

# BOWLEY • CUFFARI NEWSLETTER

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**More on Asset Protection** It may be true that the economy has come back, but not for everyone. There are some big winners, but there are some big losers. It's a rocky road. "Here today, gone tomorrow" could be any of us.

A serious business upset or insufficient insurance coverage are only two of the bullets that could take you out in an instant. It's therefore more essential than ever to protect yourself against a sudden attack on your assets.

*... we continue to see good people lose everything ...*

Although we've previously outlined the concepts of creditor-proofing, there is a real need to repeat it because we continue to see good people lose everything, including savings and pensions. Having worked hard and honestly all their lives, at middle age or more, it's pretty tough to begin again!

Asset protection, or creditor-proofing, can't be done after the fact. The law is clear that when you or your business are in financial trouble, any attempt to protect assets is probably fraudulent and certainly reviewable. The time to protect assets is now, far before even remote signs of economic trouble.

We urge clients to do a complete analysis. If you have any doubt whether assets are beyond the reach of aggressive creditors in the event of disaster, a professional audit should be performed and recommendations followed. A few hours and a few dollars today can literally save a fortune tomorrow.

**The Truth, the Whole Truth...** How does the court get at the truth in the tangle of all the conflicting evidence? There's no magic, but there are common-sense tests for credibility. Cross examination will test both the accuracy of the witness's observation

and his or her ability to recollect. A witness will be measured for internal consistency, consistency with the evidence of other witnesses, consistency with common experience, and against the cost of truthfulness.

## **"Year 2000"-- the Legal Aspect**

Luddites perhaps, but we know trouble when we see it. Everyone's read about the "Y2K bug" but very few are considering the legal fallout that will follow. Businesses **must** understand that if they "crash" on January 1, 2000, leaving clients or customers in the lurch, and if reasonable steps could have been taken to avoid this, they will almost certainly be liable for any foreseeable damages.

As well as a full review of all systems, we also recommend that all contracts be reviewed in light of impossibility of performance, both your own and third parties. You should immediately make a careful analysis of all policies, procedures and agreements and arrange to have us review anything that is at all doubtful.

*Technically ready, legally exposed?*

**Small Claims Court** Remember that this court is available for claims up to \$6000.00 and that it is a layperson's court. Costs are low and procedure is straightforward. Small Claims is ideal for small business collections work and the enforcement of claims under warranty and insurance contracts.

*"The measure of success is not whether you have a tough problem to deal with, but whether it's the same problem you had last year."*

*John Foster Dulles*

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## ***"Prejudice Revisited"***

### ***-- a True Story***

There was a time when people had memory and machines didn't. If you had to amend a document, you did it the hard way-- cut, paste and white-out.

In a certain office, long past midnight, twenty lawyers toiled over hundreds of pages of contract, preparing for a team of Montreal lawyers who were coming in by overnight train. To their sudden horror, they realized that section four had to be deleted. But, because it referenced nearly all the other paragraphs, this would mean re-typing the entire agreement. At 3:00 a.m., there just wasn't time! The situation was desperate!

Just in the nick of time, a junior had a flash of brilliance: "Make a filler! Draft a dummy paragraph with meaningless references." Assigned to draft the innocent deception, he crafted twelve perfect cut-and-paste lines, making all the right references but with wording so innocuous as to have no legal effect. Plastered with obscure terms and Latin phrases, it looked most imposing and was given the title "Prejudice Revisited". It was simply brilliant.

At 8:30 a.m. sharp the Montreal team arrived. Documents covered the boardroom table, six inches deep. Sober men in pinstripes scrutinized every line. The home team held its collective breath. All was silent.

Nods and smiles! Out came the pens and everything was signed. And then the whole thing was forgotten.

Forgotten, that is, until renewal time. By then, primitive word processors were on the scene and changes were a snap. The home team could let their colleagues in on the whole innocent ruse. "Now!" they laughed, "we'll just delete the dummy paragraph!"

"Not so fast!", came the response. Lawyers to the core, they could smell a rat! Maybe they didn't get it, but they'd take no chances! And to this day the contract still contains "Prejudice Revisited."

***Foreign Divorces*** Just back from Vegas, divorce papers in your pocket, ready to tie a new knot? Not so fast! Divorced years ago in the "Old Country"? Probably safe. What's the difference? In simple terms, the more that the applicable foreign law is like Canadian law, the more likely it will be recognized. Las Vegas, for instance, falls short of the Canadian one-year residence requirement. If in doubt, consult.

## ***What If You Can't Tell Them to Turn Off The Radio?***

A Power of Attorney for Personal Care is vital. You appoint someone you love and trust to make medical and personal decisions for you in the event you become unable to think or speak for yourself. But it can't cover every detail.

Imagine your intellect and feelings remaining

*Would Brahms drive you up the wall?  
How about sardines and horseradish once  
a week? Do you want to be pampered or  
warehoused?*

relatively active, but trapped inside a body that can't communicate. With this picture in mind, spend time with your attorney explaining your likes and dislikes. Write them out-- music, colors, food and drink, movies, books... Don't leave it to chance-- it's not fair for your attorney and not wise for you!

*"In ordinary life we hardly realize that we receive a great deal more than we give, and that it is only with gratitude that life becomes rich. It is very easy to overestimate the importance of our own achievements in comparison with what we owe others."*

*Dietrich Bonhoeffer*

Thanks to Rhonda for many excellent suggestions for this Newsletter!