

Latest Developments in Estate Planning & New Trends in Law: Cannabis



THE D'AMICO FAMILY WEALTH MANAGEMENT GROUP PRESENTS MORRIS JACOBSON & MORRIS SZWIMER FROM SPIEGEL SOHMER, LAWYERS

ANGELO D'AMICO
FCSI, CIM, CPA, CMA, CGA, CSWP
VICE-PRESIDENT, PORTFOLIO MANAGER
514-282-5927
ANGELO.DAMICO@NBPCD.COM

GABRIELLE LEFEBVRE
INVESTMENT REPRESENTATIVE
514-282-5928
GABRIELLE.LEFEBVRE@NBPCD.COM

ELSA SANTOS
INVESTMENT REPRESENTATIVE
514-871-7049
ELSA.SANTOS@NBPCD.COM

DANIEL MARRO
MARKETING ASSISTANT
DANIEL.MARRO@NBPCD.COM



SPIEGEL SOHMER



LATEST DEVELOPMENTS IN ESTATE PLANNING

Presented to: D'Amico Family Wealth Management Group
BMO Nesbitt Burns

December 5, 2018

By Morris Jacobson, Managing Shareholder
mjacobson@spiegelsohmer.com
514-875-8683

Latest Trends

- Fallout for the 2017 Tax Tsunami
- We will have an unprecedented transfer of wealth from one generation to the next

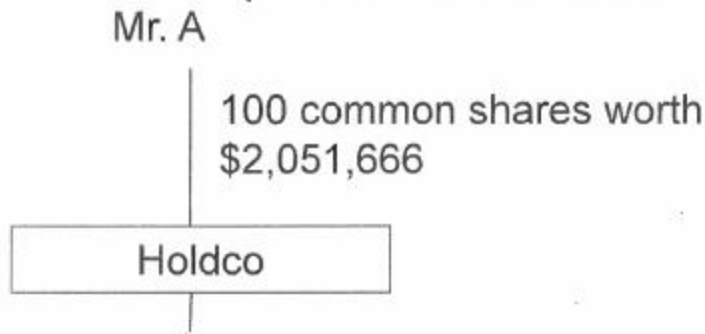


Conversion of Income to Capital Gains

- no changes to S.84.1; no new S.246.1 (remove RDTOH/CDA)
- would otherwise have been a disaster; e.g.
 - sale of business
 - pipelines
 - sale of assets
- can we dig out the old plans again?



No Tax Planning Means Double Tax (Post-Mortem Tax Plan)



marketable securities worth \$2,000,000 with accrued gain of \$200,000 and RDTOH of \$75,000

* Double tax

- 1- deemed disposition of Holdco Shares upon death
- 2- second round of taxation when Holdco is liquidated and the Estate has to pay tax on dividends it receives

If Just Liquidate

• Gain on death = 26.65% x \$2,051,666:	\$546,768.99
• Dissolution of Holdco	
FMV of Marketable securities	\$2,000,000.00
(a) Tax on disposition of marketable securities = 26.65% x \$200,000:	=(\$53,300.00)
(b) Addition to RDTOH of \$29,966 & RDTOH of \$75,000:	= \$104,966.00
	\$2,051,666.00
• Dividend to Estate:	\$2,051,666.00
• CDA:	<u>(\$100,000.00)</u>
• Net Taxable Dividend:	\$1,951,666.00
• Tax at 44.23%:	\$863,221.87



Tax Disaster

- Total Tax = \$1,409,990.86
- Net = \$641,675.14
- Capital loss in the hands of the estate that does not offset the gain on death, as the redemption of shares was not done in the first year of the Estate

One Solution: 164(6)

- must elect in the first year following death
- file an amended return for the year of death
- January 1, 2016 Estate must be a GRE for 164(6) to qualify

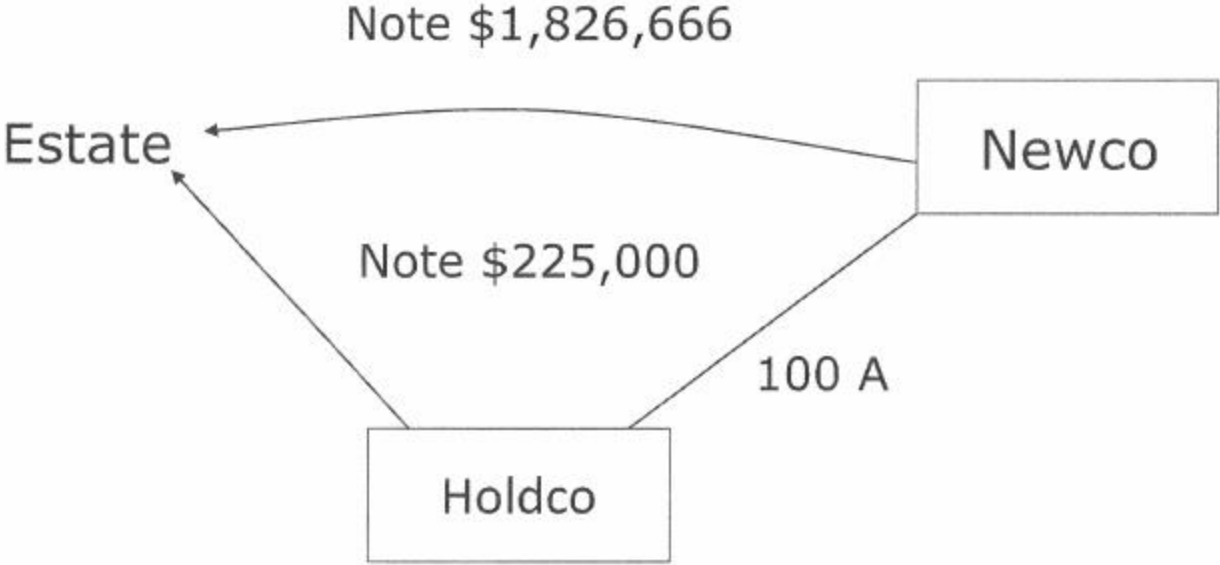


Mixed Pipeline Strategy

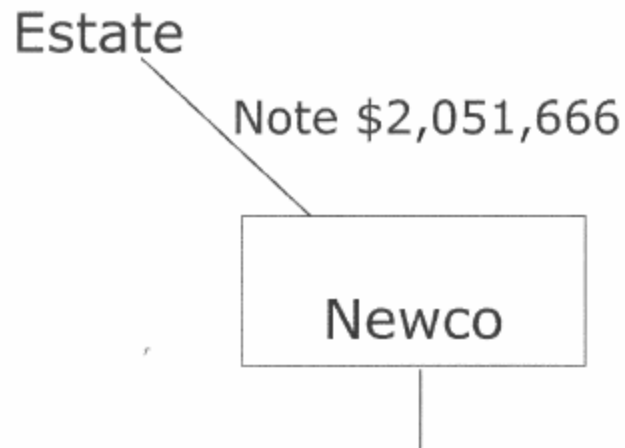
MacDonald Case

- CRA's position
 - Continuation of the business for at least one year; and
 - Followed by a progressive distribution of the corporation's assets over an additional period of time
- Redeem shares with a value of
3 x RDTOH
\$3 x \$75,000 - \$225,000
- Tax = 44.23% x \$225,000 - \$99,517 of tax but Holdco receives a dividend refund of \$75,000.
- Carry-back loss and under subsection 164(6) reduce tax payable on death by \$59,962.50.

Plan



88(1)(d) Bump



Marketable securities now have an ACB equal to \$2,000,000. Tax liability is paid and RDTOH is refunded – Net assets = \$2,051,666

Potential Saving

• Total Tax on Death:	\$546,768.99
• Less Capital Loss (164(6)):	<u>\$59,962.00</u>
• Tax on Capital Gain:	\$486,806.49
• Tax due to Redemption:	<u>\$99,517.00</u>
	\$586,323.49
• VS. No Planning:	<u>\$1,409,999.00</u>
• Savings:	(\$823,675.51)

Capital Gains Exemption

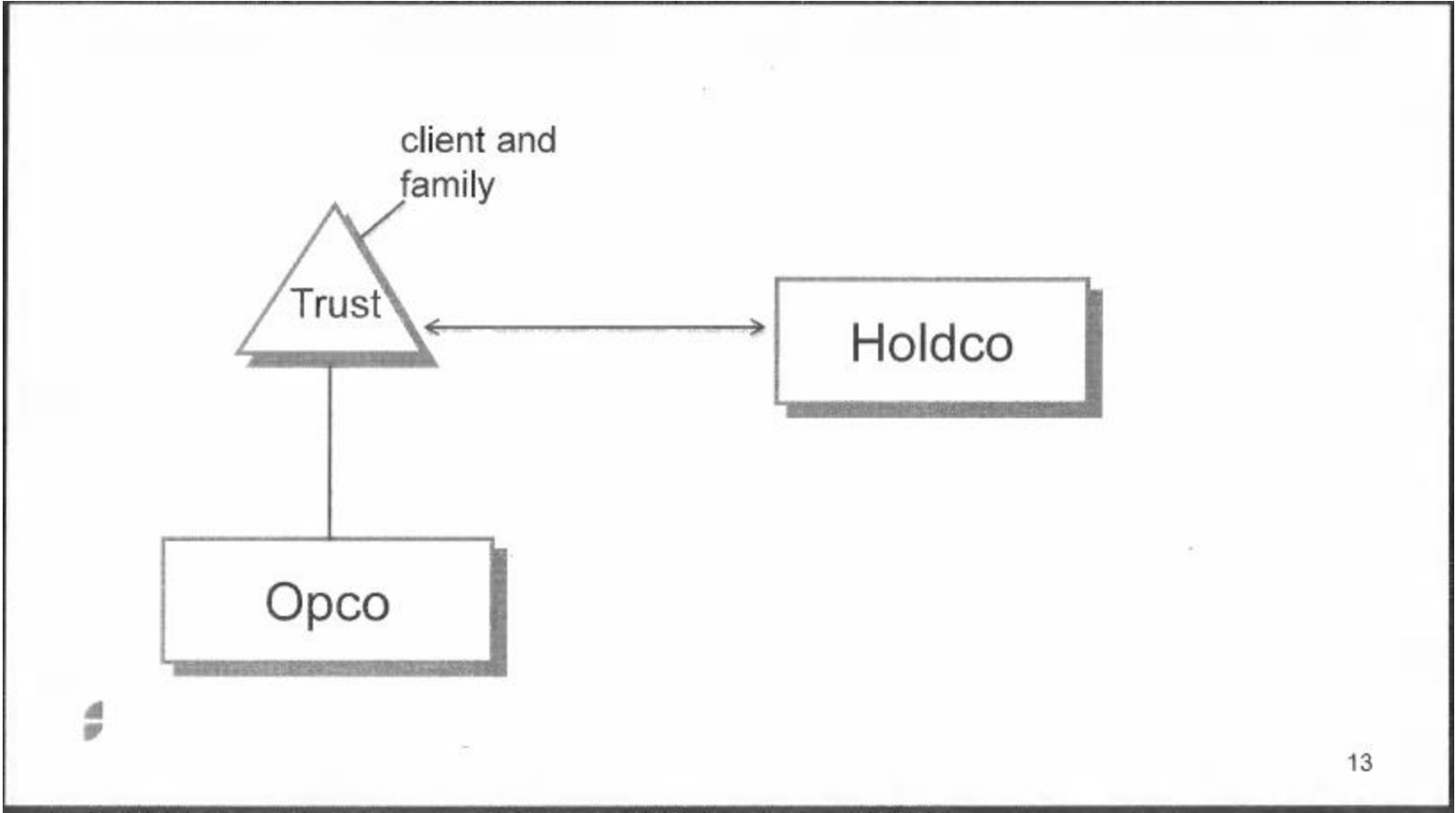
- what was originally proposed
- on October 16, 2017, in the context of the above statement regarding income sprinkling, the Minister also stated the following:

“In addition, the government today announced it will not be moving forward with the proposed measures to limit access to the lifetime capital gains exemption”.

- Laplante vs. The Queen



- It is our understanding that we will be back to the pre-July 18 situation and will still be able to use the optimal structure



The Bad News That Remains

Following exceptions: To TOSI Rules

- Income splitting and its effects on the professional corporation
- January 1, 2018: end of income splitting for family members except for the following exceptions (TOSI rules):
 1. salaries
 2. income reinvested with split income
 3. lifetime capital gains exemption on qualified small business shares
 4. income and gains from inherited property
 5. excluded business (applies to adults aged 18 years and over)



The Bad News That Remains (cont'd...)

6. excluded shares (applies to adults aged 25 years and over)
7. reasonableness (does not apply to adults aged 25 years and over) and is based on the contribution to the business by individual and members of his/her family for:
 - the work performed in support of the business
 - the property contributed directly or indirectly in support of the business
 - the risks assumed in respect of the business
 - the amounts received from the business;
 - any other relevant factors.
8. relief for retired spouses.
9. preferred beneficiary election.
10. 2018 CTF Round Table.



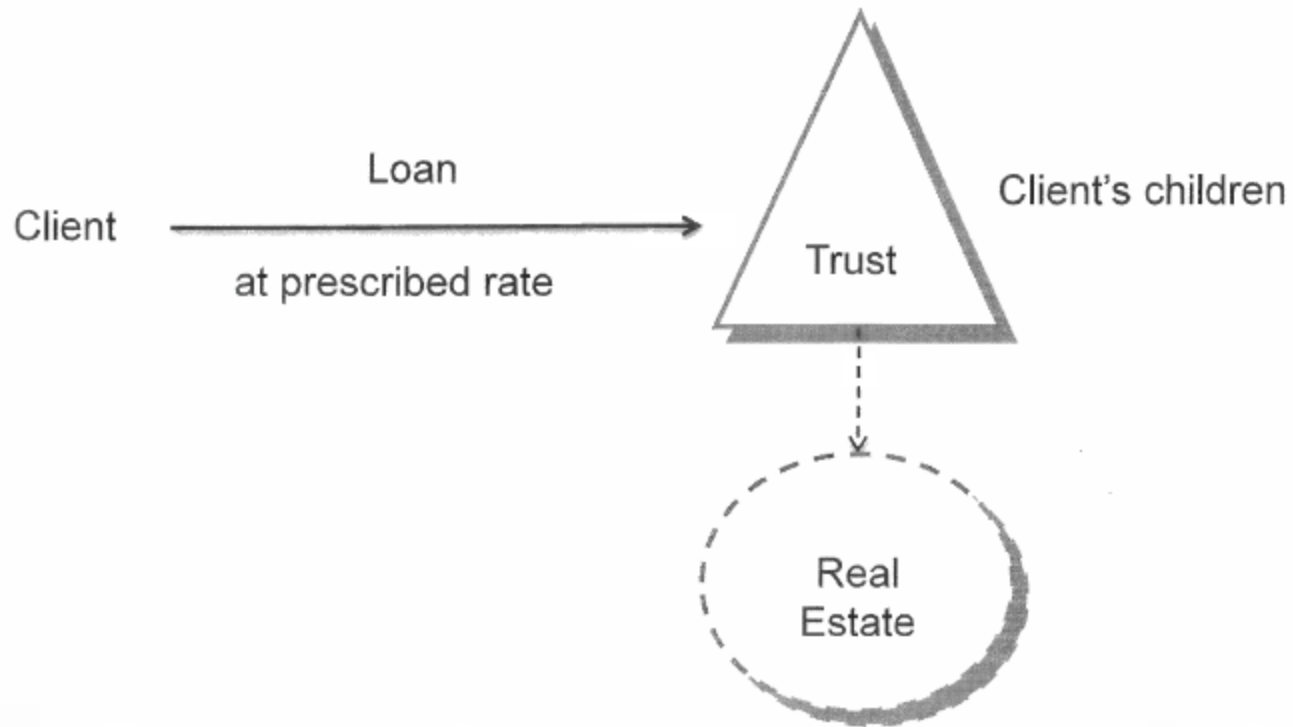
Income Splitting

Planning not affected by the December 15, 2017 proposed amendments

- company which holds passive assets (no connection to an active business)
- trust with passive assets

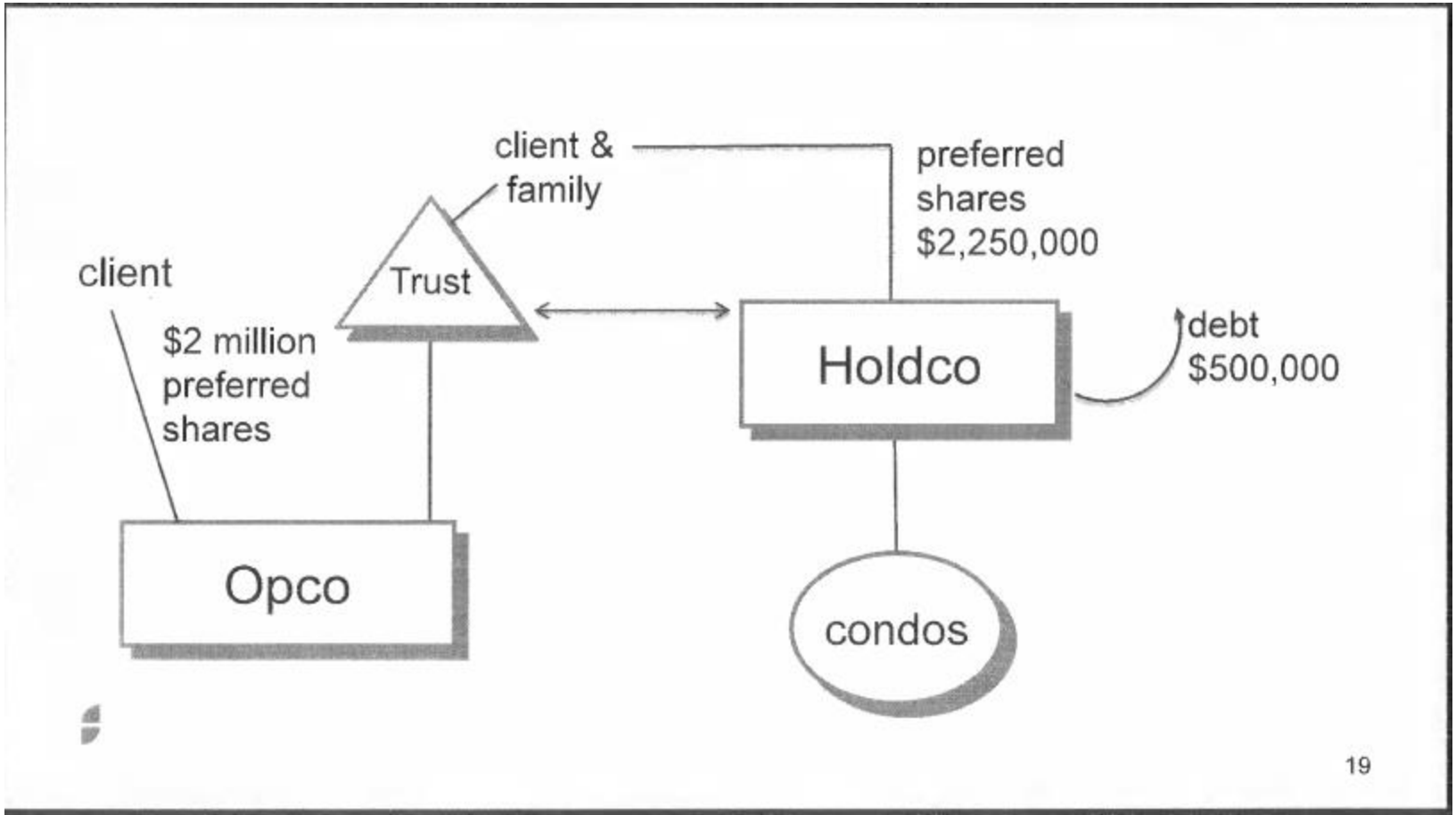


Income Splitting



- client owns personally several properties purchased for investment. Positive income. Cost \$750,000 and value of at least \$3 million. Mortgage of \$250,000
- client owns all the shares of a successful Opco. She draws a salary of \$100,000 and has \$300,000 of real estate income. Her son draws a salary of \$100,000 from the business
- husband (no income) and 2 other university age children
- following plan is implemented





- client can withdraw \$500,000 tax free
- client keeps \$100,000 of salary if so desired; not necessary
- each of husband and 2 university children receives \$40,000 to \$50,000 of dividends from Holdco; instead of \$100,000 salary, the son receives a dividend of \$82,000 from Holdco
- client redeems frozen prefs every year
- optimal flow of dividends from Opco to Holdco to family
- rate of tax on real estate income has been effectively reduced

- aside from the benefit of freezing the client's interest in real estate, there are other tax advantages
- in a similar file, accountant had suggested taxing real estate income as active:
 - risky
 - no income splitting because of new rules
 - passive investment income rules would apply (i.e. \$50,000 limit)
- cancel son's salary and replace with dividend of \$82,000 from holdco

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BIAS capital Gains Over Dividends

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Capital Gains - 2018

Province	Capital Gains / 2018
British Columbia	23.85%
Alberta	24.00%
Saskatchewan	24.00%
Manitoba	25.20%
Ontario	26.76%
Quebec	26.65%
New Brunswick	29.38%
Nova Scotia	27.00%
Prince Edward Island	25.69%
Newfoundland	24.15%

Eligible Dividends - 2018

Province	Eligible Dividends / 2018
British Columbia	31.30%
Alberta	31.71%
Saskatchewan	30.33%
Manitoba	37.78%
Ontario	39.34%
Quebec	39.83%
New Brunswick	43.79%
Nova Scotia	41.58%
Prince Edward Island	34.22%
Newfoundland	38.47%

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Non-Eligible Dividends - 2018

Province	Non-Eligible Dividends / 2018
British Columbia	40.61%
Alberta	40.24%
Saskatchewan	40.06%
Manitoba	45.69%
Ontario	45.30%
Quebec	44.23%
New Brunswick	51.75%
Nova Scotia	46.97%
Prince Edward Island	43.87%
Newfoundland	39.40%

Capital Gains vs Dividends

- parent owns all the shares of OPCO having a value of \$2 million
- parent intends to freeze into preferred shares; active child will subscribe for common shares
- parent will redeem \$200,000 of shares per year



Child

Parent

100%
common
shares

\$2 million
preferred
shares

Opco

- redemption of shares yields a deemed dividend of \$200,000 per year, all ineligible
- tax is \$87,680

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- instead have parent sell the shares for \$2 million to child, payable over 10 years
- 10 year reserve for an intergenerational sale of SBC shares
- no capital gains exemption will be claimed by parent
- child will transfer shares to a holding company
- \$200,000 per year capital gain to parent. Taxes are \$53,300 as opposed to \$87,680



Other Developments

- Quebec small business deduction
- 5,500 hours a year
- if not, rate goes from 8% to 11.8%
- 5,000 hours will go from 8% to 9%

FEDERAL BUDGET 2016

- precludes the multiplication of the small business deduction in certain partnership and corporate structures



Voluntary Disclosure

- voluntary disclosures
- where we stand
- Bell vs Molson



Who needs a Will

- **Anyone who owns assets**
 - simplifies the administration of the estate
 - ensures all property is distributed according to testator's wishes.
 - without a will, your assets will be distributed in accordance with the laws of intestacy as set forth in the Civil Code of Quebec
 - tax advantages
 - wills are not generic instruments, therefore it is important that they be tailored to meet the testator's or testatrix's needs
 - death triggers capital gains

WILLS: An Important Tax Planning Tool

- **Income splitting opportunities abound with the use of multiple trusts**
- **Testamentary Trust**
 - Trust created by will whose income is taxed at the same progressive rates as an individual (without personal deductions). Starting January 1, 2016, this changed.
- **Spousal trust**
 - **Conditions**
 - spouse entitled to all income earned
 - only spouse entitled to capital of trust during lifetime
 - **Effect**
 - tax-deferred rollout of capital property



WILLS: An Important Tax Planning Tool (cont'd)

- **Provide for trusts for children and grandchildren**
- **Attribution does not apply, nor does kiddie tax**
- **Benefits**
 - progressive tax rates
 - income splitting
 - can distribute capital tax-free to a Canadian beneficiary
 - allows the deceased to keep some level of control over the assets passed on to the beneficiary (i.e. preserve assets for children)
 - GRE

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Disposition of Property

- **Spouse or Spousal Trust**
 - RRSP / RIF
 - principal residence
 - secondary residence with accrued gains
 - shares of small business corporation with accrued gains (ensure, if not already done, that the \$850,000 capital gains exemption is triggered)
 - rental property
 - shares of public companies with accrued gains



Diposition of Property (cont'd)

- **Children's or Non-Spousal Trust**
 - insurance
 - term deposits
 - Canada savings bonds
 - assets which have not appreciated or those with accrued losses



Illustration

- Mr. X has substantial assets
- Mr. X is survived by his wife and four children
 - spousal trust
 - family trust
 - income splitting opportunities abound



Will Planning for U.S. citizens

- **For a situation when one spouse is a U.S. citizen and the other is not**
- when drafting the U.S. citizen's will we would create two trusts, one a bypass trust (spousal trust) with assets equaling the U.S. estate tax exemption for the year of death and the second trust in the spouse's favor would qualify as a qualified domestic trust (QDOT)
- when drafting the non-U.S. citizen's will, the assets being left to the spouse which is a U.S. citizen, would be placed in a spousal trust in order to avoid having the assets fall within that spouse's patrimony which would increase the spouse's exposure to U.S. estate tax.
- for spouses who are both U.S. citizens in order to defer taxes, we would create a qualified terminable Interest Property Trust ("QTIP")
- Advantages of QTIP
- will planning for Canadian residents with children living in the United States

Vehicles to complement a Will

- Marriage contract – (exception to gift *mortis causa*)
 - Mandate in Case of Incapacity
 - Alter ego trust
 - Joint spousal trust
 - Self benefits trust
- } Alternative to mandate in case of incapacity



Questions?

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SPIEGEL SOHMER



NEW TRENDS IN LAW: CANNABIS

Presentation for BMO Wealth Management
D'Amico Family Wealth Management Group
December 5, 2018

Morris Szwimer
mszwimer@spiegelsohmer.com
514-875-7882



SPIEGEL SOHMER

Our Cannabis Group



Morris Szwimer



Morris Jacobson



Robert Korne



Nathalie Proulx

Cannabis Laws in Canada Prior to October 17, 2018

- Marijuana was a Schedule II drug under the Controlled Drugs and Substances Act
 - This included the cannabis plant and seed, cannabis resin, cannabidiol (CBD), cannabinol, tetrahydrocannabinol (THC)
- Throughout Canada, it was illegal to possess or sell marijuana unless a special exemption existed (medical purposes)
 - Penalties for possession included fines and up to five years imprisonment
- Marijuana was prohibited in Canada since 1923. In 2001, it became legal to use marijuana for medical purposes



October 17, 2018



...for business

Federal /Provincial Regulations

- The Cannabis Act provides that the Federal Government will address the supply, production and procession of cannabis while the provincial regulators will legislate the distribution and sale of the product.
- As such, provinces and territories now regulate the sale and distribution of cannabis, subject to Federal conditions.



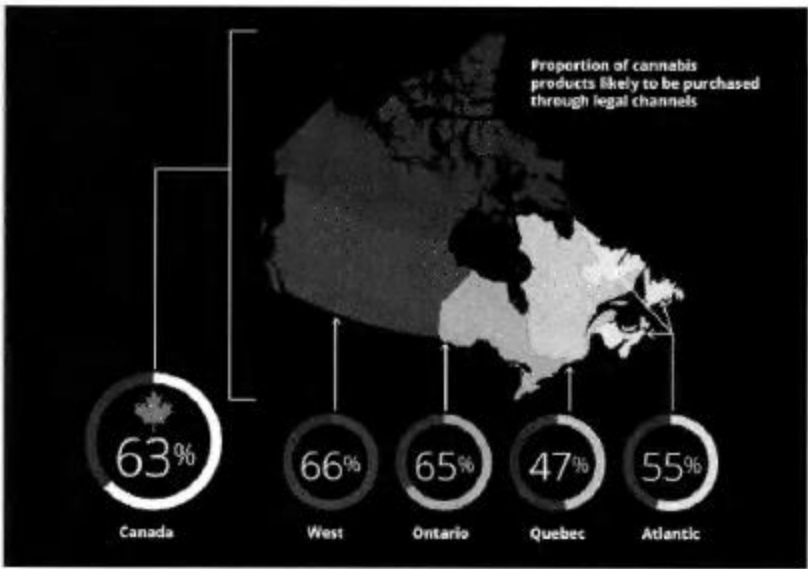
Licensed Producers

- Only producers who are authorized to produce and sell to the public may sell or provide dried marijuana, fresh marijuana, cannabis oil, or starting materials to eligible persons



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Legal Cannabis Market



Recreational Cannabis: Market Size



Scope of Legislation in Quebec

- Comprehensive regulations now exist for:
 - Possession
 - Use
 - Purchase
 - Sale
 - Distribution
 - Cultivation of cannabis



Possession Limits

- Possession in public spaces to be based upon standards which may permit less than what is permitted under the Federal Cannabis Act
- Possession in non-public spaces to be limited to 150 grams of dried cannabis or its equivalent
- Possession will not be permitted on school grounds and other prescribed places
- Cannabis must be kept in a safe manner; not accessible to minors



Places for Use

- Use is prohibited in:
 - Restaurants, bars, casinos, bingo halls
 - Terraces and other outdoor areas operated as part of a commercial activity and set up for rest, relaxation or the consumption of products
 - Outdoor play areas intended for children that are open to the public, including splash pads, wading pools and skateparks
 - On sports fields and playgrounds, including areas reserved for spectators, that are frequented by minors and open to the public

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Age Limit (Possession and Use)

- Currently 18
- CAQ has said they will raise the age to 21

Home Grow Limits

- Although permitted in other provinces, cultivation for personal use in the Province of Quebec is prohibited as opposed to Ontario where you must be 19 to cultivate, propagate or harvest cannabis and must comply with certain regulations.
- Online sales of cannabis will be performed by the SQDC.



Wholesale Distribution Model

- SQDC will purchase cannabis from licensed producers and sell to Quebec residents
- Licensed producers to be limited to sell cannabis to the SQDC only (unless shipping outside of Quebec)
- Other provinces have mixed public private or private model



Quebec Retail Sales

- Only the SQDC can sell the following to consumers in Quebec:
 - Dried and Fresh Cannabis
 - Cannabis Oil
 - Cannabis Resin
 - Edible and non-edible Cannabis Products
 - Cannabis Accessories
 - Specialized Publications about Cannabis



Retail Displays

- Products cannot be visible from outside a retail outlet
- Customers cannot have access to cannabis without the assistance of an employee



Packaging, Marketing and Point of Sale Requirements (strict rules)

- Promotional giveaways, volume discounting, gifts, rebates, lotteries in exchange for proof of purchase, information and retailer commission agreements with suppliers is prohibited
- Packaging and marketing not to be directed towards minors, misleading about health effects, associating cannabis with the particular lifestyle, using testimonials, endorsements, or a slogan or text that refers to a real or fictional person, character or animal
- Government to be given power to develop regulations regarding additional packaging showing the harmful effects of cannabis

Marketing

- Prohibited:
 - Promotional Giveaways
 - Volume Discounting
 - Gifts
 - Rebates
 - Lotteries in exchange for proof of purchase
 - Retailer commission agreements with suppliers



General Prohibition

- The operator of a business or a cannabis producer may not sell or give an object that is not cannabis or supply such an object as part of an exchange if a name, logo, distinguishing guise, design, image or slogan that is directly associated with cannabis, a brand of cannabis, the SQDC or a cannabis producer appears on the object
- Does this extend to non-cannabis companies with cannabis content? T-shirts?



Inventory Tracking Requirements

- Government to be given power to pass regulations to reduce the risk of cannabis being diverted to the illicit market



Driving Impairment

- Zero tolerance – no cannabis must be present in the body as detectable in the oral fluid of a driver of a vehicle, subject to exceptions provided by regulation

Employers

- The act respecting Occupational Health and Safety was modified to include provisions relating to consumption of cannabis at the workplace
- Obligations on employers to ensure that its employees do not perform their duties in a condition that may pose a risk to their own health and safety and of others
- The Supreme Court of Canada determined that this obligation cannot be claimed as a pretext for conducting random screening for cannabis
- Screening of employees is permissible only if (i) reasonable grounds to believe the employee was impaired; (ii) the employee was directly involved in a workplace accident or significant incident; or (iii) the employee returns to work after treatment for substance abuse



Updating Policies

- Review and update policies on drug/alcohol use in the workplace
 - Policy and discipline cannot be based only on “illegality”
 - Will be similar to alcohol – use is legal, but an employer can prohibit its “recreational” use and possession at the workplace
- Update policy regarding disclosure of use of marijuana and any other narcotic
- Update policies regarding use and disclosure of prescription drugs that may impact employee performance or ability to work safely
- Updating policies regarding accommodation (with a clear reference to rehab process, programs and return to work)
- Employers must balance the need to maintain a safe work environment with the employee's right to accommodation of a disability – up to the point of undue hardship
- Employers will need to consider adopting internal policies prohibiting the consumption, use and possession of cannabis or cannabis products on the premises of the workplace, such a zero tolerance policy



Updating Policies

- What should a drug disclosure policy have?
 - Include a clear and express statement that the policy promotes safety and deters unsafe behaviour
 - The policy should encourage/require employees to disclose substance abuse issues, without fear of reprisal or discipline, including in situations where employees may be using illicit drugs, but may not consider themselves to be addicted
 - Provide for and set out a process for employees to ask for and obtain treatment
 - Maintain confidentiality
 - Provide for a procedure for appropriate accommodation, follow-up and return to work



Residential Landlords

- In Quebec, lessors may modify the terms of existing residential leases by adding a prohibition against smoking cannabis within ninety (90) days of October 17, 2018
- Tenants may refuse such modification for medical reasons by informing the lessor of its refusal within thirty (30) days of receiving the notice



Co-Ownership

- Declarations of Co-Ownership may limit the peaceful enjoyment of the co-owners provided however that the restriction on the rights of the co-owners is justified by the destination, characteristics or location of the immovable. As such, the Declaration may restrict any use or possession of cannabis

Edibles

- At the present time the sale and consumption of edibles in Canada is not legal
- Federal legislation provides that it will be legal to sell and produce products containing cannabis which can be ingested one (1) year following the legalization of marijuana in Canada
- It is anticipated that the Federal government will develop regulations to support the sale of edibles and concentrates within a one (1) year of October 17, 2018. Public consultations expected in 2019
- Experts predict edibles will eat up a major chunk of the market, once legal and that 6 out of 10 cannabis consumers will turn their attention to ingesting edibles, namely baked goods, chocolates, candies, beverages, honey etc.
- Many major beverage companies, namely Coco-Cola, Molson etc. are looking to develop beverages which contain cannabis extracts



Closing Comments

- Restricted Travel
- Required Licences
- International Export/Import into Canada