Joint Policy Statement on Audit Inquiries

BACKGROUND

- In 1978, the CBA negotiated with the Canadian Institute of Chartered Accountants (CICA) a Joint Policy Statement (JPS) on communication between lawyers and auditors.
- Subsequent to that, an initiative of the CICA Auditing and Accounting Standards Boards attempted to have disclosed in financial statements the probability of success or failure of ongoing or anticipated litigation ("contingent gains and losses").
- In a January 1994 submission to the CICA, the CBA firmly rejected such disclosure, saying it infringed solicitor-client privilege and inappropriately pre-judged the outcome of litigation.
- CICA and a CBA Working Group comprised of both litigators and business lawyers met throughout 1995. At its June 1996 meeting, the CBA Working Group developed a consolidated position on the proposed standard. The draft response was reviewed by a special committee of senior commercial securities lawyers, and ultimately, approved by the National Executive Committee. The response was forwarded to CICA in November 1996. Given CBA's position, CICA postponed publication of the proposed standard.
- In October 1997, CBA received from CICA the International Exposure Draft (E59) emanating from the International Accounting Standards Committee (IASC) on Contingent Liabilities and Contingent Assets. CBA provided its views to IASC and CICA, saying the proposal suffered from the same weakness as the January 1994 and June 1996 CICA proposals. The IASC proposal was issued as a standard September 1998, effective for financial statements as of July 1, 1999.
- In April 2000, CBA notified its members that it is appropriate to disclose to Certified General Accountants (CGAs) the same information as may be disclosed to Chartered Accountants (CAs) for the purpose of the preparation of financial statements. This was at the request of CGA Canada.
- In the November 2001 *National* and *EPIIgram*, CBA published an article to answer practitioners' frequently asked questions on the Joint Policy.
- The May 2006 *EPIIgram* (now *Trends*) entitled "Best Practices in Responding to U.S. Enquiries" addresses issues around Canadian responses to U.S. audit enquiries, with a sample response letter.

CURRENT STATUS

- Auditing and Assurance Standards Board (AASB) approached CBA early in 2009, to discuss possible changes to the JPS, in light of new international accounting standards. Then-CBA President Guy Joubert established a task team to negotiate these changes with AASB. New international accounting standards are scheduled to come into effect in Canada, starting in December 2010.

- CBA task team is negotiating updates to JPS with AASB representatives, to reflect changes in IAS 37 on contingencies while maintaining solicitor-client privilege. It will consult with CBA members on any proposed changes.
- In January 2010, IASB proposed amendments to IAS 37 that would change the reporting standards for contingencies. With the reporting standards in the air, the CBA/AASB task team decided to issue interim guidance on how to deal with audit inquiries, rather than changing the JPS twice in short succession. In August 2010, CBA and AASB issued interim guidance.
- In December 2010, CBA task team published "New Rules and Guidelines, Assessing your client's outstanding claims for audit purposes" in LAWPRO Magazine
- CBA task team wrote to IASB in May 2010, objecting to proposed contingencies standard as unworkable in the litigation context.
- IASB unlikely to deal with amendments to IAS 37 before late 2012 or 2013.

NEXT STEPS

- CBA task team will continue negotiations on new JPS and consult with CBA members on any proposed changes.
- CBA task team will also develop necessary practice tools to assist lawyers in applying the interim guidance and new JPS.