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Crown GST Garnishment Right Prevails Despite Bankruptcy: SCC

The [Supreme Court](#) upheld the Federal Court of Appeal ruling in [Toronto Dominion Bank v. Canada](#), 2010 FCA 174 that requirements to pay issued under s.317 of the *Excise Tax Act* remain valid against the garnishee (in this case the taxpayer's bank) even if the taxpayer declares bankruptcy prior to the payment being made. Where the garnishee receives the requirement to pay before a notice to stay is filed under s.69 of the *BIA* the funds become the property of the Crown and do not form part of the taxpayer's patrimony upon bankruptcy according to the court at para. 53. The case serves as a warning to secured creditors to monitor their borrower's GST arrears according to the authors of the following articles:

- [Secured Creditors Beware: Crown GST/HST Garnishment May Trump Your Security Interest In An Account Receivable](#), Borden Ladner Gervais;
- [Supreme Court decision in Toronto-Dominion Bank v. Her Majesty the Queen: Garnishment notices regarding unpaid GST remain valid after bankruptcy](#), Stikeman Elliott.

SCC Clarifies Test for Misleading Advertising

The Supreme Court struck a blow against misleading advertising in [Richard v. Time Inc.](#), 2012 SCC 8, upholding a trial decision granting damages for "moral injuries" to a plaintiff claiming to have been misled by a sweepstakes ad saying he had won a cash prize of \$833,337. The fine print clarified that he had to have and return "the winning entry" to win. The "general impression test" set out in the legislation and used to determine whether a commercial ad is misleading must be applied from the perspective of a credulous and inexperienced consumer said the court, as "the average consumer is not very sophisticated." (para.65) The court also summarised the principles at play in assessing punitive damages (paras. 143-214) and reduced the \$100,000 punitive damages awarded at trial to \$15,000. These articles discuss the decision:

- [Important Guidance From the Supreme Court on Misleading Advertising](#), McCarthy Tétrault;
- [SCC decision lowers the bar for advertisers](#) and [Caveat venditor: Paying the price for being tricky](#), both *Canadian Lawyer*.

Exceptional Remedy Requires Stronger Evidence: MBQB

The court declines to grant an interlocutory injunction in a case concerning the validity and enforceability of restrictive covenants in restraint of trade in [Steinke o/a Muscle Mechanics Massage Therapy v. Barrett](#), 2012 MBQB 49. Although there was an admitted breach of a non-competition clause and some evidence as to solicitation contrary to a non-solicitation clause, the court found insufficient evidence of either a serious issue to be tried or irreparable harm. In addition, in the absence of evidence that the plaintiff's massage business had been affected by the proximity of the defendants' new business, the balance of convenience favoured the defendants, as forcing them to move would significantly affect their ability to earn a living.

New Debt Collector Regulations

Recent amendments to *The Consumer Protection Act* regulations ban upfront charging, set maximum fees, and require debt-settlement agencies to become licensed. [Manitoba Regulation 6/2012](#), which came into effect February 15, 2012, provides that the creditor and debtor must agree on a reduced repayment plan before the debtor is charged a fee. The amendments are part of the government's five-year plan for consumer protection.

Competition Bureau Concluded Merger Review Reports

The Competition Bureau has [announced](#) it will begin publishing [monthly reports](#) of concluded merger reviews in an effort to increase the transparency of its operations. The first report, covering the month of February, was published online March 9, 2012.

Business Law Publications

These recent articles may be of interest to business lawyers:

- [Business and Corporate Bulletin](#) - a February 2012 CBA publication with articles on competition law, trends in class actions, the *Copthorne* decision, and corruption enforcement;
- [Alberta Court Releases Seminal Competition Law Costs Decision](#) - a Blakes article concerning [321665 Alberta Ltd. v. ExxonMobil Canada Ltd.](#), 2012 ABQB 76, the first reported decision to consider entitlement to costs pursuant to s. 36 of the *Competition Act*;
- [Avoiding Common Communication-Related Claims in Corporate/ commercial Law](#) - a Slaw article detailing the kinds of communication-related complaints that result in business law malpractice claims;
- [Goodwill Hunting: Identifying And Allocating Value To Goodwill On The Sale Of A Business](#) - a BLG tax bulletin discussing [Transalta Corporation v. Canada](#), 2012 FCA 20, a decision concerning the allocation of goodwill on an asset purchase and how it is valued for tax purposes;
- [A Practical Guide To Software License Agreements](#) - a BLG article on negotiating software license agreements; and
- [Pulling the rug out](#) - a *Canadian Lawyer* article in which author Philip Slayton criticizes the SCC decision in [Reference re Securities Act](#), 2011 SCC 66, claiming it doesn't reflect modern business and fiscal reality.

CPD Opportunities: LSM

The Law Society is offering the following business-related programs this spring:

- [Advanced One Day MBA for Lawyers Workshop](#) - enhance your understanding of the financial statements and valuation methodologies underlying business transactions at this all day course on April 19, 2012. Advance preparation is required, and completion of the One Day MBA for Lawyers workshop is recommended.
- [Accommodation in the Workplace](#) - this year's program will cover new cases and legislation pertaining to accommodation in the workplace as well as ethical issues for lawyers acting in human rights cases. It takes place from 1:00 to 4:00 p.m. on May 28, 2012 at the Law Society classroom. [Register](#) early to ensure your spot.

Bar Association Programs

- The Corporate (In House) Counsel section of the MBA is hosting a dinner meeting program on [Recent Trends in Employment Law: Tips, Traps, & Minefields](#) on March 21, 2012 from 6:00-10:00 p.m. and a lunch program on [What In-House Counsel Should Know About Legal and Project Management Practices](#) on April 4, 2012 at 12:00 noon. See the MBA website for details and to register.
- Local lawyer Bruce King is presenting at the next program offered in the CBA Skilled Lawyer Series, [Real-life Lessons in Corporate Governance](#), online March 28, 2012. See the website for more information or to register.

Annual Tax Conference

The National Taxation Law section of the Canadian Bar Association is presenting the 18th annual [Tax Conference for Lawyers](#) on May 27-June 1, 2013 in Niagara-on-the-Lake, Ontario. The programming, which covers corporate and personal taxation and estate planning concepts, is aimed at younger tax and estates lawyers or general practitioners and corporate lawyers seeking a background in tax law issues. [Register](#) by April 14 to take advantage of early bird pricing.

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