

BOWLEY KERR COLLINS

BARRISTERS, SOLICITORS, PATENT AND TRADEMARK AGENTS

NEWSLETTER

Number 20

<http://www.lawteam.ca>

May 2003

Small Claims Court made easy-- With jurisdiction up to ten thousand dollars, Small Claims Court is a powerful tool for collecting debts, getting compensation for wrongs and obtaining the return of property. It is very much a "people's court" and if you do your homework, you can represent yourself splendidly. Obviously, the more you prepare, the more you'll shine.

So where do you begin? We have developed a comprehensive web page to guide you through preparing your case and to help you with the rules and the forms. You can find the web page at http://www.lawteam.ca/small_claims.htm.

A paranoid is someone who knows a little of what's going on. **William S. Burroughs**

Limitations periods-- Limitation periods are the time limits within which you must assert your right of action-- if you don't, you become "statute barred" and forever lose your right to seek relief. For instance, a claim on a debt must be brought within six years, unless it's a contract under seal, in which case you have twenty years.

In Ontario there are currently hundreds of periods running from a few days to twenty years, and even then the boundaries are pretty fuzzy. Even for lawyers, it all gets pretty baffling. Fortunately, beginning January 2004, Ontario's crazy-quilt of periods will give way to a basic two-year rule with very few exceptions.

While it is not likely, it is possible that the new rules may cut short the time you might otherwise have had to seek a remedy. We strongly recommend that clients with some outstanding claim speak to us to review the situation to ensure that a deadline is not missed. There is no second chance.

A detailed commentary on the new Act is posted on our web site at <http://www.lawteam.ca>.

"It takes less time to do a thing right, than it does to explain why you did it wrong."

Henry Wadsworth Longfellow

Freedom wins a round-- After a series of resounding defeats in the courts, the Federal Government has given up on its ill-advised effort to gut solicitor-client privilege and withdrawn the offending (and offensive) portions of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, which would have stripped Canadians of their traditional rights.

Hopefully Parliament will in future concentrate on fostering-- rather than narrowing-- our liberties.

A smooth sea never made a skilled mariner.
English proverb

Charles Carpenter (1925-2003) A generation of Ottawa lawyers learned the nuts and bolts of conveyancing from a gentle man who was always in the Registry Office at the right time and always took time to help a bewildered young lawyer or law student solve a conundrum. Although the bail-out was appreciated, the real value was in the practice tip and life lesson that went along with it. When Charles was recognized by the CCLA for fifty years of practice, there were few transactional lawyers in Ottawa who did not have fond memories.

But while everyone knew Charles to be a godly man, not all of us knew how far his faith took him. An ordained clergyman as well as a lawyer, Charles' heart was always in his beloved West Africa where he spent much of his time preaching the gospel-- in his unique London-accented French.

A life of kindness, caring and giving ended on Valentine's Day, 2003. We remember a friend, a colleague and a mentor.

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Mojisola Akpata, Barrister and Solicitor— Moji, who articulated with us during the 2002-2003 year, was called to the Bar of Ontario on April 25. Now Moji has been called to both the Bar of Ontario and the Bar of Nigeria (where lawyers wear the traditional wigs). Our fond and hearty congratulations.

Welcome on board, Christina Gagnon— Chrissy joined us just as we were putting the finishing touches on a comprehensive database-driven engine for trade-mark prosecution and stepped in as if it had been custom-made for her. Chris's attention to detail borders on the obsessive, which is precisely what you want in the trade-mark world.

"Can you patent my trade-mark?"— Canadians understand the importance of intellectual property law, but don't necessarily "get" the finer points!

IP law deals with the granting, preservation and limitation of monopolies to artists, inventors and other creators. These monopolies are necessary to reward the genius and the risk which are behind every successful endeavor, as well as to compensate for the hundreds of fruitless attempts which preceded the winner.

All of our lawyers are registered trade-mark agents and Philip Kerr is also a registered patent agent. We provide full services in all areas of IP law.

e-counsel

Legal and strategic advice for e-business

Is an Internet posting a "broadcast" for the purposes of the *Libel and Slander Act*? (and who cares?)

Superior Court of Justice Honourable Madam Justice Helen M. Pierce in ***Bahlheda v. Santa*** (April 2, 2003) found that it is and as a result, the notice and limitations provisions of the *Libel and Slander Act* are applicable. While the result is of interest to lawyers in general, every student of cyberlaw should follow the reasoning:

"The purpose of broadcasting definition is to single out information which is transmitted to mass audiences, where maximum harm to reputation can be done. Traditionally, this involved radio and television. In 1980, when the internet was in its infancy, and not widely available, the Act was amended to incorporate technology applicable to cable TV. The Legislature obviously sought to clarify the inclusion of cable television in the scope of the Act, recognizing the size of its audience."

The court must recognize and give effect to the purpose of the Act, including the mischief it seeks to ameliorate. In this Act, that harm is widespread damage to reputation when a mass audience receives defamatory material. That is the rationale for applying particular rules to broadcasting that do not apply to other forms of defamatory communication. It is the reason for the notice period, and the limitation found in sections 5 and 6.

*The internet, sometimes more than traditional broadcast media, reaches a mass audience. It uses the same infrastructure common to radio and television, as set out in the Act. I conclude therefore, that placing material on the internet, via a website, where it may be accessed by a large audience, constitutes broadcasting within the meaning of the *Libel and Slander Act*."*

What is important about Pierce, J's approach is that she doesn't lose sight of the forest for the trees. Although the expert witnesses invited her to focus on "push" technology versus "pull" technology, she refused to be dazzled by technospeak and asked, in effect, "What is really going on here, what does it look like, how did we deal with this kind of problem in a pre-internet world, and isn't this effectively the same thing?"

(Oh, yes, and who cares? Practically, this means that if you think you've been defamed on the internet in Ontario, you must serve notice within six weeks of the alleged defamation and sue within three months.)