



eLaw - Business Law Update

November/December 2010 - No. 45

ISSN 1916-3908

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Unperfected Security Interests Prevail Over Subsequent **Bank Act** Security: SCC

Unperfected security interests taken under the Saskatchewan *PPSA* have priority over later *Bank Act* security interests according to the Supreme Court of Canada in companion cases [*Bank of Montreal v. Innovation Credit Union*](#), 2010 SCC 47 and [*Royal Bank of Canada v. Radius Credit Union Ltd.*](#), 2010 SCC 48. In both cases, debtor farmers had granted security in their personal property to credit unions prior to obtaining loans secured under s.427 of the *Bank Act*. The banks had no knowledge of the prior security interests as they were never perfected. In *Radius*, the dispute involved after acquired property, but in both cases the framework of analysis was the same. The court found that the combined effect of ss. 427(2) and 435(2) of the *Bank Act* is that the banks could "acquire no greater interest in the collateral than the debtor has at the relevant time." (para.29, *Innovation*) The court then applied provincial property law to determine that "as between two competing legal interests in property, the *nemo dat* rule gives priority to the first party to take a legal interest in the property." *Bank Act* reform may be in order, as Justice Charron points out at paras. 53 and 61. These articles discuss the decisions:

- [*SCC Cleans Up Mess Caused by Archaic Legislation in Bank of Montreal v. Innovation Credit Union*](#), posted November 17 on The Court;
- [*Supreme Court rules on Saskatchewan PPSA-Bank Act priority disputes*](#), Stikeman Elliott;

- [SCC: Unperfected PPSA security interest trumps subsequent Bank Act security](#), Litigation Brief, Hakemi & Company.

Procedural Code for Leave Applications Found in Act Not Rules: MBQB

The court refused the motion of a director accused of fiduciary breaches to be added as a party to a leave application under s. 232 of *The Corporations Act* (a derivative action) in [Blankstein v. Memrad Holdings Ltd.](#), 2010 MBQB 230. The court found that *The Corporations Act* "is a procedural code to be utilized with respect to an application for leave to commence a derivative action" and does not provide any authority to allow a self-interested dissenting director to speak on behalf of the corporation. The court also found that neither QB Rule 5.03 (joinder of necessary parties) nor QB Rule 13.01 (intervenor status) applied. On the latter issue the court found:

I am also satisfied that Mr. Rady cannot speak for Memrad in the leave application because he is the dissenting voice of the Memrad directors and faces significant claims for alleged fiduciary breaches. He possesses a self interest in his capacity as a defendant in the California action. This arguably would substantially conflict with his duties to act in the best interests of Memrad. Accordingly, he cannot provide evidence before the court as an intervenor as regards the leave application on behalf of Memrad. It is simply not in the interests of the administration of justice. (para. 49)

Business Methods Patentable: FC

Intellectual property lawyers are reportedly pleased with the recent federal court decision in [Amazon.com, Inc. v. Canada \(Attorney General\)](#), 2010 FC 1011 that business methods can be patented. The court overturned the Commissioner's policy-based [decision](#) that inventions must be concrete or technological in order to qualify as patentable "art" and criticized her reliance on foreign case law. Amazon first filed its Canadian application to patent a "method and system for placing a purchase order via a communication network" (the one-click shopping system that saves customer information so that it doesn't have to be entered repeatedly) 12 years ago, after being granted a US patent for the invention. The Commission has filed an [appeal](#), however, so the Federal Court decision will not be the final word. These articles discuss the case:

- [Landmark IP test case 'bonanza' for lawyers](#) - Lawyers Weekly;
- [A "One-Click" Patent: Canada \(Finally\) Opens-Up Possibility for Business Method Patents in Amazon.com, Inc. v. AG Commissioner of Patents](#) - The Court;
- [Online Retailer Amazon Scores Victory in Canadian Patent Case](#) - Law is Cool;
- [Amazon.com Open For Business \(Methods\) in Canada](#) - Lang Michener LLP.

Recent Proclamations

Section 3 of [The Consumer Protection Amendment Act \(Payday Loans\)](#), S.M. 2006, c. 31 (enacting ss. 139, 147, 152 to 154 and 156) came into force on October 18, 2010 and ss.6 and 8 of [The Consumer Protection Amendment Act \(Payday Loans\)](#), S.M. 2009, c. 12 (enacting ss. 161.6 and 161.7) came into force October 18, 2010.

[The Personal Investigations Amendment Act \(Identity Protection\)](#), S.M. 2006, c.28 will come into force January 31, 2011. This Bill gives people who are concerned that their identity is being used by someone else the ability to place a security alert on their credit report. The security alert notifies credit grantors that they must take steps to verify the credit applicant's identity before extending credit.

The [Annual Statement \(Banks and Bank Holding Companies\) Regulations](#), passed pursuant to the *Bank Act* as a result of changes required by *An Act to Amend Certain Acts in Relation to Financial Institutions*, S.C. 2005, c. 54, will come into force June 1, 2011.

Small Business Tax Eliminated

The government has [announced](#) that as of December 1, 2010 Manitoba small business owners will no longer have to pay the small business tax. Manitoba is the first province to eliminate the tax.

New Form for Registration of a Business Name

The "Registration of a Business Name" form under *The Business Names Registration Act* will change effective January 1, 2011. The changes can be viewed on the [new form](#).

Recommended Reading

Ned Brown considers whether it is legally feasible to mortgage assets without the mortgage being supported by an underlying obligation in [Granting of Security without an Underlying Obligation](#), posted November 11, 2011 on [PitblAWg](#).

The article [SCC to Consider Garnishment under the Federal Income Tax Act in Canada Trustco v. The Queen](#), is a look ahead to the December hearing of the appeal in [Canada Trustco Mortgage Company v. Canada](#), 2009 FCA 267, the decision which upheld the Minister's garnishment of a lawyer's trust account funds for unpaid tax debts.

New Code of Professional Conduct

The Benchers have approved a new Code of Professional Conduct which will come into effect on January 1, 2011. The new Code provides a clear, concise and updated set of rules by which lawyers will be expected to conduct themselves. All members of the profession will be required to complete some form of training on the Code within one year of its implementation. The Law Society will offer training in a number of formats, including in person training, online self-study, and teleseminars. There are free programs scheduled in Brandon on December 3, 2010 and Winnipeg on December 10, 2010, but the Winnipeg program is currently full and is accepting registrations for teleconference attendance only. A second teleseminar will be held on January 25, 2011.

Free Webinar

The webcast [Negotiating an Acceptable Indemnification Provision](#) is available for free download from the CLE BC Practice Points website.

Upcoming Law Society CPD Programs

Register soon for these December/January CPD programs:

- [One Day MBA for Lawyers](#) - increase your understanding of financial statements, business valuation, financial analysis and corporate finance in this one day crash course in key business school concepts for lawyers. The program takes place at the Law Society on January 27, 2011.
- [Gain the Edge! Negotiation Strategies for Lawyers](#) - This day long seminar, presented by Martin Latz, negotiation expert and author of *Gain the Edge! Negotiating to Get What You Want*, received rave reviews when it was presented in 2009. Attendees will learn to approach negotiations with a strategic mindset, a critical skill that benefits inexperienced and seasoned negotiators alike. The program will be held February 11, 2011 at the Law Society classroom. [Register](#) by January 15th to take advantage of the early bird discount.

Bar Association Programs

Doug Sigurdson will speak on the topic of [Letters of Intent](#) at the next meeting of the Business Law section of the MBA. The program will take place December 8, 2010, from 12:00 noon - 1:30 p.m. at the offices of Aikins, MacAulay & Thorvaldson LLP, 30th Floor - 360 Main Street.

The Corporate Counsel section will meet at Taylor McCaffrey LLP on December 8, 2010 from 12:15 - 1:30 p.m. to discuss [Workplace Harassment - Navigating the New Regulations](#).

Pitblado LLP's Bruce King is one of the instructors in the next online program in the CBA's Skilled Lawyer series - Corporate Stream. [Business Finance for Lawyers](#) will address debt and equity financing, security agreements, leasing, estoppel letters, and professional and ethical considerations in financing transactions. The program takes place on January 26, 2011.

The 2011 [Mid-Winter Meeting](#) will take place January 20-22, 2011 at the Fairmont Winnipeg, with professional development programs on January 21. Topics that may be of interest to business lawyers include:

- Interpreting Manitoba's New *Franchise Act* and Tips for Practitioners - from 9:30 - 11:30 a.m.; and
- The Impact of International Reporting Standards and the Changing Accounting Landscape on Audit Inquiries under the Joint Policy Statement - from 2:00 - 4:00 p.m.

Contact the [Bar Association](#) for further details.

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.