

BOWLEY·CUFFARI NEWSLETTER

Number 17

<http://www.lawteam.ca>

May 2002

A judge's actual words from court records (not a local judge, of course): "I just hate coming into court every morning to face the dregs of society, and their clients."

A goat story Charles Carpenter, one of Ottawa's grand old lawyers, tells of a fellow who got an eight dollar tax bill for his goat. Outraged, he went to the town hall for an explanation. "Right here" said the clerk, pointing to the by-law, "Two dollars a foot for property bounding and butting upon a roadway."

Real Estate Practice Goes Electronic Thanks largely to Terrie Watson, we were one of the first firms in Ottawa to conduct searches and registrations online. Benefits to clients include smoother transactions and earlier closings.

"We are what we repeatedly do. Excellence, then, is not an act, but a habit."

Aristotle

At last! A web page! Our website is up, loaded with all kinds of useful tips and information. You will find tons of material to guide you through Small Claims actions, Landlord and Tenant issues and to provide a solid preparation before you consult a lawyer in more complex legal matters. There are also useful links to online laws and forms, even a page of lawyer jokes and links to more, as well as an archive of all of the Newsletters from the first effort in January 1997. Be sure to enjoy <http://www.lawteam.ca>. As always, your comments, questions and suggestions will be welcome.

Intellectual Property Law What is intellectual property law? The law covering patents, trademarks, copyright and related property rights. In very simplistic terms, patents are issued to provide a

period of monopoly to the inventor of an object, substance or process, while copyright arises during the creation of artistic or literary works, and trademarks are the distinctive logos, symbols or even sounds which are associated with a product or service to give uniqueness to the "brand".

IP law also deals with franchises, printed circuit topography, plant breeders' rights and several other arcane but commercially important topics.

Pointers from the Appellate Court Justice John Laskin of the Court of Appeal offered several points to keep in mind when arguing a case. Here are some which are good sense in every day life:

1. Prepare carefully and early.
2. Be a sharpshooter. The shotgun approach doesn't work.
3. Forget the windup and make the pitch.
4. Capture the moral high ground.
5. Give the court some credit for capability, intelligence and legal knowledge.
6. Practice "point first" advocacy, that is, tell them what the point is, then develop it.
7. Think past the immediate appeal, consider the effect on the law in general. Does the court want to go there? Be practical.
8. Be candid about your problems.
9. Appeal to the judicial instinct for rescue. Let the court feel they are helping and let them take ownership of the process.

"It's not that I'm so smart, it's just that I stay with problems longer."

Albert Einstein

Growing again In conjunction with some patent and trademark colleagues, we are expanding into adjoining space. As well as giving us a bit of breathing room, the move gives our clients access to an extremely strong team of IP lawyers.

Responsibilities of Corporate Officers and Directors There are three key areas of concern for those who accept the role of directors or officers of a corporation. First, directors and officers have a general fiduciary duty to avoid putting themselves in a conflict of interest position with the best interests of the corporation. If they use their position as directors to obtain a profit or other benefit for themselves, they are required to give up the benefit to the corporation. Second, there is a minimum standard of care to “exercise the care, diligence and skill that a reasonably prudent person would exercise in

comparable circumstances”. Finally, directors’ incur personal liability for a variety of statutory obligations including six months’ wages of employees, GST and other remittances, environmental and construction lien trusts.

“Go often to the house of a friend, for weeds choke the unused path.”

Ralph Waldo Emerson

e-counsel

Legal and strategic advice for e-business

Electronic Commerce in Ontario

We all do business online and rarely give a thought to just how “legal” and binding electronic transactions really are. When is the contract formed? How do you “sign” electronically? Should you insist on a paper copy? In Ontario, the *Electronic Commerce Act, 2000* provides most of the answers. The Act essentially prescribes the “functional equivalency” of electronic and paper transactions-- whatever you can do on paper may be done electronically (but only if you choose to do so) provided that certain simple rules are followed.

An electronic document is deemed equivalent to a paper document if it is accessible by the other person, is available for subsequent reference, and is capable of being retained by the other person (these are generally, but not always, technically simultaneous). If the law requires that an “original” be provided, that is satisfied if there is a reliable assurance of integrity of the information contained in the document from the time of its creation.

Although the law permits electronic signatures and endorsements, the definition is circular and simplistic-- “any electronic information that a person creates or adopts in order to sign a document and that is in, attached to or associated with the document.” We must therefore look to the common law which says that a signature is something which is affixed to a document so as to identify the signer, show an intent to be bound, and to link the signature to the document. Obviously, this can be done just as well electronically as with a pen.

Since Ontario’s law is very minimalist, one should not be surprised to encounter much more finicky rules in other jurisdictions, particularly Europe. As a result, always pay close attention to which rules apply to your transaction.

Watch for an upcoming article on secure transactions, including “secure electronic signatures”.