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### 1. Mistake of Fact Applied in Unusual Banking Case: SCC

In [B.M.P. Global Distribution Inc. v. Bank of Nova Scotia](#), 2009 SCC 15 the court considered whether a bank must pay damages to customers for debits made from their accounts when reversing credits that had been entered in relation to a forged cheque deposited by the client. At trial the bank was ordered to pay damages to the client for breaching their client service agreement. The Court of Appeal overturned this "absurd" result, holding that the client had suffered no real damages from the breached agreement and should not be allowed to retain proceeds derived from a fraudulent instrument. The SCC upheld the Court of Appeal decision, applying common law (mistake of fact) rather than equitable principles. The court also held that where money has been transferred in circumstances in which it can still be identified, tracing is permitted. For a detailed review of the "strange" facts of the case and a discussion of its implications for banks read the following commentaries:

- [The Curious Case of B.M.P. Global Distribution Inc. v. Bank of Nova Scotia](#) by Solomon Lam, posted April 8, 2009 on The Court
- [Fraud and Freezing Orders - Obligations of Banks in Dealing with Client Accounts](#), a Blakes update from April 2, 2009

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### 2. Impact of Bankruptcy Assignment on *Securities Act* Proceedings: MBQB

In [Manitoba Securities Commission v. Werbeniuk](#), 2009 MBQB 59 the Securities Commission applied for a determination regarding the impact of s. 69.3(1) of the *Bankruptcy and Receivership Act* on a claim for financial loss being advanced under s.148.2 of *The Securities Act*. The court found, among other things, that s. 69.3(1) functions as an absolute bar to any proceedings judicial or otherwise to enforce payment of an alleged debt after an assignment in bankruptcy has been made. The court also found that for the claimant to rely on s. 148.2 to enforce an order of the Commission post discharge, "...the order of the Commission would have to be based on a finding of fraudulent behaviour... Further, such a finding must be a logical extension of the Commission's jurisdiction." Since the charge of trading in securities without being registered does not involve a fraud allegation and it is not the Commission's function to enlarge the inquiry simply to accommodate the claimant, s. 148.2 does not apply.

### 3. Implementation Notice Re: CSA NI 31-103

The [Canadian Securities Administrators](#) plan to publish Proposed National Instrument 31-103 Registration Requirements in mid-July 2009, as announced in a [Staff Notice](#) released April 3, 2009. If NI 31-103 is then approved by the appropriate government authorities in each jurisdiction, it will come into force at the end of September 2009. For a description of the process see [Canadian Securities Law Online](#), a Stikeman Elliott blog which contains several articles on NI 31-103.

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### 4. Competition Act Amendments

Track the latest developments arising from the recent *Competition Act* amendments on the [amendments page](#) of [The Canadian Competition Bureau](#) website. The Bureau has recently issued [draft merger review process guidelines](#) intended to clarify its approach to the new information-gathering powers and time frames in the act. Interested parties are invited to comment on the guidelines before May 29, 2009.

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### 5. Changes to Financial Institution Regulation Under Bill C-10

The *Budget Implementation Act, 2009 (Bill C-10)* introduced several provisions concerning federally regulated financial institutions, including provisions to allow regulation of the charges imposed by FRFIs for insurance or guarantees against a default of a residential mortgage loan and provisions introducing new complaint handling procedures for OBSI (Ombudsman for Banking Services and Investments) members. In [Financial Institutions Regulatory Update](#), the authors review the implications of the new regulatory regime for FRFIs that carry on a residential mortgage business. They recommend monitoring [OBSI's website](#) for more information on the [Terms of Reference](#) changes.

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### 6. Payday Loans Legislation Introduced

The Manitoba government introduced [Bill 14, The Consumer Protection Amendment Act](#) (Payday Loans) on April 8, 2009. The bill rescinds Public Utilities Board Order No. 39/08 (setting formulas for determining the maximum cost of credit for a payday loan) which was appealed in [Re The Cash Store Financial Services Inc.](#), 2009 MBCA 1. Among other things, the proposed amendments empower the Lieutenant Governor in Council to make regulations governing the maximum cost of credit for payday loans; prohibiting payday lenders from making loans for more than a specified percentage of a borrower's net pay; prohibiting lenders from discounting loans; and restricting "tied selling."

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### 7. International Business Law Research Site Launched

[The Center for Transnational Law](#), a research facility at the University of Cologne, School of Law devoted to transnational commercial law, has just launched [TransLex.org](#), an online research and codification platform for transnational commercial law. The site has four sections: Principles of transnational law; a Bibliography of online resources; Materials, a collection of texts of international conventions, model laws, restatements, domestic statutes, and soft law instruments; and Links, a collection of selected links in transnational and international business law.

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### 8. Recent Business Law Resources

[Co-Counsel: Business Law Quarterly](#), Volume 4, Issue 1, a McCarthy Tétrault publication, contains several articles on securities, banking and financing, corporate governance and mergers and acquisitions.

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Or, for a different way of receiving business information, try listening to an [Osler Audio Report/Podcast](#) such as *Historic Changes to Competition Law in Canada* posted March 19, 2009.

And, the *BCE* decision continues to invite comment: [Scholars give BCE decision a scathing critique](#) by Robert Todd, published April 13, 2009 in Law Times.

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## **9. Insolvency and Restructuring Forum**

Details of the upcoming CAIRP [Insolvency and Restructuring Forum](#) are now available in the [online brochure](#). Local presenters include David Kroft, David Jackson, Catherine Howden, J.J. Burnell, Rick Schwartz, Jason Harvey and Jason Kendall. The forum will take place in Winnipeg on Thursday, May 14, 2009 at the Fort Garry Hotel.

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