



## The Principal Residence Exemption: The Rules Have Changed

**HEATHER PICKEN AND KIRAN GILL**

With the massive increase in southern Ontario property values, many people selling their homes hope to realize a substantial windfall.

If you own an asset that appreciates in value, you must pay capital gains tax on the net increase in value when you sell—unless there is an applicable exemption. Under Canada’s federal Income Tax Act, the Principal Residence Exemption (PRE) allows Canadian residents to eliminate all or most of the capital gain on the sale of a principal residence. In October 2016, the government introduced changes to the PRE rules that restrict its application.

### Reporting Sale of Principal Residence

Under the old rules, taxpayers were not required to report the sale of a principal residence if the PRE eliminated all capital gains on disposition. Under the new rules, taxpayers must report on their annual income tax return the disposition of property for which the PRE is claimed, the address of the property, the date it was acquired, and the selling price. Failure to report may result in the PRE being disallowed.

If you sold your principal residence after January 1, 2016, you should have reported the sale on your 2016 income tax return. If you did not do so, you should ask the CRA to amend your return for the year in which the sale occurred so that you don’t incur penalties or have your claim disallowed.

### Only Canadian Residents May Claim the One-Plus Rule

A taxpayer is entitled to designate only one property as a principal residence in any given year. If the taxpayer sells a principal residence and replaces it with a new one in the same year, under the old rules, the taxpayer could claim the PRE for both properties in that year. This is known as the “one-plus rule”. The PRE applies to all years the property is owned, plus one additional year to allow for the sale of one principal residence and the purchase of another in the same year. Since October 2, 2016, the one-plus rule is no longer available for individuals who were not resident in Canada when they acquired the second property.

### Reduction in Ability of a Trust to Claim the PRE

Under the old regime, a trust could claim the PRE, provided that one of its beneficiaries lived in the property. The new rules limit the types of trusts that can claim the PRE to the following:



- Alter ego trusts
- Spousal/common-law partner trusts
- Joint spousal or common-law partner trusts
- A trust where the beneficiary transfers the property into the trust and there is no change in beneficiary
- A qualified disability trust
- An orphan trust, i.e. a trust where the beneficiary is the child of deceased parents

The way in which most trusts are currently drafted may not be enough to meet the requirements of the new rules.

We strongly advise those who have trusts set up in their wills, such as Henson Trusts or cottage trusts, to seek legal advice on whether the will should be amended.

We also advise those contemplating setting up a trust to own a residence, or who are the beneficiary or trustee of such a trust, to seek legal and tax advice on compliance with the new rules, including minimizing their impact.



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## For the Record: New Filing Requirements



### WILLIAM G. SIRDEVAN

Owners of corporations must maintain and file current, accurate business records. The consequences of noncompliance are substantial. Two recent significant changes to provincial laws demonstrate just how substantial the consequences can be.

#### Corporations that Own Land

Recent changes to the Ontario *Business Corporations Act* now require Ontario corporations to establish and maintain registers of their ownership interests in lands located in Ontario.

These new registers must be maintained at the corporation's registered head office, which may well be a different location from the place where the corporation's minute book and other corporate records are kept.

The register must identify each property, the date of its acquisition and, if applicable, the date of its disposition. Copies must also be kept of the documents detailing each property's municipal address, legal description and assessment role number, if applicable. The register and copies may be kept in a bound book or stored electronically.

These new rules apply to all Ontario business corporations incorporated after December 10, 2016. Corporations in existence before that date have until December 10, 2018 to come into compliance. Corporations and their directors and officers face a \$2,000 fine and/or imprisonment of up to a year for noncompliance. Since many business transactions require a corporation to represent and warrant that the corporation is in compliance with all applicable laws, non-compliance will cause difficulties for commercial financings, acquisitions, divestitures, or other transactions outside of everyday business.

Unfortunately, the law does not precisely define an "ownership interest in land". We recommend that the register include both lands the corporation owns and those in which the corporation has a beneficial

interest (where the registered owner is a trustee or nominee on behalf of the corporation). We also recommend that holders of mortgages—legally or beneficially—adhere to these new rules.

#### Corporate Property Forfeiture

Corporations that fail to comply with various corporate and tax laws, among them the *Business Corporations Act* and the *Corporations Tax Act*, can be dissolved. On such a dissolution, a corporation's property is forfeited to the Crown.

A dissolved corporation's owners used to have 20 years to revive the corporation and recover its property. With passage of the *Forfeited Corporate Property Act* on December 10, 2016, corporations still have 20 years to revive, but will now be unable to recover their property if the revival takes place more than three years after the date of dissolution.

Corporate or tax authorities, as applicable, send notices of non-compliance or pending dissolution to the registered or head office that the corporation filed with the authorities. Should the corporation's public record filings be inaccurate or out of date, it will not receive these notices of non-compliance or pending dissolution and may therefore not take the necessary remedial steps to become compliant. This could result in the province dissolving the corporation and seizing its property.

These changes highlight the critical importance of corporations keeping corporate public record filings and internal corporate records accurate and current at all times. At Lawrences, we have extensive experience in helping businesses set up and maintain these crucial records.



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## Fitness for Duty: When Can You Test?



### DAVID ALLI

Employers are responsible for maintaining safe workplaces, not only for employees but also for customers. For many employers, this might mean ensuring that their employees are not impaired by use of drugs or alcohol. A recent Ontario Superior Court of Justice decision has significant implications for employers interested in implementing random drug and alcohol testing.

The Toronto Transit Commission (TTC) sought to implement a “Fitness for Duty” policy of random drug and alcohol testing in the workplace. In response, the Amalgamated Transit Union (ATU) filed a policy grievance and initiated arbitration proceedings. In 2011, the TTC amended the policy to permit testing for 20% of its workforce annually. The ATU sought an injunction to prevent implementation before the outcome of arbitration.

In *Amalgamated Transit Union, Local 113 v. Toronto Transit Commission*, the Court found that the TTC had met the requirements previously set out by the Supreme Court of Canada, which found that in dangerous workplaces, employers are generally entitled to test employees who occupy safety-sensitive positions where:

1. there is reasonable cause to believe that the employee is impaired while on duty (reasonable cause testing).
2. the employee has been directly involved in a workplace accident or significant incident (post-incident testing).
3. the employee is returning to work after treatment for substance abuse (post-treatment testing).

The Supreme Court stipulated that an employer must demonstrate there is a safety risk, such as a dangerous work environment, and that there is a general problem with drug and alcohol abuse in the workplace, which can be very challenging to prove. The TTC operates a workplace that spans the City of Toronto and has implications for public health and safety, which no doubt played a key role in justifying the use of such testing policies.

Addictions to drugs and alcohol are considered “disabilities” under the Ontario Human Rights Code, which prohibits discrimination against people with disabilities. The employer is challenged to ensure a safe and healthy work environment, while at the same time not discriminating against addicted employees. Automatic discipline or inflexible terms and conditions concerning drug and alcohol abuse can be classified as discriminatory. The employer is expected to accommodate the addicted individual to the point of undue hardship. The Ontario Human Rights Commission has indicated that positive results from drug and alcohol tests ought not to lead to negative consequences for workers based on their addiction.

The Supreme Court has stipulated that a drug and alcohol testing policy should be:

1. adopted for a purpose that is rationally connected to performing the job.
2. adopted in the belief that it is necessary in fulfilling a legitimate, work-related purpose.
3. reasonably necessary to accomplish that legitimate, work-related purpose.

This complex area is still evolving and new laws are emerging for certain drugs. Employers must be tremendously cautious when implementing drug and alcohol policies, especially when accommodating an addicted individual.

At Lawrences, we have considerable experience in crafting workplace policies. Please contact us if you need to put in place policies for drug and alcohol testing or any other workplace matter.



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## Life at Lawrences

Lawrences' lawyers lead active lives in the profession and in the community. Here are some of their latest achievements.

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### New Counsel

Veteran business lawyer **Murray Eades** has moved his law practice to Lawrences, where he will be counsel to the firm. After stints with large downtown Toronto law firms, he established his own practice in Toronto, eventually moving to Mississauga, where he has had a busy practice since 1980. Lawrences' partners look forward to working with Murray in his new role at the firm. Co-managing partner **Michael Luchenski** comments: "We are very pleased that such a well-respected colleague has chosen to move his practice to Lawrences."

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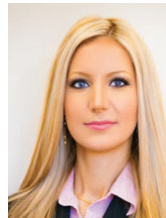
### New Associates

Lawrences is pleased to welcome new associates to its Real Estate and Litigation Groups.



**Rinus Pais** joined Lawrences in July, 2017, from a southwestern Ontario real estate law firm. Rinus is excited at the possibilities Lawrences offers: "Lawrences handles a wide range of real estate matters, many of which are quite complex. I also look forward to working with Lawrences' Business Law and Wills, Trusts & Estates Groups on the real estate aspects of business deals, estate planning, and estate administration." **Heather Picken**, Lawrences'

co-managing partner and head of the firm's Real Estate Group, comments: "We are very glad to have Rinus join us. His experience with a high-volume real estate practice is invaluable in a busy firm like ours."



Associate **Sahar Cadili** co-chaired the Ontario Bar Association's "Effective Litigation Strategies on Motions and Trials" on April 19 in Kingston. Then on June 6, she chaired the Ontario Bar Association's "Assessment of Accounts: Understanding the Process & Procedure" in Toronto.



Associate **Kiran Gill** co-chaired the Ontario Bar Association's program "Estate Litigation: A Primer" on April 25 in Toronto.



**Angela Kwok** joined Lawrences in September, 2016, after her call to the Ontario bar. Angela articulated as a judicial law clerk at the Ontario Superior Court of Justice in Hamilton, where she conducted legal research to assist over 30 judges handling legal issues arising from civil, criminal, and family law cases. At Lawrences, she is putting that experience to use in a wide variety of cases. Head of Litigation **Ed Upenieks** comments: "Angela is a great addition to our litigation team and is

rapidly gaining courtroom experience."

### At the Podium



It's been an active year for Lawrences' litigation lawyers on the speaking circuit.

**Ed Upenieks** co-chaired the Ontario Bar Association's program "Candid Conversations on the Challenges and Seizing Opportunities in the Practice of Law Today" on February 6. The panel featured Supreme Court of Canada Justices Michael Moldaver, Suzanne Côté and Richard Wagner. Then on June

3, he co-chaired a program in Iqaluit for lawyers in Nunavut entitled "Effective Strategies and Tips for a Successful Trial". And in between these two events, he received the Lifetime Achievement Award from the Peel Law Association!



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