



LEGALEye

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

EDITOR'S NOTE

Mark Stillman is the new editor of the Legaleye. Gloria Hammermeister is the assistant editor. Please forward any future suggestions or comments to Gloria 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 Fair Trading Act

by Mark Stillman

The Fair Trading Act of Alberta is scheduled to come into effect on September 1, 1999. The new legislation repeals the *Collection Practises Act*, *Consumer Credit Transactions Act*, *Direct Sales Cancellation Act*, *Licensing of Trades and Businesses Act*, *Public Auctions Act*, *Unfair Trade Practises Act*, and *The Wage Assignments Act*. The impetus behind this piece of legislation is the consolidation of consumer protection legislation into one statute and the adoption by Alberta of harmonised cost of credit disclosure legislation.

Insofar as unfair practices are concerned, many of the practices set forth in the new legislation simply reiterate those enumerated in the *Unfair Trade Practises Act*. Some of the new unfair practices are as follows:

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

- A. The use of exaggeration, innuendo, or ambiguity as to a material fact with respect to a consumer transaction;
- B. To charge a price for goods or services that grossly exceeds the price at which similar goods or services are readily available without informing the consumer of the difference in price and the reason for the difference;



- C. To charge a price for goods or services that is materially higher than the estimate given for those goods or services unless the consumer has expressly consented to the higher price before the goods or services are supplied;
- D. To enter into a consumer transaction if the supplier knows or ought to know that the consumer is unable to receive any reasonable benefit from the goods or services;
- E. To enter into a consumer transaction if the supplier knows or ought to know that there is no reasonable probability that the consumer is able to pay the full price for the goods or services;
- F. To include in a consumer transaction terms or conditions that are harsh, oppressive or excessively one sided;
- G. A supplier doing or saying something that might reasonably mislead or deceive a consumer;
- H. A misleading statement of opinion by a supplier if a consumer is likely to rely on that opinion to the consumer's disadvantage;
- I. A supplier's representation that goods or services will be supplied within a stated period if the supplier knows or ought to know that they will not be provided within that stated period;
- J. A representation by a supplier that it is requesting information or conducting a survey or making a solicitation for a particular purpose, if that is not the case;
- K. A supplier giving an estimate of the price of goods or services if the goods or services can not be provided for at that price;
- L. A representation by a supplier both to performance, capability, or length of life of goods or services unless that representation is based upon proper independent testing and is accurately and fairly reflective of the results of the testing.

The complete list of unfair trade practices in the new legislation is lengthy, particularly given the adoption of these new unfair practices. One must keep in mind that the new legislation applies only to unfair practices where the supplier or consumer is a resident of Alberta, that involve a consumer transaction in which the offer or acceptance is made in or sent from Alberta, or is made or received in Alberta involving a supplier's representative.

There are specified civil remedies set forth in the Act available to the consumer against the supplier, where the consumer has suffered damage or loss due to an unfair practice. This would involve the supply of goods or services as a result of purchase, lease, gift, contest or other arrangement or an agreement between a supplier and a consumer pursuant to which the supplier would supply goods and services to the consumer.

Unfair trade practices is only one area covered by the new legislation and other areas of interest include, direct sales contracts and time share contracts, credit reports, collection practices, and cost of credit disclosure requirements.

CAUSES CÉLÈBRES

by Gloria Hammermeister

Arctic Transit Mix and Concrete Products Ltd.
v. Rolling Mix Concrete (Edmonton) Ltd.

[1999] A.J. No. 424 Court of Queen's Bench

FACTS: This was an action for conversion of a "batch plant" concrete making facility. The Plaintiff owned the batch plant and leased the land upon which the batch plant was attached from the landowner. The Plaintiff negotiated with the landowner to sell the batch plant to the landowner. The negotiations failed. The landowner then sold the land to the Defendant. The Defendant refused to allow the Plaintiff to remove the batch plant.

ISSUE: Was the batch plant a fixture that went with the land, or was it a chattel and thus removable by the Plaintiff?



DECISION: The batch plant was a chattel and thus removable by the Plaintiff.

REASONS: The judge stated that the structure was there to better enable the Plaintiff to manufacture concrete, not for better use of the land. The test is as follows: if the object of attaching fixtures is to improve the land, then the fixtures may become part of the land. If the object of attaching the chattel is to better enjoy the chattel, then it does not become part of the land. In this case, the batch plant was attached in order to better use the batch plant, not to improve the land. Therefore, the Plaintiff was allowed to remove the batch plant, but had to restore the property to its original state. The Defendant's argument that the Plaintiff had let the plant sit for a number of years without removing it, thus inducing the Defendant to believe that it had acquired the batch plant along with the land also failed. The Defendant was aware of the Plaintiff's interest because the lease was registered on title to the land with a caveat protecting the Plaintiff's interest in the batch plant.

Tanti v. Gruden

[1999] A.J. No. 526 Alberta Court of Appeal

FACTS: A restrictive covenant existed on the land in question, limiting buildings on the land to private dwelling houses, and prohibiting business or trade enterprises. (A restrictive covenant is, in essence, a contract, restricting the use of real property in terms of activity or the kind of buildings that may be erected thereupon.) Gruden, one of the Respondents, bought a house and renovated it in order to run his insurance business from the premises. The neighbours brought an application for injunction to stop the Respondent from conducting his business from his home. However, the Respondent had obtained a major development permit from the municipality. The chambers judge threw out the application. The neighbours appealed.

ISSUE: Does the restrictive covenant take precedence over the municipal permit?

DECISION: Yes.

REASONS: A restrictive covenant is enforceable, even if its terms are more restrictive than the applicable

municipal bylaw. There is only a conflict if complying with the covenant necessitates a violation of the bylaw. However, this is not the case here. The covenant would be defeated if the Respondents were allowed to conduct their insurance business from their home. Therefore, a permanent injunction was granted.

FIRM NOTES

Gloria Hammermeister joined our firm this May as an articling student. She is a University of Alberta graduate. She can be reached by e-mail at ghammermeister@mcgregorstillman.com. We have opened a branch office in Barrhead. The telephone number of our new office in Barrhead is (780) 674-2002. There will be a lawyer from our office available for appointments in the Barrhead office every Tuesday.

AS WE SEE IT

by Terry McGregor

Why is Legal Research So Important?

It's probably happened to you; after patiently describing your problem in great detail to your lawyer, showing him or her all of your papers, and answering all of the lawyer's questions, the lawyer then says to you, "I'll have to research this and get back to you with a legal opinion."

Wait a minute. Isn't that why you went to the lawyer in the first place? Isn't he or she supposed to know all this stuff? Isn't that why he or she went to law school, and why they charge such high rates – because they know all this stuff?

Well, yes and no. Lawyers do not know all of the law in the country, or even all of the law in a particular area. They could not possibly remember all of the law on a particular point. What they do know, however, is the general law of the area, and he/she also knows how to find the relevant laws in the mass of legal texts and statutes which inhabit the dusty confines of the law library.



The problem is that the law is a dynamic thing. It changes from time to time, and it changes in different ways. Some law changes when the legislature passes new statutes or regulations, and sometimes the law changes when a court interprets a statute in a way that had not been thought of before. Sometimes a law is applied to a new situation, and sometimes a court will disagree with a previous interpretation given by a lower court, and change the interpretation, and thus change the law itself.

Some laws of our country were passed in the 17th century. Some were passed yesterday. Some of the laws passed in the 1880's have been changed, interpreted, reinterpreted, and then superseded by a new law. And some laws have been repealed, in whole or in part.

Your lawyer, when researching an issue, concentrates immediately on your set of facts and, armed with his or her general knowledge of that area of law, and his or her specialised techniques of how to pare down the vast areas of law which could be researched into only those ones which need to be researched, builds a structure of law into which your facts fit. Included in this procedure are safeguards to make sure that there are not any conflicting laws in another area (for example, environmental laws which give liability to corporate directors, whereas the corporate law restricts the liability of directors.). At the end of the research process, the lawyer "notes up" the research, to ensure that the research is the most current possible; that all the changes which occurred up until very recently have been included. Then after applying this law to the set of facts as he/she knows them, a legal opinion is formed setting out the strengths and weaknesses of the client's position, and what, if anything, would need to be done in order to protect the client, or improve the client's position. Presto! A legal opinion is born.

Armed with this type of research, the lawyer can confidently advise the client of the possible courses of action, and also present the client with a map for future dealings in the same type of situations.

Knowledge is power. Never more evident than in legal research.

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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.

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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.