

BOWLEY KERR COLLINS

BARRISTERS, SOLICITORS, PATENT AND TRADEMARK AGENTS

NEWSLETTER

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Men occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing happened. *Winston Churchill*

Time to get tough? It is often said that Canada's justice system is toothless and ineffectual and that we should copy the tough, no-nonsense approach of our southern neighbors. Well, exactly what does that look like?

US Justice Department stats disclose that 701 Americans per 100,000 are currently in prison and that during his lifetime, one American in 37 will be incarcerated. Obviously, those are vastly higher numbers than those of Canada. In fact, they are higher even than those of Russia and China, other well-known "no-nonsense" regimes.

On the bright side, however, it would keep lawyers busy!

A well-prepared witness— we like to get our witnesses prepared for being examined, stressing the importance of listening carefully and answering the question exactly—no more, no less. Recently, one witness took us so seriously that the following exchange appeared on the record:

Examiner: And did you meet him?

Witness: Yes.

Examiner: And what was his name?

Witness: Smith

Examiner: And did Smith have a first name?

Witness: Yes.

If anyone has material possessions and sees his brother in need but has no pity on him, how can the love of God be in him?

1 John 3:17

The insurance ombudsman is a free service to help resolve disputes if you aren't satisfied with your insurance company's proposed settlement. Check it out online at <http://www.gio-scad.org/>.

BKC welcomes Robert Nadeau— Robert brings 25 years combined legal, government and business experience. He has served as Corporate and General Counsel to two Fortune 500 global information technology companies and has consulted in governance, accountability, performance and risk management, as well as public sector procurement. As chair of the International Trade Committee of ITAC, he was one of the IT Sector's lead NAFTA negotiators, focusing on market access, rules of origin and customs procedures.

In addition to his responsibilities in IP, IT and business law, Robert will be applying his experience in conflict management, dispute resolution and negotiations and will lead BKC's Business Consultancy Practice. Robert also expands our capacity to serve clients in either official language.

During times of universal deceit, telling the truth becomes a revolutionary act. *George Orwell*

If it doesn't walk like a duck....(The perils of non-standard real estate title)- 2004 saw an increase in efforts to end-run some of the consumer protections which have been developed for home buyers. Various devices are used to avoid giving the benefit of the Ontario New Home Warranty Plan, the Condominium Act, the Planning Act and other measures which are intended to protect the huge investment which you make when you purchase a home. Sometimes the developer is innocently trying to help you buy a home at a lower price, but all too frequently the intent is to dodge the costs associated with coming up to standards which have been developed through painful experience. The buyer often ends up with substandard construction, an ugly land title, a costly mortgage, and higher legal costs. Some bargain!

If you are thinking of buying and the deal is not a straight-up single family dwelling or condominium purchase, please speak to us *before* you sign.

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Watch for our improved website— Sometime very soon we expect to roll out a significantly improved website. A more modern look and feel will combine with a much richer content and portals for clients to interact with us. Your comments and suggestions will be greatly appreciated.

Claude Yenge-Musiteke— You know the day is nearly over when Claude shows up with his cheerful manner to

tidy up the office. Claude, who holds a PhD from the University of Kaiserslautern and speaks a handful of languages including English, French and German, is an Accredited Architect and is holding down a maintenance job until he finds work in his chosen calling. "This is the job God has given me for now, and I will do it well", Claude says to anyone who asks why he is so cheerful. We would be delighted to pass along information from anyone who knows of a position in architecture or engineering which would suit Claude.

e-counsel

Legal and strategic advice for e-business

Classical VoIP...

Heraclitus, the 6th Century B.C. philosopher from Ephesus, would have been quite at home in the 21st Century world of Voice over IP (VoIP), encryption, digital signatures and all the other trappings of e-commerce, cyberspace and world wide web. After all, it is to him that we can attribute the popular modern world aphorism that "the only constant in the world is change".

In our relentless march toward the virtual, wireless cosmos of instantaneous communications and global transactions, Heraclitus would have reminded us, in his customary acerbic style, that while the whole world is in flux, the more things change the more they stay the same - whether that be a river, a mountain, or voice communications.

VoIP is only the latest installment. For most household users and subscribers, VoIP is "cool" because it saves costs by virtually dissolving the distinction between local and long distance calling. But VoIP is a lot more than that. It can offer consumers and businesses their choice of "phone number" in selected area code and city (depending on availability), portability of their number to anywhere they can connect to the internet, on-line document sharing, audio-visual conferencing, and unified messaging.

But is it an internet-based service, or a local telephone service? Ought VoIP to be regulated like a local telephone service whenever a VoIP service touches or connects to traditional telephone networks, or ought it to remain open and largely unregulated like the Internet, governed by market forces, user choice and competition?

That is the question currently facing the CRTC. And a great deal rides on the outcome. The CRTC is well aware that an out-dated regulatory strategy of prescriptive rules designed in the era of rotary dialing will harm investment, innovation and competition in Canada, will limit consumer choice, drive up costs, and risk Canada's status as a world leader in broadband service. The betting is that the CRTC will in the end adopt a "light-handed" approach to regulating VoIP when it issues its regulatory framework in early 2005, focusing instead on management of the 911 system, security and privacy safeguards, leaving the rest to work itself out in the market place of healthy competition, innovation and choice.