



## LEGALEYE

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

### EDITORS NOTE

**T**hanks to all of our clients and readers who provided comments regarding our first issue of the Legaleye, which came out last Christmas. We are very pleased with the response and welcome all comments and suggestions regarding the Legaleye's contents. If you have anything you would like discussed in the Legaleye, or if you have other comments or questions, please contact our Editor, Ms. Christine Pratt, at 484-4445.



### HEADS UP

*Heads Up is a column which appears in each issue of the McGregor Stillman Legaleye, highlighting new or proposed legislation in the Province of Alberta.*

### THE NEW CIVIL ENFORCEMENT ACT

**T**he new *Civil Enforcement Act*, which replaces the *Seizures Act*, the *Execution Creditors Act* and the *Exemptions Act*, was proclaimed into force on January 1, 1996. The new legislation substantially changes the way that money judgments may be collected in Alberta. In many situations, it is now easier to collect money after judgment has been obtained, and there is more incentive for a creditor to start the enforcement proceedings.

One of the most significant changes in the new enforcement regulations is that an enforcing creditor will now be granted a priority over other creditors to the greater of \$2,000.00 or 15% of proceeds of \$15,000.00 over other withholders, prior to the other withholders taking any money. This is a substantial increase over the provisions of the old legislation which only granted a priority for "costs", which were usually very limited.

Some of the highlights of the new legislation are:

1. Writs can now be registered directly against land owned by a debtor even when a property address or legal description is not known, as ownership of land can now be determined by a name search, a service available to withholders.

### **INSIDE:**

#### **HEADS UP:**

-a review of some recent and upcoming legislation

#### **AS WE SEE IT:**

-quarterly commentary on a current legal issue

#### **CAUSES CÉLÈBRES:**

-some recent case law to be aware of

#### **FIRM NOTES:**

-update on the happenings at McGregor Stillman

2. Land can now be sold by a writholder after six months. Pursuant to the old legislation, land could only be sold by a writholder after one year and only if the writholder was unable to collect any other way. The sale of land will be determined on a case by case basis by the new legislation based on principles of commercial reasonableness.

3. The filing of a Writ against a joint tenancy in land has the effect of severing the joint tenancy.

4. A substantial change with respect to garnishees is to allow for the garnishee of future obligations on a continuing basis. The garnishee will last for one year, except on deposit accounts where it will last for 60 days. A garnishee summons can now attach a joint bank account.

The new legislation has also created changes in the exemptions that a debtor can claim. They now include:

- (a) food for the debtor and dependants for 12 months;
- (b) necessary clothing for the debtor and dependants up to \$4,000.00;
- (c) household furnishings up to \$4,000.00;
- (d) one motor vehicle up to \$5,000.00 (need not be used for earning income);
- (e) medical/dental aids for the debtor and dependants;
- (f) principal residence up to \$40,000.00 (the exemption must now be split between co-owners); and
- (g) property used to earn income up to a value of \$10,000.00.

Special exemptions apply to farmers.

*In the next issue of the McGregor Stillman Legaleye, look to Heads Up for a summary of the highlights of the proposed Limitations Act which is yet to be proclaimed in force in Alberta. This legislation, when proclaimed in force, will replace the Limitation of Actions Act, which sets the time frame within which different types of law suits must be commenced.*

## CAUSES CÉLÈBRE

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.

### **MUNICIPAL LAW - LAND USE BY-LAWS - APPLICATIONS TO AMEND - FACTORS TO CONSIDER**

507089 Alberta Ltd. v. Calgary (City),  
July 5, 1996, J.D. Calgary (Alta QB)

#### **FACTS:**

The applicant applied to the City for an amendment of land-use bylaws to allow it to build an adult mini-theatre complex. The council refused the application. The applicant applied for an order of mandamus compelling the City to re-hear the application. The order was granted, and on rehearing, the City again refused the application. The applicant once again applied to the court for an order compelling a rehearing.

#### **DECISION:**

Where an individual applies to have the land use by-law amended for a specific piece of land in order to carry out a specific business, City Council can only reject that application based on planning consideration. It cannot take into account policy and public interest considerations regarding the morality of the proposed business. Mandamus ordered.

### **PERSONAL PROPERTY - SALE OF GOODS - DELIVERY - DELAY**

Chavda v. Alliance Profit Network Inc. (Oct. 16, 1996), J.D. Edmonton (Alta QB)

#### **FACTS:**

Plaintiff purchased vending machines from defendant in October, 1994. All but one of the machines were delivered in December, 1994, That machine had been damaged during shipping by a third party. The Defendant was having trouble

recovering for the damage from the third party.



#### **ISSUE:**

Was the defendant's dispute with the third party a defence to Plaintiff's action for failure to deliver the machine?

#### **DECISION:**

No. The contract provided that all machines would be delivered within a reasonable period of time. The third party, who was not privy to the contract, cannot affect that obligation, unless such is specifically agreed to in the contract.

#### **FIRM NOTES**

**J**ohn Poirier joined McGregor Stillman on January 1, 1997. Formerly a partner with the Duncan & Craig law firm, John has 17 years' experience in criminal and civil litigation, with emphasis in construction law. John has lectured law students and young lawyers for many years. In addition, he is a level 2 mediator, having completed an extensive range of courses in mediation over the past few years. John also speaks fluent French. Welcome to the team, John!

We remind our clients that Christine Pratt, the firm's civil litigation and personal injury associate, will be away on maternity leave from April 1, 1997 until July 1, 1997. However, she will continue to edit the Legaleye, and will still welcome all comments directed to her attention at McGregor Stillman.

Robert Lee left the firm on March 15, 1997. He will continue to carry on his practice of criminal and civil litigation at The Old Strathcona Law Office. The staff at McGregor Stillman wish him the best of luck in his future endeavours.

The firm welcomes Teri Lynn Bougie as a new associate who joined us in February, 1997. Teri Lynn was admitted to the Alberta Bar in 1996 and will be assisting the firm's lawyers with both their civil and criminal litigation matters, while establishing her own practice in civil litigation and other areas.

**B**oth of the firm's partners, Terry McGregor and Mark Stillman acted as instructors for the Client Counselling Section of the Bar Admission Course in February, 1997. Mr. McGregor also taught at a seminar in Quebec City in February.

#### **AS WE SEE IT**

#### **ENVIRONMENTAL LIABILITY: PLAN AHEAD AND DO IT NOW**

In 1994, the Alberta government passed sweeping changes to the *Environmental Protection and Enhancement Act* ("EPEA") which ushered in a whole new era of governmental control over the environment in Alberta. In addition to consolidating almost all of the conflicting and confusing legislation which had governed the area previously, the new EPEA also establishes severe penalties for environmental offenders, including both substantial fines and incarceration. Most significantly for businesses, however, are the establishment of liabilities for directors and officers of offending businesses on a personal basis, and the granting of power to the EPEA regulators which rival the powers of the Criminal Code.

It is the opinion of McGregor Stillman that, within a very few years, environmental requirements will rival or surpass the attention currently required to pay to tax law by business owners.

The EPEA and its ancillary acts can be generally analyzed as follows:

1. Personal liability will attach to directors and officers of businesses which are found to have violated the EPEA provisions, if the director or officer cannot show that he or she took all reasonable steps to keep informed of environmental problems, and took all reasonable steps to avoid environmental contamination (as opposed to cleaning it up after it occurred).
2. Potential penalties under the EPEA reach into the hundreds of thousands of dollars for businesses, and tens of thousands of dollars for directors and officers. Applications of the penalty provisions are not yet clear because of the newness of the EPEA, but recent reported penalties are considerably higher than those levied under the old EPA and related Acts, and are occurring with more frequency.
3. It is felt that the main intention of the EPEA is to shift the ultimate responsibility for environmental monitoring onto the businesses involved in the industry, thereby allowing the Provincial government to cut expenses while achieving a more drastic monitoring program. This is in keeping with other

government moves in the past few years in the areas of business security registrations, fire and safety monitoring and others.

4. Liabilities for long-standing pollution can extend back through the chain of land ownership (if applicable) for decades, even if the subsequent land owner or interest holder, including banks and other lenders, didn't know anything about the pollution. These provisions have not yet been fully interpreted judicially; it will probably limit the application of these provisions with some kind of "reasonableness" criteria, but this will not be known until the Court has had the opportunity to consider the issues.
5. The EPEA can be basically thought of as having two main parts: "immediate spill" provisions, and longstanding pollution provisions. The EPEA sets out the procedures under each part separately, but the intent and effect of each of the parts are similar; complete control of the situation to the government, and complete responsibility and financial liability to the offender.
6. Although the Federal Government also has environmental legislation, it does not affect Alberta businesses in the same way as does the EPEA. At present the Federal Acts are aimed primarily at environmental planning and approval processes (ie, what to do before a project is commenced), and leave policing to the Provincial governments. It has been suggested that there will be much more coordination between the two levels of government in the next few years.
7. It has also been suggested that the reason that the Provincial Government has not aggressively enforced the provisions of the EPEA (passed two years ago) until now, was lack of funds due to their cost-cutting program. There are now indications that the Government is increasing the funding of enforcement, and that the number of charges laid under the provisions of the EPEA will increase dramatically in the next few years.

McGregor Stillman will be addressing the EPEA in detail at their annual seminar in June, 1997. Meanwhile, we suggest that all businesses start to assess their potential environmental liabilities with a view to implementing plans for avoidance, rather than containment, with particular emphasis being placed on education of employees, establishing environmental assessment and management plans, and reviewing insurance plans.

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*The law firm of McGregor Stillman is a five 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 and Great Britain.*

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