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NEWSLETTER

Number 54

September 2014

If you die without a will, the government gets everything, right? There is an urban legend to the effect that if you die without a will everything goes to the government. This is true only in rare cases.

If you die intestate with respect to all or part of your property, the law lays out clearly who gets what. First, a spouse gets preferential treatment to certain portions, then children, and if you don't have a spouse or "issue" (children, grandchildren and beyond), then you start out through the family tree, first to parents, then siblings, then nephews and nieces, and if none of those exist, you start looking for "next of kin". Only in the remote case where there are no such next of kin will the property "escheat" to the government.

Much more problematic is failing to prepare a Continuing Power of Attorney for Property or Power of Attorney for Personal Care. In such a case you may find the Ontario Public Guardian and Trustee making your decisions for you if you lose capacity.

The University of Ottawa leads the way. Again. U of O's Law School has taken two recent initiatives which not only enhance the educational opportunities of students, but provide important service to the community.

In October 2013 the school opened the Ian G. Scott Courtroom. Set up exactly as a "normal" courtroom, it is used for regular legal proceedings just as if it were located at the courthouse. However, because it is located on campus and has an adjoining classroom with a glass wall, students may watch an actual case being heard, and later discuss it with the judge and counsel.

More recently, the University of Ottawa Business Law Clinic was established to provide *pro bono* business law services to clients who have a significant need but no ability to pay a law firm for such services. These would typically be "shoestring" startups. Under the supervision of experienced practitioners, law students assist with corporate/commercial law, intellectual property, employment, basic tax, charities, and commercial arbitration. Many readers will remember working with Meghan Bowley Gagnon as a law clerk. Now as a third-year law student she is also serving as one of the student directors of the program.

Moral Obligations in a Will— Readers will encounter a good deal of confusion in the popular media with respect to the moral obligation of a testator to make certain provisions in his or her will. No such obligation exists in Ontario. In its recent decision in *Verch Estate v. Weckwerth*, the Ontario Court of Appeal reminded us that Ontario has no statutory basis such as British Columbia's *Wills Variation Act* which enables a court to re-write the will of the deceased to provide an outcome more to the taste of a disappointed beneficiary. Assuming testamentary capacity and no undue influence, and subject to the rights of genuine dependents, creditors and spouses, the Ontario testator remains fully at liberty to dispose of his or her property exactly as he or she may wish.

We have no assurance in life, no guarantees that we will be healthy, enjoy a long life, or be able to control our destiny. What we can control is our attitude. We can strive to make a difference.

Ian G. Scott

Roll Over!— In commercial law we frequently employ the rollover, and it has nothing to do with dogs. As part of a corporate reorganization, an existing shareholder will exchange the shares of a certain class for those of another. For example, one hundred Class A Commons may be exchanged for 3289 Class C Preference.

Rollovers typically are part of a tax-planned reorganization in an estate freeze, a business succession process, an amalgamation, or some other transaction. Generally the purpose is to "freeze" the accumulated value of the old shares for capital gains tax purposes.

OHIP and the Snowbird— Several readers have responded with alarm to an article in the last Newsletter which discussed the ramifications of the new "smart" passports and the effect on residency-based rules in different pieces of legislation. To be clear, Income Tax, OHIP and the like which have residency-based rules are not changing. What is changing is the precision with which both Canada and the US will know exactly when you leave and when you return. OHIP in particular has excellent website information which should be consulted by snowbirds and others who expect to be out of the country for any significant periods of time.

Speaking engagements– So far we are on track for twelve events in twelve months, everything from church basements to a national webcast. Call if you are interested.

Ten Excuses for Not Having a Will–

1. If I make a will, I will die. *True. But if you don't make a will, same thing. Blueberry pie will do this to you, too.*
2. I plan to live forever. *Good luck with this.*
3. The government has a plan for my estate. *Correct, and it involves taxes.*
4. It will cost too much. *False– it will cost what it costs, but often in the same range as a decent television set. And for your heirs, the will is more important than the TV.*
5. I haven't decided who to have as an executor. *Relax, we'll walk you through all that.*
6. My situation is very complicated. *Relax again. We've been doing this for decades and have likely seen equally complicated situations before.*
7. I don't have much. *Perhaps. But more often than not, we find that testators underestimate their potential estate.*
8. I've arranged everything with joint tenancies and named beneficiaries. *Generally, this can be helpful, but only works well for the first-to-die of a couple.*
9. I'm writing my own/getting a kit/doing it online, etc. *Great! That way we make a lot more money after you die.*
10. I'm waiting for my dog to die. *Seriously?*

The Executor and the Scanner– A recent article discussed retention of the deceased's business and tax records, and recommended that such records be scanned so as to simplify retention. This makes a lot of sense. But think how much more you could do with a decent scanner. Not only legal documents, but certificates, diaries, military service records, awards and photographs can be scanned, then shared throughout the family or posted (with due prudence) to online tributes. Much of this material will also be useful to the family genealogist who can upload such records and images to ancestry.com or similar sites.

The Rule of Law– In June 1215 John, by the Grace of God, king of England, lord of Ireland, duke of Normandy and Aquitaine, put his seal on the *Magna Carta*. While at the time only a “deal” between the king and his powerful nobles and with little relevance to the common man, the Charter established once and for all in our system of law that nobody, not even the king, was above the law. Eight centuries later we continue to struggle with the balance between the rights of the strong and the weak, the lucky and the unlucky, the prudent and the unwise.

You and your real estate lawyer– The job of the purchaser's real estate lawyer is to ensure that you get

good and marketable title, all you bargained for, and if you are borrowing, you give no more to the bank than agreed. For the seller, the lawyer's job is to ensure you get all that was promised and give up no more than that.

Simple, isn't it? But if you carefully consider the foregoing, you will see that the lawyer is constrained by the contract you already made before you went to see him. He probably cannot, on a cost-efficient basis, get you out of a bad deal you have already made.

The lesson therefore is, before your deal becomes final, to engage your lawyer to review the draft contract. It may cost you a little extra but in the final analysis, paying a little extra to your trusted advisor *before* locking yourself in is just wise use of money.

Joint Accounts With Right of Survivorship– Readers are reminded that this popular probate-avoiding device does not always work out as planned.

Where property is held on joint account between a parent and one or more adult children, the legal presumption is that the child or children hold the interest in trust for the parent's benefit. In such a case it is arguable that there would be no tax consequence upon the transfer into joint tenancy and that it was not a disposition for capital gains purposes. However, if valid for CRA purposes, it would be hard to contend that Estate Administration Tax (“probate fees”) would not then apply to “... all the property that belonged to the deceased at the time of his or her death.”

In order to ensure that the presumption is rebutted and the property vests in the surviving-adult-child-joint-tenant, some clear evidence is required– ideally a clear written statement of intent, signed by the parent, in non-suspicious circumstances. While this may skate around probate fees, it won't be helpful with CRA if capital property is involved. You can't have your cake and eat it, too.

But wait, there's more! There are others out there who will gladly take the position that the adult child already has a vested interest in the jointly held property. A creditor or a departing spouse of the adult child will eagerly reach for the joint asset. Whether they eventually succeed will be up to the court's “read” of the facts, but who needs the stress and legal costs?

We find it astonishing that people who call in a pro to fix a furnace or a floor tile will cavalierly tinker with a million dollar estate, clueless as to the tax and creditor consequences. Don't be one of them.

All non-attributed content in this Newsletter was written by Norman Bowley. Please direct all comments and criticism to his attention.