

DEFENSIVE PRACTICE FOR TAX PRACTITIONERS

**Emily A. Stock and
David B. Wende
Alexander Holburn Beaudin & Lang LLP**

This paper has been prepared solely for discussion purposes at the 2008 British Columbia Tax Conference. Emily Stock, David Wende and the partners of Alexander Holburn Beaudin & Lang LLP make no representations at any time to any person with whom they have not entered into a contract to provide professional services or advice. Any reliance upon the materials provided herein shall be at the users' own risk, and without recourse to the authors or the partners at Alexander Holburn Beaudin & Lang LLP.

TABLE OF CONTENTS

1)	Introduction	2
2)	General Philosophy	3
	a) The Foundation to Risk Management	3
	b) Legally Avoiding Responsibility.....	4
3)	Practice Organization Issues – Incorporation	4
	a) Comparison of the Ontario LLP vs. BC Full Shield LLP.....	6
4)	Differences Between The Professions	10
5)	If You Are Able to Limit Liability in an Engagement Letter – Some Tips	11
	a) The Legal Test.....	12
	b) Simple Language	13
	c) Being Fair and Conscionable	13
	d) 8 Considerations for Limiting Liability Through Contract	17
6)	Appendix - Sample T1 Engagement Letter for a Tax Accountant.....	19

1) Introduction

As professionals, we strive to exceed the standard of practice set by governing bodies and our fellow practitioners. As humans, we must all acknowledge that we are not infallible to oversights and errors. The purpose of this paper, and our discussion at the 2008 British Columbia Tax Conference, is to provide you and your fellow tax practitioners with tips for limiting exposure to liability for negligence.

There is potential for exposure to anyone who may rely on your work. Our Courts have said that, generally, you are not responsible in negligence to those that you cannot reasonably foresee may rely on your work.

Tax practitioners on rare occasions know that someone other than their client is going to rely on their work. For example, if a tax practitioner is preparing a tax plan for a company that is being sold, the buyer may be relying on the tax plan. Most often, however, the client is the person who will be relying on the tax practitioner's work. This generalization is supported by our experience; like all lawyers, tax practitioners are most often sued by their own clients.

The growth area in lawsuits against chartered accountants continues to be in taxation matters. This may be because the comprehension level of most general practitioner chartered accountants with respect to taxation matters continues to decline. It may also be because what was acceptable tax planning years ago is now being challenged and more closely scrutinized by the CRA.

Whatever the reason, today there has been a dramatic increase in lawsuits against chartered accountants and tax "specialists" who have participated in an estate plan that has gone awry. For the first time in their professional careers, many of these practitioners find themselves being sued for hundreds of thousands of dollars in taxes which are asserted and could have otherwise been avoidable, together with interest and penalties levied by the CRA.

In this paper we have therefore focussed on what you can do to limit your exposure to your client. We have compared the ability of lawyers to limit their exposure to that of chartered accountants. In addition, we have provided some tips for getting your client to assist you in limiting any exposure to third parties.

2) General Philosophy

All of us are capable of making errors in our practice. The purpose of this paper is not to assist you in being a better tax practitioner. The purpose is to assist you in limiting your exposure to the person most likely to sue you – your client.

In order to successfully avoid liability, there are two complementary philosophies that we actively promote:

a) The Foundation to Risk Management

The foundation to risk management is the knowledge and acceptance of your own limitations.

Your clients may believe that, as a professional with a number of framed certificates on your wall, you have the competency to meet all of their professional needs. While you very well may exceed their expectations in providing competent tax advice in your area, issues may arise where you provide advice beyond your specialized area.

The primary loss control advice that any defence counsel or insurer can provide for the general practice members of our professions is the most obvious:

- Recognize that in many taxation matters today, it is increasingly difficult to keep abreast of changes in the legislation, jurisprudence and positions taken by the CRA;
- Admit to your clients that their problem requires the expertise of someone with expertise in the specific area required; and

- Establish relationships with specialists who will support your relationship with your client while servicing their needs at a competitive and fair price.

b) Legally Avoiding Responsibility

When clients seek estate or other tax planning, they do so often for a single purpose: to find a means by which to legally avoid remitting a greater portion of their profits to our government.

In short, you have a client attempting to limit or avoid its liability to the taxing authorities. Why should you not take advantage of the same philosophy?

We therefore recommend that you let your client know that, like them, you want to legally limit your liability. This can be best achieved through a well thought out engagement letter. After discussing what lawyers and chartered accountants are permitted to do to limit liability, we outline the key considerations for engagement letters in order to ensure that they will be upheld by a Court.

3) Practice Organization Issues – Incorporation

The corporation provides the very best avenue by which to protect yourself from the negligence of your partner. It provides no protection from liability occasioned by your own negligence.

Both the legal and the chartered accounting professions are permitted by their respective provincial bodies to incorporate in the province of British Columbia.

In April, 2004, the B.C. Government introduced the *Partnership Amendment Act, 2004* (Bill 35). Bill 35 provides a full shield from liability not only to professionals, but to businesses as well. Under Bill 35, an LLP partner is protected from legal liability except where there has been a negligent or wrongful act or omission of that partner or employees of the partnership, or if there is actual knowledge of the wrong act or omission.

If lawyers choose not to practice through an LLP, but only to incorporate, they may have less protection than another incorporated professional.

For lawyers, Section 84 of the *Legal Profession Act*, SBC 1998 and its predecessor provide limitations on the protection which a member of the Law Society can obtain from incorporation.

Section 84(1), assigned by our legislators the heading the “*Responsibility of Lawyers*” provides that

the liability for professional negligence of a lawyer carrying on the practice of law is not affected by the fact that the lawyer is carrying on that practice as an employee, shareholder, officer, director or contractor of a law corporation or on its behalf.

Such legislation is likely unnecessary given the development of the common law in this province.

In *Strata Plan VR1720 v. Bart Developments Ltd. (2000)*, 43 CLR (2nd) (BCSC), Mr. Justice Edwards held that individuals providing services are clearly liable in tort and cannot hide behind corporations. At paragraphs 15 and 16 of his decision, commonly referred to as the “*Galleria II*”, the judge held:

Limited companies cannot exercise professional functions except through qualified individual employees. Those employees must realize that it is their skill and experience the clients are engaging and will rely on. They therefore owe a concomitant duty of care to those clients and are potentially liable in tort if they fail to meet that duty.

As McFarlane E. JA pointed out in British Columbia v. R.B.O. Architecture Inc., [1994] 9WWR317 (BCCA), it is open to a limited company to limit its and its employees exposure in tort by appropriate contract language. No such language is brought to my attention here.

Section 84 of the *Legal Profession Act* purports to restrict and take away from the individual lawyer the protection of limited liability enjoyed by other professionals such as engineers or architects from those who engage in commerce through a corporation. In so doing, the legislation has the potential to be strictly construed by our courts. I say “potential” because Section 84 and its predecessor sections have never been interpreted by our courts.

Clearly the intent of the legislation is that an individual lawyer cannot escape professional liability, as opposed to commercial liability, through the artificial intervention of the corporation. At first blush, there is an argument to be made that the legislation is only designed to “pierce the corporate veil” and provide for liability against the responsible or negligent individual professional. One could argue that the legislation was not designed to impose personal liability to the principals practising in a partnership of law corporations. Practising in a “partnership of law corporations” may well be a means by which to protect the personal assets of each individual lawyer from the negligence of a fellow lawyer within the firm.

In contrast to the Law Society, the Institute of Chartered Accountants of British Columbia unofficially encourages the practice of chartered accounting through corporate partnerships. The only limit the Institute places on corporations is found in Rule 410.5 of the Institute’s Rules of Professional Conduct which requires that a member who practices through a corporation pursuant to a permit issued by the Institute for that purpose is personally responsible for the failure of the corporation to abide by the By-laws and Rules of Professional Conduct of the Institute.

However, for most professionals this debate is now moot. Many professionals are practicing through an LLP and so are more clearly protected from the negligence of a fellow professional in their firm.

a) Comparison of the Ontario LLP vs. BC Full Shield LLP

Limited Liability Partnerships (LLPs) share many of the features of normal partnerships and also offer reduced personal responsibility for business debts. Unlike ordinary partnerships, the LLP itself is responsible for its debts. Individual partners are not responsible for the LLP debts, or the debts or liabilities of other partners except in specific circumstances and depending on the province.

In British Columbia, many of the larger firms actually practice through the Ontario LLP legislation. This may be one area where the British Columbian firms have a distinct advantage.

In British Columbia, the only liability imposed upon a partner for the acts of others within the firm arises when the plaintiff can prove that the partner had actual knowledge of the act or omission, then took no actions to prevent that act or omission.

Section 104 of the British Columbia *Partnership Act*, RSBC 1996, c. 348 provides as follows, with the imposition of personal liability provisions highlighted in bold font:

Limited liability for partners

104 (1) Except as provided in this Part, in another Act or in a partnership agreement, a partner in a limited liability partnership

(a) is not personally liable for a partnership obligation merely because that person is a partner,

(b) is not personally liable for an obligation under an agreement between the partnership and another person, and

(c) is not personally liable to the partnership or another partner for an obligation to which paragraph (a) or (b) applies.

(2) Subsection (1) does not relieve a partner in a limited liability partnership from personal liability

(a) for the partner's own negligent or wrongful act or omission, or

(b) for the negligent or wrongful act or omission of another partner or an employee of the partnership if the partner seeking relief

(i) knew of the act or omission, and

(ii) did not take the actions that a reasonable person would take to prevent it.

(3) Subsection (1) does not protect a partner's interest in the partnership property from claims against the partnership respecting a partnership obligation

In October, 2006, the Ontario government introduced legislation to amend the Ontario *Partnerships Act* which was purported to provide “full shield” protection for partners in an LLP domiciled in Ontario. This legislation was a result of the pressure exerted by the national accounting and law firm LLP’s registered in Ontario seeking to enjoy the same protection enjoyed by an LLP in British Columbia. The modest improvements to the protection offered by the Ontario partnership amendments fell far short of providing the kinds of protection enjoyed by those professionals whose LLP is domiciled in British Columbia.

The wording of the Ontario legislation still provides for personal liability to the partner of an Ontario domiciled LLP for those “persons”, which would include both individuals and professional corporations, under the direct supervision and control of the partner. In addition, the Ontario *Partnerships Act* still holds all Ontario LLP partners liable for any loss occasioned by the criminal acts or fraud of another partner or employee (as distinct from person) of the firm.

Finally, the Ontario LLP partner will still be liable for the acts or omissions of another partner or employee if he or she should have been reasonably aware of that activity and could have taken steps to prevent it.

The amendments to the *Ontario Partnerships Act* 2006 are set out below, with areas of concern highlighted in bold font:

Limited liability partnerships

(2) Subject to subsections (3) and (3.1), a partner in a limited liability partnership is not liable, by means of indemnification, contribution or otherwise, for,

(a) the debts, liabilities or obligations of the partnership or any partner arising from the negligent or wrongful acts or omissions that another partner or an employee, agent or representative of the partnership commits in the course of the partnership business while the partnership is a limited liability partnership; or

(b) any other debts or obligations of the partnership that are incurred while the partnership is a limited liability partnership.

Limitations

(3) Subsection (2) does not relieve a partner in a limited liability partnership from liability for,

(a) the partner's own negligent or wrongful act or omission;

(b) the negligent or wrongful act or omission of a person under the partner's direct supervision; or

(c) the negligent or wrongful act or omission of another partner or an employee of the partnership not under the partner's direct supervision, if,

(i) the act or omission was criminal or constituted fraud, even if there was no criminal act or omission, or

(ii) the partner knew or ought to have known of the act or omission and did not take the actions that a reasonable person would have taken to prevent it.

(3.1) Subsection (2) does not protect a partner's interest in the partnership property from claims against the partnership respecting a partnership obligation.

Thus, an Ontario LLP partner will still have strict vicarious liability for any act or omission carried out by someone under his or her direct supervision, regardless of how innocent the partner may have been of the knowledge or participation of the person under his or her supervision. The potential consequences are severe: Does this mean that the head of a tax department at a national accounting firm office in Toronto or Vancouver is responsible for the entire pyramid of partners and staff accountants under her or his supervision? What is meant by direct supervision?

There continues to be personal liability for the acts of others within the Ontario LLP for fraud, and for the wrongful acts or omissions that the partner should have known. This goes beyond actual knowledge, and will thus be reduced to an objective test based no doubt upon expert opinion evidence or the speculation of

the trial judge as to whether the partner should have known, by reasonable inquiry, etc., of the wrongful act or omission.

Those partners in an Ontario LLP should be aware of the provisions of Section 10 (5) and 44.4 (4) of the Ontario *Partnerships Act* which exempts the application of the Ontario *Act* to extra provincially registered LLP's from another jurisdiction. In short, a national firm with its LLP domiciled in British Columbia will enjoy the protection of the B.C. legislation if sued in Ontario for an engagement wholly connected to that province.

Ontario LLPs with any connection to British Columbia may wish to transfer the domicile of their partnership to British Columbia.

4) Differences Between The Professions

Lawyers traditionally only face liability to their client, or someone closely connected to the client. Lawyers often owe a primary, if a not sole duty, to their client and not to third persons with whom their clients deal. As a consequence, most litigation against the legal profession is brought directly by the client.

This is to be distinguished from most chartered accountants' liability. Often, the plaintiff we defend against has had little, if any, contact with our chartered accountant clients. The exception to this broad generalization is in tax. Like lawyers, tax accountants are most often sued by their own client.

The primary method of limiting exposure to a client is to define the relationship and exposure in a contract, an engagement letter. A contract provides a wonderful opportunity for two parties to predetermine their respective rights and obligations. Most chartered accountants engaged in providing assurance functions face the spectre of unlimited liability to unknown third parties through the release of their work product. In such circumstances, the profession is limited in the way that it can protect itself from liability to third persons. Increasingly, professionals such as chartered accountants, engineers, financial

planners, etc. are availing themselves of disclaimers such as that found on the title page of this paper.

The acceptability of limiting liability through a limitation clause has been hotly debated in both the legal and accounting professions, and across Canada.

In British Columbia, lawyers are not permitted to limit their liability to their client. Section 65(3) of the *Legal Professions Act* provides that:

A provision in an agreement that the lawyer is not liable for negligence, or that the lawyer is relieved from responsibility to which the lawyer would otherwise be subject as a lawyer, is void.

In contrast, chartered accountants in British Columbia are encouraged by their professional body to adopt reasonable measures to limit their liability in their engagement letters. The ICABC has even published our sample engagement letters in the members only section of their website.

Recent decisions by the Courts provide some assistance about when and how limitation clauses are permissible. In the next section we outline some of the important considerations for limitation clauses, for those professionals lucky enough to be permitted to define their relationship with their client.

5) If You Are Able to Limit Liability in an Engagement Letter – Some Tips

Good practice on the part of the chartered accountant requires that an engagement letter be executed by the client where an assurance function is undertaken. Why not use a similar approach for tax engagements?

As a basic premise, any professional should be permitted to define the terms of their engagement as long as the client understands the terms, and is free to decide to engage the professional if the terms are not acceptable to them.

The Institute of Chartered Accountants of British Columbia encourages members to consider terms in their engagement letters that balance the members need to protect themselves, with their professional obligations to their clients. The

Institute has made our sample engagement letters available on their website and you can find them in the members' only section. The T1 engagement letter is included with this paper.

In some jurisdictions, such as Alberta and in the United States, there has been less support for the use of limitation clauses by chartered accountants. Opponents to limitation clauses say that they hinder independence, and even that they breach professional obligations to clients.

Our British Columbia Court of Appeal has recently endorsed the use of engagement letters by professionals in *Howe Sound School District No. 48 v. Killick Metz Bowen Rose Architects and Planners Inc.*, (2008 BCCA 195). In a recent case considering a 6 year limitation clause in an architect's engagement letter, the Court of Appeal again stated that "parties are entitled to arrange their affairs and assume risks at variance with the duties otherwise imposed by the law of tort." The Court then agreed with the architects that there were no policy reasons to interfere with a contractual arrangement where there are no issues of unconscionability.

The Plaintiff School District has applied for leave to appeal the decision. It will be interesting to see whether the Supreme Court of Canada decides that the appeal should be heard, and if it is heard, if they follow our Court.

It is important that you recognize that our courts find abhorrent the concept of a professional providing a professional service at a commensurate fee while attempting to exclude liability. However, our courts are much more prepared to enforce a limitation of liability, particularly when the terms are reasonable and agreed to by more sophisticated and wealthy clients.

a) The Legal Test

The legal test for deciding whether a limitation clause should be enforced was first stated by the Supreme Court of Canada in 1989 in *Hunter Engineering Co. v. Syncrude Canada Ltd.* ([1989] 1 S.C.R. 426). The test was interpreted by the

same Court in *Guarantee Co. of North America v. Gordon Capital Corp.* ([1999] 3 S.C.R. 423).

The test can be summarized as follows:

1. Did the parties, on a true and natural construction, limit liability at the time the contract was made?
2. If the answer is yes, was the limitation clause, on Dickson's C.J.'s test, "*unconscionable*" or, on Wilson J.'s test, "*unfair or unreasonable or otherwise contrary to public policy.*"

b) Simple Language

The first part of the test really just requires that the language in the engagement letter be comprehensible for the client. It is important to remember that your client may not have the same understanding of technical terms, and these terms should be defined in simple language. "*Legalese*" or "*Accountingese*" should be avoided.

All of the terms of the contract should also be in the engagement letter, not in an appendix. It should be clear from the letter that the intent is for the client to be bound by the limitation clause. Too often these important clauses are found in small print in a boiler plate appendix, in which case the Court may believe that the client did not even read the clause.

The client should know the terms of the contract at the time the engagement was commenced. If the engagement letter is dated after work has been commenced, it may be open for the client to persuade a Court that there was an oral contract before the engagement letter that did not include the limiting terms.

c) Being Fair and Conscionable

The second part of the test of the Supreme Court of Canada from *Hunter Engineering* and *Guarantee* considers the circumstances surrounding the contract for services. The majority decision of Dickson C. J. concluded that the

relevant condition was only whether the contract excluding liability was “unconscionable.”

To determine whether a contract is unconscionable, the Courts examine the circumstances of the parties when the contract was made. These circumstances include, for example, whether there was unequal bargaining power and mental capacity of the parties. The test is fairly high and a contract is only considered unconscionable where it offends the Court.

Wilson J.’s minority decision in *Hunter* has been considered by the Courts and is relevant to this discussion. Her reasons considered both the factors at the time the contract was made and subsequently. In her decision, the following factors were relevant to upholding the limitation clause:

- The contract was made between two companies in the commercial market place.
- The two companies were of roughly equal bargaining power.
- The exclusion clause was put forth by one company, presumably because it was the protection that company wanted.
- There was no evidence that there was any disadvantage or disability in negotiating the terms.
- There was no evidence to suggest sharp or unfair dealings.
- There was no abuse of freedom of contract.
- The company supplied what was bargained for (even though it had defects) and it could not be said that the other company was "deprived of substantially the whole benefit" of the contract.
- A key factor to the reasoning of both Dickson C. J. and Wilson J. is freedom to contract. They also both considered the relative bargaining power.

Too often the engagement is commenced before an engagement letter is executed by the client. The engagement letter may be sent out before an engagement is commence, but not returned until either during the engagement, or even until the engagement is completed. In such circumstances, there is a significant argument that the client was disadvantaged or under some disability to negotiate the terms of the limitation of liability language because of the amount of work already undertaken, and the inability with time permitting to refuse the limitation terms and seek another accountant to perform the engagement.

Providing the engagement letter in advance of the commencement of the engagement is one way to promote freedom to contract. When the engagement letter is provided to the client in advance of the engagement, the client is less able to argue that the freedom to contract was in any way impugned. An alternative was available to negotiate different terms, or to seek the services of another professional accountant.

Some of the terms in the engagement letter should be negotiable. If specific terms are negotiable, it will be difficult for a client to argue that the contract is unfair or unconscionable.

In addition, each engagement should be treated separately. In having multiple engagement letters over the years with similar limitation of liability language, it becomes increasingly difficult for the client to argue that there was no intention to be bound. Further, there is an opportunity for both parties to consider whether the limitation clause is appropriate to each specific engagement.

The appropriateness of the limitation clause to the specific engagement is important. The limitation of liability should still provide some compensation for a possible loss.

A decision of the Ontario Court of Appeal in *Solway v. Davis Moving & Storage Inc.* (2002), 62 O.R. (3rd) 522 (C.A.) suggests that a limitation clause which limits the liability to the return of fees, or a nominal amount beyond those fees, provides insufficient compensation for the injury suffered by the client when there is

professional negligence. Such a clause may be an invitation to the Court to find the limitation of liability clause unconscionable, unfair or unreasonable and still purport to apply *Hunter Engineering*.

In *Solway*, the Plaintiffs agreed to a limitation of liability clause within the Defendants' moving contract that limited the Defendants' exposure to liability for damage or loss to 60 cents per pound. During the move, the household contents were loaded into a trailer which was left overnight on a street unsecured. The trailer was stolen and the household goods were not recovered. In defence of a subrogated claim by the Plaintiffs' insurer, the Defendants asserted that liability was limited to \$7,089.60.

The limitation clause was not upheld. The reasoning in the decision suggests that the overriding factor was that the majority felt that \$7,089.60 was simply insufficient compensation for the loss.

The best way to argue against an assertion that the limitation as to quantum of damages is unfair, unreasonable or unconscionable is to provide for an amount that does provide some substantive compensation. The following factors may assist in determining the appropriate quantum for a limitation clause:

- The amount of the income and assets of the client.
- The importance of the engagement to the client.
- The cost of the engagement to the client.
- The risk to the chartered accountant. A company which repeatedly fails to take seriously concerns raised with respect to its internal controls should have a lower limit of liability and/or that risk should be balanced by increased fees.
- The nature of the engagement. It only makes sense that a Notice to Reader should have a small limit of liability – say \$25,000. Reviews and audits should have respectively much higher limits of liability.

- The time in which to sue must also be reasonable. The engagement letter should provide a reasonable period of time in which to first discover the error and assess whether to bring a claim. A limitation period that is so short that it would be unlikely to ever permit a latent error to become known is much more likely to be held unconscionable.

The very minimum period in which to permit an action should be two years. For a tax engagement, that time frame is still open to being found unfair, given the period of time in which the Canada Revenue Agency may reassess the taxpayers return. A minimum limitation period of four years in any engagement is more appropriate and some situations will warrant a limitation period of at least six years.

In *Howe Sound School District No. 48 v. Killick Metz Bowen Rose Architects and Planners Inc.*, (2008 BCCA 195) the Plaintiff argued that the limitation period of 6 years was unfair in situations where the defects may not be discovered until after 6 years. The British Columbia Court of Appeal disagreed and found that a 6 year term was fair in the circumstances, even if the defects may not be discovered.

Finally, it would be helpful to have a written policy about dealing with engagement letters and limitation clauses. Of course, it is even more important that the written policy be followed.

d) 8 Considerations for Limiting Liability Through Contract

To summarize the above discussion, the key suggestions to define your exposure to your client are as follows:

1. Use engagement letters for every engagement, for every year.
2. Use simple language (not legalese, or accountantese), and consider your audience.
3. Include the limitation clause in the letter itself, not in fine print boiler plate, so that it is clear that the client is to be bound by the clause.

4. Provide the engagement letter in advance of the engagement in order to promote the client's freedom to contract.
5. Provide a reasonable compensation for loss after considering the totality of the engagement.
6. Limit the time in which to sue to a reasonable period of time.
7. Evidence a willingness to negotiate specific terms.
8. Consider establishing an office policy, and follow that policy.

Courtesy of Alexander Holburn Beaudin & Lang LLP, Barristers & Solicitors

For illustrative purposes only

6) Appendix - Sample T1 Engagement Letter for a Tax Accountant

Date

Client name and address

Dear [name of client]:

Re: The Preparation of Your Personal Income Tax Return

The purpose of this engagement letter is to clearly define our respective responsibilities in the preparation of your personal income tax return(s) for the taxation year(s) 20XX and subsequent years should you choose to continue this engagement.

We will prepare the necessary federal and provincial income tax returns with supporting schedules. We may also at an additional fee provide you with any other tax advice or services as you may request or we may recommend to you.

The Rules of Professional Conduct of the Institute of Chartered Accountants of British Columbia prohibit us from being associated with any tax return where we have concerns as to whether there are any errors or omissions in respect of reportable taxable income.

In addition to your own personal consequences, there are also severe civil penalties under the *Income Tax Act* for misrepresentations by tax professionals arising from the preparation of client tax returns. Therefore, it is a fundamental term of our engagement that you fully comply with all of the responsibilities that you agree to assume as set out below.

The arrangements outlined in this letter will continue in effect from year to year unless changed by us.

YOUR RESPONSIBILITIES

It is important that you fully appreciate your responsibilities both as a taxpayer and as part of our engagement in order that your annual personal tax return will be as complete and accurate as possible.

We will not audit, review or otherwise attempt to verify the accuracy or completeness of any information you provide to us. It is your responsibility alone to provide us with accurate and complete information necessary to prepare your personal income tax return.

Courtesy of Alexander Holburn Beaudin & Lang LLP, Barristers & Solicitors**For illustrative purposes only**

You confirm that all sources of income will be disclosed, all deductions were reasonably incurred to earn income, and all credits to be claimed by you are supported by receipts.

All estimates for personal use of an automobile or truck, business portion of residence, and other such estimates you provide us are reasonable and supported by usage logs and other evidence. In short, you agree that all information, income and deduction items that you provide us to be included in your tax return will be, to the best of your knowledge, correct and complete.

In particular, with respect to these specific items listed below, you agree that you will provide to us all relevant evidence of, or otherwise inform us of:

- o All business income (including commission, farming, rental property or professional incomes).
- o All income and benefits from employment, whether or not they are on the T4 slips.
- o Any other income from any investment, regardless of whether or not payment or documentation of this income is contained in a T3 or T5 slip received by you.
- o All dispositions of a capital nature, and their costs.

If you owned real estate or other property or capital assets outside of Canada, it may be necessary for you to declare such ownership in your tax return(s). You confirm that you will provide us with the correct and complete information with regards to ownership of, or beneficial interests in any foreign property or assets and you will fully disclose the related foreign income. Otherwise you confirm that you did not, at any time in the year, own or hold beneficial interests in any foreign property.

If you have any doubt as to the appropriateness of including within your tax return any expense or other item as set out above, please identify these concerns to us in writing so that we may properly advise you. Otherwise, you expressly acknowledge and agree that we shall have absolutely no liability, in contract, tort, negligence or otherwise in the preparation of your income tax return for any income taxes, penalties, interest or costs or other damages or loss incurred by you as a result of any error in your representations and disclosures that you have agreed to as set out above.

You also agree to hold harmless and indemnify us from any penalty or costs arising pursuant to Section 163.2 of the *Income Tax Act* as a consequence of false or otherwise incorrect information supplied by you or your agents to us for the purpose of providing any taxation services to you, including but not limited to tax planning or the preparation and filing of income tax returns on your behalf.

FURTHER LIMITATION OF LIABILITY

You agree that any and all claims you may have against our firm or its professional staff arising out of all services provided to you by us, whether in contract, negligence, or

Courtesy of Alexander Holburn Beaudin & Lang LLP, Barristers & Solicitors**For illustrative purposes only**

otherwise known to law, shall be regarded as one claim and any liability to you shall be limited to the amount of \$[XXX].

You expressly agree that you will not bring any proceedings in any court of any jurisdiction advancing any claim against our individual professional staff or employees.

You expressly agree that any liability our firm may have to you shall not be joint and several with any other party, but shall be several, and limited to the percentage or degree of our fault in proportion to the fault or wrongdoing of all persons who contributed to the loss.

You agree that our liability for all claims you may have or bring in connection with the professional services rendered arising out of or ancillary to this agreement shall absolutely cease to exist after a period of four (4) years from the date of:

- (a) performance of this engagement;
- (b) the completion of the preparation of any tax filing with any government authority;
- (c) suspension or abandonment of this engagement; or
- (d) termination of our services pursuant to this agreement,

whichever shall occur first, regardless of whether you were aware of the potential for making a claim against us within that period. Following the expiration of the aforesaid period, you agree that neither you, your agents or assigns shall make any claim or bring any proceeding against us.

OTHER MATTERS

Your personal income tax return may include the following statement "*Prepared without audit or review from information provided by the taxpayer*" along with our firm name identified as the preparer of your tax return.

If the income tax return contains any business or rental forms or schedules, we will include with such forms or schedules the following disclaimer: "prepared solely for income tax purposes without audit or review from information provided by the taxpayer".

If we are engaged to compile the information, we will include the following report:

NOTICE TO READER

On the basis of information provided by the taxpayer, we have compiled the [name of form or schedule] of [name of business] as at [date].

Courtesy of Alexander Holburn Beaudin & Lang LLP, Barristers & Solicitors**For illustrative purposes only**

We have not performed an audit or a review engagement in respect of these financial statements and, accordingly, we express no assurance thereon.

Readers are cautioned that these statements may not be appropriate for their purposes.

Date Firm Name

Chartered Accountant

If you wish us to electronically file your income tax return, you will be required to execute the appropriate forms required by the Canada Revenue Agency (CRA) before we may do so.

You will not mail or deliver to the CRA, or instruct us to electronically file your tax return, until you have reviewed your proposed tax return and confirmed that to the best of your knowledge, all income and deductions you have advised us of have been included. If you have any doubt as to your ability to come to this conclusion, we will be pleased to personally review and verify with you each of the pages and schedules forming your personal tax return.

You agree to maintain all of your personal records and documentation arising out of this engagement for a period of at least four (4) years following completion of your personal tax return.

You may use our office address as the mailing address for CRA with respect to assessments and/or queries. If you choose this option, we will forward to you copies of any communication received with recommendations for the disposition of matters requiring response.

If you choose to use your own address as the mailing address, we recommend that you provide us with copies of any correspondence you receive from the CRA immediately. In many cases, deadlines apply for a response to the CRA, and if not met, proposed assessments or re-assessments may be issued or opportunities to challenge issues may be lost. Please let us know your preference at the time you deliver the information for preparation of your return(s), so we may indicate your preference when preparing your tax return(s).

All working papers and materials created by us in the course of this engagement shall at all times remain our exclusive property.

In the event that you are a party to any legal proceedings or we are otherwise required, whether by your consent or under compulsion of law, to provide documentation and evidence in respect of such proceedings, you agree that in addition to paying us for our professional time expended at our normal hourly rates, that you will wholly indemnify

Courtesy of Alexander Holburn Beaudin & Lang LLP, Barristers & Solicitors

For illustrative purposes only

and hold us harmless for any legal fees and disbursements we may reasonably incur in order to respond to such requests and provide such evidence.

We ask that our name be used only with our consent and that any information to which we have attached a communication be issued with that communication unless otherwise agreed to by us.

We would be pleased at your request to undertake any other work to assist you in meeting your financial goals or needs. The limitations of our liability as set out above under the heading *Further Limitation of Liability* shall apply equally to all additional work undertaken by us.

FEES

Upon completion of your income tax return or after providing advice or other services to you, we will render you our account for services at our usual billing rates. You agree that this invoice will be paid to us upon receipt. Any amounts outstanding will be charged interest at the greater of [#]% or the annualized interest rate shown upon the invoice.

We trust that the foregoing sets out the terms of our engagement. We shall be pleased to discuss these terms further with you at any time, particularly should your requirements change in the future. Once again, the arrangements outlined in this letter will continue in effect from year to year unless changed by us.

If you have any questions about the contents of this letter or the terms of our engagement, please raise them with us. If the services outlined are in accordance with your requirements and the above terms are acceptable to you, please sign and date the copy of this letter in the space provided and return it to us.

We appreciate the opportunity to be of service to you.

Yours very truly,

[Firm name]

CHARTERED ACCOUNTANTS

I agree to the terms and conditions as set out above. I also acknowledge and accept my responsibilities as set out above:

Date: _____

[Client Name]



Emily A. Stock

Associate

PROFILE

Emily Stock is a member of the firm's Financial Professional Services, Construction & Engineering, Insurance, and Intellectual Property & Technology Practices. Her practice is primarily litigation-based with an emphasis on intellectual property and the defence of financial professionals and engineers.

Emily obtained her Bachelors degree in Mathematics and Engineering Science, with a specialization in Applied Mechanics, from Queen's University in 2000. She obtained her Masters in Business Administration and Bachelor of Laws concurrently from the University of Victoria in 2004.

Emily has represented clients both before the Provincial Court and Supreme Court of British Columbia on a variety of interlocutory and final matters. She has also resolved actions through various forms of alternative dispute resolution.

Recently, Emily successfully defended a national firm of Chartered Accountants and one of its partners, a Chartered Accountant and Chartered Business Valuator, in a 64 day trial with David B. Wende. The allegations were dismissed in full, with costs (*Newton v. Marzban et al.*).

RECENT CONFERENCES

- Presenter, Professional Development Conference in Victoria, June 2006 for the Chartered Accountants of British Columbia
- Presenter, Professional Development Conference, January 2008, for Certified Management Accountants of British Columbia

Direct Line: 604 484 1756

Direct Fax: 604 484 9756

Email: estock@ahbl.ca

EDUCATION

B.Sc. (Eng. & Math) 2000
Queen's University

M.B.A. 2004
University of Victoria

LL.B. 2004
University of Victoria

PROFESSIONAL AND COMMUNITY AFFILIATIONS

Canadian Bar Association,
Member

Canadian Bar Association.

www.ahbl.ca



*Professional Law Corporation

Direct Line: 604 484 1795

Direct Fax: 604 484 9795

Email: dbwende@ahbl.ca

EDUCATION

L.L.B. 1979

University of Western Ontario

PROFESSIONAL AND COMMUNITY AFFILIATIONS

Canadian Bar Association,
Member

www.ahbl.ca

David B. Wende*

Partner

PRACTICE AREAS

David Wende is a member of the firm's Financial Professional Services, Commercial Litigation, and Construction & Engineering Practice.

David's practice has been directed towards assisting professionals in four capacities:

- The defence of professionals in litigation;
- Professional discipline before their self-regulatory bodies including the Institute of Chartered Accountants of British Columbia, the Association of Professional Engineers and Geoscientists of British Columbia, and the Architectural Institute of British Columbia;
- Providing risk management services in order to better serve their clients; and
- As an advocate for Chartered Accountants, Engineers, Architects and Financial Planners on issues related to insurance and their professional standards.

David was a member of the ICABC Professional Liability Task Force and has advised the ICABC on matters affecting the profession for more than a decade.

Over the last two decades, David has lectured frequently on legal issues affecting Architects, Engineers and Chartered Accountants in professional development programs sponsored by the Architectural Institute of British Columbia, the Association of Professional Engineers and Geoscientists of British Columbia, the Tax Foundation and the ICABC. David has authored a number of articles published in *Beyond Numbers*, the magazine published by the ICABC, and *CA Magazine* published by the CICA.

REPRESENTATIVE EXPERIENCE

- Assists and represents Architects and Engineers and Chartered Accountants, Certified Management Accountants, Financial Planners and Insurance Agents;
- Counsel to the College of Dental Surgeons "Court of Inquiry" process, and in the past has acted as counsel to more than 20 Discipline Panels of the College in fulfilling its self-regulatory objectives under the Dentists Act;

David B. Wende*

Partner

REPRESENTATIVE EXPERIENCE

In addition to defending Chartered Accountants before the Professional Conduct Enquiry Committee and Discipline Tribunals of the C.A. Institute, David has served as counsel to Discipline Tribunals of the C.A. Institute, and has acted as counsel to the PCEC in its prosecutions;

Having formerly defended professional engineers before its Discipline Panels, today David is counsel to the Association of Professional Engineers & Geoscientists of British Columbia in professional discipline matters

REPRESENTATIVE CASES

- *Forest & Marine Financial Limited Partnership v. Triple C Logging and Burrige & Associates*, Action No. C981539, Vancouver Registry, September 27, 2002 per Ralph J.
- *Hung v. The Institute of Chartered Accountants of British Columbia* (2002), BCSC 1234 per Joyce J.; Affirmed Court of Appeal.
- *Butcher v. HMTQ (Public Sector Employers' Council)* (2002), BCSC 310 per Stewart J.; *Butcher v. British Columbia (Public Sector Employers' Council)* (2003), BCCA 192 per Hollinrake JA.
- *Newton v. Marzban et al.* (2008) BCSC 328.

RECENT PUBLICATIONS AND CONFERENCES

- Article, "Making the Case for Limitation of Liability Clauses", *Beyond Numbers Magazine*, May 2007
- Article, "Expert Testimony", *CA Magazine*, December 2005
- Authored the chapter, "Expert Evidence and Administrative Tribunals" in *Expert Evidence in British Columbia Civil Proceedings, Continuing Legal Education Society of BC (CLE BC)*, 2000, 2005
- Article, "Liability of Chartered Accountants in Private Industry", *CA Magazine*, January/February 2005
- Presenter, "Insurance Issues for Charities Revisited", *CLE BC Conference*, October 22, 2004
- Article, "A Cautionary Tale of Professional Liability: Recognizing Potential Conflicts", *Beyond Numbers Magazine*, May 2003
- Article, "Protecting the Auditor From Unlimited Liability", *Beyond Numbers Magazine*, October 2002

David B. Wende*

Partner

RECENT PUBLICATIONS AND CONFERENCES

- Presenter, "Insurance Issues for Charities and Non-Profit Organizations", *CLE BC Conference*, October 18, 2002
- Presenter, "Expert Evidence and Administrative Tribunals", *CLE BC Conference*, March 2001
- Presenter, "Professional Liability Litigation – Civil Liability of Chartered Accountants", *CLE BC Conference*, June 1995
- Lecturer - Chartered Accountants of British Columbia, on loss control issues and professional responsibility to the Institute