



THE LAWRENCES[®] LETTER

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

SPRING 2009

IMPLEMENTING CHANGE IN THE WORKPLACE

How Do You Cut Costs to Stay in Business?

Roslyn Baichoo

The current economic climate is affecting workplaces both large and small. Many employers need to cut costs to stay afloat, but they want to retain good performers to help the business survive as the economy recovers. Here are five ways to lower costs while keeping the company going in anticipation of better times.

Communicate with Employees

The economic crisis is an opportunity to communicate the company's goals, plans, and even failures. Be upfront about the company's plan to survive the recession. Communicate regularly throughout the process: tell employees that cost-cutting procedures will be undertaken and that they may include terminations. If employees buy in to the company's mission and feel part of the recovery process, they are less likely to object to changes that must be made for the company's survival.

Put Employment Agreements in Writing

Some employers oppose written employment agreements, fearing that a written contract reduces the employer's right to make changes. These concerns can be addressed in the agreement itself. In fact, in most circumstances, a written agreement can give the employer greater flexibility in difficult times. For unionized employers, it may be possible to negotiate concessions from unions in the application and interpretation of collective agreements.

Implement a Work-sharing Program

When business is reduced by circumstances beyond the employer's control, it is worth discussing work-sharing. Qualified employers can initiate work-sharing as a means of avoiding a temporary layoff among staff who are entitled to receive Employment Insurance (EI) benefits. Employers can retain staff and employees can keep their jobs while receiving EI benefits for the days when they are not working-with no waiting period for EI benefits. Work-sharing agreements can range from six to 26 weeks, with an extension up to a maximum of 38 weeks. See details of this plan at: http://www1.servicecanada.gc.ca/eng/epb/sid/cia/grant/ws/ws_desc_ws.shtml.

Trim the Fat

Consider cutting bonuses, reducing perquisites and freezing salaries. Do this from the top down: impressions matter when you're looking for buy-in.

Discretionary bonuses are easy to deal with: the employer simply exercises its discretion not to pay. Where bonuses are guaranteed, employers fear that cutting these bonuses will lead to constructive dismissal claims. This fear is groundless if employers provide adequate notice that guaranteed bonuses will be removed at some point in the future.

Some employees have also begun to rely on salary increases as a right. In fact, that might be the case if a historical pattern demonstrates an entitlement to a salary increase. Again, this problem can be addressed with advance notice to employees of a salary freeze.

Be Selective in Termination

If reducing the size of your workforce is inevitable, do *not* offer buyout packages to anyone willing to take them! That could lead to irreplaceable talent walking out the door. Instead, thin the ranks of poor performers whose presence is tolerated when the workplace is busy, but who are an unaffordable luxury today. If it is impossible to terminate for just cause, or to pay a severance package up front, non-producers can be put on working notice.

Proper implementation of any of the above measures requires advice from an employment lawyer. Lawrences' Employment and Labour Group is experienced in advising both unionized and non-unionized employers in prudent ways to implement change in the workplace.



Roslyn Baichoo is an associate in Lawrences' Employment and Labour Group. She represents employers before various provincial and federal labour and arbitration boards, the Human Rights Tribunal of Ontario and all levels of the Ontario courts. Roslyn also provides corporate human resources training to employers on proactive approaches to workplace concerns. She can be reached at (905) 452-6878 or rbaichoo@lawrences.com.

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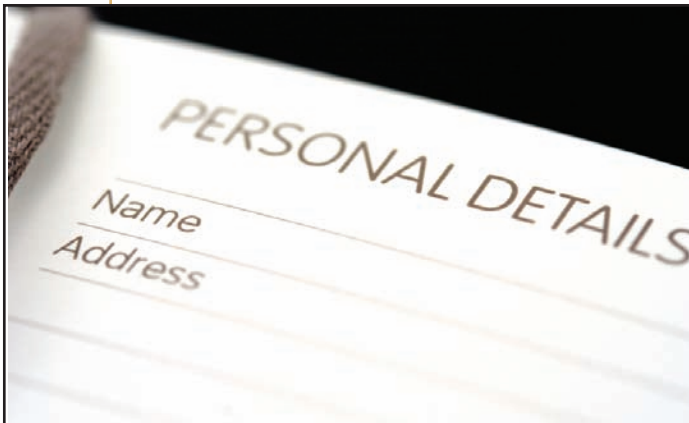
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NEW RULES FOR CLIENT IDENTIFICATION AND VERIFICATION

“Know Your Client”: It’s the Law

Heather M. Picken, Michael J. Luchenski

As a result of global concerns about fraud and money-laundering, the federal government asked the Federation of Law Societies of Canada to create a national standard for client identification and verification, to safeguard law firm trust accounts.



resolution from the directors in connection with our retainer. If the client represents a third party, we must record the same information about the third party, whether an individual or an organization.

Verification

We may also need to review certain documents in order to verify identification information when we are handling certain funds on behalf of our clients. For individuals, these will be such documents as drivers’ licences or birth certificates. For organizations, we may also need to obtain documents that are filed with or issued by public authorities to confirm the organization’s existence and corporate status.

Our Commitment to Our Clients

We are committed to carrying out our obligations under these new regulations with the least possible inconvenience to our clients. We will also maintain the privacy of the personal information in our custody or under our control in the same manner that we safeguard all other client information, in compliance with our privacy policy, which is available on our website at <http://www.lawrences.com>.

If you have any questions about our new file-opening procedures, verification requirements or privacy policy, please contact any of our lawyers. We thank you for your co-operation.



Heather Picken and Michael Luchenski are Lawrences’ co-managing partners. Heather also heads the firm’s Real Estate Group. She can be reached at (905) 452-6891 or hpicken@lawrences.com.

Michael is a member of the firm’s Business Law Group and can be reached at (905) 452-6889 or mluchenski@lawrences.com.

In response, The Law Society of Upper Canada has introduced new rules that require all lawyers in Ontario to obtain, record, and retain certain information about the identity of clients (including long-standing clients) and verify this information in circumstances where we will be handling funds on behalf of clients.

Identification

As of December 31, 2008, we are required to record the information shown in Table 1 when we are retained to act on a new file, whether for an existing or a new client. In some cases, we will need to obtain identification information about significant shareholders and directors and an authorizing

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Table 1. Required Information to Identify Clients

For Individuals	For Organizations
Full name	Full name of organization
Home address and telephone number	Business address and telephone number
Business address and telephone number	Incorporation or business identification number
Occupation	Jurisdiction in which the organization was founded
	Description of the organization’s business activity
	Name, position and contact information for all individuals authorized to give instructions on the retainer

ESTATE PLANNING

Providing for the Special Needs Beneficiary

Gosha S. Sekhon

John Simpson has Down Syndrome. His parents, wanting to provide for him after their death, named John's sister Doreen as Executor of their estate and earmarked a proportion of the estate for his care. Now Doreen is shocked to find that because John is inheriting from their parents' estate, he is no longer entitled to the government benefits that she was counting on to pay his expenses.

Special estate planning considerations arise when a beneficiary is disabled and receiving government benefits. An outright bequest to the disabled beneficiary may inadvertently do more harm than good. Proper legal guidance is therefore essential.

Those who qualify for benefits under the Ontario Disability Support Program (ODSP) are usually adults (over 18 and under 65) who meet certain criteria set out in the applicable legislation and guidelines. The benefit is a subsistence amount.

Certain qualified ODSP recipients receive additional benefits, including coverage for expensive medical treatments and medications, and support for housing costs. If a parent leaves a child an inheritance directly, the child may no longer qualify for ODSP benefits. There are several legal approaches to this problem.

Henson Trusts

If the share of the parent's estate intended for the child with special needs is placed in a fully discretionary trust ("Henson Trust") instead of being given directly to the child, the money in that trust is not part of the means test under the ODSP plan. The trustee can distribute as much of the income and/or capital of the trust to or for the benefit of the child for the child's lifetime, as the trustee deems appropriate. The trustee can also ensure that any distribution the child receives from the trust remains within the ODSP-allowable amount.

The use of such a trust involves a great deal of planning, including an assessment of how much money should be set aside in the trust, how the fund will be managed and who will manage the trust.

Disability Expense Trusts

A disabled child may end up receiving an inheritance outright if a parent dies without a Will ("intestate") or, as in John's case, a parent leaves a direct gift to the child. The ODSP legislation allows the recipient of ODSP benefits to place such an inheritance or life insurance payout in a "Disability Expense Trust" provided that the proceeds put in the trust do not exceed \$100,000. Payments to the recipient from a

trust should not affect eligibility for ODSP, so long as they are used for approved disability-related items or services, or education or training expenses incurred because of a disability.

This solution is effective only where the inheritance is \$100,000 or less.

Registered Disability Savings Plans

The new Registered Disability Savings Plan became available as of December 1, 2008, under the new *Canada Disability Savings Act*. Provincial legislation is being introduced to exempt the assets held in such plans from the means test for ODSP, but this legislation is not yet in place.

A "holder" can set up the plan and designate a single, irrevocable beneficiary who would receive lifetime disability assistance payments from the plan. A beneficiary of an RDSP must qualify to receive a disability tax credit, be a resident of Canada, and have a severe and prolonged physical or mental impairment. An individual can be a beneficiary of only one RDSP at a time.

There are certain limitations to an RDSP, including the amount of funds that can be contributed to the plan over time and the requirements to qualify as a "holder".

When planning for the disposition of your estate, it is important to choose a lawyer with experience in all facets of estate planning. Give your lawyer all the pertinent details about your intended and potential beneficiaries, especially if one of them has special needs.

Lawrences' Estates and Trusts Group has significant experience in planning for special needs beneficiaries and would be glad to advise you in determining the best options for your particular estate plan.



Gosha Sekhon is an associate in Lawrences' Estates and Trusts Group. She advises Executors on all aspects of administering the estate of a deceased person and guides Attorneys for property and Attorneys for personal care when managing the affairs of a mentally incapacitated individual. Gosha can be reached at

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An outright bequest to the disabled beneficiary may inadvertently do more harm than good. Proper legal guidance is therefore essential.

Life at Lawrences®

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

Lawrences Grows Again



In the current economy, business reorganization and restructuring is a legal service that is very much in demand. Growing with our clients' needs, Lawrences has added an associate to its Bankruptcy and Insolvency Group. **Dennis Kish**

comes to us from one of Canada's leading independent licensed bankruptcy trustees, where he managed bankruptcies and represented insolvent clients in court. Dennis obtained his law degree from Michigan State University College of Law and practiced insolvency law in the United States before moving to Ontario. He is a member of the Bars of Ontario, District of Columbia, and the Eastern & Western Districts of Michigan. Dennis can be reached at (905) 452-6876 or dkish@lawrences.com.

In the Chair



Keeping up the Lawrences' tradition of service to the community, Lawrences' managing partner **Heather Picken** has been named Chair of the William Osler Health Centre Foundation Board of Directors. Heather, who heads Lawrences' Real Estate Group, has been a Board member for the last two years and was Vice Chair last year. In announcing Heather's appointment, the Foundation newsletter noted, "Heather's interest in health care, particularly the hospitals that make up William Osler Health Centre, make her ideally suited to this leadership role." Heather can be reached at (905) 452-6891 or hpicken@lawrences.com.

On the Board



One of Lawrences' newest lawyers, **Tejdeep S. Chattha**, was recently elected to a three-year term on the Board of Directors for the Peel Law Association. The PLA runs a library, provides continuing legal education for its members, and generally

represents the profession in Peel Region. Tejdeep follows a long succession of Lawrences lawyers who have been members of the PLA's Board of Directors. Congratulations, Tejdeep!

At the Podium



Because of his expertise in this area, Lawrences litigator **Edwin G. Upenieks** is frequently called in to represent or advise various parties in disputes over legal costs. Ed recently gave a presentation to the Simcoe County Law Association in Barrie on

Maximizing Costs Recovery Following a Motion or Application. His article on assessments of costs was also recently published by The Advocates Society, a provincial association of trial lawyers. Ed can be reached at (905) 452-6873 or eupenieks@lawrences.com.

Avi E. Goldstein



We are greatly saddened to announce that our friend and colleague **Avi Goldstein**, an associate in our Corporate & Commercial Law Group, passed away on March 20, 2009. His obituary can be seen at: <http://www.lawrences.com/lawyers.asp?lawyerID=35>

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