

BOWLEY LEGAL NEWSLETTER

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Time to move on— Solo practice isn't what it once was. In today's complex legal world, it's impossible to be all things to all people. With the growing administrative burden and the costs of keeping the door open, solo life is not nearly the fun it used to be. Over the last few years I have been driven to the conclusion that I needed to swallow my pride and join a larger group.

The decision to move was made much easier by virtue of the fact that two of my favorite firms had approached me independently with a view to making the move. When those two firms merged last autumn, the logic and emotional appeal became irresistible.

And so, effective June 1, 2012 this practice will merge with Low Murchison Radnoff, a full-service team of twenty-five lawyers. Not only are LMR top-drawer lawyers, but they are decent, honourable and interesting human beings. Most exciting for me, this is a firm with a clear and ambitious plan for its future.

For my existing clients, the benefits will be significant, including access to leading lawyers across the spectrum. Because of efficiencies, legal costs in general will stay the same or be lower.

In exchange for some ostensible loss of independence, I am looking forward to the collegiality of the larger firm, lots of challenging professional work, and holidays longer than three days at a stretch. What's not to like?

By three methods we may learn wisdom: first, by reflection, which is noblest; second, by imitation, which is easiest; and third, by experience, which is the most bitter. **Confucius**

The Law of Gifts— It is not uncommon, after the death of a parent, to find one of the children in possession of property that used to belong to Mom or Dad. Nor is it uncommon for the other kids to raise questions. They will say that there was no gift, but rather there was a trust, or a loan, and the property remains part of the estate.

In such cases, the burden rests on the donee to prove that the transfer was a gift, and not something else. The two key tests for the donee to meet are, first, that the transfer was voluntary and gratuitous and, second, that there was

an intention to pass both legal and beneficial title to the donee.

Since the uncorroborated evidence of the donee will not stand, it is important to him or her to ensure there is clear, unimpeachable evidence supporting the intent and fact of gift. In most cases, the wisest way to deal with such matters is for the parent, while still alive, to document the transfer (for example, by Deed of Gift) and to let everyone else know what is happening.

Personally, I am always ready to learn, although I do not always like being taught. **Winston**

The Most Important Document You Will Ever Sign—

Is it a million dollar contract? Purchase of a commercial complex? Your will? No, the most important document you'll ever sign is your Power of Attorney for Personal Care, sometimes known as your "Living Will".

Why? Because this document is not about your stuff. It's about your own future existence. Making bad choices will doom you to live with the consequences without ever being able to change them.

Imagine this: you're trapped inside your body, unable to communicate. You've been declared incapable of making personal decisions. Your life is completely in the control of outsiders, most of them strangers.

With this background, imagine your day to day existence. Cold porridge for breakfast, tepid slop for lunch and "chef's surprise" for dinner. Every day. Windows don't open, no fresh air, always shut in, the lights burn until midnight. The night supervisor jokes about "the inmates". No grass, no birds, no music, no books. Although you can't communicate your horror, it is very real.

In these circumstances, only one thing matters: Who did you appoint to be your Ambassador to the Outside World? Did you appoint a caring champion, a soul who knows your heart of hearts and will stand up for you, or just someone who is comfortable with having you efficiently warehoused until you die?

Note our new name, address and phone number effective June 1!

Full Circle– In May 1979 I began my law articles with Radnoff, Pearl, Pearl & Slover. Bernie Pearl ran my feet off, Herb Pearl taught me strategy, Norm Slover taught me pragmatism, and Ken Radnoff, a lawyer’s lawyer, the majesty of the law. David Dwoskin, then a junior, helped me keep my sanity, and has ever since remained a good friend.

Bernie is no longer with us, and Herb has retired, but the others are going strong. Thirty three years and many adventures later, it will be good to practice again with these exceptional lawyers.

The President’s Breakfast– Did you know that Ottawa is home to one of only three Cyberknives in Canada, and is recognized as one of the top ten cancer research centers in North America?

These things don’t just happen, and they surely don’t happen on government funding alone. If Ottawans are to continue to enjoy some of the best health care in the world, the community has to be generous.

Two years ago, I was invited to the Ottawa Hospital Foundation President’s Breakfast. I was stunned. I had no idea of the magnitude of what was being accomplished, nor of the financial need. Hearing the stories of hope and inspiration, I realized that it was time to get behind something worthwhile, both financially and emotionally. I’ve become involved in the Foundation and at the Breakfast as a Table Captain.

Over the next month or so I will be inviting a number of friends to the breakfast in September. If you’d like to be sure to have a place, give me a call.

I am a great believer in luck, and I find the harder I work the more I have of it. **Stephen Leacock**

Conflict of laws– The old joke went something like this: “If an Italian airplane full of Germans, piloted by a Spaniard, crashed in France, where would the survivors be buried?” If you were paying attention you would answer that they don’t bury the survivors.

Joking aside, the question is reminiscent of the kind of problems we lump together as “conflict of laws”. In today’s world, it’s impossible to go a day without having legal dealings with other jurisdictions– ever think about

the legal implications of clicking on “I Agree”? We buy on eBay, blog all over the world, vacation in Singapore and buy condos in Florida. Arbitrage and “jurisdiction shopping” have become part of the decision-making process of international business.

Not me, you say? Say you’re driving through Manitoba and you have a catastrophic collision with someone from Minnesota. Or the vintage car you ordered from California is damaged on the wharf in Vancouver. Who pays what to whom, and why, and whose insurance will respond? And who will make them?

While a few courts do favor their own “good ol’ boys” and some laws are blatantly tilted toward locals, most courts and legal systems in democracies work hard at trying to find a balanced and principled approach to complex inter-jurisdictional conundrums.

Usually, the first question the court asks is, “Are we the proper court to hear this matter, or should we refuse?” Then, even if the local court agrees to hear the case, it still has to wrestle with the question of which law to apply– its own, that of one or more foreign jurisdictions, or perhaps some mix.

The conflict of laws is never simple and never boring.

Carol Cochrane– Back in the late ‘80s, Carol and I sat on the board of the Dispute Resolution Centre, Ottawa’s very first venture in Alternative Dispute Resolution. Now mainstream, back then it was pretty adventurous stuff. Carol is now a managing partner at Low Murchison Radnoff. I very much look forward to working with her again.

Surveys– A survey is simply a map of a piece of property drawn by a professional surveyor according to strict rules so that the information is trustworthy and accurate. A survey that shows the location, shape and size of the buildings is called a building location survey.

Surveys can be very important when certain features of the land or building will be critical for the use or development of the land or building. For instance, the only way to know for sure whether a building is set back sufficiently from the lot lines to comply with the zoning by-laws is to have it surveyed. In every case where land or building use, or the absence, presence or location of encroachments or easements is critical to the purchase, obtaining a survey is usually recommended.

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