



LEGALEye

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

EDITOR'S NOTE

Mr. Terry Thomas is the new editor of the Legaleye. Please forward any future suggestions or comments to Terry at 484-4445.

Our office will be closed for the Christmas holidays beginning December 25, 1998 and will reopen January 4, 1999. We wish you all the best over the holiday season.



HEADS UP

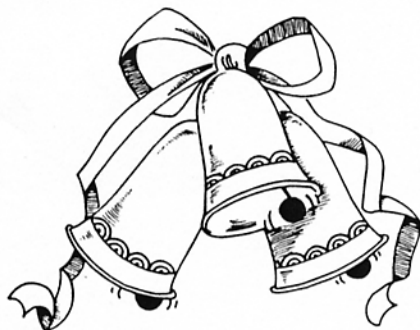
Heads Up is a column which appears in each issue of the McGregor Stillman Legaleye, highlighting new or proposed legislation in the Province of Alberta.

LEGISLATION ALERT

Limitations Act Amendment effective March 1, 1999

The amendments simplify and make consistent limitations that were covered under the old *Limitations of Actions Act*. Here is a brief review of the legislative changes:

1. The Basic Periods
 - (1) The Discovery Period, Section 3(1)(a)



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

Claims must be brought within two years from discovery. That is when the claimant knew or ought to have known that: injury occurred; the conduct was attributable to the defendant; and proceedings were warranted.

- (2) The Ultimate Rule, Section 3(1)(b)

Claims must be brought within 10 years from when the claim arose. Normally the claim arises when the conduct causing the injuries occurs.



These two periods work hand-in-hand and the claim must be brought within the **shorter of the two periods**.

2. Transitional Provisions on March 1, 1999

Transitional provisions are divided into two areas, these are:

(1) **Known Claims**

Must be brought within two years from the implementation date, or within the balance of the existing limitations period, **whichever is shorter**.

(2) **Claims not Known**

Must be brought within two years from discovery (if that occurs) or 10 years from when the claim arose, **whichever is shorter**.

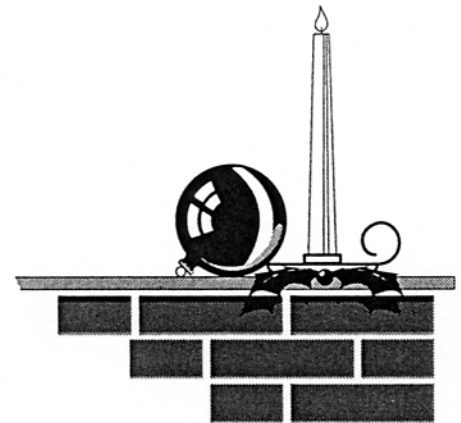
For example, a current contract claim based on a breach occurring three years ago. This would be a known claim, and, therefore must be brought within the shorter of the balance of the existing limitation period (three years, or two years from proclamation). In this case the appropriate period would be two years from March 1, 1999. If the breach was discovered 5 1/2 years ago, the effective time would be six months after proclamation, i.e. the balance of the old limitation period, which is shorter than the two years after proclamation.

3. Other Statutes and Regulations

The *Limitations Act* is a generic default statute. Any prescriptive period in any other statute overrides the *Limitations Act*. For example, the *Students' Financial Assistance Act*, Section 10.1 uses the principle of the *Limitations Act* to but amends the discovery period to six years instead of two years. The old Sections 55 and 56 of the *Limitations of Actions Act*, setting periods of one year from the termination of services by professional or treatment in a hospital will disappear and it will be replaced by the generic rules, being two years.

These are some of the highlights of the new legislation. There is much more to be aware of. You should note in particular that the legislation creates a generic scheme to cover all remedial claims, including breach of trust claims. It is no longer necessary to categorize the claim as a contract or tort, etc. Instead, you have one set of rules as a general default system, complete with new terminology.

For additional information on the *Limitations Act* please call us.



CAUSES CÉLÈBRES

LAND - SALE OF - OFFER AND ACCEPTANCE

Austie v. Aksnowicz, Alta QB Lethbridge 9606 01245 J. Mclean Furman, J.

FACTS:

The plaintiff had been leasing land from the defendant for 12 years. The defendant told the plaintiff that he was interested in selling the land. The plaintiff gave the defendant a written offer to purchase. The defendant signed the offer. Both parties agreed that the signature was only to acknowledge receipt of the offer. The defendant stated to the plaintiff in a telephone conversation that he would sell the plaintiff the land. He considered re-signing the written offer but decided this would not be necessary. The defendant later sold the land to another party without notifying the plaintiff. At the time the plaintiff was ready, willing and able to carry out the purchase.



ISSUE: Was there an enforceable contract?

DECISION: Yes.

REASONS: There was an enforceable contract because the offer included the essential terms, i.e. the identities of the parties, the description of the land and the price. The telephone conversation constituted a lawful and binding verbal acceptance. The acceptance was not contrary to the Statute of Frauds because the defendant acknowledged his signature and stated that he did not feel he needed to sign again once he had given his verbal agreement. Since the plaintiff had been ready, willing and able to perform, specific performance was awarded.

CONSUMER PROTECTION NOTE:

During this time of year as Christmas nears we are often bombarded by quick talking salesmen. They come to your door, we see them in the malls, trade shows and exhibitions. Unfortunately we are left more often than not, with buyer's remorse!!

The types of sales as mentioned are termed as direct sales and pursuant to the *Direct Sales Cancellation Act* you may be entitled to cancel the Sales Contract and be entitled to a full refund. Pursuant to the Act the buyer may, without reason, call and cancel a Sales Contract at any time within ten days from the date of the sale or within ten days of the buyer receiving a written copy of the Sales Contract. Please note there are variations of the Act which may extend your right of cancellation to a period of one year. For further information on the *Direct Sales Cancellation Act* and your rights as a consumer please feel free to contact us.



FIRM NOTES

Y2K - We have completely upgraded our computer operating systems and are prepared for the Millennium. All of our staff have undergone training in Windows 98, Window applications and networking.

Please note that we now have an Internet e-mail address: **mcgregor@mcgregorstillman.com**. Here is a list of individual e-mail addresses

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Look for an upcoming issue dedicated to Y2K.

Michelle Shaw joined our firm this July as Legal Assistant to John Poirier while Marina Skoreiko is away on maternity leave (It was a girl!).

AS WE SEE IT

LOSING YOUR JOB - SHOULD YOU TAKE THAT SEVERANCE PACKAGE?

It is traumatic to have your employment terminated. To make matters worse, employers usually urge you to decide immediately to accept or reject the "severance package" that they offer. There is no need to give an immediate answer. There are several issues which you should consider before deciding to accept or reject a settlement offer.

Firstly, you should calculate how much money you are actually owed as of the date of termination, including regular pay, holiday pay, and pay for overtime. Does the employer owe you any money for expenses, or other money that you advanced to the employer? All of these items should be calculated and treated as debts owing to you at the time of termination. Salary owing should be paid promptly, and should not be held up because of discussions on severance pay.

Secondly, what other benefits are due to you? Items of concern would include pensions or pension contributions, health, dental and disability plans, and other such costly items which you may want to continue. Check your employment contract, and coverage booklets, to see if these are options for you.



Now you should consider what you should receive for severance pay; in other words, what should the employer pay you for the distress, inconvenience, and dislocation of being terminated? Courts in Alberta use a number of factors to decide this point, all of which are given different weight in the deliberations. The most significant of those factors are the amount of time worked for the employer, age of the employee, difficulty in finding a similar level job, and of course amount of salary paid to the employee. Generally speaking, the longer an employee has worked for an employer, the more senior the level of job, the older the employee, and the more difficult the job market in the trade or occupation, the more months of salary the courts will award as severance compensation. This, of course, depends on the courts also finding that the employee was terminated without a justifiable reason, or "cause". Such reasons would include insubordination to superiors, incompetency after attempts by the employer to train the employee, stealing from the employer, and other such circumstances.

The advice of an accountant or other tax advisor to ensure that you receive the maximum benefit of the tax laws which apply to termination or retirement should be considered. In some instances, there may be no tax payable at all, or may be deferred for a considerable period of time. This advice should be sought out before the final decision is made whether to accept or reject a termination offer.

Having had the opportunity to consider all of the above issues and how they impact on your situation, you should now be ready to discuss the "severance package" with your employer. In those discussions, care should be taken to eliminate as much emotion from the discussions as possible. Experience has shown repeatedly that more beneficial settlements are received by those employees who do not become emotional or abusive towards their employers in these situation. It is probably wrong to think that your employer will feel guilty about your situation, but if treated properly, the employer will most likely be businesslike and sympathetic.

There is no set formula for how to maximize the severance package you may receive from your employer - there are too many unknowns and human factors for that. But proper preparation by you, sometimes even before the termination occurs, seeking proper legal and tax advice, and a businesslike attitude towards the discussions will serve you well for the future.



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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.

