STILLMAN LLP'S

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

EDITOR'S NOTE
Should you have any questions, concerns or suggestions for future articles please contact John Hagg by phone at (780) 930-3648or email at jhagg@stillmanllp.com

SPECIAL ANNOUNCEMENT

Stillman LLP is pleased to announce that it has merged with Lovatt LLP, and will remain located at our current location. Lovatt LLP brings with it a wealth of legal experience and expertise in the form of lawyers Craig Lupul and Donald Lupul, as well as six members of their highly experienced and pleasant support staff- Amanda Martin, Breann Parry, Francine Henke, Jessie Bakker, Lori Burdett, and Margaret Fortune. Wayne Lovatt and Peter Semonick have retired after long and successful careers as lawyers in the Edmonton legal community, and we wish them the best of luck in retirement.

Stillman LLP also wishes to offer a warm welcome to all Lovatt LLP existing clients. We thank you for the opportunity to help Lovatt LLP lawyers and staff continue to provide the high level of legal service that Lovatt LLP has provided to you for many years.

CAUSE CELEBRES

Cannabis Legalization in Alberta
By Katie Kenny, Associate Lawyer

On July 1, 2018, the recreational use and sale of cannabis will be legalized in Canada. This federal change necessitates many legal changes at the provincial level. Although this change was dictated by the federal government, like in the case of alcohol, it will largely fall to provincial governments to legislate and administer the distribution, use and sale of this previously controlled substance.

After a period of public consultation, the Alberta Cannabis Framework was released in the fall of 2017, with the stated goals of keeping cannabis out of the hands of minors, protecting public safety (including on the roads and in workplaces) and inhibiting the black market for cannabis. The Framework did not reveal the extent to which the provincial government would control the sale of cannabis. Many stakeholders wondered whether privatized sale of cannabis would be permitted, or whether Alberta would opt for a system like the one proposed in Ontario, where cannabis will be sold exclusively at government-controlled stores.

On November 16, 2017, the Alberta government introduced Bill-26 to amend the legislation currently known as the Alberta Gaming and Liquor Act, which will be renamed the Gaming, Liquor and Cannabis Act. Under this new legislation, the commission currently known as the Alberta Gaming and Liquor Commission (AGLC) will be tasked with issuing and enforcing licenses, controlling distribution, and setting regulations in a number of areas. Bill-26 addresses cannabis in much the same fashion as the existing legislation deals with alcohol. The AGLC will have the exclusive authority to import and distribute cannabis. Retail sales of cannabis will be privatized. The AGLC will issue cannabis licenses to private companies who will be authorized to sell cannabis at retail locations. Cannabis retailers

INSIDE:

will then purchase their stock from the AGLC, who will charge each retailer the same price for a given "class" of cannabis.

Producers of cannabis (growers) must also be licensed, however they will be licensed under federal legislation. Private Alberta cannabis retailers will only be permitted to sell cannabis produced by those suppliers authorized to produce cannabis for commercial purposes under the federal Cannabis Act. The AGLC, however, will regulate aspects of the federally licensed growers' participation in the Alberta market. Sales representatives of growers will need to be registered with the AGLC, and growers will be prohibited from entering into agreements to sell or promote a grower's product directly with retailers, meaning that all wholesale sales will be between the grower and the AGLC only.

The proposed legislation sets out several parameters within which the privatized cannabis retail market must operate. Licensed cannabis retailers must be separate businesses that may only sell cannabis and cannabis accessories. No alcohol, tobacco or pharmaceuticals may be sold at licensed cannabis shops, and private sales for the time being will be limited to brick-and-mortar retail, as online sales will be limited to government-controlled stores. Municipal bylaws will likely determine minimum distances cannabis retail locations must be from playgrounds and other public places, and the hours within which cannabis may be sold.

Like in the case of corporations licensed to sell liquor, the directors, officers and employees of corporations licensed to sell cannabis are subject to the same duties as the corporation itself. Therefore, directors, officers and employees of licensed retailers may be held personally liable if the corporation fails to comply with regulations and license conditions.

With regard to the sale of cannabis, the proposed legislation contains many common sense provisions designed to protect public safety. Cannabis may not be sold to a minor, and minors will not be allowed inside premises licensed to sell cannabis. Cannabis may not be sold to persons who appear to be intoxicated, and retailers may not allow anyone who appears to be intoxicated to use cannabis. At least initially, the use of cannabis within a cannabis retailer's premises will be prohibited, therefore cannabis lounges or cafes will not be permitted. However, the Alberta government has suggested that such establishments may be permitted in the future.

The new Act will set rules regarding when and where use of cannabis by members of the public is permitted, the violation of which will result in a Provincial offence. The minimum legal age for c onsumption of cannabis will be eighteen. Generally, use of cannabis in public will be permitted where smoking tobacco is also permitted. This is in contrast to the scheme proposed in Ontario, where recreational use of cannabis in public will be prohibited. However, cannabis use will not be allowed within certain distances of playgrounds, sporting fields and other designated public places. Cannabis may not be used in a vehicle, and if cannabis is within a vehicle it must be within a closed container out of the reach of the driver. The Alberta government has also introduced Bill-29 to amend the Traffic Safety Act to address cannabis-impaired driving.

Many of the legal changes necessary to adapt to the legalization of cannabis are still ahead, including licensing criteria, taxing, workplace safety and bylaws to ensure that cannabis retailing and use does not negatively impact businesses and neighborhoods.

In light of these significant legal changes, many business owners have concerns about ensuring their workplaces remain safe, and how the use or sale of cannabis in the proximity of their premises may impact their business. They will need to consider their policies in light of the new legal landscape. If you need more information about how these legal changes impact you or your business, please contact your lawyer at Stillman LLP.

(Note to reader: At the time this article was written, Bill-26 had passed first reading, meaning that changes could be made before the bill is passed into law. However, there is a high likelihood that the final legislation will be largely the same as Bill-26, and therefore it is assumed for the purposes of this article that the provisions of the bill will be adopted as they were drafted on November 16, 2017).

EDITOR'S NOTE

Stillman LLP is pleased to welcome to our team Susan Then who will be working as a Legal Assistant in our litigation department.

We are also sad to say goodbye to Christina Babcock who has moved on to other opportunities, and we wish her the best of luck with her future endeavors.

AS WE SEE IT
Random Drug and Alcohol Testing in the Workplace
By Christopher Younker, Associate Lawyer

In the very recent court case of Suncor Energy Inc v Unifor Local 707A (2017 ABCA 313), the Alberta Court of Appeal set out to determine exactly what is and is not acceptable in terms of testing for drug and alcohol use in the workplace.

In 2012 Suncor implemented random drug and alcohol testing for workers in safety-sensitive positions at some of its sites in the Fort MacMurray area. Prior to implementing random testing, Suncor had taken extensive measures to address drug and alcohol concerns at its worksites, including employees education and training, "post incident" and "return to work" testing, an employee assistance program, a treatment program for employees with substantial dependencies, a drug interdiction procedure, sniffer dogs, and an alcohol free camp policy. However, it seemed that drug use still persisted and random testing was thought to be a potential answer.

Suncor's facilities are operational twenty-four hours a day, every day, year round. Employees typically work twelve hour shifts, and use some of the largest and most complex mining and industrial equipment in the world. The equipment includes heavy haul trucks that are as large as multi-story buildings and weigh in excess of 400 tons, as well a cable and hydraulic shovels that can stand 21 meters tall.

Subsequent to the implementation of random drug testing, Unifor, the union representing the approximately 3300 unionized employees, grieved the alleged random testing infringement of unionized workers' privacy rights. An arbitration took place, at which time the majority of the arbitration tribunal ruled in favour of Unifor.

Suncor subsequently filed for a judicial review which is a process for the Court of Queen's Bench to review the decision of the arbitration tribunal in light of legal principals which guide a fair and impartial decision making process. At a judicial review, the Court has the option of upholding the tribunal's decision, replacing the decision, or sending the matter back to be heard by a new tribunal if the court finds that the decision of the tribunal was unreasonable. In this action, the Judge found that the original tribunal's decision was unreasonable, and he directed that the matter be reheard by a new tribunal. Unifor then appealed the judicial review decision to the Alberta Court of Appeal.

In coming to its decision to dismiss Unifor's appeal of the judicial review, the Alberta Court of Appeal reviewed the recent decision of the Supreme Court of Canada in Irving where Justice Abella explained how a dangerous worksite is not, in itself, enough to justify management imposing random drug or alcohol testing on its employees. Justice Abella defined the test in terms of whether there are special safety risks, and in particular, whether there was evidence of a general problem of substance abuse within a workplace:

"The dangerousness of a workplace, whether described as dangerous, inherently dangerous, or highly sensitive – is, while clearly and highly relevant, only the beginning of the inquiry. It has never been found to be an automatic justification for the unilateral imposition of unfettered random testing with disciplinary consequences. What has been additionally required is evidence of enhanced safety risks, such as evidence of a general problem with substance abuse in the workplace."

The Alberta Court of Appeal reviewed the decision of the tribunal and the judicial review. It noted that both sides at arbitration had agreed that the Suncor sites were dangerous and that safety was important. Both sides of the arbitration also agreed that random testing was not automatically justified in dangerous workplaces, but had to be a proportional response to safety concerns at the specific site. However, the majority of the tribunal favoured tipping the balance towards privacy over safety. In coming to this decision, the Court of Appeal noted that the tribunal placed a large deal of emphasis on the incidence of workplace accidents involving unionized employees versus non-union staff.

The Court of Appeal agreed with the Court of Queen's Bench ruling that the tribunal's decision was not reasonable, because what is material and relevant is the danger present and evidence of substance abuse at a workplace that effects all employees. This means that the matter will be sent back for a new tribunal hearing with an express direction that the tribunal take into account the effects on all employees as stated above, not just unionized employees.

Stay tuned. It will be interesting to see whether this express direction from the Court makes any difference to the tribunal's consideration of the matter, or whether Bill-26, the eventual Gaming, Liquor and Cannabis Act, or Regulations flowing therefrom will influence the ultimate result.

HEADS UP

Changes to the Condominium Property Act

By Shannon Kinsella, Associate Lawyer

The Condominium Property Act ("CPA"), among other things, regulates the relationship between condominium developers, purchasers and condominium boards. The Condominium Property Amendment Act ("CPAA") was passed by the Alberta Legislature in December 2014 in order to bring some much needed changes to the CPA.

The regulatory work required to bring the CPAA info force has been ongoing since December 2014 and the changes to be implemented have been split into 4 stages and will benefit both purchasers and developers of condominiums. With enhanced disclosure requirements and greater consumer protections, consumer confidence in the new condominium market is only going to increase, which is a plus for developers as well.

On January 1, 2018, the first stage of the CPAA will be implemented and will include changes dealing with occupancy date delays and purchaser deposits. Other changes, including enhanced disclosure rules and remedies will take effect starting April 1, 2018. Stay tuned to the Legal Eye for further updates on the implementation of the next three stages of the CPAA as the information becomes available. The disclosure requirements relate to the information that a developer must provide to a purchaser prior to the purchaser finalizing the condominium purchase. The major changes to disclosure requirements include:

- an actual or proposed budget must be provided;
- the interior finishing for the unit and the exterior finishing for the building must be shown and included in the contract;
- any home warranty insurance contract under the New Home Buyer Protection Act must be delivered; and
- a list of any fees the developer will charge, including occupancy fees, must be provided.

The provision of an actual or proposed budget will be very beneficial. Previously, developers were able to set a condo fee at the time of purchase, which frequently ended up much too low and would later be substantially increased. The CPAA now requires a 12 month budget to be prepared which includes specific projected expenses of the condominium corporation, which is set up once the condominium is substantially sold. If the expenses of the corporation in the first year after condominium contributions are levied are more than 15% greater than the expenses shown on the proposed budget, the developer will be required to pay the corporation the difference in expenses above the 15%. This is to ensure that the developer does not underestimate the corporation's expenses in order to make a sale based on low condominium fees.

In addition to the disclosure requirements, developers must now provide a final occupancy date for a unit, being either a fixed date or the last date in a range of dates. This change is all about consumer protection. Previously, a purchaser might purchase a condominium and would be unable to cancel the contract, even if the build was delayed by months, or sometimes even years. With the implementation of the CPAA, if a unit is not ready for occupancy within 30 days of the final occupancy date that was provided in the disclosure documents, a purchaser will now have the right to cancel the contract. This date can be extended if there was a legitimate cause as specified in the CPAA such as natural disasters, a public emergency, a delay in the issuance of a development permit, etc. However, it is important to be aware that if the purchaser receives a notice from the developer setting out a new final occupancy date, they will only have 10 days to cancel the contract or the new date will be binding on the purchaser.

Another change to be aware of is the increased protection of a purchaser's deposits. In order to safeguard a purchasers deposits, any payments that a developer receives from a purchaser must be held in trust by a lawyer. These trust requirements will come into effect on April 1, 2018. Payments received must be deposited into a trust account within 3 days and a notice must be sent to the purchaser within 10 days. Alternatively, with the agreement of the developer, the purchaser has the option to retain their own lawyer to hold the deposit in trust. In this case, notice of deposit must be sent to the developer within 10 days.

These are only a few of the changes that are coming to the CPA which will change the landscape for condominiums over the next few years. Whether you are purchasing a new condominium or are a developer, the lawyers at Stillman LLP are available to assist in navigating the new regulatory framework and requirements and to answer any questions that you may have.

STILLMAN LLP

Barristers and Solicitors

#300, 10335 - 172 Street
Edmonton, Alberta, Canada T5S 1K9
Tel: (780) 484-4445
Fax: (780) 484-4184
Canada Toll Free: 1-888-258-2529
E-Mail: lawyers@stillmanllp.com
Website: www.stillmanllp.com

Stillman LLP is a general law firm formed in 1993 with emphasis on Civil Litigation, Corporate and Commercial matters, Real Estate, and Wills and Estates and Family Law. The firm represents clients throughout Alberta, and has also represented clients from British Columbia, Saskatchewan, Manitoba, Yukon, Northwest Territories, Ontario, Quebec and various jurisdictions in France, Ireland the United States.

The firm has a well established network of agents in Canada, including Vancouver, Vancouver Island, Calgary, Regina, Saskatoon, Winnipeg, Toronto and Montreal. Stillman LLP also has established affiliations with various law firms throughout the United States and Great Britain.

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