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Fairness Hearings on Trial

Davies partner [Patricia Olasker](#) was recently quoted in a [Lexpert.ca](#) article about the implications of the Yukon Court of Appeal decision in *InterOil Corp. v. Mulacek* to block Exxon Mobil's \$2.3-billion takeover bid of InterOil Corp.

The decision raises questions about established Canadian market practices regarding fairness opinions related to M&A transactions.

The article discusses the alarm that the ruling is causing in the legal industry, with Patricia saying: "It's one of those few decisions where almost immediately lawyers start emailing lawyers at other law firms to ask, 'How are you planning to advise your clients?' It doesn't often happen that there's something that strikes so immediately at the core of what is standard practice."

Patricia, who co-authored a [recent article](#) on this subject, says that at the end of the day, the decision "poses a threat" to the continuing use of the plan of arrangement structure, which has become hugely popular in Canada because of its flexibility and because it is favourable for companies with significant U.S. shareholders.

In the future, where there is concern there may be opposition to a deal, Patricia says companies "may in fact look more closely at whether an amalgamation might work, where there's no court component, or whether a more conventional takeover bid structure might be a better alternative."