

Report on Corporate Governance

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Executive Summary

Taking into account the specific duties and personal liabilities of corporate directors of publicly traded companies in Canada, the legal and economic context that affects these duties, and the public policy reasons for them, this report addresses the following three questions of corporate governance and concludes as follows:

Question 1: Did Mr. Baker, personally, manage or control the undertaking or property of Northstar Aerospace, Inc. ("Parent"), or its subsidiary, Northstar Aerospace (Canada) Inc. ("Canada")? I.e., does a single non-executive director personally manage or control the undertaking or property of a publicly traded corporation, or of its subsidiaries.

- Under principles of good corporate governance, individual directors on a board do not personally manage or control the undertaking or property of a corporation or its subsidiaries. As an independent director on the board of directors of Parent, Mr. Baker did not have the authority to personally manage or control the undertaking or property of Parent or Canada.
- Under principles of good corporate governance, the board of directors of a large, publicly listed company exercises a supervisory and oversight role. The board's primary role in this context is to set strategy, hire the CEO, monitor performance and ensure compliance.

Question 2: What are a director's duties in allocating corporate funds to the competing stakeholders and their interests, when the corporation lacks sufficient funds to pay all claims?

- Under principles of good corporate governance, directors will discharge their duty to act in the best interests of the corporation when they reasonably consider the impact of a proposed decision on all relevant stakeholder groups, even if a particular stakeholder would have preferred a different decision and may be adversely affected by the decision.

Question 3: Could Mr. Baker have required either Parent or Canada to set aside funds ("pre-fund") for future remediation, in preference to the claims of all other stakeholders and in the absence of an express Ministry of Environment (MOE) requirement that they do so? If they had done so, what consequences could he expect to face?

- During the Baker Tenure, the boards of directors of Canada or Parent could not have pre-funded for future remediation costs if the companies did not have the funds or if it was not in the best interests of each company to do so.
- Mr. Baker could not personally have required either Parent or Canada to pre-fund the future remediation costs. He did not have the legal authority to require either Parent or Canada to pre-fund the remediation.
- The boards of directors of Parent and Canada could only have pre-funded the future

remediation costs, in the absence of an express MOE requirement to do so, if (i) they had sufficient funds; and (ii) setting aside those funds would have been in the best interests of each corporation and not violated the reasonable expectations of all relevant stakeholders. Under principles of good governance, the boards of directors of Parent and Canada would have each been expected to act prudently, diligently and honestly, in the belief that the action was in the best interests of each company.

The duty of directors is to make decisions that are the best interests of the corporation, taking into account all competing interests and all relevant statutory frameworks. Where there are conflicts, as there inevitably are, the job of directors is to exercise good business judgment in reconciling these claims and interests. Imposing personal liability on former, independent directors of a large, publicly listed company for the obligations of the corporation, in the circumstances discussed above, is contrary to fundamental principles of corporate governance and sound public policy.

A. Introduction

1. I was retained by Dianne Saxe of Saxe Law Office and Barry Weintraub of Rueter Scargall Bennett LLP, counsel for one of the former director of Northstar Aerospace, Inc. ("Parent"), Neil Baker, to provide an expert opinion and report on issues of corporate governance and public policy with particular reference to the context of a large, publicly traded company in financial difficulty.
2. Parent owned all of the shares of Northstar Aerospace (Canada) Inc. ("Canada").¹ Canada formerly owned and operated an aerospace parts manufacturing plant in Cambridge, Ontario (the "Cambridge, Ontario Property").²
3. Mr. Baker held the position of director on the board of Parent for 33 months from September 2009 to June 2012 (the "Baker Tenure").³ He did not serve on the board of directors of Canada. He was not an employee or officer of either Parent or Canada. There were six to eight directors on the board of Parent during Mr. Baker's tenure.⁴
4. Taking into account the specific duties and personal liabilities of corporate directors of publicly traded companies in Canada, the legal and economic context that affects these duties, and the public policy reasons for them, this report addresses the following three questions of corporate governance:

Question 1: Did Mr. Baker, personally, manage or control the undertaking or property of Northstar Aerospace, Inc ("Parent"), or its subsidiary, Northstar Aerospace (Canada) Inc.

¹ Northstar Aerospace, Inc. Annual Information Form (AIF) for the year ended December 31, 2009 at 3.

² See Saxe letter to Puri dated August 9, 2013 ("Saxe Letter").

³ *Ibid.*

⁴ See Northstar Aerospace, Inc. AIF for the year ended December 31, 2009 at 13. See also Northstar Aerospace, Inc. Notice of Annual Meeting of Shareholders to be held on June 9, 2011 and Management Information Circular at 6.

(“Canada”)? I.e., does a single non-executive director personally manage or control the undertaking or property of a publicly traded corporation, or of its subsidiaries.

Question 2: What are a director’s duties in allocating corporate funds to the competing stakeholders and their interests, when the corporation lacks sufficient funds to pay all claims?

Question 3: Could Mr. Baker have required either Parent or Canada set aside funds (“pre-fund”) for future remediation costs, in preference to the claims of all other stakeholders and in the absence of an express Ministry of Environment (MOE) requirement that they do so? If they had done so, what consequences could he expect to face?

My conclusions, discussion and analysis are set out in Part C below.

B. Qualifications and Background

5. I am a tenured law professor at Osgoode Hall Law School of York University with research and teaching expertise in corporate governance, capital markets regulation, the regulation of business enterprises, and law and economics. I am also Associate Dean for Research, Graduate Studies and Institutional Relations at Osgoode Hall Law School.
6. I am also former Head of Research and Policy at the Capital Markets Institute of the Rotman School of Management, University of Toronto. The CMI’s mandate is to foster a clear understanding of the challenges facing the Canadian capital markets, and the institutional tools that Canada must develop in order to convert those tools into opportunities to be a leader among the world’s small, open capital markets. My role at the CMI involved developing, organizing and executing a research plan and strategy for the CMI.
7. As part of the CMI, I was co-research director for the Task Force to Modernize Securities Legislation (TFMSL) in 2005-2006. The TMFSL was established by the Investment Dealers Association of Canada (IDA) in June 2005 and was mandated to make recommendations to achieve dynamic, fair, efficient and competitive capital markets in Canada. I designed and oversaw approximately 30 research papers and managed over 30 leading Canadian and international scholars and professionals from disciplines ranging from finance, law, economics, and accounting. The methodologies used in the research included law and economics, law and society, behavioral economics and finance, and statistical and empirical analysis. In addition to directing the overall research agenda, I co-authored one of the studies on enforcement.
8. Also as part of the CMI, I was co-research director for the Expert Panel on Securities Regulation (the Expert Panel). The Expert Panel was announced by the Federal Minister of Finance in February 2008 to provide advice on the best way forward to improve securities regulation. I assisted in designing and overseeing the production of 7 research studies for the Expert Panel on topics including proportionate regulation, principles based regulation, and enforcement. In addition to directing the overall research program, I authored one paper on enforcement.
9. I am former Co-Director of the Hennick Centre for Business and Law, a joint Centre of Osgoode Hall Law School and the Schulich School of Business. The Hennick Centre focuses on issues at the intersection of law, business and public policy.

10. My teaching and research at Osgoode Hall Law School, as well as my work with the CMI and the Hennick Centre require me to be conversant with the interdisciplinary scholarly literature and policy studies on good corporate governance, capital and financial markets, secured credit, insolvency and the regulation of business enterprises generally in Canada and internationally. I am familiar with the policies underlying the venture capital, public markets and insolvency regimes in Canada and internationally and these topics form a part of the courses and seminars that I have been teaching for the last 16 years at Osgoode and elsewhere. I have engaged with the interdisciplinary literature spanning law and economics, behavioral economics, law and society, and finance and accounting in both my research and teaching as they relate to my areas of expertise.
11. From 2006-2008, I was the President of the Canadian Law and Economics Association and from 2004-2006, I was Vice President of the Association. Law and economics involves the application of methods of economics to solve governance, policy, and regulatory issues, including the regulation of corporate conduct.
12. I have provided independent policy advice on issues relating to the regulation of business, corporate governance, and capital markets to government bodies, regulators and policy makers in Canada and internationally, including the Ontario Securities Commission, Industry Canada, the Canadian Senate, and the International Finance Corporation of the World Bank. I have also provided expert reports in litigation matters in Canada and the United States.
13. In addition to my academic work, I serve on the board of directors of the Greater Toronto Airports Authority (GTAA) and I am chair of the Corporate Governance and Nominating Committee of the board. The GTAA is a reporting issuer, subject to securities laws in Canada. I also serve on the board of directors of Women's College Hospital in Toronto.
14. My detailed CV is attached at Appendix A. The instruction letter provided by Saxe Law Office and Reuter Scargall Bennett is attached at Appendix B.
15. In preparing this report, I acknowledge my duties as an expert and I attach a signed copy of Form 5 at Appendix C of this report. I have no interest in this appeal. A list of documents relied upon is set out in Appendix D.

C. Discussion and Analysis

Question 1: Taking into account the specific duties and personal liabilities of corporate directors of publicly traded companies in Canada, the legal and economic context that affects these duties, and the public policy reasons for them, did Mr. Baker, personally, manage or control the undertaking or property of Northstar Aerospace, Inc. ("Parent"), or its subsidiary, Northstar Aerospace (Canada) Inc. ("Canada")? I.e., does a single non-executive director personally manage or control the undertaking or property of a publicly traded corporation, or of its subsidiaries?

Summary Response:

- Under principles of good corporate governance, individual directors on a board do not

personally manage or control the undertaking or property of a corporation or its subsidiaries. As an independent director on the board of directors of Parent, Mr. Baker did not have the authority to personally manage or control the undertaking or property of Parent or Canada.

- Under principles of good corporate governance, the board of directors of a large, publicly listed company exercises a supervisory and oversight role. The board's primary role in this context is to set strategy, hire the CEO, monitor performance and ensure compliance.
16. Corporate governance principles define directors' duties to the corporation and set out their powers, rights and responsibilities as directors.⁵ The policy objectives underlying good corporate governance include enhancing economic efficiency, protecting vulnerable parties, attracting business to the jurisdiction and supporting competitiveness.
17. Parent was incorporated under the Ontario *Business Corporations Act* ("OBCA") on March 29, 1984.⁶ Canada was also incorporated under the OBCA.⁷
18. When Mr. Baker joined the board of directors of Parent, it was publicly listed and traded on the Toronto Stock Exchange.⁸ It was delisted from the Toronto Stock Exchange on May 28, 2012,⁹ shortly before the Northstar Companies applied for and were granted creditor protection under federal insolvency legislation.
19. A fundamental principle of corporate governance is that directors supervise the management of the business and affairs of the corporation. The board's primary role in this context is to set strategy, hire the CEO, monitor performance and ensure compliance.¹⁰
20. Another fundamental principle of corporate governance is that a corporation is a separate legal entity, distinct from its shareholders, directors and officers.¹¹ One corporation can own shares in another corporation, and a corporation whose shares are entirely owned by another

⁵ See, for example, Joint Committee on Corporate Governance, *Beyond Compliance: Building a Governance Culture* (Toronto, November 2001); See also Toronto Stock Exchange Committee on Corporate Governance in Canada, *Where Were the Directors? Guidelines for Improved Corporate Governance in Canada* (Toronto, December 1994).

⁶ See Northstar Aerospace, Inc. Annual Information Form (AIF) for the year ended December 31, 2009 at 2. See OBCA, RSO 1990, Chapter B.16.

⁷ Northstar Aerospace, Inc. Annual Information Form (AIF) for the year ended December 31, 2009 at 3.

⁸ The company was listed on the TSX on November 6, 1985. See "TSX Issuers Dec 2011" at http://tmx.com/en/pdf/mig/TSX_TSXV_Listed/TSX_TSXV_li_201112.xls.

⁹ Northstar Aerospace, Inc. was delisted from the Toronto Stock Exchange on May 28, 2012. See "TSX Delisting Review - Northstar Aerospace, Inc." (accessed at http://tmx.com/en/news_events/exchange_bulletins/bulletins/4-26-2012_TSX-ReviewNAS.html).

¹⁰ See Canadian Coalition for Good Government, *Building High Performance Boards* (Toronto, August 2013), at 4. These corporate governance principles and practices are reflected in the governance model in OBCA. See, for example, OBCA s. 115(1). See also Joint Committee on Corporate Governance, *supra* note 5 at 12-13 and 25.

¹¹ This principle is reflected in caselaw such as *Salomon v A Salomon & Co Ltd* [1897] AC 22, and in legislation such as the OBCA, s. 92(1).

corporation is known as a wholly owned subsidiary, while the corporation that owns the shares is known as a parent corporation.

21. Under good corporate governance principles, directors of a corporation have a duty to act in the best interests of the corporation.¹² The best interests of a corporation require a consideration of the interests of all relevant stakeholders. There may be circumstances where the best interests of a parent corporation differ from the best interests of its subsidiaries. The board of directors of a parent corporation may have to consider different stakeholders with different interests than that of the subsidiary.
22. Under principles of good corporate governance, the board of directors of a corporation acts as a collective entity to govern and oversee the corporation. The board of directors exercises supervisory authority over the corporation through regular meetings of the board and by passing resolutions by majority rule. In practice, the majority of directors approving one resolution could be different than the majority of directors approving another resolution, but once passed, each resolution binds the corporation.
23. Under principles of good corporate governance principles, the board of directors of a corporation delegates portions of their responsibilities to sub-committees of the board of directors, and officers of the corporation.¹³ There are also some duties that are regarded as so important from a governance perspective that the board of directors cannot delegate them.¹⁴
24. Under principles of good corporate governance, an individual director has no power to act over the corporation, or its subsidiaries, unless the board has delegated authority for a matter to that director. Under principles of good corporate governance, individual directors on the board of a large, publicly listed company do not personally manage or control the undertaking or property of a corporation or its subsidiaries.
25. The governance role of corporate directors is different in small, closely held, private corporations as compared to large, publicly listed corporations.¹⁵ In small, closely-held, private corporations, directors frequently play a direct role in the day-to-day operations. These corporations have a small number of shareholders and the shareholders are often also directors, officers and employees. Unanimous shareholders agreements are also common in such corporations.
26. By contrast, independent directors of large, publicly listed corporations generally exercise a more supervisory and oversight role. Unlike officers and senior executives, independent directors are not and generally should not be involved in the day-to-day operation of the corporation. As discussed in more detail below, independent directors are those directors who are independent of management.
27. It is considered a good governance practice for directors to have some level of share

¹² This principle is discussed in more detail in question 2 below.

¹³ See, for example, Joint Committee on Corporate Governance, *supra* note 5.

¹⁴ These principles are reflected in the governance model in the *OBCA*, for example, in ss. 127(1) and 127(3).

¹⁵ See for example, American Bar Association, "Managing Closely Held Corporations: A Legal Guidebook" (2003) 58:3 *The Business Lawyer* at 1081-1082.

ownership.¹⁶

28. Mr. Baker held or controlled less than 20 percent of the shares of Parent during his tenure on the board.¹⁷ He was not a controlling shareholder under the *OBCA* and he was not deemed to be a controlling shareholder under securities laws.¹⁸
29. Independent directors play an important role in good governance by acting as a check on management, who is involved in day-to-day operations.¹⁹ It is a best governance practice that the majority of directors on the board of a publicly listed company be independent of management.²⁰
30. Mr. Baker was not an officer or employee of Parent and he was classified as an independent director on the Board.²¹ Mr. Baker did not serve on any committees of the board of Parent, including the special committee appointed by the board of directors in November 2010 to explore and evaluate strategic alternatives.²² As well, the board of Parent did not delegate any authority to Mr. Baker to act over Parent.²³ Based on principles of good corporate governance, which are reflected in the model of governance under the *OBCA*, Mr. Baker did not have the authority to personally manage or control the undertaking or property of Parent.
31. As well, Mr. Baker was not an employee, officer or director on the board of Canada.²⁴ Mr. Baker did not have the authority to personally manage or control the undertaking or property of Canada.

¹⁶ See, for example, Canadian Coalition for Good Governance, *Policy on Director Compensation* (Toronto: February 2011) at 2.

¹⁷ See Northstar Aerospace, Inc. Notice of Annual General Meeting of Shareholders to be held on June 23, 2009 and Management Information Circular at 5; See also Northstar Aerospace, Inc. Notice of Annual and Special Meeting of Shareholders to be held on May 26, 2010 and Management Information Circular at 5; See also Northstar Aerospace, Inc. Notice of Annual Meeting of Shareholders to be held on June 9, 2011 and Management Information Circular at 4.

¹⁸ See *OBCA* s. 1(5) and Ontario *Securities Act*, s. 1(1).

¹⁹ See Canadian Coalition for Good Government, *Building High Performance Boards* (Toronto, March 2010) at 13. See also Toronto Stock Exchange Committee on Corporate Governance in Canada, *Where Were the Directors? Guidelines for Improved Corporate Governance in Canada* (Toronto, December 1994) at Guideline 12.

²⁰ In addition to the policy reports referenced above, this best governance practice is also reflected in *Corporate Governance Guidelines*, National Policy 58-201 (17 June 2005), Part 3.1. See also *Audit Committees*, National Instrument 52-110, Part 1.4, for more details.

²¹ See Northstar Aerospace, Inc., Notice of Annual Meeting of Shareholders to be held on June 9, 2011 and Management Information Circular at 20.

²² See Northstar Aerospace, Inc., Notice of Annual Meeting of Shareholders to be held on June 9, 2011 and Management Information Circular at 21; See also Northstar Aerospace, Inc., Press Release, "Northstar Aerospace, Inc. to Evaluate Strategic Alternatives" (November 15, 2010).

²³ See Saxe Letter, *supra* note 2.

²⁴ *Ibid.*

Question 2: Taking into account the specific duties and personal liabilities of corporate directors of publicly traded companies in Canada, the legal and economic context that affects these duties, and the public policy reasons for them, what are a director's duties in allocating corporate funds to the competing stakeholders and their interests, when the corporation lacks sufficient funds to pay all claims?

Summary Response:

- Under principles of good corporate governance, directors will discharge their duty to act in the best interests of the corporation when they reasonably consider the impact of a proposed decision on all relevant stakeholder groups, even if a particular stakeholder would have preferred a different decision and may be adversely affected by the decision.
32. Principles of good corporate governance require that directors act prudently, diligently and honestly and in the best interests of the corporation.²⁵ Directors are expected to act without a conflict of interest, always putting the company's interests ahead of their own.
 33. The best interests of the corporation should not simply be read as the best interests of the shareholders. From an economic perspective, the best interests of the corporation means the maximization of value of the corporation in the aggregate, taking into account all relevant stakeholders.²⁶
 34. Under good governance principles, it is legitimate for directors to consider the interests of shareholders, employees, suppliers, creditors, consumers, governments and the environment, among others, when exercising their duty to act in the best interests of the corporation.²⁷
 35. When a corporation is profitable, well-capitalized and has strong prospects, the interests of shareholders, the interests of creditors, and the best interests of the corporation will often be consistent with each other. However, when a corporation is struggling financially, the interests of shareholders, the interests of creditors, and the best interests of the corporation can diverge and conflict with each other. Short of bankruptcy, as the corporation approaches the vicinity of insolvency, the residual claims of shareholders will be nearly exhausted, and creditors' interests will increase in relevancy.
 36. If a corporation is declared bankrupt, the residual right of the shareholders will generally become worthless, and the corporation's assets will be administered for the benefit of the creditors.
 37. The policies underlying the federal insolvency regimes are to (i) encourage the financial

²⁵ These principles are reflected in the *OBCA*, ss. 134(1)(b) and 134(1)(a) as a statutory duty of care and a statutory fiduciary duty.

²⁶ See, for example, E. M. Iacobucci, "Directors' Duties in Insolvency: Clarifying What Is at Stake" (2003), 39 Can. Bus. L.J. 398, at 400-401.

²⁷ This principle is reflected in caselaw. See *BCE Inc. v 1976 Debentureholders*, [2008] 3 S.C.R. 560, 2008 SCC 69 ("BCE").

reorganization of companies with the goal of avoiding the harmful social and economic effects of liquidation; and (ii) ensure order and predictability for a corporation's creditors.²⁸ To give effect to the policy of order and predictability, federal insolvency laws set out a statutory prioritization scheme for creditor claims that must be followed in distributing the debtor's assets.²⁹ Generally, secured creditors have priority over unsecured creditors.

38. There are strong economic and public policy rationales for the existence and priority of secured credit. A rational company is economically motivated not to prematurely or unnecessarily give security over its assets. A company presumably gives security over its assets so that it can receive necessary funds on more favourable terms (such as a lower interest rate), or because the necessary funds are not available on an unsecured basis.³⁰ Similarly, creditors negotiate security because it reduces their risk and provides certain protections. If secured credit was restricted, creditors would have incentives to restructure their transactions from secured loans to sales.³¹ Business law and federal insolvency laws recognize the value of secured credit and give priority to secured creditors over the assets of the company.
39. In light of the existence and priority of secured credit, some unsecured creditors adjust their terms to protect themselves. For example, some unsecured creditors charge higher prices or higher interest rates, or demand cash or delivery, to take into account the additional risk they bear by being unsecured. However, other secured creditors cannot adjust their terms. In these circumstances, there may be legitimate economic and public policy justifications to give priority to these unsecured creditors, over other creditors by amendment to the legislative regime. Legislative amendments in Canada over the years reflect these policy considerations. Specific statutory amendments have been made for express preference over the corporate assets for unremitted taxes,³² employment claims,³³ and rent.³⁴ There is also a specific statutory priority over the specific contaminated site for environmental clean up costs, but not over the business of the corporation.³⁵
40. A corporation generally has many stakeholders with legitimate and important claims. In the context of a corporation that is in financial difficulty, the board of directors must address many serious and urgent business problems and make decisions that impact the allocation of limited funds to competing stakeholders. These decisions may have serious negative consequences on some stakeholders.

²⁸ See, for example, Steven L. Schwarcz, "The Easy Case for the Priority of Secured Claims in Bankruptcy" (1997) 47:3 *Duke Law Journal* 425 at 432.

²⁹ See generally, *Companies' Creditors Arrangement Act*, RSC 1985, c C-36 ("CCAA") and the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3 ("BIA")

³⁰ See Schwarcz, *supra* note 28, at 421.

³¹ See, for example, Schwarcz, *supra* note 28 at 432.

³² *BIA*, *supra* note 29, s. 136(1)(h).

³³ *BIA*, *supra* note 29, ss. 136(1)(d)(i).

³⁴ *BIA*, *supra* note 29, s. 136(1)(f).

³⁵ See Morawetz J. Endorsement, dated July 30, 2012 at para 64; See also *Newfoundland and Labrador v. AbitibiBowater Inc.* [2012] 3 S.C.R. 443 at para 32; See also s.11.8(8) of the CCAA.

41. In resolving such competing interests, a fundamental governance principle is that directors must use their skills to maximize the value of the corporation.³⁶
42. Under principles of good governance, directors will discharge their fiduciary duty to act in the best interests of the corporation when they reasonably consider the impact of a proposed decision on all relevant stakeholder groups, even if a particular stakeholder would have preferred a different decision and may be adversely affected by the decision.
43. Directors must often make business decisions in real-time, under conditions of uncertainty and externally imposed time pressures and deadlines, in a competitive environment. Under principles of good corporate governance, directors are accorded a high degree of deference in exercising their business judgment.³⁷
44. Under principles of good governance, directors are protected from personal liability for making decisions on behalf of the corporation that were reasonable and made on an informed basis. As a matter of good governance, it is not reasonable to expect from directors a perfect decision or the best decision for any particular stakeholder in hindsight.
45. The important consideration from a governance perspective is whether the decision was reasonable and defensible at the time that it was made, not after the fact, in light of information that might subsequently become available. The fact that the directors rejected other courses of conduct is irrelevant unless it can be shown that a particular alternative was definitely available and clearly more beneficial to the company as a whole than the chosen transaction or course of conduct.
46. This fundamental principle of good corporate governance reflects sound public policy because it safeguards the efficient operation of business, encourages reasonable risk-taking, and prevents hindsight bias.³⁸
47. While directors must be prudent and exercise diligence, another principle of good corporate governance is that directors who reasonably rely on officers and experts should be protected from personal liability.³⁹ This is desirable from a public policy perspective.
48. The governance principle that directors must act in the best interests of the corporation includes a duty to treat stakeholders who are affected by corporate actions equitably and

³⁶ This principle is reflected in the caselaw. See for example, *Peoples v Wise*, [2004] 3 S.C.R. 461 (“Peoples”) at para 47.

³⁷ Canadian courts have generally followed this principle of deference to the business judgement of directors. See, for example, *BCE*, *supra* note 27 at para 40. See also *Maple Leaf Foods Inc. v Schneider Corp.* (1998), 42 O.R. (3d) 177 (C.A.) at para 34.

³⁸ For more on the policy rationales underlying this principle, see, for example, Douglas M Branson, “The Rule That Isn’t a Rule—The Business Judgement Rule” (2002) 36:3 Valparaiso University Law Review 631 at 637; Kenneth B. Davis, Jr., “Once More, The Business Judgement Rule” (2000) Wis L Rev 573 at 575.

³⁹ This principle is also reflected in statutory governance model of the *OBCA* at s. 135(4).

fairly.⁴⁰ Where the interests of several stakeholders conflict, directors must resolve the conflict in a way that does not oppress or unfairly disregard the interest of any particular stakeholder. A stakeholder can only claim to be oppressed if it had a reasonable expectation, viewed objectively, that was violated. Factors that are relevant in determining the existence of a reasonable expectation include:

- General commercial practice;
- The size, nature and structure of the corporation;
- Past practice;
- Preventative steps the claimant could have taken to protect itself from the prejudice it claims to have suffered;
- Representations made in agreements and other communications; and
- The fair resolution of conflicting interests between corporate stakeholders.

49. Directors frequently find themselves in a situation where it is impossible to please all stakeholders; not all conduct that is harmful to a stakeholder will give rise to a remedy for a stakeholder.

50. I now turn to considering directors' fiduciary duties in the context of the Northstar Companies, as gleaned from various public documents and filings made by the Northstar Companies.

51. In September 2009, when Mr. Baker joined the board of Parent, the Northstar Companies were already in financial difficulty. In 2007, the Northstar Companies had entered into an \$80 million credit facility.⁴¹ In 2008, prior to Mr. Baker joining the board, the Northstar Companies had breached a covenant of the 2007 secured credit agreement. As a result, the 2007 secured lenders forced Northstar to pay down debt by \$25 million, which the Northstar Companies had to do by selling some of their assets and using available cash.⁴² The secured lenders also formally reduced the amount of credit they would make available to the Northstar Companies by over \$25 million, and accelerated the maturity date of the credit facility by 1.5 years.⁴³ The Annual Information Form for the year ended December 31, 2009 states that the Northstar Companies paid increased fees and additional interest charges as a result of the breach of the 2007 secured credit agreement.⁴⁴

52. In March 2010, the Northstar Companies entered into a new \$66 million secured credit agreement with Fifth Third Bank and other lenders.⁴⁵

53. Throughout the Baker Tenure, the Northstar Companies continued to be in serious financial

⁴⁰ This principle is reflected in the statutory oppression remedy and caselaw. See, for example, *OBCA* s. 248 and *BCE*, *supra* note 27 at para 72.

⁴¹ Northstar Aerospace, Inc. Annual Information Form (AIF) for year ended December 31, 2009 at 7.

⁴² *Ibid.*

⁴³ *Ibid.*

⁴⁴ *Ibid.*

⁴⁵ *Ibid.* See also Affidavit of Craig A. Yuen at 22 in Pre-Filing Report of Ernst & Young, the Proposed Monitor, dated June 14, 2012. ("Yuen").

trouble, which worsened by early 2012.⁴⁶

54. Throughout the Baker Tenure, the board of directors of Parent and Canada each had to make many serious and urgent business decisions, in a highly competitive business environment.⁴⁷ They had many stakeholders, including customers, suppliers, employees, and secured creditors.⁴⁸
55. Throughout the Baker Tenure, a small number of customers accounted for a vast majority of the Northstar Companies' revenues.⁴⁹ The Northstar Companies' largest customer was The Boeing Company (Boeing). One significant contract had unfavourable, unsustainable pricing that effectively required the Northstar Companies to sell parts to Boeing at pre-2000 year pricing. In addition, Boeing's past delivery demands and estimates were overstated, and as a result, drove up the Northstar Companies' capital costs and investments, operating costs, and overhead.
56. During the Baker Tenure, the Northstar Companies also had many suppliers from whom they purchased raw materials and component parts. Many of these materials were sourced from the only qualified supplier, and there were risks of price fluctuations and periodic delays in the delivery of raw materials.⁵⁰ These suppliers were demanding earlier and earlier payment.⁵¹ By 2012, substantially all the suppliers and service providers had put the Northstar Companies' on a cash on delivery, cash in advance, or cash upon order basis.⁵²
57. During the Baker Tenure, Parent and Canada also had obligations to many employees.⁵³ They also had obligations under a number of pension plans and other benefit programs for their current and former employees. The Northstar Companies made contribution from their general revenues to these plans and programs, although some of these arrangements were secured by letters of credit.⁵⁴ Upon being granted CCAA protection by the court, Canada was permitted under the terms of the Debtor-in-Possession (DIP) financing to continue making contributions on some of these plans but not on others.
58. During the Baker Tenure, the Northstar Companies were also managing environmental

⁴⁶ Saxe Letter, *supra* note 2.

⁴⁷ See Northstar Aerospace, Inc. AIF for year ended December 31, 2009 at 9.

⁴⁸ See Northstar Aerospace, Inc. AIF for year ended December 31, 2009 at 4-11 and 17-19; See also Northstar Aerospace, Inc. AIF for year ended December 31, 2010 at 4-12 and 18-20; See also Yuen *supra* note 47 at 8.

⁴⁹ See Northstar Aerospace, Inc. AIF for year ended December 31, 2009 at 4-6 and 8-9; See also Northstar Aerospace, Inc. AIF for year ended December 31, 2010 at 4-7 and 9-10; See also Yuen, *supra* note 47 at 34.

⁵⁰ See Northstar Aerospace, Inc. AIF for year ended December 31, 2009 at 10; See also Northstar Aerospace, Inc. AIF for year ended December 31, 2010 at 11.

⁵¹ See Yuen, *supra* note 45 at 13.

⁵² See Yuen, *supra* note 45 at 46.

⁵³ See Northstar Aerospace, Inc. AIF for year ended December 31, 2009 at 11; See also Northstar Aerospace, Inc. AIF for year ended December 31, 2010 at 12; See also Yuen, *supra* note 45 at 17.

⁵⁴ Yuen, *supra* note 45 at 18.

claims in both Canada and the U.S.⁵⁵ These included regulatory obligations, individual private litigation and class action lawsuits. Canada was managing environmental claims on the Cambridge, Ontario property, which was subject to ongoing remediation, as well as litigation with the Municipality and a class action lawsuit.⁵⁶

59. The December 31, 2009 Annual Information Form discloses that the Northstar Companies settled the Cambridge Ontario class action lawsuit in May of 2009 and the Court approved the settlement in June 2009.⁵⁷ Under the terms of the settlement, the Northstar Companies paid out Cdn \$1.6 million, and promised payment of another Cdn \$3 million with interest. Northstar recorded a provision of Canadian \$5.05 million in its financial statements.
60. From 2005 until its bankruptcy in August 2012, Canada performed extensive investigation, remediation and monitoring activities at the Cambridge, Ontario Property and in the Bishop Street Community in consultation with the MOE and local authorities. Canada remediated the Cambridge, Ontario Property during the entire Baker Tenure. It remediated voluntarily from 2005 until March 15, 2012 and then in compliance with an MOE Director's Order until August 24, 2012, the date of Canada's bankruptcy.
61. Throughout the Baker Tenure, corporate assets were spent on the remediation and the consolidated financial statements of the Northstar Companies included an annual provision for these remediation activities.⁵⁸ It is important that a reasonable process was used by the management of Canada in consultation with the environmental consultant, AMEC, to determine the amount of this provision in the consolidated accounts for the remediation. It is also important that there was no legislative or accounting reason to set aside the funds, but only to make an accounting provision for the remediation.⁵⁹
62. A critical issue is whether Parent and its board acted reasonably to ensure that Canada had access to the funds it needed to continue the remediation as the bills came due. In this regard, it is important that the directors of Parent did not restrict or interfere with Canada's ability to pay the remediation costs as they came due.⁶⁰ It is also important that the directors of Parent also did not declare any dividends,⁶¹ or direct or approve any improvident financial transactions that materially reduced the ability of Canada to pay for the remediation.⁶²

⁵⁵ See Northstar Aerospace, Inc. AIF for year ended December 31, 2009 at 17-18; See also Northstar Aerospace, Inc. AIF for year ended December 31, 2010 at 4-12 and 18-20.

⁵⁶ See Northstar Aerospace, Inc. AIF for year ended December 31, 2009 at 17.

⁵⁷ Northstar Aerospace, Inc., AIF for year ended December 31, 2009 at 17.

⁵⁸ See Northstar Aerospace, Inc. Annual Consolidated Financial Statements (as at December 31, 2009 and 2008 and for the years ending December 31, 2009, 2008 and 2007) at 30-31 and 36-38; See also Northstar Aerospace, Inc. MD&A (for year ended December 31, 2009) at 7-8, 11-12, 14, 17, 19 and 22; See also Northstar Aerospace, Inc. Annual Consolidated Financial Statements (as at December 31, 2010 and 2009 and for the years ended December 31, 2010, 2009 and 2008) at 28 and 33-34; Northstar Aerospace, Inc. MD&A (for year ended December 31, 2010) at 7, 20 and 22.

⁵⁹ Saxe Letter, *supra* note 2.

⁶⁰ *Ibid.*

⁶¹ Northstar Aerospace, Inc., AIF (for year ended December 31, 2009) at 11; Northstar Aerospace, Inc., AIF (for year ended December 31, 2010) at 10.

⁶² Saxe Letter, *supra* note 2.

63. During the Baker Tenure, Parent and Canada also had obligations to secured creditors who exercised substantial legal, financial and practical control. The three year, \$66 million secured credit agreement with Fifth Third Bank and other lenders that was entered into in March 2010.⁶³ contained many financial controls and restrictions over the Northstar Companies' financial affairs, as did the previous 2007 secured credit agreement that had been breached.
64. The 2010 secured credit agreement required the Northstar Companies to maintain a minimum ratio of fixed charges to EBITDA,⁶⁴ a minimum tangible net worth, a maximum limit on capital expenditures and a minimum EBITDA requirement, among other covenants.⁶⁵ On the occurrence of an event of default, the amounts owing under the secured credit facility became due and payable immediately at the secured lenders' option.
65. By early 2012, the Northstar Companies were once again in breach of their covenants and had defaulted under the 2010 secured credit facility. The loan became immediately due and payable.⁶⁶ However, the secured lenders chose not to liquidate even though they had the legal right to do so. Instead, the secured lenders agreed to a forbearance agreement which provided that the lenders would not enforce their legal rights under the credit facility.⁶⁷ The forbearance agreement contained additional control features, such as additional reporting requirements and the requirement for appointment of a Chief Restructuring Officer.⁶⁸ The secured lenders also agreed to invest additional funds.⁶⁹ The secured creditors were not legally required to advance additional funds, but they obviously did so to protect their own interests and their security because they must have believed it was the best way to recover their investment.
66. Prior to the Financial Assurance Order, the MOE had never ordered or directed Canada to provide financial assurance for the remediation. In the fall of 2009, the Ministry of the Environment advised Canada that it was going to demand an unspecified amount of financial assurance, but then advised it would not do so.⁷⁰ This would indicate to a prudent director that the MOE was satisfied with the Northstar Companies' financial provision for the future remediation.
67. On June 14, 2012, Parent and Canada applied for and were granted protection from their creditors pursuant to the *CCAA*. The board of directors of Parent, including Mr. Baker,

⁶³ Yuen, *supra* note 45 at 22.

⁶⁴ EBITDA is defined as earnings before interest, taxes, depreciation, and amortization.

⁶⁵ Yuen, *supra* note 45 at 23.

⁶⁶ Yuen, *supra* note 45 at 40.

⁶⁷ Yuen, *supra* note 45 at 42. The lenders agreed to forbearance until February 17, 2012, which was later extended to June 13, 2012.

⁶⁸ Northstar Aerospace, Inc. Press Release "Northstar Announces Organizational Changes" (February 8, 2012); See also Yuen, *supra* note 45 at 24 and 41.

⁶⁹ Yuen, *supra* note 45 at 49-50.

⁷⁰ Saxe Letter, *supra* note 2.

resigned on the same day.

68. The board of directors of Canada also resigned on June 14, 2012, and thereby no longer had the right to supervise and govern Canada, including the remediation activities at the Cambridge, Ontario Property. Such responsibility was transferred to the court appointed Monitor and Chief Restructuring Officer. Even while in *CCAA* protection, Canada continued its remediation activities until all its funds were exhausted.
69. The *CCAA* court approved the sale of the majority of Parent and Canada's assets to an American private equity firm effective August 24, 2012. The sale transaction did not include the Cambridge, Ontario Property because there was no interest in purchasing this property.
70. The other assets of the Northstar Companies were sold for \$66 million, and the Canadian sale proceeds were distributed pursuant to an order by the *CCAA* court. The bulk of the proceeds were paid to the secured creditor group, which was still left with a significant shortfall.⁷¹ Notwithstanding the shortfall, the secured creditors supported approval of the sale transaction.⁷²
71. The \$66 million sale price represented approximately 73% of the total debt of Parent and Canada (not including unknown amounts such as the substantial but un-quantified value of environmental, retirement and pension claims that were left unsatisfied following the bankruptcy).⁷³
72. The MOE applied to the *CCAA* court to block the distribution of the sale proceeds to the secured creditors, but the *CCAA* court denied this application.⁷⁴ Justice Morawetz acknowledged the concerns raised by the MOE as being real and serious.⁷⁵ He noted that the MOE was entitled to file a claim for remediation costs⁷⁶ and that the MOE does has security over the Cambridge, Ontario property.⁷⁷
73. Justice Morawetz noted that if the proposed transaction was not approved, the secured lenders would move to enforce their rights.⁷⁸ As a result of the priorities in the *CCAA*, the secured creditor had a superior priority position to the MOE and would have been in a position to commence proceedings to enforce its rights.⁷⁹ The practical result would have been that the Northstar Companies would have had no assets available and no ability to

⁷¹ See Morawetz J. Endorsement dated July 30, 2012 at para 36.

⁷² Morawetz J. Endorsement dated July 30, 2012 at para 37.

⁷³ See list of creditors as at June 14, 2012. Available at Ernst & Young Monitor's Website: <http://documentcentre.eycan.com/Pages/Main.aspx?SID=248>. The total debt, not including unknown amounts, was \$89,883,85 of which \$66,000,000 was secured debt and \$23,883,854 was unsecured debt.

⁷⁴ The Ministry of the Environment's appeal from that refusal to the Ontario Court of Appeal is pending.

⁷⁵ Morawetz J. Endorsement dated July 30, 2012 at para 74.

⁷⁶ Morawetz J. Endorsement dated July 30, 2012 at para 66.

⁷⁷ Morawetz J. Endorsement dated July 30, 2012 at para 64. See also s.11.8(8) of the *CCAA*.

⁷⁸ Morawetz J. Endorsement dated July 30, 2012 at para 75.

⁷⁹ Morawetz J. Endorsement dated July 30, 2012 at para 75.

comply with the MOE order.⁸⁰

74. In conclusion, Justice Morawetz held:⁸¹

I am satisfied that the Heligear Transaction is in the best interests of Northstar's stakeholders, including its employees, suppliers and creditors. The proceeds of the Transaction will be available for distribution to the CCAA Entities' creditors in accordance with their legal priorities.

75. Justice Morawetz also made an order declaring that the MOE was seeking to enforce its rights as a creditor and that the enforcement of those rights be stayed.⁸² In addition, he denied the MOE's request to lift the stay on the basis that the MOE was seeking to create a super priority claim by way of its March 15, 2012 Remediation Order. He stated, "such a priority is not recognized at law."⁸³

76. On August 24, 2012, Canada became bankrupt and ceased to perform the environmental remediation, which was taken over by the MOE. Like all other unsecured creditors, the Ministry of the Environment did not receive any payment on its claim and the private plaintiffs in the Cambridge class action did not receive any further payments.⁸⁴

77. The boards of directors of Parent and Canada each had a fiduciary obligation to act in the long-term best interests of each company and reasonably consider the interests of all relevant stakeholders of each company, including the various classes of creditors and the corporation's ongoing social and regulatory obligations.⁸⁵

78. During the Baker Tenure, the boards of directors of Canada or Parent could not have pre-funded for future remediation costs if the companies did not have the funds or if it was not in the best interests of each company to do so.

79. The current case raises an important issue regarding whether and when, as a matter of good corporate governance and public policy, it is appropriate to impose personal liability on former, independent directors of large, publicly traded companies for the obligations of the corporation.⁸⁶

80. Absent a conflict of interest or impropriety, principles of good corporate governance suggest that directors' decisions should not be second guessed and they should not face personal

⁸⁰ Morawetz J. Endorsement dated July 30, 2012 at para 76.

⁸¹ Morawetz J. Endorsement dated July 30, 2012 at para 82.

⁸² Morawetz J. Endorsement dated July 30, 2012 at para 84.

⁸³ Morawetz J. Endorsement dated July 30, 2012 at para 85.

⁸⁴ See list of creditors as at June 14, 2012.

⁸⁵ BCE, *supra* note 27.

⁸⁶ See for example, Bernard S. Black, Brian R. Cheffins & Michael Klausner, "Outside Director Liability: A Policy Analysis (2006) 162 *Journal of Institutional and Theoretical Economics* 5; See also Ronald J. Daniels. "Must Boards Go Overboard? An Economic Analysis of the Effects of Burgeoning Statutory Liability on the Role of Directors in Corporate Governance" (1994) 24 *Canadian Business Law Journal* 229.

liability for making decisions on behalf of the corporation that were reasonable and informed at the time they were made. Otherwise, it undermines the system of corporate governance that calls on well-intentioned people to serve as directors and exercise their good business judgment in making difficult decisions on behalf of the corporation, in situations where they often cannot satisfy everyone.

81. A fundamental principle of corporate governance is that a corporation is a separate legal entity, and a corporation has the power to make contracts, raise funds through public capital markets, obtain debt financing from banks and others, employ workers, and engage in economic activity that generates wealth.
82. Economic activity comes with the risk of loss or harm. This includes the risk of loss to employees who are not compensated for work performed for the company or the risk of working in unsafe conditions. It also includes the risk of loss to customers from defective or unsafe products and the risk of loss to trade suppliers and landlords who are not paid. It also includes harm to the environment and local community from emissions, as well as harm suffered by public investors for misrepresentations about material facts and changes of the company.
83. In assuming the responsibility to set strategy, hire the CEO, oversee management and ensure compliance, directors on a board do not personally guarantee that the risks of business activity will not materialize. As a public policy matter, it is not appropriate to hold independent directors personally liable for things that are not within their control.
84. When directors are held liable for events beyond their control, the incentive for serving on a board is diminished and qualified individuals may view the potential liability of serving on boards as too great, particularly for companies that are in financial difficulty.⁸⁷
85. Under principles of good governance, personal liability on directors should be clear and express, such that directors have reasonable notice and a reasonable expectation of what conduct or omission may potentially lead to personal liability. Personal liability for directors should also be for clearly defined amounts so that directors and corporations can arrange for indemnification and/or insurance.
86. Under principles of good governance, personal liability on directors should only be imposed for events occurring during the director's tenure with the corporation and within the control of the director, and yet still only in limited circumstances. Otherwise, the deterrent function underlying personal liability is lost. In addition, personal liability should not put directors in a conflict with their other governance duties.
87. Under principles of good governance, personal liability on directors should generally be subject to clearly defined exclusions so that directors can avoid personal liability if they acted honestly, in good faith, diligently and reasonably, and if they reasonably relied on management or experts.
88. As discussed above, the imposition of personal liability on directors should accord with principles of notice, fault, certainty, and fairness. It is contrary to public policy, good governance and to the reasonable expectations of directors to impose liability on directors in

⁸⁷ Daniels, *supra* note 86 at 233.

other circumstances. The good governance principles and public policy arguments discussed above are reflected in federal and provincial statutes as well as by the courts in common law principles such as the business judgment rule.

89. The policies and principles discussed above are reflected in the statutory provisions imposing personal liability on directors and officers for declaring dividends when the corporation cannot satisfy solvency tests.⁸⁸ These solvency tests ensure that directors do not transfer funds to shareholders when a corporation is insolvent, thereby preferring the interests of shareholders over prior ranking creditors. Personal liability of directors resulting from an improper payment of dividends is legitimate because the directors are on notice about it, it is for a precise amount, and it directly results from a decision that the board of directors controlled.
90. In addition, the policies and principles discussed above are reflected in the statutory provisions that impose personal liability on directors for misappropriating corporate assets or using corporate opportunities for their own personal benefit.⁸⁹ This form of personal liability is legitimate because there is notice about the rule, certainty about its application, and it requires a level of fault or wrongdoing on the part of the director for it to apply. This rule reflects the reasonable expectations of corporate directors. If a director takes a personal benefit, it is only fair that he/she should be personally liable.
91. The policies and principles discussed above are also reflected in the statutory provisions for directors' liability for unpaid wages.⁹⁰ Directors are statutorily liable up to six-months of unpaid wages. This liability is well known to directors and it forms a part of their reasonable expectations that they will be personally liable if the corporation fails to pay its employees. These provisions impose personal liability that is clearly known, quantifiable, precise, limited in time, limited in claimants, and within the directors' control.
92. The policies and principles discussed above are also reflected in the federal *Income Tax Act*. The *Income Tax Act* imposes personal liability on directors when the corporation has failed to withhold and remit source deductions on wages/salaries or non-resident withholding tax.⁹¹ The purpose of this provision is to protect the interests of the Ministry of National Revenue by deterring directors from using withheld taxes to pay creditors to sustain business operations.⁹² Like the provision for unpaid wages, the liability is clearly known, quantifiable, precise, limited in time, limited in claimants, and within the directors' control.
93. The policies and principles discussed above are reflected in statutory defences contained in the *OBCA*. The *OBCA* provides that a director is not liable for a breach of the duty of care or fiduciary duty if he or she exercised the care, diligence and skill that a reasonably prudent person would have exercised in comparable circumstance.⁹³ This includes reliance in good faith on officers, external auditor, or experts.

⁸⁸ See for example, *OBCA* s. 130(1).

⁸⁹ See for example, *Canadian Aero Service Ltd. v O'Malley*, [1974] S.C.R. 592.

⁹⁰ See for example, *OBCA*, s. 131.

⁹¹ See for example, *Income Tax Act*, RSC 1985 c 1 (5th Supp) s. 227.1.

⁹² See for example, *Soper v Canada* [1997] FCJ No 881 (Federal Court).

⁹³ See for example, *OBCA* s. 135(4).

94. Directors and officers can also be personally liable for corporate oppression in exceptional circumstances. A personal order against directors may be appropriate where, for example, directors obtain a personal financial benefit, misuse a corporate power, or breach their personal duties.⁹⁴ A general allegation that the directors were the directing mind of the corporation is insufficient to make out a claim for personal liability for oppression. However, in closely held corporations, where a director or officer has virtually total control over the corporation,⁹⁵ a director or officer may be held personally liable to rectify the corporate oppression.
95. To extend personal liability on directors too broadly would be unfair and inconsistent with relevant public policy considerations, good governance practices and the reasonable expectations of directors.⁹⁶
96. Justice Morawetz' initial order included an order that the Northstar Companies indemnify their directors and officers against obligations and liabilities that they may incur as directors and officers of the Northstar Companies.⁹⁷ There was a reasonable expectation that the directors of the Northstar Companies may be potentially personally liable for some or all of unpaid wages, pension amounts, vacation pay, statutory employee deductions and HST. This amount was estimated to be \$1.65 million,⁹⁸ and Justice Morawetz ordered a Directors' Charge in the amount of \$1.75 million as security for this indemnity to the directors and officers.⁹⁹ There was no reasonable expectation that directors of the Northstar Companies would be personally liable for future remediation costs, or legal costs associated with the order, and no estimate was made for such possible personal liability in Justice Morawetz's order.
97. Thus, with all due consideration to the seriousness and the gravity of the environmental issues associated with the Cambridge, Ontario Property, it would be inconsistent with principles of good corporate governance sound public policy to impose personal liability on Mr. Baker, an independent director who was not associated with the corporation when the contamination occurred and was unable to direct Canada or Parent to pre-fund for future remediation during his tenure on the board of Parent

Question 3: Taking into account the specific duties and personal liabilities of corporate directors of publicly traded companies in Canada, the legal and economic context that affects these duties, and the public policy reasons for them, could Mr. Baker have required either Parent or Canada to set aside funds ("pre-fund") for future remediation, in preference to the claims of all other stakeholders and in the absence of an express Ministry of Environment (MOE) requirement that they do so? If they had done so, what consequences could he expect to face?

⁹⁴ See, for example, *Budd v Gentra Inc.* (1998) 43 BLR (2d) 27 (Ont CA) for a discussion of this issue.

⁹⁵ *Ibid.*

⁹⁶ See Daniels, *supra* note 86 at 233.

⁹⁷ Morawetz J. Initial Order (June 14, 2012).

⁹⁸ Yuen, *supra* note 45 at 47.

⁹⁹ Morawetz J. Initial Order (June 14, 2012) at 11.

Summary Response:

- During the Baker Tenure, the boards of directors of Canada or Parent could not have pre-funded for future remediation costs if the companies did not have the funds or if it was not in the best interests of each company to do so.
 - Mr. Baker could not personally have required either Parent or Canada to pre-fund the remediation.¹⁰⁰ He did not have the legal authority to require either Parent or Canada to pre-fund the remediation.¹⁰¹
 - The boards of directors of Parent and Canada could only have pre-funded the remediation, in the absence of an express MOE requirement to do so, if (i) they had sufficient funds; and (ii) setting those funds aside would have been in the best interests of each corporation and not violated the reasonable expectations of all relevant stakeholders. The board of directors of Parent and Canada would have each been expected to act diligently, prudently, honestly, in good faith and in the belief that the action was in the best interests of each company.¹⁰²
98. A decision to use corporate assets to pre-fund anticipated future environmental remediation costs would have reduced the value of assets available for secured creditors and creditors generally and given preference to the interests of one unsecured creditor over others.¹⁰³ This would have had the effect of prioritizing the claim of one of many unsecured creditors, the Ministry of the Environment, to the prejudice of the other unsecured and secured creditors.
99. Before making a decision to cause Canada to pre-fund the anticipated future remediation costs, the board of directors of Parent would have been required under principles of good corporate governance to consider all relevant stakeholders and their interests, including, for example:
- secured creditors and the impact on the secured lending facility;
 - suppliers and the ability to pay bills;
 - customers and the ability to continue delivery on schedule and in compliance with contractual commitments;
 - employees and the ability to continue meeting payroll, benefit and pension obligations; and
 - the class action litigation relating to the Cambridge, Ontario Property and impact on it.
100. Were the Board of Directors of Canada or Parent to have voluntarily pre-funded the remediation during the Baker Tenure, without an express MOE requirement that they do so, over the established, reasonable expectations of secured creditors and other stakeholders, those secured creditors and other stakeholders may well have had valid complaints against the company, and the directors personally, because that conduct would have been in breach of good corporate governance principles and their duties as directors.

¹⁰⁰ See discussion to Question 1 for additional details.

¹⁰¹ See discussion to Question 1 for additional details.

¹⁰² See discussion in Question 2 for additional details.

¹⁰³ *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67, [2012] 3 SCR 443 (“AbitibiBowater”).

101. If during the Baker Tenure, Canada had pre-funded the anticipated future remediation cost by setting up a separate bank account under the company's name but in such a way that those funds were beneficially owned by the corporation, then those funds would have continued as assets of the corporation. Upon liquidation, those funds would have formed part of the general pool of assets available for creditors.¹⁰⁴
102. If during the Baker Tenure, Canada had pre-funded the anticipated future remediation costs by transferring the funds to the MOE, voluntarily, or by segregating them by some other means so that they were no longer beneficially owned by Canada, then not only would these transactions presumably have been contrary to the secured lending agreement, such transactions could have been contrary to sound public policy by giving an unjust preference to certain creditors on the eve of insolvency, to the prejudice of other creditors.¹⁰⁵
103. On January 29, 2012, Parent provided public disclosure that it was in breach of its obligations to a major customer and advised financial markets that there was "significant doubt about Parent's ability to continue as a going concern."¹⁰⁶ Following this notice, Parent entered into forbearance agreements¹⁰⁷ with its major creditors and appointed a chief restructuring officer.¹⁰⁸
104. Finally, on May 14, 2012 the corporation disclosed that these forbearance agreements were being extended while the corporation considered strategic alternatives for the corporation.¹⁰⁹
105. Given these public disclosures, when the MOE issued a Director's Order requiring financial assurance on May 31, 2012, a transfer of assets by Canada to the MOE at that time would have undermined the prior security of the secured creditor and also given an unfair preference to one creditor over other creditors, prejudicing the interests of other creditors.
106. The MOE issued a second Director's Order on May 31, 2012 requiring Parent and Canada to provide financial assurance in the amount of \$10,352,906 to be paid to the Ministry of the Environment within the week.¹¹⁰ Canada had insufficient funds to do so.¹¹¹

¹⁰⁴ This is according to the priorities set out in federal insolvency legislation and caselaw. In *AbitibiBowater*, *supra* note 103, the Supreme Court of Canada clearly established that historic environmental remediation costs rank alongside unsecured creditors and are accorded no priority over the general assets of the corporation.

¹⁰⁵ This sound principle of public policy is reflected in the *Assignments and Preferences Act*, RSO 1990, c A33, s. 4(2), s. 4(3) as well as the *BIA*, s. 95(1)(a).

¹⁰⁶ Northstar Aerospace, Inc. Press Release, "Northstar Announces Notice Received Under Customer Contract and Financial Update" (29 January 2012).

¹⁰⁷ A forbearance agreement is an agreement that a creditor will refrain from the enforcement of a debt or obligation that would otherwise become due.

¹⁰⁸ Northstar Aerospace, Inc., "Form 51-102F3: Material Change Report" (8 February 2012).

¹⁰⁹ Northstar Aerospace, Inc. Press Release, "Northstar Aerospace announces extension of forbearance agreement" (14 May 2012).

¹¹⁰ Northstar Aerospace, Inc. Press Release, "Northstar Provides Update Regarding Ongoing Environmental Matter" (June 1, 2012).

¹¹¹ Yuen, *supra* note 45 at 32.

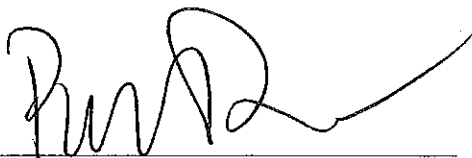
Parent's directors requested that the secured lenders fund the financial assurance and Parent requested an extension of time so as to deal with the Lenders.¹¹²

107. Prior to the Financial Assurance Order, the MOE had never ordered or directed Northstar Canada to provide financial assurance for the remediation. In the fall of 2009, the Ministry of the Environment advised Northstar Canada that it was going to demand an unspecified amount of financial assurance, but then advised it would not do so.¹¹³ This would have indicated to a prudent director that the MOE was satisfied with the Northstar Companies' financial provision for the future remediation.

108. If the MOE had taken the step in 2009 to issue a Director's Order requiring financial assurance, and if Canada had transferred such funds to the MOE, given the financial difficulties facing the Northstar Corporations, that financial assurance transaction may have also violated the secured credit agreement, undermined the priority of the secured creditor, and given an unjust preference to one creditor to the prejudice of other creditors, all of which is contrary to sound public policy and good governance principles.

D. Conclusion

109. The duty of directors is to make decisions that are the best interests of the corporation, taking into account all competing interests and all relevant statutory frameworks. Where there are conflicts, as there inevitably are, the job of directors is to exercise good business judgment in reconciling these claims and interests. Imposing personal liability on former, independent directors of a large, publicly listed company for the obligations of the corporation, in the circumstances discussed above, is contrary to fundamental principles of corporate governance and sound public policy.


Poonam Puri

¹¹² *Ibid.*

¹¹³ Saxe letter, *supra* note 2.

Appendix A

Poonam Puri

Professor and Associate Dean,
Osgoode Hall Law School, York University
4700 Keele Street, Toronto, ON M3J1P3

Curriculum Vitae

September 2013

Education

- 1997 HARVARD LAW SCHOOL**
LL.M.
Thesis: The Cost of Justice: Legal Aid in Canada, the United States and South Africa
Supervisor: Professor Martha Minow
- 1995 UNIVERSITY OF TORONTO, FACULTY OF LAW**
LL.B.
Awards, Honours and Prizes:
- W.P.M. Kennedy Silver Medalist for Ranking Second in the Graduating Class
 - Gordon Cressy Student Leadership Award in Recognition of Academic Excellence and Extra-Curricular Involvement
 - Davies, Ward and Beck Prize for Ranking First in Second Year
 - Carswell Prize for Ranking First in Second Year
 - Russell Baker Prize for Ranking First in Commercial Law Subjects
 - Gowling, Strathy and Henderson Prize for Ranking First in Bankruptcy and Insolvency Law
 - Borden & Elliot Prize for Academic Excellence in First Year
 - Michael John Eccles Prize for Ranking First in Criminal Law and Procedure
- 1990-92 UNIVERSITY OF TORONTO, UNIVERSITY COLLEGE**
Bachelor of Commerce Program
Awards, Honours and Prizes:
- Reuben Wells Leonard Scholarship in the Humanities
 - Ernst & Young Scholarship for Ranking First in Accounting

- Reuben Wells Leonard Scholarship in the Humanities
- Dr. John Knowles Collin Scholarship in the Social Sciences
- Honourable Ray Lawson Scholarship in Commerce and Finance
- Faculty Scholar in Recognition of Academic Excellence
- Special University College Admission Scholarship

Academic and Professional Positions

Academic Appointments

1997-present OSGOODE HALL LAW SCHOOL, YORK UNIVERSITY

(as of October 1, 2013 onward)

- *Associate Dean, Research, Graduate Studies, and Institutional Relations* (as of July 1, 2011 – September 30, 2012)
- *Professor of Law* (with tenure) (2012 – present)
- *Associate Professor of Law* (with tenure) (2002 – 2012)
- *Assistant Professor of Law* (tenure-track) (1997 – 2002)

2008-2013 HENNICK CENTRE FOR BUSINESS AND LAW, OSGOODE HALL LAW SCHOOL AND THE SCHULICH SCHOOL OF BUSINESS, YORK UNIVERSITY

- *Co-Director* (2009-2013)
- *Associate Director* (2008-2009)

2007-2012 CAPITAL MARKETS INSTITUTE ROTMAN SCHOOL OF MANAGEMENT, UNIVERSITY OF TORONTO

- *Head of Research and Policy*

Visiting Professorships

June-July 2013 CENTRE FOR LAW & BUSINESS, NATIONAL UNIVERSITY OF SINGAPORE LAW SCHOOL

- *Visiting Scholar*

January 2007 UNIVERSITY OF WESTERN ONTARIO, FACULTY OF LAW

- *Visiting Professor and Torys Fellow*

2006-2007 ROTMAN SCHOOL OF MANAGEMENT, UNIVERSITY OF TORONTO

- *Visiting Professor of Law*

2000-2001 CORNELL LAW SCHOOL

- *Visiting Assistant Professor of Law and Fulbright Scholar*

Other Professional Appointments

2009-2010 LAW COMMISSION OF ONTARIO

- *Scholar in Residence for Project on Joint and Several Liability*
As Head of the Project, designed research program on joint and several liability for professionals under the *Ontario Business Corporations Act*; Organized a multi-stakeholder consultation process including government, professional bodies, industry groups and retail investors on key issues; Produced consultation document for stakeholder input; Produced final report entitled "*Joint and Several Liability Consultation Paper*," April 2010.

2008-2009 EXPERT PANEL ON SECURITIES REGULATION, MINISTRY OF FINANCE (CANADA)

- *Co-Research Director*
Designed and executed a research strategy and plan to further the Expert Panel's mandate to create a Canadian Securities Commission; Managed research team of internationally recognized scholars; Expert Panel's work resulted in creation of the Canadian Securities Transition Team to negotiate with the provinces towards a Canadian Securities Commission.

2008-2009 CD HOWE INSTITUTE

- *Independent Researcher*
Designed and researched a report (double-blind peer-reviewed) on governance and pension funds, entitled "*A Matter of Voice: The Case for Abolishing the 30 percent Rule for Pension Fund Investments*."

2007 INDUSTRY CANADA, CORPORATIONS CANADA

- *Independent Researcher*
Conducted an empirical analysis of the *Canada Business Corporations Act* and the *Not-For-Profit Corporations Act* to assess their regulatory burden on users. Report entitled "*A Regulatory Burden Analysis of the Canadian Business Corporations Act and the Not-For-Profit Corporations Act*."

2006 INDUSTRY CANADA, CORPORATIONS CANADA

- *Independent Researcher*
Analyzed the prevailing methods of transferring securities under the *Canada Business Corporations Act (CBCA)* Part VII provisions and proposed reforms. Report entitled "*Who Needs Paper Anymore? Rationalizing an Allocation of Government Responsibility for the Transfer of Securities*."

2005-2007 INVESTOR ADVISORY COMMITTEE, ONTARIO SECURITIES COMMISSION

- *Inaugural Member*
Provided input and advice to the OSC on issues relating to retail investors in the Ontario capital markets.

2005-2006 TASK FORCE TO MODERNIZE SECURITIES REGULATION

- *Co-Research Director*
Designed and oversaw a research agenda for the Task Force, involving 30 research papers and over 40 leading international law and finance academics from Canada, the U.S., the U.K., and Australia; Managed a research budget of \$2 million and the production and dissemination of over 2000 pages of important research on securities markets to inform the Task Force's mandate and recommendations; Research and Task Force Recommendations have resulted in change in important areas of capital markets regulation in Canada.

2006 FRASER INSTITUTE

- *Independent Researcher*
Designed and produced a research report (double-blind peer-reviewed) on the role of self-regulation in the accounting industries in Canada and the United States. Paper served as a foundational piece in the reform of the governance of the Canadian Public Accountability Board (co-authored with Adam Pritchard).

2004 INDUSTRY CANADA, CORPORATIONS CANADA

- *Independent Researcher*
Analyzed the appropriate allocation of responsibility between corporate law and securities law regulators for topics including: corporate governance, takeover bids, insider trading, and shareholder communications and prepared report on same. Report circulated by Industry Canada to provincial counterparts as basis for discussion for rationalization.

2004 INTERNATIONAL FINANCE CORPORATION, WORLD BANK GROUP

- *Independent Consultant*
Provided legal and regulatory expertise in respect of developing the local bond market in Nigeria; reviewed existing laws and regulations of relevant government bodies and provided concrete recommendations for reform. (with M. Gilroy).

- 2003** **WISE PERSONS COMMITTEE (WPC), MINISTRY OF FINANCE, GOVERNMENT OF CANADA**
- *Independent Researcher*
Prepared report on local and regional interests in the debate on optimal securities regulatory structure for Canada for the Federally appointed Wise Persons Committee.
- 2003** **INDUSTRY CANADA, CORPORATIONS CANADA, Toronto**
- *Independent Researcher*
Prepared a report on the policy objectives of good corporate law, the role of mandatory and enabling rules in corporate law and related reform to the *Canada Business Corporations Act*.
- 2003** **ONTARIO SECURITIES COMMISSION, Toronto**
- *Independent Researcher*
Prepared cost-benefit analysis on the multi-jurisdictional disclosure system (MJDS) with the United States Securities and Exchange Commission (SEC) and the Impact of the *Sarbanes-Oxley Act* on the same (co-authored with A. Sen).
- 1997** **PAUL WEISS RIFKIND WHARTON & GARRISON, New York**
- *Summer Associate*
Represented issuers and underwriters on domestic and international securities offerings, and merger and acquisition transactions.
- 1996-1997** **HARVARD LAW SCHOOL**
- *Research Associate to Professor Philip Wellons for the Program on International Financial Systems*
Conducted research for a study on integration of stock markets in southern Africa commissioned by the U.S. Agency for International Development.
- 1995-1997** **CANADIAN BUSINESS LAW JOURNAL, Toronto**
- *Fellow*
Conducted research for paper on commercial reorganizations under the *Canadian Bankruptcy and Insolvency Act*.
- 1995-1996** **TORY TORY DESLAURIERS & BINNINGTON, Toronto**
- *Articling Student*
Performed legal work in the corporate, litigation, tax and insolvency departments.

- 1993-1995 UNIVERSITY OF TORONTO, FACULTY OF LAW, Toronto**
- *Research Assistant to Former Dean and University Professor Martin Friedland*
Conducted research for report entitled *A Place Apart: Judicial Independence and Accountability in Canada*, commissioned by the Canadian Judicial Council.
- 1990-1993 ONTARIO TITLE SEARCH SERVICES, Toronto**
- *Title-searcher*
Conducted real property title searches and closings.

Editorial and Other Appointments and Memberships

- 2003-2008 CANADIAN LAW AND ECONOMICS ASSOCIATION, Toronto**
- *President* (September 2006 – 2008)
 - *Vice-President* (September 2004 – September 2006)
 - *Member of Executive* (May 2003 – September 2004)

- 2001-2002 OSGOODE HALL LAW JOURNAL, Toronto**
- *Book Review Editor*

- 1998-2002 BANKING AND FINANCE LAW REVIEW, Toronto**
- *Book Review Editor* (1998-1999; 2001-2002)

- CANADIAN ASSOCIATION OF LAW TEACHERS**
- *Member*

- CANADIAN LAW AND SOCIETY ASSOCIATION**
- *Member*

- AMERICAN LAW AND ECONOMICS ASSOCIATION**
- *Member*

- AMERICAN LAW AND SOCIETY ASSOCIATION**
- *Member*

Professional Qualifications

- 1999** Admitted to the Law Society of Upper Canada

Awards

Professional & Community Recognition

1. Canadian Diversity Champions, Women of Influence (2012)
2. Canada's Most Powerful Women, Top 100 Award, Women's Executive Network (WXN) (2011)
3. Female Lawyer of the Year, South Asian Bar Association of Toronto (SABA) (2010)
4. Award of Professional Excellence, Canadian Association of South Asian Lawyers (CASAL) (2010)
5. Indo-Canada Chamber of Commerce Female Professional of the Year (2008)
6. Canada's Top 40 under 40 Award (2005)
7. Arbour Award, University of Toronto's highest award for alumni volunteers (2004)

Teaching Awards

1. Recipient, Legal and Literary Society of Osgoode Hall Law School Award for Excellence in Teaching (2009)
2. Nominee, University-Wide Teaching Award, York University (2001)
3. Recipient, Legal and Literary Society of Osgoode Hall Law School Award for Excellence in Teaching (1999)

Academic Awards and Scholarships

1. W.P.M. Kennedy Silver Medalist for Ranking Second in the Graduating Class, University of Toronto Faculty of Law (1995)
2. Gordon Cressy Student Leadership Award in Recognition of Academic Excellence and Extra-Curricular Involvement, University of Toronto (1995)
3. Davies, Ward and Beck Prize for Ranking First in Second Year, University of Toronto Faculty of Law (1994)
4. Carswell Prize for Ranking First in Second Year, University of Toronto Faculty of Law (1994)
5. Russell Baker Prize for Ranking First in Commercial Law Subjects, University of Toronto Faculty of Law (1994)
6. Gowling, Strathy and Henderson Prize for Ranking First in Bankruptcy and Insolvency Law, University of Toronto Faculty of Law (1994)
7. Rhodes Scholarship Finalist (1994)
8. Borden & Elliot Prize for Academic Excellence in First Year, University of Toronto Faculty of Law (1993)

9. Michael John Eccles Prize for Ranking First in Criminal Law and Procedure, University of Toronto Faculty of Law (1993)
10. Reuben Wells Leonard Scholarship in the Humanities, University College, University of Toronto (1992)
11. Ernst & Young Scholarship for Ranking First in Accounting, University of Toronto (1991)
12. Reuben Wells Leonard Scholarship in the Humanities, University College, University of Toronto (1991)
13. Dr. John Knowles Collin Scholarship in the Social Sciences, University of Toronto (1991)
14. Honourable Ray Lawson Scholarship in Commerce and Finance, University of Toronto (1991)
15. Faculty Scholar in Recognition of Academic Excellence, University of Toronto (1991)
16. Special University College Admission Scholarship, University College, University of Toronto (1990)

Research Awards and Grants (Selected)

1. Social Sciences and Humanities Research Council Insight Grant for project entitled, "Investor Protection at a Cross Roads; Charting a New Path for Public and Private Enforcement" (\$156,411)
2. Recipient, Walter L. Gordon Research Fellowship, York University (2010). Awarded to a distinguished scholar at York University in recognition of outstanding research. Completing book entitled "*Financial Markets in Crisis: ABCP, the Made in Canada Solution and the Future of Canadian Capital Markets.*" (Value: Full release from teaching and service duties 2010-2011)
3. Law Foundation of Ontario Grant (2010). Principal Investigator. Completing book entitled "*Financial Markets in Crisis: ABCP, the Made in Canada Solution and the Future of Canadian Capital Markets.*" (Value: \$5,000)
4. SSHRC Conference/Workshop Grant (2010). Co-Investigator with Lisa Philipps and François Tanguay-Renaud (Value: \$25,000)
5. SSHRC MBF Grant (2008). Co-Investigator with Peer Zumbansen (Principal Investigator), and Cynthia Williams (Illinois) (Value: \$168,000)
6. Harry Arthurs Fellowship (2010). (Value: \$3,000)
7. SSHRC Small/Travel Grant (2007). For Conference on Convergence in Corporate Governance, Kyushu University, Fukuoka, Japan (Value: \$1,200)
8. Small SSHRC Grant (2006). Project entitled "A Rational Allocation of Responsibility between Corporate Law and Securities Law" (Value: \$1,200)
9. Government of Canada, Industry Canada (2006). Project on share transfers (Value: \$25,000)
10. Task Force to Modernize Securities Regulation (2005), Co-Investigator with Paul Halpern. (Research budget: \$2,000,000)

11. Fraser Institute (2005), Co-Investigator with Adam Pritchard. Project entitled "The Regulation of Public Accounting in Canada and the US" (Value: \$16,000)
12. Senate of Canada (2005). Project entitled "A Policy and Technical Analysis of Gender Parity on Corporate Boards" (Value: \$20,000)
13. Centre for Innovation, University of Toronto Faculty of Law Research Grant (2004). Project entitled "Enhancement of the Business Associations Course" (Value: \$4,000)
14. Capital Markets Institute, University of Toronto (2004). Project entitled "Enforcement of Securities Law and Criminal Laws in the Capital Markets Context" (Value: \$12,000)
15. Borden Ladner Gervais (BLG) Fellowship (2004). Project entitled "Competition and Convergence in Canadian Corporate Governance" (Value: \$10,000)
16. Government of Canada, Industry Canada (2004). Project entitled "The Hallmarks of Good Corporate Law: An Assessment of the Canada Business Corporations Act" (Value: \$25,000)
17. International Finance Corporation of the World Bank Group and Canadian International Development Agency (2004), Co-Investigator with Malcolm Gilroy. Project entitled "Bond Market Development: A Roadmap for Nigeria" (Value: \$200,000)
18. Osgoode Hall Law School Research Fellowship (2004). (Value: \$15,000 and one term teaching release)
19. Government of Canada, Ministry of Finance, Wise Persons Committee (2003). Project entitled "Local and Regional Interests in the Debate on Optimal Securities Regulatory Structure" (Value: \$30,000)
20. Ontario Securities Commission (2003), Co-Investigator with Anindya Sen. Project entitled "A Cost Benefit Analysis of the Multi-Jurisdictional Disclosure System" (Value: \$50,000)
21. Schulich School of Business Program on Financial Services & Public Policy (2003), Co-Investigator with Stephanie Ben-Ishai. Project entitled "Effective Governance of Family Controlled Corporations in Canada" (Value: \$60,000)
22. SSHRC Standard Grant (2002), Co-Investigator with Janne Chung and Linda Thorne. Project entitled "Auditor Liability" (Value: \$75,329)
23. SSHRC Small/Travel Grant (2001). Project entitled "Lawyers Acting as Business Advisors, Venture Capitalists and Investment Bankers: Incubators of Innovation in the New Economy" (Value: \$2,500)
24. Centre for Innovation, University of Toronto Faculty of Law Research Grant (1999), Principal Investigator. Project entitled "Lawyers as Incubators of Innovation in the New Economy" (Value: \$10,000)
25. Fulbright Fellowship (1999). Project entitled "A North American Market for Lawyers" (Value: \$22,500)
26. SSHRC Travel Grant (1999). For presentation of a paper entitled "Corporate Law in its Political and Social Context" at the Inaugural Conference, Global

Alliance for Justice Education, December 9-13, 1999, Trivundrum, Kerela,
India (Value: \$1500)

Research Contributions and Scholarship (Selected)

Research Volumes

1. *Expert Panel on Securities Regulation*, appointed by the Ministry of Finance (Ottawa: 2008) (co-research director, with Paul Halpern) (7 research studies, over 500 pages). Available at <http://www.expertpanel.ca/eng/reports/index.html>
2. *Task Force to Modernize Securities Regulation*, (Toronto: 2005-2006) (co-research director, with Paul Halpern) (7 volumes, over 30 research papers, over 2000 pages). Available at <http://www.tfmsl.ca/>

Books (Authored Books/Edited Books)

3. *Financial Markets in Crisis: ABCP, the Made in Canada Solution and the Future of Canadian Capital Markets* (Toronto: University of Toronto Press) (work in progress) (with Paul Halpern and Caroline Cakebread)
4. *Cases and Materials on the Law of Partnerships and Business Organizations in Canada* (Toronto: Carswell, 5th edition, 2011) (with Aaron Dhir, Ron Daniels, Ian Lee, Edward Iacobucci, Jeffrey MacIntosh, Edward Waitzer and Jacob Ziegel)
5. *Corporate Governance and Securities Regulation post-Enron* (Toronto: Butterworths, 2004) (with Jeffrey Larsen)
6. *Cases and Materials on the Law of Partnerships and Business Organizations in Canada* (Toronto: Carswell, 4th edition, 2004) (with Doug Harris, Ron Daniels, Ian Lee, Edward Iacobucci, Jeffrey MacIntosh, and Jacob Ziegel)
7. *Canadian Companies Guide to the Sarbanes-Oxley Act* (Toronto: Butterworths, 2004) (with Leslie McCallum)

Book Chapters

8. *How the Securities Act Reference Differed from Prior Reference Decisions*, Chapter in A. Anand, editor, *What's Next for Canada: Securities Regulation after the Reference* (Toronto: Irwin Law Inc., 2012)

9. *Canada: Bank Bashing is a Popular Sport*, Chapter in S. Konzelmann, M. Fovargue-Davies, and Justin O'Brien, editors, *Banking Systems in the Crisis: The Faces of Liberal Capitalism* (Oxford: Routledge, 2012)
10. *Proportionate Liability under the CBCA in the Context of Recent Corporate Governance Reform: Canadian Auditors in the Wrong Place at the Wrong Time?* (with S. Ben-Ishai) Chapter in P. Puri & J. Larsen, editors, *Corporate Governance and Securities Regulation in the 21st Century* (Toronto: Butterworths, 2004)
11. *Introduction to Debates on Corporate Governance*, Introductory chapter in P. Puri and J. Larsen, editors, *Corporate Governance and Securities Regulation in the 21st Century* (Toronto: Butterworths, 2004)
12. *Fair Dealing-Governance and Conflicts of Interest at the Investment Dealers Association*, Chapter in Queen's Law School 2003 Annual Business Law Symposium on Conflicts of Interest in Capital Market Structures, (Toronto: Carswell, 2004)
13. *Converging Numbers: Harmonization of Accounting Standards with the context of the Role of the Auditor in Corporate Governance*, Chapter in Queen's Law School 2001 Annual Business Law Symposium on the Impact of Globalization (Toronto: Carswell, 2002)
14. *Canadian Business Bankruptcy*, Chapter in Theodore Eisenberg (editor), *Treatise on Debtor-Creditor Law* (Matthew Bender, 2001)

Articles

15. "Trends in Civil Justice Reform: A Canadian Perspective" (2013) (work in progress) (with Andrew Nichol)
16. "Developments in Financial Services Regulation: A Canadian Perspective" (2013) (with Andrew Nichol)(work in progress)
17. "Public Disclosure and Global Sustainable Development in the Banking Industry: The Equator Principles" (2013) (work in progress)
18. "The Supreme Court's Securities Act Reference Fails to Demonstrate an Understanding of the Canadian Capital Markets" (2012) 52:2 Canadian Business Law Journal 190
19. "Securities Litigation and Enforcement: The Canadian Perspective" (2012) 37:3 Brooklyn Journal of International Law 967-1019

20. "The Capital Markets Perspective on a National Securities Regulator" (2010) 51:2 Supreme Court Law Review 603-623
21. "The Future of Stakeholder Interests in Corporate Governance" (2010) 48:3 Canadian Business Law Journal 427-445
22. "Auditor liability to third parties after Sarbanes-Oxley: An international comparison of regulatory and legal reforms" (2010) 19:1 Journal of International Accounting, Auditing and Taxation 66-78 (with Janne Chung, Jonathan Farrar and Linda Thorne)
23. "Canadian Pension Funds: Investments and Role in the Capital Markets and Corporate Governance" (2010) 25:2 Banking and Finance Law Review 247-294 (with Palladam Vasudev)
24. "Legal Origins, Investor Protection, and Canada" (2009) 2009:6 Brigham Young University Law Review 1671-1699
25. "Reflections on the Recommendations of the Task Force to Modernize Securities Regulation in Canada: A Retail Investor Perspective" (2008) 46:2 Canadian Business Law Journal 199-232 (with Paul Halpern)
26. "Who Needs Paper Anymore? Rationalizing an Allocation of Government Responsibility for the Transfer of Securities" (2007) 23:1 Banking & Finance Law Review 1-49 (with Gil Lan)
27. "Canada Steps Up - Task Force to Modernize Securities Legislation in Canada: recommendations and discussion" (2007) 2:2 Capital Markets Law Journal 191-221 (with Paul Halpern)
28. "Will Canada Step Up? Improving Enforcement in the Canadian Capital Markets" (2007) 20:1 Canadian Investment Review 53-54
29. "Dual Class Shares: An Historical Analysis" (2006) 29:1 Dalhousie Law Journal 117-157 (with Stephanie Ben-Ishai)
30. "The Canadian Oppression Remedy Judicially Considered: 1995-2001" (2004) 30:1 Queen's Law Journal 79-113 (with Stephanie Ben-Ishai)
31. "Proportionate Liability under the CBCA in the Context of Recent Corporate Governance Reform: Canadian Auditors in the Wrong Place at the Wrong Time?" (2003) 39:1 Canadian Business Law Journal 36-51 (with Stephanie Ben-Ishai)

32. "Employees as Corporate Stakeholders" (2002) 8 Journal of Corporate Citizenship 49-61 (with Tuvia Borok)
33. "Sentencing the Criminal Corporation" (2001) 39 Osgoode Hall Law Journal 611-653
34. "Taking Stock of Taking Stock" (2001) 87:1 Cornell Law Review 99-157
35. "Judgment Proofing the Profession" (2001) 15:1 Georgetown Journal of Legal Ethics 1-28
36. "The Promise of Certainty in the Law of Pre-Incorporation Contracts" (2001) 80:3 Canadian Bar Review 1051-1064
37. "Financing of Litigation by Third-Party Investors: A Share of Justice?" (1998) 36:3 Osgoode Hall Law Journal 515-566

Commissioned Independent Research Reports (Selected)

38. "Joint and Several Liability under the Ontario Business Corporations Act" Report Commissioned by the Law Commission of Ontario (Primary Researcher) (May 2011)
39. "A Model for Common Enforcement in Canada: The Canadian Capital Markets Enforcement Agency and the Canadian Securities Hearing Tribunal" Report Commissioned by the Expert Panel on Securities Regulation (Hockin Panel) (February 2008)
40. "A National Enforcement Agency for Canada" Report Commissioned by the Capital Markets Institute (June 2008)
41. "Pension Funds: Trends in Asset Allocation and Role in Capital Markets, Corporate Governance and Regulatory Policy" Ontario Expert Commission on Pensions (January 2008)
42. "The Canada Not-for-profit Corporations Act: A Critical Analysis of Its Regulatory Burden" Report Commissioned by Industry Canada (October 2007)
43. "The Canadian Business Corporations Act: A Critical Analysis of its Regulatory Burden" Report Commissioned by Industry Canada (September 2007)

44. "The Regulation of Public Accounting and Standard Setting under a Common Securities Regulator" Report Commissioned by CGA Canada (February 2007)
45. "The Role of Compliance in Securities Enforcement" Report Commissioned by the Task Force to Modernize Securities Legislation in Canada, sponsored by the IDA (with Mary Condon) (June 2006)
46. "A Study in Comparative Self-Regulation: The Regulation of Public Auditing in Canada and the U.S." Report Commissioned by the Fraser Institute (with Adam Pritchard) (February 2006)
47. "Enforcement Effectiveness in the Canadian Capital Markets" Report Commissioned by the Capital Markets Institute (December 2005)
48. "Enforcement in the Canadian Capital Markets: A Policy Analysis" Report Commissioned by the Capital Markets Institute (June 2005)
49. "A Policy and Technical Analysis of Various Corporate Governance Proposals" Report Commissioned by the Senate of Canada (April 2005)

50. "The Transfer of Securities Provisions in the CBCA" Report Commissioned by the Government of Canada, Industry Canada (January 2004)
51. "A Rational Allocation of Responsibility Between Corporate & Securities Laws in Canada" Report Commissioned by the Government of Canada, Industry Canada (2004)
52. "The Hallmarks of Good Corporate Law: A Performance Evaluation of the Canadian Business Corporations Act" Report Commissioned by the Government of Canada, Industry Canada (2004)
53. "Developing Bond Markets: Regulatory and Market Challenges in Nigeria" Report Commissioned by the International Finance Corporation of the World Bank Group, and funded by the Canadian International Development Agency (with Malcolm Gilroy) (July 2004)
54. "The Role of Local and Regional Interests in the Design of Optimal Securities Regulatory Structure for Canada" Report Commissioned by the Government of Canada, Ministry of Finance, Wise Persons Committee on Securities Regulation (January 2004)
55. "A Cost Benefit Analysis of the Multi-Jurisdictional Disclosure System between Canada and the U.S." Report Commissioned by the Ontario Securities Commission (with A. Sen) (June 2003)

56. "Competition and Fragmentation: Stock Exchanges in Canada" (on file with Program on International Financial Systems, Harvard Law School) (1997)

Dissemination in the Media

Op-Eds

1. "It's Time to Abolish the 30-per-cent Rule" (16 December 2009) *The Globe and Mail* A 25.
2. "Judges Require Better Corporate Crime Education" (10 November 2004) *National Post* FP 12.
3. "Case Keeps Growing for a National Securities Regulator" (3 December 2010) *The Lawyers Weekly*.

Columns

2010-2011 LISTED MAGAZINE

- *Columnist, Law and Governance Views Column*

1. "A board's last, best chance: When serious corporate wrongdoing or transactional conflict surfaces at a company, the board's next course of action is to strike a special committee" (Fall 2011)
2. "Taking disclosure gaps seriously: The Canadian Securities Administrators vows to get tough on governance disclosure by Canadian listed companies after a national review found many corporate practices not up to par" (March 2011)
3. "There oughta be a rule: The growing use of poison pills to delay or fend off hostile bidders is testing the limits of Canada's outdated policies on takeovers. It's time regulators caught up" (Winter 2010/2011)
4. "The power of one: A spring Supreme Court date remains, but Canada is firmly – and finally – on track for the creation of a national regulator" (Fall 2010)
5. "Recipe for Success: Strong companies need strong boards more than ever. Follow these steps and you'll be well on the way" (Summer 2010)

Media Commentary: Quotes and Citations

1. Josh Rubin, "OSC rescinds stunning order; Regulator revokes resignation demand, but trade halt remains", *Toronto Star* (27 August 2011).
2. Della Bradshaw, "Learning the law business; Legal education increasingly

takes in other disciplines”, *Financial Times* (28 November 2011).

3. Bev Cline, “Driven to Succeed”, *Canadian Bar Association National Magazine* (September 2011).
4. Claire Sibonney, “Update 2 – New Ontario stocks watchdog may scrap his own job”, *Reuters News* (13 October 2010).
5. Scott Deveau, “Court Clears Magna to Pay Stronach \$1B”, *National Post* (18 August 2010) FP 1.
6. Scott Deveau, “Canada pension plan to continue Magna fight”, *National Post* (24 July 2010) FP 3.
7. Scott Deveau, “CPP board to fight Stronach’s \$1B payout; Despite 75% shareholder approval, plan sets ‘very bad’ standard”, *Edmonton Journal* (24 July 2010) E 2.
8. Scott Deveau, “CPPIB against \$1B payout”, *Leader Post* (24 July 2010) F 4.
9. Scott Deveau, “CPP fights Stronach payout; Magna founder bought out for nearly \$1B”, *The Windsor Star* (24 July 2010) A 15.
10. Jameson Berkow, “Pension giants stand pp to Magna; CPPIB, Teachers oppose US\$863M payout to Stronach in restructuring”, *National Post* (4 June 2010) FP 1.
11. Louise Egan & Jennifer Kwan, “Update 2 – Canada says watchdog to battle securities crime”, *Reuters News* (26 May 2010).
12. Julius Melnitzer, “Scrutiny on securities regulator; Courts mulling”, *National Post* (20 January 2010) FP 12.
13. Jim Leech, “Time and money better spent”, *The Globe and Mail* (17 December 2009) A 28.
14. Thomas Watson, “Who’s in charge?”, *Canadian Business* (14 September 2009) Volume 83, Issue 14/15.
15. Jim Middlemiss, “Lawyer funds new business law centre; Program aims to help understand corporate world better”, *National Post* (4 February 2009) FP 12.
16. Amoryn Engel, “Trading on the best in South Asian business”, *National Post* (5 July 2008) FW 8.

17. Sean Silcoff & Carrie Tait, "Top court hands BCE victory; Ruling clears way for historic buyout to proceed", *National Post* (21 June 2008) A 1.
18. Tyler Hamilton, "Why the OSC so rarely gets its man", *Toronto Star* (1 December 2007) A 1.
19. "Canadian institute promotes debate on national securities regulator", *The Accountant* (30 March 2007) <http://www.worldaccountingintelligence.com>.
20. David Clarke, "Accountants group weighs in on Canadian securities cop; Role of regulator in accounting issues is focus of paper", *Investment News* (19 March 2007) Volume 11, Number 11.
21. "CGA-Canada seeks comments on securities regulation discussion paper", *Canada NewsWire* (13 March 2007).
22. Sharda Prashad, "Puzzle the CEO pay", *Toronto Star* (4 June 2006) A 18.
23. Duncan Mavin, "AGM ain't what it used to be", *National Post* (24 May 2006) FP 3.
24. Augusta Dwyer, Kathy English, Lisa Stephens, Michael Ryval, Salem Alaton, "Top 40 under 40, 2005", *The Globe and Mail* (2 May 2006) T1.
25. Risha Gotlieb, "Who's afraid of the bid bad auditor?", *The Globe and Mail* (19 April 2006) B14.
26. "CPAB defends itself against call to revise its governance structure", *The Accountant* (28 February 2006) Available online at: <http://www.worldaccountingintelligence.com>.
27. James Daw, "Lobby group urges parties to take stand on investor-protection issues", *Toronto Star Money Talk* (10 January 2006) D 02.
28. Sharda Prashad, "Enron costs CIBC \$2.4 billion U.S.", *Toronto Star* (3 August 2005) F 01.
29. Terence Corcoran, "They don't need to 'Spitzerize' the OSC", *Calgary Herald* (19 June 2005) E 7.
30. Terence Corcoran, "We don't need another Batman", *National Post* (16 June 2005) FP 21.
31. Theresa Tedesco, "White-collar criminals need own court: study: 'Meaningful Reform'", *National Post* (15 June 2005) FP 2.

32. "OSC post says OSC, others hear call for white-collar courts", *Canada Stockwatch* (15 June 2005).
33. Sharda Prashad, "Ontario pushing for national regulator", *Toronto Star* (4 June 2005) D 01.
34. Betsy Powell, "White collar crime lament; Victims question fraud sentences Where is the deterrence?", *Toronto Star* (31 March 2003) B 01.
35. Soo Kim, "Once-quiet profession has to blow its horn; It used to be illegal for lawyers to advertise. Now, the market is too crowded not to", *Toronto Star* (1 July 2001) 05.

Invited Conferences, Lectures, Public Addresses and Speeches (Selected)

1. *Mind The Gap*, Moderator, Women's Executive Network, Mississauga, Ontario, June 11, 2013
2. "Employers United: An Empirical Analysis of Corporate Political Speech in the Wake of the Affordable Care Act", Presenter, Law and Society Association 2013 International Meeting, Boston, Massachusetts, June 2, 2013
3. "Should Shareholders Have a Say on Executive Pay?: A Corporate Governance & Capital Markets Analysis", Presenter, Law and Society Association 2013 International Meeting, Boston, Massachusetts, June 2, 2013
4. *Author Meets Reader - Co-Operative Workplace Dispute Resolution: Organizational Structure, Ownership, and Ideology*, Speaker, Law and Society Association 2013 International Meeting, Boston, Massachusetts, June 1, 2013
5. *Law & Entrepreneurship I*, Discussant, Law and Society Association 2013 International Meeting, Boston, Massachusetts, June 1, 2013
6. *Emerging Issues at the Intersection of Business, Regulation, and Governance*, Discussant, Law and Society Association 2013 International Meeting, Boston, Massachusetts, June 1, 2013
7. "Developments in Financial Services Regulation: A Canadian Perspective", Presentation at the 35th Annual Banking Law Update Conference, University of Johannesburg, Johannesburg, South Africa, April 17, 2013
8. "Good Corporate Governance After the Financial Crisis", Presentation at the University of South Africa, Pretoria, South Africa, April 16, 2013

9. "Good Corporate Governance After the Financial Crisis", Presentation to an LL.M. Corporate Law class at the University of Johannesburg, Johannesburg, South Africa, April 16, 2013
10. *Teaching the Relationship between Business and Human Rights*, Speaker, 2013 Annual Meeting of International Association of Law Schools, Mysore, India, March 6, 2013
11. *16th Annual Conference of the JD/MBA Students' Association*, Opening remarks, Osgoode-Schulich JD/MBA Students' Association, Toronto, Ontario, February 8, 2013
12. *Restitution Law*, Moderator, A Symposium to Honour John McCamus, Osgoode Hall Law School, Toronto, Ontario, February 7, 2013
13. *Impact of Globalization on Law, Legal Institutions & Legal Education*, Speaker, Shastri Institute Conference - Role of Legal Education in the Changing Economic World, Shastri Indo-Canadian Institute, National Law University, Delhi, New Delhi, India (by Skype from Canada), January 20, 2013
14. *Recent Trends in Judicial Reforms: A Global Perspective*, Speaker, India International Law Foundation, New Delhi, India, January 12, 2013
15. *The Myth of Choice: Good Decision Making in a World of Limits*, Moderator, Hennick Centre for Business and Law and Cassels Brock and Blackwell LLP, Toronto, Ontario, October 22, 2012
16. *Insider Trading: Extraterritoriality, Expert Networks, Evolution*, Moderator, CFA Society Toronto, Toronto, Ontario, September 19, 2012
17. *What in the World is Happening? What Lawyers Need to Know About Canada's Role in the Global Economy*, Panelist, 2012 LSD Crown Summer School Program (Conference - Reconceiving Law for Changing Times), McMaster University, Hamilton, Ontario, July 11, 2012 (Plenary session with David Herle, Michael Trebilcock and Drew Fagan)
18. "The Good, the Bad, and the Ugly: Law's Words", Presentation at 2012 LSD Crown Summer School Program (Conference - Reconceiving Law for Changing Times), McMaster University, Hamilton, Ontario, July 11, 2012
19. "Global Banking, Private Regulatory Governance and Sustainable Development", Paper presented at Joint Symposium between Osgoode Hall Law School and Bar Ilan University, Ramat-Gan, Israel, July 1-2, 2012

20. *Diversity on the Bench*, Panelist, Employment Equity and Diversity Advisory Committee, Department of Justice Canada, Toronto, Ontario, June 8, 2012
21. *Financial Systems & Institutions: Risk Management in the Post-Crisis Era*, Presentation to a delegation of the Central Committee of the Communist Party of China at the Rotman Executive Program, Toronto, Ontario, June 7, 2012
22. *The Nigerian Federal System of Government: A Case for Review*, Opening remarks at *Oputa Lecture*, Jack and Mae Nathanson on Transnational Human Rights, Crime and Security at Osgoode Hall Law School, Toronto, Ontario, April 11, 2012
23. *Book Launch: "Laughing at the Gods: Great Judges and How They Made the Common Law"* – Allan Hutchinson, Opening remarks, Osgoode Hall Law School and Goodmans LLP, Toronto, Ontario, March 27, 2012
24. *Osgoode's Rich and Diverse Program*, Panelist, Osgoode Hall Law School Welcome Day, Toronto, Ontario, March 9, 2012
25. *A Woman's World – Inspiring Futures*, Panelist, Indo Canada Chamber of Commerce, Mississauga, Ontario, March 8, 2012
26. *Transnational Financial Regulation I*, Panelist, Fifth Comparative Research Laboratory in Law and Political Economy Workshop: Transnational Private Regulatory Governance: Regimes, Dialogue, Constitutionalization, Osgoode Hall Law School, Toronto, Ontario, March 2, 2012
27. *How Should the Commission's Public Interest Power Be Exercised?* Opening remarks and speaker, with Chris Nicholls and Stephane Rousseau, Osgoode Professional Development and the Ontario Securities Commission, Toronto, Ontario, February 22, 2012
28. *Enforcing the Ontario Securities Act Internationally: The Challenge of Foreign Issuers*, Panel Chair and Moderator, 15th Annual JD/MBA Conference, Toronto, Ontario, February 3, 2012
29. *Public and Private Enforcement*, Chair and Moderator, Hennick Centre for Business and Law, Torys LLP, Toronto, Ontario, January 20, 2012
30. *Materiality & Disclosure: The Coventree Decision*, Roundtable speaker and participant, Capital Markets Institute Roundtable, Rotman School of Management, Toronto, Ontario, December 19, 2011

31. *Informed Opinions*, Participant, Workshop at the Institute for Feminist Legal Studies (IFLS), Osgoode Hall Law School, Toronto, Ontario, December 5, 2011 (with Sonia Lawrence, Inbal Marcovitch, and Cheryl Graden)
32. *Annual Meeting*, Chaired Panel on Corporate Governance, Canadian Law and Economics Association, Toronto, Ontario, October 1, 2011
33. *New Strategies against Glass Ceilings*, Panelist, Institute for Feminist Legal Studies, Osgoode Hall Law School, Toronto, Ontario, September 30, 2011
34. *Does Gender Diversity Enhance the Decision-Making Processes and Outcomes?*, Panelist, Catalyst Corporate Board Governance Symposium, Toronto, Ontario, September 22, 2011
35. *Varieties of Liberalism*, Paper presented at the University of New South Wales, Sydney, Australia, September 13, 2011
36. "Global Sustainable Development through Voluntary Mechanisms: Financial Institution Compliance with the Reporting Requirements of the Equator Principles", Paper presented at Towards Sustainable Companies: Identifying New Avenues Conference, University of Oslo, Oslo, Norway, August 29 – 30, 2011
37. "Global Sustainable Development through Voluntary Mechanisms: Financial Institution Compliance with the Reporting Requirements of the Equator Principles", Paper presented at the 6th Annual European Consortium for Political Research (ECPR) General Conference, University of Iceland, Reykjavik, Iceland, August 24 – 27, 2011
38. *Crisis Management Tales from In-House Counsel: How to React, Plan and Survive a Crisis*, Panelist, Business Law Section, ABA Annual Meeting, Toronto, Ontario, August 5, 2011
39. *Corporate Governance and Corporate Liability*, Presentation to Crown counsel for the Ministries of Labour, Environment, Housing, Health, Education and Consumer Protection at the Crown Summer School Program, McMaster University, Hamilton, Ontario, July 29, 2011
40. "Securitization in Canada: The Legal and Regulatory Framework", Presentation to a delegation of the Mortgage Banking Association of Nigeria (MBAN), Toronto, Ontario, June 23, 2011
41. *Advancing Equity – The Focus on Gender*, Panelist, Convention of the Indian Diaspora in North America, PBD Canada 2011, Toronto, Ontario, June 10, 2011

42. "The Regulatory Burden of Corporate Law", Paper presented at Regulating Entrepreneurs Session, Law and Society Association Annual Meeting, San Francisco, California, June 3, 2011
43. *New Corporate Governance: U.S. Federal Law and Federalism*, Panel Chair, Law and Society Association Annual Meeting, San Francisco, California, June 3, 2011
44. *Shareholder Democracy: Good, Bad or Unimportant?*, Moderator and Commentator, Institutional Investor Education Foundation Breakfast Roundtable, Toronto, Ontario, May 26, 2011
45. "Contemporary Corporate Law and the Need for Interdisciplinarity", Paper presented at Developing an Integrated Research Agenda in Entrepreneurship and Law, Research and Pedagogical Trends in Entrepreneurial Education at the University of Windsor Faculty of Law and Odette School of Business, Windsor, Ontario, May 11-12, 2011
46. "Regulation of Financial Markets in Canada – Legal Perspectives", Presentation to a delegation of the Central Committee of the Communist Party of China at the Rotman Executive Program, Toronto, Ontario, April 20, 2011
47. "Corporate Governance in the Post-Crisis Era", Presentation to the Board of Directors of Enersource Corporation, Toronto, Ontario, April 19, 2011
48. "The Pushes and Pulls of Corporate Governance: Through the Lens of the Financial Crisis of 2007-8-9", Paper presented at Jindal-Osgoode Joint Workshop on Transnational Governance, Delhi, India, March 13-14, 2011
49. "Whose Job is Governance: A Comparative Analysis in the Post-Crisis Era", Paper presented and Keynote address at 1st International Conference on Accounting and Finance, Financial Control and Governance, T. A. Pai Management Institute (TAPMI), Manipal, India, March 6, 2011
50. *Post-Magna Dual Class Share Conference*, Chair and Moderator, Capital Markets Institute, Rotman School of Management, Toronto, Ontario, February 15, 2011
51. "Legal Origins, Investor Protection, and Canada", Paper presented at the Economic Analysis of the Law Workshop University of British Columbia Faculty of Law, Vancouver, British Columbia, February 7, 2011
52. *Feminist Corporate Law Roundtable*, Roundtable speaker and participant, University of British Columbia Faculty of Law, Vancouver, British Columbia, February 7, 2011

53. "Corporate Governance Best Practices", Presentation to the Board of Directors of the Toronto Community Housing Corporation, Toronto, Ontario, February 1, 2011
54. Hearings on Bill S-206, *An Act to establish gender parity on the board of directors of certain corporations, financial institutions and parent Crown corporations*, Presentation before the Standing Senate Committee on Banking, Trade and Commerce, Ottawa, Ontario, December 9, 2010
55. "After the Financial Crisis: Game-Changers for the Corporation", Presentation at TEDxYorku2010, Toronto, Ontario, November 6, 2010. Available at <http://www.youtube.com/watch?v=RxSVdHekKbM>
56. *Accessing India: A Focus on Foreign Direct Investment and Mining*, Roundtable Chair and Moderator, Hennick Centre for Business and Law, Toronto, Ontario, October 27, 2010
57. "Corporate Governance Pushes and Pulls: The Role of the Board of Directors", Paper presented at Global North and Global South Perspectives on Transnational Governance: An Indian-Canadian Conversation, Joint Workshop of Osgoode Hall Law School & Jindal Global Law School, Toronto, Ontario, October 25-27, 2010
58. "The Equator Principles, Corporate Governance and the Financial Crisis" Paper presented at the First Annual Private Transnational Regulation: Constitutional Foundations and Governance Design Conference, University College Dublin, Dublin, Ireland, June 16, 2010
59. "The Capital Markets Perspective on a Common Securities Regulator" Paper presented at the Osgoode Constitutional Cases Conference, Toronto, Ontario, April 16, 2010
60. "Corporate Governance and Effective Boards", Presentation to the Board of Directors of the Toronto Community Housing Corporation, Osgoode Professional Development, Toronto, Ontario, April 7, 2010
61. *Gender Diversity in Canada's Boardrooms and C-Suites: Exploring the Business Case and Reform Strategies*, Chair of Panel, Hennick Centre for Business and Law, Toronto, Ontario, March 11, 2010
62. "The Regulatory Framework: The Board's Roles, Responsibility and Conduct" and "Committees: Roles and Responsibilities", Chair of Panel and paper presented to The Advanced Legal Guide to Advising the Public Company Board

of Directors, Hennick Centre for Business and Law and Osgoode Professional Development, Toronto, Ontario, February 18, 2010

63. *Entrepreneurship, Innovation and Commercialization of Intellectual Property*, Chair of Panel, IP Osgoode and Hennick Centre for Business and Law 2010 Conference, Toronto, Ontario February 11, 2010
64. *Roundtable Consultation on Corporate Social Reporting and Disclosure*, Co-Moderator, Hennick Centre for Business and Law, Toronto, Ontario, December 7, 2009
65. *Overview of Liability Issues and Models under the Ontario Business Corporations Act*, Head of Research Project and Roundtable Participant, Law Commission of Ontario and Hennick Centre Consultation on Joint and Several Liability Project, Toronto, Ontario, October 28, 2009
66. *Critical Issues Facing MNEs and SMEs*, Roundtable Participant, York Leadership Roundtable: Accelerating from the New to the Next Economy: Recovery Starts Here, York University and York Region, Toronto, Ontario, October 20, 2009
67. *Roundtable Discussion on Canadian Securities Regulator*, Chair and Moderator, Capital Markets Institute and Canadian Securities Transition Team, Toronto, Ontario, October 27, 2009
68. *Annual Meeting*, Chaired Panel on Corporate Governance, Canadian Law and Economics Association, Toronto, Ontario, October 2, 2009
69. *Roundtable on Corporate Sustainability Reporting*, Co-Moderator, Ontario Securities Commission, Toronto, Ontario, September 18, 2009
70. "The Duties of Directors Under Corporate Law", Presentation to Canadian Society of Corporate Secretaries, 11th Annual Conference on Corporate Governance, Toronto, Ontario, August 26, 2009
71. "Critical Issues and Challenges in Securities Regulation," Presentation to the Chinese Securities Commission, Beijing, China, August 4, 2009
72. "The Financial Crisis, Economic Governance and Environmental Sustainability," Presentation to the Chinese Academy of Social Science, Beijing, China, August 4, 2009
73. *Securities Regulation in Context: Critical Issues and Challenges*, Keynote Speaker and presentation to The Ontario Securities Commission Investigation Training Course, Kempenfelt, Barrie, Ontario, June 8, 2009

74. "Canadian Business Law and the Regulation of Risk", Presentation to a delegation of the Central Committee of the Communist Party of China at the Rotman Executive Program, Toronto, Ontario, May 28, 2009
75. *A National Enforcement Agency for Canada*, Panelist, Capital Markets Institute Conference on Research from the Expert Panel: Implications and Next Steps, Toronto, Ontario, May 20, 2009
76. *Leaders Roundtable on the Proposed Amendments to the Canadian Securities Administrators Corporate Governance Guidelines*, Institute for Corporate Directors (ICD), Rapporteur and discussant, (with Carol Hansell and Peter Dey), Toronto, Ontario, May 1, 2009
77. *The Commercialization of Intellectual Property Conference*, Co-Chair and Chair of Panel on *Business Cases for Innovation*, (with Pina D'Agostino and Ed Waitzer), Toronto, Ontario, March 20, 2009
78. "The Implications of the BCE Decision for Corporate Governance and Directors Duties", Presentation at conference entitled Emerging Issues in Directors' and Officers' Liability: Advising Clients in Recessionary Times, Law Society of Upper Canada, Toronto, Ontario, February 27, 2009
79. "Ethical Lawyering: Corporate Social Responsibility", Presentation to first year law students for course entitled Ethical Lawyering in a Global Community, Osgoode Hall Law School, Toronto, Ontario, February 12, 2009
80. "Legal Origins, Investor Protection and the Case of Canada", Presentation to Brigham Young University Law Review Symposium: Evaluating Legal Origins Theory, Provo, Utah, February 6, 2009
81. "The Role of Committees of Boards of Director", Presentation on Advising Boards of Directors of Public Companies, Osgoode Professional Development, Toronto, Ontario, January 19, 2009
82. "The Statutory Framework for Directors and Officers Duties and The Role of Committees of Boards", Presentation on Advising Boards of Directors of Public Companies, Osgoode Professional Development, Toronto, Ontario, January 18, 2009
83. *White Collar Crime Symposium*, Roundtable Participant, RCMP and Canadian Police College, Ottawa, December 10, 2008

84. *Governance and Pension Fund Investment Regulation*, Presentation at the C.D. Howe Institute, Toronto, Ontario, December 5, 2008
85. *Good Governance and the Regulation of Pension Fund Investments*, speaker at the University of British Columbia Calgary Lunchtime Speaker Series, Calgary, Alberta, November 21, 2008
86. *The Good Regulator*, Keynote Speaker, The Canadian Network of National Associations of Regulators (CNNAR) Conference, Toronto, Ontario, November 3, 2008
87. *Critical Policy and Regulatory Issues facing the Mutual Fund Industry*, Presentation at the Investment Funds Invitational Forum, Landgon Hall, Cambridge, Ontario, October 22-24, 2008
88. *Annual Meeting*, Chaired Panel on Corporate Governance, Canadian Law and Economics Association, Toronto, Ontario, September 27, 2008
89. "The Legal Regulation of Pension Funds and the 30% Rule", Paper presented at the CD Howe Institute's Pension Papers Advisory Group Meeting, Toronto, Ontario, June 20, 2008
90. "Enforcement Effectiveness and Structural Reforms to Enforcement Institutions", Presentation to the Canadian Coalition for Good Governance Annual General Meeting, Toronto, Ontario, June 17, 2008
91. "Rules versus Principles in the Regulation of Pension Funds", Presentation to the International Centre for Pension Management (ICPM) Annual Conference, Toronto, Ontario, June 3, 2008
92. "A National Enforcement Agency for Canada", Presentation at Conference entitled *Advancing the Enforcement Agenda: What is the Solution?*, Capital Markets Institute, Toronto, Ontario, May 2, 2008
93. "Setting the Stage", opening remarks at Conference entitled *Managing the Increasing Risks of Advising the Board of Directors*, Osgoode Professional Development, Toronto, Ontario, April 17, 2008
94. "The Opportunities and Challenges of Principles Based Regulation in Securities Regulation", Presentation to the Expert Panel on Securities Regulation, Ottawa, Ontario, March 31, 2008
95. *Capital Markets Institute Roundtable on Enforcement*, Chair, Toronto, Ontario, February 29, 2008

96. "The Future of Securities Regulation in Canada", Presentation at Fraser Milner Casgrain, Toronto, Ontario, February 7, 2008
97. *Roundtable on Enforcement Issues in the Canadian Capital Markets*, Chair, Capital Markets Institute, (with Paul Halpern), Toronto, Ontario, January 31, 2008
98. "The Challenge for Securities Regulation and Enforcement in the Canadian Capital Markets", University of Western Ontario Faculty of Law Faculty Seminar, London, Ontario, January 2008
99. "Reflections on the Task Force to Modernize Securities Regulation: A Retail Investor Perspective", Paper presented at the 37th Annual Workshop on Commercial and Consumer Law, University of Toronto Faculty of Law, (with Paul Halpern), Toronto, Ontario, October 19, 2007
100. *A Common Securities Regulator for Canada*, Panelist, Peer to Peer Roundtable Debate with the Hon. Minister of Finance Jim Flaherty and Purdy Crawford, Toronto, Ontario, October 18, 2007
101. "The Role of Compliance in Securities Enforcement", Presentation at the Capital Markets Institute Conference on Enforcement, Toronto, Ontario, June 2007
102. "A Response to the Convergence Debate: A Canadian Perspective", Presentation at Conference on Convergence in Corporate Governance, (with Stephanie Ben-Ishai), Kyushu University, Fukuoka, Japan, February 2007
103. "A Focus on Enforcement", Presentation to *IMET/RCMP Investigators*, (with Paul Halpern), Toronto, Ontario, June 5, 2006
104. "Models for Accounting and Auditing Standard Setting under a Common Securities Regulator", Presentation to Executive of CGA Canada, Toronto, Ontario, December 1, 2006
105. "The Role of Compliance in Securities Regulatory Enforcement", Panelist, Capital Markets Institute Roundtable, (with Mary Condon), Toronto, Ontario, February 3, 2006
106. *True Characteristics of Canada's Markets*, Chair of Roundtable, Capital Markets Institute, Toronto, Ontario February 7, 2006
107. *Insurance for Misinformation in the Capital Markets*, Chair of Roundtable, Capital Markets Institute, Toronto, Ontario February 8, 2006

108. *Disclosure Issues and Issuer/Investor Balance in Securities Regulation*, Chair of Roundtable, Capital Markets Institute, Toronto, Ontario, February 10, 2006
109. "Governance Issues associated with Income Trusts: The Role of the Market and the Role of Regulators", Presentation at the International Young Lawyers Conference on Income Trusts, Toronto, Ontario, October 28-29, 2005
110. "Peoples and Other Recent Developments: Directors' and Officer's Liability", Paper presented at the Law Society of Upper Canada Conference, Toronto, Ontario, October 24, 2005
111. "Of Competition and Convergence: Can a Distinctive Regime Survive of Canadian Corporate Governance Last", Paper presented at Unfolding the New Agenda, Comparative Research in Law and Political Economy Conference on the Corporate Governance Matrix, Toronto, Ontario, October 20-21, 2005
112. "A View from the Ivory Tower: Academics Opine on our Industry", Presentation at Investment Funds Invitational Forum, Landgon Hall, Cambridge, Ontario, October 17-19, 2005
113. "The Supreme Court of Canada's Decision in Peoples v. Wise: Effects and Implications", presented at the Law Society of Upper Canada Conference on Directors and Officers Liability, Toronto, Ontario, October 24, 2005
114. "Canada's Corporate Governance and International Regulatory Competition", Paper presented at the Corporate Law, Securities Regulation and the Pressure of Convergence, Comparative Research in Law and Political Economy Network Conference on The Corporate Governance Matrix, Toronto, Ontario, September 29-30, 2005
115. *Corporate Governance Session I and Session II*, Chair, Canadian Law and Economics Association Annual Meeting, Toronto, Ontario, September 23-24, 2005
116. "Critical Issues in the Canadian Capital Markets", Presentation to the Task Force to Modernize Securities Regulation, Toronto, Ontario, September 8, 2005
117. "Enforcement Effectiveness in the Canadian Capital Markets: Policies, Principles and Practices", Presentation at the Business Law at the Border Conference at the University of Windsor Faculty of Law, Canadian-American Research Centre for Law and Policy, Windsor, Ontario, June 3-4, 2005

118. "Enforcement Effectiveness in the Canadian Capital Markets", Paper presented at Capital Markets Institute, Toronto, Ontario, June 17, 2005
119. *Harry W. Arthurs Symposium*, Chair and Moderator, Toronto, Ontario, May 5, 2005
120. "Regulatory Policies, Pyramids and Principles: Enforcement in the Canadian Capital Markets", Presentation to the University of Windsor Faculty of Law, Faculty Seminar, Windsor, Ontario, February 14, 2005
121. "Enforcement Effectiveness in the Canadian Capital Markets", Paper presented at the Capital Markets Institute, Toronto, Ontario, December 8, 2004
122. "The Passport Model to Securities Regulation in Canada: The Role of Local and Regional Issues", Paper presented at the Capital Markets Institute, Toronto, Ontario, November 2004
123. "The Governance of Income Trusts", Presentation at the Annual Consumer and Commercial Law Workshop, University of British Columbia, Vancouver, British Columbia, October 22-23, 2004
124. "Effective Governance of Family Controlled Corporations in Canada: A Behavioural and Structural Analysis", Paper presented to the Canadian Law and Economics Association, Toronto, Ontario, September 17-18, 2004
125. "Dual Class Share Structures, the Role of the Regulator and the Role of the Judiciary", Paper presented to the University of New Delhi Faculty of Law, New Delhi, India, August 15, 2004
126. "Dual Class Share Structures and Global Competitive Advantage: Evidence from Canada", Paper presented at the International Conference on Creating Global Competitive Advantage, Udaipur, India, August 7-8, 2004
127. "The Role of Local and Regional Interests in Designing the Optimal Securities Regulatory Structure", Paper presented at the Capital Markets Institute, Toronto, Ontario, February 2004
128. "Incubating Socially Responsible Behaviour in Small and Medium Sized Enterprises", Paper presented at the Conference on SMEs and CSR, Centre for Social Markets, Calcutta India, November 2003
129. "Clean Dealing: Governance and Conflicts of Interest at the Investment Dealers' Association", Paper presented at Queens Annual Business Law Symposium, Kingston, Ontario, October 2003

130. "Factors Influencing Auditors' Negligence in Canada", Paper presented at American Accounting Association's Annual Meeting, Hawaii, August 3-6, 2003
131. *Sarbanes-Oxley Act and Auditor Independence*, Participant, Roundtable at the Capital Markets Institute, Toronto, Ontario, November 2002
132. "The Role of Gatekeepers to Securities Markets in Preventing Managerial Misconduct", Paper presented at the Conference on Corporate Governance: Crisis and Reform, Osgoode Hall Law School, Toronto, Ontario, November 6, 2002
133. "Winners and Losers: Amendments to the Canadian Business Corporations Act", Paper presented at the 33rd Annual Consumer and Commercial Law Workshop, University of Toronto, Faculty of Law, Toronto, Ontario, October 18-19, 2002
134. "Empirical Analysis of the Oppression Remedy", Paper presented at the Canadian Law and Economics Association's Annual Meeting, Toronto, Ontario, September 28, 2002
135. "The Role of the Auditor in Corporate Governance," Paper presented at the Canadian and American Law and Society Annual Meetings, Vancouver, British Columbia, July 2002
136. Hearings on Bill C-284, *Corporate Criminal Responsibility*, Presentation before the Standing Committee on Justice and Human Rights, Ottawa, Ontario, May 2002
137. "The Role of the Auditor in Corporate Governance", Paper presented at the National University of Hong Kong, Hong Kong, SAR, March 2002
138. "The Role of the Auditor in Corporate Governance", Paper presented at the University of Delhi National Law Centre, Karol Bagh, New Delhi, India, March 2002
139. "The Role of the Auditor in Corporate Governance", Paper presented at the Annual Queens Law Symposium, Kingston, Ontario, November 16-17, 2001
140. "Taking Stock of Lawyers Taking Stock as Legal Fees", Paper presented at the Canadian Law and Economics Association's Annual Meeting, Toronto, Ontario, September 28-29, 2001

141. *Empirical Studies in Corporate Governance and Securities Regulation*, Chair of Panel, Canadian Law and Economics Association's Annual Meeting, Toronto, Ontario, September 28-29, 2001
142. *Securities Regulation*, Chair of Panel, Canadian Law and Economics Association's Annual Meeting, Toronto, September 28-29, 2001
143. "Taking Stock of Lawyers Taking Stock as Legal Fees", Paper presented at the Law and Society Association's Annual Meeting, Budapest Hungary, July 2001
144. "Taking Stock of Lawyers Taking Stock as Legal Fees", Paper presented at W.G. Hart Workshop, Institute for Advanced Legal Studies, University of London, London, England, June 2001
145. "Taking Stock of Lawyers Taking Stock as Legal Fees", Paper presented at the Meeting of the Canadian Association of Law Teachers, Quebec City, Quebec, May 2001
146. "The Death of Liability in the Law Firm: A Critical Analysis of Limited Liability Partnerships in Canada", Paper presented at the Cornell Law School Feminism and Legal Theory Workshop entitled Corporations, Capitalism and Feminism: Policy and Protest, Ithaca, New York, April 20, 2001
147. "Gatekeepers, Advisors and Investors: An Analysis of Lawyers Accepting Equity in Their Clients as Compensation for Legal Services", Paper presented at Case Western Reserve University School of Law, Cleveland, Ohio, March 8, 2001
148. "Gatekeepers, Advisors and Investors: An Analysis of Lawyers Accepting Equity in Their Clients as Compensation for Legal Services", Paper presented at Cornell Law School, Ithaca, New York, February 16, 2001
149. *Beyond Public Choice*, Chair of Panel, Conference at Cornell Law School, Ithaca, New York, February 8-9, 2001
150. *Empirical Studies of the Legal System*, Chair of Panel, Canadian Law and Economics Association Annual Meeting, Toronto, Ontario, September 22-23, 2000
151. "An Empirical Analysis of the Costs and Benefits of Secured Credit: Evidence from Canada", Paper presented at the American Law and Society Association's Annual Meeting in Miami, Florida, May 2000

152. "Corporate Law in its Political and Social Context", Paper presented at a panel on Law, Social Justice and Development, at the Inaugural Conference, Global Alliance for Justice Education, Trivundrum, Kerela, India, December 9-13, 1999
153. "The Death of Liability in the Law Firm", Paper presented to Rutgers University School of Law, New Brunswick, New Jersey, November 3, 1999
154. "The Death of Liability in the Law Firm: a Critical Analysis of Limited Liability Partnerships", Paper presented at the Canadian Law and Economics Association Annual Meeting, Toronto, Ontario, September 25, 1999
155. *Financial Regulation*, Chair of Panel, Canadian Law and Economics Association's Annual Meeting, Toronto, Ontario, September 25, 1999
156. "Limiting The Liability Of Professionals: a Critical Social, Legal And Economic Analysis Of Limited Liability Partnerships", Paper presented at the American Law and Society Association's Annual Meeting in Chicago, Illinois, May 29, 1999
157. "The Death Of Liability In The Professional Firm: a Critical Social, Legal And Economic Analysis Of Limited Liability Partnerships", Paper presented at the Canadian Law and Society Association's Annual Meeting, University of Sherbrooke, Sherbrooke, Quebec, June 7, 1999
158. "The Death of Liability in the Law Firm", Paper presented at the Osgoode Hall Law School Faculty Seminar Series, Toronto, Ontario, June 2, 1999
159. "Institutional Investor Activism and Shareholder Activism in Canada and the U.S.", Paper presented at the Schulich School of Business, York University, Toronto, Ontario, April 28, 1999
160. "Institutional Investor Activism and Shareholder Activism: Canadian and U.S. Experiences", Paper presented at the Rotman School of Management, University of Toronto, Toronto, Ontario, January 25, 1999
161. "Financing of Litigation by Third Party Investors: A Share of Justice?", Paper presented at the University of Montreal Faculty de Droit, Montreal, Quebec, December 7, 1998
162. "Investor Financing of Class Actions", Paper presented at Administration of Justice: Class Actions Seminar at Osgoode Hall Law School, Toronto, Ontario, November 25, 1998

163. "Financing of Litigation by Third Party Investors: A Share of Justice?", Paper presented at 28th Annual Consumer and Commercial Law Workshop at the University of Toronto, Faculty of Law, Toronto, Ontario, October 16, 1998
164. "The Costs of Justice: A Comparison of Legal Aid in Canada and South Africa", Paper presented to members of the Justice Committee of the South African Parliament, visiting Osgoode Hall Law School, Toronto, Ontario, January 1998
165. "Does Canada Need a National Securities Commission?", Paper presented at Osgoode Hall Law School, Toronto, Ontario, February 1997

Other Public Lectures and Addresses (Selected)

1. JD/MBA Welcome Luncheon, Speaker, Schulich School of Business, York University, September 11, 2012
2. 2012 Corporate/Securities Law Moot, Judge, Hosted by Davies Ward Phillips & Vineberg LLP, March 2, 2012
3. Partnerships, Guest Lecturer for Richard Crofts' Business Associations Class, Osgoode Hall Law School, January 13, 2012
4. Partnerships, Guest Lecturer for Richard Crofts' Business Associations Class, Osgoode Hall Law School, January 11, 2012
5. The Business Law Curriculum at Osgoode Hall, Osgoode Hall Open House for Prospective Students, Winter 2008
6. The Business Law Curriculum at Osgoode Hall, Panelist at Options Fair for Upper Year Courses, Hosted by the Office of Student Services at Osgoode Hall, March 28, 2005
7. Careers in the Financial Markets, Chair and Moderator, Osgoode Hall Law School, Career Services Office, February 16, 2005
8. The Practice of Corporate Law in New York, presented at Osgoode Hall Law School, York University, September 2, 1999
9. Demystifying the First Year Law School Experience, presented at the First Year Orientation Program, Osgoode Hall Law School, York University, August 30, 1999

10. The Practice of Corporate Law in New York, presented at Osgoode Hall Law School, York University, September 1998
11. Careers in Law, presented at the First Year Orientation Program, University of Toronto, Faculty of Law, September 1998
12. Law, Law School, Race and Gender, presented at the High School Minority Outreach Program, University of Toronto, Faculty of Law, March 1998
13. Succeeding at Law School presented at the First Year Orientation Program, University of Toronto, Faculty of Law, September 1997

Conferences, Roundtables and Events Organized (Selected)

1. *Law, Literature, and Film: Adaptation and Interpretation in Theodore Dreiser's 1931 Suit Against Paramount Pictures*, by Kate Sutherland (Faculty Seminar at Osgoode Hall Law School) (April 10, 2013) (Jody-Ann Rowe-Butler)
2. *Inclusivity as a Measure of Access to Justice*, by Patricia Hughes (Faculty Seminar at Osgoode Hall Law School) (March 27, 2013) (with Jody-Ann Rowe-Butler)
3. *Duress and Duty: Evaluating Erdemovic*, by Victor Tadros (Genest Global Lecture at Osgoode Hall Law School) (March 20, 2013) (with Jody-Ann Rowe-Butler, François Tanguay-Renaud and Lorne Sossin)
4. *The Political Origins of Private Law*, by Dan Priel (Faculty Seminar at Osgoode Hall Law School) (February 27, 2013) (with Jody-Ann Rowe-Butler)
5. *Immigration and the Civil Rights Agenda*, by Cristina M. Rodríguez (Genest Global Lecture at Osgoode Hall Law School) (February 25, 2013) (with Jody-Ann Rowe-Butler and Lorne Sossin)
6. *Considerations of Fairness and Conflicts of Interest in the Regulation of Financial Markets*, by Michelle Welsh (Guest Seminar at Osgoode Hall Law School) (February 7, 2013) (with Tanya Bowes and Jody-Ann Rowe-Butler)
7. *Osgoode/Lassonde Research Celebration – A Conversation Between Law and Engineering* (Osgoode Hall Law School and Lassonde School of Engineering) (February 4, 2013) (with Jody-Ann Rowe-Butler, Richard Hornsey and Pamela Edgecombe)

8. *"Valour Rather Than Prudence": Hard Times and Hard Choices for Canada's Legal Academy*, by Harry Arthurs (Faculty Seminar at Osgoode Hall Law School) (January 16, 2013) (with Jody-Ann Rowe-Butler)
9. *Getting Our 'Fix': Fossil Capitalism And The Implications Of The New Pipeline Proposals For Environmental Justice In Canada*, by Dayna Scott (Faculty Seminar at Osgoode Hall Law School) (January 30, 2013) (with Jody-Ann Rowe-Butler)
10. *A Comment on "No Comment": The Accountability of Public Officials in the 21st Century*, by Lorne Sossin (Faculty Seminar at Osgoode Hall Law School) (December 5, 2012) (with Jody-Ann Rowe-Butler)
11. *'This Water, Don't Take': Claims, Histories and Meanings*, by Pooja Parmar (Faculty Seminar at Osgoode Hall Law School) (November 28, 2012) (with Jody-Ann Rowe-Butler)
12. *Canadian Mining in Guatemala: CSR Does Not Bring Back the Dead*, by Shin Imai (Faculty Seminar at Osgoode Hall Law School) (October 31, 2012) (with Jody-Ann Rowe-Butler)
13. *The Myth of Choice: Good Decision Making in a World of Limits*, by Kent Greenfield (Hennick Centre for Business and Law and Cassels Brock and Blackwell LLP) (October 22, 2012) (with Tanya Bowes, Aaron Dhir and Edward Waitzer)
14. *The Myth of Choice: Personal Responsibility in a World of Limits*, by Kent Greenfield (Guest Seminar at Osgoode Hall Law School) (October 22, 2012) (with Jody-Ann Rowe-Butler and Aaron Dhir)
15. *The Gorilla in our Midst: Inattentional Blindness to Sanctioned Brutality in Criminal Law*, by Ngaire Naffine (Genest Global Lecture at Osgoode Hall Law School) (October 1, 2012) (with Jody-Ann Rowe-Butler, Lorne Sossin, Benjamin Berger and Sonia Lawrence)
16. *Critical Reflections on Legal Pluralism in the State and Beyond* (Joint Symposium Osgoode Hall Law School and the Faculty of Law, Bar Ilan University) (Ramat-Gan, Israel) (July 1-2, 2012) (with Oren Perez, Jody-Ann Rowe-Butler, Benjamin Berger and Stepan Wood)
17. *Osgoode-Toronto Junior Faculty Forum* (Joint Forum between Osgoode Hall Law School and the University of Toronto, Faculty of Law) (June 21, 2012) (with Andrew Green, Albert Yoon, and Benjamin Alarie)

18. *The Rule of Law on Trial: Police Powers, Public Protest and the G20*, by James Stribopoulos (Faculty Seminar at Osgoode Hall Law School) (April 9, 2012) (with Jody-Ann Rowe Butler)
19. *Research Celebration Day* (ADRGs) (Osgoode Hall Law School) (April 4, 2012) (with Pina D'Agostino, Stepan Wood, Trevor Farrow, Dayna Scott, Jody-Ann Rowe-Butler, and others)
20. *CRL Speaker Series: From the White House to the Consumer Financial Protection Bureau*, by Nicholas Rathod (Hennick Centre for Business and Law) (March 27, 2012) (with Tanya Bowes and Shanthi Senthe)
21. *Book Launch: "Laughing at the Gods: Great Judges and How They Made the Common Law"*, by Allan Hutchinson (Osgoode Hall Law School and Goodmans LLP) (March 27, 2012) (with Jody-Ann Rowe-Butler)
22. *Social Rights. South Africa and the Second-Wave of Cases*, by Brian Ray (Faculty Seminar at Osgoode Hall Law School) (March 26, 2012) (with Jody-Ann Rowe Butler)
23. *Conversations on Work and Labour: Regulating Work: Between Universality and Selectivity*, by Guy Davidov (Osgoode Hall Law School) (March 21, 2012) (with Jody-Ann Rowe-Butler)
24. *The Transformative Role of General Counsel in the Legal Profession*, by David B. Wilkins (Osgoode Professional Development) (February 10, 2012) (with Heather Gore)
25. *Globalization, Lawyers, and Emerging Economies*, by David B. Wilkins (Genest Global Lecture at Osgoode Hall Law School) (February 8, 2012) (with Jody-Ann Rowe-Butler)
26. *Public and Private Enforcement* (Hennick Centre for Business and Law) (January 20, 2012) (with Howell Jackson and Tanya Bowes)
27. *Book Launch: "The Payment Order of Antiquity and Middle Ages - A Legal History"*, by Benjamin Geva (ADRGs) (Osgoode Hall Law School) (January 19, 2012) (with Stephanie Ben-Ishai, Benjamin Geva, and Jody-Ann Rowe-Butler)
28. *Law.Arts.Culture Mid Day Performance – Vanier College Productions performs songs from "The Drowsy Chaperone"* (Osgoode Hall Law School) (January 18, 2012) (with Jody-Ann Rowe Butler)

29. *Informed Opinions*, Workshop at the Institute for Feminist Legal Studies (IFLS) (Osgoode Hall Law School) (December 5, 2011) (with Sonia Lawrence, Inbal Marcovitch and Shari Graydon)
30. *The Canadian Legal Profession: Clone, Hybrid, or Mutant?* by Philip Girard (Lewtas Lecture at Osgoode Hall Law School) (November 21, 2011) (with Jody-Ann Rowe-Butler)
31. *Rethinking Fiduciary Duties of Pension Fund Trustees*, by Ed Waitzer (Faculty Seminar at Osgoode Hall Law School) (November 17, 2011) (with Jody-Ann Rowe Butler)
32. *Litigating Literature: Writers in Court*, by Kate Sutherland (Faculty Seminar at Osgoode Hall Law School) (November 14, 2011) (with Jody-Ann Rowe Butler)
33. *Constitutional Change and Democracy – A Moving Target*, by Allan Hutchinson (Faculty Seminar at Osgoode Hall Law School) (November 7, 2011) (with Jody-Ann Rowe Butler)
34. *Ethics and Conflicts for Public Sector Lawyers* (Osgoode Hall Law School and Ontario Securities Commission) (November 7, 2011), Panel session with Lorne Sossin, Janet E. Minor, and Malliha Wilson (with Victoria Watkins)
35. *Hennick Centre Open House* (Hennick Centre for Business and Law) (November 3, 2011) (with Ed Waitzer, James Darroch and Tanya Bowes)
36. *Transforming Intentional Parents into Legal Parents in a Criminalized Context; Choice of Law Clauses and Fundamental Public Policy in Foreign Paid Surrogacy Contracts*, by Susan Drummond (Faculty Seminar at Osgoode Hall Law School) (October 24, 2011) (with Jody-Ann Rowe Butler)
37. *Book Launch: Tax Expenditures: State of the Art*, by Lisa Philipps, Neil Brooks and Jinyan Li (Osgoode Hall Law School) (October 17, 2011) (with Jeffrey Simpson and Jody-Ann Rowe Butler)
38. *In the Public Interest: The Law and Ethics of Investigative Journalism*, by Jamie Cameron (Faculty Seminar at Osgoode Hall Law School) (October 14, 2011) (with Jody-Ann Rowe Butler)
39. *Intuition, Deliberation and Good Judgment*, by Jeff Racklinski (Hennick Centre for Business and Law, Ontario Legal Philosophy Partnership and the Canadian Forum on Civil Justice) (September 29, 2011) (with Trevor

Farrow, François Tanguay-Renaud, Ed Waitzer and James Darroch)

40. *Eying the Promised Land: The Wearisome Quest for an Effective Regional Human Rights Enforcement Mechanism in Africa*, by Nsongurua J. Udombana (Genest Global Lecture at Osgoode Hall Law School) (September 19, 2011) (with Jody-Ann Rowe-Butler)
41. *Financial Market Infrastructure Institutions: Their Future and Their Regulation*, by Dr. Ruben Lee (Osgoode Hall Law School and Ontario Securities Commission) (September 15, 2011) (with Ruben Lee and Victoria Watkins)
42. *IP Osgoode Book Launch* (IP Osgoode and ADRGS) (Osgoode Hall Law School) (September 9, 2011) (with Pina D'Agostino, David Vaver and Carys Craig)
43. *Post-Magna Dual Class Share Conference* (Capital Markets Institute) (February 15, 2011) (with Paul Halpern and Christine Campney)
44. *Accessing India: A Focus on Foreign Direct Investment and Mining Roundtable* (Hennick Centre for Business and Law) (October 27, 2010) (with Lisa Philipps, Kasi Rao, Eden Oliver, Ed Waitzer, James Darroch and Elizabeth Saati)
45. *Global North and Global South Perspectives on Transnational Governance: An Indian-Canadian Conversation* (Joint workshop between Osgoode Hall Law School and Jindal Global Law School) (October 25-27, 2010) (with Lisa Philipps and François Tanguay-Renaud)
46. *Davies Fund for Business and Law*, by H. Rodgin Cohen (Hennick Centre for Business and Law) (October 19, 2010) (with Ed Waitzer, James Darroch and Elizabeth Saati)
47. *Davies Fund for Business and Law*, by Ben W. Heineman Jr. (Hennick Centre for Business and Law) (March 17, 2010) (with Ed Waitzer, James Darroch and Archana Sridhar)
48. *Gender Diversity in Canada's Boardrooms and C-Suites: Exploring the Business Case and Reform Strategies* (Hennick Centre for Business and Law) (March 11, 2010) (with Ed Waitzer and Archana Sridhar)
49. *The Advanced Legal Guide to Advising the Public Company Board of Directors* (Osgoode Professional Development and Hennick Centre for Business and Law) (February 18-19, 2010) (with Ed Waitzer and Myrsini Rovos)

50. *Entrepreneurship, Innovation and Commercialization of Intellectual Property Conference* (IP Osgoode and Hennick Centre for Business and Law) (February 11, 2010) (with Ed Waitzer, Pina D'Agostino and Archana Sridhar)
51. *Too Big to Save? How to Fix the U.S. Financial System*, by Bob Pozen (Chair and moderator) (Capital Markets Institute) (January 18, 2010) (with Paul Halpern and Christine Campney)
52. *Corporate Social Performance: Reporting Roundtable* (Hennick Centre for Business and Law) (December 7, 2009) (with Ed Waitzer, Archana Sridhar and Kevin Ranney)
53. *Canada's National Securities Regulator: Constitutional Issues and Updates* (Hennick Centre for Business and Law) (November 12, 2009) (with Ed Waitzer and Archana Sridhar)
54. *Roundtable on Joint and Several Liability for Financial Professionals* (Law Commission of Ontario and Hennick Centre for Business and Law) (October 28, 2009) (with Ed Waitzer and Patricia Hughes)
55. *Roundtable Discussion on Canadian Securities Regulator* (Capital Markets Institute) (October 27, 2009) (with Paul Halpern)
56. *Hennick Centre Open House* (Hennick Centre for Business and Law) (October 7, 2009) (with Ed Waitzer, James Darroch and Archana Sridhar)
57. *OSC Consultation on Environmental and Corporate Governance Reporting* (Hennick Centre for Business and Law) (September 18, 2009) (with Ed Waitzer, Jo-Anne Matear and James Turner)
58. *The Future of Credit Rating Agencies: Regulation and Accountability* (Capital Markets Institute) (June 25, 2009) (with Paul Halpern and Christine Campney)
59. *Expert Panel – A New Approach to Financial Regulation: Steps to Implementation* (Capital Markets Institute) (May 20, 2009) (with Paul Halpern and Christine Campney)
60. *Leaders Roundtable on the Proposed Amendments to the Canadian Securities Administrators Corporate Governance Guidelines* (Institute for Corporate Directors) (May 1, 2009) (with Carol Hansell and Peter Dey)

61. *Fair Value: Moving it Forward* (Capital Markets Institute) (April 23, 2009) (with Paul Halpern and Christine Campney)
62. *Leaders in Business and Law – Global Trends, The Emerging Economies and New Opportunities*, by Hari Panday (Hennick Centre for Business and Law) (February 26, 2009)
63. *ABCP Crisis Resolution and Impact on Capital Markets* (Capital Markets Institute) (January 21, 2009) (with Paul Halpern, Christine Campney and Judie Thom)
64. *The Advanced Legal Guide to Advising the Public Company Board of Directors* (Osgoode Professional Development and Hennick Centre for Business and Law) (January 19, 2009) (with Ed Waitzer and Myrsini Rovos)
65. *The Statutory Framework for Directors and Officers Duties and the Role of Committees of Boards* (Osgoode Professional Development) (January 18, 2009) (with Ed Waitzer)
66. *Advancing the Enforcement Agenda, Part 2: What is the Solution?* (Capital Markets Institute) (May 2, 2008) (with Paul Halpern and Judie Thom)
67. *Enforcement Roundtable on Adjudication* (Capital Markets Institute) (February 29, 2008) (with Paul Halpern and Judie Thom)
68. *Enforcement Roundtable on Prosecution* (Capital Markets Institute) (February 15, 2008) (with Paul Halpern and Judie Thom)
69. *Enforcement Roundtable on Investigation* (Capital Markets Institute) (January 31, 2008) (with Paul Halpern and Judie Thom)
70. *Advancing the Enforcement Agenda Part 1: What's the Problem?* (Capital Markets Institute) (June 27, 2007) (with Paul Halpern and Judie Thom)
71. *Roundtable on Kerr v. Danier* (Capital Markets Institute) (November 2006) (with Paul Halpern and Atanaska Novakova)
72. *Advising the Public Company Board of Directors* (Osgoode Professional Development) (October 2, 2006) (with Carol Hansell)
73. *Inaugural Osgoode Course Design Institute* (Osgoode Hall Law School) (May 2006) (Patrick Monahan, Stephanie Ben-Ishai and Colleen Hanycz)

74. *Disclosure Issues and Issuer/Investor Balance in Securities Regulation* (Capital Markets Institute) (February 10, 2006) (with Paul Halpern)
75. *Insurance for Misinformation in the Capital Markets* (Capital Markets Institute) (February 8, 2006) (with Paul Halpern and Atanaska Novakova)
76. *True Characteristics of Canada's Markets* (Capital Markets Institute) (February 7, 2006) (with Paul Halpern and Atanaska Novakova)
77. *New Approaches to Enforcement* (Chair and Moderator) (Capital Markets Institute) (February 2006) (with Paul Halpern and Atanaska Novakova)
78. *The LSE's AIM vs. TSX Venture Exchange* (Capital Markets Institute) (February 2006) (with Paul Halpern and Atanaska Novakova)
79. *Importing the E-World into Canadian Securities Regulation* (Capital Markets Institute) (February 2006) (with Paul Halpern and Atanaska Novakova)
80. *New Products and Emerging Risks* (Capital Markets Institute) (February 2006) (with Paul Halpern and Atanaska Novakova)
81. *Corporate Governance: Crisis and Reform* (Osgoode Professional Development) (November 6, 2002) (with Carol Hansell, John Turner and Bill Braithwaite)
82. *Workshop on Corporations and Capitalism* (Osgoode Hall Law School, Co-sponsored by Cornell Law School and University of British Columbia Faculty of Law (September 2002) (with Mary Condon, Martha Fineman and Jannis Sarra)
83. *Canadian Association of Law Teachers Meeting* (Canadian Association of Law Teachers) (May-June 2002) (as a member of the Executive Board of the Association)
84. *Canadian Law and Economics Association's Annual Meeting* (Canadian Law and Economics Association) (September 2001) (as a member of the Executive Board of the Association)
85. *Conference on Lending Transactions* (Osgoode Professional Development) (September 29, 1999) (with Celia Rhea)

Teaching

Osgoode Hall Law School

2013-2014

- Corporate Governance (JD program) (2 credits)
- Boards of Directors (LL.M. in Business Law)
- Corporate Governance (LL.M. in Business Law)
- Director, Business Law LL.M. (3 credits teaching release)

2012-2013

- Director, Business Law LL.M. (3 credits teaching release)
- Co-Director, Hennick Centre (2 credits teaching release)
- Corporate Governance (LL.M. in Business Law)
- Corporate Governance: Markets & Institutions (LL.M. in Securities Law)
- Boards of Directors (LL.M. in Business Law)
- Corporate Governance Seminar (JD program) (2 credits)

2011-2012

- Directed research program "Public Disclosure and Global Sustainable Development in the Banking Industry: The Equator Principles" (with Peer Zumbansen)(no course credit for instructors)
- Director, Business Law LL.M. (3 credits teaching release)
- Co-Director, Hennick Centre (2 credits teaching release)
- SSHRC MBF Grant (6 credits course release)
- Associate Dean, Research, Graduate Studies and Institutional Relations (6 credits teaching release)

2010-2011

- Walter Gordon Fellowship (full teaching release)
- Director, Business Law LL.M. (3 credits teaching release)
- Co-Director, Hennick Centre (2 credits teaching release)
- Corporate Governance (LL.M. in Business Law, with Richard LeBlanc)
- Corporate Governance: Markets & Institutions (LL.M. in Securities Law)
- Boards of Directors (LL.M. in Business Law, with Carol Hansell)
- Directed research program "Towards a National Securities Regulator for Canada" (with Lorne Sossin, Mary Condon, and Ed Waitzer)

2009-2010

- Business Associations Course (4 credits)
- Investor Protection Seminar (with Ed Waitzer) (2 credits)
- Law Commission of Ontario Scholar (6 credits teaching release)
- Co-Director Hennick Centre (2 credits teaching release)

2008-2009

- Corporate Governance Seminar (2 credits)
- Investor Protection Seminar (2 credits)
- Introduction to Canadian Business (International LL.M. Program) (3 credits)
- Advanced Securities Regulation Seminar (2 credits)
- Business Associations Course (4 credits)
- University of Toronto Capital Markets Institute (3 credits teaching release)

2007-2008

- Corporate & White Collar Crime Seminar (2 credits)
- Corporate Governance (LL.M. in Securities Law) (3 credits)
- Capital Markets Institute, Rotman School of Management (3 credits teaching release)
- Sabbatical (winter)

2006-2007

- Sabbatical (fall)
- Parental Leave (winter)

2005-2006

- Parental Leave (fall)
- Chair of Osgoode Course Design Institute (winter term in lieu of teaching)

2004-2005

- Business Associations Course (fall; 4 credits)
- Business Associations Course (winter; 4 credits)
- Law & International Development Seminar (2 credits)
- Corporate & White Collar Crime Seminar (2 credits)

2003-2004

- Parental Leave (fall)
- Osgoode Hall Law School Fellowship (winter)

2002-2003

- Advanced Securities Regulation Seminar (2 credits)
- Corporate Governance Seminar (2 credits)
- Markets and Institutions (LL.M. in Securities Law) (3 credits)
- Parental Leave (winter)

2001-2002

- Business Associations Course (4 credits)
- Law of Corporate Management Seminar (2 credits)
- Graduate Seminar, Guest Lecturer on Law and Economics – Presentation on Law and Economics Methodology to the Osgoode Hall Law School Graduate Seminar
- Faculty Advisor, Davies Ward and Beck Corporate-Securities Moot
- Pre-tenure Teaching Release (winter)

2000-2001 (Cornell Law School)

- Corporate Governance course (2 credits)
- U.S. Corporations course (5 credits)
- U.S. Corporate & White Collar Crime Seminar (3 credits)

1999-2000

- Business Associations Course (4 credits)
- Law of Corporate Management Seminar (2 credits)
- Corporate & White Collar Crime Seminar (2 credits)
- Faculty Advisor, Davies, Ward and Beck Corporate-Securities Moot

1998-1999

- Law of Corporate Management Seminar (2 credits)
- Business Associations Course (4 credits)
- Faculty Advisor, Davies, Ward and Beck Corporate-Securities Moot

1997-1998

- Corporate Governance Seminar (2 credits)
- Business Associations Course (with Tom Johnson) (4 credits)
- Faculty Advisor, Davies, Ward and Beck Corporate-Securities Moot

Graduate Student Supervision (Selected)

Supervisor

Completed

1. Norbert Altvater, *"Corporate Social Responsibility: Changing Perspectives in the Alberta Oil Patch."* (Ph.D. Candidate) (Graduated June 2012).
2. Gil Lan-Hing-Fung, *"Law, Development and Corporate Law Reform in China: Revealing the Embedded Social Values of the Corporation."* (Now at the Ted Rogers School of Management, Ryerson University (tenure-track)) (Graduated June 2011).

3. Palladam Vasudev, *"Strengthening the Stakeholder Principle: The Path of Corporate Law."* (Now at University of Ottawa, Faculty of Law (tenure-track)) (Graduated June 2011).
4. Yanan Zhai, *"Insider Trading Regulation in China."* (Graduated June 2009).
5. Evaristus Oshionebo, *"Regulating Transnational Corporations in Domestic and International Regimes: An African Case Study."* Now at University of Manitoba, Faculty of Law (tenure track) (Co-supervised with Harry Arthurs).

Ongoing

1. Sean McFarland, *"Comparative Corporate Governance, Convergence and Development of a Framework for Mutual Fund Governance in Canada."* (Ph.D. Candidate)(expected graduation in October 2013)

Member of Supervisory Committee

1. John Allen, *"Rules or Principles for SME securities regulations in Ontario?"* (Ph.D. Candidate) (Supervised by Mary Condon).
2. Xingbin Huang, *"Electronic Payment System for Securities Transfers in China and Financial Globalization."* (LL.M. candidate) (Supervised by Benjamin Geva) (Graduated June 2008).
3. Nicolas Juzda, *"Comparative Studies of Payment Systems between China and Canada, U.S.A, EU: Legal and Regulatory Issues."* (Ph.D. candidate) (Supervised by Ed Waitzer).
4. Aviv Pichhadze, *"The Controlling Interest Factor in Corporate Structures: Bridging the Corporate Governance Divide."* (Ph.D. candidate) (Supervised by Ed Waitzer).
5. Sara Seck, *"Home State Obligations To Regulate Transnational Mining Companies Under International Environmental and Human Rights Laws."* (Graduated June 2008) (Supervised by Craig Scott).
6. Boniface Ahunwan, *"Globalization and Corporate Governance in Developing Countries: A Micro Analysis of Global Corporate Interconnection Between Developing African Countries and Developed Countries."* (D.Jur.) (Graduated June 2004). (Supervised by Mary Condon).

Member of Examination Committee

1. Thierry Dorval, *"The Role of Corporate Governance in Reducing Agency Problems and Assisting Directors in the Discharge of their Fiduciary Duties"* (University of Ottawa) (Supervised by Anthony Vanduzen).
2. Kristine Ericson, *"Factors Affecting Witness Competency in Individuals with Development Disabilities"* (Supervised by Debra Pepler).
3. Laura Westra, *"Ecoviolence and the Law: Supranational Normative Foundations of Ecocrime"* (Supervised by Craig Scott).
4. Patricia Hastings, *"The Impact of Complaint Sexual History Evidence on Jurors' Decision Processes in a Sexual Assault Trial"* (Graduate Programme in Psychology, York University) (Supervised by Debra Pepler).

Service to York University

2012-2013 (as at July 1, 2013)

- Associate Dean, Research, Graduate Studies and Institutional Relations, Osgoode Hall Law School
- Director, Business Law LLM, Osgoode Hall Law School
- Co-Director, Hennick Centre for Business and Law, York University
- Chair, Research and Seminars Committee, Osgoode Hall Law School
- Member, Management Committee of Osgoode Hall Law School
- Member, Faculty Recruitment Committee, Osgoode Hall Law School
- Member, IP Osgoode Advisory Board, Osgoode Hall Law School
- Member, York Centre for Public Policy and Law (YCPPL) Executive Committee, York University
- Administrative Committee Representative, ATLAS, Osgoode Hall Law School

2011-2012

- Associate Dean, Research, Graduate Studies and Institutional Relations, Osgoode Hall Law School
- Director, Business Law LLM, Osgoode Hall Law School
- Chair, Research and Seminars Committee, Osgoode Hall Law School
- Member, Management Committee of Osgoode Hall Law School
- Member, Faculty Recruitment Committee, Osgoode Hall Law School
- Member, IP Osgoode Advisory Board, Osgoode Hall Law School
- Member, York Centre for Public Policy and Law (YCPPL) Executive Committee, York University
- Administrative Committee Representative, ATLAS, Osgoode Hall Law School

2010-2011

- Co-Director, Hennick Centre for Business and Law, York University
- Co-Founder and Director, Business Law LLM, Osgoode Hall Law School
- Member, President Shoukri's Faculty Advisory Committee, York University
- Member, Academic Policy, Planning and Research Committee, York University

2009-2010

- Chair, Faculty Council, Osgoode Hall Law School
- Chair, Senate Committee on Awards, York University
- Co-Director, Hennick Centre for Business and Law, York University
- Member, Management Committee of Osgoode Hall Law School
- Member, Nominating Committee, Osgoode Hall Law School
- Member, Priorities and Finance Committee, Osgoode Hall Law School
- Member, President Shoukri's Faculty Advisory Committee, York University
- Member, Academic Policy, Planning and Research Committee, York University

2008-2009

- Associate Director, Hennick Centre for Business and Law
- Member, Faculty Recruitment Committee, Osgoode Hall Law School
- Member, Priorities and Finance Committee, Osgoode Hall Law School
- Member, Research and Seminars Committee, Osgoode Hall Law School
- Member, Tenure and Promotions Adjudicating Committee, Osgoode Hall Law School (winter)
- Member, President Shoukri's Faculty Advisory Group, York University

2007-2008

- Member, Faculty Recruitment Committee, Osgoode Hall Law School
- Member, Tenure and Promotions Adjudicating Committee, Osgoode Hall Law School

2006-2007

- On sabbatical and parental leave

2005-2006

- Chair, Standing Committee on Teaching and Learning, Osgoode Hall Law School
- Designed the inaugural Osgoode Course Design Institute, Osgoode Hall Law School

2004-2005

- Chair, Students Awards Committee, York University
- Member, Strategic Planning Committee, Osgoode Hall Law School
- Member, Faculty Recruitment Committee, Osgoode Hall Law School
- Member, Grades Review Committee, Osgoode Hall Law School
- Member, Priorities and Finance Committee, Osgoode Hall Law School

2003-2004

- Member, Faculty Recruitment Advisory Committee, Osgoode Hall Law School
- Member, Nominating Committee, Osgoode Hall Law School

2002-2003

- Member, Executive Committee, Osgoode Hall Law School Faculty Association
- Member, Faculty Recruitment Advisory Committee, Osgoode Hall Law School
- Member, Nominating Committee, Osgoode Hall Law School

- Member, Special Committee on Computer Planning and Applications, Osgoode Hall Law School
- Book Review Editor, Osgoode Hall Law Journal

2001-2002

- Book Review Editor, Osgoode Hall Law Journal
- Member, Executive Committee, Osgoode Hall Law School Faculty Association
- Member, Academic Policy Committee
- Member, Computer Planning & Applications Committee
- Member, Nominating Committee

2000-2001

- On leave at Cornell Law School

1999-2000

- Member, Academic Policy Committee, Osgoode Hall Law School
- Faculty-Student Relations, Osgoode Hall Law School

1998-1999

- Member, Academic Policy Committee, Osgoode Hall Law School

1997-1998

- Member, Admissions Committee, Osgoode Hall Law School

Service to the Larger Community

2013-present WOMEN'S COLLEGE HOSPITAL

- Member, Board of Directors
- Member, Quality Assurance Committee

2010-present MOUNT SINAI HOSPITAL

- *Member, Board of Governors*
- *Member, Resources and Planning Committee*
Responsible for overseeing matters relating to planning and resourcing and providing advice and recommendations to management and the board

2010-2013 NATIONAL STATISTICS COUNCIL OF CANADA

- *Member*
Providing advice on priorities for the Country's statistical system to assist in the Council's mandate of providing the Chief Statistician of Canada

2008-present GREATER TORONTO AIRPORT AUTHORITY (Toronto Pearson)

- *Member, Board of Directors*
- *Chair, Nominating and Governance Committee (2010 – present)*
- *Member, Planning and Commercial Development Committee (2010 – 2012)*
- *Member, CEO Search Committee (2011 – 2012)*
- *Member, Nominating Committee (2009 – 2010)*
- *Member, Environment, Health and Safety Committee (2008 – 2010)*
Overseeing the management, operations and maintenance of Toronto Pearson International Airport including the strategic planning process, financial budgeting and reporting, risk management and relationship management with key stakeholders including government and airlines

2008-2010 ONTARIO ASSOCIATION OF FOOD BANKS

- *Member, Board of Directors*
- *Member, Executive Committee of Board*
- *Member, Community Advisory Board*

1999-present CANADIAN LAW AND ECONOMICS ASSOCIATION

- *President (2006-2008)*
- *Vice-President (2004-2006)*
- *Secretary (2002-2004)*
- *Member of Executive (other years)*

**2003-2008 PRESIDENT'S INTERNATIONAL ADVISORY COUNCIL (PIAC),
UNIVERSITY OF TORONTO**

- *Inaugural Member*
Provided strategic advice and input to President Birgeneau, Interim President Iacobucci and President Naylor on opportunities and challenges facing the University

2001-2002 CANADIAN ASSOCIATION OF LAW TEACHERS

- *Member, Executive Committee*

1997-2002 UNIVERSITY OF TORONTO ALUMNI ASSOCIATION

- *Member, Board of Directors*
- *Chair, Special Projects Committee*
- *Member, Finance Committee*

1996-1997 LAW SCHOOL COUNCIL, HARVARD LAW SCHOOL

- *Student Representative*



SAXE LAW OFFICE
ENVIRONMENTAL LAW

Appendix B

Dianne Saxe

Phone: 416.962.5882 Fax: 416.962.8817

Email: dsaxe@envirolaw.com

248 Russell Hill Road

Toronto, Ontario M4V2T2

Friday, August 9, 2013

PRIVILEGED & CONFIDENTIAL

Prof. Poonam Puri
Puri Consulting Ltd.

Toronto, ON M5P 2P2

Dear Prof. Puri,

Our File 810-1/Baker v. Director (Ministry of the Environment)

Our firm and Rueter Scargall Bennett LLP are a team representing Neil Baker in his appeal of an Order issued by the Director of the Ministry of the Environment (MOE) to the Environmental Review Tribunal.

For the purpose of these proceedings, Mr. Baker has retained you to prepare an expert report and to give expert evidence, if required. Please make your financial arrangements directly with Mr. Baker, but please ensure that your work product is, at all times, marked *Privileged and Confidential* and addressed only to our firm and to Rueter Scargall Bennett.

BACKGROUND

Northstar Aerospace (Canada) Inc. ("Northstar Canada") formerly owned and operated an aerospace parts manufacturing plant at 569 Bishop Road, Cambridge, Ontario (the "Site"). Mr. Baker is a former director of Northstar Aerospace, Inc. ("Northstar Inc."), Northstar Canada's parent company. He held that office for 33 months from September 2009 to June 2012 (Baker Tenure). He was never an officer of any Northstar company, nor did the board of any Northstar company delegate any authority to him.¹

At the time, Northstar Inc. was publicly traded and listed on the Toronto Stock Exchange. As required by TSE rules, it issued consolidated financial statements for a group of companies that included Northstar Canada.

In 2004 and 2005, Northstar Canada had discovered and reported to the MOE the presence of Trichloroethylene ("TCE") in soil and groundwater on and off the Site. From 2005 until its bankruptcy in August 2012, Northstar Canada had performed extensive investigation, remediation and monitoring activities at the Site and in the Bishop Street Community in consultation with the MOE and local authorities. These activities are summarized in the April 4, 2013 AMEC report, provided to you.

Throughout the Baker Tenure, the consolidated financial statements included a provision for these remediation activities. The Site was not otherwise operating.

Throughout the Baker Tenure, the Northstar companies were in serious financial trouble, which worsened in early 2012. Fifth Third Bank appointed a Chief Restructuring Officer, and Northstar Inc. gave a "going

¹ There was no unanimous shareholders agreement.

concern" warning to the financial markets. Shortly afterwards, on March 15, 2012, the MOE issued Director's Order 2066-8UQP82 (the "Remediation Order") ordering Northstar Inc. and Northstar Canada to continue to clean-up the contamination. The MOE stated that it issued this Order because of its concerns about the companies' financial status.² The Remediation Order also demanded an estimate of the cost of completing the remediation.

Northstar Canada estimated total costs for 2012 to 2015 of \$5,176,453, based on Northstar staff completing a significant portion of the work. A second Director's Order was issued on May 31, 2012 (the "Financial Assurance Order") requiring Northstar Inc. and Northstar Canada to provide financial assurance in the amount of \$10,352,906 to be paid to the MOE by June 6, 2012, allegedly to ensure that the remediation activities at the Site would continue notwithstanding the financial difficulties of the Northstar companies.³ The deadline was later extended to June 20, 2012.

The financial assurance was never provided. On June 14, 2012, before the deadline for compliance with the Financial Assurance Order, Northstar Inc. and Northstar Canada obtained protection from their creditors pursuant to the *Companies' Creditors Arrangement Act* ("CCAA"), and in parallel US proceedings. All members of both boards of directors resigned, including Mr. Baker. However, Northstar Canada continued the remediation.

An initial order by Morawetz J. of the Superior Court in the CCAA Proceedings that day (the "Initial Order") granted a stay of proceedings against Northstar Inc. and Northstar Canada and the companies' former directors and officers. This stay of proceedings ultimately expired October 31, 2012.

Meanwhile, the CCAA court and the US bankruptcy court approved a stalking horse sales process with respect to all of the assets of Northstar Inc. and its affiliate companies. That process culminated in a court-approved sale of the majority of Northstar Inc. and Northstar Canada's assets to Heligear Canada Acquisition Corporation and Heligear Acquisition Co. effective August 24, 2012. The sale transaction did not include the Site.

The Canadian sale proceeds were distributed pursuant to an order by the CCAA court. The bulk of the proceeds were paid to the secured creditor group, which was still left with a significant shortfall. An MOE attempt to block the payment of the sale proceedings to the secured creditor was denied by the CCAA court; the MOE's appeal from that refusal to the Ontario Court of Appeal is pending. The MOE also filed an unsecured claim in the CCAA proceedings.

Northstar Canada was adjudged bankrupt on August 24, 2012, and Northstar Inc. was left with essentially no assets. Like all other unsecured creditors, the MOE did not receive any payment on its claim. At that point, the Northstar companies had no funds and ceased performing the remediation.

On August 15, 2012, the Minister issued a direction under s. 146 of the EPA directing the MOE to perform the work required by the Remediation Order if Northstar Canada ceased to do so. Pursuant to that direction, the MOE took over the remediation activities on the Site and the Bishop Street Community as of August 27, 2012.

On November 14, 2012, the MOE issued the Order that is the subject of Mr. Baker's appeal. The Order requires certain of Northstar Inc. and Northstar Canada's former directors and officers (the Former D&O

² "Recent financial disclosures made by Northstar have revealed there is significant doubt regarding the Corporation's ability to continue as a going concern which could impact on the environmental remediation programs"

³ Prior to the Financial Assurance Order, the MOE had never ordered or directed Northstar Canada to provide financial assurance for the remediation. In the fall of 2009, the MOE advised Northstar Canada that it was going to demand an unspecified amount of financial assurance, but then advised that it would not do so.

Group, including Mr. Baker) to pay for remediation activities at the Site and the Bishop Street Community, at an estimated cost of \$15 to \$20 million over the next ten years.

The alleged grounds for the Order may appear in the following clauses:

2.13 Northstar's publicly released Annual Reports for 2008, 2009 and 2010 estimated that the future cost of the remediation of pollution related to the Site amounted to several million dollars. Nevertheless, the funding of such future work was not secured by Northstar or Northstar Canada through a trust account or other means....

2.20 The Parties are former directors and/or officers of the companies named in the Remediation Order and as such had management and control of those companies. The Parties were directors or officers during the period from approximately 2005 to 2012 during which the results of indoor air sampling were analyzed and mitigation strategy was developed with respect to the Contamination.

2.21 As no provision has been made for the continuation of the investigations, monitoring, mitigation and remediation of the Contamination, the Parties have failed to carry out their duty and exercise their authority as a director/officer to make adequate provision to ensure implementation of the remediation strategy generally and in accordance with the obligations imposed by section 93 of the EPA as well as the Remediation Order. ...

The Environmental Review Tribunal notes, in its July 8 decision:

the undisputed fact that none of the Appellants were officers and/or directors of either corporation at the time the contaminants were initially discharged into the environment, nor did any of them personally own the Site.

FINANCIAL STATUS OF THE NORTHSTAR COMPANIES

Please assume that, during the Baker Tenure:

1. The Northstar companies were in serious financial difficulty, and twice breached their bank covenants.
2. The directors of Northstar Inc. did not:
 1. restrict or interfere with Northstar Canada's ability to pay its remediation costs as they came due;
 2. declare any dividends; or
 3. direct or approve any imprudent financial transactions that materially reduced the ability of Northstar Canada to pay for the remediation.
3. A reasonable process was used, in consultation with the environmental consultant AMEC, to determine the amount of the provision in the consolidated accounts for the remediation.
4. There was no accounting reason for the Northstar companies to have pre-funded the remediation.
5. The Northstar companies did not have the financial capacity to pre-fund the remediation, without seriously prejudicing their ability to continue to operate.
6. The Northstar companies did not have the financial capacity to comply with the financial assurance order dated May 31, 2012.

YOUR REPORT

In this context, please address the following primary questions, taking into account the specific duties and personal liabilities of corporate directors of publicly traded companies under Canadian law, the legal and economic context that affects these duties, and the public policy reasons for them:

1. Did Mr. Baker, personally, manage or control the undertaking or property of Northstar Inc., or of its subsidiaries? I.e., does a single non-executive director personally manage or control the undertaking or property of a publicly traded corporation, or of its subsidiaries?
2. What are a director's duties in allocating corporate funds to the competing stakeholders and their interests, when the corporation lacks sufficient funds to pay all claims?
3. Could Mr. Baker have lawfully required either company to pre-fund the remediation, in preference to the claims of all other stakeholders and in the absence of an express MOE requirement that they do so? If they had done so, what consequences could he expect to face?

DOCUMENTS

We have provided you with:

- The three MOE Orders;
- Annual Information Reports, downloaded from SEDAR;
- Relevant decisions in the CCAA and ERT proceedings;
- AMEC letter report, April 4, 2013.

Please feel free to refer to the SEDAR and Monitor's websites for other publicly available information. Please provide us with a list of any other documents you will require.

TIMING

If possible, please keep the main text of the report to approximately 30 pages, plus appendices. Please let us know if you can complete the report by August 22.

Many thanks,

Yours very truly,



Digitally signed by
cn=apple, o=apple, c=ca, email=apple@apple.com, serial=13443777544042
6462437563757946d134627a3974413d3d
DN:
cn=apple, o=apple, c=ca, email=apple@apple.com, serial=13443777544
6462437563757946d134627a3974413d3d
Date: 2013.08.19 11:58:42 -0500

Dianne Saxe, Ph.D. in Law
*Certified as a Specialist in Environmental Law
by the Law Society of Upper Canada*

Appendix C



Environment and Land Tribunals Ontario

- ☒ Environmental Review Tribunal
☐ Niagara Escarpment Hearing Office
☐ Office of Consolidated Hearings

Acknowledgement of Expert's Duty

Case Name
and No.:

1. My name is Poonam Puri (name). I live at Toronto (city) in the Province (province/state) of Ontario (name of province/state).
2. I have been engaged by or on behalf of Mr. Neil Baker (name of party/parties) to provide evidence in relation to the above-noted proceeding.
3. I acknowledge that it is my duty to provide evidence in relation to this proceeding as follows:
 - (a) to provide opinion evidence that is fair, objective and non-partisan;
 - (b) to provide opinion evidence that is related only to matters that are within my area of expertise;
 - (c) to provide opinion evidence in accordance with the Environmental Review Tribunal's Practice Direction for Technical and Opinion Evidence; and
 - (d) to provide such additional assistance as the tribunal may reasonably require, to determine a matter in issue.
4. I acknowledge that the duty referred to above prevails over any obligation which I may owe to any party by whom or on whose behalf I am engaged.

Date

September 25, 2013

Puri
Signature

Appendix D

Annual Information Forms

1. Northstar Aerospace, Inc. Annual Information Form (AIF) for the year ended December 31, 2009.
2. Northstar Aerospace, Inc. Annual Information Form (AIF) for year ended December 31, 2010.

Notices of Meetings

3. Northstar Aerospace, Inc. Notice of Annual General Meeting of Shareholders to be held on June 23, 2009 and Management Information Circular.
4. Northstar Aerospace, Inc. Notice of Annual and Special Meeting of Shareholders to be held on May 26, 2010 and Management Information Circular.
5. Northstar Aerospace, Inc. Notice of Annual Meeting of Shareholders to be held on June 9, 2011 and Management Information Circular.

Press Releases

6. Northstar Aerospace, Inc., Press Release, "Northstar Aerospace, Inc. to Evaluate Strategic Alternatives" (November 15, 2010).
7. Northstar Aerospace, Inc. Press Release, "Northstar Announces Notice Received Under Customer Contract and Financial Update" (29 January 2012).
8. Northstar Aerospace, Inc. Press Release "Northstar Announces Organizational Changes" (February 8, 2012).
9. Northstar Aerospace, Inc. Press Release, "Northstar Aerospace announces extension of forbearance agreement" (14 May 2012).
10. Northstar Aerospace, Inc. Press Release, "Northstar Provides Update Regarding Ongoing Environmental Matter" (June 1, 2012)

Other Public Securities Disclosure

11. Northstar Aerospace, Inc., "Form 51-102F3: Material Change Report" (8 February 2012)

Financial Statements

12. Northstar Aerospace, Inc. Annual Consolidated Financial Statements (as at December 31, 2009 and 2008 and for the years ending December 31, 2009, 2008 and 2007)
13. Northstar Aerospace, Inc. Annual Consolidated Financial Statements (as at December 31, 2010 and 2009 and for the years ended December 31, 2010, 2009 and 2008).

Management Discussion and Analysis

14. Northstar Aerospace, Inc. MD&A (for year ended December 31, 2009).
15. Northstar Aerospace, Inc. MD&A (for year ended December 31, 2010).

Website Links Lists

16. "TSX Issuers Dec 2011" at
http://tmx.com/en/pdf/mig/TSX_TSXV_Listed/TSX_TSXV_li_201112.xls
17. "TSX Delisting Review - Northstar Aerospace, Inc." (accessed at
http://tmx.com/en/news_events/exchange_bulletins/bulletins/4-26-2012_TSX-ReviewNAS.html)
18. Ernst & Young Monitor's Website re
Northstar:<http://documentcentre.eycan.com/Pages/Main.aspx?SID=248>.

Articles, Reports and Guidelines

19. American Bar Association, "Managing Closely Held Corporations: A Legal Guidebook" (2003) 58:3 The Business Lawyer.
20. Douglas M Branson, "The Rule That Isn't a Rule—The Business Judgement Rule" (2002) 36:3 Valparaiso University Law Review 631
21. Kenneth B. Davis, Jr., "Once More, The Business Judgement Rule" (2000) Wis L Rev 573.
22. Bernard S. Black, Brian R. Cheffins & Michael Klausner, "Outside Director Liability: A Policy Analysis (2006) 162 Journal of Institutional and Theoretical Economics 5.
23. Canadian Coalition for Good Government, *Building High Performance Boards* (Toronto, March 2010)
24. Canadian Coalition for Good Government, *Building High Performance Boards* (Toronto, August 2013)
25. Canadian Coalition for Good Governance, *Policy on Director Compensation* (Toronto: February 2011)
26. Joint Committee on Corporate Governance, *Beyond Compliance: Building a Governance Culture* (Toronto, November 2001)
27. Ronald J. Daniels. "Must Boards Go Overboard? An Economic Analysis of the Effects of Burgeoning Statutory Liability on the Role of Directors in Corporate Governance" (1994) 24 Canadian Business Law Journal 229.
28. E. M. Iacobucci, "Directors' Duties in Insolvency: Clarifying What Is at Stake" (2003), 39 Can. Bus. L.J. 398.
29. Stephen L. Schwarcz, "The Easy Case for the Priority of Secured Claims in Bankruptcy" (1997) 47:3 Duke Law Journal 425.
30. Toronto Stock Exchange Committee on Corporate Governance in Canada, *Where Were the Directors? Guidelines for Improved Corporate Governance in Canada* [Toronto, December 1994].

Judicial Decisions

31. Morawetz J. Endorsement, dated July 30, 2012, re Northstar
32. Morawetz J. Initial Order, dated June 14, 2012, re Northstar
33. *BCE Inc. v 1976 Debentureholders*, [2008] 3 S.C.R. 560, 2008 SCC 69.
34. *Budd v Gentra Inc.* (1998) 43 BLR (2d) 27 (Ont CA).
35. *Canadian Aero Service Ltd. v O'Malley*, [1974] S.C.R. 592.
36. *Maple Leaf Foods Inc. v Schneider Corp.* (1998), 42 O.R. (3d) 177 (C.A.).
37. *Newfoundland and Labrador v. AbitibiBowater Inc.*, 2012 SCC 67.
38. *Peoples v Wise*, [2004] 3 S.C.R. 461.
39. *Salomon v A Salomon & Co Ltd* [1897] AC 22.
40. *Soper v Canada* [1997] FCJ No 881 (Federal Court).

Documents relating to CCAA Proceedings

41. Affidavit of Craig A. Yuen at 22 in Pre-Filing Report of Ernst & Young, the Proposed Monitor, dated June 14, 2012.

Correspondence

44. Saxe letter to Puri dated August 9, 2013

Legislation, Regulation and Policy Instruments

42. *Business Corporations Act*, RSO 1990, Chapter B.16
43. *Companies' Creditors Arrangement Act*, RSC 1985, c C-36
44. *Bankruptcy and Insolvency Act*, RSC 1985, c B-3
45. *Income Tax Act*, RSC 1985 c 1 (5th Supp)
46. *Assignments and Preferences Act*, RSO 1990, c A33,
47. *Securities Act*, RSO 1990, c.S.5
48. *Corporate Governance Guidelines*, National Policy 58-201 (17 June 2005), Part 3.
49. *Audit Committees*, National Instrument 52-110, Part 1.4

