

2009 Advanced Negotiating and Drafting

# MAJOR BUSINESS AGREEMENTS

Delivering Legal Services as an Integral Member of the Business Team

April 27 – 28, 2009 | Casino Nova Scotia | Halifax



Get the latest practice tips on negotiating the best deal for your client for any business transaction and state of the art contract drafting by hearing from leading lawyers. They will discuss these and other hot button topics:

- Negotiating and contracting with monitors, consultants, receivers, bankruptcy trustees and insolvent debtors
  - Standard, design/build and construction management contracts
  - Understanding different negotiating styles
  - Pension funding and other exit considerations in the employment contract
  - Negotiating and drafting the opinion letter in credit and lending transactions: what can you concede, what you must require
  - Examining contracts for major energy projects
  - **MAC** clauses (material adverse change) and post closing survivability
- and much more...*

Marketing Partners

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CANADIAN **Lawyer**  
**INHOUSE**

## PROGRAM CO-CHAIRS

Lydia S. Bugden  
*Partner, Stewart McKelvey*

F. Van W. Penick  
*Partner, McInnes Cooper*

## KEYNOTE ADDRESS

Due Diligence Requirements You Won't Find on a Lawyer Checklist

Robert G. H. Patzelt, Q.C.  
*Vice-President  
Risk Management & General Counsel  
Scotia Investments Limited*

## Distinguished Faculty of Speakers Includes:

Mary Ellen Donovan  
*Halifax Regional Municipality*

Noella Martin  
*Wickwire Holm*

Ronald Pizzo  
*Arnold Pizzo McKiggan*

Darrell J. Stephenson  
*Stewart McKelvey (Saint John)*

Anthony Tam  
*McInnes Cooper*

Steven J. Weisz  
*Blake, Cassels & Graydon (Toronto)*

Dear Colleague,

We are pleased to be working again with **Insight** to present the **2009 Advanced Negotiating and Drafting MAJOR BUSINESS AGREEMENTS** conference on April 27-28, 2009 in Halifax.

Business deals work best when careful attention is paid to the pre and post contract process as well as to the detailed crafting of the legal document itself. Today's business climate requires you to manage the process as well as the paper in any business undertaking. Outside counsel sets the stage for on-going relations and must ensure the agreements meet the client's objectives. In-house counsel must understand the process and the terms and ensure the agreements meet the organization's current and future needs.

We have once again assembled a group of leading practitioners who will provide detailed, need-to-know information, tips, and advice to ensure your success. Whether addressing corporate finance or employment matters, participants come away with a deeper understanding and awareness of what to consider before, during and after the deals are made.

This successful conference has proven very popular with corporate counsel, lawyers in private practice, contract administrators and business owners as well as lawyers practicing in the public sector. It is an excellent opportunity to network with colleagues and share resources and information. Conference materials include detailed papers and presentations from seasoned presenters and are considered very useful take-always for future reference.

We look forward to seeing you in April!



Lydia S. Bugden  
*Partner*  
*Stewart McKelvey*



F. Van W. Penick  
*Partner*  
*McInnes Cooper*

#### WHAT SOME OF LAST YEAR'S DELEGATES HAD TO SAY:

“ Extremely valuable-great for new learning, expanding existing knowledge base and benchmarking.”

**Michelle Riley, New Brunswick Power Holding Corporation**

“ Excellent information on new areas of law.”

**Jennifer Forster, Cox & Palmer**

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#### WHO SHOULD ATTEND

- Corporate/General Counsel
- Corporate/Commercial Lawyers
- Corporate Executives
- Corporate Secretaries
- Federal, Provincial and Municipal Lawyers
- Contract Managers/Specialists
- Commercial and Investment Bankers
- Business Consultants and Brokers
- Private Equity Investors

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8:00 | 8:45

### Registration and Continental Breakfast

8:45 | 8:50

### Welcoming Remarks from Insight

8:50 | 9:00

### Welcoming Remarks from the Co-Chairs

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Lydia S. Bugden

*Partner*

*Stewart McKelvey*

F. Van W. Penick

*Partner*

*McInnes Cooper*

9:00 | 10:15

### Insolvency and Restructuring Agreements in an Economic Downturn

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Anthony M. Tam

*Partner*

*McInnes Cooper*

Steven J. Weisz

*Partner*

*Restructuring and Insolvency Practice Group*

*Blake, Cassels & Graydon LLP (Toronto)*

- Drafting appropriate warranty, hold back and indemnification protections to minimize insolvency risks
- Latest developments in **Companies' Creditors Arrangements Act (CCCA)** and **Bankruptcy and Insolvency Act (BIA)** case law relevant to business contracts and secured transactions
- Best practices in restructuring default obligations under principal business and credit agreements
- Taking advantage of distress company transaction opportunities
- Negotiating and contracting with monitors, consultants, receivers, bankruptcy trustees and insolvent debtors
- Cross-border transaction issues
- An overview of insolvency and restructuring trends in North America

10:15 | 10:30

### Networking Coffee Break

10:30 | 11:15

### Managing Electronic Information: IP and Technology Agreements

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Patrick Fitzgerald

*Partner*

*Cox & Palmer*

- Types of IP and technology agreements
- The technology and IP landscape
- Information management and records protection issues relevant to IP and technology agreements

- Data explosion, the new media and portable devices
- What is protected; what is public domain
- The business cycle and software development
- Strategies in approaching technology and IP: licensing versus acquiring business solutions
- Pitfalls to consider when contracting for technology or IP
- Protecting electronically stored information (ESI)
- Minimizing outsourcing risks
- Negotiating and drafting privacy and confidentiality protections

11:15 | 12:00

### Royalty Agreements

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F. Van W. Penick

*Partner*

*McInnes Cooper*

- Legal character settled by **Bank of Montreal v. Dynex**
- Application of **Dynex** to hard minerals
- Overriding and Net Profit Royalties
- Offshore area issues: registrability
- Onshore issues: **Blue Note Mining v. Merlin**
- Drafting concerns

12:00 | 1:00

### Networking Luncheon

1:00 | 1:45

### Impact of Corporate Law Reform on Business Contracts

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Carl A. Holm, Q.C.

*Partner*

*Wickwire Holm*

- Assessing the 2008 amendments to the *Nova Scotia Companies Act*
- How do these amendments change business transactions practice?
- Analysis, impact and implications of the Supreme Court of Canada decision in **Royal Bank of Canada v. Saulnier**

1:45 | 3:00

*PANEL DISCUSSION*

### Public-Private Partnerships in Atlantic Canada: Current Trends in Tender Bid Documents and Construction Contracts

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Moderator:

Darrell J. Stephenson

*Partner*

*Stewart McKelvey (Saint John)*

Mary Ellen Donovan

*Municipal Solicitor*

*Halifax Regional Municipality*

Jonathan Huggett

*J.R. Huggett Company (Vancouver)*

- Standard, design/build and construction management contracts
- When to use the **P3** model (public-private partnerships) and contract drafting considerations

- Latest developments and best practices in tender and bidding processes and documentation
- Sample procurement agreement clauses
- Strategic procurement in a hot construction market
- Protecting against deficiencies, delays and subcontractor defaults: indemnities, warranties, hold backs and insurance protections
- Drafting arbitration provisions

3:00 | 3:15

### Networking Refreshment Break

3:15 | 4:30

### Partnering Successfully with In-House Counsel

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Robert G. H. Patzelt, Q.C.

*Vice-President*

*Risk Management & General Counsel Scotia Investments Limited*

Richard Stock

*Partner*

*Catalyst Consulting*

Like businesses everywhere, Atlantic Canada corporations and governments are creating or expanding their own legal departments. The most enterprising of lawyers in private practice welcome the opportunity to expand the scope of their involvement with such clients. While the growth of the corporate counsel community does result in the in-sourcing of legal work, it also contributes to the growth of private practice areas including litigation, IP, regulatory, tax, labour/employment, complex commercial work, and cross-border activity.

Managing the corporation's portfolio of standard form contracts is an integral part of corporate counsel's practice. How can the business lawyer best assist the law department in this process?

This session will suggest how law firms can meet the challenge to offer value to sophisticated consumers of legal services. Balancing service, results and pricing takes a deft touch. Collaborative and partnering strategies will be suggested and their application to the conduct of business will be described.

4:30 | 5:15

### Getting the Most for Your Client When Negotiating the Contract

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Pamela Large-Moran (Charlottetown)

*Mediator and Arbitrator*

*Principal*

*Conflict Resolution Services, Atlantic Canada*

- Understanding the needs of the parties
- Identifying the parties' underlying undisclosed interests
- Prioritizing the issues at stake
- Determining an appropriate forum for negotiating
- Effectively using a pre-negotiation meeting
- Setting the agenda and timetable
- Strategies for advancing your position

- Critiquing different negotiating styles
- Confronting negative tactics
- Negotiating with your own client concurrently or in the shadow of the counter-party negotiation
- Getting the outcome your client wants

5:15

### Conference Adjourns

## TUESDAY | APRIL 28, 2009

8:15 | 9:00

### Continental Breakfast

9:00 | 9:10

### Co-Chairs' Opening Remarks

9:10 | 10:15

### Employment Agreements in Recessionary Times and a Duty to Accommodate Environment

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Noella Martin

*Partner*

*Wickwire Holm*

Ronald Pizzo

*Partner*

*Arnold Pizzo McKiggan*

- Key provisions in executive compensation and share purchase plans
- Stock options and bonuses
- Confidentiality, non-solicitation, non-competition and other restrictive covenants
- Duty to accommodate issues in employment contract drafting
- Arbitration and other dispute resolution clauses
- Drafting termination clauses, notice periods and defining "cause" and "good reason"
- Pension funding and other exit considerations in the employment contract
- Perspectives of management, the employee and the trade union

10:15 | 10:30

### Networking Coffee Break

10:30 | 11:30

### Lending, Credit, Syndicated Facilities and Security Agreements: Closing the Financing Transaction

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Lydia S. Bugden

*Partner*

*Stewart McKelvey*

Brian MacLellan, Q.C.

*Partner*

*Wickwire Holm*

- Assessing different financing models and tailoring the right one for the transaction
- Application of the new *Security Transfer Act*
- Types of credit facilities
- Covenants, conditions and warranties
- Examining collateral securities: *PPSA, Bank Act*, bankers' acceptances, pledged collateral
- Negotiating and drafting the opinion letter: what can you concede, what you must require
- Security interests in licenses
- Drafting tips for syndicated facilities

11:30 | 12:30

### Exploring the New Frontier in Major Project Agreements

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Philip Symmonds  
Partner  
*Torys LLP (Toronto)*

Scott Kraag  
Partner  
*Torys LLP (Toronto)*

- Examining contracts for major projects
- The key elements of design/build agreements and EPC contracts
- Allocating risks between owner and contractors
- Financiers' perspectives on major project agreements

12:30 | 1:30

### Networking Luncheon

1:30 | 2:00

### KEYNOTE LUNCHEON ADDRESS

#### Due Diligence Requirements You Won't Find on a Lawyer Checklist

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Robert G. H. Patzelt, Q.C.  
Vice-President  
*Risk Management & General Counsel  
Scotia Investments Limited*

2:00 | 2:45

#### The Family Unit as Corporate Client: Closely Held and Family-Owned Business Shareholder Agreements

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Jeffrey Blucher  
Partner  
*McInnes Cooper*

- Reconciling the interests of majority and minority shareholders
  - transfer restrictions
  - removal of non-family shareholders
  - veto rights
  - puts and calls
  - drag along rights

- Pros and cons of unanimous versus non-unanimous shareholder agreements
- Attaching share rights or restrictions to family members only
- Creating exit triggers: shotgun clauses, piggy back rights and mandatory auctions
- Pledging or hypothecating shares
- Use of shareholder agreements in joint ventures
- Resolving shareholder disputes through arbitration

2:45 | 3:00

### Networking Refreshment Break

3:00 | 3:45

### Purchase and Sale of Business Agreements

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David A. Reid  
Partner  
*Cox & Palmer*

- Structure of a transaction: choosing between asset purchase and share purchase
- Key business issues from buyer's and seller's perspectives
- Impact of elimination of financial assistance tests under the *Nova Scotia Companies Act*
- M&A agreement models
- Representations, warranties, covenants, indemnities, express and implied conditions
- Waivers of breaches and repudiation issues
- Preparing for and managing the closing
- **MAC** clauses (material adverse change) and post closing survivability

3:45 | 4:30

### Joint Ventures and Strategic Alliances

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Colleen Keyes  
Partner  
*McInnes Cooper*

- Forms of joint ventures
- Funding joint ventures
- Transferability of joint venture interests
- Governance and control issues
- Exit strategies, including consequences of termination
- Special legal/regulatory issues
  - taxation
  - partnerships
  - competition
  - fiduciary duties
- Examining precedent clauses joint venture agreements
- Confidentiality, non-competes and dispute resolution

4:30

### Conference Concludes

