



## LEGALEYE

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

### EDITOR'S NOTE

This is my last issue as editor of the Legaleye. I thank everyone for their suggestions and comments that have helped make the legaleye better each issue. All further suggestions should be forwarded to the incoming editor, Mr. Terry Thomas who can be reached 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.*

### PERSONAL DIRECTIVES

The *Personal Directives Act* became law in Alberta on December 1, 1997. The *Personal Directives Act* permits Albertans eighteen years of age and over to name an agent to make decisions on their behalf should they no longer be able to make choices independently by reason of mental incapacity. They may also write specific instructions to their agent about future health care and other personal matters. The instructions and decisions of the agent are legally binding, as if the person who wrote the Personal Directive had made the decision himself.

The instructions in your Personal Directive can be about any or all personal matters that are non-financial including the following:

- Medical treatments you would or would not want;
- Where you would like to live;

### INSIDE:

#### HEADS UP:

-a review of some recent and upcoming legislation

#### CAUSES CÉLÈBRES:

-some recent case law to be aware of

#### FIRM NOTES:

-update on the happenings at McGregor Stillman

#### AS WE SEE IT:

-quarterly commentary on a current legal issue

- Who you would like to live with; and
- Choices about other personal activities (recreation, employment or education).

If you had previously made a Living Will or an Advanced Directive, it should be redone to comply with the requirements of the new legislation in order to ensure that it is valid.



**CAUSES CÉLÈBRES**

**DRIVER CONTROL BOARD - QUESTIONS ABOUT CRIMINAL CHARGES - SUSPENSION OF LICENCE.**

Godbout v. Alberta Driver Control Board, (January 29, 1998), J.D. Calgary 9701-15366 (Alta Q.B.), Moshansky J.

**FACTS:** The applicant was involved in a motor vehicle accident and charged with impaired driving, to which he pled not guilty. Because he was a heavy truck driver, the applicant was required to face a Driver Control Board hearing, which was scheduled prior to his preliminary inquiry for the impaired charge. The applicant asked for an adjournment of the hearing until after his criminal trial to prevent him from having to answer possibly incriminating questions before the trial. The Board refused his request and when he would not answer questions about the charge or accident, his licence was suspended.

**ISSUE:** Was the Board's decision to suspend valid?

**DECISION:** No.

**REASONS:** A Provincial Board is not entitled to use it's inquiry to investigate an alleged criminal offence. The Driver Control Board is entitled to examine prior convictions, but not defended, untried charges. The Board violated the applicant's charter rights to remain silent and was unfair. Therefore, the decision was quashed and the applicants licence was reinstated pending the resolution of the criminal charges.

**TERMINATION OF EMPLOYMENT - SEVERANCE POLICIES - ALTERATION OF POLICY DURING EMPLOYMENT**

Long v. Delta Catalytic Industrial Services Inc. (February 3, 1998), J.D. Calgary 9401-15261 (Alta Q.B.) Furman, J.

**FACTS:** The Plaintiff had been employed by the

Defendant from 1987 to 1993. The Defendant had purchased the assets of the Plaintiffs's employer in 1987, and the Plaintiff had been employed with the predecessor employer since 1982. As part of the purchase, the Defendant agreed to hire all employees and therefore presented the Plaintiff with an offer of employment stating that severance would be based on the policy in force at termination. In 1993, the Plaintiff was terminated and given severance of two weeks for each year of employment with both companies, which was the current policy.

**ISSUE:** Were the severance provisions binding?

**DECISION:** No.

**REASONS:** There is an implied term in each employment contract that it will not be terminated without reasonable notice. This term can be altered by clear and express agreement. However, the provision in the employment contract was based on some future unascertainable policy being used for severance payments. The general rule was that unilateral changes to the policy are insufficient to bind an employee. There is no clear acceptance of a new severance policy to be inferred by an employee's continued employment after receipt of the policy or a failure to object to it. An employee can agree to have his severance unilaterally determined by his employer at termination, but such an agreement must be abundantly clear to be enforceable. This agreement was not clear enough in that it implied that the employee would have to consent to changes in the severance policy.

**FIRM NOTES**

Terry McGregor and Mark Stillman have once again been involved in shaping the minds of tomorrow's young lawyers. Both taught the client interviewing and counselling section of the Bar Admission Course this year. Mark taught in March, and Terry taught the course in May.



Christine Pratt has left the firm effective May 31, 1998. She will be practicing in the areas of civil litigation and insurance at Field Atkinson Perraton commencing June 1, 1998. We wish her the best of luck!

Mr. Terry Thomas has joined our firm effective June 8, 1998. Terry graduated from the University of Alberta law school in 1996 and completed his articles in British Columbia before returning to Alberta to practice. He is a member of the Bars of both British Columbia and Alberta. He will be practicing in the civil litigation and small business areas. Welcome Terry!

## **AS WE SEE IT**

### **HI MOM, I'M AT THE POLICE STATION**

The *Young Offenders Act* came into force on December 12, 1988 and applies to persons under the age of 18, but over the age of 12. It should be noted that the bringing into law of the *Young Offenders Act* constituted a major philosophical change in dealing with young offenders in that under the *Juvenile Delinquents Act*, a juvenile delinquent was defined as:

"Any child who violates any provisions of the *Criminal Code* or any federal or provincial statute or any bylaw, ordinance of any municipality or is guilty of sexual immorality or similar form of vice, or is liable by reason for any other act to be committed to an industrial school or juvenile reformatory under federal or provincial statute."

Pursuant to the old Act, a child having committed a delinquency was to be treated not as an offender, but as a child requiring help, guidance and proper supervision.

This was almost a comment on the parenting skills of the juvenile's family. However, under the *Young Offenders Act*, the policy contained in the Act states:

"While young persons should not in all instances be held accountable in the same manner, or suffer the same consequences for their behaviour as adults, young persons who commit offenses should nonetheless bear responsibility for their contraventions."

The effect of the Young Offenders legislation is a major philosophical shift, theoretically holding the young persons accountable for their actions, as opposed to dealing with them as delinquents and requiring greater supervision through Court intervention.

The coming into force of the Act also created within the Young Offender statute a number of rights previously not available to young offenders. Section 9 provides that when a young person is arrested and detained in custody pending his appearance in Court, the authorities are required to give the parents notice orally or in writing of the arrest and place of detention. The Court can also require the parent to attend in any of the proceedings. Failure of a parent to attend may result in the parent being found guilty of contempt of court and liable to punishment.

The statute sets out guidelines as to when a young offender may be transferred to adult court. Some of the considerations that the youth court must consider in a transfer application include:

1. The seriousness of the offence;
2. The circumstances under which it was committed;
3. The age, maturity, character and background of the young offender;
4. Any previous record;
5. The availability of treatment at correctional resources;
6. Representations made by the young person or the Attorney General.

After looking at these factors, the court must also weigh different interests in coming to a decision on the transfer application. These interests are:

1. The interests of society;
2. The protection of the public;
3. The rehabilitation of the youth remaining within the jurisdiction of the youth court.

The maximum penalties provided for under the *Young Offenders Act* are two years from the date of committal, where the young person is found guilty of an offence punishable under the *Criminal Code*. A total sentence imposed cannot exceed five years less a day. The legislation also severely limits access to the youth court records, and provides that the criminal record of a young person shall be destroyed upon the expiration of three years after all



dispositions made in respect of the summary conviction offence, including probation orders, and five years in the case of young offenders found guilty of an indictable offence. There are penalties of up to two years for people who disclose records without the proper authority.

One of the major distinctions to be made between youth and adult records is that youth records are not available to the American authorities pursuant to treaty arrangements between Canada and the United States, whereas adult criminal records are made available. As such, a young offender does not run the risk of having his record divulged to the American authorities. Given the fact that the American authorities do not recognize Canadian pardons, this is a major advantage to an offender prosecuted under the *Young Offenders Act* as opposed to the Criminal Code.

The *Young Offenders Act* also provides that all provisions of the *Criminal Code of Canada* apply to youth court proceedings "with such modifications as are necessary". It further codifies a number of common law rights, including those dealing with oral or written statements given by a young person to a peace officer. The legislation specifically requires that these statements be voluntarily given, and that prior to a young person giving the statement, a number of minimum requirements must be met. Some of these requirements are that the young person is advised in language appropriate to his age that he is not under any obligation to give a statement, that any statement given by him may be used as evidence in proceedings against him, that the young person has the right and reasonable opportunity to consult with counsel and a parent or in the absence of a parent, an adult relative or an appropriate adult chosen by the young person. This is an expansion on the rights provided where an adult is involved, in that an adult's only specific right guaranteed by the *Canadian Charter of Rights and Freedoms* is to consult with counsel.

It should be noted that each case varies dependent upon the facts involved. However, if as a parent, you receive the phone call from the authorities, it is strongly recommended that counsel be contacted immediately and that the parent advise the child that until such time as they have had an opportunity to consult with counsel they should exercise their right to remain silent.

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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 and Great Britain.*

*The firm's partners are*

**TERRY M. McGREGOR**

**and I. MARK STILLMAN**

*The firm's associates are*

**JOHN P. POIRIER and**

**TERRY J. THOMAS**

*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.*