



## **Good Deal Gone Bad**

Presented by the Real Estate Group of Fasken Martineau

Vancouver, British Columbia

November 6, 2008

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The Real Estate Group of Fasken Martineau, Vancouver presents a complimentary seminar:

## Good Deal Gone Bad

The real estate market in British Columbia is softening. As a result, you may find yourself faced with a buyer or tenant in default or threatening to default. Perhaps you are a buyer or tenant looking to minimize your downstream risk of default. This panel discussion will provide you with legal and practical strategies for today's market.

### **Agenda items include:**

#### *Seller/Buyer*

- What's Enforceable and What Isn't - Avoiding common pitfalls
- Escaping the Deal - Conditions precedent, closing conditions and rights of rescission
- "Ready, Willing and Able" - What's involved and why it's important
- Remedies - Who gets the deposit, damages and specific performance

#### *Landlord/Tenant*

- "Bullet Proofing" the Offer and Lease
- Practical Considerations - Timing of possession, the midnight move
- Remedies - Distress, termination, guarantees and damages
- Strategies for Improving the Tenant's Position

## Real Estate. Real Results.

One of the largest in Canada, Fasken Martineau's Real Estate Group includes more than 60 lawyers, with teams located in each of the major cities across Canada.

We have the experience and capacity to take on simple to the most sophisticated transactions in today's marketplace. As many members of the group have worked in-house for real estate industry players, we also bring forth unique business knowledge of clients' concerns and challenges.

Our work encompasses all areas of real estate and property law, including providing legal advice on purchases and sales, leasing and property management, financing, sale and lease-backs, joint ventures, co-ownerships and development.

We act on behalf of major real estate players in the public and private sectors in the purchase or sale of everything from raw land to trans-provincial or trans-national real estate portfolios. These transactions may have one or more residential, office, retail or industrial components or specific industry sectors, such as hotels, entertainment complexes, harbour front developments, pipelines, railways and energy transportation equipment, etc.

We have been involved in some of the major residential and office complexes, shopping centers and power centers and industrial park development projects throughout Canada. Our leasing lawyers act for both landlords and tenants, and provide unique, tailor-made transactions involving flagship locations. With a strong financing practice we also represent high-profile financial institutions, and other lenders and borrowers, and have significant experience in all current real estate structures, including real estate investment trusts (REITS), sale and leaseback transactions and public-private partnerships.

We work closely with other practice groups of the firm, such as litigation, environmental, municipal and taxation, in order to provide a broad-based service to the real estate industry.

## Client Successes

Real Estate transactions in which we have been involved in Western Canada include:

### Acquisitions/Dispositions

- Acted for purchaser of prime commercial tenanted property in Vancouver
- Acted for pension fund purchaser in acquisition of large retail mall in British Columbia (B.C.)
- Representing developer of mixed use commercial and residential development in northern B.C., including subdivision, disclosure statement, dispositions of commercial property and financing
- Representing developer in acquisition and development of high density mixed use development involving the creation of air space parcels and the development of more than 1000 residential units and over 120,000 square feet of commercial and retail space
- Represented purchaser of land for development across B.C., including Mission, Vancouver, Langley, Maple Ridge and Duncan
- Representing developer in the acquisition, financing, environmental remediation and development of commercial and industrial business parks within Greater Vancouver Act for the owner of health oriented commercial buildings in Vancouver including in connection with acquisition and due diligence, bond financing and leasing
- Acted for an offshore investor in the acquisition of a landmark performing arts theatre facility including corporate structure and tax planning, Investment Canada and other regulatory filings and approvals for foreign ownership, leasing and other operational agreements
- Acted for Vendors in the cross-border sale of an information technology business to a U.S. investment fund portfolio company
- Represented an overseas group of venturers in matters that included legal due diligence review in the proposed purchase of a major shopping centre in Vancouver, as well as a review of office and retail leases, investigation of development and regulatory compliance matters
- Represented a diplomatic office of an Asian country responsible for Western Canada, and assisting with its proposed development and construction of a cultural centre including land acquisition, rezoning, development approval and construction tendering

- Acted for a group of over 300 investors from Asia, including Hong Kong, Taiwan, Russia, Philippines, India and the Middle East, and their disposition of a major real estate asset in Saskatchewan
- Act for a major landowner and developer in the Okanagan with a portfolio of commercial and industrial assets and provide services relating to leasing, financing and acquisition. Notable transactions include:
  - Negotiating a long term build-to-suit major distribution centre for a US based multinational beverage company
  - Complete long term financing with several major life insurance companies for portfolio of regional shopping centres and office buildings
- Acquisition of airport oriented land and construction of industrial and office buildings for airport related service providers

### **Financing**

- Acted for a chartered bank on numerous real estate developments in the Greater Vancouver area
- Acted for a chartered bank on an acquisition/renovation financing of a shopping centre
- Acted for a chartered bank on a \$50 million operating line secured by numerous commercial rental properties

### **Leasing Matters - Landlord category**

- Act for landlord of industrial and commercial business properties in Greater Vancouver, preparing standard form leases, offers to lease and build to suit leases and negotiating lease agreements for significant tenancies
- Preparing and negotiating leases for landlord of retail properties in downtown Vancouver
- Acted for a major private landowner and developer in British Columbia in negotiation of pre-construction leases with multinational anchor tenants

### **Disputes**

- Acted for a management corporation in its bid for a lawful City permit related to a parcel of land it owned
- Represented and acted as co-counsel at trial for the purchaser of a new, but overheated and uninhabitable, condominium in an action against a developer

## Firm Profile

Fasken Martineau is a leading international business law and litigation firm with more than 650 lawyers. The firm has offices in Vancouver, Calgary, Toronto, Ottawa, Montréal, Québec City, London and Johannesburg.

As a full service law firm, Fasken Martineau provides strategic advice in virtually all areas of business law to a broad range of clients including more than half of the Fortune 100 companies, major corporations, government agencies, regulatory and non-profit bodies and individual clients. The firm also has expertise in both of Canada's legal systems, common law and civil law, in both English and French.

Recognized in *The International Who's Who of Business Lawyers* in 2005/6/7/8 as the #1 firm worldwide in mining law, Fasken Martineau is also acknowledged in *Euromoney's Guide to the World's Leading Environment Lawyers* as the top firm in Canada in environmental law. The prestigious *Best Lawyers in Canada* 2008 directory lists 79 of the firm's lawyers as experts in various areas of practice. *Bloomberg's* 2007 Global Mergers & Acquisitions Advisory Rankings ranked Fasken Martineau, among its Canadian peers, as #1 for cross-border M&A, #1 for European deals and #1 for UK deals (by value). Our lawyers served as counsel in four of the top ten business cases considered by *Lexpert* to have made the most significant and wide-ranging impact on the business community in 2007. Additionally, we have defended clients in more than 100 class actions representing the majority of significant cases in Canada.

Fasken Martineau is consistently distinguished in the *Canadian Legal Lexpert Directory*, the *Chamber's Global Guide to the World's Leading Lawyers*, and the *International Financial Law Review's Guide to the World's Leading Financial Law Firms*.



# Good Deal Gone Bad

The Vancouver Real Estate Group  
November 6, 2008



# **Seller/Buyer Legal Issues for a Changing Market**

Ian Cassie



## Have You Got A Contract ...?

- ① Basic elements
  - ① Parties, property, price
  - ① Writing, execution, delivery
- ① Informal deals - MOUs, LOIs, exchanges of correspondence
- ① Subject deals - Do they provide a complete out?
- ① Complicated deals - Sweat the details
- ① Phantom deals - Did you qualify your purchaser?



## The Assurance Trap

- ⦿ The general rule – buyer beware
- ⦿ Representations – “Any oil tanks in the parking lot?”
- ⦿ Half truths – “The trees haven’t died”
- ⦿ Innocent misrepresentations - what you don’t know can hurt you
- ⦿ Your agent – speaks for you
- ⦿ Play defense – exclusion clauses



## Can You Perform?

- ⦿ Face Off at Closing – Ready willing and able
- ⦿ Title – Discharge of mortgages and other financial encumbrances
- ⦿ Physical Condition - Property as promised
- ⦿ Repudiation before closing date



# Litigation

Simon Coval



## Must I Negotiate in Good Faith?

- ④ Key Practical Point:
  - ④ You can be a tough, cagey negotiator but no misrepresentations or deceit



## What Are My Obligations On Shared Opportunities?

- ⑥ Key Practical Point:
  - ⑥ Confidential information and non-competition obligations make this a danger zone. Get the obligations in writing.



## Will My Deal Stand Up In Court?

- ④ Key Practical Points:
  - ④ You can control whether legally binding or not.
  - ④ If deal is complex, get advice on closing off key aspects.
  - ④ If relying on a subject, do so properly.



## What Are My Remedies?

- ④ Key Practical Points:
  - ④ Within limits can be controlled by agreement.
  - ④ Good documents get you through court faster and cheaper.



# Landlord/Tenant Legal Issues For A Changing Market

Jim Piers



## Introduction

- ④ Offers
- ④ Lease Terms that help a Landlord
- ④ Lease Terms that help a Tenant
- ④ Settlements/Workouts
- ④ Practical Considerations



## Offers to Lease

- ⦿ Are Offers to Lease Enforceable?
  - ⦿ Generally yes, word “Offer” not determinative
  - ⦿ Look for essential terms - parties, leased space, term, rent
- ⦿ What is a Letter of Intent?
  - ⦿ Non binding, not a legal contract
  - ⦿ Obligations to negotiate
- ⦿ What a Landlord Wants:
  - ⦿ Short, material business terms only, no reps and warranties
  - ⦿ Incorporate standard form lease
  - ⦿ Tenant builds TIs, no landlord reimbursement until complete
  - ⦿ Subject/conditions, concise and precise
  - ⦿ Know your tenant, guarantor, extra due diligence



## Offers to Lease Cont'd

### ⦿ What a Tenant Wants

- ⦿ If no tenant standard lease, include all terms - business and legal
- ⦿ Shorter term, more renewal rights, termination rights, downsizing, expansion
- ⦿ Reps and warranties, e.g. use/zoning, condition of building
- ⦿ Lease not to include e.g. - restoration, relocation, terms personal to tenant only, non-controllable defaults, unreasonable liability and indemnity terms (landlord negligence)
- ⦿ Lease to include e.g., – cap on controllable op costs, assignment/sublet rights, registration, non disturbance



## Lease Terms that Help a Landlord

- ④ Financial
  - ④ Post-dated cheques/auto debit rent, security deposits (with top up)
  - ④ Guarantees (new lease if default)
  - ④ Letters of credit (rules, location)
  - ④ Unamortized TIs payable on default, transfers or destruction
  - ④ If landlord builds TIs
- ④ Building/Space
  - ④ Relocation, restoration (e.g. special TIs e.g. wiring, HVAC, etc.)
  - ④ Use/zoning, operating covenant & tenant mix (retail)
  - ④ Restrict future TIs, redecoration
  - ④ Control changes to building/development



## Lease Terms that Help a Landlord Cont'd

- ⦿ Rights and Remedies
  - ⦿ Personal rights to tenant, e.g. renewals, expansion, downsizing, signage, storage
  - ⦿ Auto termination on financial defaults
  - ⦿ Admin charges plus interest
  - ⦿ Limit recourse against landlord



## Lease Terms that Help a Tenant

### ④ Flexibility

- ④ As per Offer, expansion, short terms, more renewals, downsizing, termination
- ④ Assignment/sublet to affiliates, franchisees, purchasers
- ④ Licences for concessions, outsourcing
- ④ No termination & new terms on assignments/sublets
- ④ No restrictions on transferring, renewals, expansion, downsizing, signage, storage, etc. rights
- ④ Rights and remedies – times to remedy, limit distress – no non controllable defaults



## Lease Terms that help a Tenant cont'd

- ④ Financial
  - ④ No auto debit of rent
  - ④ Limit controllable op costs
  - ④ Office – limit gross up
  - ④ Retail – no subsidization of other tenants
  - ④ Rent for renewals – CPI, define market (value TIs)
  - ④ Remedy landlord defaults
  - ④ Limit liability of guarantors
  - ④ Limit deposit and other security
- ④ Building/Space
  - ④ Rep & warranty re: use and condition
  - ④ Disclose environmental conditions (e.g. asbestos, mold)
  - ④ No relocation, no restoration



## Settlements/Workouts

- ⦿ Lawyer Drafted Agreement
  - ⦿ Concise and precise – devil in the details
  - ⦿ Establishes rent in arrears plus interest & payment plan
  - ⦿ May contain new rent, new space, use considerations
  - ⦿ Includes waiver rights and remedies e.g. no right to forfeiture
- ⦿ Promissory Note
  - ⦿ Treats rent and additional rent in arrears as a liquidated debt – easier to get a judgment



## Practical Considerations

- ④ Drafting tip for tenant – Ensure lease terms mirror offer
- ④ Landlord – No possession until lease signed, fixturing completed and tenant open for business
- ④ Use dates; not number of days
- ④ Keep record of defaults – no matter how minor



## Lease Disputes In A Falling Market

Simon Coval



## Termination

- ④ Key Landlord Points:
  - ④ Termination is efficient
  - ④ Do it yourself only if right is clear
- ④ Key Tenant Points:
  - ④ Fix it ASAP



## Distress

- ⦿ Key Landlord Point:
  - ⦿ Uncertainty and risk may trump value
- ⦿ Key Tenant Point:
  - ⦿ Beware of double damages and non-tenant liability



# Insolvency

Kibben Jackson



## Agreements of Purchase and Sale in the Context of Insolvency Proceedings

- ⦿ Breach or termination by the party or their trustee or receiver
- ⦿ Right of counter-party to compel completion



## Prior to Insolvency Proceedings

- ⦿ Prior to commencement of insolvency proceedings
  - ⦿ Consider terminating the lease
  - ⦿ Distraint may trigger formal insolvency proceedings
- ⦿ Moral: Distraint may well result in continued occupation and less recovery



## Bankruptcy Proceedings

- ⦿ Trustee may occupy the premises for three months before assigning, abandoning or affirming the lease
  - ⦿ Trustee must pay rent for each day in occupation
  - ⦿ Trustee need not pay arrears of rent
- ⦿ Trustee may assign the lease over the objection of the landlord
  - ⦿ Assignee need not pay arrears of rent



## Bankruptcy Proceedings cont'd

- ⦿ Landlord has a preferred claim for three months' arrears of rent and three months' accelerated rent up to the value of the property on the premises at the time of bankruptcy less any rent paid during the trustee's occupation
- ⦿ Actions:
  - (i) wait to learn of trustee's decision;
  - (ii) decide whether to contest assignment; and
  - (iii) file proof of claim



## Receivers

- ④ Private Receivers
  - ④ The receiver has no greater rights than the tenant
- ④ Court – Appointed Receivers
  - ④ Receiver will have right to occupy for a reasonable period of time
    - ④ Receiver must pay rent in accordance with lease after date of appointment
    - ④ Receiver need not pay arrears of rent
  - ④ Usually a bankruptcy at the same time (to assign leases)
  - ④ Receiver will generally pick and choose which leases to terminate, which to adopt and assign
- ④ Actions: If termination is preferable, apply to court early



## ***Companies' Creditors Arrangement Act Proceedings***

- ⦿ Tenant may remain in occupation indefinitely
  - ⦿ Tenant must pay rent in accordance with lease after date of commencement of proceedings
  - ⦿ Tenant need not pay arrears of rent
- ⦿ Tenant can pick and choose which leases to terminate
- ⦿ Tenant may be able to assign the lease over the objection of the landlord
- ⦿ Potential of liquidations of inventory at premises



# Top Ten Take-Away Points

Allison MacInnis



## Top Ten Take-Away Points

1. Vendors & purchasers – keep contract formation rules in mind – avoid easy outs.
2. Vendors – qualify your buyer.
3. Vendors – be careful what you say about your properties.
4. Vendors & purchasers – you can be a tough cagey negotiator but no misrepresentations or deceit.
5. Vendors & purchasers – good documents get you through Court faster and cheaper.



## Top Ten Take-Away Points

6. Landlords – know your tenant.
7. Tenants – for that next lease, now is the time to create your wish list of do's and don'ts to go in the offer.
8. Landlords & Tenants – review your standard offers to lease and leases; if they are going to be challenged, it is very likely to be in this market.
9. Landlords – terminate and take back yourself only if clear right in lease.
10. Landlords – where tenant insolvent, consider options early in process; may have better remedies.



## Questions?

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## Biographies

Ian Cassie

Jim Piers

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## **Ian Cassie**

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Ian Cassie is the senior member of the Real Estate Practice Group in Vancouver.

Ian provides practical, timely advice on a broad range of real estate issues – land use approvals, acquisitions, dispositions, leasing, rights of way and other less than fee simple rights, ownership disputes, liability concerns.

Ian advises clients in B.C.'s core business including:

- Transportation – rights of way, including regulatory issues;
- Mining – ownership of minerals, rights of way, surface use;
- Forestry - ownership of timber, rights of way, use by other industrial users; and,
- Real Estate development – land use approvals, acquisitions, dispositions, leasing.

### **Areas of Practice**

Mining - Global Mining

Municipal Law

Real Estate

Transportation

### **Education**

LL.B., 1979  
The University of British  
Columbia

### **Called to the Bar**

British Columbia, 1980

### **Representative Experience**

- Advised the syndicate of senior secured lenders led by TPG Credit Management
- Advised Jung Development Inc. arrange \$220 million construction financing
- Represented a mining company on the \$3.5 million sale of remote company town in Northern B.C.
- Provided advice to Cement Manufacturer and Submission to the Province on ownership of limestone on fee simple lands.

- Represented a pension fund in the \$86 million purchase of a major regional shopping center
- Develop Document Package for successful sale of municipally owned land by competitive offer process.
- Develop Document Package for successful sale of \$22 million 40-Acre Single and Multi-Family Residential Development Site by competitive offer process.
- Document Development Approvals for major residential precincts and major local sports facility in Downtown Vancouver.
- Document Development Approvals for former B.C. Packer's site in Steveston, B.C.

#### **Presentations**

- Good Deal Gone Bad, Fasken Martineau Real Estate Group Seminar, November 6, 2008
- Lorman Education Services - Easements, Covenants and Similar Rights in British Columbia, May 18, 2006
- Subdivision in British Columbia, UBC Law School, Development Law Course (Winter 2006)

#### **Publications**

- "Mineral Rights in British Columbia - An Overview", by Ian Cassie, April 2004
- "New Strata Property Act Comes Into Effect in B.C. on July 1, 2000", Municipal Law Bulletin by Ian Cassie, June 2000

#### **Memberships and Affiliations**

- ICSC – International Council of Shopping Centres
- NAIOP – National Association of Industrial & Office Properties



## **James D. Piers**

**Partner**

### **Vancouver**

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Jim Piers, partner, is a member of both the Real Estate and Communications Practice Groups. His real estate practice includes land acquisition, development and assembly, commercial leasing, property management and business acquisitions with major real estate components.

From 1974 to 1978, Jim held various positions, including Secretary and Legal Counsel for a broad-based transportation company. One of his responsibilities was to create a database of its land holdings and to develop and/or dispose of non-core land assets.

He is former Chair of the Real Property Section of the Canadian Bar Association (BC Branch), a former Director of the Canadian Bar Insurance Association and has served on Bar committees and Real Estate Industry committees. He is a lecturer and panelist on real estate, including leasing and property management.

### **Representative Experience**

- Advised Hyatt Equities, LLC Standard Life complete \$122 million mortgage refinancing of Royal Centre in Vancouver
- Advised Kennametal Ltd. in its acquisition of Camco Cutting Tools and Advanced Powder Fusion (Camco Group) of Kelowna, British Columbia.
- Advised Stella-Jones Inc., a leading North American producer and marketer of industrial treated wood products, in its completed acquisition, through a wholly-owned subsidiary, of substantially all of the assets and operations of Bell Pole Company.
- Advised KPMG Inc. in the sale of the Celgar pulp mill and its related assets to Mercer International Inc.

### **Areas of Practice**

Communications

Corporate / Commercial

Real Estate

### **Education**

B.A., 1969  
University of Victoria

LL.B., 1973  
The University of British  
Columbia

### **Called to the Bar**

British Columbia, 1974

- Negotiate and settle major call centre leases, including JPMorgan Chase's Call Center in Burnaby, BC
- Acted for a major automotive manufacturer on the development of a new major parts distribution centre and land assembly for a new dealership
- Prepared standard agreements for the placement of telecommunications/broadcasting equipment and facilities on land and within buildings
- Represented office building owners including preparing standard lease and property management forms
- Regularly advise users of land such as long term tenants and purchasers on land use and land development issues, including negotiating and settling land use agreements with local governments
- Acted for a major retailer on a land exchange with the owners of Pacific Centre, for purposes of developing Pacific Centre North
- Acted for the owners of Georgia Hotel, including advising on various development scenarios
- Acted for developers of residential and commercial condominium projects, including one of the earliest Airspace Parcel projects on leased land from the City of Vancouver (South Shore False Creek)
- Acted for CN on its multi-modal transportation development of its Station Street, Vancouver, Terminal, which included future residential
- Advises on land use for telecommunications/broadcasting purposes, including zoning, development and building permits
- Acted on the acquisition and sale of office buildings and retail complexes, including Metrotower I, Burnaby, BC
- Acted in Private Partnership Transactions, including the Royal BC Museum Large Screen IMAX Theatre Development and the new Recreational Ice Rink Facility in Victoria

### **Presentations**

- Good Deal Gone Bad, Fasken Martineau Real Estate Group Seminar, November 6, 2008
- Two points of view - Common Law vs Civil Law: Changes to the common areas - Balancing the landlord's need for flexibility and the tenant's

expectation of status quo, 2007 ICSC Canadian shopping centre law conference, March 2007

- Assignment and Subletting of Leases, International Council of Shopping Centers Law Conference
- Preparing and Completing Telecommunications Leases and Rights of Way, 2003, 2005
- Breakfast Round Table, International Council of Shopping Centers Law Conference, 2004, 2007

### **Publications**

- "Two points of view - Common Law vs Civil Law: Changes to the common areas - Balancing the landlord's need for flexibility and the tenant's expectation of status quo", by Stéphanie Beauregard and Jim Piers, March 1, 2007
- "Pro-Tenant, Stand Alone Commercial Lease", by James D. Piers, 2006
- "Canadian Telecom Policy Review Panel Report", Communications Law Bulletin by Donald M. Dalik, James D. Piers, Barbara Miller and Francis Fox, P.C., Q.C., March 2006
- "Recent Trends in Leasing and Property Management", by James D. Piers, October 2004
- "Voice Over Internet Protocol (VoIP)", Communications Bulletin by Jim Piers, Barbara Miller, Jean Francois Hebert, August 2004

### **Memberships and Affiliations**

- International Council of Shopping Centers (ICSC)
- National Association of Industrial and Office Properties (NAIOP)
- Former Committee Member, Building Owners and Managers Association (BOMA)
- Law Society of British Columbia
- Canadian Bar Association Vancouver Board of Trade



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Allison MacInnis is a partner in the Real Estate Group. Her practice is focused on all aspects of real estate development, commercial property acquisitions and commercial leasing. She acts for developers in commercial, residential and industrial properties and advises on the development approval and subdivision process in municipalities across British Columbia. She represents both landlords and tenants in a variety of commercial leasing transactions, including ground leases and other special leasing or licensing arrangements. She has negotiated various land and rights exchanges through statutory rights of way and other legal agreements.

Allison for several years has been an adjunct professor at The University of British Columbia, teaching an advanced seminar in Commercial Real Estate Development. Prior to joining the firm, Allison clerked at the British Columbia Court of Appeal.

### **Areas of Practice**

Real Estate

### **Education**

Bachelor of Commerce,  
(Honours), 1994  
The University of British  
Columbia

Bachelor of Laws, 1997  
The University of British  
Columbia

### **Called to the Bar**

British Columbia, 1998

### **Representative Experience**

- Advised Riverside Golf Resort in its sale to Ken Fowler Enterprises
- Advised developer of mixed use strata project arrange for \$220 million construction financing
- Advised Fairmont Hot Springs Resort in the sale to Ken Fowler Enterprises
- Advised developers on complex municipal issues and development approvals
- Represented a transportation company on complex land and rights exchange with a public transportation authority
- Represented a vendor on major asset transaction involving transfer of land and assets requiring competition approval

- Acted for a Canadian pension fund in the acquisition of a large retail mall
- Acted for both landlords and tenants on a variety of commercial leasing transactions of office, industrial and retail space
- Advised on the development of auto malls including subdivision, development approvals and dealer relations
- Represented a developer on series of single family and multi-family residential developments in lower mainland

### **Presentations**

- Good Deal Gone Bad, Fasken Martineau Real Estate Group Seminar, November 6, 2008
- Drafting and Land Title Office Issues, November 2007
- Lorman Education Services - Easements, Covenants and Similar Rights in British Columbia, May 18, 2006
- Easements, Covenants and Similar Rights in British Columbia - An Overview, Easements Seminar, Lorman Education Services, April 3, 2005
- Real Estate Development Seminar, University of British Columbia, ongoing

### **Publications**

- "Easements, Covenants and Similar Rights in British Columbia - An Overview", by David W. Little, Allison MacInnis & Michelle Mullen, May 2004
- "Drafting and Land Title Office Issues", by Allison MacInnis, November 2007

### **Memberships and Affiliations**

- Vancouver Commercial Real Estate Women ("CREW")
- Real Property Section, Canadian Bar Association
- NAIOP, National Association of Industrial and Office Properties



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### **Areas of Practice**

Litigation and Dispute  
Resolution

Alternative Dispute  
Resolution

Real Estate

### **Education**

B.A., 1984  
The University of British  
Columbia

LL.B., 1987  
University of Toronto

D. Phil., 1992  
University of Oxford

### **Called to the Bar**

British Columbia, 1993

Simon Coval, partner, is the Manager of the Vancouver Commercial Litigation and Dispute Resolution Group. A frequent lecturer and instructor on commercial litigation, his broad commercial practice has a particular focus on business disputes involving contracts, economic torts, real estate, commercial leases, companies and partnerships, civil fraud and white-collar crime, and injunctions.

Simon is rated "high to very high legal ability" by the Martindale-Hubbell legal rating service.

Prior to joining the firm, Simon clerked for The Honourable Chief Justice McEachern and The Honourable Mr. Justice Cumming at the Court of Appeal of British Columbia.

### **Representative Experience**

- Advised 90 Degree Software Inc. in its sale to Microsoft
- Advised Extreme CCTV Inc. in the sale of Robert Bosch
- Defended Prime Minister and Federal Government of Canada against multi-million dollar misrepresentation claim
- Defended significant conspiracy and deceit claim by Crown Corporation against independent contractor
- Defended major motor vehicle company against seizure by governmental authorities of allegedly stolen vehicles
- Defended and prosecuted numerous shareholder and partnership agreements, joint venture agreements, trust agreements and agreements for the purchase and sale of goods and services

- Defended and prosecuted professional negligence actions, including, as counsel at trial, for architects, chiropractors and lawyers
- Represented major document management company in protection of confidential information and enforcement of equipment leasing terms
- Arranged settlements pursuant to various formal and informal mediation procedures
- Prosecuted registration and enforcement of multi-million dollar foreign judgment against foreign national in fraud and deceit and defended complex bankruptcy and asset preservation action by foreign professional recovery company against Canadian citizen
- Obtained and opposed numerous injunction orders, including freezing of assets, protection of confidential information, return of machinery, specific performance of contracts, eviction from place of business, renovation of shopping mall
- Prosecuted and defended numerous real estate disputes, such as sale of land, commercial leases, market rent and price reviews, rent distress
- Defended a series of actions in negligence and misrepresentation against major insurance company
- Defended complex fraud, breach of trust and tracing claim by foreign government against recent Canadian immigrant
- Prosecuted breach of warranty claim against foreign manufacturer of industrial equipment
- Defended a national courier company from prosecution pursuant to the Transportation of Dangerous Goods Act
- Prosecuted breach of agreement to sell land and calculation of damages for lost development opportunity
- Defended a major provincial political party in action brought in breach of contract by former party leader, and prosecuting breaches of a joint venture agreement, and prosecuting breaches
- Defended and prosecuted geographically complex cases involving enforcement of foreign judgments, obtaining evidence for foreign proceedings, etc.

- Prosecuted action for a credit union to recover significant debt created by cheque-kiting scheme
- Defended insurance agent against prosecution pursuant to the Financial Institutions Act
- Defended major loss personal injury claim involving complex brain injury known as "prosopagnosia" (the inability to recognize faces)

### **Presentations**

- Good Deal Gone Bad, Fasken Martineau Real Estate Group Seminar, November 6, 2008
- Competition in Business - How Far Can You Go?, Fasken Martineau Commercial Litigation Group Seminar, March 13, 2008
- Managing Your Documents to Save Money and Avoid Disasters, Fasken Martineau Commercial Litigation and Dispute Resolution Seminar, May 9, 2007
- Done Deal. Or is It?, Fasken Martineau Commercial Litigation Group Seminar, January 24, 2007
- The 6th Annual Civil Litigation Conference, November 18, 2005
- Practical Advice for Multi-Jurisdictional Disputes, Continuing Legal Education Civil Law Conference, July 4, 2005
- Commercial Litigation Seminar: Managing Confidential Business Information Before and During Litigation, March 9, 2005
- University of British Columbia Trial Advocacy Course, 2004-2006
- Continuing Legal Education courses in Commercial Leasing, Continuing Legal Education, May 2007
- Continuing Legal Education Trial Advocacy Course, Continuing Legal Education, 2003-2005
- Continuing Legal Education Trial Advocacy Course, Continuing Legal Education, 2003-2005

### **Honours and Awards**

- BV® Peer Review Rated according to Martindale-Hubbell (high to very high legal ability); Commercial Litigation



## Kibben Jackson

*Associate*

### Vancouver

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### Areas of Practice

Litigation and Dispute  
Resolution

Insolvency and Restructuring

### Education

LL.B., 1999  
The University of British  
Columbia

B.Sc. (Physiology), 1993  
McGill University

### Called to the Bar

British Columbia, 2001

Kibben Jackson is an associate in the Litigation and Dispute Resolution Group. His practice is in general corporate and commercial litigation with a focus on insolvency, corporate restructurings and secured creditor realization. He has worked with most of Canada's largest financial institutions and trustee firms, including in relation to bankruptcies and receiverships, and has represented both debtors and creditors in connection with significant reorganizations and debt restructurings.

Prior to joining the firm, Kibben clerked for the Chief Justice of British Columbia at the British Columbia Court of Appeal. Currently, Kibben serves on the Executive Committee of the Vancouver Bar Association.

### Representative Experience

- Advised Doman Industries Ltd. completes restructuring
- Advised 360networks group of companies completes Canadian restructuring
- Advised The Bank of Nova Scotia in relation to the receivership of a significant British Columbia lumber company
- Counsel for the St. Mary's Indian Band and the St. Eugene Mission Resort Companies
- Advised A&B Sound Ltd., completes Companies' Creditors Arrangement Act and Bankruptcy and Insolvency Act proceedings
- Advised a large American equity fund in the realization of secured debt and the sale of the debtor's manufacturing business

- Counsel for PricewaterhouseCoopers Inc. in its capacity as receiver and trustee of the United Used Auto group of companies. These contested proceedings involved the sale of a significant assembly of lands in Surrey, British Columbia and realizations of more than \$25 million.

### **Presentations**

- Good Deal Gone Bad, Fasken Martineau Real Estate Group Seminar, November 6, 2008
- Face the Music: The A&B Sound CCAA Proceeding- A Stalking Horse of a Different Colour, 2006 Annual Review of Insolvency Law Conference, Vancouver, June 1, 2006
- Pulp Friction: The Protracted Restructuring of the Doman Forest Companies 2005 Annual Review of Insolvency Law, Presented at the Canadian-American Symposium on Cross-Border Insolvency Law, February 1, 2005
- Recent Canadian Transnational Insolvency Decisions, International Insolvency Institute New York Conference, June 1, 2002

### **Publications**

- "Face the Music: The A&B Sound CCAA Proceeding- A Stalking Horse of a Different Colour", by Kibben Jackson, Co-Author, October 1, 2006
- "Guide to the World's Leading Insolvency & Restructuring Lawyers", by Kibben Jackson, Co-Author, July 1, 2006

### **Memberships and Affiliations**

- Executive Committee Member, Vancouver Bar Association
- Member, Civil Litigation and Insolvency Sections of the British Columbia and Canadian Bar Associations