McGREGOR STILLMAN THOMAS'S

LegalEye

PRO POSSE SUO

VOL 4, No.1

SPRING/SUMMER, 2000

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

EDITOR'S NOTE

Please contact either Mark Stillman or Richard Smith at 484-4445 with any suggestions for future articles, or with any comments you may have.

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HEADS UP

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

BILL C-22

By Gloria Hammermeister

Proceeds of Crime (Money Laundering) Act

This proposed legislation is intended to combat money laundering in Canada. Money laundering is the process by which cash generated by crime is converted to assets that cannot easily be traced back to the crime. The Act's objectives, which include:

- Implementing measures to detect and stop money laundering;
- Investigating and prosecuting money laundering offences by keeping client identification requirements for financial service providers and businesses susceptible to money laundering;
- Reporting suspicious financial transactions and cross-border movements of currency;
- Establishing an agency to handle all information responding to the threat of organized crime by helping law enforcement, but, at the same time, protecting people's privacy.

Money laundering is a serious problem in Canada. Between five and seventeen billion dollars of crime proceeds move through the Canadian economy each year. Estimates are that 80% of the money laundered in Canada is from foreign sources.

The new Act applies to banks, credit unions, *caisses populaires*, life insurance companies or foreign life insurance companies to which the Insurance Act applies, trust and loan companies, persons engaged in the business of dealing in securities, portfolio management and investment counselling, foreign exchange dealing, persons engaged in businesses described in the regulations to the Act, casinos, and departments and agents of the Provincial or Federal Governments. The list also includes lawyers.

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The legislation will establish a new, independent body called the Financial Transactions and Reports Analysis Centre of Canada. The Centre will act at arm's length from law enforcement agencies and other entities to which it is authorized to disclose information. This means that the Centre is independent of law enforcement agencies. It will collect, analyse, assess and disclose information to detect, prevent and deter money laundering. Personal information will be protected from unauthorized disclosure. The Centre will also enhance public awareness of the problem of money laundering.

There will be mandatory suspicious transactions reporting. Banks, casinos, lawyers and accountants (to name a few) must report any financial transactions that they have reasonable grounds to suspect are related to a money laundering offence.

The legislation creates very significant penalties for violating the Act. Failure to report such a transaction includes fines up to two million dollars and five years in jail.

The proposed legislation is intended to create a balanced effective reporting scheme, which will uncover criminal activity, yet, safeguard individual privacy. The information will be closely guarded and is subject to the *Privacy Act*.

The overall goal of the Act is to curtail money laundering in Canada and internationally, with the desired result being that organized crime will become a less profitable endeavour.

CAUSES CÉLÈBRES

D'Aoust v.Lindsay

Alberta Court of Queen's Bench J.D. Edm. Justice Phillips

FACTS: The Plaintiffs had been raising mule deer in Strathcona County for antler harvest since 1987. On July 23, 1995 the Plaintiff had approximately 92 deer which he kept in a series of fenced paddocks on his property. On July 24, 1995, as the Plaintiff went to check on his herd, he found three dogs gnawing on one of his deer. The Plaintiff's son shot the three dogs. Two of the dogs were owned by the Defendant Reid; the other dog was owned by the Defendant Lindsay. The Plaintiffs claimed that on the morning in question, they found a total of 25 deer either dead or maimed from the attack by the dogs, 14 of which deer were dead at the scene. The Plaintiffs sued for the losses that they had suffered as a result of the dog's attack on the herd.

DECISION: The Plaintiff's action was dismissed.

REASONS: While the trial judge found that the Defendants' dogs had entered the deer enclosure and had attacked the Plaintiffs' deer herd, the Plaintiffs had not proven that the Defendants were liable to the Plaintiffs.

The Plaintiff must show that the Defendant's animal had mischievous or vicious propensities and that these were known to the Defendant. In the present case, Justice Phillips held that there was no evidence the owners were aware of any such vicious propensities.

Additionally, on the issue of negligence, Justice Phillips held that a "dog owner does not owe a duty of care to the world at large". As the Defendants lived approximately 5 miles away from the Plaintiff's land, Justice Phillips found that it was not reasonably foreseeable that the dogs would make their way out of their neighbourhood and onto the Plaintiff's game farm. Because the Defendants owed no duty to these Plaintiffs, they were held not to be liable to the Plaintiff.

The Plaintiff further argued that as the Defendants were admittedly in breach of the County By-Law with respect to allowing dogs to run at large and that they were negligent because of the breach of the By-Law alone. Justice Phillips held that notwithstanding the breach of the By-Law, the Plaintiff's claim must still fail, because the Defendants did not owe a duty to this particular Plaintiff.

Carabine et al v. Damm Galvanizing Inc.

Provincial Court of Alberta Honourable Judge J.L. Skitsko. April 18, 2000.

FACTS: Four employees (Carabine, O'Shaunasy, Skoreyko, and Blair), brought an action against their employer, Damm Galvanizing Inc. for damages for constructive dismissal of their employment by the Defendant. Each of the employees had been subject to a profit sharing or bonus plan during their employment in addition to their wages. A percentage of the company's profits would be distributed to each employee based on the employee's gross earnings during the year. Up to the end of the 1997 fiscal year the employer was willing to share in the profits by payment of cash bonuses to each of his employees. The employer announced that effective November 1, 1998, a new profit sharing plan would be in place, and instead of receiving cash bonuses, the employees would receive shares in the company. The Plaintiffs argued that the change in the nature of the profit sharing plan was a material change in their contract of employment and sued for damages, being the loss of the cash payments pursuant to the profit sharing plan. The Defendants argued that the profit sharing plan was simply a "Company Policy" and not an essential term of the employment contract.

DECISION: The Plaintiffs action succeeded and they were entitled to damages for the loss of the original profit sharing plan.

REASONS:

Judge Skitsko held that for the employer to simply state that "Profit Sharing is not compensation" does not make it so. In this

case, the compensation was to be cash paid into an RRSP and not issuance of shares into that RRSP. This change in corporate policy was a unilateral change to the terms of each of the Plaintiff's contract of employment and amounted to constructive dismissal of each employee. Based on the Plaintiffs individual output, which were recorded by the Defendant on a monthly basis, the Plaintiffs were entitled to the cash value of the profit sharing plan they would have received. Three of the plaintiffs were entitled to damages to the maximum amount allowed by the Provincial Court, that being $7,500.00. The fourth plaintiff had earned $6,618.00 of profits, as he was granted judgment in that amount.

FIRM NOTES

For the past few months, McGregor Stillman Thomas has been in the process of undergoing re-orientation of the staff to better serve the needs of our clients. To that end, several staff changes have occurred or will be occurring in the next short while.

Terry Thomas, who has been an associate lawyer with the firm since 1997, as been made a full partner in the firm. We are extremely pleased and proud to be able to announce that, henceforth, the name of the firm will be McGREGOR STILLMAN THOMAS. Terry, in addition to his increasing duties as a very busy lawyer and partner with administrative responsibilities, has also agreed to serve as a Director of the Metis Historical Society of Alberta.

Evelyn Fowler has joined the staff of McGregor Stillman Thomas to take on the role of Legal Assistant in the primary areas of Commercial Transactions and Wills/Estates. Evelyn brings a wealth of experience in these areas to our firm, which we highly value. Evelyn will also take on the supporting role for Real Estate. Welcome, Evelyn!

McGregor Stillman Thomas is also pleased to announce that Richard Smith has joined the firm, effective May 1, 2000 as an associate lawyer. Richard's practice is primarily in the area of civil litigation, with an emphasis on family law. Having practiced for seven years in Edmonton, mainly with a mid-sized law firm, Richard brings a broad band of experience to McGregor Stillman Thomas. We are pleased that McGregor Stillman Thomas now has the ability to service our clients' matrimonial needs as well.

Susan Yacoub, who was the firm's primary civil litigation Legal Assistant from its inception until 1996, has returned to McGregor Stillman Thomas effective May 15, 2000. Sue has worked for Terry McGregor for a total of 11 years previously; we are very pleased that she has returned to take over part of the civil litigation responsibilities as well as some administrative tasks, which seem to increase daily!

Effective May 31, 2000, John Poirier will be leaving McGregor Stillman Thomas to join a small firm in downtown Edmonton. Michelle Shaw, Mr. Poirier's Legal Assistant will also be leaving. We wish them both well in their new surroundings.

Gloria Hammermeister, our articling student for the past year, will be leaving to pursue further legal avenues, effective July 15, 2000. We have enjoyed our relationship with Gloria, and wish her the best in her future legal career.

McGregor Stillman Thomas is continuing to pursue additions to the staff, both at the professional and support level. We expect to make announcements regarding further additions to our staff in issues of the Legaleye.

AS WE SEE IT

By Richard Smith

Enforcing Access Orders

In the area of family law, one of the most disheartening problems for clients is ensuring they receive the access to a child that they are entitled to. Often, the party who denied access would receive little, if any, sanction from the courts for failing to grant access to a child when the other party was entitled to it.

The *Family Law Statutes Amendment Act* ("the Act") came into force in Alberta on May 19, 1999. The Act provides remedies to those people who have had difficulties exercising access despite having an existing court order granting access.

If you have an access order that provides for access to a child at determinable times, and you have been denied access, you may now enforce your order more effectively. Similarly, if the child is not returned by the party exercising access at the time that is required by an access order, the Act provides a number of remedies.

Firstly, where you have been denied access, the court can order that you be given compensatory access, or additional time, to the child. The court can require the party that denied access to reimburse you for any expenses incurred as a result of the denial of access, including travel expenses, the cost of locating and securing access to the child, lost wages and any other expense the court feels is appropriate. This particular provision of the Act is extremely helpful for those clients that have to travel a significant distance or take time off from work to see their child, only to be denied access when they arrive to pick up the child.

The court can further order the party denying access to give security (which can be in any amount the court feels appropriate) to ensure the access order is honoured. This allows the court to require the party who has denied access to pay money into court, and in the event that access is denied on a subsequent occasion,

the money would be available to the client who has been denied access to compensate the client for this further denial of access.

The court can also impose a penalty in an amount up to $100.00 for each day that access has been denied to a maximum of $5,000.00 and, in default of payment, to imprisonment not exceeding Ninety days. Where a denial of access is ongoing, the court can order that the party denying access be imprisoned continuously or intermittently until access is given, up to a maximum of Ninety days.

Where there has been a history of denying access or the court has other reasonable and probable grounds that access will be denied, the court can direct a Peace Officer to assist the client in obtaining access, and the Peace Officer must take all reasonable steps to locate the child and bring the child to the client unless the Peace Officer determines that in the circumstances that it is not in the best interest of the child. If the Peace Officer determines that it is not in the best interests of the child, he must prepare a report describing the events and circumstances and provide a copy of the report to the client and the party that has denied access. The report of the Peace Officer is then admissible as evidence at any subsequent proceedings relating to the enforcement of the Access Order without requiring the Peace Officer to attend court.

The Act recognises that the denial of access has a detrimental effect on children. As a result, the Act provides that, where appropriate, the court can order that a child, a party who had denied access, a party who has been denied access, or any one or more of them, must attend an educational seminar, parenting course, counselling, or a similar type of session and require proof of attendance to be provided to the court. The court can further order the appointment of a mediator to assist in resolving the problems surrounding access.

Finally, the Act provides that the court can direct either or both of the parties to "do anything the court considers appropriate in the circumstances that is intended to induce compliance with the access order". This broad power gives the court great flexibility to make an appropriate order or direction on the particular facts of the case before the court.

While the implementation of the "Parenting After Separation Course", which requires parties who are separating and have children to attend a seminar to learn parenting skills has lead to a decrease in the amount of applications brought before the courts for denial of access, there are still many situations where a client's access rights are not respected by the other party. The broad powers given to the court in the *Family Law Statutes Amendment Act* will hopefully ensure that the parties respect access orders, and failing compliance with the access order, the offending party will be given a meaningful deterrent to such conduct, as well as compensating the client who has been denied access both monetarily and in the form of additional access being granted for the access time the client has lost.

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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
I. MARK STILLMAN
and TERRY J. THOMAS
The firm's associates are
RICHARD D. SMITH
(GLORIA HAMMERMEISTER, Student-At-Law)