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NEWSLETTER

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Income Tax Scam— Be Warned! There is a scam going around in which you receive a telephone call from a person purporting to be from CRA collections, advising of income tax arrears and threatening severe penalties including arrest unless payment is made immediately and in person. The scam particularly targets seniors. The caller will give valid-sounding credentials and will usually know enough about the victim and his or her tax account to sound genuine. Of course it is bogus. Unfortunately, some taxpayers have met the “tax collector” in person with money. Don't fall for this! If you are approached with anything which doesn't seem quite right, go first to the Canadian Anti-Fraud Centre website or call toll-free at 1-888-495-8501.

Guindon v. Canada: Where good intentions get you in trouble— The Supreme Court of Canada has just ruled that many defences, including Charter defences, have little or no application in the realm of tax penalties. Finding that such penalties are administrative and not criminal, the court ruled that tax preparers and advisors cannot benefit from certain protections available under the criminal law. This effectively makes mistakes a matter of strict liability, even where there is no intent to break the law.

In *Guindon*, the tax advisor was personally heavily involved in a charitable endeavour and apparently turned a blind eye or carelessly avoided basic scrutiny of a tax-avoidance scheme which was intended (or at least was said to be intended) to raise money for the charity. CRA successfully challenged the scheme and assessed very large penalties against the advisor-- in her case, financially calamitous. These were upheld.

There is only one lesson to be taken from the case: don't play fast and loose with tax laws. Minimizing tax, even by way of complicated planning, is your right as a Canadian, but trying to pull a fast one on Her Majesty will get you in very big trouble. Always get careful advice from an experienced and ethical advisor.

Failure of Gifts in a Will— In legal doctrine, there are various reasons why a gift under a Will can fail. Subject to anti-lapse provisions, a failed gift will generally fall into the residue, or will pass by intestacy.

If the intended recipient dies before the donor, with no

“gift over”, the gift is said to lapse. If, prior to the death of the donor, the property itself is no longer in the possession of the donor, the gift is said to adeem.

A gift which is illegal (such as a prohibited weapon) will not be allowed to be distributed, while a gift of a controlled item (such as a firearm which requires the possessor to hold a Firearms Acquisition Certificate) cannot be distributed until the recipient qualifies.

Recently, the doctrine of public policy has become popular with the courts. In a New Brunswick case a large gift to a neo-Nazi organization was struck down, while in Ontario a Will was set aside because a father had excluded one of his two daughters because her child's father was of another race. While most experts are sympathetic to the desire to strike down an odious Will provision, many estates experts object that public policy cases are the thin end of the wedge, opening the door to judges to re-write Wills according to their tastes. An old adage says “Bad facts make bad law.”

The hardest thing about cutting your losses is letting go of a future that wasn't going to happen anyway.

Mark Goulston

Refresher on Joint Tenancy and Named

Beneficiaries— Generally speaking, spouses should arrange their affairs such that on the death of the first to die there will be minimum tax and delay on passing assets to the other. In most cases, this will include holding as many properties and accounts as possible as joint tenants. Similarly, it is generally prudent to have the other spouse named as beneficiary of all insurance policies, death benefits and investment plans.

On the other hand, where a parent and an adult child hold property and accounts in joint tenancy, problems can arise on the death of the parent. The law presumes that the child is holding the property in trust for the estate, unless it can be proved that there was an intent the child would receive all of the property by survivorship. The intent should be well documented.

Because small nuances can make a serious difference, it is prudent to check with legal counsel in advance.



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Next Generation— Clients who have read this Newsletter for years will remember Meghan Bowley as a bright young clerk in our offices on Isabella Street. Well, much has happened since! Meghan Bowley Gagnon has graduated *cum laude* (JD, MBA) from the University of Ottawa, written the Bar Exams, and is now articling with the legal department of a large public organization. Family, friends and colleagues are immensely proud.

What Happens When a Not-for-Profit Makes a Profit? Sometimes nothing will happen, but sometimes the organization will lose its Part I tax-exempt status. Since many sports, cultural, condominium and other similar organizations are NFPs, it is therefore crucial to know and apply the rules. We strongly urge all board members of NFPs to read T4117 guide, available online from the Canada Revenue Agency.

Wasted Talent— Does it ever bother you that this community is full of clever, experienced and capable retirees who don't have much to do? It bothers us, too! We'd love to start a dialogue and explore ways to put this enormous pool of talent to good uses.

Twenty years from now you will be more disappointed by the things that you didn't do than by the ones you did do, so throw off the bowlines, sail away from safe harbor, catch the trade winds in your sails. **Mark Twain**

Book Review— David Maister is well known for his excellent work on professional service firms. In his most recent work, *Strategy and the Fat Smoker*, he deals with the problem all of us have as individuals and as enterprises trying to do “what's obvious but not easy”. Knowing what to do is generally easy. Actually doing it is the hard part. Maister explores how businesses can manage to get over the hump. Interestingly, he singles out law firms as the worst case scenario!

Self-written Wills and Powers of Attorney— We are frequently asked about free online apps for creating your very own Will and Powers of Attorney. Sometimes if we happen to be in a cynical mood we will answer, “Please, go ahead! We'll make much more money after you die!” Estate litigation is far more lucrative than estate planning. But let's not be cynical for this article.

Let's use an easy analogy. Many of us like to think we can wire a simple light switch, maybe even run an extra circuit from the main box. But there comes a point where building codes, insurance claims and simple common sense tell you

that you need to call an electrician. Not because he can turn a screwdriver any better than you can, but because he knows what he is doing.

In the same way, you don't hire the estates lawyer because he can type or “fill in the blanks” any better than you, but because of his expertise. The reason you pay fairly serious money to the estate planning lawyer is that, in addition to basic legal training, he or she spends hours every month in continuing education, following new cases and keeping up with the latest legal developments. Equally important, years of experience (and sometimes the school of hard knocks) have produced an instinct for the underlying family and financial issues which are attached to nearly every case. USA connections, beneficiaries with special needs, capital tax issues, estranged children..... the list goes on and on. He knows where the scary places are. Very often, the client is not even aware of the problematic issue until the interview!

The kits and the apps generally take a one-size-fits-all approach. In our experience, that is rarely appropriate.

While we're beating this drum, one last point. Somewhere between the estates expert and the do-it-yourself kit, there is the corner-store generalist lawyer who does a little of this and a little of that. Need we say more?

The Most Important Law? In thirty-five years of practice, I've come to realize that, by far, the Law which surpasses all others in importance is Murphy's: “If it can go wrong, it will go wrong.” *Bowley's First Corrolary to Murphy's Law* says that the best way to avoid Murphy's Law is to call in a level-headed, experienced professional.

Metes and Bounds— When you read a deed from the 1800's you'll chuckle to read the property description in terms like “*from a white post next to the pine tree by the bridge, thence northerly more or less to the large boulder in the stream...*” They were pretty informal and prone to inaccuracy. As time went by, more precise surveyor's language came to the fore as in “*Commencing at the southwest angle of the lot, thence northerly along the western limit of the lot a distance of 165 feet to a point, thence easterly.....*” While this tended to bring greater precision, it also made for extremely lengthy and complex land descriptions, and of course, invited typographical error.

Most recently in Ontario a system of satellite-based coordinates has come into play. In Ontario, a Property Identification Number (“PIN”) provides a clear and unambiguous description of the boundaries of your lot.

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

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