CONGRATULATIONS TO OUR MR. JAMES D. BAKER, Q.C. ON THE EXTRAORDINARY ACHIEVEMENT OF FIFTY YEARS OF CALL TO THE BAR OF THE PROVINCE OF BRITISH COLUMBIA.

Mr. Baker is known widely as formidable counsel. His reputation for excellence in the practice of law has made him a leader not only of our law firm but of the British Columbia Bar. He enjoys the respect and appreciation of judges at all levels of Canadian courts and is considered a model for other lawyers who are guided by his sound judgment, ethics and humanity.

Jim Baker was born in Vancouver, graduating from the University of British Columbia in 1962 with a Bachelor of Commerce Degree and a Bachelor of Law Degree. Following graduation, he articled with Lawrence and Shaw in Vancouver, and was subsequently called to the Bar in 1963. After a few years of working with a small firm, which was the predecessor to the present firm of McCarthy Tetrault, and the Office of the City Prosecutor in Vancouver, B.C., he moved to Chilliwack joining our predecessor firm of Wilson Hinds and Davies in 1965. Shortly thereafter he became a partner with this firm and has continued to practice with Baker Newby LLP ever since. In 1983 he was appointed Queen's Counsel.

Mr. Baker has always been active in the legal profession having served as President of the Chilliwack and District Bar Association, President of the Fraser Valley Bar Association, a member of the Executive Council of the Canadian Bar Association (B.C. Branch) and a member of the American and British Columbia Trial Lawyers Associations. In addition, he has lectured, served on panels and provided materials to the Law Society's Continuing Legal Education program.

Mr. Baker's area of practice has been wide ranging from criminal law and matrimonial law to general civil litigation including environmental law and First Nation's rights. At present, his practice primarily consists of civil litigation with a strong insurance and personal injury law component. He regularly appears in the Supreme Court of British Columbia and the British Columbia Court of Appeal and has appeared as counsel in most of the Superior Courts throughout the Province of British Columbia. ■

RECENT BLOGS

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Posted by Luke Zacharias and Jordan Forsyth

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Posted by Cristen Gleeson

On March 18, 2013, BC's new Family Law Act (the "Act") came into force replacing the Family Relations Act (the "FRA"). In the three months since enactment there have been few cases that have been decided solely under the new Act but in the recent decision of G.(L.) v. G.(R.), Brown J. had the opportunity to consider...

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KUDOS

JOHN LEE

To John Lee, who has been appointed to the Board of Directors of the YMCA of Greater Vancouver for a further 2 years. The YMCA of Greater Vancouver is a charity dedicated to strengthening the foundations of community. http://www.vanymca.org

LUKE ZACHARIAS

To Luke Zacharias, who has been re-elected President of Chilliwack Community Services for a second term. Chilliwack Community Services is an independent local charity providing caring community services to help people make positive change in their lives. http://www.comserv.bc.ca

ASHLEY AYLIFFE

To Ashley Ayliffe, who has been appointed to the Board of Directors of the United Way Fraser Valley. Serving the area from Aldergrove and Mission east to Boston Bar, United Way Fraser Valley raises funds to provide grants to 25 local community partners to ensure that there is a strong safety net of social services available to individuals in need throughout the community. http://uwfv.bc.ca

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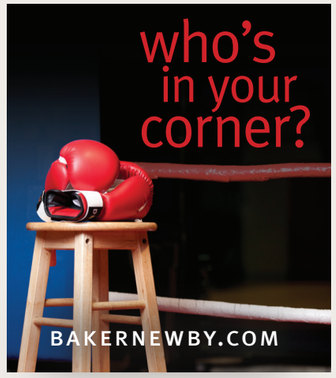

LIMITATION ACT

BY ADNAN HABIB
commercial litigation and construction law

On June 1, 2013 a new British Columbia Limitation Act came into force. The new Act replaces the existing deadlines within which legal claims must be filed. Under the old Act, the deadlines varied depending on the type of claim. A claim that involved damage to a person or to property had to be filed within two years. A good example of this is a claim for personal injuries and/or property damage arising from a car accident. A breach of contract claim or debt claim had to be filed within six years. The new Act provides one basic deadline of two years for most claims. This deadline begins to run when a claim is or should have been discovered.

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BAILIWICK

bail-i-wick (ba'lewik). *n. area of interest, skill, knowledge or expertise*

FALL 2013

FORE-WARNED

NEGLIGENCE ON THE GOLF COURSE

BY JACOB R. PARKINSON, B.A.(H), LLB
civil and commercial litigation

Chilliwack is blessed with some of the most beautiful and playable golf-courses around, and may have more golf per capita than anywhere else. When you factor in one of the best climates in the country, not to mention spectacular mountain views, you have a great activity for the whole family.

However, not every golfer is a pro, and most of us will admit to having sliced one or two tee shots in our time. So what happens in the worst case scenario, when that mulligan actually hits another golfer? Or worse still, causes them a serious injury?

We have all heard the shout of "fore" and covered our heads. (You can tell the really new golfers by the way they turn and look in the direction of the shout). You may not realize that in some situations you have a legal obligation to provide that warning.

The Courts have stated that while there is an inherent risk in playing golf, by the very nature of the activity, golfers must still take care not to hit anyone because of the obvious danger of injury. The standard is what a "reasonable competitor" would do. This statement of the law leaves a lot of room for argument, as to what is "reasonable" in a given situation.

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LIMITATION ACT

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Apart from builders lien claims which are governed by separate legislation, claims for payment under a contract such as a credit application or personal guarantee now have to be filed within two years from the date that the claim is or should have been discovered.

A claim is discovered and the deadline to file the lawsuit will begin to run on the first day when you knew or ought to have reasonably known all of the following:

(a) that injury, loss or damage has occurred;
(b) that the injury, loss or damage was caused by or contributed to by an "act or omission";
(c) that the "act or omission" was that of the person against whom the claim may be made; and
(d) that a court proceeding would be the appropriate means to seek a remedy.

The right to file a lawsuit expires two years after all of these facts are known. It should be noted that this deadline can be extended if a person acknowledges liability with respect to the claim before the deadline expires. For example, a partial payment on account will constitute an acknowledgement and will extend the deadline to sue for debt a further two years.

In most situations, if you miss a limitation period you are barred from starting any legal proceedings. It is important that you identify appropriate limitation periods that may be applicable to your circumstances and seek legal advice well in advance.

It should be noted that the new Act is not retroactive. The old deadlines will apply to claims which were discovered before June 1, 2013. ■

To learn more about Adnan Habib, his areas of practice and to view other articles written by lawyers at our firm, visit us online at www.bakernewby.com

FORE-WARNED: NEGLIGENCE ON THE GOLF COURSE

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Expert evidence will often be required on what a reasonable competitor would or would not have done. In addition, the specific golfer's style of play and tendency to slice will also be considered.

In a decision which made its way up to the British Columbia Court of Appeal, a golfer's tee shot on the 18th hole was struck low, and took a deflection. Unfortunately, the ball then somehow passed through a row of trees, striking another golfer on the adjacent 10th. The golfer taking the shot had lost track of it and did not yell "fore".

Even more unfortunately, the golfer standing in the 10th tee box was badly hurt, suffering a serious eye injury. He then commenced a lawsuit for damages against both the golfer and the golf-course.

The Court of Appeal noted that no-one had yelled "fore", which would have caused the injured party to have ducked and covered his head.

However, on the facts of the case, the ball had not veered off course, but rather had been lost track of. There was no reason to think the ball could have made it over to the 10th, or could have caused injury.

The Court of Appeal affirmed the trial judge's ruling as follows:

"[The golfer] lost sight of the ball very shortly after hitting it. As he knew that it went in the intended direction, and the course was clear of people in that direction, there was no reason why he should call out a warning, unless it was reasonably foreseeable that the ball might alter direction so as to present a risk to others on the course."

The Court of Appeal also ruled that the golf-course's actions in planting a row of trees and a dense hedge between the 10th and 18th holes was reasonable, and had been done on the basis of professional advice. In the result, the action was dismissed, despite the golfer's significant injuries.

Nonetheless, the very clear implication is that if a ball had been struck towards a group of people, the golfer would have been held negligent for failing to yell "fore". In addition, had the golf course not taken proper steps to ensure the reasonable safety of its players, it too would have been liable.

As with any legal claim, there may be strict time limitations at play within which a person must act or be barred from bringing forward a claim. You should consult a lawyer for specific legal advice.

This is all to say to take care out there, and work on that slice. And don't forget to shout "fore". ■

To learn more about Jacob Parkinson, his areas of practice and to view other articles written by lawyers at our firm, visit us online at www.bakernewby.com

DYING WITHOUT A WILL

BY JASON FILEK
estate litigation

There is a common misconception in British Columbia that if you die without a Will that the Government will take all of your assets. This is incorrect, and in fact, your assets will go to your family members, based upon legislation created by the Provincial Government. It is only in a situation where you have no family that the Government will take your assets.

When an individual dies without a Will, they are referred to as an Intestate Deceased. In that situation, the division of the Estate is determined by reference to the Estate Administration Act of British Columbia. How your Estate will be divided is determined by that Act based upon your particular family dynamic. In most situations, the first $65,000.00 will go to your spouse, and the remainder is then split between your spouse and children, with your spouse receiving one-third of the remainder, and your children sharing the remaining two-thirds. Although it is unlikely that the Government will receive the assets that you have worked hard to accumulate over your life, there may be a number of valid reasons for you to consider preparing a Will.

First, a Will gives you control over the distribution of your Estate. You may not agree with the scheme developed by the Government, and may wish to make gifts to family friends, extended family members or charities.

Second, if you have minor children, preparing a Will gives you the opportunity to select who will be the legal guardians for your minor children in the event that you pass away. You will lose that opportunity if you do not have a valid Will.

Moreover, if you do not have a Will, your minor children's share will be held in Trust by the Public Guardian and Trustee's office until the child reaches the age of 19. However, through a Will, you can appoint a Trustee for your minor child's share of the Estate, and can direct that those funds be used for the child's benefit.

Third, you can choose your own Executor in a Will. If there is no Will, and no one is willing to step forward, then the Public Guardian and Trustee or a trust company appointed by the Court may be appointed as the Administration of your Estate. This may result in increased fees which will deplete the assets of your Estate, and may also result in increased delay due to the large number of Estates handled by Trustees. Moveover, an Executor named in a Will is able to start dealing with certain aspects of your Estate immediately. If there is no Will, then an Administrator will need to be appointed and there will be no one to deal with the Estate until an Administrator is appointed by the Court.

Fourth, a Will is simply part of an Estate plan - it is not the entire Estate plan. Preparing a Will is an effective way for you to consider your overall Estate plan, and to take advantage of various opportunities available to avoid costs your Estate might otherwise incur.

Finally (and maybe most importantly), preparing a Will as part of your overall Estate plan will likely take little effort and expense on your part, but may save your family a lot of unnecessary expense and potential conflict later. ■

To learn more about Jason Filek, his areas of practice and to view other articles written by lawyers at our firm, visit us online at www.bakernewby.com