



# STHI LEGAL NOTES

STEINBERG TITLE HOPE & ISRAEL LLP

BARRISTERS & SOLICITORS • TRADEMARK AGENTS

Volume 44

Spring 2016

## Tax Law 101: A Refresher

*“In this world nothing can be said to be certain, except death and taxes.”*

**Benjamin Franklin**

As you read this newsletter, we are only weeks away from the tax filing deadline - at least for most individuals. In this article we answer some common questions about Canadian Income Tax Law for individuals.

### **Do I have to file my taxes by April 30<sup>th</sup>?**

Since April 30<sup>th</sup> falls on a Saturday this year, the Canada Revenue Agency (CRA) considers your return to be filed on time if they receive it or if it is postmarked on the next business day which this year would be Monday, May 2<sup>nd</sup>. CRA also considers any payment owing to be paid on time if it is made by May 2<sup>nd</sup>.

If you are self-employed, you actually have until June 15, 2016 to file your return. However, if you owe taxes, they must be paid on or before May 2, 2016.

### **What happens if I don't file my return by the deadline?**

The answer depends on whether you owe taxes. If you owe taxes you will be looking at daily compound interest and penalties in addition to the taxes owing. The interest, which is currently calculated at 5 per cent, is assessed beginning the day after the taxes become owing. In addition, interest is charged on the penalties. The penalty is 5 per cent of your 2015 balance owing, plus 1 per cent of your balance owing for each full month your return is late, to a maximum of 12 months.

If you don't owe anything, the main downside to being late is that your GST/HST credit (including any related

provincial credits), Canada child tax benefit payments (including related provincial or territorial payments), old age security benefit payments or any refund may be delayed. Without a return the CRA is unable to properly calculate the amounts that may be owing to you.

### **What if the taxpayer died during the 2015 tax year?**

While this topic is an article on its own, the important thing to know is that a tax return must still be filed by the Estate Trustee, the representative of the estate. If the death occurred between the beginning of January and the end of October, you have until April 30<sup>th</sup> (or May 2<sup>nd</sup> this year) of the following year to file the return. If the person died in November or December, the final return is due six months after the date of death.

Not only does the government want its share of the estate, but the Estate Trustee cannot safely distribute the estate's property without the clearance certificate provided by the CRA. The Estate Trustee will need to provide the CRA with a copy of the death certificate, the deceased's social insurance number and a copy of the document proving the status of the Estate Trustee.

### **What is the difference between tax avoidance and tax evasion?**

The difference is that the former is legal and the latter can get you into a lot of trouble since it is not legal. When you are avoiding taxes, you are using the tax laws legally to pay less tax. For instance, a big income earner, like Canadian tennis great Milos Raonic, may move to a different country, like Monaco, solely because income taxes are lower.

Tax evasion, on the other hand, is deliberately misrepresenting or failing to report income so as to lessen your taxes. One of the most common examples is businesses who ask for cash payments, do not provide receipts and then do not report the income to the CRA. Another common example is taking deductions that are not allowed.

### **In this issue**

Posting Intimate Video = Invasion of Privacy. . . . . p. 2

The Clock May Be Ticking . . . . . p. 3

*The articles in **STHI Legal Notes** are necessarily of a general nature and cannot be regarded as legal advice. Our firm will be pleased to provide additional details on request.*

see **TAX LAW** on page 3

# Posting an Intimate Video = Invasion of Privacy

In this day and age of Facebook, Instagram, traffic cams, governments spying on their citizens, the notion of privacy may seem a little redundant. However, it is still something most of us do prize.

While the Internet and Social Media continue to move at breakneck speed, the law sometimes has trouble keeping up. But a recent decision of the Ontario Superior Court of Justice has bridged at least one small gap with respect to the posting of intimate videos without permission.

## The Facts

The plaintiff and defendant began dating while in grade 12. Following their break up, they continued to communicate regularly. In the summer of 2011, the defendant began asking the plaintiff to make a sexually explicit video of herself. Although she refused, he continued to pressure her. She eventually relented and sent him the video. Despite his promises not to share the video with anyone, that same day he posted it to an Internet pornography website. At the time both parties were 18 years old.

Three months later, the plaintiff learned what the defendant had done. She also learned that he had shown the video to both his friends and some of hers. Although the video was taken down three weeks after it was posted, it left the plaintiff devastated, humiliated and distraught.

Initially, the plaintiff tried to reach a settlement with the defendant. When he refused, the plaintiff commenced litigation. The defendant chose not to defend the action.

Following a hearing of the evidence, the judge ruled in favour of the plaintiff finding that she had suffered:

- A) A breach of confidence.
- B) An intentional infliction of mental distress.
- C) An invasion of privacy.

The judge stated, “I have concluded that there are both established and developing legal grounds that support the proposition that the courts can and should provide civil recourse for individuals who suffer harm arising from this misconduct and should intervene to prevent its repetition.”

## A) Breach of Confidence

The judge began by recognizing that once the plaintiff gave this intimate video to the defendant with the understanding that it was for his eyes alone, that this engaged the issues of confidentiality and privacy. The following three elements are necessary to establish a breach of confidence.

- The information at issue must be confidential.

- The information must have been communicated in such a way that there was an obligation of confidentiality.
- The information is used in an unauthorized manner to the detriment of the plaintiff.

In this case, the defendant had clearly breached the plaintiff’s confidence since the video was obviously confidential, was meant to be treated as such and was shared by the defendant, all of which led to serious emotional and psychological harm to the plaintiff.

## B) Intentional Infliction of Mental Distress

The test for determining whether particular conduct has led to an intentional infliction of mental distress comprises three elements. The conduct must

- be flagrant and outrageous;
- calculated to produce harm; and
- result in a visible and provable injury.

Once again the judge reviewed each of these elements as they applied to the facts of the case.

### *Flagrant and Outrageous Conduct*

What made the defendant’s behaviour in this case both flagrant and outrageous was that he continued to pressure the plaintiff to make the video despite her reluctance, that on the very day he received it he posted it to a pornographic website and that he shared it with his friends and some of hers. The defendant’s actions were not simply inadvertence on his part, but rather it was a clear violation of the promise he had made to the plaintiff to keep the video private.

### *Calculated to Produce Harm*

This requirement is established where it is clearly foreseeable that one’s actions would cause harm to the victim and that the harm was intended. The judge concluded that posting a confidential, intimate video would obviously lead to emotional upset and psychological distress.

### *Visible and Provable Injury*

Although the actions of the defendant in this case did not cause the plaintiff any physical harm, they certainly caused her severe psychological harm. Shortly after discovering that the defendant had shared the video, the plaintiff had to be taken to a crisis centre due to her mental distress. In addition, she suffered from depression and had to undergo extensive counselling. Four years later she remains emotionally fragile and vulnerable, particularly since she worries about the video resurfacing down the road.

see PRIVACY on page 4

# The Clock May Be Ticking

For those who watch American legal shows, you will be quite familiar with the idea of a limitation period running out, particularly in the context of crimes. In fact, we have addressed this very topic on several occasions over the years in this newsletter. However, it is such an important topic it is good to revisit it regularly.

First to recap. With very few exceptions, the notion of limitation periods under the Criminal Code of Canada does not exist. In other words, whether a person commits a theft, an assault or some other criminal offence, two weeks ago or twenty years ago, charges may still be laid and the person prosecuted.

The situation in civil law, however, is quite different. At one point there were a variety of different limitation periods in Ontario; however, in 2002 the government created, with a few exceptions, a basic limitation period of two years. The two years runs from the date the claim arises or the date on which the claim could reasonably have been discovered. An example of the latter would be the discovery of a medical claim that was only discovered a number of years later when the individual was undergoing surgery. Prior to that time, there was no real way to be aware of the issue.

The safest course of action to protect your rights, if you believe you have a legal claim, regardless of the type, is to consult a lawyer as soon as possible. Once the two year limitation period has expired, it is virtually impossible to get permission to pursue your claim. The following case illustrates these points.

On August 18, 2009, Paula was stopped by the police and informed that the car she was driving was stolen. The car was confiscated and a pregnant Paula and her children were left on the side of the road to make their way home.

On August 24, 2009, Paula wrote to a lawyer, although she did not follow up.

On September 11, 2009, Paula wrote a letter of complaint to the Police Service. She received a response on June 23, 2011 and she requested a review of her complaint on July 8, 2011. On November 29, 2012, she was informed that her complaint was upheld in part.

On October 10, 2013, Paula commenced legal action against the officer and the Police Service.

The lower court dismissed her action as being out of time. The judge determined that the clock began to run the day of the incident, August 18, 2009, or at the latest 6 days later when she consulted a lawyer.

This decision was upheld by the Ontario Court of Appeal. The appellate court reiterated that the limitation period begins to run when the claim is discovered, in this case on the day of the incident. Although the Police Service's administrative process may have provided additional information to support Paula's claim, her claim was not dependant on it. On August 18, 2009, Paula was aware of the offending conduct, the identify of the offender as well as the nature of her injuries. ☞

---

## TAX LAW continued from page 1

The *Income Tax Act* lays out the penalties for tax evasion. Depending on how the CRA decides to proceed, the penalties can range from 50 to 200 per cent of the amount of the tax evaded and/or prison for up to five years. Having said this, approximately 90 per cent of cases are resolved by settling with the CRA without going to court.

### What if I am being audited by the CRA?

The first thing is not to panic. Many audits require the taxpayer to simply provide supporting documentation for items such as charitable giving or medical expenses. It is important to respond in a timely manner, follow the instructions in the letter you received and supply the requested documents.

Based on your documentation, there may be a further audit at the offices of the CRA or it may take place on your premises. There may be adjustments whereby you will owe money or will receive a credit.

The general rule is that the CRA can audit your returns up to four years after the date of your tax year assessment. However, you should keep your tax returns and supporting documents for six years from the end of the tax year to which they apply. Remember if you file late this is the date that the clock begins to tick, not the actual tax year.

Finally, if faced with an audit, remember that attitude really is everything.

### When do I need help?

If you have an accountant who looks after your books and prepares your returns then this is probably the first call you should make.

If the audit uncovers serious discrepancies or you do not agree with the CRA's decision you should consider seeking legal advice. Eli Leibowitz is a seasoned tax lawyer with many years of experience. He would be happy to assist you with your tax matters. ☞

### C) Invasion of Privacy

The features of this tort include:

- The disclosure of the private facts must be a public disclosure, and not a private one.
- The facts disclosed to the public must be private facts, and not public ones.
- The matter made public or the act of the publication must be one which would be offensive and objectionable to a reasonable person of ordinary sensibilities.

Once again the judge found in favour of the plaintiff. He stated, “In the present case the defendant posted on the Internet a privately-shared and highly personal intimate video recording of the plaintiff. I find that in doing so he made public an aspect of the plaintiff’s private life. I further find that a reasonable person would find such activity, involving unauthorized public disclosure of such a video, to be highly offensive. It is readily apparent that there was no legitimate public concern in him doing so.”

### Damages

The judge awarded the plaintiff monetary damages for the harm she suffered. He assessed her general damages at \$50,000. He based this amount on her age, her vulnerability, that the multiple viewings of the video along with the possible future circulation of the video was tantamount to multiple assaults on her dignity (the judge indicated that it was analogous to a sexual assault), the defendant’s breach of trust, the emotional and psychological effects on the plaintiff and the ongoing impact of the defendant’s actions.

The judge also awarded aggravated and punitive damages, both in the amount of \$25,000. Although these heads of damage are not unheard of in Canada, they are certainly exceptional.

The basis for the aggravated damages was “the breach of trust reposed by the plaintiff in the defendant that he would not reveal it to anyone else. This feature of the defendant’s behaviour was an affront to their relationship that made the impact of his actions even more hurtful and painful for the plaintiff.”

The basis for the punitive damages was the defendant’s egregious behaviour, specifically that he gave no consideration to the inevitable impact of his actions on the plaintiff and that he had never apologized or showed any remorse.

Finally, the judge granted orders that the defendant should immediately destroy any intimate images he may have of the plaintiff and that he was permanently prohibited from communicating with the plaintiff and her immediate family.

Because of the rapidly advancing technology, this area of the law is still evolving. Therefore, even those posting seemingly benign photos and videos of family and friends should be cautious and may want to ask for permission. Remember, when it comes to the Internet and Social Media, the expression “You can’t unring that bell” is most apt. 📁

#### **CRA Tax Tip**

Even if you cannot pay your full balance owing on or before May 2, 2016, you can avoid the late-filing penalty by filing your return on time.

## **Steinberg Title Hope & Israel LLP**

5255 Yonge Street - Suite 1100  
Toronto, Ontario M2N 6P4  
T: 416 225-2777 F: 416 225-7112  
www.sthilaw.com

### **LAWYERS**

**Irwin Steinberg**  
isteinberg@sthilaw.com

**Jack W. Hope**  
jhope@sthilaw.com

**David M. Israel**  
disrael@sthilaw.com

**M. Michael Title**  
mtitle@sthilaw.com

**Michael E. Cass**  
mcass@sthilaw.com

**Shelley Brian Brown**  
sbrown@sthilaw.com

**Patricia Virc**  
pvirc@sthilaw.com

**Derrick M. Fulton**  
dfulton@sthilaw.com

**Taras Kulish**  
tkulish@sthilaw.com

**David A. Brooker**  
dbrooker@sthilaw.com

**Eli Leibowitz**  
eleibowitz@sthilaw.com

**Daria Krysik**  
dkrysik@sthilaw.com

### **PRACTICE AREAS**

Corporate & Commercial  
Commercial & Civil Litigation  
Residential Real Estate  
Commercial Real Estate  
Tax Law  
Condominium Law  
Matrimonial & Family Law  
Employment Law  
Wills, Trusts & Estates  
Personal Injury Law  
Construction Law  
Trademark Law  
Health Discipline Law  
Administrative Law