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Remediation Orders and Corporate Restructuring: SCC

Environmental clean-up orders issued by a province can be "claims" subject to the stay provisions of the *Companies' Creditors Arrangement Act* according to the Supreme Court of Canada in [*Newfoundland and Labrador v. AbitibiBowater Inc.*](#), 2012 SCC 67. Where there is sufficient certainty that the regulatory body that triggers the enforcement mechanism will ultimately perform remediation work and assert a monetary claim the order can be subjected to the insolvency process said the court at para.36. These articles discuss the implications of the decision:

- [*Supreme Court Holds Environmental Orders Can Be Compromised in CCAA Proceedings*](#), Blakes bulletin;
- [*Environmental Liability in a CCAA Proceeding*](#), BLG;
- [*When can Environmental Regulatory Orders be Compromised Claims under the Companies' Creditors Arrangement Act? Supreme Court of Canada Provides Clarification*](#), Osler;
- [*Supreme Court of Canada Issues Landmark Ruling on Treatment of*](#)

Transfer Pricing Not an Exact Science: SCC

The Supreme Court dismissed the appeal and cross-appeal in [Canada v. GlaxoSmithKline Inc.](#), 2012 SCC 52 and sent the matter back to the Tax Court to be redetermined having regard to the licensing agreement and the economic circumstances surrounding the transaction. The court offers guidance in the decision on the proper application of the arms' length principle.

Appeal Court Cancels Stay of Hecla Asset Sale: MBCA

The Court of Appeal granted the receiver's s.195 BIA application to cancel an automatic stay of a court approved asset purchase agreement concerning the Hecla resort in [Business Development Bank of Canada v. Paletta & Company Hotels Ltd.](#), 2012 MBCA 115. The receiver made out a compelling case for the stay to be removed given the urgent need to sell the property and the risk of losing the sale should the deal not close by the agreed upon date. In addition, the court was not convinced there was merit to the assertion that there had been a lack of procedural and substantive fairness on the part of the receiver as alleged by the respondent.

Real Conflict in Corporate Dispute: MBQB

The court barred a law firm from continuing to act for its corporate clients in [Paterson v 5334781 Manitoba Ltd. et al](#), 2013 MBQB 3, an expedited action concerning an alleged understanding that all shareholder decisions had to be unanimous. The parties had not signed a unanimous shareholder agreement and nothing in the corporate documents required unanimous consent. The court found that since it would be necessary to call the lawyer who prepared the corporate documents to testify as to the allegations in both the Statement of Claim and the Statements of Defence he and his firm could not continue to act for the plaintiff.

Impact of *Daniels* Decision: FC

The much talked about Federal Court decision in [Daniels v Canada](#), 2013 FC 6 (that non-status Indians and Métis are "Indians" within the meaning of s. 91(24) of the *Constitution Act*) will have significant implications for the federal government but should not affect resource developers, according to those commenting on the case. The decision focuses on constitutional jurisdiction, not on Aboriginal rights or consultation requirements. The federal government is expected to appeal. These articles comment on the decision:

- [Federal Court Extends Federal Jurisdiction to Métis and Non-Status Indians: No Impact to Resource Developers](#), Osler;
- [Daniels Case on Metis and Non-status Indians](#), OKT blog.

CASL Update

The revised [anti-spam regulations](#) (published January 5, 2013 by Industry Canada) are the final step in the coming into force of CASL, passed in December 2010. Industry Canada will accept written comments on the draft regulations until February 4, 2013. The CRTC regulations were finalised last March and the CRTC published guidelines on their [interpretation](#) and on the [use of toggling](#) as a means of obtaining express consent on October 10, 2012. These articles critique the latest regulations and the enforcement bulletins:

- [New Draft Regulations Soften Impact of CASL, but Concerns about Jobs and Compliance Costs Remain](#) and [CASL Enforcement Bulletins Released By CRTC: Increased Compliance Burden On Business](#), Osler;
- [Many business concerns remain following revisions to anti-spam regulations](#), Stikeman Elliott;
- [Revised Industry Canada Anti-Spam Regulations: Certain Concerns of Business and Stakeholders Addressed](#), Blakes.

New Legislation

The senate passed [Bill C-45](#) (the second omnibus budget implementation bill introduced October 2012) on December 14, 2012 and the *Jobs and Growth Act, 2012* c.31 received royal assent the same day. For further information on the new legislation see the [legislative summary](#), the [coming into force](#) chart, and this [Blakes' article](#) detailing the amendments affecting financial institutions.

Most provisions of the [Copyright Modernization Act](#) ([Bill C-11](#), passed June 29, 2012) officially came into force November 7, 2012 with the publication of Order-in-Council [SI/2012-85](#). For commentary on the new legislation see [Change and the Copyright Modernization Act](#) by Barry Sookman and [Canada's New Photography Copyright Regime: Clearance Challenges](#), Heenan Blaikie.

CSA Seeks Comment on Proposals

The Canadian Securities Administrators have released a number of consultation papers for comment in recent months. Those wishing to comment on CSA [Consultation Paper 33-403](#) (concerning a proposed fiduciary statutory duty for dealers and advisors) have until February 22, 2013 to do so. Comments on the proposed [Model Reporting Rules](#) related to derivatives must be submitted by February 4, 2013, and comments on the [regulation of market data fees](#) are due February 8, 2013.

Recommended Reading

Recent publications that may interest business lawyers include:

- The December 2012 edition of the CBA's [*Business and Corporate Bulletin*](#) features articles on price-fixing, the anticipated BCCA decision on lawyers and money laundering legislation, and the SCC decision in *Southcott Estates*:
- [*Resolutions to Avoid Corporate/commercial Claims*](#) - Taking detailed notes, using a checklist, and not dabbling outside your expertise are all good strategies to help avoid complaints and claims and this Slaw post provides the links to help you implement them: a LAWPRO magazine article on [*Resolutions for a Better Practice*](#) and a new [*Checklist for Commercial Transactions*](#);
- [*U.S. and Canadian Tax Law: A Review of 2012 and a Look Forward to 2013*](#) - this Davies' publication looks both back and forward at tax developments in Canada and the United States. It includes a brief review of the budget and Bill C-45, the TCC decision on beneficial ownership and tax treaties, and offshore trusts, among other things. It also identifies what legislative and judicial developments to expect in 2013;
- [*The Business of the Courts*](#) - *Lexpert* magazine looks at the top ten business cases of 2012 and how businesses feel about them in its January 2013 edition.

Winter CPD: LSM

- [*The Interpretation of Bilingual Documents: A Primer for Practitioners*](#) - Find out how recent court decisions on the interpretation of bilingual enactments have affected the requirement for judges and lawyers to review both versions of statutes at this lunch hour program on February 15, 2013. Attend the program in person at the Law Society classroom or by teleconference.
- [*Hot Topics in Real Estate*](#) - an experienced panel of practitioners will give you the latest news affecting your real estate practice at this popular annual review to be held March 20, 2013, from 1:00 to 4:00 p.m. at the Law Society classroom. This program fills up early, so [register](#) soon to make sure you have a spot.

For those who prefer a webinar format, consider registering for the following programs:

- [*Avoid Hating the Law 10 Years From Now: An Ethical Lesson From the Trenches*](#) (February 12, 2013); [*The Fear Factor: How Good Lawyers Get Into Bad Ethical Trouble*](#) (February 26, 2013); and [*It's Not "Time" Management, It's LIFEtime Management*](#) (March 12, 2013) are all presentations by Stuart Teicher, a professional legal educator who focuses on ethics law. [Register](#) for 2 or more programs and save or get a discount if you register as a group.

Manitoba Bar Association Mid-Winter Conference

The 2013 MBA [Mid-Winter Conference](#) takes place January 24-25, 2013 at the Fort Garry Hotel. The Business Law section will present **Farm Business Acquisitions, Dispositions and Financing** and a session on **Due Diligence**; the Construction Law section will present **Nuts and Bolts of Builders' Liens**; and the CCCA is sponsoring a session on **The Art and Science of Effective Negotiation**. Other programs that may interest business lawyers include:

- **All Purpose Mortgages** and **Condominium Law** - both sponsored by the Real Property section.

For further details see the [registration form](#) or [brochure](#).

Skilled Lawyer Series III - Corporate Stream: CBA

The CBA's [Skilled Lawyer Series III - Corporate Stream](#) is presenting online programs on [Tricks and Traps of Financial Statements: A Lawyer's Guide](#) (January 31, 2013) and [Labour & Employment Due Diligence](#) (February 28, 2013). [Register](#) online at the CBA.

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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