# TABLE OF CONTENTS

**List of Contributors** .......................................................... vii
**Table of Cases** ..................................................................... ix

**EDITORIALS** ...................................................................... 1, 115, 267, 415

**ARTICLES**

**ACCOUNTING FOR CHANGING VALUES OF MONEY,**
David Y. Timbrell .................................................................. 3

**SECURITIES REFORM IN ONTARIO: THE SECURITIES ACT, 1975,**
Peter J. Dey ......................................................................... 20

**THE FOREIGN INVESTMENT REVIEW ACT: PHASE I,**
Warren M. H. Grover ............................................................... 54

**FINANCE LEASING—AN ANALYSIS OF THE LESSOR’S RIGHTS UPON**
**DEFAULT BY THE LESSEE,** John F. Varcoe ......................... 117

**THE NEW COMPETITION LAW: STAGE ONE,** Gordon Kaiser .......... 147

**THE CONSTITUTIONALITY OF THE COMPETITION BILL,** Peter W. Hogg
and Warren M. H. Grover ..................................................... 197

**THE ADMINISTRATION OF THE CANADA BUSINESS CORPORATIONS**
**ACT,** Frederick H. Sparling ............................................. 229

**A PRACTITIONER’S NOTES UPON THE ONTARIO PERSONAL PROPERTY**
**SECURITY ACT,** Bradley Crawford ...................................... 269

**DIRECTORS’ AND OFFICERS’ LIABILITIES IN CANADA,** Ivan R. Feltham
and William R. Rauenbusch .................................................. 321

**THE WORTHIER CREDITORS (AND A CHEER FOR THE KING ),**
Morris G. Shanker ................................................................. 340

**ANTI-COMBINES LAW AND POLICY IN CANADA, 1888-1975:**
**A BIBLIOGRAPHY,** W. T. Stanbury ..................................... 352

**THE CARRUTHERS REPORT—A CRITICAL EVALUATION,**
Reuben A. Hasson .................................................................. 416

**MISLEADING ADVERTISING: THE STANDARD OF DECEPTIVENESS,**
F. A. Miniter ......................................................................... 435

**THE CANADA BUSINESS CORPORATIONS ACT: WHAT EFFECT MAY IT**
**HAVE ON THE CONCENTRATION OF ECONOMIC POWER?**
J. E. Smyth ......................................................................... 448
## TABLE OF CONTENTS

**COMMENTARIES**

AMENDMENTS TO THE BRITISH COLUMBIA TRADE PRACTICES ACT:
   THE REFINEMENT OF OMNIBUS LEGISLATION, Allen A. Zysblat . 99
   CANADIAN IMPERIAL BANK OF COMMERCE V. MATERI, Arthur Close
   109 THE REWRITING OF CANADIAN BUSINESS STATUTES,
   James C. Baillie ................................................................. 242
   MANITOBA LAW REFORM COMMISSION WORKING PAPER ON FIRE
   INSURANCE, R. A. Hasson ..................................................... 253
   TORTIOUS LIABILITY FOR PRE-CONTRACTUAL AND
   INTRA-CONTRACTUAL MISREPRESENTATIONS, Jacob S. Ziegel 259
   THE TRANSITIONAL PROVISIONS OF THE ONTARIO PERSONAL
   PROPERTY SECURITY ACT: IN RE GALAXIE FAMILY
   RESTAURANT, Jacob S. Ziegel .................................................. 375
   NEW DEVELOPMENTS IN COMPANY LAW IN NEW BRUNSWICK AND
   PRINCE EDWARD ISLAND, Richard W. Bird .................................... 383
   THE ENGLISH LAW COMMISSION, WORKING PAPER No. 60: FIRM
   OFFERS, Marvin Baer .................................................................. 394
   THE ENGLISH LAW COMMISSION, WORKING PAPER No 61: PENALTY
   CLAUSES AND FORFEITURE OF MONIES PAID, Marvin Baer ............ 399
   THE ENGLISH AND SCOTTISH LAW COMMISSIONS’ SECOND REPORT
   ON EXEMPTION CLAUSES, S. M. Waddams .................................... 406
   Bin C-60 (BANKRUPTCY ACT, 1975) A NINETEENTH CENTURY
   APPROACH TO NON-BUSINESS BANKRUPTCY, R. C. C. Cuming . 459
   PROXIES-THE MEANING OF SOLICITATION, Leon Getz .................. 472
   UN AVENIR PLUS DIFFICILE POUR LE MANUFACTURIER AU QUEBEC?,
   Pierre-Gabriel Jobin ................................................................. 477

**BOOK REVIEWS**

Products Liability (S. M. Waddams) ............................................. 411
Materials on Corporate Finance (W. Grover and D. Ross) ............... 484
Product Liability in Europe .......................................................... 489
Take-over Bid Legislation in Canada: Comparative Analysis
   (P. Anisman) ........................................................................ 491
Personal Property Security Law (F. Catzman, A. Abel, I. Baxter,
   J. Heal, D. McKenzie, R. McLaren) ........................................... 493
Taxation of Branches and Subsidiaries in Western Europe, Canada
   and the U.S.A. (S. Frommel) .................................................... 497
Fraser’s Handbook on Canadian Company Law (H. Sutherland and
   D. Horsley, eds.) .................................................................. 499

**CORRESPONDENCE** ................................................................. 501
LIST OF CONTRIBUTORS


SPARLING, FREDERICK H., The Administration of the Canada Business Corporations Act .............................................................. 229


TIMBRELL, DAVID Y., Accounting for Changing Values of Money ........ 3

VARCOE, JOHN F., Finance Leasing—An Analysis of the Lessor's Rights Upon Default by the Lessee .................................................... 117


ZIEGEL, JACOB S.,
  Tortious Liability for Pre-contractual and Intra-contractual Misrepresentations ............................................................. 259
  The Transitional Provisions of the Ontario Personal Property Security Act: In re Galaxie Family Restaurant ......................... 375

# TABLE OF CONTENTS

**List of Contributors** ................................................................. ix  
**Table of Cases** ................................................................. xi  

**EDITORIALS** ................................................................................. 1, 133, 277, 437  

**IN MEMORIAM** ................................................................................. 134  

**ARTICLES**  
- **How the Conspiracy Provisions of the New Competition Law Affect the Professions and Services**, William P. McKeown .................................................. 4  
- **Franchising as a Form of Business Organization—Some Legal Problems**, J. George Vesely .............................................. 34  
- **Consumer Protection and Public Administration:**  
  - **Some B.C. Notes**, William A. W. Neilson................................. 169  
- **Consumer Protection in the Community: The Canadian Experience—An Overview**, Harold Buchwald ..................... 182  
- **A Common Law Look at the Law of Latent Defects in Quebec and the Proposals for its Reform**, R. A. Field .... 209  
- **Factual Non-Arm's Length Relationships in Canadian Business Statutes**, Brian Hansen........................................... 278  
- **Some Polemical Thoughts on the Subject of Restraint of Trade**, G. H. L. Fridman......................................................... 303  
- **How to Do Things With Inside Information**, F. H. Buckley .... 343  
- **Annual Workshop on Commercial and Consumer Law, 1976:**  
  - **What Was Said**, Francis Miniter........................................... 364  
# TABLE OF CONTENTS

**THE CANADIAN ANTI-DUMPING SYSTEM**, Philip Slayton ........................................ 438

**THE NATIONAL SEA DECISION—EXPLORING THE PARAMETERS OF ADMINISTRATIVE DISCRETION**, James C. Baillie and Victor P. Alboini .......................................................... 454

**COMMENTARIES**

**LIABILITY OF AUDITORS TO THIRD PARTIES IN CANADA: HAIG V. BAMFORD**, R. K. Paterson ........................................................................................................ 68

**WHEN ARE ACCOUNTING PRINCIPLES GENERALLY ACCEPTED?**

David Timbre ........................................................................................................... 77

**B.C. REPORT ON SECURITY INTERESTS IN LAND: REMEDIES ON DEFAULT**, B. J. Reiter ........................................................................................................ 82

**SUMMARY ENFORCEMENT OF DIRECTORS' DUTIES: RE GOLDHAR AND QUEBEC MANITOU MINES LTD., R. Lynn Campbell ................. 92

**REGULATORS AND THE CONSUMER INTEREST: THE CANADIAN TRANSPORT COMMISSION'S COSTS DECISION,**

Michael J. Trebilcock ............................................................................................. 101

**MISLEADING ADVERTISING AND THE FACT-PROMISE DICHOTOMY:**

R. V. STEINBERG'S LIMITED, J. S. Ziegel ................................................................ 114


**REGINA V. LITTLER (1974), 65 D.L.R. (3d) 443 and 467 (QUEBEC COURT OF APPEAL), D. L. Johnston ................................................................. 234

**FIXED VERSUS NEGOTIATED COMMISSION RATES ON THE TORONTO STOCK EXCHANGE,** Mark Q. Connelly ..................................................................... 244

**CONSUMER NOTES AND PART V OF THE BILLS OF EXCHANGE ACT—MORE TROUBLE ABREWING,** Jacob S. Ziegel ............................................................ 262

**THE FICTIONAL PAYEE AND PAYROLL PADDING: ROYAL BANK OF CANADA V. CONCRETE COLUMN CLAMPS (1961) LTD.,**

Benjamin Geva .................................................................................................... 418

**THE DESTROYED BANKNOTE,** F. A. Mann ................................................................ 471

**A FEATURE OF CORPORATE CRIMINAL LIABILITY OR WHY THE BRAINS OF A CORPORATION ARE NOT NECESSARILY ITS "INTIMATE FRIENDS",** Peter Burns .............................................................................................. 474

**THE POSITION OF A BANKRUPT'S BANKER,** Donald Posluns ................................. 476

**THE DISTINCTION BETWEEN BREACH OF CONDITION AND A RESTRICTIVE DEFINITION OF THE RISK: A REPLY TO PROFESSOR RENDALL,** Marvin G. Baer .................................................................................. 485
# TABLE OF CONTENTS

## BOOK REVIEWS

<table>
<thead>
<tr>
<th>Title</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chalmers' Sale of Goods Act, 1893 (Michael Mark, ed.)</td>
<td>123</td>
</tr>
<tr>
<td>More Debits than Credits: The Burnt Investors' Guide to Financial Statements (Abraham J. Briloff)</td>
<td>127</td>
</tr>
<tr>
<td>Underhill's Principles of the Law of Partnership (E. R. Harvey Ivamy, ed.)</td>
<td>131</td>
</tr>
<tr>
<td>Law of Vendor and Purchaser (Victor Di Castri)</td>
<td>270</td>
</tr>
<tr>
<td>Law and Practice of Credit Factoring (Peter M. Biscoe)</td>
<td>272</td>
</tr>
<tr>
<td>The Principles and Practice of Business Valuations (Ian R. Campbell and others)</td>
<td>493</td>
</tr>
<tr>
<td>The Law of Contract in Canada (G. H. L. Fridman)</td>
<td>495</td>
</tr>
<tr>
<td>Acquisitions and Mergers in Canada (Desmond B. Morin and Warren Chippindale)</td>
<td>501</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

*List of Contributors* ................................................................. vii  
*Table of Cases* ....................................................................... ix  

**EDITORIALS** ............................................................................. 1, 117, 237, 361  

**ARTICLES**  
**Going Private in Canada.**  
George C. Glover, Jr. and Alan M. Schwartz ......................... 3  

**Recent Changes to Condominium Legislation in**  
British Columbia, D. J. Pavlich .................................................. 34  

**Secured Transactions and Conflict of Laws,**  
Ian F. G. Baxter ........................................................................ 57  

**Credit Transfers of Funds in Canada: The Current Law.**  
Bradley Crawford ........................................................................ 119  

**Wroth v. Tyler: Must Equity Remedy Contract Damages?,**  
Barry J. Reiter and Robert J. Sharpe ....................................... 146  

**Legal Aspects of the Corporate Political Contribution in Canada,**  
J. Patrick Boyer ......................................................................... 161  

**Symposium on the Report of the Royal Commission on**  
**Corporate Concentration**  
Concentration of Corporate Power in Canada: A Reaction  
to the Report on Corporate Concentration, R. E. Olley .......... 239  

**Competition Policy in the Corporate Concentration Report,**  
David McQueen ......................................................................... 265  

**A Lawyer’s Perspective,** James C. Baillie ...................... 281  

**Vagliano’s Case Revisited,** Peter E. Salvatori, ....................... 296  

**G.M.A.C. v. Hubbard: Statutory Conflict: Conditional**  
**Sales and Public Policy,** Jacob S. Ziegel ............................... 329  

**A Retreat to Progress (A Proposal to Eliminate Damage**  
**Awards for Loss of Business Profits),**  
Morris G. Shanker ..................................................................... 363  

**Experimenting With Canadian Business: Anti-Dumping**  
**Protection in Canada,** Marguerite E. Ritchie, Q.C. .................. 375  

**Damages for Failure to Return Shares,**  
Stephen M. Waddams ............................................................. 398
# TABLE OF CONTENTS

## COMMENTARIES

**NAKEN V. GENERAL MOTORS OF CANADA LTD.:**

  A STUMBLING-BLOCK TO CANADIAN CONSUMER
  CLASS ACTIONS, Robert S. Reid ................................................................. 78

**CLOSE BUSINESS RELATIONSHIP BETWEEN A PURCHASE-MONEY LENDER AND A SELLER OF GOODS—BANK OF MONTREAL V. KON,** Benjamin Geva........................................................................................................ 90

**DEFECTS IN REGISTRATION UNDER THE PERSONAL PROPERTY SECURITY ACT—HAS THE PENDULUM SWUNG Too FAR?,**
  Jacob S. Ziegel.................................................................................................. 106

**THE UNCONSCIONABILITY BUSINESS—A COMMENT ON TILDEN RENT-A-CAR CO. V. CLendenning,** Reuben Hasson ............................................................... 193

**CAN CONTRACT DAMAGES BASED ON WASTED EXPENSES GIVE THE PLAINTIFF MORE THAN THE VALUE OF THE PROMISED PERFORMANCE?,** Marvin G. Baer ................................................................. 198

**UNJUST ENRICHMENT AND DIRECTORS' DUTIES: ABBEY GLENN PROPERTY CORP. V. STUMBORG,** W. J. Braithwaite ................................................................. 210

**PPSA REGISTRATION PROBLEMS,** Jacob S. Ziegel ........................................ 222

**THE EXTENSION OF OPTIONS AND EQUITABLE ESTOPPEL,**
  D. M. McRae .................................................................................................... 426

**NAKEN V. GENERAL MOTORS OF CANADA LTD.:**

  A STUMBLING-BLOCK REMOVED?, Robert S. Reid ........................................ 436

**STRICT LIABILITY AND DUE DILIGENCE IN PUBLIC WELFARE OFFENCES: R. V. CITY OF SAULT STE. MARIE,**
  Robert J. Sharpe.................................................................................................. 453

**PERSONAL PROPERTY SECURITY LEGISLATION COMES TO SASKATCHEWAN,** Jacob S. Ziegel ................................................................. 463

## BOOK REVIEWS

*Canadian Securities Regulation* (David L. Johnston) ............................................ 114

*Status and Duties of Company Directors* (J. A. Olawoyin) .................................. 358

*Essays on Canadian Taxation* (Brian G. Hansen, Vern Krishna, James A. Rendall, eds) ................................................................. 477
# TABLE OF CONTENTS

*List of Contributors* ................................................................. ix  
*Table of Cases* ........................................................................ xi  

**EDITORIALS** ........................................................................ 1, 137, 261, 381  

**ARTICLES**  
**The Emerging Law on Product Liability and Consumer Product Warranties**, Frank Zaid ......................................................... 2  
**The Protection of Preference Shareholders in the Closely Held Corporation**, Mary Anne Waldron ................................. 29  
**The Quickening Pace of Jurisprudence Under the Ontario Personal Property Security Act**, Jacob S. Ziegel ............. 54  
**The Multilateral Trade Negotiations—A Lawyer’s Perspective**, The Honourable Donald S. Macdonald ......................... 139  
**Jurisprudential Developments in Manufacturers’ Liability for Defective Products Where the Only Damage is Economic Loss**, Saul Schwartz ........................................ 164  
**The Extra-Provincial Licensing Statutes: Their Scope, Validity and Consequences**, N. William C. Ross ......................... 183  
**Forged Cheques: A Consideration of the Rights and Obligations of Banks and their Customers**, Nicholas Rafferty ............................................................................. 208  

**Panel Discussion on “Battle of the Forms”**  
I. “Battle of the Forms”: A Comparison and Critique of Canadian, American and Historical Common Law Perspectives, Morris G. Shanker ........................................... 263  
II. “Battle of the Forms”: A Comment on Professor Shanker’s Views, David Vaver ................................................................. 277  
III. A Corporate Counsel’s Perspective of the “Battle of the Forms”, Grant G. Murray ................................................................. 290  

**Inaccurate or Ambiguous Countermand and Payment Over Countermand**, Sandra Rodgers Magnent ......................... 297  
**The Customs Valuation Agreement in the New GATT and its Effect on Valuation of Imports into Canada**, Thomas B. Akin ................................................................. 316
## TABLE OF CONTENTS

THE POSITION OF RETAIL AND WHOLESALE FINANCERS AS SECURED CREDITORS UNDER THE PROPOSED BANKRUPTCY ACT, J. B. Colburn ........................................................................................................ 348

SYMPOSIUM ON UNCONSCIONABILITY IN CONTRACT LAW
Unconscionability in Contract Law and in the New Sales Act—Confrontations of a Doubting Thomas,
  Reuben Hasson ........................................................................................................ 383
  Unconscionability: Is There a Choice? A Reply to
  Professor Hasson, B. J. Reiter .............................................................. 403
  Thomist Unconscionability, Arthur Allen Leff ................................................. 424
  Unfair Contract Terms in Civil Law Systems,
    H. R. Hahlo ................................................................................................. 429

THE LAPPED REGISTRATION PROBLEM UNDER THE ONTARIO PERSONAL PROPERTY SECURITY ACT, Leon J. Lysaght and R. L. Simmonds ........................................................................................................ 442

OFFERING MEMORANDA UNDER THE ONTARIO SECURITIES ACT, 1978, Rene Sorell .................................................................................................................. 467

COMMENTARIES
THE UNFAIR CONTRACT TERMS ACT, 1977, M. H. Ogilvie ............... 97
"ACTUAL CASH VALUE" REVISITED, Jack A. Gilbert .......................... 120

PROFESSIONAL ADVERTISING POLICIES UNDER THE AMENDED COMBINES INVESTIGATION ACT, Donald Posluns .................... 235

DETRIMENTAL RELIANCE AND THE PPSA, Jacob S. Ziegel ............. 249

EXEMPTION CLAUSES AND CONSEQUENTIAL DAMAGES: A RECENT SWEDISH DECISION, Jan Hellner ......................... 480

DOCUMENTS AND REPORTS
SUBMISSION TO THE HOUSE OF COMMONS, FINANCE COMMITTEE ON THE BANKS AND BANKING LAW REVISION ACT, BILLS C-15, C-57 ........................................................................................................ 369

BOOK REVIEWS
Sale of Goods in Canada (G. H. L. Fridman) ............................................. 130
The Law of Contracts (S. M. Waddams) ....................................................... 255
Kerr on Receivers (Raymond Walton, ed.) .................................................... 375
Mechanics' Liens in Canada (D. N. Macklem and D. I. Bristow) ............ 377
<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>International Product Liability: A Study of Comparative and International Aspects of Product Liability</td>
<td>379</td>
</tr>
<tr>
<td>(H. D. Tebbens)</td>
<td></td>
</tr>
<tr>
<td>Economic Torts (J. D. Heydon)</td>
<td>488</td>
</tr>
<tr>
<td>Contracts: Cases, Notes and Materials (John Swan and Barry J. Reiter)</td>
<td>489</td>
</tr>
<tr>
<td>Secured Transactions in Personal Property in Canada</td>
<td>493</td>
</tr>
<tr>
<td>(Richard H. McLaren)</td>
<td></td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

*List of Contributors* .......................................................... vii  
*Table of Cases* ........................................................................ ix  

**EDITORIALS** ....................................................................... 1, 129  

**ARTICLES**  
*A Trade Mark Primer: The Effects of Deviating Use and Concurrent User*, Cally Jordan ........................................... 3  
*Patenting Life*, William L. Hayhurst ........................................ 19  
*New Laws to Govern EFTS?*, Bradley Crawford ...................... 37  
*Equities as to Liability on Bills and Notes: Rights of a Holder Not in Due Course*, Benjamin Geva ....................... 53  
*Planning and Implementing Defences to Take-over Bids: The Directors’ Role*, Frank Iacobucci ................................. 131  
*Economic Regulation and The British North America Act: Panel Discussion*  
Paper by James C. MacPherson ............................................. 172  
Comment by Peter W. Hogg ................................................. 220  
Comment by David McQueen ............................................... 225  
*Civil Liability for Taking or Using Trade Secrets in Canada*, David Vaver ...................................................... 253  
*Agreements to Lessen Competition After Atlantic Sugar*, Donald G. McFetridge and Stanley Wong .............................. 329  
*Franchising in the United States*, Richard F. Davis .................. 346  
*Reforming Canadian Competition Policy: Once More Unto the Breach*, W. T. Stanbury and G. B. Reschenthaler ................. 381  
*Proposals for Amending the Combines Investigation Act — A Business Economist’s Views*, Donald J. LeCraw ........ 438  
*Which Way to Lien?*, Joseph Berman and Edward Waitzer .......... 470
<table>
<thead>
<tr>
<th>Commentaries</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>OLRC REPORT ON PRODUCT LIABILITY, The Honourable Mr. Justice Linden</td>
<td>92</td>
</tr>
<tr>
<td>SUISSE ATLANTIQUE RE-VINDICATED: How LONG, O LORDS, How LONG?</td>
<td>100</td>
</tr>
<tr>
<td>Do UNTO OTHERS: THE EXTRATERRITORIAL REACH OF REGULATORY LEGISLATION IN CANADA, Robert K. Paterson</td>
<td>114</td>
</tr>
<tr>
<td>AETNA INSURANCE, EASTERN SUGAR AND &quot;UNDULY&quot; IN THE COMBINES INVESTIGATION ACT: STILL MORE CONFUSION, James P. Cairns</td>
<td>231</td>
</tr>
<tr>
<td>RECENT LEGISLATIVE DEVELOPMENTS IN PERSONAL PROPERTY SECURITY LAW, Jacob S. Ziegel</td>
<td>238</td>
</tr>
<tr>
<td>PHOTO PRODUCTION LTD. V. SECURICOR TRANSPORT LTD: AN INCONCLUSIVE UNSCIENTIFIC (CANADIAN) POSTSCRIPT, M. H. Ogilvie</td>
<td>368</td>
</tr>
<tr>
<td>BLINDFOLDING THE COURTS: A FURTHER COMMENT ON PHOTO PRODUCTION V. SECURICOR, Reuben Hasson</td>
<td>498</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Book Reviews</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>STUDIES IN CONTRACT LAW (Barry Reiter and John Swan)</td>
<td>245</td>
</tr>
<tr>
<td>INSURANCE LAW IN AUSTRALIA AND NEW ZEALAND (K. C. T. Sutton)</td>
<td>376</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Correspondence</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>505</td>
</tr>
</tbody>
</table>
Canadian Business Law Journal v.6 (1981-82)
# TABLE OF CONTENTS

**List of Contributors** ................................................................. vii  
**Table of Cases** ............................................................................ ix  

**EDITORIALS** ................................................................................. 1  

**ARTICLES**  
The Anton Piller Order, W. L. Hayhurst, Q.C. .......................... 2  
Transferring Business Operations to Canada During  
Wartime: Problems and Strategies,  
Joseph E. Magnet .......................................................................... 23  
Consignment Sales and the Personal Property Security  
Act, J. Brian Colburn ................................................................. 40  
Corporate Theory and the Oppression Remedy,  
Mary Anne Waldron ...................................................................... 129  
The Enforcement of Demand Debentures,  
Douglas R. Johnson ...................................................................... 153  
Defective Products, Contributory Negligence,  
Appportionment of Loss and the Distribution Chain:  
Lambert v. Lewis, Michael G. Bridge ........................................... 184  
Due Diligence and the Role of the Securities Lawyer,  
Victor P. Alboini ......................................................................... 241  
Reflections on the Need to Revise the Bills of Exchange  
Act—Some Doctrinal Aspects: Panel Discussion  
Paper by Benjamin Geva .............................................................. 269  
Comment by Stephen A. Scott .................................................... 331  
Comment by Gordon Sedgwick, O.C......................................... 344  

**Canadian Industrial Policy Objectives and Article III of  
GATT: National Ambitions and International Obligations,**  
The Honourable Donald S. Macdonald ....................................... 385  

**The Plain English Movement: Panel Discussion**  
Paper by Carl Felsenfeld ............................................................... 408  
Comment by David S. Cohen ...................................................... 421  
Comment by Martin Fingerhut .................................................... 446
# TABLE OF CONTENTS

**OLIGOPOLY AND THE COMBINES INVESTIGATION ACT,**  
F. H. Webber ........................................................................................................ 453

**COMMENTARIES**  
**MISTAKEN BIDS: THE QUEEN V. RON ENGINEERING &**  
CONSTRUCTION EASTERN LTD., Joost Blom.................................................. 80  
**THE IMPORTANCE OF INSURANCE IN INTERPRETING EXCLUSION**  
CLAUSES, Marvin G. Baer .................................................................................. 97  
**"AGREEMENTS TO LESSEN COMPETITION AFTER ATLANTIC**  
**SUGAR": A COMMENT,**  
Kenneth G. Englehart ...................................................................................... 104  
**THE SCOPE OF THE ONTARIO PERSONAL PROPERTY SECURITY**  
**ACT - RECENT DEVELOPMENTS,**  
Jacob S. Ziegel ................................................................................................... 107  
**THE EFFECTIVENESS OF CONTRACTUAL ALLOCATIONS OF**  
**RISK: CARMAN CONSTRUCTION LTD. V. CANADIAN**  
**PACIFIC RAILWAY; RONALD ELWYN LISTER LTD. V.**  
**DUNLOP CANADA LTD.,**  
John Swan and Barry J. Reiter .......................................................................... 219  
**FOREIGN MONEY LIABILITIES: LAW REFORM COMMISSION OF**  
**BRITISH COLUMBIA, WORKING PAPER No. 33,**  
S. M. Waddams .................................................................................................. 352  
**A FRAMEWORK OR STRAIGHTJACKET: A REPLY TO BIGER AND**  
ROSEN, Marvin G. Baer .................................................................................... 367  
**MORE ON ATLANTIC SUGAR: A REPLY, Donald G. McFetridge**  
and Stanley Wong ............................................................................................... 373  
**SECURITY INTERESTS IN SHARES AND THE OPPSA,**  
Jacob S. Ziegel ................................................................................................... 378  
**ACCOUNTING FOR INFLATION: NEW PROPOSALS FROM THE CICA,**  
Paul Cherry and Tom Strike .............................................................................. 493  
**THE UNTIMELY INTERVAL AND THE PPSA: ROYAL BANK OF**  
**CANADA V. DAWSON MOTORS (GUELPH) LTD.,**  
Jeffrey Alpert ...................................................................................................... 501  
**ROYAL BANK OF CANADA V. DAWSON MOTORS (GUELPH) LTD.:**  
**A POSTSCRIPT, Jacob S. Ziegel .................................................................** 507

**BOOK REVIEWS**  
**LAW AND PRACTICE OF INTERNATIONAL FINANCE,**  
(Philip Wood) .................................................................................................... 232  
**RECENT BUSINESS LAW PUBLICATIONS** ................................................. 127, 239
**TABLE OF CONTENTS**

*List of Contributors* ................................................................. ix
*Table of Cases* ................................................................. xi

**EDITORIALS** ........................................................................ 1, 249

**IN MEMORIAM** ................................................................. 153

**ARTICLES**

**THE ADMINISTRATION OF THE FEDERAL HAZARDOUS PRODUCTS ACT**
Jeffrey C. Shaul and Michael J. Trebilcock ........................................... 2

**DOES CANADA NEED A PAYMENTS CODE?**
Bradley Crawford ........................................................................... 44

**ONE PIECE OF A LARGER PROBLEM: THE ECONOMIC COUNCIL ON REGULATION**
David McQueen ............................................................................ 73

**A SURVEY OF TARIFF CLASSIFICATION — IRONING OUT THE CREASES**
Leonard F. Adamczyk ....................................................................... 101

**COMPULSORY ACQUISITION OF SHARES UNDER SECTION 199 OF THE CANADA BUSINESS CORPORATIONS ACT AND RE WHITEHORSE COPPER MINES LTD: AN OFFER YOU CAN REFUSE**
Joseph P. Chertkow ........................................................................ 154

**DISPUTE SETTLEMENT IN COMMERCIAL LAW MATTERS**
Paul Davidson ............................................................................... 197

**TRUE LEASES AND SECURITY LEASES UNDER CANADIAN PERSONAL PROPERTY SECURITY ACTS**
R. C. C. Cuming ........................................................................... 251

**THE PAST, PRESENT AND FUTURE OF TRUE LEASES AND DISGUISED SECURITY AGREEMENTS: AN OLD PROBLEM IN MODERN APPAREL**
Morris G. Shanker .......................................................................... 288

**CENTRAL DEPOSITORY SYSTEM FOR SECURITIES**
D. M. Harley, Q.C. ........................................................................ 306
## TABLE OF CONTENTS

**ENDING SECURITIES COMMISSION FEE REGULATION: RATIONALE AND ECONOMIC EFFECTS**  
R. L. Beck and G. B. Reschenthaler ........................................ 377

**THE FUTURE OF THE SUPREME COURT OF CANADA AS THE FINAL APPELLATE TRIBUNAL IN PRIVATE LAW LITIGATION: PANEL DISCUSSION**  
Donovan Waters ............................................................................. 389  
John Swan ....................................................................................... 410  
Maurice Tancelin ............................................................................ 420  
Ian R. Macneil .............................................................................. 426  
Epilogue by Jacob S. Ziegel ............................................................ 441

**THE LEGAL INCIDENTS OF COMPUTER SOFTWARE AND ITS USE AS COLLATERAL IN SECURED TRANSACTIONS**  
S. Wynton Semple ............................................................................ 450

**COMMENTS**

**LIENING OVER BACKWARDS**  
Joseph Berman and Edward Waitzer .............................................. 129

**A NON-NEGOTIABLE CROSSING**  
Ian F. G. Baxter ............................................................................ 141

**PERSONAL LIABILITY ON CORPORATE CHEQUES: THE CONFLICT BETWEEN COMMERCIAL INTEGRITY AND COMMON SENSE**  
Jeffrey Alpert .................................................................................. 224

**STATUTORY REQUIREMENTS FOR PERFECTION BY POSSESSION UNDER THE ONTARIO PERSONAL PROPERTY SECURITY ACT**  
Jay A. Carfagnini .......................................................................... 234

**COLLATERAL CONTRACTS AND THE SUPREME COURT OF CANADA: CARMAN CONSTRUCTION LTD. V. CANADIAN PACIFIC RAILWAY CO.**  
Emil J. Hayek ................................................................................. 328

**INTERACTION OF SALES LAW AND THE OPPSA, AND RELATED QUESTIONS: ZUKER V. PAUL**  
Jacob S. Ziegel ............................................................................... 338

**LAW REFORM COMMISSION OF BRITISH COLUMBIA, COMPETING RIGHTS TO MINGLED PROPERTY: TRACING AND THE RULE IN CLAYTON’S CASE, WORKING PAPER No. 36, 1982**  
G. H. L. Fridman ............................................................................. 353

**LAW REFORM COMMISSION OF BRITISH COLUMBIA, ILLEGAL CONTRACTS, WORKING PAPER No. 38, 1982**  
S. M. Waddams .............................................................................. 361
# TABLE OF CONTENTS

**ALBERTA NATURAL GAS TAX REFERENCE: EFFECT ON PUBLIC ENTERPRISE IN CANADA**
William D. Moull .......................................................... 485

**THE UNIFORM PERSONAL PROPERTY SECURITY ACT 1982**
Jacob S. Ziegel ............................................................... 494

**BOOK REVIEWS**

**COPYRIGHT FOR THE EIGHTIES, CASES AND MATERIALS**
(Alan Latman and Robert A. Gorman) .................................. 144

**THE LEGAL PROTECTION OF COMPUTER SOFTWARE**
(Hugh Brett and Lawrence Perry) ........................................ 147

**CREDITOR-DEBTOR LAW IN CANADA**
(C. R. B. Dunlop) ................................................................ 366

**THE LEGAL ASPECT OF MONEY**
(F. A. Mann) ...................................................................... 368

**TERRELL ON THE LAW OF PATENTS**
(William Aldous, Q.C., David Young, Q.C., Antony Watson, Simon Thorley) ........................................................................... 371

**INSURANCE LAW IN CANADA**
(Craig Brown and Julio Menezes) .......................................... 499

**CONTEMPORARY CANADIAN BUSINESS LAW: PRINCIPLES AND CASES**
(John A. Willes) .................................................................. 503

**RECENT BUSINESS LAW PUBLICATIONS** .......................... 151, 375
# TABLE OF CONTENTS

*List of Contributors* ................................................. ix  
*Table of Cases* ...................................................... xi  

**EDITORIAL** .......................................................... 1  

**ARTICLES**

**The Modern Role of Contract Law**  
S. M. Waddams ........................................................... 2  
P. S. Atiyah ............................................................... 10  

**The Assessment of Canadian Control Under the National Energy Program**  
Robert G. S. Hull ......................................................... 19  

**Is The Law Too Favourable to Secured Creditors?**  
R. M. Goode .............................................................. 53  

**Statutory Claims and Personal Property Security Legislation: A Proposal**  
W. A. Bogart ............................................................... 129  

**Corporate Law Overview: Recent Jurisprudential and Legislative Developments** .................................................. 177  

**“Greenline Investors Service”: Shall We Keep Brokers and Banks Apart?**  
Jack Carr, Arthur Milne and Stuart M. Turnbull .................. 257  

**The Fluctuating Role of Contract Law In The Community**  
The Honourable Mr. Justice Willard Z. Estey .................. 272  

**Jurisprudence on The Saskatchewan Consumer Products Warranties Act**  
Louis J. Romero .......................................................... 288  

**The Public and Private Law Dimensions of The UFFI Problem, Paper by David Cohen**  
Part I ........................................................................... 309  
Part II ........................................................................... 410  
Comment by Michael J. Trebilcock .................................. 438  
Comment by Andrew J. Roman ....................................... 444
# TABLE OF CONTENTS

- **OF SECRETARIES, ANALYSTS AND PRINTERS: SOME REFLECTIONS ON INSIDER TRADING**  
  Stanley M. Beck ................................................................. 385

- **BUSINESS LAW IMPLICATIONS OF THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS**  
  William D. Moull................................................................. 449

- **CORPORATE AND INVESTMENT ATTITUDES TOWARDS INSIDER TRADING IN CANADA**  
  Edward Rosenbaum, Ralph L. Simmonds,  
  John H. Simpson and Dainius P. Vaidila .............................. 485

- **FIDUCIARY DUTIES OWED BY DEPARTING EMPLOYEES - THE EMERGING "UNFAIRNESS" PRINCIPLE**  
  P. Y. Atkinson and R. A. Spence ........................................... 501

## COMMENTARIES

- **SNOW V. THE EATON CENTRE: WREATHS ON SCULPTURE PROVE ACCOLADE FOR ARTISTS’ MORAL RIGHTS**  
  David Vaver ............................................................................. 81

- **TORT LIABILITY FOR ECONOMIC LOSS: JUNIOR BOOKS LTD. V. VEITCHI CO. LTD.**  
  S. M. Waddams ......................................................................... 101

- **LAW REFORM COMMISSION OF BRITISH COLUMBIA, BULK SALES LEGISLATION, WORKING PAPER No. 40**  
  F. M. Catzman, Q.C. ................................................................. 109

- **REFORM OF THE LAW RELATING TO INSURABLE INTEREST IN PROPERTY - SOME THOUGHTS ON CHADWICK V. GIBRALTAR GENERAL INSURANCE**  
  Reuben A. Hasson......................................................................... 114

- **THE CONFLICT BETWEEN LAW AND COMMERCE: GEORGE MITCHELL (CHESTERHALL) LTD. V. FINNEY LOCK SEEDS LTD.**  
  Reuben A. Hasson......................................................................... 218

- **EXCLUSIVE DEALING AriER BOMBARDIER: THE LAW IS NOT A GREAT DEAL CLEARER THAN BEFORE**  
  George Takach............................................................................ 226
TABLE OF CONTENTS

IS COMPETITION UNBECOMING? ........................................ Bruce Dunlop ................................................................. 235

THE TRAVAILS OF BILL C-12 ..................................... Jacob S. Ziegel ............................................................. 374

BOOK REVIEWS

INTELLECTUAL PROPERTY IN AUSTRALIA (James Lahore) ........ 120
AUSTRALIAN TRADE MARK LAW AND PRACTICE .................. (D. R. Shanahan) ..................................................... 120
UNIFORM LAW FOR INTERNATIONAL SALES UNDER THE 1980 UNITED NATIONS CONVENTION .................. (Professor J. Honnold) ................................................. 121
CONTRACTS (E. Allan Farnsworth) ..................................... 125
COMMERCIAL LAW (R. M. Goode) ..................................... 245
THE CONTROL OF COMMERCIAL FRAUD (L. H. Leigh) .......... 253
UNJUST ENRICHMENT (George B. Klippen) ........................... 378
SALES AND CONSUMER LAW IN AUSTRALIA AND NEW ZEALAND (K. C. T. Sutton) .................................................. 380
RECENT BUSINESS LAW PUBLICATIONS .......................... 383

CORRIGENDUM

At page 383, under "Recent Business Law Publications", item 4 should read:

"Fisher, Barry M. (Chairman)
# TABLE OF CONTENTS

*List of Contributors* ................................................................. ix  
*Table of Cases* ........................................................................... xi

**IN MEMORIAM** ........................................................................... 1

**EDITORIAL** .............................................................................. 257

**ARTICLES**

**The Shareholder’s Pre-emptive Right: Prevention of Director Abuse in New Share Issuance**  
*R. J. Hay* ...................................................................................... 2

**Let’s Make a Deal: Proposals Under the Bankruptcy Act**  
*R. Gordon Marantz* ....................................................................... 44

**The Pledge of Documents of Title in Ontario**  
*Roderick J. Wood* ....................................................................... 81

**Copyright and the Copying Machine**  
*W. L. Hayhurst* ........................................................................... 129

**Inventory Financing in Quebec after Bill 97**  
*Roderick A. Macdonald* ............................................................. 153

**Standby Credits in Canada**  
*Gordon B. Graham and Benjamin Geva* ...................................... 180

**The 1983 UCP Revision, Trade Practices and Court Decisions: A Plea for a Closer Relationship**  
*Boris Kozolchyk* ......................................................................... 214

**Symposium: Class Actions Reform in Canada**  
The Future of Class Actions in Canada: Cases, Courts and Confusion  
*Jennifer K. Bankier* ..................................................................... 260

*Naken, The Supreme Court and What Are Our Courts For?**  
*W. A. Bogart* ............................................................................. 280

**Class Action Reform: Some General Comments**  
*I. Robert S. Prichard* .................................................................. 309

**Le Recours Collectif Québécois: Description et Bilan**  
*Yves Lauzon* ............................................................................. 324
# TABLE OF CONTENTS

Ontario Class Action Reform: Business and Justice System Impacts — A Comment
W. A. Macdonald, Q.C. and J. W. Rowley, Q.C. ......................... 351

DOES ANGLO-CANADIAN CONTRACT LAW NEED A DOCTRINE OF GOOD FAITH?
Paper by Michael G. Bridge................................................................. 385
Comment by E. Allan Farnsworth ....................................................... 426
Comment by Maurice Tancelin ............................................................. 430

CONFLICTS OF INTEREST, TRUST COMPANIES AND THE CHINESE WALL
Wolfe D. Goodman, Q.C., Michael Herman and Jeffrey M. Blidner ................................................................. 435

PERFECTION AND TRACING OF PROCEEDS UNDER THE PERSONAL PROPERTY SECURITY ACT
Jeffrey Alpert ..................................................................................... 467

CANADA-U.S. RELATIONS: LEGISLATION, REGULATION AND THE MANAGEMENT OF CONFLICT
Allan E. Gotlieb ................................................................................. 485

COMMENTARIES

CERTAINTY OR FAIRNESS? - THE INTERPRETATION OF "ATTACHMENT" IN THE PPSA
Thomas J. Hunter ............................................................................... 111

REPEAL OF BILLS OF SALE LEGISLATION
Jacob S. Ziegel .................................................................................. 117

PREDATORY PRICING: NOTES ON HOFFMANN-LA ROCHE
James P. Cairns .................................................................................. 242

THE SCOPE OF SECTION 66A OF THE OPPSA AND EFFECTS OF SUBORDINATION CLAUSE: Euroclean Canada Inc. v. Forest Glade Investments Ltd.
Jacob S. Ziegel .................................................................................. 367

BANK OF NOVA SCOTIA II: THE AMERICAN SUBPOENA AND THE MULTINATIONAL ENTERPRISE
Lee Paikin ............................................................................................ 497

BOOK REVIEWS

Hugh Cockerell and Gordon Shaw, *Insurance Broking and Agency: The Law and the Practice*  
(R. A. Hasson) ........................................................................................................... 255

S. M. Beck, F. Iacobucci, D. L. Johnston and J. S. Ziegel,  
*Cases and Materials on Partnerships and Canadian Business Corporations*  
(Mary Anne Waldron) .............................................................................................. 375

Tom Hadden, *The Control of Corporate Groups*  
(Neil C. Sargent) ....................................................................................................... 379

RECENT BUSINESS LAW PUBLICATIONS .................................................. 126
# TABLE OF CONTENTS

*List of Contributors* ................................................................. ix  
*Table of Cases* ........................................................................ xi

**IN MEMORIAM** ........................................................................... 385

**EDITORIAL** ............................................................................. 129

**ARTICLES**

**Half a Loaf: Bill S-29, Proposed Amendments to the Combines Investigation Act**  
W. T. Stanbury ............................................................................. 1

**Sparkling v. Royal Trustco: The Representative Role of the Director Under the CBCA**  
John L. Howard ........................................................................... 35

**Limiting the Search and Seizure Powers of Combines Investigators: the Southam Decision and its Aftermath**  
Kent E. Thomson ........................................................................ 55

**Symposium: Recent and Prospective Developments in the Personal Property Security Law Area**  
*Paper*  
*Jacob S. Ziegel* ........................................................................ 131

Comments on the Report of the Minister’s Advisory Committee on the Personal Property Security Act (Ontario)  
*R.C.C. Cuming* ....................................................................... 168

Modernization of Personal Property Security Law: A Quebec Perspective  
*Roderick A. Macdonald* ........................................................... 182

**International Financial Markets and Loans: An Introduction to the Legal Context**  
*Ian F.G. Baxter* ....................................................................... 198

**Business Secrets Across International Borders: One Aspect of the Transborder Data Flow Debate**  
*T. Murray Rankin* .................................................................. 213
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Title</th>
<th>Author(s)</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>THE EVOLVING RELATIONSHIP BETWEEN CONTRACT AND TORT</td>
<td>Joost Blom</td>
<td>257</td>
</tr>
<tr>
<td>CUMULATION IN QUEBEC CIVIL LAW: A BASIC AND LIVELY ISSUE</td>
<td>Pierre-Gabriel Jobin</td>
<td>306</td>
</tr>
<tr>
<td>BEYOND THE LEGAL ENTITY DOCTRINE: PARENT-SUBSIDIARY RELATIONS UNDER</td>
<td>N.C. Sargent</td>
<td>327</td>
</tr>
<tr>
<td>THE WEST GERMAN KONZERNRECHT</td>
<td></td>
<td></td>
</tr>
<tr>
<td>RESTRUCTURING THE INSURANCE ACT: THE FIRST STEP TO INSURANCE LAW</td>
<td>Craig Brown</td>
<td>386</td>
</tr>
<tr>
<td>REFORM IN CANADA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>PRE-INCORPORATION TRANSACTIONS: A STATUTORY SOLUTION?</td>
<td>M.A. Maloney</td>
<td>409</td>
</tr>
<tr>
<td>THE UNANIMOUS SHAREHOLDER AGREEMENT: A NEW DEVICE FOR SHAREHOLDER</td>
<td>Richard James Hay and Lucinda Ann Smith</td>
<td>440</td>
</tr>
<tr>
<td>CONTROL</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CONSTITUTIONAL ASPECTS OF BANK REGULATION - SILENCE ON THE GREEN</td>
<td>William D. Moull</td>
<td>71</td>
</tr>
<tr>
<td>LINE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>THE NINE LIVES OF FUNDAMENTAL BREACH</td>
<td>R.A. Hasson</td>
<td>80</td>
</tr>
<tr>
<td>LAW REFORM COMMISSION OF BRITISH COLUMBIA, REPORT ON ILLEGAL</td>
<td>Saul Schwartz</td>
<td>83</td>
</tr>
<tr>
<td>CONTRACTS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>ONTARIO MINISTRY OF THE ATTORNEY-GENERAL: DISCUSSION PAPER ON</td>
<td>Arthur L. Close</td>
<td>359</td>
</tr>
<tr>
<td>REPAIR AND STORAGE LIENS</td>
<td></td>
<td></td>
</tr>
<tr>
<td>THE RAPE OF THE LOCK: A COMMENT ON CHARANIA V. TRAVELERS INDEMNITY</td>
<td>Reuben A. Hasson</td>
<td>373</td>
</tr>
<tr>
<td>CO. OF CANADA</td>
<td></td>
<td></td>
</tr>
<tr>
<td>MARVCO COLOR RESEARCH LTD. V. HARRIS</td>
<td>Richard Nobles</td>
<td>377</td>
</tr>
<tr>
<td>CONFIDENTIALITY AND THE PROTECTION OF THIRD PARTY BUSINESS</td>
<td>P. G. Capriolo</td>
<td>463</td>
</tr>
<tr>
<td>INFORMATION</td>
<td></td>
<td></td>
</tr>
<tr>
<td>THE INVESTMENT CANADA ACT</td>
<td>Warren Grover</td>
<td>475</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

# FLOATING CHARGES, SUBORDINATION CLAUSES AND SECTION 66a OF THE OPPSA: EUROCLEAN CANADA INC. V. FOREST GLADE INVESTMENTS LTD.

*John R. Varley* .......................................................................................................................... 482

# BOOK REVIEWS

## PUBLIC ENTERPRISE—TOWARDS A MORE ANALYTICAL VIEW

*D. McQueen* .......................................................................................................................... 94

S.M. Waddams, *The Law of Damages*  
(Marvin G. Baer) .................................................................................................................. 112

Robert J. Sharpe, *Injunctions and Specific Performance*  
(Marvin A. Catzman) .............................................................................................................. 116

Barry Nicholas, *French Law of Contract*  
(Jean-Louis Baudouin) ........................................................................................................... 119

Roger T. Hughes,  
*Hughes and Woodley on Patents*  
*Hughes on Trade Marks*  
*Hughes on Copyright and Industrial Design*  
(W.L. Hayhurst) .................................................................................................................... 123

Hugues G. Richard (ed.), *Canadian Trade Marks Act Annotated*  
(W.L. Hayhurst) .................................................................................................................... 125

G.H.L. Fridman and James G. McLeod, *Restitution*  
(J. Beatson) ............................................................................................................................ 247

Peter Gauch and Justin Sweet, *Selected Problems of Construction Law: International Approach*  
(Paul J. Lowry) ....................................................................................................................... 253

Benjamin Geva, *Financing Consumer Sales and Product Defences*  
(Ronald C.C. Cuming) ............................................................................................................. 495

Bruce Feldthusen, *Economic Negligence*  
(Nicholas Rafferty) ................................................................................................................. 502

Susan P. Shapiro, *Wayward Capitalists: Target of the Securities and Exchange Commission*  
(William D. Moull) .................................................................................................................. 508
# TABLE OF CONTENTS

*List of Contributors* ................................................................. ix  
*Table of Cases* ........................................................................... xi  

**EDITORIAL** ............................................................................. 1  

**ARTICLES**  

**Anti-Dumping Law and the Special Import Measures Act**  
John N. Buchanan ........................................................................ 2  

**Section 165(3) of the Bills of Exchange Act**  
Sheilah L. Martin ........................................................................ 23  

**Regulation of Canada’s Financial Markets**  

**Symposium**  
Summary of the Wyman Report .................................................. 97  
The Wyman Report: An Economist’s Perspective  
James E. Pesando ........................................................................ 105  
Deposit Insurance Reform: Comments  
by the Canadian Bankers’ Association  
on the Wyman Report  
Robert M. MacIntosh ................................................................ 121  

**Pre-Merger Notification in Canada**  
R. Jack Roberts and Christopher A. Hewat ................................... 135  

**Continuing Securities Reform in Canada:**  
**Amendments to Quebec’s Act**  
L. LaRochelle, M. Brunet, R. Simmonds .................................... 147  

**A Fresh Plea for the Financing Buyer**  
Aleck Dadson ............................................................................. 171  

**The Prepaying Buyer: Another Perspective**  
Martin Woodman ......................................................................... 257  

**Consensual Protection for the Prepaying Buyer in Quebec**  
Kenneth S. Atlas .......................................................................... 267  

**The Impact of Extraterritoriality on World Banking**  
Robert MacIntosh ........................................................................ 274
TABLE OF CONTENTS

LES DOMMAGES EXEMPLAIRES POUR VIOLATION DU CONTRAT: LA SITUATION EN DROIT QUEBECOIS
Therese Rousseau-Houle ................................................................. 291

SECTION 15 OF THE CHARTER PROTECTS PEOPLE AND CORPORATIONS - EQUALLY
Gerald D. Chipeur ........................................................................ 304

MERGERS AND ACQUISITIONS IN CANADA: THE INTERRELATIONSHIP BETWEEN FOREIGN OWNERSHIP AND COMPETITION POLICY
A. Keith Tuomi ............................................................................. 316

THE CONSTITUTIONALITY OF THE COMBINES INVESTIGATION ACT CIVIL DAMAGES REMEDY
Calvin S. Goldman ...................................................................... 385

THE FOREIGN EXTRATERRITORIAL MEASURES ACT
William C. Graham ...................................................................... 410

TAKEOVER BATTLES AND THE BUSINESS JUDGMENT RULE: RECENT AMERICAN CASE LAW DEVELOPMENT
John Howard ............................................................................... 445

GARANTIES CONVENTIONNELLES ET GARANTIES LEGALES - UNE HARMONISATION DIFFICULE MAIS NECESSAIRE
Me Claude Masse ........................................................................ 475

COMMENTARIES

PPSA REGISTRATION PROBLEMS: EUROCLEAN V. FOREST GLADE
Gary J. Matalon ........................................................................... 79

ALBERTA MOVES TOWARD ENACTMENT OF A PERSONAL PROPERTY SECURITY ACT
Ronald C.C. Cuming ................................................................. 82

ECONOMICS IN COURT: THE CONSUMERS GLASS CASE
James P. Cairns ........................................................................... 212

BANK ACCOUNTS AND OBLIGATIONS
M.H. Ogilvie .............................................................................. 220

THE USURY PROVISIONS IN THE CRIMINAL CODE: THE CHICKENS COME HOME TO ROOST
Jacob S. Ziegel ........................................................................... 233
# TABLE OF CONTENTS

**COPYRIGHT AND THE COPYING MACHINE: THE AMSTRAD CASE**  
*W. L. Hayhurst* .......................................................... 331

**EQUIPMENT LEASES IN SASKATCHEWAN**  
*Jacob S. Ziegel* ............................................................. 335

**UNDUE INFLUENCE IN THE HOUSE OF LORDS**  
*M.H. Ogilvie* .................................................................. 503

**BOOK REVIEWS**

Terence Corcoran, *Public Money, Private Greed*  
(Edward J. Waitzer) .......................................................... 92

L.S. Sealy, *Company Law and Commercial Reality*  
(Neil C. Sargent) .............................................................. 247

J.C. Smith, *Liability in Negligence*  
(A.I. Ogus) ..................................................................... 253

Nicholas Wolfson, *The Modern Corporation*  
(Edward J. Waitzer) .......................................................... 348

M.A. Springman and E. Gertner (eds.),  
*Debtor-Creditor Law: Practice and Doctrine*  
(C.R.B. Dunlop) .............................................................. 351

Denis V. Cowen and Leonard Gering, *Cowen on the Law of Negotiable Instruments in South Africa'*  
(Benjamin Geva) .............................................................. 360

T. Hadden, R.E. Forbes and R.A. Simmonds,  
*Canadian Business Organizations Law*  
(J.G. Macintosh)............................................................... 366
# TABLE OF CONTENTS

**List of Contributors** ................................................................. ix  
**Table of Cases** ........................................................................... xi  

**EDITORIALS** ........................................................................... 1,385  

**ARTICLES**

**The New Competition Act and Competition Tribunal Act:**  
"Not With a Bang But a Whimper"  
*W.T. Stanbury* .................................................................................. 2  

**Slow Courier in the Supreme Court: A Comment on**  
*B.D.C. Ltd. v. Hofstrand Farms Ltd.*  
*Joost Blom* .......................................................................................... 43  

**Interaction of Personal Property Security Legislation and Security Interests Under the Bank Act**  
*Jacob S. Ziegel* ................................................................................... 73  

**Bankers' Fiduciary Duties and Negligence**  
*Bradley Crawford* ............................................................................. 145  

**Loan Syndication and the Restrictive Provisions of Section 190 of the Bank Act**  
*Peter J. Lewarne, T.E.R. Butcher and Michael R. Emory* .............. 170  

**Deposit Protection: Lessons Learned From Recent Experiences — Part I**  
*Kevin P. McGuinness and Linda S. Abrams* ....................................... 185  

**Symposium**

**Economic Loss: Where Are We Going After Junior Books?**  
*Bruce Feldthuset* ................................................................................ 241  

**Economic Loss: Curb's on the Way Ahead?**  
*Joost Blom* .......................................................................................... 275  

**Civil Law and Pure Economic Loss: What Are We Missing?**  
*Daniel Jutras* ..................................................................................... 295  

**Deposit Protection: Lessons Learned From Recent Experiences — Part II**  
*Kevin P. McGuinness and Linda S. Abrams* ....................................... 312  

**Limitation Periods in Negligence and the Hidden Cause of Action**  
*Nicholas Rafferty* .............................................................................. 338
### TABLE OF CONTENTS

**Symposium: Harmonization of Provincial Legislation in Canada: The Elusive Goal**

- **Paper**
  - *W.H. Hurlburt* ................................................................. 387
  - Harmonization of Provincial Legislation in Canada
  - *Arthur L. Close* ................................................................. 425
    - The American Experience on Harmonization
    - *(Uniformity) of State Laws
    - *Morris Shanker* ................................................................. 433

**Economic Analysis of Fault and No-Fault Liability Systems**

- *Samuel A. Rea, Jr* 444

**Majority-Minority Relations in Canadian Corporation Law: An Overview**

- *Philip Anisman* ................................................................. 473

**Commentaries**

- **The Corporate Fiduciary: Standard Investments Ltd. v. Canadian Imperial Bank of Commerce**
  - *R.P. Austin* ........................................................................... 96

- **Some Notes on the Current Accounting Scene**
  - *Michael A. Tambosso* ......................................................... 110

- **Farm Repossessions by Banks: Saskatchewan Farm Protection Legislation and the Section 178 Device**
  - *Roderick J. Wood* ................................................................. 120

- **Two Contrasting Approaches to the Parol Evidence Rule**
  - *S.M. Waddams* ....................................................................... 207

- **Bankers' Fiduciary Obligations and Chinese Walls: A Further Comment on Standard Investments Ltd. v. Canadian Imperial Bank of Commerce**
  - *Jacob S. Ziegel* ....................................................................... 211

- **Canada and the Vienna Sales Convention**
  - *Jacob S. Ziegel* ....................................................................... 366

  - *William L. Hayhurst* ............................................................... 494
BOOK REVIEWS

R.M. Goode (ed.), *Electronic Banking — The Legal Implications*  
(Bradley Crawford) ................................................................. 132

S.R. Derham, *Subrogation in Insurance Law*  
(Reuben Hasson) ........................................................................ 136

J. Agnew, *Competition Law*  
R. Whish, *Competition Law*  
(Timothy Pinos) ........................................................................ 141

(M.H. Ogilvie) ........................................................................... 227

J. Ziegel, L. Waverman and D. Conklin (eds.)  
*Canadian Financial Institutions: Changing the Regulatory Environment*  
(John L. Howard) ..................................................................... 230

M.H. Ogilvie, *Banking — The Law in Canada*  
(G.G. Sedgwick) ........................................................................ 235

R.B. Miner (ed), *Current Issues in Canadian Business Law*  
(Emil J. Hayek) ........................................................................ 376

J.-G. Castel, A.L.C. de Mestral and W.C. Graham (eds.)  
*International Business Transactions and Economic Relations*  
(Philip W. Slayton) ................................................................... 379

NOTES ON RECENT PUBLICATIONS

(Michael Weizman) ................................................................. 383
# TABLE OF CONTENTS

**List of Contributors** ................................................................. ix  
**Table of Cases** .......................................................................... xi

**EDITORIALS** ............................................................................ 129, 385

## ARTICLES

**Symposium: Canadian Perspectives on Current Developments in Industrial Arbitration**

The Internationalization of Commercial Arbitration in Canada: A Preliminary Reaction  
*William C. Graham* ................................................................. 1  
International Commercial Arbitration: Comments on Professor Graham's Paper  
*John D. Gregory* ..................................................................... 42  
Quebec's New (1986) Arbitration Law  
*John E.C. Brierley* ................................................................. 58  
A British Columbia Perspective on International Commercial Arbitration  
*Bonita J. Thompson* .............................................................. 70  
International Arbitration: A U.S. View  
*Michael F. Hoellering* ............................................................. 86

**Good Faith in Contract Law — Some Lessons from Insurance Law**  
*Reuben A. Hasson* ................................................................. 93

**Determining the "Fair Value" of Corporate Shares**  
*Vern Krishna* ........................................................................... 132

**Tracing of Proceeds Under the Ontario Personal Property Security Act: General Motors Acceptance Corp. of Canada, Ltd. v. Bank of Nova Scotia**  
*Jacob S. Ziegel* ....................................................................... 177

**Symposium: A New Look for Federal Powers Over the Economy**

Federal Powers Over the Economy: Finding New Jurisdictional Room  
*John D. Whyte* ....................................................................... 257  
Comments on John Whyte's Paper  
*Ivan Bernier* ........................................................................... 303
### TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Article</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Warren Grover</td>
<td>308</td>
</tr>
<tr>
<td>THE &quot;RELIGIOUS&quot; EMPLOYEE AND REASONABLE ACCOMMODATION REQUIREMENTS</td>
<td></td>
</tr>
<tr>
<td>Ivan F. Ivankovich</td>
<td>313</td>
</tr>
<tr>
<td>SOME REFLECTIONS ON BIG BANGS IN FINANCIAL SYSTEMS</td>
<td></td>
</tr>
<tr>
<td>David Walker</td>
<td>388</td>
</tr>
<tr>
<td>PRIVITY OF CONTRACT AND THE THIRD PARTY PURCHASER</td>
<td>402</td>
</tr>
<tr>
<td>M. H. Ogilvie</td>
<td></td>
</tr>
<tr>
<td>THE COMPUTER AND THE LAWYER</td>
<td>444</td>
</tr>
<tr>
<td>Ian F. G. Baxter</td>
<td></td>
</tr>
<tr>
<td>SECTION 10 OF THE INTEREST ACT: ALL THE KING’S MEN</td>
<td>468</td>
</tr>
<tr>
<td>Mary Anne Waldron</td>
<td></td>
</tr>
<tr>
<td><strong>COMMENTARIES</strong></td>
<td></td>
</tr>
<tr>
<td>THREE MORE MISTAKEN BID CASES</td>
<td>203</td>
</tr>
<tr>
<td>Joost Blom</td>
<td></td>
</tr>
<tr>
<td>THE RETROSPECTIVITY OF THE OPPRESSION REMEDY</td>
<td>219</td>
</tr>
<tr>
<td>Jeffrey G. Macintosh</td>
<td></td>
</tr>
<tr>
<td>INSURABLE INTEREST: THE SUPREME COURT OF CANADAADOPTS THE FACTUAL EXPECTANCY TEST</td>
<td>226</td>
</tr>
<tr>
<td>L. Stuesser</td>
<td></td>
</tr>
<tr>
<td>PROTECTING THE INTEGRITY OF THE ONTARIO PERSONAL PROPERTY SECURITY ACT</td>
<td>359</td>
</tr>
<tr>
<td>Jacob S. Ziegel</td>
<td></td>
</tr>
<tr>
<td>INTERNATIONAL CORONA RESOURCES V. LAC MINERALS - WHERE EQUITY RUSHES IN</td>
<td>489</td>
</tr>
<tr>
<td>R.D. Gibbens</td>
<td></td>
</tr>
<tr>
<td><strong>BOOK REVIEWS</strong></td>
<td></td>
</tr>
<tr>
<td>(Laurence D. Hebb)</td>
<td></td>
</tr>
<tr>
<td>Hugh Collins. <em>The Law of Contract</em></td>
<td>125</td>
</tr>
<tr>
<td>(M.H. Ogilvie)</td>
<td></td>
</tr>
<tr>
<td>R.M. Goode, <em>Proprietary Rights and Insolvency in Sales Transactions</em></td>
<td>239</td>
</tr>
<tr>
<td>(M.G. Bridge)</td>
<td></td>
</tr>
<tr>
<td>F.M. Ventris, <em>Bankers' Documentary Credits</em></td>
<td>243</td>
</tr>
<tr>
<td>(Benjamin Geva)</td>
<td></td>
</tr>
<tr>
<td>Title</td>
<td>Author(s)</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>---------------------------------------------------------------------------</td>
</tr>
<tr>
<td>The Logic and Limits of Bankruptcy Law</td>
<td>Thomas H. Jackson, John D. Honsberger</td>
</tr>
<tr>
<td>Origins and Meaning of Section 92A: The 1982 Constitutional Amendment on Resources</td>
<td>J. Peter Meekison, Roy J. Romanow and William D Moull, John D. Whyte</td>
</tr>
<tr>
<td>The Law of Guarantee</td>
<td>Kevin Patrick McGuinness, Bradley Crawford</td>
</tr>
<tr>
<td>Law and Practice of International Commercial Arbitration</td>
<td>Alan Redfern and Martin Hunter, R.M. Goode</td>
</tr>
<tr>
<td>The Taxation of Resource Industries</td>
<td>Brian R. Carr, Vern Krishna</td>
</tr>
<tr>
<td>The Law of Restitution</td>
<td>Lord Goff of Chieveley and Gareth Jones, M.H. Ogilvie</td>
</tr>
<tr>
<td>NOTES ON RECENT PUBLICATIONS</td>
<td>Michael Weizman</td>
</tr>
<tr>
<td>CORRESPONDENCE</td>
<td></td>
</tr>
</tbody>
</table>
## TABLE OF CONTENTS

*List of Contributors* ................................................................. ix  
*Table of Cases* ........................................................................... xi

**EDITORIALS** ........................................................................... 385

**ARTICLES**

**Symposium: Certainty and Flexibility as Competing Contract Values and the OLRC Report**

- *Jacob S. Ziegel* ................................................................. 1
- Flexibility and Certainty as Competing Contract Values: A Civil Lawyer's Reaction to the OLRC's Recommendations on Amendments to the Law of Contract
- *Rosalie Jukier* ................................................................. 13
- Unconscionability: Panacea, Analgesic or Loose Can(n)on?
- *David Vaver* ................................................................. 40
- Porridge or Scrambled Eggs?
- *Leon E. Trakman* ........................................................ 75

**Symposium: Recent Developments in the Relationship of Banker and Customer**

- Reflections on Recent Developments Concerning the Relationship of Banker and Customer
- *E. P. Ellinger* ................................................................. 129
- Comments on Peter Ellinger's Paper
- *Bradley Crawford* ........................................................ 171
- Comments on Peter Ellinger's Paper
- *R. M. Goode* ................................................................. 179

**The Evolving Law of Payment by Wire Transfer — An Outsider's View of Draft UCC Article 4A**

- *Benjamin Geva* ............................................................ 186

**An Evaluation of Proposed Article 4A: Comment on Professor Geva's Paper**

- *Carl Felsenfeld* ........................................................... 235

**Restricted Shares in Ontario**

- *Clarence T. Hay* .......................................................... 257
PENAL LIABILITY FOR INSIDER TRADING IN CANADA:
COMMISSION DES VALEURS MOBILIERES DU QUEBEC V.
BLAIKIE
R.L. Simmonds ........................................................................................................ 477

MISTAKEN BIDS: A POSTSCRIPT
Joost Blom .................................................................................................................. 494

BOOK REVIEWS

J. Fraser Mann, Computer Technology and the Law in Canada
(D.L.T. Conn) ............................................................................................................. 123
Robert W. Clarke, Inequality of Bargaining Power: Judicial Intervention in Unconscionable and Improvident Bargains
(Sheilah L. Martin) .................................................................................................... 126
Gareth Jones and William Goodhart, Specific Performance
(T. Brettel Dawson) .................................................................................................. 243
Frank T. Melton, Sir Robert Clayton and the Origins of English Deposit Banking, 1658-1685
(Janice Dickin McGinnis) ......................................................................................... 247
G.H.L. Fridman, Sale of Goods in Canada
(Kenneth Sutton) ....................................................................................................... 253
G.V. Sawiak, The Toronto Stock Exchange: A Procedural Guide for Companies and Their Professional Advisors
(Ralph Simmonds) .................................................................................................. 372
Robert K. Paterson with Jock A. Finlayson, Philip Raworth and Malcolm D.H. Smith, Canadian Regulation of International Trade and Investment
(Michael J. Trebilcock) ............................................................................................ 375
W. Neil Brooks, The Quest for Tax Reform — The Royal Commission on Taxation Twenty Years Later
(Chester N. Mitchell) .............................................................................................. 379
Bradley Crawford, Crawford and Falconbridge, Banking and Bills of Exchange
(E.P. Ellinger) .......................................................................................................... 504
J. Milnes Holden, The Law and Practice of Banking
(M.H. Ogilvie) .......................................................................................................... 506
Roderick S.W. Winsor and Harry B. Radomski, The Insurance Act of Ontario Annotated
(Rueben A. Hasson) .............................................................................................. 509
# TABLE OF CONTENTS

List of Contributors ................................................................. ix
Table of Cases .............................................................................. xi

EDITORIALS .................................................................................. 257

ARTICLES

Poison Pills in Canada
  Gordon Coleman ........................................................................... 1

Business Judgment and Defensive Tactics in
Hostile Takeover Bids
  John H. Farrar ............................................................................. 15

Close Corporations in Australia — The Close
Corporations Bill 1988
  Jennifer Hill ............................................................................... 43

The Report of the Commission to Study the
Public's Expectations of Audits: A Commentary
  Morley P. Carscallen .................................................................. 61

The Legal Status of Ecclesiastical Corporations
  M.H. Ogilvie .............................................................................. 74

Solicitor-Client Privilege and the Ontario Loan
  and Trust Corporations Act
  Glenn Grenier ............................................................................ 129

The Ins and Outs of Swap Transactions
  Isabel Pappe ............................................................................... 158

The B.C. Law Reform Commission's Report on
  Fraudulent Conveyances and Preferences
  M.A. Springman ...................................................................... 180

The Family Law Act: Planning for It May Ruin
  Your Marriage — Not Planning for It May
  Destroy Your Company
  Lorne H. Wolfson ..................................................................... 205

Developments in Electronic Funds Transfer Systems
  and the Consumer — An Australian Perspective
  David Harland ........................................................................... 259

The Poison Pill: A Noxious Nostrum for
  Canadian Shareholders
  Jeffrey G. MacIntosh ................................................................ 276
QUEBEC'S EXECUTORY HYPOTHEC: A HISTORY RETHINKED
Tom Johnson ......................................................... 335
QU'EST-CE QU'UNE INFORMATION PRIVILEGIEE EN MATIERE
D'OPERATIONS D'INITIES? LES SUITES DE L'AFFAIRE
MEMOTEC
Raymonde Crete et Martin Weiss ..................................................... 385
THE E.F.T. DEBIT CARD
Benjamin Geva ........................................................................... 406
THE MORAL RIGHTS OF ARTISTS AND THE
COPYRIGHT ACT AMENDMENTS
R.D. Gibbens .................................................................................. 441
THE FUTURE OF TORT LAW: MAPPING THE
CONTOURS OF THE DEBATE
Michael J. Trebilcock ................................................................. 471

COMMENTS
GOOD FAITH AND THE COMPANIES' CREDITORS
ARRANGEMENT ACT
Lawrence J. Crozier ........................................................................ 89
SECTION 52(1)(a) OF THE COMPETITION ACT -
WHO IS THE AVERAGE PERSON?
Michael E. Rice and Marshall D. Rice ............................................ 97
PERSONAL PROPERTY SECURITY LEGISLATIVE
ACTIVITY 1986-88
Jacob S. Ziegel ................................................................................ 108
"OFFERING CORPORATIONS" AND CORPORATE GOVERNANCE: A
PROPOSAL TO AMEND THE ONTARIO BUSINESS CORPORATIONS ACT,
1982
Philip Anisman .............................................................................. 223
REFORMING THE GATT SAFEGUARDS REGIME
Michael J. Trebilcock ...................................................................... 234
PERFECTION BY REGISTRATION, INSTRUMENTS, SECURITIES,
DOCUMENTS OF TITLE, AND THE PERSONAL PROPERTY SECURITY
ACT 1989
Jacob S. Ziegel ................................................................................ 242
THE CASE FOR CONTINGENT FEES: THE ONTARIO LEGAL PROFESSION
RETHINKS ITS POSITION
Michael J. Trebilcock ...................................................................... 360
THE REFORM COMMISSION OF BRITISH COLUMBIA,
REPORT ON DEEDS AND SEALS
Louis Romero ................................................................. 368

HAS THE CONTRIBUTION HOLIDAY BEEN JUDICIA LLY
RAINED OUT?: C.U.P.E. V. ONTARIO HYDRO
IN THE ONTARIO COURT OF APPEAL
John R. Varley ........................................................................ 489

THE SUPREME COURT OF CANADA SCUTTLES THE DEEMED
TRUST IN BANKRUPTCY
Jacob S. Ziegel ......................................................................... 498

BOOK REVIEWS
Lazar Sarna, Letters of Credit
(Boris Kozolchyk) ......................................................... 116
Lazar Sarna, ed., Corporate Structure, Finance and
Operations, Essays on the Law and Business Practice, vol. 5
(M.H. Ogilvie) ............................................................... 122
Bruce Dunlop, David McQueen and Michael Trebilcock,
Canadian Competition Policy, A Legal and Economic
Analysis
(Stanley Wong) ................................................................. 125
Morton W. Rashkis and Mary Lou Benotto, Income
Tax and Family Law Handbook
(Maureen A. Maloney) ...................................................... 252
William D. Coleman, Business and Politics: A Study of Collective
Action
(W.T. Stanbury) ................................................................. 376
E.P. Ellinger, Modern Banking Law
(Emil J. Hayek) .................................................................. 382
Canadian Business Law Journal v.16 (1990)

TABLE OF CONTENTS

List of Contributors ........................................................................................................ ix
Table of Cases .................................................................................................................. xi

ARTICLES

CANADIAN AND U.S. UNFAIR TRADE LAWS: A COMPARISON
OF THEIR LEGAL AND ADMINISTRATIVE STRUCTURES
Alan M. Rugman and Samuel D. Porteous ................................................................. 1

RESPONSIBILITY FOR ACCIDENTS: RELEVANT RESULTS
SELECTED FROM THE DRAG MODEL
Marc Gaudry ................................................................................................................. 21

A PROPOS DE L'OBLIGATORIÉTÉ DE LA LOI SUR LA VENTE
D'OJECTS: OBSERVATIONS ET COMPARAISONS
Pierre Legrand jr ........................................................................................................... 34

SYMPOSIUM: EUROPE 1992 AND THE HARMONISATION OF
STANDARDS FOR THE REGULATION OF FINANCIAL
INSTITUTIONS
EUROPE 1992 AND THE HARMONISATION OF STANDARDS
FOR THE REGULATION OF FINANCIAL INSTITUTIONS
Michael Blair ................................................................................................................. 97

COMMENT ON MICHAEL BLAIR'S PAPER —
Hal S. Scott ................................................................................................................ 124

COMMENT ON MICHAEL BLAIR'S PAPER —
Nicholas Le Pan ........................................................................................................... 129

HOLDING AUDIT COMMITTEES ACCOUNTABLE
Neil Campbell ............................................................................................................... 134

THE LABOUR CONVENTIONS DOCTRINE IN AN ERA OF
GLOBAL INTERDEPENDENCE: RETHINKING THE
CONSTITUTIONAL DIMENSIONS OF CANADA'S EXTERNAL
ECONOMIC RELATIONS
Robert Howse ............................................................................................................. 160

SYMPOSIUM: PUNITIVE DAMAGES IN CONTRACT AND TORT

RECENT DEVELOPMENTS IN THE CANADIAN LAW OF
PUNITIVE DAMAGES
Bruce Feldhusen ......................................................................................................... 241

PUNITIVE DAMAGES AS AGGRAVATED DAMAGES: THE
CASE OF CONTRACT
Bruce Chapman ........................................................................................................... 259

COMMENTARY ON PROFESSOR FELDTHUSEN'S PAPER ON
PUNITIVE DAMAGES
Earl A. Cherniak ....................................................................................................... 281

LES DOMMAGES PUNITIFS EN DROIT CIVIL QUÉBÉCOIS
Louis Perret .............................................................................................................. 285
THE ARRANGEMENT PROCEDURE UNDER SECTION 192 OF THE CANADA BUSINESS CORPORATIONS ACT AND THE REORGANIZATION OF DOME PETROT FUM LIMITED
Simon B. Scott, Timothy O. Buckley and Andrew Harrison ................................................................. 296

A NEW MORALITY IN BUSINESS LAW?
Justice Beverley M McLachlin ........................................................................................................ 319

SYMPOSIUM: SHOULD CANADA ADOPT ARTICLE 2A TYPE LAW ON PERSONAL PROPERTY LEASING?

SHOULD CANADA ADOPT AN ARTICLE 2A TYPE LAW ON PERSONAL PROPERTY LEASING?
Jacob S. Ziegel ................................................................................................................................. 369

FILING REQUIREMENTS FOR PERSONAL PROPERTY LEASES: A COMMENT AND RESPONSE TO PROFESSOR ZIEGEL
Charles W Mooney, Jr ......................................................................................................................... 419

AN ARTICLE 2A FOR CANADA? A COMMENT ON PROFESSOR ZIEGEL’S PAPER
R.C.C. Cumming ................................................................................................................................. 439

THE EFFECT OF THE "PT FDGE" OF A DEBENTURE
V.A. Cottrill ........................................................................................................................................ 453

COMMENTARIES

THE AVAILABILITY OF THE OPPRESSION REMEDY TO MAJORITY SHAREHOLDERS IN ONTARIO
Michael Rice .......................................................................................................................................... 58

STRATEGIC 1FGAL PLANNING FOR EDI
Bradley Crawford ................................................................................................................................... 66

PROPOSALS FOR A NEW ALBERTA ARBITRATION ACT
W.C. Graham ......................................................................................................................................... 185

CONFIDENCE ABUSED: LAc MINERAEs LTD. V INTERNATIONAL CORONA RESOURCES LTD.
Peter D. Maddaugh ............................................................................................................................. 198

EXTENDED DAMAGES AND VORVIS V. INSURANCE CORPORATION OF BRITISH COLUMBIA
John Swan .............................................................................................................................................. 213

NEW ZEALAND CONSIDERS A PERSONAL PROPERTY SECURITY ACT
J.H. Farrar ................................................................................................................................................. 328

THE PATENTABILITY OF NEW PLANT LIFE FORMS IN CANADA
Randy W Marusyk ................................................................................................................................. 333

PROMOTER’S LIABILITY AND PREINCORPORATION CONTRACTS: WESTCOM RADIO GROUP LTD. V. MACISAAC
Jacob S. Ziegel ......................................................................................................................................... 341
FRAUD, FAIRNESS AND PIERCING THE CORPORATE VEIL
J.H. Farrar.................................................................................................................. 474
DIRECTORS' DILIGENCE UNDER THE INCOME TAX ACT
R. Lynn Campbell....................................................................................................... 480

BOOK REVIEWS

M. G. Bridge, Sale of Goods
(Ronald C.C. Cuming).................................................................................................. 78
T.G. Youdan, ed., Equity, Fiduciaries and Trusts
(Dennis R. Klinck)....................................................................................................... 84
Marc Gold and David Leyton-Brown, eds.,
Trade-Offs on Free Trade: The Canada-U.S. Free Trade Agreement
(P.J. Davidson)............................................................................................................ 91
Mark Vincent Ellis, Fiduciary Duties in Canada
(E.E. Gillese)................................................................................................................ 231
Loo Choon Chiaw, ed., Butterworths Banking and Financial Law Review
(Bradley Crawford)....................................................................................................... 236
A.S. Burrows, Remedies for Torts and Breach of Contract
(Joost Blom).................................................................................................................. 348
Bruce Feldthusen, Economic Negligence
(T. Brettel Dawson)..................................................................................................... 352
Harry Poch, Corporate and Municipal Environmental Law
(David McRobert)......................................................................................................... 357
Marvin A. Zuker, Small Claims Court Practice in Ontario Provincial Court (Civil Division)
(Ishbel Ogilvie)............................................................................................................ 363
Ian F.S. Baxter, International Banking and Finance
(Ross Cranston)............................................................................................................ 367
D. Paul Emond, ed., Commercial Dispute Resolution: Alternatives to Litigation
Ernest G. Tannis, Alternative Dispute Resolution That Works
(Paul J. Davidson)......................................................................................................... 502
(M.H. Ogilvie).............................................................................................................. 507
# TABLE OF CONTENTS

*List of Contributors* ......................................................... ix  
*Table of Cases* ............................................................... xi  

**EDITORIAL** ................................................................... 321  

**ARTICLES**  

**Symposium: Commercial Free Speech and the Canadian Charter of Rights and Freedoms**  

**Money Talk: Against Constitutionalizing (Commercial) Speech**  
*Allan C. Hutchinson* .......................................................... 2  
*A Comment on Allan Hutchinson's "Money Talk: Against Constitutionalizing Commercial Speech"*  
*Robert J. Sharpe* ............................................................... 35  

**Constitutional Protection for Commercial Speech: Some Lessons from the American Experience**  
*David A. Strauss* ............................................................... 45  

**Can it Really be Unconstitutional to Regulate Product Safety Information?**  
*David Cohen* ................................................................... 55  

**Fundamental Breach Excluded but Not Extinguished:**  
*Hunter Engineering v. Syncrude Canada*  
*M. H. Ogilvie* ................................................................... 75  

**Foreign Exchange and Joint Ventures with China: Short-term Strategies and Long-term Prospects**  
*Paul D. McKenzie* ............................................................ 114  

**Colloquium on the Transformation of Eastern Europe: Political and Economic Interpretations**  

**Introduction**  
*Jacob S. Ziegel* .............................................................. 162  

**A Transition to Liberal Democracy?**  
*Valerie Bunce* ................................................................. 163  

**Political Reform in the Soviet Union: How Much is Enough?**  
*Timothy J. Colton* ............................................................ 173  

**Will the Soviet Union Survive Until the Year 2000?**  
*Geoffrey Pearson* ............................................................. 179  

**Gorbachev's Legal Revolution**  
*Peter H. Solomon, Jr.* ....................................................... 184  

**The Long Road from Serfdom and How to Shorten It**  
*Reuven Brenner* .............................................................. 195
PERESTROIKA: IS IT ON TRACK?  
*Padma Desai* ................................................................. 226

EASTERN EUROPE ON THE ROAD FROM COMMUNISM TO CAPITALISM  
*Zbigniew M. Fallenbuchl* .................................................. 238

DOES COMECON HAVE A FUTURE?  
*Carl H. McMillan* ................................................................ 246

KEEPING THE PLAYING FIELD LEVEL: POISON PILLS AND DIRECTORS' FIDUCIARY DUTIES IN CANADIAN TAKE-OVER LAW  
*Peter Dey and Robert Yalden* ............................................. 252

SOME OBSERVATIONS ON THE "USUAL" ANTI-DILUTION PROVISIONS  
*Patricia J. Myhal* .................................................................. 283

POISON PILLS IN CANADA: A REPLY TO DEY AND YALDEN  
*Jeffrey G. Macintosh* ............................................................. 323

ECONOMIC LOSS IN THE SUPREME COURT OF CANADA: YESTERDAY AND TOMORROW  
*Bruce Feldhusen* .................................................................. 356

A CANADIAN CENTRAL REGISTRY FOR SECURITY INTERESTS IN AIRCRAFT: A GOOD IDEA BUT WILL IT FLY?  
*Joel Cuperfain* ...................................................................... 380

CALCULATING PERIODIC INTEREST  
*Elizabeth Maynes, Stephen Pincus and Chris Robinson* ............ 415

THE REGULATION OF FOREIGN BANKS IN CANADA: *Milelli* MARKS A DECADE OF AMBIGUITY  
*Gillian Lester* ...................................................................... 430

**COMMENTS**

THE UNITED KINGDOM COMPANIES ACT 1989  
*J.H. Farrar* ........................................................................ 150

EQUIPMENT LEASES: THE FIRST FRUITS OF NON-UNIFORMITY  
*Jacob S. Ziegel* .................................................................... 303

EQUITABLE MORTGAGES AND LODGEMENT OF TITLE AGREEMENTS  
*Peter Devonshire* .................................................................. 309

L'HYPOTHESE DE L'EXISTENCE D'UNE CHARGE FLOTTANTE AVANT LA CODIFICATION DU DROIT CIVIL, QUEBECOIS  
*Sylvio Normand* .................................................................... 455
BOOK REVIEWS

Donald Harris and Denis Tallon, eds., *Contract Law Today: Anglo-French Comparisons*
(John Manwaring) ................................................................. 464

(M.H. Ogilvie) ......................................................................... 473

(John L. Howard) ................................................................... 476
# TABLE OF CONTENTS

**List of Contributors** ....................................................... ix  
**Table of Cases** ..................................................................... xi  

**EDITORIALS** ................................................................. 321  

**ARTICLES**  

**Canada Prepares to Adopt the International Sales Convention**  
*Jacob S. Ziegel* ................................................................. 1  

**Nutrasweet: The Evolution of Law on Abuse of Dominant Position**  
*Donald N. Thompson* ......................................................... 17  

**The Farm Debt Review Act**  
*Michael A. Weinzock* .......................................................... 43  

**Price Adjustments in Long-Term Supply Contracts: The Saga of the Quintette Coal Arbitration**  
*William A.W. Neilson* ......................................................... 76  

**Kicking the Tires: Assessing the Hyundai Anti-Dumping Decision From a Consumer Welfare Perspective**  
*Matthew S. Kronby* ............................................................. 95  

**Federalism's Turn: Telecommunications and Canadian Global Competitiveness**  
*H. N. Janisch and R. J. Schultz* ........................................... 161  

**Federalism and Telecommunications: Boon or Barrier to Competition?**  
*Katherine Swinton* ............................................................. 188  

**Government Procurement and Bid Challenging in Canada After the Free Trade Agreement**  
*Arie Reich* ........................................................................ 195  

**Operating Clauses in Shopping Centre Leases: Lights Out for the Vacating Tenant**  
*Allan M. Kaufman* ............................................................... 245  

**The Scope of the Quebec Commercial Pledge**  
*Martin Boedman* ................................................................. 276  

**The Unauthorized Use of Confidential Information**  
*Richard A. Brait* ................................................................. 323  

**Significant Developments in the Canadian Law of Tenders**  
*Gail Henley* ....................................................................... 382  

**Reliance on Public Corporate Documents**  
*Richard W. Bird* ................................................................. 411
COMMENTARIES

AUDITORS’ LIABILITY IN THE HOUSE OF LORDS: A SIGNAL
CANADIAN COURTS SHOULD FOLLOW
Brian R. Cheffins ........................................................................................................ 118

PPSA — SECTION 178 BANK ACT OVERLAP: No CLOSER TO
SOLUTIONS
Ronald C.C. Cuming .................................................................................................. 135

STATUS OF INTERNATIONAL ARBITRATION AWARDS UNDER
CANADIAN INSOLVENCY LAW
Lawrence J. Crozier .................................................................................................... 294

CAUSATION AND FIDUCIARY DUTIES
R. D. Gibbens .............................................................................................................. 301

SECTION 91(15) REVISITED AGAIN - AND AGAIN
M. H. Ogilvie .............................................................................................................. 432

DISSECTING THE FREE TRADE AGREEMENT LOBSTER
PANEL DECISION
Ted L. McDorman .................................................................................................... 445

BOOK REVIEWS

Colin H. H. McNairn and Christopher D. Woodbury, Government Information — Access and Privacy
(Derek C. Hayes) ........................................................................................................ 149

D. R. Garrod and E. A. Watkins, The Vancouver Stock
Exchange: Listing Rules, Policies and Procedures
(Mark Gillen) ............................................................................................................. 152

Wilfred M. Estey, Legal Opinions in Commercial Transactions
(John Swan) .............................................................................................................. 155

Harvin Pitch and Ronald Snyder, Damages for Breach of
Contract
(Jeff Berryman) ....................................................................................................... 307

Norman Jones, God and the Moneylenders: Usury and Law in
Early Modern England
(Benjamin Geva) ...................................................................................................... 309

lain Ramsay, Consumer Protection — Text and Materials
(A. M. Clark) ............................................................................................................. 315

Peter D. Maddaugh and John D. McCamus, The Law of
Restitution
(J. Beatson) .............................................................................................................. 459

I.C.F. Spry, The Principles of Equitable Remedies: Specific
Performance, Injunctions, Rectification and Equitable Damages, 4th ed.
(Bruce Kercher) ....................................................................................................... 463
Paul M. Perell, *The Fusion of Law and Equity*  
(M.H. Ogilvie) ................................................................. 466

Koh Kheng Lian, Ho Peng Kee, Choong Thung Cheong and  
Boo King Ong, eds. *Current Developments in International  
Banking and Corporate Financial Operations*  
(Roy M. Goode) ........................................................................ 469

Malcolm M. Clarke, *The Law of Insurance Contracts*  
(Reuben A. Hasson) ............................................................... 473

Clifford Rand, *Understanding the Income Tax Act*  
(Jerry Dan Kovacs) .................................................................. 478

CORRESPONDENCE .................................................................... 143
# Table of Contents

**List of Contributors** ................................................................. xxi

**Table of Cases** ........................................................................... xxiii

## Articles

**Fiduciary Relations in Corporate Law**
*John L. Howard* ........................................................................... 1

**Law, Economics and Morality; Contracting Out of Corporate Law Fiduciary Duties**
*Brian R. Cheffins* ....................................................................... 28

**Les Actionnaires Minoritaires des Compagnies Quebecoises: Qu'en Est-il de Leurs Recours en Cas d'oppression?**
*Raymonde Crete* ........................................................................ 49

**The Puzzle of Shareholder Fiduciary Duties**
*Jeffrey G. MacIntosh and Janet Holmes and Steve Thompson* ............... 86

**The Clearing House Arrangement**
*Benjamin Geva* ........................................................................ 138

**International Credit Transfers: the Influence of Article 4A on the Model Law**
*Bradley Crawford, Q.C.* ............................................................... 166

**Personal Property Security Law: The New Kids on the Block**
*R. C. C. Cuming* ......................................................................... 191

**Choice of Law in Contracts**
*John Swan* ................................................................................ 213

**The Counter-Reformation of Secured Transactions Law in Quebec**
*Roderick A. Macdonald* ............................................................. 239

**The Transplant of Commercial Law; Security Law in Sri Lanka**
*Ross Cranston* ........................................................................... 296

**Information in Formation of Contracts: A Civilian Perspective**
*Pierre Legrand Jr.* ...................................................................... 318

**Precontractual Duties of Disclosure**
*S. M. Waddams* ......................................................................... 349
COMMENTS ON PROFFESSOR WADDAMS' "PRECONTRACTUAL DUTIES OF DISCLOSURE"

E. Allan Farnsworth ................................................................. 351

"REASONABLE" COMMERCIAL CONTRACTS AND THE UNFAIR CONTRACT TERMS ACT 1977

M. H. Ogilvie ................................................................. 357

Do WE NEED A PAROL EVIDENCE RULE?

S. M. Waddams ................................................................. 385

CONSUMER LAW AND THE SEARCH FOR EMPOWERMENT

lain Ramsay ................................................................. 397

TAKING STOCK: CONSUMERISM IN THE 1990s

Michael J. Trebilcock ................................................................. 412

UNCONSCIONABILITY AND IMPERFECT INFORMATION:

A RESEARCH AGENDA

Alan Schwartz ................................................................. 437

THE FUTURE OF CONSUMER LAW: THE BRITISH EXPERIENCE

Sir Gordon Borrie ................................................................. 456

"EQUITY AND GOOD CONSCIENCE" AND AMIABLE COMPOSITION IN CANADIAN ARBITRATION LAW

John E.C. Brierley ................................................................. 461

INTERNATIONAL PRIVATE COMMODITY SALES

Michael Bridge ................................................................. 485
### TABLE OF CONTENTS

**List of Contributors** ............................................................... ix  
**Table of Cases** ................................................................. xi  

**EDITORIAL** ........................................................................... 161

**ARTICLES**

**Global Competition and Canadian Federalism: The Financial Sector**  
*Harvey Lazar, Andrée Mayrand and Keith Patterson* .............. 1

**Canadian ADR: Towards an Hospitable Environment**  
*David Lunny and Wilf Wakely* .................................................. 42

**Canadian Labour Policies and Global Competition**  
*Morley Gunderson and Anil Verma* .......................................... 63

**How Ontario Lawyers View the Personal Property Security Act: An Empirical Survey**  
*Jacob S. Ziegel and David Denomme* ...................................... 90

**The Floating Charge on Land in the Western Provinces**  
*Roderick J. Wood* .................................................................. 132

**Symposium: Recent Developments in the Law of Economic Negligence**

**Introduction**  
*Jacob S. Ziegel* .................................................................. 163

**Two Steps Forward or One Step Back?**  
*Earl A. Cherniak and Kirk F. Stevens* ...................................... 164

**Limited Auditors' Liability: Economic Analysis and the Theory of Tort Law**  
*Bruce Chapman* .................................................................. 180

**Government Liability for Economic Losses: The Case of Regulatory Failure**  
*David Cohen* ...................................................................... 215

**Mitigating the Collective Action Problem of Debt Enforcement Through Bankruptcy Law:**  
*Bill C-22 and its Shadow*  
*George G. Triantis* ................................................................. 242

**The Dark Side of Chapter 11: A Comment on Professor Triantis' Article**  
*Douglas G. Baird* ................................................................. 261
LANDLORD AND LENDER LIABILITY FOR HAZARDOUS WASTE
CLEAN-UP: A REVIEW OF THE EVOLVING CANADIAN
AND AMERICAN CASE LAW
Jimmy Y. Levy ................................................................. 269

SYMPOSIUM: CAN CANADIAN COMMERCIAL LAW BE
REHABILITATED?
CAN CANADIAN COMMERCIAL LAW BE
REHABILITATED? AN INTRODUCTORY OVERVIEW
Jacob S. Ziegel ................................................................. 322
THE POSITION PAPER ON REVISED BANK ACT SECURITY:
REHABILITATION OF CANADIAN PERSONAL PROPERTY
SECURITY LAW OR CURING THE ILLNESS BY KILLING THE
PATIENT
Ronald C.C. Cuming ......................................................... 336
CAN CANADIAN COMMERCIAL LAW BE REHABILITATED?
A QUESTION OF INTEREST
Mary Anne Waldron .......................................................... 357
THE NEW QUEBEC CIVIL CODE AND RECENT FEDERAL
LAW REFORM PROPOSALS: REHABILITATING
COMMERCIAL LAW IN QUEBEC?
Rosalie Jukier and Roderick A. Macdonald ......................... 380

EXPERT EVIDENCE IN COMPETITION TRIBUNAL PROCEEDINGS
Frank Roseman and Jane Graham .......................................... 406
AN ASSESSMENT OF THE MERGER REVIEW PROCESS UNDER THE
COMPETITION ACT
W.T. Stanbury ..................................................................... 422

COMMENTARY
IS AN ARBITRATION AWARD "MADE" WHERE IT IS SIGNED?
Okezie Chukwumerije .......................................................... 305
FRAUDULENT MISREPRESENTATIONS AND THE INSURER'S DUTY
TO INVESTIGATE
Roger Harris ....................................................................... 464

BOOK REVIEWS
Dianne Saxe, Environmental Offences: Corporate
Responsibility and Executive Liability
(R. Lynn Campbell) ............................................................. 148
Bruce Kercher and Michael Noone, Remedies, 2nd ed.
(Jamie Cassels) .................................................................. 152
A. G. Guest, ed. "Chalmers and Guest on Bills of Exchange, Cheques and Promissory Notes", 14th ed. (Bradley Crawford) ................................................................. 317
P. D. Finn, ed., "Essays on Restitution"
(Nicholas Rafferty) ................................................................. 474
and
Joseph J. Norton, ed., "Bank Regulations and Supervision in the 1990s"
(M.H. Ogilvie) ................................................................. 479
## TABLE OF CONTENTS

*List of Contributors* ............................................ ix
*Table of Cases* .................................................. xi

**EDITORIAL** ...................................................... 321

**ARTICLES**

**NEW LEGISLATION FOR DOMESTIC ARBITRATIONS**
*W.H. Hurlburt* .................................................. 1

**A COMPARATIVE EMPIRICAL RESEARCH AGENDA**
*In Consumer Bankruptcy*
*Jay Lawrence Westbrook* ....................................... 30

**THE LAW O' THE BRASS BALLS OR THE REGULATION OF THE PAWN**
*Edward Veitch* .................................................. 49

**SYMPOSIUM: REFLECTIONS ON RECENT FEDERAL PROPOSALS FOR THE RATIONALIZATION OF TRADE PRACTICES REGULATION IN CANADA**

**REFLECTIONS ON RECENT FEDERAL PROPOSALS FOR THE RATIONALIZATION OF TRADE PRACTICES REGULATION IN CANADA**
*William A.W. Neilson* .......................................... 70

**WHAT ROLE SHOULD THE FEDERAL GOVERNMENT PLAY IN CONSUMER PROTECTION? A COMMENT ON PROFESSOR NEILSON’S PAPER**
*David Cohen* ..................................................... 86

**QU’EL EST LE RÔLE DU GOUVERNEMENT FÉDÉRAL EN MATIÈRE DE PROTECTION DU CONSOMMATEUR? OBSERVATIONS SUR LA PRÉSENTATION PAR LE PROFESSEUR NEILSON**
*Nichole L’Heureux* ............................................... 95

**PROTECTION OF UNPAID SUPPLIERS UNDER THE NEW BANKRUPTCY AND INSOLVENCY ACT**
*Robert A. Klotz* .................................................. 161

**WHEN WORDS COLLIDE: ENVIRONMENTAL REGULATION IN CONFLICT WITH BANKRUPTCY LEGISLATION**
*Susan Cantlie* .................................................... 190
<table>
<thead>
<tr>
<th>Title</th>
<th>Author</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>SECURITIES ACT REGULATION OF THE MUTUAL FUND PRODUCTS PROVIDED TO CORPORATE SAVINGS PLANS</td>
<td>Alexandra S. Raphael</td>
<td>218</td>
</tr>
<tr>
<td>LIABILITY EQUALS RESPONSIBILITY: CANADIAN MARINE TRANSPORT TERMINAL OPERATORS IN THE 1990s</td>
<td>Roger Harris</td>
<td>229</td>
</tr>
<tr>
<td>SYMPOSIUM: THE DRAFT CONSUMER AND BUSINESS PRACTICES CODE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>THE CONSULTATION DRAFT OF THE CONSUMER AND BUSINESS PRACTICES CODE</td>
<td>Marvin G. Baer</td>
<td>254</td>
</tr>
<tr>
<td>AN ANALYSIS OF THE DRAFT CONSUMER AND BUSINESS PRACTICES CODE AS A PROJECT OF CONSOLIDATION</td>
<td>Roderick J. Wood</td>
<td>274</td>
</tr>
<tr>
<td>L'AVANT-PROJET ONTARIEN DE CODE DE LA CONSOMMATION DANS UNE PERSPECTIVE COMPARATIVE</td>
<td>Nicole L' Heureux</td>
<td>283</td>
</tr>
<tr>
<td>SOME COMMENTS ON THE COMMON LAW AND THE CIVIL LAW IN CANADA: INFLUENCES, PARALLEL DEVELOPMENTS AND BORROWINGS</td>
<td>The Honourable Charles D. Gonthier</td>
<td>323</td>
</tr>
<tr>
<td>CORPORATE SHARE CAPITAL STRUCTURES AND INCOME</td>
<td></td>
<td></td>
</tr>
<tr>
<td>SPLITTING: MCCLURG V. CANADA</td>
<td>Vern Krishna and J. Anthony Van Duzer</td>
<td>335</td>
</tr>
<tr>
<td>THE EFFICIENCY EXCEPTION FOR MERGERS: AN ASSESSMENT OF EARLY SIGNALS FROM THE COMPETITION TRIBUNAL</td>
<td>Paul S. Crampton</td>
<td>371</td>
</tr>
<tr>
<td>TORT RECOVERY FOR ECONOMIC LOSS: RECENT DEVELOPMENTS</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>Anne L. Mactavish</td>
<td>395</td>
</tr>
<tr>
<td>THE AMAZING THREE-HEADED LIMITED PARTNER: REFLECTIONS ON OLD LOOHOLES AND NEW JURISPRUDENCE</td>
<td>Lisa Philipps</td>
<td>410</td>
</tr>
<tr>
<td>THE CONSTITUTIONALITY OF PROVINCIAL REGULATION OF THE ENVIRONMENTAL LIABILITY OF BANKS AS SECURED LENDERS IN CANADA</td>
<td>M. H. Ogilvie</td>
<td>429</td>
</tr>
</tbody>
</table>
COMMENTARIES

MISTAKEN PAYMENTS AND THEFT BY AN OWNER: A COMMENT ON R. V. MILNE
Lionel D. Smith ................................................................. 103

THE "VOID" CONTRACT; ULTRA VIRES AND ILLEGALITY: COMMUNITIES ECONOMIC DEVELOPMENT FUND V. CANADIAN PICKLES CORPORATION AND MAXWELL
John Swan ................................................................. 115

THE POLLUTION LIABILITY ASSOCIATION POLICY INTERPRETED
Roger Harris and Mark M. O'Donnell ........................................... 451

BOOK REVIEWS

M.B. Henderson, Commercial Crime in Canada
(Kernaghan Webb) .................................................................. 128

James Gordley, The Philosophical Origins of Modern Contract
Doctrine
(M.H. Ogilvie) ........................................................................ 134

Philip Raworth, Legal Guide to International Business
Transactions
(Paul J. Davidson) .................................................................. 143

Carol Wilton, ed., Essays in the History of Canadian Law, Volume IV, Beyond the Law: Lawyers and Business in Canada 1830-1930
(Barry Wright) ........................................................................ 146

Craig Brown and Julio Menezes, Insurance Law in Canada
(Roger Harris) ........................................................................ 155

J. Beatson, The Use and Abuse of Unjust Enrichment
(S.M. Waddams) .................................................................... 306

Ronald C.C. Cuming and Roderick J. Wood,
Alberta Personal Property
Security Act Handbook

Ronald C.C. Cuming and Roderick J. Wood,
British Columbia Personal Property
Security Act Handbook

Derrick C. Tay, Law of Ontario Personal Property Security
(Catherine Walsh) .................................................................... 308

Meredith Memorial Lectures-1990—Conferences
Commemoratives Meredith
(Gilles Renaud) ........................................................................ 317

(Reuben A. Hasson) ................................................................ 459
Special Lectures of the Law Society of Upper Canada
1990—Fiduciary Duties
(R. Lynn Campbell) .......................................................... 466

Benjamin Wright, The Law of Electronic Commerce—EDI,
Fax and E-Mail: Technology, Proof and Liability
(Paul J. Davidson) .............................................................. 469

Bruce L. Welling, Corporate Law in Canada: The Governing
Principles, 2nd ed.
(J. Anthony Van Duzer) ...................................................... 473
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>List of Contributors</td>
<td>vii</td>
</tr>
<tr>
<td>Table of Cases</td>
<td>ix</td>
</tr>
<tr>
<td><strong>EDITORIAL</strong></td>
<td>161</td>
</tr>
<tr>
<td><strong>SYMPOSIUM: RECOGNITION OF EXTRAPROVINCIAL AND FOREIGN JUDGMENTS: THE</strong></td>
<td></td>
</tr>
<tr>
<td><strong>IMPLICATIONS OF MORGUARD INVESTMENTS LTD. V. DE SAVOYE</strong></td>
<td></td>
</tr>
<tr>
<td>Introduction</td>
<td>2</td>
</tr>
<tr>
<td><em>Jacob S. Ziegel</em></td>
<td></td>
</tr>
<tr>
<td>The Other Side of MORGUARD: New Limits on Judicial Jurisdiction</td>
<td>4</td>
</tr>
<tr>
<td><em>Vaughan Black</em></td>
<td></td>
</tr>
<tr>
<td>MORGUARD v. DE SAVOYE: Subsequent Developments</td>
<td>29</td>
</tr>
<tr>
<td><em>Elizabeth Edinger</em></td>
<td></td>
</tr>
<tr>
<td>Low Cost Legal Remedies and Market Efficiency: Looking Beyond MORGUARD</td>
<td></td>
</tr>
<tr>
<td><em>Peter Finkle and Claude Labrecque</em></td>
<td>58</td>
</tr>
<tr>
<td>The Uniform Enforcement of Canadian Judgments Act</td>
<td>87</td>
</tr>
<tr>
<td><em>John Swan</em></td>
<td></td>
</tr>
<tr>
<td>Recognition and Enforcement of Judgments Between Provinces: The</td>
<td></td>
</tr>
<tr>
<td>Constitutional Dimensions of MORGUARD INVESTMENTS LTD.</td>
<td>104</td>
</tr>
<tr>
<td><em>James A. Woods</em></td>
<td></td>
</tr>
<tr>
<td><strong>ARTICLES</strong></td>
<td></td>
</tr>
<tr>
<td>Breaking the Logjam: Proposals for Moving Beyond the Equals Approach</td>
<td>132</td>
</tr>
<tr>
<td><em>Ronald J. Daniels</em></td>
<td></td>
</tr>
<tr>
<td>The Legal Foundations of Netting Agreements For Foreign Exchange</td>
<td></td>
</tr>
<tr>
<td>Contracts</td>
<td>163</td>
</tr>
<tr>
<td><em>Bradley Crawford</em></td>
<td></td>
</tr>
<tr>
<td>The Capricious Cushion: The Implications of the Directors' and</td>
<td>182</td>
</tr>
<tr>
<td>Officers' Insurance Liability Crisis on Canadian Corporate Governance</td>
<td></td>
</tr>
<tr>
<td><em>Ronald J. Daniels and Susan M. Hutton</em></td>
<td></td>
</tr>
</tbody>
</table>
THE CANADIAN SECURITIES ADMINISTRATORS' TAKEOVER PROPOSALS: OLD WINE IN OLD BOTTLES?
Jeffrey G. Macintosh ........................................................................................................... 231

DEVELOPMENTS IN CORPORATE LIABILITY: IS THE SKY THE LIMIT?
E. David D. Tavender, Catherine M. Poyen and Donna M. Hallett ................................................................. 258

COMPULSORY DISCLOSURE OF "SOFT" INFORMATION
Neil Campbell ......................................................................................................................... 321

DROITS ET RECOURS DE LA SOCIETE EN DEFAUT EN ONTARIO:
UN APERCU GENERAL
Aline Grenon .......................................................................................................................... 363

REGULATORY OFFENCES SINCE WHOLESALE TRAVEL: THE NEED TO RE-EVALUATE SECTIONS 1, 7 AND 11(d) OF THE CHARTER
Scott Requadt .......................................................................................................................... 407

COMMENTARIES

THE ENFORCEMENT OF INTERNATIONAL COMMERCIAL AWARDS:
SCHRETER V. GASMAC INC.
Okezie Chukwumerije ......................................................................................................... 296

INSURANCE SUBROGATION
Roger Harris ............................................................................................................................ 308

SASKATOON AUCTION MART: MILK QUOTAS AND FINALLY SOME COMMERCIAL REALITY
R. Marcus Mercier .................................................................................................................. 466

BOOK REVIEWS

Benjamin Geva, The Law of Electronic Funds Transfers
(Bradley Crawford) .................................................................................................................. 158

(M.H. Ogilvie) ........................................................................................................................ 477
## TABLE OF CONTENTS

### EDITORIALS

Demise of the Department of Consumer and Corporate Affairs

*Jacob S. Ziegel* ................................................................. 1

Section 347 of the Criminal Code

*Jacob S. Ziegel* ................................................................. 321

### ARTICLES

**Countervailing Against Environmental Subsidies**  
*John J. Barceló III* ............................................................. 3

**Challenges to the Citadel: A Brief Overview of Recent Trends in Canadian Corporate Governance**  
*Ronald J. Daniels* and *Edward J. Waitzer* ....................... 23

**The Quistclose Trust in Canada**  
*Dennis R. Klinck* ................................................................. 45

**The Market for Realization of Secured Rights**  
*Martin Boodman* ................................................................. 78

**A Corporate Governance Theory of Repossessory Rights**  
*F.H. Buckley* ........................................................................ 96

**On Procurement, Protectionism and Protests: A Survey Among Canadian Procurement Officers**  
*Arie Reich* ........................................................................... 107

**Machinery Remission: Transparency and the Rule of Law**  
*Maureen Irish* ....................................................................... 161

**A Question of Privilege: Confidential Communications and the Public Accountant**  
*Ivan F. Ivankovich* ................................................................. 201

**From Monopoly Towards Competition in Telecommunications: What Role for Competition Law**  
*H.N. Janisch* ......................................................................... 239

**A Practical Guide to Section 347 of the Criminal Code — Criminal Rates of Interest**  
*Stephen Anle* ......................................................................... 323
CAPITAL MARKET EFFICIENCY ASSUMPTIONS: AN ANALYTICAL FRAMEWORK WITH AN APPLICATION TO DISCLOSURE LAWS
Mark Gillen ................................................................. 346

THE THRILLS AND SPILLS OF FREE-RIDING: INTERNATIONAL ISSUES BEFORE THE ONTARIO SECURITIES COMMISSION
Gaily Jordan ................................................................. 379

RECENT U.S. PROTECTIONIST R&D POLICIES: ARE CANADIAN MULTINATIONALS EXEMPTED?
Mark A.A. Warner and Alan M. Rugman ......................... 395

COMMENTARIES

INCONTESTIBLE BENEFITS IN THE SUPREME COURT OF CANADA: PEEL (REGIONAL MUNICIPALITY) V. CANADA; PEEL (REGIONAL MUNICIPALITY) V. ONTARIO
Mitchell McInnes ......................................................... 122

ARTICLE 25 OF THE WARSAW CONVENTION IN CANADA
Roger Harris ................................................................. 279

DIRECTOR’ LIABILITY FOR TERMINATION PAY:
BARRETTE V. CRABTREE ESTATE
Bryan Haynes ................................................................. 283

GUARDING AGAINST OVER-COMPENSATION WHEN MEASURING DAMAGES BY THE COST OF REPAIR, REPLACEMENT OF PERFORMANCE: THE ROLE OF UNDERTAKINGS
Karl J. Dore and Edward Veitch ................................. 432

SUBSTANTIVE CONSOLIDATION UNDER THE COMPANIES’ CREDITORS ARRANGEMENT ACT AND THE BANKRUPTCY AND INSOLVENCY ACT
Ellen L. Hayes ................................................................. 444

RESTRUCTURING CROWN DEBTS UNDER THE CCAA
Lawrence J. Crozier .......................................................... 453

QUEBEC COURTS NOT READY TO ENDORSE DeregULATION IN THE FINANCIAL SERVICES INDUSTRY
Alexandra Raphael and Anna Drummond ....................... 461
FLOATING CHARGES AND THE OPPSA: A BASIC MISUNDERSTANDING

Jacob S. Ziegel ................................................................. 470

BOOK REVIEWS

Frank H. Easterbrook and Daniel R. Fischel, The Economic Structure of Corporate Law
(Bruce Chapman) ............................................................. 145

Aird & Berlis, Business Acquisition Agreements, An Annotated Guide
(Elizabeth A. Ellis) ............................................................. 151

Peter Jones, Essentials of EDI Law
(Benjamin Geva) ................................................................. 155

(Kent Roach) ................................................................. 156

(David Stevens) ................................................................. 292

David Estrin et al., Business Guide to Environmental Law
(Peter D. Swan) ................................................................. 307
TABLE OF CONTENTS

List of Contributors ........................................... ix
Table of Cases .................................................... xi

ARTICLES

Is This a Cheque I See Before Me?: National Bank V.
Tardivel and the Scope of the Defence of
Non-Delivery
Bradley Crawford .............................................. 1

Canadian Bankruptcy Law: A Secured Creditor's
Heaven
R. C. C. Cumming ............................................. 17

Executory Contracts in Debt Restructuring
Ellen L. Hayes .................................................. 44

Securities Regulation and the Public Interest: Of
Politics, Procedures and Policy Statements —
Part I
Jeffrey G. MacIntosh ......................................... 77

Disgorgement of the Profits of Breach of
Contract: Property, Contract and "Efficient Breach"
Lionel D. Smith ................................................ 121

Unclogging the Equity of Redemption in
Commercial Transactions
Ernest W. Belyea ............................................... 161

Labour and Insolvency in the 1990s
Rupert H. Chartrand .......................................... 193

Must Boards Go Overboard? An Economic Analysis
of the Effects of burgeoning Statutory
Liability on the Role of Directors in Corporate
Governance
Ronald J. Daniels ........................................... 229

Recent Offerings of Equity-Linked Securities:
Unlocking the Value of an Investment
Beth DeMerchant ............................................. 259

Securities Regulation and the Public Interest: Of
Politics, Procedures, and Policy Statements —
Part II
Jeffrey G. MacIntosh ......................................... 287
CORPORATE GROUPS, CREDITOR PROTECTION AND GROSS GUARANTEES: AUSTRALIAN PERSPECTIVES
Jennifer Hill ................................................................. 321

THE CANADIAN BANKRUPTCY ACT OF 1919: PUBLIC LEGISLATION OR PRIVATE INTEREST?
Thomas G.W. Telfer ....................................................... 357

GOODBYE TO THE HAGUE RULES: WILL THE NEW CARRIAGE OF GOODS BY WATER ACT MAKE A DIFFERENCE?
Hugh M. Kindred .................................................................. 404

IS CANADIAN CONSUMER LAW DEAD?
Jacob S. Ziegel .................................................................. 417

COMMENTARIES

CHARACTERIZATION OF EQUIPMENT LEASES AND OTHER PPSA PROBLEMS: ADELAIDE CAPITAL CORP. V. INTEGRATED TRANSPORTATION FINANCE INC.
Jacob S. Ziegel .................................................................. 141

THE COMING OF AGE OF THE UNCITRAL MODEL LAW IN CANADA
Richard B. Potter .................................................................. 429

AMBIGUOUS WIRE INSTRUCTIONS: ROYAL BANK OF CANADA V. STANGL
Benjamin Geva .................................................................. 435

REGISTRATION ERRORS UNDER THE OPPSA: LAMBERT (RE)
Roderick J. Wood .................................................................. 444

To WHAT TYPES OF SALE DOES SECTION 28(1) OF THE OPPSA APPLY?
Jacob S. Ziegel .................................................................. 457

BOOK REVIEWS

Roberta Romano, Foundations of Corporate Law
(Roderick J. Wood) .................................................................. 154

Ross Cranston and Roy Goode, Eds., Commercial and Consumer Law, National and International Dimensions
(M.H. Ogilvie) .................................................................. 315

Donald R. Cameron, Environmental Concerns in Business Transactions: Avoiding the Risks
(Martin L. Chamberlain) .......................................................... 318
Geoffrey Thompson, Moira L. McConnell and Lynne B. Heustis, *Environmental Law and Business in Canada*  
(*Marcia Valiante*) .......................................................... 467

Mark R. Gillen, *Securities Law in Canada*  
(*Mary G. Condon*) ............................................................. 472

Jacob S. Ziegel and David L. Denomme, *The Ontario Personal Property Security Act: Commentary and Analysis*  
(*Arthur L. Close*) .............................................................. 477
# TABLE OF CONTENTS

**EDITORIAL** ................................................................. 161

**ARTICLES**

*Wolfe D. Goodman* ............................................. 1

**The Constitutionalization of the Conflict of Laws**
*Elizabeth Edinger* ............................................. 38

**Proprietary Claims in the Law of Restitution**
*J. Beatson* .......................................................... 66

**Proprietary Relief: Two Privy Council Decisions — A Canadian Perspective**
*Donovan Waters* .................................................. 90

**The Reform of Judgment Enforcement Law in Alberta**
*Roderick J. Wood* ................................................ 110

**Financial Innovation and Regulatory Trepidation: Swaps and the OSC**
*Drew MacIntyre* .................................................. 163

**The New Morality in Quebec Company Law: Directors’ Liability After the Civil Code of Quebec**
*Cally Jordan* ....................................................... 216

**Symposium: Recent Developments Affecting the Canadian Economic Union**

**The Internal Trade Agreement: Furthering the Canadian Economic Disunion?**
*David Cohen* ....................................................... 257

**Courting Our Way to Economic Integration: Judicial Review and Canadian Economic Union**
*Katherine Swinton* ............................................. 280

**Economics, Nationalism, and Reason: The Limits of Economic Argument in the Case Against Quebec Secession**
*Robert Howse* ................................................... 305

**Section 91 (Settlements) of the Bankruptcy and Insolvency Act: A Mutated Monster**
*R. C. C. Cuming* .................................................. 235
THE NATURE, SOURCE AND EXTENT OF PARTICIPATION RIGHTS IN MUTUAL INSURANCE COMPANIES
Bradley Crawford, Q. C. ........................................................... 337

THE GENERAL AGREEMENT: FROM TARIFFS AND TRADE TO SUSTAINABLE DEVELOPMENT
Mark Anthony Drumbl............................................................ 357

MORE DIRECT DIRECTOR RESPONSIBILITY: MUCH ADO ABOUT . . . WHAT?
H.J. Glasbeek ............................................................... 416

COMMENTARIES

THE BRITISH COLUMBIA BUYERS LIEN - A NEW CONSUMER REMEDY
Arthur L. Close ............................................................... 127

WINNIPEG CONDOMINIUM CORPORATION No. 36 V. BIRD CONSTRUCTION CO.: WHO NEEDS CONTRACT ANYMORE?
Bruce Feldthusen ........................................................... 143

TRACING THE PROCEEDS OF COLLATERAL UNDER THE PSA: FLEXICOIL LTD. V. KINDERSLEY DISTRICT CREDIT UNION LTD.
Lionel D. Smith ............................................................. 460

ONTARIO REPEALS SECTION 5 OF THE SALE OF GOODS ACT
Jacob S. Ziegel .............................................................. 478

BOOK REVIEWS

MARK ROSE, Authors and Owners
(William Hayhurst) ............................................................. 156

DOUGLAS G. BAIRD, THE ELEMENTS OF BANKRUPTCY
(Roderick J. Wood) ........................................................... 333
## TABLE OF CONTENTS

**SYMPOSIUM: CORPORATE GOVERNANCE IN TRANSITION**

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Introduction</td>
<td>1</td>
</tr>
<tr>
<td>Canadian Corporate Governance Conference — List of Participants</td>
<td>9</td>
</tr>
<tr>
<td>Too Close for Comfort: The Role of the Closely Held Public Corporation in the Canadian Economy and the Implications for Public Policy</td>
<td>11</td>
</tr>
<tr>
<td><em>Ronald J. Daniels and Paul Halpern</em></td>
<td></td>
</tr>
<tr>
<td>On the Economics of Concentrated Efficiency</td>
<td>63</td>
</tr>
<tr>
<td><em>Randall K. Morck</em></td>
<td></td>
</tr>
<tr>
<td>Concentrated Control, Institutional Investors and Shareholder Responsibilities</td>
<td>86</td>
</tr>
<tr>
<td><em>Robert Yalden</em></td>
<td></td>
</tr>
<tr>
<td>Debt Financing, Corporate Decision Making and Security Design</td>
<td>93</td>
</tr>
<tr>
<td><em>George G. Triantis</em></td>
<td></td>
</tr>
<tr>
<td>Organizational Economics and Directors' Control</td>
<td>106</td>
</tr>
<tr>
<td><em>Edwin H. Neave</em></td>
<td></td>
</tr>
<tr>
<td>Corporate Governance — Alternatives for Decision Making</td>
<td>123</td>
</tr>
<tr>
<td><em>Robert D. Brown</em></td>
<td></td>
</tr>
<tr>
<td>Comments of A Business Lawyer on Rules Governing Boards of Canadian Public Corporations</td>
<td>127</td>
</tr>
<tr>
<td><em>James C. Baillie</em></td>
<td></td>
</tr>
<tr>
<td>The Evolving Board: The Mechanisms of Board Oversight</td>
<td>140</td>
</tr>
<tr>
<td><em>Michael A. Mackenzie</em></td>
<td></td>
</tr>
<tr>
<td>Institutional Shareholders and Corporate Governance</td>
<td>145</td>
</tr>
<tr>
<td><em>Jeffrey MacIntosh</em></td>
<td></td>
</tr>
<tr>
<td>Market Shift — The Role of Institutional Investors in Corporate Governance</td>
<td>189</td>
</tr>
<tr>
<td><em>Kathryn E. Montgomery</em></td>
<td></td>
</tr>
<tr>
<td>Corporate Governance as Ideology</td>
<td>202</td>
</tr>
<tr>
<td><em>Thomas J. Courchene</em></td>
<td></td>
</tr>
<tr>
<td>Corporate Stakeholders, Choice Procedures and Committees</td>
<td>211</td>
</tr>
<tr>
<td><em>Bruce Chapman</em></td>
<td></td>
</tr>
<tr>
<td>Comments on “Must Boards Go Overboard?”</td>
<td>221</td>
</tr>
<tr>
<td><em>R. Howse</em></td>
<td></td>
</tr>
</tbody>
</table>
Concentration of Ownership and the Composition of the Board: An Examination of Canadian Publicly-Listed Corporations
Chris Roth ................................................................. 226

ARTICLES
Litigation and the Competition Act: Procuring Anti-Competitive Effects Through Public Processes
Paul Michell ............................................................. 244
The Prospects for the Efficiency Defence
Donald McFetridge .................................................... 321
The Bought Deal in Canada
Gordon Du Val .......................................................... 358
Major Differences Between PPSA Legislation and Security Over Movables in Quebec Under the New Civil Code
Aline Grenon ............................................................... 391
The Legality of International Gray Marketing: A Comparison of the Position in the United States, Canada and the European Union
Jacques Picard ............................................................ 422
The Directive on Unfair Terms of the European Union
M. H. Ogilvie ................................................................. 439

COMMENTARIES
Settlements Under the Bankruptcy and Insolvency Act and the Ramgotra Case
Lisa H. Kerbel Caplan ................................................... 298
New Developments in Bank's Duty of Confidentiality
Edward K. Rowan-Legg .................................................. 455

BOOK REVIEWS
Donovan Waters, ed., Equity, Fiduciaries and Trusts 1993 (Ellen E. Hodgson) ...................................................... 303
Kelly R. Palmer, The Law of Set-Off in Canada (Dennis R. Klink) ................................................................. 311
Lawrence Collins, Essays in International Litigation and the Conflict of Laws (Vaughan Black) ................................ 462
M.A. Springman, G. Stewart, M. MacNaughton, Fraudulent Conveyances and Preferences (R. C. C. Cuming) ........................................ 464
Robert A. Klotz, Bankruptcy and Family Law (Paul Horwitz) ................................................................. 472
Errata

"Concentrated Control, Institutional Investors and Shareholder Responsibilities"

Robert Yalden

Page 87, Line 3: Delete the words "will have to".
Page 87, Line 9: Move the word "repeated calls from academics and practitioners" to line 8 after the words "In the face of".
Page 89, Line 19: Change the word "shareholder" to "shareholder's".
Page 89, Line 22: Delete the semi-colon in the line and add the word "to" before the word "consider". Add the word "what" after the word "about".
Page 92, Line 14: Delete the words "should be".

"Institutional Shareholders and Corporate Governance"

Jeffrey Macintosh

The author would like to thank Jo-Anne Mateor for her expert research assistance.
TABLE OF CONTENTS

EDITORIAL .................................................................................................................. 321

ARTICLES
Public Accountability in an Age of Contracting Out
Evan Atwood and Michael J. Trebilcock ............................................................ 1

Unification and Harmonization of Private Law
E. Allan Farnsworth .............................................................................................. 48

Claims for Harmonization: A Theoretical Framework
David W. Leebron .................................................................................................. 63

Canadian Bankruptcy Reform, Bill C-109, and Troubling Asymmetries
Jacob S. Ziegel ....................................................................................................... 108

Investments in Segregated Funds: Their Protection From Creditors
Colin H.H. McNairn ................................................................................................. 161

SYMPOSIUM: HOW FAR IS ARTICLE 9 OF THE UNIFORM COMMERCIAL CODE EXPORTABLE?

Personal Property Security Law Reform: The Australian Experience To Date
Anthony Duggan .................................................................................................... 176

How Far is Article 9 Exportable? The English Experience
Michael G. Bridge .................................................................................................. 196

Canadian Perspectives on “How Far is Article 9 Exportable?”
Jacob S. Ziegel ....................................................................................................... 226

How Far is Article 9 of the Uniform Commercial Code Exportable? A Return to Sources?
Martin Boodoo and Roderick Macdonald ......................................................... 249

Exporting UCC Article 9 to an International Convention: The Local Law Conundrum
Charles W. Mooney, Jr. ......................................................................................... 278

Playing the Market: An Exploration of Stockbrokers’ Liability for Clients’ Losses
Peter C. Wardle ..................................................................................................... 323
No Special Tenderness for Sexually Contracted Debt?  
Undue Influence and the Lending Banker  
M.H. Ogilvie ............................................................................................................. 365

The Agent Bank’s Possible Fiduciary Liability to Syndicate  
Banks  
Agasha Mugasha ....................................................................................................... 403

Atlas Unchartered: When Unconscionability ’Says it All’  
Vern W DaRe ............................................................................................................ 426

COMMENTARIES

Registration Requirements and Registration Errors under the APPSA  
Roderick J. Wood ...................................................................................................... 132

Special Declarations of Interest and the Warsaw Convention  
Roger Harris .............................................................................................................. 291

Equipment Leases and the Bankruptcy and Insolvency Act:  
Re Giffen  
Jacob S. Ziegel ........................................................................................................ 296

Lisa H. Kerbel Caplan ............................................................................................. 458

Fiduciary Duties and Equitable Compensation  
S.M. Waddams ......................................................................................................... 466

CORRESPONDENCE ................................................................................................. 306

BOOK REVIEWS

Christine Boyle and David Percy, eds. Contracts: Cases and Commentaries  
(Richard F. Devlin) ................................................................................................. 144

Carol M. Rose, Property and Persuasion: Essays on the History, Theory, and Rhetoric of Ownership  
(Bruce Ziff) .............................................................................................................. 152

C.R.B. Dunlop, Creditor-Debtor Law in Canada  
(George R. Stewart) ............................................................................................... 309

Mark J. Roe, Strong Managers, Weak Owners  
(John L. Howard) .................................................................................................... 313
Eugene Meehan, Jennifer E. Babe, David R. Byers, Thomas M. Conway, Barbara Kincaid and William J. Simpson, *Creditors' Remedies in Ontario*
Lyman R. Robinson, *British Columbia Debtor-Creditor Law and Precedents* *(John R. Williamson)*

Shaun Hargreaves Heap and Yanis Varoufakis, *Game Theory: A Critical Introduction*
David M. Kreps, *Game Theory and Economic Modelling* *(Norman Siebrasse)*
# TABLE OF CONTENTS

## INTRODUCTION

The New Canadian-U.S. Litigation Dimensions  
*Jacob S. Ziegel*  
321

## ARTICLES

The Payment Clearing and Settlement Act, 1996  
*Bradley Crawford*  
1

Toward a New Canadian Approach to Agreements Between Competitors  
*Tim Kennish* and *Thomas W. Ross*  
22

Corporate Governance in the United Kingdom: Lessons for Canada  
*Brian R. Cheffins*  
69

Prometheus Unbound: Fiduciary Obligation in the Supreme Court of Canada  
*John D. McCamus*  
107

An Incomplete Contracting Perspective on Fiduciary Duty  
*Gillian K. Hadfield*  
141

Prometheus Unbound: A Practitioner’s Perspective  
*L. David Roebuck*  
155

Conversion of Unissued Cheques and the Fictitious or Non-Existing Payee — *BOMA v. CIBC*  
*Benjamin Gova*  
177

GATT Article XXI, Helms-Burton and the Continuing Abuse of the National Security Exception  
*Riya Dattu* and *John Boscariol*  
198

Canada’s Foreign Extraterritorial Measures Act: Using Canadian Criminal Sanctions to Block U.S. Anti-Cuban Legislation  
*Andrew C. Dekany*  
210

Resolving the Conflict of Lien Claims and Contractor’s Right of Set-off: *Thunderbrick v. City of Yorkton*  
*Patrick N. McDonald*  
221

Privity of Bailment — Liability of Sub-Bailee to Owner of Goods: *The Pioneer Container*  
*Nigel Bankes* and *Nicholas Rufferty*  
245

Canadian Experience with, and Perceptions of, Litigating in the United States  
*Colin L. Campbell, Q.C.*  
324

Litigating in the United States: The Inco/Diamond Fields/Exxiem Experience  
*Joseph M. Steiner*  
333
Aspects of Class Action Securities Litigation in the United States
Steven Sharpe and James Reid ................................................................. 348

The Enforcement of Foreign Judgments: Morguard Goes Forth into the World
Joost Blom ........................................................................................................ 373

Recognition of Foreign Judgments in Quebec
H. Patrick Glenn ............................................................................................... 404

The Role of ADR Clauses in Avoiding Foreign Litigation Entanglements
Richard B. Potter, Q.C. ................................................................................... 415

Mareva Injunctions in Canada: Territorial Aspects
Vaughan Black and Edward Babin ................................................................. 430

COMMENTARIES
Section 224(1.2) of the Income Tax Act in the Supreme Court of Canada
Jacob S. Ziegel .................................................................................................. 170

British Columbia's New Class Action Legislation
Arthur L. Close, Q.C. ....................................................................................... 271

Comments on Black and Babin, Mareva Injunctions in Canada: Territorial Aspects
Elizabeth Edinger ............................................................................................ 477

BOOK REVIEWS
Keeping the Gates to Corporate Reorganization: Judicial Activism under the BIA and CCAA
George G. Triantis .......................................................................................... 279

Roberta Romano, The Genius of American Corporate Law
(Mark R. Gillen) .............................................................................................. 294

Ronald J. Daniels and Randall Morck, eds. Corporate Decision-Making in Canada
(Stéphane Rousseau) ...................................................................................... 310

ERRATA
"Conversion of Unissued Cheques and the Fictitious or Non-Existing Payee"
Benjamin Geva

Page 180, Line 16: For "causes of actions", please read "causes of action".
Page 196, Lines 11, 12 and 13: Delete the words "is that it" from the sentence, so that it now reads: "It is clear, then, that the current interpretation of BEA s. 20(5), as reflected in Falconbridge's summary, is a less than perfect tool in allocating internal fraud losses to the drawer."
# TABLE OF CONTENTS

**EDITORIAL** ................................................................................................................. 321

**ARTICLES**

Reforming the Bank Act: Regulation, Public Policy and the Market  
*G. Frank Mathewson and Neil C. Quigley* ................................................................. 1

The Nielsen Case: Was Competition Restored?  
On the Anti-Competitive Effects of a Partial Enforcement of Competition Laws.  
*Micahel S. Gal* ........................................................................................................... 17

When Commerce Meets the Criminal Law:  
Constructing the Offence of Misappropriation Contrary to Direction (S. 332)  
*Owen B. Griffiths* ...................................................................................................... 58

Ownership and Control in the Canadian Telecommunications Industry:  
The Case of Strategic Alliances  
*Gerald Heckman* ....................................................................................................... 97

**SYMPOSIUM: REVISION OF THE FEDERAL INTEREST ACT AND HARMONIZATION OF FEDERAL-PROVINCIAL CONSUMER CREDIT DISCLOSURE LEGISLATION**

The Federal Interest Act: It Sure is Broke, But is it Worth Fixin’?  
*Mary Anne Waldron* .................................................................................................. 161

Annual Percentage Rate Disclosure in Canadian Cost of Credit Disclosure Laws  
*Richard H. Bowes* ...................................................................................................... 183

Product Flexibility and the Cost of Credit: An Australian Perspective  
*Elizabeth V. Lanyon* .................................................................................................. 219

Revisiting Old Truth-in-Lending Battles: A Comment  
*Jacob S. Ziegel* ........................................................................................................... 243

1997 Federal Financial Services Review: Perspectives of the Canadian Life and Health Insurance Industry  
*J-P Bernier* .................................................................................................................... 251

The Treatment of Receivers in the Personal Property Security Acts: Conceptual and Practical Implications  
*Tamara M. Buckwold* .................................................................................................. 277

Securitization of Divisible Interests: A Canadian Response to  
Steven Schwarcz  
*Lara Friedlander* ....................................................................................................... 323

Jurisdiction on the Net: Defining Place in Cyberspace  
*Chris Gosnell* ............................................................................................................ 344
Learning from the Delaware Experience: A Comparison of the Canada Business Corporations Act and the Delaware General Corporation Law
Kenneth G. Ottenbreit and John E. Walker .......................................................... 364

Lay Knowledge of Business Law in Canada
Peter Bowal and Irene Wanke ............................................................................. 396

Ships at Sea, International Insolvencies, and Divided Courts
Jacob S. Ziegel..................................................................................................... 417

COMMENTARIES

Priority of Crown Claims in Insolvency:
Kevin Davis........................................................................................................ 145

The Reasonable Expectation of Unfair Exclusions in Insurance Contracts
Marvin Baer ........................................................................................................ 438

Investment Advice, Professional Liability and the Certainty of Damages
in the Civil Law: An Analysis of the Belanger and Bazinet Cases
Alain Olivier....................................................................................................... 453

BOOK REVIEWS

Ziegel, Daniels, MacIntosh and Johnston, Cases and Materials on Partnership and Canadian Business Corporations
Buckley, Gillen and Yalden, Corporations: Principles and Policies
Welling, Rayner, Smith and Jordan, Canadian Corporate Law:
Cases & Materials
(Roderick J. Wood) ......................................................................................... 470
# TABLE OF CONTENTS

**In Memoriam** L.C.B. Gower, 1913-1997 ........................................................................ 161

**ARTICLES**

Restructuring in the Canadian Financial Services Sector  
*James C. Baillie* ........................................................................................................ 1

*Brian R. Cheffins* ..................................................................................................... 20

Some Comments on the Impact of the Michaud Case  
*Raymonde Crête* ...................................................................................................... 73

The Valuation of Chances  
*S.M. Waddams* ....................................................................................................... 86

Not a Chance: Comments on Waddams; The Valuation of Chances  
*Vaughan Black* ........................................................................................................ 96

Are Poison Pills Illegal?  
*Stephen Wishart* .................................................................................................. 105

A Sui Generis Right to Data? A Canadian Position  
*David Fewer* ......................................................................................................... 165

Fraud in the Canadian Courts: An Unwarranted Expansion of the Scope of the Criminal Sanction  
*Kevin Davie and Julian Roy* .................................................................................. 210

Culpable Silence: Liability for Non-Disclosure in the Contractual Arena  
*Shannon Kathleen O'Byrne* .................................................................................... 239

Black Bay Street Lawyers and Other Oxymora  
*Michael St. Patrick Baxter* .................................................................................... 267

The Efficient Resolution of Business Disputes  
*Leon E. Trakman* ................................................................................................... 321

Impact of the Adoption of the Model Law in Canada: Creating a New Environment for International Arbitration  
*Ljiljana Biukovic* .................................................................................................... 376

Commercial Morality and Passing-off: A Model for a Modern Tott  
*James C. MacInnis* .................................................................................................. 415

**COMMENTARIES**

Uniform Law Conference of Canada: Recent Developments on Jurisdiction and Judgment Enforcement  
*Arthur L. Close, Q.C.* ............................................................................................. 140
Regulated Licences and the OPPSA: No End in Sight to the Judicial Imbroglio

Jacob S. Ziegel

284

Shell Canada Limited: A New Test of Economic Substance over Form

John R. Owen

449

BOOK REVIEWS

R, John Cameron et al., eds. Personal Property

Security Opinion Report: Commentary and Illustrative Opinion

(Margaret E. Grottenthaler)

155

Corporate Finance — Past, Present and Futures: A Review of Three Recent Corporate Finance Books

Christopher C. Nicholls

292

J. Anthony VanDuzer, The Law of Partnerships and Corporations

(Michael E. Deturbide)

307

Bruce Ziff, Principles of Property Law, 2nd ed.

(Marjorie Benson, Marie Ann Bowden and Dwight Newman)

310

George S. Takach, Computer Law

(David L. Johnston)

314

James D. Cox, Thomas Lee Hazen and F. Hodge O'Neal, Corporations

(Richard W Bauman)

463
# TABLE OF CONTENTS

**EDITORIALS**

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>173, 333</td>
<td></td>
</tr>
</tbody>
</table>

**SYMPOSIUM: THE LEAKY CONDO PROBLEM ON THE WEST COAST**

- How T-Rex Ate Vancouver; The Leaky Condo Problem  
  *Mary Anne Waldron* ........................................ 335
- Defects in Residential Construction: Do Financing Mechanisms Play a Part?  
  *Brian Bucknell* ............................................ 368
- The Insurance Challenge of Mandatory Home Warranties:  
  A Comment on Mary Anne Waldron's Article  
  *Norman Siebrasse* ......................................... 380

**ARTICLES**

- Constructive Thinking? The Supreme Court's Extension of Constructive Trusts to Banks on the Basis of Constructive Notice of a Breach of Trust by a Customer  
  *Bradley Crawford, Q.C.* ................................... 1
- European Monetary Union: Implications for Canadian Corporations and Issuers  
  *Peter S. Noble* ............................................ 25
- Enforcement against the Assets of a Business Trust by an Unsecured Creditor  
  *David A. Steele and Andrew G. Spence* .................... 72
- Referral to Arbitration under Article 8 of the UNCITRAL Model Law: The Canadian Approach  
  *Shelley Kierstead* ......................................... 98
- The Graham Decision Revisited: The Fading Promise of the Joint Venture as a Distinct Legal Concept  
  *Melanie Shishler* .......................................... 118
- Contracting for Health Care Services in the Public Sector  
  *Colleen M. Flood* ......................................... 175
- Policy and Predictability: Pure Economic Loss in the Supreme Court of Canada  
  *Earl A. Cherniak, Q.C. and Elissa How* ................... 209
  *Jack L. Carr* ............................................. 235
- The Consumer Implications of the MacKay Report  
  *James R. Savary* .......................................... 248
- Regulating Financial Services: Realigning Federal-Provincial Responsibilities  
  *David A. Brown, Q.C.* .................................... 258
Proposed Amendments to the Ontario Securities Act:
An Open Letter to the Ontario Securities Commission

Philip Anisman ................................................................. 272

L'harmonisation du droit des virements bancaires dans les pays d'Aléna: Surmonter le défi de l'Internet
Marc Lacoursiere ........................................................... 389

Post-Bankruptcy Remedies of Secured Creditors: As Good as it Gets
Tamara M. Buckwold ...................................................... 436

COMMENTARIES

Unlawful Taxes and the Supreme Court's Decision in Eurig
Wolfe D. Goodman, Q.C. ....................................................... 291

Freedom of Contract and the Right to Claim Proceeds
under the OPPSA
Jacob S. Ziegel .................................................................. 299

Tortious Liability for the Actions of a Court-Appointed Receiver?
Vern W. DaRe .................................................................. 469

BOOK REVIEWS

David Johnston and Kathleen Doyle Rockwell,
Canadian Securities Regulation
(Christopher C. Nicholls) ......................................................... 166

Jacob S. Ziegel and David E. Baird, eds., Case Studies in Recent
Canadian Insolvency Reorganizations
(Daniel D. Prentice) ................................................................. 309

(Stephen G.A. Pitel) ................................................................. 314

Jacob S. Ziegel, ed., New Developments in International
Commercial and Consumer Law
(M.H. Ogilvie) ................................................................ 323

S.R. Derham, Set-Off 2nd ed.
Sheelagh McCracken, The Banker's Remedy of Set-Off 2nd ed.
(M.H Ogilvie) ................................................................ 327

Marjorie L. Benson and Marie Ann Bowden, Understanding
Property: A Guide to Canada's Property Law
(Diana Ginn) ...................................................................... 330

Brian R. Cheffins, Company Law: Theory, Structure and Operation
(Robert Yalden) .................................................................. 479

ERRATUM
"Freedom of Contract and the Right to Claim Proceeds under the OPPSA"
Jacob S. Ziegel

Page 304, second line from the bottom of the page:
Delete the first "not" in the phrase "if not they have not been overlooked", so that the sentence now reads:
"Nevertheless, a number of points are overlooked in his judgment or, if they have not been overlooked, they at least warrant some discussion."
# TABLE OF CONTENTS

## SYMPOSIUM: LEGAL ASPECTS OF THE INTERNET REVOLUTION

**Internet Law: Dynamics, Themes and Skill Sets**  
*George S. Takach*  

**Solving Legal Issues in Electronic Commerce**  
*John D. Gregory*  

**Consumer Protection Issues in Internet Commerce**  
*David Walse*  

## ARTICLES

**The Bre-X Hoax: A South East Asian Bubble**  
*Christopher C. Nicholls*  

**Lessons of Bre-X (?): Some Comments**  
*Jeffrey G. MacIntosh*  

**Recent Developments in Canadian Competition Law**  
*Anthony F. Baldanza and Angela Di Padova*  

**Corporate Agents' Liability in Tort: A Comment on ADGA Systems International Ltd. v. Valcom Ltd.**  
*Colin Feasby*  

**Neuman and Beyond: Income Splitting, Tax Avoidance, and Statutory Interpretation in the Supreme Court of Canada**  
*David G. Duff*  

**Corporate Governance Reform: Recognition of Workers' Equitable Investments in the Firm**  
*Janis Sarra*  

**China and the WTO: Tensions between Globalized Liberalism and Local Culture**  
*Pitman B. Potter*  

**From Relationships to Rules: A Comment on China's Accession to the WTO in Response to Pitman Potter's Article "China and the WTO: Tensions between Globalized Liberalism and Local Culture"**  
*Moir McConnell*  

## COMMENTARIES

**Post-Bankruptcy Remedies of Secured Creditors: Some Comments on Professor Buckwold's Article**  
*Jacob S. Ziegel*  

**Tenders for Construction Contracts**  
*S.M. Waddams*  

**Canada's First Decision on the International Sales Convention**  
*Jacob S. Ziegel*  

**Resurrecting the "Rule of Thumb": Minott v. O'Shanter Development Co.**  
*Paul D. Hayward*
BOOK REVIEWS

W.I. Gough, *Company Charges*
   Sarah Worthington, *Proprietary Interests in Commercial Transactions*  
   (Catherine Walsh) ................................................................. 157

Wilfred M. Estey, *Legal Opinions in Commercial Transactions*  
   (Michael Disney) ........................................................................ 326

   (Christopher C. Nicholls) ............................................................ 497

Karen Gross, *Failure and Forgiveness: Rebalancing the Bankruptcy System*  
   (Tamara Buckwold) ...................................................................... 504
# TABLE OF CONTENTS

**EDITORIAL** .............................................................................................................................. 1

**ARTICLES**

Pre-Incorporation Contracts: The Fog is Finally Lifting  
*Wilfred M. Estey* ......................................................................................................................... 3

Damages for Market Losses  
*Nicholas Rafferty* ....................................................................................................................... 38

Tracing in Bank Accounts: The Lowest Intermediate Balance Rule on Trial  
*Lionel Smith* ................................................................................................................................. 75

Environmental Regulation as Expropriation: The Case of NAFTA's Chapter 11  
*Julie A. Soloway* .......................................................................................................................... 92

Electricity Restructuring: The Ontario Experience  
*Michael J. Trebilcock and Ron Daniels* .................................................................................... 161

Partial Copyright Assignments: Safeguarding Software Licensees against the Bankruptcy of Licensors  
*E. Richard Gold* .......................................................................................................................... 193

Misappropriation of Personality  
*Susan H. Abramovich* ................................................................................................................. 230

The Yoke of Canadian Egg: Corporate Standing under the Charter  
*Andrew Bernstein* .......................................................................................................................... 247

Sale of Substantially all the Assets of a Corporation  
*Mark Gannage* ............................................................................................................................ 264

Debtor-in-Possession Financing in Canada: Current Law and a Preferred Approach  
*Micheal B. Rotsztain* .................................................................................................................... 283

Insecure Transactions: Deficiencies in the Treatment of Technology Licences in Commercial Transactions involving Secured Debt or Bankruptcy  
*Wendy A. Adams and Gabor G.S. Takach* .................................................................................. 321

Lessening of Competition in Mergers under the Competition Act: Unilateral and Interdependence Effects  
*Thomas W. Ross and Andy Bazillaskas* ....................................................................................... 373

**COMMENTARIES**

Post-Bankruptcy Remedies of Secured Creditors: A Reply to Professor Ziegel  
*Tamara M. Buckwold* .................................................................................................................... 128
Post-Bankruptcy Remedies of Secured Creditors:
A Brief Rejoinder

Jacob S. Ziegel ................................................................. 144

Financing Consumer Bankruptcies, Re Berthelette,
and Public Policy

Jacob S. Ziegel .................................................................. 294

Braintech, Inc. v. Kostiuk: Adjudicatory Jurisdiction
for Internet Torts

Vaughan Black and Mike Deturbide ................................. 427

Is There an Oppression Remedy Showstopper?: O’Neill v. Phillips

Jason W. Neyers .................................................................. 447

The Certainty of Uncertainty in Mortgage Power of Sale Proceedings:
Logozzo v. Toronto-Dominion Bank

Paul M. Perell ................................................................. 465

The Holt Cargo Litigation in the Federal Court of Appeal

Jacob S. Ziegel .................................................................. 476

BOOK REVIEWS

Harvey McGregor, McGregor on Damages, 16th ed.
(Vaughan Black) ................................................................. 154

Frank Bennett, Bennett on Receiverships, 2nd ed.
(Roderick J. Wood) ............................................................. 314

ERRATUM

"Financing Consumer Bankruptcies,
Re Berthelette, and Public Policy"

Jacob S. Ziegel

Page 308: Replace references to "Official Trustee"
with "Official Receiver"
Canadian Business Law Journal v.34 (2001)

EDITORIAL........................................................................................................................................... 1

ARTICLES

Limited Liability Professional Partnerships
Richard H. Bowes.......................................................................................................................... 3

Limited Liability Partnerships and the Economics of Mandatory Insurance
Kevin E. Davis...................................................................................................................................... 51

The Case for Limited Liability Partnerships
Ronald C. Brown, Q.C.................................................................................................................... 57

The Nature and Definition of Federal Security Interests
Roderick J. Wood.................................................................................................................................. 65

The Direct Injury Rule in Canada: An Indirect Analysis
Jason Potts............................................................................................................................................ 114

Does Duality Result in a Restraint of Competition in the U.S. Credit Card Product and Services Market?
Glenn A. Gottselig.................................................................................................................................. 157

Economic Duress in Contract: Departure, Detour or Dead-End?
M.H. Ogilvie.......................................................................................................................................... 194

Extraterritoriality and the Supreme Court's Assertion of the Economic Constitution
Steven M. Pepa....................................................................................................................................... 231

Dimitry Anastakis.................................................................................................................................. 313

Deductibility of Fines and Penalties under the Income Tax Act:
Public Policy, Statutory Interpretation and the Scheme of the Act in 65302 B.C. Ltd.
David G. Duff....................................................................................................................................... 336

Academics, Equity and Unjust Enrichment
Margaret Halliwell.................................................................................................................................. 391

Lessons about Comfort Letters
Paul M. Perell........................................................................................................................................... 421

Regulating Legal Competence
Michael Trebilcock............................................................................................................................... 444

COMMENTARIES

Hard Cases, Equity and the PPSA
Anthony J. Duggan............................................................................................................................. 129
Creation and Termination of Unanimous Shareholder Agreements: *Sportscope Television Network Ltd. v. Shaw Communications Inc.*

Wayne D. Gray ................................................................. 146


Jacob S. Ziegel ................................................................. 460

**BOOK REVIEWS**


(Sarah Worthington) ............................................................ 269

Margaret E. Grottenthaler and Philip J. Henderson,

*The Law of Financial Derivatives in Canada*

(Christopher C. Nicholls) ........................................................ 288


(Kenneth C. Morlock) ............................................................ 301

Lord Goff of Chieveley and Gareth Jones, *The Law of Restitution, 5th ed*

(Stephen G.A. Pitel) ............................................................. 306

John Lowry and Philip Rawlings, *Insurance Law: Doctrines and Principles*

(Reuben Hasson) ................................................................. 471
# TABLE OF CONTENTS

## ARTICLES

### WORKSHOP PRESENTATIONS: DIRECTORS’ AND OFFICERS’ LIABILITY

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Liability of Corporate Officers and Directors to Third Parties</td>
<td>1</td>
</tr>
<tr>
<td><em>Christopher C. Nicholls</em></td>
<td></td>
</tr>
<tr>
<td>Unfinished Business: An Analysis of Stones Unturned in</td>
<td>39</td>
</tr>
<tr>
<td><em>ADGA Systems International v. Valcom Ltd.</em></td>
<td></td>
</tr>
<tr>
<td><em>Edward M. Iacobucci</em></td>
<td></td>
</tr>
<tr>
<td>The Corporate Veil Lifted: Director and Officer Liability to Third</td>
<td>55</td>
</tr>
<tr>
<td>Parties</td>
<td></td>
</tr>
<tr>
<td><em>Janis Sarra</em></td>
<td></td>
</tr>
<tr>
<td>Gain-Based Relief for Breach of Contract: <em>Attorney General v. Blake</em></td>
<td>72</td>
</tr>
<tr>
<td><em>Mitchell McInnes</em></td>
<td></td>
</tr>
<tr>
<td>Loosening the Privity Fetters: Should Common Law</td>
<td>173</td>
</tr>
<tr>
<td>Canada Recognize Contracts for the Benefit of Third Parties?</td>
<td></td>
</tr>
<tr>
<td><em>John D. McCamus</em></td>
<td></td>
</tr>
<tr>
<td>Third-Party Beneficiaries in Quebec Civil Law</td>
<td>216</td>
</tr>
<tr>
<td><em>Martin Goodman</em></td>
<td></td>
</tr>
<tr>
<td>Internet-Based Securities Offerings by Small and</td>
<td>226</td>
</tr>
<tr>
<td>Medium-Sized Enterprises: Attractions and Challenges</td>
<td></td>
</tr>
<tr>
<td><em>Stéphane Rousseau</em></td>
<td></td>
</tr>
<tr>
<td>A Comment on “Internet-Based Securities Offerings by Small</td>
<td>274</td>
</tr>
<tr>
<td>and Medium-Sized Enterprises: Attractions and Challenges”</td>
<td></td>
</tr>
<tr>
<td><em>Anita Indira Anand</em></td>
<td></td>
</tr>
<tr>
<td>The Canadian Law of Post-Dated Cheques: Indeterminate</td>
<td>280</td>
</tr>
<tr>
<td>Rules, Unpredictable Results</td>
<td></td>
</tr>
<tr>
<td><em>Jonnette Watson Hamilton</em></td>
<td></td>
</tr>
</tbody>
</table>

## ALTERNATIVE CREDIT MARKET: PANEL DISCUSSION

<table>
<thead>
<tr>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>The Alternative Consumer Credit Market and Financial Sector:</td>
<td>325</td>
</tr>
<tr>
<td>Regulatory Issues and Approaches</td>
<td></td>
</tr>
<tr>
<td><em>Iain Ramsay</em></td>
<td></td>
</tr>
<tr>
<td>Access to Credit in the Alternative Consumer Credit Market:</td>
<td>402</td>
</tr>
<tr>
<td>An Australian Comparison</td>
<td></td>
</tr>
<tr>
<td><em>Tony Duggan</em></td>
<td></td>
</tr>
<tr>
<td>Credit in the Alternative Financial Sector: The U.S. Experience</td>
<td>409</td>
</tr>
<tr>
<td><em>Kathleen E. Keest</em></td>
<td></td>
</tr>
<tr>
<td>The Legal Relationship between Online Service Providers and Users</td>
<td>419</td>
</tr>
<tr>
<td><em>Ian R. Kerr</em></td>
<td></td>
</tr>
</tbody>
</table>
Corporate Groups and Canada-U.S. Crossborder Insolvencies:
Contrasting Judicial Visions
Jacob S. Ziegel ........................................................................................................ 459

COMMENTARIES

The Tobacco Damages and Health Care Costs Recovery Act:
 JTI-MacDonald Corp. v. British Columbia (Attorney General)
 Elizabeth Edinger ......................................................................................................... 95

Unwritten Constitutionalism in Canada: Where Do Things Stand?
 Sujit Choudhry ........................................................................................................... 113

Loose Change: Problems with Foreign Currency Obligations
 Stevenson Estate v. Siewert
 Vaughan Black ........................................................................................................... 123

 Roderick J. Wood .................................................................................................... 146

BOOK REVIEWS

Francis L. Lamer, Priority of Crown Claims in Insolvency
(David L. Denomme) ................................................................................................. 158

Belinda Fehlberg, Sexually Transmitted Debt: Surety Experience and English Law
(M.H. Ogilvie) ........................................................................................................... 165

Fiona MacMillan, International Corporate Law Annual, Volume 1
(Len Sealy) ............................................................................................................... 169

Rod D. Margo, Aviation Insurance, 3rd ed.
(Roger Harris) ........................................................................................................... 314

George Panagopoulos, Restitution in Private International Law
(Stephen G.A. Pitel) .................................................................................................. 317

Kevin P. McGuinness, The Law and Practice of Canadian Business Corporations
(Wilfred M. Estey) .................................................................................................... 495

Chris Reed, Ian Walden and Laura Edgar, eds., Cross-Border Electronic Banking. Challenges and Opportunities
(M.H. Ogilvie) ........................................................................................................... 501
# TABLE OF CONTENTS

## ARTICLES

Late Return of a Dishonoured Cheque  
*Bradley Crawford, Q.C.*  
- 1

The Ambiguity Exception to the Parol Evidence Rule  
*Paul M. Perell*  
- 21

Transplanting Equitable Subordination: The New Free-Wheeling Equitable Discretion in Canadian Insolvency Law?  
*Thomas G.W. Telfer*  
- 36

### PANEL DISCUSSION ON THE SUPREME COURT’S FINAL NOTE DECISION

Preserving the Clavicle in the Cat: Stunted Reform of Common Law Rules in the Supreme Court of Canada  
*Geoff R. Hall*  
- 89

A Further Note on Final Note: The Scope and Limits of Judicial Law Making  
*Anthony J. Duggan and Kent Roach*  
- 115

The Sealed Contract Rule and the Agent’s Right of Indemnification  
*Jacob S. Ziegel*  
- 139

Beyond Bill C-23: A Competition Law for the New Millennium  
*Paul S. Crampton*  
- 161

The Canada-U.S. Softwood Lumber Dispute: Is Canada Stumped Again?  
*Billy Garton and James Duvall*  
- 201

### PANEL DISCUSSION ON REHABILITATING PERSONAL PROPERTY LAW AS A SERIOUS TOPIC FOR RESEARCH AND TEACHING

Rehabilitating Personal Property Law as a Serious Topic for Research and Teaching  
*Sarah Worthington*  
- 238

Personal Property Law and Information Assets: Rehabilitation and Relevance  
*W.A. Adams*  
- 267

Civil Law Property as (Movable) Rehabilitative Therapy  
*David Lametti*  
- 292

A Wise Decision? An Analysis of the Relationship between Corporate Ownership Structure and Directors’ and Officers’ Duties  
*Edward M. Iacobucci*  
- 337
WHAT CURES FOR CHAPTER 11 ILLS?
A PANEL DISCUSSION

Systemic or Surgical? Possible Cures for NAFTA’s Investor-State Dispute Process

Stephen Clarkson ................................................................. 368

What’s in the Medicine Chest for Chapter 11’s Ills?

Julie Soloway and Jeremy Broadhurst ........................................... 388

NAFTA Investment Arbitration and the Growth of International Economic Law

Todd Weiler .................................................................................. 405

COMMENTARIES

Good Faith and Wrongful Dismissal

S.M. Waddams ............................................................................. 307

Interprovincial Inter-Insurer Interactions: Unifund v. ICBC

Vaughan Black ............................................................................. 436

Forum Selection Clauses and Fundamental Breach:


M. Paul Michell ............................................................................. 453

BOOK REVIEWS

Christopher C. Nicholls, Corporate Finance and Canadian Law

(Edward M. Iacobucci) .................................................................. 144

William Hedley and Richard Hedley, Bills of Exchange and Bankers’ Documentary Credits, 4th ed.

(M.H. Ogilvie) ............................................................................. 157

Jacob S. Ziegel and David L. Denomme, The Ontario Personal Property Security Act: Commentary and Analysis, 2nd ed.

(Kenneth C. Morlock) ................................................................. 313

John Parkinson, Andrew Gamble and Gavin Kelly, eds., The Political Economy of the Company

(Janis Sarra) .................................................................................. 329

Benjamin Geva, Bank Collections and Payment Transactions

— A Comparative Legal Analysis

(E.R. Effinger) ............................................................................. 479
# TABLE OF CONTENTS

In Memoriam: John M. Stransman, 1952-2002 ........................................... 1

ARTICLES

Transactions at Undervalue and Preferences under the 
Bankruptcy and Insolvency Act: Rethinking Outdated Approaches  
R.C.C. Cuming ................................................................. 5

When Dot-Coms Die: The E-Commerce Challenge to 
Canada's Bankruptcy Law  
Michael Geist ......................................................................... 34

New and Old Challenges in Approaching Phase Three Amendments to 
Canada's Commercial Insolvency Laws  
Jacob S. Ziegel ......................................................................... 75

Patent Security Interests: Costs and Benefits of Alternative 
Registration Regimes  
Anthony J. Daggan ................................................................... 165

Reform of the Financial Assistance Provisions in CBCA-Type 
Model Statutes  
Wayne D. Gray ......................................................................... 186

Was Final Note Not the Final Word? Scurvy-Rainbow and the 
Continuing Quest for Balance in the Reform of Common Law Rules  
Geoff R. Hall ............................................................................ 229

Competition Law in the Canadian Telecommunications Industry  
Iain C. Scott ............................................................................. 249

Secondary Markets for Copyrighted Works and the “Ownership Divide”:
Reconciling Competing Intellectual and Personal Property Rights  
Wendy A. Adams .................................................................... 321

Practical Approaches to Privity of Contract Problems  
Robert E. Forbes .................................................................... 357

What's in a Name? Lloyd's, International Comity and 
Public Policy  
Geneviève Saumier .................................................................. 388

COMMENTARIES

Australian High Court Holds Confidentiality Agreement in 
Restraint of Trade  
Joy Goodman ........................................................................... 119

Restitutionary Damages for Breach of Contract: Bank of America 
Canada v. Mutual Trust Co.  
Mitchell McInnes ................................................................... 125
"Acting Jointly or in Concert" in Corporate Law:
  Re Sepp's Gourmet Foods Ltd.
  
  James C. Baillie, Alfred Avanessy and Peter Johnson ........................................... 281

Pre-Incorporation Contracts and 1394918 Ontario Ltd. v. 1310210 Ontario Inc.: Some Answers, Some Questions
  
  Paul M. Perell .................................................................................................................. 291

Re N'Amerix Logistix Inc.: Cause D'Espece?
  
  Paul D. Wickens ............................................................................................................... 306

Exposure of Canadians under the U.S. Trade Embargo of Cuba:
The Case of James E. Sabzali
  
  John W Boscariol .............................................................................................................. 419

Bank of America Canada v. Clarica Trust: Common Sense and Common Law
  
  Mary Anne Waldron .......................................................................................................... 435

Preincorporation Contracts: A Further Comment on 1394918 Ontario Ltd. v. 1310210 Ontario Inc.
  
  Jacob S. Ziegel ............................................................................................................... 445

BOOK REVIEWS

Bjorn Lomborg, The Skeptical Environmentalist: Measuring the Real State of the World
  (Donald N. Dewees and Elizabeth May) ............................................................................. 134

P. Birks, ed., English Private Law, Volumes 1 and 2
  (Mitchell McInnes) ........................................................................................................ 315

Colin H.H. McNairn and Alexander K. Scott,
  Privacy Law in Canada
  (Elizabeth E Judge) ......................................................................................................... 451

Robert Chambers, An Introduction to Property Law in Australia
Sarah Worthington, Personal Property Law: Text and Materials
  (Roderick J. Wood) .......................................................................................................... 457

Robert A. Klotz, Bankruptcy, Insolvency and Family Law, 2nd ed.
  (Tamara M. Buckwold) .................................................................................................... 469
# TABLE OF CONTENTS

In Memoriam: Frederick M. Catzman, Q.C., 1907-2003 .................................................. 321

**ARTICLES**

Old and in the Way? The Revenue Rule and Big Tobacco  
*Vaughan Black* .................................................................................................................. 1

Foreign Public Law and the Colour of Comity: What's the Difference between Friends?  
*Janet Walker* .................................................................................................................. 36

Securities Regulatory Structure in Canada: The Way Forward  
*A. Dougias Harris* ........................................................................................................... 57

The Hague "PRIMA" Convention: Choice of Law to Govern  
Recognition of Dispositions of Book-Based Securities in Cross Border Transactions  
*Bradley Crawford, Q.C.* ................................................................................................. 157

Consumer Liability in Unauthorized Electronic Funds Transfers  
*Benjamin Geva* ................................................................................................................ 207

Impersonating the Drawer: A Comment on Professor Geva’s "Consumer Liability in Unauthorized Electronic Funds Transfers"  
*John F. Dolan* .................................................................................................................. 282

The Outside Director: Policeman or Policebo?  
*Christopher C. Nicholls* .................................................................................................. 323

The Canadian Outside Director: Great Expectations  
*Warren Grover* ................................................................................................................. 349

What Is to Be Done with Section 347?  
*Mary Anne Waldron* ...................................................................................................... 367

Of Payday Loans and Usury: Further Thoughts  
*Iain Ramsay* ..................................................................................................................... 386

Does Section 347 Deserve a Second Chance?  
A Comment  
*Jacob Ziegel* ..................................................................................................................... 394

Reforming the Permanent Establishment Principle through a Quantitative Economic Presence Test  
*Arthur J. Cockfield* .......................................................................................................... 400

Consumption Taxation of Electronic Commerce: Problems, Policy Implications and Proposals for Reform  
*Jinyan Li* ........................................................................................................................... 425

Taxation and E-Commerce  
*Richard M. Bird* ............................................................................................................. 466
COMMENTARIES

*M. Paul Michell* ........................................................................................................... 125

Enforcement of Foreign Judgments in Canada, Unlevel Playing Fields, and *Beals v. Saldanha*: A Consumer Perspective
*Jacob S. Ziegel* ........................................................................................................... 294

New Developments in Ontario Contingency Fee Agreements
*Paul M. Perell* ........................................................................................................... 472

BOOK REVIEWS

R. Potok, ed., *Cross Border Collateral: Legal Risks and the Conflict of Laws* (Steven L. Schwarcz) ........................................................................................................... 150

Vanessa Finch, *Corporate Insolvency Law: Perspectives and Principles* (Kevin E. Davis) ........................................................................................................... 309
EDITORIALS ........................................................................................................ 1, 317

ARTICLES

Corporations as Winners under CBCA Reform
Wayne D. Gray .................................................................................................. 4

Proportionate Liability under the CBCA in the Context of Recent Corporate Governance Reform: Canadian Auditors in the Wrong Place at the Wrong Time?
Phonam Puri and Stephanie Ben-ishai .................................................................. 36

Shareholders as Winners and Losers under the Amended Canada Business Corporations Act
Janis Sarra ........................................................................................................... 52

Creditors, Losers under CBCA Reform but Winners in Judge-Made Corporate Law
Wayne D. Gray .................................................................................................. 92

SYMPOSIUM ON THE HARVARD MOUSE DECISION OF THE SUPREME COURT OF CANADA .............................................. 161

The Harvard Mouse Decision and its Future Implications
Steven B. Garland and Sandee Smardin ................................................................ 162

W.A. Adams ...................................................................................................... 181

Property, Patents and Ethics: A Comment on Wendy Adams' "The Myth of Ethical Neutrality"
Abraham Drassinower ....................................................................................... 214

Reflections in a Darkling Glass: A Comparative Contemplation of the Harvard College Decision
Don L. Burk ......................................................................................................... 219

The Harvard Mouse Case: A Comment from the Viewpoint of Japanese Law
Shimamami, Ryo ............................................................................................... 238

Some Reflections on Law Reform in England and Canada
Andrew Burrows, Q.C. ...................................................................................... 320

SYMPOSIUM ON OFFICERS' AND DIRECTORS' DUTIES TO CREDITORS OF AN INSOLVENT CORPORATION

Directors' Liability to Creditors on a Corporation's Insolvency in Light of the Dylex and Peoples Department Stores Litigation
Brian Morgan and Harry Underwood .................................................................. 336
The Duties of Directors of Financially Distressed Corporations: A Quebec Perspective on the Peoples Case
   Stephane Rousseau ................................................................. 368

Directors’ Duties in Insolvency: Clarifying What Is at Stake
   Edward M. Iacobucci ............................................................... 398

Two Decades with the Special Import Measures Act: A Statistical Analysis of Canadian Dumping and Subsidy Cases, 1984-2003
   Nick Covelli and Viktor Hohots .................................................. 412

Theorizing Corporate Law in a Mixed Jurisdiction: A Review of Crete and Rousseau's Droit des societes par actions
   Jean-Francois Gaudreault-DesBiens ......................................... 425

COMMENTARIES

If Boma is Wrong, is the Bank Always Right?
   373409 Alberta Ltd. (Receiver of) v. Bank of Montreal
   M.H. Ogilvie ............................................................................ 138

Peoples v. Wise and Dylex: Identifying Stakeholder Interests upon or near Corporate Insolvency — Stasis or Pragmatism?
   Wayne D. Gray ........................................................................ 242

Forum Selection after Z.I. Pompey Industrie v. Ecu-Line N.V.,
   The Canmar Fortune
   M. Paul Michell .................................................................... 262

The Trumping of Mateship: Unconscionability in the High Court of Australia
   Anthony J. Duggan ................................................................... 275

BOOK REVIEWS

British Columbia Law Institute, The Ultimate Limitation Period: Updating the Limitation Act
   (Erik S. Knutsen) ..................................................................... 148

Sally Wheeler, Corporations and the Third Way
   (H.J. Glasbeek) ....................................................................... 285

S. Hedley and M. Halliwell, eds., The Law of Restitution
   Goff and Jones: The Law of Restitution, 6th ed.
   (Mitchell McInnes) .................................................................. 302

David Campbell, Hugh Collins and John Wightman, eds., Implicit Dimensions of Contract: Discrete, Relational and Network Contracts
   (Richard E Devlin) ................................................................ 469
# TABLE OF CONTENTS

**EDITORIAL** .......................................................... 1

**ARTICLES**

Stolen Goods, A Cruise Disaster and a Right of Way
Gone Wrong: Three Unconscionable Contracts
Cases from a Law and Economics Perspective
*Anthony J. Duggan* ................................................. 3

A Curious Incident in the Law of Contract: The Impact
of 22 Words from the House of Lords
*Geoff K. Hall* ......................................................... 20

Mistaken Assumptions in Equity: Sound Doctrine or Chimera?
*John D. McCormus* .................................................. 46

A New Approach to Extraterritoriality:
*Unifund Assurance Co. v. I.C.B.C.*
*Elizabeth Edinger and Vaughan Black* ....................... 161

Enforcement of Foreign Judgments:
Where *Morguard* Stands after *Beals*
*Stephen G.A. Pütel* .................................................. 189

*Beals v. Saldanha* and the Enforcement of
Foreign Judgments in Canada
*Jay Goodman and Jeffrey A. Talpis* .......................... 227

The Courts’ Inherent Jurisdiction and the CCAA:
A Beneficent or Bad Doctrine?
*Keith Yamamoto* .................................................... 250

Judicial Exercise of Inherent Jurisdiction under the CCAA
*Jalis Sarr* ............................................................. 280

Comment on Professor Yamamoto’s Paper
*Andrew Kent* .......................................................... 295

Unravelling Proprietary Restitution
*Lionel Smith* .......................................................... 317

Unravelling Proprietary Remedies: An Australian Perspective
*Michael Bryan* .......................................................... 339

Deconstructing the Constructive Trust
*Andrew Kull* ........................................................... 358

A Map of the Common Law?
*Stephen A. Smith* ...................................................... 364

The Many Dimensions of Private Law
*Robert A. Hillman* .................................................... 384

Response
*Stephen Waddams* .................................................... 396
COMMENTARIES

There Is No There There: Intel Corp. v. Hamidi and the Creation of New Common Law Property Rights Online
W.A. Adams .................................................................................................................. 87

New Limitation Periods — Contracting in Ontario
R. John Cameron ......................................................................................................... 109

Analysis of Recent Cases under the Companies' Creditors Arrangement Act
Keith Pritchard ............................................................................................................ 116

(Un)knowing Assistance by the Ontario Court of Appeal
M.H. Ogilvie ................................................................................................................ 399

Ontario PPSA Choice of Law Rules and Ambulatory Definition of Security Interest: GMAC Commercial Credit Corp. v. TCT Logistics Inc.
Jacob Ziegel ................................................................................................................ 412

Phase Three Bankruptcy Reform in Canada and Some Insights from the Senate Committee's Report
Vern W DaRe ............................................................................................................. 421

BOOK REVIEWS

Janis P. Sarra and Ronald B. Davis, Director and Officer Liability in Corporate Insolvency: A Comprehensive Guide to Rights and Obligations
(Rupert H. Chartran .................................................................................................. 127

Harry Glasbeek, Wealth by Stealth: Corporate Crime, Corporate Law and the Perversion of Democracy
(Kenneth Jull) ............................................................................................................. 135

James Edelman, Gain-Based Damages: Contract, Tort, Equity and Intellectual Property
(Mitchell McInnes) .................................................................................................... 146

Sarah Worthington, Equity
(Dennis Klinck) .......................................................................................................... 297

Hannes Unberath, Transferred Loss: Claiming Third Party Loss in Contract Law
(M.H. Ogilvie) ............................................................................................................. 314

The Wise Persons' Committee Report: Another Attempt to Revolutionize Canadian Securities Regulation
James C. Baillie .......................................................................................................... 434

J. Bakan, The Corporation: The Pathological Pursuit of Profit and Power
M. Achbar, J. Abbott and J. Bakan, The Corporation
(Richard E Devlin) .................................................................................................... 450

Jacob S. Ziegel, Comparative Consumer Insolvency Regimes: A Canadian Perspective
(Melissa B. Jacoby) .................................................................................................... 455
Bradley Crawford, *Payment, Clearing and Settlement in Canada*  
*(Louise S. Pelly)* ........................................................................................................................................ 466

Peter D. Maddaugh and John D. McCamus,  
*The Law of Restitution*, looseleaf ed.  
*(Stephen G.A. Pitel)* ........................................................................................................................................ 475
# TABLE OF CONTENTS

In Memorium: Peter Birks, 1941-2004 ........................................... 161
In Memorium: E. Allan Farnsworth, 1928-2005 ......................... 166

**ARTICLES AND SYMPOSIA**

Inter-Media Mergers: An Antitrust Alternative
to the Marketplace for Ideas

_Gwilym Allen and Peter G.C. Townley_ ........................................... 1

Transactional Aspects of Corporate Intellectual Property Strategy

_Richard A. Bratt_ .......................................................... 19

Constitutional Issues in Canadian Competition Litigation

_Mahmud Jarjis_ .......................................................... 66

Unjust Enrichment, Juristic Reasons and Palm Tree Justice:

_Garland v. Consumers’ Gas Co._

_Mitchell McInnes_ .......................................................... 103

**SYMPOSUM ON THE SUPREME COURT’S JUDGMENT IN THE PEOPLES DEPARTMENT STORES CASE** ........................................... 167

Common Statement of Facts .................................................. 168

_Peoples Department Stores Inc. v. Wise_: The Expanded Scope of
Directors’ and Officers’ Fiduciary Duties and Duties of Care

_Catherine Francis_ .......................................................... 175

A Solicitor’s Perspective on _Peoples v. Wise_

_Wayne D. Gray_ .......................................................... 184

The Tangled Web of the Wise Case

_Warren Grover_ .......................................................... 200

_Peoples Department Stores v. Wise_ and the
“Best Interests of the Corporation”

_Ian B. Lee_ .......................................................... 212

Directors’ Duty of Care after _Peoples_: Would It Be Wise
to Start Worrying about Liability?

_Stéphane Rousseau_ .......................................................... 223

The _Peoples_ Judgment and the Supreme Court’s
Role in Private Law Cases

_Jacob S. Ziegel_ .......................................................... 236

_Written v. Pilot Insurance Co.: The Unofficial Death of the Independent
Wrong Requirement and Official Birth of Punitive Damages in Contract
Yehuda Adar_ .......................................................... 247
The Proposed Federal Exemption Regime for the
Bankruptcy and Insolvency Act
Thomas G.W. Telfer ........................................................................................................... 279

Policing Director and Officer Conflicts
Paul D. Wickens .................................................................................................................. 328

COMMENTARIES

The Canadian Supreme Court on Copyright:
CCH Canadian Ltd. v. Law Society of Upper Canada
W.L. Hayhurst ...................................................................................................................... 134

REACTIONS TO THE B.C. COURT OF APPEAL'S JUDGMENT IN
THE IMPERIAL TOBACCO CANADA LTD. LITIGATION

British Columbia v. Imperial Tobacco Canada Ltd.:
Extraterritoriality Post Unifund
Elizabeth Edinger ................................................................................................................ 359

British Columbia v. Imperial Tobacco Canada Ltd.:
Judicial Independence and the Rule of Law
Robin Elliot ......................................................................................................................... 370

The B.C. Tobacco Legislation Litigation — A Comment on
the Papers of Professors Edinger and Elliot
Darcy L. MacPherson ......................................................................................................... 386

Confronting the Patentability Line in Biotechnological
Innovation: Monsanto Canada Inc. v. Schmeiser
W.A. Adams ....................................................................................................................... 393

"On the Effective Date of the Partial Wind-Up": Monsanto Canada Inc.
v. Ontario, A Sign of the Pressure on the Pension Promise
Simon Archer ...................................................................................................................... 413

Unravelling Proprietary Restitution: A Response to
Professor Lionel Smith
Andrew Burrows ................................................................................................................ 424

Perfection under a Predecessor Debtor Name — Comment on
Charter Financial Company v. Royal Bank of Canada
Wayne D. Gray, David L. Denomme and Jacob S. Ziegel .................................................. 431

"Once More into the Breach": A Comment on James C. Baillie,
"The Wise Persons' Committee Report: Another Attempt to
Revolutionize Securities Regulation"
A. Douglas Harris .............................................................................................................. 461

Emaciating the Statutory Audit — A Comment on
Hart Building Supplies Ltd. v. Deloitte & Touche
Darcy L. MacPherson ......................................................................................................... 471

Regulated Conduct and the Competition Act
Michael Trebilcock .......................................................................................................... 492
BOOK REVIEWS

Elizabeth Warren and Amelia Tyagi, *The Two-Income Trap: Why Middle-Class Mothers and Fathers are Going Broke*  
(Saul Schwartz) .................................................................................................................. 149

J. Ziegel, A. Duggan and T. Telfer, *Canadian Bankruptcy and Insolvency Law — Cases, Texts and Materials*  
(Roderick J. Wood) .......................................................................................................... 156
# TABLE OF CONTENTS

## ARTICLES

From St. Mary's Paper to TCT Logistics: Receiver-Managers of Insolvent Companies in a Constitutional Battlefield  
*Ronald B. Davis* .......................................................... 1

Inefficiency and Path Dependency in Canada's Securities Regulatory System: Towards a Reform Agenda  
*Anita Indira Anand and Peter Charles Klein* ....................... 41

Passports, Politics and Path Dependency: Comments on Anand and Klein "Inefficiency and Path Dependency in Canada's Securities Regulatory System: Towards a Reform Agenda"  
*Mary Condon* .......................................................... 73

Merger Review in Regulated Industries  
*Margaret Sanderson and Michael Trebilcock* ...................... 157

Creditors' Proofing Charities: What to Do in Light of the Christian Brothers Decisions  
*Timothy G. Youdan* .................................................. 198

Neither Fish nor Fowl? The Use of Charitable Company Assets under English Law  
*Alison Dunn* .......................................................... 223

The Fiduciary Nature of Spousal Surety Agreements in Banking Law  
*M.H. Ogilvie* .......................................................... 245

Income Trust Unitholder Liability: Risks and Legislative Response  
*Mark R. Gillen* ...................................................... 325

Vicarious Liability in the Charity Sector: An Examination of Bazley v. Curry and Re Christian Brothers of Ireland in Canada  
*Jason W. Neyers and David Stevens* ................................ 371

## COMMENTARIES

Enforcement of Foreign Non-money Judgments: *Pro-Swing v. Elta*  
*Vaughan Black* .......................................................... 81

Limitation Periods, Choice of Law, and the Constitution: *Castillo v. Castillo*  
*Paul Michell* .......................................................... 97

Coordinating Multi-jurisdiction Class Actions through Existing Certification Processes  
*Janet Walker* .......................................................... 112

Notional Severance, Usurious Contracts, and Two Comments on the Supreme Court's Decision in the *New Solutions* Case  
*Stephen Waddams and Jacob Ziegel* .............................. 278
Lender's Duty of Disclosure to Guarantor: Bank of Montreal v. Collum
Jeffrey Alpert ...........................................421

Re-characterizing the Quistclose Trust: Lord Millet's Obiter Dicta in Twinsectra
Dennis R. Klinck ........................................427

The Travails of Bill C-55
Jacob Ziegel ...........................................440

REVIEW ESSAYS AND BOOK REVIEWS

Michael Geist, Internet Law in Canada
(Peter Bowal and Benjamin Lau) ...........................................122

George Benston, Michael Bromwich, Robert E. Litan and Alfred Wagenhofer, Following the Money: The Enron Failure and the State of Corporate Disclosure
(Warren Grover) ...........................................130

Janis San'a, ed., Corporate Governance in Global Capital Markets
(Mohamed E Khimji) ...........................................136

Jason W. Neyers, Mitchell McInnes and Stephen G.A. Pitel, eds., Understanding Unjust Enrichment
(Charles Mitchell) ...........................................143

Teresa Scassa and Michael Deturbide, Electronic Commerce and Internet Law in Canada
(Daniel Genais) ...........................................292

Lucian Bebchuk and Jesse Fried, Pay without Performance: The Unfulfilled Promise of Executive Compensation
(Warren Grover) ...........................................311

Adam B. Jaffe and Josh Lerner, Innovation and its Discontents: How Our Broken Patent System is Endangering Innovation and Progress, and What to Do About It
(Teresa Scassa) ...........................................316

The Promise of the Oppression Remedy: A Review of Markus Koehnen's Oppression and Related Remedies
Stephanie Ben-Ishai ...........................................450

Contractarianism and the Law of Corporate Insolvency
Anthony Duggan ...........................................463

(Peter W Hogg) ...........................................482
# TABLE OF CONTENTS

## ARTICLES AND SYMPOSIA

**SYMPOSIUM ON CANADIAN BANKRUPTCY LAW AMENDMENTS AND COMPARATIVE AMERICAN AND JAPANESE DEVELOPMENTS** ................................................................. 1

- Japanese Insolvency Law after a Decade of Reform  
  *Kent Anderson* ........................................ 2

- Consumer Bankruptcy after the Fall: United States Law under S. 256  
  *Charles J. Tabb* ........................................ 28

- Bill C-55 and Canada’s Insolvency Law Reform Process  
  *Jacob Ziegel* ........................................ 76

**TWO COMMENTARIES ON THE ONTARIO COURT OF APPEAL’S DECISION IN THE DANIER LEATHER INC. CASE** ................................................................. 100

- Summary of the Relevant Facts ........................................ 100

  *Jeremy D. Fratberg and Robert Yalden* ......................... 106

- *Danier Leather Inc.* and the Duty to Update a Prospectus  
  *Harry Underwood and René Sorell* ......................... 134

**SYMPOSIUM ON EXPORTABILITY OF PPSA REGIMES** ................................................................. 177

- The Exportability of North American Chattel Security Regimes: The Fate of the English Law Commission’s Proposals  
  *Hugh Beale* ........................................ 178

- Exportability of North American Chattel Security Regimes: The Inter-American Model Law on Secured Transactions  
  *Alejandro M. Garro* ........................................ 200

- A Distant Export: The New Zealand Experience with a North American Style Personal Property Security Regime  
  *Mike Gedye* ........................................ 208

- Article 9 Norm Entrepreneurship  
  *Roderick A. Macdonald* ........................................ 240

**SYMPOSIUM ON RECENT CLASS ACTION DEVELOPMENTS IN CANADA AND THE UNITED STATES** ................................................................. 337

- Recent Developments in Class Proceedings: A Defendant’s Perspective  
  *Mark A. Gelowitz* ........................................ 339

- The Conflict between Consumer Class Actions and Contractual Arbitration Clauses  
  *Shelley McGill* ........................................ 359

- Class Actions against the Crown, or Administrative Law by Other Means?  
  *Lorne Sossin* ........................................ 380
The Class Action Fairness Act of 2005: The Federalization of U.S. Class Action Litigation
   Elizabeth J. Cabraser, Fabrice Vincent and Paulina do Amaral . . ............398

Recent Class Action Developments in Canada and the United States: Panel Discussion .................................................................420

Is PIPEDA Constitutional?
   Mahmud Jamal ...............................................................................................434

Six Months of the B.C. Business Corporations Act: Changes and Challenges
   Linda I. Parsons and Kate Bake-Paterson .......................................................455

A Comment on "Six Months of the B.C. Business Corporations Act: Changes and Challenges"
   Shannon O’Byrne ...............................................................................................477

COMMENTARIES

Material Contribution and Quantum Uncertainty: Hanke v. Restafice Corp.
   David Cheifetz and Vaughan Black .................................................................155

Choice of Law in Tort: A Role for Renvoi? Neilson v. Overseas Projects Corporation of Victoria Ltd.
   Stephen G.A. Pitel .............................................................................................171

Tracing, Canadian Style: Re Graphicshoppe and Other Recent Cases
   Anthony Duggan ...............................................................................................292

British Columbia v. Imperial Tobacco Canada Ltd.:
   Extraterritoriality and Fundamental Principles
   Elizabeth Edinger .............................................................................................301

Castillo v. Castillo: Closing the Barn Door
   Janet Walker ....................................................................................................487

REVIEW ESSAYS AND BOOK REVIEWS

John McCamus, The Law of Contracts
   (Richard E Devlin) .............................................................................................319

David Vogel, The Market for Virtue: The Potential and Limits of Corporate Social Responsibility
   (Harry Glasbeek) ...............................................................................................325

   (Lorne Sossin) .................................................................................................501
# TABLE OF CONTENTS

## EDITORIAL

325

## ARTICLES

Cherry Picking among Apples and Oranges: Refocusing Current Debate about the Merits of the Ombuds-model under PIPEDA

*Jennifer Stoddart* .................................................. 1

Reviewing PIPEDA: Control, Privacy and the Limits of Fair Information Practices

*Lisa M. Austin* ........................................................... 21

Let's Not Get Psyched Out of Privacy: Reflections on Withdrawing Consent to the Collection, Use and Disclosure of Personal Information

*Jennifer Barrigan, Jacquelyn Burkell, Ian Kerr* ............... 54

Legal Principles Versus Economic Principles: The Battle over Efficiencies in Canadian Merger Review

*Andrew J. Roman, Michael E. Piaskoski and Michelle Wong* 173

Government Student Loans, Government Debts and Bankruptcy: A Comparative Study

*Stephanie Ben-Ishai* .................................................. 211

The Nondischargeability of Student Loans in Personal Bankruptcy Proceedings: The Search for a Theory

*John A.E. Potter* .......................................................... 245

Institutional Activism: Current Trends and Emerging Legal Issues

*John J. Chapman* .......................................................... 327

The Way Forward: Policy Implications of the Supreme Court Decision in TCI Logistics

*Ronald B. Davis* .......................................................... 357

The Decision of the Supreme Court of Canada in TCI Logistics and the Future of Receiverships in Canada

*Jeffrey C. Carhart* .......................................................... 376

Limited Partnerships and the "Control" Liability of Limited Partners

*Christopher J.H. Donald* .............................................. 398

## COMMENTARIES

Interest on Dishonoured Bills and Notes:

*Pizzey Estate v. Crestwood Lake Ltd.*

*Bradley Crawford, Q.C.* .............................................. 72

The (CISG) Road Less Travelled:

*GreCon Dimter Inc. v. J.R. Normand Inc.*

*Antonin I. Prijbetic* ..................................................... 92
Repap: A Study in Judicial Review of Business Judgments
Wayne D. Gray ........................................................................................................ 279

True Sales in the True North: Form, Substance and Securitization in Metropolitan Toronto Police Widows and Orphans Fund v. Telus Communications Inc.
Robert M. Scavone .................................................................................................. 420

"Beyond the Veil": Wildman v. Wildman
Christopher C. Nicholls ......................................................................................... 448

REVIEW ESSAYS AND BOOK REVIEWS
Ronald C.C. Cuming, Catherine Walsh and Roderick J. Wood, Personal Property Security Law
(David L. Denomme) .............................................................................................. 115

Democracy versus Economics in Corporate Governance
(Ian B. Lee) ............................................................................................................. 130

Ben Klemens, Math You Can’t Use: Patents, Copyright and Software
(Teresa Scassa) ........................................................................................................ 147

Ethical Investing by Union Pension Funds
(Derek Smith) ......................................................................................................... 158

Lynn M. LoPucki, Courting Failure: How Competition for Big Cases is Corrupting the Bankruptcy Courts
(The Hon. James Farley, Q.C ) .................................................................................. 306

Arianna Pretto-Sakmann, Boundaries of Personal Property Law — Shares and Sub-shares
(Mohamed F Khimji) ............................................................................................... 312

(Mitchell McInnes) ................................................................................................. 318

Stephen G.A. Pitel, ed., Litigating Conspiracy
(Craig Jones) ........................................................................................................... 461

Francesco Parisi and Vernon L. Smith, eds., The Law and Economics of Irrational Behavior
(Christopher C. Nicholls) ....................................................................................... 473

John C. Bogle, The Battle for the Soul of Capitalism
(Warren Grover) ..................................................................................................... 479

Janet Ulph, Commercial Fraud: Civil Liability, Human Rights and Money Laundering
(M. Michelle Gallant) ............................................................................................. 489
# TABLE OF CONTENTS

**EDITORIALS** ................................. 165, 333

**ARTICLES AND SYMPOSIA**

- **Tax Policy, Capital Structure and Income Trusts**
  *Benjamin Alarie and Edward M. Jacobucci* ................................ 1
- **The Use of Conciliation or Mediation for the Resolution of International Commercial Disputes**
  *Linda C. Reif* ................................ 20

**SYMPOSIUM ON THE CANADIAN SECURITIES TRANSFER LEGISLATION** ........................................ 48

  *James Steven Rogers* ................................ 49
- **Stronger than Fictions: Canada Rethinks the Law of Securities Transfers in the Indirect Holding System**
  *Robert M. Scavone* ................................ 67
- **The Role of Legal Concepts in Commercial Law: Comments on Spink, Rogers and Scavone**
  *Mohamed F. Khimji* ................................ 94
- **The Securities Transfer Act — Fitting New Concepts in Canadian Law**
  *Eric T. Spink* ................................ 167
- **Statutory Licences and the Search for Property: The End of the Imbroglio?**
  *Thomas G.W. Telfer* ................................ 224
- **The Equitable Action in Unjust Enrichment: Ambiguity and Error**
  *Mitchell McInnes* ................................ 253
- **Demystifying Juristic Reasons**
  *Lionel Smith* ................................ 281

**TWO COMMENTARIES ON THE SUPREME COURT'S DECISION IN DELL COMPUTER CORP.**

- **Consumer Arbitration and Class Actions: The Impact of Dell Computer Corp. v. Union des Consommateurs**
  *Shelley McGill* ................................ 334
- **Canadian Arbitration Law after Dell Computer Corp. v. Union des Consommateurs**
  *Andrew D. Little* ................................ 356
- **Unconscionability in the Age of Sophisticated Mass-Market Framing Strategies and the Modern Administrative State**
  *Jean Braucher* ................................ 382
Taking Promises Seriously
James Edelman .................................................................399

Solicitors' Conflict of Interest and the Wider Fiduciary Question
Anthony Duggan .................................................................414

Material Contribution's Expanding Hegemony:
Factual Causation after Hanke v. Resurface Corp.
Russell Brown .................................................................432

COMMENTARIES
Ontario's Personal Property Security Act — Bill 152
R. John Cameron .................................................................103

New Solitudes: Recent Decisions Call into Question the National Class Action
Craig Jones .................................................................111

Ottawa Rejects Reform of Section 427 of the Bank Act
Jacob Ziegel .................................................................123

Hare v. Hare: Demand Promissory Notes and Limitation Periods
Lisa Kerbel Caplan .................................................................459

REVIEW ESSAYS AND BOOK REVIEWS
Report of the Task Force to Modernize Securities Legislation in Canada
(James C. Baillie) .................................................................128

Ari N. Kaplan, Pension Law
(Philip Girard) .................................................................143

A Study in Reasonable Expectations
(Geoff R. Hall) .................................................................150

The Economics of Contract Law
(Stephen Waddams) .................................................................305

Rosa M. Lastra, Legal Foundations of International Monetary Stability
(Benjamin Geva) .................................................................325

David Debenham, Executive Liability and the Law
(Wayne D. Gray) .................................................................471
# TABLE OF CONTENTS

**EDITORIAL** ................................................................. 1

**ARTICLES AND SYMPOSIA**

**RECOVERY OF UNLAWFUL TAXES: THREE COMMENTS ON KINGSTREET INVESTMENTS**

Recovery of Unauthorized Taxes: A New Constitutional Right
*Peter W. Hogg* ............................................................... 5

Public Justice and Private Justice: Restitution after *Kingstreet*
*Lionel Smith* .............................................................. 11

*Kingstreet Investments: Taking a Pass on the Defence of Passing On*
*Benjamin Alarie* ............................................................ 36

The Quick-Look Approach in Antitrust Analysis
*Cen Eriaku* ................................................................ 50

The Standard of Proof for Jurisdiction Clauses
*Stephen G.A. Pitel and Jonathan de Vries* ......................... 66

**ASPECTS OF GLOBALIZATION**

Globalization and the Practice of Law — One Lawyer’s Perspective
*Donald R. Cramshaw* ......................................................... 162

The Essence of Globalization: An Economist’s Perspective
*John M. Curtis* ................................................................. 180

Searching for Hope: The Countries that Globalization Has Left Behind
*Michael Trebilcock* ........................................................... 184

Reflections on the Recommendations of the Task Force to Modernize Securities Legislation in Canada: A Retail Investor Perspective
*Paul Halpern and Poonam Puri* ............................................. 199

Piercing the Corporate Veil and the “Pure Form” of the Corporation as Financial Innovation
*Christopher C. Nicholls* .................................................... 233

Legal Strategies to Profit from Peer Production
*Jeremy de Beer* ............................................................... 269

Panel Discussion of *Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c. 47 and Beyond*
Justice Kathryn N. Feldman, Andrew Kent, Rosalind Mason and Charles J. Tabb .................................. 321

Governing the Nonprofit Organization: Accommodating Autonomy in Organizational Law
*Evelyn Brody* ................................................................. 343
Not-For-Profit Corporations and Defects and Deficiencies in the Ontario Corporations Act

Marni M.K. Whitaker ........................................................................................................... 379

The Reforms of the Enterprise Act 2002 and the Floating Charge as a Security Device

Louise Gullifer ....................................................................................................................... 399

COMMENTARIES

Contract Damages: Fundamental Principle, Fundamental Disagreement

David McLauchlan and Nick Hegan ...................................................................................... 89

A Study in Reasonable Expectations: A Rebuttal to Geoff R. Hall

Barry J. Reiter ....................................................................................................................... 95

Privy Council Clarification of Dishonesty in Accessory Liability

M.H. Ogilvie ........................................................................................................................... 100

Concurrent Judicial Jurisdiction: A Race to the Court House or to Judgment?

Lloyd's Underwriters v. Cominco Ltd.

Vaughan Black and John Swan .............................................................................................. 292

All Quiet on the CISG Front: Guiliani v. Invar Manufacturing, the Battle of the Forms, and the Elusive Concept of Terminus Fixus

James M. Klotz, Peter J. Mazzacano and Antonin I. Pribetic .............................................. 430

The Test of Fundamentality in Anticipatory Breach Cases: Spirent v. Quake

Qiao Liu ................................................................................................................................... 443

Recognizing Multijurisdiction Class Action Judgments within Canada: Key Questions — Suggested Answers

Janet Walker ............................................................................................................................ 450

REVIEW ESSAYS AND BOOK REVIEWS

Buy This Book! Commercial Expression in Canada

(Ronalda Murphy) ..................................................................................................................... 111


(Mitchell McInnes) .................................................................................................................. 141

M.H. Ogilvie, Bank and Customer Law in Canada

(Benjamin Geva) ...................................................................................................................... 147

Christopher C. Nicholls, Mergers, Acquisitions and Other Changes of Corporate Control

(Edward J. Waltzer) ................................................................................................................... 156

Janis Sarra, Rescue! The Companies' Creditors Arrangement Act

(Roderick Wood) ..................................................................................................................... 316

How Should We Teach Securities Regulation in a Fast-Moving World?

(Cristie L. Ford) ...................................................................................................................... 470
# TABLE OF CONTENTS

**EDITORIAL**  ................................................................. 327

**ARTICLES AND SYMPOSIA**

Real Estate Fraud and Systems of Title Registration:
   The Paradox of Certainty
   *Brian Bucknall* .......................................................... 1

The Teck Cominco and Lloyd's Underwriters Litigation: A Symposium .......................... 165

   Concurrent Judicial Jurisdiction and *Forum Non Conveniens*—
   What Is to Be Done?
   *Joost Blom* ............................................................... 166

   *Teck Cominco* and the Wisdom of Deferring to the
   Court First Seised, All Things Being Equal
   *Janet Walker* ............................................................ 192

Comity and Parallel Foreign Proceedings: A Reply to Black and
   *Austen L. Parrish* ...................................................... 209

In the Wake of the Bingo Queen: Are Licences Property?
   *Anthony Duggan* ......................................................... 225

The Russians are Coming, But Can They Enforce
   Their Foreign Arbitral Award?
   *Wayne D. Gray and Robert Wisner* ................................. 244

Preventing Harm in Telecommunications Regulation: A New Matrix of
   Principles and Rules within the *Ex Ante Versus Ex Post* Debate
   *Kenneth Jall and Stephen Schmidt* ................................ 329

Options Backdating: A Canadian Perspective
   *Ryan Compton, Daniel Sandler and Lindsay Tedds* ............... 363

Canada's Policy Response to Foreign Sovereign Investment:
   Operationalizing National Security Exceptions
   *Jackie VanDerMeulen and Michael J. Trebilcock* .................. 392

Shadows and Light: Addressing Information Asymmetries through
   Enhanced Social Disclosure in Canadian Securities Law
   *Aaron A. Dhir* .......................................................... 435

**COMMENTARIES**

Asset Backed Commercial Paper and the “Intention of
   Parliament” in the Ontario Court of Appeal
   *Geoff R. Hall* ............................................................ 54
Political Prisoner: A Securities Regulator for Canada — Again?
  Cally Jordan ........................................................................................................... 66

Canadian Western Bank v. Alberta: Cooperative Federalism and the End of "Banking"
  M.H. Ogilvie ........................................................................................................... 75

Design Services Ltd. v. Canada
  Angela Swan and Jakub Adamski ............................................................................. 87

The Trustee's Right to Waive the Solicitor-Client Privilege in Corporate Bankruptcies
  Jacob Ziegel ............................................................................................................ 100

Private Insurance and Public Policy: Reconciling Conflicting Principles
  Craig Brown ........................................................................................................... 266

Security Interests and Continuing Challenges in Characterization of Equipment Leases: DaimlerChrysler Services Canada Inc. v. Cameron
  Jacob Ziegel ........................................................................................................... 283

Reform of Ontario's Law on Jurisdiction
  Vaughan Black and Stephen G.A. Pitel ..................................................................... 469

A Postscript to "Privy Council Clarification of Dishonesty in Accessory Liability"
  M.H. Ogilvie ........................................................................................................... 483

REVIEW ESSAYS AND BOOK REVIEWS

Rights-Based Torts Theory Acquires New Ambition
  Russell Brown ....................................................................................................... 113

Of Grand Claims and Modest Effects: A Plea for Realism about the Role of Microcredit in Economic Development
  Toni Williams ......................................................................................................... 130

Uncertain Causation in Medical Liability by Lara Khoury
  (Vaughan Black) .................................................................................................... 145

Corporate Law by Christopher C. Nicholls
  (Mary Condon) ...................................................................................................... 153

The Foundations of Restitution for Wrongs by Francesco Giglio
  (Lionel Smith) ....................................................................................................... 158

Emerging Issues in Tort Law, by Jason W. Neyers,
  Erika Chamberlain and Stephen G.A. Pitel, eds.
  (William Lucy) .................................................................................................... 295

Contract Terms, by Andrew Burrows and Edwin Peel, eds.
  (Angela Swan) ...................................................................................................... 307

The Speculation Economy: How Finance Triumphed Over Industry, by Lawrence E. Mitchell
  (Wyatt Wells) ....................................................................................................... 320
# Table of Contents

**Editorial** ................................................................. 1

## Articles and Symposia

- On Lemons and Leather: Liability for Misrepresentations of Forward-looking Information in Danier Leather  
  *Edward M. Iacobucci* .................................................. 3

- Legal Privilege as a Defining Characteristic of Charity  
  *Adam Parachin* ........................................................ 36

- Symposium on the Supreme Court’s BCE Judgment ................................................................. 173

  - Flexibility vs. Certainty: The Law Relating to Arrangements after BCE  
    *Anita I. Anand* ..................................................... 174

  - BCE and the Long Shadow of American Corporate Law  
    *Mohammad Fadei* .................................................. 190

  - Fiduciary Outs and Maximizing Shareholder Value following BCE  
    *Jeremy D. Fraiberg* ............................................... 213

- Indeterminacy and the Canadian Supreme Court’s Approach to Corporate Fiduciary Duties  
  *Edward Iacobucci* .................................................... 232

- BCE and the Peoples’ Corporate Law: Learning to Live on Quicksand  
  *Jeffrey G. MacIntosh* ............................................... 255

- BCE Inc. (Re): An Unexamined Question Considered  
  *J. Alex Moore* ........................................................ 273

- A Comment on BCE Inc.  
  *James C. Tory* ........................................................ 285

- Ontario Personal Property Security Act Reform: Significant Policy Changes  
  *Michael E. Burke* ................................................... 289

- Reasonable Expectations and the Interpretation of Contracts across Legal Traditions  
  *Sébastien Grégoire* .................................................. 345

- “The Reasonable Expectations of the Parties”: An Unhelpful Concept  
  *Stephen A. Smith* ................................................... 366

- Indemnity and Infidelity: Advancement of Defence Costs in Actions “By . . . The Corporation”  
  *Pamela D. Pengelley* ................................................ 389
The Future of Stakeholder Interests in Corporate Governance  
_Poonam Puri_ .................................................................................................................427

COMMENTARIES

Unjust Enrichment and the Supreme Court of Canada: Two Comments on  
**B.M.P. Global Distribution Inc. v. Bank of Nova Scotia**  
Mistake, Forged Cheques and Unjust Enrichment:  
Three Cheers for _B.M.P. Global_  
_John D. McCamus_ ........................................................................................................76

The Unitary Action in Unjust Enrichment  
_Mitchell Mclnnes_ ........................................................................................................102

Priority Disputes between Marine Mortgages and Ontario PPSA Security  
Interests in Watercraft: _Royal Bank v. 1132959 Ontario Ltd._  
_Jeffrey Alpert_ .............................................................................................................125

_Muscott Misplaced: The Future of Forum of Necessity_  
Jurisdiction in Canada  
_Janet Walker_ .............................................................................................................135

Renewed Friction between Provincial PPSAs and  
Bank Act Chattel Security Interests  
_Jacob Ziegel_ ..............................................................................................................312

The Americanization of Canada's Competition Act  
_Neil Campbell and Sorcha O'Carroll_ ........................................................................446

Competing Class Actions across Canada: Still at the Starting Gate after  
_Canada Post v. Lepine?_  
_Genevieve Saumier_ ....................................................................................................462

Journey to the Outer Limits of Secured Transactions Law:  
_Caisse Populaire Desjardins De L'est De Drummond_  
_Roderick J. Wood_ ......................................................................................................482

The Civilian Orientation of Canadian Unjust Enrichment Law: A  
Reply to Professor McCamus  
_Chris D.L. Hunt_ ........................................................................................................498

REVIEW ESSAYS AND BOOK REVIEWS

_Annotated Securities Transfer Act, 2006,_ by Members of the Canadian  
Securities Administrators' USTA Task Force, with additional comments  
by John Cameron and Robert Scavone  
_(Bradley Crawford, Q.C.)_ 144
Canadian Bankruptcy and Insolvency Law: Bill C-55, Statute c. 47 and Beyond, by Stephanie Ben-Ishai and Anthony Duggan
(Andrew Keay) ............................................................................................................. 154

Structure and Justification in Private Law: Essays for Peter Birks, by Charles Rickett and Ross Grantham, eds.
(Elisa Bant) ..................................................................................................................... 164

Property Rights in Money, by David Fox
(Benjamin Geva) ............................................................................................................ 324

(Mohamed E Khimji) .................................................................................................... 332

General Principles of Canadian Insurance Law, by Barbara Billingsley
(Lorraine Lafferty) ......................................................................................................... 339
# TABLE OF CONTENTS

**EDITORIAL** ................................................................. 185

**ARTICLES AND SYMPOSIA**

- **On Polyphony and Paradoxes in the Regulation of Securities Within the Canadian Federation**  
  *Noura Karazivan and Jean-François Gaudreau-Desbiens* .................. 1

- **The Late, But Welcome, Arrival of a New Federal Not-for-Profit Corporations Law**  
  *Wayne D. Gray* ....................................................... 40

- **Subordination Agreements, Bankruptcy and the PPSA**  
  *Roderick J. Wood* .................................................. 66

- **Terecon Contractors: The Effect of Exclusion Clauses on the Tendering Process**  
  *Jassmine Girgis* .................................................... 187

- **Small Claims Court Identity Crisis: A Review of Recent Reform Measures**  
  *Shelley McGill* ..................................................... 213

- **The Regulation of Abusive or Unconscionable Clauses from a Comparative Law Perspective**  
  *Sébastien Grammond* ................................................ 345

- **Abusive or Unconscionable Clauses from a Common Law Perspective**  
  *Stephen Waddams* .................................................. 378

- **The Challenge of Jurisdiction: Van Breda v. Village Resorts Ltd. and Black v. Breeden**  
  *Joost Blom* .......................................................... 400

- **The Priority Pitfall Problem: The Contest Between Judgment and Secured Creditors in Ontario**  
  *Brian M. Steinberg* ................................................ 425

**COMMENTARIES**

- **Solidarity, Unconscionability and Enforcement of Union Fines:**  
  *Birch v. Union of Taxation Employees, Local 76036*  
  *Michael Mac Neil* .................................................... 99

- **Restrictions on Unilateral Termination of Franchise Agreements**  
  *Jonathan C. Lisus and Adam Ship* .................................. 113

- **Nareeux Import Co. Ltd. v. Canadian Imperial Bank of Commerce: A New Implied Duty of Good Faith for Banks Issuing Letters of Credit?**  
  *Bradley Crawford, Q.C.* ........................................... 130

- **Doctrinal Reform and Post-Contractual Modifications in New Brunswick: Nav Canada v. Greater Fredericton Airport Authority Inc.**  
  *Rick Bigwood* ....................................................... 256
Insurance Salvage Rights and the PPSA

Anthony Duggan .................................................................................................................. 278

Part Payment, Promissory Estoppel and Lord Denning's "Brilliant" Balance

M.H. Ogilvie ......................................................................................................................... 287

Fundamental Breach is Dead; Or is it? Tercon Contractors Ltd. v. British Columbia (Transportation and Highways)
Angela Swan and Jakub Adamski. ......................................................................................... 452

Dead Man Walking? Malamas v. Crerar Properties Corp. Affirms a Dissolved Corporation's Right to Defend Itself
Ray Thapar and Ronald Podolny ......................................................................................... 465

REVIEW ESSAYS AND BOOK REVIEWS

Critical Moments and Turning Points in Law, Development and Corporate Governance

Gil Lan 146

The Little Book of Plagiarism, by Richard A. Posner
(Mark Perry) .......................................................................................................................... 166

Financial Institutions: The Regulator). Framework, by Christopher C. Nicholls
(James C. Baillie) .................................................................................................................... 175

Agreements on Jurisdiction and Choice of Law, by Adrian Briggs
(Vaughan Black) ..................................................................................................................... 300

Antitrust and Global Capitalism 1930-2004, by Tony A. Freyer
(Peter Carstensen) .................................................................................................................. 309

Economic Interests in Canadian Tort Law, by Peter T. Burns and Joost Blom
(Hazel Carty) .......................................................................................................................... 323

Democratizing Pension Funds: Corporate Governance and Accountability, by Ronald B. Davis
(Freya Kodar) .......................................................................................................................... 327

Corporate Social Responsibility: A Legal Analysis, by Michael Kerr, Richard Janda and Chip Pitts
(Sara L. Seek) .......................................................................................................................... 335

Cross-Border Litigation: In terjurisdictional Practice and Procedure, by Kenneth C. MacDonald
(Joost Blom) ............................................................................................................................ 472

Mistakes in Contract Law, by Catharine MacMillan
(David Capper) ........................................................................................................................ 476

Proprietary Rights and Insolvency, by Richard Calnan
(Anthony Duggan) .................................................................................................................. 483

Canadian Bankruptcy and Insolvency Law: Cases, Text and Materials, by A. Duggan, S. Ben-Ishai, T.G.W. Telfer, J.S. Ziegel and R. Wood
(Geoffrey B. Morawetz) ........................................................................................................ 492
<table>
<thead>
<tr>
<th>Title</th>
<th>Authors</th>
<th>Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Financial Contracts: A Legal Analysis</td>
<td>Martin Marcone (Christopher C. Nicholls)</td>
<td>496</td>
</tr>
<tr>
<td>Conflict of Laws</td>
<td>Stephen G.A. Pitel and Nicholas S. Rafferty  (Janet Walker)</td>
<td>502</td>
</tr>
<tr>
<td>LETTER TO THE EDITOR</td>
<td></td>
<td>343</td>
</tr>
</tbody>
</table>
# TABLE OF CONTENTS

*Foreword* ........................................... vii
The *Jacob Ziegel Medal* ........................................... ix
Introduction to Volume 50 ........................................... xi
Programme, 40th Annual Workshop on Commercial and Consumer Law ........................................... xiii
List of Contributors ........................................... xvii
Table of Cases ........................................... xx

## I. COMMERCIAL, CORPORATE AND FINANCIAL LAW

The Future of Payment Law

*Bradley Crawford* ........................................... 1

The Modernization of the Bills of Exchange Act: A Proposal

*Benjamin Geva* ........................................... 26

La réforme du droit des sociétés au Québec: tradition, harmonization et innovation

*Stéphane Rousseau* ........................................... 51

*M. Dickerson Arrive au Québec: A Comparative Law Perspective on the New Business Corporations Act (Québec)*

*Wayne D. Gray* ........................................... 73

Balancing and Its Alternatives: Jurisprudential Choice, Federal Securities Legislation and the Trade and Commerce Power

*Ian B. Lee* ........................................... 95

The Regulation of Financial Institutions: A Reflective But Selective Retrospective

*Christopher C. Nicholls* ........................................... 129

## II. SECURED TRANSACTIONS, BANKRUPTCY AND INSOLVENCY LAW

Secured Transactions Law in Canada: Significant Achievements, Unfinished Business and Ongoing Challenges

*Ronald C.C. Cuming, Catherine Walsh and Roderick J. Wood* ........................................... 156

Transnational Commercial Law and the Influence of the Cape Town Convention and Aircraft Protocol

*Roy Goode* ........................................... 186

The Evolution of the Companies’ Creditors Arrangement Act in Light of Recent Developments

*Janis Sarra* ........................................... 211

A Retrospective on the Canadian Consumer Bankruptcy System: 40 Years After the Tassé Report

*Stephanie Ben-Ishai, Saul Schwartz and Thomas G.W. Telfer* ........................................... 236

## III. CLASS ACTIONS AND CONSUMER LAW

Canadian Consumer Law and Policies 40 Years Later: A Mixed Report Card

*Jacob Ziegel* ........................................... 259
A Brief History of Interest Caps in Canadian Consumer Lending: Have We Learned Enough From the Past?  
Mary Anne Waldron ................................................................. 300

Regulation and the Constitution of the EU Single Market: The Contribution of Consumer Law  
lain Ramsay ................................................................. 322

Consumer (In)Justice: Reflections on Canadian Consumer Class Actions  
Jasminka Kalajdzie ................................................................. 356

Opting in, Opting Out, and Closing the Class: Some Dilemmas for England's Class Action Lawmakers  
Rachael Mulheron ................................................................. 376

IV. CONTRACT, FIDUCIARY LAW AND RESTITUTION  
Canadian Contract Law, 1970-2010  
Stephen Waddams ................................................................. 409

Two Unsettled Questions in the Law of Contractual Interpretation: A Call to the Supreme Court of Canada  
Geoff R. Hall ................................................................. 434

Fiduciary Obligations in the Supreme Court of Canada: A Retrospective  
Anthony Duggan ................................................................. 453

Forty Years of Restitution: A Retrospective  
John D. McCamus ................................................................. 474

V. MISCELLANEOUS  
Current Jurisdictional and Recognitional Issues in the Conflict of Laws  
Vaughan Black, Joost Blom and Janet Walker .................................................. 499

Reflections on the Maturing of Resource Law in Canada: 1970-2010  
Billy Garton and Mark Feldthusen .................................................. 525

The Use of Academic Writing in Appellate Judicial Decision-Making  
Robert J. Sharpe and Vincent-Joel Proulx .................................................. 550
# TABLE OF CONTENTS

## EDITORIAL

Albert H. Kritzer (1928-2010): An Appreciation  
Jacob Ziegel ................................................................. 167

## ARTICLES AND SYMPOSIA

Side-Payments, Opt-ins and Power: Creating a National Securities Regulator in Canada  
Anita Anaud and Andrew Green ....................................... 1

Christopher C. Nicholls .................................................. 27

Is Duke v. Andier Still Good Law in Common Law Canada?  
Elizabeth Edinger .......................................................... 52

The Implication of Contractual Terms in the New Millennium  
Brandon Kain ............................................................... 170

Consumer Arbitration after Seidel v. Telus  
Shelley McGill .............................................................. 187

The Canada Consumer Product Safety Act: A Review  
John F. Blakney, Margot Patterson, and Andrew Lanouette ........ 211

“SIR”ches and Seizures: Are Supplementary Information Requests Unconstitutional?  
Joshua A. Kranc ............................................................ 232

Certification in Class Proceedings —— The Curious Requirement of “Some Basis in Fact”  
Maurice Cullity ............................................................. 407

Personal Property Security Law in Australia and Canada: A Comparison  
John G.H. Stumbles ......................................................... 425

## SYMPOSIUM: FINANCIAL LITERACY FOR CANADIANS AND REACTIONS TO THE FEDERAL TASK FORCE REPORT

The Canadian Task Force on Financial Literacy: Consulting without Listening  
Saul Schwartz .............................................................. 338

Mary Anne Waldron .......................................................... 361

Financial Literacy and Insolvent Consumers: It Takes Two to Tango  
Jacob Ziegel ................................................................. 380

Financial Literacy or Financial Castigation?  
John A.E. Pottow ............................................................ 394
COMMENTARIES

Taking Security in Accounts Receivable and Their Proceeds under the Ontario PPSA: Bank of Nova Scotia v. IPS Invoice Payment System Corporations
Jeffrey Alpert .......................................................... 76

Security Interests in Goods Held for Lease: The Double Perfection Requirement
Anthony Duggan .......................................................... 85

The Good, the Bad and the Ugly: Report on a Panel Discussion of Class Actions Past and Future
H. Michael Rosenberg .................................. 94

Regulation of Prepaid Cards in Canada
Jacqueline D. Shinfield ............................................. 104

Priorities and Judicial Authority under the CCAA: Century Services Inc. v. Canada (Attorney General)
Roderick J. Wood ...................................................... 118

Ranjan K. Agarwal and James G. Lea .................. 259

A Return to First Principles in Unjust Enrichment: Kerr v. Barano
Mitchell McInnes .................................................. 275

Civil Liability Claims Against the Crown in Right of Canada and the Demise of Grenier
David Mullan ......................................................... 291

Surely the Next to Last Shot in the Battle of the Forms!
Margaret H. Ogilvie .................................................. 307

Section 25(1) of the OPPSA and Bank of Nova Scotia v. IPS Invoice Payment System Corporations —- A Further Comment
Jacob Ziegel .......................................................... 319

Two Comments on Re Indalex Limited
Comment by Ronald B. Davis
Ronald B. Davis ...................................................... 447

Re Indalex Limited: When Good Intentions Make Bad Law
Robin Schwill .......................................................... 467

REVIEW ESSAYS AND BOOK REVIEWS

Richard A. Posner, A Failure of Capitalism: The Crisis of '08 and the Descent into Depression
(John M. Curtis) ...................................................... 135

 Vaughan Black, Foreign Currency Claims in the Conflict of Laws
(Benjamin Geva) ...................................................... 147

The Unfortunate Gulf in Contract Law Between the Academy and Real-World Practice: A Review of Exploring Contract Law
(Geoff R. Hall) ...................................................... 158
Bradley Crawford, *The Law of Banking and Payment in Canada* (Muharem Kianieff) ........................................................................................................................................................................... 327

# TABLE OF CONTENTS

## EDITORIAL
- Where Federal-Provincial Co-operation has Failed Conspicuously
  Jacob Ziegel .................................................. 171

## Editorial
- Jacob Ziegel .................................................. 331

## ARTICLES AND SYMPOSIAS
- Canadian Intellectual Property Law and Pharmaceuticals: Is There a Need for Change?
  Edward M. Iacobucci ........................................... 1

- The Recent Evolution of Equitable Collection Remedies
  Elizabeth Edinger .............................................. 39

- The Tort of Intentional Interference with Economic Relations: Is Clarity Out of Reach?
  Ronald Podolny ................................................ 63

- Reforming the Law of Fraudulent Conveyances and Fraudulent Preferences
  Tamara Buckwold .............................................. 333

- 2012 Amendments to Canada's Bank Act: Bill S-5: Financial System Review Act
  Stephen D.A. Clark ............................................ 372

- Unjust Enrichment, “Existing Categories” and Kerr v. Barnow: A Reply to Professor McNees
  John D. McCamus .............................................. 390

- Fairness Away? Reflections on the BCLI Report on Proposals for Unfair Contracts Relief
  Rick Bigwood .................................................. 197

- Asset Sales Under the Companies' Creditors Arrangement Act and the Failure of Section 36
  Alfonso Nocella ................................................ 226

- Bank Act – PPSA Interaction: Still Waiting for Solutions
  Roderick J. Wood .............................................. 243

## SYMPOSIUM: SYMPOSIUM ON THE SUPREME COURT OF CANADA'S ADVISORY OPINION IN THE SECURITIES REGULATION REFERENCE CASE
- A National Securities Regulator: The Road Ahead
  Jeremy Fraiberg .............................................. 174

- Politics, Not Law
  Jeffrey MacIntosh ............................................ 179

- Reacting to the Status Quo in Securities Regulation
  Eric Spink .................................................... 182
Endgame: The Impact of the Supreme Court's Decision on the Project to Create a National Securities Regulator
Stéphane Rousseau .............................................................. 186

The Supreme Court's Securities Act Reference Fails to Demonstrate an Understanding of the Canadian Capital Markets
Poonam Puri ................................................................. 190

SPECIAL SUPPLEMENT
Waiver of Tort: An Historical and Practical Survey
J.M. Martin ................................................................. 473

COMMENTARIES
Buyer Beware: A Recent Re-Emergence of the Doctrine of Successor Liability
William D. Black, Christopher Hubbard and Kelly Peters......................... 83

Drafting Non-Competition Clauses under the New Competition Act Section 45: Avoidance of a Criminal Offence
Andrew Roman and Jordan Morelli.................................................. 95

Implied Obligations from a Comparative Perspective
Sebastien Grammond ........................................................................ 113

Canada's New Anti-Spam Legislation
Laura Weinrib and Alice Tseng .......................................................... 123

Une exception a la regle de l’inefficacite de l’hypothèque judiciaire , dans le contexte de la faillite debiteur
Elise Charpentier ........................................................................... 271

Strict Liability and Statutory Rescission of Franchise Agreements in the Ontario Court of Appeal
Adam Ship .......................................................... 287

Securities Class Actions After Timminco: Has the Court of Appeal Undone Part XXIII.1?
A. Dimitri Lascaris and Daniel E.H. Bach ............................................. 416

Class Action Developments: Report on Panel Discussion
Amy Rose ............................................................................. 429

The Use of Academic Writings in Judicial Decision-Making: Perspectives from the Bench
Sylvie McCallum Rougerie ............................................................ 445

REVIEW ESSAYS AND BOOK REVIEWS
Three Recent Works on Contractual Interpretation: Steven J. Burton, Elements of Contractual Interpretation; Geoff R. Hall, Canadian Contractual Interpretation Law; Catherine Mitchell, Interpretation of Contracts: Part One
(John D. McCamus) ...................................................................... 136

Qiao Liu, Anticipatory Breach
(Mary Anne Waldron) ..................................................................... 154

M.W. Lau, The Economic Structure of Trusts
(Donovan Waters) ....................................................................... 161

Ignoring Polonius: A Review of *Debtor Nation: The History of America in Red Ink, by Louis Hyman* (Charles J. Tabb) ........................................................................................................ 322

Paula Giliker, *Vicarious Liability in Tort: A Comparative Perspective* (Russell Brown) .................................................................................................................. 456

Gunther Teubner, *Networks as Connected Contracts* (Angela Swan) ................................................................................................................................. 465
TABLE OF CONTENTS

EDITORIAL

In Memoriam: The Honourable Lloyd W. Houlden 1922-2012
Jacob Ziegel ................................................................. 165

ARTICLES AND SYMPOSIA

New Ground Rules for Jurisdictional Disputes: The Van Breda Quartet
Joost Blom ................................................................. 1

Internal Accountability for Provincial Violations of Canada’s International Obligations: Lessons from Abiribi
H. Scott Fairley .......................................................... 31

Mapping the Serbonian Bog: The Territorial Limits of Secondary Market Securities Act Claims Under the Canadian Constitution —
Part I
Brandon Kain and Byron Shaw ........................................... 63

Commercial Law and Indigenous Sovereignty: It’s a Nice Idea, But How Do You Build it in Canada?
Douglas Sanderson .......................................................... 92

Mapping the Serbonian Bog: The Territorial Limits of Secondary Market Securities Act Claims Under the Canadian Constitution —
Part II
Brandon Kain and Byron Shaw .......................................... 233

Cash Collateral Under the PPSA: The Case for Control
Robert M. Scavone .......................................................... 263

A Presumptively Better Approach to Arbitrability
John A.F. Pottow, Jacob Brege and Tara J. Hawley .................. 323

PANEL DISCUSSION: THE FUTURE OF CANADA’S PAYMENTS SYSTEM: REACTIONS TO THE TASK FORCE’S FINAL REPORT

Final Report of the Task Force for Payments System Review:
Modernization to Promote e-Commerce
Bradley Crawford ............................................................. 167

The Payment Industry After the Task Force Report: Can Canada Learn from the Experience of Others?
Benjamin Geva ............................................................... 180

Rapport du groupe de travail sur l’examen du système de paiement — payments de consommation
Marc Lacoursière ............................................................... 198

The Task Force’s Payments System Review Report: An Outsider’s View
Ruth Plato-Shinar .............................................................. 215

PAPERS FROM THE 42nd ANNUAL WORKSHOP ON CONSUMER AND COMMERCIAL LAW

Litigate or Regulate? The Elusiveness of an Effective Consumer Protection Regime
Craig Jones ................................................................. 360
Public Goals by Private Means & Public Actors Protecting Private Interests: A Response to Professor Jones
Jasminka Kalajdzic ........................................................................................................ 371
Is Corporate Rescue Working in Canada?
Alfonso Nocilla ........................................................................................................ 382
Rescue and Liquidation in Restructuring Law
Roderick J. Wood ....................................................................................................... 407

COMMENTARIES
The Case Against Adopting a General Doctrine of Successor Liability
Wayne D. Gray ............................................................................................................ 116
Section 70(1) of the BIA and Competing Priorities Among Security Interests: A Purposive Approach
Jacob Ziegel ................................................................................................................. 134
Debt or Equity? A Puzzle for Canadian Bankruptcy Law
Stephanie Ben-Ishai ..................................................................................................... 416
Dragons and Arrows: Arrowhead and Limiting Professional Liability to Third Parties
William D. Black, Elder C. Marques and Helen F. Burnett ........................................ 430
Copyright Reform: The Debate Enters a New Phase
C. Ian Kyer ................................................................................................................ 442
Equity, Unjust Enrichment and PPSA Priorities: KBA Canada v. 3S Printers Inc.
Roderick J. Wood ....................................................................................................... 452

REVIEW ESSAYS AND BOOK REVIEWS
James Steven Rogers, The End of Negotiable Instruments: Bringing Payments Law Out of the Past
(Bradley Crawford) ...................................................................................................... 140
Robin Hickey, Property and the Law of Finders
(Jonnette Watson Hamilton) ....................................................................................... 147
Teresa Scassa, Canadian Trademark Law
(Mark Perry) ............................................................................................................... 155
Benjamin Geva, The Payment Order of Antiquity and the Middle Ages
(Ross Cranston) .......................................................................................................... 162
Simon Douglas, Liability for Wrongful Interferences with Chattels
(Neil Foster) ............................................................................................................... 290
Tanya Aplin, Lionel Bently, Philip Johnson and Simon Malynicz,
Gurry on Breach of Confidence: The Protection of Confidential Information
(Chris Hunt) ............................................................................................................... 297
Geraint Howells, The Tobacco Challenge: Legal Policy and Consumer Protection
(Ian Irvine) ............................................................................................................... 312
Lorna Fox O'Mahony, Home Equity and Ageing Owners Between Risk and Regulation
(Stephanie Ben-Ishai) ............................................................................................... 465
Andrew Keay, *The Corporate Objective*
(Mohamed F. Khimji) ................................................................. 470

Review Essay: The Problem of Standard Form Contracts: A
Retreat to Formalism

(Stephen Waddams). 475

*Index* ...................................................................................................................... 489
# TABLE OF CONTENTS

The End of an Era: A Tribute to Jacob Ziegel  
Roy Goode .................................................. 319

## ARTICLES AND SYMPOSIA

*Reference re Securities Act: If Wishes Were Horses, Then Beggars Would Ride...*  
Elizabeth Edinger ........................................ 1

The Concept of *De Facto* Control in Canadian Tax Law: *Taber Solids* and Beyond  
Brian M. Studniberg .................................... 17

Chinese Investment in the United States and Canada  
Mark Klaiver and Michael Trebilcock .................. 123

Common Law Treatment of Renewal Rights in Commercial Agreements: A Special Look at Franchises, Distributorships and the Duty of Good Faith  
Adam Ship ................................................. 178

## PAPERS FROM THE 42nd ANNUAL WORKSHOP ON CONSUMER AND COMMERCIAL LAW

Business Method Patents and Patent Trolls  
Norman Siebrasse ......................................... 38

Comment on Norman Siebrasse, Business Method Patents and Patent Trolls  
Jeff Berryman ............................................. 58

The Contribution to Private Law of Justice La Forest  
Stephen Waddams ........................................ 205

Justice Gérard V. La Forest and the Uncertain Greening of Canadian Public Law  
William Lahey ............................................. 223

## MINI-SYMPOSIUM ON CONTRACT BOILERPLATE

Mini-Symposium on Contract Boilerplate: Introduction  
Jennifer Milson and Simon Stern .......................... 246

The Market for Rights  
Aditi Bagchi .............................................. 252

Market Regulation of Contractual Terms: A Sceptical View  
Guy A. Rub ............................................... 258

Contracts as Products: Comments on Margaret Radin’s *Boilerplate*  
Michael Trebilcock ....................................... 271

*Boilerplate: A Judge’s Perspective*  
Kathryn Feldman .......................................... 274

Radin on Consent and Fairness in Consumer Boilerplate: A Brief Comment  
Peter Benson .............................................. 282
Response: Boilerplate in Theory and Practice
Margaret Jane Radin ................................................................. 292

The IPO Market in Canada: What a Comparison with the United States
Tells Us About a Global Problem
Bryce C. Tingle, J. Ari Pandes and Michael J. Robinson ......................... 321

Joint Venture Theurgy
Robert Flannigan ........................................................................ 368

COMMENTARIES
Financial-Consumer Complaint Agencies
Bradley Crawford ........................................................................... 68

Clarifying the Doctrine of Rectification in Canada: A Comment on Shafron
v. KRG Insurance Brokers (Western) Inc.
Patrick Hartford ............................................................................. 87

Safe Food for Canadians Act
John F. Blakney, Margot Patterson, Olivia Wright
and Jawaid Panjwani ...................................................................... 396

Problems of Interpreting Statutes of Limitations in Cases of
Continuing Breach of Contract
Peter S. Spiro .................................................................................. 411

REVIEW ESSAYS AND BOOK REVIEWS
Katy Barnett, Accounting for Profit for Breach of Contract: Theory
and Practice
(Andrew Botterell) .......................................................................... 99

Andrew V.M. Lodder, Enrichment in the Law of Unjust Enrichment and
Restitution
(Mitchell McInnes) ......................................................................... 107

Jamie Glister and Pauline Ridge, Fault Lines in Equity
(Paul B. Miller) ............................................................................. 115

Australian Personal Property Securities Law — A Book for All Reasons, by
Anthony Duggan and David Brown
(Ronald C.C. Cuming) ...................................................................... 307

An Amiens Brief in the Economists' Court: From Crisis to
Crisis: The Global Financial System and Regulatory Failure,
by Ross P. Buckley and Douglas W. Amer
(Dan Ciuriak) ................................................................................ 425

Personal Property Security Law,
by Ronald C.C. Cuming, Catherine Walsh and Roderick J. Wood
(David L. Denomme) ....................................................................... 449

Rights and Private Law,
by Donal Nolan and Andrew Robertson, eds.
(Eric S. Knutsen) ........................................................................... 461

Index .............................................................................................. 469
# TABLE OF CONTENTS

**List of Contributors** ........................................................... vii
**Table of Cases** ................................................................. ix

## ARTICLES AND SYMPOSIA

### SYMPOSIUM ON THIRD-PARTY LITIGATION FUNDING

Commercial Litigation Funding: Ethical, Regulatory and Comparative Perspectives  
Camille Cameron and Jasminka Kalajdzic ........................................... 1

Financing Access to Justice: Third-Party Litigation Funding and Class Actions in Australia  
Andrew Watson and Michael Donelly ................................................ 17

Profitable Justice: Aligning Third-Party Financing of Litigation with the Normative Functions of the Canadian Justice System  
Poonam Puri ..................................................................................... 34

An Economic Assessment of Third-Party Litigation Funding of Ontario Class Actions  
Michael Trebilcock and Elizabeth Kagedan ........................................ 54

Policy and Regulatory Issues in Litigation Funding Revisited  
John Walker .................................................................................. 85

Litigation Investment and Legal Ethics: What Are the Real Issues?  
Anthony Sebak ................................................................................ 111

A Legal Ethics Perspective on Alternative Litigation Financing  
W. Bradley Wendel ......................................................................... 133

Third-Party Funding for Class Actions, and Control Over the Litigation  
Charles M. Wright and Anthony O'Brien ........................................... 165

## ARTICLES

Equity and the PPSA: Strange Bedfellows?  
Ronald C.C. Cumming .................................................................. 179

Is Crowdfunding Bad for Investors?  
Anita Anand ................................................................................ 215

Waiver of Tort: Is There a Limiting Principle?  
John D. McCamus .......................................................................... 333

Special Compensation Arrangements for Dissident Directors in Proxy Contests: A Policy Analysis  
Edward M. Iacobucci .................................................................... 365

Canadian Mergers and Acquisitions at the Crossroads: The Regulation of Defence Strategies After BCE  
Robert Yalden .............................................................................. 389

A Pragmatic Approach to Contractual Interpretation  
Ronald Podolny ............................................................................ 428
Developments in Financial Services Regulation: A Comparative Perspective
Poonam Puri and Andrew Nichol ................................................................. 454

PAPERS FROM THE 43rd ANNUAL WORKSHOP ON CONSUMER AND COMMERCIAL LAW
Repeat Bankruptcies and the Integrity of the Canadian Bankruptcy Process
Thomas G.W. Telfer .................................................................................. 231

Club Resorts Ltd. v. Van Breda: Extraterritoriality Revisited
Elizabeth Edinger ....................................................................................... 263

COMMENTARIES
The Cult of Corporate Personality: Yaiguaje v. Chevron Corporation
Jason MacLean ........................................................................................... 281

Security Interests in Transferred Collateral: A Note on Lisec America Inc. v. Barber Suffolk Limited
Anthony Duggan ......................................................................................... 296

REVIEW ESSAYS AND BOOK REVIEWS
Angela Swan and Jakub Adamski, Canadian Contract Law (Rick Bigwood) ................................................................. 313

C. Mitchell, P. Mitchell and S. Watterson, Goff & Jones: The Law of Unjust Enrichment (Mitchell McInnes) ................................................................. 323

Index ............................................................................................................. 489