

# BOWLEY KERR COLLINS

BARRISTERS, SOLICITORS, PATENT AND TRADEMARK AGENTS

## NEWSLETTER

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September 2004

Time is the coin of your life. It is the only coin you have, and only you can determine how it will be spent. Be careful lest you let other people spend it for you.

Carl Sandburg

### ***Interpleader: a story of Tweedledum and Tweedledee***

A couple of years ago, Tweedledee asked you to store his antique Rolls Royce for a few months. Now it's sitting in your garage taking up space and you want Tweedledee to get it off your hands. But Tweedledum's lawyer has written one of those pompous letters claiming that the Rolls now belongs to his client, and if you give it to Tweedledee you will be sued. While you're pondering this, Tweedledee's lawyer writes you an equally high-toned letter, demanding that you "forthwith deliver up the said vehicle." You're damned if you do, damned if you don't.

So what now? You *interplead*, that is, you effectively turn the problem over to the court. The court, of course, will call in Tweedledee and Tweedledum and ask them to explain who should have the Rolls, but at least it's now their problem, not yours!

***Condominiums— what are they?*** Many people think "condo" is just another word for a townhouse. While it is true that many condominiums *are* townhouses, they can also be high rise apartments or retail stores... the possibilities are endless. It is not the physical attributes, but the legal features which define a condominium.

Properly speaking, the condominium is nothing but a corporation, and the corporation owns a building. Each unit owner has a share of the corporation, together with the exclusive right to occupy a specific unit. The actual building (including most or all of the heating, plumbing and electrical) is common area and belongs to the corporation. As unit owner, you own the air inside your unit!

In practical terms, this means that property maintenance is the responsibility of the corporation. This is achieved by collecting monthly fees from the owners to look after such things as lawn care, snow removal and building repairs. Part of the fees are set aside in a *reserve fund*

which is similar to a savings account to build up money for major expenses such as replacing the roof or re-paving the parking lots.

Management of the condominium's business is the responsibility of the board of directors and day-to-day matters are typically delegated to a management company. The board is ultimately answerable to the "shareholders", namely the unit owners.

***A lawyer and a doctor collided*** on a country road. The kindly lawyer offered the shaken doctor a good stiff drink from his pocket flask. After the doctor had drunk deeply, he handed the flask back to the lawyer, asking "Aren't you going to have a drink, too?" "Of course" responded the lawyer, "after the police have left."

There may be times when we are powerless to prevent injustice, but there must never be a time when we fail to protest.

Elie Wiesel

***Substitute Decisions***— What happens if you lose your mental capacity to look after your financial affairs or your health care decisions? It depends.

If you had the foresight to look after these matters while you still had full capacity, you would have prepared a Continuing Power of Attorney for Property and one for Personal Care. In this situation, the person who you appointed will take legal control of your property and will make health care decisions on your behalf. However, if you never got around to it, all is not lost— somebody can make an application to the Superior Court for an order appointing them as guardian of property or guardian of the person. Finally, if no one wants to step in on your behalf, the Public Guardian and Trustee will do so.

Why is it better to look after this in advance? First, having a lawyer draft your Powers of Attorney is significantly less costly than having him go to court to have someone appointed. Second, the ongoing cost of administration is generally significantly less when handled under Power of Attorney as opposed to court appointment. Third (and most important), you get to choose who will look after you and your property, and under what terms.

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**Group Rates**— We are always receptive to groups of ten or more who wish to qualify for a discounted rate on wills and powers of attorney.

**Full website back online**— After some experimentation over the last few months, an improved version of our full-service website is back up. Check it out!

**Welcome, Christina Dow** as litigation assistant. Christina takes over from Fay Johnson who now counts Victoria, BC as home.

**Congratulations, Heather Spurrell** for having successfully completed the interprovincial transfer process. Heather is now a member of the Law Society of Upper Canada and a very welcome addition to our general practice.

**Colleen O'Driscoll** has always been known as one of Ottawa's foremost title search experts. That expertise, plus a "can do" approach to conveyancing, means superior service even on the toughest transaction.

### e-counsel

#### Legal and strategic advice for e-business

**Keeping up with Moore's Law— or not...**

Intel Corporation founder Gordon Moore observed that processing power doubles every eighteen months while costs remain constant. In other words, in eighteen months from now you will get twice today's computing power for the same money.

But this kind of exponential growth is not limited to information technology. It pervades nearly every area of human endeavor. Each day brings news of breathtaking advances in medicine, communications, transportation, entertainment and warfare (if this can be called an advance). We have become accustomed to change. We acquire more power over our lives, and over life itself. But with great power comes great risk. We can change our world for the better, we can also change it for the worse. Since the impact of change can be huge and irreversible, we need to be wise in our choices.

While the technological revolution of our parents and of our grandparents shrank our world into a global village, it did so at a pace with which law and policy could keep up. No longer. Today's technological revolution is like a runaway train in which some of the policy makers are in the club car with the shades drawn, playing poker with special interest groups, while the rest are in the sleeper car. In the US, Congress is obsessed with grinding out silly laws with silly names in response to the demands of Hollywood, the recording industry and the security establishment. In Canada, Parliament seems unaware that the '70's are over.

If there is any encouraging news it is that the courts are generally showing real creativity in adopting the common law to the new world which technology is creating. The Supreme Court of Canada has recently released several judgments which demonstrate how to bring principle and common sense to bear on some of these important issues. In the US, the Federal Courts in particular have shown themselves adept at making sense of the new world order.

But the courts are limited to the narrow factual situations which find their ways in front of them. With large and general questions such as human cloning, 7/24 electronic surveillance (of you, not some ragged stranger), organ regeneration, human-computer interface (eg. a wireless chip in your brain) and designer babies, the legislature is the proper forum to debate and resolve such issues. Looking after your friends or taking a nap waiting for public opinion to gel is not the kind of leadership we need.