



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

### EDITOR'S NOTE



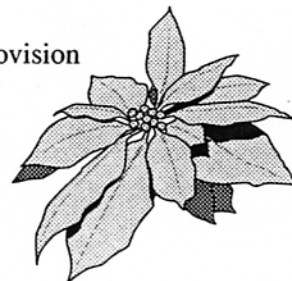
On behalf of McGregor Stillman LLP,  
I would like to wish everyone a  
Happy Holiday Season and all the  
best in the coming year.

Please contact Karen Wood at  
484-4445 with any suggestions for

future articles, or with any comments you may have.

The Amendment Act made this provision  
effective as of October 1<sup>st</sup> 2000.

The main provisions of the  
Amendment Act came into force  
on May 16<sup>th</sup> 2001.



Changes have been made to EI repayment or "clawback."  
Repayment was introduced in 1979 to discourage higher  
income claimants from repeatedly collecting benefits. The  
position as of the 2000 tax year is as follows: -

### 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.*

#### Amendment to the Employment Insurance Act

By Rod Duncan

On May 10<sup>th</sup> 2001 Royal Assent was granted to allow  
amendment of the Employment Insurance Act of 1996.

Prior to the Amendment Act the Government discouraged  
repeated use of Employment Insurance by reducing the  
benefit rate of frequent EI users. This was known as the  
"intensity rule." This policy had the effect of punishing EI  
users, who through no fault of their own, were required to  
work seasonally or on short-term contracts. This was  
especially so in Provinces where there was low economic  
activity.

The Amendment Act eliminates this "intensity rule" by  
making it law that all claimants receive at least 55% of  
their maximum insurable earnings.

1. First time claimants are exempt from the  
repayment provisions since by definition they are  
not repeat claimants.
2. All of those in receipt of special benefits -  
maternity, parental or sickness - no longer have to  
repay any of those benefits. Parents, who stay at  
home with young children, or those too sick to  
work, are no longer penalized.

### **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 LLP

#### **AS WE SEE IT:**

-quarterly commentary on a current legal issue



3. The threshold for benefit repayment is now set at one level - \$48,750 of net income with a repayment rate of 30%. When repayment is required then it is restricted to 30% of a claimant's net income over \$48,750.

Prior to the Amendment Act those parents who were looking to return to the work force were required to work more hours than other EI claimants were in order to be eligible through the scheme. This had the effect of penalizing them. The Amendment Act removes this discrimination and re-entry parents are to be treated as any other claimant. This provision should be read in conjunction with earlier announced increases in allowable parental leave.

The Canada Employment Insurance Commission is to report annually through until 2006. This Commission monitors and assesses the EI program - reporting its impact on people, communities and the economy.

There also have been changes made to the EI rate setting mechanism.

On December 1<sup>st</sup> 2000 Federal Government announced that the premium rate for the year 2001 would be set at \$2.25 per \$100 of insurable earnings - this being a reduction from \$2.40. The Government suggests this had the effect of saving individual workers \$59 compared to the previous rate. Across the country Canadians apparently have an extra \$1.2 billion to spend in the economy.

The Government compares the new rate to that of 1994 - when it was \$3.07 per \$100 of insurable earnings - and suggests that employers will save \$6.4 billion.

The Amendment Act maintains Maximum Insurable Earnings at \$39,000.

## **CAUSES CÉLÈBRES**

### **Jakubik v. Liberty Mutual Insurance Company**

This lawsuit involved the Plaintiff claiming against her insurer. The Plaintiff purchased a 1998 Windstar van from the common-law husband of her daughter, who had purchased the vehicle as scrap, repaired the vehicle, and sold it to the Plaintiff for \$19,200.00 on December 6, 1999.

She testified that she paid her daughter's common-law

husband in cash. Some of the repairs that were done by the common-law husband of the Plaintiff's daughter were bodywork, replacing the car seats, and re-installing an air bag.

On December 11, 1999 two days after having secured insurance from the Defendants for the van, the Plaintiff and a friend went Christmas shopping at a number of malls in Edmonton, ending up a Kingsway Garden Mall. The Plaintiff testified that she took about \$2,000.00 in cash with her when she went Christmas shopping that day. The Plaintiff and her friend went to the food court to eat, and as they were getting ready to leave, she discovered her purse was missing. She testified that along with her glasses and other articles, there was \$190.00 - \$220.00 in cash left in her purse when it was stolen. The Plaintiff discovered soon thereafter that her van was missing from the mall parkade. The Plaintiff testified that she had left her winter coat and all of their gift purchases up to that point in the van before entering Kingsway Mall.

The van was recovered on December 16, 1999. The Defendant refused to pay out to the Plaintiff under the insurance policy on the basis that the Plaintiff had made false statements in her application for insurance, that the Plaintiff provided false information, or on the basis that the loss the Plaintiff claimed had been fabricated. There were a number of concerns raised by the Defendant:

1. The short period of time between the dates that the Plaintiff purchased the van and it was stolen. (5 days);
2. The Plaintiff's failure to disclose the family relationship between the Plaintiff and the seller of the van when she was interviewed by the insurance investigator;
3. The damage done to the van when it was recovered, which was consistent with intentional damage rather than accidental damage;
4. When the van was recovered, it had been stripped of parts, notably the seats and the air bags;
5. The seller of the van (the common-law husband of the Plaintiff's daughter) had been uncooperative when meeting with the Defendant's investigator, stating untruthfully that he bought the van from an unknown man, and his evasiveness about his relationship with the Plaintiff.

The Defendant's investigator suspected that the thefts of the purse and the van were "a complete set up", that no cash had actually been exchanged between the Plaintiff and



the seller, and that the Plaintiff was a party to a plan to strip and damage the van to ensure the full value of the van by the insurance proceeds, in addition to the sale of the parts stripped from it. The Plaintiff denied any involvement with any scheme to defraud the Defendant.

Justice Moreau of the Alberta Court of Queen's Bench held that once the insured individual proves that a loss they have sustained is covered by an insurance policy, the onus shifts to the insurer to establish that the Plaintiff is not entitled to recover. Notwithstanding the suspicious circumstances surrounding the theft of the Plaintiff's purse and van, the learned Trial Judge held that the Defendants had not satisfied the Court, on a balance of probabilities that the Plaintiff knowingly participated in a "set up", that she committed a fraud or willfully made false statements to her insurer that would disentitle her from recovery. Accordingly, the Trial Judge gave judgment for the Plaintiff in the amount of \$16,389.25, which represented the purchase price of the van less the salvage value and the Plaintiff's deductible, the value of the Christmas gifts and other contents that were in the van at the time that it was stolen, and reimbursement to the Plaintiff for a rental car for three weeks.

### **FIRM NOTES**

- A welcome addition to the firm in October of this year was Rod Duncan who hails from Scotland where he had been practicing law for the previous 15 years. He became a member of the Alberta bar in November 2001.
- The firm enjoyed participating in the Work Experience program with grade 12 Ross Shepard student Bree Hazelaar who is interested in becoming a lawyer. Good luck in your future endeavors Bree!
- Once again Mark Stillman volunteered his time to examine this year's articling students during their Bar Course.
- Terry McGregor continues in his volunteer efforts in establishing a poverty law clinic to assist those less fortunate Edmontonians in need of legal advice.
- Karen Wood volunteered her time to the IAAF World Championship working in the athlete's village, and to the Edmonton Fringe Festival.
- In addition, Karen Wood volunteered her time to the Leaf Breakfast Committee, which organizes a fund raising breakfast in honour of Persons Day each year to

raise money for the Women's Legal Education Action Fund. (Persons Day celebrates the day that Canadian Women were recognized as persons under the constitution by the courts.)

- McGregor Stillman LLP has made arrangements for larger office space to accommodate our growing team; we are pleased to announce that we are moving to the third floor of our present building. Renovations are commencing shortly. Our phone, fax, and street address will remain the same. Our office suite will be #300.
- The firm opened a satellite office in Westlock in association with Gerlach Barlow in November 2001.

### **AS WE SEE IT**

By Karen Wood

### **You Risk More Than Your Reputation When You Don't Keep Your Word!**

The general presumption is a promise which is made is not enforceable. Therefore, if you promise to give a gift to a person or provide a gratuitous favour, it is not enforceable if you change your mind. Contracts are one type of promise that the law will enforce. What then makes a promise contractual? To be legally binding as a contract, a promise requires that there be some *consideration* for its performance. Consideration is generally thought to be the exchange of something of value such as cash, goods, or services. A promise which does not have consideration is considered a gift. If the only result of a promise is personal satisfaction, this does not amount to consideration. However, in certain circumstances, gifts or promises have been found to be enforceable where a party has relied to his detriment on the performance of the promise. This appears to be based on the development of the law of negligent misrepresentation.

In the law of negligent misrepresentation, where you rely on the statement of someone which turns out to be untrue and suffer damages as a result, your damages are recoverable against the statement maker. Therefore, if in reliance upon performance of a promise or receipt of a gift you act in a manner which causes you to suffer damages, your damages are compensable. For example, in one case, a lottery corporation advised "Mr. X" that he had won the lottery. In light of his future wealth, Mr. X expended a large sum of money only to discover at a later date that he



had been misinformed. The lottery corporation was held responsible for Mr. X's losses. The gift itself was not enforceable. Therefore, Mr. X was not entitled to the full amount of the lottery winnings. However, the amount of funds that Mr. X had spent in expectation of receipt of the lottery winnings were held to be damages for which the lottery corporation was responsible to reimburse him.

Casual promises are something to be wary of because you may unintentionally be bound where:

- a.) consideration passes resulting in a contract, or
- b.) the other party relies on the promise to their detriment.

For example, your friend promises to help you remove shingles from your roof. This is an unenforceable gift. However, if relying on your friend, you hired contractors to shingle the roof and they were not able to proceed because the roof was not prepared and, as a result, charged you a penalty, you could sue your friend for the cost of the penalty. If there was no penalty but you were charged the normal cost of removing the shingles – this would not be recoverable because this was something you would have had to pay anyway. BUT if your friend had promised to help you remove your shingles if you helped him weed his garden, and you had in fact helped him weed his garden, you could then sue him for the cost of the value of his assistance in removing the shingles because you in fact had a contract.

You may find yourself in a business or personal situation being responsible for promises that you have made. For example, promises of longevity, promotion, etc., while not enforceable under current law in an employment situation, do serve to lengthen the notice period. Be forewarned that the development of the law may lead to actual recovery for damages caused by accepting your employment offer when you entice new employees and make grandiose promises. Further in business development, be aware that "trading promises" may in fact result in a contractually binding situation. As a matter of good business practice, you should always qualify your promises such that a reliance situation does not arise. Statements such as "I'll do my best", etc. will help combat a party's statement that they relied on your promise and acted to their detriment as a result. Finally, while your friend may never sue you for not helping remove his shingles, after he weeded your garden, one should always honour their own word!

## **McGREGOR STILLMAN LLP**



**Barristers and Solicitors**

#207, 10335 - 172 Street  
Edmonton, Alberta, Canada  
T5S 1K9

Telephone: (780) 484-4445  
Facsimile: (780) 484-4184  
E-mail: mcgregor@mcgregorstillman.com



*The law firm of McGregor Stillman LLP is a five lawyer general law firm, with emphasis on Civil Litigation, Corporate and Commercial matters, Real Estate, Wills and Estates, and Family Law. 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 LLP 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.*