

# BOWLEY·CUFFARI NEWSLETTER

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**Double dipping— SCC misses another opportunity to bring certainty to family law** You couldn't design a more nightmarish matrimonial regime than our current system. Costly, thankless, unpredictable, slow, weird.... Why? Mostly because it's alchemy. Family courts have the impossible task of making the law politically correct, and there is no better example than the issue of double-dipping.

'Double dipping' means that a spouse can get paid for half the actuarial value of the other's pension, then receive lifetime support from the same pension. It's like the one-cow farmer expecting to have beef for supper and milk for breakfast. One would think that's a no-brainer. In *Boston v Boston* the Supreme Court had a chance to say so, and almost did. What they said was, "It is generally unfair to allow the payee spouse to reap the benefit of the pension both as an asset and then again as a source of income."

'Generally'? A good lawyer can use 'generally' to get a Mack truck into a bread box. 'Generally' invites lawyers to take another run. 'Generally' tells the lower court judges that if they don't have the courage to make a tough call, they can just say it's an exceptional case. 'Generally' means more trials, more appeals, more costs. 'Generally' means palm tree justice. Oh, well, it keeps lawyers busy.

Such are promises—all lies and jest.  
Still a man hears what he wants to hear  
And disregards the rest.

*Paul Simon* (The Boxer)

**Trinity Western** On the other hand, the Supremes in a powerful 8-1 decision reassured us that religious freedom has practical meaning and that political correctness does not have the run of the house. See the case (or even read the head note) at

<http://www.lexum.umontreal.ca/csc-scc/en/rec/>

IN GERMANY THEY FIRST CAME FOR THE COMMUNISTS AND I DIDN'T SPEAK UP BECAUSE I WASN'T A COMMUNIST. THEN THEY CAME FOR THE JEWS, AND I DIDN'T SPEAK UP BECAUSE I WASN'T A JEW. THEN THEY CAME FOR THE TRADE UNIONISTS AND I DIDN'T SPEAK UP BECAUSE I WASN'T A TRADE UNIONIST. THEN THEY CAME FOR THE CATHOLICS, AND I DIDN'T SPEAK UP BECAUSE I WAS A PROTESTANT. THEN THEY CAME FOR ME--AND BY THAT TIME NO ONE WAS LEFT TO SPEAK UP.

PASTOR MARTIN NIEMOLLER

**FINTRAC** *Has our one-party state lost its mind, or its soul?* Consider the *Proceeds of Crime (Money Laundering) Act*. Don't let the ambitious title trick you— this is not about crime control. Money laundering is serious, and we need to deal with it. But let's not burn down the barn to roast the pig. Nobody has any idea if this legislation will be effective, but we do know it will, in a stroke, turn us into a society of frightened, sneaky, tattle-tale lackeys and abolish lawyer-client confidentiality, which, with the secret ballot, independent judiciary and free press is a cornerstone of our freedoms. Within a few months we will all become spies for Big Brother. For lawyers, if a client comes through the door with a business or real estate transaction, and the circumstances are 'suspicious', we have to tattle. What's 'suspicious'? There's the catch, because you have to guess. If you don't guess right, you go to jail or pay fines up to two million dollars.

So, why not just say to the client, "Gee, this could look a little funny to FINTRAC. Let's just call them and make sure we're on side?" The law says it's jail time if you do that. You just have to quietly betray them if it's 'suspicious'- that's the law of Canada.

So, what is 'suspicious'? Having more cash than

seems right for your station in life? Driving a black car? Wearing sunglasses and flashy jewelry? Own a golf course? Or maybe you didn't pay your last legal bill and I want to get even?

If the revocation of confidentiality and the introduction of Beijing-style spying doesn't bother you, maybe this will-- the Act's red tape could force an increase of five percent or more in legal fees.

**Watch for our web sites!** Some time this fall we expect to have our basic web page up and running. A little later, our site dedicated to e-business law will come on line at e-counsel.ca.

**PIPEDA Compliance:** If you are receiving this Newsletter, you are on our database. We retain your name, address, probably your telephone numbers and e-mail address, and little more. We use the database

solely for our Newsletter and for client contact purposes. If you object to our retention of your personal information for such purposes, please contact us and we will remove your information immediately.

**Patents, trade-marks and copyright** Intellectual property issue? We have developed a special relationship with a strong IP firm and can now refer clients to world-class IP counsel in whose skill and character we have the utmost confidence.

**Kim von Arx** has spent the summer with us on a full time basis, while sweating through his transfer exams for the Ontario bar. Having been accepted into University of Ottawa's brand new Masters program in Information Technology Law, Kim will be working with us on a part time basis during the school year.

## *e-counsel*

### **Legal and strategic advice for e-business**

**PIPEDA** If your enterprise uses "personal information" about individuals (other than simply their name and business-related data), the *Personal Information Protection and Electronic Documents Act* probably applies to you. Since penalties run to \$100,000.00 and directors, officers and employees can be held personally liable, it is prudent to pay attention. Even if you aren't convicted, the Privacy Commissioner can make life so miserable you will wish you'd never kept a line of personal data.

The keys to PIPEDA are "consent" and "control"—informed consent to obtaining data, and control of its use and disposition. If you intend to use someone's personal information, you need to obtain their consent for the specific use you have in mind, such consent can be withdrawn, and during the time such data is in your possession, you need to guard against its loss or misuse.

Although the Act is in its early stages and we are not likely to see much prosecution for a while, we urge all clients who use personal information as part of their business to take steps to ensure they are on side when enforcement starts to get serious. Particularly, any client who is considering selling a database of personal information should consider taking preparatory steps well in advance of the transaction.

**Doing business on-line** What are the big issues of doing business on-line? The key concept is that you will, more likely than not, be doing business with someone outside of your legal system, perhaps not speaking your language, and who is not likely to subject himself or herself to your courts. What are your remedies for a breach of the deal? What are his remedies against you?

The law is still pretty rudimentary. It is evolving and still uncertain. The best advice at this stage is to proceed with caution. For a hundred dollars or so, you may be willing to take a chance. Most of the time, on-line commerce works well. However, if the proposed transaction involves thousands of dollars, prudence and legal counsel from an e-business lawyer are essential. Be wise.