



## LEGALEye

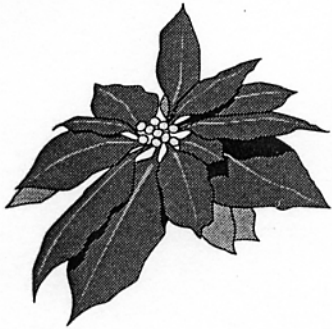
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Presenting Legal News, Views and Updates from  
**McGregor Stillman - Avocats**  
Barristers & Solicitors

### EDITOR'S NOTE



Our office will be closed during the holiday season from December 24 until December 29, 1999. Our office is open December 30 and 31. We will be closed January 1 through January 3, 2000. We wish you all the best this holiday season, and a safe and happy New Year!



### 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.*

#### **Limited Liability Partnerships for Professionals – The Partnership Amendment Act, 1999** by Mark Stillman

This past Spring, the Legislature enacted *The Partnership Amendment Act, 1999*, which although not yet proclaimed in force, will likely be proclaimed in the near future. The new legislation is of particular interest to certain groups of professionals in Alberta, creating a new entity known as a "Limited Liability Partnership" ("LLP").

Currently, all members of a partnership are potentially liable for all debts and liabilities, including those arising out of the negligence or wrongdoing of any other partner, employee, agent or representative of the partnership. This exposure to liability is receiving

### **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

greater attention in recent years with the creation of "mega-firms" and increasing liability insurance premiums. An Alberta partner in a national firm can be held liable for the malpractice or wrongdoing of a partner in another Province, whom he or she has never met, in relation to a file in which the Alberta partner has not been involved and knows nothing about.

Under LLP legislation, accountants (namely GCA's, CMA's and CA's), doctors, lawyers, dentists, optometrists and chiropractors may avoid individual



liability for the negligence, wrongful act, omission, malpractice or misconduct of another partner, employee, agent or representative subject to certain exceptions, namely:

- (a) If the partner knew of the negligence, wrongful act, omission, malpractice or misconduct and failed to take reasonable steps to prevent it, or
- (b) Where the negligence, wrongful act, omission, malpractice or misconduct was committed by an employee, agent or representative of the partnership whom the partner was directly responsible for supervising and the partner failed to provide adequate supervision. Personal assets of non-involved partners would be protected. The limitation does not extend, however, to the partner who errs and the partnership assets are not protected.

LLPs are only available to the specified groups of professionals identified above, as up until now, these groups have had no other means available to limit their liability insofar as their personal assets are concerned, whereas other self governing professions already had the ability to limit their liability through the use of corporations. Although lawyers, doctors and dentists can incorporate, their corporations do not have limited liability similar to other corporations. With the LLP legislation, the assets of the firm or partnership would still be available in an action; however, the personal assets of each uninvolved partner would be protected.

An application made by a partnership to the Registrar of Corporations in Alberta meeting the requirements of the legislation must be submitted in order to operate as an LLP. The new legislation requires that the partnership must notify all of its existing clients of its registration as an LLP and advise clients of the effect of the registration on the liability of the individual partners. It is also possible under the new legislation for partnerships from other Provinces to apply for registration in Alberta as an Extra-Provincial LLP.

McGregor Stillman is not contemplating registering as an LLP at this time.

## **CAUSES CÉLÈBRES**

by Gloria Hammermeister

### **R v. Chan**

[1999] A.J. No. 910 Alberta Provincial Court, Criminal Division

**FACTS:** The accused pled guilty to a charge that he "On or about March 30, 1999, at or near Turner Valley, Alberta did unlawfully cause/permit an animal to be in distress, contrary to section 2(1) of the Animal Protection Act." The accused had locked his cat in the trunk of his car because his landlord (also his boss) would not allow him to keep pets in the building. It was his intention to take the cat to Calgary and leave it with a friend. The accused said that he fed the cat daily, but when the cat was examined by a vet, it was discovered that the cat was dehydrated, stressed and starving. The water the accused had left for the cat had 1/4 inch of ice on it, since it was minus 4 degrees Celsius.

**ISSUES:** This case raised several issues. First, how much should the fine be? Pursuant to section 12(1) of the Act, the maximum fine is \$2000.00. Second, does the fact that the accused is from a different culture have any bearing on the case? Third, how should sections 12(2) and 12(3) be interpreted?

**DECISION:** The accused was fined \$1500.00. The judge did not think the accused's cultural background had any bearing on the case. He further held that the accused may not have custody of any animal for two years from the date of the judgment.

**REASONS:** The penalty imposed must be sufficient to both deter the particular accused and the general public from engaging in similar conduct. The judge found this to be a serious offence. Although public safety was not jeopardized, the accused's actions adversely and materially affected the public. The judge said, "It is hard to conceive of any rational human being concluding that such treatment would do anything other than place the cat in extreme distress (as indeed it did)." Regarding the accused's cultural background, the judge did not feel he was in a position to comment on Canadian versus Chinese attitudes towards pets; however, he did say that the cultural background of the accused had nothing to do with the offence. The accused had been in Canada for 18 years, and is not exempted from the law based on



cultural practice. Regarding the interpretation of sections 12(2) and 12(3) of the Act, the judge took a common-sense approach. The judge held that the words "the animal" should apply to any animal, not just the one that was abused. This makes sense, particularly if the abused animal had died, and allows the court to order that the accused may not have custody of any animal for a period of time deemed just.

### **Nawrot v. Ritter Homes Inc.**

[1999] A.J. No. 903 Alberta Court of Queen's Bench, Master's Chambers

**FACTS:** The defendant U sought a summary dismissal of the claim of negligence against him. While employed by Integrity Inc., he was hired to do an inspection of the plaintiff's house. An employer/employee contract existed between U and Integrity at the time. The contract between the plaintiffs and Integrity Inc. had a limitation of liability clause, providing that no legal action may be commenced against Integrity Inc. after one year of completion of any inspection. The action against U was commenced more than one year after the inspection.

**ISSUE:** Could U rely on the limitation clause in the contract between the plaintiffs and Integrity Inc.?

**DECISION:** No, U could not rely on the limitation clause.

**REASONS:** The wording of the liability clause did not include employees of Integrity Inc. and therefore U could not rely on it. U owed the plaintiffs a duty of care while performing the employer's contractual obligation.

### **FIRM NOTES**

Mark Stillman was an assessor at this year's Bar Admission courses at the Shaw Conference Centre. He assessed up-and-coming lawyers' interviewing and counselling skills.

Terry McGregor was appointed to the Pro Bono Committee of the Law Society of Alberta, a project to

investigate methods of delivering free legal services to the poor.

Michelle Shaw, legal assistant, is the proud owner of Ben, a pet therapy cat. Michelle is on the Board of Directors for the Pet Therapy Society of Northern Alberta, and is in charge of media relations. Ben visits clients at the palliative care unit at Capital Care Norwood. You can see a picture of Ben on the internet: [www.shopalberta.com/paws](http://www.shopalberta.com/paws), then click on "photo gallery".

### **AS WE SEE IT**

by Terry McGregor

#### **The Value of Arbitration**

Over the past ten years, the cost of going to court has skyrocketed in all but the simplest of lawsuits. Increasingly complex business transactions, restrictive rules of evidence, the increased use and cost of expert witnesses, and the increased amount of time required for lawyers to adequately prepare for a trial of a disputed matter have seen the actual cost of litigation double, triple, or quadruple when compared to the same type of litigation ten years ago.

This has led some businesses to try different methods of avoiding the court process. Many of the methods attempted involve avoiding the dispute resolution process altogether; i.e., settling at higher than justifiable amounts because of the spectre of high costs, ignoring the problem in the hope that it will go away (which doesn't work), or giving limited instructions to legal counsel, thereby hampering their ability to do a good job.

The court process has been evolving over the past ten years as well. There are many more alternatives within the actual court process now than there were ten years ago. Mini-trials, settlement conferences, case management by judges, and scheduled time management are all attempts by the courts of our Province to deal with these burgeoning problems.

Another increasingly popular innovation is the introduction of binding arbitration clauses in commercial and corporate contracts.



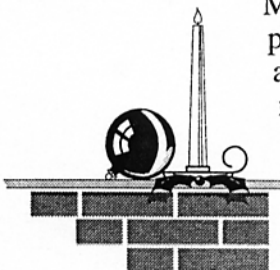
Arbitration is a dispute resolution process which does not use the courts, but uses a process similar to that of the courts to hear and evaluate evidence and render a decision. Instead of a judge rendering a decision after hearing evidence, the arbitrator does so. The arbitrator or arbitrators can be retired judges, lawyers, experts in particular fields considered to be neutral for the purposes of arbitration, or other persons picked by the parties as being knowledgeable and neutral. The main difference is that the arbitrator can and should use his or her own knowledge and expertise to decide a problem; whereas a judge can only make a decision based on evidence presented to him or her.

Arbitration, if done by committed agreement (rather than grudging acquiescence) and performed by counsel who have prepared well, can save untold amounts of time and money for their clients. While legal counsel usually prepare and present the arbitration case itself, quite often an arbitrator will talk to the clients directly to flesh out more of his or her understanding.

Arbitration is not worthwhile, in our opinion, unless it is both binding and clear in its process. These matters must be agreed upon by the parties before the arbitration process starts. For existing disputes, arbitration can be agreed upon and the process started now. For future contracts, specific arbitration clauses can be inserted into the agreement. Included in the agreement of both parties to the arbitration should be a clause stating that the decision of the arbitrator, if arrived at according to the rules agreed upon, can be enforced by the courts of the Province on a summary application; that is, that the person who wishes to enforce the arbitration decision can apply to the courts for a quick ruling and order to enforce the arbitration decision as though it were an actual order of the court.

Arbitration is not the same as mediation. Mediation, as you may have read in a previous edition of the Legaleye, is not a binding process; whereas the intent of arbitration is that it be binding and enforceable.

Mediation is a compromise process; whereas arbitration is asking a trier of fact and law to make a decision in favour of one or the other disputants.



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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*

*TERRY J. THOMAS and*

*GLORIA HAMMERMEISTER, Student-At-Law*

*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.*