SINGLETON URQUHART LLP | LEGAL COUNSEL | SUMMER 2015 NEWSLETTER | VOLUME 27 | NUMBER 2

Letter of the Law

Commercial Leases and the Trojan Horse

Commercial landlords who, for one reason or another, consider taking over the business operations of a tenant which has defaulted on or abandoned its lease might first consider the cautionary tale of the Trojan Horse. We are told that one day, after ten fruitless years of war with Troy, the Greeks pretended to give up, packed their bags, and sailed away. They left behind a wooden horse, which the Trojans accepted as a gift despite their chief priest's warning: "Beware of Greeks bearing gifts."

The chief priest was eaten by giant sea serpents immediately after delivering his warning. For this, and other obvious reasons, he wasn't around to share his sage advice with Spirit Ridge Resort Holdings Ltd. in the summer of 2011 when its tenant, the Passa Tempo restaurant—operated by Annette LaGrange—fell behind with the rent. One morning, she abruptly left, handing the restaurant keys to a Spirit Ridge representative while stating "The restaurant is now yours" or words to that effect.

She left behind forty-eight employees who were owed almost three weeks' worth of wages. Spirit Ridge felt compelled to accept this questionable gift immediately because the restaurant was to provide food for a wedding event which the Osoyoos resort was hosting that evening. But, like the Greeks' wooden horse, the gift had a hidden surprise—a staggering bill of over $51,000 consisting in large part of the outstanding wages.

With its reputation at stake, Spirit Ridge took over Passa Tempo's assets and inventory and continued the operation of the restaurant two hours after Ms. LaGrange departed. It produced employment agreements offering Passa Tempo's staff continued employment with no loss of seniority although at the same time it informed the employees that Passa Tempo continued to be liable for their unpaid wages. Notably, however, Passa Tempo had never formally terminated its employees' service.

For its part, Spirit Ridge thought it was simply exercising its rights under the lease when it took over the restaurant and assets of its defaulting tenant. It believed that in doing so it assumed no risk or liability for the unpaid wages which Passa Tempo owed to its employees.

However, a delegate of the Director of Employment Standards—with whom the employees filed an employment standards complaint—issued a Determination finding that Spirit Ridge had taken over operation of the restaurant without Passa Tempo's employees having been dismissed, thereby becoming the "successor employer" of the employees.

Spirit Ridge appealed this Determination to the Employment Standards Tribunal, which upheld the Delegate's Determination, and

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(Continued from cover)

then to the British Columbia Supreme Court—in *Spirit Ridge Holdings Ltd. v. British Columbia (Employment Standards Tribunal*. The Supreme Court did not find the Tribunal's decision to be patently unreasonable, the test for overturning the Tribunal's decision.

The key legislation relating to this issue is Section 97 of the *Employment Standards Act* (ESA), which reads:

> If all or part of a business or a substantial part of the entire assets of a business is *disposed* of, the employment of an employee of the business is deemed, for the purposes of this Act, to be *continuous and uninterrupted by the disposition.* (Author's italics.)

According to B.C.'s *Interpretation Act,* "disposed", broadly interpreted, means "to *transfer by any method* and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, divest, release and agree to do any of those things." (Author's italics within quotation.)

When Spirit Ridge accepted the surrender of the restaurant from Ms. LaGrange and continued its operations, a "transfer" or "disposition" under ESA's Section 97 occurred. Further, the two-hour gap between Ms. LaGrange's departure and Spirit Ridge's delivery of the offers of employment did not affect the employees' continuous and uninterrupted employment because Passa Tempo did not terminate their employment before Spirit Ridge took over the restaurant.

Accordingly, Spirit Ridge was ordered to pay the employees the wages that Passa Tempo had not paid them plus interest and a $1,000 administrative fine. The wages determination included termination pay of a restaurant employee that Spirit Ridge had dismissed without cause *calculated from the date of the employee's original hiring* by Passa Tempo. Given other circumstances, Spirit Ridge might have been additionally liable to pay the employees for statutory holidays and vacation pay.

Good intentions, as we all know, can have unforeseen consequences. In this case, Spirit Ridge acted quickly to fulfill its obligations to its guests. Unfortunately, given the urgency of the situation, it had no choice but to use Passa Tempo's assets, inventory and employees. What it failed to do before taking over the restaurant operations was to take the necessary steps to avoid, or at the very least minimize, the risk of assuming Passa Tempo's unpaid wage liabilities to its employees.

As the Tribunal itself recognized in its decision, given a different factual scenario, it is possible the outcome would have been different. Although the Tribunal refused to speculate on what those different factual scenarios might be, a commercial landlord finding itself in a situation similar to Spirit Ridge's should at the very minimum ensure that its tenant has formally terminated its employees' services before taking over the tenant's operations. Even when time is of the essence, as in this case, the landlord should consult a lawyer to understand the consequences of its decision, what steps can be taken to avoid or minimize those consequences, and the nature of the financial obligations it might be assuming.

Whether, under any given circumstances, a commercial landlord taking over its tenant's business operations will trigger the operation of the ESA's Section 97 to make it a "successor employer" is always an important question that needs careful analysis. At the very least, the uppermost thought for commercial landlords facing similar situations should be, to reverse another saying, "always look a gift horse in the mouth."

For more information on this case and generally on landlord-tenant relations in commercial settings, please contact

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The electronic version of this article at **www.singleton.com** contains links to the cases and legislation above.

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EDITOR'S NOTE

Litigation today is becoming more and more complex as new technologies, examples of which are plentiful in our daily life, find their way into the courtroom.

The presence of expert witnesses, previously a less frequent occurrence, has become commonplace in most trials. The expert is there to offer an unbiased opinion on technical matters so the judge hearing the case can understand and interpret issues requiring specialized expertise, and then apply them to the facts at issue. Examples include explaining the technical reasons behind the cause of a retaining wall failure or explaining the expected standards of practice that would apply to a doctor or an engineer.

The expert doesn't decide the case, but rather allows the judge to understand the technical issue so that he or she can determine the outcome. But with the ever-increasing use of technology comes the development of new experts versed in those evolving disciplines.

At what point do those new technologies become accepted as reliable enough for the courtroom? When does "novel" science become the norm? **STEVE VORBRODT**'s article in this issue of *Letter of the Law* reviews the challenges that such evidence presents for courts across Canada.

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Biting the Hand that Fed You

Former Employees and Client Information

WORKPLACE LAW

Most businesses have confidential client information, which can be an important and valuable asset. To protect this asset, businesses will often rely on restrictive clauses in their employment agreements that prevent this information from being improperly used by departing employees.

There are two basic types of restrictive clauses or agreements used to protect confidential information: non-competition agreements and non-solicitation agreements. A non-competition agreement seeks to prevent former employees from competing directly with their former employer, usually in a specified geographic area for a period of time. A non-solicitation agreement does not prevent the former employee from competing, but simply prevents him or her from soliciting clients of their former employer.

Because a non-competition agreement is more restrictive, it is given greater scrutiny by courts because it is seen to be contrary to public policy. This view was expressed by the Supreme Court of Canada in a 2009 case, *Shafron v. KRG Insurance Brokers (Western) Inc.*, when it stated that NCAs "interfere with individual liberty of action" and that "the exercise of trade should be encouraged and should be free."

A non-competition agreement is therefore presumed to be unenforceable unless an employer can show its restrictions are reasonable having regard to these elements:

- the nature of the interest that the employer wants to protect
- the time period and geographical area that the agreement covers
- the activities that it prohibits.

To be enforceable, the agreement's terms must also be clear and certain.

Because it is less restrictive, a non-solicitation agreement is more likely to satisfy the reasonableness standard. In fact, courts may refuse to enforce a non-competition agreement if a non-solicitation agreement would adequately protect the employer.

A proper non-solicitation agreement should not restrict solicitation of the previous employer's customers *in any kind of business whatsoever;* rather it should be limited to the employer's specific business.

Even without an agreement, there are certain obligations imposed by law that can prevent a departing employee from acting unfairly towards its former employer. The obligations that will be owed by a departing employee, with or without an express contractual restriction, can arise as a fiduciary duty, a duty of good faith, or a duty of confidence.

In each case, courts will consider a former employee's conduct unfair if he or she has taken confidential customer lists to use for solicitation of business and/or if he or she wrongfully divulges trade secrets or seeks to wrongfully appropriate the former employer's maturing business opportunities.

Courts will also consider a person's position in a company. A court may prevent a company's top managers or key employees from soliciting their former customers after they leave its employ. But a lower-level employee may compete with a former employer, provided he or she does not use that company's confidential information such as recorded customer lists.

To protect against improper competition by former employees, we encourage businesses to have their standard form employment agreements reviewed by a legal professional so that they can be more confident that non-competition or non-solicitation clauses are reasonable and likely to be enforced. In addition, employers that suspect an employee is improperly soliciting former or current clients should consider consulting a lawyer to see if there is a remedy available. A court injunction may prevent an ex-employee from using confidential information soliciting clients. Employers may also seek damages from an offending former employee as compensation for the financial loss he or she has caused.

For more information on employment agreements and the duties that departing employees owe to their former employers, please contact

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The electronic version of this article at ***www.singleton.com*** contains a link to the case mentioned above.

Objecting to Expert Evidence Based on Novel Science

INSURANCE LAW

In product liability and other personal injury cases, the courts will sometimes be asked to consider expert evidence based on theories that deviate from accepted standards in the scientific community. The polite term for such theories is "novel" science while the more informal term is "junk".

As expert witnesses play an increasing role in litigation, courts have become concerned that overreliance on expert evidence may threaten the role of the judge or jury. In a 1994 case, *R. v. Mohan,* the Supreme Court of Canada described this potential danger as follows:

> . . . dressed up in scientific language which the jury does not easily understand and submitted through a witness of impressive antecedents, [such] evidence is apt to be accepted by the jury as being virtually infallible and having more weight than it deserves.

The general test for admitting expert evidence set out in *Mohan* attempts to address this danger. To be admissible, the expert evidence must be relevant, necessary to the judge's and/or jury's understanding of the facts, not excluded under any other rule of evidence, and tendered by a qualified expert.

For opinions based on novel science, the courts have imposed stricter controls and precautions by evaluating its reliability using another four-part analysis as follows:

1. Can the theory or technique be tested? If so, has it been?
2. Has the theory been peer reviewed and published?
3. Does the theory have a known or potential rate of error for the existence of standards?
4. Has the theory or technique found general acceptance?

This test was first applied in 2000 by the Supreme Court of Canada in *R. v. J.-L.J.,* a case in which the accused was charged with sexually assaulting two boys. In his defence, he tendered the evidence of a psychiatrist who said that the actual perpetrator was likely a serious sexual deviant. However, based on various tests, including a penile plethysmograph, the psychiatrist claimed that the accused showed no such deviant personality traits. After applying the above four factors, the Court decided that, while the accused's expert used a test that had been recognized as a therapeutic tool, it had never been used as a forensic tool. On this basis, the expert's evidence was excluded.

British Columbia courts have subsequently used the same test for admitting novel science as evidence. In a 2007 B.C. Supreme Court case, *Taylor v. Liong,* the defendant objected to evidence from one of the plaintiff's experts who linked trauma to the onset or exacerbation of multiple sclerosis. This expert's opinion was described by another expert as "a simple compilation of disconnected facts and unsupported assertions." After applying the *J.-L.J.* criteria, the B.C. Court found that the expert's theory was not reliable and his evidence was not admitted.

Four years later, in a B.C. Supreme Court personal injury action, *Bialkowski v. Banfield,* the plaintiff applied to introduce expert evidence based on quantitative electroencephalography analysis (QEEG) which recorded electrical activity in the brain that was afterwards computer analyzed. The defendant objected to the admission of the QEEG analysis by a neuropsychologist, claiming that he was not qualified in this area and that the results of QEEG testing were unreliable.

The Court found that QEEG was a novel science warranting special scrutiny. It also found that while that the neuropsychologist was qualified to give an opinion on the repercussions of brain injury, he was not trained or qualified with respect to QEEG testing or analysis. Other courts had previously rejected similar evidence due to its unreliability. Accordingly, based on the principles established in *J.-L.J.* and *Mohan*, the plaintiff's expert evidence was inadmissible.

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Claiming Litigation Privilege Before a Lawsuit Starts

INSURANCE LAW | *Raj v. Khosravi*

In the early stages of handling an insurance claim, an adjuster always wants to discover as much as possible about it. If a claim arouses any doubts about its veracity, the adjuster will often engage an outside investigator to undertake a more detailed investigation.

However, if a claim proceeds to litigation, the parties have an obligation to disclose the documents in their possession that could be used to prove or disprove a material fact. In many instances, this obligation makes investigative reports producible, even over the protestations of the adjuster who commissioned the investigation.

A scenario that broadly fits this outline was recently presented to the British Columbia Court of Appeal in *Raj v. Khosravi*. In its decision, the Court reaffirmed the legal test for a party being able to claim litigation privilege over a document. The Court explained litigation privilege as:

> . . . a form of privilege that provides a protected area in which communications and documents created for and used in the process of preparing for and engaging in litigation are free from "adversarial interference" and "premature disclosure". Its object is to carve out a protected space in which those engaged in the adversarial process of litigation can investigate, prepare and develop their respective positions and strategies, free from the intrusion of their adversary. Its purpose is "to create a 'zone of privacy' in relation to pending or apprehended litigation."

To maintain a claim of litigation privilege over a particular document, the Court reaffirmed that the following two-fold test applies:

1. Was litigation a reasonable prospect at the time the document was produced?

2. If so, what was the dominant purpose for the document's production?

The first step of the test generally has to overcome a low threshold although a bare assertion that litigation is a "reasonable prospect" is insufficient. The test is determined objectively on a standard of reasonableness.

The second part is more challenging. It requires the party claiming privilege to prove that the dominant purpose of the document, when produced, was to obtain legal advice or to conduct or aid in the conduct of litigation. The particular factual context in which the document was produced is critical in making this determination.

In *Raj v. Khosravi,* Rajan Kumar Raj presented a bodily injury insurance claim to the Insurance Corporation of British Columbia. The handling adjuster had doubts about the veracity of the claim and engaged an investigator to conduct surveillance of Mr. Raj and prepare a report in anticipation of an expected litigated claim from Mr. Raj. In a supporting affidavit and subsequent cross-examination, the handling adjuster maintained that the sole purpose of the investigator's report was to assist in anticipated litigation.

In B.C. Supreme Court Chambers, the Master found that the defendant had met the onus to establish litigation privilege. On appeal, the Chambers Judge set aside the Master's order, finding that litigation

was not in reasonable prospect at the time of the report's production and that there were multiple reasons for the production of the report.

The Court of Appeal reversed the Chambers Judge's decision and affirmed the Master's decision. The Court held that litigation may be a reasonable prospect at any time during information gathering and the start of litigation. The Court referred to the Master's acceptance of the defence's evidence that there was no other purpose for the report than to defend a possible tort claim.

Raj v. Khosravi provides reassurance for adjusters that, where there is a reasonable prospect of litigation occurring and an adjuster creates or commissions the creation of a document whose dominant purpose will be to defend that litigation, the adjuster can maintain a claim of privilege over that document.

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The electronic version of this article at ***www.singleton.com*** contains a link to the case cited above.

(Continued from page 4)

Parties hoping to have expert evidence based on novel science excluded in court need to address the *J.-L.J.* test carefully. In reaching conclusions about the admissibility of such evidence, courts have, among other approaches, examined whether the scientific theory has been accepted in other cases and evaluated conclusions and methodologies in peer reviewed articles discussing a particular theory.

Despite the decisions cited above, expert evidence based on a new scientific theory may still be accepted in court. In *J-L.J.,* the Supreme Court of Canada encouraged flexibility in the application of the test by cautioning, "A case-by-case evaluation of novel science is necessary in light of the changing nature of our scientific knowledge: it was once accepted by the highest authorities of the western world that the Earth was flat."

For more information on the acceptance of expert evidence in product liability and personal injury litigation, please contact

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The electronic version of this article at ***www.singleton.com*** has links to the cases cited above.

How *Curiosity* Spilled the Directors

COPYRIGHT LAW | *Cinar Corporation v. Robinson*

While a company's directors or officers may comfort themselves that they will usually not be held personally responsible for their company's liabilities, this does not necessarily hold true in all cases. A 2013 Supreme Court of Canada copyright law decision, *Cinar Corporation v. Robinson*, presented a striking example of this when a company and its directors were ordered to pay over $5 million in damages.

This case involved several television production companies, businesses where copyright is at their very core. Copyright concerns are also increasing for many other kinds of businesses, particularly those involving advanced technologies. Over and above the copyright issues, however, the case demonstrates more broadly that there are times when directors and officers can bear personal liability for the wrongs committed by their companies.

Chief Justice McLachlin, who wrote the Court's decision, sympathetically described the plaintiff:

> Claude Robinson was a dreamer. He spent years meticulously crafting an imaginary universe for an educational children's television show, "The Adventures of Robinson Curiosity" (*Curiosity*). Robinson drew his inspiration from Daniel Defoe's novel *Robinson Crusoe*, as well as from his own life experiences.

The Chief Justice went on to describe how, in the early 1980s, Mr. Robinson further developed his ideas and approached prospective production partners. Among them was Quebec-based Cinar Corporation and two of its directors and officers, Ronald Weinberg and Micheline Charest. Importantly, Mr. Robinson gave them a copy of *Curiosity*. Unfortunately, these efforts, and Mr. Robinson's later efforts, did not result in *Curiosity* being produced and the project was shelved in the mid-1980s.

In 1995, almost a decade later, Mr. Robinson watched a children's television show called *Robinson Sucroë (Sucroë)*. "He was stunned to see that *Sucroë*, as he perceived it, was a blatant copy of *Curiosity*," wrote the Chief Justice.

On finding out that several parties to which he had given access to *Curiosity* were also involved in the production of *Sucroë*, Mr. Robinson started legal proceedings against 16 defendants including Cinar, Mr. Weinberg, Ms. Charest and the television series' production companies, some of which were based in Europe. He also sued some directors and officers of these companies, including Christian Davin, the CEO, and Christophe Izard, an officer of France Animation. Mr. Izard had seen Mr. Robinson's preparatory work for *Curiosity*.

In 2009 Mr. Robinson's case was heard in Quebec Superior Court. The trial lasted 83 days with 40 witnesses, 4 experts, and considerable audio-visual evidence. While the producers of *Sucroë* had not literally or directly copied *Curiosity's* words or drawings, the trial judge held that the latter's features as reproduced in *Sucroë* represented a substantial part of *Curiosity* and Mr. Robinson's expression of his ideas. Mr. Robinson's copyright had been infringed.

The trial judge awarded Mr. Robinson damages and costs totalling $5,224,293. Significantly, he also found that the two directors of Cinar who had seen *Curiosity*, as well as Mr. Izard, were personally liable for their roles in the infringement.

The Quebec Court of Appeal reduced the damages and costs award in addition to finding some other defendants not liable. The appeal to the Supreme Court of Canada dealt at length with the question of the appropriate test to apply to determine copyright infringement in a non-literal copying case.

The Court rejected an approach for this type of case requiring categorization of the parts of a work into "generic expression", "idea", or "copyrightable expression".

Instead, the Court determined that the correct approach assessed the cumulative effect of Mr. Robinson's skill and judgment expressed in his creative work as a whole. Then, by comparing the similarities and differences of the works at issue, it could determine whether the defendant had copied a substantial part of the plaintiff's work.

The Court also held that it is no defence that the copied features are only a small part of the defendant's work. The Court's "qualitative and holistic" approach means that it will likely now be easier for future plaintiffs to prove copyright infringement in this type of case.

The Supreme Court also restored many of the trial judge's awards that the Court of Appeal had overturned. With respect to the claim for psychological harm to Mr. Robinson, the Court refused to cap non-pecuniary damages—as it would have done in a bodily injury case—stating that damages for copyright infringement are more akin to damages claimed by a victim of defamation. The Court upheld the trial judge's award of $400,000 for non-pecuniary damages.

The Quebec Court of Appeal had reduced the punitive damages to $250,000 but the Supreme Court doubled them to $500,000.

On the question of the Cinar directors' and Mr. Izard's personal liability, the Court concluded that Mr. Weinberg and Ms. Charest did not act in the ordinary course of their responsibilities for the operation of their company. The Chief Justice agreed with the trial judge that Mr. Weinberg and Ms. Charest deliberately, wilfully and knowingly pursued a course of conduct that was either likely to constitute infringement or reflected an indifference to the risk of it. Mr. Izard's behaviour was similar in scope.

All three personally had access to and actively consulted Mr. Robinson's drawings during the development of *Sucroë*. They also hurt their case by persistently denying they had access to Mr. Robinson's work, despite the fact that they were given copies of *Curiosity* and even made comments on it in the course of their consultations with one of Mr. Robinson's production partners.

The Chief Justice went further in explaining why their conduct was egregious enough to merit being held personally liable for all types of damages awarded, including an award of $500,000 in punitive damages:

> Conduct of this nature threatens one of the fundamental goals of Canadian copyright law, namely "to prevent someone other than the creator [of a work] from appropriating whatever benefits may be generated": . . . The impact of this conduct on Robinson was equally serious. It deprived him not only of a source of revenue, but also of his sense of proprietorship over a project that had deep personal significance for him. He experienced profound anguish. Insult was added to injury by [Mr. Weinberg's, Ms. Charest's and Mr. Izard's] callous denials of copying and by insinuations to the effect that Robinson was simply an attention-seeking eccentric.

On the other hand, Mr. Davin escaped liability. He had supervised Mr. Izard and was credited as an executive producer on *Sucroë* as well as being involved in schemes orchestrated by Cinar to fraudulently obtain royalties and government subsidies. However, the Chief Justice noted that Mr. Davin did not actively or passively authorize the copying of Mr. Robinson's work and did not know or should not have known that *Sucroë* was developed by copying Mr. Robinson's work.

From this case it can be seen that courts will, at least in cases involving intellectual property, thoroughly explore whether a company's directors and officers should be held responsible for their company's blameworthy conduct and therefore found personally liable for damages to an injured party. In *Cinar Corporation v. Robinson*, the Supreme Court of Canada gave no indication whether similar conduct would render directors and officers liable in other types of cases. Only time will tell whether this line of reasoning is followed to broaden directors' and officers' liability.

For more information on this case, on copyright law, and directors' and officers' liability in general, please contact

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REUT AMIT, articled student, assisted with the research and writing of this article.

The electronic version of this article at ***www.singleton.com*** contains links to the decision discussed above.

New Rules and Fees for Some Foreign Workers

IMMIGRATION LAW

As of February 21 this year, foreign workers who are in Canada and who are exempt from the Labour Market Impact Assessment (LMIA) process cannot receive an employer-specific work permit unless the employer has first fulfilled certain requirements. New fees also came into effect on the same date for workers who entered Canada with open work permits.

LMIA-Exempt Workers

Workers who are LMIA exempt include those who have entered Canada under North American Free Trade Area rules or are exempt under the Canada-Chile, Canada-Peru, and Canada-Colombia Agreements.

Employers hiring foreign workers in this category must submit information to Citizenship and Immigration Canada (CIC) about their business or organization, provide CIC with an Offer of Employment form, and pay a new $230 compliance fee on-line in advance of any application for a permit being made on entry to Canada.

Unless these requirements have been met beforehand, employees trying to enter Canada will be refused entry since they will no longer be able to receive a work permit at the port of entry as was the practice hitherto.

Employers that do not comply with these new rules may face a monetary penalty, a ban on hiring foreign workers, and, in serious cases, criminal investigation and prosecution.

Workers with Open Permits

There is now a new $100 fee for open work permit applications which must be paid at the same time as the $155 work permit processing fee.

Those who hold open work permits include people permitted to work under the International Experience Class Program, those holding Post-Graduate Work Permits, spouses and common-law partners of higher-skilled foreign workers, and some foreign nationals waiting to have their permanent residence applications accepted.

For more information on the changes to the aforementioned programs as well as immigration law in general, please contact

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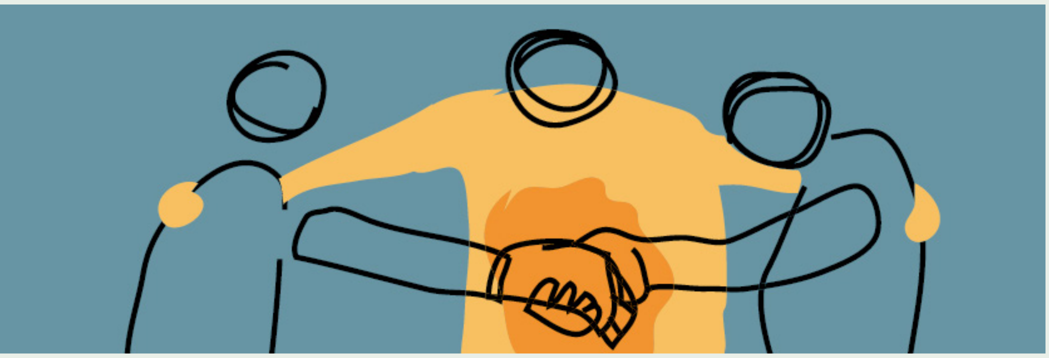
The electronic version of this article at ***www.singleton.com*** contains links to government websites with more detail about these programs.

What is a General Partnership?

BUSINESS LAW



In the previous two articles in this series (see *Letter of the Law*, Summer 2014 and Winter 2014), we discussed some of the advantages and disadvantages of incorporating a company and carrying on business as a sole proprietorship. In this last article, we consider the pros and cons of operating a business as a general partnership.

General partnerships are relatively simple to form. As with sole proprietorships, there are no formal requirements for establishing one—it comes into existence when two or more partners start to carry on a business together with the intention of earning profits.

The British Columbia *Partnership Act* provides that the receipt by a person of a share of the profits of a business is proof, in the absence of evidence to the contrary, that he or she is a partner in the business.

Maintaining the existence of a general partnership is also easy. Partnerships involved in trading, manufacturing and mining must register their names with the British Columbia Corporate Registry and must obtain any business licences required to carry on the partnerships' business.

There are no other requirements for maintaining a general partnership. A general partnership does not need to file annual reports with the Corporate Registry, nor does it have to produce financial statements.

In addition to the ease with which a general partnership can be formed and maintained, there are other advantages to carrying on business in this manner. General partnerships may offer tax advantages to their partners because it is possible to apply the business losses of the partnership against other sources of personal income earned by the partners.

Partners do not have to enter into a written general partnership agreement since the *Partnership Act* sets out various rules that govern the relationship among partners and between partners and third parties. Importantly, the *Partnership Act* provides that each partner is personally liable for the entirety of the partnership's business obligations, regardless of any distribution agreed to by the partners.

Furthermore, each partner is treated as an agent of the partnership so the actions of one partner bind the partnership as long as they are carried out in connection with the partnerships' business.

The rules set forth in the *Partnership Act* that govern the relationship between partners and third parties are compulsory and may not be altered. However, the rules with respect to the relationship among partners may be amended by a written agreement. Thus, although a general partnership agreement is not necessary, one is recommended where partners wish to alter the rights and duties owed to one another under the *Partnership Act*.

There are also other matters that are not dealt with in the *Partnership Act*, such as how new partners will be admitted into the partnership and which events, if any, will cause a partnership to dissolve.

Since general partnerships impose personal liability on partners for the losses of the business, as well as the wrongful acts of their partners in certain situations, carrying on business in this manner may not be suitable in all instances.

If partners are not confident in one another, or if the nature of the partnership's business is likely to expose partners to liability, then it may be more appropriate to carry on business as a limited partnership or a limited liability partnership. Both of these alternative forms of partnership limit the liability imposed on some or all partners. Consequently, before choosing which type of partnership to employ, we recommend that you seek legal advice.

For more information on partnership and business structures in general, please contact

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This is the last in a series of articles on different structures for carrying on business.

The electronic version of this article at ***www.singleton.com*** contains links to legislation and government bodies mentioned above.

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MARCEL DAIGLE

REUT AMIT

Our two newest Associates, **MARCEL DAIGLE** and **REUT AMIT**, completed their articles at Singleton Urquhart (SU) and became Associates at SU in May and June, respectively. Marcel's practice areas will centre on construction law and commercial litigation. Reut will be focusing her legal practice on employment, immigration and general commercial litigation.

BARBARA CORNISH was selected, through peer recognition, as one of the 2015 Best Attorneys in British Columbia by Best Lawyers. Barbara was also elected by her peers as one of the world's leading mediators in *Who's Who Legal*. For more information on mediation and other forms of alternate dispute resolution, please contact Barbara Cornish at bcornish@singleton.com.

*For more information on Marcel Daigle and Reut Amit, please visit our website at **www.singleton.com**.*