

Squid pro quo

Newfoundland and Labrador Branch

Spring 2008

Canadian Bar Association



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Squid pro quo

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Canadian Bar Association
Box 59, Suite 304, Atlantic Place
215 Water Street
St. John's, NL A1C 6C9
Tel.: 579-5783 Fax: 726-4166
email: cba-nl@nl.rogers.com
website: www.cba.org

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Squid pro quo is a publication of the Newfoundland and Labrador Branch of the Canadian Bar Association 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. Articles must be submitted no later than October 31st, February 28th and June 30th.

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 (579-5783) for information regarding advertising rates and policies.

Squid pro quo can also be found on the CBA Newfoundland and Labrador Branch home page on the World Wide Web <http://www.cba.org>.

Letter from the Editor



Pamela Taylor
Editor

Spring finally seems to be making an appearance! The temperature is warmer and the last vestiges of snow are disappearing. Hopefully winter is finally at an end. This past season has been a busy one for the Branch as I am sure it has been for all of you. Take some time to peruse the Magazine and see what your colleagues and members of the Branch have been involved in this winter.

This edition of *Squid pro quo*, as always, has been a collaborative effort of our dedicated Magazine Committee. I'd like to take this opportunity to say farewell to a longstanding member of the Committee, Judy Manning. Judy has been involved for several years with the Magazine and has provided many well written articles as well as working behind the scenes in the production of various editions. As some of you may know, Judy has moved to Toronto, and we wish her every success in the future. I'd also like to welcome the newest member of the Magazine Committee, Laura Churchill. Laura is our new Branch Executive Director. Her contribution to the Magazine has already been impressive and I look forward to the opportunity to work more with her in the coming months.

In this edition of the Magazine you will find an informative In Persona article on John Clarke written by Tracey Pennell. John has had a long and interesting career and his focus on mediation and alternate dispute resolution gives the rest of us a glimpse of some other options available when practicing law. Of course, this edition also contains our regular features, including an insightful case digest from Daniel Glover, updates from some of our Section Chairs, and an always informative contribution from CBIA Representative, Hughie Shea.

Many thanks to our intrepid President, Christine Healey, who does triple duty in this edition of the Magazine. She has provided us with her President's report as well as articles on this year's winner of the 2008 Canadian Bar Association-Newfoundland and Labrador Excellence in Journalism Award and on the recent successful National Mid-Winter Meeting in Yellowknife.

Mark your calendars for this year's Branch Annual General Meeting which will be held in St. John's in June / July, 2008. Consider putting your name forward for the Executive or to become one of the Section Chairs. The Branch provides many great volunteer activities and a chance to give back to the profession and be involved in providing leadership to the Bar, so consider becoming involved. Hope to see you there! ■

President's Report

by Christine Healy



We have all heard that old (and allegedly Chinese) proverb, "May you live in interesting times." Well, the last few months have certainly been interesting for our Branch.

We had our first-ever Professional Development Day as part of our Mid-Winter meeting program, and it was a true success. The objective of the Professional Development program is to focus on "nuts and bolts" practice management issues, as opposed to new developments in the law. At February's session, we heard from clients as to what they expect from their legal counsel, we learned about effective retainer letters, and we discussed some practice tips and traps for real estate and litigation practitioners. The presenters delivered excellent content, and all who attended came away with useful knowledge. Materials are going to be distributed to attendees (if they have not yet been received when you read this column). Many thanks to our presenters, and to the Professional Development Committee who put together an excellent program.

We hope to continue Professional Development program offerings at future Annual and Mid-Winter Meetings. Future topics may include marketing, client retention, use of technology, and perhaps even a "human resources" bootcamp. We also hope to address law firm management

issues. If you have suggestions for future topics, please contact the Branch to pass along your ideas.

In February, the Executive Committee launched a search for a new Executive Director. We were fortunate to receive significant interest in the position when it was advertised. After reviewing a large number of applications, an interview committee of Chris Pike, Vice-President, John Hoyles, CBA National CEO, and I interviewed several exceptional candidates.

I am pleased to report that our search resulted in our new Executive Director, Laura Churchill, joining our team. Laura has experience as an Executive Director and manager for not-for-profit organizations, and she has a degree in criminology. Her interest in and knowledge of the Canadian Bar Association (CBA) is impressive, and should only grow as she gets to know us better. Please drop by the Branch office or send Laura an e-mail to welcome her to the organization.

I also want to extend my sincere thanks to the entire Executive Committee who truly pitched in when help was needed most. We had a difficult couple of months as we searched for and found our new Executive Director, and the commitment shown by the Executive Committee was exceptional. I know no one on the Executive planned to devote this many hours to the Branch this year, and all that extra time took people away from their families and offices, but the effort made a huge difference. Your commitment is noticed and appreciated by all of us as CBA members. Thank-you.

In the coming months, we are going to be focusing on ways we can deliver more value to you as CBA members. You may already be aware of the many preferred supplier arrangements we have for you, including an excellent deal with Provincial Airlines that can see substantial savings for flights within our beautiful Province (Marble Mountain, anyone?).

This winter has been a long one, and our Branch has been very active. We hope to see that continue through the spring. Stay tuned for Lunch and Learn notices, as well as Branch social events. I invite you to check the Branch's website at www.cba.org/newfoundland often to keep track of what we are doing. These are interesting times, to be sure! ■

APPOINTMENT



Laura Churchill

The Executive Committee of the Canadian Bar Association - Newfoundland & Labrador Branch is pleased to announce the appointment of Laura Churchill as Executive Director

Laura graduated from Saint Mary's University in 2005 with a Bachelor of Arts Degree (Criminology and Sociology). Since then, she has had a strong presence in the not-

for-profit sector in St. John's working in an administrative capacity with various artist run organizations.

The entire Executive Committee of the CBA offers Laura our congratulations upon receiving this position, and are looking forward to working with her on the many initiatives of the CBA.

Yellowknife Mid-Winter Meeting Report

by Christine Healy



I am pleased to report on the national Mid-Winter Meeting in beautiful Yellowknife – the sunny south of Canada's north. It turns out I have a great love for snowmobiling (especially when I actually get to drive the snowmobile). I may have to adjust my Christmas wish list for next year, as the experience was tremendous.

As often happens with national Mid-Winter meetings, when the meetings are in smaller communities, the experience tends to be truly remarkable. In this case, Yellowknife, a place I would not usually visit, put on an excellent meeting. There was a substantive session on Aboriginal Law (and our own Sandra Gogal, now residing in Toronto was there), and there were very productive business meetings. There was also an excellent afternoon and evening at Aurora Village outside Yellowknife, where we had the opportunity to go dogsledding, snowmobiling, snow-shoeing and tubing. While the northern lights did

not make an appearance, the northern vistas will not soon be forgotten. During our National Council meetings, an issue of concern to many in our Branch was addressed: the publication ban against First Canadian Title. I am pleased to report that it appears some significant progress was made on this issue. The National Executive will be providing Council with a proposed advertiser's policy which will set the standards by which all advertisers will be assessed. If such a policy is clear and well-understood, the need for individual motions to ban particular companies should disappear. This has been put over to the National Council meeting in Quebec City, so I hope to be able to report on successful resolution of the issue after that meeting. I invite members to contact me to discuss this issue, as your council representatives want to make sure we know and understand the issue from our members' perspectives. ■

Plan now to attend.

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Section Update

Family Law

by Suzanne Orsborn, Section Chair



The Family Law Section held its first Lunch and Learn Session for 2007-2008 in December. The topic of the Session was the enforcement of family law related orders, and the Section was pleased to welcome RCMP Sergeant Peter McKay and RNC Constable Kevin Foley to provide some insight and discussion into how and when family law related orders, particularly those addressing custody and access, are enforced. They also discussed generally the role that law-enforcement may play in the area of family law. It is anticipated that the next Lunch and Learn Session will be held in May, 2008.

Since the last Section update, the newly-formed Bar/Bench Committee of the Unified Family Court has held three meetings. If you are interested in receiving copies of the minutes, or otherwise have any questions or concerns that you wish to bring to the Committee's attention, please feel free to contact me.

Those practicing in the area of family law will likely be familiar with the development of the "Spousal Support Advisory Guidelines" (SSAG). The Draft Proposal for the SSAG was published in January of 2005. In February of 2008, Professors Carole Rogerson and Rolie Thompson

released a new article entitled "The Spousal Support Advisory Guidelines Three Years Later". This article provides a very useful and thorough review of the use of the SSAG across the country, including an up-to-date review of cases that have addressed the SSAG. It also includes some details on what changes may be expected in the final version of the SSAG. The article may be accessed online at http://www.law.utoronto.ca/documents/rogerson/spousal_3Years_en.pdf.

As always, I would recommend that Canadian Bar Association members visit our National Family Section's website for information on activities and initiatives on the national level. The website, available at <http://www.cba.org/CBA/sections%5Ffamily/main/>, also includes a link to "The Family Way", the Family Section's newsletter. The next National Section meeting is set to be held in May in Prince Edward Island.

I welcome any comments or suggestions on the activities of this section and may be contacted at 570-7248 sorsborn@bensonmyles.com. ■

Universal Firm Focus

Within the Newfoundland and Labrador Branch, a Universal Firm is defined when 85% or more of the lawyers, in a firm with 2 or more lawyers, are members of the Canadian Bar Association (CBA), and where these memberships are paid by the Firm on behalf of its lawyers.

Universal Firms are the cornerstone of CBA membership. Through their support of the CBA, Universal Firms are recognized as leaders in the legal community and as advocates for the profession and for the Rule of Law in Canada.

The Newfoundland and Labrador Branch gratefully acknowledges each firm's commitment to the CBA and their ongoing contributions to our profession.

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Benson Myles

Moores Andrews Collins

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If you would like to inquire about how you can become a Universal Firm, or think that your firm should be included in the above list, please contact Laura Churchill at the Branch office.



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Business Law

by Beth Whalen, Section Chair



The National Business Law Section met in Toronto on Saturday, January 19, 2008 and it was well attended with representatives from most provinces and the National Executive. The new executive, chaired by Bruce King, of Pitblado LLP in Winnipeg, Manitoba, officially welcomed all the attendees.

Similar to last year's meeting, the topic which received the most attention at the annual meeting was the National Securities Regulator. This has been a hot political topic over the years and has received mixed support. The consensus at the meeting was that currently most of the provinces support the National Securities Regulator. At this year's meeting, we had a representative from the federal Department of Finance who updated us on the federal government's activities in this regard. David Murchison, senior advisor to the Assistant Deputy Minister, Financial Sector Policy, Finance, Canada, informed us that the government is taking an active approach and is in the process of setting up a review panel to address this issue and hopes to have the panel members announced this spring. The Section agreed that we need to support the National Securities Regulator on a legal basis and not just because it makes sense economically. The Section will be preparing a submission to the panel on behalf of the Canadian Bar Association (CBA) once the process is underway.

This past November, the National Business Law Section submitted a report entitled *Modernizing Securities Transfer Rules in Federal Statutes*, which commented on Finance Canada's June 2007 consultation paper, *Modernizing the Legal Framework for Financial Transactions: Reforming Federal Securities Transfer Rules* as follows: "In general, the CBA [Business Law] Section believes, that, with limited exceptions relating to the direct holding system for certain debt instruments, there is no need for any federal securities transfer legislation...[a] federal STA would be at best unnecessary and duplicative and at worst a source of confusion, uncertainty and market inefficiencies". A copy of the full report can be found at http://www.cba.org/CBA/sections_business/main/Submissions.aspx. Newfoundland and Labrador's new provincial *Securities Transfer Act*, S.N.L. 2007, c. S-13.01, was assented to on June 14, 2007 and I am currently in the process of organizing a substantive CLE on this new legislation with the Law Society of Newfoundland and Labrador.

We also discussed at this year's meeting the Uniform Law Conference of Canada ("ULCC") which our National Chair, Ms. Jennifer Babe sits on as a CBA representative. The ULCC is constantly looking for input from legal practitioners on what laws may be "broken" or outdated, either provincially or federally. We recently were informed that the federal Department of Justice is seeking comments on the third stage of their project to harmonize federal laws with the common law and Quebec civil law. The *Canada Business Corporations Act* is part of the mix. The link to the consultation document which explains the project in greater detail is <http://www.justice.gc.ca/en/bijurilex/consul/consult.html>.

We also had a roundtable discussion with all Section Chairs where each Chair reported on their Section's activities and legal developments (i.e. pending new statutes) in their home jurisdiction. Most of the discussion focused on setting up a central database of ideas for Business Law Section activities and promoting communication between provincial chairs. We also received a written National Section Report from Ms. Jennifer Babe. The main focus of the report was on our "Business Law Boot Camp" series which was an online CLE program initiated in 2007 for our members. Two Business Law Boot Camp sessions were held in 2007 with two more planned for 2008. The first focused on the issues most commonly encountered by lawyers advising a start-up business which included naming a business, shareholders agreements and commercial leases. The second session aimed at advising legal practitioners on the basics of buying and selling a business. On February 28, 2008 the Business Law Section will be holding its third boot camp session on business loans. Other future

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topics include employment issues, shareholder disputes, bankruptcy and launching an initial public offering (IPO). A major focus for the upcoming year is updating and improving the National Business Law Section website. We discussed at the meeting the need to have a website that is a service to our members and will assist them in their day to day practice. Each Section Chair was tasked with collecting information relating to the corporate, banking, and securities practice areas in their provinces to include on the website. Another project discussed at the meeting was the creation of a National Business Law newsletter. This was a project carried over from last year. I am currently accepting potential articles to be included in our newsletter and would encourage members to submit articles for review.

Last year the National Section created committees in the major business law practice areas including: corporate, banking and securities. These committees are now active and I am currently part of the corporate committee. The

purpose of these committees is to keep on top of legislation and law reform issues in our particular practice areas. The committees will research, prepare reports and lobby to bring the CBA voice to the table and in particular bring our comments before government and law makers.

The National Business Law Section also conducts meetings by teleconference. We plan on having a teleconference in the early spring in order to prepare submissions to CBA National for the upcoming CBA Legal Conference in Quebec. We will also use this time as a planning session for the fourth session in our Business Law Boot Camp series.

For further information on the National Business Law Section, please see http://www.cba.org/CBA/sections_business/main/. If you have any questions or suggestions, please do not hesitate to contact me at (709) 722-7584 or by email at bwhalen@wob.nf.ca. ■

Call to Bar

February 8th, 2008

Fifteen lawyers were Called to Bar in St. John's on February 8th, 2008. They are (*in the order of call*):

Roll Number	Name	Roll Number	Name
1376	Melissa M.F. Melvin*	1384	Sharyl J. Rowsell*
1377	Andrew C. White	1385	Tina C.E. Baker*
1378	Angela M. Whitehead	1386	Robby D. Ash*
1379	D. Blair Pritchett*	1387	Diane P. Laskey*
1380	Farrah Carrim*	1388	Sarah M. Learmonth*
1381	Jill L. Chisholm*	1389	Aaron L. Felt
1382	William T. Cahill*	1390	Jennifer A. Curran*
1383	Renee L.F. Appleby*		

April 4th, 2008

Twelve lawyers were Called to Bar in St. John's on April 4th, 2008. They are (*in the order of call*):

Roll Number	Name	Roll Number	Name
1391	Denise L. Spencer	1397	Shannon W. Davis
1392	Iain R.W. Hollett	1398	Meagan L. Cottreau
1393	Darren D. O'Keefe*	1399	Meredith D. Baker*
1394	Jennifer A. Reid*	1400	Kenneth J. Byrne*
1395	Marc A.C. Cooper	1401	Daniel J. Vavasour
1396	Steven A. Scruton*	1402	Jeffrey J. Niederhoffer

**Denotes CBA member*



Civil Litigation

by Sheri Wicks, Section Chair



On March 8, 2008, I attended the Civil Litigation National Section meeting in Montreal. Dominating many of the discussions during the day long meeting was the continued difficulties the Section has been experiencing in successfully organizing a national CLE. While plans had been in place for the spring of this year, difficulties with finalizing the location and timing of the event ultimately lead to a decision not to proceed with the anticipated programming. Given the lead time required to successfully implement a national CLE it was decided to develop a plan to move forward with a CLE for the fall of 2009, in partnership with the Insurance Law Section who have expressed an interest in developing a joint program. The Section did plan and implement a successful CLE during the 2007 Canadian Legal Conference (CLC) in Calgary, and intends to present CLEs on evidence and class actions at the CLC in Quebec City in 2008.

All of the provincial section chairs in attendance reported on the activities in their province. In British Columbia the Section is divided into three sub-sections, one in Victoria, Okanagan and Vancouver. All three sub-sections are active and have had 2-6 Lunch and Learn Sessions so far this year on topics such as law reform of the rules of procedure, the collaborative process, Antoine orders, and Rule 68 for cases under \$100,000.00.

Alberta has a northern and southern sub-section as well as a section dedicated to personal injury. The Section has monthly meetings which are well attended and an effort is made to do joint sessions with the Insurance Law Section. The recent decision of *Morrow v. Zhang*, 2008 ABQB 98 imposed a cap on damages available in insurance cases, which has had a significant impact on practitioners practising in this area of law. The decision has been appealed to the Alberta Court of Appeal. The Section has also recently been asked, and has provided an opinion to government on its proposed legislation to exempt the effect of apologies under the *Evidence Act*.

In Saskatchewan the Section regularly hosts Lunch and Learn Sessions, the most recent of which was a session on access to information applications as a litigation strategy. The Court of Appeal has a new Chief Justice and Registrar, and that court has recently increased the tariffs which can be claimed in a cost awards. Saskatchewan has a simplified process for matters under \$50,000.00 however it is not well liked by the bar. Their small claims court currently has a ceiling of \$20,000.00.

Manitoba has recently enacted an *Apology Act*. Their small claims ceiling is \$10,000.00 and they also have an expedited process for claims under \$50,000.00. The province has started JAADR, which is Judge Assisted Alternate Dispute Resolution. The judge who participates as the mediator cannot be the trial judge, and the program seems to be working fairly well.

Ontario has a new Chief Justice at the Court of Appeal. Their rule 78 has been fine tuned with cases now having to go to mediation within 250 days of the 1st defence being filed. The result is that cases are getting settled. Ontario has a simplified procedure and there has been recent discussion about allowing limited discovery and increasing the ceiling to \$100,000.00. The Section hosts a 2½ day CLE each year which is well attended. The Section finds that is it very useful to have a member of the judiciary present as one of the panel members during the CLE events. In 2009 it is anticipated that there will be a CLE on cross-boarder litigation and jury trials.

In Quebec the Section is active with two Lunch and Learn Sessions each month, many of which are being successfully repeated in Quebec City. A review is underway on the new code of civil procedure which was enacted three years ago. Some of the amendments to civil procedure are working very well with many routine motions such as a change of solicitor, and amendments to pleadings being done without a motion being required unless the other side objects to the action. The Quebec Bar and the Judicial Committee has just released a report on the large number of experts now being used in civil trials. The report includes recommendations such as the plaintiff and defendant being required to agree on one expert who will report to the court or a procedure whereby the plaintiff and defence experts must agree on the information to be presented to the court. It will be interesting to see what recommendations are implemented in Quebec.

The New Brunswick Section recently did a CLE which covered 18 different topics on evidence law, and will be doing a CLE on October 17, 2008, titled "The Don't Miss Civil Litigation CLE". The government is still working towards implementing uniform limitation periods, which is desperately needed as many limitation periods are in private statutes which are not indexed. In the fall of 2007 the Province

implemented a simplified procedure process for cases under \$50,000.00, which has not been well received by the bar, and was implemented without consultation.

Prince Edward Island has a new Chief Justice for the Court of Appeal, as well as two new members of the Appeal Bench. There is a simplified procedure in Prince Edward Island for claims under \$25,000.00, however the bench does not like it as discoveries are taking place during trials which is resulting in trial matters taking much longer to conclude than would otherwise be the case. CLE's in the Province are primarily Law Society driven. The court docket is problematic in that it can take four months to get an application/motion date, but a trial date can be obtained almost immediately.

In Nova Scotia the Civil Litigation Section and the Alternate Dispute Resolution Section frequently meet over lunch and most recently hosted a Lunch and Learn Session on the enforcement of judgements from other jurisdictions. On March 24, 2008 the Section did an on-line session on defamation, and in June one of the senior member of the bar will be discussing the recent \$1 million cost award in the "Trivial Pursuit" case as well as the "coffee shop newsletters" case. A full day "Excellence in Advocacy" CLE is also happening in March. The Province has a simplified rules process for cases under \$100,000.00 with some limited scope of discovery permitted. A test case on the insurance cap will be heard October 6-24, 2008, and until a decision is rendered in that case all insurance claims are essentially in a self imposed state of "stay".

During our meeting the Section discussed having a calendar of events on the National Civil Litigation Section web site where all of the sections could post the activities which they are planning in their respective provinces. In this way section chairs will be able to see easily what events are taking place around the country and if a section in one province wishes to participate by teleconference in an activity taking place in another province they will be able to do so. The Section is waiting for further information from the National office with respect to working out the logistics of this initiative.

At the National Mid-Winter Meeting in Yellowknife, Council discussed a pro-bono mentorship program which

they hope to launch at the CLC in August. The CBA is looking for approximately 20 volunteers to act as mentors, with the expectation that there would be one telephone conversation per month with your mentee, with a volunteer term of one year. If you are interested in becoming a mentor please contact Kerri Froc at the National Office who is coordinating this initiative.

Locally, since my last report to you, the Section has completed a database of all of the Practise Notes issued from the Trial Division and the Court of Appeal. This searchable database is now available to all members on the Branch web site. In February the Branch held its first Professional Development Day as part of the Branch's Mid-Winter Meeting activities. The Professional Development Day was very successful and included topics of interest to civil litigators. As always please feel free to contact me at swicks@wob.nf.ca or at 570-7360 should you have any Lunch and Learn ideas, or wish to discuss anything of interest to the Section. ■

Canadian Bar Association Newfoundland & Labrador Branch

Distinguished Public Service Award

The public is invited to nominate lawyers in the province
for the Canadian Bar Association

2008 Distinguished Public Service Award

to recognize a lawyer's contribution to community service.

The award will be presented during the
Newfoundland and Labrador Branch's Annual Meeting.

Please contact Laura Churchill, Executive Director by
April 30, 2008 to obtain a nomination form.



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Criminal Law

by Mark Pike, Section Chair



The National Criminal Justice Section Meeting was held at the Delta Hotel in Ottawa from Nov. 30 – Dec. 1, 2007.

Once again, the agenda was quite full and required that the Provincial Section Reports be delivered on the evening prior to the day set for the meetings. I updated the National Executive and the other Section Chairs with developments and initiatives that had taken place within Newfoundland and Labrador since the last meeting. In particular, the following subjects were addressed:

1. The Elimination of Crown Culture;
2. Mental Health Court Funding Extended;
3. Addictions and the Criminal Justice System; and
4. The Establishment of a Criminal Justice Committee

As most members are aware, the Canadian Bar Association (CBA) is by far and away the largest and most effective lobby group on Parliament Hill and it has played a pivotal role in affecting both the form and substance of federal legislation. Nowhere is this more evident than in the area of criminal law. There are many bills currently before the House arising from the aggressive initiatives being pursued by the current federal government. Many of these relate to Criminal Code amendments contained in the comprehensive Bill C-2 - Tackling Violent Crime. A primary vehicle of the Section's input is the written submission that is prepared after consultation with members. Recently completed submissions on the legislative initiatives (with links) include:

Legislation and Law Reform Links

Submissions recently completed

- Bill C-22 Criminal Code amendments (age of protection) <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2905961&Language=e&Mode=1&File=14>
- Bill C-32 Criminal Code amendments (Impaired Driving) <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2519296&Language=e&Mode=1>
- C-25, Proceeds of Crime <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2502179&Language=e&Mode=1>
- Proceeds of Crime (Money Laundering) and Terrorist Financing Act Regulations <http://canadagazette.gc.ca/partI/2007/20070630/html/regle5-e.html>

- C-35, Reverse Onus in Bail Hearings <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3002092&Language=e&Mode=1>
- C-2, Criminal Code amendments <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3078412&Language=e&Mode=1>
- Investigation of the Bombing of Air India Flight 182 <http://www.majorcomm.ca/en/>
- Customer Name and Address Information Consultation <http://securitepublique.gc.ca/prg/ns/cna-en.asp>

Submissions in progress or pending

- C-21, (Criminal Code and Firearms Act amendments) <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=2333983&Language=e&Mode=1>
- S-3, Criminal Code amendments (investigative hearing and recognizance with conditions) <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3082355&Language=e>
- C-25, YCJA amendments <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3114354&Language=e&Mode=1>
- C-26, Controlled Drugs and Substances Act amendments <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3118732&Language=e&Mode=1>
- C-27, Criminal Code amendments (Identity Theft) <http://www2.parl.gc.ca/HousePublications/Publication.aspx?DocId=3125690&Language=e&Mode=1>

At the National meeting this year we were given the unique opportunity to have a two hour meeting with senior personnel from the Criminal Law Policy Section of Justice Canada. The CBA Criminal Justice Section's membership is balanced between prosecutors and defence counsel from every province and territory in Canada. We are able to provide a perspective based on much practical experience to those tasked with this important public function. It was clear, through the course of the consultation, that Justice Canada is seeking a more collaborative process when it comes to legislative reform.

(continued on page 23)

In Persona

by Tracey Pennell



John Clarke

My first encounter with John Clarke was during the 2005 Newfoundland and Labrador Law Society Bar Admission Course. John taught the portion of the Civil Procedure Course on Alternative Dispute Resolution. What I recall most from John's presentation that day, besides the fact that he was the last presenter for this section and his material was not going to be on the exam, was his view on civil procedure and how it differed from the other presenters that week. While the others were teaching us about the mechanisms used in the courts and the process leading up to trial, John spoke about an alternative to court which provides essentially the same outcome at the end of the day – a resolution to a dispute.

Born in Botwood to James and Audrey Clarke, John's family moved to Mount Pearl when John was just a year old. He was the oldest of four children with three younger sisters, and while he was outnumbered by the females, John indicated that it was never a problem. He attended school in Mount Pearl until grade 6, at which time he transferred to MacPherson Junior High in St. John's. John indicated that Mount Pearl was not the bustling city it is now and that the school system only went as far as grade six. He completed high school at Prince of Wales Collegiate where he graduated Senior Matriculation, Honours.

Following high school, John tried his hand at various adventures, including engineering and accounting. He eventually found his way at Memorial University of Newfoundland where he completed a Bachelor of Commerce Degree, with a Major in Accounting. After graduation, John moved to Saskatchewan where he attended law school at the University of Saskatchewan. It was while attending law school that John met his future wife, the now Madam Justice Deborah Fry. After a four month courtship, the couple married.

John articulated with Vernon French, Q.C. and completed three months of his articles during the summer between second and third year law school. Following graduation, he completed his articles and was called to the Bar of Newfoundland in 1979. John continued to work with Vernon French where he had a general practice. He later



John Clarke

joined the firm of Learmonth, Dunne & Clarke in a general practice. During the 1980's, John became involved with the Labour Management Co-operative Committee, a group of management, labour and union persons who oversaw labour arbitrations in the Province. In 1985, he was added to the Approved Arbitrator's List. John was appointed to the Labour Relations Board in 1984 where he served as the vice-chair for the Board and chaired the Construction Panel. He has also served on the Panel of Arbitrators for the Arbitration and Mediation Institute of Canada Inc., Labour Canada, Canadian Motor Vehicle Arbitration Program, Canadian Industrial Relations Association, Mediation Newfoundland and Labrador, Canadian Dispute Resolution Corporation and Canadian Transportation Agency. Today John remains a member of many of these professional organizations. John was also the Chair of the Alternative Dispute Resolution Section of the Canadian Bar Association, Newfoundland and Labrador Branch, from 2004 to 2008. It was during the early 1990's that John's interest in mediation really hit its peak.

At that time, he began to think that the litigation process could be improved as he found that people were generally not satisfied with the costs and delay. It was at this time that the Rules of the Supreme Court were being changed and new pre-trial procedures were being developed. He found that it was becoming an increasingly more expensive process. Whether it was intentional or not, it seemed that litigants were becoming discouraged with the process and were, by default, left to their own devices to settle their disputes. John also noted that in his experience, parties are typically more satisfied with a negotiated resolution as opposed to a court-imposed ruling.

It was at that time, that John began taking courses in and studying the process of mediation. In 1994, he completed the Mediation Training Program (Generic Mediation) Course in Toronto, the Canadian Motor Vehicle Arbitration Training Program and the Mediation Training Program, Level 1, with the Canadian Dispute Resolution Corporation in Halifax. He completed the Level 2

Mediation Training Program in 1996 and in 1998. He was awarded the designation of Chartered Arbitrator by the Arbitration and Mediation Institute of Canada in 1998 and Chartered Mediator in 2000. John has also completed the Mediation Training Program-Practicum, through the Canadian Dispute Resolution Corporation in Vancouver and Victoria. In 2006, he completed the Workplace Mediation Training program in Los Angeles.

In 2006 John, along with his wife, Deborah, and Wayne Thistle, Q.C. opened the Centre for Innovative Dispute Resolution, which provides a full range of dispute resolution services, including mediation, arbitration, facilitation, and training. The Centre is located on Quidi Vidi Road in St. John's, in a converted house and provides a comfortable setting to assist parties in reaching settlement. During our meeting, John gave a tour of the building and the informal set up really does provide a relaxing atmosphere that would be conducive to settlement, in contrast with the stark conference rooms found in hotels and court rooms. John even remarked that some of the 'fight' is taken out of people when they arrive and once had someone remark that they did not even feel like arguing over a particular issue, whereas had they been set up in a hotel conference room, the atmosphere would have been more adversarial.

John continues to practice law but concentrates his efforts in the area of alternative dispute resolution. In addition to his law practice, he serves on the Board of Directors of Cornerstone Capital Resources Inc., a Newfoundland and

Labrador based mineral exploration company which is listed on the Toronto Venture Stock Exchange. This corporation is involved in mineral exploration on the island of Newfoundland, in Labrador and in Ecuador.

Besides all his professional responsibilities and commitments, John finds the time for some extra-curricular activities. He and his wife enjoy playing bridge and John has recently started taking photography courses. John also enjoys golfing, salmon fishing and hunting moose in the fall.

On behalf of myself and the *Squid pro quo* Magazine Committee, I would like to thank John for taking the time to speak with me. It was truly a pleasure discussing the life and legal career of a man who has made, and continues to make, great contributions to this Province's legal system. ■



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Law Day 2008 Report

by Suzanne Orsborn & Andrea Murphy, Co-Chairs

2008 Law Day Committee



Standing (l to r): Dianne Laskey, Kelly Langthorne, Meredith Baker; Robynn Arnold, Allison Oser, Mandy Woodland
Seated (l to r): Tracey Pennell, Suzanne Orsborn, Andrea Murphy
Missing: Tina Baker, Will Cahill, Beth Whalen, Sarah Learmonth, Isobel O'Shea, Keri-Lynn Power, Brianna Hookey

Law Day 2008 was celebrated across Canada on Thursday, April 17th, 2008 with a national focus on the theme of "Access to Justice". The Newfoundland and Labrador Branch of the Law Day Committee chose the theme of "Celebrate Justice for All" as its guiding principle in carrying out Law Day 2008 activities and events.

Among the major events organized by the Law Day Committee this year was the Legal Information Fair held at the Avalon Mall, St. John's, on April 17th, 2008. In past years, participants in the Legal Information Fair have included the Public Legal Information Association of Newfoundland, the Better Business Bureau, the Royal Newfoundland Constabulary, the Royal Canadian Mounted Police, the Canadian Bar Association – Newfoundland and Labrador Branch, as well as the Residential Tenancies Division (among others). Estate Planning presentations were also planned as part of the Fair.

As in previous years, the Law Day Committee was committed to encouraging the participation of students from elementary school to high school in Law Day activities. Mock Trials for high school students were held in various judicial centres throughout the province and high schools were invited to have members of the legal community attend classes to give presentations on topics of interest to their students. Poster and Photography contests encour-



aging students to express their take on the Law Day theme were held for elementary and junior high school students respectively, with all entries displayed at the Legal Information Fair.

As a new event this year, the Law Day Committee included a food drive in its activities. The food drive was scheduled to be held during the week of April 13th to 19th, 2008 and saw food and cash donations collected from participating law firms and legal organizations in the Province. The food was distributed to local area food banks.

The 2008 Law Day Committee, comprised primarily of junior members of the Bar from St. John's and Gander, has held a number of meetings. Subcommittees were arranged to put the various events into action and the Committee was happy to have another successful year. ■

CBA MEMBERSHIP BENEFIT

Members can place classified ads in *Squid pro quo* for items of interest to the profession. The cost per ad is \$25.00 including HST, with a maximum word count of 25 words.

Ads must be received by the Branch Office, via email, no later than October 31 for the fall edition, February 28 for the spring edition, and June 30 for the summer edition, and payment must be received contemporaneously with receipt of the ad.

To book your classified advertisement in *Squid pro quo*, please contact the Branch Office at 579-5783 or email: cba-nl@nl.rogers.com.

Young Lawyers - CBA Report

by Judy Manning



On November 16-18, 2007, the 2007-2008 Directorate Meeting of the Young Lawyers Association was held in Montreal, Quebec, chaired by Jin Rossiter. This is an annual meeting of the national Young Lawyers Canadian Bar Association (YL-CBA) Executive and the YL-CBA chairs from the Branches, intended as a forum to share ideas for successful programs, discuss common concerns and network with colleagues. Beth Whalen, Chair of the Newfoundland and Labrador young Lawyers, had a scheduling conflict and so I attended in her place.

Bernard Amyot, President of the Canadian Bar Association, was present at the Directorate Meeting. In his remarks to the Young Lawyers, President Amyot acknowledged that he has been traveling the country meeting managing partners in large universal firms, and a major issue that has come to the forefront during the course of those discussions is associate retention, particularly female associate retention.

Jay Ray, of Texas, immediate past Chair of the American Bar Association Young Lawyers Division (ABA YLD), also

addressed the Directorate Meeting. The ABA YLD is a 147 000 member association, which works with approximately 300 local state Young Lawyer Associations and serves as the public service arm of the ABA. He acknowledged the wonderful relationship that the CBA Young Lawyers Association and the ABA YLD has had in the past. Mr. Ray shared some of the previous initiatives of the ABA YLD, as well as some of the projects which it has planned for this year, including its "Will for Heroes" project, designed to provide free wills for firefighters, and a "Choose Law" initiative directed toward high school students, aimed at increasing diversity in the profession.

Mathieu Pishé-Messier, a partner at the Montreal office of Borden Ladner Gervais, and the current Chair of the Junior Bar Association of Montreal, also addressed the gathering, acknowledging that the CBA is very fortunate to have Bernard Amyot as President this year, particularly as he is very open to the opinions of young lawyers.

The remainder of the Directorate Meeting was facilitated by Vicky Schmolka and was aimed at identifying priority activities for the national YL-CBA Executive. Following many intense hours of generating and sorting activity ideas, the attendees were divided into smaller groups to assess how to initiate particular activities, potential benefits of the activities, how to gauge the success of activities, and of course, costs. Informed by the presentations of these small groups, attendees voted for the activities they deemed most important for the national YL-CBA Executive. It appears that establishing a work/life balance priority plan and developing an associate retention tool kit shall be high priorities for the YL-CBA Executive in the immediate future, as well as establishing a national pro bono project.

On Saturday night, we dined with President Amyot and the Board of Directors of the Canadian Bar Insurance Association, savoring fine French food and hospitality. ■

Mark Your Calendars!

June / July 2008
(Date TBA)

Branch Annual General Meeting

St. John's, NL

August 17-19, 2008

CBA Canadian Legal Conference and Expo

Quebec City, PQ

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Labour & Employment Law

by Christopher Peddigrew, Section Chair



The National Labour and Employment Law Section meeting was held in Gatineau, Quebec on the afternoon of Nov. 17, 2007, which coincided with the National Administrative Law Section meeting, held the same day. The meeting followed a joint meeting with the Federal Department of Justice (DOJ), held on November 15, 2007, and a CLE entitled "Getting Down to Brass Tacks: More Than Just Standards of Review", which was held on Friday, November 16 and Saturday morning, November 17, 2007.

Several of the issues discussed at the joint meeting with the DOJ related to upcoming, expected and/or potential amendments to various pieces of legislation. There was discussion regarding draft Hazard Protection/Prevention of Violence in the Workplace Regulations. The Department advised these regulations will not include proactive ergonomic measures to address repetitive strain injuries.

National Labour and Employment Law Section Chair, Pierre Moreau, advised that while the Canadian Bar Association (CBA) Privacy Law Section has the lead on addressing many of the recommendations for changes to *Personal Information Protection and Electronic Documents Act (PIPEDA)*, the Labour and Employment Section has the opportunity to provide comments. It was noted that because of jurisdictional/constitutional constraints, *PIPEDA* does not govern provincially regulated workplaces. The absence of legislation in many provinces governing workplace privacy was identified as a key issue that is not addressed in the *PIPEDA* report.

Another significant issue discussed at the meeting with the DOJ was the 2006 report on the Canada Labour Code Review by Harry Arthurs. While the report was released in 2006, Federal Minister of Labour, Jean-Pierre Blackburn, advised that the DOJ indicated there is too much division between the stakeholders (i.e. union and management) over several key issues with the result that the federal government will likely not be acting on the report's recommendations in the immediate future.

Replacement worker legislation was also discussed during the meeting with the DOJ. It was noted that Liberal MP Mario Silva's Private Member's Bill, seeking to ban the use of replacement workers during labour disputes, is coming up for second reading. This of course is another issue where union and management interests are sharply divided making it difficult for the National Section to take a position or otherwise get involved.

Two 2007 Supreme Court of Canada decisions were also discussed. In the McGill University decision the Supreme Court dealt with the duty to accommodate and upheld an employer's right to terminate an employee after three years of

absence. In the British Columbia Health Services decision the Supreme Court held that there is a Charter right to bargain collectively.

Finally, there was discussion with the DOJ about wage recovery and adjudication for section 240 Canada Labour Code hearings. Concerns were expressed about the appointment process for arbitrators in such cases. Concerns were also expressed over the number of lost workdays due to labour disputes in this country. Pierre Moreau agreed to write Minister Blackburn regarding these two concerns.

During the National Section meeting Jean-Daniel Belangor, a lawyer with the Public Sector Integrity Commission (PSIC) spoke about the coming into force of new whistle-blower legislation for federal public servants. The model for the PSIC will be similar to that of the Human Rights Commission and its mandate will be to protect public servants from reprisal.

Several other topics were also addressed during the National Section meeting including: planning the CLE for the 2008 National Labour and Employment Conference; possible relocation of the Conference and Section Meeting to somewhere other than the Ottawa-Gatineau region (Western Canada was suggested as an option); the 2008 CBA Mid-Winter Meeting in Yellowknife, NWT (February 22 – 24, 2008); the upcoming CBA Legal Conference in Quebec City (scheduled for August 15 – 19, 2008); the National Section budget; and the National Labour and Employment Section Newsletter. The newsletter coordinator, Loretta Bouwmeester anticipates there being two newsletters in 2008. Finally, each provincial branch Section Chair gave a short presentation on recent case law and/or legislative developments in his or her respective province.

The 2007 CLE Conference, "Getting Down to Brass Tacks: More than Just Standards of Review", was a tremendous success. The CLE was well attended and offered a selection of very interesting speakers and topics.

Attendees were provided with excellent materials and papers on issues that are very relevant to those practicing in the area of labour and employment law as well as administrative law. For those who have not attended a National Labour and Employment CLE before, I can assure you that the presenters and the materials are second to none.

Additional information about the National Labour and Employment Law Section is available at <http://www.cba.org/CBA/sections%5FLabour/main/>. ■

Excellence in Journalism Award

by Christine Healey



After less than a month on the justice beat, Rosie Gillingham of the Telegram published a series of articles that netted her the 2008 Canadian Bar Association, Newfoundland and Labrador (CBA-NL) Award for Excellence in Journalism. Ms Gillingham had spent 15 years as a sports reporter with the Telegram before making the shift to justice reporting. It turns out that the Justice beat is a good fit for her.

Ms Gillingham did a series of articles on the first manslaughter conviction in the Province under the *Youth Criminal Justice Act*. The *Act* presumes that youths convicted of manslaughter are to be sentenced as adults.

The Court also considered whether this individual was a candidate for the Intensive Rehabilitative Custodial Supervision Program (IRCS) at Whitbourne. This was the first IRCS sentence in the Province.

Ms Gillingham took a close look at a very complex sentencing case and gave a balanced explanation of the process, the court's considerations, and the ultimate resolution. There was extensive explanation of the differences between being sentenced as an adult and a youth. There was also discussion of the principles of sentencing, including rehabilitation.

This was a controversial case, and Ms Gillingham's work showed the impact of the sentencing on the family of the man who was killed, as well as the considerations weighed by the judge in reaching his decision.

The CBA-NL Branch presented Ms Gillingham with the 2008 Award for Excellence in Journalism at our Mid-Winter Meeting. The Branch created this award to promote effective justice reporting in the Province. For the public, much of what they know of the justice system is learned through the media, so the award honours reporting that helps the public better understand a justice issue.

This year's panel of Justice Seamus O'Reagan, Jennifer Newbury, Greg Stamp, and Roxane Dean, were all impressed by the caliber of the work nominated for this year's award, but saw that Ms Gillingham's work to explain this complex sentencing case best met the goals of the award. Congratulations to Ms Gillingham. ■

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 - 11, 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.
4. Letters referring to a recent *Squid pro quo* article must be received within one month of its publication.
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CBIA Update

by Hughie Shea, CBIA Representative



On April 1, 2008, any existing firm enrolled in our group benefits plan as of December 1, 2007 will see a reduction in the life insurance premium of 75% and a reduction in the Long Term Disability premium by 90%. This reduction applies to firms that have enrolled in our plan already and is a reflection of the plan's financial success. As a not-for-profit organization, when any of our plans have surplus funding, the excess is redirected to the folks who put it there - you, the insureds. This reduction only applies to our group benefits clients and does not apply to clients regarding their personal coverage.

Canadian Bar Insurance Association (CBIA) strives to provide break-even pricing for our customers. When a plan performs better than expected, surplus funds are returned to our policyholders or used for their benefit. Many of our insureds have benefited by this practice, as we have refunded or reduced premiums in excess of 20 million dollars in the last 10 years. Many of our members will attest to receiving refund cheques or an increase in their personal coverage at no additional cost. Part of our mission statement; "For lawyers, by lawyers", really speaks to the fraternal nature of the organization and who we work for you.

As a marketing recap for 2008, CBIA and CBA Financial will be actively involved with the Canadian Bar Association Newfoundland and Labrador (CBA-NL) this year. Our sponsorship activity has included the family Easter Egg hunt which is proving to be a very successful annual event, and of course advertising in the local but nationally known *Squid pro quo* (SPQ) Magazine. As partners, we will continue to be active in our efforts to support you locally, nationally and personally. We will be involved throughout the remainder of 2008 as opportunities present themselves.

The plan for the remainder of 2008 for the local CBIA and CBA Financial will be quite simple. We will strive to improve the level of service and communication to our clients, continue with the level of involvement of support to our CBA-NL Branch and continue to offer exceptional value to our clients through price and design. CBIA and CBA Financial offer a wide range of financial services and products to protect you, your family and your employees. I make no apologies for our ability to use price as a measure of competitive advantage in our marketplace, especially since the main beneficiary is you.

I plan to devote the next SPQ article to a commentary and summary of the changes announced in the 2008 federal

budget. Some of the specific announcements that affect financial planning activities include:

- Tax Free Savings account, (TFSA) to start in 2009: I will be completing a review on how this compares to an RRSP for tax savings opportunities;
- Pension income splitting - what's allowed and what's not;
- Loosening of the definition of "locked in" money for the federally regulated plans; and
- Changes to the Registered Education Savings Plan.

Thank you one and all for your continued support. If at any point I can be a conduit for financial planning information please let me know. As always, it is my pleasure to be of service. I can be reached at anytime via email at hughieshea@financialanswers.ca or by phone 709-726-6570 ext 226. ■



Canadian Bar Association

Young Professionals International Legal Internship Program

The Canadian Bar Association announces 8-month placements available in the Americas, Africa and South East Asia duration August 1, 2008 to March 31, 2009 for young (30 and under) qualified Canadian lawyers interested in contributing to human rights and legal development, and getting international experience. Interns are overseas for 6-7 months. Airfares, accommodation and expenses paid, nationally and internationally. Please note that some opportunities in Latin America are open to Spanish speakers only, and we encourage applications from Spanish speakers.

This program has only just been announced (Oct 2007) by the Canadian International Development Agency (CIDA). Those interested should check our website regularly for further announcements.

For further information about the program, and information on how to apply, please see the CBA's web site at www.cba.org/CBA/IDP/YIIP/

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Case Digest

by Daniel M. Glover



Evidence in Health Law: Disclosure vs. the Chilling Effect

*Eastern Regional Integrated Health Authority v. Commission of Inquiry on Hormone Receptor Testing*¹ has received much local media coverage recently. The dispute generally concerns two competing interests from a public policy perspective, openness encouraging accountability and confidentiality of sensitive information. The decision turns largely on the evidence.

Eastern Health brought the application to prevent the Commission from public production of reports prepared by outside consultants in their review of pathology at Eastern Health and their laboratories involved in testing breast cancer tissue samples. Eastern Health maintains that the review was set up under the protection of the s.8.1 *Evidence Act*, which provides that no report made by a peer review committee² shall be disclosed in connection with a legal proceeding, including a public inquiry. Witnesses are also not to be compelled to answer questions about these reports. Similar legislation exists across Canada, in the U.S. and Australia. It is intended to protect individuals who may have information that could assist in improving the safety of health services and who may be reluctant to come forward for fear of finding themselves involved in litigation.³ The Commission took the position that the *Public Inquiries Act* allows the use of the reports since they were not for peer review as protected by the *Evidence Act*.

Dymond J. ruled in favour of the Commission's finding that the evidence did not support the position that the external reviews were peer reviews or part of a quality assurance program under the *Evidence Act*. He rejected Eastern Health's position that they could set up a single peer review without the formal creation of a Quality Assurance Committee responsible for an ongoing quality control process. They could not invoke the statutory protections by giving *ad hoc* terms of reference and deeming therein that the reviews would be protected.

Dymond J. went on to ask whether common law privilege, or the "Wigmore Principles,"⁴ applied to protect the reports. These principles are that: the communications must originate in confidence that is essential to maintaining the relationship between the parties; the relationship must be one that ought to be fostered; and the injury of disclosure must outweigh the benefit.⁵ Dymond J. found that

Dr. Cook, who took a lead role in the investigation and initiated the reports, shared them with other pathologists and portions of them were read out at meetings. Any of the pathologists, technicians and other health care workers that were interviewed for the reports were entitled to copies of them. There was no isolated relationship involved since the reports concerned many patients over an extended period. Finally, given that the inquiry is a fact-finding process not concerned with fault, the balance tips in favor of disclosure. Accordingly the reports are not protected under common law privilege.⁶

The decision is a fascinating contribution to the discussion of the interrelationship between the values of open and frank disclosure of potential problems with services being provided to the public, and confidentiality intended to foster an atmosphere of trust. ■

¹ 2008 CarswellNfld 46 (T.D.) ("the decision"). I will refer to the parties as "Eastern Health," represented by Daniel Simmons and the "Commission," represented by Bernard Coffey, Q.C. and Sandra Chaytor, Q.C. There were a number of intervenors, including the Canadian Cancer Society represented by Jennifer Newbury, members of the Breast Cancer Class Action represented by Chesley Crosbie, Q.C., and the Newfoundland and Labrador Medical Association represented by D. Mark Pike. Peter Browne, David Eaton, Q.C. and Janet Grant represented the other intervenors.


² R.S.N.L. 1990, c. E-16.

³ As defined in the Hospital and Nursing Home Association Act.

⁴ This description of the intent of the legislation is from a Health Canada Report, *Silos to System*, cited at para. 15 of the decision.

⁵ As set out in *Slavutych v. Baker*, [1976] 1 S.C.R. 254. See para. 112 of the decision.

⁶ See para. 112 of the decision.

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Canadian Bar Association National News

April 2008

Task Force Releases Consultation Report

"The current rules on conflict of interest are creating unnecessary barriers to access to legal counsel for clients, and are difficult for lawyers to interpret and implement. Regardless of the type of practice, the size of firm, or the region of the country where a lawyer works, the answers to the consultation questions were consistent. The vast majority of respondents find the current rules in need of change."

That was the clear message from members when the CBA task force asked for their input last fall. The full Task Force Consultation report is now available online. Created a year ago, the task force will release its findings at the Canadian Legal Conference in Quebec City in August.

Background on the task force

<http://www.cba.org/CBA/groups/conflicts/>

Task Force Consultation Report

http://www.cba.org/CBA/groups/pdf/consultation_report.pdf

Rod Snow Elected CBA National Second Vice President

Rod Snow of Whitehorse, Yukon is the new Second Vice President-elect of the CBA. President Bernard Amyot of Montreal made the announcement on March 28 following a national CBA Council election. This year, for the first time, members cast their ballots online using secure voting technology. Rod Snow will become Second Vice President at the Canadian Legal Conference in Quebec City this August—the first step on the way to the presidency of the CBA in 2010.

Rod Snow's biography:

http://www.cba.org/CBA/News/pdf/2008election_snow.pdf

Expand Tax Court Jurisdiction

The CBA is recommending that the jurisdiction of the Tax Court of Canada be expanded to include judicial review, refusals to register revocations of registration, audit and investigatory powers, solicitor-client privilege, collections, and non-GST appeals under the Excise Tax Act.

Details and reasons:

<http://www.cba.org/CBA/submissions/pdf/08-18-eng.pdf>

CBA Assists Nepal Bar Association with Constitutional Recommendations

With the assistance of the CBA and other Canadian and international experts, the Nepal Bar Association (NBA) made 99 recommendations that will contribute to the development of the new constitution of Nepal. Funded by the Canadian International Development Agency, the CBA's work in this area is the culmination of 15 months of cooperation with the NBA as part of Engaging Civil Society in Democratic Development, a project intended to support Nepal in its movement towards democracy.

Details:

<http://www.cba.org/CBA/idp/programs/nepal.aspx>

Transparency and Clarity in Granting Work Permits to Temporary Foreign Workers

The CBA's Citizenship and Immigration Law Section is urging the Commons Standing Committee on Citizenship and Immigration to recommend that Bill C-17 amending the Immigration and Refugee Protection Act (IRPA) not be passed by Parliament. Instead, the CBA recommends that the minister should continue to use existing measures in IRPA to maintain transparency and accountability in the approval of work permits granted to temporary foreign workers.

The CBA is also reiterating its concerns about immigration consultants. The government created the Canadian Society of Immigration Consultants (CSIC) to protect the public from unscrupulous practices in 2003. Questions have been raised about the effectiveness of the CSIC. Section Chair Alex Stojicevic of Vancouver presented the CBA's views on March 31.

News release:

http://www.cba.org/CBA/News/2008_Releases/2008-03-31_c-17.aspx

CBA submissions on work permits, the IRPA and immigration consultants:

<http://www.cba.org/CBA/submissions/pdf/08-13-eng.pdf>;

<http://www.cba.org/CBA/submissions/pdf/07-36-eng.pdf>;

<http://www.cba.org/CBA/submissions/pdf/05-60-eng.pdf> ■

People and Places

by Keri-Lynn Power

David Baird has joined *Benson Myles*.

Rory Barnable has joined *Stewart McKelvey*.

Mark Garrett, formerly with *Parsons Ennis Moores*, has taken non-practicing status.

Jonathan Hale* has taken non-practicing status.

Susan King*, formerly with *Roebathan McKay Marshall*, is now with the Department of Justice.

Carey Majid* has taken non-practicing status.

Judy Manning, formerly with *Martin Whalen Hennebury Stamp*, is now with *Lawson McGrenere*, Toronto, Ontario.

Robert Matthews*, formerly with *Benson Myles*, is now with *Robert R. Regular Law Office*.

Kimberley McLennan*, formerly with *Roebathan McKay Marshall*, is now with the *Department of Justice - Civil Division*.

Jeffrey Miller*, formerly with *Cox & Palmer*, is now with *Simmons and Simmons* in London, United Kingdom.

Sean Montague, formerly with *Legal Aid*, has taken non-practicing status.

David Moores*, formerly with *Parsons Ennis Moores*, is now with *Wells & Company*.

Keir O'Flaherty, formerly with *Goodland O'Flaherty*, is now with *Murphy, Watton and Burridge*.

Tracey Pennell*, formerly with *Cox & Palmer*, has taken non-practicing status and is now a Policy Advisor to the *Department of Natural Resources*.

Michelle Scaplan, formerly with *O'Brien and Associates*, is now with *Legal Aid*.

Denise Woodrow, formerly of *Parsons Ennis Moores*, has taken non-practicing status.

*Denotes CBA Member

DOES THE NL BRANCH HAVE YOUR CORRECT EMAIL ADDRESS?

Branch notices for Lunch and Learn Sessions, CBA Luncheons, Annual General Meeting etc. along with other items of interest to members are distributed electronically. Therefore, it is extremely important that the Branch has your up to date information on our database. Current CBA members can update their profile, including address and practice information by going online at: www.cba.org/CBA_memberUpdate/Login.aspx?Page=Update

Criminal Law Section Report

(continued from page 11)

Much discussion at the meeting centered on inputs to the Conflicts of Interest Initiative currently underway across the country. This critical issue is of vital importance to practitioners in all areas of the law. Other topics for consideration included attendance at the Uniform Law Conference and the need for greater participation on law reform matters as well as the establishment of a new Committee on Imprisonment and Release.

I am pleased to report that your National Criminal Justice Section is composed of many capable and dedicated individuals and led by a strong executive determined to strive for improvement in the law and the administration of justice. ■



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[†] Taxes and license are extra. See Hickman Saturn Saab for complete details on all offers.