

The Canadian Institute's 8th Annual

# ADVANCED INSOLVENCY LAW & PRACTICE

January 17-18, 2008 | Four Seasons Hotel | Toronto

## Conference Co-Chairs



**David Cohen**  
Partner  
Gowling Lafleur  
Henderson LLP



**Fred Myers**  
Partner  
Goodmans LLP

## The Distinguished Faculty of Speakers Includes:

**James M. Farley, Q.C.**  
McCarthy Tétrault LLP

**The Honourable  
Mr. Justice Colin Campbell**  
Ontario Superior Court  
of Justice, Toronto

**The Honourable  
Geoffrey B. Morawetz**  
Ontario Superior Court  
of Justice, Toronto

**Max Medelsohn**  
McMillan Binch  
Mendelsohn LLP  
(Montreal)

**Sean Dunphy**  
Stikeman Elliott LLP

**Andrew V. Tenzer**  
Shearman & Sterling LLP  
(New York)

**Aubrey Kauffman**  
Fasken Martineau  
DuMoulin LLP

**Nicholas Brearton**  
KPMG LLP

**Neil Narfason**  
Ernst & Young Inc. (Calgary)

**Jonathan Levin, LSM**  
Fasken Martineau  
DuMoulin LLP

**Robert Thornton**  
ThorntonGrout  
Finnigan LLP

**Denis St-Onge**  
Gowling Lafleur  
Henderson LLP (Montreal)

**Lyndon Barnes**  
Osler, Hoskin  
& Harcourt LLP

**Douglas R. McIntosh**  
Alvarez & Marsal  
Canada ULC

**E. Dennis McCluskey**  
CIT Business Credit  
Canada Inc.

A renowned panel of insolvency and restructuring professionals will provide you with the latest and most critical information on:

- ✓ Assessing private equity, hedge fund and other alternative investment sources criteria in refinancing debt: Has the conventional loan default become history?
- ✓ Forecasting judicial trends in the wake of *TCT Logistics Inc.*
- ✓ Assessing the impact of the credit derivatives market on insolvency practices and trends
- ✓ The pension fund as a significant player in successful restructurings: *Stelco, Algoma, Eaton's and Air Canada*
- ✓ Looking into the crystal ball and predicting the future direction of harmonization efforts: Proposed amendments to the CCAA and BIA
- ✓ Best drafting and negotiating practices for postponement and subordination agreements

**Plus!** Add value to your attendance by registering for our pre-conference workshop on **Identifying and Increasing Value in a Distressed Company Turn Around**

Sponsored By:

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For more information on obtaining education credits to meet your professional development requirement, please see inside and the registration page



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## With record level employment and continuing declines in corporate bankruptcies, why is everything not rosy?

### What's wrong with the picture?

Beneath the surface of the strong Canadian economy lurk dangers, potentially bringing us back to the woeful times of the early 90's.

Insolvency and restructuring professionals, waiting for the "good bad times" to return, may not have to wait too long.

The record high Canadian dollar is hurting Canada's manufacturing and tourism industries.

Highly leveraged debt financings backed by weak borrower covenants are delaying recovery proceedings in situations normally calling for the intervention of insolvency and restructuring practitioners. If interest rates rise and the Canadian dollar shrinks or regulators impose restrictions on high risk investing, how could insolvency and restructuring experts adapt when the supply of capital shrinks and lenders must enforce loans secured by worthless assets?

Moreover, trouble spots staining the U.S. economy are having a ripple effect, running cross-border. The Canadian courts have recently created "recognition mechanisms", and U.S. insolvency matters are being litigated in Canada. What should Canadian bankruptcy lawyers know about cross-border protocols, recent domestic court decisions and the latest *Chapter 15* of the *U.S. Bankruptcy Code* developments and case law to get a piece of the action?

The Canadian Institute's 8th Annual Advanced Forum on Insolvency Law & Practice has a proven track record of providing professionals in bankruptcy, insolvency and restructuring with one stop shopping to get up to speed on all important legal and practice developments you simply won't find elsewhere. A distinguished faculty of leading Canadian and U.S. experts working at the cutting edge of the insolvency and restructuring profession will provide you with invaluable practice tips and help you learn about:

- ✓ Strategies to maintain value during the workout and turn around process
- ✓ Assessing the impact of the Ontario court decision in MuscleTech in cross-border litigation
- ✓ Analysing Bill C-62's changes to commercial priority rules
- ✓ Developing bulletproof receivership practices to avoid successor employer liability
- ✓ Properly advising the board of directors and effective communications strategies with bondholder committees

The always popular Max Mendelsohn, widely recognized as a dean of bankruptcy law and this year's luncheon speaker, will provide us with his observations on practicing in the field for over 40 years.

Plus, learn about lucrative distressed debt investment opportunities from prominent business executives with extensive financing experience by attending the pre-conference workshop **Identifying and Increasing Value in a Distressed Company Turn Around**.

Spaces at this annual event go quickly every year, so register now to ensure your place by calling 1-877-927-7936 or in Toronto 416-927-7936. Or, visit our website and register online at [www.CanadianInstitute.com/insolvency](http://www.CanadianInstitute.com/insolvency). We look forward to seeing you at the conference!

#### GOWLINGS

Gowlings is a leading Canadian law firm offering a diverse range of services to help domestic and international organizations achieve their business objectives. Recognized for excellence in business, advocacy and intellectual property law, Gowlings provides dedicated industry expertise in a number of sectors including energy, infrastructure, life sciences, financial services, technology and manufacturing. The Firm combines traditional legal services with innovative solutions in areas such as transfer pricing and tax, government relations and occupational health and safety, to provide business entities with a competitive advantage. Characterized by national strength and regional focus, Gowlings has 700 professionals across offices in Montréal, Ottawa, Toronto, Hamilton, Waterloo Region, Calgary and Vancouver. The Firm also provides intellectual property services in Russia and the CIS through its office in Moscow. Visit us at [gowlings.com](http://gowlings.com).

## Who You Will Meet

- ▶ Lawyers in insolvency, bankruptcy and restructuring
- ▶ In-house corporate counsel
- ▶ Trustees and insolvency practitioners
- ▶ Corporate recovery managers and directors
- ▶ Business regeneration and turnaround specialists
- ▶ Financial institution senior lenders and special loans managers
- ▶ Asset Management and Alternative Lending Managers
- ▶ Pension Fund and Private Equity Managers
- ▶ Auditors and accountants
- ▶ Forensic accountants
- ▶ Investigators
- ▶ CFO's



This program has been accredited by the Corporate and Commercial Specialty Committee of the Law Society of Upper Canada towards the professional development requirement for certification.

#### Corporate and Commercial Law

Workshop ▶ 3.0 Hours

Conference ▶ 10.5 Hours

Program Level ▶ Intermediate  
Advanced

#### Civil Litigation

Conference ▶ 4.5 Hours

Program Level ▶ Advanced

# FACULTY LIST

## CO-CHAIRS:

*David Cohen*  
Partner  
Gowling Lafleur Henderson LLP

*Fred Myers*  
Partner  
Goodmans LLP

## SPEAKERS:

*Jennifer Babe*  
Partner  
Miller Thomson LLP

*Lyndon Barnes*  
Partner  
Osler, Hoskin & Harcourt LLP

*Nicholas Brearton*  
Partner  
KPMG LLP

*David R. Byers*  
Partner  
Stikeman Elliott LLP

*The Honourable  
Mr. Justice Colin Campbell*  
Ontario Superior Court of Justice,  
Toronto

*Jeffrey Carhart*  
Partner  
Miller Thomson LLP

*Robert Chadwick*  
Partner  
Goodmans LLP

*Lynda M. Colley*  
Senior Policy Analyst  
Office of the Superintendent of  
Bankruptcy, Industry Canada (Ottawa)

*Sean Dunphy*  
Partner  
Stikeman Elliott LLP

*James M. Farley, Q.C.*  
Senior Counsel  
McCarthy Tétrault LLP

*John Finnigan*  
Partner  
ThorntonGroutFinnigan LLP

*Gary Franko*  
Senior Vice President  
Tricap Partners Ltd.  
Brookfield Asset Management Inc.

*Michael Friedman*  
Partner  
Richards Kibbe & Orbe LLP (New York)

*David Gordon*  
Deputy Superintendent, Pensions  
Financial Services Commission  
of Ontario

*Aaron Hammer*  
Partner  
Freeborn & Peters LLP (Chicago)

*Dan Howat*  
Senior Vice President,  
Chase Business Credit  
J.P. Morgan Chase Bank, N.A.

*Pamela L. Huff*  
Partner  
Blake, Cassels & Graydon LLP

*William Jenkins*  
Partner  
Fraser Milner Casgrain LLP (Calgary)

*Aubrey Kauffman*  
Partner  
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*Jonathan Levin, LSM*  
Partner  
Fasken Martineau DuMoulin LLP

*Ken Manget*  
Managing Director,  
Head of Income Funds  
BMO Nesbitt Burns

*Douglas R. McIntosh*  
Managing Director  
Alvarez & Marsal Canada ULC

*E. Dennis McCluskey*  
President & CEO  
CIT Business Credit Canada Inc.

*The Honourable Geoffrey B. Morawetz*  
Ontario Superior Court of Justice,  
Toronto

*Elizabeth Murphy*  
Associate Partner  
KPMG LLP

*Neil Narfason*  
Senior Vice President  
Ernst & Young Inc. (Calgary)

*Candace Pallone*  
Counsel  
McCarthy Tétrault LLP

*Kenneth T. Rosenberg*  
Partner  
Paliare Roland Rosenberg Rothstein LLP

*Denis St-Onge*  
Partner  
Gowling Lafleur Henderson LLP  
(Montreal)

*Andrew V. Tenzer*  
Partner  
Shearman & Sterling LLP (New York)

*Robert Thornton*  
Partner  
ThorntonGroutFinnigan LLP

*John R. Varley*  
Senior Counsel  
Pallett Valo LLP

## What Delegates to Our 2007 Insolvency Conference Had to Say

“High level presentations,  
informative and relevant”

*Darryl McConnell*, VP, BDO Dunwoody Limited

“Wide variety of topics, very  
practical panel discussions  
“tailor-made” for my practice”

*John Russo*, Lawyer, Fraser Milner Casgrain LLP

“Very advanced subjects  
and great speakers”

*Marc Noreau*, Chief Legal Officer, Asset Inc.

7:30 Registration Opens Coffee Served ☞

8:30 Opening Remarks from the Co-Chairs

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*David Cohen*

Partner

Gowling Lafleur Henderson LLP

*Fred Myers*

Partner

Goodmans LLP

8:45 The Impact of an Abundance of Capital and Alternative Equity Sources on the Disappearance of the Borrower Default: Will the Party Last Forever?

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Moderator and Speaker:

*David Cohen*

Partner

Gowling Lafleur Henderson LLP

Panelists:

*Gary Franko*

Senior Vice President, Tricap Partners Ltd.  
Brookfield Asset Management Inc.

*Michael Friedman*

Partner

Richards Kibbe & Orbe LLP (New York)

*Dan Howat*

Senior Vice President, Chase Business Credit  
J.P. Morgan Chase Bank, N.A.

*The conventional wisdom on loan enforcement is being challenged, and the rules of the game re-written in these robust economic times. Re-financing a troubled loan is delaying default. Is this a wise idea? In this session, leading experts will discuss how readily available and affordable capital is radically changing restructuring practices, and how you can best adapt to the new environment.*

- Assessing private equity, hedge fund and other alternative investment sources criteria in refinancing debt: Has the conventional loan default become history?
- Is there too much liquidity? Has this distorted the real picture of underlying asset values?
- Is there an end limit to refinancing debt?
- Understanding the hidden dangers of using of the covenant “lite” in refinancing debt: Do real borrower covenants exist anymore?
- Understanding how each of the new players handles restructuring: Has the old play book of the conventional lender been completely re-written?
- What happens when “the cookie crumbles”? Who will be left “holding the bag”?
- Latest techniques and strategies in handling sales of and investments in distressed companies
- Dividend recapitalizations: What is the risk of potential liability for the private equity investor?
- Exploring cross-border opportunities in distressed company transactions: How do you access the market?
- Loan to own: Exercising lender remedies as an alternative to bankruptcy
  - analysis of lender remedies
  - *Uniform Commercial Code* issues
  - alternatives to bankruptcy in developing an acquisition strategy
  - negotiation of consensual restructuring agreement

10:15 Networking Coffee Break ☞

10:30 Shared and Divergent Perspectives from the Bench, the Regulator and the Bar: Where is Insolvency and Restructuring Practice Heading?

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Moderator and Speaker:

*Fred Myers*

Partner

Goodmans LLP

Panelists:

*James M. Farley, Q.C.*

Senior Counsel

McCarthy Tétrault LLP

*Lynda M. Colley*

Senior Policy Analyst

Office of the Superintendent of Bankruptcy, Industry Canada (Ottawa)

*The Honourable Mr. Justice Colin Campbell*

Ontario Superior Court of Justice, Toronto

*The Honourable Geoffrey B. Morawetz*

Ontario Superior Court of Justice, Toronto

- Will the *Bill C-62* and *Bill C-52* (eligible financial contracts) amendments simplify or complicate insolvency practice?
- Should the judiciary be more activist in insolvency cases? Can it stop or manage the process of endless re-financings? What more can it do to achieve fairness in the marketplace?
- Has the Supreme Court of Canada decision in *TCT Logistics Inc.* resolved the receiver's successor employer obligations issue?
- Forecasting judicial trends in the wake of *TCT Logistics Inc.*
- Updating the case law on lifting stays of proceedings
- What is the tort of “deepening insolvency” recognized by U.S. courts? Might the Canadian courts adopt it? Could it become a valuable tool and a significant new head of damages?
- Revisiting judicial criteria in assessing proposals: Latest considerations in developing a winning proposal
- Advancing ADR strategies in developing a winning proposal
- Examining and critiquing the latest case law on priority disputes, deemed trusts, directors' and officers' liabilities and receiver obligations
- The impact of *Chapter 15* of the *U.S. Bankruptcy Code* on the Canadian courts: The Ontario Superior Court of Justice decision in *MuscleTech*

12:00

Networking Luncheon for Delegates and Speakers 

40 Years Later: Some Observations on Professional Practice

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*Luncheon Speaker: Max Medelsohn*

McMillan Binch Mendelsohn LLP (Montreal)

1:30

Credit Derivatives: An Invitation to Disaster or is Warren Buffet Wrong?

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*Elizabeth Murphy*

Associate Partner

KPMG LLP

**Candace Pallone**

**Counsel**

**McCarthy Tétrault LLP**

*By segregating the bond market into manageable instruments, credit derivatives have become very attractive to investors willing to speculate in corporate debt. But what are the dangers lurking under the surface, especially when interest rates rise and spreads widen? In this session, you will learn about the “do’s and don’ts” of credit derivatives practices.*

- What are credit derivatives? How do they work in isolating and separating risk from the underlying debt instrument? Do they give investors a false sense of confidence?
- Protecting the loan portfolio through asset-backed CDO’s: What are the dangers created by systemic risks?
- Trends to diversify risk
- Examining market trends in credit derivatives: Speculating on loan default
- The potential adverse consequences of rising interest rates and increasing credit spreads
- Assessing the impact of the credit derivatives market on insolvency practices and trends

## 2:15 **Successfully Addressing Pension Liabilities, Funding and Employee Claims in Restructurings**

**Moderator and Speaker:**

**Kenneth T. Rosenberg**

**Partner**

**Paliare Roland Rosenberg Rothstein LLP**

**Panelists:**

**John R. Varley**

**Senior Counsel**

**Pallett Valo LLP**

**Jeffrey Carhart**

**Partner**

**Miller Thomson LLP**

**David Gordon**

**Deputy Superintendent, Pensions**

**Financial Services Commission of Ontario**

*Will Bill C-62’s changes to pension liabilities, funding and successor employer claims accomplish what insolvency practitioners had hoped for? What further amendments are needed to resolve lingering uncertainty on priorities, receiver liabilities and indemnification issues? In this session, a union lawyer, insolvency lawyers and a regulator will address these critically important questions.*

- Analysing the future of the trustee’s and receiver’s roles in light of the *Bill C-62* amendments on wage earner protection, successor employer obligations and the priority of pension claims over unsecured creditors for unremitted contributions
  - definition of current assets relating to the scope of the charge for unpaid wages
  - receiver obligations despite absence of indemnity
  - due diligence defenses for receivers and trustees
- Does the wording of successor employer obligations protect the receiver and trustee from liability? Are they exposed to different sets of rules?
- Will trustees and receivers face increased indemnification concerns? What measures can they take to protect themselves?
- Relevant considerations in the receiver/trustee’s exercise of discretion to pay wage claims by related parties
- Lessons to be learned from the court decisions of *St. Mary’s Paper Ltd.* and *TCT Logistics Inc.*
- Assessing *Bill C-62*’s impact on collective bargaining and restructuring negotiations

- Managing pension funding pending insolvency proceedings
- The pension fund as a significant player in successful restructurings: *Stelco, Algoma, Eaton’s* and *Air Canada*
- How the *Pension Benefits Guarantee Fund* in Ontario works

## 3:30 **Networking Coffee Break** ☐

## 3:45 **Mastering PPSA Practices for Insolvency Practitioners and the Status of Its Legislative Reform in Ontario**

**Jennifer Babe**

**Partner**

**Miller Thomson LLP**

- Analysing the *PPSA*’s companion statute, *Securities Transfer Act, 2006 (Ontario)* on holding, pledging and transferring financial assets
- New registration requirements of leases for a “term of more than one year”
- Case law updates on *PPSA* priority disputes
- Removing restrictions on assigning accounts and enhancing the value of an account creditor’s security interest
- Additional registration requirements for perfecting purchase money security interests in inventory
- Shortened notice periods for foreclosures of collateral
- Power of the court to enable a secured party to realize on both real and personal property collateral
- Perfecting security interests during restructuring and *CCA* processes: When is it too late to register?
- A status report on the *PPSA* amendment process in Ontario

## 4:15 **Securities Law Compliance and Best Practices for the Insolvency Bar, Bankruptcy Trustees and Receivers**

**Moderator and Speaker:**

**Sean Dunphy**

**Partner**

**Stikeman Elliott LLP**

**Panelists:**

**Robert Chadwick**

**Partner**

**Goodmans LLP**

**Andrew V. Tenzer**

**Partner**

**Shearman & Sterling LLP (New York)**

**Neil Narfason**

**Senior Vice President**

**Ernst & Young Inc. (Calgary)**

*How has the increased vigilance of securities market regulators and the heightened sensitivity to shareholder accountability impacted insolvency practice? What must you consider in advising boards? In this lively session, a panel of leading professionals representing public companies will discuss the latest judicial trends in shareholder activism and enforcement proceedings when management is guilty of corporate malfeasance or its decisions threaten the company’s bottom line.*

- Can directors be liable for future oriented reports when they turn out to be incorrect?
- Applications of *Danier Leather* and the business judgment rule in the insolvency matters: Continuous disclosure and material change versus material fact
- Properly advising the board of directors
  - establishing and implementing independent review and continuous disclosure committees

- developing a plan to manage potential claims threatening the company's solvency
- dealing with bondholder committees
- ensuring directors' compliance with their statutory obligations
- managing share trading restrictions
- access to information issues
- Recent insolvency-related oppression and derivative remedy cases
- Addressing issues unique to distressed companies
  - finding a buyer
  - termination of employment
  - covenant violations
  - auditor's opinion
- U.S. securities law requirements: Achieving transparency under *Chapter 11* of the U.S. *Bankruptcy Code*
- Disclosure requirements under Canadian provincial securities legislation, trading exchange rules, and the *CCAA*
- Recent criminal cases and investigations against directors and officers violating court orders or breaching statutory duties
- Coordinating a multiplicity of insolvency court proceedings, domestic and cross-border to represent corporate directors and officers being investigated, charged or sued

**5:30 Co-Chairs' Recap & Conference Adjourns**  
**Networking Cocktail Reception**

Friday, January 18, 2008

**8:00 Coffee Served** 

**8:30 Opening Remarks from the Co-Chairs**

**8:45 Developing a Comprehensive Strategy and Managing Relationships in Cross-Border Insolvencies and Restructurings**

**Moderator and Speaker:**

*Aubrey Kauffman*  
Partner  
Fasken Martineau DuMoulin LLP

**Panelists:**

*Pamela L. Huff*  
Partner  
Blake, Cassels & Graydon LLP

*Aaron Hammer*  
Partner  
Freeborn & Peters LLP (Chicago)

*Nicholas Brearton*  
Partner  
KPMG LLP

*How do the "foreign recognition" rules on both sides of the border work in practice? Are we getting any closer to harmonizing cross-border bankruptcy law? What are the best and latest practices in managing a cross-border insolvency file?*

*In this panel session, renowned insolvency practitioners will review recent and current cross-border restructurings to help you answer these questions.*

- Surveying the landscape: A review of the current cross-border restructurings
- Recognition of Canadian courts' jurisdiction in U.S. bankruptcy proceedings under *Chapter 15* of the U.S. *Bankruptcy Code*: The impact of MuscléTech

- Cross-border protocols: Revisiting Calpine
- Canadian courts' rulings on recognizing cross-border insolvencies: *Foamex*, *Collins & Aikman*, *Dura Automotive*
- Recognition Mechanisms
  - "center of main interest" test cross-border and EU
  - conflict of laws
  - eligibility and standing
  - provisional relief
  - automatic court-ordered stays
- Selecting the appropriate forum
- Looking into the crystal ball and predicting the future direction of harmonization efforts: Proposed amendments to the *CCAA* and *BIA*

**10:00 Networking Coffee Break** 

**10:15 Getting a Handle on Negotiated, Court-Ordered and Statutory Subordinations and Super Priorities**

**Moderator and Speaker:**

*Jonathan Levin, LSM*  
Partner  
Fasken Martineau DuMoulin LLP

**Panelists:**

*Robert Thornton*  
Partner  
ThorntonGroutFinnigan LLP

*Denis St-Onge*  
Partner  
Gowling Lafleur Henderson LLP (Montreal)

- Analysing *Bill C-62's* changes to commercial priority rules and claims unaffected by bankruptcy
  - wage earner protection
  - pension contributions
  - eligible financial contracts and derivatives netting
  - purchase money security interests
  - unpaid supplier claims
- Current status of Crown claims in *CCAA* and *BIA* proceedings
  - impact of provincial limitations legislation
  - timing of deemed trusts attachment
  - marshalling
- Case law updates and legislative developments in federal and provincial statutory deemed trusts
  - *section 227* of the *Income Tax Act*
  - *section 23* of the *Canada Pension Plan Act*
  - *section 86* of the *Employment Insurance Act, 1996*
  - *section 222* of the *Excise Tax Act*
  - *section 99* of the *Corporations Tax Act(Ontario)*
  - *section 23* of the *Retail Sales Tax Act(Ontario)*
- Is the *CRA* overreaching its deemed trust claim over mortgage proceeds?
- The Quebec hypothec and relevant insolvency issues
  - requirement to publish conditional sales contracts
  - penalties and yield maintenance clauses
  - licences
  - tax credits
- Resolving priorities disputes between DIP financiers, landlords, franchisors, estates and mortgagees
- Will Canadian courts recognize equitable subordination?
- Best drafting and negotiating practices for postponement and subordination agreements
- Reviewing recent jurisprudence on court-ordered priorities
- The case for and against super priority status in DIP financing

## 11:15 Taxing Income Trusts: Will the Drain of Funds Trigger Insolvencies?

**Ken Manget**

Managing Director, Head of Income Funds  
BMO Nesbitt Burns

**William Jenkins**

Partner

Fraser Milner Casgrain LLP (Calgary)

*The huge cash pools of income trusts are starting to erode in some sectors, as many investors are taking out their funds and looking for opportunities elsewhere. Will this reduction in available cash and declining unit values since the October 2006 federal government "tax announcement" contribute to insolvencies, especially in the energy and resources sectors? In this session, a leading lawyer and banker will discuss what fund advisors can do to reduce the risk of insolvency.*

- Examining the "growth" and "safe harbour" provisions on taxing income trusts under *Bill C-52*
- Will the flight of capital bankrupt income trusts?
- The impact of declining unit values on investors' personal net worth and solvency
- Can insolvency be avoided through re-conversion?
- Assessing the relevance of *CSA 41-201*: Can income trusts survive the new rules on distributable cash, capital assets and material obligations of the trust's underlying business?
- Re-investing in future projects and expansions: Will taxing income trusts cut off funding for junior oil producers?
- Overcoming the challenges of increased borrowing costs for income trusts
- Managing cross-border issues of distressed trusts
- Lessons to be learned from recent income trust failures
- The future direction of income trusts

## 12:00 Uncovering Fraud and Beating the Rogues through Creative Litigation and Aggressive Investigations

**Moderator and Speaker:**

**Lyndon Barnes**

Partner

Osler, Hoskin & Harcourt LLP

**Panelists:**

**David R. Byers**

Partner

Stikeman Elliott LLP

**John Finnigan**

Partner

ThorntonGroutFinnigan LLP

*The biggest enemy of the recovery professional is fraud. Fraud, if undetected, can taint an entire portfolio. Scam practices in one area such as mortgage fraud can spread to other types of financings. How do you stop assets from going out the back door or cross-border? What can you do to move quickly at the first whiff of wrongdoing or impending insolvency? In this session, leading insolvency practitioners will discuss what you should do, and when you should do it, to reduce these risks.*

- Deploying the latest strategies to detect and stop common scams in debt recovery:
  - valuation and property occupancy misrepresentations in mortgage lending and enforcement
  - fabricating business inventory, receivables and assigning fraudulent invoices for value
  - interest kiting

- Contacting law enforcement when confronting fraud: How the police can help
- Latest asset tracing techniques and identifying specific banking transactions in commingled funds accounts
- Obtaining banks' cooperation in unraveling banking transactions and freezing accounts
- Effective use of forensic accounting techniques in tracing assets and examining financial transactions
- Latest applications of using *Norwich Pharmacal* orders in tracing assets
- Creative use of interim and ancillary legal proceedings to stop ongoing scams
- Going cross border to chase and stop the rogue operator
- Hedge fund scam updates: the ongoing *Portus* saga and the current status of receiver recoveries

## 1:00 Co-Chairs' Closing Remarks Conference Concludes

Pre-Conference Workshop • January 16, 2008

2:00 PM – 5:00 P.M.

### Identifying and Increasing Value in a Distressed Company Turn Around

**Douglas R. McIntosh**

Managing Director

Alvarez & Marsal Canada ULC

**E. Dennis McCluskey**

President & CEO

CIT Business Credit Canada Inc.

- Assessing the capital markets environment for distressed companies
- Conducting a comprehensive distressed company due diligence checklist
- Developing a sound corporate governance program for directors and officers of distressed companies
- Assessing the evolving role of the Chief Restructuring Officer in a turn around
- Unearthing hidden value
- Strategies to maintain value during the workout and turn around process
- Overcoming DIP obstacles
- Negotiating and drafting inter-creditor and restructuring agreements
- Obtaining and accessing additional financing from alternative sources

*Dennis McCluskey is President and CEO of CIT Business Credit Canada Inc., a limited liability company co-owned by CIBC World Markets and The CIT Group, Inc. Dennis oversees a full service Canadian domiciled operation that provides secured working capital loans to Canadian mid-market and large corporate clients.*

*Doug McIntosh is a Managing Director and Chief Executive Officer of A&M Canada ULC. Alvarez & Marsal is an independent global professional services firm, delivering performance improvement, restructuring, turnaround management and corporate advisory services to clients, with 25 offices and over 1,000 professionals around the world.*

### SPONSORSHIP & EXHIBITION OPPORTUNITIES

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Senior Business Development Executive **Heather Morrison** at 416-927-0718 ext. 302, toll-free 1-877-927-0718 ext. 302 or by email at [h.morrison@CanadianInstitute.com](mailto:h.morrison@CanadianInstitute.com)

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## Top Reasons to Attend!

- ▶ Learn about the evolving role of the Chief Restructuring Officer in a turn around
- ▶ Understand the latest techniques and strategies in handling sales of and investments in distressed companies
- ▶ Get latest case updates on lifting stays and winning proposals under the CCAA
- ▶ Assemble and manage successful bondholder committees

## REGISTRATION FORM

To expedite your registration, please mention your priority service code

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- MAIL: The Canadian Institute  
1329 Bay Street  
Toronto, ON, M5R 2C4
- FAX: 1-877-927-1563 or 416-927-1563

ATTENTION MAILROOM: If undeliverable to addressee, please forward to:  
Insolvency Lawyer, Receiver, Trustee in Bankruptcy



STEP 1

▶ CONFERENCE CODE: 366L08-TOR

YES! Please register the following delegate(s) for the  
8TH ANNUAL ADVANCED INSOLVENCY LAW & PRACTICE

*This program qualifies  
for credit under the  
CAIRP MPD Program*

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at the same  
time and  
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Hotel Reservations

For information on hotel room availability and reservations, please contact Four Seasons Hotel at 416-964-0411. When making your reservation, please ask for "The Canadian Institute's Corporate Rate".

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Conference participants will receive a comprehensive set of conference materials prepared by the speakers. These materials are intended to provide the participants with an excellent reference source after the conference. If you have paid and are unable to attend, the conference materials will be shipped to you upon request only. Request must be received within 30 days upon conclusion of the conference.

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STEP 2

STEP 3

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