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The Transit Strike— Why hasn't the Ontario government stepped in to end the Ottawa strike as they did in Toronto? Simply because they can't! Ottawa's buses cross over into Quebec. This makes OC Transpo an interprovincial transportation enterprise, thereby falling under federal jurisdiction. See the next paragraph.

The Elephant— Three students submitted their papers on the mighty pachyderm. The French student handed in "The Elephant and Gastronomy" while the American discussed the beast as a marketing tool. The Canadian? "The Elephant: Federal or Provincial Responsibility?"

Just because something doesn't do what you planned it to do doesn't mean it's useless.

Thomas Edison

"It's time to put a stop to judges making the law"— From time to time howls go up (from the left or the right, depending on whose ox just got gored) demanding that parliament curtail judges "making law". Apparently such critics prefer the European system where all lawmaking is up to the politicians and their bureaucrats. If you don't think that's scary, consider that in Europe you can't sell a carrot unless it is the prescribed size, color and shape.

The genius of the Common Law is that it is pragmatic and incremental. In every case before the court are real people with real problems. Sifting through the evidence, using time and battle tested procedure, the court sorts out the facts and applies the law, both statute and precedent. The court also knows that its ruling will be relied upon by succeeding courts as precedent. This responsibility for the future encourages wisdom and predictability. Under Civil Law, radically different results could come out of adjoining courtrooms hearing identical facts.

A safeguard is the appeal: if you really think the trial judge "blew it", you try to convince an appeal court that the judge misapplied rules of evidence, made unreasonable findings of fact, misapplied procedural rules or misapplied the law to the facts. While the appeal court is concerned about injustice in the court below, it also looks for consistent application of the law.

One of the criticisms leveled at all courts, and especially

appeal courts, is that they "legislate" by filling the gaps in legislation. Actually, judges are reluctant to interfere with legislation, but there are two common situations where they will wade in. Sometimes one statute clearly runs afoul of another, typically the "constitutional case". As well, where Parliament has clearly failed to step up to the plate concerning the issue before the court, the court will do the job which Parliament has feared or failed to do.

Very appealing— Some years ago, a particular judge in Ottawa was notorious for the frequency with which his decisions were appealed. On one occasion, the appellant's lawyer rose to his feet in the Court of Appeal and began, "My Lords, this is an appeal from the Honourable AB....."

"Yes," interrupted the Court, "and what is your second ground of appeal?"

The brain is a wonderful organ. It starts working the moment you get up in the morning, and does not stop until you get into the office. **Robert Frost**

The Silver Lining— Low business valuations and low interest rates present a rare opportunity for estate planning. Business owners who are contemplating retirement or business succession should consider an estate freeze, which, if properly structured, allows each shareholder to pull out \$750,000.00 of capital gains tax free. If the company's valuation occurs at a time of general lower economic activity (even if the company itself is in great shape), lower valuations become reasonable. The result is that most, if not all, of the value of the company can be taken out tax-free, or "frozen" to be taken out over time, while the new common shares (the future growth of the company) become highly affordable to the successors, both in absolute dollars and in the cost of interest. Business owners considering succession should be planning at least five years in advance.

Bilingual proceedings— For the lawyer, one unspoken bonus of conducting a bilingual trial is that you get to listen to each question, and each answer, twice. While something may be lost in running a blitzkrieg cross examination, much is gained in having more opportunity to reflect on what you're hearing.

Technology in the Law Office— When I was called to the Bar in 1981, “leading-edge technology” meant Dictaphones and Selectrics. The office was filled with the staccato of typing and the “ding!” of carriage returns. Carbon paper and white-out reigned and diehards clung to their rotary phones.

Some time around 1983 we bought a used mag-card machine, an IBM Selectric connected by an inch thick cord to a processor the size of a bar fridge. Mag cards contained about a page of text per card. No screens, just trial and error at the keyboard. And we had arrived.

Soon enough we moved to an AES word processor, seven inch floppies and a tiny green screen. The screeching printer lived under a plexiglass shroud.

The AES gave way to our first PC’s. Priced like small cars, we financed them over five years. Each came with a revolutionary amber screen and a 40Mb hard drive. Don’t laugh— the salesman tried to talk us out of such

extravagance, said that 20Mg was plenty.

Soon came Windows, colored screens, electronic bulletin boards, Gopher, Lotus 1-2-3, WordPerfect 5.1 and dBase. Ultra-cool!

A year or so later, a salesman showed up with a fax machine. We didn’t buy. Why be the only firm in town with one? That all changed in a single summer!

In many ways, not much new has showed up since, except that the technologies have matured and are more integrated. Today most law firms are “paper-less” and use virtual private networks for off-site work. Real estate and other registrations are done online, as is most legal research. Today, it’s not “cool”, it’s just normal.

What’s next? Expect to see further maturation of technology and behaviour, more functionality and less razzle-dazzle. Each new technology has a gee-whiz phase. As it ends, the true potential becomes apparent.

Taking Stock of Your Exposure

In days of financial uncertainty it is wise to take stock and ensure that risks are minimized. Here are a handful of issues to consider:

- are you a director of any corporation, even non-profit? Do you know your statutory liabilities? Are you fully involved in decision making which could affect these?
- have you *ever* been a director of a corporation? If so, are you sure that your resignation has been registered? If not, you are likely still on the hook.
- have you personally guaranteed any debt? If so, is the debt being properly serviced? Perhaps it has been paid down sufficiently to allow your guarantee to be released. If it has, and your current bank won’t let you off the hook, maybe another one will.
- if you have loaned money to a friend or corporation, is your loan secured?
- as between you and your spouse, who is at greater liability risk? Are most of the family assets in the name of the low-risk spouse?
- would debt-consolidation save you a pile of interest?

We particularly urge business persons to review our Corporate Clinic checklist. See it at <http://bowley.ca/Library/pdf/Corporate%20Checklist.pdf> or call us for a complimentary copy.

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