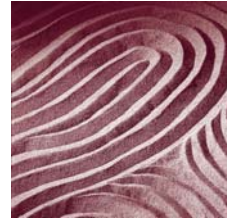
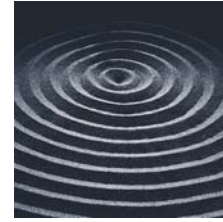


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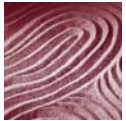
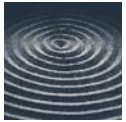
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## What's New in Law?

Presented by:  
Jennifer E. Babe, Partner,  
Miller Thomson LLP  
September 13, 2006



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## What's New in Law?

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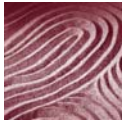
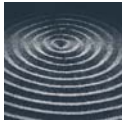
Sept. 13, 2006



## A. Vicarious Liability: Responsibility without Fault

- The Problem:

- Highway traffic legislation imposes liability on “owners” of legal title to motor vehicles
- Lessors, rental companies and conditional sale vendors, who hold legal title but do not have possession or control of the vehicle, are exposed to liability in some jurisdictions
- See the Miller Thomson chart to see a province by province highlight

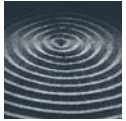


# CFLA's Recommendation: Adopt the “Newfoundland solution”

- Adopt the legislated definition of “owner” to exclude financiers, lessors and rental companies who are not in possession and control of the vehicle
- This was not adopted in Ontario
- CFLA is recommending this solution in Alberta and BC



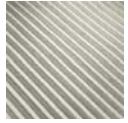
# Ontario



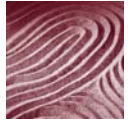
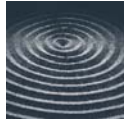
- Bill 18: enacted legislated cap for lessors in accidents occurring on or after March 1, 2006
- 3 problems remain:
  - 1) no cap on taxis, limousines or “livery vehicles” – which term is not defined; CFLA has asked for a definition and not done yet.
  - 2) cap is on personal injuries; no cap on property damage.
  - 3) insurance policy wording for lessors has not been altered by the Financial Services Commission of Ontario to delete coverage for “drivers”, leaving access to umbrella policies by plaintiffs.
- Example:
  - Award for \$5M of personal injuries; plaintiff entitled to:
    - a) \$1M from driver’s primary policy; lessor excluded by the cap
    - b) \$4M from lessor’s umbrella policy which covers the “driver”
  - FSCO has been asked by CFLA, but has not yet amended policy wording.
- Lee Samis of Samis & Company has prepared revised policy wording that CFLA has recommended to FSCO

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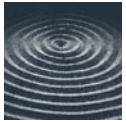
## B. Some Recent Cases



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1. GMAC Commercial Credit Corp. v. T.C.T. Logistics Inc. [2006] S.C.C. 35



- KPMG acting as court-appointed interim receiver.
- Court order providing interim receiver's employment related activities were not to be considered those of a "successor employer" and no actions against interim receiver allowed without leave of court.
- Post bankruptcy, KPMG sold assets of debtor's warehouse operation.
- Some unionized employees hired by purchaser.
- Union applying for leave to have interim receiver declared "successor employer" under Ontario *Labour Relations Act*.



GMAC Commercial Credit Corp. v. T.C.T.

Logistics Inc.

continued...

- S.C.C. held appeal of union allowed for:

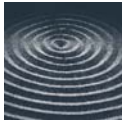
A. Leave under s. 125 of *Bankruptcy and Insolvency Act* to bring successor employer application against the interim receiver; and

B. Bankruptcy court does not have jurisdiction to decide whether it is a successor employer; that falls to Ontario Labour Relations Board.

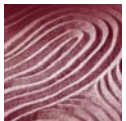




## 2. R. v. Jackman (2006) B.C.S.C. 804



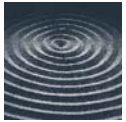
- Issue: as between two fraud victims who gets the vehicle?



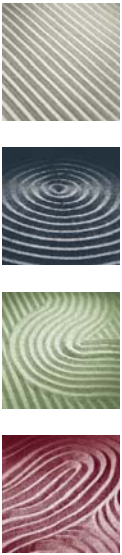
- s. 29 of B.C. *Sale of Goods Act* provides:
  - 29(1) if the goods are stolen, and the offender is convicted, the goods revert to the owner.
  - 29(2) if the goods are obtained by fraud not amounting to theft, property does not revert to owner just because of the conviction of the offender.



R. v. Jackman (2006) B.C.S.C. 804 continued...



- Court held that where owners of vehicle accepted a “rubber” cheque drawn on non-existent bank account, and then accepted another [stolen] vehicle as collateral until the rogue could replace the cheque, this was fraud not constituting theft.
- Original owners allowed to pay third party transferee to buy back their vehicle



3. Paccar of Canada Ltd. v. Peterbilt of Ontario Inc. et al (2006) 18 C.B.R. (5<sup>th</sup>) 125; 8 P.P.S.A.C. (3d) 258 (O.S.C.J. – Commercial List)

- Issue: whether the subject transaction was a tri-partite financing outside the Ontario PPSA, or, a lease that secures payment or performance of an obligation governed by the PPSA.
- The court held the agreement was one subject to the Ontario PPSA and Paccar was unperfected.
- The court reviewed the Ontario case law and held that:
  - i. absence of an option to purchase is not in itself determinative;
  - ii. Paccar had taken steps to “maximize financial performance from both the dealer and the lessee; and
  - iii. Taken as a whole, this agreement was one that created a security agreement to secure “payment or performance of an obligation”.
- Note: The Ontario Bar Association’s PPSA Committee has again in its submission to the Ontario government dated February 13, 2006, reinforcing its 1998 submissions, recommended that Ontario follow every other PPSA statute in Canada and the Quebec Civil Code, by adopting the rule that the Act applies to all leases for a term of more than one (1) year, to end these cases and promote uniformity across Canada.



C. What you need to know about the  
*Securities Transfer Act*

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