

# SETTING UP/KNOCKING DOWN ASSET PROTECTION STRUCTURES



A multidisciplinary faculty of experts will address creditor-proofing, reviewable transactions and key related areas, including:

- How far can the lawyer safely go in setting up an asset-protection regime, and how is this affected by timing?
- The relevant insolvency laws and their implications to navigate effectively
- Under-used remedies in pursuing debtor's assets and how to use them
- What Canadian lawyers can learn from the U.S. experience with asset protection plans
- The state of the art in asset location and recovery in both home and foreign jurisdictions chasing assets across the "wired world"

Where law, legal ethics and forensics meet -- do you have the information and strategies you need in this challenging area?

**"THE VERY BEST LEGAL EDUCATION CONFERENCE I HAVE EVER BEEN TO, AND I HAVE PRACTISED LAW FOR 24 YEARS. WELL DONE!"**

**P. Daniel LeDressay**

*Barrister & Solicitor, Vancouver B.C.  
and past Chair, Bankruptcy and  
Insolvency Subsection, Canadian Bar  
Association-B.C.*

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Webcast Available

## Chairs

**Jeffrey S. Leon and Raj S. Sahni**  
*Bennett Jones LLP*

## Date and Time

March 3, 2015  
9:00 a.m. - 4:45 p.m. EDT/EST

## Keynote Speaker

**The Hon. Justice  
Herman Wilton-Siegel**  
*Superior Court of Justice (Ontario)  
[Commercial List]*

## Location

Osgoode Professional Development  
1 Dundas St. W., 26th Floor  
Toronto, ON

## SETTING UP/KNOCKING DOWN ASSET PROTECTION STRUCTURES

Debtors have always been interested in effective shields, just as creditors have sought powerful swords. But today's turbulent business/investment environment has turned up the pressures on both – pressures which are passed on to legal counsel and other professional advisors.

It has never been more important for corporations and individuals to shield their assets from creditors, and for creditors to bring expertise and creativity to bear on their quest to pursue every possible avenue for recovery.

OsgoodePD's unique program, **Setting Up/Knocking Down Asset Protection Structures**, will provide you with a tangible edge in acting for either side. Leading corporate lawyers from Canada and the U.S., commercial litigators, tax and insolvency counsel, and forensic experts will join in a candid discussion of the strengths, weaknesses and risks of various strategies for shielding clients' personal and corporate wealth from creditors and their counsel.

The program will bring together

- The leading and recent law which both business lawyers and commercial litigators must know
- Lessons drawn from the long practical experience of Canadian and U.S. counsel
- Reflections from a distinguished Commercial List judge on what the Court looks for from counsel in assessing whether an asset protection regime should stand or fall
- Guidance on how counsel can address the substantial ethical and professional issues in this contentious area, so as to best meet client needs without compromising one's integrity and reputation

You'll come away with valuable ideas and insights in an area where up-to-date knowledge is crucial.

**REGISTER NOW BY VISITING [WWW.OSGOODEPD.CA](http://WWW.OSGOODEPD.CA),  
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### Chairs

**Jeffrey S. Leon** and  
**Raj S. Sahni**  
*Bennett Jones LLP*

### Keynote Speaker

**The Hon. Justice  
Herman Wilton-Siegel**  
*Superior Court of  
Justice (Ontario)*

### Faculty

**The Hon. Colin L.  
Campbell, Q.C.**  
*Neeson Arbitration Chambers*

**Jennie Chan**  
*Managing Director, Kroll*

**Patricia Donlevy-Rosen**  
*Donlevy-Rosen & Rosen, P.A.*

**John. L. Finnigan**  
*Thornton Finnigan Grout LLP*

**Geoff R. Hall**  
*McCarthy Tétrault LLP*

**Alex Ilchenko**  
*Pallett Valo LLP*

**Bob Klotz**  
*Klotz Associates*

**Jacqueline Mills**  
*Barrister & Solicitor*

**James W. Murdoch**  
*Thorsteinssons LLP  
Tax Lawyers*

**Jim Patterson**  
*Bennett Jones LLP*

**Samuel M. Robinson**  
*Stockwoods LLP*

**Howard D. Rosen**  
*Donlevy-Rosen &  
Rosen, P.A. (Coral  
Gables, Florida)*

**Steven Weisz**  
*Blake, Cassels &  
Graydon LLP*

**Maureen Ward**  
*Bennett Jones LLP*

## WHO SHOULD ATTEND

- Corporate-commercial lawyers who are consulted on asset protection schemes
- Insolvency lawyers
- Commercial litigators
- Tax counsel
- Forensic accountants

# AGENDA

**8:30-9:00**

## **Registration and Continental Breakfast**

**9:00-9:05**

## **Chairs' Welcome and Introductory Remarks**

**9:05-10:00**

## **Asset Protection: Essential Background Law and Recent Developments for Corporate Lawyers and Litigators**

**Geoff R. Hall, McCarthy Tétrault LLP**

This session will highlight key sections of the *BIA*, *CCAA*, *Criminal Code* and other relevant legislation, with leading caselaw. A firm foundation for the exploration of strategic and tactical considerations over the day.

- Protected assets: what's exigible, what isn't?
- Significance of the distinction between fraudulent conveyances and fraud
- The most effective creditors' remedies for challenging asset protection structures

**10:00-10:45**

## **Creditor-Proofing: What's Workable, What's Permissible and What Crosses the Line?**

**Bob Klotz, Klotz Associates**

In creditor-proofing situations, you must address the triple risks of criminal liability, civil liability and prosecution for professional misconduct, and the varying standards applicable to each. Bob Klotz will assess the difficulties and identify realistic solutions regarding the nature and scope of advice you can safely provide.

- Dealing with pressures from clients, colleagues and referral sources to enter the "gray zone"
- Can counsel effect a transaction in a "value-free" manner? Drawing the line between "mere legal advisor" and "principal actor in the transaction"
- Constructing an "ethical safety net" to protect yourself
- Where fraud is alleged, how will courts exercise their discretion to protect or withdraw solicitor-client privilege?

**10:45-11:00**

## **Refreshment Break**

**11:00-12:00**

## **What's a Nice Lawyer Like You Doing in a Place Like This? Ethical and Professional Issues in Asset Protection**

**Patricia Donlevy-Rosen, Donlevy-Rosen & Rosen, P.A.**

**Alex Ilchenko, Pallett Valo LLP**

**Moderator**

**Jeffrey S. Leon, Bennett Jones LLP**

Building on the previous session, this panel brings U.S. and Canadian expertise to bear on the tough judgment calls to be made in asset protection scenarios where too few clear guideposts exist.

- When is it too late in the day to protect effectively against potential creditor claims?
- The line between prudent planning and fraud - how far can you go, as a matter of professionalism and prudence?

- The lawyer's exposure as a potential witness
- Potential professional liability issues
- Privacy and confidentiality issues
- The know-your-client rule's application to asset protection - what you can/can't do

**12:00-1:00**

## **Luncheon and Keynote Address**

**The Hon. Justice Herman Wilton-Siegel**

*Superior Court of Justice (Ontario)*

Reflections from the Bench on effective strategies for attacking and defending asset protection structures in cases before the Commercial List, and on what makes experts' reports most helpful to the Court.

**1:00-1:45**

## **Protecting/Pursuing the Assets of Owner-Managers and Closely-Held Companies**

**Steven Weisz, Blake, Cassels & Graydon LLP**

**Samuel M. Robinson, Stockwoods LLP**

Experienced counsel unpack the critical considerations in attacking or defending asset protection structures implemented by owner-managers or partners in the context of closely-held businesses.

- Use of multiple corporate structures
- Availability and scope of indemnities
- Approaches to capitalizing the business
- Ownership of family assets
- Preserving retirement savings
- Role of estate planning and shareholders' agreements
- Distributing profits
- Securing shareholder advances

**1:45-3:05**

## **Issues and Strategies in Key Areas**

**Jacqueline Mills, Barrister & Solicitor**

**James W. Murdoch, Thorsteinssons LLP Tax Lawyers**

**Raj S. Sahni, Bennett Jones LLP**

**Maureen Ward, Bennett Jones LLP**

**Marriage Dissolution**

- Excluding assets from family property
- Relevant provisions in marriage contracts
- Shareholder agreement provisions: how much immunity do they confer?

**Protecting/Pursuing Corporate Decisionmaker's Assets**

- Scope, strengths and limitations of D & O insurance and indemnities
- Role and scope of due diligence

**Moving Wealth Offshore: Shangri-La or Lost Horizon?**

- Structures used and their relative chances of success
- Choosing jurisdictions: strengths, weaknesses, risk assessment, transaction costs
- When may this strategy be counterproductive or 'boomerang'?

**Plus: Specific problems involving insolvent debtors**

**3:05-3:15**

## **Refreshment Break**

3:15-4:45

## Where's Waldo's Stuff? Chasing Assets Around a Wired World

**The Hon. Colin L. Campbell, Q.C.,** *Neeson Arbitration Chambers*

**Jennie Chan,** *Managing Director, Kroll*

**John. L Finnigan,** *Thornton Finnigan Grout LLP*

**Howard D. Rosen,** *Donlevy-Rosen & Rosen, P.A.*

**Jim Patterson,** *Bennett Jones LLP*

A fast-moving, still-evolving area in which corporate clients and their counsel pit their wits and ingenuity against creditors' litigation counsel and the forensic experts who assist them. Speakers of diverse experience and expertise will share their most timely tips and insights.

- Locating, identifying, freezing and recovering assets
- Safeguarding assets during the course of an investigation
- Meeting standards of ethical conduct without invasion of privacy or breach of confidentiality
- Working with counsel in other jurisdictions to facilitate cross-border and international asset tracing
- Harnessing the power of forensic technology tools
- Obtaining evidence for freeze orders in multiple jurisdictions

4:45

## Program Ends



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LSUC (ON): 7.25 CPD Hours (5.5 Substantive, 1.75 Professionalism); BC/NB/NT/NU/YK/QC: 6.75 credit hours; PEI/SK: 6.5; NS/MB: 7.0 credit hours; NY CLE Board (onsite participants only): 8.0 credit hours in the Area of Professional Practice for Transitional and Non-transitional lawyers.

Also eligible for CLE/Insurance Premium Credits Program offered by the Law Society of PEI and for Alberta CPD credit with the Law Society of Alberta. Questions? E-mail: cpd@osgoode.yorku.ca or refer your respective regulatory body to ensure compliance.

## Setting Up/Knocking Down Asset Protection Structures

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### Fee Per Delegate

\$895 plus 13% HST.

Fees include attendance, program materials, continental breakfast, lunch and break refreshments. Group discounts are available. Visit [www.osgoodepd.ca](http://www.osgoodepd.ca) for details. Please inquire about financial assistance.

### Date & Time

March 3, 2015

9:00 a.m. – 4:45 p.m. EDT/EST

Please arrive a half hour early for sign-in and material pick-up.

Dress is business casual.

### Location

Osgoode Professional Development  
 Downtown Toronto Conference Centre  
 1 Dundas St. W., 26th Floor  
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### Cancellations and Substitutions

Substitution of registrants is permitted at any time. If you are unable to find a substitute, a full refund (less \$75 administration fee) is available if a cancellation request is received in writing 5 days prior to the program date. No other refund is available.

### Program Changes

We will make every effort to present the program as advertised, but it may be necessary to change the date, location, speakers or content with little or no notice. In the event of program cancellation, York University's and Osgoode Hall Law School's liability is limited to reimbursement of paid fees.



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3. **FAX** your registration to 416.597.9736
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