



JUSTIN R. FOGARTY, KCSTG, (HON) LT COL.

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Biography

Justin R. Fogarty is a partner with Davis LLP and is based in Toronto. His broad legal and business background includes representing corporate borrowers, lenders, investors, banks and court officers in significant domestic and cross-border insolvency and restructuring matters. He has appeared at all levels of court and before administrative tribunals. He has been recognized by Lexpert, Chambers Global, and Martindale - Hubbell as top counsel. Mr. Fogarty's representative matters include cases in the areas of commercial litigation focusing on insolvency, fraud, shareholder disputes, debtor/creditor, construction and real estate. Mr. Fogarty has also sat as a court-appointed claims officer in Companies' Creditors Arrangement Act (CCAA) proceedings. He is the chair of the Business Solutions and Restructuring Group at Davis.

Mr. Fogarty uses his extensive litigation experience and business acumen to achieve successful outcomes for his clients. He has advised leading Canadian and U.S. financial institutions in connection with the structuring of more than \$2.5 billion in completed ABL (asset-based lending) transactions. He has advised major companies, financial institutions, law firms and accounting firms in national and international, cross-border restructurings, in and out of court.

What makes Mr. Fogarty unique in his field is his ability to put deals together for his clients. Drawing on his background in corporate finance, he finds lenders and buyers. He uses his business savvy and extensive experience to go beyond traditional insolvency advising - he also closes deals for clients. Chambers Global states: "He is bright with a good problem-solving approach."

Mr. Fogarty is active in the legal community. He is the current editor of The National Insolvency Review and sits on the board of directors of the Canadian Bar Association's Insolvency Section. He is also past advisor to the Commercial Finance Association and past director and chair of the Turnaround Management Association's (TMA) Education Committee, where he developed an insolvency simulation exercise that was used by the TMA across Canada and the United States. Mr. Fogarty is a past sessional lecturer in Insolvency and Secured Transactions at Osgoode Hall Law School.

Mr. Fogarty participates in numerous associations and community organizations. He is vice-chair of the International Bar Association subcommittee on insolvency and restructuring. He is a member of the Advocates' Society, a Chevalier of the Order of Saint George, an officer of the Order of Saint Lazarus, a member of the board of directors for the Canadian Polo Association, president of Polo Canada and the Alberta Alpine Ski Academy and chairman of the Alpine Canada Alpine Founders Club. He is a member of the Board of Directors of Alpine Canada and appointed co-chair for the CBA Conference on Insolvency and Restructuring in September, 2010. Recently, he was appointed by the Minister of National Defence as the Honorary Lieutenant Colonel of the 763 Signals Regiment of Ottawa and has recently become a member of the board of the directors of the Conference of Defence Association Institute.

Recognition

- 2010, Appointed Hon. Lieutenant Colonel 763 Regiment
- 2010, Awarded Knight Commander Grand Order of St. George
- Global-Awards-Winner.jpg2010 winner "Insolvency Advisory Excellence in Canada", Corporate Intl Magazine Global Awards

- 2010, Chambers Global, ranked Band 4: "He is bright with a good problem-solving approach."
- Martindale-Hubbell: Justin R.G. Fogarty received a BV Peer Review Rating for high to very high legal ability and very high ethical standards
- 2006, Lexpert Guide to the 100 Most Creative Lawyers in Canada: Justin R.G. Fogarty, rated Top 40 Corporate Lawyers in Canada to Watch
- 2006, Lexpert Guide to the 100 Most Creative Lawyers in Canada: Justin R.G. Fogarty, rated Top 25 Litigators in Canada to Watch
- 2006 Lexpert Guide to the 100 Most Creative Lawyers in Canada: Justin R.G. Fogarty, named one of the Corporate Lawyers and Litigators to Watch
- 2006 Lexpert/American Lawyer Guide to the Leading 500 Lawyers in Canada: Justin R.G. Fogarty, named one of The 40 Lawyers to Watch

Professional Experience

Agriculture

- Represented Mums Unlimited Inc. and 3D Greenhouses Inc. with respect to the receivership and sale of its agricultural facilities. Mums Unlimited Inc. (Re) (2005), 5 C.B.R. (5th) 262 (Ont. S.C.J.)
- Represented The Manderley Corporation, the largest turf grass producer in North America, in connection with its CCAA restructuring and sale. Manderley Corp., Re. [2005] Carswellont 1082 (Ont.S.C.J.)

Automotive

- Currently, Mr. Fogarty is counsel to Transcast Precision Inc., a company engaged in a protracted battle with Chrysler, GM and Magna (the OEMs) on the issue of ownership of manufactured auto parts. He is counsel in the Abitibi Bowater matter for the unsecured pension claims for former employees.
- Represented the Interim Receiver of Impact Tool Inc., a Tier 1 autoparts supplier, before the Ontario Superior Court of Justice, the Court of Appeal of Ontario and the Supreme Court of Canada to resist extraordinary relief requested by the bankruptcy trustee. 2008 Carswellont 6368 (S.C.C) 2008 ONCA 187, 41 C.B.R. (5th) 1, 2008 Carswellont 1360.
- Represented Wachovia Capital Finance, the senior secured creditor of Brake Pro Inc., a Tier 1 autoparts supplier, with respect to the debtor's CCAA proceedings.
- Represented All-Metal Machine Specialties Limited and All-Metal Investments Limited, a Tier 1 and Tier 2 autoparts supplier, in connection with the receivership and sale.

Aviation

- Represented the Proposal Trustee and later Bankruptcy Trustee in connection with the estate of Zoom Airlines Inc. and in respect of cross-border issues in the administration of Zoom UK.

Construction

- He also acts in a number of complex construction lien matters. Recently, Mr. Fogarty acted for a joint venture between ATCO Power Ltd. and Ontario Power Generation. He was successful in resolving (both in an out of court) approximately \$180 million in liens registered against the Brighton Beach Power Plant, a combined-cycle plant located in Ontario.

Commodities

- Represented Pengrowth Corporation and Canadian Forest Oil Limited, in connection with its cross-border CCAA proceedings of Androscoggin Energy LLC. Androscoggin Energy LLC (Bankruptcy), Re, (2005) 8 C.B.R. (5th) 1 (ON S.C.), Androscoggin Energy LLC (Bankruptcy), Re, (2005), 8 C.B.R. (5th) 11, (2005), 195 O.A.C. 51 (ON C.A.)
- Represented Mirant Energy Marketing Canada Limited, in connection with one of the largest oil and gas CCAA restructurings in North America. Mirant Canada Energy Marketing Ltd., 2004 ABQB 218

- Represented the suppliers of Stelco Inc., in connection with Stelco's reorganization under CCAA and the Canada Business Corporations Act.

Manufacturing

- Represented North American Printing Inc. in connection with the restructuring and sale of its printing operations.
- Represented Afton Food Group Inc., a public company and franchisor, in connection with its CCAA reorganization and sale. Afton Food Group Ltd., Re, 2006
- Represented Pillowtex Canada Inc., a textile manufacturing company, in connection with its receivership proceedings.
- Represented Congress Financial Corporation (Canada) in connection with its US\$50 million cross-border secured revolving and term credit facility in favour of SMTC Manufacturing Corporation of Canada and its subsidiaries.
- Represented Congress Financial Corporation (Canada) in connection with making an \$81 million credit facility available to Canadian General-Tower Limited and its wholly owned US subsidiary Textileather Corporation.

Pharmaceutical

- Represented ProMetic BioSciences, Inc. in connection with the CCAA restructuring of Hemosol Corp. Hemosol Corp. (Re), [2007] ON CA 124.
- Represented the largest US claimants in the cross border restructuring of MuscleTech Research and Development Inc. The debtor and its affiliates were facing numerous product liability and consumer lawsuits relating to the diet supplement, ephedra, as well as certain prohormone products alleged to build muscles.
- Represented Raytheon Engineers, a blood fractionation contractor, in connection with their claim in the Canadian Red Cross Society (CRCS) restructuring. Raytheon was successful in obtaining an unsecured creditor's committee appointed to review the sanctity of the financial management of the CRCS administration. The dividends to all unsecured creditors were substantially increased as a result of these efforts.

Retail

- Represented Wachovia Capital Finance, the senior secured creditor of SAAN Stores Ltd., a national retailer, with respect to the debtor's CCAA proceedings. SAAN Stores Ltd. (Bankruptcy), Re, 2005 12 C.B.R. (5th) 35 (ON S.C.)
- Represented Tiger Brand Knitting Company Inc. in connection with its CCAA reorganization and sale. Tiger Brand Knitting Co. (Bankruptcy), Re, (2005), 9 C.B.R. (5th) 315
- Represented National Retail Credit Services Co, the largest credit card supplier, in the restructuring of T. Eaton Company Limited. T. Eaton Co., Re, [1999] CarswellOnt 3542.

Service Industry

- Represented the Interim Receiver of Creative Building Maintenance Inc., a janitorial and maintenance services company. RoyNat Inc. v. Creative Building Maintenance Inc. [2006] Carswellont 3349 (Ont.S.C.J.)

Technology

- Represented Wachovia Capital Finance, the senior secured creditor of NexInnovations Inc., a systems integration company, with respect to the debtor's CCAA proceedings.
- Represented the Interim Receiver of MetConnex Canada Inc., developer of integrated optical modules for optical networks.

Financial

- Represented Congress Financial Corporation (Canada) in connection with US\$47 million cross-border secured revolving and term syndicated credit facility in favour of TVC Communications LLC.
- Represented Congress Financial Corporation (Canada) in connection with \$4 million in participation in the US\$100 million cross-border secured syndicated credit facility in favour of Reichhold Inc. and its international subsidiaries led by Bank of America.
- Represented Congress Financial Corporation (Canada) in connection with a US\$100 million cross-border revolving secured syndicated credit facility in favour of Cott Corporation and its subsidiaries arranged with Wachovia Bank, National Association, and BMO Nesbitt Burns.
- Represented Congress Financial Corporation (Canada) in connection with a US\$20 million revolving credit facility in favour of IMAX Corporation.

Publications

- Finding Your Inner Creativity, October 1, 2006
- The Butterfly & the Tornado - Basel II: If a Banker tinkers with Policy in Switzerland, Does It Set Off - a Credit Crisis in Canada? September 1, 2004
- Lender Liability in Corporate Finance Transactions and Equitable Subordination in the U.S.: Towards a Canadian Perspective, September 1, 2004
- The Rise of the Interim Receiver: The Right Approach for the Times, February 1, 2004
- A Balancing Act: The Evolution of Debtor in Possession Financing in Canada, April 1, 2003

Seminars

- Conference Board of Canada: Leadership 2009: Developing Strategic Management Capacity - Leader's View: Leadership for the Global Market Place, December 7, 2009
- Canadian Institute: Speaker at the Insolvabilite restructuration faillite - Consequences d'une restructuration sur les droites des tiers, October 29, 2009
- National Association of Credit Management: Annual Credit Conference - Panelist: The Changing Face of Bankruptcy in Today's Volatile Economy, October 23, 2009
- CBA: Co-Chair of the Fifth Annual Pan-Canadian Insolvency and Restructuring Conference, September 30, 2009
- Setting Up/Knocking Down Asset Protection Structures - What's a Nice Lawyer Like You Doing in a Place Like This? - Ethical and Professional Issues in Asset Protection at the Setting Up/Knocking Down Asset Protection Structures, June 16, 2009
- IBA: 15th Annual Global Restructuring and Insolvency Conference - Economic Radar: How Economic Trends Affect the Liquidity and Regulation of the Financial Markets, May 17, 2009.
- Document Retention and Destruction in Ontario - Avoiding Costs and Legal Pitfalls Associated with Poor Document Management Practices, January 29, 2009.
- The 7th Annual Conference on Bankruptcy, Insolvency and Restructuring featuring The Honourable Justice Farley, Q.C. The orders given by virtue of the LACC, September 26, 2007.

Education

- University of Ottawa, BA, 1981
- University of Windsor, LLB, 1984
- Harvard University, Certificate Program for Instruction for Lawyers on International Negotiation, 1987
- Osgoode Hall Law School, LLM, 1999

Place and Year of Call

- Ontario, 1986

Languages

- English
- French