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Special Institute on

International Energy and Minerals Arbitration

**Fairmont Royal York Hotel - Toronto, Ontario, Canada
September 16-17, 2013**

The world's energy and minerals industries increasingly have a global reach, with development in virtually every country. The international cast of characters includes host governments; state-owned or -sponsored resource companies; private mining, oil & gas, and energy producers; engineering and construction companies; refiners; transportation companies; public utilities; international banks; multilateral development institutions – and all of their advisors. The dramatic increase in the number of offshore investments and diverse agendas and nationalities of participants, combined with the tidal wave of resource nationalism and the limitations of many local courts, have led to an exponential increase in the use of international arbitration for dispute resolution in the energy and minerals sectors.

This Special Institute will provide an in-depth view of how and why international arbitration has evolved to become a preferred method for addressing international disputes. The program will look at international commercial arbitration among private parties and at investor-state disputes. Speakers will examine the framework and basic principles governing the arbitral process and explore in practical terms the key considerations associated with drafting dispute resolution clauses, selecting arbitrators, and enforcing arbitral awards. They will take a close look at current developments affecting arbitration in the energy and minerals sectors.

This conference has an enormously diverse faculty and will feature presentations by many of the world's leading counsel, arbitrators, and academics who are active in the energy and minerals sectors. Attendees will also hear from distinguished in-house counsel about practical lessons learned from their international arbitration experiences.

Who should attend: In-house counsel and business development managers who deal with host governments or state-owned companies; executives or counsel who negotiate or draft exploration, development, or operating agreements; counsel for engineering, construction, power, and pipeline projects; consultants and other professionals acting for companies active in the energy and resources sector; executives and counsel active in structuring international transactions; and arbitration counsel and arbitrators interested in international arbitration.

This conference has been developed to provide a practical overview of the key elements of international arbitration, as well as in-depth treatment of certain recurring issues.

*Audio CDs and hard copy or electronic
course materials are available if you are
unable to attend. See inside for details.*



International Energy and Minerals Arbitration

Monday Morning, September 16, 2013

8:00 am - **Registration – Fairmont Royal York Hotel**

9:00 – 9:15 am

Introductions and Opening Remarks

STEVIA M. WALTHER, Executive Director, Rocky Mountain Mineral Law Foundation, Westminster, Colorado, USA

ROBERT B. KEITER, President, Rocky Mountain Mineral Law Foundation; University of Utah S.J. Quinney College of Law, Salt Lake City, Utah, USA

PATRICK J. GARVER, Program Co-Chair, Senior Advisor, Good Governance Group, Toronto, Ontario, Canada

Session Introductions

YVES FORTIER, Independent Arbitrator, Montréal, Quebec & Toronto, Ontario, Canada / London, UK

9:15 – 10:00 am

International Energy and Minerals Arbitration: The Basic Principles

As the world has gotten smaller and flatter – and more natural resources companies have a global footprint – international arbitration has emerged as one of the primary options for resolving cross-border commercial and investor-state disputes. This conference will start with an overview of the framework and basic principles governing the international arbitral process. It will discuss the rules of international arbitral institutions (such as the ICC, LCIA, PCA, ICDR, and ICSID), the treaty frameworks, national arbitration laws, and the role of national courts. It will also consider the policy and legal implications of choosing to arbitrate international disputes.

DAVID W. RIVKIN, Partner, Debevoise & Plimpton LLP, New York, New York, USA / London, UK

10:00 – 10:30 am

Evolution of International Energy and Minerals Arbitration

In the past decade the number and nature of international arbitration cases involving natural resource companies and service providers has grown enormously. This presentation will discuss – and help demystify – the evolution of the principal arbitral institutions and their swelling caseloads in the resources sector, as well as discuss the corresponding development of international law governing international arbitration in the energy and minerals sectors – essential background for any lawyer involved in international transactions and/or dispute resolution.

THOMAS CHILDS, Counsel, King & Spalding, New York, New York, USA / London, UK

10:45 – 11:30 am

Investor-State Arbitration and Public Policy

The most rapidly growing segment of the international arbitration world is “investor-state” disputes. This presentation will examine the effect of the exponential growth in the number of investment treaties that provide for arbitration of such disputes and consider how investments in the extractives sector can be structured to maximize the benefit of such treaties. It will look at issues unique to investor-state disputes and ICSID – including jurisdictional issues and annulment of awards – and discuss the protections afforded by such treaties.

RUDOLF DOLZER, Professor, Heidelberg, Germany

11:30 am – 12:20 pm

Resource Nationalism, Expropriation, and Creeping Expropriation Affecting the Extractives Sector

Nothing has provoked more international arbitrations in the extractives sector recently than the combination of a global fiscal crisis, volatile commodity prices, unsustainable debt, populist politics, and resource nationalism. The breadth of various host government initiatives to re-slice the resource pie is, in many jurisdictions, breathtaking. When does it cross the line, legally speaking? This speaker will discuss the energy and resources sectors’ experience with evolving public expectations, contracts, and laws affecting investors and host governments, and the legal principles involved.

ELISABETH ELJURI, Partner, Norton Rose Fulbright, Caracas, Venezuela

12:20 – 2:15 pm - **Lunch (on your own)**

10:30 – 10:45 am - **Coffee Break**

International Energy and Minerals Arbitration

Monday Afternoon, September 16, 2013

Session Introductions

BARRY LEON, Partner, Perley-Robertson, Hill & McDougall LLP/s.r.l., Ottawa, Ontario, Canada

2:15 – 3:15 pm

Energy and Minerals Arbitration: Lessons Learned the Hard Way – Panel Discussion Among the Battle Weary

Three senior in-house lawyers from major companies in the extractives sector will reflect on what they care about and what works – and sometimes doesn't work – in international arbitration. This includes issues that can reach out and bite you, like jurisdiction, independence, specialized expertise, discovery, interim measures, enforcement proceedings, budgeting, timing, collegiality, and confidentiality.

Moderator - HENRY WEISBURG, Shearman & Sterling LLP, New York, New York, USA

MIMI M. LEE, Senior Counsel, Chevron, San Ramon, California, USA

LAURA M. ROBERTSON, Managing Counsel – Arbitrations, ConocoPhillips, Houston, Texas, USA

[Additional panelist from the mining sector - to be confirmed]

3:15 - 3:30 pm - **Coffee Break**

3:30 – 4:15 pm

Current Developments in Investor-State Arbitration in the Energy and Extractives Sectors

New law is being made every day in investor-state cases involving the energy and extractives industries. On a worldwide basis it is thought that

there are hundreds of billions of dollars at issue in arbitrations currently pending in those industries today. This presentation will provide an overview of the nature of the cutting-edge cases and other important developments on common investor-state issues such as expropriation, stabilization, adaptation and most-favored-nation clauses, force majeure, fair and equitable treatment, and others.

YAS BANIFATEMI, Partner, Shearman & Sterling LLP, Paris, France

4:15 – 5:05 pm

Arbitration and Gas Pricing/LNG Disputes

The last several years have seen markets and supply contracts for long-term natural gas and LNG turned upside down, particularly in Europe where the decoupling of oil prices and gas resale prices has resulted in numerous large disputes and settlements. This presentation will describe the legal issues that drive these price review cases and discuss what they mean for international gas pricing arrangements.

GEORGE M. VON MEHREN, Partner, Squire Sanders LLP, London, UK / Cleveland, Ohio, USA

5:05 – 6:05 pm - **Hosted Reception for Registrants and Guests**

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Association of International Petroleum Negotiators

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Section on Energy, Environment, Natural Resources and Infrastructure Law (IBA-SEERIL)

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Toronto Commercial Arbitration Society

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International Energy and Minerals Arbitration

Tuesday Morning, September 17, 2013

Session Introductions

PATRICK J. GARVER, Program Co-Chair, Senior Advisor, Good Governance Group, Toronto, Ontario, Canada

9:00 – 10:00 am

Ethical Issues Affecting International Arbitration

Different parties in international arbitration have different ethical obligations, be they litigants, counsel, witnesses, experts, or arbitrators. But with parties, counsel, and arbitrators from many different countries and cultures all over the world, which ethical standards apply? What are the ethical issues that come up repeatedly – and are the ethical issues that are commonly raised tactical or real? This presentation will discuss evolving ethical standards in arbitration and illustrate how ethical issues can affect the timing, course, and enforceability of an arbitration proceeding – and possibly affect you personally.

JULIE BÉDARD, Partner, Skadden, Arps, Slate, Meagher & Flom LLP, New York, New York, USA

10:00 – 10:45 am

Corruption and International Arbitration

International corruption is one of the principal issues affecting international trade and commerce – and the energy, mining and oil and gas sectors have been singled out by many as a high-risk area. Corruption allegations have surfaced in a surprising number of international arbitration proceedings, directed at arbitrators, witnesses, and governments and their private sector counterparts, threatening the integrity of proceedings and awards. This discussion will look at the evolving role of corruption allegations in international arbitration.

CONSTANTINE PARTASIDES, Partner, Freshfields Bruckhaus Deringer LLP, London, UK

10:45 – 11:00 am - **Coffee Break**

11:00 – 11:40 am

Arbitration and Joint Operating Agreements

Joint operating agreements and joint ventures are an important part of the global extractives industries. However, it is not uncommon that disputes will arise among the parties. This topic will look at the common issues and disputes in that context and discuss the dispute resolution provisions that are most often used.

KEVIN O’GORMAN, Partner, Norton Rose Fulbright, Houston, Texas, USA

11:40 am – 12:15 pm

The “Business Case” For and Against International Arbitration

Many business executives and their counsel struggle with the decisions whether, when, and where to arbitrate. The decisions often must weigh factors such as the adequacy of the local rule of law or courts, as well as the need for a “neutral” tribunal. One must also assess transparency, costs, timing, discovery options, interim relief, enforceability, finality, confidentiality, subject matter, and language skills – to name but a few issues of concern. This presentation will address the various considerations surrounding the initial decision whether, when, and where to arbitrate and how to shape the process. It will also assess the record of effectiveness of arbitration in the resources sector.

ANDREW L. MCDOUGALL, Partner, White & Case, Paris, France

12:15 – 1:45 pm - **Lunch (on your own)**

International Energy and Minerals Arbitration

Tuesday Afternoon, September 17, 2013

Session Introductions

HENRY WEISBURG, Partner, Shearman & Sterling LLP, New York, New York, USA

1:45 – 2:30 pm

The Nuts and Bolts of Selecting and Drafting Dispute Resolution Clauses

In many transactions, one of the most important issues – providing for efficient and effective dispute resolution procedures – often gets less attention than it deserves. Sometimes that results in some very unpleasant surprises. This topic will be a practical hands-on look at the key issues that drive the choice of either a “model” clause or a decision to craft a dispute resolution clause that is specific to the parties, the contract, or its subject matter. It will discuss how to evaluate the most appropriate arbitration seat, language, substantive law, tribunal, and procedures. It will identify some of the common errors made by parties as they “customize” arbitration clauses.

JASON FRY, Partner, Clifford Chance, Paris, France

2:30 – 3:15 pm

Procedural Issues Affecting International Arbitration in the Energy and Resources Sectors

There is enormous diversity in the procedural rules selected by contracting parties, or permitted or applied by the various arbitral institutions. However, there are also recurring issues that affect the course of most cases. This presentation will provide a brief overview of how prominent arbitral tribunals deal with procedural issues. It will address in more detail some of the key issues common to arbitration proceedings, including appointment of arbitrators, document discovery, evidentiary standards and process, interim or provisional relief, parallel proceedings, and non-signatory issues.

HENRI C. ALVAREZ, Partner, Fasken Martineau, Vancouver, British Columbia, Canada

DOMINIQUE GIBBENS, Partner, Fasken Martineau, Montréal, Quebec, Canada

3:15 – 3:30 pm - **Coffee Break**

3:30 – 4:15 pm

Enforcement of Awards

While the ease of enforcement of awards is a key consideration for many choosing arbitration, enforcement is not always as straightforward as a successful party might hope. This presentation will discuss the energy and minerals sectors’ track records of enforcement of international arbitration awards, and consider the procedural and legal issues that can affect the finality or enforcement of an award, including jurisdictional challenges, intervention by national courts, procedural pitfalls, and the various grounds for nonrecognition. It will also consider what contractual safeguards can maximize the chances of recovery.

JOHN P. BOWMAN, Partner, King & Spalding LLP, Houston, Texas, USA

4:15 – 5:05 pm

Issues Associated with Selecting Arbitrators: Appointments and Challenges

Arbitrator selection certainly presents one of the most important decisions required of parties to an international arbitration. Determining the legal, experiential, and social qualities best suited for an arbitrator in any particular case requires substantial due diligence and analysis – and judgment. Familiarity with relevant legal principles (such as the “evident partiality” standard under the U.S. Federal Arbitration Act and comparable domestic law in the relevant jurisdiction) and commonly applied standards (such as the IBA’s green, orange, and red lists) is key, as is familiarity with the diverse ways in which challenges to arbitrator nominations are handled. This presentation will address a variety of approaches that can be applied to arbitrator selection, techniques for “diligencing” a candidate, and methods for challenging, and defending, a nominee.

CATHERINE A. ROGERS, Professor of Law & Paul and Marjorie Price Faculty Scholar, Penn State University, University Park, Pennsylvania, USA

5:05 – 5:15 pm

Response and Concluding Remarks

HENRY WEISBURG, Partner, Shearman & Sterling LLP, New York, New York, USA

5:15 pm - **Adjournment**

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HENRY WEISBURG, Partner, Shearman & Sterling LLP,
New York, New York, USA

International Energy and Minerals Arbitration



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Conference Materials will be provided electronically
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Check here to receive hard copy materials
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- Standard Room (2 doubles): \$209
- Fairmont View King: \$229
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Bookings must be made in our block to receive these discounts. Ask for special rates for Rocky Mountain Mineral Law Foundation.

- Direct: 416-368-2511
- Online: <http://tinyurl.com/rockym73>

All rates are in Canadian dollars, and are available by booking before August 1. Difficulties making room reservations? Contact us at info@rmmlf.org.

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Registration Fees: Include electronic course materials, refreshments, and hosted functions as listed in this brochure. These fees do not include hotel costs or transportation. Registrations will be accepted only when accompanied by a check, money order, government purchase order or training form, credit card information, or wiring information. No registrations can be processed without payment.

Recording: Audio and video recording of this course are not permitted without the express authorization of the Foundation.

Special Needs: If you have special needs addressed by the ADA, please notify us at least two weeks before the program.

Registration Cancellations: Refunds, less a \$50 administrative fee, will be given for cancellations received by 3:00pm on Tuesday, August 27, 2013. No refunds will be given thereafter, although substitution of attendees may be made by contacting RMMLF. Cancellations must be made in writing or email to info@rmmlf.org. Registrants not entitled to a refund will receive a link to the electronic materials. For questions on refunds, complaints, and/or program cancellations, please contact our office at 303-321-8100.

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