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### **“REAL NEWS!” June 2014 Issue**

Dear clients, friends and family,

After a long, hard winter we have finally emerged to some warmer, more pleasant weather. And with the warmer weather comes charity runs, walks and cycles. I participated in the CN Cycle for CHEO on Sunday May 4<sup>th</sup>, 2014 and the Scotiabank Serge Giroux Golf Dream Classic on May 29<sup>th</sup> to send children with life-threatening illnesses to Orlando. I would like to thank you for your support. Our Associate Lawyer, Robin Goski, participating in a number of charity events including the Relay for Life on June 6<sup>th</sup>, the Conquer Acquired Brain Injuries (CABI) Walk on June 14<sup>th</sup>, and the Bring on the Bay open water swim for the Easter Seals on July 12<sup>th</sup>.

There are many opportunities to get involved in charity initiatives this summer throughout our community. We encourage you to pick a charity close to your heart and to participate in something active this summer to support that charity. We have included a list of some of this summer's community events for those who are interested in getting involved.

In our past issue, we looked at what happens on the closing day. In this issue, we will be covering the meaning of vacant possession and what you can do if you move into your new home and the previous owners left a lot of debris behind or you found that the house is not how you view it.

We have also included in this issue a brief overview of the recent legislation that comes into effect on July 1, 2014. The Canadian Anti-Spam Legislation will have implications for both individuals and businesses alike. If you have further questions beyond this brief overview, we encourage you to contact your lawyer.

Did you know that we post all our newsletters online? Yes, they are available on our website by clicking [here](#).

Our next issue, scheduled to be published early September 2014, will cover some common issues that arise with neighbours such as who owns the trees between you? Can you neighbour go on your property to make repairs to his property? Who owns and must repair the fence?

Sincerely,  
*Jacques & Jean*

## CASL Overview:

- Canada's Anti-Spam Legislation (CASL) comes into effect on July 1, 2014.
- CASL governs Commercial Electronic Messages (CEMs). An electronic message is any message that encourages the participation in a commercial activity, regardless of whether there is an expectation of profit.
- Sending CEMs without implied or express consent after July 1, 2014, an individual sender could be liable for fines of up to \$1,000,000 per infraction and corporations could be liable up to \$10,000,000 per infraction.
- Unless an exemption applies, businesses will have to ensure that it has consent to send CEMs to each recipient and the CEM complies with CASL's form and content requirements.
- Obtaining express consent is the best practice and does not expire unless the person unsubscribes from receiving your CEMs.
- In order to obtain express consent, the consent must identify the name and address of the sender, and contain a statement that consent can be withdrawn at any time without charge.
- Implied consent can arise in a number of situations, such as a business relationship. A business relationship is where the recipient has purchased or leased a good or service within the last 2 years, or where a written contract in force or the written contract is expired within the past two years.
- There are a number of exemptions to CASL including ordinary business communications. Sharing contacts between businesses. A business can send one CEM without consent if the recipient's email was referred to by a third party who has an existing relationship with the recipient.
- CASL also requires businesses to keep records of when consent was given and if and when the consent expires. If there is a complaint, auditors could require you to prove your records.

This is a very brief overview of the CASL requirements coming July 1, 2014. The purpose of the overview, is to have our readers think about how they use CEMs and if they are or working towards becoming CASL compliant. We recommend that you speak with your corporate lawyers to ensure that you are prepared.

As we are also working on becoming CASL compliant prior to July 1, 2014, we will be sending out an email to specifically ask for your consent to receive our quarterly newsletters. We hope that you find our newsletters informative and will consent to receiving them in the future.

## New Home is not how you expected it? What can you do?

### Vacant Possession

- Vacant possession means to have unimpeded access to the property that you have just purchased. The two most common impediments to vacant possession are people and things.

- Imagine that you arrive at your new home to find several people still at the property. Not every person will cause an impediment to vacant possession. The person cannot have been an invited guest, such as a painter or plumber. Often times, purchasers will have a worker on site to paint the property before they move in, or the vendor has some last minute painting to complete to fulfill the conditions of the Agreement of Purchase and Sale. The invited workers do not prevent the purchaser from moving in.
- However, if there is a trespasser who is preventing vacant possession, the purchaser has a greater chance of proving that the vendors did not provide vacant possession. The purchaser must show that there has been a substantial impediment which “interferes with the enjoyment of the right of possession of a substantial part of the property.” (*Cumberland Holdings Ltd. v. Ireland (1946)*). The vendor has the duty to eject any unauthorized person in order for the purchasers to have vacant possession.
- If items are left at the property when you go to move into your new home, there must be a substantial interference to possession in a substantial portion of the property. Therefore, if the vendors have left a few garbage bags in the garbage, this will not qualify as having not provided vacant possession. However, if the vendor was a hoarder and left 40 years of accumulated things in the property, this would amount to a substantial interference to a substantial part of the property.

## Broom Swept Condition

- Broom swept condition means that you have agreed to remove anything that did not originally come with the home and that was not contracted to stay with the property in the Agreement.
- If you do want to leave something in the home as a house warming gift, ie. a side table that fits perfectly in the living room nook, you need to ask the purchaser’s permission to leave the item. The buyers may not want the object and if they do not want the object, you would be breaching the broom-swept clause by leaving the item behind.
- You will also want to clean the property before you leave. You will want to sweep, wash and /or vacuum the floors, clean the kitchen and bathrooms and remove any marks or stains.
- If you do have a broom swept condition in the Agreement, it is something to consider when planning the logistics of the closing date. If you plan to move on the closing date, be sure to leave yourself enough time to clean the floors, kitchen and bathroom. These tasks often take longer than expected and you do not want to be rushed, exhausted and stressed on your closing date.
- The rates for Bridge Financing are relatively inexpensive and may be worthwhile investment for you when planning your move so that you can move and clean the property being sold at your own pace rather than being rushed because the purchasers are anxious to move in.

## What you saw is not what you got?

- We recently had an occasion where a client purchased a property and in the listing the basement floors were reportedly engineered hardwood. The real estate agent and the seller also told the client that the floors were engineered hardwood. When the client moved into the property, they found that the floors were actually peel-and-stick laminate tiles made to look like hardwood floors.
- An Agreement of Purchase and Sale is a contract between the buyers and the sellers. Therefore, both parties had to agree on the terms and conditions of the contract. For example, the buyers cannot be thinking they are buying engineered hardwood floors, while the sellers know that the floors are a different material. The parties are not contracting for the same thing, therefore there is no Agreement.
- If the buyers discover once they move in that they did not get what they contracted for, the buyer can take recourse against the sellers for breach of contract and misrepresentation.
- At law, the harmed party must mitigate their damages. In this case, our client had to obtain quotes to replace the floors with the material that was represented in the MLS Listing, being engineered hardwood. A lawyer will then send a demand letter to the sellers demanding the sellers cover the cost of the repair.
- If the sellers refuse to pay for the replacement of the item, in this case, the floors, the clients would be able to sue the sellers for misrepresentation and/or breach of contract. (\*\*We are real estate lawyers and it is beyond our mandate to assist with litigation matters. We refer all litigation matters to litigation lawyers\*\*).

## Community Events

**A list of community events taking place in Ottawa this summer include:**

- **Doors Open Ottawa:** June 7-8, 2014 @ various locations around Ottawa. For more information [click here.](#)
- **Italian Week:** June 5-15, 2014 @ Preston Street. For more information [click here.](#)
- **Ottawa Ribfest:** June 18-22, 2014 @ Sparks Street. For more information [click here.](#)
- **Tim Hortons Ottawa Dragon Boat Festival:** June 19-22, 2014 @ Mooney's Bay Park. For more information [click here.](#)
- **H.O.P.E. Volleyball SummerFest:** July 12, 2014 @ Mooney's Bay Park. For more information [click here.](#)
- **2014 Athletics Ontario Junior/Senior Championships:** July 19-20, 2014 @ Terry Fox Athletic Facility at Mooney's Bay Park. For more information [click here.](#)
- **Glengarry Highland Games:** August 1-2, 2014 @ Maxville, Ontario (east of Ottawa). For more information [click here.](#)
- **Sound of Light:** August 2-16, 2014 @ Canadian Museum of History (formerly Canadian Museum of Civilization). For more information [click here.](#)

## Upcoming Events in Ottawa:

- For all upcoming events in Ottawa, please contact the Ottawa tourism website at: <http://www.ottawatourism.ca/en/visitors/plan-a-visit/event-calendar>
- Orleans Start Newspaper: <http://www.orleansstar.ca/>
- Ottawa Chamber of Commerce: [http://www.ottawachamber.ca/ottawa\\_events/upcoming\\_events.aspx](http://www.ottawachamber.ca/ottawa_events/upcoming_events.aspx)
- Ottawa Kiosk – events information: <http://www.ottawakiosk.com/events.html>
- Barrhaven Independent: <http://www.barrhavenindependent.on.ca/>

\*\* IMPORTANT: please note that information provided in this newsletter is not intended to be legal advice. There could be many factors unknown to us that could have an impact on your situation. Please do not hesitate to contact us if you require any further information on these issues.

## About the Jacques Robert Law Office

With the dynamic vision of its key player, Jacques Robert, our firm has grown to be one of the largest real estate law firms in the Ottawa area. To meet the changing face of Real Estate Law we are continually upgrading our systems and competitively adjusting our pricing structures.

Our highly trained legal team, consisting of Robin Goski (associate lawyer), Adriana Caruso (law clerk), Melanie McNeil (law clerk), Lynda Francoeur (receptionist/admin), Tess Brown (receptionist/admin) and Milva Caruso (law clerk and office manager) are all well versed in the area of real estate law, wills and estates. We offer a fully bilingual service to our clientele - nos services sont également disponibles en français.

Our firm is on the recommended rosters for the Department of National Defense, RCMP as well as many corporate relocation firms. We are on the recommended list for all of the major builders in the region.

We have 5 locations for our clients signing convenience: the East, Central, West, South and South-West parts of the city. Our Central Administration is conducted at the East office which is located in Orleans just minutes from the Queensway, the main freeway through Ottawa from West to East. We are open daily from 9:00 am until 5:00 pm.

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