

# BOWLEY KERR COLLINS

BARRISTERS, SOLICITORS, PATENT AND TRADEMARK AGENTS

## NEWSLETTER

Number 23

<http://www.lawteam.ca>

May 2004

***A lesson in legal drafting***— Many people think wordiness is a necessary legal skill. Think again.

Some years ago an Ottawa judge spoke informally to a group of lawyers who regularly appeared before him. "Listen, you guys, do the math," he began, "On a given day I'll hear ten or twelve motions, maybe more. So, the night before I take home and read twenty to thirty written submissions. If I spend two hours in total on my 'homework', or a hundred and twenty minutes, you each get four to six minutes. So, write as much as you like, but if you haven't made your point in that time, it won't be read at all. If it's disorganized baffle-gab, I won't even go for that long!"

'Nuff said, and probably a useful lesson for non-lawyers, too.

***The probability that we may fail in the struggle ought not to deter us from the support of a cause we believe to be just.***

Abraham Lincoln

***Liquidate and skip town***— whether in greed or desperation, the temptation to unload everything for quick cash and skip out on the creditors has proved too much for too many. In fact, there was a time when some crooks moved from town to town, filling warehouses on credit just long enough to turn it into cash, slipping out of town just ahead of the lynch mob.

The ***Bulk Sales Act*** was drafted with just such a mischief in mind. It works because it shifts the burden to the bulk buyer (remember, the seller is a crook) and provides that where the buyer takes possession of the stock in bulk without the consent of the creditors, he is personally liable to account to them for the value of stock received. Thus, even though he may have snapped everything in the store for five grand, he will still have to cough up the actual value of fifty thousand dollars to the creditors if he hasn't satisfied the ***Act's*** safeguards.

The moral of the story, of course, is that if you are buying stock in bulk out of the usual course of business or trade of the seller, insist on compliance with the ***Act***.

***The winds and the waves are always on the side of the ablest navigators.***

Edward Gibbons

***Typos, typos....*** Well, now we know that readers are paying close attention. The September 2003 Newsletter had a typo and nobody noticed. So, we wrote it up in the January 2004 edition which in turn had several words out of order. We got a torrent of response!

Now, the question is, was that another typo or were we just testing? In either case, should we feel sheepish? Well, ewe be the judge.

***Puny judges?*** In traditional legal parlance, all judges of the court other than the Chief Justice are known as *puisne* (from the French "born later"). Traditionally, the word is pronounced "puny".

It is not a recommended form of address in the courtroom, and the expression seems to be falling out of favor— one can almost imagine why. Many younger lawyers probably don't even know it exists.

***Miracles on a shoestring***— Jericho Road Homes provide hope and home to men struggling with hopelessness and addictions. Donations of food, furniture, office supplies or just about anything can multiply this good work. Call Ray Desmarais at 567-5134.

***Heather Spurrell*** of the Bar of Newfoundland and Labrador and soon-to-be member of the Law Society of Upper Canada, is a much-appreciated addition to our firm.

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*Love is patient, love is kind. It does not envy, it does not boast, it is not proud. It is not rude, it is not self-seeking, it is not easily angered, it keeps no record of wrongs. Love does not delight in evil but rejoices with the truth. It always protects, always trusts, always hopes, always perseveres.*

*I Corinthians 13:4-7*

**e-mail addresses**— we are trying to update our records to include your e-mail address(es). If you would like us to do so, simply send a brief note to [info@e-counsel.ca](mailto:info@e-counsel.ca) and we will take care of it.

**Welcome**, Dale Scaiano who assists in trademarks and general administration and Nancy Gilman who assists with the books and administration.

**David Farrell**— pioneer of restorative justice, a founder of Prisons Ministries, Canada, always touching lives in practical and uplifting ways, he lived to help others. When he was told he had only months to live he asked not for healing but for peace. Characteristically, David spent his last days encouraging, comforting and blessing those of us who had to stay behind.

## *e-counsel*

### Legal and strategic advice for e-business

#### Open Source— Part I

**Not so long ago** open source was considered “freebie”, second-class, geek stuff. Today governments, banks, universities and major corporations just can’t get enough of it. It has grabbed huge market share in the back-office, is coming on strong in specific applications, including point-of-sale and hand-held technology, and desktop applications such as Open Office are going head-to-head with Microsoft. Open source software just keeps getting better and better and its “free”. Often (but not always) it will work happily on lower-powered machines, meaning that you might be able to delay replacement of your existing hardware for several years.

But nothing is ever quite as simple as it looks. Someone has said, “Open source is free like a puppy is free.” There are a few things to keep in mind before you convert your business to open source:

- carefully estimate the cost of conversion. Don’t overlook the intangibles such as staff resistance or the absence of printer drivers.
- tech support is a little different. Sometimes you can get bags of help from discussion groups, sometimes you will have to buy it. Get a grip on this before you convert.
- open source licensing is different. Generally speaking, it says “Freely ye have received, freely ye shall give.” It tends to be philosophically very hard over against proprietary rights. This is not a big deal if you are only a user, but if you plan to incorporate open source into your proprietary software, think again. Open source licenses can produce “infection” of anything into which the open source is incorporated, so that even a snippet of open source code copied into your million-line, million-dollar software may turn it into “freeware”. Ouch!
- if you have a careful IT security program built on the Wintel/Norton model, you need to work this into your calculations.
- frequently the best conversion model is a gradual one. Try one of the hundreds of superb stand-alone open-source applications which will run as easily on Windows or Mac as they run on Linux. Then try another, and another. By the time you load Linux on your desktop you’ll barely notice it.
- in the same vein, if you started by running one or more Linux servers while keeping your desktops Microsoft, you’d be in the company of many Fortune 500 companies.

A future article will deal with the business and regulatory side of the open source world. Is there money to be made in such a world? You bet there is! Is the law well settled? Not by a long shot. Stay tuned!