

 **Employment News**

This is a summary of employment matters of interest to the business community, from a litigator's point of view.

We welcome your questions and comments.

Editors**Larry Banack****Telephone****416-977-8353****Nancy Shapiro****TeleFax****416-977-3316****IS THERE A ONE-YEAR LIMITATION ON EMPLOYMENT RELATED INJUNCTIONS?**

The British Columbia Court of Appeal recently stated that generally employment related injunctive relief should be time limited. Only in exceptional circumstances should the initial grant of an injunction extend beyond one year from the date of termination of employment.

The Court dissolved a non-solicitation injunction which had been granted to an employer 17 months earlier restraining an ex-employee from communicating with customers of the employer.

The test for granting an injunction confirmed by the Supreme Court of Canada in *RJR-MacDonald Inc. v. Canada (A.G.)* requires the consideration of which party will suffer the greater harm from the granting or refusing of an injunction. The Court in this case found that there had been a transfer of the balance of convenience since the time the injunction was initially granted. It stated that while the evidence had provided a proper basis for prohibiting the employee from soliciting customers, the balance of convenience had now shifted to the employee. The employer had had an adequate opportunity to solidify its customer base after the employee's departure and to move its action quickly to trial.

Accordingly, if an employer successfully obtains an injunction against a former employee, it must be prepared to pursue the litigation expeditiously or risk losing the benefit of the injunction. This decision further brings into question whether there is now a presumption against the enforceability of contractual non-competition and/or non-solicitation provisions which continue for more than one year.