Lang Michener LLP
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In Brief

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In Brief: General comments on legal developments of concern to business and individuals

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LAW NOTES provide an excellent summary of a variety of interesting topics, including managing corporate reputation, business initiatives for innovators and entrepreneurs, and a look at biologics as a new growth area. Efforts to combat mortgage fraud; planning and financing small business ventures; the crucial significance of notice requirements as they relate to renewal provisions; and the new humanitarian symbol are all canvassed in separate NOTES.

The full-length articles cover a wide gamut from practical tips about foreign travel to trade recommendations about scaling back restrictions on Canada's foreign ownership and a revolution in financial reporting.

In addition, the ins and outs of the national "do-not-call list" are fully canvassed, as is a new lawsuit that allows those trading in the secondary securities markets to hold directors, officers and "others" responsible for misrepresentation.

In "…Hands Off the Cookie Jar…," employers may be heartened to learn that they may have another quiver in their arsenal to curb workplace theft and recover losses. Wiki pages, diacritics, spoofed websites and the need to better protect trade-marks all get clarified in "The Internet Is Now Truly International."

Brief Life Bites may provide a smile, and we include your *Letters and Comments* and also a little bit about us.

A Door Half Open: Changes Recommended to the *Investment Canada Act*


Michael Flavell


Martin Masse


Corinne Brûlé

In 2007, the Competition Policy Review Panel was formed with the mandate to review Canada's competition and foreign investment policies and to make recommendations aimed at increasing Canada's competitiveness in the global marketplace. Earlier this year, the Panel released its much anticipated Report.

This abbreviated article focuses on the most significant recommendations made by the Panel with respect to the *Investment Canada Act* (the "Act"). In short, its intention is to increase Canada's attractiveness as a destination for foreign investors. But a brief overview of the current scheme is helpful to appreciate the rationale for its recommendations.

Current Foreign Investment Restrictions Under the Act

Depending on the type and size of the transaction, investments by non-Canadians are subject to one of two procedures under the Act: (1) notification, or (2) application for review for "net-benefit."

Notification is required any time that a non-Canadian creates a new Canadian business or acquires control of an existing Canadian business, unless the investment is subject to review and an application for review is filed.

Currently, acquisitions of a Canadian business by a foreign investor will be subject to review under the Act where the value of the assets of the Canadian business meets or exceeds certain monetary thresholds that are calculated yearly by the Minister of Industry. If the investor is from a member country of the World Trade Organization ("WTO"), the threshold for review in 2008 has been set at $295 million. For non-WTO investors, or for investors acquiring a Canadian business engaged in specified sensitive sectors (uranium production, financial services, transportation services), the threshold is much lower ($5 million for direct investments and $50 million for indirect transactions). Additionally, the Government may review certain transactions regardless of the thresholds if the investment falls within a type of specified business activity that is related to Canada's cultural heritage or national identity.

Currently, acquisitions of a Canadian business by a foreign investor will be subject to review under the Act where the value of the assets of the Canadian business meets or exceeds certain monetary thresholds.

When an application is under review, the relevant Minister will determine whether or not the investment is likely to be of "net benefit" to Canada. The factors that are taken into account generally relate to employment, productivity, industrial efficiency, competition and compatibility with national policies.

Panel's Recommendations

A very brief overview of some of the major recommendations made by the Panel can be summarized as follows:

1. Change of Monetary Thresholds for Review and Value Measurement standard

The Panel recommended an increase in the monetary thresholds which would trigger review by Industry Canada to $1 billion in enterprise value. This increased threshold would not apply to investment in "cultural businesses." The Panel recommended a change from using "gross assets" as the measurement tool for an investment or acquisitions value to the use of "enterprise value." Enterprise value is equal to price paid for the equity of an acquired business and the assumption of its liabilities on the balance sheet minus its current cash assets.

2. Shift of Burden Regarding the "Net-Benefit" Test

With respect to the net-benefit test, the recommendations are that the test no longer be one in which the applicant must prove a net benefit to Canada, but should be one in which the Minister is required to prove that the investment would be contrary to Canada's interest.

3. Implementation of "National Security" Test

The Panel was in support of the implementation of a national security test which would allow the rejection of an investment/acquisition if it was found to be a risk to national security. A similar test is in place in the U.S.

4. Cultural Businesses and the *de minimus* Exemption

While many were hopeful for drastic changes with respect to "cultural business" industries, the Panel was hesitant to make any such recommendations. The Panel did take a few small steps towards liberalization. It called for a *de minimus* threshold which aims to exempt from review any business activities that are ancillary to the "cultural" industry. This threshold would apply when revenues from cultural business activities are "less than the lesser of $10 million or 10% of gross revenues of the overall business." The Panel also recommended that Canadian Heritage, the ministry responsible for review of cultural business transactions, review its relevant policies every five years, including whether or not it should increase or revise the threshold.

5. Increased Transparency and Predictability

A common industry complaint addressed by the Panel was that the review process is neither transparent nor predictable. The Panel called for a requirement that Industry Canada report publicly the disallowance of any transaction under the Act along with reasons for doing so. Additionally, Industry Canada should be required to publish Annual Reports and improved Guidelines.

6. Two-Phased Liberalization in Telecommunications Sector

The Panel followed the recommendations made by the 2006 Telecommunications Policy Review Panel calling for a two-phased

liberalization in the telecommunications sector. It also recommended that Industry Canada allow the establishment of new telecommunications businesses and the acquisition of companies by foreign investors with up to 10% market share.

7. Changes to Air Transportation Foreign Ownership Restrictions

The Panel recommended an increase in the foreign ownership limitations in the airline industry from 25% to 49% of voting equity, so long as it is done on a reciprocal basis. The Panel also emphasized that Canada needed to increase its "Open Skies" negotiations with other nations.

Concluding Remarks

By and large, the Panel's recommendations involve a scaling back of Canada's foreign ownership restrictions. The question remains whether the Panel went far enough.

The likelihood that these recommendations would be followed is unclear. However, prior to the election, the Conservative Party did pledge to implement some of the changes discussed above. These include: the increase in thresholds for review; the use of enterprise value as a standard for assessment; the requirement for reasons for disallowances; the implementation of a national security test, and the increase to the allowed level of foreign ownership in the airline industry.

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Ed.: *This is an edited abridgment of a much lengthier paper presented at the Canadian Bar Association's 2008 Annual Fall Conference in Competition Law. For a copy of that paper, without cost or obligation, please contact any of the co-authors.*

XBRL – Tag, You're It: Revolutionizing Financial Reporting

John Conway

In addition to preparing for the implementation of IFRS (International Financial Reporting Standards) on January 1, 2011, Canadian companies should be cognizant of another acronym, XBRL, that stands to revolutionize financial reporting worldwide.

What is XBRL?

XBRL stands for e**X**tensible **B**usiness **R**eporting **L**anguage, which is an emerging business reporting language being developed by a non-profit consortium of international companies, organizations and government industries that is designed to make it easier for entities that produce, collect and use financial information to share and analyze financial data.

How Does XBRL Work?

Instead of treating financial data as a large block of text (as in a standard internet page or a printed document), XBRL applies computer-readable identification tags to each individual item of data. The tags provide information about the item, such as whether it is a percentage, fraction or monetary item. These tags enable computers to recognize the information in an XBRL document, store it, analyze it, exchange it with other computers and display it automatically in a variety of ways for users. XBRL works regardless of the language or accounting standard used by the reporting company, enabling financial data to be compared and analyzed globally between companies using a variety of accounting standards.

What Are the Benefits?

Through the use of identification tags, XBRL will save users of financial information time and money by eliminating the need to re-key financial data into a spreadsheet (a process prone to error) for comparison and analysis. Entities that collect business data (for example, governments, regulators and financial information companies) and entities that produce or use business data (for example, auditors, company managers, financial analysts and investors) all stand to benefit from XBRL. Once data is gathered in XBRL, different types of reports using varying subsets of the data can be produced with minimal effort. The data can also be checked by software for accuracy.

When Will XBRL Become Mandatory?

Currently, there is no requirement in Canada or the U.S. that financial statements be filed in XBRL format. However, the regulators are moving in that direction.

In the United States, the Securities and Exchange Commission ("SEC") introduced a voluntary XBRL filing program in 2005 allowing companies to submit XBRL documents as exhibits to their ordinary financial statement filings. There are over 50 companies participating in the SEC's voluntary XBRL filing program. In June of this year, the SEC released a proposal to implement new rules requiring companies to provide their financial statements in XBRL format. The proposed rules are scheduled to be phased in beginning this fall and will require companies that have a worldwide public float of over $5 billion to provide XBRL filings as exhibits to their ordinary filings

for periods ending as early as December 15, 2008. The SEC plans to replace the EDGAR (Electronic Data Gathering, Analysis and Retrieval) system with IDEA (Interactive Data Electronic Applications) which will be capable of handling XBRL filings.

The launch of mandatory XBRL filings is much further on the horizon for Canadian companies. The Ontario Securities Commission ("OSC") launched a voluntary XBRL filing program in the spring of last year and currently a handful of companies are participating. At a Canadian Securities Administrators ("CSA") panel discussion held in September 2008, it was suggested that Canadian regulators will not make XBRL filing mandatory until Canada converts its accepted accounting standard from Canadian GAAP (Generally Accepted Accounting Principles) to IFRS (International Financial Reporting Standards) in 2011. Additionally, a new or updated Canadian electronic filing system will likely be required before XBRL becomes mandatory in Canada as SEDAR, in its current state, does not have the capability to support the amount of XBRL filings that would be filed if XBRL was mandatory. (SEDAR is the official site that provides access to most public securities documents and information filed by public companies and investment funds with the CSA.)

Looking Forward

The CSA and the OSC support the move towards XBRL and believe that it will benefit both Canadian investors and the Canadian capital markets. XBRL could be specifically useful in Canada because of the large number of public companies in Canada with small market capitalization. XBRL will make the financials of these companies much more accessible to analysts and will assist analysts in discovering smaller companies for potential investment.

As XBRL becomes mandatory in more jurisdictions worldwide (mandatory XBRL filing and an accounting standard conversion were recently simultaneously implemented in Israel at the beginning of this year), Canadian companies that take the initiative and file their financial statements in XBRL may enjoy a competitive advantage in the global marketplace.

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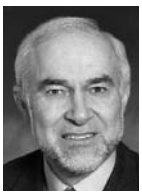
Canada's Mandatory Do-Not-Call List



David Young

Esther Rossman

Pursuant to amendments made to the *Telecommunications Act* ("Act"), the Canadian Radio-television and Telecommunications Commission ("CRTC") now regulates unsolicited telemarketing communications. The CRTC has created a set of "Unsolicited Telemarketing Rules" ("Rules"), and has also established a National Do-Not-Call List ("DNCL").

Canada's DNCL is now operative. In essence, this list enables consumers who do not want to receive telemarketing calls to register their telephone numbers with a registry maintained by Bell Canada. All businesses that conduct telemarketing in Canada, whether directly or indirectly through telemarketing service providers, are required to subscribe to the DNCL to ensure that they do not call numbers that have been registered.

Consumer Registration

Consumers may register any Canadian telephone number on the DNCL, regardless of whether they use that number with a landline, a cellular telephone, or a fax machine. To register or de-register on the DNCL via telephone, consumers must call 1-866-580-DNCL (1-866-580-3625) or 1-888-DNCL-TTY (1-888-362-5889) from the telephone number that they wish to register or de-register. The same service will be available for fax numbers. Online registration is also available at www.LNNTE-DNCL.gc.ca.

The effect of registering a number on the DNCL will be to prohibit organizations and their telemarketing service providers from calling that number unless the consumer has expressly consented to being called, or the organization or the consumer falls within an exempt category. Businesses which employ a telemarketing service provider must make all reasonable efforts to ensure that the telemarketers calling on their behalf do not initiate calls to consumers registered on the DNCL.

A 31-day grace period following a consumer's registration is granted to allow telemarketers time to update their telemarketing lists. In other words, an organization is not prevented from calling a number until 31 days following its registration on the DNCL. In effect, this permits organizations to download updates from the DNCL every 31 days (although this may be done more frequently, if desired) and delete those numbers from their lists prior to making any unsolicited telecommunications.

Telemarketer Registration and Access to the DNCL

All telemarketers and businesses which employ telemarketing companies to make calls on their behalf will be required to

register with Bell Canada, even if they only make exempt unsolicited calls. Registration is free, and must be done through the National DNCL website (www.LNNTE-DNCL.gc.ca).

Unless they are exclusively making calls which are exempt from DNCL requirements, telemarketers will also be required to purchase a subscription. The fees to be paid will vary, based on the number of area codes a telemarketer intends to call. Currently, the annual fee for all area codes is $11,280. For smaller telemarketers, individual area codes can be accessed for an annual fee of $615 or specific phone numbers can be verified at 50 cents each.

An additional "complaints operator" charge, not yet effective, is anticipated to be payable by all telemarketers, whether calling under an exempt category or not. This fee will be payable to a third party and is meant to offset the costs of administering a DNCL complaint hotline and investigating violations.

Exempt Categories of Telemarketing Communications

The amendments to the Act provide for a number of categories of telemarketing communications to be exempt from the DNCL Rules. These are:

(i) communications made by charities registered under the *Income Tax Act*;

(ii) communications made for purposes of elections, surveys, and soliciting newspaper subscriptions;

(iii) business-to-business communications; and

(iv) communications based on an existing business relationship with a consumer.

This list enables consumers who do not want to receive telemarketing calls to register their telephone numbers with a registry maintained by Bell Canada.

Existing Business Relationship Exemption

For most organizations, the most significant category of telemarketing call exempt from the DNCL will be the "existing business relationship" category. In other words, a telemarketer may call a consumer who has registered on the DNCL if the telemarketing business has an existing business relationship with the consumer and the consumer has not made a specific request to the organization not to be called.

An existing business relationship is established between a consumer and an organization in one of three ways, including a consumer's purchase of services or the purchase, lease or rental of products, within the 18-month period immediately preceding the date of the telecommunication.

Telemarketers' Internal Do Not Call Lists

Organizations that benefit from one of the exemptions from the DNCL must still maintain an internal do not call list containing the names (and presumably telephone numbers) of individuals who have contacted the organization directly requesting that they not receive further calls. In other words, consumers who could have been called by the organization, for example because they have an existing business relationship with it, may still request not to be called.

Violations and Complaints

A consumer who continues to receive telemarketing calls after registering on the DNCL (not subject to exemptions and after the 31-day grace period) may file a complaint either by calling the DNCL toll-free numbers noted above, or through the National DNCL website. The complaint must be filed within 14 days of the call, and must include the name or number of the telemarketer (or business employing the telemarketer), the date of the call and the nature of the complaint.

Violations of the DNCL Rules will expose organizations and individuals to "administrative monetary penalties" ("AMPs") of up to $15,000 for a corporation and $1,500 for an individual per violation. Liability is imposed on the telemarketer and on the business employing the telemarketing service provider.

The CRTC has indicated that it will take a compliance-oriented approach to enforcement, encouraging first-time offenders to remedy their practices rather than moving directly to imposing penalties. In order to maintain enforcement flexibility, the CRTC will evaluate a number of factors before determining whether to issue a notice of violation and in setting the amount of the penalty.

Due Diligence Defence

The Act provides for a due diligence defence in respect of violations of the Rules. The CRTC has provided criteria for telemarketers to follow in order to establish the due diligence defence. These criteria provide important guidance to telemarketers and their telemarketing service providers in establishing internal procedures to ensure, to the extent possible, compliance with the new DNCL regime and to establish the strongest due diligence position as a defence to any potential violations.

Some Final Remarks

Clearly, the CRTC's new National Do Not Call List will have an important impact on businesses that rely on telemarketing, either directly or through marketing partners, to promote their products. Businesses will need to establish and ensure compliance with internal procedures to conform to the requirements of the

DNCL. Training of staff by businesses and their telemarketing service providers will be important. Finally, documentation providing for consumers' consent will need to be revised and appropriate contract provisions with service providers will need to be stipulated.

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New World of Liability: Securities Misrepresentation in the Secondary Market

Christine J. Mingie

Tom Hakemi

British Columbia has finally introduced its long-awaited civil liability regime for secondary market disclosure. It expands the liability regime to public companies and their directors and officers (and certain other persons who provide services to public companies, such as lawyers, auditors, geologists and financial advisors) by creating a cause of action for purchasers of securities in the secondary market.

The secondary market includes all trading in securities that takes place after the initial sale from the issuing company. And, indeed, the secondary market includes all trading on stock exchanges and represents some 90% or more of all trading in securities.

The changes also open the door to class action proceedings for misrepresentations in filed disclosure documents for purchasers in the secondary market by removing the common law requirement that an investor prove he or she relied on the misrepresentation.

The changes also open the door to class action proceedings for misrepresentations in filed disclosure documents for purchasers in the secondary market.

The New Right of Action

Under amendments to the *Securities Act* (the "Act") now in effect, public companies and their officers, directors, insiders, experts and others that are subject to British Columbia securities laws are exposed to civil liability from investors for misrepresentations in a public company's continuous disclosure and for failures to make timely disclosure of material changes.

Investors now have the right to sue if they suffer damages as a result of purchasing or selling securities of a public company in the following circumstances:

- a failure to make timely disclosure of a material change by a public company;
- a misrepresentation in a document released by or on behalf of the public company;
- a misrepresentation made in a public oral statement by or on behalf of the public company; and
- a misrepresentation in a document or public oral statement released or made by an influential person, such as a promoter or an insider of the public company.

The definition of what constitutes a document under the new regime is particularly important. It includes documents, whether in written or electronic form, that are or must be filed with the British Columbia Securities Commission, that are or must be filed with any government agency under securities or corporate law, a stock exchange or quotation and trade reporting system, and any other communication that would reasonably be expected to affect the market price or value of the company's securities. The expansiveness of the definition captures a wide range of documents including, for example, web replays of a conference call and documents filed or required to be filed with the Registrar of Companies (such as notices of articles, annual reports and notices of change of directors).

Persons Potentially Liable

Depending on whether a potential claim involves a disclosure misrepresentation or a failure to make a timely disclosure, an investor is entitled to sue any of a number of people, including:

- public companies, their directors and their officers, if the officers authorized, permitted or acquiesced in the release of the document or the making of the public oral statement containing the misrepresentation or in the failure to make timely disclosure of a material change;
- influential persons (including promoters) and experts (whose reports, statements or opinions, for example, contained the misrepresentation); and
- in the case of a misrepresentation contained in a public oral statement, the person who made the statement regardless of their affiliation with the public company.

Available Defences

A number of defences are available to persons who are sued by an investor, depending upon whether the claim involves a claim of disclosure misrepresentation or a failure to make a timely disclosure. Some of the defences available include the due diligence defence, reliance on professionals and experts, mistaken release of a document, the safe harbour defence, reliance on another public document and whistleblower protection.

Damages and Liability Limits

The new civil liability regime contains detailed provisions on how damages are to be assessed in favour of an investor who bought or sold securities after a document was released, an oral statement made that contained a misrepresentation, or after a failure to timely disclose a material change. The assessment of damages is subject to a number of variables. Generally, damages are based on the difference between the value of the securities bought or sold when the disclosure record of the public company was inaccurate and the value of the securities after proper disclosure has been made. Without finding of fraud, however, the damages have certain limits or caps.

Proportionate Liability

In addition to liability caps, the liability of each defendant will be assessed proportionately to that person's responsibility for making and not correcting the disclosure that contained the misrepresentation or failing to make the required disclosure. In situations where a defendant knowingly made a misrepresentation or failed to make timely disclosure, the defendant will be jointly and severally liable for the whole amount of the damages assessed.

Leave to Proceed

In an effort to protect against frivolous lawsuits, the amendments prohibit an action from being commenced without leave of the court. In determining whether to grant leave to commence an action, the court must be satisfied that the action is being brought in good faith and that there is a reasonable possibility that the action will be resolved at trial in favour of the plaintiff.

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The Internet Is Now Truly International

Corinne Brûlé

ICANN, the Internet Corporation for Assigned Names and Numbers, coordinates the domain names and addresses that help computers worldwide reach each other over the Internet.

ICANN has long recognized that the Internet would one day have to evolve beyond the Western world's A–Z alphabet and 0–9 numbering system known in cyberspace as part of the American Standard Code for Information Interchange ("ASCII") character set. The result of this evolution is the internationalized domain name ("IDN") that can contain letters with diacritics such as é, ž, ü and ç or letters from non-Latin alphabets such as Arabic and Chinese. Presently, in order for these IDNs to function on current web browsers and applications, IDNs must be converted into ASCII form.

But just over a year ago, ICANN created "wiki pages" with the domain name "example.test," supporting 11 test languages: Arabic, Persian, Chinese, Russian, Hindi, Greek, Korean, Yiddish, Japanese and Tamil. In the spring of this year, Hebrew and Amharic were added. ICANN and the Internet community are looking at these IDNs to evaluate how they operate and how current computer software handles these domain names in different scripts. These tests are evaluating internationalized domain name top level domains ("TLDs"), specifically country code TLDs ("ccTLDs") such as .ca (Canada), .uk (United Kingdom) and .es (Spain).

ICANN has already established a list of general standards for IDN registration policies and practices that are designed to minimize the risk of cybersquatting and consumer confusion, and in that respect the interests of local languages and character sets. ICANN is currently implementing practices and guidelines for restricting or managing mixed-character-set domain name registrations to ease the transition to the successful use of IDNs. As well, ICANN, UNESCO and the International Telecommunication Union are working towards an agreement on universal standards regarding multilingual issues and the Internet. These issues go beyond just IDNs, extending to questions of fonts and character size, text encoding and automatic translation software.

Once IDNs become widespread, they will lead to new challenges for companies with a portfolio of domain names that often consist of trade-marks spelled out in the A–Z alphabet and the corresponding websites.

For example, IDNs will make it easier to create "spoofed" websites designed to look exactly like well-known sites through the use

of different characters and fonts in various languages that can resemble each other. The "a," for instance, in the Cyrillic alphabet can look identical to the "a" in the Latin alphabet, although the differences in their code are significant to a computer locating a web site or validating a certificate.

It may also become more difficult to protect trade-marks used in domain names, since ICANN's current dispute resolution mechanisms require a complainant to prove that a domain name is identical or confusingly similar to its trade-mark. Meeting this requirement will be challenging when disputes involve domain names and trade-marks registered in different languages or scripts. If a trade-mark is registered and protected only in English, and a translation or transliteration of it is registered as a domain name, the trade-mark owner would have to prove that the transliterated or translated version of the trade-mark is identical or confusingly similar to the original trade-mark.

The phonetic similarity of trade-marks and domain names will add another dimension to trade-mark infringement actions dealing with IDNs.

Further, the phonetic similarity of trade-marks and domain names will add another dimension to trade-mark infringement actions dealing with IDNs. Protection against cybersquatting will also be affected by the introduction of IDNs.

Trade-mark owners must now consider the challenges that they will face as a result of the creation of IDNs, particularly for trade-marks that require international protection. In order to combat these challenges, trade-mark owners may need to acquire expertise in the new IDN languages which could affect their trade-marks and the markets in which they operate. This expertise should include not only knowledge of the written language and its similarities to Latin based letters (i.e., to protect against spoofing) but also an understanding of the subtleties of interpretation and how this affects trade-mark protection (i.e., what could be confusingly similar or identical).

Despite the challenges, the creation of IDNs is a positive development for many organizations in that it will open the doors to markets that previously have been practically inaccessible. Trade-mark owners must now begin to incorporate IDNs into their trade-mark strategies and planning in order to evolve with the ever-expanding international online community, as the unilingual western-centric Internet will soon be ancient history.

More information on ICANN developments and strategies for protecting trade-marks and domain names should be pursued at the first opportunity with legal counsel.

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Employees Beware: Hands off the Cookie Jar, or Pay

Howard A. Levitt

Not long ago, a study found an astounding 79% of employees admit to stealing or considering doing so from their employers. One in five has already done so by providing inflated expense accounts, cooking the books or pocketing money from cash sales. From purloined paperclips to the more audacious embezzlement of corporate funds, Canadian employers lose more than $120 billion a year to employee theft, a problem identified as the cause of 30% of business failures.

But can the cost consequences of such theft more fairly rebound to the workplace thief?

An increasing percentage of my practice involves suing the perpetrators on behalf of clients, sometimes laying charges, and even settling cases in return for both money and videotape evidence incriminating fellow miscreants.

An obscure court decision from British Columbia adds a quiver to the arsenal of what Canadian employers can do to recoup lost revenues.

Sharon Brown, a cashier and customer service representative at a Safeway store in Cranbrook, B.C., had easy access to cash and accounting records. After noticing unexplained cash and inventory shortages in refunds processed without supporting records, Safeway began tracking the refunds and merchandise more closely. Security cameras were installed with a view to catching the thief in the act. Brown was revealed to be the thief.

The evidence was damning and when interviewed by Safeway, she admitted to the thefts. Although the exact amount was unknown, she admitted to slowly taking money over three months and accelerating that pace a month before her interview, dipping into Safeway's account daily with a typical take of $100.

Safeway fired Brown and laid criminal charges. She pled guilty and, as part of the terms of probation, she paid Safeway $1,500.

However, Safeway did not stop where most employers would have. Safeway sued for a further $6,000, representing the monies stolen and $24,000 for the corporate resources expended in its investigation and its assistance of the criminal prosecutors. Those expens-

es included the effective hourly rates for each employee involved in the investigation, as well as the cost of the security cameras.

Justice Cohen of the B.C. Supreme Court ordered Brown to repay all of the amounts claimed by Safeway. He held that the grocery store was entitled to be reimbursed for costs and expenses incurred as a victim of theft.

Termination alone will not recoup losses and the cost of monitoring, surveillance and investigations when theft is suspected. Usually the costs are absorbed as part of doing business, or passed on to employees through lower compensation schemes or to customers by way of higher prices.

Apart from terminating an employee for cause, employers often feel powerless to prevent workplace theft. For that part of the 79% of employees who are at least "considering stealing," the development of a corporate culture from the executive level down that makes it resoundingly clear that there is zero-tolerance for such actions will be helpful.

Those caught stealing will not only be criminally prosecuted but will also be sued to recoup all costs associated with an investigation leading to the thief's discovery.

The message must be clear: Those caught stealing will not only be criminally prosecuted but will also be sued to recoup all costs associated with an investigation leading to the thief's discovery. While it is unlikely the employer will recover all its losses, the message that it will pursue civil remedies has an impact on potential thieves. In this way, the investment of pursuing the thief may pay off.

To successfully implement such a strategy, employers should:

- Conduct a thorough investigation;
- Keep records of the time, resources and additional expenses used to investigate any particular employee, including having investigators keep track of hours they expended;
- Involve the police and lay charges; and
- Bring a civil action against terminated employees not only to recoup the costs of investigation but to send a zero-tolerance message.

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Ed.: *This article appeared largely in this form in Howard's weekly column on the first page of the Working section of the* National Post.

Traveling to the U.S.: Prepare for Confiscation and Backup Your Data

Cyndee Todgham Cherniak

Any traveler to the United States should prepare to be without his or her laptop, cell phone, PDA, Blackberry, iPod, MP3 and other electronic equipment. In addition, any traveler to the United States should make backup copies of any documents taken to the United States.

The reason is that under new sweeping powers by rules (as opposed to legislation and regulations), the U.S. Department of Homeland Security and U.S. Customs and Border Patrol may seize travelers' hard drives, flash drives, cell phones, iPods, pagers, beepers, video and audio tapes, books, pamphlets and other written materials at the border and hold them for unspecified periods. Such seizures may be carried out without suspicion of wrongdoing or "probable cause" that a crime has been or will be committed.

While the rules require the U.S. agents to take measures to protect business information and attorney-client privileged material, it will not be easy to get them to listen and any argument may not end favourably for the traveler. Some of the first cases that have gone through the U.S. courts involved seizures from lawyers.

The good news is that the rules require that the U.S. Government destroy any copies of the data if a review is completed and no probable cause exists to keep the information. However, there will be no way for the individual traveler to ensure that all copies of their information were destroyed.

The U.S. Government is looking for any type of criminal activity or contravention of U.S. law, whether or not it is terrorism related, evidence of money laundering, corruption, improper exports, customs contraventions and such.

It will come down to simple risk management. If your are going to vacation in the U.S., do not bring electronic devices and data with you. If you must have your electronic devices and documents with you on your vacation, or if you are traveling for business, you will have to take steps to make sure that something you need is not seized. The obvious piece of advice is to be a good citizen, but often officials cannot tell the difference between one who is upright and the criminals, and some criminals are great actors. They may pick you even if you have never done anything wrong in your life and there is nothing improper in your possession.

Assuming you may be selected for search and seizure when entering the United States, do not travel with something that you cannot do without. Make backup copies of any data that you take to the United States. Where possible, remove any information you do not need at the time you will be crossing the border into the United States. For example, backup information from your Blackberry to your desktop before leaving for the airport. Then delete the informa-

tion from your Blackberry. You will be able to retrieve it when you return home. Some enterprise servers may allow you to park information and retrieve it electronically after you clear the U.S. customs controlled area (and, for example, are in your hotel).

If you must travel with a laptop, have a laptop dedicated for travel purposes and keep only the information you need for the trip to the United States on your laptop. Backup all important documents on a desktop in your office (or on an external backup system).

Lawyers who must travel to the United States for their clients need to take steps to protect client information. One suggestion would be to put the documents on a thumb drive and seal the thumb drive in a sealed and marked "Attorney-Client Privilege" envelope. This may not prevent the officers from opening the envelope and looking at the documents, but it may allow you to ask for the sealed envelope to be opened by a judge and, failing that, it may protect you from a claim by the client if the U.S. Government seizes the documents.

Cyndee Todgham Cherniak is counsel in the International Trade Group in Toronto. Contact her directly at 416-307-4168 or cyndee@langmichener.ca.

LAW NOTES

Managing Corporate Reputation; Innovators and Entrepreneurs Welcomed; New Growth Area in Generics; Combating Mortgage Fraud; Perpetual Renewal Provisions and Notice; Planning and Financing Small Business Ventures; The New Peace Symbol


Peter Giddens


Dale Schlosser


Matthew German


Keith Cameron


Christine J. Mingie


Eugene Meehan


Cyndee Todgham Cherniak

1 Managing Corporate Reputation: Lessons from the Facebook Decision

The first libel and privacy trial concerning Facebook has some important lessons for Canadian companies about the potential risks posed by social networking websites.

In *Applause Store Productions Limited and Firsht* v. *Raphael*, a recent decision of the England High Court of Justice, Matthew Firsht, a successful businessman, and his TV production company, Applause Store Productions Limited, were awarded $40,000 plus indemnity costs for libel and breach of privacy when an old acquaintance of Firsht posted a fabricated profile of him on Facebook.

Firsht learned about the Facebook profile when he was surfing the Internet. The profile included his photograph and some personal information about his sexual orientation that was false. In addition to the profile, a group entitled "Has Matthew Firsht lied to you?" was created on Facebook. It contained false and defamatory statements about Firsht and his company's ability to pay its debts.

The fabricated profile was on Facebook for 16 days and was theoretically accessible by millions of users during that time. Firsht requested that Facebook remove the profile and obtained a court order requiring it to disclose information concerning the user who had created the profile. That information allowed Firsht to trace the author of the profile through the internet protocol address of the computer used to create the profile on Facebook. Firsht and Applause successfully sued the author of the profile for breach of privacy and libel.

The lesson for Canadian companies is clear. Social networking is everywhere, and whether or not you know it, your employees may be up to their necks in it, possibly posting commentary online about the company, co-workers or the company's operations.

There are significant legal risks associated with such social networking websites. Those risks include the posting of defamatory statements; disclosure of trade secrets, business information or intellectual property; disclosure of personal information about co-workers; and disclosure of material information about a public company before such information has been made public.

Companies would be well advised to ensure they have a policy in place to manage the ongoing business and legal risks associated with social networking websites before it's too late.

—**Christine J. Mingie**, Lang Michener LLP (Vancouver)

2 Ontario Welcomes Innovators and Entrepreneurs

Earlier this year, the Ontario Minister of Finance, Dwight Duncan, proposed a new 10-year income tax exemption for new corporations that commercialize intellectual property in Ontario developed

by qualifying Canadian universities, colleges or research institutes.

In particular, Minister Duncan proposed a 10-year exemption from:

(1) Ontario Corporate Income Tax, and

(2) Corporate Minimum Tax for any qualifying corporation established after March 24, 2008 and before March 25, 2012.

In other words, Ontario is a welcome destination for innovators and entrepreneurs. A qualifying corporation would have to be incorporated in Canada and derive all, or substantially all, of its income from eligible commercialization activities carried on in Ontario.

The exemption would generally apply to corporations that commercialize intellectual property in priority areas such as, but not limited to, bio-economy/clean technologies, advanced health technologies, telecommunications, computer and digital technologies. Eligible commercialization activities would include the development of prototypes and the marketing and manufacturing of products related to the intellectual property.

Ontario has called on the federal government to support innovation by matching this income tax exemption.

—**Cyndee Todgham Cherniak**, Lang Michener LLP (Toronto)

Ed.: *A more complete version of this NOTE appeared previously in the Lang Michener* Intellectual Property Brief. *To subscribe to this publication, please visit the Publications Request page of our website.*

3 Biologics: The New Growth Area in Generics

Health-related markets in Canada amount to approximately 10% of the GDP. In 2006, pharmaceuticals accounted for an estimated 17% of all health care spending in Canada. And, of course, generic pharmaceuticals have an important role in drug costs.

While pharmaceutical drugs are composed of molecules that generally can be synthesized once the chemical formula is known, biological products are composed of larger and more complex structures that are not easily identified or characterized. In some cases, a biologic may consist of a mixture of such large complex structures.

Biologics are manufactured through the use of animals, plants or micro-organisms such as bacteria or viruses and then purified. Examples of biologics include blood and blood components and gene therapy products.

In Canada, the Biologics and Genetic Therapies Directorate ("BGTD") of Health Canada regulates biologics under the Food and Drugs Regulations. Careful attention is paid to raw material controls, product purification, product testing and viral/bacterial inactivation to prevent risks caused by the growth of viruses or the initial presence of pathogens.

The process involved in obtaining production or distribution of a drug by a generic is well established. However, the approval procedure for a generic biologic is more involved than the filing of an abbreviated new drug submission, as can be done for a generic drug.

The term "subsequent entry biologic" is a term currently used by BGTD to describe a biologic product to be used by a generic. Manufacturers of subsequent entry biologics are required to file a new drug submission ("NDS") for review. An analysis of the comparability and details of the clinical data is then made. An NDS for a subsequent entry biologic requires detailed information such as a clinical package demonstrating the safety and efficacy of the subsequent entry biologic, including comparative studies between it and innovative products, and pharmacodynamic data to demonstrate comparable bioactivity based on clinically relevant parameters.

All animals from which drugs are prepared and preserved are to be under the direct supervision of competent medical or veterinary personnel, kept in quarantine for at least seven days before use, and healthy and free from infectious disease.

One challenge of subsequent entry biologics is, given the complexity of the biologics, that the production of copies is complicated. Particularly where the biologic is a mixture of compounds, the challenge of establishing the generic version to be equivalent to a previously approved product is very difficult. This is the basis for the current policy of requiring a more detailed NDS filing for generic biologics.

As analytical techniques and computational analysis continue to improve in sensitivity and power, the ability to reliably characterize increasingly complex structures is becoming available. This improved ability to characterize biologics should not only make it easier for generics to copy biologics as their patent protection expires, it should also make the task of government agencies in evaluating generic biologics less complex.

—**Dale E. Schlosser**, Lang Michener, LLP (Toronto)

Ed.: *The full version of this article appeared previously in the Lang Michener* Intellectual Property Brief. *To subscribe to this publication, please visit the Publications Request page of our website.*

4 Combating Mortgage Fraud: Overhaul of the *Mortgage Brokers Act*

The new *Mortgage Brokerages, Lenders and Administrators Act* (the "New Act"), now in effect, represents the first major overhaul of the *Mortgage Brokers Act* (the "Old Act") in about 35 years. The New Act changes the licensing regime and requirements for mortgage agents, brokers, brokerages and administrators who act as mortgage brokers in Ontario.

While changes to the Old Act have been discussed for many years, it is the increase in mortgage fraud cases over the last few years that gave urgency to the new legislation. The provincial government's goal in introducing this new legislation was not only to reduce mortgage fraud, but also to improve consumer protection,

enhance and modernize financial services regulations and encourage greater competition and choice for consumers.

The New Act is much more expansive in its regulatory regime as it has significantly widened the definition of a mortgage brokerage. Under the New Act, one must have a brokerage licence before carrying on the business of dealing or trading in mortgages, mortgage lending or administering mortgages.

Those who may be affected the most by the licensing requirements under the new regime are private lenders. Under the Old Act, private mortgage lending was a completely unregulated market. However, under the New Act, any private lender who is in the business of lending money will no longer be allowed to make mortgage loans unless they obtain a brokerage licence. While many private lenders may view this licensing requirement as a hassle, the hope is that such licensing requirements will better protect the consumer.

The New Act stipulates a number of general and specific exemptions from the licensing requirements. For instance, Section 6 of the New Act provides that financial institutions are exempt from having to be licensed because they are already highly regulated and have substantial consumer protection measures in place. Employees of financial institutions are also exempt from being licensed as mortgage brokers or agents.

Individuals and businesses providing simple referrals will also be exempt from the licensing requirements. There is also an exception from the licensing requirements for lawyers. This does not mean a lawyer can become a mortgage broker without being licensed, but does provide lawyers with the ability to assist a client where they have otherwise been retained to perform legal work.

The New Act also provides exemptions for some other parties as prescribed in the Regulations, including trustees in bankruptcy, directors, officers and employees of crown agencies as well as certain statutory corporations.

The goal of the new licensing regime is to protect lenders and borrowers alike by introducing mandatory controls into the world of mortgages. Hopefully, ensuring that every mortgage agent, broker, brokerage and administrator gets licensed will reduce the instances of fraud in the mortgage industry. However, only time will tell whether the New Act will actually have this desired effect.

—**Matthew German**, Lang Michener LLP (Toronto)

5 Perpetual Renewal Provisions: Importance of Timely Notice

In the Supreme Court of Canada, leave to appeal was denied and, accordingly, an arbitrator's decision terminating a perpetual renewal provision was upheld.

The Respondent, Brascan Energy Marketing Inc., was the assignee of a series of contracts entered into between its predecessor, the Great Lakes Power Company Limited ("GLP") and the Applicant, PUC Distribution Inc. ("PUC"). (GLP was a supplier of electricity to PUC for distribution in the City of Sault Ste. Marie.)

Pursuant to the original contract in 1928, GLP agreed to supply PUC with blocks of power, including a 5000 hp block of electricity at a preferential rate. This contract had a term of 10 years and was renewable for three additional 10-year terms. It also provided that the 5000 hp block was renewable for successive 10-year terms in perpetuity, provided that PUC gave written notice to GLP six months before the end of each term.

The parties entered into successive 10-year agreements regarding the provision of the 5000 hp block, but in 1987, PUC failed to deliver a timely notice of renewal.

In 1989, the parties entered into a new 10-year agreement under which GLP agreed to provide electricity to meet all of PUC's needs, including supply of the 5000 hp block at the rates specified in the 1928 agreement, but there was no provision for any right of renewal.

Subsequently, they entered into another agreement in 1998 that amended and extended the 1989 agreement for two further potential five-year terms, but was dependant on the parties' agreement as to rates. This agreement also did not provide for a right of renewal with respect to the 5000 hp block.

In 2003, the 1989 agreement, as amended by the 1998 agreement, came to an end when the parties could not agree on rates going forward.

PUC's position was that the 1928 agreement continued to exist and that the obligation to supply the 5000 hp block at the 1928 rates continued in perpetuity, subject to the required renewal notice every 10 years. GLP argued the 5000 hp block component of the 1928 agreement, including the perpetual renewal provision expired in accordance with its terms in 1987, and that the 1989 and 1998 agreements did not provide for further renewals.

An arbitrator decided that the perpetual renewal provision in the original contract was terminated.

The Ontario Superior Court of Justice allowed the appeal from the arbitrator's decision, but the Court of Appeal restored the decision of the arbitrator and leave to the Supreme Court was denied.

—**Eugene Meehan, Q.C.**, Lang Michener LLP (Ottawa)

Ed.: *Supreme Court of Canada:* PUC Distribution Inc. *v.* Brascan Energy Marketing Inc. *(now named Brookfield Energy Marketing Inc.), S.C.C. Docket 32632. This case was summarized and appeared in Issue 60 of Lang Michener's* S.C.C. L@wletter*, edited by Eugene Meehan, Q.C.*

6 The Small Business: Planning and Financing

Business plans are as diverse as businesses and usually necessary for obtaining institutional financing. There are various examples on the Internet and major banking institutions also publish examples of what information they are looking for in a business plan before

they provide a loan. Provincial and federal governments also provide guidance on how to draft a business plan; for example, visit www.canadabusiness.ca. To be most effective, the business plan should be written by the entrepreneur. Nobody knows the business better than the person that is going to run it.

General components of a business plan include: brief introduction that will highlight the major features of your business proposal, title page, table of contents and executive summary. Busy business professionals may not read word for word your entire business plan, so make sure that your executive summary is not only succinct but gets to the heart of your business. To be sure, the executive summary should also outline the equity interest and security/collateral that you are offering.

Useful information to include in your business plan is a section on the current market of the industry. This deals with the supply and demand side of your business, which includes consumer analysis, as well as discussion with respect to your competition (i.e., size of the market, where it has been, where it is going and any trends that can be discerned from industry research). Once this background information is laid out, it will then be key to describe how your business can be differentiated from others that are currently in the marketplace. Of course, a lender will also be looking at business costs and whether you have a marketing plan and have assessed its cost.

There is lots of guidance out there to assist small businesses to access financing. And, getting to the heart of it, be prepared for key questions like, "How much money do you think you need?" The lender will want to know that you are being realistic, that you actually have some business experience or qualified education to make it a success. Do you have a good credit history? Are you going to provide a personal guarantee? Do you have a co-signer to secure the loan? Lenders love security and collateral. They are always looking to ensure that you have some "skin in the game."

There are also non-traditional sources of funding that may be available to you right in your own back yard. For example, in Toronto, there is the ACCESS Community Capital Fund that helps small businesses obtain initial loans of up to $5,000 (www.accessriverdale.com). In Ottawa there is the Ottawa Community Loan Fund, which provides short-term loans of up to $15,000 (www.oclf.org). If you are a young entrepreneur, between the ages of 18 and 34, you may be able to receive financing through the Canadian Youth Business Foundation (www.cybf.ca). In addition, the Canada Small Business Financing ("CSBF") loan may provide you that little bit of start-up capital to get your business off the ground. The CSBF is run by Industry Canada and hands out about 10,000 loans a year and each company can access up to $250,000 in financing.

In addition, credit lines from major credit cards are sometimes available for businesses. This can be up to $50,000 in start-up financing. No business plan is needed and usually no security is required. However, as with most term loans, you will likely share joint and several liability with that of the business. Other common forms of financing include venture capital financing and angel investors through such means as convertible debentures or a simple share purchase.

—**Keith Cameron**, Lang Michener LLP (Ottawa)

7 New Humanitarian Symbol: The Red Crystal

A new symbol has been added to the list of marks in the *Trademarks Act* (Canada) which businesses are prohibited from using as trade-marks in Canada.

The list of "prohibited marks" set out in section 9 of the *Trademarks Act* include certain marks, including the Red Crystal, given significance by virtue of the *Geneva Conventions* (the "Convention"), the treaties designed to set standards for international law for humanitarian concerns.

Such prohibited marks include the international distinctive sign of civil defence (an equilateral blue triangle on an orange ground), as well as the emblem of the Red Cross on a white ground, officially recognized in 1863 following the founding of the International Committee of the Red Cross, and used by the Canadian Red Cross Society.

The Red Cross emblem (the inverse of the flag of Switzerland, a traditionally neutral state) was adopted as a non-partisan symbol and was intended to be the only such distinctive mark symbolizing the neutral status and the protection granted by international humanitarian law to armed forces' medical services and volunteers belonging to relief societies for wounded military personnel. However, the religious connotations of the cross as a symbol of Christianity led to issues of acceptance of the symbol in war zones in non-Christian regions. Accordingly, by the end of the nineteenth century, the Red Crescent and the Red Lion and Sun were used instead by some countries and relief societies. All three symbols were eventually recognized by the Convention.

The officially recognized humanitarian relief "Red" symbols created difficulties for the International Committee of the Red Cross as the emblems are sometimes perceived as having particular religious or political connotations which, in turn, undermined the precept that neutrality and impartiality are the cornerstone principles of the movement. Some countries and relief societies were slow to (or simply refused) to adopt any of the three Red emblems officially recognized by the Convention as being unsuitable.

In a bid to address these concerns and to avoid territorialism by establishing a symbol that is intended to be devoid of any political, religious or other connotation, the Convention has been amended to adopt an additional distinctive emblem; namely, the Red Crystal.

The amendment to the Convention provides that the Red Crystal can be used in two ways, namely in its pure form as a protective device (i.e., a visible sign of protection conferred by the Convention), or as an indicative device to show that a person is

linked to the International Humanitarian Relief Movement. When used as an indicative device, the Red Crystal may be used in association with (or may have incorporated into the centre of the Red Crystal) any or all of the Red Cross, the Red Crescent, the Red Lion and Sun or the Red Star of David (although that symbol is not otherwise officially recognized by the Convention).

The Red Crystal is not required to be used by any country or humanitarian society, but is required to be given equivalent treatment and protection by states adhering to the Convention. Consequently, Canada's *Trade-marks Act* has been amended, to include the Red Crystal as a prohibited mark.

As a result, businesses are prohibited from adopting or using as a trade-mark or otherwise, any mark which consists of or is likely to be mistaken for the Red Crystal. This is a point which should be considered when a business is in the process of choosing a new trade-mark for goods and services or considering a brand expansion of an existing trade-mark resembling the Red Crystal or other prohibited mark.

—**Peter Giddens**, Lang Michener LLP (Toronto)

Ed.: *The full version of this article appeared previously in the Lang Michener* Intellectual Property Brief. *To subscribe to this publication, please visit the Publications Request page of our website.*

Brief Life Bites

Civilized Discrimination; Auditing Adolescent Children; Ritual and Weaponry

Editor: *This segment offers colleagues and readers an opportunity to briefly comment or read about a life experience, an accomplishment, an acknowledgement, a powerful image, an incredible experience or a simple "slice of life." I would be most pleased to consider publishing one of yours or one that pertains to a friend, family member or colleague. (I am always open to suggestion.)*

1 Civilized Discrimination

Reviewing the movie *Tkaronto* (an Indian word, probably Mohawk in origin and likely first used [with changed spelling] to refer to the present location of Toronto in 1765), movie reviewer, Mari Sasano, wrote these powerful words:

> [It] would have been far more effective to show how institutionalized, subtle and "civilized" discrimination can be, as it is in real life, since that is far more insidious than any…cartoon villain can ever be."

2 Auditing Adolescent Children

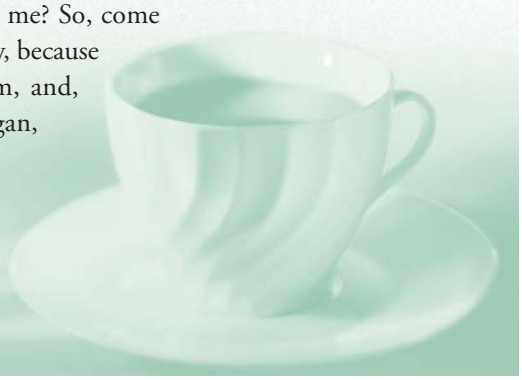
Ed.: *Nothing can be so human, instructive and poignant as outsmarting yourself. See if this story fills the bill. None of the names have been changed to protect the innocent (or anyone else).* ***Eugene Meehan****, Q.C. is the father of four children and his youngest is 16 year old Morgan. Not too long ago, about to call it a day, Eugene and his spouse Giovanna received a call from Morgan at about 9 p.m. on a Friday night. Morgan asked if he could sleep over at a friend's house. What follows are Eugene's words, "slightly" edited:*

Morgan has a just-imposed curfew of midnight. The previous night he'd called to ask if he could go to a rave. "Never been to one before Dad; want to go to see what it's like." To me rave equals dope, ecstasy, alcohol and headbanger music. Does it say "dope" on my forehead, as in moronic kind of dope? My answer was swift: "No, get here before midnight. Don't go. I'll be waiting at the door, and I'll be smelling you as you come in."

Anyway tonight it's, "Can I sleep over at someone's house." The radar immediately goes on: "Where are you, what address, phone number?" I write everything down. I call back and ask to speak to a parent and I do. I call Morgan back and say: "OK, you can stay."

But I've a surprise for Morgan. I do a canada411.ca search and the addresses don't match. Radar level increases further. So, I get in the car and drive to the address given by Morgan. Twenty minutes later, I'm there: "Route 300, 1712 Russell." There's a 1710, 1714 but no 1712. Radar now flashing red. I figure: no such address, no such mother. (That "mother" must have been one of his "rave" friends). Morgan's at the rave, and a bunch of sweaty bodies are stomping on him. I'll kick his [butt] around the block if he's safe. He's grounded. Period.

I gently call him on his cell: "Hi Morgan, how are you? Going to bed? I wanted to know you're OK. You're still at the address you gave me? So, come outside right now, because that's where I am, and, by the way Morgan, there's no such address."



Morgan is stunned. The silence lingers.

Morgan wasn't at 1712 Russell, but he was at 1712 Route 300, Russell Township, about 40 minutes outside of town. The address I got from canada411.ca and the address Morgan gave me did not match because his friend and mom had just moved a week before.

Every few weeks, I read over a short article about letting teenagers make their own decisions and accepting their responsibility (and consequences), and not call in the cavalry all the time to save their butt. Difficult to do (or not do), but better in the long run, maybe.

But my radar's still up – even if I do go to bed at 9 o'clock.

3 Ritual and Weaponry

This story is not gruesome like the story about the feet washing ashore in British Columbia. But it does have to do with a leg, weaponry and a ritual. At a wedding ceremony in San Diego, the male spouse discreetly lifted his wife's wedding gown to remove her garter so he could throw it into the crowd. His wife did not object, but Jeff Nichols chose the wrong leg and found instead a thigh holster and a loaded revolver. Well, his wife is also a police officer and, apparently, she decided to come prepared for the worst.

Letters & Comments

You may recall the article by **Sunny Pal** (Lang Michener LLP, Ottawa) entitled "A New Governance Standard for the World's Natural Resources Industry" that received acknowledgement and appreciation from **Dr. Peter Eigen**, Chairman of EITI in Oslo, Norway. The EITI movement has received significant international recognition recently. The communiqué from the G8 Summit in July 2008 included in its objectives promotion of "improved transparency, accountability, good governance and sustainable economic growth in the extractive sector…[and continued support of] initiatives such as the Extractive Industries Transparency Initiative (EITI)." Soon after, in September, a resolution was adopted unanimously by the U.N. General Assembly emphasizing the need for transparency in the extractive industry and specifically noting the efforts of countries participating in the EITI. (Sunny included his article in a presentation he made recently on the subject of international anti-corruption at the Institute of Chartered Secretaries' Directors' Education and Accreditation Program.)

With reference to the articles (Parts 1 and 2) in the last two issues of ***In Brief***, "Significant Differences Between Canadian and American Patent Law," co-authored by **Keith Bird**, **Orin Del Vecchio** and **Donald MacOdrum**, there were continuing requests for the unabridged versions, including those from law firms in the United States, and we were pleased to oblige.

Lang Michener, In Brief…

Events

Public Sector Recruiting and Retention – Ensuring the Future Viability of Canada's Public Service

Presented by Infonex

November 25–27, 2008, Ottawa, ON

Pradeep Chand, Associate will be the Chair and a speaker at the Public Sector Recruiting and Retention Conference. Pradeep will be speaking during a segment titled "Identifying Current and Future Human Resource Needs in the Public Service."

Deals

Teck Cominco Limited Acquires Global Copper Corp. in $415 M Cash-and Stock Deal

On August 1, 2008, Teck Cominco Limited completed the acquisition of Global Copper Corp. by way of a plan of arrangement for aggregate proceeds of approximately $415 million payable in cash and Class B subordinate voting shares of Teck. Global's principal asset is the Relincho project in Chile.

Teck Cominco Limited was represented by Peter Rozee, its

Senior Vice President, Commercial Affairs, and by Lang Michener LLP in Canada with a team in Toronto that included **Hellen Siwanowicz**, **Patrick Phelan**, **Carl De Vuono** and **Greg McIlwain** (securities and corporate); **James Musgrove** and **Daniel Edmondstone** (competition); and a team in Vancouver that included **Tom Theodorakis** and **Sean O'Neill** (corporate); **Peter Reardon** (litigation); and **Michael Taylor** (U.S. securities).

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Lang Michener Welcomes 13 New Lawyers

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Christopher Garrah Appointed Chair of the Business Law Section (OBA)

We are pleased to announce that **Christopher Garrah** has been appointed Chair of the Business Law Section of the Ontario Bar Association (OBA). Chris was formally an Executive (Member-at-Large) of the OBA's Business Law Section.

InBrief

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