



THE CANADIAN
BAR ASSOCIATION

CBA BUSINESS LAW CONFERENCE

November 2-3, 2017 | Toronto (ON)

Thursday, November 2, 2017

19:00 - 21:00 OPENING COCKTAIL RECEPTION sponsored by Thomson Reuters

Friday, November 3, 2017

8:30 - 9:00 REGISTRATION AND BREAKFAST

9:00 - 9:15 WELCOME REMARKS

9:15 - 10:30 Current Practice Trends in Canadian Private M&A Agreements (1.25 substantive hours)

Moderator: **Lydia Salvi**, Canadian Bar Association – Business Law Executive
(Toronto, ON)

Panelists: **Wayne Gray**, Practical Law Canada (Toronto, ON)
 John Mackie, Practical Law Canada (Toronto, ON)
 Paul Singh, Blake, Cassels & Graydon (Toronto, ON)

This panel will discuss current trends and developments in Canadian private M&A based on Practical Law Canada's 2017 Report: *What's Market: Legal Trends in Canadian Private M&A*. Gain insights into Practical Law's *What's Market* for real time information relating to key provisions in acquisition agreements, including purchase price adjustments, earn outs, representations and warranties and indemnification provisions.

10:30 – 10:45 REFRESHMENT BREAK

10:45 – 12:00 Earn Outs: a Tool to Bridge the Value Gap or a Trap for the Unwary (1.25 substantive hours)

Moderator: **Trevor Scott**, Osler, Hoskin & Harcourt LLP (Vancouver, BC)

Panelists: **Michael Horwitz**, Torys LLP (New York, NY)
 Vimal Kotecha (CBV), Richter LLP (Toronto, ON)
 Arlene O'Neill, Gardiner Roberts LLP (Toronto, ON)

When there are valuation differences between the buyer and seller of a business, an earn-out is often used to bridge that gap. An earn-out will require the buyer to pay an additional purchase price if the business achieves predefined goals. However earn-outs are complicated to negotiate and to draft because they raise a multitude of questions.

Who will run the business post-closing? Will the purchaser make the necessary investments in the business? What assurances are there that the buyer will do what needs to be done to maximize the earn-out provision and will not divert opportunities to its other business? What if the business is sold? These questions and others will be discussed by the panelists.

12:00 - 14:00 LUNCHEON | KEYNOTE SPEAKER (*1 EPPM hour – speaker's address will be 1 hour*)
The Future of Automation in M&A Transactions (Ethical and Practice Management Issues)

Speaker: **Andrew Arruda, CEO and Co-Founder of ROSS Intelligence**

Moderator: **Samer Awadh, MLT Aikins LLP (Regina, Saskatchewan)**

Panelists: **Randy Brunet, MLT Aikins LLP (Regina, Saskatchewan)**
 Robert Skanes, iManage (Toronto, ON)

Mr. Arruda will discuss the transition in the legal practice in the electronic and technological world and how artificial intelligence, automation and other advancements will impact lawyers, business and the legal business. The discussion will address ethical and practice management issues arising in an increasingly paperless practice that requires fewer lawyers.

14:00 - 14:45 Recent Key Court Decisions Arising From Disputes Involving M&A Transactions (*0.75 substantive hours*)

Moderator: **Neill May, Goodmans LLP (Toronto, ON)**

Panelists: **Paul A.D. Mingay, Borden Ladner Gervais LLP (Toronto, ON)**
 Brian M. Pukier, Stikeman LLP (Toronto, ON)

This panel will discuss recent key court decisions and their potential impact to M&A transactions.

14:45 - 15:30 Top Tax Developments Every Business Lawyer Should Know (*0.75 substantive hours*)

Moderator: **Robert de Guzman, Canadian Bar Association – Business Law Executive (Edmonton, AB)**

Panelists: **Mark Woltersdorf, Dentons Canada LLP (Edmonton, AB)**
 To be announced, Dentons Canada LLP (Toronto, ON)

This panel will explore recent and proposed changes to the Income Tax Act that every business lawyer should know, particularly as it relates to M&A transactions.

15:30 - 15:45 REFRESHMENT BREAK

15:45 – 16:30 Protecting and Leveraging Intellectual Property for an M&A Transaction (0.75 substantive hours)

Speaker: **Robert Cowan, McInnes Cooper** (*Halifax, NS*)

The ability to attract Angel investors, venture capital investors and other investment opportunities may greatly depend on how wisely the business has protected its intellectual property rights. The ability to package and sell these assets exclusively to a buyer is also critical to the succession and value of many businesses. This session will look at the importance of properly identifying and defining the IP assets of a business, as well as the necessary steps taken to protect these valuable assets. The session will also look at how a business may leverage these assets as security and the treatment of these assets in an M&A transaction. The due diligence that the acquiring party will undertake to ensure that it is receiving a good and enforceable interest in the IP assets, as well as the steps necessary to properly enforce security involving IP assets, will also be addressed.

16:30 - 16:45 CLOSING REMARKS