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NEWSLETTER

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Seventy-five Years! 2013 will see the seventy-fifth anniversary of the firm, making us the oldest surviving mid-size firm in the region. This year also marks Kenneth Radnoff Q.C.'s fiftieth year in practice, and the sixtieth for Kenneth Binks, Q.C. We plan to celebrate!

Bailment– If you take care of goods for someone else, you are said to be a "bailee", and you need to be careful. At a minimum, your duty is to take the same care of the goods as would a prudent owner in the care of his own goods. If you are a bailee for reward, the standard is higher (unless a contract exists limiting the liability). When the damage or disappearance of the goods has no explanation, the bailee must still demonstrate that he was not negligent.

> 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**

Estate Administration Tax Amendments– Just a reminder that Ontario has now introduced significant "enhancements" to the Estate Administration Tax (commonly called Probate Fees). While the amount of tax won't change (at least not initially) the investigation and enforcement mechanisms have been given large, sharp teeth and executors who do not comply can find themselves tracked down and held accountable in some cases for a lifetime. Another good reason why the administration of estates is not for the amateur or the faint of heart.

Two Wives, One Pension– In *Carrigan v. Carrigan Estate*, 2012 ONCA 736 the question before the Ontario Court of Appeal was, "Who receives the pension death benefit when the member of a pension plan entitled to a deferred pension dies and is survived by both a common law spouse with whom he resided at the time of death and a legally married spouse from whom he was separated but whom he designated a beneficiary of his pension plan?"

Ronald Carrigan married Melodee in 1973. They had two children. The couple separated in 2000 (or sooner). They did not divorce and they did not formalize the separation by court order or written agreement. Interestingly, in 2002 Ronald designated Melodee and the two children as beneficiaries of his pension death benefit, but also by that time he was living with Jennifer Quinn in a relationship which qualified them as spouses for nearly all legal purposes. In 2008 he died unexpectedly, still living with Jennifer. Both "wives" claimed the pension death benefit.

The definition of "spouse" under the Pension Benefits Act includes both a married spouse and certain types of "common law" spouses. However, in a split decision which has left estates lawyers, family lawyers and pension experts scratching their heads, the Court of Appeal found that, given the very particular language of the Act, Ms. Quinn did not count as a spouse for the very specific provisions of section 48(3)– you had to be a "married" spouse for that section to apply, and therefore it was irrelevant that she was living with Ronald at the time of his death. As a result, the fallback was that the benefit went to the named beneficiary.

It's nearly impossible to summarize the reasonings of the three judges in just a few paragraphs, and one would be foolish to try. The strong and well-reasoned dissent of Justice LaForme suggests it is not likely to be the last word on the subject. Legislative reform or clear language from the Supreme Court will be needed to clear up a situation now made muddy.

There is, however, an important take-away lesson for all post-separation spouses, and that is to ensure that pension (and insurance) designations say exactly what you would want them to say in light of your new circumstances. By extension that goes for all of your rights and obligations (and those of your "Ex"). You need to be sure they are clearly buttoned down by way of written agreement or court order. The ounce of prevention costs much less than the pound of cure.

> The price one pays for pursuing any profession or calling is an intimate knowledge of its ugly side.
>
> **James Baldwin**

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Viagra Patent Struck Down– In a judgment which serves as a reminder to the patent bar, the Supreme Court of Canada (7-0) struck down Pfizer's Canadian patent for Viagra. Too often we forget that the word "patent" means the same in intellectual property law as it does in everyday speech, namely "open and obvious".

In simple terms, granting a patent is the government's "deal" with the inventor– lay open your invention in terms that any person skilled in the particular calling can understand, and we will grant you a sixteen year monopoly. The laying open is in the nature of a recipe. For sixteen years, everyone knows exactly how you produce the new invention, but nobody is allowed to copy it. After that, the recipe is there for all to use freely. Pfizer's mistake was that it listed all the ingredients, but failed to specify which one was the active ingredient. In other words, it left the skilled tradesman guessing, and that is a no-no.

If you lend someone $10.00 and never see them again, it was probably worth it. **Anon**

Contempt of Court– To understand the concept of contempt of court, one must recall that the original court of justice was in fact the king's royal court. When the king sent his judges out on circuit, each courtroom remained imbued with all of the majesty and authority of the sovereign. Thus, a contempt of the court was an offence directed against the sovereign as head of law and justice.

Although difficult to define, a contempt is any action or language reasonably likely to bring the authority or administration of the court into disrespect, or interfere with the court's process. Examples include a refusal to be sworn or answer questions, contemptuous language or gestures and interfering with the testimony of a witness.

Contempt may be either civil or criminal. Civil contempt involves disobedience of the court's orders or processes, and is a private injury, while a criminal contempt involves a public insult which is stubbornly rebellious or is calculated to bring scorn upon the court and its process. Civil contempt can escalate to criminal contempt.

Cheap Will Kits Online– Good News for Estates Lawyers and Canada Revenue Agency! Almost everyone knows that you can go online and bang out your last will and testament at a ridiculously low cost. Use your Air Miles VISA and you even get points.

Contrary to popular opinion, this is not bad for estates lawyers. Although we would prefer to work with you to create an estate which is tax-effective, good for family politics and does exactly what you really mean to do, the sad truth is that estate litigation is far more profitable than estate planning.

Like packing your own parachute or installing your own gas appliance, you don't always get a second chance. There's a reason to leave crucial matters to the experts.

A society of sheep will in time beget a government of wolves.
Bertrand de Jouvenel

The Ontario Photo Card– Far too often individuals who do not have driver's licences or passports are asked for photo ID and have nothing to produce. As a result, they may be refused service, even in a law office. Because of this, Ontario has developed a card which is acceptable as photo proof of identity. To obtain such a card, you must be at least sixteen, not have a driver's license (or be willing to surrender it) and be a resident of Ontario. Go to a Service Ontario center with original ID to prove your legal name, date of birth and signature. Cost is $35.00.

Easements– An easement may be described as a right-of-way or right-of-use over all or part of your land in favour of another. These are typically in favour of a utility commission or supplier such as hydro, telephone, gas or cable, and they are normally for the purpose of installing and maintaining lines and equipment so that service may be provided to your property or to neighbouring properties. Occasionally easements take the form of roads or laneways to provide access to some otherwise landlocked parcel.

Most easements are registered against the land, but a few exist by way of legislation (mostly in the case of hydro easements) and in some very rare cases, have come into existence through "long user".

The most important consequence to bear in mind is that you cannot use your land in such a way that it impedes the easement. Thus, if you were to build an in-ground pool over the gas easement, you will find yourself obligated to remove it when the gas company needs to repair its lines.

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