



# Practising in Challenging Economic Times

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In today's economic circumstances, lawyers are seeking to keep busy and maintain their income levels while satisfying their clients' needs, many of which have drastically changed. Clients on the other hand are looking to reduce and even minimize expenses, but may be in even more need of good legal counsel at these times. Can these two interests be reconciled? This paper outlines some specific planning opportunities of mutual benefit so that a lawyer can assist a client in these times and hopefully maintain his income flow. Admittedly, many of the planning opportunities outlined herein will be more applicable to lawyers with a mature practice rather than a start-up practice, but of course this may also be an excellent opportunity for young attorneys to assist potential clients whose needs may have been overlooked.

## 1. Realign Corporate Structures

Generally speaking, classic corporate doctrine dictates that riskier business operations be segregated from the ownership of passive assets and more recession-proof operations. In booming economic times, one or more corporations can become catchalls for some assets that they really shouldn't own. The following could be specifically reviewed:

a) removing cash and other redundant assets into a holding corporation; to the extent that the

operating corporation needs cash in its business cycle; same can be re-loaned on a secured basis (as described herein);

b) extracting assets such as trademarks and licensing same to the operating corporation by way of a License Agreement;

c) extracting real estate and leasing same to the operating corporation.

There are often tax considerations involved and of course there is the cost and complexity involved in realigning corporate structures; however, the money could be very well spent.

## 2. Secure Related Party Debt

Related party debt can be secured in the same manner as any other debt. Of course, same will rank subsequent to existing security and subsequent or new secured lenders will often require a subordination of the related party debt. However, it is far better to be a subordinated or subsequent secured lender than to be an unsecured lender or merely a shareholder.

## 3. Related Party Agreements

Any arrangements between related parties should be carefully documented and scrutinized to make sure that in the event of a concern, the client is properly protected. For example, if a holding corporation leases a property to an operating corporation,

a lease should be entered into specifying events of default and remedies thereto, etc. Trademarks which are licensed to an operating corporation should also be covered under a binding license agreement. Finally, as noted, any securitization of related party debt should be updated and monitored; proposed amendments to the *Limitations Act, 2002* as to demand obligations will be most welcome.

## 4. Personal Liability

Review any arrangements which might cause a client concern from a personal liability standpoint, particularly guarantees and monitor any director liability issues, particularly source deductions, accrued wages and vacation pay, and maintaining director and officer insurance.

## 5. Wills and Powers of Attorney

Review wills and powers of attorney to make sure that these are up-to-date; consider the use of techniques such as secondary wills and specialized trusts.

## 6. Shareholders and Partnership Agreements

Many times, shareholders and partnership agreements are prepared in draft and not finalized and often there are only one or two relatively minor issues outstanding. Finalize these agreements since, in the event of a dispute, while not all options are ever covered, a signed shareholders agreement or a partnership agreement is usually a good starting point for referencing any dispute.

## 7. Shareholders and Partners Disputes

Inevitably, shareholders and partners disputes will arise, particularly during bad economic times. Be available to

assist your client to deal with same and have the skills to do so.

### **8. Life Cycle Matters**

No matter what, certain life cycle matters will occur, such as:

- a) a family wishing to pass on a business;
- b) there may be pre-arranged dispositions, such as those among key employees or pursuant to a shareholders agreement;
- c) a trust is deemed to dispose of its capital property every twenty-one (21) years;
- d) death/disability;
- e) divorce.

Once again, be available to be called upon when these matters arise.

### **9. Using Current Low Values and Existing Tax Losses**

If a party wishes to enter into a reorganization with a family member or key employee, now might be the best time to do so since rarely will you get a lower current value and the opportunity to maximize estate and income tax planning objectives. Furthermore, the availability of tax losses may allow your client to realign his corporate or personal asset structure to give effect to planning objectives. It might also be possible to amalgamate certain entities to take advantage of tax losses and achieve administrative savings, while of course maintaining adequate creditor protection.

### **10. Corporate Records**

Update all relevant corporate records. They should always be updated in any event, but particularly to be able to meet any review by regulatory authorities; a reassessment in a business

down cycle might be very difficult for your client to comply with.

These are a few suggestions whereby you can be more involved with your clients at these critical times. It may be that while your client may agree that certain of these items would be a good idea to implement, cost considerations may prevent him from doing so at this time, but he may consider same in the future. In any event your client will be most appreciative of your interest in their concerns.

You should try to meet your clients at least once a year (do a “wellness check”) and if necessary, go to your client’s business; even if your client does not retain you for the above noted services, it may be that he has a friend or a business associate who may wish to do so. Finally, it’s always helpful to have good professional relationships with lawyers who practise in other areas, whose skills you do not have, who can help you implement these matters. Other professionals, such as accountants, can assist with tax planning and business valuations while bankers can help with funding.

I’d also offer some suggestions in maintaining or expanding your client base:

- a) try to diversify your client base in terms of the percentage of billings generated by any particular client or group of clients, areas of the economy, referral sources, or type of work.
- b) try to be involved in emerging areas of practice such as health-care and technology.
- c) immigrants and recent arrivals to this community will need a lawyer (since they don’t know one) and you should try to be capable of attracting this type of work.

d) always remember that it’s worthwhile to take the time to service an existing client since, if you lose a client, it will require significantly more of your time and energy to replace the lost client compared to simply having serviced the client that you had.

e) always try to be as professional as possible, not only for the obvious reasons, but it may assist in acquiring new clients. When involved in a transaction, you may impress the professional advisors for the other side, and if so, they may refer new work to you rather than the lawyer they were dealing with on the other side.

In any event, remember the old adage that “failure to plan is planning to fail” so it’s time for all of us to examine our strategies. Unfortunately, the thinking is that this recession will last for a while so it’s better to over plan than under plan. ■

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