURERS

### GEORGE BOIRE

George Boire is Senior Vice President, Environmental Risk, and the Environmental Practice Leader for **Marsh Canada**.

### 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.

### ADAM CHAMBERLAIN

Adam Chamberlain is a partner with the Toronto office of **Borden Ladner Gervais LLP**. He is a member of the firms Energy, Environmental and Aboriginal practices and is the National Leader of the Climate Change Group.

### DAVID I. CROCKER

David Crocker is with **Davis LLP**. His practice involves all areas of environmental law. He reviews & revises environmental assessment audits in the context of corporate M&As, real estate transactions and corporate reorganizations.

### ROBERT M. FISHLOCK

Robert Fishlock is a Partner at **Blake, Cassels & Graydon LLP** and has provided advice and representation in all areas of environmental law for more than 25 years.

### MICHAEL FORTIER

Michael Fortier is a partner at **Torys LLP**. With a strong background in corporate and real estate law, his practice focuses on assisting buyers, sellers, investors, underwriters & others through all environmental aspects of deals.

### C.W. DANIEL KIRBY

Dan Kirby is a partner at **Osler, Hoskin & Harcourt LLP** and Co-Chairs the firm's Environmental Law Group. He specializes in environmental law.

### MARK L. MADRAS

Mark Madras is a Certified Specialist in Environmental Law. He is the Head of the Real Estate, Environment and Urban Development Department for the Toronto office of **Gowling Lafleur Henderson LLP**.

### VICO PALOSCHI

Vico Paloschi, M.Sc., P.Geo. is Senior Vice President, Environmental Due Diligence & Remediation, at **Pinchin Environmental Ltd.**

### DIANNE SAXE

One of Canada's first Certified Specialists in Environmental Law, Dianne Saxe of **Saxe Law Office** is the only practitioner with a Ph.D. in environmental law. She has 33 years of experience in all areas of environmental law and litigation.

### JOHN TIDBALL

John Tidball is a partner with **Miller Thomson LLP**. He is an experienced Environmental Law Specialist, with special expertise regulatory compliance & approvals, waste management & contaminated property.

# COURSE PROGRAM

## CONDUCTING A THOROUGH ENVIRONMENTAL DUE DILIGENCE

In light of the wide array of environmental laws and regulations in place, it is essential for prospective purchasers to conduct a thorough environmental due diligence. This session will look at environmental due diligence and how far the purchaser or lender should 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

## WORKING WITH ENVIRONMENTAL CONSULTANTS ON CONTAMINATED SITES

Many consultants insist on contracts that limit their liability. 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 this concern and how to address it.

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

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

## AV PROCEEDINGS

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



Attendance at this program can be reported as 8.0 hours of Continuing Professional Development (CPD) to the Law Society of B.C.

## ENVIRONMENTAL RISK AND CONTINUOUS DISCLOSURE OBLIGATIONS

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 focused 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
- Environmental disclosure in initial offering documents
- OSC and SEC disclosure rules

## 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 and remediation agreements
- Negotiating the purchase price based on the result of the due diligence process
- Indemnities and hold backs
- Pre and post closing arrangements

## STRUCTURING & NEGOTIATING PURCHASE AND SALE AGREEMENTS IN LIGHT OF ENVIRONMENTAL ISSUES

This discussion details the possible transaction structures a purchaser can implement to assess, limit and manage its environmental liabilities on acquiring property in respect to any possible environmental issues or concerns.

- Transfer of assets deal
- Forming a subsidiary to acquire the property
- Establishing a limited liability company
- Drafting issues in relation to environmental covenants, indemnities

## LESSONS LEARNED FROM BERENDSEN V. ONTARIO

The eventual outcome of the Berendsen case ruffled many feathers and put the burden of proof of responsibility firmly on the shoulders of the plaintiff for future cases of this kind. This session examines the result and effect of the Court of Appeals decision in the Berendsen case.

- Why claims of negligence is not a fail-safe option
- How foresight “now” is not foresight “then”
- Importance of establishing the causal link
- Safer options to proving negligence in environmental cases

## DEALING WITH ENVIRONMENTAL RISK IN INDUSTRIAL AND COMMERCIAL LEASING

Understanding the nature of environmental problems that may be encountered when structuring a lease agreement is essential to avoid the risk of huge environmental liabilities and exorbitant cleanup costs. This presentation details environmental issues associated with leasing.

- Liability and responsibility for contaminated leased land
- Conducting pre-lease due diligence
- Landlord representations & warranties: environmental conditions
- Tenant representations & warranties: operations as to environmental use

## DEFINITIONS, INTERPRETATION AND APPLICATION OF REGULATION 153/04

With the implementation of amendments to Regulation 153/04 in July 2011, some significant changes have occurred that will affect the development of Brownfields. This session will explore the regulation and its meaning for Brownfield development.

- Importance of due diligence in light of revisions to regulation 153/04
- The necessity for increased regulatory awareness
- When is there a need for a Record of Site Condition?
- The importance of using an experienced consultant and Risk Assessor

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

This discussion details potential contaminated site liabilities and how to overcome these issues during the redevelopment process.

- The Ministry of Environment’s approach to remediation orders
- Provincial prohibitions on changing use and building on contaminated lands
- Municipal policies in regard to Brownfield redevelopment
- Risk assessment vs. clean-up: practical and legal issues

## 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

## 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.

- When insurance can be used to cover environmental cleanups
- Conditions under which cleanup costs will be rejected
- Common exclusions from insurance coverage
- Obtaining coverage for undisclosed problems at the time of obtaining the policy

## WORKSHOP

### STRUCTURING THE TRANSACTION IN ORDER TO ALLOCATE ENVIRONMENTAL LIABILITY

General provisions found in standard business agreements are unlikely to effectively deal with environment liabilities and mitigate the unique risks associated with these types of transactions. This discussion explains key environmental liabilities and outlines options for allocating them within a contract.

- The limits of contractual protection
- Resolving ambiguity in contract terms dealing with environmental risk
- Liability to successors in title
- Allocating liability in a risk management scenario
- Risk allocation and environmental liabilities

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.

**Conducting a Thorough Environmental Due Diligence: How Much Is Enough?**

Tony Crossman,  
Miller Thomson LLP

**Dealing with Specific Contaminants and Situations Following an Audit**

Will Gaherty  
, Pottinger Gaherty Environmental Consultants Ltd.;  
Guy C. Patrick, Golder Associates Ltd.

**So You've Bought Dirty Property: Dealing With Liability & Tips For Redevelopment**

Rick F.F. Coburn,  
Borden Ladner Gervais LLP

**Using Insurance to Mitigate the Cost of Environmental Risks**

Adrian Pellen,  
Aon Reed Stenhouse Inc.

**Addressing Environmental Issues In Negotiating Purchase & Sale Agreements**

Catherine Lyons,  
Goodmans LLP

**Conducting An Environmental Assessment**

Ed Rodrigues,  
Golder Associates Ltd.

**Dealing With Environmental Risk In Industrial and Commercial Leasing**

Marc McAree,  
Willms & Shiers Environmental Lawyers LLP

**Environmental Risk and Securities Disclosure**

Paul R. Cassidy,  
Blake, Cassels & Graydon LLP

**Working With Environment Consultants On Contaminated Sites**

Phil Christie & Jennifer Mac Lean,  
TransLink

**Structuring the Transaction to Allocate Environmental Liability**

Gary A. Letcher,  
Edwards, Kenny & Bray LLP

**Legal Status Of Landlord & Tenant**

Craig S. Harkness,  
Osler, Hoskin & Harcourt LLP

**Analyzing The Financial Feasibility Of A Development Project: Operating Budget**

G. John Fleming,  
Altus Helyar Cost Consulting

**Best Practices Solutions To Deal With Threatening Issues**

Margaret Knowles,  
Morguard Investments Ltd.

**Brownfields Redevelopment**

Andrew Panko,  
Associated Brownfields Inc.

**Financing/Funding for Brownfields**

Graham Banks,  
Morrison Financial Services Limited

**Environmental Site Assessments**

Thomas Franz & Thomas Gnanayudam,  
Franz Environmental Inc

**Environmental Issues and Urban Design Solutions**

Andrew Martschenko,  
Parataxis Design and Development Corporation

**Environmental Issues & Architectural Solutions**

Les Klein,  
Quadrangle Architects

**Site Assembly: The Use Of Conditional Contracts And Options**

Edward M. Perlmutter,  
Blakes, Cassels & Graydon LLP

**Conducting A Thorough Due Diligence: How Much Is Enough**

Duff Harper,  
Blake, Cassels & Graydon LLP

**Ontario's Programs & Initiatives To Facilitate Brownfields Redevelopment**

Hon Q. Lu,  
Ministry Of Municipal Affairs And Housing

**Brownfield Regulation**

Tamara Farber,  
Miller Thomson LLP

**Navigating The Provincial Environmental Process**

Will Gaherty,  
Pottinger Gaherty Environmental Consultants Ltd.

**Beyond Clean: Other Environmental Issues**

Will Gaherty,  
Pottinger Gaherty Environmental Consultants Ltd.;  
Brad Gilmour, Bennett Jones LLP

**Environmental Concerns in Leasing**

Rachel J. Hamilton & Jennifer Cleall,  
Davis 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 January 17, 2012. No refunds will be issued after this date.

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**TO REGISTER FOR ENVIRONMENTAL DEAL-BREAKERS IN REAL ESTATE AND BUSINESS TRANSACTIONS**

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 Please bill my credit card:  AMEX  VISA  Mastercard  
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