HCLA News

Newsletter of the Halton County Law Association

Volume 6 Issue 1

Winter 2015

Annual General Meeting

This issue:

Deadline for Next Issue: April 1, 2015

HCLA Annual Membership Dues are Due!

Please be reminded that your Halton County Law Association membership fees in the amount of $155.00 are due. We now accept major credit cards, so it is easier than ever to pay. Please contact Karen Kennett at 905-878-1272 to pay your membership, or register for the upcoming Judges' & Awards night by credit card.

Thank you!

You are cordially invited to attend
The Halton County Law Association

Annual General Meeting
&
Judges' & Awards Night

Thursday, March 12, 2015

The Harbour Banquet Centre
2340 Ontario Street, Oakville (Bronte Harbour)

Meeting 5:00 p.m.
Cocktails 6:00 p.m. Dinner 7:00 p.m.

$100.00 per person
(hst included)

RSVP
Karen Kennett
Halton County Law Association
491 Steeles Avenue East
Milton, Ontario L9T 1Y7
Telephone 905-878-1272 Fax 905-878-8298
Email: hcla@bellnet.ca

President's Report by Laura E. Oliver

This is my last article as President. As I write this I reflect back not only on my (looong) time as President, but on my time (even looonger) on the Board.

When I attended my first Halton AGM I had just moved my practice to Oakville. I was unfamiliar with the issues facing the jurisdiction but I knew it felt like a place I wanted to stay. I was pleased to hear the 'big announcement' of Justice Durno (then RSJ) that it was official - we were getting a new court house!

That was 15 years ago.

Since that announcement, a courthouse committee was struck at the Board level. There were meetings -countless meetings attended by former Board members who dedicated hundreds of volunteer hours to the project. Plans were drawn up -everything was set. And then it wasn't.

Now, once again, volunteer Board members (and a certain Paul Stunt) are dedicating their time and energy to this issue. It's tough to keep going when no one seems to be listening -but they do.

Which, brings me back to my time as President. During my term the Board has backed the push to expand the Family Court across the Province. We wrote letters, signed Petitions, voted at meetings.

Nothing happened.

As well, the board has, and is, pushing for a new courthouse. We have written letters -to everyone. We have asked members to contribute stories of how the facilities have affected clients' access to justice.

Again, nothing happened.

But I digress. These lofty endeavours take time.

What we have managed to accomplished (I hope) is the development of a well respected roster of CLE programs -which actually make money! We started charging for photocopies and faxes, much to the chagrin of the membership. Those funds, however, will be used to

benefit the membership (you'll see). Our AGM is becoming a must attend event (you remember how it used to be...) and we have thrown away all of our books!

The plans and samples for the library renovations have been approved. Now we wait -we have to wade through our fair share of red tape to be allowed to hire contractors to complete the work. The work will have to be completed on weekends and after hours. Please have patience while we go through this transition. The wait (we hope) will be worth it. We hope to give our members a state of the art practice centre that will hold us over until we get a new courthouse (well maybe not that long).

Enough of the kidding. As everyone knows, in my humble opinion Halton is the best place to practice in the Province. I have enjoyed my time on the Board immensely. I stick around for another 2 years as Past President but for the most part -put out to pasture. My time on the Board (I think about 12 years) has allowed me to meet and interact with wonderful people I may not otherwise have met. I want to thank all of the Board members for their dedication to the Association. They have been an easy Board to manage. We have had no real conflicts -healthy debates from time to time (I think wine at the meetings is a big help!) but generally everyone had banded together to work towards our common goals. The library will get done. The courthouse -that is anyone's guess but the Board will continue to push.

I wish the incoming President, Rachel Pulis, and Vice President, Sam Misheal, every success. You have great people to work with and you just have to keep pushing (we are lawyers after all!).

We are pleased to announce the recipients of this year's Halton County Law Association Awards as follows:

Paul D. Stunt – The Alan B. Sprague Award for Excellence
Andy Snelius – The Eric M. Swan Award for Civility

Please join us on **Thursday, March 12th**
at the Harbour Banquet Conference Centre, 2340 Ontario Street, Oakville
for the award presentations!! See page 1 for invitation and details.
We now accept major credit cards so it is easier than ever to register!
Call 905-878-1272 today with your credit card details!

Our warmest congratulations to the award winners!

Halton County Law Association

491 Steeles Avenue East
Milton, Ontario L9T 1Y7

January 27, 2015

The Honourable Madeleine Meilleur
Attorney General for the Province of Ontario
McMurtry-Scott Building
720 Bay Street,
11th Floor
Toronto, ON
M7A 2S9

Dear Minister,

I am writing to you as President of the Halton County Law Association and on behalf of the 280 members of our Association, 594 local members of the Law Society of Upper Canada and on behalf of the 550,000 members of the public who are served by the Milton Courthouse.

As you are aware, we have been advocating for a new consolidated courthouse in Halton for quite some time. It was with dismay that I read the press announcement of January 5, 2015 regarding the expansion to the Brampton Courthouse, which had already been approved for a much needed temporary solution when the Halton community is in desperate need for infrastructure in the form of the new courthouse to serve this community.

The Milton Courthouse is approximately 44,360 square feet, having been built in 1962 with an addition in 1979. At the time of its opening the Milton Courthouse served a population of 190,230. It now serves a population of 550,000 with projections of 565,100 by 2016. At present, approximately 13,637 new cases are processed in Halton each year. Those numbers are projected to continue to grow as the population of Halton continues to grow. Projected population growth rates for the next 30 years suggest 72.7% increase by 2041 (while Peel is only projected to increase at a rate of 52.2% in the same time frame). That means the Milton and Burlington Courthouses will serve a population of close to 930,000 by 2041. From a statistical standpoint, Halton's caseload represents 40% of the area population whereas Brampton's caseload represents 35% of the area population.

Wait times and space issues will continue to plague the people of this region as long as we do not have a new consolidated Halton Courthouse. The cells are grossly overcrowded; elevators routinely breakdown, litigants are required to travel to Brampton or Guelph to have matters dealt with because the Courthouse simply cannot accommodate the volume of cases. Jurors are often required to sit in the stairwells while waiting to be called. There is no private space in either the Milton or Burlington Courthouses for lawyers to consult with clients, which seriously undermines solicitor-client confidentiality. Judges routinely have to pass through the public corridors to access courtrooms, posing a significant risk to their safety.

I write to you, once again, in an effort to secure a commitment to the communities served by the Milton and Burlington Courthouses to provide a save, secure, functional and accessible court facility for Halton. At the very least, the Ministry needs to acquire a site for a consolidated courthouse as soon as possible and begin immediately the planning process with all of its stakeholders. Otherwise, the inevitable crisis in Halton will not be averted.

Yours very truly,

L. Oliver

Laura E. Oliver
President

Library News by Karen Kennett

Quicklaw
I am pleased to announce that LibraryCo has been successful in negotiating a contract with LexisNexis for the continuation of in-library access to primary and secondary source material including Quicklaw. The remote desktop access ended December 31, 2014 as a result of the loss of funding from the Law Foundation of Ontario. The 2015 subscription will maintain the strong primary and secondary content currently available from within the county law libraries. Users will continue to have access to Quicklaw, Halsbury's Solicitors Forms and Precedents, court forms and quantums. In addition, the 2015 subscription has been expended, with a new LexisNexis Practice Page—Employment Law—to complement the Criminal Law, Family Law and Litigation Practice Pages already accessible in the law libraries. Each Practice Page focuses on specialized texts and resources to help lawyers in those practice areas work more productively.

Library Renovations
Please excuse the mess, as we continue with the library renovations, which are expected to be completed by the spring. A new look for the law library and lawyers' lounge will hopefully make the space more comfortable and pleasing for you.

New Books
We have received seminar material binders for the following Law Society CPD programs:
Real Estate Practice Basics 2014
3rd Annual Human Rights Summit
22nd Annual Immigration Law Summit
Indigenous Law Issues
Impaired and Over 80 2014
The Six Minute Real Estate Lawyer 2014
Taxation Issues for Real Estate Transactions 2014
Securites Law Update 2014
17th Annual Estates and Trusts Summit
Expert Evidence for Litigators
The Six Minute Debtor-Creditor and Insolvency Lawyer
Understanding Pensions in Family Law
15th Annual Employment Law Summit
Civil Litigation Practice Basics 2014
Six-Minute Environmental Lawyer 2014
Injunctions: A Bootcamp for Litigators
Class Actions: A Bootcamp for Litigators
Practice Gems: Administration of Estates 2014
Practice Gems: Probate Essentials 2014

Criminal Docket by Brendan Neil

As we start a new year there are some new procedures arriving with regards to trial dates and Judicial Pre-Trials.

As all of you know the time to trial in the Halton region is hitting a breaking point. In an attempt to deal with the growing population and strain on the criminal justice system the following changes are coming to the setting of trials and judicial pre-trials, as well as the continuation of trials.

These changes are similar to processes that are being used in other jurisdictions.

Commencing January 21, 2015 any trial estimate of 4 hours or more will require a judicial pre-trial and a new Trial Time Estimate Form will be used that will be provided to the trial coordinator. This new form will outline the issues for trial including number of witnesses, amount of audio/video/ photographic evidence and length, anticipated evidentiary issues, charter issues, interpreter needs. It is hoped that by assessing these issues prior setting dates estimates will be more accurate.

There will also be a second judicial pre-trial set for roughly 2-3 weeks prior to the trial date. This date is to confirm the trial date, address any outstanding issues or to confirm resolution. It is hoped that this will reduce day of trial collapses and allow more effective use of trial days.

The court will be requiring the client to attend judicial pre-trials so that counsel can get instructions on the day rather than adjourning to a future date. Trial counsel or properly instructed counsel will be required to attend the judicial pre-trials with the full authority to negotiate the matter.

As of April 1, 2015 matters that have been underestimated and require continuation dates for trial will continue the following court day, unless the extra required time could not have been anticipated. This change will require counsel to be very accurate with their trial estimates to avoid being forced on the following day. These continuations will be at the discretion of the presiding judge.

Unfortunately, with the backlog in OCJ family court matters Justice O'Connell and Justice Starr will move to a family law only role for the next period of time. There is no anticipated increase in judicial resources to cover this change beyond the regular per diem judicial allotment.

Brendan Neil is certified by the Law Society of Upper Canada as a Specialist in Criminal Law and sits on the Board of the Criminal Lawyers' Association. Comments in the above piece are his alone and should not be considered as the position of the HCLA or it's respective members.

Estates News by Suzana Popovic Montag & Laura Betts

Problems with Probate
When a person dies, his or her estate trustees are often required to obtain probate in order to deal with the assets of the deceased's estate. The specific rules governing probate (called "administration", if there is no will or if someone other than the estate trustee named in the will takes up the task of administering the estate) differ between the various jurisdictions in Canada. In Ontario, the process is governed by the *Rules of Civil Procedure*. Rule 74.04 governs the process of obtaining a Certificate of Appointment of Estate Trustee With a Will, and Rule 74.05 governs the process of obtaining a Certificate of Appointment of Estate Trustee Without a Will.

In both instances, with or without a will, the need to obtain a grant of probate (or administration) will depend upon (1) the types of estate assets, (2) how the estate is structured prior to death and (3) whether third parties (such as banks, investment institutions and/or buyers of the deceased's real or personal property) insist on probate as a precondition to dealing with the estate assets. The reason for such third party insistence on probate has to do with their protection from liability, as probate effectively confirms that the appointed estate trustee has authorization to deal with the estate assets. However, there is a trade-off for such protection. In Ontario, this comes in the form of a tax, the Estate Administration Tax ("EAT"), colloquially known as "probate fees".

Probate Fees
Ontario's EAT is based upon the value of the estate for which a Certificate is sought. The EAT is $5 on every $1,000 (or part thereof) for the first $50,000 of estate value and $15 per $1,000 (or part thereof) for the estate value in excess of $50,000.

In the early 1990s, EATs in Ontario were increased significantly. Ever since, avoiding EAT (probate fees) has become an important consideration in almost every estate plan. Yet, in some cases, the planning to mitigate EAT can create complexity that far outweighs any savings in tax.

Avoiding Probate
Some assets do not require probate in order to be administered. Among these assets are: real property outside of Ontario; jointly owned property; the proceeds of life insurance payable on death to a designated beneficiary; and any benefits payable under a "plan" (defined in Part III of the *Succession Law Reform Act*)[1] to a designated beneficiary. For the remainder of one's assets, careful planning must be undertaken in order to minimize the need for probate.

One technique used to avoid paying EAT is to dispose of assets *inter vivos* (while living). *Inter vivos* transfers by way of gift or consideration can reduce the value of an estate at the time of death which, in turn, will minimize the assets falling to probate. However, disposing of assets *inter vivos* can result in immediate, and sometimes significant, income tax consequences which, in some cases, can exceed the probate fee[2].

Another technique involves cash assets being placed into joint accounts with friends or family members as "joint with right of survivorship". This right means that, when one joint owner dies, the surviving joint owner becomes the sole owner of the property, meaning the asset does not pass through the estate[3]. Again, this will effectively lower the value of the estate on death and may also assist with the release of safety deposit boxes and bank accounts when the time comes.

A possible downside to these two techniques is that they each involve an effective loss of partial or full control of assets by the original owner. Consequently, it may not be appropriate if the client values control of the assets. Other adverse consequences of transfers of property include the possibility of attracting creditors to the property, possible *Family Law Act*[4] claims and/or the loss of some benefits if the property in question is a principal residence.

A further technique for avoiding probate involves the settling of trusts. When an individual transfers property into a trust, he or she no longer holds legal title to it. Therefore, the asset will not need to go through probate at the time of death.[5] When the original owner passes, the trustee will transfer the property to the beneficiary or beneficiaries pursuant to the terms of the trust, and no probate fees will be payable.[6] Life insurance proceeds can also run outside of the estate and therefore avoid passing through probate if placed in a testamentary trust.[7]

Other Problems Related to Probate
Limitation periods are another problem that may arise in the context of probate. Certain limitation periods run from the date on which the will was probated. If the will is never submitted for probate, these limitation periods do not expire. As a result, a personal representative can be left continually at risk, with no end to that risk in sight.[8]

Even after probate has been granted, challenges can be made to the validity of the will or to the grant of a Certificate of Appointment of Estate Trustee. The more measures that are taken to ensure the validity of the will, the lower the likelihood of a challenge to the will and the greater the likelihood that the will would withstand any such challenge.

Conclusion
While not an exhaustive list of problems that can arise with probate in Ontario, this article has attempted to highlight some of the most prevalent, largely centering around the probate fees and the avoidance of probate. The best means of planning for probate will depend upon the needs and circumstances of each testator. However, knowing what to look for and what to avoid is essential to any estate plan.

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[1] R.S.O. 1990, c. s.26. "Plan" under Part III includes (a) a pension, retirement, welfare or profit-sharing fund, trust, scheme, contract or arrangement or a fund, trust, scheme, contract or arrangement for other benefits for employees, former employees, directors, former directors, agents or former agents of an employer or their dependants or beneficiaries; (b) a fund, trust, scheme, contract or arrangement for the payment of a periodic sum for life or for a fixed or variable term; or (c) a fund, trust, scheme, contract or arrangement of a class that is prescribed for the purposes of this Part by a regulation made under section 53.1,and includes a retirement savings plan, a retirement income fund and a home ownership savings plan as defined in the *Income Tax Act* (Canada) and an Ontario home ownership savings plan under the *Ontario Home Ownership Savings Plan Act*.
[2] See Barry Corbin, "How Not to Avoid Probate Fees" (1996) 16 E.T.J. 169 at 171-173.
[3] Christine Van Cauwenberghe, *Wealth Planning Strategies for Canadians 2015* (Toronto: Carswell, 2014) at 569 [*Wealth Planning Strategies for Canadians*].
[4] R.S.O. 1990, c. F.3.
[5] *Wealth Planning Strategies for Canadians, supra* note 3 at 580.
[6] *Ibid.* at 580.
[7] *Ibid.* at 261.
[8] *Ibid.* at 565.

Family Law News by Darryl A. Willer

Family Law News – The Enhanced Duties and Expectations Of Experts

The December 1, 2014 decision of Justice Harper in *Berta v. Berta*, 2014 Carswell Ont. 12382 is a must-read for every family law lawyer and business valuator who deal with complex financial claims, including child support and spousal support and business valuations.

In this case, both parties retained experienced valuators to prepare reports that provided opinions on the husband's income for support purposes. The case is noteworthy primarily because of the observations and remarks of Justice Harper about the conduct and approach of the wife's business valuator during the litigation, which led him to largely reject the testimony put forward by the wife's expert.

Justice Harper observed that although the wife had retained an experienced business valuator, the position advanced was "aggressive" and amounted to "a no holds barred battle." He was particularly critical of the breadth of the valuator's request for disclosure, which amounted to an unreasonable quest for "minutia that was not relevant to his task of providing an opinion of the income available for support purpose." He was further concerned that considerable disclosure which he claimed was outstanding had in fact been produced or was at a minimum available to the valuator.

For all of these reasons, he concluded that the valuator had acted like an advocate searching for "nefarious activity" rather than meeting his duty to assist the Court on the issue of income for support.

Justice Harper went on the explain that business valuators must diligently review documents they have received as part of the disclosure process and must not start from the premise that they are entitled to unearth every single document that might in any way tie into another document to conduct a so called forensic type review, which often amounts to nothing than an expensive and time-consuming fishing expedition. He remarked that business valuators must approach their task with proper regard to the principles of proportionality and the probative value of the information they seek relative to the task at hand.

Even more crucially, Justice Harper was particularly critical of the fact that though the wife's expert was given the opportunity to talk to company accountants and the husband's experts in order to see if they could narrow the issues, the wife's expert refused on the basis that the wife had instructed him not to do so.

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Justice Harper strongly disagreed with this approach, and, in referring to Rule 2 of the *Family Law Rules*, pointed out the "duty on all lawyers, judges and all parties to deal with cases justly, and in so doing, they all owe a duty to make every reasonable effort and to attempt to settle or narrow issues…"

In order for the opinions of business valuators to be viewed by the Court as credible and helpful, valuators must approach the task in an objective, thoughtful, proportionate and reasonable fashion. Their key focus must be to assist the Court to address complex issues, not advocate for the party who happens to be paying for their services.
This case is the most recent in a long line of cases over the past several years which have been critical and ultimately rejected the once common practice of retaining "hired guns" or experts who advocate on behalf of clients.

Family law counsel are well advised to be careful in retaining valuators who have a track record of objectivity, thoughtfulness and proportionality in the preparation and presentation of their reports. Conversely, counsel should be prepared to vigorously challenge opposing business valuators who have failed to meet this recognized standard for experts.

Darryl A. Willer is partner at the law firm of Jaskot Family Law Barristers LLP in Burlington, Ontario and has been practicing exclusively in the area of family law since 2002.

Congratulations

to

The Honourable
Madam Justice

Kendra Coats

2014 Recipient
of the

John F. Evans
Sopinka Award
of
Community Distinction

Mark your Calendar!

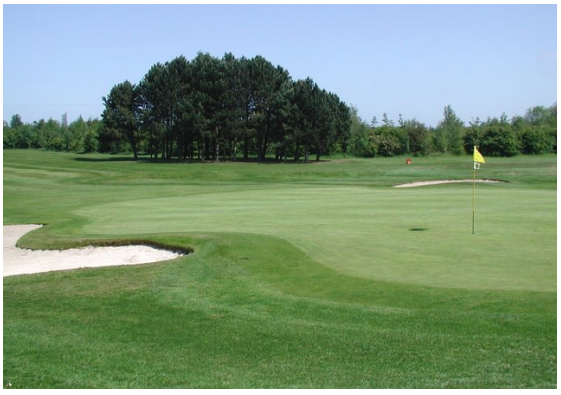
Halton County Law Association

Annual Charity Golf Tournament

Thursday, June 11, 2015

Hidden Lake Golf & Country Club

Join us!!



Intellectual Property Law by Ryan Smith

The Trade-marks Acts Gets a Makeover - 5 Things You Need to Know

The biggest changes in fifty years to the Trade-marks Act have passed into law. On June 19th, amendments to the Trade-marks Act were ratified in an omnibus bill. There was no consultation undertaken by the government on the changes. It is largely believed that the changes were implemented to more closely align Canada's trade-mark system with that of the U.S., Europe, and Japan.

The amended Act will come into force once the regulations are drafted and approved, which many believe will be in the middle of 2015.

Here are five (5) changes to the Trade-marks Act you need to know about.

1. Trademark Applications can be registered before Use

The basis of our trade-mark law in Canada has been that the person who used the trademark first will usually have superior rights to that trademark. The European system is based much more on the principle that the first to file for protection of a trademark should have superior rights.

For the first time, the amendments permit an applicant for a trademark, who has never used the trademark, to register it. This is a fundamental shift in our law. It also has the potential to increase trademark oppositions, litigation, and trademarks on the register that the applicants never intended to use, that is, these applicants have merely registered the trademark as a placeholder hoping to profit on its sale to someone else. (This practice still occurs in the field of domain name registrations.) Because a trademark can be filed without stating whether they were ever used, interested parties may be forced to begin opposition proceedings to discover whether the trademark has superior rights to theirs.

In this environment, trademark applicants and registrants should carefully consider whether to employ a watching service to make them aware of the filing of any trademark applications that could be confusing with their important marks.

2. Trademark Applications Need Not Identify Filing Grounds

A trademark application may be filed without identifying any grounds for the filing. Although this may speed up the application process for the applicant and the examination time for the Trademarks Office, it does little to communicate to other interested parties important information about the trademark.

For example, currently, where a party performs a trademark pre-filing search and discovers that an application has already been filed for an identical trademark, that party may make a decision about whether to oppose that application or choose another trademark on the basis of the date of first use specified in the application. If that date were not included, the applicant would either have to make a choice about whether to file its application on incomplete information or it may oppose the other application in order to find out when it was used in order to determine who has superior rights.

3. Adoption of the NICE Classification System

The description of wares and services in a trademark application is a critical part in drafting a proper application. The amendments have added a further step.

Applicants will now be required to classify their wares and services according to the NICE Classification system. NICE was established in 1957 by countries who worked to harmonize across countries and languages how goods and services are described in trademark registrations. Along with describing the goods and services in the trademark application in accordance with ordinary commercial terms, applicants will also have to consult the NICE classifications, identify them, and group the goods and services in the application together on the basis of NICE.

Applications and registrations filed before the amendments come into force may be required by the Trademarks Office to regroup and classify the goods and services listed in their applications or registrations. Failure to classify the goods and services at the request of the Trademarks Office could lead to the application or registration being expunged or not renewed.

4. Convention Priority Claims can be based on any Original Filing

Under the present Act, in order for the application date of a Canadian trademark to be deemed the application date of an earlier filed identical trademark, such earlier filed trademark had to have been filed in the country where the applicant resides. That often lead to a complex legal determination about where the applicant resided when the applicant was an amalgam of multiple companies and corporations in different jurisdictions.

The amendments will permit a later filed Canadian application to be based on any earlier filed original application, so long as the applicant resides in a country that is a party to the Union of Paris, 1883.

5. Length of Protection Shortened

Trademark registrations are valid for 15 years from the date of registration. After the amendments come into force, that period of protection will decrease to 10 years.

* * * * *

There are many projections about how the amendments to the Trade-marks Act will affect the protection and policing of trademark rights in Canada. At this time, there are more questions than answers. Once the regulations are finalized, the impacts may be clearer. My take on it is that we will need at least a few years to assess fully how these changes have affected trademark law in Canada.

Ryan K. Smith is a lawyer and trade-mark agent at Feltmate Delibato Heagle LLP. He specializes in corporate and commercial law with expertise in intellectual property matters including trade-marks, copyrights, privacy, information technology, and confidential information. You can reach Ryan at rsmith@fdhlawyers.com and (905) 287-2215.

Analyze This – The How-To Guide on Analyzing a Business in a Matrimonial Dispute

When it comes to Matrimonial Disputes, the calculation of Income for Support Purposes, as well as a corresponding Business Valuation (in the case of a Business Owner) can range from relative simplicity to near-overwhelming complexity, depending on case facts, circumstances, and uncertainty in forward looking assumptions.

But which case facts or circumstances matter? How do we deal with uncertainty? What are the questions to ask before engaging an Accounting Expert to perform the above noted calculations? How does one quickly and accurately analyze a business, without needing financial statements?

The answer is two-fold: the first step is to develop an understanding of the business, and the second is to quickly analyze the financial results of the business in previous years to develop a baseline for the future.

Business 101 – How to Understand the Business

Businesses, by their very nature, are complex. There are industry, business, personal, and accounting preferences which are important to understand prior to engaging an Expert Accountant. The most pertinent questions to ask are:

General Questions

1. What industry does this business function in? Is it retail, or B2B? Does it provide professional services, or is it a manufacturing company? It's important to distinguish what the business does, and who its customers are right away.
2. How is the business structured? Who owns shares, and how many do they own? Are the spouse and children shareholders?
3. Does the business own or rent property? If it owns property, what is the approximate value?
4. Who prepares the books and tax returns? This is often a missed question, but poor record-keeping is a very costly issue in forensic reviews.

Sales Related Questions

1. How many customers does the business have? Many? Few? How concentrated are sales on the top 5 clients? Are there sales contracts in place, if so, when do they expire?
2. What has been the trend in sales over the past 5 years? Why have sales increased/decreased?
3. Is there any seasonality to sales? What are the best sales months?
4. What are the expectations for the industry in the future?

Case Related Questions

1. What personal expenditures, if any, does the business pay for?
2. Have there been any unusual, non-repeating transactions in

the business in the past 3 years? For instance: a lawsuit settlement, or a sales contract for a one-time event.
3. Have the financial results of the company significantly changed after the date of separation? Why or why not?
4. What role does the business owner play? Are they a CEO, salesperson, labourer, or finance manager? If the owner is easily replaced by new ownership, this can significantly affect the Valuation.

After obtaining this more in-depth understanding of the business, it is important to analyze the financial results of the past three years, keeping the above questions in mind.

Financial Statement Analysis

The ability to quickly and effectively analyze multiple years of Financial Statements is a skill that comes with much practice and experience. However, many of these tasks can be performed by Counsel prior to engaging an Expert, with a basic understanding of Microsoft Excel (or a calculator).

Specific attention in this analysis should be placed on the date of separation – specifically whether account balances or trends change dramatically after this date.

Step One – Identify the Trends, and Ask: Why?

The quickest way to identify how the business has changed year over year is to identify the trends on the Income Statement.

Firstly, how have sales changed in the past three years? What sales growth has the business experienced yearly?

Secondly, normalize the expenses of the business by calculating what percentage of revenue they represent in a given year. Compare these percentages across the three years and determine whether expenses have changed significantly.

Variable expenses (i.e. expenses which fluctuate with sales) should NOT change significantly (as a percentage of sales) due to an increase or decline in sales. This explanation is typically a knee-jerk response to the question, and should be investigated further.

Fixed expenses (as a percentage of sales) will change significantly with sales however, as the expense is expected to remain flat, irrespective of sales. This is because certain expenses, such as Rent or Insurance, should remain relatively consistent year over year.

Step Two – Slush Accounts & Personal Expenses

There are certain accounts that Expert Accountants pay specific attention to, as they are notorious for having personal expenses embedded within. Colloquially these are known as Slush Accounts, as they are a mixture of legitimate expenses, and personal expenses.

These accounts (in no specific order) are:

Meals & Entertainment;
Travel;
Advertising/Promotion;
Miscellaneous;
Motor Vehicle Expenses (fuel, repairs, insurance, lease payments);
Leasehold Improvements or Repairs (it's amazing how many Kitchen Renovations occur in the "office")
Home Office Expense; and
Utilities, such as Telephone or Internet.

If any of these expenses are significant, or if the total of these accounts is significant, there is a high probability that the Net Income of the business is significantly understated. In these cases, obtaining the detailed general ledger of these accounts is essential in determining what portion of these expenses are legitimate, and what portion are personal.

Overall

Analyzing any business can be done quickly and effectively by Counsel, prior to engaging an Expert to perform a Business Valuation and Calculation of Income for Support Purposes. By following the framework above, you will be able to efficiently analyze the business, and determine what questions to ask of the business-owner in order to obtain better information and documentation regarding the business, earlier into the proceedings. This undeniably will lead to better advocacy on behalf of your client, and lower costs should you hire an Expert.

About the Author

Ryan Bensen graduated from the DeGroote School of Business with a Master of Business Administration in Accounting and Finance, and subsequently obtained his CPA, CA with a Big Four Accounting Firm in Toronto. In addition, he has obtained his Certification in both Fraud Examination and Financial Forensics.

For the past several years, Ryan has focused his expertise on Tort, Matrimonial, and Corporate/Commercial Disputes.

Ryan is a Partner of Bensen Industries Ltd., a boutique Litigation Accounting and Valuations Firm located in Milton, with clients throughout the Golden Horseshoe and Southern Ontario.

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Congratulations Justice Murray on your Retirement!!

Halton County Law Association

Estates & Family Law Seminar

accredited cpd

This program qualifies for .75 Professionalism Hours and up to 4.75 Substantive Hours.

This organization has been approved as an Accredited Provider of Professionalism Content by the Law Society of Upper Canada.

Co-chairs: Ian Hull and Suzana Popovic-Montag
Lunch Guest Speaker: The Hon. R. Roy McMurtry

Topics & Speakers:
Caselaw Update – Fareen Jamal

Who is a Spouse for Estate Purposes – Katherine Batycky
Issues on Joint Ownership and Dependant Relief Claims – Family Law Considerations – Liza Sheard, David Freedman and Stuart Henderson

Practice and Ethics Panel Discussion – Ian Hull, Suzana Popovic-Montag, Fareen Jamal, Katherine Batycky and David Freedman

U.S. Estate Planning: An Update – Adam Cappelli

Passing of Accounts: Review of Process and Update – David Freedman, Ian Hull, Suzana Popovic-Montag and Liza Sheard

Wills Drafting and Family Law Issues – Jasmine Sweatman

The Drafting Lawyer as Witness in a Will Challenge Proceeding – Liza Sheard and Andrea Hill

Estates and Family Law – From "The Chief's" Perspective – Working lunch panel discussions with Hon. R. Roy McMurtry**, OC O.Ont, QC LSM**

Thank you to our sponsor:

ESB LAWYERS LLP

Date: **Friday, May 1, 2015** **Location:** **Oakville Golf Club, 1154 Sixth Line, Oakville**
Time: **9:00 a.m. to 2:00 p.m. (Registration, coffee 8:30 a.m.; includes lunch)**
Cost: **$125.00 - HCLA members** **$150.00 – Non-members**
Go paperless & save $10.00 off the price quoted above … receive a PDF of the seminar material, emailed in advance (registration fee must be paid in advance to take advantage of this offer)
HST included (#R10462350)
VISA/Mastercard now accepted – by telephone only – DO NOT fax or email!

Please register me for the May 1st seminar. My cheque in the amount of $_____ payable to the Halton County Law Association is enclosed.

Name _____ Firm_____

Email _____ Telephone _____

Send payment to: Halton County Law Association, 491 Steeles Avenue East, Milton, ON L9T 1Y7
Methods of payment: Cash, cheque or credit card by telephone.
For more information, or to register, call 905-878-1272.

Save the Date!

United Way Sopinka Luncheon

Wednesday, November 25, 2015
Guest Speaker:
The Honourable Mr. Justice Richard Wagner

Classified Ads

Office Space Available

Downtown Oakville-Office Space available for one or two lawyers-lease one or both-cross referral opportunities from 9 lawyers in building. Receptionist service, telephone equipment and reception area included; shared signing room on main floor. Call Mike or Ed—905-842-8600.

Roseland Law Chambers has offices and secretarial space available in Burlington and Milton. Reception, meeting rooms and other services available. A good way to keep overhead low while having the comraderie and referrals of other lawyers. Please contact Karmel Sakran at 905-639-1222 or email karmel@ggslaw.ca.

Looking for a Will
Anyone will knowledge of a will for Constance Mary Beasley of Burlington, who died June 8, 2014, please contact Brett Murray, Floras and Murray, 55 Queen Street East, Suite 801, Toronto, ON M5C 1R6, telephone: 416-869-3151, fax: 416-869-1762 or email: b.murray@floras-murray.com

Looking for a Will
Anyone with knowledge of a will for JEAN PATRICIA MCCALLUM (aka “Jeannie McCallum”) is asked to contact Karmel Sakran 905-639-1222, fax 905-632-6977, email: karmel@ggslaw.ca.

People in the News

Katherine Batycky has joined Stoner & Company Family Law Associates and her new contact information is as follows:

Katherine Batycky, Associate Lawyer
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390 Brant Street, Suite 203,
Burlington, Ontario L7R 4J4
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