

## **DIRECTORS' DUTIES IN THE POST-BCE ERA**

October 28, 2009 Ava Yaskiel, Partner, Ogilvy Renault LLP

Ms. Yaskiel reviewed the decision of the Supreme Court of Canada relating to the proposed privatization of BCE. Prior to the BCE decision, the prevailing view was that in the context of a change of control transaction, the board's fiduciary duty shifts from acting in the best interests of the corporation to maximizing shareholder value. The BCE decision rejected this notion and made it clear that directors owe their fiduciary duty to the corporation in *all* circumstances.

Ms. Yaskiel highlighted the significance of the decision with respect to the guidance it has provided regarding (i) the duties of directors and (ii) the rights of stakeholders both generally and in the context of a change of control transaction. She suggested that the decision will have far-reaching impact on change of control transactions in Canada in ways yet to be determined. She also noted that the decision has reaffirmed the importance of process in establishing an evidentiary record supporting the reasonable exercise of directors' business judgment.