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# NEWSLETTER

Number 55

January 2015

**Estate Administration Tax Act Amendments**— As if your job as Executor were not onerous enough, as of January 1, 2015 the Government of Ontario is throwing a few more bricks in your basket.

Under the former scheme, the Executor when applying for Probate would be required to set out in an affidavit (under oath and subject to severe penalty for perjury) the value of the estate for Estate Administration Tax (“Probate Fee”) purposes. Now, however, within thirty days the Executor will also be required to complete and file a painfully detailed Estate Information Return to the Minister of Finance for Ontario.

In the Return, the Minister requires a detailed list of assets with full description (eg. VIN number, legal description of real estate, etc.), investment account numbers, adviser’s name and contact information, number and classes of investments, etc., etc.

Lest you feel inclined to ignore filing the Return, or simply insert your “best guess” as to values, the Act makes it a punishable offence to fail to file or to file with “false or misleading” information. It is also an offence to “assist” someone to do so. The penalty is not less than \$1000.00 and not more than double the tax and/or two years in jail.

Unlike most other tax schemes, there is no Clearance Certificate available. This means that you can never get this monkey off your back— the Province can come back after the Executor for up to four years in any event, and forever if the Province alleges fraud or “carelessness”, whatever that may mean.

Being an Executor was never fun. Now it has even become dangerous. For those brave enough now to take on the job, we recommend as a minimum that you seek professional advice, that you have a solid basis for your numbers (including valuations where appropriate) and that you buy executor’s insurance.

**Time travel**— Although we are very big on technology, we don’t yet have a time-travel machine at our office. We wish we did. That way, when a client comes forward needing evidentiary documentation (for instance, for Revenue Canada), we could all just jump in the time machine, go back to 1998 or whenever, attend to

preparation and signing of all the documents, and the problem would be solved.

Until we get our hands on that technology, however, there is a problem— we are professionally and ethically restricted as to “back-dating”. Unless we were actually present, we can’t lend our professional credibility to an event on anyone else’s say-so, even if that anyone else were the Queen of England! In some cases, to do so would actually be a punishable offence— we could face Law Society censure, significant fines, and even jail time. None of these appeal to us.

So how can we work around such a problem? If a client is able to demonstrate with satisfactory evidence that an event actually occurred, and provide us with a confirming statutory declaration, on many occasions we can “document” the event in the sense of memorializing it “as of” the earlier date.

The moral of the story, as always, is to get it done right the first time!

You miss one hundred percent of the shots you don’t take. **Wayne Gretzky**

**Leading questions**— These are questions asked by counsel which suggest the answer, typically “Yes” or “No”. Unless the answers are completely non-controversial or not in dispute, leading questions are generally not to be asked in cross-examination unless permitted by the trial judge in the interest of justice.

On the other hand, in examination-in-chief of one’s own witness, leading questions are not only permitted, but encouraged, as they keep the flow of evidence moving along in a more efficient and coherent manner.

**Habeas corpus**— This literally means “you have the body”. An ancient remedy whereby any person or authority who holds some other person in custody or confinement is summonsed to court to justify the legality of such custody or confinement. A cornerstone of individual liberty, it is guaranteed by section 10(c) of the *Canadian Charter of Rights and Freedoms*.

**Speaking engagements**— Last year our lawyers spoke at dozens of engagements before a variety of audiences, including professional organizations. This year we have several already lined up including one at the Ontario Bar Association. Please call if your industry or interest group is looking for an engaging and informative presentation.

**Felony**— At common law, and much loved by those in authority, a felony was a crime for which the punishment was the forfeiture of the felon’s lands and goods, usually to the king or other authority bringing the accusation. This was long before the notion of conflict of interest had gained much traction. Not every capital offence (punishable by death) was a felony and not every felony was a capital offence, but there was nearly complete overlap. In Canada, the distinction between felonies and misdemeanours has been abolished and replaced by a more meaningful distinction between indictable and summary conviction offences.

**What is a Power of Attorney for Personal Care?**— Often known by a misleading name “Living Will”, the POAPC is likely the most important document you will ever sign. It’s not a Will at all. It has nothing to do with your stuff. It has everything to do with you and the core of your existence. We like to call it your “Appointment of Ambassador to the Outside World”.

Imagine this: you have come to the point in life where you are almost entirely dependent on others. You can barely, if at all, articulate your feelings. You have been “warehoused” awaiting death, your world reduced to a sterile room. The medical staff treat you kindly enough, but professionally. You are somebody’s assignment— one of many. And no matter how hard you struggle, you can’t seem to make anyone understand your feelings.

Fortunately, you had the foresight to name a trusted and beloved Attorney for Personal Care— someone who knows your heart and soul as their own, someone with the perception to know if your living circumstances bring you joy or bring you despair, and someone with enough spine to do something about what they see.

Every strike brings me closer to the next home run.

**Babe Ruth**

**Construction Law Lectures**— If you are a contractor or engaged in any of the trades, LMR will be offering a series of educational presentations on such essentials as liens,

contracts, change orders, employment, corporate structure, family issues and selling the business. If interested, call us at 613-236-9442 and speak to Karen Bowley or Dan Côté—Finch.

**Dust to Dust, Ashes to ... where exactly?**— As with almost every legal question, there are all kinds of misinformation and urban legends about what can and cannot be done with the ashes of a loved one. And as with almost every other legal question, the answer is found by logical analysis.

You start with the not-surprising proposition that nobody, not even the Executor, has property rights in human remains. The Executor, though, does have the ultimate control over the disposal of the remains.

Once we've decided to be reduced to ashes (actually, it's dust, to be more scientifically accurate), the question becomes what the Executor can or cannot do with the same. The answer is that you can do anything that's not prohibited.

The first dichotomy is between scattering and burying. If you want the ashes buried, this can happen only in a registered cemetery. Scattering gives a lot more liberty, provided you don't trip over some other law.

For example, it is a criminal offence to show disrespect to human remains. The famous outhouse scene in *The Shipping News*, while funny, was technically illegal.

Further, you can't scatter ashes on private property without the owner's consent. You can't scatter them on public land in violation of any by-law, statute or regulation— for example, you're not allowed to litter with somebody's ashes anymore than you could litter with a chocolate wrapper. The least regulated places are unoccupied Crown Lands and Crown Lands covered by water.

Obviously, you can have ashes scattered in a designated part of a cemetery pursuant to “scattering rights” for which you are required to pay. And if you don't want to scatter, you can keep the ashes, again with respect to private property rights, and if you want them stored, you can pay to have them kept in a niche or a columbarium.

If you would like to have some say as to what happens to your ashes, you need to make these wishes known through your will. Given that the will is often not read until after the fact, we also recommend that instructions be inserted in the Power of Attorney for Personal Care, as a kind of “heads up”, and of course you need to have the conversation with the people entrusted with the job.

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