



In this issue:

1. [Director Indemnification Clarified: ONCA](#)
2. [Bar Order Refused re Crocus Fund Interim Distribution](#)
3. [Transitioning to New Registration Regime - NI 31-103](#)
4. [Bill C-10 Changes to Competition Law Continue to Provoke Comment](#)
5. [Recent Business Law Publications](#)
6. [Workplace Safety and Health Update](#)
7. [Fall Conferences](#)
8. [Vanity URLs Raise Trade-Mark Infringement Concerns](#)

1. Director Indemnification Clarified: ONCA

In [Bennett v. Bennett Environmental Inc.](#), 2009 ONCA 198, BEI appealed from an order requiring it to indemnify its former corporate director for the costs he had incurred in Securities Commission proceedings against BEI and its directors. The decision turned on the court's interpretation of s.124 (3) (a) and (b) of the [Canada Business Corporations Act](#) (the non-indemnification or "good faith and lawful conduct requirements" provisions). The court had this to say about the director indemnification legislation:

The primary purpose of indemnification is to provide assurance to those prepared to become corporate directors that they will be recompensed for any adverse consequences arising from well-intentioned entrepreneurship undertaken on the corporation's behalf. This assurance serves to attract and to protect competent directors who will advance the interests of the corporation.

However, to encourage appropriate conduct, Parliament and the provincial legislatures also provide deterrents against misconduct. Arguably, the most effective deterrent is the consequence, including the stigma, of director prosecution and conviction. Another deterrent is the legislative prohibition against corporate indemnification for director misconduct.

This tension between the competing objectives of encouraging director entrepreneurship on the one hand, and discouraging director misconduct on the other, informs the interpretation of s. 124(3).

The court dismissed BEI's appeal, upholding the application judge's decision that BEI had failed to meet the onus of establishing that Bennett had acted "in bad faith or unlawfully" or that his belief in the lawfulness of his conduct was "unfounded or totally unreasonable."

2. Bar Order Refused re Crocus Fund Interim Distribution

In [Manitoba \(Securities Commission\) v. Crocus Investment Fund](#), 2009 MBQB 139 the court dismissed the receiver's motion to approve an order barring potential claimants from asserting any claim against Crocus or its receiver if they failed to file their claim within the time stated in the

order. The court questioned why, in order to facilitate an interim distribution, it should be asked to create a new limitation period eliminating a risk which should more properly be provided for by way of a reserve for unknown claims. It could find no principled reason for doing so on an interim distribution, and cast doubt (at para.19) on whether such an order could ever be justified as against the receiver.

3. Transitioning to New Registration Regime - NI 31-103

[Staff Notice 31-311](#), published June 12, 2009 by the [Canadian Securities Administrators](#), outlines the issues involved in the transition from the existing registration regime to the new regime proposed under the [National Instrument 31-103 registration requirements](#). As discussed in our April 2009 update, the new regime is still subject to final approvals. If approved, the CSA expects to publish NI 31-103 in July 2009, to come into force September 28, 2009. As part of the transition, the national registration database will be shut down from September 25 to October 12, 2009. During that time firms would have read-only access to the database and would need to submit material information to their securities regulator, to be refiled after the database reopens.

4. Bill C-10 Changes to Competition Law Continue to Provoke Comment

On May 13, 2009 the National Competition Law section of the Canadian Bar Association forwarded a [submission](#) to the Senate committee studying the amendments to the *Competition Act* in [Bill C-10](#). The section proposed some additional amendments to the new offence for agreements among competitors to avoid unintentionally making illegal some categories of ordinary course business transactions. The section also proposed to add additional exemptions to the merger review process to more fully align it with the U.S. merger review regime on which the new Canadian process is modelled.

See also the article [Government Enacts Significant Changes to Canada's Merger Review Laws](#), posted May 29, 2009 on the website of McCarthy Tétrault.

5. Recent Business Law Publications

The following publications may be of interest to business lawyers:

- [The Protection Problem](#) by Patti Ryan, published in the June 2009 edition of the [National](#) and concerning the spread of protectionism due to the global recession;
 - [Canada-EFTA Free Trade Agreement Comes into Force on Canada Day](#) by Greg Kanargelidis and Elysia Van Zeyl, a May 2009 Blakes bulletin;
 - [Co-Counsel: Business Law Quarterly \(Volume 4, Issue 2\)](#) a McCarthy Tétrault publication dated May 29, 2009 which includes several articles on topics concerning securities, mergers and acquisitions, finance and corporate governance.
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6. Workplace Safety and Health Update

The Labour Law section of the [Manitoba Bar Association](#) is presenting a [Workplace Safety and Health Case Update](#) with speaker Jamie Jurczak on June 25, 2009. This meeting takes place at the Blackstone Lounge at Taylor McCaffrey, starting at 5:00 p.m. Contact the MBA for further details and to register.

7. Fall Conferences

Planning for fall conferences is already underway. Mark your calendar for the following CBA section conferences taking place in late September:

- [Canadian Competition Law: The Next 25 Years](#), the annual conference presented by the

National Competition section of the Canadian Bar Association, will explore the impact of "the most important changes to Canadian competition law in almost 25 years." The conference will be held September 24-25 2009, at the Hilton Lac-Leamy in Gatineau, Quebec;

- The [Fifth Annual Pan-Canadian Insolvency and Restructuring Conference](#) takes place from September 30 to October 1, 2009 at the Fairmont Chateau Laurier Hotel in Ottawa. Topics addressed at this year's conference include: the fallout from the credit crisis; opportunities for insolvency and restructuring professionals; a cross country check-up; and a personal bankruptcy update.

8. Vanity URLs Raise Trade-Mark Infringement Concerns

[Facebook](#) has [announced](#) that, as of June 13, 2009, it is providing access to vanity URLs. In the past, Facebook users were assigned random numbers for their URLs. Vanity URLs include the user's name in the web address (www.facebook.com/username). For brand owners using Facebook as a marketing tool, this is a great opportunity to use their trade-mark as a user name and web address. However, it is also an opportunity for trade-mark infringers to use a corporation's trade-mark as their own username and hold themselves out as being affiliated with that business. Facebook initially provided trade-mark owners with the ability to block URL extensions for trade-marks which are registered, but that function is now closed. Businesses alleging trade-mark infringement should [report here](#).

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