

## INVESTOR RECOVERY CONFERENCE

# **PUBLIC & PRIVATE SECURITIES ENFORCEMENT:** IMPROVING RECOVERY FOR HARMED INVESTORS

Monday, October 26, 2015  
8:00am - 4:30pm

Osgoode Professional Development Centre  
1 Dundas Street West, 26th Floor

### SPONSORED BY:

**FAIR**

Canadian Foundation for  
Advancement of Investor Rights  
Fondation canadienne pour l'avancement  
des droits des investisseurs



## CONFERENCE PROGRAM

### 8:00 AM Registration and Breakfast

ROOM E

### 8:30 AM Opening Remarks

ROOM C

**Lorne Sossin**, Dean, *Osgoode Hall Law School, York University*

**Neil Gross**, Executive Director, *FAIR Canada*

**Poonam Puri**, Professor of Law, *Osgoode Hall Law School, York University*

**Joel Rochon**, Partner, *Rochon Genova LLP*

CHAIR

**Poonam Puri**, Professor of Law, *Osgoode Hall Law School, York University*

### 8:40 AM Keynote Address



**Monica Kowal**, Vice Chair, *Ontario Securities Commission*

### 9:00 AM Relationship between Public Regulatory Enforcement and Private Securities Class Actions

In light of *AIC Limited v Fischer*, 2013 SCC 69, [2013] 3 SCR 949, this panel will critically examine the respective roles of public regulatory enforcement and securities class actions in deterring wrongdoing and facilitating investor recovery. The panel will consider whether regulatory enforcement actions and investor class actions are complimentary, or unnecessarily duplicative. The panel will also cover:

- Advantages that class actions provide investors over regulatory enforcement actions
- Role that Canadian securities regulators should play in facilitating investor recovery
- Key differences in Canada and US as between the respective roles of public and private enforcement

ROOM C

PANELLISTS

**Wendy Berman**, Partner, *Cassels Brock & Blackwell LLP*

**James D. Cox**, Brainerd Currie Professor of Law, *Duke University School of Law*

**Adam Pritchard**, Frances and George Skestos Professor of Law, *University of Michigan Law School*

### 10:00 AM Investor Recovery Facilitated by Securities Regulators: An Analysis of the Canadian versus the SEC Experience

This panel will explore the Canadian versus US experience with investor recovery facilitated (by the Securities and Exchange Commission (SEC)). It will discuss the tools and mechanisms that the SEC uses to direct damages from enforcement actions towards investors, and assess the effectiveness of these approaches. The panel will also discuss the roadblocks that have prevented the Ontario Securities Commission (OSC) and other provincial/territorial securities commissions from obtaining the power to make restitution orders directly rather than using a Section 128 court order and the experience of provinces (Manitoba, Quebec and New Brunswick) who do have the power to order compensation directly to investors.

ROOM C

PANELLISTS

**Jean-Francois Fortin**, Executive Director – Enforcement, *Autorité des marchés financiers*

**Urška Velikonja**, Associate Professor of Law, *Emory University School of Law*

**Verity Winship**, Professor of Law, *University of Illinois College of Law*

CHAIR

**Howell E. Jackson**, James S. Reid, Jr., Professor of Law, *Harvard Law School*

### 11:00 AM Refreshment Break

ROOM E

### 11:15 AM Jurisdictional Issues Involving Foreign Investors, Foreign Exchanges and Foreign Public Companies

In light of *Kaynes v BP, PLC*, 2014 ONCA 580, this panel will critically analyze the circumstances under which Canadian courts are willing to take jurisdiction over securities class actions in which Canadian investors have invested through foreign exchanges and the implications for Canadian investors. In addition, it will critically analyze the Canadian courts' approach to certifying global classes with foreign investors and explore the implications for recovery for

investors through a global class action as compared to multiple domestic proceedings. This panel will compare and contrast American courts' approaches to assuming jurisdiction in such instances, and will close by exploring the public policy implications of broader and narrower approaches to jurisdiction.

ROOM C

PANELLISTS

**Hannah Buxbaum**, John E. Schiller Chair in Legal Ethics, *University of Indiana Maurer School of Law*  
**Larry Lowenstein**, Partner, *Osler, Hoskin & Harcourt LLP*  
**Douglas Worndl**, Partner, *Siskinds LLP*

CHAIR

**Cynthia Williams**, Osler Chair in Business Law, *Osgoode Hall Law School, York University*

**12:15 PM**

**Lunch**

ROOM E

**1:00 PM**

**Harmed Investor, Speedy Recovery: Industry-Funded Investor Compensation Funds**

This panel will discuss the role of industry funded compensation funds for wronged investors, and consider their benefits and limitations as compared to private suits and other means of recovery. The panel will also consider:

- Whether the Canadian Capital Markets Regulator (CCMR), Ontario or all CSA jurisdictions should establish a financial services compensation fund for investors who are defrauded by registrants; what are the benefits and the barriers?
- The experience of Quebec's Financial Services Compensation Fund, as well as the experience of investor compensation funds in the UK.
- The panel will explore the ability of investors to recover when a dealer becomes insolvent with related fraudulent activity using the First Leaside case as an example, particularly to highlight the limitations of most investor compensation funds when a firm becomes insolvent.

ROOM C

PANELLISTS

**Shayne Kukulowicz**, Partner, *Cassels Brock & Blackwell LLP*  
**Mark Neale**, CEO, *UK's Financial Services Compensation Scheme* (by video-link)  
**Louise Gauthier**, Senior Director, Distribution Policies and Compensation, *Autorité des marchés financiers*  
**Robert Pouliot**, Director, *Canadian Foundation for Advancement of Investor Rights*

**1:45 PM**

CHAIR

**Gil Lan**, Associate Professor, *Ryerson University Ted Rogers School of Management*

**The Impact of Whistleblower Programs on Investor Recovery**

This panel will examine the impact of whistleblower programs on investor recovery in regulatory enforcement actions and class actions. The panel will explore whether financial rewards to whistleblowers augment or diminish funds available to harmed investors. The US experience will be highlighted.

ROOM C

PANELLISTS

**Dominic Auld**, Partner, *Bleichmar Fonti Tountas & Auld LLP*  
**Stephen L. Cohen**, Associate Director - Enforcement Division, *U.S. Securities and Exchange Commission*  
**David Conklin**, Partner, *Goodmans LLP* (TBC)  
**Jordan Thomas**, Partner, *Labaton Sucharow LLP*

CHAIR

**Tom Atkinson**, Director of Enforcement, *Ontario Securities Commission*

**2:15 PM**

**Refreshment Break**

ROOM E

**2:30 PM**

**Achieving Efficient and Effective Settlements under the OSC's New No-Contest Settlement Scheme**

This panel will explore what makes an effective and efficient no-contest settlement and to what extent they further the public interest and/or aid in investor recovery and whether investor recovery is a goal of enforcement settlements. This panel will discuss what Canada can learn from the American experience with no-contest settlements in practice. This panel will also explore the nascent Ontario experience with no-contest settlements and speak to whether they should be adopted elsewhere in Canada.

ROOM C

PANELLISTS

**Anita Anand**, Professor of Law, *University of Toronto Faculty of Law*  
**Philip Anisman**, Barrister & Solicitor  
**Stephen L. Cohen**, Associate Director - Enforcement Division, *U.S. Securities and Exchange Commission*  
**Kelly Gorman**, Deputy Director - Enforcement, *Ontario Securities Commission*

CHAIR

**Mary G. Condon**, Professor of Law, *Osgoode Hall*

**3:20 PM**

**Recovery for Investors through Ombudservices**

This panel will discuss OBSI's role in facilitating investor recovery. The panel will compare OBSI's mandate, legislative and operating framework with other ombudsman's offices internationally, and discuss how OBSI could be made more effective as well as barriers to potential reforms.

ROOM C

PANELLISTS

**Sarah P. Bradley**, Ombudsman and Chief Executive Officer, *Ombudsman for Banking Services and Investment*

**Mercer E. Bullard**, Professor of Law and Mississippi Defense Lawyers Association Distinguished Lecturer, *The University of Mississippi School of Law*

**Sujatha Sekhar Naik**, Chief Executive Officer, *Securities Industry Dispute Resolution Centre*

**Shane Tregillis**, Chief Ombudsman, *Financial Ombudsman Service (Australia)*

CHAIR

**Janis Sarra**, UBC Presidential Distinguished Professor, *University of British Columbia Peter A. Allard School of Law*

**4:15 PM**

**Closing Remarks**

ROOM C

**Marian Passmore**, Director of Policy and Chief Operating Officer, *FAIR Canada*

## FACULTY

### CO-CHAIRS

**Neil Gross**, Executive Director, FAIR Canada

**Marian Passmore**, Director of Policy and COO, FAIR Canada

**Poonam Puri**, Professor, Osgoode Hall Law School

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**Dr. Philip Anisman**, Sole Practitioner

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**Douglas Worndl**, Partner, Siskinds LLP



#### PROFESSIONAL DEVELOPMENT

Program is eligible for 6.0 Substantive Hours towards the annual CPD requirement with the Law Society of Upper Canada (LSUC).



#### QUESTIONS OR CONCERNS

Please contact Jody-Ann Rowe, Event Coordinator at 416.736.5771 or [jrowe@osgoode.yorku.ca](mailto:jrowe@osgoode.yorku.ca)



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