



ANNUAL REVIEW OF
INSOLVENCY LAW

16th

conference

U B C C E N T R E F O R B U S I N E S S L A W , A L L A R D S C H O O L O F L A W

FEBRUARY 1, 2019 – MONTRÉAL



2019 CONFERENCE CO-CHAIRS:

Mr Justice Mark Schragger, Cour d'appel du Québec

Regional Senior Justice Geoffrey Morawetz, Ontario Superior Court of Justice

Jean-Daniel Breton, Ernst & Young, Montréal, IIC

Dr Janis Sarra, University of British Columbia, Vancouver, IIC

ARIL CO-EDITORS: Dr Janis Sarra, University of British Columbia

Madam Justice Barbara Romaine, Alberta Court of Queen's Bench

Mr Justice Blair Nixon, Alberta Court of Queen's Bench

Professor Jill Corraini, Business Law Camosun College, Victoria

THURSDAY, JANUARY 31, 2019

6:00–7:00 pm

CONFERENCE OPENING RECEPTION
co-hosted with the Turnaround Management Association

Fairmont The Queen Elizabeth Hotel, 900 René-Lévesque Blvd W, Montréal



FRIDAY FEBRUARY 1, 2019

7:00 am– 4:45 pm

CONFERENCE

Fairmont The Queen Elizabeth Hotel, 900 René-Lévesque Blvd W, Montréal

SUSTAINING SUPPORTER



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L'Institut d'insolvabilité du Canada

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OPENING EVENTS

7:00 – 8:00 am **BREAKFAST & REGISTRATION**

8:00 am **WELCOME**

Conference Co-Chair **Dr Janis Sarra**, University of British Columbia Peter Allard School of Law, Vancouver, IIC

8:05 – 8:30 am **THE HONOURABLE DONALD BRENNER MEMORIAL KEYNOTE**

8:30 – 9:20 am **PLENARY PANEL: PARAMOUNTCY – DOES INSOLVENCY ALWAYS TRUMP?**

Chair: **Mr Justice Mark Schragger**, Cour d'appel du Québec

Tom Curry, Lenczner Slaght, Toronto

Sylvain Rigaud, Norton Rose Fulbright LLP, Montréal, IIC

Kelly Bourassa, Blake Cassels & Graydon LLP, Calgary, IIC

9:30 – 10:20 am **CONCURRENT PANELS**

PANEL A **INSURANCE COMPANY INSOLVENCY**

Chair: **Mr Justice Clément Gascon**, Supreme Court of Canada

Dr Janis Sarra, University of British Columbia Peter Allard School of Law, Vancouver, IIC, *Flotsam, Financing and*

Flotation: Is Canada 'Resolution Ready' for Insurance Company Insolvency?

Commentators: **Stephanie Greer**, Senior VP, Risk & Resolution, Assuris, Toronto

Paul Kovacs, President and CEO, Property and Casualty Insurance Compensation Corporation

PANEL B **BEST PRACTICE FOR LICENSED INSOLVENCY TRUSTEES REGARDING DEBTOR GAMBLERS**

Chair: **Mr Justice Darrell Stephenson**, Court of Queen's Bench of New Brunswick

Dr Anna J Lund, University of Alberta Faculty of Law, Edmonton, *Bankrupt Gamblers: Research Informed Practice for*

Insolvency Trustees, co-authored with Arooj Shah, articling student, MLT Aikins, Edmonton

Commentators: **Nathalie Brault**, Nathalie Brault Trustee Inc, Laval

John Haralovich, MNP LTD, Ottawa

PANEL C **THE CHALLENGES OF OIL AND GAS JOINT VENTURES**

Chair: **Mr Justice Fred Myers**, Ontario Superior Court of Justice

Randal Van de Mosselaer, Osler, Hoskin & Harcourt LLP, Calgary, *Oil and Gas Joint Operations and Insolvency: Who's*

In Charge Here Anyway? co-authored with Emily Paplawski, Osler, Hoskin & Harcourt LLP, Calgary

Commentators: **Matthew Liben**, Stikeman Elliott LLP, Montréal

Dr Fenner Stewart, University of Calgary

PANEL D **CONFLICTING, COMPETING AND CONFOUNDING**

Chair: **Madam Justice Marie-Anne Paquette**, Cour supérieure du Québec

Vicki Tickle, McMillan LLP, Vancouver, *Conflicting Case Law, Competing Statutes, and the Confounding Priority Battle*

of the Interim Financing Charge and the Crown's Deemed Trust for Source Deductions, co-authored with Michael

Hanlon, McMillan LLP, Montréal, and Emily Csiszar, McMillan LLP, Vancouver

Commentators: **Roger P Simard**, Dentons Canada LLP, Montréal, IIC

Jonathan Krieger, Grant Thornton Limited, Toronto, IIC

PANEL E **THREE QUESTIONS AND AN ANSWER**

Chair: **Mr Justice Thomas McEwen**, Ontario Superior Court of Justice

Alexis Teasdale, Bennett Jones LLP, Calgary, *Preferring the Powerful, the Treatment of Landlords in Insolvency*

Proceedings, co-authored with Isabel Langlois, Bennett Jones LLP, Calgary, Neil Honess, KPMG, Calgary and Lexi Ng,

KPMG, Calgary

Professor Alfonso Nocilla, University of Western Ontario, London and Vern DaRe, Fogler, Rubinoff LLP, Toronto,

The Trouble with Pre-Packs

Sean Zweig, Bennett Jones LLP, Toronto, *The Expanded Use of the CBCA in Debt Restructurings*, co-authored with,

Preet Bell, Bennett Jones LLP, Toronto

10:20 – 10:40 am **HEALTH BREAK**

10:40 – 11:30 am **CONCURRENT PANELS**

PANEL F **DUTY TO CONSULT INDIGENOUS PEOPLES IN INSOLVENCY**

Chair: **Mr Justice Blair Nixon**, Alberta Court of Queen's Bench

Professor Signa Daum Shanks, Osgoode Hall Law School, Toronto, and **Professor Stephanie Ben-Ishai**, Osgoode Hall

Law School, Toronto, IIC, *Accommodating Bankruptcy and the Duty to Consult*

Commentator: **Colin Brousson**, Gowlings WLG (Canada) LLP, Vancouver, IIC

PANEL G **ROYALTIES AND VESTING**

Chair: **Mr Justice Glenn Hainey**, Ontario Superior Court of Justice

David LeGeyt, Burnet, Duckworth & Palmer LLP, Calgary, *Uncertain Succession: The Past, Present and Future of*

Royalties and Vesting in Canadian Insolvency Law, co-authored with Ashley Weldon, Natasha Wood and Brendan

Downey, Burnet, Duckworth & Palmer LLP, Calgary

Jeff Carhart, Miller Thomson LLP, Toronto, IIC *Vesting Orders, Appeal Periods and the 2018 Decision of the Ontario*

Court of Appeal in Third Eye Capital Corporation v Ressources Dianor Inc, co-authored with Margaret Sims,

Miller Thomson LLP, Toronto

Commentator: **Michelle Grant**, Ernst &Young Inc, Vancouver, IIC

PANEL H **EQUITY CLAIMS – WHAT'S LEFT?**

Chair: **Mr Justice David Collier**, Cour supérieure du Québec

Luc Morin, Norton Rose Fulbright, Montréal, IIC, *What Did you Expect? Equity Claims, Shareholders and the Insolvent*

Corporation, co-authored with Arad Mojtabehi, Norton Rose Fulbright, Montréal

Commentators: **Robyn Gurofsky**, Borden Ladner Gervais LLP, Calgary

Kibben Jackson, Fasken Martineau DuMoulin LLP, Vancouver, IIC

PANEL I **TECHNOLOGY AND INSOLVENCY – ARE WE READY?**

Chair: **Madam Justice Danielle Turcotte**, Cour supérieure du Québec

Cindy Cheuk, Dentons Canada LLP, Vancouver, *Keep Up and Wind Up: the Effects of Technological Innovation on Insolvency*

Law, co-authored with William Stransky, Dentons Canada LLP, Vancouver

Commentators: **Chris Simard**, Bennett Jones LLP, Calgary, IIC

Jeremy Nemers, Aird & Berlis LLP, Toronto

10:40 am – 11:30 pm CONCURRENT PANELS (continued)

PANEL J DEBTOR POST-FILING OBLIGATIONS – ARE THEY REALLY OBLIGATIONS?

Chair: **Madam Justice Shelley Fitzpatrick**, British Columbia Supreme Court
Jeremy Opolsky, Torys LLP, Toronto, *Not Paid Today and May Not Be Paid Tomorrow: Developments in Post-Filing Obligations of CCAA Debtors*, co-authored with Jacob Babad, student-at-law, Torys LLP
Commentators: **Rick Pallen**, PricewaterhouseCooper LLP, Vancouver
Neil Honess, KMPG, Calgary

11:40 am – 12:30 pm CONCURRENT PANELS

PANEL K LIEN ON ME

Chair: **Mr Justice Louis J Guoin**, Juge coordonnateur de la Chambre commerciale, Cour supérieure du Québec
Aditya Badami, Norton Rose Fulbright LLP, Calgary, *The Priority of Municipal Tax Claims in Receiverships: Addressing a Vexing Issue for the Courts and Practitioners*, co-authored with Howard Gorman, IIC and John Cassell, Norton Rose Fulbright Canada LLP, Calgary
Commentators: **Sara L Scott**, Stewart McKelvey, Halifax
Antoine Leduc, Lapointe Rosenstein Marchand Melançon LLP, Montréal

PANEL L GOVERNANCE OF FINANCIALLY DISTRESSED ENTERPRISES

Chair: **Madam Justice Barbara Romaine**, Alberta Court of Queen's Bench
Edward Sellers, Black Swan Advisors Inc, Toronto, IIC, *Developments and Trends in the Governance of Distressed Enterprises in Canadian Insolvency Proceedings: Who is Making the Critical Decisions?*
Commentators: **Mark Wentzell**, Grant Thornton Limited, Vancouver, IIC
Gerry Apostolatos, Langlois Lawyers LLP, Montréal

PANEL M BEYOND OUR BORDERS – INTERNATIONAL BANK INSOLVENCY

Chair: **Chief Justice Robert Bauman**, British Columbia Court of Appeal
Dr Maziar Peihani, Research Fellow at the Centre for International Governance Innovation, Waterloo, *Orderly Resolution of Too-Big-To-Fail Banks: An Elusive Objective for International Law?*
Dr Stephan Madaus, Martin-Luther-University Halle-Wittenberg, Germany, "Bank Resolution: Guiding Principles and an Innovative Way Forward"
Commentator: **Mary Buttery**, Cassels Brock & Blackwell LLP, Vancouver, IIC

PANEL N CONSIDERING CRYPTOCURRENCY

Chair: **Mr Justice Jean-Francois Michaud**, Cour supérieure du Québec
Gregory Azeff, Miller Thomson LLP, Toronto, and **Matthew McGuire**, The AML Shop (Anti-Money Laundering Shop), Toronto, *Governing the Ungovernable: Cryptocurrencies, Insolvency Proceedings*, co-authored with Stephanie De Caria, Miller Thomson LLP in Toronto
Pritesh Patel, Richter Advisory Group Inc, Toronto

PANEL O CANADIAN CONSUMER FINANCIAL PROTECTION

Chair: **Madam Justice Chantal Corriveau**, Cour supérieure du Québec
Professor Micheline Gleixner, Faculté de Droit, Université de Moncton, *A Canadian Financial Consumer Protection Code: Is Canada ready for Round Three?*
Commentators: **Naida Kornuta**, MNP LTD, Saskatoon
Colleen Craig, C E Craig & Associates Inc, Victoria

12:30 – 1:30 PM LUNCH

KEYNOTE LUNCH ADDRESS

Introduction: **Mr Justice David Brown**, Ontario Court of Appeal
Speaker: **Professor Chery Wade**, St John's University School of Law, New York, "Foreclosures and the Sup-prime Market in the US – Lessons of the Past Ten Years"

1:30 pm – 2:20 pm CONCURRENT PANELS

PANEL P DISCLAIMING CONTRACTS

Chair: **Madam Justice Karen Horner**, Alberta Court of Queen's Bench
Matthew Nied, Cassels Brock & Blackwell LLP, Vancouver, *It's Not You, It's Me: Disclaimer of Contracts in Receivership and CCAA Proceedings*, co-authored with Spencer Toffoli, Cassels Brock & Blackwell LLP, Vancouver.
Commentators: **Aryo Shalviri**, Blake, Cassels & Graydon LLP, Toronto
Deryck Helkaa, FTI Consulting Canada, Calgary, IIC

PANEL Q INTERIM AND EXIT FINANCING – A CROSS-BORDER COMPARISON

Chair: **Madam Justice Sarah Pepall**, Ontario Court of Appeal
Professor Jennifer Payne, Oxford University Faculty of Law, "Tripping the Light Fantastic: A comparative analysis of the European Commission's proposals for new and interim financing of insolvent businesses", co-authored with Janis Sarra, UBC, Vancouver
Commentators: **Al Hutchens**, Alvarez & Marsal, Toronto, IIC
Professor Bruce Markell, Northwestern Pritzker School of Law, Chicago, US

PANEL R INTERNATIONAL FINANCIAL REPORTING STANDARDS (IFRS) AND INSOLVENCY – WHAT YOU NEED TO KNOW

Chair: **The Honourable James Farley**, retired judge, Ontario Superior Court of Justice, Oakville
Presenters: **Micheline Dionne**, International Actuarial Association, Montréal
Tricia O'Malley, past chair, Canadian Accounting Standards Board and former member, International Accounting Standards Board, Stratford
Dr Johnathon Cziffra, Department of Accounting Studies, HEC Montréal

PANEL S CONFLICTS OF INTEREST

Chair: **Madam Justice Christiane Alary**, Cour supérieure du Québec
Stephanie Wanke, Miller Thomson LLP, Edmonton, *The Spectre of Conflicts: An Insolvency Lawyer's Bogeyman*
Commentators: **Michael Vermette**, PricewaterhouseCooper LLP, Vancouver, IIC
Robert Thornton, Thornton Grout Finnigan LLP, Toronto, IIC

1:30 pm – 2:20 pm CONCURRENT PANELS (continued)

PANEL T DATA DEALERS

Chair: **Mr Justice Laurence Pattillo**, Ontario Superior Court of Justice
Emily LeDue, Dentons Canada LLP, Vancouver, *Data Dealers: Selling Personal Information in Insolvency Proceedings*, co-authored with Jordan Schultz, Dentons Canada LLP, Vancouver
Commentators: **George Kinsman**, Ernst & Young Inc, Halifax, IIC
Matti Lemmens, Borden Ladner Gervais LLP, Calgary

2:30 – 3:10 pm CONCURRENT PANELS – CASE COMMENTS

PANEL U CONSTRUCTION AND CONTRACTS – WHAT REMEDIES?

Chair: **Mr Justice Ken Nielsen**, Alberta Court of Queen's Bench
Ouassim Tadlaoui, Borden Ladner Gervais LLP, Montréal, IIC, **Michel La Roche**, Miller Thomson LLP, Montréal, and **Christian Bourque** PricewaterhouseCooper LLP, Montréal, IIC, *Using the CCAA as a Collection Tool: The Hexagone File Example*, co-authored with Bertrand Giroux, BCF, Montréal and Marc Duchesne, Borden Ladner Gervais, Montréal, IIC

PANEL V IN CONTEMPT

Chair: **Mr Justice Gaétan Dumas**, Cour supérieure du Québec
Tevia Jeffries, Dentons Canada LLP, Vancouver, *Contempt Across Canada: Recent Comments on Contempt and Insolvency from Alberta and Prince Edward Island Courts*
Commentators: **Professor Jill Corraini**, Business Law Camosun College, Victoria
Linc Rogers, Blake, Cassels & Graydon LLP, Toronto, IIC

PANEL W ENFORCEMENT OF FOREIGN JUDGMENTS

Chair: **Madam Justice Barbara Conway**, Ontario Superior Court of Justice
Sarah Hawco, 180 Group LP, Calgary, *Kriegman v Dill, A Case Comment*
Judge Martin Glenn, US Bankruptcy Court, Southern District of New York, "Reflections on the new UNCITRAL Model Law on Recognition and Enforcement of Insolvency-related Judgments"
Commentator: **Andy Kent**, McMillan LLP, Toronto, IIC

PANEL X RECEIVERSHIP AND BARGAINING UNITS

Chair: **Madam Justice Lynne Leitch**, Ontario Superior Court of Justice
Andrew Hatnay, Koskie Minsky LLP, Toronto, *UFCW v Rose of Sharon: Do Receivers have a Duty to Bargain?*
Commentators: **Jean-Daniel Breton**, Ernst & Young Inc, Montréal, IIC
Peter Reardon, McMillan LLP, Vancouver, IIC

PANEL Y FIRST IMPRESSIONS ON THIRD PARTY LITIGATION FINANCING

Chair: **Mr Justice Paul Walker**, British Columbia Supreme Court
Guillaume Michaud, Langlois Lawyers LLP, Montréal, *Bluberi Gaming Technologies – A New Frontier: The Emergence of Litigation Funding in the Canadian Insolvency Landscape*
2 Commentators: **Karen Fellowes**, DLA Piper (Canada) LLP, Calgary
Rachel Bengino, Thornton Grout Finnigan LLP, Toronto

CLOSING EVENTS

3:20 – 3:55 pm CLOSING PLENARY: A BRIDGE TOO FAR

Chair: **Regional Senior Justice Geoffrey Morawetz**, Ontario Superior Court of Justice
Mr Justice Blair Nixon, Alberta Court of Queen's Bench
Madam Justice Christiane Alary, Cour supérieure du Québec
Mr Justice Darrell Stephenson, Court of Queen's Bench of New Brunswick

3:55 pm CLOSING THANKS

Conference Co-Chair: **Jean-Daniel Breton**, Ernst & Young Inc, Montréal, IIC

4:00 – 4:45 pm CLOSING RECEPTION

Conference website: www.aril.ca

Registration information

Conference fee is \$975 per registrant or \$225 for Judges, articling students, full time academics/Juges, étudiants stagiaires et professeurs à temps plein. (Plus applicable taxes.)

Register at ARIL-REGISTER.CA. Payment is by VISA or MASTERCARD only. Sorry, no refunds permitted, but substitutions are allowed.

There are a limited number of subsidized places for practitioners for whom cost is a barrier, please contact Janis Sarra (sarra@allard.ubc.ca). Quelques places sont disponibles pour les personnes pour qui le coût pourrait être un obstacle. Si c'est le cas, SVP communiquez avec Janis Sarra (sarra@allard.ubc.ca)

Information re CPD/CLE credits will be available at a later date.

For more information about the conference please contact /pour tout information n'hésitez pas à communiquer avec Kate Shepherd (AnnualReview.Insolvency@ubc.ca) 604-762-5601.

Accommodation Information

Hotel: Fairmont The Queen Elizabeth Hotel, 900 René-Lévesque Blvd W, Montréal
Room rates: \$199 single, double occupancy, plus applicable taxes.

Reservations

By phone: Call 514-861-3511 or 1-800-441-1414. Callers must identify themselves as being with the "ARIL 2019" in order to qualify for the group rate.

Online: <https://book.passkey.com/go/aril2019>

Deposits/Cancellations: A valid credit card is required when making reservations. No deposit is taken at the time of booking. Cancellations can be made without penalty up to 24 hrs in advance (by 6:00pm local time).

Hotel room booking deadline: January 8, 2019

Rates applicable 3 days prior to and 3 days post meeting dates.

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