



## STOCKWELL DAY

Hon. Stockwell Day serves at McMillan as a strategic advisor to lawyers and clients. Stockwell previously served as Minister of Finance, Province of Alberta. Subsequent federal roles included Leader of Canada's Official Opposition, Minister of Public Safety, Minister of International Trade, Minister for the Asia Pacific and President of the Treasury Board.

He now serves on a number of public and private boards, and policy groups. He is an instructor and presenter at universities, has received two Honourary Ph.Ds, appears on a weekly National Television broadcast along with being a regular commentator in various media, and is a national and international speaker.



## TIM MURPHY

Tim Murphy is a partner in McMillan LLP who specializes in project finance, infrastructure and energy. He is a former Chief of Staff to the Prime Minister and Finance Minister of Canada and a former Member of Ontario's legislature. He provides strategic advice to national and international companies on regulatory compliance and broader policy issues. BNN, Global Television, CTV

Newsnet and CBC Newsworld frequently invite Tim as a commentator. He has also written articles for *Policy Options*, *The Walrus*, *Canadian Public Administration Journal* and *The Globe and Mail*, *Ottawa Citizen* and *Toronto Star*. Tim also lectures regularly on public policy, political and legal issues.



## PAUL DAVIS

Paul Davis has a practice focused on mergers and acquisitions, proxy fights, corporate governance and corporate finance, and leads McMillan's China Practice Group in Ontario. In connection with M&A and corporate finance matters, he provides strategic advice to Canadian and international corporations across a wide range of industries and sectors.

Paul also advises shareholders (both domestic and international) as well as boards of directors in connection with proxy fights. He has also served as a director of several public companies. Paul is an adjunct Professor at Queen's Faculty of Law and has written and spoken extensively on shareholder activism and M&A.



## ROD LOVE

Rod Love is the founder of Rod Love Consulting Inc., a national practice that specializes in strategic planning, political and intergovernmental analysis, issues management, effective strategic communications planning and media management. Mr. Love was appointed Chief of Staff to the Premier, a position he held until leaving government to start RLC Inc. in February of 1998. As Chief

of Staff, Mr. Love was involved in all aspects of the restructuring and refocusing of the Government of Alberta that led to the elimination of the deficit, the rapid elimination of Alberta's debt, the highest credit rating and the lowest personal and corporate income taxes in Canada, following which he founded Rod Love Consulting. Rod Love Consulting Inc. enjoys a number of strategic alliances with related firms, and maintains extensive contacts with individuals in governments, businesses and news organizations across the country.

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# STILL OPEN FOR BUSINESS? GETTING DEALS DONE UNDER CANADA'S EVOLVING FOREIGN INVESTMENT REGIME

Canada's foreign investment regime has been under the microscope since the rejection of the BHP/Potash Corp. transaction. State-owned enterprises seeking to invest in Canada encountered lengthy reviews in CNOOC/Nexen and Petronas/Progress Energy, which were immediately followed by new rules and policies. The Canadian government has also recently used the national security regime explicitly for the first time to block the proposed sale of telecom infrastructure by Manitoba Telecom. At the same time, the Government continues to promote Canada as being open to foreign investment and the vast majority of transactions are approved, although often with significant undertakings. This program will address how to obtain approvals in this increasingly complex and risky environment.



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## SPEAKERS

### CHAIR AND COURSE LEADER

Neil Campbell, McMillan LLP

### GUEST SPEAKERS

Paul Davis, McMillan LLP  
Stockwell Day, McMillan LLP  
Tim Murphy, McMillan LLP  
James Musgrove, McMillan LLP  
Miike Thackray, McMillan LLP  
François Tougas, McMillan LLP  
Mark Opashinov, McMillan LLP  
Stephen Wortley, McMillan LLP  
Jaime Watt, Navigator  
Rod Love, Rod Love Consulting Inc.  
Robert Schlossberg, Partner, Freshfields Bruckhaus Deringer

## COURSE HIGHLIGHTS

- Changes to the framework investment review
- Net benefit and undertakings – what does it take to get approval – and keep it?
- High-profile deals and political risk: life after potash
- State-owned enterprises – when is an acquiror an SOE, and what to do about it?
- Standing on guard – how to manage uncertain national security issues after the Manitoba Telecom decision
- Cultural industries in the digital economy
- Oil & gas and other natural resources
- Getting deals done – allocating & managing the risk
- Roundtable discussion – open mic on issues and experiences

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# STILL OPEN FOR BUSINESS?

GETTING DEALS DONE UNDER CANADA'S EVOLVING FOREIGN INVESTMENT REGIME

## PROGRAM OUTLINE

**8:00 - 9:00**

REGISTRATION AND BREAKFAST

**9:00 - 9:15**

CHAIR'S OPENING REMARKS

*Neil Campbell*

**9:15 - 9:45**

CHANGES TO THE FRAMEWORK INVESTMENT REVIEW

*James Musgrove*

- Recent developments
- Changing review thresholds
- Interactions with other government departments

**9:45 - 10:15**

NET BENEFIT AND UNDERTAKINGS – WHAT DOES IT TAKE TO GET APPROVAL – AND KEEP IT?

*Toronto: Mark Opashinov*

*Calgary: François Tougas*

- Critical factors
- Negotiation of confirmatory vs. incremental undertakings
- Monitoring and enforcement – lessons from the *U.S. Steel* case

**10:15 - 10:45**

REFRESHMENT BREAK

**10:45 - 11:30**

HIGH-PROFILE DEALS AND POLITICAL RISK: LIFE AFTER POTASH

*Toronto: Tim Murphy & Jaime Watt*

*Calgary: Stockwell Day & Rod Love*

- Current provincial and federal climate
- Political public relations strategies to support review applications
- Dealing with the media

**11:30 - 12:00**

STATE-OWNED ENTERPRISES – WHEN IS AN ACQUIROR AN SOE, AND WHAT TO DO ABOUT IT?

*Neil Campbell*

- Control-in-fact and other SOE amendments
- Retroactive deeming rules
- New SOE guidelines

**12:00 - 1:15**

NETWORKING LUNCH

**1:15 - 2:15**

STANDING ON GUARD - HOW TO MANAGE UNCERTAIN NATIONAL SECURITY ISSUES AFTER THE MANITOBA TELECOM DECISION

*James Musgrove & Robert Schlossberg*

- Canada and the world – how do we compare?
- Scope for transactions to be reviewed
- Critical infrastructure and other non-traditional areas
- Options for managing risks

**2:15 - 3:00 (TORONTO)**

CULTURAL INDUSTRIES IN THE DIGITAL ECONOMY

*Mark Opashinov*

- Current developments
- Impact of technological change
- Implementation of cultural policies
- Use of discretionary review powers

**2:15 - 3:00 (CALGARY)**

OIL & GAS AND OTHER NATURAL RESOURCES

*Mike Thackray*

- Attitudes toward foreign capital and control of resources
- Oil sands, potash and other “strategic” resources
- Related infrastructure investments

**3:00 - 3:30**

REFRESHMENT BREAK

**3:30 - 4:15**

GETTING DEALS DONE – ALLOCATING & MANAGING THE RISK

*Toronto: Stephen Wortley*

*Calgary: Paul Davis*

- Deal planning
- Due diligence
- Review timelines and deal timing
- Contractual risk allocation

**4:15 - 4:45**

ROUNDTABLE DISCUSSION - OPEN MIC ON ISSUES AND EXPERIENCES

**4:45 - 5:00**

CHAIR'S CONCLUDING OBSERVATIONS

*Neil Campbell*



## NEIL CAMPBELL

COURSE LEADER

Neil Campbell is ranked by Chambers as one of the leading foreign investment review lawyers in Canada. He is the Co-Chair of the Competition and International Trade Law Groups and a member of the Energy Law Group at McMillan LLP. Neil's competition law experience includes over 300 merger clearances under the *Competition Act* and/or the *Investment Canada Act* as well as major domestic or international cartel cases, related class actions, abuse of dominance and other unilateral conduct investigations/proceedings. His trade law experience includes export/import controls; trade sanctions, foreign corrupt practices and investor-state disputes under NAFTA and bilateral investment treaties. Neil has extensive experience with merger clearances and investigations in regulated industries such as financial services, broadcast/telecom, energy and transportation. He has been actively involved in public policy issues including submissions to Canadian parliamentary committees and government agencies in respect of competition law reforms as counsel to the Competition Policy Group; over 30 submissions to governmental authorities in respect of compliance with the ICN Recommended Practices for Merger Notification and Procedures on behalf of the Merger Streamlining Group and as a co-author or coordinator for multiple CBA Competition Section, ABA Antitrust Section and IBA Antitrust Committee working group comments to agencies and governments.



## STEPHEN WORTLEY

Stephen Wortley is the Chair of McMillan's China Practice Group and Chair of its Hong Kong office. His practice emphasizes (i) Chinese outbound M&A transactions into Canada (including WISCO's investment into Century Iron Mines Corporation), advising both SOEs and SMEs, and (ii) listings on Asian Exchanges (including China Gold's listing on the Hong Kong Stock Exchange). In the course of

his practice, Stephen has advised Hong Kong and Mainland Chinese clients with respect to the application of the *Investment Canada Act*. In Hong Kong, Stephen acts as external counsel for Sunwah International, a large Hong-Kong-based conglomerate. Stephen is ranked in a number of publications as a leader in Merger & Acquisitions Law. He has spoken extensively on alternative investment structures in Canada in the resource sector, the expanding nature of M&A opportunities from China including in the Clean-Tech and Green-build space and the importance of the new Hong-Kong-Canada tax treaty and Hong Kong's position as a strategic jumping-off point for investment into Canada.



## ROBERT SCHLOSSBERG

For 30 years, Bob has been advising on acquisitions by foreign entities that are subject to US national security review under Exon-Florio. He works across a full range of industries and nationalities. Bob also has represented clients on numerous antitrust matters with a particular emphasis on practice before the US FTC and DOJ Antitrust Division. He has considerable experience in guiding national and

international merger transactions through antitrust review. Bob is the editor of the American Bar Association treatise on M&A and past chair of the Section's M&A Committee. He is a non-governmental advisor to the US agencies in connection with the International Competition Network.



## MARK OPASHINOV

Mark Opashinov is a partner in McMillan's corporate and competition groups. Mark advises domestic and foreign clients on all aspects of Canadian corporate, competition and foreign investment review law. Mark regularly advises on mergers, acquisitions, divestitures, joint ventures and complex re-organizations. As part of Mark's deal advisory practice, he advises on the regulatory

aspects of transactions including steering clients through the *Investment Canada Act* review process. Mark has acted for parties in the automotive, biotechnology, computer, chemicals, energy, entertainment, financial services, health care, Internet, mining, pharmaceuticals, professional services, publishing, software, technology, telecommunications and transportation sectors, among others.



## FRANÇOIS TOUGAS

François Tougas advises businesses in connection with the review and approval of cross-border and multi-jurisdictional transactions under the *Competition Act* and the *Investment Canada Act*. His expertise lies primarily in industrial rail and marine, mining, forest products and tangible technology. He frequently represents businesses in public policy submissions and representations

before regulatory bodies, Parliamentary Committees and policy review panels. He is adjunct professor of law at the University of British Columbia and has been recognized by national and international ranking publications, and frequently writes and speaks on competition, foreign investment and transportation law and economics issues.



## MIKE THACKRAY

Mike Thackray has extensive experience in all aspects of oil and gas law both in Canada and internationally. With his cross-border experience, Mike prefers and makes all attempts to cut away adversarial attitudes, positions and posturing, and helps all involved parties “find and cross together the common goal line.” Mike's clients include private and public companies (junior, intermediate and senior) in Canada, the United States and the United Kingdom. Mike currently serves on the Board of Directors of both public and private oil and gas companies in Canada and internationally, as well as Chairman of the Board for CentrePoint Non-Profit Management. Additionally, he serves as a Strategic Advisor (international oil and gas opportunities) to a US-based private equity fund, 4Gen Capital. He is also a member of McMillan's Board of Partners.



## JAMES MUSGROVE

James Musgrove is co-chair of McMillan's Competition and Antitrust group, and practises primarily in the areas of competition and foreign investment law. He advises on mergers, cartels, investment review, distribution issues and foreign corrupt practices. He makes regular representations and submissions to the Competition Bureau and Investment Canada. He was retained to give expert evidence related to the Investment Canada

process in the BHP/Potash transaction. James is Chair of the American Bar Association Section of Antitrust Law Unilateral Conduct Committee; Past Chair of the Canadian Bar Association National Competition Law Section; and Past President of the Toronto Lawyers' Association.



## JAIME WATT

Jaime Watt is the Executive Chairman of Navigator Ltd. and a Principal at ENSight Canada. He specializes in complex public strategy issues, serving both domestic and international clients in the corporate, professional services, not-for-profit and government sectors. He is a trusted advisor to business leaders as well as leaders of political parties at all three levels of government across Canada. Jaime has led ground-

breaking election campaigns that have transformed politics because of their boldness and creativity. A highly regarded speaker, Jaime appears regularly as a public affairs commentator in the media and was recently named one of Toronto's most influential individuals.

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