

# BOWLEY LEGAL NEWSLETTER

Number 44

May 2011

**Thirty years— where did they go?**— The call to the bar in 1981, in the depths of one of Canada’s worst recessions, was, after the rigours of Law School and the terrors of the Bar Admission, something of an anticlimax. None of the established firms were hiring— if one was going to practice law, there was little choice but to “hang up a shingle” and make a go of it. And here we are.

Three decades have flown by. I’m privileged to have worked with brilliant colleagues and wonderful support staff. With a daughter off to law school in September, the future remains (as always) an exciting adventure.

**Out of Date Minute Books**— Keeping records up to date (and legally correct) is more than just good housekeeping— it is essential if you expect to enjoy the significant tax advantages which are attached to corporations and trusts.

Why? Simply because Canada Revenue Agency is very jealous of the significant tax benefits which can be obtained through using corporations and trusts. They will insist on the crossing of every “t” and the dotting of every “i”. If you can’t be bothered to attend to careful corporate procedure or proper trustee dealings, don’t be surprised if CRA disallows dividends to shareholders or payments to beneficiaries. In particular, CRA auditors will immediately seize upon incomplete or erroneous minute books to roll back years of distributions, with disastrous (even bankrupting) effect. Dodging a few hundred dollars to keep the records up to date is surely a false economy when thousands of dollars of tax savings are at stake.

**Lost moorings**— By the time this Newsletter arrives on your desk, the Election That Nobody Wanted will have produced the Result That Nobody Needed. This autumn in Ontario we will likely toss out one set of cynical rascals and replace them with another set of cynical rascals.

And, what do we make of six burly police officers manhandling a tiny woman, cutting off her clothes and leaving her semi-naked and shivering in a holding cell for five hours? That she was black and female is irrelevant— the incident had little to do with race and gender but everything to do with our general loss of civility.

How about a senior government advisor suggesting that Julian Assange (Mr. Wikileaks) be summarily shot? No judge, no jury, no process— just shot. Should we be

surprised, then, when shortly thereafter one driver murdered another because he didn’t like the way he had been driving? Right here in Canada.

The Montreal division of the CRA has a dozen or so of its personnel under investigation for fraud. The military loses senior officers because they can’t keep their zippers up. Investment advisors and clergy are caught with their hands in the cookie jar. Spitting on the sidewalk is cool, and we dress our ten year olds like hookers.

We’ve lost our moorings. We’ve lost our sense of civic duty, of neighborliness, of compassion. Being Canadian used to be all about rescuing each other in blizzards, barn-raising bees, watching out for each others’ kids, going off to war to stand up to tyrants. But that’s not us any more.

How do we get our moorings back? Simple in concept, but difficult in practice, it starts with me and with you. It’s a daily discipline of integrity. Patience with noisy kids and confused seniors. Taking a turn to wash the dishes in the office kitchen (even if you are the boss). Letting somebody into traffic from a side street. If a TV show is brutal and disgusting, turn it off. Doing the job right, not because you’ll be noticed, but because it’s right. Everyday integrity, everyday humility. A little more kindness, a little less whining. Your spirit knows what’s right— listen to it.

We should every night call ourselves to an account: What infirmity have I mastered today? What passions opposed? What temptation resisted? What virtue acquired? **Seneca**

**Networking**— Any professional practice or business which expects to grow and prosper depends on its business referral network. Build your network in the same way you would collect artwork as an investment — select your professional and business referral colleagues carefully, make sure these are people you enjoy in their own right, as friends, who make you a better person just for knowing them and being in their company. Like artwork, if there is a commercial benefit, that’s a bonus, but if not, you have still had great enjoyment. Don’t treat your network people like commodities, but as true friends who have hopes, dreams, values and burdens, and be a friend to them.

**Getting the paperwork in order**– There’s a true but terrible story of a man who carefully spread his wealth over dozens of banks so that he rarely, if ever, received interest income slips, and therefore never reported the interest on his income tax returns.

Brilliant. That is, until his memory failed! With no paper records, neither he nor his family could trace where all his money was deposited.

Laugh if you like, but try these questions:

1. Have you named a power of attorney to manage your finances if you should become incapacitated?
2. Does anyone but you have any idea where your financial records are?
3. Have you given your attorney, or other trusted person, your account numbers and the names of your banks?
4. If someone had to step in and look after your affairs, would they know your monthly and yearly expenses? Would they know how your payments are made?
5. Would they know your sources of income?
6. Would they know your medical issues? This would include not only your doctor’s contact information, but medical issues and any drug or medical assistance plans. Does your doctor have a copy of your Power of Attorney for Personal Care, together with contact information?
7. Does your family or attorney know who your accountant and financial planner are?
8. Do you have a tax-planned estate plan? If you have a sizeable estate, have you sought professional advice as to how to ensure that your loved ones, and not the tax man, get most of your estate?

**Not Even Close**– You’ve got a will, drawn by a smart lawyer, for which you paid good money. Everything’s shipshape, so if you are ever eaten by an alligator, your earthly business is in order. Maybe, maybe not.

As it turns out, life changes can play havoc with your carefully drawn will. Getting married after the date of your will, for instance, will revoke your will. Oddly enough, separation or divorce won’t revoke the will, but a divorce has the effect of excising the former

spouse from the will (unless there are clear words to the opposite effect), and a separation could conceivably leave you in the worst of all possible worlds– the hated “ex” could be not only the main beneficiary, but also the executor.

Life insurance complicates the situation even further– case after case arises where separated (and even divorced) parties neglect to change the “named beneficiary” on life insurance. Year after year they pay the premiums (and in the most extreme cases, the new spouse pays the premiums) until the party dies. When the insured dies, the insurance company pays out to the person whose name appears on the paperwork– the ex-spouse. In the recent case *Chanowski v Bauer*, the Manitoba Court of Appeal said, in effect “Too bad, so sad– you should have looked after the paperwork.”

While every case is different, the moral of the story remains the same: when it comes to business which will fall into place after you die, don’t leave loose ends.

**Tearing Up the Neighbourhood**– Starting in May of this year, construction crews will be tearing up Bank Street between the Queensway and the Canal. Although the plans have not yet been fully disclosed, we expect that access to our office is going to get tricky before we’re finished with this. However, we will work around every difficulty, even if it requires taking over a table at Tim Horton’s for a week. We will keep clients posted as appointments are made.

**Do all the good you can,  
By all the means you can,  
In all the ways you can,  
In all the places you can,  
At all the times you can,  
To all the people you can,  
As long as ever you can.**

**John Wesley**

## Counsel to Business, Professionals and Select Individuals

200 Isabella Street, Suite 203, Ottawa, Ontario, Canada K1S 1V7 613-233-9541 fax 613-233-7965 [www.bowley.ca](http://www.bowley.ca)  
Norman Bowley Professional Corporation