

# BOWLEY LEGAL NEWSLETTER

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**The Rollover** – As a general rule, capital property can be transferred or “rolled over” to a surviving spouse after the death of the owner of the property. Usually this is a good idea, because it allows the surviving spouse to receive the property without having to come up with a lot of cash to pay capital gains tax. It also defers the tax and allows for further tax planning.

However, on occasion the surviving spouse will want to elect not to take advantage of the rollover, and actually “take the hit” for tax. Why? Because it may be the case that the deceased had unused capital gains exemptions, capital losses carried forward or other similar unused items which can be used to “soak up” some or all of the capital gains. The result is that on the eventual disposition of the property, the tax burden will be reduced.

## *Which of the Following Were Trained in Law?*

- St. Paul the Apostle
  - Thomas More
  - Mahatma Gandhi
  - Nelson Mandela
  - Adolf Hitler
  - Vladimir Lenin
- (Answer overleaf)

**Making RRSP Contributions in the year of death**– It astonishes many to know that RRSP contributions can be made after an individual dies. Provided that the deceased had RRSP “room”, the tax hit in the final return can be reduced by making a contribution to the plan of the surviving spouse. The contributions must be made in or before the first sixty days after the year of death. While there are limitations, assuming the deceased was 71 years of age or less at the time of death, this opportunity should be considered in every case.

**Queen’s Counsel**– One still encounters QC’s in Ontario, but fewer and fewer. The honorific was discontinued by Ontario in 1985 and by the federal government in 1993. In the provinces which continue to grant the title, many believe (as was the case with Ontario and the federal government) that the title has become less a mark of able senior counsel and more a mark of political patronage.

Traditionally, Queen’s Counsel had certain privileges, including that of sitting “within the bar” and wearing silk (rather than woolen) gowns, giving rise to the expression that on appointment as a QC, one was “taking the silk”.

**“Not proven”**– While in the Common Law only two verdicts are possible, namely “guilty” or “not guilty”, in Scots Law there is a third option- “not proven”. While it is a verdict of acquittal, it certainly does not enjoy the same exonerative comfort as “not guilty”. The judge or the jury feel there is not enough evidence to convict, but they nevertheless have this feeling that something must have happened and that, with just a little more evidence, there might have been a guilty verdict.

**Survey**– A survey is simply a map of property drawn by a professional according to strict rules so that it is trustworthy and accurate. In Ontario, such professionals bear the designation Ontario Land Surveyor and their signature gives the survey official status.

Some surveys show the buildings, some do not. The former is called a building location survey. Those where the buildings are not shown at all, or are shown without dimensions or locations, are drawn to inform about other matters such as lot dimensions or road locations.

Surveys can be critical when certain features of the land or building are essential for the use or development of the land or building. For instance, the only way to know for certain whether a building is set back sufficiently from the lot lines to comply with zoning by-laws is to have a survey. You should never build a structure without having a surveyor stake it out and provide you with a survey. Wherever land or building use, or the absence, presence or location of encroachments or easements is critical to the purchase, obtaining a survey is recommended.

Sustained success is largely a matter of focusing regularly on the right things and making a lot of uncelebrated little improvements every day.

**Theodore Levitt**

**Small Claims Court**– When I first began to practice law, the Small Claims Court was often still known by its

traditional name of “Division Court” and had a maximum monetary jurisdiction of \$600. Not long after, the limit was bumped up to \$1000, then shortly thereafter, to \$2000 and eventually to \$10,000. Finally, in 2010 the jurisdiction was set at \$25,000.

The Court, while still a “people’s court”, now handles some significant cases. For the plaintiff, the opportunity now exists to pursue large collections and damage claims, while the defendant now must bear in mind that a judgment from the Small Claims Court can have a serious economic impact.

In the event you need to avail yourself of the Court, or if someone else hales you before the Court, be sure to visit our website and study the page entitled “Small Claims Court Assistance” to be sure you are well prepared.

**The Appeal**– The stale joke has it that old lawyers don’t die, they just lose their appeal (as if they had any in the first place). Joking aside, appeals are central to our system.

Appeal courts do not re-try the evidence, but rather review the trial court’s performance– was the right evidence admitted for the right reasons, and was the correct law applied properly to the facts as found? Depending on the circumstances, the appeal court can substitute its own finding, or it can send the matter back for re-trial.

To the party who loses at trial, the appeal represents a hope of rescue. However, the appeal courts in our system perform a more important function, namely that of making sure that the various trial courts stay “on the same page” and to ensure that as our common law grows, it evolves in a principled and consistent fashion.

**Are You an Alien?**– A Canadian who owns property in the United States is known in their tax system as a “non-resident alien”. Among other things, this means that should you die, Uncle Sam will want to talk to your estate about taxes. In simple terms, the notion is that the American government will impose an estate tax on your US property (real estate, US stocks and mutual funds, trust interests where the trust property is located in the US, and other properties), currently running at up to 45%. Because it’s a little late to do any effective tax planning after you die, we urge everyone with US

property to discuss their situation with a knowledgeable advisor.

**Trained in Law– the Answer:** all of them except Hitler.

**Business Succession: When you should avoid discussing it**– Although we normally urge business owners to plan their succession early, with thorough and open discussions among family and advisors, there are a number of circumstances where this is neither necessary nor prudent:

1. You have a written warranty from your doctor that you will live to age 100.
2. You never get in a car or airplane.
3. You love your work so much you never want to retire or even slow down.
4. Your kids are all stupid, your employees aren’t very bright, and nobody else understands your business.
5. There won’t be any capital gains tax payable when you die.
6. If you die, your spouse will know instinctively and precisely how to deal with all of your business issues. Not only that, your spouse will still be young enough and have the energy and desire to do so.
7. You’re over sixty and you still have hair. And you wear it in a green Mohawk.

If you don’t fit this profile, you should be talking to us and your accountant.

Liberty means responsibility. That is why most men dread it. **George Bernard Shaw**

**Maxwell Leadercast**– Mark your calendar for May 6 and be sure to attend here in Ottawa. With speakers such as John Maxwell, Seth Godin, Suzy Welch, Muhtar Kent (CEO of Coca-Cola) and Frans Johansson (The Medici Effect), you will come away challenged and invigorated. A steal at \$95 for the day, including lunch. We’re proud to be a sponsor of the event. Check the website at <http://www.chick-fil-aleadercast.com/> and call us for ticket information.

## Counsel to Business, Professionals and Select Individuals

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