

AUGUST 09

Business News

Legal Issues update for Canberra Businesses

DOUBLE BARREL LOANS - GLOBAL FINANCIAL CRISIS COMES HOMES TO ROOST

One area in which the effect of the global financial crisis is clearly becoming more common is the discharge of investment loans.

Although it is now too late to protect your position if you have already negotiated these loans, it is important to note that in relation to investment loans secured by mortgages over property, banks are now taking a very hard line on discharges. We have had a number of clients who had found buyers for their investment properties only to be told, after exchange of contracts, that in addition to the whole of the proceeds of sale being handed over to the bank, the bank would also require a further amount, in one case of \$40,000. This was because the most recent valuation of the second and continuing investment property had fallen to the extent that the bank was no longer prepared to hold the loan at the debt-to-loan ratio that would arise from the return of the funds.

The illogical part of this, of course, was that the bank was being offered \$300,000 or \$400,000 to reduce the principal but it had decided that, because of the lower valuation, it was in a better position if it continued to receive the income of both principal and interest and maintained the two properties as security. Conversely, if you were forced to a mortgagee-in-possession sale, the bank might recover less than the total value (according to its most recent valuation) of the combined properties. This really is a case of borrower beware!

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NEW ARRIVALS

**Tanya Herbertson,
Senior Associate**

Congratulations to Tanya
and her family on their new
arrival of baby Rhys.

Lara Radik, Solicitor

Congratulations to Lara
and her family on the
arrival of Sidney.

**Mellisa Camaivuna,
Finance Manager**

Congratulations to Mellisa
and her family on the
arrival of Eroni.

ENVIRONMENTAL DEFENDER'S OFFICE PUBLISHES NEW BOOK.

The Environmental Defender's Office (EDO) launched the second edition of the "ACT Environmental Law Handbook" on 30 June 2009 at the ACT Legislative Assembly. The book is an insightful and useful tool for those interested in the environment and its interaction with the ACT legal system.

There are a number of laws that affect Canberran businesses that are informed or influenced by environmental considerations. For example, the construction industry faces a significant challenge in complying with environmental constraints in terms of planning, seeking development approval and, in certain circumstances, complying with the Commonwealth's *Environmental Protection and Biodiversity Conservation Act 1999*.

Other important considerations for businesses in Canberra include the *Tree Protection Act 2005 (ACT)*, the *Water Resources Act 2007 (ACT)*, and the growing focus on energy efficiency in buildings, appliances and, to some extent, services.

NICK TEBBEY, SENIOR ASSOCIATE, 6285 8000

CORPORATE ESPIONAGE – MORE THAN JUST A MOVIE THEME!

Canberrans beware: corporate espionage does not just belong in Hollywood. In fact, in an unstable economic climate, people are increasingly turning to back-door tactics to secure their own success, often at the expense of those who trust them.

In previous newsletters, we have discussed the importance of protecting your confidential information (“CI”). CI can include client lists, business procedures, product specifications ... essentially anything that contributes to wealth creation and maintenance in your business.

CI is traditionally quite difficult to protect because it does not clearly fall within one of the recognised categories of intellectual property (“IP”) (although often it can be captured by principles of copyright, etc). Your trade secrets are, therefore, best protected through non-disclosure agreements and constant vigilance.

Unfortunately, even these measures can be powerless in the face of increased technological capabilities and instability in the nation’s economy. At Snedden Hall & Gallop, we are seeing an alarming trend of businesses suffering some form of theft of their CI, often through cloak-and-dagger approaches that equate to “corporate espionage”.

A business needs to be careful to protect its secrets. This requires constant updating of an IP register. Knowing exactly what it is you need to protect is, by far, the single most important weapon in your arsenal against corporate espionage.

There is an increasing amount of legislation that prohibits, and, in some cases, makes criminal, acts of deceit, fraud and other methods of obtaining information. However, if you don’t know what to protect, these legislative provisions will be too late. It is important to be aware, though, of the potential criminal consequences, including gaol, that follow from some acts of corporate espionage.

Snedden Hall & Gallop can assist you to undertake a full audit of your IP, and advise you on the best ways to protect what you have, to inform your staff about their rights and obligations, and to help you secure your interests for the future.

NICK TEBBEY, SENIOR ASSOCIATE, 6285 8000

TERMINATING A UNION OFFICIAL: CAN YOU DO IT?

It has long been the case that members and officials of unions have been in the privileged position of participating in union activities without fear of employer reprisal. However, this gives rise to the question, when a union official acts improperly or misconduct persists, is the employer exposed to unfair dismissal claims by terminating that official’s employment? Two recent decisions have examined these issues:

Harrison v P & T Tube Mills Pty Ltd [2009] FCA220 in which the Federal Court dismissed an employee’s application for compensation for a termination allegedly based on his role at the workplace as a union delegate. In the case of *Leadbetter v QANTAS Airways Ltd [2009] AIRC131* another union employee, who alleged that his dismissal was motivated by his status as a union delegate, failed to prove the dismissal was unfair. In both cases, the employers were found to be justified in dismissing the relevant employees because of misconduct.

In the first case, the misconduct was essentially placing stickers around the worksite, often against the wishes of workers. The dispute escalated to the stage where management directed the worker to remove a sticker that he placed on his neck at a staff barbecue. The worker refused and he was thereupon terminated. It was held that an employee is legally obliged to obey all reasonable and lawful directions and there was nothing unusual about this case to deny the employer’s right to terminate.

In the case of *Leadbetter*, the worker had filled out a form, reporting an injury and, at the same time, used offensive language towards the QANTAS managers. This was held to be serious misconduct and a breach of the employment contract, warranting dismissal.

Each case has to be looked at separately, however, care and a proper paper trail can obviate the risk of unfair dismissal litigation in most cases.

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