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Can you trust an honest lawyer?— A certain lawyer was sitting by a river when a traveler approached and said, “I wish to cross. Will it be lawful to use this boat?”

“It will,” was the reply, “it is my boat.” The traveler thanked him, and pushing the boat into the water embarked and rowed away. But the boat sank and he was drowned.

“Heartless man!” said Indignant Spectator. “Why did you not tell him that your boat had a hole in it?”

“The matter of the boat's condition,” said the barrister, “was not brought into question.”

Advertising may be described as the science of arresting the human intelligence long enough to get money from it. **Stephen Leacock**

Gross rent, net rent... what do they mean? There are two ways of looking at rent in a commercial lease. Most leases set a base rate (the “net rent”) of so many dollars per square foot, but also require the tenant to carry a proportionate share of the landlord’s costs such as heating, maintenance, insurance and the like. This is called “additional rent” and is usually estimated monthly and adjusted annually. However, a few leases charge the tenant an all-inclusive amount, usually called “gross rent”.

The landlord prefers to have a “carefree” situation where all of his costs, including surprises, are covered, while the tenant prefers the predictability of the gross lease.

Directors’ continuing liabilities— Remember that in many cases your statutory liabilities as director can and will continue long after your active role in the corporation ceases, and even after the company ceases activity, unless you file notice of your resignation as director.

Is Ontario ready for e-Wills?— Generally, wills call for certain formalities. In Ontario, a will must be in writing, signed and attested by two witnesses. The exception is a holograph, which must be entirely in the testator’s own handwriting, and signed. But what about an electronic file, marked as a will, with or without an electronic signature?

The Quebec Superior Court considered just this question in *Rioux v. Coulombe* (1996), 19 E.T.R. (2d) 201. In that case, a diskette marked as a will, surrounded by other evidence supporting the deceased’s clear intention to

create a will, was submitted to probate. Quebec’s Civil Code allows for “substantial compliance”, which permitted the Court to make an exception. However, Ontario law is much stricter, requiring witnesses or actual handwriting, and *Rioux* would probably not fly here.

Notwithstanding our general support of e-commerce, we are not disappointed in this result. Given the increasing number of horror stories involving home-made wills (and even some sketchy wills drawn by jack-of-all-trade lawyers) we continue to urge clients to trust their testamentary affairs to those who actually know something about the subject matter.

Rules for Choosing an Executor— An ideal executor is:

1. sufficiently business savvy to administer the estate, or at least work with experts who can
2. familiar enough with the testator and his affairs to “read between the lines” of the will
3. not significantly older than the testator
4. geographically proximate

Rules for Choosing an Attorney— Generally speaking, an attorney under a Continuing Power of Attorney for Property should have the same qualities as an executor, and often is the same person. However, there is an important additional qualification for an attorney under Power of Attorney for Personal Care— and it is by far the most important. It is found in the answer to this question: “If I lost my ability to communicate with the world around me, yet remained aware of my surroundings, who would I want to have as my spokesperson?”

Let a fool hold his tongue and he will pass for a sage. **Publius Syrus**

Common shares, preference shares— what are they?

Common shares represent the equity or growth potential of a corporation. If the company grows, the common shares enjoy the benefit, but if the company does poorly, the common shareholders take the hit. Preference (or special) shares, on the other hand, get preferential treatment in dividends and on winding up, but once they get their preference, the common shareholders get what’s left. Many consider the preference share to be more in the nature of a debt instrument than a true share of the ownership of the company.

Spring Cleaning: the “Ounce of Prevention” Department

Blisters, aching muscles, the pride of a job well done— this is the time of year we bring order and beauty to our homes and gardens. Nothing is as gratifying as surveying the sweet fruit of our labors.

But this is also a good time to focus on some of the more important but less obvious issues in our lives. These are usually “out-of-sight-and-out-of-mind” matters where inattention can have serious, sometimes disastrous consequences. Mostly they aren’t very exciting, so we tend to procrastinate, and then we have a crisis.

So let’s check off a few of these areas and come up with a plan to get these in order, too. Here are some of the key ones (in no particular order of importance):

1. **Important records.** Inventory these so you know what you have (and what’s missing), then organize them all in a safe and accessible place. Make paper or scanned copies for off-site storage.
2. **Insurance.** Life, disability, home, auto, business— do you have enough? Too much? Do the policies tie in to your wealth and estate plans?
3. **Will and powers of attorney.** Do they make sense in your current circumstances? Are the executors and attorneys still the right ones for the job? Do they fully integrate with your wealth and estate plans?
4. **Mortgages, credit cards and other debt.** How much money are you handing over to the banks? Do you know if you’re getting the best rates and the best terms? Do you understand your pre-payment privileges and are you taking maximum advantage of them? Bear in mind that you need to earn about \$1.80 to get the same result as saving \$1.00 of after-tax savings.
5. **Tax planning.** How much money are you handing over to the government? The best time to look for ways to save on your taxes is on any day that ends with a “y”. The best time to start is immediately after filing last year’s tax return. It’s almost impossible not to find ways to save on tax, and that’s better than a pay raise because you get to keep all of it.
6. **A disaster plan.** Would your family react like a well-trained team if the smoke detector began to wail at 3:47AM? (Assuming you have smoke detectors with fresh batteries.) Are you ready for a three day power outage? Could you survive a month’s unemployment? Perhaps more than any other, forethought and preparedness in these areas can actually save your life!
7. **Your well-being.** Eating right? Time to quit smoking? Regular exercise? When’s the last time you had a full physical? Is it time to end some unhealthy relationships, and are you investing well in your good relationships?

You’ll find all kinds of good literature in the library and on the internet discussing these key issues, but most of it is common sense and hard work. The trick is getting started. Commit yourself to three or four hours before the week is out to get the process started. In that time, you won’t get all the details finished, but you will be well into the project with a working plan and a sense of purpose.

“If you don’t know where you’re going, you’ll end up somewhere else.”— Yogi Berra

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