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Lawyers Laud Taxpayer-Friendly Ruling

A recent Tax Court of Canada decision has overruled the long held position of the Canada Revenue Agency that a U.S. limited liability company is not entitled to benefits under the *Canada-U.S. Income Tax Convention*. The issue in [*Td Securities \(USA\) LLC v. The Queen*](#), 2010 TCC 186 was whether a U.S. LLC was entitled to the treaty rate for branch tax on profits earned in Canada prior to the amendments made to the treaty by the Fifth Protocol. The agency is expected to appeal the decision which, if it stands, will have significant implications for U.S. LLCs. For a taste of the buzz the case has generated see:

- [*Tax Court of Canada Rules U.S. Limited Liability Company is Treaty Resident*](#), an April 15, 2010 Osler Update
- [*TD Securities \(USA\) LLC v. The Queen - Canada Revenue Agency Loses on Denying Treaty Benefits to a LLC*](#), Cassels Brock
- [*Reversal of Fortune: TD Securities \(USA\) LLC v. The Queen*](#), Fraser Milner Casgrain
- [*Fiscally Transparent U.S. LLC Entitled to Canada-U.S. Treaty Benefits*](#), Borden Ladner Gervais
- [*Flash: Tax Court Holds A US LLC Is Entitled to Treaty Benefits*](#), Davies

Supreme Court to Hear *Bona Fide Purchaser* Appeal

The Supreme Court has granted leave to appeal [*Bank of Montreal v. i Trade Finance Inc.*](#), 2009

ONCA 615, an Ontario case pitting two innocent financial institutions, both victims of an \$11.2 million fraud, against each other. i Trade advanced money to the fraudster, who subsequently pledged the shares it acquired with a portion of the funds as security for a loan from BMO. Overturning a lower court decision in favour of i Trade, the Court of Appeal found that BMO was a *bona fide* purchaser for value without notice and that i Trade was not entitled to recover the funds under a constructive trust based on unjust enrichment. The following article questions why the Supreme Court has chosen to hear the appeal given the Court of Appeal's precedent-based approach:

- [Will the Interest of Bona Fide Purchase For Value Without Notice Maintain its Priority Status?: I-Trade v. BMO](#) by Sona Dhawan posted April 19, 2010 on The Court

Jobs and Economic Growth Act Introduced

The Canadian government introduced [Bill C-9](#), the *Jobs and Economic Growth Act*, on March 29, 2010, as part of its Budget 2010 strategy to strengthen the Canadian financial sector. Among other things, the Bill proposes changes to the regulation of financial services, including reporting requirements under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, new legislation concerning national payment card networks, and a new framework to enable credit unions to incorporate. The changes are summarized [here](#), and detailed in the Blakes' [Update on Financial Institution Legislation](#).

New Franchise Legislation Introduced

The Manitoba government introduced new franchise legislation on April 6, 2010. Bill 15, [The Franchises Act](#), gives franchisees the right to recover losses caused by misrepresentation and requires franchisors to disclose financial information before entering into an agreement. It also imposes a duty on both sides to act in good faith and in accordance with reasonable commercial standards. See the [news release](#) and [explanatory note](#) for further information.

Fee Changes - Companies Office

The fees to file Annual Returns under *The Corporations Act* will increase on August 1, 2010. For corporations with share capital the new fee will be \$50. Corporations without share capital will pay \$25, and the fee for amended annual returns will be \$25.

National Instrument 55-104 Insider Reporting Regime

The [Canadian Securities Administrators](#) are adopting a new insider reporting regime on April 30, 2010. National Instrument 55-104 *Insider Reporting Requirements and Exemptions* and its related policy (55-104 CP) harmonize insider reporting obligation across Canada. Details are discussed in these articles:

- [Amendments to Canada's Insider Reporting Regime: National Instrument 55-104](#), an Osler update
- [Canada's New Insider Reporting Regime](#), a Clark Wilson securities law update.

Business Law Resources

Osler's March 2010 [Corporate E-Review](#) contains several articles reviewing current corporate law topics including foreign ownership restrictions in the telecom industry, say on pay in Canada and related party transaction rules for public companies. Of particular interest is the article [Canadian Competition Law: Your Top Ten Compliance Questions for 2010](#), which lists

ten questions businesses of all sizes should ask themselves to adjust to the more rigorous enforcement environment now in place as a result of last month's amendments to the criminal conspiracy provisions of the *Competition Act*.

[Tax Update: A report on cross-border developments in Canadian tax law](#) published April 26, 2010 by the McCarthy Tétrault tax group, looks at the OECD report on tax relief for cross border investors and at the US LLC issue referred to above.

[Preventing and Managing Shareholder Disputes](#), a CLE BC webcast, may be downloaded free from the Practice Points website, as may the article [Securities Class Actions and Secondary Liability in Canada: A New Day Dawning?](#), which surveys the development of class action lawsuits in Canada and the advent of statutory secondary market liability.

Upcoming Education Programs: LSM

[Caveat Emptor and the Pros and Cons of Great Sellers' Disclosure](#) - Join an interactive discussion with presenters John Neufeld and Robert Tyler about what the real estate industry has been doing with respect to sellers' disclosure. This lunch hour program takes place May 13, 2010.

[Trust Conditions](#) - Presenters Herb Peters and Jeff Shypit discuss the governing principles of trust conditions, common problems, and the consequences of lawyers breaching trust conditions and undertakings in this lunch program scheduled for May 19, 2010.

Insolvency and Restructuring Forum

The CAIRP [Insolvency and Restructuring Forum](#) will take place in Winnipeg on Thursday, May 13, 2010 at the Fort Garry Hotel. Local presenters include David Kroft, David Jackson, and Catherine Howden. Madam Justice Sucho and Bruce Taylor will speak on the regional hot topic, *Things Your Parents Never Told You About Restructuring the Family Business*. For further details or to register see the [brochure](#).

Tax Law Conference: CBA

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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