

BOWLEY LEGAL NEWSLETTER

Number 39

September 2009

Family Business Succession— It has been estimated that about 30% of all family businesses successfully transition to the second generation, and less than 10% of those make it to the third. The “partnership of siblings” can be pretty rocky, but the “consortium of cousins” can be nearly impossible to manage. One solution is to establish a trust to hold the shares of the business, with pragmatic and hard-nosed business types as trustees.

There are many issues to be considered, some of them “hard” and some of them “soft”. Clearly, finding enough cash for a good retirement is fundamental, but often less tangible matters such as keeping the family name above the door of the business are equally important. Minimizing tax should never be forgotten. Failure to plan can cost each shareholder up to three quarters of a million dollars in easily avoidable taxes!

The time to organize and effect a good transition from one generation to the next is while the first generation is still actively engaged and vigorous enough to make the tough decisions. Generally, that means at least a decade before retirement.

Family business succession is usually difficult to get started. Nobody wants to think about getting old. Nobody wants to deal with the fact that some of the kids are great candidates to take over while others have no interest, while yet others would be disasters. Or, perhaps the kids just can't get along.

However, a trusted team of a capable lawyer and accountant, often accompanied by a financial advisor, can move the family through the process in a sensitive yet pragmatic way. After all, Dad wants to retire someday, the business is going to be sold to somebody, so better it be done intelligently and for the maximum benefit of all.

The greatest pleasure I have known, is to do a good action by stealth, and to have it found out by accident.
Charles Lamb

Marriage Contracts: Are they worthwhile?— A Marriage Contract is an agreement between two people getting married or already married that sets out, during

their marriage, their rights and obligations should they separate. The contract permits a couple to agree in advance of a potential separation, on issues that are likely to arise in the event of a separation, such as matters of custody and access, financial support of a spouse and/or children, and property division. A Cohabitation Agreement is the same as a Marriage Contract except the parties are not presently married or intending to get married in the near future.

If a Marriage Contract is entered into, its terms may alter the laws governing married couples found in the Divorce Act, Family Law Act and at common law. For example, if a married couple do not intend at the time of separation to divide their property equally, it would be necessary for the couple to stipulate their intentions to the contrary.

When cohabiting partners are unmarried and they decide to separate, the assets existing at the time of separation are divided according to ownership in the absence of an agreement to the contrary. If cohabiting partners do not wish for their jointly owned assets to be divided equally (such as the jointly owned home where one spouse paid the down payment), a cohabitation agreement is essential.

To avoid a successful court attack in the future on the agreement (or part of it), the parties must make full financial disclosure prior to signing the agreement. Each party should retain a separate lawyer to advise and explain the terms of the agreement so that the nature or consequences of the domestic contract are understood. Further, the agreement must be entered into voluntarily, with the absence of undue influence or duress by a spouse or a third party. Finally, an agreement ought to be fair and equitable to both parties to limit the likelihood of the agreement being set aside.

The Home Renovation Tax Credit— In less than five months the \$1350 tax break will be history. Don't miss it! Take an hour or two this Saturday to set up a file and pull together all qualifying home reno receipts.

Judy Overgaard— Ms. Overgaard joins our firm after practicing family law, real estate and general litigation with Belleville powerhouse Baldwin Law. Judy's expertise in matrimonial litigation, pre-nuptial contracts and other family law issues brings welcome strength to the firm.

This newsletter is also provided to their clients with the compliments of

THOMAS & WINSHIP

HST (on your legal fees)– Currently, legal and other professional fees are exempt from Ontario Sales Tax (but not GST). Beginning July 1, 2010 apparently in an effort to make life simpler for the battered consumer, the Ontario government will “harmonize” the two taxes so that you will now pay provincial tax in addition to federal tax.

H1N1 and other disasters– proactive steps– Whether or not Ottawa is shut down by the Swine Flu, or for that matter, if our office building were lost to fire, we are (hopefully) more or less prepared to keep going. All of our staff and lawyers can work remotely through VPN, all data is scanned, backed up and removed off-site each night, and we think we have enough redundancy and multi-tasking built in that even in a worst-case scenario, we can hobble along and serve immediate client needs while a full restore takes place. A far cry from the Christmas Eve about fifteen years ago when a burglar stole our only computer and nearly put us out of business!

Small Claims Court \$25,000– Effective January 1, 2010 the Ontario Small Claims Court monetary jurisdiction will be increased to \$25,000.00. While the court remains very much a “people’s court” intended for self-representation, in many circumstances where larger amounts are involved you may be wise to seek professional assistance with respect to preparation of your claim or defence. Be sure to check out our guide to handling your claim at “Small Claims Court Assistance” on our website.

Paperless office– After the Pine Beetle, lawyers are probably the worst threat to Canada’s forests. Our little office is doing its best to reduce the paper burden by making and keeping as much of our documentation as possible in electronic format.

As part of the evolution from paper to electron, all old files are being scanned and destroyed. Consequently, if you believe our files contain any of your paper records or documents which you wish to maintain, please contact us immediately.

Your Credit Bureau Rights– Ontario’s Consumer Reporting Act provides that every consumer reporting agency shall, at the written request of a consumer and during normal business hours, clearly and accurately disclose to the consumer, without charge, the nature

and substance of all information in its files pertaining to the consumer, the sources of credit information, and any disclosures made to inquirers. The consumer has a right to protest the information contained in the file, and where a consumer disputes the accuracy or completeness of any item of information contained in the file, the agency must use its best endeavours within a reasonable time to confirm or complete the information and correct, supplement or delete the information “in accordance with good practice.”

Online scams– It seems that with every issue we preach and warn again about some new scam. Most recent are the “notification” and “empathy” phishing attacks. You may get an e-mail, perhaps from UPS or Purolator, confirming that your order has been shipped or that there has been some problem with your credit card. Or perhaps from somebody you think you remember from university: “Are you going to the reunion?”

They’ll do whatever it takes to get you to click on a file, go to a website, or respond in some fashion. Once you respond, a trojan is placed on your hard drive. Now your computer belongs to someone else for purposes you wouldn’t care to support.

Even if you don’t understand all this, you know it’s not good. The bottom line: any time you receive an e-mail from someone you don’t recognize, ask yourself why you really need to respond. Unless there is a very, very good reason, don’t respond.

Please help the Border Colleagues!– Bowley Legal and Thomas & Winship have teamed up to support the Ottawa Humane Society’s “Wiggle Waggle Walkathon”. We’ll be out in force September 13, 2009 with our dogs, raising money for the 11,000 animals the Society cares for each year. For more information, or to pledge, please visit our website at www.bowley.ca.

We can pay our debt to the past by putting the future in debt to ourselves. - Lord Tweedsmuir (Governor General of Canada)

We pay the debts of the last generation by issuing bonds payable by the next generation. - Laurence Johnston Peter (Author of The Peter Principle)

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