



## eLaw - Business Law Update

March 2010 - No. 40

ISSN 1916-3908

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## Arbitration Clauses in Unanimous Shareholder Agreements: MBCA

The appeal court redefines the nature of a dispute under a unanimous shareholder agreement in [Hnatiuk v. Court](#), 2010 MBCA 20. Disagreeing with the motion judge's characterization of the dispute as a share valuation issue, the court finds valuation to be secondary to the essence of the disagreement, which arose from the failure of the parties to follow the process set out in the USA for agreeing on a value for their respective interests. Thus while the referral to arbitration stands, the appeal is allowed for the purpose of properly describing the nature of the dispute being referred for arbitration.

## Directors' Liability: ONCA

The recent Ontario Court of Appeal decision in [Danso-Coffey v. Ontario](#), 2010 ONCA 171 should give those offered figurehead directorships pause to consider the potential risks in such appointments. The court set aside a lower court finding that the respondent (who was named a director of her brother's corporation without her consent or knowledge) was not liable for unremitted sales tax owed by the bankrupt corporation. The following article summarizes the corporate and tax law principles underlying the decision and the implications for unwitting directors:

[Directors Liability for Unremitted Retail Sales Tax: Danso-Coffey](#) by Sona Dhawan  
Posted March 16, 2010 on The Court.

## Federal and Provincial Budgets 2010

The federal government [introduced Budget 2010](#) on March 4, 2010. The [Budget in Brief](#) outlines three key objectives: stimulating job creation and maintenance; targeting initiatives to build the economy; and balancing finances. The following articles comment on the specifics, particularly from a tax perspective:

- [2010 Federal Budget Commentary](#), a McCarthy Tétrault publication dated March 5, 2010;
- [Budget Briefing 2010](#), an Osler update from March 4, 2010.

The Manitoba government [released Budget 2010](#) on March 23<sup>rd</sup>. It introduces a [five-year economic plan](#) to address a projected budget shortfall of \$545 million. Controversial aspects of the budget are discussed in articles from the [Winnipeg Free Press](#) and the [Globe and Mail](#).

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## Criminal Conspiracy Provisions in Force

The criminal conspiracy provisions of the *Competition Act* (amended March 2009 by [Bill C-10](#)) came into force March 12, 2010. They apply to all existing agreements between competitors. The Competition Bureau has outlined how it will enforce the provisions in its publication [Competitor Collaboration Guidelines](#), published December 23, 2009.

The Blakes Bulletin [New Competition Laws in Force March 12, 2010: Criminal Conspiracy and Civil Provisions Address Competitor Collaborations](#) compares the former and current provisions and distinguishes between civil and criminal review of agreements.

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## Canada Not-for-Profit Act Sections In Force

Several sections of the [Canada Not-for-profit Corporations Act](#), S.C. 2009, c. 23 were recently brought into force by order of the Governor in Council, P.C. 2010-265. [In force](#) as of Mar 12, 2010 are sections 300 to 302, 304 and 310, subsections 311(1), (3) and (4), the portion of section 313 before paragraph (a), paragraphs 313(c), (e), (g), (i), (k), (m), (o), (q), (t), (v), (x), (z), (z.02), (z.04), (z.1), (z.5) and (z.8) and sections 361 to 371.

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## Recent Business Law Publications

The following publications may be of interest to business law lawyers:

- [Business Law Quarterly](#), a McCarthy Tétrault Co-Counsel publication, contains several articles on corporate governance and public company disclosure;
- [CCAA amendment changes game for dispositions](#), a *Law Times* article from March 22, 2010, examines the Ontario Superior Court decision in the CanWest restructuring, which dealt with the new CCAA requirements respecting court approval of asset dispositions in transactions outside the ordinary course of business;
- The Winter 2010 edition of the [Commercial Law Newsletter](#) contains updates on several projects of the Uniform Law Conference of Canada, including an identity theft project, reform of the law of fraudulent conveyances and preferences, and a new project on trust indenture provisions.

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## Upcoming Programs and Conferences

Learn about the legal limits secured creditors and receivers face when selling assets in the upcoming Law Society of Manitoba program [Purchasing Assets from Receivers](#), to be held April 20, 2010 from 12:00 noon - 1:30 p.m. at the Law Society classroom. Contact [Jennifer Lavallee](#) in the Education and Competence Department to register.

The Corporate Counsel section of the Manitoba Bar Association is hosting a meeting on [Managing Workloads and Workflows in Legal Departments](#) on April 20, 2010 at 12:15 p.m. The guest speaker will be Richard G. Stock, Partner, Catalyst Consulting. Contact the [Manitoba Bar Association](#) to register.

The Canadian Bar Association is holding its sixteenth annual [Tax Law for Lawyers Conference](#) from May 30 to June 4, 2010 at Niagara-on-the-Lake, Ontario. See the [conference brochure](#) for further details.

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