

The Canadian Institute's  
7th Annual Advanced Forum on

# Securities Litigation

Winning Strategies to Litigate and  
Resolve Disputes in the Capital  
Markets Battleground

November 28 and 29, 2007

St. Andrew's Club & Conference Centre, Toronto

## Topics include:

- > Latest strategies and uses of oppression and derivative remedies in takeovers and amalgamation squeeze outs
- > Obtaining self-help, interlocutory and injunctive orders on short notice and enforcing foreign orders in securities cases
- > Do the Delaware courts give Canadian securities litigators a "barometer reading"?
- > Overcoming the hurdle of meeting the "leave" test of proving fraud on the market and market manipulation for Bill 198 actions
- > Advantages of using more effective cross-border enforcement mechanisms under the new OSC Rules of Procedure
- > Updates on RCMP-IMET initiatives, successes and challenges

## Conference Co-Chairs:



**Bryan Finlay, Q.C.**  
WeirFoulds LLP



**Jessica Kimmel**  
Partner, Goodmans LLP

## Hear From Industry Experts Including:

**Lawrence Ritchie**  
Vice Chair  
Ontario Securities Commission

**Thomas G. Heintzman, O.C., Q.C.**  
Partner  
McCarthy Tétrault LLP

**Kelley McKinnon**  
Chief Litigation Counsel  
and Senior Manager  
Litigation Enforcement Branch  
Ontario Securities Commission

**Philip Anisman**  
Barrister and Solicitor

**William B. Chandler**  
Chancellor, Delaware Court of  
Chancery (Wilmington, DE)

**Peter Howard**  
Partner  
Stikeman Elliott LLP

**Charles Wright**  
Partner  
Siskinds LLP

**Irwin H. Warren**  
Partner and Co-Head of  
the Securities Department  
and Corporate Governance  
Litigation Practice  
Weil, Gotshal & Manges LLP  
(New York)

**Benjamin Zarnett**  
Partner  
Goodmans LLP

**Edward Babin**  
Partner  
Davies Ward Philips Vineberg LLP



See inside for details



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## Distinguished Faculty

**William B. Chandler**  
Chancellor, Delaware  
Court of Chancery  
(Wilmington, DE)

**Lawrence Ritchie**  
Vice Chair, Ontario  
Securities Commission

**Bryan Finlay, Q.C.**  
Partner, WeirFoulds LLP

**Jessica Kimmel**  
Partner, Goodmans LLP

**Irwin H. Warren**  
Partner and Co-Head  
of the Securities and  
Corporate Governance  
Litigation Practice, Weil,  
Gotshal & Manges LLP

**Peter Howard**  
Partner  
Stikeman Elliott LLP

**Edward Babin**  
Partner, Davies Ward  
Philips Vineberg LLP

**Thomas G. Heintzman,  
O.C., Q.C.**  
Partner  
McCarthy Tétrault LLP

**Eric Rosenfeld**  
President and Chief  
Executive Officer  
Crescendo Partners LP  
(New York)

**Dimitri Lascaris**  
Partner, Siskinds LLP

**Richard M. Wise, FCA**  
Partner, Wise Blackman LLP

**John Finnigan**  
Partner, Thornton Grout  
Finnigan LLP

**Ellen Bessner**  
Partner, Gowlings Lafleur  
Henderson LLP

**Alistair Crawley**  
Partner  
Crawley Meredith LLP

**Janice L. Wright**  
Partner  
Rueter, Scargall Bennett LLP

**MaryJeanette Dee**  
Partner  
Richards Kibbe & Orbe  
(New York)

**Christopher P. Naudie**  
Partner, Osler Hoskin &  
Harcourt LLP

**John Fabello**  
Partner  
Torys LLP

**Charles Wright**  
Partner  
Siskinds LLP

**Philip Anisman**  
Barrister and Solicitor

**Jeremy Devereux**  
Partner  
Ogilvy Renault LLP

**Kelley McKinnon**  
Chief Litigation Counsel  
and Senior Manager  
Litigation Enforcement  
Branch, Ontario Securities  
Commission

**Aleksander Popovic**  
Vice President  
Enforcement  
Investment Dealers  
Association

**Josée Turcotte**  
Deputy Secretary and  
Independent Adjudicative  
Counsel, Ontario Securities  
Commission

**Benjamin Zarnett**  
Partner  
Goodmans LLP

**Patrick J. O' Kelly**  
Partner  
Stikeman Elliott LLP

**Roman Doroniuk**  
Director  
The Forzani Group Limited  
Aeroplan Income Fund  
and Limited Partnership

**Brian Heller**  
Partner  
Heller, Rubel LLP

**Kevin J. Burk**  
Sergeant  
Royal Canadian Mounted  
Police, Toronto Integrated  
Market Enforcement Team  
(Toronto IMET)

**Wendy Berman**  
Partner  
Heenan Blaikie LLP

**Howard Rubel**  
Partner  
Heller Rubel LLP

**Robert Stewart**  
Partner  
Miller Thomson LLP

You are an honest corporate director.

You think your board approved that extra bonus after you completed a great deal.

## So why are you still worried?

The *Hollinger International* trial and stock options investigations dominated business news headlines in 2007. How do you spot and successfully advance a potential recovery claim for honest investors who have been deceived by management? If acting for an innocent director blindsided by a fellow board member's wrongdoing, what effective defense measures are available?

An avalanche of hostile cross-border M&A bids may also harm the investor. How will their interests be protected, especially in the aftermath of the *Inco-Falconbridge* and *Sears Canada* battles? Will the Delaware Chancery Court decision in *Netsmart* and similar cases influence Canadian courts and regulators in striking a fair balance between protecting the interests of shareholders and allowing an open and unrestricted operation of capital markets?

The OSC's new anti-scam unit, the RCMP-IMET's annual budget increase from \$30 million to \$40 million and increasing scrutiny of the courts and regulators on both sides of the border reflect a heightened awareness that capital markets can only operate properly if shareholders are not discouraged from investing. That is why the theme of **The Canadian Institute's 7th Annual Advanced Forum on Securities Litigation** will be investor protection in an unsettled age of increasingly hostile takeover bids, sophisticated fraud on the market schemes and difficult to detect director self-dealing transactions.

Whether corporate lawyer or litigator, securities regulator or law enforcement professional, shareholder activist or board member, you will have an exciting opportunity to meet with and hear from leading professionals and industry experts who will answer these questions and address other hot button issues, including discussions on these new topics:

- > Judicial approaches to properly conducting an auction and leveling the playing field for all competing bidders in M&A transactions
- > Lawsuits against the broker for investor trading losses in high risk closed fund investments
- > Analysing the *Imax* application and assessing its relevance to the judiciary's future direction on *Bill 198*
- > Latest Legal and Procedural Developments in Hearings before the OSC and the *New Rules of Procedure*

Plus don't miss out on our post conference workshop **Representing the Corporate Officer from Suspicion to Acquittal: Assembling the Dream Team, Assigning Roles and Developing an Integrative Strategy** where leading corporate and criminal litigators will walk you through each stage of successfully representing the business executive facing a multiplicity of proceedings.

Places will certainly go quickly, so reserve your space today. We look forward to seeing you at the conference!

## Sponsorship & Exhibition Opportunities

Maximize your organization's visibility in front of key decision-makers in your target market. For more information, contact 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)

Wednesday November 28, 2007

8:00 Registration Opens and Coffee Served ☞

9:00 Opening Remarks from the Co-Chairs

Bryan Finlay, Q.C., Partner, WeirFoulds LLP  
Jessica Kimmel, Partner, Goodmans LLP

9:15 Keynote Address

Lawrence Ritchie, Vice Chair, Ontario Securities Commission

9:45 When Friendly Takeover Bids Turn Hostile:  
The Role of the Courts as Peacemaker in  
M&A Transactions

**Moderator and Speaker:**

Irwin H. Warren  
Partner and Co-Head of the Securities and Corporate  
Governance Litigation Practice  
Weil, Gotshal & Manges LLP

**Panelists:**

William B. Chandler  
Chancellor, Delaware Court of Chancery (Wilmington, DE)  
Peter Howard, Partner, Stikeman Elliott LLP  
Edward Babin, Partner, Davies Ward Philips Vineberg LLP

- Are the recent US court decisions on proxy context battles a harbinger of what to expect in Canada?
- The importance of *Netsmart* and other Delaware Chancery Court decisions: Developing and implementing a sound corporate governance program to assess competing takeover bids
- Properly conducting an auction and leveling the playing field for all competing bidders
- The role of the provincial securities regulator in overseeing domestic and cross-border M&A transactions
- OSC enforcement case updates on protecting investors and the public interest
- Lessons to be learned from *Sears Holding Corp*
- Has the business judgment rule evolved in the context of cross-border M & A?
- Revisiting the *Falconbridge-Inco* wars: The litigator's perspective

11:00 Networking Coffee Break ☞

11:15 Shareholder Activism in the Courts: A Passing  
Phase or an Emerging Litigation Strategy?

**Moderator and Speaker:**

Thomas G. Heintzman, O.C., Q.C.  
Partner, McCarthy Tétrault LLP

**Panelists:**

Eric Rosenfeld, President and Chief Executive Officer  
Crescendo Partners LP (New York)

Dimitri Lascaris, Partner, Siskinds LLP

Richard M. Wise, FCA, Partner, Wise Blackman LLP

*Activist shareholders have dominated news headlines in recent years. Corporate boards are now mindful of protracted litigation and its potential adverse impact on share values. Will activist shareholders inspire institutional investors such as pension funds? What are the latest litigation techniques being used by shareholder activists? In this panel session, leading securities experts will debate these lively questions to help you properly assess the threat of shareholder activism if you are representing a board, and how to benefit from it if you are looking for hot M & A opportunities.*

- Latest strategies and uses of oppression and derivative remedies in takeovers and amalgamation squeeze outs

- The shareholder's right to dissent
  - timing and process issues
  - effective activism strategies to "enlist" dissenters
  - relationship or conflict with the oppression remedy
- Developing a bulletproof shareholder rights plan
- Minimizing the litigation risk: What to look out for in drafting a shareholder rights plan
- Lessons to be learned from *Nortel*, *Ford Motor* and *Danier Leather* in shareholder class action tactics
- Valuation considerations
  - share price value, minority discounts and control premiums
  - fair value, fair market value and company conduct affecting values
  - related party transactions
  - impact on value of past oppression
  - assessing the intangibles not visible on the financial statements

12:30 Luncheon for Delegates and Speakers 

1:45 Investor Lawsuits for Investor Losses in  
Alternative Investments and Income Trusts:  
Management's Worst Nightmare?

**Moderator and Speaker:**

John Finnigan, Partner, Thornton Grout Finnigan LLP

**Panelists:**

Ellen Bessner, Partner, Gowlings Lafleur Henderson LLP  
Alistair Crawley, Partner, Crawley Meredith LLP

- Assessing the merits of and best defenses for investor lawsuits against fund managers, administrators, brokers, dealers and distributors
  - closed funds
- Lawsuits against the broker for investor trading losses in high risk closed fund investments: Identifying meritorious claims, and assessing an effective defense strategy
- Taking the appropriate measures to protect against liability for investment losses: Analysing the respective positions of fund manager, dealer, distributor, institutional investor and their officers and directors
- *Portus*, *Norshield* and the hedge funds cases revisited: What went wrong, can they happen again and how can they be best defended?

2:45 Interlinking the U.S. and Canada through  
Overcoming and Managing Multi-Jurisdictional  
Obstacles

**Moderator and Speaker:**

Janice L. Wright, Partner, Rueter, Scargall Bennett LLP

**Panelists:**

Thomas G. Heintzman, O.C., Q.C.  
Partner, McCarthy Tétrault LLP

MaryJeanette Dee  
Partner, Richards Kibbe & Orbe (New York)

Christopher P. Naudie  
Partner, Osler Hoskin & Harcourt LLP

*How do you spot a multi-jurisdictional issue in representing a client in a securities case? What are the consequences of not engaging foreign counsel? When do you bring in other counsel? How does the legal team coordinate strategy, and what information may be shared? As regulators across different jurisdictions increasingly cooperate with each other, stepping up their cross-border enforcement, and with the SEC stretching its arm into Canadian corporate activity, this is a "must attend session" for all securities litigators, regulators and adjudicators.*

- Critically examining the cross-border issues in Hollinger
  - conflict in rights against self-incrimination
  - documentary production
  - law enforcement coordination

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- asserting privilege
- taking testimony “out of state”
- use of OSC testimony in U.S. proceedings
- The implications of the “A” case in the *Nortel* proceedings: lessons learned and issues unresolved
- Strategic and effective partnering between cross-border counsel representing a common client
- The impact in Canada of securities litigation abroad: advising and protecting your Canadian client implicated in cross-border litigation
- An update on the SEC’s current enforcement initiatives
- Do the U.S. courts and regulators give Canadian securities litigators a “barometer reading”?
- Ensuring your Canadian corporate client cooperates with cross-border investigations and proceedings implicating its foreign affiliate: *The U.S. Patriot Act* and related considerations
- A status report on key U.S. legislation: *Class Action Fairness Act* and *Sarbanes-Oxley Act*

#### 4:00 Networking Refreshment Break

#### 4:15 Broker Negligence Claims and Breaches of Contract in the Client Relationship: Effectively Advancing and Defending Broker Claims

*John Fabello*, Partner, Torys LLP

*Alistair Crawley*, Partner, Crawley Meredith LLP

- Why are egregious broker practices on the rise? What are the most common abuses and how can they be detected and stopped?
- What are the most commonly encountered areas of broker tort and breach of contract?
- When is the client contributorily negligent?
- When can the broker become a fiduciary of the client? What are the consequences of a fiduciary relationship in damages assessment
- How can broker counsel best defend the broker in regulatory, criminal and investigative proceedings?
- How can the broker –client relationship be managed to avoid litigation: the role of ADR as a tool to facilitate resolution of broker-client disputes

#### 5:00 Co Chairs’ Recap

#### 5:15 Conference Adjourns

### Thursday, November 29, 2007

#### 8:30 Coffee Served ☕

#### 9:00 Opening Remarks From the Co-Chairs

#### 9:15 Secondary Investor Market Liability: Why is Court Room so Quiet Post “Bill 198” (Ontario Securities Act, section 126.1)?

##### Moderator and Speaker:

*Bryan Finlay, Q.C.*, Partner, WeirFoulds LLP

##### Panelists:

*Charles Wright*, Partner, Siskinds LLP

*Philip Anisman*, Barrister and Solicitor

- Impact of *Bill 198* actions filed and pending and potential prospectus liability
- Analysing the *Imax* application and assessing its relevance to the judiciary’s future direction on *Bill 198*
- Updating the status of and developments in secondary market liability regimes in Alberta, British Columbia, Manitoba, Saskatchewan and Nova Scotia

- Overcoming the hurdle of meeting the “leave” test of proving fraud on the market and market manipulation
- Is the recourse unnecessary, underutilized or is too premature to assess its potential impact on executive conduct?
- Has *Bill 198* encouraged more responsible board conduct? What are the proactive governance measures taken and to be encouraged to reduce the risk of *Bill 198* claims?

#### 10:30 Networking Refreshment Break

#### 10:45 Establishing and Maintaining Peaceful Coexistence with Securities Enforcement Regulators

##### Moderator and Speaker:

*Jeremy Devereux*, Partner, Ogilvy Renault LLP

##### Panelists:

*Kelley McKinnon*

Chief Litigation Counsel and Senior Manager  
Litigation Enforcement Branch, Ontario Securities Commission

*Aleksander Popovic*

Vice President, Enforcement, Investment Dealers Association

*The advantages of early and ongoing cooperation and openness with regulators must be weighed against compromising your client’s interests who may prefer to have the inquiry escalate to investigation and legal proceedings. What are the pros and cons of telling the regulators everything they would like to know? A panel of an experienced lawyer representing clients in enforcement proceedings and leading regulators will help you answer this thorny question.*

- Harmonizing provincial regulatory enforcement systems across Canada
- Case updates on documentary production and privilege in investigative and regulatory proceedings
- Making the best use of settlement agreements and admissions
- Establishing a healthy and ongoing working relationship with enforcement regulators to get the best results for your cooperating client
- Latest uses of arrangements and consent agreements to fast-track approvals
- The interplay between the courts and the regulators: Where and how do their roles intersect?
- Recent case updates on regulator interventions in civil cases

#### 11:45 Latest Legal and Procedural Developments in Hearings before the Ontario Securities Commission (“OSC”) and the New Rules of Procedure

*Josée Turcotte*

Deputy Secretary and Independent Adjudicative Counsel  
Ontario Securities Commission

*Jessica Kimmel*, Partner, Goodmans LLP

*Find out what you need to know to be an effective counsel in Commission proceedings. In this session, you will hear about recent legal and procedural developments of the past few years and how the new OSC Rules of Procedure will help you better manage your enforcement hearings files.*

- Advantages of using more effective cross-border enforcement mechanisms
- Expanding the concept of interlocutory motions
- The new cost rules
- The status and role of unrepresented respondents in Commission hearings
- Addressing Charter challenges
- Changes to the take-over and issuer bids rules
- How to seek intervener status
- Understanding the latest disclosure requirements

#### 12:30 Networking Luncheon for Delegates and Speakers



## 1:45 The Corporate Director's Perspective on the Business Judgment Rule for Litigators

### Moderator and Speaker:

**Benjamin Zarnett**  
Partner, Goodmans LLP

### Panelists:

**Patrick J. O' Kelly**  
Partner, Stikeman Elliott LLP

**Roman Doroniuk**  
Director, The Forzani Group Limited  
Aeroplan Income Fund and Limited Partnership

*Danier Leather, secondary investor market liability, a flurry of M&A activity and the trend to privatizing have impacted on the business judgment rule. How has it been refined? What are the subtle changes to the test? If you are advising a board, you can't afford to miss this critically important session which help you answer these questions.*

- Lessons to be learned from the final disposition of *Danier Leather*: Understanding the business judgment rule, continuous disclosure and material change versus material fact
- Ensuring compliance with *National Instruments 51-108 and 51-109*: Avoiding liability for breaches of auditor certification of the financial statements
- Can directors be liable for future oriented reports when they turn out to be incorrect?
- When and with whom can directors share information? Establishing and implementing the essential disclosure and reporting committees
- Spotting self-dealing transactions and establishing the appropriate board safeguards and controls

## 2:45 Networking Refreshment Break

## 3:00 Backdating Stock Options and Corporate Malfeasance: What to Do When the Authorities Show Up

### Moderator and Speaker:

**Brian Heller**  
Partner, Heller, Rubel LLP

### Panelists:

**Kevin J. Burk**  
Sergeant, Royal Canadian Mounted Police  
Toronto Integrated Market Enforcement Team  
(Toronto IMET)

**Wendy Berman**  
Partner, Heenan Blaikie LLP

- Representing the investigated or charged client in parallel or overlapping proceedings
- The scandal of stock options backdating
  - detecting the fraud
  - different forms of backdating
  - protecting the company
  - proactive measures to avoid backdating
- Latest cases on invoking privilege before the securities regulator: Does it extend to all criminal proceedings and investigations?
- Developing an effective and comprehensive legal team strategy
- When does the investigation begin? Should your client cooperate with the investigator at the earliest stage of informal inquiry?
- Updates on RCMP-IMET initiatives, successes and challenges
- Sentencing guidelines refined

## 4:15 Co-Chairs' Closing Remarks Conference Concludes

## Post-Conference Workshop

Friday, November 30, 2007

9:00 pm – 12:00 pm

### Representing the Corporate Officer from Suspicion to Acquittal: Assembling the Dream Team, Assigning Roles and Developing an Integrative Strategy

**Howard Rubel, Partner, Heller Rubel LLP**

**Robert Stewart, Partner, Miller Thomson LLP**

*Your client, a corporate executive with an outstanding track record, calls you in a panic. The RCMP is at his door, armed with a search warrant. What steps do you take and how do you map out a winning strategy? A leading criminal defense litigator and a corporate lawyer will walk you through the perfect legal team playbook.*

- Taking the phone call from the "client under suspicion": What do you say?
- Do "off record" discussions exist?
- Holding the client's hand when investigators execute the search warrant and remove records: What should you do?
- Arranging the right multidisciplinary team and assigning the proper roles
- Attending the first "informal" meeting and preparing the client
  - reviewing the client's files for privilege
  - producing documents at the meeting
  - smoking gun and physical evidence issues
  - instructing the client on when and how to answer questions
  - does silence mean guilt?
- Engaging the consultants
- Coordinating the investigation with civil proceedings and multiple investigations
- Effective plea bargaining to bring about an early and favourable outcome
- Representing the client in criminal proceedings
  - jury selection
  - opening remarks
  - objections to Crown witnesses' testimony and documentary productions
  - cross-examining Crown witnesses
  - closing arguments
  - sentencing considerations
- Who is the client? Who is the paying client?

## Who you will meet

- In-House Corporate Counsel
- Regulators including OSC Professionals
- M&A Litigators
- Compliance and Privacy Officers
- Investment and Mutual Funds Dealers and Advisors
- Investigators, Law Enforcement
- Mediators and Arbitrators



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

Conference	11.5 hours
Post-Conference Workshop	2.5 hours

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## Top Reasons to Attend

- ✓ Lessons to be learned from the Inco-Falconbridge battles
- ✓ What to look out for in drafting a shareholder rights plan
- ✓ Ensuring your Canadian corporate client cooperates with cross-border investigations

### REGISTRATION FORM

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STEP 2

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#### Program Materials

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.

#### Cancellation and Refund Policy

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