

# BOWLEY LEGAL NEWSLETTER

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**Legal Parrots**– Aunt Matilda walked into the pet store, having decided that a parrot would make a fine companion. The nice young man behind the counter showed her three lovely specimens, but warned her they were very costly.

The first bird cost \$5000.00 but could recite the Income Tax Act word for word, forwards and backwards. Needless to say, Aunt Matilda was impressed. Then she turned to the next fellow. After hearing him give the ratio for every Court of Appeal decision since the Charter, she was not surprised to hear that his price was \$7500.00.

“The bird on the end,” said the clerk “will be \$25,000.00”. Nearly fainting, Aunt Matilda asked why this parrot should command such a price. “Exactly what can he do?”

“We’re not sure,” responded the clerk, “we’ve never actually seen him do anything. He just seems to sit there. But the others call him the Senior Partner.”

The minute a man is convinced that he is interesting, he isn't.

**Stephen Leacock**

**Buy a home, save \$2000**– For several years now, Ontario has had a program to rebate first-time purchasers of *new construction* up to \$2000.00 of the Land Transfer Tax. As you can imagine, and as with every other “win a prize” razzmatazz, there are catches and plenty of fine print. The key point is that the purchaser (and the purchaser’s spouse while he or she was the spouse) cannot have previously owned a home anywhere in the world.

Now the government has extended the break to all first-time buyers (with the same fine print), including buyers of resale housing. Sort of. While the proposal has not yet been proclaimed into law, the government has promised to rebate LTT on the same basis for every purchase where the agreement of purchase and sale was dated December 14, 2007 or later. In effect, this means that if you make your purchase before the promise becomes law, you file your claim and get paid when the law gets passed. Given that the current Ontario government is a solid majority, you can probably take that one to the bank before summer 2008.

From our perspective as lawyers, there will continue to be an important procedural difference until the proposal

becomes law. For first-time purchasers of new construction, we will handle the rebate for you at the time of closing and you will receive the benefit on the spot. However, for purchasers of resale housing, we will assist you with your claim and help you submit it, but you will have to pay the tax up front and wait several months for your rebate. For more detail, refer to our website.

That’s the good news. Now for the bad news. The City of Toronto has finally realized what a wonderful cash cow the Land Transfer Tax is for the province, and has decided to reach into taxpayers’ pockets in the same fashion. Now Toronto has its own Land Transfer Tax ranging from 0.5% to 2.0% of the purchase price. You do the math, then ask yourself how long you think it will be before certain other deficit-running municipalities develop a taste for a “Welcome to Ottawa” tax. Moral of the story: if you, or any of your family, have never purchased a home, now might just be a really good time to get into the action.

**Lapse of a Gift**– Most of us, especially of a certain age, suffer from lapse of memory- but lapse of a gift?

The legal doctrine of lapse deals with a gift in a will to a beneficiary who dies before the testator, without a “gift over”. The problem now is that there is property to be distributed, but no one to receive it. Normally, the lapsed gift will fall into the residue, unless a contrary intention appears. If there is no residuary provision, or the gift itself is the residue, the lapsed gift will pass as on an intestacy.

A fanatic is one who can't change his mind and won't change the subject. **Winston Churchill**

**GST and Real Estate**– There is a common misconception that the sale of land or buildings is not subject to the Goods and Services Tax. It is. However, since there is such a significant exception for “used residential complexes”, and since the vast majority of real estate transactions fall into this category (even a single family home qualifies as a “complex”), the erroneous notion has arisen that GST is not a relevant consideration.

There are three common situations where the purchaser and the vendor need to be particularly vigilant, namely new residential construction, substantial residential renovation and (especially) non-residential transactions. Why worry? Because if you are the vendor and you forget

to collect the tax (or to ensure an election is filed) you become personally responsible to pay it!

Many buyers get a rude surprise when they purchase new construction at just under \$450,000.00 and along the way order up a few upgrades to push the price over \$450,000.00. The effect is to produce some very nasty tax surprises on closing.

With respect to GST, the first thing to watch out for is whether it is included in or in addition to the purchase price. This is a matter for negotiation, of course, and both buyer and seller need to understand the complete impact on them of each.

The tax treatment of commercial properties is very complex and fraught with risk for the unwary. There is much more at stake than GST, although that is significant enough. We invariably urge clients to retain a good tax accountant to review each particular situation.

For a more comprehensive discussion, see our web site.

certain tax liabilities of the deceased partner.

A final order of divorce has the effect of revoking any gift in the will to the former spouse, but it must be a *final* order. Mere separation has no such effect, and it is not unknown for a common-law partner to be trumped by the deceased party's not-yet-divorced "ex" pursuant to an old and forgotten will.

With one exception, getting married has the immediate effect of revoking any existing will. The exception is for a will made in contemplation of that exact marriage. Otherwise, an individual who had a perfectly good will prior to marriage will find himself or herself intestate after the ceremony, often with very unhappy results.

(If you read the title of this article and started worrying about a *business* partner, you really *do* need to be talking to a lawyer– it's much more complicated!)

*Are you a matchmaker?*– Do you know a lawyer who should be part of our firm? Let us know.

Indifference, to me, is the epitome of evil. **Elie Wiesel**

***The Death of a Partner***– What happens when a spouse dies without a will? How about a common-law spouse? Does it make a difference if the couple is same-sex? The law is exceedingly complex and tricky, but there are a few important key principles everyone should know.

First, for all practical purposes it makes no difference whether the couple is same-sex or opposite-sex. Second, for Income Tax purposes (and only for Income Tax purposes) it matters not whether the couple is legally married or common-law. Third, married spouses have absolute property and support rights, but common-law partners do not–their rights of support are highly qualified and property rights are up to the courts. Fourth, marriage, separation and divorce will impact all of these rights in powerful but not always predictable ways.

With or without a will, for tax purposes the common-law spouse will be treated on death exactly as a married spouse. Thus, spousal rollovers for RSP's, corporate shares, land inventory and farm property will be available provided the situation otherwise qualifies. The flip side is that the common-law spouse can also be saddled with

## Precepts for a New Year

When you reap the harvest of your land, you shall not reap your field right up to its edge, neither shall you gather the gleanings after your harvest. And you shall not strip your vineyard bare, neither shall you gather the fallen grapes of your vineyard. You shall leave them for the poor and for the sojourner: I am the LORD your God.

Leviticus 19:9-10

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