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A bit of history..... The careful courtroom observer will note a large black strip attached to the lawyer's robe and hanging, somewhat like a scarf, over his shoulder. In earlier times, this appendage was literally the barrister's economic life line!

As a gentleman and an officer of the court, the barrister could never stoop to asking a fee. Rarely independently wealthy, however, he needed some device to provide a tangible recognition of his services. Thus, as the barrister rose to his feet to open his case, he would throw the scarf over his shoulder. Cleverly sewn into the end of the scarf was a tiny pocket, just the right size for a gold coin. Waiting patiently, the barrister would stand until he felt a tug, the signal from his trusty student-at-law that the unseemly business was done. "My Lords," he could then begin.....

Lawyers' robes When I began practicing in 1981, we gowned for everything but Provincial Court. Little by little, the rule was relaxed — first for Assignment Court, then for motions, until finally one rarely gowned at all. With the advent of alternative dispute resolution, case management and pre-trials, it was not unusual to go for months, sometimes years, without gowning.

All that changed with a vengeance in the fall of 1999. Gowns are back, not only for virtually every Superior Court matter, but for most matters of the former Family Court as well.

An advance or an anachronism? The jury is still out, but most of us have seen a distinct increase in civility and professionalism in the courtroom and in the corridors. So far, I'm all for it.

(And thank you, Lynne Dixon, for letting out my vest!)

How the "Go-It" was invented

Ruling G8976 of the Political Correctness Tribunal

"This tribunal does not hesitate to find the expression "Walkman" sexist and offensive. That is simple. The difficulty is in finding the appropriate Correctspeak alternative. The expression "Walkperson" was put forward, but counsel for the respondent correctly observed that "Walkperson" continues to offend the sensitivities of other living beings and should not stand. She/he offered the term "Walk-being".

After due consideration, however, this board must reject "Walk-being". The sensibilities of non-living entities would be offended. We note that Correctness Canada has recommended "Walk-It", but, in our view, such an expression falls into a "walkist" trap. The Correctness Directive does not permit any suggestion of preference amongst the various mobilities. Consequently, it is ordered that the said listening device shall be named a "Go-It". All existing models shall be renamed, at the cost of the manufacturer."

A lesson in legal ethics

The dying man called for his doctor, his minister and his lawyer.

"I intend to take it with me," he whispered, and gave each of them $250,000 in cash. "Put it in my casket when they lower me down." At the funeral each one faithfully tossed the package into the coffin just before it was buried.

Afterwards the minister confessed that he had taken out $10,000 to stave off bankruptcy of the orphanage. Encouraged by this confession, the doctor admitted that he had removed $20,000 for the new children's hospital. Shocked, the lawyer said, "I'm appalled at your lack of ethics! I placed my personal cheque for the full amount in the coffin!"

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Q Who invented copper wire?

A Two lawyers fighting over a penny.

Energizer Bunny goes to Family Court

Does the support obligation keep on going and going and going....? What happens when a divorce leaves one former spouse self-sufficient and the other incapable of self-support? Must the first spouse continue to support the other? Or can he or she move on, free of obligation? These are the questions Madam Justice McLachlin asked in the opening lines of the Supreme Court of Canada judgment in ***Bracklow v Bracklow***.

Sharon and Frank Bracklow had lived together for four years before marriage and three years after. At first, Sharon had earned more than Frank but a progressive illness gradually rendered her unable to work. For a time after the separation Frank voluntarily paid support, but soon Frank felt he had done enough. He reasoned that it had been a short marriage and, in any event, her illness was not his fault. Sharon said this didn't matter and sued for support. The Supreme Court of Canada asked itself three questions:

1. is there a support obligation?
2. if so, for how long?
3. how much?

Family law practitioners waited with baited breath, hoping for some guidance in such situations. To nobody's surprise, given the facts, the answer to the first question was "Yes". To everyone's chagrin, however, the answer to the second and third question was, "Send it back to the trial judge." So now we know for sure that the door is open, but questions of quantum and duration remain anybody's guess.

(Full text of the judgment is available at http://www.droit.umontreal.ca/doc/csc-scc/en/pub/1999/vol1/html/1999scr1_0420.html)

A Hand from the Grave You want to leave a bundle to the kids but you're certain that the little monsters will blow it all on Ferraris, exotic vacations, and loose living. Cleverly, you decide to delay vesting until age fifty when, surely, they will have acquired some elementary self-contol and maturity. Good idea, but draft very carefully!

Any properly drafted trust provision will bear in mind the rule in ***Saunders v Vautier***. In simple terms, this rule says that if a gift in a trust is *vested* and if all of the beneficiaries are of the age of majority, the beneficiaries may ask the court, as of right, to "bust the trust". Consequently, the drafter should insert a *contingent gift over* to prevent absolute vesting. As a further precaution, we also add an "all or nothing" provision to make an attack on a trust a little more risky. As a general rule we also advise against prolonging vesting past twenty-five. As one Canadian authority on wills writes, "If the kid is still an idiot at thirty, he'll probably never get any better."

Any concerns of this nature should be thoroughly discussed and the will provisions tailored to the specifics of your family.

Q: Why don't lawyers play hide-and-seek?

A: Nobody would look for them.

Growing pains... With three full-time and four part-time personnel, things are getting hectic, both offices are pretty crowded, and co-ordinating everything is becoming, well, interesting. Our plan is to centralize most of the staff and administration at a much larger downtown office. Keep watching this space!

"The one who cuts corners can't give you a square deal."
Anon

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