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## Canada Update - Highlights of Major Legal News and Significant Court Cases from May 2007 to July 2007

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# CANADA UPDATE – HIGHLIGHTS OF MAJOR LEGAL NEWS AND SIGNIFICANT COURT CASES FROM MAY 2007 TO JULY 2007

*Brandon Wonnacott\**

## I. SUMMARY OF LEGAL NEWS

### A. ENERGY SECURITY IN NORTH AMERICA

ON July 23, 2007, North American energy ministers met to discuss and collaborate on energy matters including “energy science and technology, energy efficiency, deployment of clean energy technologies and other cooperative projects.”<sup>1</sup> The event was held in Victoria, B.C. and included Canadian Minister of Natural Resources Mr. Gary Lunn, U.S. Secretary of Energy Mr. Samuel W. Bodman, and Mexico’s Secretary of Energy Ms. Georgina Kessel.<sup>2</sup> Included in the discussion was the endorsement of the first-ever trilateral agreement on energy science and technology, targeted to increase innovation and scientific communication between the countries.<sup>3</sup> Canada, Mexico, and the United States will begin to trade scientific and technical personnel to create joint projects between the countries.<sup>4</sup> Additionally, the ministers recommitted to energy efficient standards on consumer products, including “refrigerators, air conditioners, and larger electric motors.”<sup>5</sup> Energy efficiency was also discussed, with the ministers committing “to strengthen[ ] trilateral cooperation on motor vehicle fuel efficiency and ‘standby power’ consumption.”<sup>6</sup> The ministers will meet again in Mexico City in September to further discuss joint energy opportunities.<sup>7</sup>

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1. Kathleen Olson, *North American Energy Ministers Take Further Action on Energy Security and the Environment*, CANADA NEWS CENTRE, July 23, 2007, <http://news.gc.ca/web/view/en/index.jsp?articleid=342449>.

2. *Id.*  
3. *Id.*  
4. *Id.*  
5. *Id.*  
6. *Id.*  
7. *Id.*

## B. NON-CANADIAN TAKEOVERS

Amidst concerns of Canadian corporations being “hollowed out” by foreign multinationals, the conservative government will soon launch a new “competitiveness panel” to review takeovers.<sup>8</sup> This comes following a wave of foreign takeovers of Canadian companies.<sup>9</sup> Industry Minister Ms. Maxime Bernier will oversee the panel.<sup>10</sup>

## C. “NO FLY” DETAILS

Hundreds of people have recently been listed on a new “no-fly list,” aimed at keeping off commercial airlines individuals the Canadian government views as a “serious” threat to Canada’s security.<sup>11</sup> The new program went into effect on June 18 and will cost \$13.8 million to implement and \$2.9 million a year to run.<sup>12</sup> All passengers over the age of twelve will be screened against the database, and if the traveler’s name, gender, and birth date match an entry in the database, Transport Canada will be contacted to confirm or deny the passenger’s identity and if they will be allowed access to the flight.<sup>13</sup> The Canadian government contends that this program is necessary to ensure the safety and protection of everyone on commercial flights.<sup>14</sup> The plan has been met with harsh criticism, however. Many are concerned that there is no need for a no-fly list and that the government will not effectively protect travelers’ personal information.<sup>15</sup> Civil liberties groups in particular are concerned that passenger privacy will be too easily compromised with the implementation of this system.<sup>16</sup> NDP MP Joe Comartin (Windsor-Tecumseh) called the program “useless,” as he believes that the people we truly need to be worried about would not be foolish enough to use their real names.<sup>17</sup>

## II. SIGNIFICANT COURT DECISIONS

### A. CRIMINAL LAW: JUDGMENTS: *R. v. TESKEY*

The accused faced charges of breaking and entering, theft, and aggravated assault. During a five day trial, complex and circumstantial evidence was given that at times was contradictory.<sup>18</sup> The trial judge, after reserving his decision for four months, convicted the accused on all of the

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8. *Government Panel to Look Into Foreign Takeovers*, FIN. POST, May 14, 2007, <http://www.canada.com/nationalpost/financialpost/story.html?id=40f7016f-4977-4080-8d3e-e38126079966&k=31129>.

9. *Id.*

10. *Id.*

11. Bruce Campion-Smith, *Ottawa Releases ‘no-fly’ Details*, THESTAR.COM, May 17, 2007, <http://thestar.com/news/article214874>.

12. *Id.*

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *R. v. Teskey*, 2007 S.C.C. 25, <http://scc.lexum.umontreal.ca/en/2007/2007scc25/2007scc25.html>

charges, basically only stating that the Crown had proven the elements beyond a reasonable doubt.<sup>19</sup> The judge stated his intention to issue written reasons, which he eventually released eleven months after the verdicts – after the accused’s notice of appeal had been filed.<sup>20</sup> The court of appeals found that the oral reasons given during the Judge’s decision did not meet the required test of sufficiency, but the majority did consider the written reasons and upheld the convictions.<sup>21</sup> The accused appealed to the Supreme Court of Canada regarding whether the Court of Appeal should have considered the written reasons.<sup>22</sup> The Supreme Court ruled in a six to three decision that the appeal was allowed, and that the convictions should be set aside and a new trial ordered.<sup>23</sup>

B. TAXATION LEGAL SERVICES: ATTORNEY GENERAL OF BRITISH COLUMBIA V. DUGALD E. CHRISTIE, ET AL.

British Columbia’s *Social Service Tax Amendment Act (No. 2), 1993* placed a 7 percent tax on legal services with the intent to help fund legal aid for British Columbia.<sup>24</sup> Christie claimed that this tax was unconstitutional, as the effect of the tax made lower income families unable to retain him as a litigation lawyer to litigate their claims.<sup>25</sup> The judge ruled that the tax was unconstitutional as it denied a constitutionally protected right of lower income families to receive access to legal remedies.<sup>26</sup> The Court of Appeal upheld the decision. The Supreme Court of Canada, however, ruled that access to the courts is not absolute, as the legislature has the power under s. 92(14) of the *Constitution Act, 1867* to impose conditions on the access some have to the courts.<sup>27</sup> The Supreme Court allowed the appeal and ruled the tax constitutional.

C. BANKING AND INSURANCE: CANADIAN WESTERN BANK ET AL V. HER MAJESTY THE QUEEN IN RIGHT OF ALBERTA

Alberta enacted alterations to the *Insurance Act*, which made federal chartered banks subject to the laws governing the licensing of insurance projects.<sup>28</sup> Appellant banks attempted to bring a declaration that their promotion of specific insurance products was not covered by the changes, but was instead considered banking within the meaning of s. 91(15) of the *Constitution Act, 1867*.<sup>29</sup> They brought this basis on “the doctrine of in-

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19. *Id.* ¶ 1.

20. *Id.*

21. *Id.*

22. *Id.*

23. *Id.*

24. *British Columbia v. Christie*, 2007 S.C.C. 21, <http://scc.lexum.umontreal.ca/en/2007/2007scc21/2007scc21.html>.

25. *Id.* ¶ 1.

26. *Id.*

27. *Id.*

28. *Canadian Western Bank v. Alberta*, 2007 S.C.C. 22, <http://scc.lexum.umontreal.ca/en/2007/2007scc22/2007scc22.html>

29. *Id.* ¶ 1.

terjurisdictional immunity or, alternatively, inoperative by virtue of the doctrine of federal paramountcy.”<sup>30</sup> The trial judge dismissed the claim, finding instead that the act was valid legislation, and that the banks’ claims were inapplicable.<sup>31</sup> The judge ruled that “the promotion of authorized insurance was not at the core of banking” and that there was no such “operational conflict” between federal and provincial legislation.<sup>32</sup> The Court of Appeals upheld the decision, and the Supreme Court dismissed the appeal.

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30. *Id.*

31. *Id.*

32. *Id.*