

May 10, 2018

Patricia Olasker Speaks to Lexpert About Sandbagging in M&A

Davies partner Patricia Olasker is quoted in the Report on Business/Lexpert Special Edition *Canada's Leading Corporate Lawyers* about the practice of "sandbagging," which, in mergers and acquisitions, refers to the situation in which buyers may agree to a transaction despite knowing that one or more of the seller's claims are false.

"The term sounds pejorative, and to a layperson it might not ever sound fair that a buyer of a business can sandbag the seller," Patricia says. However, she adds that "the issue is much more nuanced than [it is sometimes portrayed] and has to be seen as part of an overall negotiation between buyer and seller."

Patricia believes that as a practical strategy on its own, sandbagging doesn't make a lot of sense. "In our experience, buyers generally aren't looking to take advantage of unsuspecting sellers by lying in the weeds with knowledge of misrepresentation so that they can turn around and sue the seller after closing," she explains. "Litigation is too costly and time-consuming for that."