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On February 1, 2006, legislation came into force to remedy some of the effect of the strict application of the patent fee payment rules. The new legislation provides a one year period in which to correct an incorrectly paid small entity fee, irrespective of when the incorrect fee was paid and of any pending actions or other proceedings in relation to the patent or patent application affected.

The legislation does not provide any continuing relief for incorrectly paid fees of any kind. Therefore, it is only a one-time solution to correct past errors in relation to small entity fees, and will do nothing to resolve or ameliorate the continued strict effect of Canadian patent fee payment rules. CIPO is planning to amend the small entity rules on a going forward basis. However, no rules are yet in place.

The Federal Court of Appeal in *Barton No-Till and Flexi-Coil v. Dutch Industries* stated that "[t]he definition of 'small entity' is complex" and not precise. Indeed, the Court observed "[i]t seems to me that no matter how diligently an applicant for a patent attempts to make these factual determinations" to assess their entitlement to small entity status, "there is some risk of being wrong". Therefore, we recommend that if a small entity fee payment has been made at any time on any Canadian patent or patent application, you take advantage of the one-time opportunity, available until February 1, 2007, to make up all such fees to a large entity level.