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# NEWSLETTER

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***Trusts and the Twenty-One Year Rule***— There are actually three twenty-one year rules which apply to trusts, and all can be troublesome. However, one of them is particularly dangerous and can have extremely costly results. As you might imagine, it arises from the *Income Tax Act*.

The government taxes capital gains, that is, in extremely simple terms, the difference between what you get for capital property when you sell it and what you paid originally. The *Income Tax Act* also provides that when you die, you are deemed to dispose of all capital property at fair market value, and you are taxed on that basis.

The problem is that property-holding trusts never die. Thus, there wouldn't be a deemed disposition on death. This would mean a missed opportunity to levy a tax, and that would never do. So the *Income Tax Act* provides that every trust (except for a handful of special purpose trusts) will be deemed to dispose of all its assets at fair market value every twenty-one years.

Let's take an example. In 1986 Bill and Susan Jones set up a family trust and loaned it a million dollars, all properly papered. The trust purchased an investment property and over time repaid the loan and now continues to do very well with the building. On today's market it is worth five million dollars. The *Income Tax Act* says, in effect, "We're going to pretend that the trust has just sold the property for five million dollars, so there is a capital gain of four million. You owe us."

If that happens to you and your trust, you are stuck with the tax consequences. If you were wise enough to speak to your legal and tax advisors before the twenty-one year event, they could likely have helped you defer much, perhaps all, of the tax. The sooner you had talked to them, the more options there would have been.

Every reader who is involved in any kind of trust needs to assess where the trust sits on the twenty-one year spectrum and act accordingly. Even if you have plenty of time, ensure that the date is diarised so that you can start taking action four or five years before tax day.

***Passing of Accounts***— Every executor, trustee and attorney is obliged to keep accurate and up-to-date accounts and provide them to beneficiaries on demand.

At the end of the day it is usual for this to be done informally, and generally all beneficiaries review and approve the accounts.

However, in cases where the beneficiaries dispute the accounts or the trustee's claim for compensation, or where the beneficiaries are unable to approve the accounts (if, for instance, they are minors or incapacitated, and without guardians), and in certain other circumstances, the trustee will want the court to review and approve the accounts.

***Ottawa Hospital Foundation President's Breakfast: September 19, 2017***— We're honoured again to host friends and clients (not mutually exclusive terms!) to the 16<sup>th</sup> Annual President's Breakfast. Some spaces are left— call Norm Bowley, 613-236-9442 if you're interested.

***Before You Go***— My grandfather was lucky— he lived out a good life and dropped in his work boots, tools in hand. Only the day before, he had won livestock ribbons at the county fair. He went out proud and strong.

For most of us it's not like that. With modern medicine keeping our bodies alive longer than ever before, we are out-lasting our mental and decisional capacity. Most of us can expect a period of declining capacity and increasing dependency on others. At some point along the time-line there is a likelihood that third parties will refuse to deal with us, whether on financial or personal care matters. Whether we like it or not, financial institutions, doctors and other third parties are going to look to someone else to make decisions on our behalf.

The brutal truth is that such an eventuality is likely for most of us. We may well rage against the dying of the light, but our autonomy will nevertheless recede.

The trick, therefore, is to entrust your future decision-making to those who share your heart, mind and soul, those who will put your welfare before their own and will stand courageously on your behalf. As you will quickly appreciate, though, this has to be done while you are fully able to make such appointments, and it must be done in writing, with all the proper formalities.

Please don't let yourself come to a place where you are trapped inside a helpless shell, wishing you had attended to this.

**The Best Time for Advice**— Have you ever tried to buy an umbrella during a rainstorm? They're all sold out, of course. Better to have one in hand before you need it.

The same is true for professional advice. It's always quicker, cheaper and better to prevent problems rather than solving them. Sometimes you won't even know what trouble looks like until it bites you, but an expert will warn you before you're bitten. Few would consider buying a home without an inspection, but people will enter into later-in-life marriages without contracts, buy a business on a handshake, or invest thousands in brand development without consulting a trademark expert. Ouch!

**Me? A Criminal?**— All kinds of nice people find themselves suddenly caught up in our criminal system and treated like, well, criminals. Often a motor vehicle accident and/or alcohol are involved, sometimes a "principled altercation" that got out of control, sometimes a harmless hobby or habit which just happens to be "offside" with the Criminal Code. Stuff happens, and all of a sudden your life turns upside down.

We don't practice in the area of criminal law, but we work closely with those who do. We will connect you with criminal defence counsel appropriate to you and your situation.

In the meantime, here are a few simple reminders:

1. Beyond your name and address, you are not compelled at law to make statements against your interest. In simple terms, don't "spill your guts" until you have spoken to the counsel of your choice. If you are pressured to call somebody in the middle of the night, you are not obligated to do so. It's better to have good counsel than bad counsel who happens to take phone calls in the middle of the night.
2. With the greatest of respect to our men and women in blue, they generally see their job to secure convictions of "bad guys". Once you are charged, you're considered a "bad guy". So the instruction remains: give nothing unless there is a warrant, and then give up only exactly what the warrant requires, and say nothing until you speak to counsel.
3. At first opportunity, call us.

**The Eight Keys of Trust**— If your listener trusts you, your impact is multiplied. To be a powerful communicator you need to know how to earn trust. There are eight keys:

1. **Tribal solidarity:** Are you part of the listeners'

community, or a stranger? If you speak the language of their group, you have the advantage. Take time to identify shared values and experiences.

2. **Consistency with your earlier story:** Listeners have memories. If what you say today doesn't square with what you said yesterday, you have a credibility problem.

3. **Consistency with other witnesses:** If your story doesn't mesh with what the listener has already heard (or will soon hear) from others, don't ignore it, and don't dance around. Explain the difference and respectfully show why your story is preferable.

4. **Consistency with other evidence:** You need to understand what the listener has already experienced and learned about the subject matter, and you need to treat his body of knowledge and experience with respect. If you plan to build on that, understand how you will make your new value proposition. If you are going to contradict what the listener has already accepted as gospel, you had better have a good plan. If you dodge the issue, the listener will assume the worst.

5. **Willingness to speak against self-interest:** Nothing earns credibility like being honest about information which harms your own position. Obviously you'll do this intelligently and as part of the bigger picture, and you'll show how your proposition is the better one. But you won't pretend that there's not another proposition. Stay in control of the conversation-- it's possible to be strong, confident and candid all at the same time.

6. **Body language:** Do you trust people who won't look you in the eye, who babble like fools, or who slump and mumble? Of course you don't. So, don't be that guy! Stand up, speak up, look 'em in the eye-- if you want to be believed, look believable.

7. **The company you keep:** If your listeners don't like your friends, they probably won't like you or your message, either. If you know that there is distrust between your audience and your own community, deal with it right up front, and do this with the utmost respect. Speak from your heart to their heart. If you show respect and courage, you will earn the right to be heard.

8. **The novelty of the proposition:** Perhaps your proposition is "old hat" to you, but if it is brand new to your listeners, expect scepticism. Don't hate their scepticism but understand it, respect it, and earn your way around it. (Reprinted from the *Friday Briefing*.)

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