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

EDITOR'S NOTE

Please contact Karen Wood at 484-4445 with any suggestions for future articles, or with any comments you may have.

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.

JUSTICE STATUTES AMENDMENT ACT

By I. Mark Stillman

New legislation in Alberta, known as the *Justice Statutes Amendment Act* ("Act"), has been passed by the Alberta Government, amends numerous statutes relating to the administration of Justice in Alberta.

Several sections of the *Act* came into force on January 22, 2001, including provisions that enhanced the role of the Provincial Court and enshrine into law the successful civil claims mediation and pre-trial conference processes.

Provincial Court Judges now have the power to deal with breaches of its Orders, as well as breaches of Orders granted by Justices of the Peace. Provincial Court Judges will also be able to award costs in Family Court matters when a party has been guilty of delays or brought forward frivolous proceedings. Previously, only the Court of Queen's Bench could deal with the contempt of Court proceedings.

Other changes will allow for future increases to the limit for Provincial Court civil matters (i.e., Small Claims Court) to \$50,000.00. The current limit is \$7,500.00. Once a higher limit is authorized more time will be freed up at the

Court of Queen's Bench level to hear more matters. Several other sections of the *ACT* came into force on April 1, 2001, including amalgamating the Surrogate Court into the Court of Queen's Bench, allowing entities other than Court offices

to accept payment for current ticket fines, and allowing the Provincial Court to deal with tenancy issues.



The following is a summary of various provisions which have already come into force.

Provisions which came into force on January 22, 2001:

- The organization of the Provincial Court will be simplified by enabling the three separate divisions (Civil, Criminal, and Family and Youth) to be merged in the future.
- The potential civil claims limit for Provincial Court, Civil Division, is increased to \$50,000.00 from \$10,000.00. The current limit is \$7,500.00.

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- Provincial Court Judges are provided with civil contempt powers to deal with breaches of Provincial Court Orders and Orders made by Justices of the Peace.
- Additional categories of many judgments granted in Provincial Court can be filed and enforced in Court of Queen's Bench, including cases of access to children.
- Provincial Court Judges are granted the power to award costs in Family Court matters where a party has been guilty of delays or has brought forward frivolous proceedings, or where a claim or counterclaim is withdrawn in Civil Court.
- Any person can apply for access to a child when the parents are deceased. Under previous legislation, an application could only be made when the parents were living apart.
- Provincial Court can now grant a default judgment when a plaintiff fails to appear on a counterclaim.
- Provincial Court can now hold payment hearings in civil claims cases to assess the ability of the debtor to pay.
- Pre-trial conferences and civil claims mediation are enshrined in law.
- Arbitration cases can now be appealed to the Court of Appeal level.
- Complaints of Judges and Justices of the Peace regarding administrative decisions of the Chief Judge will be heard by Judicial Council rather than the Court.

Provisions which came into force on April 1, 2001:

- In appeals of civil claims, transcripts must be filed within three months to ensure civil claims appeals are not delayed unnecessarily.
- Provincial Court Judges will be granted the power to deal with tenancy agreements.
- The Surrogate Court will be amalgamated into the Court of Queen's Bench, eliminating duplication in the Court system. Queen's Bench Justices already act as Judges for the Surrogate Court.
- Changes to the *Provincial Offences Procedure Act* come into effect. These changes include raising the limit on tickets from \$400.00 to \$1,000.00 where failure to pay does not result in jail time. These tickets are enforced by placing restrictions on motor vehicle privileges, such as not being allowed to register a vehicle until the fine is paid.

Generally, the new legislation improves Albertans' access to justice through several changes to the Court system.

CAUSES CÉLÈBRES

In certain circumstances, an individual who does not pay his child support or spousal support will find himself in jail.

In Grant v. Wolansky, Mr. Wolansky was the owner of a very active trucking company and was required to pay \$300.00 per month to his ex-wife for the support of their two children. Between October of 1987 and September of 1993, Mr. Wolansky paid virtually nothing. He continually defied Court Orders to disclose his financial documents, deceived the Court with regard to his assets, and rendered ineffective all attempts to secure payment of the Court ordered maintenance. He was the sole owner and shareholder of a prosperous trucking business. The Director of Maintenance Enforcement applied to Court to examine Mr. Wolansky under oath and to commit him to prison.

Mr. Justice Cote, sitting as a Queen's Bench Justice ordered, among other things, that Mr. Wolansky be jailed for 14 days. In his reasons, Mr. Justice Cote states that "Mr. Wolansky has produced virtually no credible evidence of anything and has defied a host of different duties to give discovery, despite a reinforcement of those duties by many formal Court Orders. In short, Mr. Wolansky has been making a monkey of the Courts for upwards of seven years, with great deliberateness, and total success. They have achieved nothing because he and his assets and records scamper away each time"... "Children and taxpayers often suffer if child support is evaded."

"Society cannot function, and Courts and laws become useless, if people can readily defy or evade the law and Court Orders. Mr. Wolansky patently has. Enforcement delayed is justice denied. Nothing brings the law into more public disrepute today than the spectacle of endless talk, never leading to action. Mr. Wolansky creates the impression and may believe, that the Courts are all sound and fury, signifying nothing." In addition to jailing Mr. Wolansky for 14 days, Mr. Justice Cote appointed the Director of Maintenance Enforcement as receiver of all interest of Mr. Wolansky of real property, shares owned by or held by Mr. Wolansky, and of all loans from or owing to Mr. Wolansky.

In Rarick v. Rarick, the wife applied to the Court to declare her husband in contempt of Court for failing to pay child support and spousal support and to jail him for his contempt. Mr. Rarick acknowledged that he was in arrears of support in the amount of \$11,432.00. Between September 15, 1999 and March of 2000, Mr. Rarick did not pay any of his support, despite the Court requiring him to pay \$1,429.00 per month. He paid no support during this period of time despite the fact that he earned in excess of \$41,000.00 from his employer and was entitled to receive an additional \$4,000.00. Madame Justice Veit of the Court of Queen's Bench held that Mr. Rarick had chosen to pay commercial obligations and to make personal expenditures rather than to pay for the support of his children and his wife despite having been told by the Court that he must pay his family obligations first. Madame Justice Veit found Mr. Rarick in contempt of the Court Orders and imprisoned Mr. Rarick for a period of 15 days or until Mr.



Rarick purged his contempt by paying the support ordered by the Court. Mr. Rarick was also obligated to pay the Court costs of the application to Ms. Rarick on a solicitor-client basis.

The decision by Madam Justice Veit is interesting in that while the Rules of Court provide that the Court does not have the authority to imprison a person for a failure to pay money, Madam Justice Veit held that it was clear in Alberta that the Court can send a person who has failed to pay support to prison if the default is willful, pursuant to S. 21(1) of the *Maintenance Enforcement Act*. While Ms. Rarick did not apply to imprison Mr. Rarick under the provisions of the *Maintenance Enforcement Act* but instead relied upon the Rules of Court, the Court held that as there was no particular form of contempt hearing set out in the *Maintenance Enforcement Act*, and Mr. Rarick had received notice of the request for imprisonment and the grounds upon which the requests were made, the contempt scheme set out in the *Maintenance Enforcement Act* had been satisfied.

In *Will v. Will*, an application pursuant to the *Maintenance Enforcement Act*, the Director of Maintenance Enforcement applied to Court to have Mr. Will committed to jail for failure to pay his maintenance obligations. In May of 1995, Mr. Will was ordered to pay \$1,000.00 a month maintenance for his four children. When the application was heard in May of 2000, Mr. Will was in excess of \$50,000.00 in arrears of maintenance. Master M. Funduk of the Court of Queen's Bench had little sympathy for Mr. Will's situation. He stated that "Mr. Will says that he lost a job that he had because he was convicted of assaulting his ex-wife. First, whose fault is that? Second, that happened a considerable time ago.

Mr. Will gives the platitudinous self-serving response that he would like to get a job and pay the arrears. He says that if he could just get a Class 3 driving license he could work for his brother driving a truck. That is like my saying that I will only work if I can be appointed to the Chief Justice of the United States.

...I cannot believe that the job market in Western Canada is restricted to driving a truck for Mr. Will's brother". Master Funduk sentenced Mr. Will to 90 days continuous imprisonment.

The foregoing cases suggest that if you are having trouble paying your ongoing maintenance, it is incumbent upon you to bring the matter to Court as soon as possible to justify why the arrears have accumulated and to satisfy the Court that your failure to pay the maintenance was not willful. The *Maintenance Enforcement Act* provides a "reverse onus". In other words, it is assumed by the Court that the person who is to pay the child support has the ability to pay and it is up to the payor of the maintenance to satisfy the Court that he does not have the ability to pay because of illness, unemployment,

or other valid reasons. As the Court recognizes that child support obligations come before other financial obligations, and as the Court has a duty to protect the rights of children, the Court is not reluctant to use the powers of imprisonment to make individuals recognize and address their child support responsibilities.

FIRM NOTES

We are pleased to announce that Mr. Terry McGregor has been appointed as an honorary life member of the Alberta Civil Trial Lawyers Association.

Congratulations to Terry McGregor as a leader of the Edmonton Centre for Equal Justice project of the Edmonton Social Planning Council, and the establishment of an inner city law clinic.

Mr. Mark Stillman has volunteered to be an examiner in the interviewing and counselling section of the 2001 Bar Admission Course.

AS WE SEE IT

By Karen G. Wood

Intellectual Property on the Internet - Choosing Your Domain Name

Increasingly, businesses are entering the *virtual* business place and developing websites to attract customers or participate in virtual sales. In addition, individuals and public interest groups are developing websites to express their views and concerns. The first step in developing your website is registering a domain name. The first issue is to decide which domain you will register in: .com, .net, .edu, .ca, etcetera. Then is the tricky part – choosing your domain name. When you register your domain name you gain the exclusive right to the use of that domain name. But it's not that simple. If the domain name is not chosen with care you may still be liable for breach of trademark or the tort of "passing off". The mere registration of the name will not give you the right to use that name where there is a breach of trademark or the tort of "passing off". Any goodwill that you generate in a domain name will be lost should you discover at a later date that it is in breach of trademark or constitutes "passing off".

Breach of trade name is the easiest liability to avoid. Therefore, it is important to do the appropriate searches to ensure that your domain name can be used by yourself: internet searches, tradename searches, registered and



unregistered trademark searches, business names, etc.. "Passing off" is where you use a name or acronym which another business has developed goodwill in. For example a dispute arose between the Potato Growers of Alberta and the Professional Golfers Association over the use of the acronym PGA in the Potato Growers Domain name. The Potato Growers Association agreed to the sale of their domain name. It was questionable whether the Professional Golfers Association would have been successful in a lawsuit because it is unlikely anybody would have confused the two associations. However, it is much better not to be sued in the first place.

The domain name registry for Canadian Web sites is .ca. The Canadian Internet Registration Authority (CIRA) administers the registry and can be reached at www.cira.ca/en/home.html. Under their new November 2000 rules, it is now much easier to obtain a .ca domain name than previously. In addition, multiple domain names can now be registered per organization. CIRA provides mediation/arbitration for disputed domain names. The Internet Corporation for Assigned Names and Numbers (ICANN) has a dispute resolution policy for domain names ending in .com, .net, .org, etcetera. In spite of these methods of resolving disputes, litigation is still available. As a result of litigation, you could be ordered to pay damages. Even where you are successful, you will have to bear the cost of the litigation for which you will not be fully compensated even where costs are awarded.

Therefore to protect your domain name for commercial use:

- a. perform extensive searches,
- b. ensure that your name is not identical or likely to be confused with a trademark or trade name other than your own, and
- c. have a legitimate interest in the name.

To protect your domain name for private non-commercial use:

- a. have a legitimate interest in the name,
- b. ensure that your name is not identical or likely to be confused with a trademark or trade name, and
- c. make fair use of the domain name without tarnishing the trademark or trade name of a third party.

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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.

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.