

# Credit crisis puts law firms in conflict pickle

*Most have clients on both sides of issue*

JACQUIE MCNISH

Published: October 3, 2007

A spectre is haunting Canada's legal profession.

The apparition began to take shape last month when a Bay Street analyst, **Ohad Lederer** of **Veritas Investment Research**, advised clients that **National Bank of Canada** was "discussing the possibility" of contingent liabilities because of the risk that corporate clients might sue the bank for selling them non-bank asset-backed commercial paper. In response to a question about **Mr. Lederer's** research report, a spokesman for National Bank said: "For the moment, no contingent litigation costs have been announced, yet."

Contingent liability is a fancy phrase that means that money is being set aside to pay potential damages. Such contingencies do not mean that National Bank would actually be on the hook to pay lawsuit damages or settlements, but rather that, at this juncture, it may be worried enough to set aside some of its profit as a kind of insurance to cover the risk.

Legal contingent liabilities are rare for Canada's banks for the simple reason that the country's handful of chartered banks are so big that lawsuit costs seldom rank as a material financial event. It took seismic events, such as the collapse of Enron Corp. and the U.S. mutual fund trading scandal, to prompt some of the country's banks, most notably Canadian Imperial Bank of Commerce, to set aside hundreds of millions of dollars a few years ago to cover potential legal liabilities.

The fact that National Bank appears to be contemplating a reserve sends a chilling signal that one of the country's most active sellers of non-bank-issued asset-backed commercial paper fears it may become embroiled in a high-stakes legal slugfest with corporate clients who are now stuck with a share of the more than \$30-billion of troubled short-term notes.

Normally the prospect of such a lawsuit rush would excite the hearts of the country's litigation warriors. But there is no litigation fairy in the asset-backed commercial paper (ABCP) crisis. Instead, the credit turmoil is shaping into a Hydra-headed monster for major law firms because so many of their clients have become entangled in the credit nightmare.

Pick any major Canadian law firm and you will find a stable of domestic and foreign banks, major corporations, pension funds and wealthy individuals who are on opposite sides of what has become the country's largest financial restructuring effort. Deciding which clients law firms can and cannot represent has opened a Pandora's box of sensitive conflict and relationship issues.

"This is a political nightmare," said the managing partner of one Bay Street law firm who declined to be identified. "We have long-standing corporate clients who want their money back from banks, but the banks are our biggest clients."

For the moment, law firms have been given a reprieve by the so-called Montreal Accord of investors who have agreed to suspend trading in complex commercial paper securities until at least the middle of this month. But even within this accord, deep fissures have emerged that could test law firm relations.

For example, one of the most important players in the ABCP crisis are the foreign banks, such as Deutsche Bank AG and UBS AG, who provided so-called liquidity support to prop up the short-

term notes in the event of market turmoil. Unless the Montreal Accord can peacefully solve the ABCP problem, people involved in the discussions said Canada's major pension funds, corporations and other investors face a potentially ugly global war with the foreign banks over who has rights to billions of dollars of collateral owned by the trusts that issued the commercial paper.

"This could get very nasty," said one lawyer involved in the discussions.

One firm that could be in a ticklish position is Stikeman Elliott LLP. The law firm is a key adviser to CIBC, which actively sold the now-troubled commercial paper to its clients.

Quietly this August, according to sources, Stikemans also became counsel to some of the foreign banks that could find themselves on the opposite side of Canadian bank customers if the Montreal Accord fails to arrive at a solution.

Stikemans declines to discuss which of the foreign banks it is representing.

"We have nothing to gain by talking about this now," said one Stikeman lawyer who declined to be identified.