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Recent Caselaw

Revised Statutes of New Brunswick 2011

The Revised Statutes of New Brunswick, 2011 came into force September 1, 2011.


1st Case

This month's first case is a New Brunswick Court of Queen's Bench decision dealing with a motion for extension of time for service of pleadings.



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Revised Statutes of New Brunswick 2011

The Revised Statutes of New Brunswick, 2011 came into force September 1, 2011. This is the first instalment of what is intended to be a complete revision of the Acts of New Brunswick, the first such revision since 1973.

The Revised Statutes, 2011 includes 137 Acts. Subsequent revised Acts are set to be published on a yearly basis.

The revision is meant to consolidate amendments, modernize language, reconcile apparent inconsistencies and correct clerical and grammatical errors. The revision also adopts standardized French common-law terminology and improvements to the text of the French version of the revised Acts.

As well, the Revised Statutes, 2011 replace the existing alphanumeric chapter numbering of New Brunswick Statutes with a purely numerical system more appropriate to the bilingual nature of New Brunswick legislation. The revised Acts are numbered from chapter 100 on; for example, the Time Definition Act, formerly designated as chapter T-2, is now chapter 229 of the Revised Statutes, 2011. Next year's revisions will start at chapter 100 of the Revised Statutes, 2012.

In the course of the revision, no changes were made of a law reform nature, or that would have the effect of altering the substance or intent of any provision of a revised Act.

Shea v. Bentley and Loop's Greenhouse, 2011 NBQB 199; leave to appeal refused, 2011 CanLII 57112 (NBCA)

1st Case

The plaintiff, a New Brunswick resident, was involved in a motor vehicle accident on March 25, 2004 in the state of Georgia. The plaintiff was a passenger in a New Brunswick-registered motor vehicle, which was rear-ended by a truck registered in Florida. Following the accident, the plaintiff returned to New Brunswick and retained the services of a lawyer. She filed a Notice of Action with Statement of Claim Attached in Saint John on March 23, 2005.

The plaintiff had entered into settlement negotiations with the defendants' insurer in the summer of 2004. However, the negotiations broke down when the insurer indicated that proper service of the plaintiff's pleadings had not been effected, that the time for service on the defendants had passed and as a consequence it would not be paying the plaintiff's claim.

In considering whether to grant the plaintiff an extension of time to serve her pleadings, the Court stated that the applicable test was that of "substantial injustice" first articulated by the Court of Appeal in *Bridges v. Daeres* (1986), 64 N.B.R. (2d) 412 (C.A.).

This was described as a double test: for time for service to be extended, the failure to extend time must do an obvious and substantial injustice to a plaintiff, while at the same time the extension must not work any substantial injustice to the defendant as to his defence.

Applying the test to the circumstances of this case, the Court held that the refusal to extend the time for service would cause obvious and substantial justice to the plaintiff. While the extension of time would likely cause some prejudice to the defendants and their insurer, it would not cause substantial injustice to them. An extension was required to ensure that justice was done.

The motion was allowed and the plaintiff was given 60 days from the date of decision to effect service on the defendants. In the circumstances, the defendant Loop's Greenhouse, which opposed the motion, was entitled to costs of \$1,000 inclusive of disbursements.

Addendum:

On August 25, 2011, a judge of the New Brunswick Court of Appeal dismissed Loop's Greenhouse's motion for leave to appeal.

Our newsletter is not intended to give legal advice, however, to discuss legal matters or obtain the full text of cases, readers are welcome to contact Foster & Company.