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# LOSS PREVENTION BULLETIN

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## ■Bulletin #104

### Want to share space but not liability?

If you want to share space with another lawyer but want to reduce the risk of being considered a firm for vicarious liability purposes, consider these guidelines:

1. Use a written office-sharing agreement.
2. Make sure your letterhead, business cards, and pleading covers are separate from your office-share mate's. List only your name or your own firm's name.
   When a group of lawyers combine their names on one letterhead, third parties will often write cheques payable to the 'firm.' These cheques may be difficult to deposit to the individual lawyers' separate trust accounts.
   To avoid this problem, lawyers sometimes maintain separate trust accounts but document them all in the name of the 'firm.' This practice causes confusion for banks and law office staff, and it increases the risk of errors among the various trust accounts with the same name.
   NOTE: Individual law societies may have rules about 'space share' trust accounts. Check with your law society for its requirements.
3. Make sure that all signs (such as those posted on the office door, building directory, and building exterior) present the relationship between you and the other lawyers clearly. For example, if you are a sole practitioner sharing space with a law firm, list your name separately. You can signify this separation by placing a line between the firm's name and yours. Include the phrase 'sole practitioner' after your name, if possible.
4. Have the receptionist answer the phone in a way that conveys separation from the other law firm. "Law office of John Doe" is an effective way to remind clients that you are separate from Smith and Jones, the firm with whom you share space. Using separate phone numbers makes this easy and is less confusing than having one phone number that is answered "law offices."
5. If you want to have your office-share mate help you on a case, get your client's written consent first, just as you would if you were to associate a lawyer who did not work at the end of the hall.
6. Have your own conflict of interest system. This preserves all your clients' confidences and helps establish that you are a separate entity.
7. Review office procedures for files, mail handling, telephone messages, and faxes to make sure client confidentiality is maintained.

*Adapted from an article in 'In Brief', a malpractice avoidance newsletter for Oregon lawyers published by the Oregon State Bar Professional Liability Fund, issue 76, July 1999*

## ■Bulletin #105

### Caution! Word processor at work

The fact that a document has been produced by a word processor does not obviate the need to check the document carefully, as shown in the two examples below.

A law firm received instructions to prepare a lease of premises on behalf of a client. The client required the lease to contain an upwards only rent review clause. A draft lease was produced with commendable speed with the help of a word processor. The draft was not checked. It was taken for granted that the draft was correct. In fact, a section of the rent review clause was omitted. No one knew why. The effect of the omission was to create an upward and downward rent review clause.

The second example shows just how extreme the problem can be. A draft lease generated by the word processor was in fact patent nonsense. It contained every provision available in the precedent. The landlord was to maintain the structure, the tenant was to maintain the structure; the landlord was to insure, the tenant was to insure; the term was for five, ten, fifteen, and twenty years. A cursory inspection would have revealed the problem.

**To avoid this type of claim**:

— Don't assume that a document generated by a word processor is correct.
— Always check the document in both draft and finished form.
— Remember that it's the responsibility of the lawyer, not the secretary, to ensure the draft is correct.

## ■Bulletin #106

### Corporate tax laws hold traps for family lawyers

When questions of business valuation and tax issues are involved in a matrimonial property settlement, family law lawyers should consider retaining a tax expert to avoid potential liability for negligence.

In a recent case, the trial judge concluded that neither lawyer understood the income tax consequences when they arranged for a corporation to redeem a share with high value but low paid-up capital.

The husband and wife each held one share in the company, which had a paid up capital of $2. Their separation agreement provided for the transfer or redemption of the wife's share. However, the lawyers failed to make clear the character of the money the wife was to receive and to specify from whose hands the share would be redeemed.

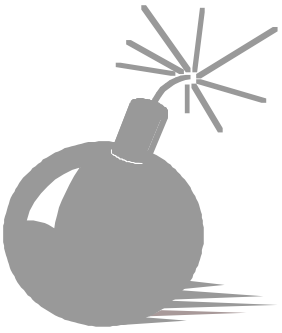
When the wife's share was redeemed for $300,000, the corporation was deemed to have paid a dividend of $299,999 under s.84(3) and a taxable dividend of $449,999 under s.82 of the *Income Tax Act.*

The tax court held that the wife's share was in fact transferred to the husband and redeemed out of his hands, so the deemed dividend was correctly treated as income to the husband. The court said that the husband's lawyer's attempt to amend the already signed separation agreement to say 'the husband agrees to cause the company to redeem the share held by the wife to make payment in accordance with this agreement' was too inaccurate and too ambiguous to be regarded as an amendment to the separation agreement and that as events unfolded both lawyers were "flying in a fog of ambiguity and confusion with the letter . . . and the manner in which the share was later redeemed."

*See Denelzen v. M.N.R., [1996] 2 C.T.C. 2464 (T.C.C.) Appeal dismissed, Denelzen v. Canada [1998] F.C.J. No. 1450, Federal Court of Appeal, Toronto, Ontario*

## ■Bulletin #107

### Tired of Y2K?



If you feel overwhelmed by Y2K, here is one simple step you can take to protect your office: use a paper calendar. Keep a paper calendar in addition to your computerized calendar, or print out your computerized calendar weekly. You may want to do the same with computerized 'to do' lists. If you keep parallel computerized and manual calendars, compare and update them regularly (daily is best).

## ■Bulletin #108

### Be vigilant about avoiding scams

From a con artist's perspective, duping a lawyer is very attractive. Not because lawyers are easily targeted — they are not. But if one lawyer can be tricked into participating in a questionable scheme — for example, by passing funds through his or her trust account — a con artist may be successful in persuading many other people that it is legitimate.

Lawyers are seen as credible, and people may believe that a lawyer's involvement means the transaction is legitimate and secure. If the lawyer's involvement does not amount to the practice of law, however, exactly the opposite is true. The lawyer may not be covered by liability insurance, and both investors and the lawyer may face losses.

For any transaction in which you are involved, and particularly those involving investment schemes, it is always sound to think through the issues: Do you fully understand the transaction? Are you satisfied the investment is legitimate? Are you satisfied as to the nature and authenticity of the securities involved? Are you satisfied the source of the funds is legitimate? If a financial institution is involved, are you satisfied that it actually exists and is legitimate? Are you offering legal services and advice, and acting as a lawyer in the transaction? Are your obligations clear? If the answer is "no" to any of these questions, *why are you involved?*

Through lack of caution, a lawyer might unwittingly be caught in an improper scheme, and may face serious financial risks and other consequences. It merits a second look.

*From Alert! a publication of the Lawyers Insurance Fund, Law Society of British Columbia 1999: No. 2 June*

## ■Bulletin #109

### Declining to take a file

Some statements seen in lawyers' letters responding to complaints made to a law society:

I was reluctant to take on this file, but . . .

I agreed to take on the file to help out my friend, but . . .

I had doubts about the merit of the action, but . . .

I knew this was an aggressive, demanding client, but . . .

In hindsight, I had taken on far more work than I could handle at the time. My practice was extremely busy, but . . .

If you are taking on files when these statements apply, reconsider your approach and remember:

— Not every lawyer suits every client.
— There are times in a lawyer's life when taking on a new matter is a mistake.
— Your instincts are probably correct.

*From Benchers' Bulletin a publication of the Law Society of British Columbia, March-April 1999*