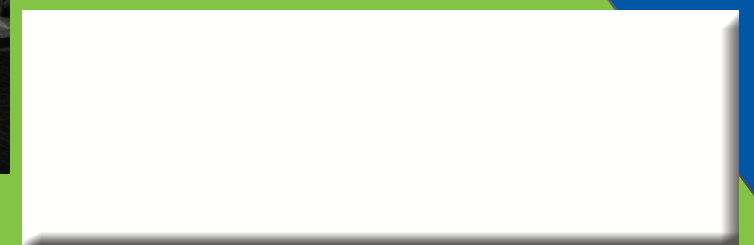


SQUID PRO QUO

THE VOICE OF THE LEGAL PROFESSION

CANADIAN BAR ASSOCIATION - NEWFOUNDLAND & LABRADOR BRANCH

WINTER 2012



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Letter from the Editor



Dan Furey

This is my first edition as Editor of *Squid pro quo* and I am honoured to have been selected for this role. I look forward to contributing to the Magazine and the CBA over the coming year. I would like to take this opportunity to thank Janet Grant for her hard work as Editor over the past several years. Her dedication helped make *Squid pro quo* the outstanding magazine that it is today. I know that I have big shoes to fill!

The In Personam in this edition focuses on Trinda L. Ernst, Q.C., current National President of the CBA. Written by Karen Hollett, the article gives great insight into the life of the new President and her motivations for being involved in CBA and other volunteer initiatives.

Regular features in this edition include the President's Report, Case Digest and Section Update. In the President's Report, Branch President Susan Gover provides an overview of the Branch's activities over the past several months and outlines plans for the coming year. In the Case Digest, Nick Whalen summarizes the Federal Court of Appeal's decision in *Amazon.com, Inc. v. Canada (Commissioner of Patents)*, 2011 FCA 328, which discussed the patentability of business methods. The Section Updates include reports from the ADR and Young Lawyers Section.

I hope that you enjoy this edition of the Magazine. As always, we welcome any comments or suggestions for article topics and look forward to hearing from CBA members. I hope to see many of you at the Branch's Mid-Winter Meeting on March 1-2, 2012.

CALL FOR SUBMISSIONS

We welcome members to submit articles, ideas and suggestions for upcoming issues of *Squid pro quo*.

The deadline for materials to be submitted for the next issue is March 12, 2012.

Advertising opportunities are also available, please contact the Branch office for more information.

President's Report

By Susan Gover



I am very honoured and excited to be your 2011-12 Branch President. I have been involved with the CBA since I was an articled clerk and my membership in the CBA over the years has brought great value to my practice and my relationship with local members of the Bar. For me, ensuring the Branch continues to provide value to our membership will be paramount during my tenure. I look forward to working with an energetic Branch Executive Committee to meet this goal, through some of the activities we have conducted and planned this fall and winter, as outlined below.

Branch Goals

On September 15th the Executive Committee held its Strategic Planning meeting to organize activities for the coming year. The Executive Committee intends to deliver relevant services to our members and to demonstrate the benefits of CBA Membership to all lawyers in the province, both rural and urban. As well this year, we aim to strengthen and build upon our Section and Professional Development activities.

Section Chairs

We hope to have a strong year for Section activities in 2012, with many new and returning Section Chairs volunteering for the role. Isobel O'Shea, Vice President, held an orientation session with the Section Chairs in early October. During the session the Section Chairs were encouraged to develop and conduct Professional Development seminars for our members as well as to get involved with their National Section. We are re-marketing our brown bag Section "Lunch and Learns" as Section Professional Development (PD) Luncheons and will be providing lunch for all attendees. The response and attendance relating to this change has been positive to date. This fall has seen PD Luncheons by our Privacy and Access Law Section, Environmental, Energy and Natural Resources Section, Tax Law Section and Women Lawyers Forum.

We also remind our members who reside outside of the St. John's area that they can dial in and participate via conference call to all of our PD Luncheons.

Should you have an idea for a PD Luncheon, or have a topic you wish to present, please contact the Branch office or a Branch Section Chair as listed at the back of this issue. As always your feedback is welcomed.

Courtesy Calls

Vice President Isobel O'Shea and I were very busy this fall meeting with members of the local Judiciary, including Chief Justice Green, Chief Justice Orsborn and Chief Judge Pike. We also had the opportunity at the end of November to meet with the Minister of Justice Felix Collins. During these meetings we have had the opportunity to discuss issues of mutual interest, including those identified by our members. These meetings have lead to very fruitful discussions and we plan to continue this dialogue in the coming months. The Justices are also very encouraged about the Branch Pro Bono Pilot Project starting in 2012.

Prior to these meeting we asked for member feedback on issues to be raised. We encourage all members to contact the Branch office or a member of the Executive at anytime with issues you feel should be raised at future meetings.

Bar Admission Course

On November 9th, the Branch completed its annual presentation to students at this year's Bar Admission Course. We were happy to have the opportunity to meet with our newest articled clerks to tell them about the work of the

SAVE THE DATE - UPCOMMING BRANCH EVENTS

CBA-NL Mid-Winter Meeting of Council: Thursday, March 1, 2012
5:30pm

CBA-NL Branch Office, St. John's

CBA-NL Mid-Winter Meeting PD Session: Friday, March 2, 2012
8:30am-12:30pm

Delta Hotel, St. John's

CBA-NL Mid-Winter Meeting Luncheon: Friday, March 2, 2012
12:30pm-2:30pm

Delta Hotel, St. John's

Excellence in Journalism Awards Dinner: Friday, March 2, 2012,
7:00pm

The Cellar Restaurant, St. John's

Law Day Events: Saturday, March 31, 2012
Supreme Court, St. John's

Annual Easter Egg Hunt and Brunch: Sunday, April 1, 2012
10:00am
Geo Centre, St. John's

President's Report

CBA and why CBA membership is an asset for any young lawyer.

On November 18th the Branch hosted its annual Wine and Cheese Reception for the Bar Admission Course students. Also in attendance were the Principals, Judges, Law Society representatives and course instructors.

President's Reception

Our annual President's Reception was held on December 15th at the Sheraton Hotel Newfoundland. As you will see from the photos in this issue, the annual Holiday event was once again a success. Thank you to everyone who attended.

Young Lawyers and Law School Students Holiday Social

On December 21st, the Branch hosted a Holiday Social for our Young Lawyers and Law School students from Newfoundland and Labrador who are home for the holidays. This is the third year we have hosted an event welcoming Law School students and we look forward to seeing them at future CBA events.

Mid-Winter Meeting

Work is underway to plan the Branch Mid-Winter Meeting which will take place in St. John's on March 1-2, 2012. The meeting will include a Professional Development Seminar and luncheon on March 2nd at the Delta Hotel, followed that evening by the presentation of the Excellence in Journalism Award at The Cellar Restaurant.

The Branch is pleased to announce that Mr. Justice Thomas Cromwell of the Supreme Court of Canada will be our guest speaker during our Mid-Winter events on March 2nd. We look forward to welcoming him to St. John's. Registration for the Mid-Winter Meeting will be available in January.

Other Items

As a final note, I would like to thank the Executive Committee, Section Chairs and Branch Committee members 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.



2011-12 Executive Committee

Left to Right (sitting): Cheryl Mullett, Treasurer, Susan Gover, President, Isobel O'Shea, Vice President

Left to Right (standing): Susan LeDrew, Membership Chair, Steve Scruton, Professional Development Chair, Beth McGrath, Secretary, Ashley Woodford, Executive Director, Dan Glover, Young Lawyers Conference Chair

Missing from photo: Adam Baker, Western Regional Chair, Janie Bussey, Past President, Kelly Hynes, Labrador Regional Chair, Renee L.T. Moore, Central Regional Chair

In Personam:

Trinda L. Ernst, Q.C.

By Karen Hollett



Conventional wisdom suggests that if you really need something done, it is best to ask a busy person to do it. Trinda Ernst, Q.C., current President of the Canadian Bar Association, is someone to whom you might wisely turn to. Trinda and I spoke recently about the practice of law, the CBA and her many other interests. Although she literally had to run to take our prearranged telephone call, once we connected she was fully engaged and we ended up chatting for a full hour. I haven't yet had the pleasure of meeting Trinda in person, but even over the telephone lines her energy is both infectious and inspiring and it was a pleasure to talk to her. It is clear that she is a force to be reckoned with.

With all of her CBA responsibilities (she indicates that this is her number one priority right now) as well as her busy full-time law practice at Waterbury Newton in Kentville, Nova Scotia, you might wonder how Trinda could find time for anything else. In fact, she has many other passions and interests including her involvement on the Board of the Sing Canada Harmony Scholarship Fund, her involvement in Rotary (she just participated in a selection process for their international student exchange program) and a life-long commitment to the Girl Guides of Canada. As she joked, if all of this volunteering means she has less time for sleep and has to wait to see the latest movies from the back of an airplane seat, she doesn't mind because she believes in giving back to both her community and profession.

Indeed, Trinda believes volunteering is an important obligation that all lawyers share and can find very rewarding. Volunteering for a cause you believe in is not only personally satisfying, but as she pointed out, service on volunteer boards also improves lawyering competencies. The critical skills developed by successful volunteer board members - how to really listen, to build consensus and to solve problems - are also important skills for lawyers as we move away from traditional adversarial postures and toward resolution centred approaches to conflict.



Trinda L. Ernst, Q.C.

We also reflected upon how the practice of law has generally changed since she started out as a young lawyer. For instance, she recalled that she was the first female lawyer at her firm when she started in 1985 and now she is the fifth female president of the CBA. Of course, she added, it is not only strides made by women in the profession, but other groups as well that are important. For instance, she recalls that one of her classmates at law school moved to British Columbia because of the lack of a gay friendly atmosphere in Nova Scotia at the time. Today, she noted, "we have SOGIC (Sexual Orientation and Gender Identity Conference) and most CBA Branches have sections for LGBTTT lawyers." The CBA's focus on inclusiveness has played an important role in changing the landscape and making the profession more welcoming to all.

Trinda recognizes that the first 10 years in any profession are the toughest and believes that the CBA presents a very special opportunity for young lawyers in particular. She urges young lawyers to take advantage of the resources that are offered by the CBA and notes, for example, that the tools on the CBA website are "second to none." Trinda also explained that getting involved with the CBA can provide a young lawyer with exceptional opportunities, including some of the best networking available. Where else, as she argued, can a newly minted lawyer serve on national boards and take part in initiatives with such impact on the legal profession and the administration of justice? Trinda believes that the organization is a very hospitable environment for young lawyers to "get their feet wet" and make a real difference. And, while we haven't yet had a CBA National President under 40, she hopes we will in the not too distant future. Of course, she quickly pointed out that ongoing learning and professional development is not reserved just for young lawyers and I agree with her assertion that, "If you are not learning every day you are alive, something is wrong!"

(Continued on page 10)

Canadian Bar Association

National News

Law Day 2012

April 17, 2012, Law Day, will mark the 30th anniversary of the Canadian Charter of Rights and Freedoms. On that day and the days around it, lawyers and judges will participate in programs for elementary and high school students, families, and the public in general to explain the workings of the law and legal systems in Canada. Numerous activities will have a special focus on the Charter and its importance.

National Law Day Chair Karlee Blatz of Winnipeg says planning for Law Day 2012 is off to a good start. "We held our first call of the national committee call in November and the scope of activities in the works is most impressive." Planned activities across the country include lectures on the law, mock trials, courthouse tours, fun runs, open citizenship courts, and poster, photography and public speaking contests.

In Newfoundland and Labrador, Law Day activities are being planned for Saturday, March 31st and will include activities such as the mock trial competition and public legal information fair.

In addition to the CBA's Law Day activities, a group of University of Windsor law students have launched the Charter Project in honour of the Charter's 30th anniversary. The project's objective is to increase awareness and understanding of the Charter through education. "They are offering online video content and educational workshops aimed at high school students," explains Karlee Blatz.

University of Windsor law students Byron Pascoe and Jennifer Graham described the online character of their initiative. Currently it contains videos of legal pioneers and celebrities including Frank Iacobucci, Howie Mandel and Rick Hansen, to name a few, describing what the Charter means to them. On the education side, online programs will offer basic information about rights and responsibilities under the Charter.

For information on how to volunteer on the Law Day 2012 provincial committee, please contact the Branch

office at (709) 579-5783, or email cba-nl@cba.org.

2012 Mid-Winter Meeting

Register now for Mayakoba, February 10-12, 2012!

This February, your input will help shape the future of the CBA. At Sections and Conferences meetings, you will have an opportunity to provide feedback on proposals for a new member fee structure. At Council, consultations will begin on the future of the Canadian Legal Conference. The Council agenda also includes resolutions dealing with current legal issues, public policy and governance.

The program is designed to be conducive to business, networking and R&R. If you're not a Council member, you are invited to attend and should seek appointment as an alternate Council member from your Branch in order to vote.

Details on registration, conference hotel rates and travel discounts are available online at www.cba.org/Mayakoba2012

Diversity Strategy for Firms

The increasing diversity of the Canadian labour force and Canadian law school graduates means that law firm managers need to have a solid understanding of diversity management to be successful talent managers. Ongoing assessment of your firm's current diversity performance is key.

The CBA's Equality Committee has produced a draft guide, *Measuring Diversity in Law Firms: A Critical Tool for Achieving High Performance* that provides background information on current law firm realities, the role that diversity plays in organizational performance, and the impact of different approaches to diversity management. The Guide also describes measurement strategies and the major steps involved in measuring diversity.

The Equality Committee is asking for your input and insight. The Guide is available on the CBA website at <http://www.cba.org/cba/Equity/main/diversity-guide.aspx> (with member number). Please send your input to equality@cba.org.



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Case Digest

Business Methods Patentable in Canada

By Nick Whalen

On November 24, 2011, the Canadian Federal Court of Appeal delivered its eagerly anticipated decision in *Amazon.com, Inc. v. Canada (Commissioner of Patents)*, 2011 FCA 328, (November 29, 2010) affirming in part, 2010 FC 1011, (October 14, 2010), that “a novel business method can be an essential element of a valid patent claim” (para. 63).

The Federal Court of Appeal agreed that all elements of patentability, be they questions of patentable subject matter, novelty, utility, obviousness or statutory prohibition, are questions addressed to “the subject matter of the claims”, and require a purposive construction of the claims in accordance with the principals laid out in *Free World Trust v. Électro-Santé Inc.*, 2000 SCC 66, and *Whirlpool Corp. v. Camco Inc.*, 2000 SCC 67, the seminal Canadian cases on patent claims construction (interpretation).

On the important question of the circumstances in which a process or method (*i.e.* an art, like a business method) may be patentable, the Federal Court of Appeal quoted and approved the lower court at length, refusing any requirement for technological advances in a patent and not prohibiting business methods which otherwise meet the other criteria. However, the Court refused to draw a distinction from *Schlumberger Canada Ltd. v. Canada (Commissioner of Patents)*, [1982] 1 F.C. 845 (C.A.), finding that the mere existence of a practical application or computer embodiment will not satisfy the condition that an invention not be abstract if the essential elements of the claims are nothing more than abstract ideas (and the other elements of the claims non-essential).

After over 13 years since filing, the patent has been returned yet again to the patent office for consideration, if, on a purposive construction, the claims might be valid as having some essential elements which are not abstract, in addition to the ones which are.

BACKGROUND

At issue in this case was Amazon.com’s patent application for a “Method and System For Placing A Purchase Order Via A Communication Network”, filed September 11, 1998, and claiming priority from two corresponding US applications.

The patent application claims the exclusive rights over a method and system for orders for goods and services created online

by a registered user using a single action, without the further need to register payment information at the time of purchase. This is the so-called “One-Click Patent” that has been issued in the United States, Australia and New Zealand, but not in Europe where three of four related patent applications have been rejected at various stages and the remaining one will likely not issue.

Decision of the Canadian Intellectual Property Office

The patent application was rejected on numerous grounds by the Commissioner of Patents after two hearings at the patent appeal board, the last in 2008. While the Commissioner found that the invention might be unpatentable for lack of novelty and obviousness, she actually rejected the claims on the basis of non-statutory subject matter, finding that the claims:

- Essentially related to a business method, and were therefore unpatentable as such;
- Lacked any physical element as it relates to the inventive aspect; and
- Lacked any technological contribution as it relates to the inventive aspect.

Decision at the Federal Court of Canada

In a strongly worded decision in *Amazon.com’s* appeal to the Federal Court of Canada, Phelan J. denounced virtually all aspects of the Commissioner’s approach. The decision expressly rejected certain past office practices and tests, and proposed a test to be used in assessing patentability of business method patents generally, by providing the following guidance:

- There is an “absolute lack of authority in Canada for a ‘business method exclusion’”;
- Inventions need not be either physical in nature or effect;
- Tangibility is not an issue;
- There is no requirement that inventions be technological (the Court questioned how it would even define such an evolving concept);
- It is improper to examine the “substance of the invention” or to parse out the novel and known elements of an invention for the purpose of determining whether there is patentable subject matter in the novel elements alone – a purposive construction is to be used for all legal interpretation of the claims.

Case Digest

Business Methods Patentable in Canada

Phelan J. then reiterated the test for patentability of an art or process (including a business method) enunciated in *Progressive Games, Inc. v. Canada (Commissioner of Patents)*, 177 F.T.R. 241 (T.D.) at para. 16, aff'd (2000), 9 C.P.R. (4th) 479 (F.C.A.). As a result, Phelan J. then essentially directed that the patent be issued as it clearly met the tests.

DECISION AT THE FEDERAL COURT OF APPEAL

Sharlow J.A. concurred in by Trudel J.A. and Stratas J.A., confirmed Phelan J.'s approach to construction, but disagreed in part on how the physicality requirement is met. They also determined that he did not have sufficient evidence to rule on the issue of construction of the claims, and returned the patent for re-examination on an expedited basis.

In discussing the analytic framework for assessing whether the subject matter of the claims is patentable, the Court directs the Commissioner to engage in a purposive construction of the claims, and then to determine whether the subject matter of the claims, once appropriately construed, meets the applicable tests.

In setting the test for patentability of a method, process or art, the Federal Court of Appeal quoted Phelan J. at length, including his statement of the test in *Progressive Games*, to the effect that, to be patentable:

- The method must have a practical application;
- It must be a new and inventive method of applying skill and knowledge; and
- The method must be commercially useful.

However, the Federal Court of Appeal disagreed in part as to what level of "physicality" of invention would be needed to overcome the prohibition on patents for merely scientific principles or abstract theorems set forth in Section 27(8) of the *Patent Act*. The Federal Court of Appeal determined that the claimed elements must have physical existence or manifest a discernible change or effect, in order to be patentable (para. 66). Further, and in keeping with the *Schlumberger* decision, Canadian law does not permit a physical embodiment or practical application to render patentable an otherwise abstract idea, without some novelty in the combination of abstract and non-abstract essential elements of the claims. In *Schlumberger*,

the patent to a software implementation of a mathematical formula was invalid notwithstanding certain non-essential computer related elements in the claims.

So, in addition to the bullets above, to be patentable, a method, process or art must also meet this "physicality" requirement, by:

- Physical existence; or
- Manifestation of a discernible change or effect; or
- Some change to interpretation of the foregoing as a result of advances in knowledge.

But:

- Physicality is not established merely by the presence of a practical application; and
- If an abstract idea is an essential element of a claim following a purposive construction, then there must be some other essential element in novel combination with the abstract idea which satisfies the physicality requirement.

The decision also implies that the One-Click purchase method on its own is an abstract concept, but does not elaborate on what was relied on to reach that factual determination.

CONCLUSIONS

Although it should be remembered that this patent has had a hard prosecution in all jurisdictions and the law in this area is developing, protection of software related inventions exists if the specification and claims are drafted with the legal tests in mind. However, the Federal Court decision was more favourable to patentees than the Federal Court of Appeal decision. Patentees may now need to place greater emphasis on how certain essential elements of their claims meet the "physicality" requirement, in the sense of constituting a discernable change or effect, and draw a contrast between any abstract ideas which underlie an invention and the claimed invention itself.

By (1) adopting much of the Federal Court's decision, (2) affirming there is no technological requirement in Canadian patents, and (3) directing the court to consider business method patentability with an open mind, the Federal Court of Appeal is opening the door to greater protection for business method patents and software related inventions than previously existed in the Canadian Patent Office.

Case Digest

Business Methods Patentable in Canada

Subject to the results of any further appeals to this decision, the importance of this case to inventors of software related inventions cannot be understated. Domestic and foreign inventors and patentees of computer related inventions should take this opportunity to reconsider their Canadian patent filing strategy, and whether the requirement for some physical existence in or a discernable effect or change caused by the claimed invention requires them to amend their claims.

CBA Branch Online Professional Development

CBA-NL members can register for online PD programs conducted by other Branches and the CCCA, please contact the host Branch or visit the websites listed for more information.

"Dodd-Frank Through the Canadian Lens: What Corporate Counsel Needs to Know"

Presented by the Canadian Corporate Counsel Association

Wednesday, January 18, 2012

Time: 12:00pm – 1:30pm (Eastern)

To register online:

http://www.cba.org/pd/details_en.aspx?id=NA_DODDFW0112

"Interpreting Legislation" with Scott McCrossin, RCMP Legal Services and James Charlton, Legislative Council Office

Presented by the CBA- Nova Scotia Branch

Friday, January 20, 2012

Time: 12:00pm – 1:30pm (Atlantic Time)

To register online:

http://www.cba.org/pd/details_en.aspx?id=NS_ONL_0112

"Trial Prep for Legal Assistants" with Jane O'Neill and Rachel Barnes, McInnes Cooper

Presented by the CBA- Nova Scotia Branch

Friday, February 10, 2012

Time: 12:00pm – 1:30pm (Atlantic Time)

To register online:

http://www.cba.org/pd/details_en.aspx?id=NS_ONL_0212A

In Personam with Trinda L. Ernst, Q.C. (continued from page 5)

With leaders like Trinda, one can't help but feel that the future for our young colleagues is very bright. With her personal and lifelong commitment to her charities and causes, she will be a driving force behind the CBA and will continue mentoring young lawyers long after her term as President ends in August 2012.

I should also mention that Trinda is no stranger to the island of Newfoundland. Between visiting with her choral singing group "Valley Voices," and for CBA events and personal vacations, she has ventured to locations across the island, from L'Anse aux Meadows and Gros Morne National Park to Water Street in St. John's, where she loves to browse the "awesome shops." While she has not been to Labrador yet, she hopes to make it there someday soon.

When I asked what stood out most for her about her visits to Newfoundland, she told me it was "the people." Trinda relayed stories of welcoming and warmth that clearly touched her heart, such as the time that the Newfound Sound singing group met her sister group at the airport and had arranged volunteer drivers to take everyone downtown to their hotels. She told me that she really enjoys our Newfoundland brand of hospitality - in addition to the people (including the wonderful local taxi driver/ "tour guides") she quickly added that she also loves the food! Personally, I have no doubt she will be back here soon and I look forward to meeting her.

NEW CBA MEMBERS

Danielle Duchene

Tom F. Hutchings

Amanda MacDougall



Canadian Bar Association

Professional Development

Spring 2012 In-Person Conferences

National Criminal Justice Conference

April 20, 2012
Four Seasons Hotel, Vancouver, BC

National Environment, Energy & Resources Law Summit

April 26-27, 2012
Fairmont Waterfront Hotel, Vancouver, BC

Spring Competition Law Conference

May 2, 2012
Toronto Board of Trade, Toronto, ON

Citizenship and Immigration Law Conference

May 3-5, 2012
Delta Grand Okanagan, Kelowna, BC

National Charity Law Symposium

May 4, 2012
Metro Toronto Convention Centre, Toronto, ON

IP Advocacy

May 17, 2012
Ottawa, ON

Tax Law For Lawyers

May 27- June 1, 2012
Pillar & Post Hotel, Niagara-On-the-Lake, ON

Military Law Conference

June 8, 2012
Ottawa, ON

National Aboriginal Law Conference

June 14-15, 2012
Delta Bessborough Hotel, Saskatoon, SK

Winter/Spring 2012 Online Programs*

Short-term Agreements for Legal Services: Avoiding Conflicts through Plain Language Drafting

January 24, 2012

Aboriginal Estate Planning and Administration

February 7, 2012

Trends in Law Practice Management: Calculating the Risks

February 28, 2012

Impact of new Anti-Spam Legislation

April 17, 2012

Overcoming Impasse in Negotiations

May 9, 2012

Understanding the Evolution of Pension Plans: From Defined Benefit to Defined Contribution and Beyond

June 5, 2012

****All CBA online programs begin at 1:30pm Newfoundland time.***

For more information, or to register for any of the above programs, please visit <http://www.cba.org/pd/index.aspx>, or contact CBA National office at pd@cba.org, or call: 613-237-2925; 1-800-267-8860.

Canadian Bar Association Professional Development

CBA SKILLED LAWYER SERIES II *Bridging the Gap Between Theory and Practice*

CBA Skilled Lawyer Series II - Corporate Stream

Raising Capital: Equity Financing

Broadcast Live On: November 15, 2011
(Recording Available)

Key Issues in Business Valuation

Broadcast Live On: December 14, 2011
(Recording Available)

IP Issues in Corporate Transactions

Broadcast Live On: February 1, 2012

Beware the Boilerplate: How "Standard" Clauses can Undo Commercial Contracts

Broadcast Live On: February 22, 2012

Real-life Lessons in Corporate Governance

Broadcast Live On: March 28, 2012

Negotiating and Drafting Commercial Leases

Broadcast Live On: May 2, 2012

Advising Corporate Clients on Liquidation and Dis- solution

Broadcast Live On: May 30, 2012

Ethics for Business Lawyers

Broadcast Live On: June 13, 2012

CBA Skilled Lawyer Series II - Litigation Stream

Best Practices for Making and Meeting Disclosure Requests

Broadcast live on November 2, 2011
(Recording Available)

Settlement Strategies: Offers, Counteroffers, Tricks and Traps

Broadcast live on November 30, 2011
(Recording Available)

A View from the Bench: Motion Practice Strategy and Pointers

Broadcast live on January 17, 2012

Discovery Questioning Strategy and Techniques

Broadcast live on February 15, 2012

Trial Preparation: Your Pre-Trial Checklist

Broadcast live on March 7, 2012

Controlling the Difficult Witness

Broadcast live on April 4, 2012

Cross-Examining the Expert Witness

Broadcast live on May 8, 2012

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Section Update

By Christian Hurley
CBA-NL ADR Branch Section Chair

National ADR Section Meeting Vancouver, October 28-29, 2011

The in-person meetings for the National ADR Law Section were held at the Pan Pacific Hotel in Vancouver this year. The turnout was exceptional with delegates representing almost every ADR Section, including the new Yukon Section. After introductions, the agenda and minutes from the September conference call were approved.

The substantive portion of the meetings kicked off with a presentation by representatives from Mediate BC. Mediate BC provides mediation services for civil matters (Small Claims Division) as well as family and child protection matters (the latter being managed by Family Justice Services). The organization was made possible by funding from the Ministry of the Attorney General and the Law Foundation of BC. The organization has been an incredible success to date and civil servant cost savings have been significant (with one study finding a 50% decrease in small claims court time for parties who took part in the mediation process). For more information on Mediate BC, visit their website: www.mediatebc.com.

A discussion regarding the regulation of mediation followed this presentation. Unlike Ontario, where both mediator rosters and rates are regulated, British Columbia only regulates the rosters. Practitioners from both provinces seemed to agree that the British Columbia approach was the better of the two, as rate regulation in Ontario has led to somewhat of a two-tiered mediation system, with some members of the public viewing the lower-paid roster mediators as being of a lower quality.

Next came a presentation by Bevin Worton, a representative from the Department of Justice. Ms. Worton advised that the Government of Canada has a Dispute Resolution Policy and a Dispute Resolution Practice Group, which produces an internal newsletter for those practicing or having an interest in the field. Several ideas for collaboration between the Department of Justice and the ADR Section were discussed and dialogue between the parties will continue in the future.

On the second day of meetings, it was proposed that a committee be formed to explore the possibility of the ADR Section presenting a PD webinar in the Spring of 2012. A three person committee (of which I am a member) was formed and currently we are working to secure an acclaimed speaker to present on the topic of negotiation strategies for reopening deadlocked disputes. The webinar is tentatively scheduled for May 1, 2012.

The next topic for discussion was the creation of an award to be presented by the ADR Section. There was some discussion as to which direction to take in creating such an award. Some thought that an achievement-based award was appropriate, while others thought that the Section might be better served by aiming it towards law school students (with an eye to expanding the Section's membership). A committee was formed and tasked with further evaluating these two options.

Section Update

National ADR Section Meeting (continued)

The last portion of the meeting was dedicated to section chairs from around the country in attendance reporting on activities and developments in their respective jurisdictions. Of particular interest to me was the founding of an interdisciplinary Collaborative Law Practice Group in PEI. This group consists of lawyers, mental health professionals and financial professionals and represents the first time that PEI has opened collaborative training to professionals from non-legal disciplines.

I reported on the current state of mediation in Small Claims Court as well as the use (or lack thereof) of Rule 37A (Court Ordered Mediation). Going forward, I would be interested in organizing a committee to develop a proposal recommending the implementation of mandatory mediation in Small Claims Court. I have had many offers of help from fellow ADR Section members in Ontario and British Columbia (where such a regime currently exists) and would welcome expressions of interest from members of the Newfoundland and Labrador bar.

CBA-NL PRO BONO PILOT PROJECT

The Branch Pro Bono Committee has been meeting over the last number of months to develop a plan for a pro bono initiative in Newfoundland and Labrador. In consultation with the Judiciary of Newfoundland and Labrador, as well as with CBA Pro Bono Committees from across Canada, the Branch is commencing a pilot project for pro bono services which is anticipated to begin in January 2012.

The pilot project will involve pro bono lawyers providing legal advice to self-represented litigants who have already appeared in court and have been referred to the CBA-NL pro bono service for legal advice by the presiding justice. As such, the justice would adjourn the matter for a short period so that the self-represented litigant could obtain pro bono legal advice on a specific issue before returning to court. A court appearance by the pro bono lawyer will not be expected or required. It is anticipated that the pro bono service associated with each self-represented litigant would be 2-4 hours in length.

If you are interested in participating in this project, please contact the Branch office at cba-nl@cba.org, or (709) 579-5783, or contact Christina Kennedy, Pro Bono Chair at ckennedy@nape.nf.ca, or (709) 754-0700.

Section Update

By Dan Glover

CBA-NL Young Lawyers Conference Branch Section Chair



Young Lawyers Conference National Meeting Toronto, October 22-23, 2011

In October I had the opportunity to attend the Young Lawyers Conference (YLC) National Meeting in Toronto and met many of the Young Lawyers Branch Section Chairs from across the country. During the meeting, amongst other things, each provincial Chair had the opportunity to report on activities and YLC initiatives in their Branch, the highlights of which are summarized below.

The Manitoba YLC recently held a successful luncheon with a member of their local judiciary who spoke on “Tips for Avoiding Judicial Tantrums.” They also hosted several PD sessions, a wine and cheese reception and took in a Manitoba Moose hockey game.

The Northwest Territories Chair reported on their plans for Law Day 2012, which will include presentations to non-profit organizations and a karaoke night to raise money for a local charity.

In the Yukon a Supreme Court Justice gave a luncheon speech focused on advice for young lawyers. They also hosted a curling night and plan on having young lawyers will visit local high schools to discuss what it is like working as a lawyer.

The British Columbia Young Lawyers Chair discussed their Branch’s Rural Education and Access to Lawyers Initiative (REAL). The REAL program has been put in place to address the shortage of lawyers practicing in

small communities and rural areas of BC and to facilitate continued access to legal services in these areas.

In Alberta YLC social events have included a brewery tour, art gallery tour and a “Meet the Bench” night. They also participated in a weekend “homeless connect” event along with local doctors and dentists to assist people in need of obtaining basic services.

The Quebec YLC is planning a “Meet the Bench” event with 75 judges and 150 lawyers confirmed to participate. The Quebec YLC also conducts many pro bono initiatives including a call in program.

The Chair of the CBA Pro Bono Committee was also in attendance and provided a number of ideas for pro bono initiatives to bring back to our Branches, including call in days, initiatives and information sharing with non-profit organizations, legal resources fairs, town hall discussions and online resource banks. I have discussed some of these suggestions with our Branch Executive and look forward to further discussion at the Branch level.

I was also pleased to report on the planned YLC activities in Newfoundland and Labrador, including the Bar Ad Reception and the Young Lawyers and Law School Students Holiday Social. I also shared the details of the Branch’s Pro Bono Pilot Project. I have been in contact with the Chair of the Pro Bono committee to offer support and assistance to the project. We hope to see many young lawyers get involved as it is a great opportunity for any young lawyer.

CBA Events



2011 Bar Ad Reception, November 18, Newman Wine Vaults



2011 Bar Ad Reception, November 18, Newman Wine Vaults

In-House Counsel:

Save THE Dates

World Summit | April 13-15 2012

National Spring Conference | April 15-17 2012

We look forward to seeing you in Montreal!



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Women Lawyer's Forum

Andrea Murphy, Johnson Inc.

Awards Committee

Sheri Wicks, Ottenheimer Baker, Chair

Elections Committee

Janie Bussey, Eastern Health, Chair

Law Day

Elyse Bruce, Curtis, Dawe, Co-Chair
Aimee Rowe, Curtis, Dawe, Co-Chair

Pro Bono Committee

Christina Kennedy, NAPE, Chair

People and Places

Meredith Baker, *Stewart McKelvey*, will be joining *Poole Althouse* in January 2012.

Heather Buffett has left *Martin Whalen Hennebury and Stamp*.

Janie Bussey, formerly of *Stewart McKelvey*, is now with *Eastern Health*.

Congratulations to **Annette Conway**, *Curtis Dawe*, for successfully making the shortlist with two short stories for the Fourth Annual Cuffer Prize for short fiction, presented by The Telegram.

Congratulations to **Rhodie E. Mercer, Q.C.**, of *Mercer, MacNab, Vavasour & Fagan* on his recent retirement after 40 years of practicing law in St. John's.

Stephen Orr, formerly of *Ottenheimer Baker*, is now with *Gittens Law*.

Have you moved, retired or have a notable achievement to share with the membership?

Let us know, by email at cba-nl@cba.org to be featured in the next edition of *Squid pro quo*.

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:

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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.
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