

# BOWLEY KERR COLLINS

BARRISTERS, SOLICITORS, PATENT AND TRADEMARK AGENTS

## NEWSLETTER

Number 22

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January 2004

**Lien on me.....** There's a lot of confusion in popular language about certain more-or-less related legal concepts. Here are the straight goods:

A **lien** is a legal "hold" on property arising by operation of law, either by statute such as the *Construction Lien Act* or by some principle of equity. Liens generally arise because the claimant has performed work for the improvement or preservation of the property.

The lien claimant must take steps to make the property holder aware of his claim and to "perfect" the lien. This stops the property owner from disposing of the property until the court can sort out the rights of the parties and, if appropriate, order the sale or delivery of the property.

A **security interest** is very common and arises by virtue of contract. You borrow from the bank and post your home as security (a mortgage) or you pledge your furniture as security for the payment plan (a personal property security interest). A very old form of security interest is described in the *Pawnbrokers' Act*.

An **execution** (not in the criminal penalty sense of the word) is a court order to a sheriff or bailiff to go out and seize personal the property of the "judgment debtor" and sell it in order to pay for a court judgment which has been obtained after a lawsuit. You don't just get an execution because you want one—you have to go through the formality of a court case, and win it, before you can try to grab property and sell it.

**Distrain** is a special remedy available to commercial landlords. Provided that the landlord follows the letter of the law, and if the tenant is in arrears of rent, the landlord can seize and sell the goods of the tenant in an amount sufficient to pay the arrears.

**What's most important** is to get it right. Incorrect exercise of such a remedy, or unlawfully avoiding such a remedy, can have severe consequences. For instance, let's see what happens if a tenant tries to foil the landlord's exercise of distraint by way of a "midnight move". In the quaint and ancient words of the Commercial Tenancies Act, "*If a tenant so fraudulently removes, conveys away or carries off*

*the tenant's goods or chattels, or if any person wilfully and knowingly aids or assists the tenant in so doing, or in concealing them, every person so offending shall forfeit and pay to the landlord double the value of such goods or chattels...*" Ouch!

Ubi jus, ibi remedium. (Where there is a right, there is a remedy.) **Ancient legal maxim**

**Patents: you snooze, you lose.** Got a killer invention? Don't sit on it too long, and above all don't run around bragging about it. Here's the rule in simple form: in Canada, once the inventor "discloses" the invention to anyone (including a machine shop or a laboratory), he or she has one year to file a patent application. If not, the invention falls into public domain and is freely available to all.

Given that the filing process can be very time-consuming, we recommend to clients that they consult with us at the earliest possible moment.

Blessed are the peacemakers, for they will be called sons of God.

**Gospel of Matthew 5:9**

**Typo escapes unnoticed!!!** As far as we know, our September Newsletter was the first to get out with a typo. The writer missed it, "Eagle Eye" Karen missed it, and even our printer (a very fussy newspaper guy from way back) missed it. Astonishingly, not a single reader picked it up!

Want another chance? It's in the first half of the first column. Can you find it? Check page 2 of this edition for the answer.

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*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.*

**Martin Niemoller** (First cited in Newsletter 15, but worth repeating.)

**The typo?** “.. *designed to reign in the big banks...*”

**New faces** Welcome on board to Shaun Mousseau, hard-working patent agent trainee and Fay Johnson, a litigation clerk who brings experience, determination and efficiency to bear on the toughest file.

**Sure hate to see you go....** Terrie Watson, real estate clerk *extraordinaire* and all around great team player, has moved on to the Department of Justice. We all miss her, but wish her the best in her new tasks.

*e-counsel*

Legal and strategic advice for e-business

### The Day of the RFID's

Radio frequency identification devices (RFID's) are the smarter, more versatile and *much* more powerful successors to bar codes. Unlike bar codes, RFID's can be read from a distance and yield much more data. For example, your entire shopping cart can be priced without lifting a single item onto the counter and paid with your RFID-enabled cash chip in your purse, your key chain, or even embedded subcutaneously in your wrist or shoulder. You get speed and convenience, the store gets precise inventory control and (better still) exquisitely detailed customer profiles.

On the highway, RFID's allow motorists to whiz past toll gates at cruising speed, while in the factory RFID's permit assembly lines to achieve astounding levels of customization as well as efficiency and quality control. Farmers and ranchers use RFID's implanted in their animals for better control of feeding, milk and egg production, and of course to track a wayward beast. An RFID in Fido's ear not only serves to identify him if he gets lost, but provides a vet with a complete medical record anywhere in the world.

Anyone who has experienced the cold fear of having a toddler wander off, or an Alzheimer's patient disappear from a care facility will quickly appreciate the possibilities of RFID's as tiny, unobtrusive locator beacons. As the range and power increases, the usefulness of RFID's as tracking and monitoring devices will soon come to mean that no child or elderly person need ever be lost again.

The perceptive reader, however, is by now asking, "Who's regulating this stuff? Who's to make sure there are no abuses?" Unfortunately, the current answer is, "Nobody." In fact, no one is really giving it much thought at all.

To what extent should we inventory and track human beings like car parts, spaghetti or cows? If we tag little kids, when do we un-tag them, or is it a lifetime thing? When do you tag Grandma? Which, if any, criminals? How about habitual criminals, child molesters, or repeat shoplifters? Should we tag street kids or Immigrants? You and me?

The technology has arrived. Public policy hasn't.