



THE LAWRENCES[®] LETTER

News and information for clients and friends of Lawrence, Lawrence, Stevenson LLP

SPRING 2006

Mandatory Retirement: The End is Just the Beginning

Christopher M. Andree

XYZ Widgets Ltd. has over 150 staff, of whom 10% are within two years of the current retirement age. Several of them would like to work beyond age 65 and the company wants to keep them. However, their benefits cease at age 65.

Before the *Ending of Mandatory Retirement Statute Law Amendment Act, 2005* (the "Act") comes into force on December 12, 2006, the company in the fictitious example above should consider renegotiating its group insurance plan. The company should also review its policies on hiring, performance evaluation, duty to accommodate, and dismissal—and have them reviewed by an employment and labour lawyer to ensure that they don't contravene the new legislation.

The *Act* amends the definition of age under the *Ontario Human Rights Code* (the "Code") to eliminate the upper age limit of 65. However, group insurance plans and the *Workplace Safety and Insurance Act, 1997* ("WSIA") reduce or eliminate entitlements at age 65.

The *Act* purports to address the age limits and entitlements affected by age under other legislation, especially the *Employment Standards Act, 2000* ("ESA") and the *WSIA*. The *Act* specifically states that workplace safety and insurance benefits will continue to end at age 65, and that employers will continue to be able to limit or eliminate group insurance coverage to employees 65 or older, pursuant to the *ESA*. However, we believe there is reason to question the enforceability of these provisions once the *Code* has been amended, since the provisions of the *ESA* and *WSIA* may be found to be a breach of the *Code* or the *Charter of Rights and Freedoms* (the "Charter").

Employers who continue to provide group insurance plans to their employees may find themselves with increased liability to employees as they age and become heavier users of those plans. In an effort to avoid this result, some employers may consider eliminating their plans in favour of a monthly stipend for employees to purchase their own independent coverage, or transferring some or all of the cost of premiums to employees. While this may address the cost of the plan to the employer, such changes may negatively affect recruitment and retention of employees, particularly those who are older or more skilled.

The *Act* also raises concerns about termination of



older workers due to poor performance. As employees age, their mobility, agility, strength and sensory acuity will likely diminish. In positions where these attributes are necessary, employers will be required to accommodate aging employees. Gone will be the days when an employer could rely upon a mandatory retirement policy to deal with aging employees whose performance is deteriorating. Employers will now have to engage in progressive discipline, consider accommodation alternatives or provide potentially lengthy periods of notice of termination to older employees.

With the end of mandatory retirement comes the beginning of many other issues for employers. The period to December 12, 2006 is designed to allow employers to bring their policies and practices in line with the new legislation. We recommend employers invest the time necessary to assess the effect of this change on their workplace in both the short and long term, and take steps to address any concerns. Legal review of those steps is advisable.



Chris practises Employment and Labour Law at Lawrences[®], representing both large and small employers in all aspects of their relationships with employees, including recruitment protocols, wrongful dismissal litigation, and preventive strategies that provide practical solutions to workplace issues. He represents clients before all levels of courts and administrative tribunals. Chris can be reached at 905 452 6878 or candree@lawrences.com.

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BUSINESS SUCCESSION PLANNING

So You've Built the Business: Now What?

William G. Sirdevan

Jane and Brenda are business partners in a successful real estate venture. They've worked together for years, building the business from a basement sideline to a fulltime venture with 12 employees in a down-

town office. They're happy with their success and now they'd like to take life a bit easier. They've just started to think about how to have the business run for them, when tragically, Brenda becomes terminally ill and dies in a matter of months. Besides being devastated at the loss of her friend, Jane isn't sure what to do now about the business.

According to the Canadian Federation of Independent Business, almost 50% of business owners have not chosen successors for their businesses, have not considered succession issues and have not developed a retirement or estate plan. Indeed, almost 50% of the adult population in Ontario do not have wills.

Why is this? Usually, business owners are so busy building and running their businesses that the planning process seems too time-consuming, too involved. Some don't want to think about giving up their businesses. Many just don't know where to start.

If you own a business, it's time well spent to ask your lawyer, accountant and other advisors the questions in Table 1.

No one wants to think about the end of a business that they've put their life into. Even less do they want to think about the end of their own life. But the peace of mind that comes from sound estate and business succession planning allows you to

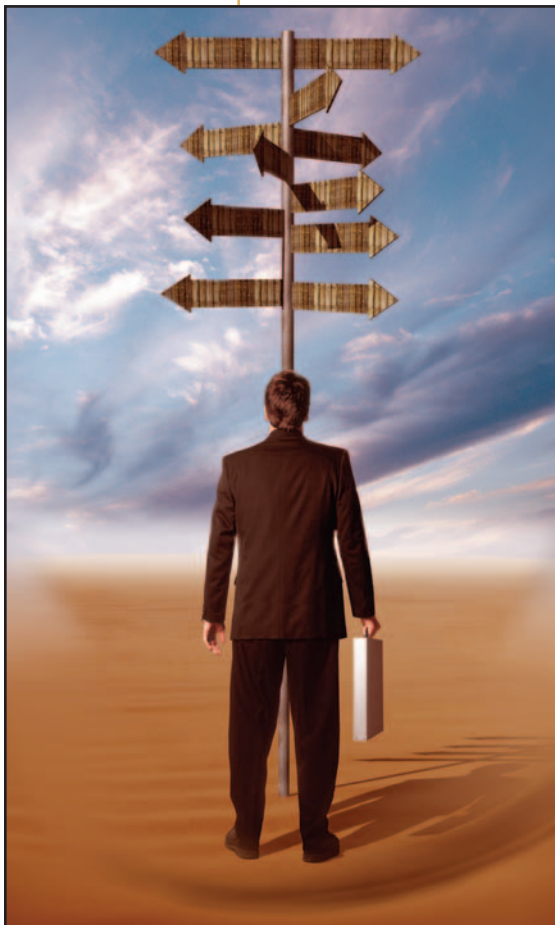
make good business decisions that will benefit you, your estate and your beneficiaries.



Bill is a partner and chairman of Lawrences® Business Law Group. He has almost 20 years' experience advising clients on corporate and business structuring, reorganizations and succession planning. Bill can be reached at 905 452 6871 or wsirdevan@lawrences.com.

Table 1. Questions to ask your advisors

1. How do I maximize the value of my interest in the business?
2. Will the value be maximized by transfer to the next generation or should I sell?
3. When should I start looking for a buyer?
4. Should I be doing anything now to get the business ready for sale?
5. If I have partners in the business and a partner dies, can I remain in the business with the deceased partner's spouse or children?
6. Will the deceased partner's family be able to buy out my share?
7. Will I be able to buy out the deceased partner's share?
8. What will be the tax consequences to my estate when I die? Can anything be done to minimize the tax bill now and or on my death?
9. How will the taxes be paid?
10. Will it be necessary to sell the business to pay the taxes when I die?



The peace of mind that comes from sound estate and business succession planning allows you to make good business decisions

APPEAL DEADLINE EXTENDED

Thinking About Appealing Your Property Tax Assessment?

John L. O’Kane

The provincial government has extended the deadline for filing property tax assessment appeals from March 31, 2006 to June 30, 2006. The additional three months gives owners of commercial and residential real estate a fresh opportunity to scrutinize their 2005 Property Assessment Notice and their tax bills, to consider whether an appeal of the assessment is warranted.

Last year, owners of commercial and residential real estate sent over 3,700 complaints to the Ontario government about the way their properties had been assessed. If you’re thinking about appealing your assessment, it pays to know how the property tax system works.

Municipalities levy a tax on your land and building based on an assessment (value) assigned by a provincial crown corporation known as the Municipal Property Assessment Corporation (MPAC). In order to have the tax against your property lowered, you must have the assessment on the property reduced.



First Steps in Deciding to Appeal

- Request a copy of all assessment information related to the property from MPAC.
- Look for any changes in the Property Assessment Notice over the previous three to five years.
- If you recently bought the property, check to see if there is a significant difference between the price you paid and the assessed value.
- Check to see if the property size is listed correctly.
- Check that the property classification (“commercial”, “industrial”, “residential”, “multi-residential” or “farm”) is correct.
- Check whether any similar properties in the vicinity sold recently for a significantly lower amount than the assessed value.
- If the property is in a capped class (commercial, industrial, multi-residential), check whether the municipality has properly calculated and applied any applicable tax caps.

MPAC came under the scrutiny of the Ontario Ombudsman about the way it carries out the assessment (valuation) function and the way it handles assessment appeals. The Ombudsman recently released a report following that investigation.

The Ombudsman found that MPAC had failed to provide property owners with sufficient and timely assessment information that would enable them to “understand their assessments and challenge them fairly”. The Ombudsman also criticized the assessment appeal process that requires a property owner to prove that MPAC’s assessment is wrong, rather than requiring MPAC to prove that it got the assessment right.

The Ombudsman’s report, appropriately entitled “Getting it Right”, made 20 recommendations directed at MPAC and two directed at the Ministry of Finance. The provincial Minister of Finance has directed MPAC to report back to him within six months on the report’s recommendations.

Since property taxes can be complicated, especially if you hold a real estate portfolio, the best approach is to get professional advice about your property assessment in order to ensure that you are paying only your fair share of the property tax burden.



John O’Kane is a partner in the Litigation Group at Lawrences®. He has over 20 years’ experience advising clients on business and property issues, including municipal property assessment and taxation litigation. He can be reached at 905 452 6882 or

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If you’re thinking about appealing your assessment, it pays to know how the property tax system works.

Life at Lawrences®

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

Fifty Years of Excellence



In June 1956, **William (Bill) Lawrence**, newly minted lawyer and silver medallist in his Osgoode Hall law

school class, joined the Brampton law practice of his father, Harold Lawrence—and Lawrences® was born. Harold and Gordon Graydon had founded the firm in 1924, but Gordon entered politics in the 1930s as the federal Member for Peel. By 1956, Harold needed his son's help in the growing firm. With Bill's leadership and exceptional abilities as a lawyer, Lawrences® became the pre-eminent law firm in Brampton, a stature it maintains today. June 28, 2006 will mark the 50th anniversary of Bill's call to the bar and 50 years of continued service as a lawyer in Brampton. Few lawyers attain this momentous achievement; we are proud to have Bill as our friend and mentor. Congratulations, Bill!

In the Presidency



In June, **Michael Luchenski**, a partner in our Business Law Group, completes a very successful term as President of The

Brampton Board of Trade, a 1,200-member business organization for advocacy and networking. During Michael's presidency, the BBT has advocated effectively for programs to integrate skilled immigrants into the Canadian workforce, for completion of the Highway 410 extension, for preservation of employment lands in Bramwest and for many other issues of importance to the Brampton business community. In the process, he has met with leaders at all levels of government.

As the third president of the BBT to come from Lawrences®, Michael continues our proud tradition of public and community service.

On the Bookshelf



Bankruptcy is something most business people don't like to think about, but lawyers have to work with both courts and

creditors. It can get complicated, and the law changes frequently. Fortunately, the legal profession has **Rob van Kessel**, one of Lawrences® senior litigation partners whose practice is focused on insolvency, to help them keep up to date. Rob's third legal textbook, *Interim Receivers and Monitors*, has just been released by LexisNexis Canada. It helps lawyers understand the role of insolvency practitioners who oversee a company in receivership or restructuring proceedings. All of Rob's books are considered "must have" resources for insolvency and litigation lawyers.

In the Medals



Lawyers often refer to difficult work as "the heavy lifting". One of Lawrences® real estate lawyers is good at both types of heavy lifting:

Miel McGerrigle, a member of the Canadian women's national Olympic weightlifting team, won a bronze medal in the recent Commonwealth Games in Australia. And just as she is at Lawrences®, Miel was part of a winning team: they won six medals in all, including two gold. Lawrences® was a proud sponsor of Miel's trip to the Games; we congratulate Miel and her teammates who did so well for Canada.

Star of the Show

If you thought you recognized a certain law firm on a recent TV show, you weren't imagining it. The 13-part series "Almost Legal" that

premiered on the Life Network on April 14, 2006, stars Lawrences® own **Christine Wiseman** as one of four Ontario articling law students whose lives are chronicled in the series. She undertook to have a TV crew trail her through the trials (yes, she's a litigator) and tribulations of her articling year at Lawrences®. Christine made it through both the articling year and the TV show: she was called to the Ontario Bar in July 2005. The show looks at four different situations in which law students work under the supervision of licenced lawyers before they can qualify to practice law in Ontario. Check out upcoming episodes of "Almost Legal" on the Life Network on Fridays at 9:30 pm.

THE LAWRENCES® LETTER

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50th anniversary of
William Lawrence's
call to the bar

Michael Luchenski
presides at Board of
Trade

Rob van Kessel
publishes third
book

Miel McGerrigle
wins bronze medal

Christine Wiseman
stars in TV show