

BOWLEY·CUFFARI NEWSLETTER

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<http://www.lawteam.ca>

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Joe Cuffari— Who would have ever thought? Joe is now preparing for the Nova Scotia Barristers' Society transfer exams and will practice law just a stone's throw from the Halifax Citadel.

Meetings "Having served on various committees, I have drawn up a list of rules: Never arrive on time; this stamps you as a beginner. Don't say anything until the meeting is half over; this stamps you as being wise. Be as vague as possible; this avoids irritating the others. When in doubt, suggest that a subcommittee be appointed. Be the first to move for adjournment; this will make you popular; it's what everyone is waiting for."
— Harry Chapman

Life is not holding a good hand. Life is playing a poor hand well. **Danish Proverb**

solve tough legal problems. On weekends, however, you might see her on her Harley, in search of the perfect road.

Finished! The courses are done, the last paper handed in and convocation is in November. You have to be crazy to try to cram a Master's program and a busy law practice into nineteen months. If you weren't crazy when you started, you will be by the time it's finished! Getting through would not have been possible but for a very understanding wife and family, highly capable staff, patient clients, and God's help. I am very grateful.

(LL.M. studies are also over for **Kim von Arx**, formerly of Bowley · Cuffari and now with CIRA. Congratulations, Kim!)

If we don't believe in freedom of expression for people we despise, we don't believe in it at all.
Noam Chomsky

Contract Basics— How do you know if you have a binding contract? Lots of Latin and dense legalese? Not really- it doesn't even have to be in writing.

First, you need an **offer**, then you need a matching **acceptance**. Lastly, you need **consideration**, that is, mutual value flowing, such as money, performance or even forbearance. Writing is only required for certain species of contracts. But, it is generally a good idea for any contract unless there is immediate performance and you can be positive you'll never need a record of the transaction. Good contracts are very much about good evidence.

Those who would give up essential Liberty, to purchase a little temporary Safety, deserve neither Liberty nor Safety. **Benjamin Franklin**

Lawteam.ca is getting more and more traffic each month. As we suspected, the 'useful' stuff is most popular, the 'fun' stuff running a close second. Here's our problem: if the site is to be truly helpful, you'll have to tell us what you'd like to see.

Most legal websites are either ego-stroking vanity sites or heavy-duty legal libraries. The latter are useful to other lawyers and the former to nobody. We want to do something different— build a website which is genuinely helpful to non-lawyers. It is not intended to replace legal counsel (heaven help us!) but there is plenty of legal information which should be popularized— the Small Claims process, simple Landlord and Tenant issues, access to statutes and regulations. Law needs to be demystified. So, please, help us build a site which works for you. Visit <http://www.lawteam.ca> and let us know how we can make it better.

Shannon G. Ross— We're delighted to welcome Shannon Ross as an associate. Transplanted from the Eastern Townships, Quebec, with Common Law and Civil Law degrees, Shannon knows how to

Colleagues The Book of Ecclesiastes tells us that “Though one may be overpowered, two can defend themselves. A cord of three strands is not quickly broken.” Five lawyers in the office are even better (lawyerjokes notwithstanding). Although officially two firms at our address, we are finding such a high level of mutual trust and respect that we can collaborate informally on many professional issues—tactics, procedures, file efficiencies, software improvements.... There’s nothing quite like running a cross-examination or discovery tactic past respected colleagues. If one of them likes it and one says you’re nuts, there’s a decent chance you’re on

to something, but it needs work. If both say you’re nuts-- back to the drawing board!

Jane Chojnacki— The pleasant voice on our phone? That’s Jane! Receptionist, organizer, trouble-shooter and the one person who usually knows where the rest of us are at any point in time.

Thanks, Terrie! This has been an extremely busy real estate year, with a fair share of complicated transactions. Terrie Watson, law clerk extraordinaire, has handled it all with consummate skill, grace and good humor.

e-counsel

Legal and strategic advice for e-business

Liability for leaky IT? Can you be sued for getting hacked?

Here’s the scenario: In your usual course of business you keep detailed confidential records of your clients which, in addition to SIN numbers, cell phone usage and banking details, include some awkward credit, medical, bankruptcy and criminal details. To your horror, it all gets public. You investigate and discover:

Scenario 1: your webmaster put all your data records on an unprotected page on your webserver. A surfer simply stumbled onto it; or

Scenario 2: you host your own webpage on your data server, your data is password protected but not encrypted. Your password is your phone number. A script kiddie spent five minutes hacking the sensitive data; or

Scenario 3: your webpage is remotely hosted, your in-house server has a strong firewall, your data directories require sophisticated passwords and the data is steganographically hidden. It took a team of very sophisticated hackers days of hard work, and a good deal of luck.

Are you liable? If your answer was (1), certainly. If (2), probably and if (3), not likely. The answers to this high-tech question rely on the traditional legal tests of duty of care, foreseeability of injury and reasonableness. It is obvious the data is highly sensitive and serious damage will arise if it is allowed to fall into the public domain. It is also obvious that a high duty of care is required. In the first case it is pretty clear that you fell far short of the standard of care required. In the second case, you took some steps to protect the data, but you kept your tiger in a paper cage. In the third case, there probably isn’t much more you could reasonably do.

Is this a serious real-life issue? You bet it is, and Ziff Davis found out the hard way. Check the reporting article at <http://www.wired.com/news/business/0,1367,54817,00.html>. To get an idea of what reasonable standards might look like, see <http://www.oecd.org/pdf/M00033000/M00033182.pdf>. If you would like us to speak to your organization about these issues, please call.