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Court Determines Reasonableness of Contingency Fees in Securities Class Action: ONCA

The Ontario Court of Appeal has upheld a lower court decision reducing class counsels' contingency fees by half (to approximately \$6 million) in what is reported to be the first securities class action settlement in Canadian history involving an income trust: [Sutts, Strosberg LLP v. Atlas Cold Storage Holdings Inc.](#), 2009 ONCA 690. Securities class actions have only recently become possible in Canada as a result of amendments to the securities legislation in all but one province. In this case, the Superior Court of Justice had approved a \$40 million settlement in favour of the plaintiff trustees who alleged that Atlas had misrepresented its financial information. Although class counsel were "deserving of being fairly compensated at a level significantly above an amount that might be considered a reasonable base fee given the risks," the judge found their fee to be "excessive in relation to the recovery for the class." The Court of Appeal agreed and particularly endorsed the finding that neither the risks nor the complexities of the case were as great as counsel contended. See the following article for a comment on the case:

[Contingency Fee Agreement Subject to the Discretion of the Court, as per Atlas](#) by Sona Dhawan posted October 7, 2009 on The Court.

Changes to Manitoba Legislation

Several sections of *The Securities Amendment Act*, [S.M. 2006, c.11](#) (parts of s. 2(1) (a) and (b), s.4(2) and ss. 6 and 11) and [S.M. 2008, c.8](#) (ss. 1 to 8 and 10 to 12) came [into force](#)

[Section 36](#) of [The Cooperatives Amendment Act](#), S.M. 2009, c.19 will come into force November 1, 2009.

Investment Fund Reporting Changes Proposed: CSA

On October 16, 2009 the Canadian Securities Administrators published for comment proposed changes to National Instrument 81-106 *Investment Fund Continuous Disclosure*, aimed at ensuring a smooth transition from current Canadian generally accepted accounting principles (GAAP) to international financial reporting standards (IFRS) for investment funds. The CSA is seeking comment on the changes by January 14, 2010. See the following articles for further detail:

[Canadian Securities Regulators Prepare for Changes to Investment Fund Disclosure Resulting from International Financial Reporting Standards](#), a CSA news release.

[CSA Publishes Proposed Amendments to Securities Rules to Address Adoption of International Financial Reporting Standards in Canada](#) and [Investment Fund Continuous Disclosure - Transition to International Financial Reporting Standards](#), both Blakes Bulletins published October 19, 2009.

More on Bankruptcy and Insolvency Amendments

Recently enacted amendments to the *Bankruptcy and Insolvency Act* and the *Companies' Creditors Arrangement Act* continue to generate interest, as evidenced by the number of new articles discussing the changes. See, for example:

The September 2009 issue of Aird & Berlis LLP Banking Law newsletter, [Collateral Matters](#), which features an overview of the major commercial issues dealt with in the bankruptcy and insolvency amendments or [Bankruptcy and Insolvency Law Reform \(2005-2009\) Major Commercial Issues](#) by Douglas Palmateer, a more detailed summary by the same author.

[New Restructuring and Insolvency Law Changes Now in Effect](#) a Blakes article dated October 5, 2009.

Corporations' Status Questioned

The article [The Corporation as a Person: Legal Fact or Fiction?](#) by Benjy Radcliffe, posted September 24, 2009 on The Court questions whether the time has come to reconsider the longstanding court treatment of corporations as distinct legal entities. The article was prompted by [comments](#) made by Justice Sotomayer in a recent American case suggesting that the court may have been wrong in offering corporations the same rights and protections as persons. The author discusses the different approaches that have developed on this issue in American and Anglo-Canadian law, and concludes that "the changing role of the corporation demands a new conceptualizing of the attributes of the corporation."

Fall and Winter CPD Programs: LSM

Register 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*. The program takes place February 10, 2010 from 1:00-4:00 p.m. at the Law Society classroom.

Upcoming MBA Events

The Bankruptcy and Insolvency Law Section is presenting two sessions on CCAA filings in November: [Review and discussion of a standard form CCAA Order for Manitoba](#) on November 19 at 12:00 noon and [Practical pre-filing considerations in a CCAA](#), starting at 5:15 p.m. on November 26. Contact the MBA for further information or to register.

The Tax Law section invites interested members to attend the second annual CRA Professional Forum to be held November 26 from 1:00-4:00 p.m. at the Fairmont Hotel. Those interested in attending should contact Barbara Knoll at 984-1951 or by e-mail at barbara.knoll@cra-arc.gc.ca.

Not-for-Profit Corporations Webconference: CBA

The National Business Law Section of the Canadian Bar Association is presenting an online webconference dealing with upcoming changes to legislation governing not-for-profit corporations [The New Canada Not-for-profit Corporations Law: What Will it Mean to Your Practice?](#) will be held on November 10, 2009 starting at 12:00 noon. Register [online](#).

The Law Society of Manitoba provides this service solely for the benefit of and to support the competence of its members. Members should exercise their professional judgment in using or adapting any content.