

BOWLEY LEGAL NEWSLETTER

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Lawyers' Narrow Escape— Recently, a respected Canadian law firm was drawn into a bankruptcy-sized scam so slick it almost succeeded. There's a lesson in it for all of us. Here's how it went.

Contacted by an offshore consulting firm, they were asked to collect a very large sum from a recalcitrant account. Pleased to have this important new client, the lawyers fired off a tough demand letter. To their pleasant surprise, they got a phone call right away from the "bad guys" who were embarrassed by their oversight and promised to send a certified cheque by courier, payable to the law firm in trust. The new client couldn't have been happier and insisted that the lawyers take a very generous fee and courier a certified cheque for the balance. So far, so good.

Accounting wrote the cheque... but one of the lawyers had a bad feeling. It had been too easy and too good. Something wasn't quite right. Their bank was asked to contact the originating bank to verify the account. The hunch turned out to be a good one— there was no such account, the "certified cheque" was an exquisite forgery. The lawyers' trust cheque, of course, was as good as cash, and had been minutes away from being sent to the rogue. We can never be too cautious.

Only trust thyself, and another shall not
betray thee.

William Penn

Stare decisis— Pronounced "stah-ray dee-sigh-sis", this principle which is fundamental to the Common Law, holds that similar cases should be decided on consistent principled rules drawn from the body of previously decided cases. Similar fact situations should result in similar and predictable legal results.

With rare exception, courts consider themselves bound by the principles enunciated in cases of their own jurisdiction and strongly influenced by decisions of courts in sister jurisdictions— the more related, the more influential. Thus, Ontario courts will generally consider Ontario decisions as binding, other Common Law provincial decisions as extremely persuasive and decisions of the courts of England, Australia and New Zealand as highly relevant. In many areas of law, the decisions of US courts (particularly the Federal Courts) are also given great weight.

Duties of a Trustee— During our lifetime, many of us are asked to serve in the capacity of trustee. More often than not, this is in relation to estates, but occasionally as trustee of an *inter vivos* trust or as trustee holding land for an organization. Before we agree to serve, we should know what our duties will be.

In general terms, the trustee is said to have a duty which is "one of selfless service", the trustee being required to put the interests of the trust and the beneficiaries first in his thinking whenever he is exercising the powers or performing the duties of his office.

Many authors say that the trustee has three key duties, namely a duty to act personally, a duty not to profit personally, and a duty to act honestly and with the level of skill and prudence which would be expected of the reasonable man of business administering his or her own affairs.

Non-resident Issues— Although Income Tax rarely features in real estate transactions, when it does, it can be extremely significant. Failure to pay attention can be very painful.

The basic notion is this: so long as the non-resident owns property in Canada, the taxing authorities have a means of enforcing payment of any tax which is owed. If the non-resident sells his property and leaves the country with all of the proceeds, the government may never get paid, so the Income Tax Act provides that between 25% and 50% of the proceeds of sale (depending on the circumstances) has to stay in the country until all tax issues are sorted out.

The non-resident, of course, is not especially motivated to leave the money behind, so the Income Tax Act has a little twist— it shifts the burden to the purchaser. If the vendor fails to hold back the funds, the purchaser becomes fully liable. The very motivated purchaser will definitely ensure there is a proper holdback. Alternatively, the vendor and the CRA can sort out all their issues in advance and provide the purchaser with a copy of a Clearance Certificate evidencing that all sums have been paid.

He who gives when he is asked has waited
too long.

Seneca

Chris Becker joins Bowley Legal– We are pleased to welcome Chris following his call to the bar. Articling with the City of Ottawa, Chris gained valuable experience prosecuting Building Code, Fire Protection and various By-law offences. As well as his law degree, Chris also holds a degree in history and political science from McMaster and a master's degree in public administration from Brock.

We also welcome Kerry Bernard to the very important role of receptionist (aka “Ambassador to the World”). Kerry takes the place of Brooke Rabbie who has responded to an exceptional career opportunity with our blessing and best wishes.

A tip of the hat to Meghan Bowley who came in “for a week or two” to help clean up a few backlogs. This of course extended into the whole summer and we are now begging for every spare minute in her autumn university schedule. All our best, as well, to Norma

Murray who now performs for one of our clients the administrative magic she used to work for us.

Chrissy Gagnon, now a busy stay-at-home Mom, keeps her Time Matters certification up to date and still finds time to drop in to the office to tune up our systems.

Legal Resources on the Web– Everyone now has access to a decent law library– online! All provincial and federal statutes and regulations are there, as well as court rules, forms, tax circulars and bulletins, tribunal decisions– and much, much more. An easy way to start is by visiting the “Links” page on our website.

I expect to pass through life but once. If therefore, there be any kindness I can show, or any good thing I can do to any fellow being, let me do it now, and not defer or neglect it, as I shall not pass this way again.
William Penn

The ABC's (and D's) of Business Success

Want more profit and less grief? As a regular practice, analyze each of your customers, accounts and activities according to this chart:

| | High profit | Low profit |
|---------------|-------------|------------|
| Low overhead | A | B |
| High overhead | C | D |

Adore the “A’s” and ditch the “D’s”– that’s a no-brainer. But what about the “B’s” and the “C’s”?

Mr. C. may be a high profit customer, but he demands an inordinate amount of your resources, keeps you off-balance, forces you to run high lines of credit and keeps you and your staff frazzled. His demands force you to defer the satisfaction of other customers, who will of course drift away. Costly errors and insurance claims also tend to involve “C” customers.

Ms. B., on the other hand, contributes only modestly to revenue, but she’s easy to carry. She also tends to be a pleasure to serve and shows gratitude for good service. More importantly, with proper care and cultivation, “B” customers can grow into “A” customers, but “C” customers never do.

Twenty years from now you will be more disappointed by the things that you didn't do than by the ones you did do. - Mark Twain

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