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New season, new look. We've switched to a different service to create and deliver eLaw. Your feedback, especially regarding technical issues, is welcome.

Contact us at elaw@lawsociety.mb.ca.

Supreme Court of Canada Clarifies Pension Plan Administration

In [Nolan v. Kerry \(Canada\) Inc.](#), 2009 SCC 39, a case described as a landmark decision for employers, the Supreme Court clarifies several important issues related to pension plan administration. The case involves an Ontario plan, but the court's ruling should have broad application. Among other things, the court found that administrative expenses were properly deducted from the pension plan fund and that the surplus in the defined benefit part of the plan could be used to fund the employers' contribution obligations under the defined contribution section of the same plan. The court cautions, however, that "(e)ach case will turn on its own facts and the terms of the plan and trust at issue." (para.64) Proper structure and wording of plans (especially where a change in plan is introduced) is critical. The following articles dissect the decision and identify the potential trouble spots for employers and administrators:

[Kerry Case Provides Welcome Guidance on Payment of Plan Expenses and Contribution Holidays](#) by Evan Howard and Lesha Van Der Bij, an Osler update posted August 20, 2009

[Pension Plans Kerry On: The SCC Rules](#) and [The Supreme Court Sides with Employer in the Kerry Case](#) by Gregory J. Winfield, McCarthy Tétrault

[Pensions: Supreme Court Decision in Kerry - Payment of Plan Expenses, DB and DC Contribution Holidays, and Cost Issues](#), a Blakes article posted August 10, 2009

[Nolan v. Kerry \(Canada\) Inc.: Important Answers for Employers, Pension Plan Sponsors, Administrators and Participants](#) by Peggy McCallum, Fasken Martineau LLP.

Final BIA and CCAA Amendments in Force

The remaining amendments to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* came [into force](#) September 18, 2009, as [announced](#) by the Office of the Superintendent of Bankruptcy. Additional regulatory amendments were created to give effect to the new legislation. They are the [Companies' Creditors Arrangement Regulations](#) SOR/2009-219) and the [Bankruptcy and Insolvency General Rules](#) (SOR/2009-218). New [BIA forms, directives and circulars](#) coming into force September 18 are available on the OSB website. See the following articles for further detail on the amendments:

[Companies' Creditors Arrangement Act - General Information](#) - an OSB article on its duties and functions under the new CCAA

[Changes to the Bankruptcy and Insolvency Act: Date of Initial Bankruptcy Event, Wage Protection, Pension Plan Contributions, and Unpaid Suppliers](#) by Daniel Le Dressay, posted September 2009 on Practice Points

[Insolvency Law Amendments to Take Effect on September 18, 2009](#), an August 2009 Blakes Bulletin

As noted below, the Law Society is presenting a half-day [program](#) on the new legislation on February 10, 2010.

New Not-For-Profit Corporations Legislation Passed

[Bill C-4](#), the *Canada Not-for-profit Corporations Act*, which replaces Parts II and III of the current *Canada Corporations Act*, received [Royal Assent](#) on June 23, 2009. The new legislation (other than ss. 297(2) to (4), (6) and (7) and ss. 341 to 360), will come into force on a day to be fixed by order of the Governor in Council. Not-for-profit corporations must comply with the new regime within three years of it coming into force, which may be up to two years away. For more information on the Act see the [legislative summary](#) and the article [Federal government passes new legislation governing non-share capital corporations](#).

More on Bill C-10 Changes

The article [Government Enacts Significant Changes to Canada's Competition Laws](#) from the September *Business Law Quarterly* (McCarthy Tétrault) summarizes the new criminal and reviewable conduct provisions of the *Competition Act*. The authors point out that these amendments pose both risks and opportunities for business clients, who should be encouraged to review their compliance provisions.

Property Registry Notices

The Registrar-General issued two new directives over the summer: [Electronic Bill Payment Option for Personal Property Registry Account Holders](#) and [Mortgage Sale Proceedings Involving Personal Property Subject to Security Interest](#). The latter directive concerns the election under s.55 (5) of [The Personal Property Security Act](#) to proceed against both land and personal property in the same process. In these cases the secured party acting as mortgagee must give notice of the election (including a reference to s.55 (5)) in both the Notice of Exercising Power of Sale and the Auction Sale Conditions.

Business Law Resources

The August 2009 [Business and Corporate Edition](#) of the CBA's *National* magazine contains articles on the Competition Bureau's new enforcement approach to issues of joint abuse of dominance and on the Declaration on Climate Change and Clean Energy recently signed by the three North American leaders.

CLE [Practice Points](#) has published two new articles that may be of interest to business lawyers: [Insolvency Issues and Partnerships](#) by Peter Rubin and Jeff Langlois and [Commercial Leasing: Structuring and Managing Lease Relationships in a Recession - Tools and Strategies in Lease Drafting](#) by Peter J. Anderson and Catherine Gibson.

The CBA National Business Law Section [Newsletter](#), published July 2009, contains articles on the report of the expert panel on securities regulation, the *Shafron* case, and the new provisions enacted under Title VIII of the *Securities Act*.

Young business lawyers will appreciate the practical advice on career development offered in [How to Succeed in Business \(Law\) Without Really Trying](#), an article from the September 2009 edition of *Canadian Lawyer* magazine's [4 Students](#) digital edition.

The article [Bruce Power case highlights corporate solicitor-client privilege](#), by Norm Keith, discusses the import of the Ontario Court of Appeal decision in [R. v. Bruce Power Inc.](#), 2009 ONCA 573. The case "validates solicitor-client privilege, the protection provided to internal investigations that are intended to obtain legal advice, and secure information for potential litigation...and identifies the value of in-house counsel during such investigations."

As noted in its July 16, 2009 [news release](#), the [Privacy Commissioner of Canada](#) has released a [report](#) recommending that Facebook take steps to better protect the privacy of its users and meet the requirements of Canadian privacy legislation. See the [backgrounder](#) for the history of the investigation.

Upcoming CPD Programs: LSM

Mark your calendars now to attend these continuing professional development programs offered by the Law Society:

The 2009 Isaac Pitblado Lectures looks at the future of law in [Practising Law in the 21st Century: evolution or revolution](#). Keynote speakers include Professor Richard Susskind, OBE, author of *The End of Lawyers? Rethinking the Nature of Legal Services* (reviewed [here](#)), Jordan Furlong, editor of the *National* magazine and Dan Pinnington, practice advisor at LawPRO. The program takes place November 13 & 14, 2009 at the Fort Garry Hotel, Winnipeg.

[Time Mastery for Lawyers](#) is a downloadable teleseminar with Frank Sanitate and Douglas Gillies, presented in three modules November 30, December 7 and 14, 2009.

[When the Going Gets Tough - New Insolvency Regime to Help the Tough Get Going](#) - Moderator David Jackson and several insolvency practitioners will walk you through the long awaited amendments to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act*. Plan to attend this important program to be held February 10, 2010 from 1:00-4:00 p.m. at the Law Society classroom.

Fall Conferences

Several conferences on topics of interest to business lawyers are taking place in Winnipeg and elsewhere this fall:

The CCCA and McGill International Executive Institute are presenting a two day course on [Financial Reporting, Accounting, and Analysis: The Fundamental Tools of Finance and Accounting for Corporate Counsel](#) with Philippe Levy, CA on October 5 and 6, 2009 at the

Fairmont Hotel.

[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.

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