



ANNUAL REVIEW OF
INSOLVENCY LAW

13th

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 5, 2016, VANCOUVER

2016 Conference co-Chairs:

Madam Justice Shelley Fitzpatrick, Supreme Court of British Columbia

Magnus Verbrugge, Borden Ladner Gervais LLP, IIC

Kevin Brennan, Ernst & Young Inc, IIC

Dr Janis Sarra, Allard School of Law, University of British Columbia, IIC

2016 Conference Vancouver Organizing Committee:

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ARIL Co-Editors: **Dr Janis Sarra** and **Madam Justice Barbara Romaine**, Alberta Court of Queen's Bench

THURSDAY FEBRUARY 4, 2016

6:00 pm - 7:00 pm **OPENING RECEPTION**

WESTIN BAYSHORE HOTEL, 1601 BAYSHORE DRIVE, VANCOUVER

Co-hosted by Borden Ladner Gervais LLP and Ernst & Young Inc

Jazz by the Straight Jackets Quintet

Featuring wine tasting from Laughing Stock Vineyard

FRIDAY FEBRUARY 5, 2016

CONFERENCE AGENDA

WESTIN BAYSHORE HOTEL, 1601 BAYSHORE DRIVE, VANCOUVER

6:30 am - 8:00 am REGISTRATION

7:00 am BREAKFAST

8:00 am **Welcome Janis Sarra**, University of British Columbia, IIC

Welcome and Introduction of Keynote speaker:

Madam Justice Shelley Fitzpatrick, Supreme Court of British Columbia, Conference Co-Chair

8:05 am - 8:40 am **The Honourable Donald Brenner Memorial Keynote**

Todd Hirsch, Chief Economist, ATB Financial, Calgary, *Creativity, Innovation and Adaptability: Challenges for Canada's Economy in 2016 and Beyond*



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8:50 am - 9:45 am CONCURRENT PANELS

PANEL A Legislative Reform, Our Work to Date and the Process AheadChair: **Madam Justice Shelley Fitzpatrick**, Supreme Court of British Columbia**Paul Morrison**, Industry Canada**David Wood**, CIRP, Boale, Wood & Company Ltd, Vancouver, CAIRP's work on consumer issues**Jonathan Krieger**, CIRP, Grant Thornton Ltd, Toronto, IIC, The Insolvency Institute of Canada and CAIRP's work on commercial issues**PANEL B Nortel Viewed from a Different Lens**Chair: **Mr Justice Mark Schragger**, Québec Court of Appeal**Professor Jay Lawrence Westbrook**, University of Texas at Austin, Austin, *Corporate Formalism in a Global Economy***D J Miller**, Thornton Grout Finnigan LLP, Toronto, IIC, co-authored with Michael Shakra, Thornton Grout Finnigan LLP, *Nortel: The Long and Winding Road***Professor John A E Pottow**, University of Michigan Law School, Ann Arbor, *Two Cheers for Universalism: Nortel's Nifty Novelty***PANEL C The Treatment of Employees in Insolvency**Chair: **Madam Justice Marina Paperny**, Alberta Court of Appeal**Jean-Daniel Breton**, FCIRP, Ernst & Young Inc, Montréal, IIC and **Philippe Bélanger**, McCarthy Tétrault LLP, Montréal, IIC, *Proposed Adjustments to the Wage Earner Protection Program Act***Professor Stephan Madaus**, Martin-Luther-University Halle, Germany, *Protection of Employees in their Employer's Insolvency – The German Way***PANEL D Looking Ahead: Beyond Recognition on Cross-Border Proceedings**Chair: **Mr Justice Darrell Stephenson**, Court of Queen's Bench of New Brunswick**Andrew Kent**, McMillan LLP, IIC, Toronto, co-authored with Jennifer Cockbill, McMillan LLP, Vancouver, *Restructuring Canadian Multinationals***Dr Irit Mevorach**, University of Nottingham, United Kingdom, *Beyond the Search for Certainty: Addressing the Cross-Border Resolution Gap*Commentator: **Magnus Verbrugge**, Borden Ladner Gervais LLP, Vancouver, IIC

9:55 am - 10:50 am CONCURRENT PANELS

PANEL E Model Laws, Legislative Guides and International Conventions – Best Mechanisms to Address Cross-border InsolvencyChair: **Regional Senior Justice Geoffrey Morawetz**, Ontario Superior Court of Justice**Dominique D'Allaire**, Government of Canada official and UNCITRAL Working Group V delegate, *The Coordination of Cross Border Insolvency Proceedings: Challenges and Options***Alexander Bornemann**, German Department of Justice, German Delegation, UNCITRAL Working Group V**Judge Christopher Klein**, Chief Judge of the United States Bankruptcy Court for the Eastern District of California, Head, III NGO Delegation to UNCITRAL Working Group V**PANEL F Stakeholder Participation in Insolvency Proceedings**Chair: **Mr Justice Louis Gouin**, Québec Superior Court**Professor Stephanie Ben-Ishai**, Osgoode Law School, Toronto, IIC, co-authored with Larissa Lucas, *Government Involvement in CCAA Proceedings: Has Transparency Been Achieved?***Lance Williams**, DLA Piper, co-authored with Mary Buttery, DLA Piper, IIC and Tijana Gavric, DLA Piper, Vancouver, *TLC The Land Conservancy of Canada: The Evolution of the Role of "Other" Interests in Companies' Creditors Arrangement Act Proceedings*Commentator: **Christian Lachance**, Davies Ward Phillips & Vineberg, Montréal**PANEL G The Treatment of Micro, Small and Medium Enterprises in Canada**Chair: **Mr Justice David Brown**, Ontario Court of Appeal**Dr Janis Sarra**, University of British Columbia, Vancouver, IIC, *Micro, Small and Medium Insolvent Enterprises: Do We Need Statutory Reform in Canada? First the Data...then the Reform***Dr Alberto Mazzoni**, Università Cattolica del Sacro Cuore, Milan, Italy, *The Social Aspects of MSME Insolvencies*Commentator: **Darren Crocker**, CIRP, BDO Canada, Edmonton**PANEL H Property Held in Trust?**Chair: **Mr Justice Sean Dunphy**, Ontario Superior Court**Jocelyn Perreault**, McCarthy Tétrault LLP, Montréal, *To Trust or Not to Trust: A Review of the Groupe Sutton-Royal Decision Highlighting Fundamental Distinctions between the Civil Law and the Common Law on Whether Property is Held 'in Trust'*Commentators: **Marc Duchesne**, Borden Ladner Gervais LLP, Montréal, IIC**Kibben Jackson**, Fasken Martineau DuMoulin LLP, Vancouver, IIC

10:50 am - 11:05 am HEALTH BREAK

11:05 am - 12:00 pm CONCURRENT PANELS

PANEL I Crossing the 49th ParallelChair: **Madam Justice Mary Newbury**, British Columbia Court of Appeal**Alex MacFarlane**, Gowling Lafleur Henderson LLP, Toronto, IIC, co-authored with Thomas Gertner, Gowling Lafleur Henderson LLP, *Foreign Non-Main Proceedings and the Public Policy Exception – A Comparison of Canadian and American Insolvency Regimes***Professor Bruce A Markell**, Northwestern University School of Law, Comity, Chapter 15, and the Enforcement of Foreign Country Money Judgments in the United StatesCommentator: **Mike Vermette**, CIRP, PricewaterhouseCoopers Inc, Vancouver, IIC

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11:05 am - 12:00 pm CONCURRENT PANELS continued

PANEL J The Appropriate Scope of Third-Party ReleasesChair: **Mr Justice Martin Castonguay**, Québec Superior Court**Tevia Jeffries**, Dentons Canada LLP, Vancouver, *Releases of Court Officers at Discharge: If Anyone Can Show Just Cause Why This Court Officer Should Not Be Released, Speak at the Discharge Hearing or Forever Hold Your Peace***Susan Philpott**, Koskie Minsky LLP, Toronto, co-authored with Adrian Scotchmer, Koskie Minsky LLP, Toronto, *Immunity for Court-Appointed Officers: A Case for Curtailment*Commentator: **Neil Narfason**, CIRP, Ernst & Young Inc, Calgary, IIC**PANEL K Too Rigid? The Treatment of "Equity" Claims in Insolvency**Chair: **Mr Justice Fred Myers**, Ontario Superior Court of Justice**William Kaplan**, Blakes, Cassels & Graydon LLP, IIC, *Bul River Mineral Corporation: A Question of Equity*Commentators: **Steven Graff**, Aird & Berlis, Toronto**Elizabeth Pillon**, Stikeman Elliot LLP, Toronto, IIC**PANEL L Recent Case Insights**Chair: **Mr Justice Robert Mongeon**, Québec Superior Court**Alexis Teasdale**, Bennett Jones LLP, Calgary, *Blurred Lines: The Sharpening of the Solvency Requirement and the Bounds of Judicial Power in Section 192 Arrangements under the Canada Business Corporations Act in Connacher***Stephen Hutchison**, Stewart McKelvey, Saint John, *The Use of an Equitable Receiver to Seize RRSP Accounts of a Bankrupt: A Case Commentary on Bearsfield and Mod-Aire v McNabb***Jessica Cameron**, Borden Ladner Gervais LLP, Calgary, *Solicitor-Client Privilege: Who Carries the Shield? A Case Commentary on Re Bre-X Minerals 15 Years Later*

12:00 pm - 1:15 pm LUNCH

1:15 pm - 2:05 pm CONCURRENT PANELS

PANEL M Intercorporate Debt and Equitable SubordinationChair: **Madam Justice Myra Bielby**, Alberta Court of Appeal**Jeremy Opolsky**, Torys LLP, Toronto, *Intercorporate Debt and Equitable Subordination: One Case Forward and One Case Back*Commentators: **Craig Munro**, CIRP, FTI Consulting Canada, Vancouver, IIC**Geneviève Cloutier**, Gowling Lafleur Henderson LLP, Montréal**PANEL N Banking on the Future**Chair: **Mr Justice Craig Jones**, Alberta Court of Queen's Bench**Dr Maziar Peihani**, National University of Singapore, *Crisis Management and Orderly Resolution of Banks in Canada and Internationally: A Perspective on Reforms and Challenges***Chantal M Richer**, Canada Deposit Insurance Corporation, Ottawa**Jeffrey Carhart**, Miller Thomson LLP, Toronto, IIC**PANEL O The Treatment of Student Loans in Insolvency – A Comparison of Canada and the US**Chair: **Mr Justice Paul Walker**, Supreme Court of British Columbia**Professor Karen Gross**, Widmeyer Communications, Washington, DC, *The United States Student Loan Situation: How Did We Go So Wrong?***Dr Saul Schwartz**, School of Public Policy and Administration, Carleton University, co-authored with Stephanie Ben-Ishai, *Do Professional School Students Understand Their Student Loans?*Commentator: **André Bolduc**, CIRP, BDO Canada Limited, Ottawa**PANEL P Developments in the UK and EU – Insights for Canada?**Chair: **Madam Justice Sarah Pepall**, Ontario Court of Appeal**Professor Jennifer Payne**, University of Oxford, United Kingdom, *UK Debt Restructuring Mechanisms: New Developments in Practice and Potential Law Reform***Bob Rajan**, Alvarez & Marsal Deutschland GmbH, Germany, *Europe: Moving in the Right Direction ... But Can We Ever Get to Where We Need to Go?***Professor Ignacio Tirado**, University of Autonomia of Madrid, Spain, *An Evolution of COMI in the European Insolvency Regulation: from 'Insolvenzimperialismus' to the Recast***PANEL Q Dealing with a Tragedy: the Montréal Maine and Lac Mégantic Story**Chair: **Madam Justice Allisen Rothery**, Saskatchewan Court of Queen's Bench**Andrew Adessky**, CIRP, Richter Groupe Conseil Inc, Montréal**Gilles Robillard**, CIRP, Richter Groupe Conseil Inc, Montréal**Patrice Benoit**, Gowling Lafleur Henderson LLP, Montréal

2:15 pm to 3:05 pm CONCURRENT PANELS

PANEL R Unsuccessful Sales and Investment Solicitation ProcessesChair: **Mr Justice Michael Penny**, Ontario Superior Court of Justice**Jordan Schultz**, Dentons LLP, Vancouver and **Travis Kelley**, Dentons Knowles Summer Fellow, *No Wind in the Sale: A Recent Trend of Unsuccessful Sale and Investment Solicitation Processes under the CCAA*Commentator: **Shayne Kukulowicz**, Cassels Brock & Blackwell LLP, Toronto

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2:15 pm to 3:05 pm CONCURRENT PANELS continued

PANEL S Pay Day Loans and New Challenges for InsolvencyChair: **Madam Justice Lynne Leitch**, Ontario Superior Court**Dr Jerry Buckland**, University of Manitoba, *The Rise of Internet Payday Lending: An Acute Challenge in our Financializing World*Commentators: **George Lomas**, FCIRP, MNP Ltd, Lethbridge**Guyaine Houle**, FCIRP, Pierre Roy & Associés Inc, Montréal**PANEL T Partnerships – The Coopers & Lybrand Story**Chair: **Madam Justice Chantal Corriveau**, Québec Superior Court**Richard Jones**, Jones Law, Prince Edward County, *The Coopers & Lybrand Saga: The Debt-Compromise Restructuring of a Large Partnership*Commentators: **Robert Thornton**, Thornton Grout Finnigan, Toronto, IIC**David Bowra**, CIRP, The Bowra Group Inc, Vancouver, IIC**PANEL U Blowout on the Oil Patch: An Update on Alberta Oil and Gas Insolvencies**Chair: **Madam Justice Christiane Alary**, Québec Superior Court**Neil Honess**, CIRP, KPMG Canada, Calgary**Murray D'Angelo**, National Bank of Canada, Calgary**Jeff Oliver**, Gowling Lafleur Henderson LLP, Calgary**PANEL V Emerging Scholars Panel**Chair: **Mr Justice Herman Wilton-Siegel**, Ontario Superior Court**Pascale Cornut St-Pierre**, PhD Candidate, Sciences Po Law School, *Eligible Financial Contracts and the Many Faces of Derivatives: A Brief History of the ISDA Master Agreement***Dr Wendy Akpareva**, Nottingham Law School, *Shall We Borrow a Leaf from the UK? Directors' Liability in Insolvency: United States in Context*Commentator: **Jennifer Cockbill**, McMillan LLP, Vancouver

CLOSING PANELS

3:15 pm - 4:10 pm Closing Plenary: View from the Bench- Court to Court CooperationChair: **Chief Justice Robert Bauman**, British Columbia Court of Appeal, Vancouver**Regional Senior Justice Geoffrey Morawetz**, Ontario Superior Court of Justice, Toronto**Judge Kevin Gross**, United States Bankruptcy Court, District of Delaware**Mr Justice Frank Newbould**, Ontario Superior Court of Justice, Toronto**4:10 pm - 4:20 pm Plenary - A Tribute and Toast to Louise Lalonde 1957-2015****Janis Sarra**, University of British Columbia, Vancouver, IIC**François Viau**, Gowling Lafleur Henderson LLP, Montréal, IIC**4:20 pm Closing Thanks****Magnus Verbrugge**, Borden Ladner Gervais LLP, Vancouver, IIC, Conference Co-chair**4:20 pm - 5:30 pm Closing Reception****Registration information**

Conference fee is \$950 (plus applicable tax), \$200 for Judges, articling students, full time academics/Juges, étudiants stagiaires et professeurs à temps plein.

Register at aril-register.ca. Sorry, no registration refunds permitted, but substitutions are allowed. Payment by credit card (Visa or Mastercard) or Interac only.

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).

The complete program will qualify for 7.5 MPD hours for CAIRP members/le programme complet donne droit a 7.5 heures de PPO pour les membre de l'ACPIR.

This event also qualifies for CPD/CLE credits in Ontario, British Columbia and Québec.

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

Visit the conference website at www.aril.ca for an up to date schedule.

Accommodation Information**Hotel:** Westin Bayshore Hotel, 1601 Bayshore Drive, Vancouver**Room rates:** \$179 Deluxe Harbour View Guest Room, or \$189 Premium Tower Guest Room (plus applicable tax)**Reservations****By phone:** Call 1-800-937-8461.

Callers must identify themselves as being with the "UBC 13th Annual Review of Insolvency" in order to qualify for the group rate.

Online: <https://www.starwoodmeeting.com/Book/InsolvencyLaw>

Deposits/Cancellations: A deposit equal to one night's stay is required to hold your reservation. Full refund of this deposit will be given to cancellations received until 72 hours prior to arrival. For cancellations received within 72 hours of arrival, the deposit is non-refundable.

Hotel room booking deadline:Please reserve rooms at this rate prior to **January 14, 2016**

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