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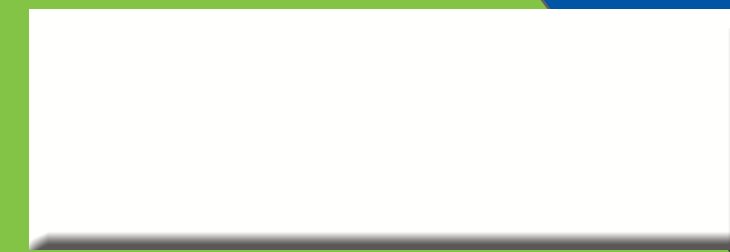
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SQUID PRO QUO

THE VOICE OF THE LEGAL PROFESSION

CANADIAN BAR ASSOCIATION - NEWFOUNDLAND & LABRADOR BRANCH

FALL 2010



Squid pro quo

Published by the Canadian Bar Association
Newfoundland & Labrador Branch

Letter from the Editor



Janet Grant

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This edition of the Magazine marks the first edition for the 2010-2011 *Squid pro quo* Editorial Board. This year's Board is compromised of both new and returning members and I am very lucky to have such a wonderful group of volunteers to assist with the production of the Magazine. In terms of new members, we are pleased to welcome Daniel Furey, Sarah Learmonth and Jeff MacDonald. Our returning members include Meredith Baker, David Coffin, Daniel Glover, Suzanne Orsborn, Sharyl Rowsell and J. Alex Templeton. As well, our new Executive Director, Ashley Woodford, has helped out tremendously with this edition of the Magazine. Ashley brings a wealth of experience to the position of Executive Director from her previous work with CBA National. We are thrilled that she has joined us!

We are delighted to share with you two articles that highlight some of the activities that are happening at the Provincial Court. Amanda Hewitt's article outlines the Family Violence Intervention Court pilot project which aims to prevent and reduce incidents of family violence. Chief Judge D. Mark Pike's article explains the role of administrative judges from both a provincial and national perspective.

Our In Personams feature Francis Fowler, the recipient of the CBA's Distinguished Public Service Award; Laurie Jones, Legal Research Officer with the Court of Appeal; and Rod Snow, the CBA National President. I very much enjoy reading the In Personams and finding out about the person behind the position. These articles provide great support for the proposition that a career in law can be varied and diverse!

The 2010-2011 Section Chairs have provided their Goals and Objectives for the upcoming year. I encourage you all to participate in any Section that is relevant to your practice and to bring forward any ideas or suggestions that you may have to your Section Chair.

Regular features in the Magazine include Benefits of Membership, Case Digest and CBIA Update. In that respect, articles in the Magazine provide information related to the CBA's Skilled Lawyer Series, Justice Thompson's approval of a class action settlement and a recommendation for your investment strategy.

I hope you enjoy this edition of the Magazine. We welcome any comments or suggestions for article topics and look forward to hearing from the members. Also, do not forget to mark your calendars for the President's Reception which will be held on December 16, 2010 at the Sheraton.

Opinions expressed herein are not necessarily those held by the Newfoundland & Labrador Branch of the Canadian Bar Association

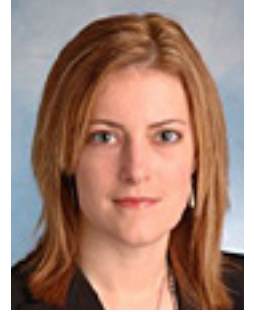
Squid pro quo is a publication of CBA-NL Branch and is intended to provide a service to members by informing them of Branch Activities and matters of general interest.

Members are encouraged to submit articles for publication, though articles submitted may, at the discretion of the Editorial Board, be edited for brevity and clarity, in which case the author will be consulted prior to publication.

Squid pro quo will accept advertising, though space for this purpose is limited. Advertisers or CBA Members wishing to purchase advertising space should contact the Branch Office (709) 579-5783 for information regarding advertising rates and policies. *Squid pro quo* can also be found on the CBA Newfoundland & Labrador Branch website at <http://www.cba.org>.

President's Report

By Janie Bussey



I am delighted to report to you as your Branch President for the 2010-2011 year. It has been a while since I wrote an article for *Squid pro quo*, though for several years I was regular contributor as the Young Lawyers Chair in Newfoundland and Labrador. The CBA has been a large part of my legal career since law school and I have been a member of the Executive Committee since 2004. I hope that the CBA will become a large part of your legal career as well.

I would like to start by thanking our Past President, Sheri Wicks, for her hard work and dedication throughout her 2009-2010 term. I'm pleased to welcome Steve Scruton to the Executive as the Professional Development Chair and Susan LeDrew as our new Membership Chair. As well, I would like to welcome the returning members of the Executive Committee namely, Sheri Wicks, Past President, Susan Gover, Vice President, Isobel O'Shea, Treasurer, Cheryl Mullett, Secretary, Janet Grant, Communications Chair, Beth Whalen, Young Lawyers Chair, Renee Tulk Moore, Central Representative and Ashley Woodford, Executive Director. I'm excited to have such an outstanding group of people to work with this year!

Branch Goals: On September 2nd the Executive Committee held its strategic planning meeting to organize its activities for the coming year and discuss the Branch's 2010-2011 goals. The Executive Committee intends to deliver relevant services to our members in 2010-2011 to demonstrate the benefits of CBA Membership to all lawyers in this province, both rural and urban. As well, we hope to strengthen and build upon our Section activities which are the backbone of the CBA.

Mid Winter and Annual General Meetings: Work is underway to plan our Mid-Winter Meeting, which will take place in St. John's on March 3-5, and our Annual

General Meeting, which will be held on July 14-16, in St. John's. Both meetings will include Professional Development Seminars focused on practical "nuts and bolts" issues for lawyers. Mark your calendars!

Courtesy Calls: Susan Gover and I met with Chief Justice Green, Supreme Court of Newfoundland, Trial Division, Chief Justice Orsborn, Supreme Court of Newfoundland, Trial Division, Chief Judge Pike, Provincial Court and the Honourable Felix Collins, Minister of Justice for the Province of Newfoundland and Labrador to discuss the opportunities and issues that you, our members, have identified. We plan to continue this dialogue over the coming months and ask that you contact either Susan or I with any topics that you would like us to raise during our future discussions.

Special Events

Women Lawyers Forum: On Wednesday, September 15th the Women's Lawyers Forum hosted its inaugural event at the Christina Parker Gallery bringing together the female members of our Branch. It was a wonderful evening where senior female members shared their wisdom of experience with the junior members of the Branch and was thoroughly enjoyed by all who participated. I congratulate Andrea Murphy and her committee for organizing a fabulous event!

Bar Admission Course Presentation: On November 3rd the Branch completed its annual presentation to the students at this year's Bar Admission Course. I, along with the Young Lawyers Chair, Beth McGrath, Executive Director, Ashley Woodford and CBIA representative, Hughie Shea, contributed to the presentation and were happy to meet with our newest lawyers to tell them about the work of the CBA and why CBA membership is an asset for any young lawyer.

President's Report

Bar Ad Wine and Cheese Reception: On November 19th we hosted the annual Wine and Cheese Reception for the Bar Admission Course students, their principals, Judges, Law Society representatives and course instructors at the Newman Wine Vaults. It was very well received and attended and I congratulate Beth and Ashley for organizing such a wonderful event!

President's Reception: Please mark your calendars for the Annual President's Reception at the Sheraton Hotel scheduled for Thursday, December 16th. This event is an excellent opportunity for members to network with colleagues and catch their breath before the Christmas rush. I hope to see you there!

Section Chairs: Susan Gover, Vice President, held an orientation session with Section Chairs in September.

We hope to increase Section activity this year and host several Lunch & Learn Sessions outside St. John's to engage our rural practitioners in CBA activities. I want to send particular thanks to our Section Chairs who plan and organize valuable Lunch and Learn events for our members.

Other Items: As a final note, I would like to thank Ashley Woodford, our Executive Director, as well as the Executive Committee and Section Chairs for all their hard work and dedication to the Branch's activities.

If there is any way in which the Branch may be able to assist you as a member, please do not hesitate to contact us. I look forward to working with you throughout this year.



2010-11 CBA-NL Executive Committee

From Left to Right (Sitting): Sheri Wicks, Isobel O'Shea, Janie Bussey, Susan Gover, Janet Grant

From Left to Right (Standing): Cheryl Mullett, Ashley Woodford, Beth McGrath, Stephen Scruton, Susan LeDrew

Missing from photo: Renee L.T. Moore

Past President's Report

By Sheri Wicks



There have been lots of exciting things happening at the Branch since I last reported to you as the Branch President in the summer edition of *Squid pro quo*. Most notably, we have a new Executive Director, Ashley Woodford, who officially started with us in early September. In the short time that she has been with us, Ashley has already proven to be an exceptional asset to the Branch and we are grateful to have her working for us.

As most of you are aware, the CBA year runs from September 1st to August 31st, and as such I became the Branch's Past-President on September 1, 2010. Before finishing my time as President, I had the pleasure of representing the Branch at the CBA's Board of Directors' meeting in August and at the 2010 Canadian Legal Conference ("CLC"), in Niagara Falls. Special thank you to John Hoyles, the national Chief Executive Officer, for making it possible to have Ashley attend the August Board of Directors' meetings; such early exposure to the Board and its activities is invaluable.

At the Board of Director level, some of the matters currently being addressed are:

- 1) Negotiating a new partnership arrangement with the Canadian Corporate Counsel Association;
- 2) Setting up a task force to embark upon a substantive review of CBA membership rates and how those rates are set for individuals and universal firms; and
- 3) The continuing work of the CBA Task Force on Conflicts of Interest, and in particular the Federation of Law Societies' response to the Task Force's Report.

The CLC included the semi-annual meeting of the CBA Council which, as always, provided informative reports from the many committees of the CBA. The

CLC also included two days of professional development programming, as well as a fantastic line up of social and networking events including an opening night at Table Rock Centre, a concert with Jim Cuddy and Greg Keelor, law firm receptions at some of the finest wineries in Niagara-on-the-Lake and a Closing Gala at the Hillebrand Winery – just to name a few! The CLC is always such a special event with lawyers and judges from across the country gathering to work hard, but also to take time to socialize and enjoy each other's company. If you have not attended the CLC in the past I recommend it to you.

The Branch is now in the very capable hands of Janie Bussey, the new President, and I look forward to working with Janie and all of the other members of the Executive in this, my last year as a volunteer on the Executive. In many ways this year will be bittersweet for me, and I know this time next year I will miss being involved in the daily operations of the Branch. Volunteerism has many rewards and I am grateful for all of the friends and connections I have made with fellow lawyers both here in this province and also across the country during my time as a CBA volunteer.

MARK YOUR CALENDAR!

President's Reception

Thursday, December 16, 2010

5-7pm, Sheraton Hotel

CBA-NL Mid Winter Meeting

March 3-5, 2011

St. John's, NL

Visit <http://www.cba.org/newfoundland> for further details as they become available.

The Benefits of Membership

By Sharyl Rowsell



So you've graduated from law school. Congratulations! You must know everything about running your practice. No? Well then, let me introduce you to your new best friend: the CBA Skilled Lawyer Series.

The CBA is now offering two streams of sessions geared toward lawyers in their first few years of practice, one on corporate matters and the other on litigation topics, with the aim of bridging the gap between the theory and the practice of law. These professional development sessions, brought to you via on-line seminars, or webinars, focus on practical, skills-based training rather than substantive law. The sessions incorporate interactive components such as video demonstrations, real-time drafting/revisions, live polling and question-and-answer segments. For those who cannot sit in on the live sessions, recordings can be purchased at a later date.

The litigation stream includes sessions entitled: "Writing for Litigators", "Preparing Clients for Discovery and Trial", "Conducting and Defending a Discovery", "Excelling at Motion Argument", "Evidence and Objections at Trial", "Examination-in-chief of Fact Witnesses", "Cross-examination of Fact Witnesses" and "Retaining and Presenting Experts at Trial".

The corporate stream sessions are: "Drafting for Business Lawyers", "Understanding Financial Statements", "Business Finance for Lawyers", "Tax Issues in Corporate Transactions", "Acting for a Start-up Business", "Due Diligence Fundamentals", "Buying and Selling a Business" and "Running an M & A Deal".

The sessions are scheduled from 1:30 to 3:00 pm Newfoundland and Labrador time on various dates until June 2011. CBA members can register for the entire litigation stream or the entire corporate stream for \$800; the price is \$2,000 for non-members. You can also sign up for individual sessions at a cost of \$125 for

CBA members and \$250 for non-members (plus applicable taxes).

Schedules and further information on each session can be found on-line at <http://www.cba.org/pd/packageFeatures.aspx> or by accessing the CBA website at www.cba.org and choosing the "Professional Development" tab, and then the "Skilled Lawyers" tab. The site includes a link to frequently asked questions (FAQ) which provides information on on-line registration, payment and how to access the presentations.

Whether you are a new lawyer in need of practical training or an experienced lawyer wanting to brush up on corporate or litigation skills, the CBA Skilled Lawyer Series may be just what you need.

UPCOMING SESSIONS CBA SKILLED LAWYERS SERIES

LITIGATION STREAM

Preparing Clients for Discovery and Trial
December 7, 2010

Conducting and Defending a Discovery
February 7, 2011

CORPORATE STREAM

Business Finance for Lawyers
January 26, 2011

**For more information and a complete listing of
Skilled Lawyers Series online sessions,
visit www.cba.org/pd**

Canadian Bar Association - Newfoundland & Labrador Branch

Section Chairs - 2010/2011



Aboriginal Law

Steven Scruton
Stewart McKelvey
Tel: (709) 722-4270
E-mail: sscruton@smss.com

The Aboriginal Law Section is a growing Section in Newfoundland and Labrador, but remains in its early stages. While Aboriginal Law issues are becoming more frequent, particularly in matters occurring in Labrador, there are few practitioners with a dedicated practice in Aboriginal Law. With that in mind, my goals for this year include the following:

- To continue to build the Section's membership and develop an interest in and understanding of aboriginal law as it applies in our province;
- To keep Section members apprised of recent updates in aboriginal law issues at both the provincial and national level;
- To participate in the National Aboriginal Law Section in order to encourage participation from this part of the country and to provide provincial views on their initiatives, and to keep members informed of same;
- To work with other Sections that have overlapping interests; and
- To organize a Lunch and Learn Session or other engagement on topics of interest to Section members, likely in conjunction with another Section with overlapping interests.

I would be happy to hear from anyone interested in joining the Section and welcome any questions or suggestions. Please feel free to contact me at your convenience.



Alternative Dispute Resolution (ADR)

Christian Hurley
Ottenheimer Baker
Tel: (709) 722-7584
E-mail: churley@ottenheimerbaker.com

This is my first year as branch Section Chair and in an effort to get myself up to speed I will be attending the National Section meetings in Montreal this October. It is my goal to come away from these meetings with a better picture of what is happening in the field of ADR on both national and provincial levels.

I also hope to learn from the experience of other long-time volunteers and to seek advice as to what activities have drawn special interest from CBA members within their branches.

My specific goals that I hope to accomplish this coming year include:

- Organizing a Lunch and Learn Session with a guest speaker experienced in the field of ADR, or partnering with another section to deliver a Lunch and Learn Session of joint relevance;
- Organizing a webcast Professional Development Session in partnership with other provincial ADR branches;
- Advising Section members of new developments in the field of ADR; and
- Building the Section's membership by developing a greater interest in and understanding of ADR and how it applies in our province.

Input from Section members is always welcome. If you have ideas or suggestions as to how I can make this Section better, please feel free to contact me.



Bankruptcy and Insolvency

Mark Russell
Cox & Palmer
Tel: (709) 738-7800
E-mail: mrussell@coxandpalmer.com

Insolvency Law has rarely been more interesting than it is right now, as the 2009 BIA and CCAA amendments are being felt and there are various proposals to further amend Bankruptcy Laws winding their way through Parliament. I will be looking to harness this excitement in achieving the following goals for this year:

- Further strengthen the Section's relationship with the NLAIRP and provide opportunities for members of the insolvency bar and local trustees to network and discuss current issues in insolvency law;
- Hold at least one Lunch and Learn Session on a current topic of Insolvency Law; and
- Contribute to the discussion, on the local and National Section level, on ongoing proposals and amendments to Insolvency Law.

Section Chairs - 2010/2011



Business Law

Paul Dicks Q.C.

Benson Myles

Tel: (709) 579-2081

E-mail: pdicks@bensonmyles.com

My goals for the Section this year include:

- To keep members updated on new developments in Business Law;
- To hold Lunch and Learn Sessions in conjunction with other Sections on inter-related topics;
- To receive input from members on new initiatives and activities; and
- To use electronic media for learning sessions and periodic updates.



Civil Litigation

Daniel Glover

Curtis Dawe

Tel: (709) 722-5181

E-mail: daniel@curtisdawe.nf.ca

My plans for the Section this year include:

- To conduct at least two Lunch and Learn Sessions of interest to section members;
- To attend the national Civil Litigation Section meeting in Ottawa in October, 2010 and participate in discussions there;
- To participate in conference calls with other Civil Litigation Section leaders;
- To discuss topics of interest to Civil Litigation Section members with other section leaders and other interested parties; and
- To discuss joint Lunch and Learn or Professional Development opportunities with other Section Chairs.

Please contact me to discuss any ideas for future meetings, Lunch and Learn possibilities and other topics that may be of interest to Section members.



Constitutional and Human Rights

Chris Peddigrew

Cox & Palmer

Tel: (709) 738-7800

E-mail: cpeddigrew@coxandpalmer.com

My goals for 2010-2011 are to:

- Keep Section members up to date on relevant developments

in Constitutional and Human Rights Law; and

- Work cooperatively with other Sections to provide at least one Lunch and Learn Session on a topic of interest to Section members.

I am interested in hearing from members and welcome any expressions of interest for involvement in Section initiatives.

Construction Law

John O'Dea

McInnes Cooper

Tel: (709) 722-8735

E-mail: john.odea@mcinnescooper.com

My plans for the Section this year include:

- Meet with the Newfoundland and Labrador Construction Association, Professional Engineers, and Architects Association to identify issues of common interest;
- Hold seminars of interest to the profession, including modernizing the Mechanics Lien Legislation;
- Monitor proposed changes to the province's standard front end documents for lump sum and unit price contracts;
- Hold Lunch and Learn Seminars on topics of interest; and
- Keep Section members informed on construction law matters at the national level.

Corporate Counsel

Christine Healy

Statoil Canada Ltd.

Tel: (709) 738-8527

E-mail: chhea@statoil.com

Goals not submitted

Criminal Justice

Robin Fowler

Special Prosecutions Office

Department of Justice

Tel: (709) 729-1169

E-mail: robinfowler@gov.nl.ca

My plans for the Section this year include:

- To co-ordinate with the Provincial Court to create a Media Response Plan;
- To keep Section members apprised of recent updates both locally and nationally in the area of Criminal Law by having regular lunch meetings;
- To hold Lunch and Learn Sessions with guest speakers; and
- To work with other Sections with similar interests.

Section Chairs - 2010/2011

Please contact me with any questions, concerns, or suggestions.

Elder Law

John Whelan

Caregivers

Tel: (709) 757-3504

Email: john.whelan@caregiversnl.com

Goals not submitted

General Practice, Solo & Small Firm

Bradley Savoury

Rogers Bussey Lawyers

102 LeMarchant Road

St. John's, NL A1C 2H2

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Fax: (709)-738-8534

E-Mail: bsavoury@rogersbussey.com

Goals not submitted.



Environment, Energy and Resources Law

Gregory Moores

Stewart McKelvey

Tel: (709) 570-5797

E-mail: gmoores@smss.com



Government & Public Sector Lawyers

Chris Quigley

Department of Justice

Civil Division-Corporate/ Commercial Group

Tel.: (709) 729-5942

E-Mail: chrisquigley@gov.nl.ca

This year, the local CBA branch has seen the combination of the Energy and Resources Law section and the Environmental Law Section. This is in keeping with the CBA's National organizational structure.

As one of the smaller Sections, a fundamental goal of the Energy and Resources Law Section is to maintain a reasonable level of activity. Plans for this Section include:

- An initial business meeting of Section members; and
- At least one session with a guest speaker, preferably in the form of a Lunch & Learn or in combination with a more social setting or context. In this regard, plans are underway to host a Lunch & Learn in the area of petroleum industry agreements.

I am very interested in hearing from any Section member who is inclined to offer suggestions. Please do not hesitate to give me a call or send me an e-mail at your convenience.

Family Law

Melanie Del Rizzo

Smyth, Woodland, Del Rizzo & LeDrew

Tel: (709) 754-4845

E-mail: mdelrizzo@swd-law.nf.net

Goals not submitted.

My plans for the Section this year include:

- Organizing one or more sessions (whether Lunch and Learn or other meeting format) on topics of interest to public sector lawyers;
- Adding a public sector lawyer perspective to discussions within the Branch;
- Advocating in favour of provincial support for CBA membership for public sector lawyers; and
- Working with other Sections on issues of common interest.

I'm looking forward to working with all members. Input on session topics / ways to collaborate with other Sections welcomed.



Health Law

Jessica Dellow

Ches Crosbie Barristers

Tel: (709) 579-4000

E-mail: dellow.jessica@gmail.com

My plans for the Section this year include:

- Keeping Section members informed of recent developments in health law, both provincially and federally;
- Working with Health Law Section Chairs in other provinces; and
- Making myself available to any lawyers wanting to discuss Health Law issues.

I look forward to working with Section members and encourage

Section Chairs - 2010/2011

members to contact me with any ideas they may have for section initiatives for the upcoming year.

Immigration Law

Blair Pritchett

McInnes Cooper

Tel: (709) 722-8735

Email: blair.pritchett@mcinnescooper.com

For the upcoming year, I have set two principal objectives for the Section. First, I would like to organize an information session featuring program officers from the Provincial Office of Immigration. Second, I would like to hold a meeting of interested practitioners to try and build more interest for the Section. At this point, the Immigration Section is still in its infancy, so the overall hope is to slowly build a larger, more involved group so that local lawyers can reap the benefits of the extensive work undertaken by the National Section.



Insurance Law

Peter Shea

Cox & Palmer

Tel: (709) 738-7800

E-mail: pshea@coxandpalmer.com

My plans for the Section for this year include:

- To hold at least two Lunch and Learn Sessions on topics of interest to section members, with a view to having at least one insurance industry related speaker speak to the Section;
- To work co-operatively with other Sections, particularly the Civil Litigation Section, on topics in which we have a shared interest; and
- To keep members apprised of local and national developments in the field of insurance law

I look forward to working with Section members, and encourage members to contact me with any ideas they may have for Section initiatives for the upcoming year.



Intellectual Property

Erin Best

Cox & Palmer

Tel: (709) 738-7800

E-mail: ebest@coxandpalmer.com

Some goals of the Intellectual Property section for 2010-2011 include:

- Attending the National Meeting and Judges Dinner;
- Organizing webinars on topics of interest to the Section;
- Emailing IP law updates to the Section;
- Organizing volunteers to facilitate CIPO Case studies;
- Liaising with visiting representatives of CIPO, IPIC and SOCAN; and
- Keeping the Section informed of progress with Bill C-32, Copyright Modernization Act.



Law Practice Management & Tech.

Christopher D. G. Pike, FCIP

Benson Myles PLC Inc

Tel: (709) 570-7228

E-mail: cpike@bensonmyles.com

The Section's mandate is not just about technology and includes marketing and firm management. This year I plan to focus on those areas and plan to offer two Lunch and Learn Sessions. One will have a marketing focus and the other a general management focus.



Labour and Employment Law

Michelle Willette

Cox & Palmer

Tel: (709) 738-7800

Email: mwillette@coxandpalmer.com

My goals for 2010-2011 are to:

- Keep Section members up to date on relevant developments in Administrative, Labour and Employment law; and
- Work cooperatively with other Sections, particularly the Human Rights law section to provide at least one Lunch and Learn session on a topic of interest to Section members.

I am interest in hearing from members and welcome any expressions of interest for involvement in Section initiatives.

Maritime and Admiralty Law

Kim Walsh

Stewart McKelvey

Tel: (709) 722-4270

E-mail: kwash@smss.com

Goals not submitted.

Section Chairs - 2010/2011



Privacy Law

Mandy Woodland

Cox & Palmer

Tel: (709) 738-7800

E-mail: mwoodland@coxandpalmer.com

Section priorities for this year are:

- To increase membership participation in Section activities, beginning with a Section meeting held on October 14th, 2010;
- To keep Section members up to date on developments in privacy and/or access law, particularly legislation and law reform;
- To hold one or more Sessions with a guest speaker, as either Lunch and Learn Sessions or in an alternative format;
- To work with other Sections with shared interests;
- To participate in National Section Chair meetings and conference calls and provide regular feedback to the Section membership on our discussions and any issues arising from these meetings;
- To support and promote activities of our National Section, including online Professional Development seminars; and
- To attend the National Privacy & Access Law Section meeting in 2011.

I am very interested in hearing from Section members and I welcome ideas, suggestions, and input on section activities.



Real Property Law

Susan LeDrew

Smyth Woodland Del Rizzo & LeDrew

Tel: (709) 754-4845

E-mail: smledrew@swd-law.nf.net

Goals not submitted



Sexual Orientation and Gender Identity Conference (SOGIC)

Michael Ladha

Curtis, Dawe

St. John's, NL A1C 3V2

Tel: (709) 722-5181

E-mail: mladha@curtisdawe.nf.ca

My plans for the Section this year include:

- To continue to develop and facilitate the growth of SOGIC in Newfoundland & Labrador;

- To facilitate an interest in and discussion of sexual orientation and gender identity issues as they apply to different practice areas;
- To co-ordinate and work with other Sections where there may be overlapping issues;
- To keep Section members up to date with recent developments concerning sexual orientation and gender identity legal issues at both the provincial and national level;
- To organize at least one Lunch and Learn Session on a topic of interest to Section members; and,
- To attend the National SOGIC meeting if possible.

Taxation Law

Michael Drover

Michael Drover, Attorney At Law

Tel: (709) 722-6060

E-mail: mdrover@michaeldrover.com

Given the newness of this Section, a primary focus of mine during this year will be to attempt to identify those section members engaged in this area of the law. My plans and goals for the Section this year will therefore include:

- To develop a list of practitioners in this area;
- To organize at least one Lunch and Learn Session or Professional Development Session;
- To try to develop some sort of networking and support opportunity for tax practitioners; and
- To co-ordinate and work with other sections on areas of mutual interest.

Wills and Estates

Jennifer Gorman

Benson Myles

Tel: (709) 570-7231

E-mail: jgorman@bensonmyles.com

Goals not submitted.



Women Lawyers Forum

Andrea Murphy

French, Noseworthy & Associates

Tel: (709) 754-1800

E-mail: amurphy@frenchnoseworthy.com

My plans and goals for the Forum this year include:

- To officially launch the Newfoundland and Labrador Branch of the Women Lawyers Forum;

Section Chairs - 2010/2011

- To increase interest and membership in the Women Lawyers Forum in this Province;
- To keep Forum members up to date on developments and issues of interest/concern to female practitioners;
- To create a volunteer mentorship program whereby senior female practitioners are paired with junior female practitioners;
- To hold at least one Lunch and Learn or Section Meeting on a topic of interest to female members of the profession and/or to offer an opportunity for discussion and networking amongst the female members of the profession; and
- To organize at least one community service initiative for the benefit of women within the Province of Newfoundland and Labrador.

I look forward to serving as Chair of the Women Lawyers Forum for the 2010-2011 year and would welcome any expressions of interest for involvement in the Forum or suggestions for future events.

Please contact me with any issues or ideas for the upcoming year.



Young Lawyers Conference

Beth McGrath

Ottenheimer & Baker

Tel: (709) 722-7584

E-mail: bmcgrath@ottenheimerbaker.com

Goals:

- To keep our Section members informed on issues facing young lawyers of our Bar;
- To work with other Sections with similar interests;
- To coordinate with National Young Lawyers a Pro Bono initiative with joint involvement from our local Pro Bono Section; and
- To continue our Branch's national involvement and learn from representatives across Canada.

Activities:

- Annual Christmas Social for our Section members and first year law students;
- Bar Admission Course Wine & Cheese;
- To hold at least 4 Young Lawyers' Friday Networking Sessions;
- To hold two educational sessions: one as a financial planning seminar with CBA Financial and CBIA and the second as part of our Mid-Winter Meeting or Annual General Meeting; and
- To attend the National Young Lawyer's Meeting.



Women Lawyers Forum Event, "In Her Shoes"

Award Spotlight

By Daniel Furey



Distinguished Public Service Award Winner Frank Fowler, Q.C.

The 2010 Award for Distinguished Public Service was presented to Francis P. Fowler, Q.C. at the CBA-NL Branch Annual General Meeting on July 16, 2010. This award is given to a CBA member who has exemplified strong community volunteerism.

Mr. Fowler is a valued CBA member. He has excelled in the legal profession and has contributed a great deal to a number of community organizations.

Mr. Fowler was born and raised in St. John's. He attended St. Bonaventure's College and graduated in 1959. Following his graduation, he pursued further educational opportunities at St. Dunstan's University (now the University of Prince Edward Island) in Charlottetown, PEI. He graduated in 1963 and began his law degree at Dalhousie University.

He returned to St. John's following his graduation from Dalhousie in 1966 and articulated with the firm Lewis, Aylward, Crosbie. Following his call to the bar in 1967, he and several others established the firm Thoms, Fowler, Rowe and Barry. He continued with this firm for a number of years until he began the firm Fowler, Pike, Madden, which merged with Benson Myles in 1995, where Mr. Fowler continues to practice law. He focuses his practice in the areas of corporate/commercial law, construction law, and real estate.

Mr. Fowler has served as a member of the CBA since 1967. Throughout this time he has been a strong supporter of the CBA and served on the CBA-NL Executive

Committee as Secretary and Treasurer. He has also served the legal community in this province as president of the Law Society of Newfoundland and Labrador from 1981-1982.

I have known Mr. Fowler for many years as a volunteer at the Basilica of St. John the Baptist Parish in St. John's. He is a member of the parish choir and is a solo cantor on occasion. He also served two terms as the Chair of the Parish Council and was involved in the parish's sponsorship of a refugee family from Sudan several years ago.

In addition, Mr. Fowler has been a member of the Rotary Club of St. John's Northwest since 1979. He served as President of the Club in 1981. He was also involved in several major projects that the Club undertook, one being the construction of a hostel for families of children treated at the former Janeway Children's Hospital in Pleasantville.

I asked Mr. Fowler why he has chosen to become and stay involved with so many diverse community organizations over the years. He said that lawyers, by virtue of their training, will pitch in where there is a need. They are problem solvers. He said that he gets a great satisfaction from helping others. In addition to being committed to a variety of community causes, Mr. Fowler is also a dedicated family man. He and his wife, Patty, reside in St. Philip's and have four grown children. The CBA is fortunate to have benefited from Mr. Fowler's experience for the past four decades. We wish him many more years of good health and service.



Frank Fowler, Q.C.

In Personam

By Suzanne Orsborn



Laurie Jones

The researcher is like the unsung hero of the legal profession. A legal brief or oral argument that appears to be convincing on its surface will lose all value if it has not been thoroughly researched. Lawyers who work primarily in one field must still conduct regular research to keep up with new developments in the law and to explore how a unique situation may have been addressed in other cases. It comes as no surprise that the Court of Appeal of Newfoundland and Labrador, faced with legal questions from every area of the law, has two lawyers employed as Legal Research Officers who assist the judges with legal research. Laurie Jones is the Court's senior Legal Research Officer.

One of the rites of passage for a new practicing lawyer is arguably that inevitable point where he or she states or thinks: "They didn't teach us this in law school!" Ms. Jones' position, however, is perhaps one of the few where the creative thinking and research skills learned in law school, which can sometimes become a secondary aspect of the practice of law, are front and centre. She has the opportunity every day to explore and research legal questions that can have a real impact not only on the parties involved in an appeal but on the community as a whole.

Ms. Jones graduated from Memorial University in 1991 with a Bachelor of Arts in Folklore and German. She spent one year at Queen's University pursuing a Masters degree and then decided to go to law school. She attended Dalhousie University and graduated in 1996.

After graduating from Dalhousie, Ms. Jones articulated with Benson Myles and the Civil Division of the Department of Justice. Following her call to the bar, she practiced with Noonan Oakley. In 1998, she left the firm after being called to a higher duty: new mother to her first

son, Thomas, who was born that year. After the birth of her son, she continued to have an active working life, including teaching paralegal courses in the areas of legal research and labour and employment at Keyin Tech.

Ms. Jones' current position was not her first one with the Court of Appeal. In 1999, she accepted a position as a Law Clerk with the Court. She remained in that position until 2001 when her second son, Nathaniel, was born. Following Nathaniel's birth, Ms. Jones took some time off from full-time legal work to focus on raising her children. While raising two boys is easily a full-time job in its own right, Ms. Jones also found time not only to do contractual work for the Unified Family Court and research work for a professor at Memorial University, but also to do volunteer work, perhaps most notably in organizing a provincial breast cancer retreat for the Canadian Cancer Society in Port aux Basques in September 2007.

While the majority of her legal career has been spent in areas outside of private practice, it remains familiar territory to her: Griffith Roberts, her husband of 16 years, is a partner with Cox & Palmer.

Evidently not one afraid of a good challenge, she decided to add a whole new element to her busy life: school. In addition to working full-time with the Court and with her family, Ms. Jones is currently completing her Masters in Employment Relations through part-time study at Memorial University.

Ms. Jones returned to the Court of Appeal as a Law Clerk in September 2007 and with a subsequent title change, is now a Legal Research Officer with the Court. As her title suggests, the primary focus of Ms. Jones' work is in conducting legal research on issues before the Court of Appeal. Through her overall responsibilities, however, she is involved with cases at the Court from the time that they

In Personam

are filed until the time that a decision is finalized.

When an appeal is filed with the Court, Ms. Jones is tasked with providing a summary of the case to the judges. One can easily appreciate the importance of this role in assisting the judges to more easily and quickly “get to the point”. Once the appeal is reviewed by the responsible judge(s), Ms. Jones may then be requested to conduct legal research on a particular question in issue. This request may come before or after the case is heard by the Court.

Once the case is heard and a decision is written, but before the decision is released, Ms. Jones is also responsible for conducting a final review of the decision to ensure proper citations are included and that none of the cited cases have been overturned.

Ms. Jones’ responsibilities are not, however, limited to tasks related to cases before the Court. She also conducts policy work on the rules and procedure at the Court of Appeal level, and oversees the “Policy and Procedures Manual” utilized by both the Court of Appeal and the Trial Division. She provides input on the library resources of the Court, and oversees the work of the Court’s recently-hired second Legal Research Officer.

The aspect of Ms. Jones’ work that she finds the most challenging is perhaps a prime example of a situation where “the grass is always greener on the other side”. While some lawyers may at times consider research work a welcome break from dealing with clients or spending long hours in meetings, Ms. Jones indicated that the main downside to her role as a researcher is that she does not get as much interaction with other individuals.

Ms. Jones’ position certainly gives her a unique perspective into the operations of the Court of Appeal. When asked if there was anything about the Court of Appeal

that the average member of the bar may not know, she replied that the judges of the Court are very pleasant and approachable and good to work with. (I note that this revelation is not necessarily reflective of a sense within the bar that justices of the Court of Appeal are not pleasant, approachable, or good to work with, but speaking from personal experiences at the Court, they can certainly seem intimidating!) Ms. Jones spoke particularly highly of Madam Justice Cameron who retired in May of this year. Ms. Jones indicated that Justice Cameron was very good to work for, and credited Justice Cameron for encouraging her to apply for her current position.

Given Ms. Jones’ “insider’s” view into the Court of Appeal, I could not resist asking if she had any tips for members of the bar when bringing a case before the Court of Appeal. She summed up her suggestion quite succinctly: “Proof read!” – a valuable tip indeed for counsel before any level of the Supreme Court, be it the Court of Appeal or the Trial Division, as well as of course before the Provincial Court.

On behalf of *Squid pro quo*, I wish to express my sincere thanks to Ms. Jones for taking time out of her busy schedule to meet with me.

CALLS TO BAR OCTOBER 2010

JEFFERY S. MACDONALD*

R. PATRICK R. SAUL

**Denotes CBA Member*

In Personam

By Jeff MacDonald

Rod Snow, CBA National President

This past summer, the CBA made legal history by electing its first president from northern Canada. Originally from Nova Scotia, Mr. Snow has made his way across the country to Yellowknife, where he practices with Davis LLP as a corporate/commercial solicitor. A frequent writer and guest lecturer on aboriginal and mining law matters, Mr. Snow intends to bring a northern perspective in his duties as CBA President.

Mr. Snow was born and raised in the community of Port Maintland, on the southern shore of Nova Scotia. Born into a line of lobster fishermen, he spent his share of mornings learning to gap buoys and fill bait bags. With his parents' wish that he obtain a university education on his mind, Mr. Snow made his way up the coast to Halifax where he obtained a Bachelor of Arts degree and a Bachelor of Laws degree from Dalhousie University. It was at Dalhousie that Mr. Snow began to take an interest in marine law, and he decided to pursue graduate studies as a NATO fellow at the University of Washington. He began practicing law with Davis LLP in their Vancouver office and when the opportunity came along for Mr. Snow to open up an office in Yellowknife, he jumped at the opportunity. What was intended to be a two-year adventure is now a seventeen-year-and-counting stay. Mr. Snow has lectured on aboriginal, mining and environmental law topics to a variety of groups and he is recognized by Lexpert as a leading mining lawyer.

In speaking with presidents of other bar associations around the world, Mr. Snow has come to realize that many jurisdictions share common challenges with issues surrounding access to justice. Legal Aid seems to be under pressure everywhere, with members practicing law in the public domain always being asked to do more with fewer and fewer resources. A common theme in many countries is that, in times of global economic uncertainty,

the legal system must remain a stable and steady presence that people can depend on. Many bar associations across the world are struggling to ensure that the independence of the judicial system is maintained. This independence of the bar and the judiciary is essential in a democracy, Mr. Snow contends.

Mr. Snow's three main priorities are to help Canadian lawyers face the challenges of a changing world in the face of globalization, promoting excellence in the profession and growing the CBA by boosting membership. The CBA is proud to have launched the Skilled Lawyer Series, a series of skills-based programs available to both corporate and litigation practitioners. The CBA acts as an advocate for practitioners across Canada and frequently makes submissions on behalf of all lawyers to various parliamentary committees. Mr. Snow believes that the CBA's voice will only be stronger with more members and he hopes to see membership in the CBA increase during his tenure as President.

Mr. Snow has had the opportunity to visit Newfoundland and Labrador many times in the past. An avid outdoorsman and hiker, he had the opportunity to visit this past summer with his wife, Heather MacFadgen, a lawyer who is currently serving as the Yukon Human Rights Commission's Executive Director. In addition to spending time in St. John's, they managed to make it to Trinity for the annual Pageant. Mr. Snow is eager to return to Newfoundland and Labrador sometime in 2011 to meet local members of the CBA.

Outside of his practice and CBA duties, Mr. Snow keeps busy trying to keep up with his three children, Ben, Emily and Noah, as well as being involved in his local community. A Rotarian, Mr. Snow served as President of the Whitehorse Rotary Club. He has been a director of many professional bodies, such as the Yukon Chamber of Mines and the Vancouver Port Corporation as well

In Personam

as serving as President of the Whitehorse Chamber of Commerce. In addition to his work with various professional bodies, Mr. Snow is a Past Chair of the Asia Pacific Festival Society and an erstwhile forward in the Whitehorse Old-Timers Hockey League. Being based in Yellowknife has made Mr. Snow aware that the public expects lawyers to be involved in their community and he believes that lawyers bring a very unique and necessary skill set to community groups.

Mr. Snow has been a member of the CBA since he began to practice law and was active in the Environmental Law Section early in his career. He has been involved at the national level as a Director and Vice President as well as in a capacity as a guest lecturer on environmental law. Mr. Snow credits the CBA for giving him an exposure to other areas of law that he normally would not encounter. Mr. Snow believes that, like many other things, what you get out of the CBA depends on what you put into it, and encourages all members to participate and make use of the extensive resources available to CBA members.

In discussing the role lawyers play in society, Mr. Snow believes the thing to remember is that the legal profession is first and foremost a helping profession. What lawyers often represent to people, more than anything else, is hope. Having had the opportunity to practice law both in one of Canada's largest cities and in a smaller center such as Whitehorse, Mr. Snow has seen firsthand the level



Rod Snow, CBA National President

of trust and responsibility people place upon lawyers in the community. This level of trust and responsibility is core to the rule of law, Mr. Snow contends, and lawyers as members of the CBA should discharge these responsibilities accordingly. In addition to the responsibilities that lawyers have to the public, Mr. Snow believes that lawyers have a responsibility to each other to be effective mentors and to be generous with their time in supporting their colleagues whenever they can.

On behalf of *Squid pro quo*, I would like to thank Mr. Snow for his cooperation in providing a candid and entertaining interview, and also for his tremendous contributions to our profession in his role as President of the CBA.



2010 Canadian Legal Conference Niagara Falls

Administrative Judges - Who are they? What do they do?

By Chief Judge D. Mark Pike

When I was a lawyer I thought that the court ran itself. I went to court; the judge heard the case and gave a decision. What happened in the hallways behind the court rooms, in the judges' chambers and especially in the Chief's office, remained somewhat of a mystery. Now that I've had some, albeit limited, experience in this position I can shed some light on the subject.

The administration of the Provincial Court of Newfoundland and Labrador is divided among the Chief Judge, the Associate Chief Judge and the Senior Coordinating Judge. They comprise the judicial administrative infrastructure of the Provincial Court province-wide. This includes not only the twenty-three judges of the Court, but the Court Clerks, Justices of the Peace and support staff working at the Provincial Court. The administrative judges, in conjunction with the Director of Court Services, make policy decisions on a short, medium and long-term basis and carry out planning and strategic planning functions to ensure the effective and efficient running of the entire court system.

Duties of the Chief Judge are set out in the *Provincial Court Act* (Act). These involve having charge at all times of the general policy of the Court in judicial matters, the assignment of duties and request for exchange of duties among judges, the coordination and apportionment of the work of judges as well as the transfer of judges within the province. The Chief Judge is also empowered to make recommendations to the Minister of Justice respecting all matters affecting the general administration and operation of the Court. Examples of this include the conduct and implementation of policies involving specialized, therapeutic courts such as Family Violence Intervention Court and Mental Health Court. It is the responsibility of the Chief Judge to maintain and revise where necessary the rules of practice and procedure and to prepare Practice Notes and Memoranda to judges and counsel.

include overseeing the scheduling of the sittings of the Court, completing the budgetary process and working in conjunction with the Director of Court Services. The Director of Court Services reports to the Chief Judge on judicial administrative matters and has supervisory responsibility for approximately one hundred court staff members. The Chief Judge liaises with agencies such as police and other investigative organizations, the Public Prosecution Service of the province and of Canada, the Newfoundland and Labrador Legal Aid Commission, and the private bar either through the Law Society or the Canadian Bar Association, all for the purpose of maintaining and improving the delivery of justice services. He or she must also respond to media inquiries. The Chief Judge serves as the Court's contact with the Minister of the Department of Justice and senior executives of the Department of Justice as well as other agencies throughout the province and the country.

On the national scene, the Chief Judge, along with the Associate Chief Judge, participates in the semi-annual meetings of the Canadian Council of Chief Judges (CCCCJ). The CCCCJ is a national organization which is dedicated to the promotion of public confidence in the justice system and to ensuring the effective administration of Provincial and Territorial Courts in Canada by providing accessible, timely, independent and impartial justice for all. This organization's mandate is to develop and maintain relationships with the Federal Department of Justice, Provincial Departments of Justice, and national organizations such as the Canadian Bar Association and the Canadian Association of Provincial Court Judges in order to share information and perspectives and to present the approaches and opinions of the Provincial and Territorial Courts on all matters, including legislation, which affect the Provincial and Territorial Courts of Canada. The CCCCJ also works to develop an on-going, collaborative working relationship with the Canadian Judicial Council and the National Judicial Institute.

The regular administrative duties of the Chief Judge

The Chief Judge has the primary responsibility for

ensuring that there is continuing education for all judges, arranging for leave, and replacing judges in cases where a conflict of interest might arise. The conduct of public inquiries is one of the responsibilities of the Court and must be coordinated through the Office of the Chief Judge. Regular travel throughout the province is required as well as the Administration of the Oath of Office to newly appointed judges and the supervision of all Justices of the Peace working at the Provincial Court.

The administrative judges are not only the representatives of the Court within the justice system but often act as a visible face of the Court when attending a variety of meetings and official functions. The Chief Judge organizes and sets the agenda for the Annual Conference of Judges and consults with the executive of the Provincial Court Judges Association on common issues.

The Chief Judge is also required to coordinate the delivery of justice services with the Chief Justices of the Supreme Court of Newfoundland and Labrador as well as the Chief Justice of Newfoundland (Court of Appeal). The administrative judges are involved in the various inter-jurisdictional initiatives with the goal of improving the delivery of justice services across Canada. Administrative judges have a sitting schedule similar to the puisne judges except that the sitting duties of the Chief Judge and the Associate Chief Judge may be reduced to accommodate these other responsibilities.

The Chief Judge may be also required to perform additional duties that may be prescribed by the Act or the Regulations and can be called upon to advise the Minister of Justice on matters concerning the administration of justice in the province.

A recent example of this is the report which was produced by the Task Force on Criminal Justice Efficiencies. This task force was established by the Minister of Justice and was co-chaired by the Chief Judge of the Provincial Court. Arising from this report were a number of significant recommendations involving reducing the time between arrest and trial and an overhaul of the practices and procedures related to scheduling of trials and applications in the Provincial Court at St. John's. The implementation of this report is being carried out by the current Chief Judge and its effects are expected to be far reaching.

The Chief Judge also has responsibilities as Chair of the Judicial Council. The role as Chair of the Judicial Council is a new responsibility for the Chief Judge. The powers and responsibilities of the Judicial Council can be particularly important especially where they relate to the selection of candidates to be recommended for appointment to the Court. Recently this process has been completely revised and the Council has instituted elaborate guidelines for a broad-based consultative screening process to ensure that only excellent candidates are recommended to the Minister of Justice for appointment as Judges of the Court. A mechanism to ensure judicial transfers are made on an equitable basis has also been put in place. An initiative is underway to prepare and revise, in consultation with the Judges of the Court, a Code of Ethics.

The Associate Chief Judge performs the duties assigned to him or her by the Chief Judge. Where the Chief Judge is unable to perform his or her duties, the Associate Chief Judge performs them. The practice of the current Chief Judge is to fully utilize the administrative capacity of the Associate Chief Judge to assist with all of the activities outlined above.



*Left to Right: Judge Brown, Chief Judge Pike,
Associate Chief Judge Hyslop*

The Senior Coordinating Judge has the primary responsibility for the daily and immediate coordination of the sitting duties (assignment and reassignment of cases) for all judges on the Avalon Peninsula and must work closely with the Court Utilization Manager under the direction of the Chief Judge and Associate Chief Judge in this respect. The Senior Coordinating Judge is consulted on administrative and policy issues impacting the work of the court in the region. These responsibilities have been increasing as new initiatives are undertaken in St. John's.



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Case Digest

By Daniel M. Glover



When Should a Class Action Settlement be Approved by the Court?

*Doucette v. Eastern Regional Integrated Health Authority*¹ provides an example of the analysis a court will undertake before approving a settlement of a class action, in this case the class action regarding hormone receptor testing certified on May 28, 2007.

Under section 35 of the *Class Actions Act*,² settlement of a class action requires court approval. In this case, a memorandum of settlement and distribution protocol for the proceeds of settlement was sent to class members in the notice of the hearing to approve the settlement. The global monetary amount was to be paid and distributed based on various compensation categories according to the nature of particular class members' injuries and their medical histories. Other settlement conditions sought to be approved included: the appointment of an independent administrator of the settlement, notice of settlement, the retainer agreement with class counsel, retention of an external reviewer to carry out a review of the implementation of the Cameron Inquiry recommendations in March 2012, the establishment of bursaries, a public apology, a statement from the Plaintiffs regarding Eastern Health's good faith efforts to resolve the class action, and a process for individual class members to meet with Eastern Health.

In his decision Justice Thompson cites jurisprudence acknowledging that settlements are the product of

compromise and therefore not held to a standard of perfection but to one of fairness and reasonableness. The settlement must be in the best interests of class members. There must not be evidence of collusion and the settlement must have been made in good faith. Specific factors to be considered expressly set out in Rule 7A include the likelihood of recovery, the amount and nature of the discovery evidence, recommendations and experience of counsel, future expenses and likely duration of the litigation, recommendations of neutral parties, the number and nature of objections, communication by counsel with the Plaintiff and class members, the dynamics of the negotiations and positions taken and the risk of not unconditionally approving the settlement. The role of the court in this inquiry is not to judge the merits of the case but only whether the settlement meets the criteria for approval. Therefore it is inappropriate for the court to make findings of fact.

Justice Thompson reviewed in detail the affidavit evidence before the Court on the application, including evidence on both legal teams' communications with witnesses and considerations of the complexities of the legal claims being advanced, particularly the question of causation. He applied the above noted factors and approved the provisions of the draft Order including the 33.3% contingency fee. He thanked all counsel for their diligence and professionalism throughout the matter.

1. 2010 NLTD 29.

2. S.N.L. 2001, c. C-18.1.

Family Violence Intervention Court

By Amanda Hewitt

The Family Violence Intervention Court (“FVIC”) pilot project has been operating in St. John’s since March 25, 2009. It sits every second Wednesday at 2:00 p.m. in courtroom #8, alternating with the Mental Health Court. It is a specialized criminal court intended to address the complex issue of family violence. For the purposes of the pilot, “family violence” has been defined as *Criminal Code* offences committed by the accused arising from or related to his/her relationship with a significant partner or ex-partner. The key component is the relationship between the accused and the victim; cohabitation is not a determining factor. The goal of the Court is to prevent and reduce incidents of family violence. Through a collaborative approach, access to support services and intervention programs is accelerated. The FVIC focuses on enhancing victim safety as well as emphasizing offender accountability and treatment.

Across Canada, there are essentially two categories of family violence courts: expedited case management courts which aim to fast-track family violence cases through the court process and treatment-based courts which move beyond fast-tracking and emphasize treatment of the abusive behaviour. As part of the Violence Prevention Initiative, the Department of Justice agreed to conduct research and analysis on family violence courts and develop recommendations for this jurisdiction. The Feasibility Committee recommended that the St. John’s pilot project be designed as a treatment-based model. The FVIC emphasizes programming for the offenders, as well as counseling supports for victims and children. Once a guilty plea is entered and a finding of guilt made by the Judge, every offender is required to be supervised by the Bail Supervisor and to participate in family violence programming prior to sentencing.

The family violence programming is currently offered by Corrections and Community Services and the Learning Resources Program (“LRP”) of the John Howard Society.

Participants in the FVIC must be matched with the type of programming offered by the service providers. Potential candidates are screened through the use of risk assessment tools to ensure that they are placed in the appropriate programming stream. While an effort is made to offer some after-hours programming, there is no guarantee that a participant’s schedule will be accommodated. Corrections and Community Services offers a program for low risk offenders called “Respectful Relationships” which consists of 10 group sessions. The LRP offers a program called “OASIS” which consists of 16 to 24 group sessions, depending on whether the accused is moderate risk or high risk. Participants return to the FVIC for periodic progress reports. Pre-sentence reports, which include information from the programming facilitators, are completed by the Bail Supervisor. Completion of the family violence programming is a mitigating factor at sentencing.

The FVIC uses a team approach and information sharing to ensure offender accountability and victim safety. Team meetings are held prior to court to discuss each case with regard to offender compliance with programming and judicial interim release conditions. The team makes suggestions to the Judge with respect to any changes in judicial interim release conditions. As well, concerns of the victim can be brought forward to the team and the team can be made aware of any increase in risk to the victim.

Implementation of the FVIC has resulted in a number of procedural changes for the St. John’s Provincial Court. For example, people interested in participating in the court can be referred directly from First Appearance Court (courtroom #7). However, if a person wishes to be referred to the court from a trial court, then a formal written application must be brought before the dedicated Judge in FVIC. This supports the court’s goal of early intervention and ensures that participation decisions are

made within a timely manner.

Another procedural change is that the St. John's Provincial Court has requested the RCMP and the RNC to schedule all first appearances for domestic violence charges (where the accused has been released) for Thursday afternoons in First Appearance Court. This provides an opportunity for the dedicated FVIC team, including Legal Aid defence counsel and the Risk Assessment Officer, to discuss the court with potential participants and to immediately schedule risk assessments for those who express interest.

An external evaluation of the FVIC was completed in March 2010. Although there was insufficient data to determine the effectiveness of this specialty court, early indications are positive. This is echoed in a victim's comment during the evaluation: "I thought the Court and staff members were trying to make it better for everyone. I was impressed with the Judge. The Legal Aid lawyer was fabulous." Offenders also made positive comments regarding the programming: "I was nervous but once I felt more comfortable, I ... looked forward to going."

The FVIC pilot project has been extended until March 2011. The St. John's Provincial Court welcomes the opportunity to continue supporting this important initiative. Questions regarding the Court can be directed to Amanda Hewitt, Specialty Court Liaison, Provincial Court or Pam Thomas, Program and Policy Development Specialist, Department of Justice.

***Squid pro quo* Letters to the Editor**

Squid pro quo welcomes letters to the editor from members of the Canadian Bar Association wishing to express observations, opinions, corrections, very brief reports, or comments on previously published articles.

Please note the following:

1. Your letter must be single spaced, Times New Roman font, point size - 12 with one inch margins.
2. Letters must not exceed 250 words in length; Published letters will be edited for clarity and length without the prior approval of the author. Unpublished letters will not be returned.
3. Signatures of all authors are required (by fax will be acceptable), together with the author's full mailing address and daytime telephone number. Pen names and anonymous letters will not be published
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Canadian Bar Insurance Association Update

By Hughie Shea



Paradigm Shift

I have always been terrified of the phrase “new paradigm”. It was used to describe why technology stocks in the late 1990s deserved a higher valuation than regular stocks. At one point Nortel was selling for earnings multiple of 600 years into the future, while a bank would typically sell for earnings multiple of 15 years into the future. The argument made at the time was that Nortel would have such rapid sustained growth that the multiple of 600 years was rational and that stocks and stock pricing were going through a “new paradigm”.

Research in Motion (RIM), maker of my Blackberry, was only a short while ago (summer 2009) selling at multiples that valued the current stock price 60 years into the future. As of October 18, 2010 that number has shrunk to 9.

To be fair, RIM has been, and continues to be, a company that has made a profit. My point is that at a multiple of 60, it was not a reasonable or rational value. All sustainable businesses must make a profit. That profit multiple has to be fair if you are going to be a purchaser. Without a fair price, the speculation (because this cannot be considered an investment) now moves to “the bigger sucker theory;” that is, you only make money on these stocks by pawning them off on a bigger sucker.

When we look at stock markets and their performance in 2010 we see that Canada’s currency is on an upward trend, at par on October 14, 2010 (*Source: Bank of Canada*). In previous articles of *Squid pro quo* I have illustrated that as the Canadian Dollar goes up, the value of US property we have purchased goes down. With the US economy still in a soft spell it is important that you do not become the bigger sucker. Currency conversions can destroy return. If we look at Europe we are inundated with news of debt, currency risk and social programs gone awry.

The G7 (G6 plus Canada) was formed in 1976 and includes the countries of France, Germany, Italy, Japan, the United Kingdom and the United States. At the time it represented the global powerhouses of industrialized nations. What it did not include was China, the fourth largest economy in the world with its 1 trillion plus in foreign currency reserves. The economic ministers of these countries get together to discuss and coordinate macroeconomic policy: heady stuff like money supply, balance of trade, interest rates, global credit crisis and oddly enough, foreign currency issues. It seems to be a reasonable position that without China, one of the largest holders of foreign currency and the fourth largest economy in the world, discussions on those topics are moot. We are moving to a paradigm shift. The G7 is becoming, or is, less relevant than a broader global mandate which includes the G20.

In order to plan for retirement, wealth creation, or increasing net worth, we still need a return on our investment. I think it is fair to say that we are moving into a broader global economy, an economy that includes Brazil, Russia, India and China (also known as BRIC). However, an investment means that we know and trust the governments, social programs, financial infrastructure and the ability to get our money when we need it. Currency risks globally should limit your investment choices. Until the Canadian stock market becomes overvalued, the best opportunity for investment return is here, domestically. For global investing, be very aware of how your investment is protected against changes in currency value. What is the strategy employed to protect your investment value? How is it hedged? You need to be aware that if the currency risk is not hedged, and the Canadian dollar appreciates by 10%, then that is an extra 10% your investment needs to make just to break even.

Only a couple of years ago the United States bought 85% of all the goods we produced for export; now it’s

65%. Canada is proving to have a dynamic economy to thrive in the paradigm shift of a broader global economy. Tremendous natural resources, stable government, good social programs, fiscal prudence and a low population base for a very large geography means less risk and more stable returns. Sounds like a reasonable investment strategy to me. If this seems reasonable to you then have a look at the Jarislowsky Fraser Canadian Equity Fund in our CBA Financial program, which is 100% invested in Canada, invested in companies you recognize and understand, and has no foreign currency risk.

Thanks again for your support. If I can be of service please call or email.



*2010 Canadian Legal Conference
Niagara Falls*

New CBA Members

Alexander Baranowski, Benson Myles

Andrew Collins, Benson Myles

Meghan Felt, McInnes Cooper

Cletus Flaherty, O'Dea, Earle

Sylina Jones

Meghan King, Benson Myles

Christopher Payne, Cox & Palmer

Aimee Peddle

Daniel Salama, Roebathan McKay Marshall

People and Places

Donna Ballard is now the Assistant Deputy Minister of Justice, Courts and Legal Services

Chad Blundon is now Director, Local Governance with the Department of Municipal Affairs, Government of Newfoundland and Labrador

Farrah Carrim, formerly of Cox & Palmer, is now with Vale Inco (Toronto)

Andre Clair, formerly of Martin Whalen Hennebury Stamp is now a Legal Research Officer with the Court of Appeal

Chrisine Healey, formerly Commercial Advisor, Department of Natural Resources, Government of Newfoundland and Labrador is now Manager, Commercial Affairs - Offshore Upstream, Statoil Canada

McInnes Cooper has temporarily moved to TD Place, 140 Water Street, Suite 700

Kim McKay, formerly with Cox & Palmer is now with Simmonds and Partners Defence

Renee Moore, formerly of Easton Hillier Lawrence Preston is now with Legal Aid (Gander)

Vanessa McCarthy, formerly of Brown & Burnes (Toronto) is now with Legal Aid (Gander)

Juan O'Quinn has closed his practice in Gander and has moved to British Columbia

Tracey Pasley (Bastow) moved from the Halifax office of McInnes Cooper to the St. John's office

Moving?

Let us know, by email at cba-nl@cba.org and we will publish in the next edition of *Squid pro quo*