

# BOWLEY • CUFFARI NEWSLETTER

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**It Happened in Ottawa** At 80, the accused was the dean of Ottawa's vagrants and quite aware that November was the time to seek winter accommodation. A brick through a jeweler's window got the process going.

A quick guilty plea, then the criminal record was produced, thick and impressive. After a whispered conference at the prisoners' dock, defence counsel advised the court that while his client couldn't read, he thought the record looked about right and would be admitted. While this type of offense, with such a record, would normally merit a couple of months, counsel had instructions to request a sentence of five months in custody. The court was happy to help!

**Occupiers' Liability** With winter near, slip and fall cases can't be far behind. Remember that as owner or tenant you could find yourself on the receiving end of a lawsuit if someone falls on your premises. "Premises" includes stairs, sidewalks, driveways and parking lots. The courts have little sympathy for good intentions that aren't translated into the prevention of dangerous conditions. Icy steps, wet floors, broken concrete, dark hallways-- all are disasters waiting to happen. Prudence, prevention and insurance are all in order.

And if you're the victim? After medical attention, report the fall and speak to your lawyer immediately. Important notice periods and critical evidence can evaporate in a flash, leaving you with serious injuries but a weak case, or worse, no recourse whatsoever.

**Book Review** Stephen Covey's *The 7 Habits of Highly Effective People* is a must read. Unlike most such books, this is not about recipes and quick fixes. It argues that a quick fix is no fix at all. Covey says that it's what we are, not what we do, that makes us effective. Very inspirational and practical.

**Settlement on behalf of client** Did you know that if your lawyer settles a case on your behalf, you're bound by it? Cases such as *Belanger v Southwestern Insulation* hold that if the parties are of full age and capacity, the court will not upset a settlement reached by the lawyers. Be sure you understand all the implications of a settlement. Like a feather in the wind, you can't call it back.

**Guarantees and Sureties** "Co-signing" for a child, a spouse, a friend or a company-- what are the implications? In a word, they're virtually the same as if you were primary debtor. Lenders wisely try to get the maximum security for a loan. If they can get a guarantee in addition to everything else, why not? Because the bank fears that the borrower won't pay back, it prefers that you take its risk. You may end up paying some or all of the debt. "Co-sign" only if you're willing and able to pay. Don't be afraid to shop around, to negotiate terms, or to limit the guarantee, e.g. "I'll guarantee only \$2000.00." And don't be afraid of simply refusing to be a guarantor.

**Web Page???** Confirmed Luddites, we haven't yet put the firm on the Net. If we were convinced that having a web page and e-mail address would provide more convenience or service to our clients, we'd become B-C.com in a flash, but the jury's out. What are your ideas?

**Third Newsletter** Thanks to the Feeleys at Eastern Ontario Graphics for great printing, our kids for stuffing envelopes and our clients for their ideas.

*Things which matter most must never be at the mercy of things which matter least.*

Goethe

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**Financial hardship** Like everyone, we have to make a living, but we recognize that our clients can run into hard times. We've been known to take payments over time, cut our fees and occasionally waive them altogether. If things are pretty ghastly, tell us in advance so that we can work things out.

**Avoiding trouble** is always easier than getting out of trouble. This is especially true in the business realm. The prudent entrepreneur is going to seek legal and accounting expertise *before* setting out and *before* any significant change in the business.

The structure of the business will have profound tax implications. Unless one expects to make so much money that a fifty percent tax bite is of no consequence, one needs to consider the "who's", "how's" and "when's" so as to minimize tax at all stages.

Judgment proofing, like water proofing, has to be done before the event. If the business begins to fail and the creditors are at the door, it's too late to put the house in the name of the other spouse, too late to pay the kids for all their work and too late to see that family members who invested in the business were given security over assets.

Serving as a director of a company may seem a great honor, but carries with it *personal* liability for wages, vacation pay, withholding taxes, environmental and other claims. Don't sleepwalk into this one.

Estate planning must also be done at the earliest possible stage. It comes as a great shock when one tries to pass the family business on to the next generation, either *inter vivos* or on death, only to find the tax burden so heavy that the business must be broken up or sold to outsiders in order to find the cash to pay the tax. A properly planned estate freeze and careful use of insurance can avoid this disaster.

**Better service** It's in our best interest to provide better service. It's also a lot more fun. We count on you to tell us where we can improve, if our pricing is in line, what we can do to make things more understandable, to make technology suggestions, and

even ask why we need four copies of documents. (You know lawyers-- why settle for one paper when four will do?) We need and appreciate your feedback. Even if it stings occasionally, we can't continue to improve without your help.

**Powers of Attorney** Incapacity is much more probable than most of us realize. An aging population, Alzheimer's and similar conditions are leaving more and more people unable to care for themselves or their financial affairs. Your choices are either to write *your* plan in advance or leave it up to someone else to figure out.

A Continuing Power of Attorney for Property is your legal plan by which someone you trust will handle your finances according to your wishes.

A Power of Attorney for Personal Care deals with your wishes for personal care should you be unable to communicate. You may determine the style of daily care, the kind of treatment or medication you might or might not want, whether or not you would want continued life support and under what conditions. The true significance of this Power of Attorney is that the moral responsibility for these difficult decisions is taken by the person who really should take it.

**November--Wills Month** For standard wills and powers of attorney we generally charge \$200.00 for an individual and \$300.00 for a couple, plus disbursements and GST. For this November only our fees will be \$150.00 and \$225.00 respectively, provided this newsletter is mentioned. Also remember that we have special rates for groups.

*Love has good manners and does not pursue selfish advantage. It is not touchy. It does not keep account of evil or gloat over the wickedness of other people. On the contrary, it is glad with all good men when truth prevails. Love knows no limit to its endurance, no end to its trust, no fading of its hope; it can outlast anything. It is, in fact, the one thing that still stands when all else has fallen..*

*1 Corinthians 13:4-8*