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Wishful Thinking Does Not Displace Presumption of Fraudulent Preference: MBQB

The Canada Revenue Agency was unable to establish that a payment it received from a debtor who subsequently made an assignment into bankruptcy was not a fraudulent preference under the s.95 of the *Bankruptcy and Insolvency Act* in [*Andrews \(Trustee of\) v. Canada \(Minister of National Revenue\)*](#), 2011 MBQB 50. The court agreed that a payment made to a creditor to permit the debtor to carry on may satisfy the onus and disprove the presumption raised in s. 95(2), but in such cases the debtor's intention must be assessed objectively. If the dominant intention of the debtor is simply wishful thinking (as in this case, where the debtor's plan was "doomed to failure") it will not displace the presumption, however honestly the debtor may hold it.

Limitation Period Under s.38 BIA: ONCA

Creditors pursuing claims through a trustee in bankruptcy under [s.38](#) of the *Bankruptcy and Insolvency Act* will need to be cognizant of provincial limitations timelines following the Ontario Court of Appeal ruling in [*Indcondo Building Corporation v. Sloan*](#), 2010 ONCA 890. The court found that on a plain reading of Ontario's limitations legislation "the relevant discoverability date is the earlier of that of the predecessor (in this case, the Trustee) or the person claiming through the predecessor." See the *Lawyers Weekly* article [How to handle limitation periods in bankruptcy](#) and the *Law Times* article [Appeal court sets time limits](#) for more

More on Securities Act Reference

The Supreme Court of Canada heard the reference on the constitutionality of Canada's proposed national *Securities Act* on April 13 and 14, 2011. [Factums](#) filed by each province and others are posted on the court's website, as are [webcasts](#) of the hearing. Appeal courts in both [Alberta](#) (March 8, 2011) and [Quebec](#) (March 31, 2011) previously found the legislation unconstitutional. For more detailed information on the reference see the [Canadian Securities Law Portal](#), a University of Toronto website "devoted to facilitating discussion and debate" on this controversial topic, or the following articles which reflect the views of both supporters and detractors:

- [National Securities Regulator](#), *Financial Post*;
- [Supreme Court Hears Arguments on National Securities Regulator](#), *Blakes Bulletin*;
- [Alberta Court of Appeal finds proposed Securities Act unconstitutional](#), *The Court*;
- [A National Securities Regulator? - No way! says the Alberta Court of Appeal](#), *Ablawg*, University of Calgary Faculty of Law.

Upcoming Regulations

The [Canada Not-for-profit Corporations Regulations](#), setting out the detailed rules that must be in place before the *Canada Not-for-profit Corporations Act* can come into force, have been pre-published in the *Canada Gazette Part I*.

New regulations ([Deposit Type Instruments Regulations](#), [Registered Products Regulations](#), and [Prescribed Products Regulations](#)) resulting from changes to the *Bank Act*, the *Cooperative Credit Associations Act*, and the *Trust and Loan Companies Act* will come into force November 1, 2011. The *Blakes* article [New Requirements for Deposit Type Instruments and Registered Products](#) discusses the amendments.

The [Electronic Documents Regulations](#) will come into force June 1, 2011. These articles explain the changes: [New Electronic Documents Regulations for Financial Institutions: Consent Requirements Defined](#); [New Regulations for Financial Products and Services - Electronic Documents](#), [Financial institutions able to deliver documents by electronic means](#).

Legislative Amendments Introduced

The Manitoba government introduced [Bill 22](#), *The Securities Amendment Act*, on April 21, 2011. As the [explanatory note](#) and [news release](#) indicate, the amendments are intended to bolster investor protection measures and support new initiatives to regulate securities markets. The changes would allow the Securities Commission to regulate auditor oversight bodies; to strengthen its ability to enforce orders issued by other regulators; and to regulate the activities of credit-rating agencies.

[Bill 23](#), *The Employment Standards Code Amendment Act*, was introduced April 20, 2011. Among other things the bill proposes changes to *The Employment Standards Code* to allow written flextime agreements and to change the standard for terminating employees without notice to one of just cause rather than wilful misconduct.

Employers of Foreign Workers Must Comply With New Regulations

Citizenship and Immigration Canada has [announced](#) changes to the [Immigration and Refugee Protection Regulations](#) which came into effect April 1, 2011. The changes will affect employers and workers involved in the Temporary Foreign Worker program by providing for a more rigorous assessment process, limiting the time workers can stay in Canada, and simplifying enforcement procedures. The changes are explained in detail in

Articles on Business Topics

Ned Brown has posted three new articles on [Pitblawg](#) in the last month: [Difficulty in Taking Security on After-Acquired Serial Numbered Goods](#), [Leasing of Goods](#), and [Mortgage/Security interests in "Fixtures"](#).

[Canadian Anti-Spam Legislation Will Impact Electronic Communication Practices](#) - is a Blakes Bulletin exploring how the anti-spam provisions of *FISA* will impact the electronic communication practices of Canadian companies when it comes into force. And, [Bill C-28 and Social Media](#), a recent Slaw posting, gets even more specific by focusing on how *FISA* will affect the way businesses use social media.

[Significant Developments in Canadian Competition Law and Policy Since March 2009](#) - this McCarthy Tétrault article reviews the amendments to the *Competition Act* and other changes in this area.

[Unsubstantiated Fraud Claims](#) - this *Lawyers Weekly* article looks at how courts are treating unsubstantiated and incendiary allegations in commercial litigation pleadings.

[Tax court delivers smackdown to charitable donor](#) - this *Lawyers Weekly* article discusses how the CRA and the courts are treating leveraged charitable donation programs.

Continuing Professional Development: LSM

Be sure to register soon for these upcoming Law Society programs:

- [Accommodation in the Workplace](#) - Presenters will examine such current issues as family/marital status, gender identity and disability in this dynamic area of law. The program will take place May 17, 2011, from 1:00 to 4:00 p.m. at the Law Society classroom.
- [Financial Statements](#) - Shawn Wilson, who presented the popular One Day MBA for Lawyers last January, is back for this comprehensive all-day review of the principles involved in constructing and decoding financial statements for family, business and personal injury lawyers. The program takes place on June 10, 2011 at the Law Society classroom. There will be no webcast or video replay of this program, so [register](#) early to ensure your spot.

Bar Association Programs

Several Manitoba Bar Association sections are hosting upcoming events:

- The [Bankruptcy and Insolvency](#) section is co-hosting a wine and cheese event at the Blackstone Lounge, Taylor McCaffrey LLP on April 28, 2011 from 5:00 p.m. - 6:30 p.m. The CPD component of the event will look at the effect of foreclosure (and Manitoba's seize or sue legislation) on provable unsecured claims in bankruptcy and how to value homestead interests and realize upon jointly held property.
- The [Taxation Law](#) section is hosting its annual general meeting and a judge's reception with Chief Justice Rip of the Tax Court of Canada on May 10, 2011 starting at 5:00 p.m.
- The [Corporate \(In House\) Counsel](#) section has announced a special event hosted by Deloitte & Touche LLP on May 12, 2011 from 11:30 a.m. to 1:30 p.m. at the Manitoba Club. A panel of general counsel will discuss the changing and expanding role of in house counsel.

These online CBA programs may be of interest to business lawyers:

- [Legal Project Management for the Business Lawyer](#) - this program is on project management, with a particular focus on managing the corporate file. It takes place May 10, 2011 from 11:00 a.m. to 12:30 p.m. [Register](#) online.
- [The Impact of Trade Treaties on Municipal Procurement](#) - this program considers how domestic and international trade agreements have changed the municipal procurement

landscape across Canada. It takes place June 9, 2011. Contact the CBA to register.

CAIRP Insolvency and Restructuring Forum

The CAIRP May 2011 [Insolvency And Restructuring Forum](#) will take place in Winnipeg on May 26, 2011 at the Hotel Fort Garry. The program focuses on the key issues affecting mid-market commercial and personal insolvency practitioners. Local presenters include JJ Burnell, Andrew Loewen, Art Stacey, and Master Errick Harrison.

Spring Conferences: CBA

The 2011 [Tax Law for Lawyers Conference](#) will be held May 29 to June 3, 2011 in Niagara Falls, Ontario. See the conference [program](#) and [registration form](#) for further details.

The [Competition Law 2011 Spring Forum](#) will take place in Toronto on May 3, 2011. It will focus on civil competition law issues. The [conference agenda](#) and [registration form](#) are on the CBA website.

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