



REZA MANSOORI-DARA
CRIMINAL LITIGATION

WELCOME TO OUR NEWEST ASSOCIATE

Reza Mansoori-Dara was born in Tebran, Iran, and grew up in Vancouver, British Columbia.

Reza holds a Bachelor of Music and Masters of Arts from the University of British Columbia. In 2002, he attended the L.L.B program at the University of Cambridge, England, where he studied criminal law, evidence, constitutional law and human rights under the tutelage of Professor Hopkins, Professor Virgo and Professor Munday.

After returning to Canada in 2004, Reza articulated with Hope Heinrich LLP focusing primarily on criminal defence and federal prosecutions under the supervision of Mr. Bruce Kaun.

Upon being called, Reza joined Baker Newby LLP in July of 2008. He acts as ad hoc prosecutor for the Director of Public Prosecution Service of Canada.

NEW LOOK... *continued from page 3*

but our letterhead, business cards, advertising and various promotional materials, etc. These changes have been specifically designed to be more colorful and vibrant to reflect our commitment to continuing to evolve and change to meet the future, while still maintaining original elements in recognition of our tremendous history and longstanding reputation and commitment to our clients and the communities we serve.

The second, and more "active" change, is the significant upgrade to our corporate website at www.bakernewby.com. Again, we recognize the ever-increasing use of, and reliance on, the internet by both personal and business clients, and in particular the younger generations! In addition to a fresher look, our website

now utilizes a new "Content Management System" that will enable us to, over time, increase the scope and value of the legal-related content we can provide, and hopefully allow our website to be a more useful tool to our clients and the public generally.

In conjunction with the updating of our website, we have also developed a distinctive personal injury website at www.fraservalleyinjurylawyers.com, which we hope will be of specific benefit to those who have suffered serious injuries through motor vehicle or other accidents.

We hope you like our fresher, more contemporary appearance as much as we do! We welcome your comments or feedback at info@bakernewby.com. ■

WE WANT TO HEAR FROM YOU!

WE ALWAYS TRY TO PROVIDE ARTICLES THAT ARE TIMELY, INFORMATIVE AND USEFUL TO OUR READERS. IF YOU WOULD LIKE TO SUGGEST AN ARTICLE IDEA THAT IS OF INTEREST TO YOU, PLEASE CONTACT:

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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



TODD HARVEY

ELECTED AS A DIRECTOR OF THE CHILLIWACK FOUNDATION FOR A FOUR-YEAR TERM.

The Chilliwack Foundation is a non-profit organization incorporated in 1985 to accept and administer funds designed to promote charitable, educational and cultural interests within the community. The Chilliwack Foundation is a living trust. It is meant to enable citizens in their lifetime, or through testamentary gifts, to create a fund or add to existing funds of the donor's choice for the continuing benefit of this community.



JOHN LEE

ELECTED TO THE BOARD OF DIRECTORS OF THE YMCA OF GREATER VANCOUVER.

Throughout the Lower Mainland and Fraser Valley, people of all ages and abilities, from all walks of life and personal circumstances, find countless opportunities at the YMCA – opportunities to improve their health, work towards their goals, find support for their families, connect with others and get involved.

DR. BRIAN MINTER

A SPECIAL KUDOS TO DR. BRIAN MINTER WHO HAS BEEN APPOINTED THE FIRST CHANCELLOR AT THE UNIVERSITY OF THE FRASER VALLEY.

As Chancellor, Dr. Minter will be the ceremonial head of the University. He will preside over convocation and confer UFV credentials (degrees, diplomas, and certificates). As a representative of the public interest at the University, he will also act as an ambassador for UFV and will be called upon to represent the institution at major events both on and off campus.



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BAILIWICK

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.



BY ADNAN HABIB
commercial and
construction litigation

BUILDERS LIENS

POSTING SECURITY FOR A LOWER AMOUNT THAN THE AMOUNT CLAIMED

On September 22, 2008, the British Columbia Court of Appeal in the decision of *Q West Van Homes Inc. v Fran-Car Aluminum Inc.* dealt with the discretion granted to the Court under s.24 of the Builders Lien Act to order cancellation of a lien upon posting security for an amount less than the amount claimed.

Once a claim of lien has been filed on a construction project it has the effect of interrupting the flow of money from the lender to the owner, from the owner to the contractor, from the contractor to the subcontractor and from the subcontractor to the supplier. In order to get the money flowing again, an application to post security is brought by the owner or the contractor under s. 24 of the *Builders Lien Act*. The usual practice which developed before the Courts involved payment of the face amount of the lien into Court (plus 10% to 15% as security for legal costs) and the lien is then cancelled from title. The money would then be held as security pending resolution of the dispute years from now. Recently, there have been a series of cases where another application is made shortly afterwards to reduce the amount of the security which was initially paid into Court. This second application requires the Court to scrutinize the evidentiary basis for the lien.

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THE CIVIL STANDARD OF PROOF
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BC MILK MARKET BOARD REGULARIZATION OF GRADUATED ENTRY PROGRAM QUOTA



BY TODD HARVEY
corporate, commercial, real estate,
estates and estate planning

The British Columbia Milk Marketing Board (the "Board") is the governing body for milk producers in British Columbia. One of the mandates of the Board is to maintain a register of licensed milk producers and allot milk quota to licensed producers. Quota is essentially a license to ship milk from a particular dairy farm. The Board has a Graduated Entry Program (GEP) under which new milk producers are issued quota by the Board so that they can begin producing and shipping milk. Some participants in the GEP were issued GEP Quota but were unable or unwilling to use the quota themselves. In some cases, they then leased or sold the GEP quota to another party who needed the quota to ship milk.

Such transfers are contrary to the Board rules that govern the GEP (the

"Rules") which provide that a participant in the GEP must be "actively engaged in milk production" in order to qualify for the GEP Quota and in order to continue to use the GEP Quota as a license to ship milk from a particular dairy farm. Under the Rules, when determining whether a person is "actively engaged in milk production" the Board will look at whether the GEP Quota is being used for the benefit of the GEP participant that the quota has been allotted to, whether the participant is active in the day-to-day affairs of the dairy farm, whether the participant operates and controls the dairy farm, whether the participant owns or leases the dairy farm, whether the participant pays for all of the supplies on the farm and whether the participant is

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BUILDERS LIENS...

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The Court of Appeal reviewed a number of the authorities and crafted framework under which applications under s. 24 of the Builders Lien Act should be considered. The Court of Appeal held there is a two prong test. The first was to determine what claims should be taken into account when fixing security. The second is determining what amount of security is appropriate.

In summary, the Court must:

- (a) look at the claims of the parties to determine whether it is plain and obvious they will not succeed (a prima facie case will suffice);
- (b) any claims that are not sustainable will not be considered in fixing the appropriate amount of security;
- (c) looking at the evidence as a whole, the judge has a discretion in fixing the amount that is appropriate security;
- (d) that discretion must be exercised judicially based on the relevant evidence before the court and taking into account the objectives of the legislation: to protect those who supply work and materials to a construction project so long as the owner is not prejudiced; and
- (e) the amount of security may be less than the amount claimed under the lien.

The implication of this decision is twofold. Firstly, if you are able to post security for a lower amount than the amount claimed you are able to effectively eliminate a portion of a lien claim without incurring the expense of a Supreme Court trial. Secondly, as a lien claimant it is imperative that you document your underlying evidence to ensure that when your claim is scrutinized that it can be classified as one for the "price of work and material". ■

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

THE CIVIL STANDARD OF PROOF



BY CRISTEN GLEESON
civil litigation and family law

The standard of proof in all civil cases has traditionally been the balance of probabilities. If you are the plaintiff in a civil action (the person who started the action) this means you have to prove that it is more likely than not that the particular act or 'tort' caused your loss or damage. Put into a specific example, if you are suing for personal injury as the result of being struck by a car, you will need to prove that it is 51% more likely than not that your injuries were caused by the defendant.

In criminal cases, the standard of proof is higher. The Crown must prove beyond a reasonable doubt that the alleged crime was committed by the accused person.

The British Columbia Courts, relying on legal principles originating from the House of Lords in England, created a higher standard of proof for civil wrongs of a higher moral blameworthiness such as sexual assault, fraud and professional misconduct. The higher standard required "clear and cogent evidence" in order for a plaintiff to be successful in suing civilly in such actions.

This higher standard meant that plaintiffs seeking to recover damages for actions involving torts of higher moral blameworthiness such as sexual assault, fraud or professional misconduct had a tougher burden to meet.

With respect to civil sexual assault in particular, some B.C. cases even require independent corroborating evidence where the evidence consists of only the plaintiff's word against the defendant's word.

Why would the standard of proof be more onerous for some civil cases than it is for others?

The Supreme Court of Canada took a close look at the trend towards creating higher standards for these types of civil cases recently in the case of *F.H. v. McDougall* 2008 S.C.C. 53 and released its decision on October 2, 2008.

Mr. Justice Rothstein, writing for the majority of the Court, appears to have effectively put an end to the more onerous civil standard for cases of higher moral blameworthiness.

F.H. v. McDougall involved incidents of sexual assault by a supervisor at a residential school when the plaintiff was a child. The Defendant testified at trial and denied the assaults. The trial judge took note of the more onerous standard for civil sexual assault and nevertheless found that the Plaintiff had been sexually assaulted and that the Plaintiff's loss had resulted from the Defendant's sexual assaults. As the assaults had occurred in private, there was no independent corroborating evidence – it was the Plaintiff's word against the Defendant's.

IT IS INAPPROPRIATE TO SAY THAT THE EVIDENCE SHOULD BE SCRUTINIZED MORE CAREFULLY DEPENDING ON THE SERIOUSNESS OF THE CASE.

The Defendant appealed the case and went before the British Columbia Court of Appeal. The Court of Appeal was of the opinion that independent corroborating evidence was required given the higher standard of scrutiny required in cases of higher moral blameworthiness such as sexual assault. In addition, the Court of Appeal held that the trial judge had failed to correctly apply the higher standard.

The Plaintiff appealed the Court of Appeal's decision to the Supreme Court of Canada. The following summarizes some of the significant points made by Mr. Justice Rothstein in his reasons for judgment:

There is only one standard of proof in civil cases – the balance of probabilities – and there is no higher standard for torts of higher moral blameworthiness.

The requirement that there be independent corroborating evidence in cases of civil sexual assault where the evidence consists of only the plaintiff's word against the defendant's word is unsuited to sexual based offences which normally occur in private.

A trial judge's factual findings, particularly with respect to the credibility of the parties, ought to be accorded a high level of deference by the appeal court.

It is inappropriate to say that the evidence should be scrutinized more carefully depending on the seriousness of the case. In all cases evidence must be scrutinized with care by the trial judge.

The Supreme Court of Canada's decision means a less onerous burden of proof for plaintiffs in cases involving serious or morally blameworthy torts. It also marks a shift toward applying an equal standard in all civil cases, no matter how serious. ■

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

BC MILK...

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entitled to any profits of the farm.

Accordingly, when a GEP participant transfers quota to another person, they will normally no longer be "actively engaged in milk production" in relation to the farm for which the quota is being used. As this is a violation of the Rules, the Board is then entitled to cancel the quota, which will mean that the person using the quota will no longer have a license to ship milk from the farm in question. In addition, GEP participants that are not in compliance with the rules are unable to transfer their quota because the quota is technically subject to cancellation for non-compliance with the Rules.

However, earlier this year the Board decided to offer GEP participants a one time opportunity to formally transfer their quota to the person who is actually actively engaged in milk production and using the quota as a license to ship milk. Under this "regularization program" the

Board is requiring that a transfer application form be signed by the registered GEP participant personally and that the transfer be completed and recorded under the name of the person actually using the quota on or before December 1, 2008. If the transfer is not finalized by this date, the quota is in jeopardy of being cancelled by the Board.

This regularization program demonstrates that the Board has recognized that in many cases GEP quota has been transferred or leased to another party that is not the registered owner of the quota, which is a violation of the Rules. The purpose of the regularization program is to systematically eliminate all such arrangements such that GEP quota is used only by those who are actually actively involved in milk production and using the quota to ship the milk produced. ■

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



NEW LOOK – SAME GREAT QUALITY AND SERVICE!



Despite having been around for over 70 years now, neither Baker Newby LLP nor its lawyers have ever been ones to sit back and rely on our past accomplishments! To the contrary, we are always looking at ways to grow, with the goal of not only

continuing, but improving, the high standards of service and quality which our clients have come to expect, and which we expect of ourselves. To this end, we are pleased to announce two new changes.

The first change, which is somewhat more subtle, is to our logo and our overall "look". This new look will not only be reflected in this Bailiwick newsletter,

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