



**TOP 10
BUSINESS ISSUES
WITH LEGAL
IMPLICATIONS 2012**

In a constantly changing regulatory and business environment, it can be difficult for businesses to keep up. And 2012 will be no exception – both domestic and foreign investors will face challenges and meet opportunities doing business in Canada. From the evolving class action lawsuit to changing Aboriginal consultation requirements and a harder hitting tax man, Borden Ladner Gervais LLP (BLG) predicts the issues likely to impact the corporate landscape and dominate headlines in 2012.

1. Keeping the spark alive – ensuring foreign investors keep coming back for more

Canada's North was an alluring target for international development companies in 2011 and in fact in October, *Fortune* magazine ranked Canada No. 1 in its annual look at the Best Countries for Business. Significant investment in the natural resource sector represented a boon for the Canadian economy but our international partners faced Canada's Aboriginal consultation requirements and environmental regulations. What can foreign investors and Canadian natural resource companies do to mitigate red tape and keep these vital projects on the move?

2. Financial institutions and the economic recession – it ain't over 'til it's over

Canada weathered the global recession better than other industrialized countries thanks to our banking system. Not one of our banks required a bailout, our economy grew 3.1 per cent in 2010, and we saw more foreign investors seeking Canadian capital and wanting to do deals. Sounds like we're in the clear! On the contrary. Some say low interest rates, banks spreads, insurer liabilities and pension plan funding could create challenges for Canadian banks and insurers in 2012. How will banks and big businesses cope?

3. We can't predict what the plaintiff class action bar will do next, but at least we can prepare for it

Class action lawsuits kept companies busy in 2011 as this type of lawsuit continued to develop and spring up from every angle. Some companies had incredible success, others were engaged in lengthy trials and others faced certification hearings. From securities to privacy to product liability, it appears that class actions will continue to attract corporate attention in the coming year. Development south of the border may limit the scope of the class action in the United States, but companies operating in Canada will want to follow a series of decisions to be released in Canada in the next 12 months to understand the risk facing their organizations.

4. You can't run or hide – why you must turn and face the tax man in 2012

After cutting taxes in many countries to boost economies, governments around the world are doing what they can to recover revenues lost during the recession. Canada is no exception and businesses are seeing more frequent and aggressive tax audits. While Canada Revenue Agency has been actively pursuing audits on high net worth individuals for more than a year, companies will now face even greater scrutiny. From grading on non-compliance to assessments of reporting functions, Canadian businesses will feel the heat of the tax man in 2012.

5. Privacy in public forums – will we ever recover?

It seems like a lifetime ago that we dialed up the Internet, sat through the beeps and whirs and patiently waited for pages to load. What did people do before the Internet and the World Wide Web? For one thing, they maintained their privacy. 2011 brought the launch of facial recognition for Facebook users in the U.S., high-profile cases of defamation liability via Twitter, and job loss for some Vancouver rioters whose photos appeared online. With the terrain changing so rapidly, how will web users protect their privacy in 2012? What will be the effect of: anti-spam legislation, new advertising guidelines for online tracking, evolving rules surrounding Internet/social media defamation, and employers finding out more and more about their employees' antics outside of the workplace?

6. What the frack?

While large-scale commercial production of shale gas has not yet been achieved in Canada, many companies are now exploring for and developing shale gas resources in Alberta, British Columbia, Quebec, and New Brunswick. But fracking – the use of highly-pressurized fluid to fracture rock and release gas and oil from shale fields – is increasingly controversial. However, in the U.S. alone, fracking is responsible for increasing recoverable resources by 600 trillion cubic feet of gas and seven billion barrels of oil that would not otherwise be accessible. What changes to regulation and legislation are expected in response to community concerns? What direction is Canada going with respect to greater oversight and required consultation?

7. One for the history books: Social media mobilizes civil rights

Around the globe, 2011 will be a year to remember in terms of civil rights activists and political regime protesters using social media to build engagement and mobilize crowds. In fact, *Time* magazine even named “The Protester” as 2011’s Person of the Year. What have we learned from these movements and what can businesses do to protect themselves should a protest movement take place at their front door?

8. Saying sorry without fear of litigation? Apology legislation becomes more prevalent

Thanks to apology legislation, businesses in Ontario, British Columbia, Saskatchewan and Manitoba are more likely to come out of a crisis on top. Not only does this legislation allow businesses to express empathy for those affected by a situation, but there is growing evidence that apology laws actually reduce the number of lawsuits and the time required to settle them.

9. Overseas growth sounds attractive. But what about the tax authorities?

International trade and overseas expansion have never been more attainable for Canadian businesses. With continued scrutiny of transfer pricing arrangements, however, businesses must be prepared to meet the reporting and filing requirements of the relevant tax authorities. At the same time, growing businesses should be aware of the expanded exchange-of-information tax treaties and how these multi-jurisdictional relationships can contribute to profitable growth.

10. Canada’s green economy: Set to stay the course?

When it comes to the business of renewable energy, Canada is considered a land of opportunity. Favourable pricing and incentive programs have attracted international attention and foreign investment. But in 2011, the provincial government faced much criticism over the Ontario Green Energy Act, the FIT program and renewable energy prices in general. The Green Energy Act will remain under the microscope in 2012 as investors, consumers and governments examine the value of this program and the unconventional process of enacting it. How will this impact Canada’s role in the global renewable energy space, the opportunities presented to Canadian and international companies, and the Canadian economy?

About Borden Ladner Gervais LLP

With more than 750 lawyers, intellectual property agents, and other professionals working in six major Canadian cities, Borden Ladner Gervais LLP is the largest Canadian full-service law firm focusing on business law, litigation and intellectual property solutions. BLG provides bilingual services in virtually every area of law, and represents a wide range of regional, national and multinational organizations. For further information, visit blg.com

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