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DIP Creditors Have Priority Over Pensioners: SCC

In [*Sun Indalex Finance, LLC v. United Steelworkers*](#), 2013 SCC 6, the Supreme Court overturned the controversial Ontario Court of Appeal ruling that pension plan deficiencies were subject to deemed and constructive trusts which had priority over debtor in possession financing in insolvency proceedings. As these commentators note, the decision divided both the court and public opinion:

- [*Supreme Court Reverses the Indalex Decision*](#), The Court;
- [*Top court deals blow to pensioners in insolvency cases*](#), Globe and Mail;
- [*Supreme Court rules against pensioners in Indalex case*](#), CBC.

Oral Lease Agreement Upheld: MBCA

The Court of Appeal upheld the lower court ruling in [Canadian National Railway Co. v. Huntingdon](#), 2013 MBCA 3 awarding damages against the owners of Cityplace for breach of an oral agreement to continue a lease on agreed terms, and for trespass and wrongful distress. The court overturned the award of compensatory damages against the third defendant, the owner's asset manager. The asset manager was not a landlord at common law or under *The Landlord and Tenant Act*, nor was there evidence it was privy to the oral lease. The court did uphold the award of punitive damages against the asset manager, however, for acting as agent in the wrongful distraint of the tenant's property.

Manitoba QB Cases

In [Lake Louise Limited Partnership v. Canad Corporation of Manitoba Ltd. et al](#), 2013 MBQB 67, a dispute between two business owners as to the proper interpretation of their hotel management agreement, the court's decision on the correct formula for calculating the management fee for the video lottery terminal area had significant commercial implications for the parties. The court's finding that the phrase "all revenues and receipts of every kind" in the definition of gross revenues included the "coin-in" from the VLT machines, and that this method of calculation was not prohibited by GAAP, resulted in a \$220,000 increase in the yearly management fee.

The court denied a shareholder's application for injunctive relief and an order for access to the corporate records of a family company in [Walsh v. Scotia Investments Ltd. et al.](#), 2013 MBQB 34, despite finding evidence of "concerning" transactions involving the company's assets. "(I)t would be stretching the *Court of Queen's Bench Rules* and the provisions of *The Corporations Act* to grant the relief requested," said the court, given that two statements of claim were already before the court on the same matter.

A lien bond filed by the general contractor of the new football stadium in order to obtain removal of a builder's lien filed by the roofing subcontractor (Structal) satisfied its trust obligation under s. 4(3)(a) of *The Builders' Liens Act* and the general contractor was not obliged to hold back disbursement of progress payments according to the court in [Stuart Olson Dominion Construction Ltd. v. Structal Heavy Steel](#), 2013 MBQB 48. The court declined to determine, at this preliminary stage in the litigation, whether the general contractor had a right of set-off to diminish the amount of the trust fund and whether Structal was entitled to payment of funds from the progress payment.

Update on Legislation

Federal

Several sections of the [*Jobs, Growth and Long-term Prosperity Act*](#), S.C. 2012, c. 19 recently came into force:

- Division 7 of Part 4 (ss. 304 to 308 and 310 to 312, 685 and 687 to 695) and ss. 449, 450 and 453 (concerning the *Old Age Security Act*) came into force March 1, 2013;
- Division 4 of Part 4 came into force March 8, 2013; and
- Division 39 and 49 of Part 4 and ss. 579 to 593 came into force April 1, 2013.

These sections of the [*Jobs and Growth Act, 2012*](#), S.C. 2012, c. 31 came into force as follows:

- Division 8 of Part 4, in force March 1, 2013;
- Sections 433(1) and (3), 434(1), 435(1), (2), (4), (6), and (8), 436(1), (4), (5) and (7), 437(1), (3) and (5), 438(1), 439(1), 440(1) and (3), 441(1), 442(1), 443(1) and 445(2), 447, 452 to 460, and 461(1), in force March 7, 2013;
- Sections 414 to 423, in force April 1, 2013; and
- Division 13 (other than s. 285) of Part 4, in force April 1, 2013.

Section 46 of the [*Financial System Review Act*](#), S.C. 2012, c.5 came into force February 28, 2013.

Part 4 of [*Sustaining Canada's Economic Recovery Act*](#), S.C. 2010, c. 25 (other than ss.163 and 164, which came into force on assent) will come into force September 2, 2013.

Provincial

In Manitoba, [*The Consumer Protection Amendment Act \(Motor Vehicle Work and Repairs\)*](#), S.M. 2012, c.14 will come into force July 1, 2013. It amends *The Consumer Protection Act* to provide protections for consumers dealing with motor vehicle work and repairs.

New Notice and Access Rules Simplify Shareholder Communications

The Canadian Securities Administrators have amended National Instruments [54-101](#) and [51-102](#) effective February 11, 2013, allowing issuers to use a new notice and access process to deliver proxy related materials via the internet for meetings held on or after March 1, 2013. Stikeman Elliott has published articles on [how the new system works](#) and on its [implementation](#). There are obstacles to full implementation of the new rules, however, given apparent conflicts with provincial and federal legislation. The Canadian Bar Association has formed an ad-hoc committee to consider possible amendments to the *CBCA*, *Bank Act*, *ICA* and *TLCA* to enable federal issuers to take full advantage of the CSA amendments.

Budget 2013

The recent federal budget, presented March 21, 2013, is a hot topic on law firm publication lists this month. For some sample articles explaining how proposed budget measures will affect business in Canada see:

- [Budget Briefing 2013](#), Osler;
- [Federal Budget 2013: How will it impact your business?](#) Gowlings; and
- [Selected Tax Measures](#) and [Federal Government Advances Plan for National Securities Regulator](#), Blakes.

Report on Commercial Tenancies: MLRC

The Manitoba Law Reform Commission released [Report #127](#): Commercial Tenancies: Section 17 of *The Landlord and Tenant Act* and Section 93 of *The Real Property Act* on March 28, 2013. The report reviews the discrepancies between the above noted sections governing a landlord's right to re-enter leased commercial premises where a tenant has committed a serious breach of a tenancy agreement. The Commission recommends the enactment of a single statutory implied term allowing a landlord to re-enter leased commercial premises if rent is unpaid for a period of 15 days or if a covenant is breached continuously for a period of 15 days. As noted in the [executive summary](#), the Commission also recommends incidental changes to the legislation, with a view to improving its clarity and accessibility.

Articles on Business Topics

- In a series of five posts on Slaw, author David Canton examines what everyone should know about the *Anti-Spam Act* before it comes into force. [Part 1](#) introduces the act; [Part 2](#) looks at the definition of spam; [Part 3](#) covers other things in the act; [Part 4](#) covers how to prepare for the act; and [Part 5](#) looks at challenges going forward.
- [Significant Amendments to Canada's Trade-marks Act Closer To Reality](#) - this Canadian Trademark blog post reviews the trade-mark law changes proposed in [Bill 56](#), the *Combating Counterfeit Products Act*, introduced March 1, 2013.
- [CSA Approve Amendments to Prospectus Rules](#) - this Blakes bulletin summarizes the CSA approved final amendments to the prospectus requirements under Canadian securities laws, which will come into effect May 14, 2013.
- [The Expanding use of the Oppression Remedy may give legal teeth to Corporate Social Responsibility](#) -- in this case comment on [Wrzesien v Arnett & Burgess Pipeliners Ltd.](#), 2013 ABQB 59, ABlawg author Jeff Bone speculates on whether the courts will expand the oppression remedy to allow shareholders to enforce environmental objectives.
- [Reading and Understanding Financial Statements](#) - the author of this Practice Points article outlines the terms and qualitative characteristics

of financial statements and discusses GAAP and the accrual basis of accounting.

- The April 2013 edition of the CBA [National Business Law section newsletter](#) contains articles on [changes to the investment Canada regime](#) and [advance notice requirements for director nominations](#).

Spring CPD: LSM

Upcoming CPD programs that may interest business lawyers include:

- [Technology and Security: Are You Meeting Your Confidentiality Obligations?](#) - find out what security "best practices" you should have in place to ensure confidential information is protected on your electronic devices at this webinar with Aikins Law IT manager John Martynuk. It takes place April 24, 2013 from noon to 1:00 p.m.
- [Canada's Anti-Spam Law: What Your Clients Need to Know](#) - Brian Bowman will walk you through the soon-to-be implemented anti-spam legislation at this lunch hour webinar on May 23, 2013. The new law will fundamentally alter online marketing activities in Canada and steps should be taken now to prepare for the changes.

CAIRP Insolvency and Restructuring Forum

The 2013 CAIRP Insolvency & Restructuring Forum, [Perspectives Beyond the Box](#), will take place at the Winnipeg Convention Centre on May 2, 2013.

Winnipeg presenters include David Jackson, Jason Harvey, Katie Hall, Russ Wookey and Ken Muys. Robert Klotz will speak on current issues in bankruptcy and family law.

Spring Conferences: CBA

- Presenters will examine the current state of flux in competition law and enforcement at the [2013 Competition Law Spring Forum](#), to be held May 28, 2013 in Toronto.
- Toronto is also hosting the 2013 CCCA [National Spring Conference](#), which takes place April 14-16, 2013. The [program](#), targeted exclusively to in-house counsel, includes plenary sessions on cyber security and adapting to change, keynote speakers, and breakout sessions on a diverse range of topics.
- The [2013 Tax Law for Lawyers Conference](#), to be held May 26-31, 2013 in Niagara-on-the-Lake, Ontario, features six days of programming on the practical applications of Canadian tax law.

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