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L. YVES FORTIER CHAIR IN INTERNATIONAL ARBITRATION AND
INTERNATIONAL COMMERCIAL LAW

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McGill Arbitration Student Society
Société étudiante d'arbitrage de McGill

Presents:

**2015 McGill Symposium
on International
Arbitration:**
*Governance and
Constitutionalisation in
International Arbitration*

March 12-13, 2015
McGill University – Faculty of Law
Montréal, Québec

Speakers

ANDREA BJORKLUND

Andrea Bjorklund is a professor at the McGill Faculty of Law and holder of the L. Yves Fortier Chair in International Arbitration and International Commercial Law. A renowned expert in international arbitration and litigation, international trade and international investment, she was previously a professor at the University of California (Davis) School of Law and a Bigelow Fellow at the Chicago Law School. Prior to entering academia, Professor Bjorklund worked on the NAFTA arbitration team in the U.S. Department of State's Office of the Legal Adviser and worked for Commissioner Thelma J. Askey on the U.S. International Trade Commission.

THOMAS E. CARBONNEAU

Thomas Carbonneau is Samuel P. Orlando Distinguished Professor of Law and Director of Institute of Arbitration Law and Practice at Penn State Law. He is a scholar of international, comparative, and domestic arbitration. He has written more than fifteen books and eighty scholarly articles. As a Fulbright Scholar, he held the Visiting Chair in Comparative Law and Legal Pluralism at McGill Faculty of Law in Montréal, Quebec, Canada in spring 2010. Professor Carbonneau is a former Rhodes Scholar.

FLORIAN GRISEL

Florian Grisel is a Research Fellow (*Chargé de recherche*) at the *Centre National de la Recherche Scientifique* (CNRS) and a Senior Lecturer in Transnational Law at King's College London. His doctoral dissertation (University Paris 1 Panthéon-Sorbonne) was awarded the 2011 Varenne Prize in General Theory and Philosophy of Law. Prior to joining the CNRS and King's College London, Dr. Grisel practiced law as an attorney at leading arbitration firms based in Geneva and Paris.

DAVID SCHNEIDERMAN

David Schneiderman, B.A. (McGill) 1980, LL.B. (Windsor) 1983, LL.M. (Queen's) 1993, is Professor of Law and Political Science at the University of Toronto's Faculty of Law. Professor Schneiderman has authored numerous articles on Canadian federalism, the Charter of Rights, Canadian constitutional history, and constitutionalism and globalization. He has authored *Constitutionalizing Economic Globalization: Investment Rules and Democracy's Promise* (Cambridge University Press, 2008).

JAMES A. WOODS, Ad. E.

James A. Woods, Ad. E., is the founding partner of Woods LLP, Canada's pre-eminent litigation and arbitration boutique. He has over 35 years of experience in litigation and arbitration. He is recognized as a leading lawyer before all instances of Quebec and Ontario courts, as well as the Supreme Court of Canada. During his career, he has acted as arbitrator, both as president and tribunal member, in many domestic and international cases, both ad hoc and under the rules of various arbitral institutions.

Program

MARCH 12, 2015

5:00 PM – Welcome Message (NCDH, Moot Court)

Jonathan Brosseau, President, McGill Arbitration Student Society

5:05 PM – Mock Arbitration (NCDH, Moot Court)

McGill University's & Queen's University's Willem C. Vis International Commercial Arbitration Moot Team

Thomas E. Carbonneau, Florian Grisel, James A. Woods, Arbitral Tribunal

7:00 PM – Wine & Cheese (NCDH, 3rd floor)

MARCH 13, 2015

4:30 PM – Panel on Governance and Constitutionalisation in International Arbitration

Andrea K. Bjorklund, Moderator

Thomas E. Carbonneau, Florian Grisel, David Schneiderman, Speakers

The ever-increasing importance attached to international arbitration raises new questions focusing, amongst others, on the different models of governance that can be distinguished in the field of international arbitration and its evolution towards a judicialized system. Other questions focus on whether the evolution of international arbitration is moving towards the creation of a constitutional order and on the approach to international arbitration in different parts of the world.

6:00 PM - Cocktail Reception, sponsored by Woods LLP



2015 MCGILL SYMPOSIUM ON INTERNATIONAL ARBITRATION

Governance and Constitutionalisation in International Arbitration

Given the importance attached to international arbitration and the increasing number of agreements (whether bilateral, regional or global) providing for such dispute settlement mechanism, together with the diversity in terms of parties and subject matter of given arbitrations (commercial arbitration, investment arbitration, state-to-state arbitration), the topic of this year's edition is "Governance and Constitutionalisation in International Arbitration." The panel will be composed of three panellists and the aim of the presentation is to feature discussions on this topic that are both academic and practice oriented.

One discussion will focus on the evolution of international arbitration towards a judicialized system which might involve tackling the questions of the models of governance that can be distinguished in international arbitration (the contractual model, the judicial model,...). This first topic will also emphasise the strong practical impacts of these questions both in terms of the procedure (the ICC and ICSID procedural rules to take into account this "judicialization" of commercial and investment arbitration) and substance (the difference between rules of law and rules of equity and the impact of the evolution of arbitration on the choice of the applicable rules and the resolution of a dispute) of arbitration. [Dr Florian Grisel, Senior Lecturer in Transnational Law, King's College London]

Other discussions will raise the question whether there are discernable the outlines of an emergent global economic constitutional order? If the current global scene is understood as hybrid and plural, there only will be partial manifestations – observable, regime-specific instances – of what might become part of a unitary global economic constitution. In the domain of international investment law, for example, though there is web of 2800 bilateral investment treaties, there are sufficient commonalities that will be familiar to constitutional lawyers. It also is apparent that the body investment jurisprudence resembles, in some important ways, the output of high court decision making under national constitutional law. The paper proceeds to outline some familiar constitutional tropes found in investment law and closes with a discussion, by way of illustration, of an ongoing dispute that resembles an early nineteenth century US constitutional dispute concerning the sanctity of contracts. [Professor David Schneiderman, University of Toronto – Faculty of Law]

Finally, there are questions and misgivings about the universality of ICA (international commercial arbitration). In particular, do most countries outside the place of origination accept the principle of contract freedom in arbitration? Latin American and Asian or Eastern countries express significant reservations about the subordination of national legal systems and interests to the process of ICA. In this context, it may be useful to focus upon the Federal Arbitration Act (FAA) and the abundant case law that accompanies it. How instructive are they to understanding the strength and weaknesses of globalized or judicialized arbitration? Lastly, constitutionalism, meaning a concern for the fundamental political values and civil liberties practiced in a lawful community, is arguably at the core of the US Supreme Court's support for arbitration. The Court appears to be preoccupied with assuring the integrity of civil justice in the United States and in transnational circumstances that affect US economic interests and parties. The singular and practical motivation makes uniformity not only necessary, but also a 'natural and probable' consequence of the doctrine. [Thomas E. Carbonneau, Director Institute of Arbitration Law and Practice, Penn State University – Dickinson School of Law]



McGill SYMPOSIUM ON INTERNATIONAL ARBITRATION

Governance & Constitutionalisation in International Arbitration

MARCH 12-13, 2015

**Location: McGill Faculty of Law, New
Chancellor Day Hall**



JUSTICE PRIVÉE
et ÉTAT de DROIT McGill



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**L. Yves Fortier Chair in International Arbitration
and International Commercial Law**



**12 MARCH:
(17.00h-19.00h)**

**Mock Arbitration under
the ICC Rules**

**McGill Team vs Queen Team,
Willem C. Vis International
Arbitration Moot**

**James A. Woods, Arbitrator
NCDH, Moot Court**

(19.00h)

**Wine & Cheese
NCDH, 3rd floor**

**13 MARCH:
(16.30h-18.00h)**

Distinguished Panel

**Andrea Bjorklund, Full
Professor, McGill University
Florian Grisel, Senior Lecturer,
King's College London
Thomas E. Carbonneau,
Professor of Law, Director,
Institute of Arbitration Law and
Practice, Penn State Law**

**David Schneiderman, Professor
of Law and Political Science,
University of Toronto**

NCDH, Moot Court

(18.00h)

**Cocktail Reception
sponsored by Woods LLP
NCDH, Atrium**

RSVP before March 9th

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