



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

### **EDITOR'S NOTE**

Our office will be closed during the holiday season from December 24 until December 28. Our office is open during regular business hours during the week of December 29 – January 2, 2003 with the exception of Thursday, January 1, 2004.

We wish you all the best this holiday season and a safe and happy NewYear!

Please contact Richard Smith at 484-4445 ext. 302, 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 upcoming legislation and legal issues in the Province of Alberta.*

### **CAR INSURANCE – EXPECT TO DIG DEEP**

By Terry McGregor

Bill 53 – Car Insurance:  
Recent Premium Increases

Recent introduction of Bill 53, the Provincial Government's answer to huge increases in car insurance premiums has met with spirited debate, opposition and questions, and the pointing of fingers at various parties. One thing is certain: the recent increases in car insurance premiums are causing concern in the Provincial Government. At present, it appears that the Provincial Government thinks the increases are required because of personal injury settlements. This is because of a well-organized and well-funded lobbying campaign by insurance companies. The Insurance industry attempted to blame personal injury lawyers and

“massive” personal injury settlements for the increases in car insurance premiums. Given that they get all of their insurance statistics from the insurance company, we think the Provincial Government tends to believe what they are hearing from the insurance lobby. To that end, the Provincial Government is attempting to increase “no fault” types of benefits from a driver's own insurance company to pay to that driver in the event that he or she is hurt. In return for the increase of this type of benefit, the driver will see their right to sue the wrongdoer either reduced or eliminated.

A review of premium increases shows that it is not only automobile insurance that has increased dramatically in the last two years; property insurance has increased as well. Rises in property insurance premiums have, of course, little to do with personal injury settlements. Therefore, one must question the reasoning being given by the insurers for premium increases. It is our opinion that the primary and overwhelming reason for the increases in automobile insurance premiums over the last two years is a dramatic decrease in return on investment in the stock markets for the insurance companies. In brief, they have played



### **INSIDE:**

#### **HEADS UP:**

-a review of some recent and upcoming legislation and legal issues

#### **FIRM NOTES:**

-update on the happenings at McGregor Stillman LLP

#### **CAUSES CÉLÈBRES:**

-some recent case law to be aware of

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

-semi-annual commentary on a current legal issue



the markets and lost. Fortunately for the insurance companies, they are in the position where, if they can convince the Government, they can pass on their losses to their customers by Government regulation. Given that it is a requirement to own car insurance in order to drive, consumers are powerless to do anything. Generally consumers have no remedy, withdrawing their business, when insurance companies raise premiums to cover investment losses.

Bill 53 is the first in what is anticipated to be a line of new legislative bills to be introduced by the government over the next couple of years in order to try to stop the flood of complaints from Albertans regarding increases in insurance premiums. We believe that the Government is introducing Bill 53 as a direct knee-jerk response to phone calls being received by caucus members about increases in insurance premiums, particularly for young drivers.

We would urge our clients to analyse their own insurance situation and to write their MLA complaining about the lack of clear understanding regarding the “insurance premium crisis”. We also strongly urge our clients to resist the temptation to reduce insurance coverage in order to reduce insurance premiums. Talk to your insurance agent about the best coverage for your circumstances and let them know your feelings about premium increases.

## **FIRM NOTES**

Elana Yaremkevich will be commencing employment as our Family Law Paralegal, beginning in January of 2004. She replaces Eileen McGregor who has decided to pursue her education. We wish Eileen the best of luck in her studies.

Terri Stadnyk has joined us in the position of Corporate, Commercial, Wills and Estates Paralegal.

Maggie Rupp has joined us in the position of Office Manager.

## **CAUSES CÉLÈBRES**

### **WCB’s Power Put in Perspective**

By Greg Bentz

In *Wolfert v. Shuchuk*, 2003 ABCA 109, an injured worker sued the Workers’ Compensation Board (“WCB”) for an abuse of power, namely, the WCB made the worker go through too many hoops and to such an extent that it allegedly caused emotional and psychological damages. The WCB claimed, among other defences, immunity and sought to have the suit dropped on the basis that the *Workers Compensation Act*, R.S.A. 2000, c. W-15 exempted it from the Courts supervision. The Court of Queen’s Bench held other wise, and decided that the WCB’s powers were limited. The Alberta Court of Appeal affirmed the Queen’s Bench Judge, and finally, the Supreme Court of Canada in November 2003, denied leave to appeal, meaning that the top

Court in Alberta had it correct.

The *Act*, gives the WCB a significant amount of power and limits the amount of scrutiny that the Courts have on it. The *Act* takes away individual’s rights to sue either other parties, or the WCB itself. Further, the *Act* does not allow Courts of Law to interfere with the WCB decisions, unless they are “patently unreasonable”.

The *Shuchuk* decision as well as another recent Alberta Queen’s Bench decision have not only taken the jurisdiction to review certain WCB decisions, but have allowed individuals to sue the WCB for improper conduct. It was held that even if the WCB pays out a claim, that doesn’t give them the right to abuse the power conferred upon them by the legislation.

In *Gutierrez v. Jeske*, [2003] A.J. No. 958 (QB), the Court did not allow the WCB to force the complainant to follow the WCB. In *Jeske*, the plaintiff, who was covered by the *Act*, was injured by a party not covered by the *Act*. The plaintiff commenced a lawsuit to recover additional compensation that the WCB did not provide. The WCB tried to take over the lawsuit, and when the plaintiff tried to ask the Court for control, the WCB’s defence was that he Court had no jurisdiction to deal with a WCB decision.

The Court held that it would always have jurisdiction to determine the procedure that it follows. The *Act* does not, nor can it, give the WCB the right to determine who can or cannot sue whom.

These cases are examples of how the WCB will try to use its statutory authority when individual workers are trying to recover in a legal suit. Although the *Act* gives the WCB a vast amount of power, its reassuring that the Courts will still monitor the WCB’s conduct.

## **AS WE SEE IT**

By Christopher Hoose

### **Incorporation or Sole Proprietorship: What’s the best business vehicle for you?**

When you finally make that decision to start your own business, the first question or dilemma you will face is this: Should I start a company (incorporate) or should I go it alone as a sole proprietor. This article will briefly define each of these business vehicles and discuss some advantages, disadvantages and considerations you will face in making this very important decision. **Incorporation**

The major distinction between starting a company (incorporation) and a sole proprietorship is that a company is a separate legal entity from the owners or shareholders of the company. The key advantage of this is that, except for in exceptional circumstances, the owner (shareholder) of a company is only liable to the extent of the amount of his or her investment – this is the concept of limited liability. In a business venture where the obligations of the business or the risk of liability are



high, the concept of limited liability, to you the owner, is very attractive. Another advantage of incorporation is that you can select a different fiscal year end for your company. As well, with a corporation you can have more than one shareholder which allows for dividend payouts and the splitting of income, possibly between spouses.

The disadvantages of a corporation in relation to sole proprietorships are the start up and ongoing costs. To form a corporation you must file with the Corporate Registry:

1. Articles of Incorporation with the prescribed fee;
2. If you are choosing a name, a NUANS search;
3. A notice of directors in prescribed form; and
4. A notice of address in prescribed form.

Your corporate name can be either an assigned number or a name you choose. As well, a corporation is required each year to file Annual Returns, financial statements, and a corporation must also file a separate tax return – the T2.

### **Sole Proprietorship**

A sole proprietorship is the least complex business structure available. It is carried on by an individual in their personal capacity. A sole proprietor accepts all risks for the liabilities and obligations incurred in the conduct of the business, including certain acts of their employees. The sole proprietor would be personally liable to the full extent of his or her property, both business and personal.

However gloomy, and frankly scary, the personal liabilities and obligations associated with a sole proprietorship are, there are some advantages to choosing this business vehicle. The primary advantage to a sole proprietorship is the greatly reduced start up costs versus those of a corporation. Generally, the only start up costs for a sole proprietorship, other than the assets to operate your business, is a business license and any additional insurance you may need. As well, for sole proprietors there is no distinction between the business and the owner for legal or tax purposes. The income earned by a sole proprietor is reported on the individuals T-4, and there is no requirement for filing a separate T-2 income tax form as with a corporation.

### **Considerations**

When deciding which of the above two business vehicles are best for you and your proposed business enterprise, the following list of factors should be considered:

1. Limited Liability and the Nature of your business – if a substantial uninsurable risk is possible, a corporation would be the preferred vehicle;
2. The number of persons involved – if there are a large number of investors involved, then a corporation would be preferred;
3. Costs – incorporation requires more costs for upkeep such as the filing of all required records

each year;

4. Availability of Government Grants for your Enterprise – some grants and loans may only be available to corporations, and some may only be available to sole proprietorships. Before choosing a business vehicle you may have to perform some industry research; and
5. Borrowing Requirements – Because a corporation is a separate legal entity, a lender will first look to the assets of the corporation to determine if personal guarantees of the owners/shareholders will be required. Therefore, the advantage of limited personal liability of the corporation may be nullified.

In conclusion, whether you choose to operate your business as a sole proprietorship or as a corporation is largely a personal decision that you need to make weighing the above factors and deciding which will best serve your business needs.

## **THE RETIREMENT OF MASTER FUNDUK**

By Richard Smith

After 23 years sitting as a Master in Chambers of the Court of Queen's Bench of Alberta, Michael B. Funduk retired. In those 23 years, Master Funduk rendered more than 3,500 written decisions. His decisions quickly became known throughout the legal profession as required reading, not only because his decisions were so rarely overturned, but also because his unique style of writing made him an original. The following quotations from his decisions are a small example of why Master Funduk's retirement is a loss to the legal profession and proof that his legacy will continue for many years to follow.

“The Bankruptcy and Insolvency Act is not intended to be a periodic absolution for debts, like the recurring sinner seeking periodic absolution for his sins from God .... Parliament does not do God's work. It is quite incapable of that.”

“If Mr. P was to himself remove his inflamed appendicle he can do so, but he will botch the job. If he wants to drill and fill his aching tooth he can do so, but he will botch the job. If he wants to act for himself in this lawsuit he can do so, but he will botch the job. He has.”

“My advice to the Bankrupt is – sell the house, move into a one bedroom apartment, eat at home, read books for entertainment, stop drinking, cut up all the credit cards, stop borrowing, stop supporting ex-girlfriends, use cash for necessary purchases. I was not born yesterday. I know what a 43 year old divorced male is looking for in frequenting bars and lounges.”

“I would point out to M that the building is now being managed by a Court appointed officer. The letter indicates a misguided view by M that he will call the shots. He is of course wrong. The Court does not dance to anybody's tune.”

“I am reminded of two lines from a song by a country pop singer, Kenny Rogers:



“You’ve got to know when to hold them.  
You’ve got to know when fold them.”

“Each counsel can draw what they want from that.”

“Cross-examination, like a hanging, can sometimes wonderfully focus ones mind.”

“The law is not always logical at all. If logic and law arrive at the same result so much the better. If they do not then, on legal issues, the law must govern.”

“The Defendant says that he has seven defences. Each is worth nothing. Seven times nothing is still nothing.”

“What the law is does not depend on whose ox is being gored.”

“Like a horse ridden hard for 20 miles, this lawsuit too should be put out to pasture, except permanently. It appears that the Plaintiff decided to rub the Defendant’s face in a prairie muffin.”

“There is a lot of truth in the saying that good counsel work is 99% perspiration. Too often the perspiration only starts when counsel start running into difficulties in the Courtroom.”

“When someone says that it is not about money, but about a principle, it is about money.”

“The Bankrupt was convicted of theft from the bank in the amount of \$302,000.00.... The Bankrupt assigned herself into Bankruptcy because Revenue Canada assessed her for \$246,000.00. (The irony is that if you steal, Revenue Canada wants a part of what you steal.)”

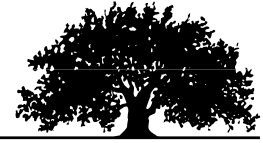
“That argument has no merit. It is constructing a house of straw on quicksand.”

“Here the Trustee recommends in its report that the Bankrupt be discharged without conditions. Why not go the extra step and also recommend that the Bankrupt be given a medal for his ability to fornicate the Bankruptcy laws?”

“Any legal system which has a judicial appeals process inherently creates a pecking order for the judiciary regarding where judicial decisions stand on the legal ladder. I am bound by decisions of Queen’s Bench Judges, by decisions of the Alberta Court of Appeal and by decisions of the Supreme Court of Canada. Very simply, Masters in Chambers of the superior trial court occupy the bottom rung of the superior courts judicial ladder. I do not over-rule decisions of a Judge of this Court. The judicial pecking order does not permit little peckers to over-rule big peckers. It is the other way around.”



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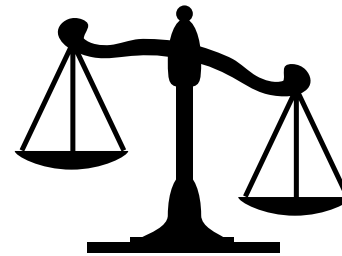
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*McGregor Stillman LLP is a general law firm formed in 1993 with emphasis on Civil Litigation, Corporate and Commercial matters, Real Estate, and Wills and Estates and Family Law. The firm represents clients throughout Alberta, and has also represented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

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