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SCC Reinterprets Farm Loss Deduction Limitations

The Supreme Court took a different approach to the deductibility of farm losses in [*Canada v. Craig*](#), 2012 SCC 43, overruling its previous decision in [*Moldowan v. R.*](#), [1978] 1 S.C.R. 480 which held that [s.31\(1\)](#) of the *Income Tax Act* (the farm loss limitation rule) applied to all those who farmed as a sideline business. The court found that this interpretation incorrectly read the combination exception out of s.31, attracting judicial and academic criticism and justifying a revisit by the court. Instead, the trial judge should look at such factors as capital investment, income, time spent, and future intentions to determine whether the taxpayer places significant emphasis on both farming and non-farming sources of income. If so, "there is no reason that such a combination should not constitute a chief source of income, avoiding the application of the loss deduction limitation of s. 31(1)." (para. 42)

Flexible Approach to Content of Lien Enforcement Documents: MBCA

In [*NVR Holdings Ltd. v. Action Concrete*](#), 2012 MBCA 73 the Court of Appeal upheld the motion judge's finding that a counterclaim which clearly identified the underlying lien dispute constituted a sufficient "action" to satisfy [s. 49\(2\)](#) of *The Builders' Liens Act*. Under the section a lien expires two years from registration unless an action is commenced in which the claim may be realized. The court also endorsed a flexible approach to the application of the content requirements under the Act, finding "it is not necessary to specifically state that one is seeking to enforce a lien or a claim for lien; it is sufficient if, on an objective reading of the statement of claim, it is clear that the plaintiff, or the plaintiff by counterclaim, was applying to enforce its lien."

Oppression Order Upheld: MBCA

In [*Katz v. Babkat Inc.*](#), 2012 MBCA 68 the Court of Appeal declined to interfere with the applications judge's discretionary declaratory order under ss. [231 and 234](#) of *The Corporations Act* and the resulting share valuation and order to repay the shareholder loan. Where there are undisputed material facts, said the court, "it is preferable both for the parties and the interests of justice that the matter be decided in a summary fashion as opposed to subjecting the parties to the expense and inconvenience of an unnecessary trial."

Segregation of Creditors Appropriate: MBQB

In [*Bankruptcy of Delbert Barkman*](#), 2012 MBQB 259 the master confirmed the trustee's decision to exclude the government, a creditor of a bankrupt farm partnership, from sharing in the proceeds of the separate estate of one of the individual farm partners. Rejecting the government's argument that s.142 of the *Bankruptcy and Insolvency Act* does not apply if all parties are insolvent and there is no joint estate, the court found that the section sets out "a rather well drafted methodology for segregating monetary realizations from partnerships and related individual estates." (para.13)

New Manitoba Franchise Legislation In Force

Manitoba became the fifth Canadian province to enact franchise legislation when [*The Franchises Act*](#), CCSM c F156 and [regulation](#) came into force October 1, 2012. The new legislation imposes disclosure obligations on franchisors operating in Manitoba that may require them to revise their franchise disclosure documents. The act is similar to franchise legislation in other provinces, but there are some important differences, as discussed in this [Osler E-review](#). Osler lawyer [Frank Zaid](#) will discuss what to expect from the new legislation at the upcoming [Pitblado Lectures](#) on November 30, 2012.

Update on New and Proposed Legislation

The [Canadian Environmental Assessment Act](#), 2012, S.C. 2012, c. 19, s. 52 came into force July 6, 2012 by Order in Council P.C. 2012-969. The act and regulations establish the new environmental assessment process. For further information on the new regime see the [Canadian Environmental Assessment Agency](#) website or The Stream post [Tricky Legislation: Canadian Environmental Assessment Act, 2012](#).

[The Retail Businesses Holiday Closing Amendment Act](#), SM 2012, c 37 came into force August 1, 2012, expanding the hours retail businesses can be open on Sunday and certain holidays and introducing protections for workers regarding these hours. For an explanation of the changes see the [Employment Standards website](#).

The Accessibility Advisory Council has published a final [report](#) outlining its recommendations for accessibility legislation in Manitoba and the public is [invited to comment](#) on the proposals by October 21, 2012. These articles discuss the Manitoba proposals and similar legislation in Ontario:

- [Accessibility Legislation In Canada - Additional Requirements Under The AODA And Proposed Accessibility Legislation In Manitoba](#) - Osler.
- [Recommendations for New Manitoba Legislation to Remove Barriers Faced by People With Disabilities](#) - Slaw.

Copyright In Flux

Canadian copyright law is undergoing significant change as a result of the passing of [Bill C-11](#) on June 29, 2012 and the release this summer of five decisions on copyright by the Supreme Court of Canada ([SOCAN v. Bell Canada](#), [Alberta \(Education\) v. Access Copyright](#), [Re:Sound v. MPTAC](#), [Entertainment Software Association v. SOCAN](#), [Rogers Communications v. SOCAN](#)).

The article [Happy\(?\) Birthday, Bill C-11!](#) summarizes the salient aspects of Bill C-11 and these articles discuss how the Supreme Court decisions affect fair dealing and other copyright issues:

- [The Supreme Court Issues Five Copyright Decisions - All In A Single Day!](#) - Fasken Martineau.
- [Tariff, Away: Re:Sound v Motion Picture Association of Canada](#) - The Court.

Business Law Publications

These recent publications may be of interest to business lawyers:

- [*Problems With Credit Card Account Interest Obligations*](#) - Ned Brown discusses possible solutions to the problem of collecting post-default interest where the credit card debt is real estate secured (usually by an all obligations mortgage on the cardholder's home). Securing cardholder debt by real estate engages s.8 of the *Interest Act*.
- [*Business & Corporate Bulletin*](#) - the CBA's August 2012 online newsletter contains articles on the *Investment Canada Act*, putting a price tag on privacy, and creating a national securities regulator.
- [*Getting the Final Document Correct: The rationale for using a checklist for commercial transactions*](#) - this LAWPRO Magazine article introduces practicePRO's new commercial transactions checklist, which can be downloaded on their [website](#).
- [*Working capital as a purchase price adjustment tool*](#) - this Stikeman Elliott article discusses how the use of working capital adjustments has changed and suggests best practices for negotiating and drafting these provisions.

Legal Boundaries in a Global World: 2012 Isaac Pitblado Lectures

The [2012 Isaac Pitblado Lectures](#) will explore how increasing globalization is affecting the practice of law in Manitoba. Keynote speakers include Chief Justice Warren Winkler, Prof. Trevor Farrow, Dr. Michael Geist, Edward Northwood, and Dr. Bryan Schwartz. The lectures take place November 30 and December 1 at the Fort Garry Hotel. Early bird [registration](#) has been extended to October 26, 2012.

Fall CPD: LSM

Be sure to register soon for these upcoming continuing professional development programs offered by the Law Society:

- The Law Society is bringing back Martin Latz, one of North America's leading experts and instructors on negotiating techniques, for two day-long workshops on negotiation strategy. [Gain the Edge!® Negotiation Strategies for Lawyers](#) takes place November 7, 2012 and [Advanced Negotiation Strategies](#) is on December 6, 2012. Further information can be found in the program agendas [\(Nov 7\)](#) and [\(Dec 6\)](#) and on the [presenter's website](#),
- [Electronic Legal Research Booster \(An Intermediate Level Legal Research Program\)](#) - Enhance your online legal research skills at this hand-on program where you will learn how to find the best free legal commentary on recent case law and legislative developments in your practice area. The program takes place on November 14, 2012, from 1:00 to 4:00 p.m. at the Law Society classroom.
- [Practical Ethics: Real Problems, Real Solutions](#) - [register](#) soon to attend either the morning or afternoon session of this live repeat of last winter's popular program on practising ethically. The sessions take place on

December 10, 2012 and feature leading legal ethics instructor Paul Paton and local panellists Vivian Rachlis, Bill Gange and Anita Southall.

CBA/MBA Programs

- The third session of the CBA's online [Skilled Lawyer Series - Corporate Stream](#) begins November 13, 2012 with the program [Effective Use of Technology in Corporate Transactions](#). Among the topics to be covered are: document management, electronic deal rooms, and teleconferencing technology. Local lawyer Doug Forbes is one of the presenters of the December 6, 2012 program on [Tips for Negotiating and Drafting Purchase and Sale Agreements](#).
- Scott Ransom will present on the topic of [Ethical Considerations in Giving Opinions](#) at the November 15, 2012 meeting of the Business Law section of the MBA. The meeting is from 12:00 noon to 1:30 p.m. at Pitblado LLP.

Honouring Chief Justice Richard Scott on His Retirement

Manitoba's legal community is invited to participate in two events honouring Chief Justice Richard Scott on his retirement. An educational forum [Courting Change: The Changing Role of Courts](#) will be held February 8, 2013 and a [gala dinner](#) is planned for February 9, 2013. See www.scottretirement.org for more information.

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