

“Transnational Criminal Law”

— *The Challenges and Art of Multi-jurisdictional Representation* —

Monday, November 28, 2011 – 9:00 a.m. to 4:30 p.m.
The Pan Pacific Hotel, Vancouver, B.C.

Co Chairs: David J. Martin, Martin + Associates, Vancouver
Eric Gottardi, Peck & Company, Vancouver

Who Should Attend: All criminal, securities and immigration lawyers in Canada managing multi-jurisdictional disputes as well as civil and commercial litigators and solicitors whose clients operate transnationally.

Learning Level: Intermediate/Advanced

Globalization has led to both increased mobility as well as commercial and personal legal complexity. More and more Canadian business executives and individuals are encountering regulatory and criminal investigations originating in other countries, including in the USA, that threaten their financial, reputational and liberty interests. This course will identify these risks and address both proactive advocacy to mitigate such risks, and the opportunities that may exist to defend against and resolve transnational legal conflict.

TOPICS:

1. The Complexity of Transnational Criminal Law Practice

- a. The assembly and management of an international defence team.
- b. The conduct of the internal defence investigation.
- c. The development of a preliminary defence strategy.
- d. The requirement for continuous innovation and agility.

Panel: - David Martin, Martin + Associates, Vancouver
- James Lewis, Q.C., 3 Raymond Buildings, Greys Inn, London

2. Issues related to managing S.E.C. and Canadian Securities Commission investigations that may give rise to allegations of criminal conduct.

- a. The impact of the exercise of the right to be free from self incrimination in the context of civil securities enforcement proceedings.
- b. Investigative agency information sharing: assessing the prospect of indictment.
- c. The “lucre/liberty” tradeoff.
- d. The Canadian approach to reciprocal enforcement of civil judgments.

Panel: - Ron Wood, Proskauer Rose, Los Angeles
- Patrick Sullivan, Taylor Veinotte Sullivan, Vancouver

3. Issues arising from evidence gathering, restraint and forfeiture orders issued under the Mutual Legal Assistance in Criminal Matters Act, RSC 1985 c. 30.

- a. Responding to evidence gathering orders.
- b. Challenging restraint orders.
- c. Challenging sending orders.
- d. Advocacy for the imposition of Ministerial sending order conditions.

Panel: - Deborah Strachan, Group Head, International Assistance Group, B.C. Regional Office, Department of Justice, Vancouver
- Tamara Duncan, Martin + Associates, Vancouver

4. Pre-Indictment advocacy within the U.S. justice system.

- a. Limitations and opportunities for the defence within the grand jury system.
- b. Risks and potential rewards of presenting a “defence case” to prosecutors prior to indictment.
- c. Negotiating compromise: multi agency settlements.
- d. Resisting the relentless demand for “cooperation” as a precondition to resolution.

Panel: - Mark Bartlett, Davis, Wright, Tremaine, Seattle, Washington, Recently retired First Assistant U.S. Attorney, Western District of Washington, Seattle
- Richard Peck, Q.C., Peck & Company, Vancouver
- Marco del Toro, del Toro Asociados, Mexico City, Mexico

5. The Special Case of Cross Border Tax Investigations

- a. The cross border “audit” in both the domestic and “off shore” contexts.
- b. The Canada-U.S. Tax Treaty and the simultaneous criminal investigation (SCIP) process.
- c. Pre-assessment advocacy and the rules related to Treaty residency “tie breaking”, double taxation and the negotiation of cross border credits.
- d. The limitations respecting the reciprocal enforcement of the Court judgments.

Panel: - Craig Sturrock, Thorsteinssons, Vancouver
- Robert McCallum, LeSourd & Patten, P.S., Seattle, Washington

6. All efforts to find compromise have failed: Indictment and the extradition process

- a. The Pre-Authority to Proceed Phase
Panel: - Janet Henchey, Director, International Assistance Group,
Department of Justice, Ottawa
- Eric Gottardi, Peck and Company, Vancouver

- b. The “Judicial” Phase of Extradition Proceedings: The Committal Order
Panel: - Deborah Strachan, (supra)
 - Greg DelBigio, DelBigio Law Corporation, Vancouver

- c. The “Ministerial” Phase of the Extradition Process: The Surrender Order
Panel: - Janet Henchey (supra)
 - Gary Botting, Author, Canadian Extradition Law and Practice

- d. Appeals from Extradition Surrender and Committal Orders
Panel: - Deborah Strachan (supra)
 - Ian Donaldson, Q.C., Donaldson’s, Vancouver