

LegalEase[®]

A straightforward look at law and business

Sorbara, Schumacher, McCann LLP is a thirteen-lawyer local law firm with offices in Kitchener and Guelph specializing in all areas of business law

Privacy Laws and Your Business

On January 1, 2004, legislation will come into force in Ontario which will impact upon Ontario businesses' ability to collect, use and disclose personal information. This legislation, the *Personal Information Protection and Electronic Documents Act* ("PIPEDA"), is a federal statute that has been operational for federal works such as banks since January 2001. The Act provides that, effective January 1, 2004, its provisions will govern all businesses in Ontario unless the Ontario legislature enacts its own similar privacy legislation prior to that date. It is believed that the Ontario legislature is in the process of developing its own privacy

legislation. However, this legislation will not be in force prior to the January 1, 2004 deadline.

The main objective of PIPEDA is to regulate how organizations collect, use and disclose personal information. The Act will govern all Ontario businesses and non-business organizations which conduct commercial activity including associations, partnerships, persons or trade unions. Personal information is broadly defined in the Act to mean "information about an identifiable individual" but it does not include the name, title or business address or telephone number of an employee of an organization. In essence, PIPEDA applies to the collection, use and disclosure of all personal information except that which would normally appear on a business card.

PIPEDA is premised upon ten principles for the protection of personal information as developed by the National Standard of Canada. These ten principles are included as a Schedule to the Act and are briefly discussed below.

1. Accountability. Under this principle, an organization must develop policies for

the protection of personal information which meet the requirements of the Act. An organization must also appoint at least one individual as a privacy officer to oversee its policies and procedures and to be accountable for the organization's compliance with the Act.

2. Identifying purposes. Under this principle, an organization must identify the purposes for collecting personal information at or before the time that the information is collected. If a new purpose arises after collection, the organization must identify that purpose prior to the use of the personal information.

3. Consent. This is one of the core principles behind the legislation. It provides that an organization must obtain the consent of the individual to collect, use or disclose personal information. Consent can be implied in certain circumstances and the form of consent can vary depending upon the sensitivity of the information and the proposed use. Consent cannot be obtained through deception. An individual must have the means through which he or she can withdraw consent upon reasonable notice

continued on page 3

ANNOUNCEMENT

Sorbara, Schumacher, McCann LLP is pleased to announce that



J. Greg Murdoch, B.A., LL.B.

has been admitted to the partnership to oversee our commercial litigation practice.

THE INSIDE LOOK!

Common Law Relationships

Find out what laws apply and how to protect your rights **pg 2**

Welcome!

Meet our two newest associates **pg 4**

New Limitations

Effective January 2004, you may have less time to commence a lawsuit **pg 5**

Shareholders' Agreements

Learn how to clarify issues and avoid disputes before they happen. **pg 6**

Life Insurance and Small Business

Life Insurance can be an important tool for business planning. **pg 7**

Corporate Tax Returns

Directors may be liable for the corporation's failure to file. **pg 8**

Common Law Relationships

In the course of practice in family law matters, our family law lawyers have come to realize that many people are confused and unsure of what rights and obligations, if any, arise out of what is commonly referred to as a “common law” relationship.

Some believe that the law will treat parties as if they were married if they have lived together “as man and wife” in a conjugal relationship for a certain period of time. They also believe that, upon a breakdown of this type of relationship, matters of division of assets, spousal and child support, and custody and access are dealt with by the court in the same manner as they would be if the parties were married.

This is not the case. In fact, the term “common law” relationship is not used in any legislation in Ontario or Canada.

The *Family Law Act* is the Ontario legislation which governs the provision of child and spousal support and division of assets upon the breakdown of a marriage. This Act refers only to the term “spouse” which has two definitions in the Act.

For the purposes of division of assets, the Act defines spouses as “a man and a woman who are married to each other or who have in good faith entered into a marriage which is voidable”. This refers to parties to a valid marriage or a marriage that is invalid because one party was already married at the time of marriage. This definition does not govern couples who live together but are not married to one another regardless of how long the parties have lived together.

On the contrary, a different definition of spouse applies in the context of spousal support. This definition, in addition to the above-mentioned definition of a married couple, also includes a man and a woman (or two parties to a same-sex couple) who are not married and have cohabited: (a) continuously for a period of not less than three years; or (b) in a relationship of some permanence if they are the natural or

adoptive parents of a child.

In short, the traditional notion of a “common law” relationship is only applicable in the context of spousal support. The obligation to pay spousal support is based upon this definition of spouse and is also dependent upon the needs of the payee spouse and the payor’s ability to pay. Parties to a “common law” relationship are, therefore, not entitled under the *Family Law Act* to a division of assets upon the breakdown of the relationship.

With this in mind, it is important for individuals who are involved in this type of relationship or who may become involved in this type of relationship to consider the potential consequences of a breakdown in the relationship. Of course, no one enters a relationship with the expectation that it will fail. However, the potential for a breakdown of “common law” relationships is just as real as it is in the context of marriage and the consequences from a breakdown are just as real.

One way to avoid the bitter squabbling and legal confrontations which can flow from breakdowns in a relationship is for the parties to enter a cohabitation agreement. A cohabitation agreement is a contract between two persons (either same sex or opposite sex) who are cohabiting together but are not married in which they agree upon their respective rights while living together, upon separation and upon death.

Cohabitation agreements are specifically provided for in the *Family Law Act*. In these agreements, parties can set out their respective rights and obligations during and after cohabitation with respect to the areas of: ownership and division of assets; support obligations; and any other matters in the settlement of the affairs between the parties. A cohabitation agreement can provide for the right to direct the moral and educational training of children but it cannot deal with issues of custody and access of children.

Like any contract, a cohabitation agreement will only be enforceable if it is entered into voluntarily by both parties and so long as both parties fully understand the terms and consequences of the agreement. These factors are very important in the context of cohabitation agreements because the parties may often have unequal bargaining power which could lead to vulnerability for one party. There must also be full financial disclosure between the parties prior to the completion of the cohabitation agreement. In order to ensure that all of these matters are dealt with properly, parties to a cohabitation agreement must be given an opportunity for (and should obtain) independent legal advice prior to executing the same. Cohabitation agreements must be in writing and be witnessed and signed by both parties. Any amendment to the agreement must meet these formal requirements as well.

If the parties later marry, the cohabitation agreement will remain in effect as a marriage contract unless the same is revoked or revised.

Since the *Family Law Act* does not govern all issues arising from a breakdown of a “common law” relationship, it is often wise for parties to consider entering a cohabitation agreement to make their rights and obligations clear. Without an agreement of this sort in place, the parties’ rights and obligations are often uncertain which may lead to an unpleasant and expensive legal dispute.

If you are in a “common law” relationship or are considering entering one, Brian McCann or any one of our family law lawyers would be glad to discuss with you the appropriateness of a cohabitation agreement and address any questions you may have. [LegalEase](#)

Privacy Laws and Your Business continued

to the organization.

4. Limiting collection. Under this principle, an organization must evaluate the type of personal information it collects and limit the same to that which is absolutely necessary for its stated purposes. Collection must only be made through fair and lawful means.

5. Limiting use, disclosure and retention. Under this principle, an organization cannot use or disclose personal information for purposes other than those for which it was collected unless consent is obtained. Personal information that is no longer required by an organization must be destroyed, erased or made anonymous.

6. Accuracy. Under this principle, an organization must keep its personal information as accurate, complete, and up-to-date in order to meet its stated purposes. An organization is not permitted to update personal information unless such updates are required to fulfill the purposes for which the information was collected.

7. Safeguards. Under this principle, an organization must ensure that its personal information is protected by security safeguards which are appropriate to the sensitivity of the information, regardless of the format in which the information is held. These safeguards should address issues of loss or theft as well as unauthorized access, copying and disclosure. Organizations are required to ensure that their employees are aware of the importance of maintaining confidentiality of personal information.

8. Openness. Under this principle, an organization must make its policies and procedures regarding the management of personal information readily accessible and available. This

information must include: the name of the organization's privacy officer; the means through which a person can gain access to personal information; a description of the type of personal information and the use thereof; a copy of any brochures or literature which explain the organizations policies, and the type of personal information that is made available to related organizations (subsidiaries).

9. Individual access. Under this principle, an individual is entitled, upon written request, to be informed of the existence, use and disclosure of his or her personal information and to have access to that information. An organization must comply with this request within thirty days or seek an extension.

10. Challenging compliance. Under this principle, an organization must put procedures in place to receive and respond to complaints or inquiries about its policies. This complaint procedure should be easily accessible and simple to use and the organization must investigate complaints that are submitted through the process.

These principles are quite broadly defined and lack specific guidance in some areas. It should also be noted that there are a number of exceptions to the above principles which set out circumstances in which use and disclosure of personal information without consent may be justified and permissible and when full access to this information may not be necessary.


Individuals who wish to challenge an organization's use of personal information can file a complaint with the Federal Privacy Commissioner. The Commissioner will then investigate the complaint and its investigatory powers are quite broad. Within one year of the complaint, the Commissioner must complete a report which sets out the findings and recommendations from its investigation. In addition to the foregoing, the Privacy Commissioner may initiate its own complaints or instigate an audit of an organization's personal information management practices.

If a complainant is unsatisfied by the Commissioner's report, he or she can apply, within 45 days of the report, to the Court for a hearing regarding the complaint. The Court's power in these matters is broad and includes the ability to order the payment of damages by the organization.

PIPEDA has been applauded by some as necessary legislation which addresses the growing concern of consumers regarding the trading and selling of personal information for marketing purposes. However, its scope goes far beyond regulating that one activity and may cause organizations to expend unreasonable and significant expenses and resources to ensure compliance.

Critics of the Act question its effectiveness on the basis that it is overly vague and is difficult to adapt to the unique circumstances of different organizations. PIPEDA also makes no distinction for, and does not address, the relative size of an organization or its available resources. Lastly, there is considerable debate about the ability of the federal government to regulate the affairs of provincial organizations. This jurisdictional issue has yet to be addressed by the courts. Therefore, for the time being, Ontario organizations are subject to, and must comply with, PIPEDA beginning January 1, 2004.

Ontario businesses large and small should, therefore, begin reviewing (or developing) their policies and procedures with respect to the management of personal information and they should appoint a privacy officer to monitor the same. Many industry associations may already have guidelines in place to help organizations develop effective policies. In addition, the federal government has a website, www.privcom.gc.ca, which includes a full copy of the Act and which provides useful links which may be of assistance.

If you are concerned about your organization's ability to comply with this new legislation, you should take steps immediately to review your organization's policies and procedures. 

National Standard Office Lease

The Canadian Institute of Public and Private Real Estate Companies (“CIPPREC”) has recently developed and has now made available a national standard form of office lease. The CIPPREC National Standard Office Lease can be found on the CIPPREC website at www.cipprec.ca.

It is important to remember that this Lease is an office lease and cannot be used when leasing commercial or industrial properties. Indeed, the form of lease contemplates a single, stand-alone office building and should be avoided for a mixed-use building. The Lease has been drafted for use in all provinces except Quebec. The Lease is not intended to be a heavy-handed document but it is, nevertheless, very much a landlord’s form of lease. That said, the Lease is not as long or onerous as some of the leases which lawyers and real estate professionals have typically dealt with and it contains a provision which requires to landlord and the tenant to act reasonably in granting consents or approvals under the Lease. These factors may assist the parties during their negotiations and dealings regarding office leases.

Another nice feature of the Lease is that it is well structured and easy to complete. The

first Article of the Lease permits the inclusion of the basic terms of the Lease in point form. These terms would include the names of the landlord, tenant and indemnifier, the term of the lease, the basic rent plus any deposit information and a description of the area of the leased premises. The second Article is a section which is left blank so that the landlord and the tenant can include any special provisions unique to the specific landlord and tenant relationship. The balance of the Lease contains the “standard form” provisions which have been drafted upon the assumption that amendments thereto will not be required. The Lease also contains four helpful schedules as follows:

- Schedule A: Building - Specific Information**
- Schedule B: Sketch Showing Premises**
- Schedule C: Rules and Regulations**
- Schedule D: Indemnity Agreement**

The Lease also comes with proposed provisions concerning an option to extend the term and for the determination of the rents for the extended period. These provisions can be inserted by the parties into Article two if appropriate.

The Lease was created to make the negotiation and finalization of office leases a more expeditious and less expensive process for both landlords and tenants. In the right circumstances, the Lease should meet this objective. If you are a landlord with a single office building premises, you may wish to consider the CIPPREC National Standard Office Lease.

Should you have any questions about the Lease or should you require assistance with any of your leasing requirements, please contact Gary Keller at our Kitchener Office.



Welcome!

The partners and staff at Sorbara, Schumacher, McCann LLP are pleased to announce the addition of two new associates to the firm.

Arlene Metz has returned to the firm to continue her corporate/commercial and real estate practice. After earning her law degree from the University of Western Ontario, Arlene began her career as an associate with Flynn & Sorbara before deciding to become a full-time mom. For the past four years, Arlene worked as a corporate/commercial lawyer within a mid-sized law firm in the Waterloo Region. Arlene is a native of



Kitchener and is active as a volunteer parent and a soccer coach within the community.

Arlene practices primarily out of our Kitchener office but she would be glad to meet with you at either office

to discuss your corporate law needs.

Erin Crawford has joined our Guelph office as an associate and practices in the areas of family law and real estate. Erin completed her law degree at the University of Windsor and was called to the Ontario bar last summer. After completing her articles in

Toronto, Erin is pleased to be back in the Guelph area. Erin is a native of the Fergus/Elora area and has been involved in a number of community organizations in and around the City of Guelph including the Guelph Museum Children’s Program, Hillside Music Festival, and the Guelph-Wellington Women in Crisis center.

Please feel free to contact Erin at either of our offices to discuss your family law and real estate needs. 



New Limitations

On January 1, 2004, Ontario's new *Limitations Act* comes into force. While it is unlikely to make the front page of the local or national newspapers, this new legislation will impact individuals' and corporations' ability to commence legal proceedings in Ontario. Generally speaking, limitations are deadlines prescribed by law after which an action or claim cannot be commenced in the civil court. Once the time period in which to sue has elapsed, the wronged person can no longer start a lawsuit against the wrongdoer.

Until now, limitation periods were set out in numerous statutes including the current *Limitations Act*. The length and starting point of a particular limitation period depended upon who was being sued and what they were being sued for. The result was somewhat confusing for potential litigants.

With the enactment of this new *Limitations Act*, Ontario has attempted to simplify the matter of limitation periods. This new Act provides for a basic limitation period of two years from the day the person seeking to make the claim discovers that he or she has a cause of action. In other words, the clock starts ticking the day the person with the claim first knows that the act or omission of another person has caused or contributed to the injuries, losses, or damages suffered by the person. Generally speaking, this limitation period covers all types of claims against all types of parties.

The Act presumes that a person with a claim discovers that claim on the day the act or omission occurred. This presumption can be rebutted if the claim is commenced within the two-year period starting when the person wronged knew or ought to have known they had grounds for the claim. This takes care of a situation where the cause of the damage or loss is not discovered within the two years, through no fault of the wronged person.

The Act also provides for an ultimate limitation period of 15 years after which a claim cannot be made, even if the wronged person did not discover the cause of the damage or loss until after this ultimate limitation period elapsed. This ultimate limitation period does not run at any time the person with the claim is incapable of commencing the proceeding due to a physical, mental, or psychological condition, nor if the person is a minor.

Certain proceedings are not affected by any limitation period in the new Act. For example, proceedings to enforce court orders, to enforce provisions under a Separation Agreement, to enforce an award in arbitration, or to commence a proceeding arising from a sexual assault against a

The Act also provides for an ultimate limitation period of 15 years after which a claim cannot be made.


person who was in a position of trust or authority in relation to the victim, are not affected by any limitation period. Also, any proceeding to recover money owing to the Crown for fines, taxes, penalties, or interest can still be pursued. This 15-year limitation period does not apply to undiscovered environmental claims. There are also different limitation periods set out in other statutes which have been preserved and exempted from the provisions of the new Act which means that some of the current limitation periods may still be applicable.

The new *Limitations Act* will apply to all claims arising after January 1, 2004 and to any causes of action which occurred prior to that date but were not discovered until after the same. Any causes of action that arose and were discovered prior to that date will remain subject to the old limitation periods.

While this new legislation cannot be described as simple, its attempt to provide some uniformity in the matter of limitations periods is welcome. Not only will it simplify matters for practising lawyers, it will give greater certainty to and assist those who have been wronged by setting out the time frame in which they must decide whether or not to pursue an action.

If you or someone you know might have a claim, the best advice is to see your lawyer immediately because the clock may be ticking. You may find yourself out of time if you do not move quickly to determine your rights and options.

The litigation lawyers at Sorbara, Schumacher, McCann LLP can assist with any type of lawsuit and can

give more in depth advice with respect to limitation periods generally. 



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Shareholders' Agreements

Our commercial litigation lawyers are often retained to act in respect of disputes that might have been avoided had the parties executed a well-drafted shareholders', partners' or joint venture agreement.

When a business is growing, its principals are generally happy and sometimes have the tendency to believe that all will remain well indefinitely. At these times, the last thing business partners are interested in discussing are the issues which invariably arise when a partner requests to be bought out or intractable differences necessitate a buyout or, worse, the dissolution of the business. However, it is when times are good, and preferably at the inception of a business, that these issues need to be addressed. More often than not, they will become problematic (even in the event of an otherwise amicable buyout request for reasons unrelated to the business) if they remain undecided when the need for a buyout or dissolution materializes.

There are a great number of issues that can and ought to be dealt with in a shareholders' or partnership agreement. However, one of the most important, and possibly most overlooked matter, is that of valuation. It goes without saying that the amount of money or other consideration any one party is going to receive on a dissolution or buyout is a critical issue. In addition, the parties must identify the types of events (triggering events) that will lead to buy-out situation and develop a proper procedure for valuation and resolution of the situation. A failure to clarify valuation issues greatly

increases the prospects that, when a triggering event occurs, the matter will lead to a protracted dispute.

Despite what one may think, the valuation of a partner's interest can be extremely complex. Some examples of the considerations which need to be addressed and those which, in our experience, are not typically adequately addressed include:

1. **Minority interest:** should the interest in question be valued as a minority interest or it is to be valued as a pro-rated portion of the en bloc fair market value of the business?
2. **Book value:** if a book value is specified, is it to be as shown on the company's balance sheet or are adjustments to be made to reflect the assets and liabilities at their fair market values?
3. **Assets:** does the definition of assets mean only tangible assets or does it also include intangible assets such as goodwill?
4. **Earnings:** if earnings are referenced, are they to be as shown on the income statement or adjusted to reflect normalized earnings?


5. **New developments:** if, since the execution of the shareholders' agreement, separate entities have been created to own or lease assets of the corporation, these assets may not show up on the corporation's balance sheet and could affect the value of the shares.

6. **Formulae:** if predetermined formulae are set out to determine the value of shares, they may no longer produce an equitable value for the shares depending upon the changes in the corporation's circumstances as well as internal and external factors.

These examples illustrate that matters which are not clearly defined in the agreement can lead to ambiguity and differences in interpretation which could ultimately result in hard feelings and litigation.

Also, as time passes, the factors that impact values change. Parties should consider from time to time whether or not the provisions of the shareholders' agreement that pertain to valuation will still produce a fair and reasonable result in light of the changes to the business.

The importance of having a comprehensive shareholders' or partnership agreement prepared as early in the business relationship as possible cannot be overemphasized. Parties should also review these types of agreements from time to time to ensure that business growth and changing circumstances have not created new issues that have not been provided for and to ensure that the agreement continues to meet the reasonable expectations of the parties. In these circumstances, the old adage is true: "an ounce of prevention is worth a pound of cure".

Please contact Ron Nightingale to learn more about shareholders' agreements and to address your specific business needs. 

NOTE: Portions of this article have been reproduced with permission from BDO Dunwoody's "The Complete Picture", February 2003 edition.

Life Insurance & Small Business

Life insurance can be a vital tool in meeting specific business needs and future business planning. This is particularly so upon the death of key personnel.

The survival of a small business may be affected by the death of an owner/manager or other key member of a business in a number of ways. A key member will have established close relationships with lenders, creditors, employees and customers alike through time, skill and effort and his or her involvement in the business will be central to the development of the business' reputation, growth, and customer base. Indeed, a small business is often dependent upon the relationships between its principals and its customers. In the event of the death of such a key member, the lenders, creditors, employees and customers of the business may lose confidence in its ability to find a suitable replacement and carry on. This type of uncertainty can be an added burden upon the business during an already difficult time.

A solution to avoid some of the financial problems which accompany this particular circumstance is to purchase "key person insurance". This type of insurance policy is taken out on the life of a key member of the business. In the event of the death of this individual, the proceeds from the insurance policy provide the business with a source of funds for recruiting, hiring and training a suitable replacement for the deceased or to hire interim management. This can help to assure creditors and employees of the continuation of the business notwithstanding the death of the key member. These insurance proceeds also provide the business with the necessary working capital to cover immediate cash needs and to repay business debts, and to help alleviate any financial fall-out from the death.

Further, if a creditor has required the key member to personally guarantee a loan, that individual's estate may be liable for any outstanding debts which the business cannot pay. This type of insurance is also an effective tool for reducing such financial risks for the

heirs of the deceased. In most circumstances, life insurance premiums paid for key person insurance protection or business loan protection are not deductible for tax purposes but the life insurance proceeds paid out on death are tax-free.


In the event of the death of a shareholder or partner of a business, life insurance is generally an effective way of funding the purchase and sale of a business interest pursuant to a buy/sell agreement. Shareholders' and partnership agreements often restrict the ability to sell a business interest and require other shareholders or partners to purchase the same in certain circumstances, particularly in the event of the death of a shareholder or partner. In the absence of life insurance, the resulting change in ownership upon death can result in a catastrophic financial burden on the part of the remaining owners, and often has severe income tax implications for the estate of the deceased. There are numerous ways to structure a buyout in the event of death, but ultimately, the shareholders' or partnership agreement should be drafted to reflect the needs and wishes of all parties and life insurance should form an integral part of the succession plan.

In addition, life insurance may also be used to provide the necessary funding to pay the tax liability resulting from a deemed disposition of capital property upon the death of an individual. Pursuant to the provisions of the Income Tax Act, an individual who owns shares in a company, a partnership interest, or the assets of a sole proprietorship will be deemed to have disposed of these assets upon death. As a result, tax liability in the form of capital gains and recaptured depreciation may be triggered.

If the individual's estate does not have sufficient funds to pay the tax liability, the shares or partnership interest may have to be sold, or the business assets may have to be liquidated at prices well below market value. Life insurance will reduce this risk for the heirs of the deceased and will allow the beneficiaries to retain the property if they so desire.

In summary, there are many instances in which life insurance plays a valuable role in meeting business needs. With proper planning, the use of life insurance can: increase the chances of survival of your small business in the event of the death of an owner/manager or another key member; provide an effective way of funding the purchase and sale of a business interest pursuant to a buy/sell agreement; and reduce the financial risks for the heirs of the deceased.

When planning for the creation or future of your business, you should consider the appropriateness of life insurance as a means of protecting the principals' interest in the event of future unfortunate circumstances. These considerations should often be made at the outset of a business in conjunction with the creation of shareholders' or partnership agreement and the matter of insurance should also be reviewed periodically in the normal course of business.

To learn more about how this type of insurance can protect your business and meet your needs, you can contact Arlene Metz or any of our commercial lawyers. 



Corporate Tax Returns

Earlier this year, the former Finance Minister, Janet Ecker, announced new corporate tax measures whereby the directors of organized corporations and shelf-corporations could be personally prosecuted under the Provincial Offences Act for failure to file corporate tax returns. Directors are advised to ensure that the corporations which they serve are up to date

with their filings. Should it be found that the corporation has fallen behind, it is essential for directors to ensure that filing be brought up to date immediately.

All incorporated businesses, including those incorporated inside or outside of Ontario or Canada that maintain a permanent establishment in Ontario, must file an Ontario Corporations Tax Return (CT23) or an Exempt from Filing Declaration (EFD) for each year. At the current time, there are over 800,000 Ontario corporations on the tax roll, and an estimated 50% of these corporations are in default. The significant rise in defaulting corporations over the years is largely due to a change in filing requirements made in 2000 when the Ministry of Finance demanded that corporations which had previously filed a one-time only declaration indicating that they were exempt from filing begin filing returns or declarations annually. Many corporations also fail to comply with the requirement to notify the Ministry of a change of address.

Since that time, approximately 340,000 notices of default have been sent out by the government. In response to such a notice, a corporation is expected to file and remit any outstanding tax payments. Should payment not be received, the Ministry will attempt to contact the corporation either by telephone or subsequent letter. After this contact is made, the corporation will have approximately 45 days to file a proper return and remit payment, or face a report to the collections and compliance branch of the Ministry.

There are significant legal implications to a corporation for such omissions. Corporations that do not comply with the requirement to file returns or declarations or have not kept the Ministry informed of their current address can face cancellation of their corporate charters. Implications of a charter cancellation include the forfeiture of corporate assets to the Crown, a loss of limited liability status, a loss of insurance


coverage and an inability to claim tax losses.

In addition to these penalties, the directors of such defaulting corporations may now face personal liability for these omissions. A director may be charged under the Provincial Offences Act for the corporation's failure to file. This charge carries with it a fine of up to \$200.00 per day for every day that the corporate return remains outstanding.

If a corporation is no longer active, its directors can avoid the filing requirements by dissolving the corporation. However, corporations that have been incorporated for less than two years are not eligible to apply for dissolution. In such circumstances, the Ministry has indicated that a corporation must file a tax return and a final return for each year of the corporation's existence, prior to receiving consent to dissolve. Directors of shelf-corporations face another potential difficulty as there may not be a shareholder who can provide the required authorization to dissolve the corporation.

The Ministry appears to be taking a tough stand on corporate non-filers as it created a special unit to address non-filers and it has begun to review over 12,000 default accounts and earmark charters for cancellation.

While it remains to be seen whether or not the new government will approach this issue with the same enthusiasm, directors should be concerned about their corporations' compliance measures since a failure to comply could attract personal liability. If you are a director of a corporation, you should review the affairs of your corporation annually to ensure that all obligations are met on a timely basis.

Should you have any questions or concerns about these or any other corporate filing requirements, Sam Sorbara would be glad to meet with you to review your corporate books and discuss your corporate law needs. 

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