

BOWLEY KERR COLLINS

BARRISTERS, SOLICITORS, PATENT AND TRADEMARK AGENTS

NEWSLETTER

Number 19

<http://www.lawteam.ca>

January 2003

New Firm, Old Values— Most remains the same— dedication to service and straightforward advice. New is a far wider range of expertise.

Bowley Kerr Collins is what happens when friends who share a passion for the law and a common faith combine the best of two practices to set a new standard in client, employee and lawyer satisfaction.

Together we bring forty-two years of experience and a client base which spans the globe. Whether advising on patent, trade-mark and copyright law, advocating a client's case in court or handling the details of a business or real estate transaction, we will continue to be there for you.

Shannon G. Ross— Shannon will continue to share office space with us and keep things lively with her infectious laughter and quick wit— two very valuable assets in a family law practice. The independent law office of Shannon G. Ross can be reached at 233-9541 or ross@e-counsel.ca.

Joe Cuffari— Soon after you read this, Joe will become a member of the bar of Nova Scotia. Clients often inquire about Joe and we pass along their best wishes. Please feel free to drop Joe a line at jcuffari@ca.inter.net or call him at 902-422-2297.

Lawyer: Witness, can you identify Exhibit "C"?
Witness: Why, yes, it's a photograph of me!
Lawyer: And were you present when it was taken?

"Shelf Companies"— From time to time a client rushes in and wants a "shelf company" for some business deal he wants to do later that day. We don't keep shelf companies, whether formerly active companies which are now dormant or numbered companies which were incorporated and put on the shelf, waiting for just such a day.

As a rule, dormant but formerly active companies contain too much risk of hidden (even unknown)

liability for some forgotten act or omission. Creating inactive companies "just in case", then attending to their care and feeding until somebody might want one is generally a foolish economy. As well, the "shelf company" concept encourages the false notion that "one size fits all", and we don't agree with that.

However, if you do have that big deal this afternoon, call us— there's more than one way to skin the cat!

The only fool bigger than the person who knows it all is the person who argues with him.

S. J. Lec

Presentations— Our lawyers frequently give talks to groups of clients, other lawyers, industry and various other audiences. Don't hesitate to ask.

Franchises, continued... In Newsletter 4 we introduced franchise law— a tricky business area where you always pay for what you get but you don't always get what you pay for. Whether you are franchisor or franchisee, the opportunities are great but so are the risks.

Adding to the complexity is Ontario's new *Arthur Wishart Act (Franchise Disclosure)* which provides very detailed and fussy disclosure requirements on franchisors who need to be extremely careful to comply exactly. Failure to do so can result in total loss of the business as well as lawsuits for damages by franchisees.

Franchisees need to be even more careful and have a thorough review of all the legal issues including tax, zoning, regulatory, financing, leasing, securities, employment and intellectual property. Our in-house checklist, for instance, currently exceeds ten pages. It's nit-picky, but necessary.

VISA— As a further client service, we now accept payment by Visa.

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93 Point Corporate Clinic – We have developed a checklist which we like to use with corporate clients to keep them legally “onside”. It is available online or by fax. Every business client should carefully review the list to ensure awareness of important compliance issues. Review it online at <http://www.lawteam.ca/corporate%20clinic.htm>

Karen Bowley– No one has contributed more to the old firms nor to the gargantuan task of merger than has Karen. Patient, steadfast and with the world’s sharpest eye for detail, Karen keeps our back office going so smoothly that we frequently seem to take her for granted. We do notice and we are grateful.

*There are seven sins in the world:
wealth without work,
pleasure without conscience,
knowledge without character,
commerce without morality,
science without humanity,
worship without sacrifice, and
politics without principle.*

Mahatma Gandhi

e-counsel

Legal and strategic advice for e-business

January’s Potpourri of Important Developments:

Gutnick v Dow Jones– The High Court of Australia held that if you post defamatory words on an American website and those words are read in Australia, the Australian victim can sue in his own jurisdiction and need not go to the United States. Although not binding on us, the decision will be given considerable respect by Canadian courts. Moral: if you slander somebody on your website, don’t be surprised if you’re hauled into court on the other side of the world. Implication for Canadian lawyers: pay attention to worldwide legal development. See full decision at http://www.austlii.edu.au/au/cases/cth/high_ct/2002/56.html

Delrina Corp. v Triolet Systems Inc. (Leave to appeal denied by SCC.) When you ask a court to grant you a temporary injunction, you must promise to pay for the losses the other party will suffer if it turns out your case for an injunction was ill-founded. Here, the plaintiff had been granted a temporary injunction which prevented the defendant from entering the market with a strong software product, but at trial it turned out their case was not sustainable. The defendant proved it had suffered a loss of \$6,762,000 by virtue of being ordered not to sell, and the plaintiff had to come good for this. Moral of the story: if you intend to ask the court to stop somebody from doing something, better be pretty sure of your legal and factual foundation. The full text of the Ontario Court of Appeal decision can be seen at <http://www.ontariocourts.on.ca/decisions/2002/march/delrinaC30375.htm>

Big Brother– closer than you think? This stuff will scare you! Readers who have an uneasy feeling that our privacy and liberties are at risk would do well to review the comments of George Radwanski, Canada’s Federal Privacy Commissioner at <http://www.privcom.gc.ca/>, in particular the material on databases, surveillance and “Lawful Access”. Radwanski does for government intrusion what Auditor General Sheila Fraser does for the federal government’s spending habits. (Those wishing to read the Auditor General’s report on the federal government’s gun control spending, can find it at <http://www.oag-bvg.gc.ca/domino/reports.nsf/html/20021210ce.html>.)