



In this issue:

1. [SCC Rules on GAAR Cases](#)
2. [Leave Granted in Payday Loans Case: CA](#)
3. [Amendments Proposed to OSFI Guideline on Outsourcing of Business Activities](#)
4. [More on the Import of the BCE Case](#)
5. [MLRC Report on Franchise Law Available Online](#)
6. [Tax Free Savings Accounts](#)
7. [Companies Office Update](#)
8. [MBA Mid-Winter Meeting](#)

1. SCC Rules on GAAR Cases

The Supreme Court of Canada released its first decision of 2009 on January 8, dismissing a taxpayer's appeal of a Federal Court of Appeal decision by a 4-3 majority. [Lipson v. Canada](#), 2009 SCC 1, described as "probably the most significant tax decision in the last 70 years," examines the import of GAAR, the general anti-avoidance rule set out at [s.245](#) of the [Income Tax Act](#). The majority found that using the spousal attribution rules under [s.74.1](#) to make mortgage interest tax deductible constitutes abusive tax avoidance under the GAAR. For analysis of the decision see:

- [Use of Income Tax Act's General Anti-Avoidance Rule No Clearer After Lipson](#) by Julian Ho, published January 9, 2009 on [The Court](#);
- [The Uncertain Demise of the Duke of Westminster: A Comment on Lipson v. Canada](#) a January 14, 2009 post by Solomon Lam on [The Court](#);
- [Top court boosts tax avoidance rule/Dissent says legitimate tax planning threatened by GAAR interpretation](#) by Cristin Schmitz, published January 23, 2009 on [The Lawyers Weekly](#).

And, shortly after releasing the *Lipson* decision, the Supreme Court dismissed with costs the leave application in [MacKay v. The Queen](#), 2008 FCA 105. This case also concerns the application of the general anti-avoidance rule, in this instance to a transfer of loss situation.

For a discussion of the import of both cases, see [Supreme Court of Canada Rules Against Taxpayer in Lipson, Dismisses Leave to Appeal in Mackay](#), an article published in the most recent [Osler Update](#).

2. Leave Granted in Payday Loans Case: CA

In [Re The Cash Store Financial Services Inc.](#), 2009 MBCA 1, the Manitoba Court of Appeal granted application for leave to appeal Public Utilities Board Order No. 39/08 (which set maximum charges for payday loans pursuant to *The Consumer Protection Act*) and stayed the operation of the Order pending a final decision by the court. In a [News Release](#) issued shortly after this decision, the Manitoba government announced its intention to move forward with "proclaiming significant payday loan legislation provisions and...introducing legislation that would regulate interest rates."

3. Amendments Proposed to OSFI Guideline on Outsourcing of Business Activities

[The Office of the Superintendent of Financial Institutions Canada](#) released for comment a [draft revised Guideline B-10](#) on December 10, 2008. The Guideline sets out the regulator's expectations for federally regulated financial institutions that outsource their business activities. The proposed revisions to the Guideline primarily relate to the repeal of the requirement for approval of outsourcing arrangements as a result of the coming into force of Bill C-37. See the article [OSFI Updates Guidance on Outsourcing](#) by Parna Sabet-Stephenson and Kim Holas, a January 2009 [Blakes Bulletin](#), for a complete summary of the changes.

4. More on the Import of the *BCE* Case

For further commentary on the *BCE* decision referred to in last month's Update see:

- [Key Lessons from the BCE Decision](#), an Osler Update from December 22, 2008; and
 - [Supreme Court of Canada Releases Reasons for Decision in BCE](#), by Jeff Galway & Michael Gans, published December 23, 2008 on the [Blakes](#) website.
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5. MLRC Report on *Franchise Law* Available Online

[The Manitoba Law Reform Commission](#) report on [Franchise Law](#) (Report #116) is now available online. The report examines the history and models of franchising and existing franchise regulation in Canada, and recommends, among other things, the enactment of franchise legislation in Manitoba.

6. Tax Free Savings Accounts

As described in a January 2, 2009 Canada Revenue Agency [News Release](#), the tax-free savings account (TFSA) introduced by the Government of Canada in the 2008 Budget came into effect January 1, 2009, allowing Canadians 18 years of age and older to set aside up to \$5000 a year and not pay tax on the income earned or on withdrawals. The Manitoba government has [announced](#) a proposed spring amendment to [The Retirement Plan Beneficiaries Act](#) that would allow a tax free savings account beneficiary to be designated outside a will in the same manner as a beneficiary of an RRSP, RRIF, pension plan or annuity, thereby reducing or avoiding probate fees that might otherwise apply. For further information on tax free savings accounts see <http://www.tfsa.gc.ca/>.

7. Companies Office Update

In order to help clients determine whether they need to request expedited service when filing documents, the Companies Office is now posting document processing dates on its [website](#). This information is updated daily.

8. MBA Mid-Winter Meeting

There is still time to register for the annual [Mid-Winter Meeting](#) of the Manitoba Bar Association which will take place from January 22 to 24, 2009 at the Hotel Fort Garry. Continuing legal education programs of interest to business lawyers include:

- 9:30 - 11:30 a.m. - *Representations and Warranties: A Guide to Negotiation*; and
- 2:00 - 4:00 p.m. - *Corporations and Criminal Law: Advising, Defending and Avoiding Prosecutions of Corporations and Directors for Commercial Crimes and Regulatory Offences*, a road map to effective representation of clients in such proceedings.

Both programs take place on Friday, January 23, 2009. Contact the [Manitoba Bar Association](#) for further details and to register.

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