



McGuigan Nelson LLP
Barristers & Solicitors

Newsletter - Q1 - 2016

Q1—2016 Edition

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Meet the Team:

McGuigan Nelson LLP has designed this newsletter so we can provide regular updates to existing or prospective clients.

For those who do not know, we are now located at 205, 625 – 11th Avenue SW, Calgary, Alberta. This location is closer to the Calgary Court house and is still conveniently located in the Calgary Beltline.

Kevin P. McGuigan is the senior managing partner at the firm. With almost 20 years of experience as a lawyer in Alberta, he has a wealth of experience in a range of corporate—commercial matters,

from small business disputes to large and complex transactions. Most recently, he has enjoyed success with a variety of Class Action lawsuits, most recently settling three class actions involving the CBI Group of Companies, and recently obtaining certification on the Platinum Equities Class Action.

Byron Nelson has over 15 years of experience as a litigator, and works in a range of practice areas, focusing heavily on corporate commercial litigation and administrative disputes. He most recently ran in the 2015 Alberta Election, and is an active member of the Al Azhar Shrine Temple.

Justin Dunphy is a recent addition to the law firm, joining in April 2015. He was called to the Bar in Newfoundland in 2014, where he practiced with a mid-sized firm, Justin's current background and experience is in general litigation, corporate—commercial disputes, as well as employment law and class action litigation.

Beth Bai is a Student –at –Law with an expected call date in the summer of 2016. She is gaining experience in a wide variety of practice areas.

News and Updates:

For investors who invested in CBI Group, here is a status update on the projects we are involved with:

[CBI PIC and CBI Keystone / Venu:](#)

This matter has settled and we are tentatively scheduling a meeting in early Spring with investors to discuss options to move forward so investors can

see some form of recovery.

[CBI Lakehouse:](#)

The Lakehouse property is in the process of being transferred to a company created by McGuigan Nelson for the benefit of investors. We are in the process of converting the investor's contribution to the project into shares of the company. We are looking to sched-

ule an investor meeting in early Spring 2016. Please pay close attention to your e-mail inboxes as the notice will be distributed via e-mail.

[CBI Keystone Business Park:](#)

This matter is currently before the courts. We are looking at a certification application in the Fall of 2016, to be set depending on the court's availability.



Have You Been Terminated?

The unfortunate result of our recent economic climate is that many people are being laid off by their employers. This obviously causes upset and distress to many people to be faced with this huge change in their lives, aside from the obvious economic impact. Often, people are given a letter of termination with an offer. And often, they are told in the letter that they have to sign a form of release in a very short period of time, in order to get paid their severance.

This article is intended to help educate people about the process, and to break this down, so that people can understand their rights.

To begin, a company can let an employee go without having a reason to do so if they are in a non-unionized position. It can simply be a matter of terminating the position. The company does not have to justify letting you go. However, there is a difference in being terminated with cause and without cause. If you are dismissed with cause, the employer is saying you did something wrong, and there usually is no severance package or letter of recommendation. If this happens to you, please contact me and we can discuss your situation. We can determine if the allegation of cause is justified or not based on established

case law and legal precedent.

If you are dismissed without allegation of cause, then an employer has an obligation to give you reasonable notice you are going to lose your job, or pay in lieu of doing so. Frequently employers try to only offer statutory minimums under the Employment Standards Code, which is only a minimum. You may, in fact, be entitled to a much higher period of notice or pay in lieu. The amount of notice depends on a variety of factors, with the main ones being the length of time with the employer, level of responsibility or seniority, and likelihood of finding alternative employment.

I encourage you to seek legal advice if you receive a severance package. You can contact me if you receive an offer and we can arrange to review it, if you can scan and email it to us. I can assure you that in most cases, if you have a time limit, and you ask to speak to a lawyer, your employer will almost always give you an extension of time to get some advice on the offer., and a chance to talk about your potential options. As every situation is unique, we can only tell you that we would only be able to present you with options, once we see your situation.

One key element in any termination situation where you are dismissed without cause is to seek a written letter of reference. It is extremely helpful, especially in this job market, to obtain this letter as you can rely on it to show prospective employers that you lost your employment simply due to market conditions. You need to ask for a letter before you sign any release from the employer, or you will remove any incentive the employer has to give you one.

There are other things to consider, including the effect of written employment contracts, as well as non-solicitation, confidentiality or competition agreements.

So before you sign an employer's release, I urge you to get advice, so that you can make informed decisions. You can contact Kevin or Justin at (403)265-7744, or you can email kevin@mnlip.ca directly to get some more information, if you face this situation.

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Wills and Estate Planning: An Ounce of Prevention

Imagine this scenario: A father: John, passes away, leaving three children. John never had a professional will done by a lawyer. He simply wrote on a piece of paper that he wants everything to go to his oldest son: Abel.

Abel does not get along with his two younger siblings, Beth and Charlie. Beth has a physical disability and was relying on the inheritance to assist her. Charlie was the son who took the most time taking care of his father, and was promised the family home when John passed away.

The siblings all have to go to court to uphold or challenge the validity of the will. No one can act as the executor as the court has determined there is too much hostility between the siblings, so the court appoints the public trustee. All three siblings have legal counsel, and the combined legal fees are paid out of the proceeds of the estate.

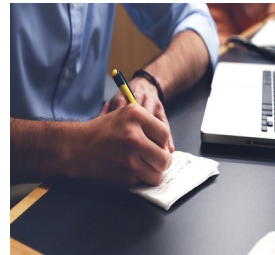
This is unfortunately an all too common scenario when it comes to estate planning. Inadequate planning leaves the door wide open for disputes between family members over assets. This can tear a family apart. As well, wills have formal requirements under Alberta law. If these requirements are not met, such as the proper signatures and having two witnesses who are not beneficiaries, the will could be challenged in court.

A basic will can be done quickly and cost-effectively by legal counsel, and can save your estate thousands in the long run.

McGuigan Nelson LLP has significant experience in will and estate preparation. We can ensure your wishes with respect to your estate are properly reflected in the terms of the will and under Alberta estate legislation so they withstand scrutiny if ever chal-

lenged. We can also assist in explaining the process, the best way to divide assets in the manner you choose, and ways to structure your estate so that assets automatically transfer to a beneficiary without having to go through probate in the first place.

Contact us today to ensure your estate is distributed according to your wishes and no one else's. On our website, www.mnllp.ca, under the "Resources" heading, you will find a wills questionnaire which you can complete and send to our offices, where we will discuss your options.



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The Importance of a Clean Minute Book



“There are countless issues that can arise in a business relationship between two parties”

As litigation counsel for small and medium sized businesses who are incorporated we often find that disputes between business partners, who are usually both shareholders and directors, could have been resolved if the right corporate procedures were set up at the outset for a company. Take these scenarios for example:

John and Adam decided to incorporate ABC Inc., which sells auto parts. John provided the expertise and knowledge in setting up the store and stocking the right parts for the market. Adam provided the majority of the upfront cash. Both are 50 / 50 shareholders but did not set up their corporate by-laws. The company has been running for two years and has become very profitable.

John decides that he does not want to be in business with Adam any more, and wants to open his own store down the road. John wants to sell his

shares to Adam. Adam does not want John to leave and refuses to buy them.

There are countless issues that can arise in a business relationship between two parties. Here, a Unanimous Shareholders’ Agreement (“USA”), corporate by-laws, and other procedures could be put in place to address these issues. For example, a USA, properly structured, could address the following;

1. How parties can value shares;
2. Whether one shareholder can “buy out” another partner;
3. How the parties can address disputes (i.e. binding arbitration is a much cheaper alternative than the court system);
4. How to address any loans or upfront cash that one shareholder put in;
5. How a shareholder can sell their shares to a third party,

and at what price.

The *Business Corporations Act* also provides remedies for shareholders, creditors, and other parties when things “go off the rails” in a business that is incorporated. But to take advantage of these remedies a proper corporate structure is critical.

At McGuigan Nelson LLP, we focus on addressing the gaps in parties’ corporate structure to ensure that the issues they had to litigate in the first place do not arise again in the future.



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Personal Loans and Security

As Alberta is moving into a longer economic downturn, this will affect every business, and person, in some way. One of the consequences we see a lot of is the failure of individuals or small businesses to repay private loans.

Without taking proper collateral (which we refer to generally as "security"), it can be costly and time consuming to try and collect on a debt when the debtor fails to make interest payments, or fails to pay the original loan amount when it is due. We often find that the loan agreements that our clients have executed are very limited, establishing nothing more than an interest payment schedule and a due date for the principal. This in turn makes it harder, and more costly, to collect.

Worse still, without any security, there is no guarantee, even if you obtain a judgment from a court, which you will be able to collect on any assets, which

may already be tied up in mortgages or other loans which have priority over your judgment.

For a reasonable legal cost a basic loan agreement can be drafted up ahead of time, allowing you to put an encumbrance on land or personal property, as a condition of any loan. This way, should there be a failure to make payment, you have an option to seize on the security to recover what you loaned rather than fight in court to get a judgment. A security agreement is the "shortcut" to recovery. Going to court to get a judgment is longer, more expensive, and less likely to guarantee recovery.

Even without a security agreement, having a lawyer draft up a loan agreement can ensure that the terms of the loan are plain and clear, so if you do have to go to court, there will be no dispute over what the terms of the contract are.

At McGuigan Nelson LLP, we have years of combined experience in debt recovery for a variety business and personal loans, both small and large.



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MNL

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McGuigan Nelson LLP is a boutique litigation law firm that provides strong, results-orientated counsel for the wronged and the injured. MNLLP specializes in civil litigation, professional negligence, corporate—contractual litigation, personal injury, and class action litigation.

We represent clients in the following jurisdictions:

Provincial Court of Alberta

Alberta Court of Queen's Bench

Alberta Court of Appeal

Supreme Court of British Columbia

Court of Appeal of British Columbia

Court of Queen's Bench of Saskatchewan

Court of Queen's Bench of Manitoba

Supreme Court of Canada

Contact us today to help you with your legal needs:

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