

Tax Window Files

Date: June 18, 2014

2014-0531461E5 Paralegals and work in progress election

LANGIND E

DOCNUM 2014-0531461E5

REFDATE 140528

SUBJECT Paralegals and work in progress election

SECTION 34, 232(1) "lawyer", 248(1) "lawyer"; Ontario Law Society Act and By-law 4 of the Law Society of Upper Canada.

Please note that the following document, although believed to be correct at the time of issue, may not represent the current position of the CRA. Prenez note que ce document, bien qu'exact au moment émis, peut ne pas représenter la position actuelle de l'ARC.

PRINCIPAL ISSUES: As paralegals are now licensed to provide legal services in Ontario, are they able to make the work in progress election under s. 34 available to "lawyers"?

POSITION: No, as the definition of "lawyer" in the Act combined with how Ontario licences lawyers and paralegals make clear paralegals do not meet that definition.

REASONS: The definition of "lawyer" in the Act pushes the determination whether someone is a "barrister or solicitor" to the provinces. The Ontario Law Society Act and By-law 4 of the Law Society of Upper Canada create two tracks: barristers and solicitors, who practise law, and paralegals, who provide legal services. Paralegals are therefore not barristers or solicitors and may not make the work in progress election.

XXXXXXXXXX

2014-053146

Whitney Dunn

May 28, 2014

Dear XXXXXXXXXXXX:

Re: Whether paralegals may make the work in progress election

We are writing in response to your email of May 13, 2014, where you asked whether paralegals in Ontario may make the work in progress election under section 34 of the Income Tax Act (the "Act"). You noted that the Law Society of Upper Canada now licences paralegals to provide legal services.

Our comments:

This technical interpretation provides general comments about the provisions of the Act. It does not confirm the income tax treatment of a particular situation involving a specific taxpayer but is intended to assist you in making that determination. The income tax treatment of particular transactions proposed by a specific taxpayer will only be confirmed by this Directorate in the context of an advance income tax ruling request submitted in the manner set out in Information Circular IC 70-6R5, Advance Income Tax Rulings.

Section 34 of the Act provides special rules for computing the income of a taxpayer for a taxation year from a business that is the professional

practice of an accountant, a dentist, a lawyer, a medical doctor, a chiropractor, or a veterinarian. This section permits these taxpayers to elect to exclude amounts for work in progress at the end of the taxation year from business income for that year.

The CRA's view is that a professional practice is one carried on by one or more persons who are members of organizations which are usually governed by statute and which have the power to regulate certification and the issuance of licenses to practice the profession, to examine candidates for membership and the right to practice, to establish standards of professional conduct and to discipline members for infractions of them. For the professional practice of a "lawyer", subsection 248(1) of the Act states that term has the meaning assigned in subsection 232(1), which in turn defines "lawyer" as "... in the province of Quebec, an advocate or notary and, in any other province, a barrister or solicitor".

The Law Society Act (footnote 1) governs the regulation of the legal profession in Ontario. It sets out two broad categories of licensees: those entitled to practise law as barristers and solicitors, and those providing legal services; and then grants the Law Society of Upper Canada the power to make and regulate classes of licences through its by-laws.

The Law Society's By-law 4 governs the classes of licences and their scope of practise. Classes L1, L2 and L3 are grouped under the heading "Licence to Practice Law", whereas class P1 falls under "Licence to Provide Legal Services". Class L1 and L2 licensees are "entitled to practise law in Ontario as a barrister and solicitor". Class L1 is the general licence class, whereas L2 is for those licenced to practise law elsewhere yet employed by the Attorney General of Ontario. Class L3 is

for members of the Barreau du Québec, who may practise a restricted scope of law in Ontario.

In contrast, P1 licence holders - paralegals - are able to provide legal services, not practise law; they are not stated to be barristers and solicitors.

In our view, the province of Ontario and the Law Society of Upper Canada have created a two tiered system: the practise of law by barristers and solicitors (and members of the Barreau du Québec) and the provision of legal services by paralegals. Accordingly, as paralegals in Ontario are not barristers or solicitors, they do not meet the definition of "lawyer" in the Act and may not make the work in progress election under section 34.

We trust our comments will be of assistance.

Michael Cooke, C.P.A., C.A.

Manager

Business Income and Capital Transaction Section

Business and Employment Division

Income Tax Rulings Directorate

Legislative Policy and Regulatory Affairs Branch

FOOTNOTES

Note to reader: Because of our system requirements, the footnotes contained in the original document are shown below instead:

1 RSO 1990, c L.8.

