



# Gordon & McLeod LLP Newsletter

FOR OUR VALUED CLIENTS

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## Keeping the “Family” in Family Farm Succession Planning

by Laurie M. Gordon & Toni L. McLeod

The topic of family farm succession planning is far beyond the scope of any single article that we could write, but it is also one of the most important discussions that many of our clients will have with their legal and accounting advisors.

Being lawyers we aren't big on numbers, but the statistics in this area demonstrate the aging demographic of family farms and highlight the fact that most of these operations are reaching an age of maturity where families will need to start considering their options in terms of succession and the transfer of farm assets to future generations.

What is the most important core issue in succession planning? To our minds, it is not tax rollovers, qualified farm property, capital gains exemptions, estate freezes, farm corporations or any of the other myriad of tax and legal strategies (which admittedly forms a very important part of all succession planning). Instead, we believe that it is most important to never lose sight of the “family” in family farm succession planning. The goals of the family and family dynamics must not be overlooked, and the financial and emotional needs of all individuals involved must be taken into consideration. Agribusiness is a complex, multi-

generational enterprise, and each family farm is unique and must be treated as such. It is therefore very important when reviewing legal and taxation strategies that your advisors take the time to discuss your wishes and understand the family dynamics. After all, the farm is not just another asset to be sold or transferred.

Once your advisors have a solid understanding of your goals and key considerations, it is their role to provide you with the best options in terms of business structure, financial/tax planning, etc. in order to develop and fully implement the family farm succession plan.

One of these options may be to take advantage of the “intergenerational rollover” rules, which results in the transfer of ownership of qualifying farm property to children or grandchildren by gifting any accrued gain to them.

Another option might be to consider a full or partial “estate freeze”. Through this method, the outgoing generation transfers the assets of the farm to a corporation held by the incoming generation in exchange for fixed-value shares of that corporation. The current value of the assets transferred is



“frozen” or “crystallized” through these shares so that any future increase in the value of the transferred farm assets belong to the incoming generation. As a result, the outgoing generation defers the taxes on the capital gain that would have been payable on a subsequent disposition of those assets.

We would welcome the opportunity to be part of the legal side of your succession planning team to help you work towards the ultimate goal of ensuring that the outgoing generation's wishes and years of hard work are respected, while at the same time contributing to the success of the incoming generation and the overall future of your family farm.

Contact us today to set up an appointment at 403-646-6111.

# Employment Law Update

by Toni L. McLeod

We have become aware of a recent unreported decision of the Alberta Court of Queen's Bench that has helped clarify the issue around how an employer can legally limit an employee to the statutory minimum notice of termination in their employment contracts (without the added burden of common law reasonable notice).

## Why Does this Issue Matter?

For an employee earning \$52,000 a year who is terminated after 25 years of service, an enforceable termination clause limiting them to the Alberta *Employment Standards Act* (ESA) minimums could mean the difference between receiving \$8,000 or \$104,000 in termination pay.

## The Law

We are frequently called upon to provide legal advice around an employee's entitlement upon termination of employment without cause. For clarity sake, termination *for cause* is what we refer to as the Donald Trump style of firing someone – "You're Fired" - with no termination pay or any other obligations. This threshold for meeting the criteria for terminations for cause is very high, and very few circumstances merit this type of departure from the workplace. All other terminations are considered to be *without cause*, in which case an employer must provide an employee with the statutory minimum amount of notice (or pay in lieu of notice) required under the ESA, plus common law notice or pay in lieu of notice.

What is reasonable notice (or pay in lieu of notice) under the common law will vary based on the individual circumstances of each case, but can be far in excess of the notice required under the ESA, particularly for long-service employees (hence the difference b/w \$8,000 and \$104,000 in the example above). As a result, some employers have tried to limit their exposure to common law notice obligations by including a provision in employment contracts which limits the employee to ESA statutory minimums upon termination.

Previously the law in this area was somewhat unsettled and the courts hadn't stated exactly what they would want to see included to make such a clause enforceable. As a result, many of these clauses were struck down as enforceable on the basis of being ambiguous or in violation of the ESA. However, this new unreported decision of the Alberta Court of Queen's Bench effectively overrules a previous Provincial Court decision on the topic, and clarifies that employers CAN limit their liability on termination to employment standards minimums provided the contract includes language similar to that included in the body of the decision.

## How We Can Help

We would be happy to help your small or large business draft enforceable employment contracts and termination provisions based upon the current status of the case law in this area. We also provide independent legal advice to anyone who has been provided with an employment contract or release documents prior to signing, and offer detailed severance package reviews to determine if what has been offered is fair in light of your particular circumstances.

## DID YOU KNOW?



*Our partner, Toni L. McLeod, offers a full range of human resources advisory services. Whether you have questions about hiring, firing, disability accommodation, human rights issues, or need help drafting employment contracts and policies, we would be happy to help!*

Gordon & McLeod LLP is pleased to offer these other services:

- Businesses, Corporations and Partnerships
- Wills and Estates
- Powers of Attorney
- Personal Directives
- Guardianship and Trusteeship Matters
- Residential and Commercial Real Estate
- Mortgages
- Corporate Law
- Employment law and Human Resources Advising
- General and Independent Legal Advice
- Notary and Commissioner-of-Oaths
- Other General Practice Matters

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\*The contents of these articles are intended to provide a general guide to the subject matter. Legal and financial advice should be sought about your specific circumstances.