



# THE LAWRENCES<sup>®</sup> LETTER

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

SPRING 2010

## Are You Ready for the Harmonized Sales Tax (HST)?

### Chris Markou

In Ontario, the 5% Federal Goods and Services Tax (GST) and the 8% Provincial Retail Sales Tax (PST) will be combined into a single 13% tax, effective July 1, 2010. The new tax will be known as the Harmonized Sales Tax (HST). Sales tax currently does not apply to many goods and services; however, that will change on July 1, when they will be subject to 13% HST. Some examples are electronic goods, internet service, haircuts, gym memberships, automobile fuel, lawyers' fees, home renovations, real estate commissions, and commercial rents.

### The HST and Real Estate

If you are purchasing a new home, the purchase price above \$400,000 will be subject to HST unless you sign the agreement with the builder before June 18, 2009, in which case HST will not apply even if the deal closes after June 30, 2010. However, there are exceptions to this general rule, including the potential for a transactional tax adjustment payable by the builder and possibly passed on to the purchaser. In transactions where HST is payable, the purchaser may be eligible for a rebate of up to \$24,000.

If you are purchasing a resale home, the HST will not apply to the purchase price, but it will apply to other services connected with the purchase, such as home inspection, legal fees, movers' bills, and renovations. If you are selling a resale home, you will pay HST on the real estate agent's commission and condominium status certificates.

HST will *not* be charged on monthly residential condominium fees or residential leases of more than one month. However, since HST will be charged on services normally included in condo fees and rents, such as cleaning and garbage pickup, condo fees and rents are likely to rise. HST will be charged on monthly commercial condominium fees.

If you are purchasing commercial property, including land for development, you will be charged HST. Commercial purchasers who are currently registered for the GST can follow the same self-assessment and offsetting input tax credit procedures currently provided for under the GST legislation,



thereby relieving the vendor of the obligation of collecting and remitting the HST. If you are leasing commercial property, even if you signed the lease before July 1, 2010, you will have to pay HST on the monthly lease payments after June 30, 2010.

If you are about to buy, sell or lease real estate and are unsure of how the HST will affect the transaction, please contact any member of our Real Estate Group.

### The HST and Business

Businesses that are registered for GST will now be required to collect the HST and must report their HST according to their current GST filing frequency. Retailers and service-providers should upgrade their point-of-sale, cost and accounting systems as early as possible to ensure that they meet the implementation date of July 1, 2010. There are transitional rules in place for certain transactions beginning as early as May 1 for goods and services delivered after July 1, 2010. Businesses will be able to claim input tax credits (ITCs) for HST in the same way that they currently claim ITCs for GST.

Additional information is available on the Canada Revenue Agency website ([www.cra-arc.gc.ca](http://www.cra-arc.gc.ca)).

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# THE STANDARD LEASE: How Much Protection Does it Really Provide?

## Kenneth G. Hood

Leases are a valuable form of protection—when properly drafted. Landlords run considerable risks if they rely on standard form leases, or if they enter into lease agreements without first obtaining legal advice.



A recent Ontario Court of Appeal decision, *Montgomery v. Van*, highlights these risks.

A tenant, who was injured when she slipped on ice on the walkway leading to her basement apartment, sued her landlord for her injuries and damages. In his defence, the landlord argued that since a clause in her lease provided that “Tenants are responsible for keeping their walkway and stairway clean (including snow removal),” the tenant should not be allowed to sue him, since she was the one who had failed to keep her walkway clear of snow and ice.

Landlords should first obtain legal advice if they want to enter into such an arrangement with their tenants, or wish to avoid having lease provisions found void.

The regulations of the *Residential Tenancies Act*, 2006, provide that exterior common areas must be maintained free of hazards and that unsafe accumulations of ice and snow must be removed. Any provision in a lease that is inconsistent with the Act or its regulations is void. The landlord in this case argued that while the regulations made him initially responsible for ice and snow removal, he had contracted with the tenant, in her lease, to make her responsible.

The Court of Appeal disagreed, finding that the “provision fails to define this individual tenant’s task clearly enough to create an enforceable contractual obligation.” Further, the Court stated that “... this vague provision... is nothing more than an impermissible attempt by the landlord to avoid his statutory obligations.” However, the Court left it open for landlords to contract with tenants in the lease for tenants to provide some of the landlord’s services. Such agreements do not avoid the landlord’s responsibilities under the Act and regulations, but they can enable landlords to sue tenants for breach of contract if they fail to carry out these responsibilities.

Had the clause in the lease been properly drafted as a stand-alone contract for the tenant to provide snow clearing services, the landlord would have been protected, because the Court agreed that landlords may contract with tenants to provide snow removal tasks or any other services that the landlord would usually be expected to provide. However, like any contract, such a provision would have to be clear, specifying what is required of the tenant, where and when the work is to be done, and what the landlord is giving in exchange for the tenant’s work. A standard form lease does not cover these provisions. Landlords should first obtain legal advice if they want to enter into such an arrangement with their tenants, or wish to avoid having lease provisions found void.

Lawrences’ Real Estate Group has significant experience in advising on leases for many different circumstances. We can help you ensure that the provisions of your lease will stand up in court.



*Kenneth G. Hood is a member of Lawrences’ Litigation Group. A Certified Specialist in Civil Litigation, Ken has significant experience in landlord and tenant disputes. He can be reached at 905-452-6890 or [khood@lawrences.com](mailto:khood@lawrences.com).*

## Are You Ready for the HST?

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### How Lawrences Can Help

Our lawyers and staff are familiar with how the HST will affect your transactions. Whether you are the purchaser or builder of a new home, a business owner selling products to the public, or have any other transactional needs, we will ensure that your interests are protected, including the application for any rebates that are available.

Where it may be beneficial for our clients, we will be billing work in progress before July 1, 2010, in order not to incur HST. If you have any questions about your bill, your lawyer will be happy to answer them for you.



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## BUSINESS OWNERS AND THEIR CREDITORS

# The Implications of Insolvency

### Dennis Kish and Robert Ryan

Anne's business, Trucking Inc., has hit hard times: customers aren't paying their bills and debts are mounting. Anne is considering having Trucking Inc. file for protection under the *Bankruptcy and Insolvency Act*. One of Trucking Inc.'s creditors is Anne's father, Bill, who loaned Trucking Inc. \$50,000 to help it get started many years ago. Bill didn't ask for any security on the loan, such as a mortgage or a security agreement. Anne is also considering having Trucking Inc. transfer a truck worth about \$50,000 to Bill before the bankruptcy in repayment of his loan.

However, in the eyes of the law, Bill is an unsecured creditor and should be treated the same as Trucking Inc.'s other unsecured creditors. Therefore, if Trucking Inc. transfers the truck to Bill in repayment of his loan before the bankruptcy, the transfer may be attacked by the bankruptcy trustee as a "preference". Because Anne is Bill's daughter and is the owner of Trucking Inc., Bill is not at "arm's length" to Trucking Inc. As a result, if the transfer to Bill takes place within 12 months of the bankruptcy and has the effect of preferring Bill over Trucking Inc.'s other creditors, the bankruptcy trustee may bring a legal action against Bill to recover the truck or recoup the \$50,000. If Bill were at "arm's length" to Trucking Inc., then the trustee would be able to bring a legal action only if the transfer occurred within three months of the bankruptcy. If Bill is forced to return the truck to the trustee, he may file a proof of claim in Trucking Inc.'s bankruptcy for the \$50,000, but he will likely receive only pennies on the dollar—or even nothing—in the bankruptcy.

Both Anne and Bill need to be aware of the implications of the *Bankruptcy and Insolvency Act*. A preference can be a payment made by an insolvent debtor to an unsecured creditor with the intent—or merely the effect—of giving preferential treatment to that creditor over the other creditors. Under recent amendments to the *Bankruptcy and Insolvency Act*, a preference can also be a cash payment or a "provision of services", a term that has not yet been defined in the courts. There are also several other very important amendments to the Act.

Anne and Bill should have considered using a legal strategy to protect Bill. For example, Bill could have required Trucking Inc. to grant him a security interest in the truck when he lent Anne the \$50,000. Had he done so, and followed all the rules necessary to ensure that his security interest was perfected, then the transfer of the truck to Bill would likely not have



been considered a preference and would have been protected from the trustee in bankruptcy.

While the economy seems to be recovering, many businesses continue to struggle financially and will need to make decisions about the future of their businesses and assets. If you have any questions about bankruptcy and insolvency law or your position as a debtor or creditor, you should get professional advice on your rights and obligations immediately.



Dennis Kish is an associate in Lawrences' Bankruptcy & Insolvency Group. He has significant experience representing both debtors and creditors, and has managed insolvency files for a firm of bankruptcy trustees. Dennis can be reached at (905) 452-6876 or [dkish@lawrences.com](mailto:dkish@lawrences.com).



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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.*

### At the Podium



Lawrences' lawyers have been popping up at the podium this year!

At the recent 5th Annual Leadership Conference of the Canadian Bar Association, Lawrences' partner **Heather Picken** participated on a panel of law firm leaders discussing the challenge of managing law firms in today's business and legal environment. The panel, which included lawyers from some of Canada's largest firms, debated best practices for such issues as client communications, conflicts of interest, and cost management.



At a recent Ontario Bar Association seminar on Estate Litigation, Lawrences' litigation partner **Ed Upeniaks** presented a paper entitled "The Basics: Some Common Claims in Estate Litigation", co-authored by himself and **Gosha Sekhon**,

an associate in Lawrences' Wills, Estates & Trusts Group. The presentation covered the issues that arise when wills are disputed.



### On the Internet



Making her voice heard is Lawrences' litigation associate **Iris Pichini**, whose three-part article "Language, Power and Gender: A Poststructuralist Approach to Mediation" is appearing on the website of the Ontario Bar Association's

Alternative Dispute Resolution Section. The article examines the role that language and gender play in the mediation process.

### In Retirement



After more than 50 years of continuous client service in the legal profession, **Bill Lawrence** retired from active practice at the end of 2009. Always a modest man, Bill insisted that he wanted to retire without fanfare, but someone who has contributed so much for so long cannot be allowed to retire without tribute.

Bill joined his father's firm in 1957 after graduating as the silver medallist from Osgoode Hall Law School and clerking for Chief Justice James McRuer. He was instrumental in Lawrences' growth from a two-partner firm to a full-service business law firm that has been involved in many of the largest development deals in the Brampton area and that enjoys a sterling reputation in the legal community. He has also mentored many young lawyers, steering them on their way to become excellent practitioners who place a priority on client service. All of Lawrences' current partners have benefited from his wise counsel; managing partner Michael Luchenski notes: "At Lawrences, we've been fortunate to have a leading practitioner like Bill with the firm for so long. His influence and example have helped make Lawrences what it is today: a multiservice law firm that places a premium on excellence, both in legal work and in service to clients."

All of us at Lawrences wish Bill a long and happy retirement.

## THE LAWRENCES® LETTER

The Lawrences® Letter is a free newsletter offered by Lawrence, Lawrence, Stevenson LLP. If you have colleagues who would be interested in receiving the newsletter, please have them send their contact information to [newsletter@lawrences.com](mailto:newsletter@lawrences.com).

If you do not wish to continue receiving the newsletter, please send an e-mail to [newsletter@lawrences.com](mailto:newsletter@lawrences.com) with the word 'unsubscribe' in the subject line.

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