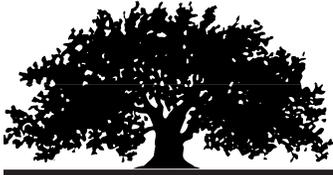


McGREGOR STILLMAN'S



LEGALEYE

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Presenting Legal News, Views and Updates from
McGregor Stillman
Barristers & Solicitors

EDITORS NOTE

Welcome to the first edition of the **McGregor Stillman Legaleye**. The Legaleye is a newsletter that we will be providing as a service to our clients on a quarterly basis. Each edition reviews recent or pending changes to legislation as well as recent court decisions that may impact the businesses or rights of our clients. Each issue will also contain a commentary on a current legal issue.

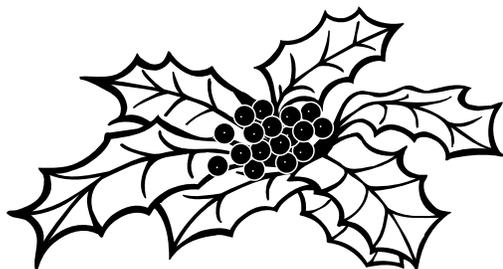
We hope you will find it useful and enjoyable, and we welcome all input from our clients with suggestions for commentary subjects, new columns, or just plain criticism. We encourage anyone with input to contact our editor, Ms. Christine Pratt, at 484-4445.

This issue, coming out as it does in December, is our special Holiday Issue and replaces our traditional Season's Greetings Cards. **We wish to take this opportunity to wish all of our clients and readers a Happy Holiday and continuing success in the New Year.**

SEMINARS

Starting in June 1997, McGregor Stillman will be hosting an annual seminar and reception for its clients. The event will be held in the second or third week of June, and will initially last for a half day. The topics to be covered at the seminar will be recent legal developments, primarily in the corporate commercial and environmental fields.

The seminar will be followed by a reception. All of the



INSIDE:

HEADS UP:

-a review of some recent and upcoming legislation

AS WE SEE IT:

-quarterly commentary on a current legal issue

CAUSES CELEBRES:

-some recent case law to be aware of

FIRM NOTES:

-update on the happenings at McGregor Stillman

firm's lawyers will be present to answer questions and discuss matters of interest.

The cost of the seminar will be extremely reasonable (probably \$50.00). One half of the seminar fee for each participant will be donated to a charity of McGregor Stillman's choosing; the donation will be made on behalf of the clients of our firm.

HEADS UP

Heads up is a column which will appear in each issue of the McGregor Stillman Legaleye, highlighting new or proposed legislation in the Province of Alberta.

“Everyone is taken to know the law”. This is usually easier said than done, especially when the laws are changing so rapidly around us. Therefore, **McGregor Stillman** is pleased to provide you with updates on recently passed or pending legislation, to keep you better prepared to act and react when necessary.

PERSONAL DIRECTIVES ACT

This is proposed legislation which is yet to be proclaimed in force. The proposed legislation allows a person who is at least 18 years of age to make a personal directive, which is a document dealing with personal matters of a non-financial nature such as healthcare, accommodation, with whom the person may live, social, educational and employment activities, legal matters and appointment of an agent to act on behalf of the person. A personal directive would take effect when the maker lacks mental capacity. A personal directive would specify the duties, limitations and authority of an agent. The proposed legislation provides for court review of a personal directive. Protection from liability is afforded to an agent and a service provider for anything done or omitted to be done in good faith. The agent appointed under the personal directive would have the right to access of confidential information with respect to information relevant to a personal decision to be made.

A personal directive may be useful for several reasons. Firstly, in this day and age healthcare professionals are not aware of ones values and beliefs, as once was the case. In a hospital, physicians and nurses will change several times during a serious illness either because of patient transfer to another service, or because a physician goes off service, and another comes on. To a great extent, medical practice in hospitals has become the practice of strangers on strangers. Secondly, with advances in medicine, life can be prolonged, but sometimes it is a poor quality of life, with increased suffering. Thirdly, the ability to protract the course of a disease, without the capacity to cure it, affects to a greater extent the older population, more than the younger. Diseases which afflict the elderly, because of complications, are less likely to be curable in older individuals. Physicians need to be sensitive to individuals’ desires for treatment and to the values which only the individual can apply to various situations.

A personal directive, also known as an advance directive, are really terms for a document which in the past has been broadly known as a “Living Will”. Living Wills presently are not legal documents and the pending legislation will afford the individual the ability to give directions in advance, as to healthcare decisions for oneself when one is still very much alive, but unable because of illness to make those decisions.

In future issues of the McGregor Stillman Legaleye, look to Heads Up for a summary of the highlights of the new Limitations Act which comes into force in Alberta on January 1, 1997 and the recently passed Civil Enforcement Act.

CAUSES CELEBRE

Each quarter McGregor Stillman selects a few recent decisions which we feel may affect you or your business, and provides a quick summary of each. If you want more information on any one case, please contact our offices.

SOLE SHAREHOLDER - PERSONAL LIABILITY FOR CONVERSION BY CORPORATION

Massey v. Brost and Exactor Industries Inc. (May 1, 1996), J.D. Calgary 9201-05964 (Alta QB) Phillips J.

FACTS: Brost was the sole shareholder and director of Exactor. The Plaintiff agreed to finance the construction of a house by Exactor. The Plaintiff later alleged that at least \$15,000.00 of the money advanced had been removed from the project and used by Brost personally on his own home. A claim was filed against Exactor and Brost and shortly thereafter Exactor was sold.

ISSUE: Was Brost personally liable for the conversion of the \$15,000.00 by Exactor?

DECISION: As Brost was the sole shareholder and director of Exactor, he had essentially committed the tort of conversion equally with Exactor. Brost was personally liable.

USE OF PARALEGAL AS AGENT - WHO CAN REPRESENT A LITIGANT IN COURT

Burton v. Burton (May 16, 1996) J.D. Fort McMurray
4813-002422, 4813-002313
(Alta QB), Veit J.

FACTS: The parties each paid \$840.00 to First Choice Paralegal Services to prepare their divorce petitions and other required documents. The paralegal was not a lawyer. The Law Society sought a declaration that the use of the paralegal had flawed the proceedings.

ISSUE: Could a paralegal perform these services for the parties?

DECISION: The paralegal breached the *Legal Profession Act* and the court must not condone or encourage such breaches. Litigants cannot use the services of a non-lawyer as their agent in court where they can afford a lawyer and the non-lawyer makes a practice or business of representing litigants.

FIRM NOTES

Robert P. Lee, the firm's criminal law practitioner, was away on a trip to Hong Kong for both pleasure purposes and to become familiar to some business connections located there. He was away from October 9th, until November 12, 1996. Welcome back Robert!

Christine J. Pratt, the firm's civil litigation and personal injury associate attended a very educational and informative trial lawyers conference in September, 1996 put on by the American Brain Injury Association in Palm Beach, Florida. Christine is also expecting her second child in April, 1997, and will be away from practice from April 1, 1997 until July 1, 1997. Good luck Christine!

Terry M. McGregor will be speaking and teaching at the inaugural and constitutional meeting of the Canadian Trial Lawyers Association in Quebec on February 13 to 16, 1997. Terry will be attending as the Alberta Civil Trial Lawyers Association's constitutional delegate, being a founder of ACTLA in 1985.

I. Mark Stillman conducted a seminar on Wills and Estate Planning on November 19, 1996 at the Mayfield Inn for Investors Group. Similar courses can be provided to your group. Please contact Mr. Stillman for information.

AS WE SEE IT

CONGRATULATIONS! YOU HAVE BECOME A DIRECTOR OF A COMPANY. WHAT ARE THE RISKS?

For the most part, the duties, responsibilities and standards imposed on directors of corporations in Alberta are governed by the Alberta *Business Corporations Act*. The legislation provides that:

“subject to any unanimous shareholders agreement, the directors shall manage the business and affairs of the corporation”.

Directors are unlikely to be able to attend to every detail of the corporations's operation and accordingly the Alberta *Business Corporations Act* permits directors to delegate to officers powers to manage the business and affairs of the corporation. The directors, however, remain responsible for long term planning, setting general goals and strategies and ensuring that competent individuals follow through with those plans and strategies. The directors are responsible to evaluate the success of those persons to whom the various responsibilities have been delegated. Directors must be careful, however, not to abdicate their duty through irresponsible or unnecessary delegation.

The Alberta *Business Corporations Act* imposes on a director a duty to act honestly and in good faith with a view to the best interests of the corporation. Loyalty to the corporation requires that directors not allow their personal interests to conflict with those of the corporation. They must avoid conflicts of interest, actual or perceived.

It is important to be aware that a director, who is present at a board of directors meeting of a corporation, may incur liability if he or she votes for or consents to certain resolutions. A director who is present at a meeting of directors is deemed to have consented to any resolution passed or action taken at the meeting unless that director takes certain steps to record the dissent or lack of consent. Accordingly a director who does not agree with a proposed resolution, should ensure that his or her dissent is properly recorded on the minutes.

There are numerous federal and Alberta statutes other than the Alberta *Business Corporations Act* under which personal liability may be incurred by a director of a corporation. Under many of these statutes personal liability may arise should the corporation fail to comply with its obligations under the statute. Under some of the statutes the liability is quasi criminal and results from the complicity of a director in directing, authorizing, acquiescing or participating in the offense. Three examples are employment related situations, environment related situations and income tax related situations.

Under the Alberta *Business Corporations Act*, directors can be liable to employees of the corporation for all debts not exceeding six months wages payable to each employee for services performed for the corporation while they are directors. The *Employment Standard Code* of Alberta imposes liability on directors for up to six months wages owed to employees by the corporation. The *Occupational Health and Safety Act* of Alberta provides that a "person" which would include a director of a corporation, who fails to take reasonable steps to prevent a contravention of the Act may be subject to prosecution under that Act. There is also potential liability for a director under the *Income Tax Act* where a corporation has failed to deduct or withhold, or to remit certain amounts for employee deductions and remittances. A director is not liable, however, if he or she can show that he or she exercised "the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances."

It should be noted that the foregoing are merely examples of potential liability or exposure to criminal prosecution, and there are other situations where liability can arise.

As one can see, there is a growing mine field of potential liability on the part of directors of corporations. In acting as a director of a corporation, one cannot expect to be perfect, however, the best policy is one of honesty, good faith, loyalty to the corporation and reasonableness of conduct in the circumstances. There are various types of insurance available to protect directors in certain circumstances, and it is prudent to investigate the types of insurance available.



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The law firm of McGregor Stillman is a four lawyer general law firm, with emphasis on Civil Litigation, Corporate and Commercial matters, Real Estate, and Wills and Estates. The firm has represented clients throughout Alberta, and has also represented clients from British Columbia, Saskatchewan, Manitoba, Yukon, Northwest Territories and Ontario. The firm has a well established network of agent connections in Canada, including Vancouver, Calgary, Regina, Saskatoon, Winnipeg, and Toronto and environs. The firm has an affiliation with Goodman, Lister & Peters of Detroit, Michigan. McGregor Stillman also has established contacts with various other law firms throughout the United States.

*The firm's partners are
TERRY M. McGREGOR
and I. MARK STILLMAN
The firm's associates are
ROBERT P. LEE
and CHRISTINE J. PRATT*

This newsletter contains general information only. It may not apply to your specific situation depending on the facts. The information herein is to be used as a guide only, and not as a specific legal interpretation.
