

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

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Baker Newby LLP is committed to being the leading Fraser Valley law firm, providing a full range of quality, practical and effective legal services. Our team of lawyers and staff will continuously strive to serve with excellence, earning the respect, loyalty and trust of our clients, our community and our peers.

SPRING 2017



THE ORIGINS OF BAKER NEWBY

80th
1937-2017
ANNIVERSARY

In 1937, our law firm emerged out of the shadow of the Great Depression. Over the past three-quarters of a century it has grown along with the Fraser Valley region it has served.

When an organization reaches a milestone like 80 years, it is usually because of the resolve and principles of those who laid the foundations for its enduring success. In Baker Newby's case, there has been no shortage of great lawyers, staff, and clients who have shaped the firm over the years. This article focuses on some of the early developments in the life of the firm which were instrumental in it becoming what it is today.

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FRANCHISES ACT COMES INTO FORCE

BY JORDAN FORSYTH

Commercial Law, Corporate Law, Real Estate Law,
Wills, Estates and Trusts



Effective February 1, 2017 the *Franchises Act* (British Columbia) and the related Franchises Regulation came into force, introducing a new regime for both franchisors and franchisees in British Columbia. Previously there was no regulation specific to franchise relationships in BC, but the *Franchises Act* introduces a whole new range of disclosure and compliance obligations for franchisors, as well as expanded rights for franchisees.

One of the most significant new requirements of the *Franchises Act* and its regulations is that effective February 1, 2017 any franchisor who is granting or renewing a franchise agreement in BC must provide the franchisee with a “franchise disclosure document” (“FDD”) setting out a range of prescribed information about the franchise. The FDD must be provided at least 14 days before the earlier of the agreement being signed or any payment to the franchisor by the franchisee.

Effective February 1, 2017, if an FDD is not properly completed and provided to a franchisee as required by the *Franchises Act*, the franchisee may be able to rescind the franchise agreement in certain circumstances, and/or claim compensation for losses. The right of rescission can extend for a period of up to two years after the agreement is signed, making a failure to comply with the new statute potentially very costly for franchisors.

While very similar statutes already exist in Alberta, Ontario, Manitoba, New Brunswick and Prince Edward Island, franchisors that operate in BC only, and therefore having never drafted an FDD, will need to ensure that this is properly done for any franchise agreement entered into following February 1, 2017. Even franchisors with an existing FDD drafted for another province will still need to ensure that certain amendments are made to comply with the BC legislation, which introduced some new concepts.

While the obligation to provide an FDD became operative following the coming into force of the *Franchises Act*, there are also provisions of the legislation that apply regardless of when a franchise agreement is signed. For example, there is a “duty of fair dealing” imposed by the statute, as well as confirmation of a franchisee’s right to “associate with other franchisees and form or join an organization of franchisees” that will apply even if the franchise agreement was entered into before February 1, 2017.

Before signing a franchise agreement, it is critical that prospective franchisors and franchisees receive professional legal and accounting advice. However, since February 1, 2017 the stakes became much higher. ■

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

EXCLUDED PROPERTY IN BRITISH COLUMBIA

BY CRISTEN GLEESON

Family Law,
Personal Injury Law



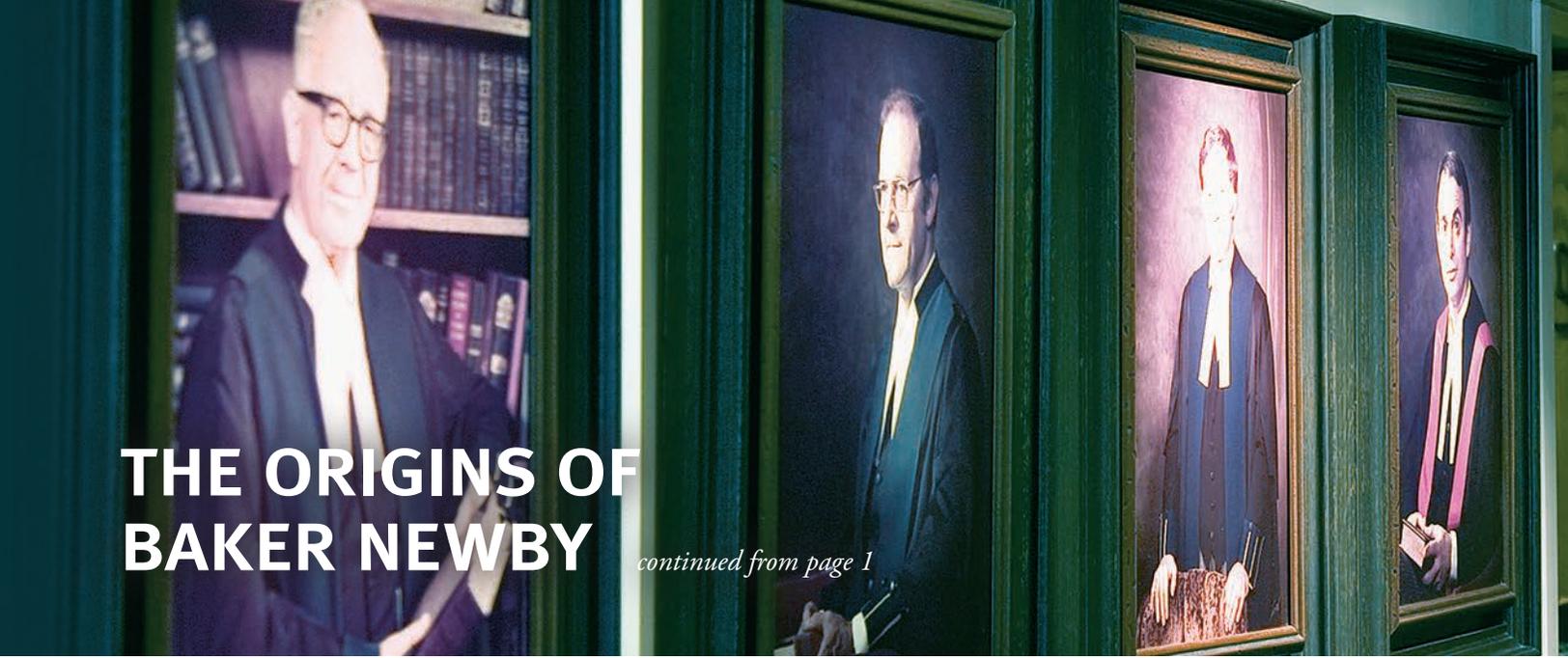
When the *Family Law Act* came into force in 2014, it introduced an excluded property regime to British Columbia’s family law. Specifically, section 85 of the *Family Law Act* established two categories of property at separation of married or un-married spouses: excluded property and family property. The difference between the two classes is that on the breakdown of a relationship the parties are presumptively entitled to division of the value of family property in equal shares, while excluded property is not divisible between the parties. Some of the recognized categories of excluded property include, but are not limited to, property owned by either spouse prior to the relationship and gifts or inheritances exclusively received by one spouse during the relationship. However, the distinction between family and excluded property becomes less clear when excluded property is transferred into the other party’s name, either jointly or solely, during the relationship. Subsequently, case law has interpreted the meaning and effect of section 85 in the context of these situations. Unfortunately, the case law has served to confuse the matter.

Two distinct interpretations of section 85 of the *Family Law Act* emerged in the case law following its introduction. The first interpretation considers the *Family Law Act* to be a “complete code” to property division and holds that excluded property remains excluded from equal division upon dissolution of a relationship despite the transfer of excluded property into the other party’s name during the relationship. In essence, this interpretation urges the courts to look only at the rules and provisions contained within the *Family Law Act* when determining entitlement to property. The second interpretation holds that certain common law and equitable property concepts continue to apply under the *Family Law Act* and consideration of these concepts must be had.

Despite the well-reasoned cases supporting both interpretations, it appears the second interpretation of section 85 of the *Family Law Act* governs. In the recent decision of *V.J.F. v. S.K.W.*, the British Columbia Court of Appeal upheld the decision reached at trial where a \$2 million gift from a third party to the husband (the “Gift”), which was subsequently put in the sole name of the wife for creditor protection, was found to not be excluded property under section 85 of the *Family Law Act*. Instead, the Gift was found to be family property as defined by section 81 of the *Family Law Act* that was subject to the presumption of equal division. In reaching this conclusion, the Court ultimately decided that the excluded property regime in the *Family Law Act* is not a “complete code” governing property division upon separation. Instead, the Court held that the *Family Law Act* built upon existing common law and equitable principles, such as the presumption of advancement, and that these principles continue to apply.

The significance of the *V.J.F.* decision is the Court’s discussion regarding gifts between parties. However, it should be noted that the facts in *V.J.F.* are unique since the husband transferred the Gift solely into the wife’s name for the purpose of creditor protection. While *V.J.F.* clearly decided that the excluded property placed solely in the name of the other spouse became a family asset, the analysis depends entirely on the facts in each case. It remains to be seen how the Court will consider excluded property placed in joint names during a relationship, however, if *V.J.F.* provides any insight, consideration of the intention of the parties at the time of transfer will be paramount. ■

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



THE ORIGINS OF BAKER NEWBY

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The firm now known as Baker Newby LLP got its start in 1937, when the enterprising lawyer David Sturdy opened his first office, in Chilliwack. In 1944, a young Frank Wilson became an articled student of David Sturdy. He would eventually take over the firm's operations after Sturdy's departure.

Frank Wilson and his wife initially emigrated to Vancouver from Germany following Hitler's rise to power in the late 1930s. He had graduated from the University of London with a degree in engineering before coming to Canada. After discovering that engineering work was scarce in British Columbia, however, he went to work in Alberta before returning to school to complete a Master's degree in education. It was while working as the principal of a school in Mission that he became interested in the law. His rich and varied experience would serve him well in this challenging discipline.

In its earliest days, the firm was located in a tiny office on Young Street, in downtown Chilliwack, across from the landmark Empress Hotel. While the firm may have been small at this time, Chilliwack was the judicial centre of the Fraser Valley during the 1940s, as its County Court building was the only courthouse between New Westminster and Hope.

In 1950, David Hinds became an articled student of Frank Wilson's. Mr. Hinds was born in Kent, England, and his father was in the hop-growing business for fine English ales. When he was still a young boy David's family moved to Chilliwack and his father began growing hops in the Fraser Valley region. He attended law school at UBC, graduating in 1950, only the second graduating class from UBC, before joining the firm.

In 1954, William ("Bill") Davies articled with the firm, then called "Wilson and Hinds". He would subsequently become a partner, resulting in the name of the firm expanding to "Wilson, Hinds and Davies".

Bill Davies had completed his law degree at UBC after three years of undergraduate studies in the humanities. Before beginning his articles with the firm, he had served in the Royal Canadian Air Force, working in the JAG branch. While most articling students in Vancouver made \$50 per month, he made \$75 for the first 6 months before Mr. Wilson, as a Christmas raise, increased his wage to \$100 per month. Mr. Davies would inherit most of David Sturdy's conveyancing practice after

Sturdy left the firm, charging \$10 for deeds and \$15 for mortgages. In the 1950s, the firm's offices were located on Princess Avenue on the second floor of a building overlooking the Empress Hotel's entrance, in what had been a dental office. Of note, Davies was the only lawyer in the province to have a fully-equipped dental sink in his office. Throughout the 1940s and 1950s, the firm was one of the most respected prosecution firms in the province, with both Wilson and Hinds handling complex criminal matters. After the British Columbia Provincial Police were replaced by the RCMP in 1950, the firm continued to work closely with law enforcement to prosecute all criminal matters.

The firm's lawyers faced unique challenges in the days before online research and iPads made information access second nature. While the firm had an extensive library, often lawyers would have to travel on "circuit court" to conduct trials in remote areas of the province, a practice which still exists today but with the added convenience of laptops and internet access. After travelling to the northern regions of the province, our lawyers would often have to write out charges by hand into the early hours of the morning to get ready for the next day, even after being in court on a murder trial the entire previous day.

Given the increasing reputation of the firm and the expanding population of the Fraser Valley, the volume of work grew exponentially, so in 1966 the firm hired James Baker, a skilled criminal lawyer from downtown Vancouver. Mr. Baker in turn called his friend Darragh Vamplew. They had shared an office at the Vancouver prosecutor's office at 312 Main Street, and he invited Mr. Vamplew to Chilliwack. In 1970, Max Newby, an articling student in Kamloops, was offered a partnership at the firm. After a brief moment of hesitation, Newby accepted. The firm continued to grow.

Since these humble beginnings, Baker Newby has continued to grow and expand while maintaining its core principles of excellence and helping those in need. With currently seventeen lawyers split between our Chilliwack and Abbotsford offices, Baker Newby LLP is committed to being the leading Fraser Valley law firm, providing a full range of quality, practical, and cost effective legal services. Baker Newby LLP is well recognized and has an excellent reputation throughout not only the Fraser Valley, but throughout the legal community of British Columbia. ■



PRACTICE PROFILE: DISABILITY INSURANCE LAW

BY BRITTANY CORWIN

Commercial Law, Commercial Litigation, Construction Law,
Disability Law, Personal Injury Law



Many individuals, through their workplace group benefits plans, CPP, or other insurance policies receive benefits, including long-term disability insurance. Disability insurance provides "peace of mind" coverage for a portion of your lost income if you become disabled from work as a result of illness or injury.

In this Part One of our four-part Practice Profile, we look at the definitions that are common to disability insurance contracts. The insurance contract or policy itself will set out the definition of "total disability" and the onus is on you to establish that you are disabled within that definition. Typically, you will qualify for benefits if your illness or injury prevents you from performing the essential duties of your own current occupation. This is often referred to as the "own occupation" definition. After a certain time frame, many policies will often change the definition of "total disability" to that of being disabled from "any occupation". In other words, after a certain time period you then have to prove that you are not only disabled from working the essential duties of your own occupation, but you are also disabled from working any occupation.

In order to establish that you are disabled within the meaning under the contract or policy, you will be required to provide medical evidence documenting your illness or injury and how it prevents you from performing the essential duties of your own occupation. You will likely also be required to show that you have been receiving ongoing care and treatment from a physician for that injury or illness. ■

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

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This newsletter is intended to provide readers with a broad overview of the legal topics presented. Readers are urged to consult with their lawyer before taking any specific action on the information contained in this newsletter.

KUDOS

80 YEARS OF EXCELLENCE



The Chilliwack Chamber of Commerce Business Excellence Awards were recently held at Heritage Park at which time Baker Newby LLP was awarded the Professional Services Award. We would like to take this opportunity to say how honoured we are to have received this recognition. ■

TODD HARVEY



Commencing July 1, 2017, Todd Harvey will become the President for the Rotary Club of Chilliwack. Mr. Harvey has been a member of the Rotary Club of Chilliwack since 2008 and was recently presented with an Honorary Paul Morris Fellow Award for meritorious service both to the Rotary Club and to the community. ■

BRITTANY CORWIN



On March 28, 2017, Brittany Corwin became a member of the Board of Directors for the Chilliwack Chamber of Commerce. Ms. Corwin is looking forward to working alongside the Chilliwack Chamber of Commerce and its membership of local businesses. ■




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