

# BOWLEY • CUFFARI NEWSLETTER

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**First Newsletter** Clients have told us they would like to keep up to date with changes in law and legal practice. Here's our first effort. We'd love to have your feedback about this format.

## Wills and Powers of Attorney

Wills don't change but people and circumstances do. As assets, needs, children and executors change over time, you should keep your will up to date. We recommend a thorough review every five years.

At least as important as your will are your powers of attorney. Since the will speaks only from the moment of death, it is of no effect while the testator is alive. It is therefore of no help whatsoever should you become incapacitated. To protect yourself and ensure that you and your affairs are properly cared for by someone *you* trust and select, it is important to have a well-drafted Power of Attorney for Property and a Power of Attorney for Personal Care. The care in drafting of these instruments is of utmost importance.

## Do it yourself? Sure, but...

What about the do-it-yourself will and power of attorney kits and software? A completely cynical lawyer would encourage the use of these because they will definitely generate a lot of good estate litigation. Not being completely cynical, we don't encourage them. However, if you're into do-it-yourself dentistry and TV repair, you'll love these kits.

**Group rates for wills** can be arranged. Groups of at least three couples or five individuals will qualify in most circumstances. Call for details.

**White Rats?** Scientists are now using lawyers instead of white rats in lab tests. They're far more

plentiful, easier to train, and they'll do things that rats refuse to do.

**Marriage contracts** Do I need one? Should I have one? With one important exception, we have some philosophical difficulty with the concept of pledging "till death do us part" while the ink is still drying on a contract that deals with "but just in case" The important exception is the marriage of individuals who each have adult children from previous marriages. In this scenario, when one of the spouses dies, all of his or her property could go to the survivor. When the surviving spouse dies, everything would go to the children of the last to die, leaving nothing for the children of the first to die. This would not be a desirable result and should be addressed by way of a marriage contract. A good will, while always advisable, is not the correct solution in this situation.

**Changes** After the sudden windup of **McHugh, Devine** in 1995 we were forced into "survival mode", operating in a much more automated, zero staff environment. Fortunately, our staff were able to find good employment fairly quickly. Both **Sue Rochon** and **Mary MacMillan** have very responsible positions in the judicial system. Last year, **Karen Bowley** took her leave from Natural Resources Canada and now ably assists Joe and Norm in the service of their clients (including Cam McArthur's former clients) under the name of Bowley, Cuffari with an office in Ottawa and one in Gloucester.

*"Injustice anywhere is a threat to justice everywhere." Martin Luther King, Jr.*

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## Read any good books lately?

A "must read" for business people is "Boom, Bust & Echo" by Toronto demographer David Foot. The author analyzes the changes occurring in society as the Baby Boomers, their parents and their children continue to age. He then discusses how a business should prepare for such changes.

A "fun read" is Thomas Cahill's "How the Irish Saved Civilization", an absolute delight for the history buff. Expect a long wait for your copy of this best seller.

**Alternative Dispute Resolution** is now an integral part of our justice system. We encourage our clients to be aware of ADR options and to take advantage of them. Two of the best known of these are arbitration (binding or non-binding) and mediation.

Roughly speaking, an arbitration is a stripped-down trial, with the arbitrator hearing out both sides and making his ruling. Generally speedier and less formal than a court trial, arbitration has its obvious attractions but by its nature does not have the precision of the litigation process. It is ideal where the facts are clear but their interpretation is in dispute.

Among ADR methods, mediation is unique in that a solution is not imposed on the disputants by a third party. Instead, it is worked out by the disputants. The mediator's job (and it is a tough one!) is to help the parties find that elusive point where their interests converge. It is quite amazing to see antagonists, after the rhetoric and positioning have been put aside, begin to discover that there is enough common interest to arrive at basic agreement. As the process develops, the opponents become allies in crafting a deal that is almost always better than one that is imposed.

The key to mediation is willingness to be a full participant in the process. The horse can be led to water but it cannot be made to drink. In our experience, each party must come to the table with a willingness to engage in the process with frankness and full disclosure. If a party persists in "playing games" the process will not work.

We have been involved with mediation from its earliest days in Ottawa in the mid 1980's, having chaired the pilot project, the Dispute Resolution Centre for Ottawa-Carleton. We are more enthusiastic than ever, particularly in the matrimonial and commercial areas

## Streamlining the court process

- case management as of January 1, 1997
- Simplified Procedure for cases up to \$25,000.00
- Small Claims jurisdiction increased to \$6000.00

## "Do you guys handle labor disputes?"

No, but we know someone who does. We find that clients prefer the personal touch of the smaller firm but want access to specialist. Labor law, intellectual property, criminal defence, income tax litigation and similar specialized areas tend to be practiced by the "boutique" firms who rely on general practitioners like us for referrals and consultations. Networking with specialists enables us to give our clients maximum efficiency and effectiveness.

## Keeping track of you!

When we decided to begin a regular newsletter, our first step was to update our database of clients and other friends of the firm. With something over a thousand names on the list, you can imagine that we've lost track of one or two addresses. It's also inevitable that we'll have some errors in the database. If we've committed a gaffe with your address (or, heaven help us, your name!) please forgive and call us to correct it. If you don't want to be on our mailing list, please let us know. If you know someone we've forgotten, call us!

*He has showed you, O man, what is good. And what does the LORD require of you? To act justly and to love mercy and to walk humbly with your God.*

*Micah 6:8*