

Spring 2014 Firm News



Enzo Salles recognized as Client Choice in Commercial Property

Enzo Salles won the Client Choice Award for Commercial Property – Ontario. The award honours Enzo's commitment to client service and quality work in commercial real estate.

The Client Choice Awards recognize those law firms and lawyers from around the world for their excellent client care and the quality of their service. Nominated by in-house counsel, this recognition focuses on the ability to add real value to clients' business.



Ken Kallish wins Meritas' Grahovac Award

On May 2, 2014, Ken Kallish won the prestigious Grahovac Award for his longstanding commitment and service to Meritas Law Firms Worldwide. The award recognizes the contributions of an outstanding Meritas member attorney.

Ken has been a key leader in developing and growing the Meritas organization. He has served as a member of the Board of Directors, the Executive Committee and as Meritas Chairman. Ken has also served on several committees and continues to be the Meritas member contact for Minden Gross LLP.

Ken's inclusive leadership style, vision, and unwavering commitment to Meritas have been instrumental to its growth and success. Through his work, Ken exemplifies the Meritas principles of trust, cooperation and recognized expertise, which are integral to his practice.

©2014 MINDEN GROSS LLP - THIS NEWSLETTER IS INTENDED TO PROVIDE GENERAL INFORMATION ONLY AND NOT LEGAL ADVICE. THIS INFORMATION SHOULD NOT BE ACTED UPON WITHOUT PRIOR CONSULTATION WITH LEGAL ADVISORS. IF YOU WOULD LIKE TO BE REMOVED FROM OUR MAILING LIST, PLEASE CONTACT 416.362.3711.



BARRISTERS & SOLICITORS
145 KING STREET WEST, SUITE 2200
TORONTO, ON, CANADA M5H 4G2
TEL 416.362.3711 FAX 416.864.9223
www.mindengross.com



Legal Reminder

Canadian Anti-Spam Legislation

On **July 1, 2014**, the new Canadian Anti-Spam Legislation (CASL) will come into force. CASL prohibits the sending of commercial electronic messages without first obtaining the prior implied or express consent of the recipient. CASL also prescribes form requirements for commercial electronic messages – messages will have to properly identify who is sending the message (and include the contact information of the sender) and provide a clear and predominately displayed unsubscribe mechanism. CASL shouldn't be taken lightly as violation of the legislation could result in penalties of up to \$1 million for individuals and \$10 million for corporations.

Ben Bloom (p: 416.369.4167; e: bbloom@mindengross.com) can provide guidance related to CASL compliance and answer any questions or concerns that you may have.

Canada Not-For-Profit Corporations Act

Reminder that all not-for-profit corporations and charities incorporated federally must continue under the Canada Not-For-Profit Corporations Act by **October 17, 2014** or risk being dissolved. Please contact Hartley R. Nathan (p. (416) 369-4109; e. hnathan@mindengross.com) or Ira Stuchberry (p. (416) 369-4331; e. istuchberry@mindengross.com) for further information.



Spring 2014

TOPICS:

**2014 FEDERAL BUDGET:
TRUST UPDATE**
page 1

PROFESSIONAL NOTES
page 4

SPRING 2014 FIRM NEWS
page 5

LEGAL REMINDER
page 6

2014 FEDERAL BUDGET: Trust Update

The 2014 Federal budget proposes a number of changes to the taxation of "testamentary trusts" (trusts created upon the death of an individual pursuant to a Will) as well as an elimination of the tax benefits associated with the use of "immigration trusts". These proposed changes, among others, continue the government's ongoing attempt to address perceived tax loopholes.

Taxation of Testamentary Trusts

First introduced in the 2013 Federal budget, the 2014 Federal budget proposes a number of changes to the taxation of testamentary trusts that will, among other things, eliminate the access of testamentary trusts to graduated rates of tax. Instead, each testamentary trust will be subject to a flat rate of tax on all of its income at the highest marginal tax rate. An exception to this rule will be to provide an estate (itself a testamentary trust)



continued access to graduated rates for the first 36 months of its existence.

My colleague, Rachel Goldman, and I had previously written about the use of testamentary trusts in a Will for tax purposes,* suggesting that an individual who was otherwise going to bequest a portion of his estate outright to an individual should instead consider the use of a “tax-planned testamentary trust” wherein an individual’s inheritance would, rather than being paid outright to him, be placed into a testamentary trust of which the individual would be the sole trustee, for such individual’s sole benefit. This would allow the individual to control his inheritance while providing him with access to an extra set of graduated rates of tax. We went even further, suggesting the use of *multiple* tax-planned testamentary trusts in a Will for a number of individuals in order to multiply the accessibility to the graduated rates of tax. The proposed changes in the 2014 Budget, will significantly curtail the use of these “tax-planned testamentary trusts” and will completely eliminate the ability to multiply the annual tax savings.

While hindered, the tax-planning opportunities associated with testamentary trusts are not *completely* lost. The 36-month access of an estate to graduated rates of tax presents an opportunity to enjoy the use of an extra set of graduated rates for the first three years following an individual’s death. Where an individual would otherwise bequest his estate outright to one or more individuals, consideration should be given to retaining the estate in trust for at least the first 36 months following the individual’s death. The extra set of graduated rates for those 36 months, based on current tax rates, can result in aggregate tax savings to the estate (and thus the beneficiary or beneficiaries) in excess of \$100,000.

Another planning note to consider is that the changes to the taxation of testamentary trusts will only apply to the 2016 and subsequent taxation years. As a result, consideration should be given to taking advantage of an existing testamentary trust’s access to graduated rates before the end of 2015 – whether by paying dividends to the trust, disposing and re-acquiring assets that would have otherwise been disposed of shortly thereafter, or otherwise.

Immigration Trusts

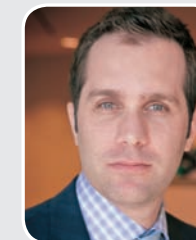
One of a number of ways in which a trust is deemed to be resident in Canada – and thus subject to tax on its worldwide income – is where a resident of Canada has made a contribution to it. An exception, however, is made where the contributor was a resident of Canada for a period of not more than 60 months. Non-residents relocating to Canada often took advantage of this exception, and thus the term “immigration trust” was born. When properly implemented, both the income earned in an immigration trust over the course of this time period would not be taxed in Canada and the cost of the trust’s assets could be “bumped up” to their fair market value at the expiration of such period. If the immigration trust was resident in a low or no tax jurisdiction (as was commonly the case) during this time, any income earned from the trust’s assets, and any growth thereon, could be enjoyed with the incurrance of little or no tax.

The 2014 Federal budget proposes to eliminate the tax benefits associated with immigration trusts by eliminating the 60-month exception. The proposed changes will not only deter the future use of immigration trusts but will affect those immigration trusts already in existence.

The limited transitional relief provides that existing immigration trusts can continue to enjoy the “tax holiday” until the end of 2014 so long as no contributions are made to the immigration trust after February 10, 2014 and before 2015. On top of being mindful in this regard, consideration should be given to taking steps before 2015 – whether it be winding up the trust, migrating the trust to Canada or otherwise - in order to “step up” the costs of the assets of existing immigration trusts.

* *Tax Planning Your Will - Part 1, Part 2*; July and November 2012. Available at www.mindengross.com.

Matthew Getzler
Associate
mgetzler@mindengross.com



Professional Notes

Hartley Nathan, QC, and **Ira Stuchberry** co-authored an article for the May 2014 issue of *Directors Briefing* entitled “Top 10 Contentious Issues in the Boardroom”. **Hartley** presented a paper at The Directors College on May 30, 2014 entitled “Contentious Issues at Board and Shareholder/Member Meetings”.

Minden Gross LLP was an active participant at the 2014 Meritas Annual Meeting in Boston from April 30 to May 2, 2014. **Ken Kallish** received the Grahovac Award and was a panelist for the “Member Contact Session: Roles, Best Practices and Discussion”; **Irvin Schein** was part of a presentation on “International Commercial Arbitration: A Global View”; and **Samantha Prasad** facilitated a session on “Speed Networking” as part of the “Member Networking and Roundtable Discussions”.

Samantha Prasad was re-appointed to the Meritas Member Relations and Marketing Committee for 2014-15 and was appointed as Program Chair for the Meritas Leadership Institute. She spoke on “Proper Administration of Trusts” at an Ontario Bar Association (OBA) program “A Practical Guide to Tax Considerations for Succession Planning” on May 29, 2014 and on “Income Splitting and the Attribution Rules for a Family Business” at a Federated Press seminar on May 22 & 23, 2014. Samantha also had two articles published in *The TaxLetter* and two articles published on *The Fund Library* since our last newsletter.

Eric Hoffstein spoke on “Debts and Expenses of the Estate” at the OBA program “Your First Estate Administration” on May 29, 2014. He also spoke to the Canadian Association of Gift Planners (CAGP) on “The Vulnerable Donor: Practical Strategies for Protecting Yourself and Your Gifts” at the 21st Annual CAGP-ACDPD National Conference in Vancouver on April 10, 2014. He spoke on tax cases related to trusts and estates at the STEP program on Current Cases and CRA Developments on February 13, 2014.

Joan Jung presented “Drafting and Negotiating Shareholder Agreements” at a Canadian Bar Association webinar on May 28, 2014.

Steven Pearlstein spoke on “The Dangers of Adding Parents to Title” at the Law Society of Upper Canada’s program “Buying and Selling Residential Real Estate” on May 27, 2014. He also spoke on “Private Lenders” at the Ontario Bar Association program “Mortgage Financing: Successful Due Diligence and Document Preparation Strategies” on April 2, 2014.

David Ullmann was quoted in the *Globe and Mail* article “Nortel bankruptcy case a cross-border spectacle” on May 8, 2014.

Arnie Herschorn presented a paper at the Real Estate Summit on April 24, 2014, entitled “*The Real Property Limitations Act* and Other Litigation Issues”. Arnie’s annotation on “*King Lofts Toronto 1 Limited v. Emmons*” appeared in *Real Property Reports*.

Stephen Messinger spoke at the ICSC British Columbia Next Gen Session April 24, 2014. He also lectured at the Georgetown Advanced Commercial Leasing Institute on April 9-11, 2014 and at the ICSC School for Professional Development on April 1, 2014. In March, Stephen was part of a breakfast roundtable at the ICSC Law Conference in Toronto. **Stephen Messinger** and **Christina Kobi** submitted a paper on “Tenant’s Fixtures and Improvements” for insertion into Harvey Haber’s book *Tenant’s Rights and Remedies in a Commercial Lease – A Practical Guide 2nd Edition*.

Christina Kobi attended the 2014 ICSC RECon Conference in Las Vegas on May 18-20. She was a panelist on a “Deal or No Deal” session at the 2014 ICSC Canadian Shopping Centre Law Conference in Toronto on March 26-27, 2014. Christina also spoke on “Self-Management Provisions” at the *The Six-Minute Commercial Leasing Lawyer* held in Toronto on February 19, 2014.

Michael Goldberg spoke at two breakout sessions on “Family Business Succession and Equalization Planning Case Study” on April 3, 2014 at the Wealth Management Services Team Conference. He published “Sell Now: How the 2014 Budget May Impact Small Business Owners’ Exit Strategies” in the March 2014 editions of the *Small Business Times*, *Tax Notes*, and *The Estate Planner*. On February 19, 2014, he hosted the third of four Tax Talks.

Matthew Getzler’s article “Tax Planning and Insurance” was published in the March 2014 *Giving Advice*, a publication from the Professional Advisory Committee (PAC) of the Jewish Foundation of Greater Toronto.

Brian Levett was listed as a ranked lawyer in the “Lexpert Leading Canadian Lawyers in Global Mining” in the March 11, 2014 *Globe and Mail*.

Stephen Posen presented at the Law Society of Upper Canada’s *Six-Minute Commercial Leasing Lawyer* on the topic of both “vicinity” and “comparable” for purposes of renewal rent and relocation of premises in a commercial lease on February 19, 2014.