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LIFE SCIENCES LAW IN CANADA, 2ND EDITION

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Life Sciences Law in Canada provides a roadmap for protecting the intellectual property associated with medicines, medical devices, and natural health products in Canada, for getting them on to the market and for keeping them on the market. All the legislation and regulations applicable to companies carrying on business in Canada in the life sciences, be they major, established pharmaceutical companies or small, fledgling start-ups, is examined in detail.

This release features updates to the Quantum Table – Remedies for Patent Infringement in Chapter 7. Patent Enforcement. This release also features the addition of Health Canada Guidance Document: The management of drug submissions and applications effective on October 1, 2025, to Chapter 8. Patented Medicines (Notice of Compliance) Regulations. This release also features updates to Procedural Summary for the resolution of disputes under the CIRA Domain Name Dispute Resolution Policy in Chapter 10. Trademarks and Domain Names) This release also features updates to Summary of Procedure for Appeals Pursuant to Section 56 of the Trademarks Act in Chapter 10. Trademarks and Domain Names.

Highlights

Quantum Table – Remedies for Patent Infringement – Punitive Damages – Skotidakis argued that even if its witnesses were deliberately lying, such conduct did not rise to the level of "highly reprehensible misconduct" required to award punitive damages. The Court of Appeal was not convinced. Justice Grammond clearly referred to the factors set out in *Whiten* at in determining that the misconduct of Skotidakis was highly reprehensible and also determined that the aggravating circumstances warranting punitive damages were essentially Skotidakis' concealment of the infringement from the Court by presenting various pieces of evidence intended to mislead. The Court of Appeal explained that there is little doubt that attempts to mislead the Court

may form the basis for punitive damages. It must be kept in mind that this was not a case of a debate over the construction of claims in which reasonable people may differ. The Court of Appeal was not convinced by Skotidakis that the trial judge made any reviewable error in his evaluation of, or inferences drawn from, the evidence as presented to him or in the assessment of punitive damages. For the most part, Skotidakis was asking the Court of Appeal to reweigh the evidence; that was not the role of the Court. It may be that the amount of $200,000 was on the higher end of the scale for punitive damages for cases such as this, however under the circumstances, the Court of Appeal was not inclined to interfere with the trial judge's assessment as the Court of Appeal had not been convinced by Skotidakis that such an amount was beyond the point of being "rationally required to punish the defendant's misconduct". It seems to the Court of Appeal that Justice Grammond looked at the entirety of the evidence and called out what he clearly saw as a ruse on the part of Skotidakis to deliberately conceal the date upon which it had built the infringing refrigeration system, without necessarily having to determine that any one piece of evidence was falsified. Such factual conclusions based upon the inferences made by the trial judge were certainly within his bailiwick and not something with which the Court of Appeal should easily interfere: *1048547 Ontario Inc. v. Fromfroid S.A.*, 2025 FCA 151 (F.C.A.).

Summary of Procedure for the Resolution of Disputes under the CIRA Domain Name Dispute Resolution Policy – Case Law – The Response – Although the Panel would allow the Registrant's late Response, the Proceeding would continue to be heard by a single Panel pursuant to Rule 6.5. The Rules do not specifically speak to circumstances where a single Panelist is appointed as a result of a Respondent's default but then the Panelist proceeds to allow the Response. Normally where a Response is filed in a timely manner, a three-person Panel is appointed pursuant to Rule 6.4. However, where there is no Response, a Complainant may elect to proceed with a single-member Panel, as it had done here pursuant to Rule 6.4. The Panel noted that there is perhaps a gap in the Rules because a single-Member Panel can be elected to hear the case in the event of a failure to file a Response, but that single-member Panel can also, as was done here, decide to admit a late Response. Accordingly, once the single-member Panel decides to admit a late Response, the Panel can also then require that the proceeding continue with a three-member Panel as a result of a late Response being admitted. The Panel can however, alternatively, determine how best to proceed in the circumstances, having regard to Rules 9.1(a), (b), and (c) and that can mean that the Proceeding continue with the single-member Panel. The Panel weighed the circumstances to determine what was fair and appropriate in the circumstances. By requiring the matter proceed with a three-person Panel as a result of the admission of a late Response Nunc pro tunc, the Complainant would in a way be prejudiced since the Complainant would have to pay for a three-person Panel instead of a single-member Panel, which represents a significant increase in costs. On the other hand, a Registrant is normally entitled to a three-member Panel at the Complainant's cost if the Registrant files a Response. Although it was a close call, in the circumstances the Panel decided to permit the matter to proceed with a single-Member Panel. The reasons for that were as follows; a) The Registrant failed to address the hard-copy delivery of the Complaint thereby increasing the indulgence required; b) Had the Registrant satisfactorily addressed the hard-copy delivery issue, the Registrant would have likely been given the opportunity to request a three-member Panel, as it is normally entitled to it; c) on balance it seemed fair that because the Registrant was being permitted to file late even with an incomplete

explanation, and to the prejudice of the Complainant whose Complaint was now responded to when it otherwise would not have been that the Complainant's financial burden of having to pay for a three-member Panel be alleviated in exchange for permitting the Registrant the indulgence; and d) If the Panel were to direct that the matter proceed as a three-person Panel, it would create a difficult situation in that the procedure for appointing a three-person Panel does not necessarily involve the present Panelist and if that were to be the case, the Complainant would as a result have to pay for not just the present Panelist fee, but also possibly for an additional set of three-Panelists, something that is not contemplated in the Rules and would be an unforeseeable additional expense. The Panel recognized that this solution was not entirely satisfactory but noted that the Rules appear to have a gap that should be addressed in their next itineration, but until then, the Panel was charged with finding the fairest route for both parties in the circumstances. The Panel believed that this solution gives each of the parties a benefit; the Registrant got to file its Response and the Complainant avoided having to pay additional fee: *Automotive Finance Corp. and Paolo Fasciani, Re*, 2025 CarswellNat 1686 (C.I.R.A.).

Summary of Procedure to Appeals Pursuant to Section 56 of the Trademarks Act – Case Law – Additional Evidence – Justice Fuhrer was convinced that the Abudulai affidavits were legal opinions on domestic law. According to prevailing jurisprudence on that issue, they were thus inadmissible and should be struck as part of the Court's gatekeeping function. Justice Fuhrer concluded that Abudulai's evidence involved legal opinions about aspects of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, SC 2000, c 17 [Money Laundering Act], as they relate to the money services business [MSB] regime, including associated regulations and guidance published by the Financial Transactions and Reports Analysis Centre of Canada, in the context of the oppositions and Remitbee's appeals from the opposition decisions. Justice Fuhrer explained that existing Federal Court of Appeal jurisprudence, which binds the Federal Court, was clear in Justice Fuhrer' view, that "questions of domestic law, as opposed to foreign law, are not matters upon which a court will receive opinion evidence. Such matters clearly fall within the purview of the court's expertise and opinion evidence on these issues would usurp the court's role as expert in matters of law: *Remitbee Incorporated v. Remitly, Inc.,* 2025 CarswellNat 83, 2025 FC 81 (F.C.).

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