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(a) New Legislation

On **May 1st, 1991**, the *Partnerships Registration Act* and section 2 of the *Corporations Information Act* were repealed and replaced by the *Business Names Act*, S.O. 1991, c.5. The Act is administered by the Ministry of Consumer and Commercial Relations.

Under the *Partnerships Registration Act*, it was only persons engaged in business under a business name, or associated in partnership, for trading, manufacturing or mining purposes who were required to register. Lawyers were outside the scope of that legislation and did not have to register. However, the practice of a profession with a view to profit falls within the definition of "business" in the new Act and so most law firms have to register under the Act.

(b) Partnerships and Sole Practitioners

The Act requires partners to register unless they are "carrying on business or identifying themselves to the public under a name that is composed of the names of the partners." It appears that the Ministry does not consider that it is sufficient to carry on business without registration under the surnames only of the partners: at least a first name will be required, in addition to the surnames, if the firm is to avoid the registration requirements.

Thus if Jane Brown, John Black and Mary Green are partners practising under the firm names of "Brown, Black and Green", it appears that they will have to register.

The Ministry is of the view that the "names of the partners" means the names of all the current partners, not including the name of any former partner who has withdrawn from the firm, retired or died. It appears that the same interpretation is taken in respect of sole practitioners. If John Black practices under the name "Black: Barrister and Solicitor", he will apparently have to register.

However, if he practices under his full proper name, as "John Black: Barrister and Solicitor", he will avoid having to register.

(c) Associates

There is nothing in the Act which specifically provides for the registration of a business name used by groups of individuals in an association other than partnership. However, where lawyers are practising in association rather than as partners or as employees, but practice under a common name, the Ministry takes the position that they will each have to register as individuals. Thus if Jane Brown, John Black and Mary Green are associated under the name "Brown, Black and Green", each of them will have to register.

This requirement will result in a multiplicity of registrations because many lawyers who use the same business name will be required to file separate registrations under the same business name.

(d) Employees

There is no requirement for registration by employees because it is their employers who are perceived as "carrying on the business". It will be the employers' responsibility to comply with the registration provisions of the Act.

(e) Registration

Registration is effected by completing and filing with the Registrar of Business Names the registration form prescribed by Ontario Regulation 121/91. These forms are obtainable from the Companies Branch of the Ministry at 393 University Avenue, Toronto and from Land Registry Offices. Completed registration forms should be mailed or presented to the Registrar of Business Names in Toronto. The prescribed fee for each registration is \$50.00.

Changes to the Occupational Health and Safety Act

On January 1, 1991, Bill 203 came into force, making significant changes to the *Occupational Health and Safety Act*, R.S.O. 1980, c.321. These changes will affect many lawyers as employers. Among the requirements in the amended Act are the preparation of an Occupational Health and Safety Policy by every employer, the selection of a Health and Safety Representative in every workplace.

where 6 to 19 workers are regularly employed, and the establishment of a Joint Health and Safety Committee at every workplace that regularly employs 20 or more workers. The Act also imposes new duties on Health and Safety Representatives and Joint Health and Safety Committees.

Automated Office Systems

There are a number of computer programs on the market which are designed to carry out a variety of tasks necessary to the practice of law. These programs are commonly used to keep accounting records, produce documents, manage tickler systems, and so on. a number of inquiries have been made of the Society regarding these programs, and more specifically requesting confirmation of whether or not the Society "approves" of a particular program. Members of the profession should be advised of the following:

(a) The Society has not in the past does not now either approve or disapprove of the use of any specific commercial device, machine or program intended to accomplish any task, whether or not that task is in order to fulfil a requirement set by the Society;

(b) the Society is not concerned with the technical apparatus used to achieve any particular result. In other words, the Society is interested in the contents and accuracy of solicitors' accounting records, but not in the method of their production except insofar as that method affects the reliability of the records;

(c) All solicitors' accounting records, whether automated or manual, must comply with section 15 of Ontario Regulation 573 under the *Law Society Act*. Copies of the regulations can be found in your white Law Society Manual;

(d) The responsibility for keeping accurate records has always been and remains with the solicitor. The responsibility for ensuring the integrity of data as stored, processed or reported by a machine or computer program remains with the solicitor. It is unlikely that the Society will ever endorse any commercial product with the effect that the use of that product alone suffices as compliance with any requirement;

(e) A vendor of any commercial product who claims that such product is recommended, endorsed, approved or otherwise accepted by the Society is engaging in a misrepresentation and all such claims should be reported to the Practice Advisory Service.

Continuing Legal Education

The C.L.E. Department of the Law Society presented a program on June 8, 1991, entitled "The Law Society and the Profession: Opened Windows, Changing Times".

In addition to addressing the discipline procedures of the Law Society, and the proposed changes thereto, the panels discussed a number of timely and interesting ethical issues, including contact with the media and the duty to report misconduct plus taxes.

The program was videotaped; copies of the videotape can be ordered from the Continuing Legal Education department by calling (416) 947-3380 or 1-800-668-7380, ext. 3380 (from area codes 416, 519, 613 and 705) or 1-800-668-9231 from area code 807. The videotapes are available at a cost of \$195.

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A completed registration form normally requires the signature of each partner. However, there is a special registration procedure available for partnerships of more than 10 partners. The Provisions of the Act should be reviewed to determine specific registration requirements. Where there are more than 10 partners, Regulation 121/91 provides for the registration of "designated partners", provided that there is compliance with certain other conditions. These conditions include showing the full names and residence addresses of current partners who are carrying on the business of the partnership in Ontario, and of any partner who left the partnership after May 1st, 1991. Any person is to be permitted on demand to inspect and obtain copies of these records without charge at any time during normal business hours. Again, we suggest the specific provisions of the Act and regulations be reviewed in this regard.

(f) Registration Date and Penalties

Registration must be effected by **November 30th, 1991**. After that date,

penalties may be imposed if any person required to register under the Act carries on business under a business name without being registered. Registration is effective for five years, or unless cancelled sooner. A subsisting registration can be renewed prior to, or within sixty days after expiration, upon payment of the prescribed fees. In the meantime, if there is any change in the information set out in the registration, the registrant is required to file an amended registration form within fifteen days after that change. Specific provisions govern the amendment of a registration respecting a partnership, and member are again referred to the Act for information.

(g) Help

Further enquiries concerning lawyers' obligations to register under the *Business Names Act* should be directed to the Companies Branch of the Ministry of Consumer and Commercial Relations at 393 University Avenue, Toronto, Ontario M7A 2H6 (telephone: (416) 593-8880).

GST Update

(a) Executor's Fees

The Law Society was consulted as to whether a lawyer acting as an executor of an estate is required to charge GST on the executor's compensation. Revenue Canada, in the Excise database, has indicated that GST is chargeable on executor's compensation where that compensation is earned in the course of business and the fees form part of the business income of the taxpayer. As a result, if the executor is a lawyer acting in his or her professional capacity, and the service of acting as an executor is provided in the course of a commercial activity, the lawyer, if registered, is required to collect and account for the GST.

In the context of a law partnership, if the lawyer/partner acts as executor as part of his or her partnership activities, the partnership would be responsible for collecting the applicable GST. If a lawyer acts as executor in his or her personal capacity and it is considered a commercial activity, GST would only be payable if the lawyer's taxable supplies outside the partnership exceed \$30,000, or if the lawyer is personally registered for the GST. If, however, a lawyer acts as executor in his or her personal capacity, perhaps having been appointed as a friend or relative of the deceased, and the lawyer's normal practice does not include executorships, so that the lawyer is not considered to be acting in the course of a commercial activity, the lawyer would not be required to collect and remit the GST.

(b) Application of GST to Costs in Litigation

Although this issue is currently under review by Revenue Canada Excise, the following analysis may apply: a lawyer, unless a small supplier, must charge GST on legal services. If the costs portion of a court order or a settlement agreement is intended to compensate the client, whether in whole or in part, for the lawyer's fee for services rendered, presumably by analogy GST would be applicable. In normal fashion, a lawyer would prepare an account to the client, and would credit the client for any amount received from the opposing party that is attributable to the lawyer's fees. The lawyer (unless a small supplier) will charge GST on the account the client, is deemed to have collected it, and must remit it. If costs are payable pursuant to a court order, the issue can be clarified if the order specifies whether the costs are to include the applicable amount of GST. It may be the obligation of the lawyer to raise this issue with the court, in order to avoid possible negligence allegations. If the case is being resolved by way of settlement between the parties, collection of GST applicable to the costs will be a matter for negotiation, as is any other expense.