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**Conferences on Corporate Law and Trade-marks
2006 CRAC Tour**

CRAC is hitting the road!

Last year, CRAC hosted several conferences that were held in Montreal. This year, we will come to see you in the surrounding areas and some regions of the province.

Date and Place *

| | | |
|-------------------|-------------|-----------------------|
| Tuesday, March 21 | LONGUEUIL | Holiday Inn Longueuil |
| Tuesday, March 28 | LAVAL | Châteauneuf Hotel |
| Tuesday, April 4 | SHERBROOKE | (Date & Place TBA) |
| Tuesday, May 9 | QUEBEC CITY | Laval University |

Registration fee

Registration fee is \$35 and is payable by cheque made to CRAC Ltd or by credit card Visa or Mastercard. A continental breakfast will be served at 8:00 a.m. A receipt will be issued to your firm's name. Should CRAC cancel any of the conferences, the full amount will be refunded.

Conferences

Three consecutive presentations will be held between **8:30 a.m. and 12:00 noon** by members of our team. These conferences are intended for professionals practicing corporate law such as lawyers, notaries, paralegals and other professionals in the field.

1) Corporate Names: Federal and Provincial Regulations and Policies

Speaker: Mr. Denis Livernoche
Supervisor of Name Searches Department

FOOD FOR THOUGHT

Peace is not merely a distant goal that we seek, but a means by which we arrive at that goal.

Martin Luther King, Jr.

New 2006 Price List

Please note that our new price list came into effect on January 1, 2006. We remind you that as of last year the prices are listed **before** taxes.

IncoWeb[®] Training

You are interested to learn more about our online IncoWeb[®] services?

Whether you are already a user of our online IncoWeb[®] service or not, you probably will enjoy a one-hour free training session. For more information or to schedule a training session, please call Annie Fredette at 514-861-2799, ext. 355, or contact her by email at afredette@crac.com

2) Corporate Services Online with IncoWeb®: Fast and Efficient (Incorporation, Quebec Registration, Tax Numbers)

Speaker: Me Annie Fredette
Attorney, Research & Development of IncoWeb®

3) Trade-marks: An Intellectual Property Right

Speaker: Me Johanne Muzzo
Attorney, Trade-mark Agent – IPC Intellectual Property Centre

Registration Form

To register, [click here](#) to print your registration form.

For more information, call Denis Livernoche (514) 861-2799, ext. 335 or toll-free 1-800-361-5744.

** More cities will be added to the list for the month of May and they will be published in our next issue of Info-CRAC. If you would like our team to visit your firm in your area, please let us know.*

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Joint Filing of Information Return and Tax Return (Part 2)

In our [Memo-CRAC of January 12, 2006](#), we introduced Part 1 of our article on the new rules affecting the option of joint filing by a business in Quebec.

You may recall, from Part 1, that a company must file within 6 months following the financial year end either:

1 – an information return (LE-630) together with the tax return with the Minister of Revenue of Quebec (“MRQ”); or

2 – an annual declaration with the Quebec Enterprise Registrar (“REQ”).

Having discussed this issue with some of our clients since our Memo-CRAC, we have come to the realization that there are still many questions surrounding the joint filing initiative introduced this year. Let’s examine a few particular cases raised during these discussions.

Failure to file the 2005 annual declaration

- **What must a company do if it is late in filing the 2005 annual declaration?**

Note that the 2005 annual declaration is not affected by the new changes even if it is filed in 2006. The company must file it with REQ as it has done in the past and pay the applicable fee of \$79 plus the late filing fee of \$39.50 to REQ.

Failure to file the 2006 declaration

- **If a company files its 2006 tax return with MRQ without joining to**

it Form LE-630, and neglects to file the 2006 annual declaration with REQ by the due date, what options does it have then? Can the company still send form LE-630 to MRQ after the due date?

Form LE-630 must always accompany a tax return, it can never be filed alone. Since the company didn't send form LE-630 with its tax return or file an annual declaration on time, it has no option, after the due date, but to file an annual declaration with REQ and pay only the late filing fee of \$39.50 to REQ. It's important to remember that the annual fee of \$79 will already have been paid to MRQ along with any taxes due by the company, even if the annual declaration was filed with REQ.

To recapitulate regarding the fees:

- Before 2006: \$79 & \$39.50, in case of late filing, paid to REQ.
- As of 2006: \$79 paid to MRQ & \$39.50, in case of late filing, paid to REQ;

Revocation of striking-off

- ***What happens if a company was struck off in 2005 for failure to file the 2003 and 2004 annual declarations, and it wishes to file today an application for revocation of striking-off?***

The company shall file with REQ, in the usual manner, the application for revocation of striking-off with the 2003, 2004 and 2005 annual declarations and pay all applicable fees to REQ (\$79 + \$39.50 per declaration in addition to the fee for the revocation).

Financial year end date

- **Will the financial year end date be published in the CIDREQ register?**

No. Unlike Corporations Canada where the date of the financial year end is posted for federal corporations in Strategis, this information will not be made public in CIDREQ for Quebec companies.

It seems strange that the date of the financial year end of the company will not appear in CIDREQ, given that this date is necessary to determine the filing period during which the annual declaration has to be filed, and as a result, whether or not the company is in good standing.

Form LE-630

- **What does MRQ do with form LE-630 filed with the tax return?**

MRQ sends form LE-630 for processing to the office of REQ within a few days. MRQ does not process this form; it's processed and filed in the register by REQ. Should REQ reject the form, for whatever reason, a notice of refusal shall be sent out by REQ to the registrant at the mailing address entered in MRQ's records, and not REQ's records, because the form was received originally by MRQ.

Observations

The goal of this new initiative, if it is to become successful, shall cause the accountant to file an information return each year on behalf of the company to update the information that appears in the register. This task is invariably associated with the annual upkeep of the company's minute book, and as such, doesn't it fall within the lawyer's competence? Doesn't the accountant

unwillingly carry out a task that falls outside his scope? And if there's a mistake in the register, who is to correct it, the accountant or the lawyer? Will it depend on who filed the document containing the mistake? Here are just some of the concerns that were raised as a result of this joint filing initiative.

One thing is certain, we have said it before and it is worth repeating here: it's in the client's interest to keep the lines of communication open between his lawyer and accountant.

Notwithstanding their good intentions, did REQ really simplify things for businesses? The jury is still out! Do you recall a few years ago when Corporations Canada implemented a similar joint filing initiative with Revenue Canada for federal corporations? We all know the outcome of that initiative. It failed, for several reasons! In fact, Corporations Canada wishes to abandon that system and return to the old system in which an annual return must be filed within 60 days from the anniversary date instead of within 6 months of the financial year end.

One must ask the question then: why did REQ invest so much time and energy on a project they know failed at the federal level? Perhaps they think they can do better, one can only hope! Only time will tell.

Should you have any questions on this matter or suggestions on how you intend to proceed with your clients, don't hesitate to contact Me Franca Sucapane, ext. 328.

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Priority Service Fee for Some Declarations

Pursuant to changes to the *Regulation respecting the application of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons*, please note that since January 1, 2006, a government fee for priority service has been implemented by REQ with respect to declarations that would otherwise have been filed without a fee.

Documents affected by this change are the following: amending declaration, corrective amending declaration, declaration of striking-off, initial declaration and notice of dissolution for partnerships. These documents are still free of charge when filed in regular service with respect to the government fee. But if they are filed on a priority basis, a government fee is then charged by REQ.

REQ's fees for priority service are as follows:

| Registrant | Fee |
|---|---------------------------|
| Legal person (profit-making) and mutual insurance association | \$39.50 + taxes = \$45.44 |
| Legal person (non-profit) and mutual benefit association | \$16 + taxes = \$18.40 |
| Sole proprietorship | \$16 + taxes = \$18.40 |
| Partnership | \$24 + taxes = \$27.60 |
| Cooperative | \$19 + taxes = \$21.85 |
| Other person or group | \$ 16 + taxes = \$18.40 |

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Notice to Users of CRAC Standard Schedules

Following further discussions with legal professionals in corporate law as well as attending a conference given by an expert in the field regarding *Regulation 45-106 respecting prospectus and registration exemptions* ("Regulation"), we made a few adjustments recently to our standard Schedule 3 - Other Provisions - or Schedule 4 for IncoWeb® users.

You may recall that a company is considered a private issuer, and thus exempt from filing a prospectus, if it abides by the following 3 clauses set out in s. 2.4 of the Regulation:

- 1) the securities, other than non-convertible debt securities, are subject to restrictions on transfer that are contained in the constating documents or security holders agreement;
- 2) the number of security holders is limited to 50; and
- 3) the distribution of securities by the company is limited to persons described in s. 2.4 of the Regulation.

As you know, the only clause that must be set forth in the articles of the company is the restrictions on the transfer of securities. The other 2 clauses are not required in the articles although, pursuant to the coming into effect of the Regulation, they were inserted in our standard Schedule 3 for practical reasons (For more details, see [Oct./Nov. 2005](#) issue of our Info-CRAC).

It has been suggested, since then, that leaving the other 2 clauses in the articles may be restrictive in certain cases, and as such, we preferred to remove them altogether. Therefore, only the clause on the restrictions on the transfer of securities remains in Schedule 3. Even though the other 2 clauses were taken out, it is important to note that a company must comply factually with all 3 clauses in order to benefit from private issuer status.

As for the clause itself on the restrictions on the transfer of securities, we added the term *shares* in the following section of the clause: "...no securities, other than *shares* and non-convertible debt securities, of the Company may be transferred...". We elected to keep the two restrictions separate: a) – restrictions on transfer of *shares* in Schedule 2; and b) – restrictions on transfer of *securities*, other than shares and non-convertible debt securities, in Schedule 3.

At the same time, we ensured that the wording of the restriction itself found in both Schedules 2 and 3 was identical. Part of the original text was changed from: "...without the prior written consent of the majority of the Board of Directors" to "without the consent of the Board of Directors as evidenced by a resolution duly adopted by same".

Finally, our minute books contain a new subscription letter with respect to the issue of shares by a company. A clause was added on in the letter in which the subscriber declares that he is indeed one of the persons set out in s. 2.4 of the Regulation and checks off the box from a list corresponding to the category of persons to which he belongs.

We will certainly continue to monitor this situation and watch out for any developments regarding this matter. If you have any questions or comments, please call Me Franca Sucapane, ext. 328.

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