

LEGAL UPDATE

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MACDONALD SAGER MANIS LLP

Lawyers
150 York Street, Suite 800
Toronto, Ontario, M5H 3S5
Canada
Telephone: (416) 364-1553
Telefax: (416) 364-1453
www.msmlaw.net

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HERE WE GROW AGAIN AND AGAIN, AND AGAIN

In the short time since our last newsletter there has been some big changes and additions at Macdonald Sager Manis LLP.

We are pleased to welcome **Paul Jacobs, Q.C.** to the firm as senior counsel. Paul will be

continuing his litigation practice and also his mediation work. Paul was called to the bar in 1970, appointed Queen's Counsel in 1982. Paul took his mediation training in the 1980's at the Harvard Project, then was accredited at CDR, Boulder, Colorado. He is also a graduate of the Advanced Mediation Training Programme of The Advocates' Society. He is a founding member of the ADR Committee of The Advocates' Society, and immediate Past Chair and member of the Executive Committee of the ADR Section of the Ontario Bar Association.

Paul conducts a wide range of litigation matters, provides opinions, private mediations, is a member of numerous panels of mediators in Ontario and the United States, and is a former Roster Mediator for the Ontario Mandatory Mediation Programme, Superior Court of Ontario. Paul is also an arbitrator for the Canadian Motor Vehicle Arbitration Plan, the Ontario Farm Products Marketing Commission,

and the British Columbia International Commercial Arbitration Centre.

On September 1, 2006 **Ronald Kanter** joined the firm. Ron is a senior real estate practitioner. He specializes in municipal, planning, and environmental law. He is an advocate for landowners, developers, homebuilders, businesses, municipalities, and residents at City Hall, the Ontario Municipal Board, and the Courts. He has obtained approval for high rise, single family subdivisions, live-work, commercial, industrial, institutional and recreational uses. Ron acts as an arbitrator for Tarion, formerly the Ontario New Home Warranty Program, and serves on the Toronto Board of Trade Task Force in the City of Toronto Act. He has taught Public Law in the Bar Admission Course, Law & Planning at the University of Toronto Law School, and served as a municipal

councillor and provincial legislator.

Also on September 1, 2006 **John F. Collins** joined Macdonald Sager Manis LLP. John practices corporate commercial, intellectual property (with an emphasis on software, technology, the internet, and e-commerce), government procurement, and privacy law. Licensed in Ontario and in California, John is also a member of the Law Society of England & Wales. In addition to practicing in Toronto, John has practiced in the U.S. as Counsel to Science Applications International Corp., a Fortune 500 company. From 1980-1991, John practiced with Litton Industries Inc., a Fortune 100 company, as Vice President and Division Counsel to Litton Systems Canada Limited, a Toronto aerospace, electronics, and systems integration company.

Ibi Olabode has joined the firm to continue her family law practice. Ibi was called to the Bar in 2000. She obtained her Bachelor of Laws degree from the University of Victoria, British Columbia. Her Honours Bachelor of Arts degree in Political Science and Philosophy was obtained from the University of Toronto. Although Ibi's primary practice area is matrimonial litigation, she has broad-based experience in other practice areas ranging

from corporate commercial litigation to estate litigation. In addition to her work as a litigator Ibi regularly volunteers her time to helping foster an interest in legal education at various Toronto area schools. She has contributed time to community legal clinics and is a member of the *Ontario Bar Association* and the *Black Lawyer's Association of Canada*.

Last but not least our articling student of 2005/2006, **Ali Baniyadi**, has completed his Bar Admission Program and been called to the Bar. He has joined Macdonald Sager Manis LLP and will be carrying on a general practice with an emphasis on corporate/commercial law and trade-marks. Ali graduated from the University of Toronto in 2002 with a Bachelor of Science degree. He received his law degree from the University of British Columbia in 2005.

**WE'RE MOVING?
AND YOU'RE INVITED**

To accommodate the additions to the firm we have expanded our premises by adding on a large portion of adjoining space to our suite. The entire space has been reconstructed and our reception area is now at the opposite end of the floor. It feels like a brand new suite. To celebrate this renovation project we will be holding a client appreciation/open house on Thursday, November 9, 2006, from

5:00 p.m. to 8:00 p.m. Please mark that date on your calendar. All of our clients and friends are invited.

**PROPOSED OMB CHANGES
AFFECT DEVELOPERS**

The Ontario Government recently introduced Bill 51 to amend the *Planning Act* and other laws. The effect of the Bill would be to maintain the power of the Ontario Municipal Board to review municipal planning decisions, while increasing the power of city councils in relation to the Board.

According to Bill 51, the OMB would be subject to a number of changes, including the following:

- The Board would be required to "have regard for" decisions made by municipal councils.
- Hearings would be limited to the information and material that were before the municipal council, unless such information could not reasonably have been provided to the municipality.
- Applications by developers resulting in Council decisions involving "employment" lands would no longer be subject to appeal to the Board.

Each of these changes, if approved by Legislature, will result in challenges for developers. The Board will no longer have the power to consider applications solely on the basis of good planning, but will have to pay some attention to council decisions, which are frequently subject to political considerations.

It is difficult for an Applicant to present as much information, with the same degree of technical detail, in a 5 or 10 minute presentation to a Committee or Counsel as to an OMB hearing, which may be scheduled for a week or longer. The restriction on new evidence could also discourage settlement proposals or compromises from being presented to the Board.

The Ministry of Municipal Affairs appears to favour more protection for employment lands (formerly designated as industrial or commercial) despite market demand for more housing. The very broad definition of employment lands currently found in Bill 51 may have the effect of discouraging residential development along main streets or in brownfield sites where land is designated for industrial or commercial uses, even though no one has actually worked on the land so designated for many years.

Bill 51 is currently being considered by a Legislative Committee, which held hearings in August 2006. It will likely received 3rd Reading and come into force towards the end of 2006. Related regulations will determine when applications are subject to the new rules. Developers, and their consultants, should pay close attention to Bill 51 as it moves through the legislative process to become law, since it will change planning laws in subtle but important ways.

For more information about this contact Ron Kanter.

COPYRIGHT INTERNET ISSUES

What are you giving up when you put your work on the internet? Internet sites for sharing artistic works are extremely popular, and it comes as no surprise that the internet is again challenging intellectual property principles.

Once you put something on the internet, copying, and copyright infringement can become an issue. For most of us, this is not particularly problematic. No one is terribly interested in copying the vacation video I posted on a public website. However, do I still own my vacation video, once I put it on a website? I initially had copyright, since I created the video, I shot it, and perhaps even went to the trouble of editing it. But once I put it on a

website owned by someone else, am I conceding the copyright? Am I granting the site permission to distribute the work? Can the site profit from distributing my work?

For most of us these may be purely theoretical questions but serious artists must be concerned about the copyright and distribution rights if they post their work on a site owned by someone else.

Websites commonly use disclaimers to establish the rights of the site and its users. These disclaimers are the first place to look when determining what you are giving up when you put your work on a given website.

This issue was illustrated when British songwriter Billy Bragg recently removed his songs from the popular MySpace.com website. Mr. Bragg claimed that the terms and conditions written in the MySpace disclaimer gave the website control over whatever people uploaded to it.

The disclaimer granted Myspace "a nonexclusive, fully paid and royalty-free worldwide license". Although short of "ownership", MySpace was claiming a licence to distribute the music, perhaps by making it available on the Web site. The site has now clarified who retains what rights. The MySpace disclaimer now reads: "The license you grant to

MySpace.com is nonexclusive (meaning you are free to license your content to anyone else in addition to MySpace.com).”

MySpace has not commented on why it made the change, but the new language narrows the rights claimed by MySpace. The terms and conditions of this and similar websites should be read carefully before uploading any valuable content.

For more information on copyright issues contact Michael Carey.

WHAT WE DO WELL

An important part of the practice of Macdonald Sager Manis LLP consists of lending transactions and debt enforcement for many major financial institutions. The qualities that make us stand out in these highly competitive areas – thoroughness, cost consciousness, timely reporting and attention to detail – extend to all our areas of practice including:

- Litigation
- Banking & Finance
- Wills & Estates
- Bankruptcy/Insolvency/
Debtor-Creditor

- Family Law, including Collaborate Family Law
- Corporate Transactions
- Real Estate
- Shareholder/Partnership Disputes
- Leasing
- International Transactions
- Construction Contracts & Litigation
- Franchise Law
- Labour & Employment Law
- Trademark
- Municipal Planning
- Environmental Law
- Intellectual Property

We would be pleased to be of assistance to any of our existing clients, or new clients, in any of these areas.

THE FINE PRINT

The articles contained herein are not intended to be an exhaustive review of the law or to constitute legal advice, but rather to merely highlight issues you should be aware of. Proper well informed legal advice will be necessary should these issues affect you or your business.

HOW TO REACH US

**Our general line is:
(416) 364-1553.**

Our direct lines and e-mail addresses are: (416)

Ross N. Macdonald 364-4682
rmacdonald@msmlaw.net

Steven J. Sager 364-6163
ssager@msmlaw.net

Howard F. Manis 364-5289
hmanis@msmlaw.net

Connie Freitas 364-2604
cfreitas@msmlaw.net

Sean E. Cumming 364-1077
scumming@msmlaw.net

Kevin G. Bateman 366-4005
kbateman@msmlaw.net

Matthew Wise 364-8593
mwise@msmlaw.net

Michael Carey 364-3325
mcarey@msmlaw.net

Tanya DeAngelis 361-2615
tdeangelis@msmlaw.net

Paul Jacobs 361-2620
pjacobs@msmlaw.net

Ibi Olabode 361-2617
iolabode@msmlaw.net

Ali Baniyadi 361-2616
abaniyadi@msmlaw.net

Ronald M. Kanter 361-2619
rkanter@msmlaw.net

John F. Collins 361-2623
jcollins@msmlaw.net

For general information please contact Ross Macdonald at (416) 364-4682 or rmacdonald@msmlaw.net

