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SQUID PRO QUO

THE VOICE OF THE LEGAL PROFESSION

CANADIAN BAR ASSOCIATION - NEWFOUNDLAND & LABRADOR BRANCH

SPRING 2009



Top - Bottom Left - Right:

Sleigh Ride - Mid-Winter, Lake Louise; Glenda Best;
Minister Tom Marshall; Sheri Wicks; Christine &
Garrett Healy; Lake Louise; Christine Healy, Rosie
Gillingham, Chris Pike

*Photos compliments of Linda Whitford and
Pamela Taylor*



Squid pro quo

Published by the Canadian Bar Association
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Letter from the Editor



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

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

Squid pro quo will accept advertising, though space for this purpose is limited. Advertisers or CBA Members wishing to purchase advertising space should contact the Branch Office (709) 579-5783 for information regarding advertising rates and policies.

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

I think it can now safely be said that winter is over and spring is here. The mounds of snow are disappearing and flowers are starting to bloom. Change is definitely in the air. The Magazine has also undergone some changes. The cover of the Magazine has a new look. The Canadian Bar Association has redesigned its logo and official colors. We have incorporated the new colours and design into our cover. Let us know what you think.

On the cover of this edition of the Magazine, you'll see pictures from our mid-winter meeting in Corner Brook and from the national mid-winter meeting which held in Lake Louise. Justice William Goodridge, Kevin Stamp and Jamie Merrigan were kind enough to volunteer their time to present a seminar entitled *Breaking the Litigation Log Jam*. Craig Scott, Director of the Support Enforcement Agency, gave a presentation as well. Mr. Scott spoke on the work of the Agency and provided practical advice and tips for lawyers dealing with support enforcement issues. Both sessions were interesting, informative and well attended. The 2009 Excellence in Journalism Award was also presented at the mid-winter meeting. Congratulations are extended to Rosie Gillingham who won for her newspaper article series entitled *Crime and Punishment*, a thought provoking explanation of sentencing. This is the second time that Ms. Gillingham has won is as many years.

Inside the pages of the Magazine you'll find updates from some of our Section Chairs. You will also find a report from the Chairs of the 2009 Law Day Committees. A number of events have been planned around Law Day this year. Volunteers are always welcome. I encourage you to take some time to read the article and see if there may be something you would be interested in participating in on Law Day 2009. The second annual Food Drive is now also underway. Firms and individuals are encouraged to participate in it.

This edition of the Magazine includes two In Personam articles. Alex Templeton has provided us with an insightful article on Chief Justice Clyde K. Wells who recently retired after ten years on the Bench. Alex sat down with Chief Justice Wells to talk to him about his distinguished legal and political career and his tenure as Chief Justice of the Court of Appeal. Janet Grant wrote an In Personam article on recently appointed provincial court judge, Mark Pike. Judge Pike spoke about his distinguished legal career and his thoughts as he embarks on this new chapter in his life.

Cheryl Mullett has provided us with another instalment in our new feature called *The Benefits of Membership*. Cheryl focuses on the Canadian Bar Association's work in promoting the Rule of Law and, in particular, the CBA's involvement in the Omar Khadr case. You will also find contributions from our regular contributors including an informative case digest from Dan Glover and an update from Hughie Shea on the activities of the Canadian Bar Insurance Association.

As the summer fast approaches, don't forget to mark your calendars for the upcoming Annual General Meeting. As well, this year the Canadian Legal Conference will be held in Dublin, Ireland. This promises to be an exciting and unforgettable experience.

Enjoy your Spring!•

President's Report

by Christopher Pike



With this issue of our Magazine, you will see some changes in appearance and graphics. These changes are a result of rebranding efforts that our national office is implementing. This is more than just a cosmetic makeover. Watch for more on this front as the Canadian Bar Association (CBA) works to position itself more clearly as an advocate for both the public interest and the profession.

You may also have noticed that the Professional Development sessions at our last Annual Meeting and our last Mid-Winter Meeting were offered without the participation of the Joint Committee on Continuing Legal Education.

The Joint Committee will continue in its present form, but recent discussions with the Law Society have seen us assume responsibility for the Professional Development offered at these meetings. How is this a benefit to our members?

First, we will save you money. The Professional Development events will be priced at the same level as

Continuing Legal Education events and will be open to all members of the Bar, but CBA members will be eligible for discounted pricing on these events.

Second, the Professional Development events will be planned by the same group that plans our meetings. This will ensure that the Professional Development portion of our meetings are well integrated with the social aspects of them.

Finally, our Sections will ensure that our Professional Development events give our members access to subject area experts from both Newfoundland and Labrador and the rest of Canada.

We will continue to work with the Law Society to ensure that Continuing Legal Education events have access to our Section resources and we will continue to work with Frank O'Brien and the Committee in the delivery of Continuing Legal Education events.

The bottom line: we are working for you. •



Enjoy an exclusive discount every time you travel with Provincial Airlines Limited.

The Canadian Bar Association (CBA), Newfoundland and Labrador Branch would like to remind members of our partnership with Provincial Airlines Limited (PAL) as the official Exclusive Provincial Preferred Supplier for air travel within Newfoundland and Labrador. This membership benefit is of value to you and your practice.

What does this mean for you as a member of the CBA - NL Branch?

As part of the new partnership, Provincial Airlines Limited will be offering CBA members of the Newfoundland and Labrador Branch preferential corporate discount. These rates are only available to CBA members when they specifically identify themselves as a CBA member of the Newfoundland & Labrador Branch and provide the corporate contract number 08CBA341.

Provincial Airlines Limited is the largest independent regional carrier in Eastern Canada and is fully committed to providing a superior level of service to Newfoundland and Labrador as well as Quebec. To learn more about Provincial Airlines wide range of services, please visit there website at www.provincialairlines.ca.

If you have any questions about this preferred supplier agreement, please contact Laura Churchill, Executive Director, at the CBA Branch office at (709) 579-5783 or email: cba-nl@cba.org.

The Benefits of Membership

By Cheryl Mullett



The Canadian Bar Association (CBA) provides valuable benefits to its members beyond preferred supplier discounts. The CBA is able to use its resources to promote the Rule of Law in Canada and the world. The CBA is uniquely positioned to influence governments and agencies around the world to promote the legal values and ideals that form the basic tenants of our system of justice. The CBA is there to intervene at levels that we, as individual members, would have difficulty accessing and can have increased influence because it speaks as a united voice of the profession. However, it is only with the support of members like you, who value the integrity of our profession, that the CBA can influence the provincial, national and world stage.

The case of Omar Khadr is an example of where the CBA needs to get involved on behalf of its members to stand up for the Rule of Law. Omar Khadr was 15 years old when he was captured in Afghanistan. He has been detained at Guantanamo Bay by the United States government for six years in pre-trial custody. He has not been provided with the basic rights of due process such as the right to counsel or the right to know the case against him. His detention has been served among the general adult population of detainees at Guantanamo Bay. He has not been provided with the physical, psychological or educational services that would normally be provided to a minor under the *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*.

United States President Obama has signed an executive order to close Guantanamo Bay within the year. A recent visit from the United States President signaled an opportune moment for the CBA, on behalf of its members, to voice its objection to the manner of detention of Omar Khadr and attempt to influence the Canadian government's position on repatriation of Omar Khadr to face our judicial process.

On January 23, 2009 the President of the CBA, J. Guy Joubert, wrote a letter to Prime Minister Stephen Harper,

urging his government to renew its commitment to the Rule of Law and international obligations to children involved in armed conflict by repatriating Omar Khadr. This letter can be found at the CBA website at www.cba.org. The need for the CBA involvement cannot be overstated. The United States detention facility at Guantanamo Bay has been the centre of allegations of torture and human rights abuses. As lawyers, CBA members understand the importance of the Rule of Law. Omar Khadr must be treated in accordance with the principles of the Rule of Law, otherwise it undermines the entire system of justice that Canadians and CBA members value so highly.

The CBA has and will continue to advocate on your behalf to ensure fairness and justice and to uphold our international human rights commitments. For more information on CBA advocacy visit www.cba.org and see your membership fees at work. •

DOES THE NL BRANCH HAVE YOUR CORRECT EMAIL?

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

or by contacting the Branch at:

(709) 579-5783
and
cba-nl@cba.org

Law Day 2009

By Andrea Murphy and Mandy Woodland

Law Day 2009 will be celebrated across Canada on Thursday, April 16th, 2009 with a national focus on the theme "Access to Justice". The Newfoundland and Labrador Branch of the Law Day Committee has chosen the theme "Rights and Responsibilities" as its guiding principle in carrying out its Law Day 2009 activities and events.

Among the major events being organized by the Law Day Committee this year is the Legal Information Fair to be held at the Avalon Mall, St. John's, on April 16th, 2009. During the Fair, many government and not-for-profit organizations will be on hand to provide information to the general public on a variety of law-related issues. Last year, participants in the Legal Information Fair included among others: The Royal Canadian Mounted Police; the Residential Tenancies Division; the Better Business Bureau; the Canada Firearms Centre; the Youth Centre in Whitbourne; the Canadian Bar Association; the Public Legal Information Association; Crime Stoppers; the Coalition Against Violence; the Newfoundland and Labrador Sexual Assault Crisis Centre; the Sheriff's Office; the Legal Aid Commission; and the Crown Attorney's Office.

Estate Planning presentations will also be provided to the general public during the Fair by members of the Law Day Committee.

Another major event held as part of the Law Day activities is the Mock Trial Competition for high school students which took place in the St. John's area on April 4th, 2009. During this competition, high school students take on the roles of prosecution and defence lawyers, witnesses, jurors, accused, etc. at mock trials in the courtrooms of the historic Supreme Court of Newfoundland and Labrador, Trial Division, on Duckworth Street.

During the mock trials, high schools go head to head and argue their cases before actual supreme court judges. In order to prepare them for this event, participating high schools may avail of having members from the legal

community attend their classes in order to coach and assist them in their preparation for the mock trial competitions.

High school visits are also offered across the province during the weeks before Law Day, where local high schools may avail of having members of the legal community attend their classes to give presentations on topics of interest to their students. Presentation topics include: the *Charter of Rights and Freedoms*; Human Rights Law; Criminal Law (Youth Justice/Young Offenders); Family Law; and Law as a Career/Legal Education.

Poster and Photography contests encouraging students to express their interpretation of the Law Day theme will be held for elementary and junior high school students, respectively, with all entries to be displayed at the Legal Information Fair. Cash prizes will be awarded to each of the First, Second and Third Place prize winners of both of the Poster and Photography contests, as well as to each of their schools. Further, the poster and photograph of the first place prize winners will be reproduced on 2009 Law Day promotional posters to be used at all Law Day events.



Standing: Steve Scruton, Allison Oser, Robynn Arnold, Suzanne Orsborn, Elyse White and Mark Russell

Seated: Laura Churchill, Tracey Pennell, Beth Whalen, Andrea Murphy and Mandy Woodland

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Young Lawyers Conference

By Beth Whalen



On November 7th to 9th, 2008, the 2008-2009 Directorate Meeting of the Young Lawyers Conference (YLC) was held in Ottawa, Ontario, chaired by Sarah Klinger. This is an annual meeting of the national YLC Executive and the YLC Chairs from the Branches, intended as a forum to share ideas for successful programs, discuss common concerns and network with colleagues.

The Young Lawyers Primer began on Friday afternoon and Guy Joubert, President of the Canadian Bar Association (CBA), welcomed us all to the Directorate Meeting. In his remarks, President Joubert acknowledged the importance of our young lawyer members. A major issue that has come to the forefront during his discussions with other lawyers across Canada is associate retention, particularly female associate retention. This is something the CBA is committed to working with our group to improve. President Joubert complimented the work our group does for the CBA and legal profession as a whole and looks forward to working with us during his tenure. Immediately following the meeting, President Joubert hosted a reception for the group, along with other CBA young lawyers in Ottawa.

The Business Meeting began on Saturday morning. Most of the morning was facilitated by Mark Schwilden, the Director of Membership & Marketing of the CBA in a session called "CBA Focus on Career Builders". The CBA recently adopted an aggressive five year plan that will position it as a "leader and voice of the legal profession in a complex, changing world". During a branding exercise conducted by the Membership & Marketing group, "Career Builders" was identified as the number one group where retention is of utmost importance. "Career Builders" is defined as young lawyers and is made up of 24% of lawyers in Canada, where 57% practice in major cities and 29% are in small firms. We participated in a focus group session and were split up into four subgroups to review the issues facing CBA on how to provide value to its members and in particular how to reach young lawyers. Generally, it was determined that the CBA had to provide support through educational,

professional and personal offerings. As young lawyers we expect the most of an organization in which we are involved.

The afternoon was aimed at identifying priority activities for the national YLC Executive. It appears that continuing the work/life balance priority plan and developing an associate retention tool kit shall be high priorities for the YLC Executive in the immediate future, as well as establishing a national pro bono project. Pro bono programs are generally organized to match the existing needs of vulnerable populations to structure opportunities for lawyers to provide assistance. Many ideas were discussed relating to the type of pro bono project we would like to offer, including legal tool kits, free legal clinics or phone clinics, and free consultations for young business owners. It was decided that we would go ahead with establishing the project and we will confirm the type of service to be provided, the area of law involved and the population we wish to serve at our next meeting.

We also had a presentation from Jennifer Khor on her work with the CBA International Development Programs and the Nepal Project. Ms. Khor reviewed the projects around the world that CBA is involved in which includes development of bar associations in Africa, China, and South East Asia. In addition, the Nepal Project was developed to support Nepal in its movement towards democracy by strengthening the capacity of the Nepal Bar Association (NBA). The NBA assists all Nepalis to exercise their democratic and human rights and to advocate for laws that protect these rights in a manner that reflects the culture, traditions and preferences of all Nepalese citizens. The original fifteen month term of the project included four missions to Nepal and accessed the expertise of eight Canadian and two international resource persons. Project programming produced a training manual on elections, democratic institutions and constitutions and a publication with 99

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Case Digest

By Daniel M. Glover



Application of *Dunsmuir* Upheld in R & D Funding Case

On February 19th, 2009 the Supreme Court of Canada denied the leave to appeal application from *Hibernia Management & Development Co. v. Canada-Newfoundland Offshore Petroleum Board*.¹ In that decision the Court of Appeal upheld Justice Adams' dismissal of the appellants' judicial review application finding that the Board has the power to issue guidelines to quantify research and development expenditure requirements for the offshore oil industry.

A critical issue both at trial and on appeal was the standard of review. Shortly before the hearing at the Court of Appeal the Supreme Court of Canada released its decision in *New Brunswick (Board of Management) v. Dunsmuir*,² which alters the analytical approach to be used in determining the appropriate standard of review to be applied to a decision of an administrative tribunal. The majority found that the more deferential standard of reasonableness applied to the Board's decisions given the legislative structure, which assigns extensive decision making authority to the Board subject in certain cases to direction from the relevant federal and provincial ministers.

There is an interesting dissent from Justice Rowe, which focuses partly on the language used by the Board in their preamble to the guidelines and extrapolates that the Board was "tak[ing] off on a flight of its own fancy, rising on wings of rhetoric far beyond the bounds of its authority."³ Justice Rowe essentially limits the power of the Board to the ability to act further if the operators fail to carry out research and development (R&D) in the Province related to the needs of their particular project.

Justice Welsh and Justice Barry took a more expansive view of the scope of the Board's powers to regulate R&D expenditure amounts. Justice Barry found the Board's

decision to be purposively connected to the legitimate legislative intent of creating a lasting economic legacy for the people of Newfoundland and Labrador. He found that the Board reasonably interpreted the Accord as not simply seeing residents of this Province as "hewers of wood and drawers of water," performing only lesser skilled tasks in the offshore petroleum industry, but as building "on the intellectual capital and human resources of this Province." He held that the use of industry norms to limit expenditure levels provided reasonable assurance that the Board's requirements would be moderate.⁴

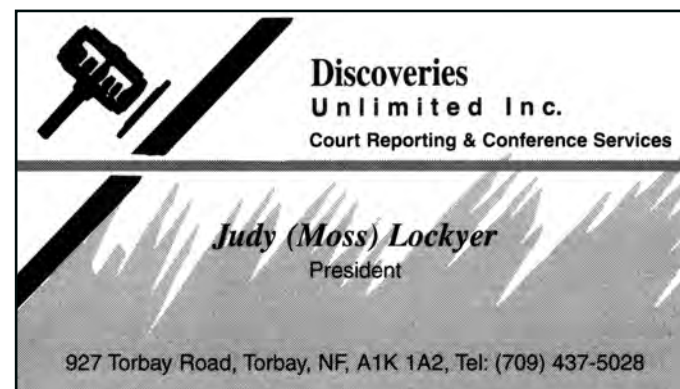
The decision is most important generally speaking as our Court of Appeal's first application of *Dunsmuir*, however it is also an important addition to the limited jurisprudence interpreting the Atlantic Accord and the regulation of the offshore oil industry in this Province. •

1. 2008 NLCA 46. Petro-Canada was also an applicant/appellant challenging the decision of the Canada-Newfoundland and Labrador Offshore Petroleum Board ("Board") to issue Guidelines for Research and Development Expenditures. Augustus Lilly, Q.C. and Maureen Ryan acted for HMDC, James Thistle, Q.C. and Jacqueline Penney acted for Petro-Canada. Ian Kelly, Q.C. and I represented the Board.

2. 2008 SCC 9.

3. 2008 NLCA 46, at para. 164.

4. *Ibid.*, at para. 134





**For 3 days in August, Dublin (Ireland)
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This **August 16 – 18**, Dublin is hosting the Canadian Legal Conference. Learn about international law and human rights from former Irish President, Mary Robinson. Understand the patterns impacting the business of law with visionary Leonard Brody. Recognize the trends that will transform the global practice of law with legal futurist Richard Susskind. And connect with Canadian and international colleagues to debate how law is practiced in a complex, changing world. **To learn more and to register, visit www.cba.org/dublin2009 or call 1-800-267-8860.**



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

SECTION UPDATE

Business Law Section

By Beth Whalen



The National Business Law Section met in Toronto on Saturday, November 29, 2008. The Executive, chaired by Bruce King, of Pitblado LLP in Winnipeg, officially welcomed all the attendees. All Atlantic Provinces were represented at the meeting however most west coast Sections Chairs were unable to attend.

Following the usual administrative and housekeeping items, we were provided with an overview of how the Business Law Section fits into the Canadian Bar Association (CBA) as a whole. This was a very useful presentation and confirmed the importance of the CBA as an ally and advocate of all members of the legal profession.

We 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 how to reach new members and ensure we are offering value to our current CBA members.

We also received a written National Section Report from Ms. Jennifer Babe. The report included a summary of our "Business Law Boot Camp" series which was an online CLE program initiated in 2007 for our members. These sessions are aimed at the sole practitioner and the small firm in remote parts of Canada with difficult access to CLE. "Buying and Selling a Business" was the first session in 2008 which had 317 listeners from 10 provinces and three territories. "Business Loans" was the second session which had 223 listeners from 10 provinces and two territories. Two Business Law Boot Camp sessions are planned for 2009. The topics under discussion are "Insolvency Primer", "Directors Liability" and "The Heart of the Contract".

A major focus for the upcoming year continues to be updating and improving the National Business Law Section website. We discussed at the meeting the need to have a website that is of service to our members and will assist them in their day to day practice. Each Section Chair was tasked with collecting practical website links

that they and their section members find useful relating to the Corporate, Banking, and Securities practice areas. Another project discussed at the meeting was the creation of a National Business Law Newsletter. Again, this was a project carried over from the last two years and our current Chair is extremely confident this will be completed for 2009. I am currently accepting potential articles to be included in our newsletter and would encourage members to submit articles for review.

In 2007 the National Section created committees in the major business law practice areas which include 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 Securities subcommittee is currently very active as they are in the process of discussing the federal governments move towards a single securities regulator. It appears the federal government is keen to put in place a common securities regulator and there has been a government task force put together for purposes of drafting legislation. There will be many views with respect to this issue, and one of the voices at the table will be representatives from our Section. Due to the election this fall the consultations were put on hold. At these meetings our representatives will be afforded on a confidential basis a first hand look at the draft legislation in order to provide comments on behalf of the CBA and in particular to advise how this will work on the ground.

The Corporate subcommittee has been active in the proposed Federal Corporate Not-for-Profit legislation which has been put forward in the last two sessions but died on the order paper.

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SECTION UPDATE

Civil Litigation Section

By Daniel M. Glover



I first of all I wish to thank the previous Chair, Sheri Wicks and the Executive Director, Laura Churchill, for their generous assistance over the past few months. I also wish to thank the Honourable D. Mark Pike for speaking at the first Lunch and Learn Session held on Halloween concerning the nuts and bolts of taxations that, as demonstrated, are so important to the final results achieved for our clients. Judge Pike also pointed to his work as part of the Rules Subcommittee which is considering amendments to Rule 55 to clarify costs awards. I am hoping to have a follow up meeting about the work of the Rules Subcommittee in 2009.

I also had the privilege of attending the Lunch and Learn Session of the “*Blood Tribe decision*” with Sandy Hounsell, Outreach Advisor for the Federal Privacy Commissioner’s Office on December 15th, 2008. The decision confirms the essential role and unique status of solicitor client privilege in our justice system and I thank Mandy Woodland for arranging and inviting me to the Session.

Since my last Section report I submitted a “roundup” article to the National Civil Litigation Section canvassing recent appellate and Supreme Court of Canada decisions concerning civil procedure, including pleadings, discovery, removal of counsel, costs and stay of proceedings.² The submission came about through the latest two conference calls with Section Chairs across Canada. Other topics discussed include proposed apology legislation canvassed in more detail in the last issue of *Squid pro quo*, CLE proposals and expenses.

Also pursuant to the latest conference call, the Ontario Bar Association working group report on *Bill 108, “The Apology Act,”* was circulated to civil litigation section chairs for consideration. The report expresses comfort in the fact that the proposed legislation will render apologies inadmissible in many contexts, but the parties will be free to litigate the facts to which they refer. It states that legislators must be sensitive to the importance of apologies to groups who have suffered historical injustice. The consensus among members in Ontario was that the legislation should not attempt to codify how to apologize as it is up to the apologizer to get it right. Specific technical concerns identified included

the possibility of a debtor avoiding the restarting of a limitation period through confirmation by adding an apology to her acknowledgment of the debt and that confusion about the mitigation of damages for apologies provided in the *Libel and Slander Act* might arise. The Report recommends amendments to the *Libel and Slander Act* and *Limitations Act* to address these concerns. I look forward to further discussion on these and similar issues from a national perspective.

I have confirmed the next Lunch and Learn Session will be a presentation by Lyne Provencher, LLB, Vice President of Lexfund Management Inc., concerning third-party litigation funding which is currently being utilized in Ontario and in Western Canada to assist plaintiffs with the increasing costs of litigation. The Civil Justice Council, the advisory public body mandated with implementing the modernization of the civil justice system in the United Kingdom, has recommended such funding as a way to improve access to justice in accordance with the guidelines set out in recent decisions from the United Kingdom and Australian Courts³. Particulars of the meeting have been circulated to section members. I would encourage members to attend and provide their input on the possibility of this innovation being used more frequently in Canada and in our Province.

I am also looking forward to the national section meeting scheduled for May 22nd and to updating the practice notes on our Branch website to include the recently adopted client identification rules and cash transaction requirements. Please feel free to contact me with topics of concern to section members or suggestions for future meetings at daniel@curtislawe.nf.ca or 722-5181. •

1. (2008 SCC 44)

2. At http://www.cba.org/CBA/sections_Civil/main/default.aspx, the Section is currently seeking articles to add to the next edition of its newsletter

3. http://www.civiljusticecouncil.gov.uk/files/future_funding_litigation_paper_v117_final.pdf.

SECTION UPDATE

Citizenship & Immigration Law Section

By Blair Pritchett



The National Citizenship and Immigration Law Section met in Ottawa on Saturday, November 29, 2008 at the Delta Hotel. As the Newfoundland and Labrador Section Chair, I was unable to attend the meeting, Canadian Bar Association Member, Andrea Murphy, attended on my behalf.

The meeting began with an official welcome to all attendees from Executive Co-Chair, Baerbel Langner, followed by the review and approval of the Agenda as well as the May 15, 2008 executive meeting minutes. The provincial Section Chairs from Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, and Quebec were also in attendance.

A discussion was held regarding the recent appointment of the Honourable Jason Kenney as Federal Minister of Citizenship and Immigration. A letter of welcome to Minister Kenney was sent on behalf of the Section in November 2008 and later that month members of the executive had the opportunity to meet with the new Minister and his policy advisor, Andrew House. The fact that the Minister held a meeting with the Section so early in his appointment is very encouraging, as is the fact that the Minister expressed excitement about his new portfolio.

The 2008-2009 Budget was reviewed and approved and the Canadian Bar Association's CLE fund distribution scheme was explained and discussed. Several ministerial directives were also discussed including the implications of amendments to legislation respecting business and self-employed applicants. Updates were also provided regarding current legislation and law reform, including: proposed changes to Regulation 4 of the *Immigration and Refugee Protection Regulations* pertaining to bona fide relationships; the proposed *Bill C-50, Budget Implementation Act, 2008*; the amendments to the *Immigration and Refugee Protection Act* outlined within *Bill C-17* as they relate to vulnerable foreign nationals; and *Bill C-57*, pertaining to the discretionary refusal of work permits by immigration officers.

It was noted that the Section's newsletter has been particularly active over the past few years, with newsletters being released on an annual or bi-annual basis. It was further noted that the newsletter is particularly useful in provinces such as Newfoundland and Labrador where it is the sole source of current updates to practitioners on Citizenship and Immigration practice standards, legislation and jurisprudence. The most recent newsletter was released in November 2008. A second newsletter is planned dependent upon article submission. Deadlines for submissions for this second Newsletter were mid-January, however any section members interested in submitting articles for future editions of the newsletter are encouraged to contact the provincial Section Chair. Articles pertaining to local issues in this Province with the potential for national implications are particularly welcome.

The availability and usefulness of the Section's Listserv was also discussed, as it provides a means for practitioners to exchange information, ideas and resources with others across the country. It was further noted that many members of the Department of Justice also make use of the Listserv in order to keep themselves apprised of current events, issues and areas of concerns to the profession. The CBA's Pro Bono Mentorship Initiative was also discussed and it was noted that participation in this initiative is encouraged by the National Section.

Reports were presented from each of the attending Section Chairs regarding activities and recent legal developments within their respective jurisdictions. The Report for this Province noted that the Citizenship and Immigration Section is a new addition to CBA and that it is hoped that the Section will grow and thrive over the coming years. To advance this aim, a joint web-based CLE is currently being contemplated by the Section Chairs of Nova Scotia, New Brunswick and Newfoundland and Labrador. The subject matter of the CLE is yet to be determined, however it is expected to take place in the

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SECTION UPDATE



Criminal Law Section

By Rosellen Sullivan

The National Criminal Justice Section Meeting was held at the Delta Hotel in Ottawa on November 28-29, 2008.

The Provincial Section Reports were delivered on the evening of Friday November 28th, prior to the day set for the meetings. I updated the National Executive and the other Section Chairs with developments and initiatives which 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. Report on Criminal Justice System Efficiencies released;
3. Canadian Bar Association (CBA) consulted on Family Violence Court;
4. Criminal Justice Committee established;
5. Draft Criminal Procedure Rules of the Supreme Court of Newfoundland and Labrador, Trial Division; and
6. CBA Section Chair appointed Associate Chief Judge Provincial Court.

Most of the discussion focused around the Report on Criminal Justice Efficiencies and on consultation on Family Violence Courts. These issues were of national importance as virtually every jurisdiction is grappling with justice system efficiency issues and the implementation of specialty courts. In fact, a significant portion of the Saturday meeting dealt with these two issues. We were given a very informative presentation from senior personnel from Statistics Canada with regard to court efficiency, time and case flow management and trends in court caseloads.

As most members are aware, the 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. Due to the 2008 Federal Election many of the proposed

legislative amendments were sidelined or abandoned all together. Therefore there was no discussion on any recent submissions. Although there was discussion about generation of future submissions on various areas including most specifically amendments to the *Youth Criminal Justice Act*.

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. If you have any questions regarding this section please contact me at rsullivan@sbslaw.nf.net •

Calls to Bar

<i>Roll Number</i>	<i>Name</i>
1424	Mark J. Walton
1425	Jodi D. MacDonald
1426	L. Nicole Connolly
1427	Erin E.E. Best
1428	Michael J. Cohen
1429	Elyse S.B. Bruce
1430	Laura J. Brazil
1431	David L. Hearn
1432	Michael W.A. Noseworthy
1433	Nicole M. Squires
1434	Jessica R. Bartlett
1435	Laura A. Brocklehurst

SECTION UPDATE

Family Law Section

By Suzanne Orsborn



In October 2008, I attended the National Family Law Section meetings in Ottawa. On October 24, 2008, the Section met with representatives from the Family, Children, and Youth section of the Federal Department of Justice. Issues discussed included:

- Private members' Motion M-483 ("Vellacott Motion"): This is a private member's motion for amendments to the *Divorce Act* "so that law and practice ensure due process protection of rights and equality of parents, and to ensure that children benefit from equal parenting from both their mother and their father, after separation or divorce". The motion was to be debated in Parliament however Parliament was dissolved before this occurred. It is expected that this issue will be brought forward again in the near future, and I have agreed to assist with any formal submissions or response by the Canadian Bar Association National Family Section on this issue; and
- Spousal Support - A draft version of a Spousal Support Advisory Guidelines (SSAG) was released earlier this year. It was anticipated that a final version of the SSAG would be released by the end of 2008, however at the present date this has not yet been released.

At the National Family Section meeting held on October 25, 2008, the following issues were among those discussed:

- Standards/Code of Conduct for Family Law lawyers: This issue was discussed at length at the Section's last meeting in Prince Edward Island. There is no such standard or code presently in other jurisdictions, though it is being examined;
- Mandate of the Section - A resolution for a revised mandate for the family law Section was proposed, which will be brought forward at the national CBA Mid-Winter meeting in 2009; and

- Alternative Dispute Resolution (ADR) education in law schools: A resolution for mandatory ADR education in law schools was proposed, which will be brought forward at the CBA Mid-Winter meeting in 2009.

Many other issues were discussed at the National Section Meeting and members are invited to contact me if they wish a more detailed breakdown of the matters addressed at this meeting.

Members can access the CBA website for information on activities and initiatives on the national level at <http://www.cba.org/CBA/sections%5Ffamily/main/>.

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

Citizenship & Immigration (*cont. from page 11*)

coming months. Another upcoming Section event is that of the Section's Annual Conference at the Fairmont Château Whistler Hotel in Whistler, British Columbia from April 16 to 18, 2009. For more information or to register for this event, please consult the CLE webpage at: www.cba.org/CBA/CLE/main/IMM_09.aspx. Any CBA members interested in joining or learning more about the Citizenship and Immigration Law Section are encouraged to contact the provincial Section Chair.

For further information on this report or the National Citizenship & Immigration Law Section please see http://www.cba.org/CBA/sections_Cship/main/ or contact Newfoundland and Labrador Section Chair, Blair Pritchett at (709) 724-8641, or by email at blair.pritchett@mcinnescooper.com.

In Personam

By Janet Grant



The Honourable D. Mark Pike

The Honourable D. Mark Pike was appointed as the Associate Chief Judge of the Provincial Court on October 31, 2008, with his appointment effective as of November 17, 2008. The press release that announced Judge Pike's appointment described him as "one of the most experienced trial lawyers in Newfoundland and Labrador." This description is indeed fitting for someone who has been both a Crown attorney and defence counsel and has spent the majority of his practice appearing in all levels of court.

Born in Corner Brook, Judge Pike graduated from Prince of Wales Collegiate in St. John's and went on to complete a Bachelor of Commerce degree from Memorial University. He then attended law school at the University of British Columbia and completed his studies in 1983. While at the University of British Columbia, he had the privilege of being taught contracts by Professor Beverley McLaughlin (as she then was).

Judge Pike served articles with the civil division of the Department of Justice under then Deputy Minister John Cummings. During his articles he also spent some time with the firm Halley, Roberts, Barry. Upon completion of his articles in 1984, Judge Pike was offered positions with both the criminal and civil divisions of the Department of Justice, as well as a position with Halley, Roberts, Barry. Due to his interest in criminal law, Judge Pike decided to accept the position with the criminal division of the Department of Justice.

After approximately a year and a half with the Provincial Crown, Judge Pike accepted a position with Fowler, Rose. At that time, there was no Federal Crown office in St. John's, and the firm of Fowler, Rose acted as an Agent

of the Attorney General of Canada. While Judge Pike maintained a general, diversified practice, the largest component of his practice involved federal prosecutions. Between 1985 and 2000, when a Federal Crown office was opened in St. John's, he handled numerous complex prosecutions involving multiple accused, corruption of federal officials while abroad, conspiracy charges, the interception of private communications, and organized crime.

Over time, the composition of Fowler, Rose changed and in 1992, it merged with the firm now known as Benson Myles. While at Benson Myles, Judge Pike practiced in the fields of criminal law, civil litigation, corporate commercial, labour and employment and administrative law. As a result of the issues raised in handling such files, Judge Pike was often in court and appeared at all levels of court, including the Supreme Court of Canada. Appearing before the Supreme Court of Canada was one of Judge Pike's career highlights. He successfully represented the interests of a local law firm in its resistance to a search by police of its premises for client files. As a result, certain provisions

of the Criminal Code were struck down as they were found to violate Section 8 of the *Charter of Rights and Freedoms*. One of the judges on the Supreme Court of Canada panel was his former contracts professor, Chief Justice McLaughlin!

In terms of his administrative law practice, Judge Pike appeared before many boards and tribunals including those related to the practice of law, accounting, dentistry, nursing and medicine. In 1996 he was appointed as a Master and Taxing Officer of the Supreme Court of Newfoundland by the Chief Justice of Newfoundland.

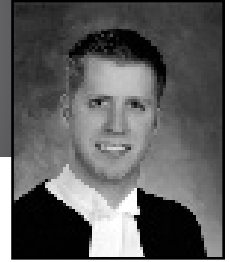
(continued on page 18)



Judge Mark Pike

In Personam

By J. Alex Templeton



The Honourable Chief Justice Clyde K. Wells

On January 15, 2009, the Honourable Chief Justice Clyde K. Wells announced that he would resign as Chief Justice of the Newfoundland and Labrador Court of Appeal on February 28, 2009. Wells will continue to serve as a supernumerary judge of the Court of Appeal after that date. I recently had the pleasure of meeting with Wells to discuss this news, as well as to reflect back on his distinguished career and, specifically, his ten years of service as Chief Justice.

In the course of announcing his resignation, Chief Justice Wells remarked that he felt he ought not to hold the Chief Justice position for more than ten years. He explained that limiting himself to a ten year term was part of a personal policy that he had applied throughout his career. "If I couldn't achieve what I hoped to achieve within ten years, it was highly improbable that I would achieve it by staying beyond that time," reasoned Wells. "That was my view when I was in politics and it remained the same when I accepted the appointment as Chief Justice." Wells added with a grin, "Also, I'll be seventy-two years old this year, so if I'm to have somewhat of a retirement I had better get started fairly soon."



Chief Justice Clyde K. Wells

Photo: The Telegram

A Full Seventy-Two Years

And what a full seventy-two years it's been. Wells was born in Buchan's Junction on November 9, 1937 and in 1944 moved with his family to Stephenville Crossing. Following a pleasant childhood, Wells attended Memorial University where he studied political science and English and obtained a Bachelor of Arts degree in 1959. He then moved to Halifax and attended Dalhousie University, where he obtained a Bachelor of Laws degree in 1962.

Upon graduation, Wells practiced law with the Office of the Judge Advocate General in Ottawa. He enjoyed the experience but soon decided that military law was not for him. Following a chance encounter with lawyer Kevin Barry in Corner Brook, Wells accepted an invitation to join Barry's busy legal practice. In just a few years Barry and Wells' partnership grew to become Barry, Wells, Monaghan, Seaborn, Marshall & Roberts, which at the time was one of the largest law firms in the province outside of St. John's.

In 1966, Wells was appointed as Minister of Labour by Premier Joseph R. Smallwood and was elected to the House of Assembly as Member for the Electoral District of Humber East. Soon, however, Wells' commute from Corner Brook to St. John's proved problematic and he decided to resign as Minister of Labour, opting to remain in Cabinet as a Minister without portfolio. He and fellow Cabinet Minister John C. Crosbie later resigned from Cabinet over a dispute with Premier Smallwood regarding the Come by Chance Oil Refinery. Wells continued to serve in the House of Assembly as a Member sitting across the aisle until 1971, at which time he resigned and returned to legal practice.

In the years following, Wells' residence in Corner Brook continued to be problematic. There was no Supreme Court judge sitting in Corner Brook at that time and, being involved in litigation in both the Trial Division and the Court of Appeal, Wells spent a great deal of time living in a hotel in St. John's and traveling back and forth to Corner Brook on weekends to be with his family. Taking stock of the situation in 1981, the Wells family finally decided to move to the capital city.

Between 1981 and 1987, Wells hired various junior lawyers, including John Glube, Peter Alteen, Ches Crosbie and Ron McCabe, to support his litigation-based practice.

Wells returned to politics in 1987, when he became leader of the Liberal Party of Newfoundland and Labrador. Wells led the party to power in the 1989 general election, becoming the province's fifth Premier and ending seventeen years of Progressive Conservative rule. Among other things, Wells' administration dealt with the province's debt and deficit problems, restructured the province's education system, implemented far-reaching economic reforms, concluded an agreement to develop the province's first offshore oil field and weathered the collapse of the province's cod stocks. Wells also famously opposed the Meech Lake Accord and participated in discussions which led to the Charlottetown Accord. He resigned as Premier in 1996.

Following his premiership, Wells returned again to legal practice, this time with the law firm O'Reilly Noseworthy. In May 1998 Wells was appointed to the Court of Appeal, and then to the Chief Justice position in January 1999.

Ten Years as Chief Justice

When asked what he enjoyed most about being Chief Justice, Wells focused on the adjudication process common to all appellate judges. "I enjoy listening to argument as to why a decision made by a trial judge was an error in law or was not supported by the evidence, and why and to what extent changes should be made. I enjoy the intellectual exercise in assessing those circumstances, paying due deference to the judge who conscientiously made the decision and explained why, and then deciding to support that position, acknowledging that it was correct, or concluding that there was some error and explaining why." Wells noted that, aside from the intellectual exercise, his enjoyment of the Chief Justice role was attributable to his colleagues and co-workers. "I had a great rapport with all of the judges and staff that I worked with here. I enjoyed their support and I'm grateful to each and every one of them."

On its part, the Court of Appeal has enjoyed many improvements during Chief Justice Wells' term;

improvements which Wells attributes to the efforts of everyone working at the court. "There was a time when you couldn't get a hearing date here for four or five months; that's not so anymore," said Wells. "Now, you can get a date within thirty to forty-five days to have an appeal heard when it's ready to be heard." Wells said that, in addition to some reduction in workload, the reduced wait times are principally due to the diligence of the staff and judges in adhering to internal scheduling practices. "We've developed a policy of not setting an appeal down to be heard more than two months after the date on which the request for a hearing is being made. It makes for a bit of pressure, but we have to strike a balance between accommodating lawyers, the courts and, first and foremost, operating in the best interests of the litigants." The Court of Appeal has also shortened the time associated with rendering decisions. "This court gets its decisions out quite expeditiously, usually within thirty to ninety days," noted Wells. The building housing the court has also seen improvements during Wells' term. "We've put this building in the best condition we can to enable it to function properly and safely," said Wells. Renovations have included replacing carpets with hardwood or tile flooring, installing a public washroom, installing an elevator, constructing a proper bench and providing for more file storage and archiving.

In addition to his adjudicative work, Chief Justice Wells served as a member of the Canadian Judicial Council (CJC) during the past ten years. The CJC, composed of the chief justices and associate chief justices of Canada's superior courts, is the regulatory body for Canadian judges. "It was interesting work and a great opportunity to make a contribution to principles guiding the administration of justice," remarked Wells. One issue that Wells was particularly interested in while working with the CJC is access to civil justice. "For many people, particularly middle income individuals, the cost of access to justice has become so inordinately high that I think it behooves us all to take a serious look at what's contributed to this," said Wells. "Forty-five years ago, when I was first involved in practicing law in this province, we spent a half day on a tort action, or a day at the most, and then it was considered a fairly lengthy trial. You'd submit a bill of costs and the total might be three-hundred and forty dollars. Well I've seen bills of costs now that are thirty-four thousand dollars and people just can't afford that." Wells noted that the responsibility for finding solutions

falls to the legal community as a whole. “We’ve done some things to our system of justice that have caused us to greatly increase the cost of justice and I think it’s the legal profession and judges – those who are involved – that have to find solutions.” Wells identified the discovery process, as well as rules of evidence, as factors involved in the issue. “The very extensive discovery system that we have in this province, where you discover all and sundry who may be connected to a matter, greatly extends trials. It not only runs into an expensive process in itself, it has the effect of arming lawyers with all this material for examination and cross-examination on irrelevant matters. Judges have contributed to this with the virtual abandonment of the relevancy rule: if you allow evidence in for what it’s worth, which trial judges often do, a day and a half later when you’re finished presenting that evidence, the other side spends another three days putting more equally irrelevant evidence in to counter your irrelevant evidence. It’s an area that requires a lot of attention from the legal profession as a whole.”

As in the case of access to justice, Chief Justice Wells has spoken publicly in recent years about the judicial system. This he considers a responsibility of all judges, but a particular responsibility of chief justices. “There has been a great reluctance from judges about speaking publicly, but that’s been changing over the last twenty years or so. Gradually, judges are coming to realize that they have been failing in the role of providing information to the public.” Chief Justice Wells applauded the efforts of Chief Justice Beverley McLaughlin of the Supreme Court of Canada in this regard. “She has been a constant advocate and a tireless speaker at public occasions, constantly explaining to the public the importance of the independence of the judiciary and the role of the courts and discussing the flaws and weaknesses in the system and where it needs some adjustment or correction.”

At a speaking engagement in April 2006, Chief Justice Wells spoke of the increased frequency of criticism directed at the courts by the media, particularly in the form of allegations of judicial activism. At that time, Wells noted that there was a corresponding deficit in editorial analysis on the role of the courts in the administration of justice. When asked to comment on the speech, Wells said “I don’t think it’s sufficient simply to write that the courts are being activist without explaining what the proper role of the courts is. To give the impression

that the courts are arbitrarily declaring law to be invalid based on the whims of the judges is inappropriate. Put it in the proper context so that the public can weigh the issue fairly.” Wells emphasized that judges, and the legal profession generally, have a responsibility to educate the public on the role of the courts.

In cluing up our discussion, I noted that when John Crosbie was asked why he chose not to retire early from working life he replied that he did not want to “vegetate”. Chief Justice Wells smiled and said, “Well, one good thing about the judicial office is, if you’re eligible to retire, instead of accepting your pension and doing nothing, you can stay on as a supernumerary judge and, in addition to your pension, be paid the difference between your pension and a judge’s salary.” Supernumerary status allows retirement-age judges to work part-time for that fraction of their previous salaries. “The state gets a good benefit from it: it gets more and very experienced judges who are available to work,” explained Wells. “And the judges benefit too by not having to go cold-turkey from working full-time to nothing; to ‘vegetate’, as Mr. Crosbie put it. Most judges I know would prefer not to ‘vegetate’.”

When asked what he plans to do in his retirement, Chief Justice Wells replied that he might pursue certain writing projects. “There are issues that I’ve been involved with in the past that I may want to write about. There’s one particular area that I was involved in many years ago as a lawyer where I thought that the system failed an individual and I think I may have some responsibility to write about that to avoid it happening again.” Wells also has an interest in astronomy, which retirement may allow him to pursue more actively. “I’m interested in looking at the night sky, which is difficult to do here with the city lights. I may have better opportunity to find dark skies in my retirement, so as to look up at the stars. I find the universe and the world of astronomy amazing.”

I would like to thank Chief Justice Wells, personally and on behalf of the *Squid pro quo* Magazine Committee, for taking the time to speak with me. It was a pleasure discussing his career, his views on the administration of justice and his plans for the future. We wish him a happy and fulfilling retirement. •

Judge Mark Pike *(continued from page 14)*

During the course of his appointment as a Master and Taxing Officer, he presided over and delivered judgments in excess of 750 cases.

As a result of Judge Pike's involvement with the criminal justice system, he has been an advocate for the improvement of the administration of justice. In June of 2007, he was appointed by the Minister of Justice to the Criminal Justice Committee for Newfoundland and Labrador. Later in 2007, he was appointed by the Minister of Justice to the Task Force on Criminal Justice System Efficiencies. The Task Force comprised representatives from the Department of Justice, the Public Prosecutions Division, the Legal Aid Commission, the private bar and the Provincial Court of Newfoundland and Labrador and had a mandate to identify and recommend the elimination of obstacles to the timely processing of cases and to make recommendations on ways to bring about improvements. The Task Force's report was presented to the Minister of Justice in February of 2008 and includes a number of recommendations to increase efficiency and reduce delay in the processing of cases in Provincial Court without compromising fundamental principles of justice.

A discussion of Judge Pike's career would be remiss if his role as Inquiry Counsel was not addressed. Between 1983 and 1985, he served as Inquiry Counsel to several judicial inquiries appointed by the Attorney General of Newfoundland. He also worked as counsel at the Benteau Inquiry and as counsel in a public inquiry into a sudden death in Rigolet, Labrador. Judge Pike appeared as counsel for the primary parties at the Reid and Power Inquiries where issues related to mental health and the actions of the police were canvassed. From 2003-2005, he appeared as counsel at the Lamer Commission of Inquiry held into the justice system's handling of three controversial murder cases. Most recently, he acted as counsel for the Newfoundland and Labrador Medical Association at the Commission of Inquiry into Hormone Receptor Testing.

Throughout his career, Judge Pike has been recognized for his service and commitment to law enforcement and to the legal profession. In 1996, he received a Commendation for Dedication and Outstanding

Service from the Royal Newfoundland Constabulary. Similarly, in 1997, he received a Commendation for Dedication and Exemplary Service from the Royal Canadian Mounted Police. In September of 2008, he, along with his wife, Pamela Goulding, was appointed as Queen's Counsel. This marked the first time in Newfoundland and Labrador that a husband and wife were appointed Queen's Counsel together.

Judge Pike has been a Canadian Bar Association (CBA) member since being called to the bar in 1984 and has been involved with numerous CBA activities and initiatives. Most recently, he served as the Chair of the Criminal Law Section of the Newfoundland and Labrador Branch of the CBA from 2006 until 2008. He also gave of his time to present various Lunch and Learn Sessions. In fact, the day that his judicial appointment was announced he conducted a Lunch and Learn Session related to the roles and responsibilities of Taxing Officers.

Upon reflection of his career as a litigator, Judge Pike noted the importance of maintaining courtesy between opposing counsel. According to Judge Pike, this is not an optional component of practice, but is in fact a mandatory component. He pointed out that civility within the profession is imperative and addressed in the CBA's Code of Professional Conduct. During his career as a litigator, Judge Pike was known for his personable disposition. He attributes his ability to maintain positive relations with other counsel due to the fact that he had an interest in and appreciated the human side of his colleagues. In fact, he indicated that one aspect of practice that he will miss during his time on the bench will be the opportunity to get to know his colleagues outside of the courtroom.

The role of Associate Chief Judge involves performing duties assigned by the Chief Judge of the Provincial Court of Newfoundland and Labrador, as well as performing the duties of the Chief Judge when the Chief Judge is unable to perform those duties. Judge Pike feels that it is a great honour to be appointed to this position and is looking forward to his role in judicial leadership. He is humbled to have such a responsible position and feels that it is a great privilege to be able to serve the public in this fashion.

In addition to the normal responsibilities of a judge,

inclusive of keeping up with the ever changing law, the role of Associate Chief Judge involves developing and maintaining relationships within the judiciary and with outside agencies that interact with the criminal justice system. Judge Pike noted that in today's society, individuals are demanding more from those in positions of authority and expect accountability and a high quality of service. He regards this as a positive development, but one that also presents a challenge in judicial leadership. According to Judge Pike, he is determined to meet those expectations.

Although the appointment as Associate Chief Judge has been fairly recent, Judge Pike has already begun work on matters that have been specifically assigned to him by the Chief Judge. One such project involves examining the scheduling of cases. Judge Pike has been working with individuals from the government's information technology group to make use of improvements in information technology to develop scheduling efficiencies. He is looking forward to both automating and innovating the process of case scheduling.

Outside of the practice of law, Judge Pike enjoys spending time with his wife and two teenaged sons. The family have all been actively involved with Tae Kwon Do, the Korean martial art of kicking and punching. In fact, each member of the family has achieved the significant goal of attaining a black belt designation. In that respect, Judge Pike speaks of his pride when both he and his eldest son received their 3rd degree black belts together in 2008.

Judge Pike also enjoys spending time on the golf course and is a Past President of the Bally Haly Golf and Country Club. In addition, he is known to be a wine connoisseur who spends his time both enjoying and writing about wine.

On behalf of the *Squid pro quo* Committee, I would like to take this opportunity to thank Judge Pike for taking the time to speak with me. It was a pleasure discussing his legal career to date and his plans for his new role in judicial leadership. •

Distinguished Public Service Award

**Members and the public are invited
to nominate lawyers in the Province for the**

***2009 Canadian Bar Association's
Distinguished Public Service Award***

to recognize a lawyer's contribution to community service.

**The award will be presented during the
Newfoundland & Labrador Branch's Annual General Meeting.**

*Please contact the Branch Office
by May 30th 2009 to obtain a nomination form*

SECTION UPDATE

Government & Public Sector Section

By Amanda Hewitt



Back in November, on behalf of our Section Chair Todd Stanley, I had the opportunity to attend the national meeting of the Public Sector Lawyers Section. It is evident that this Section is quite active, both in terms of organizing continuing legal education sessions and honouring the achievements of their peers.

At the Canadian Legal Conference (CLC) held in Quebec City in August of last year, the Public Sector Lawyers Section hosted two CLE events. The first session was entitled "Deal or No Deal: Procurement in the Public Sector." The panelists were Darrell Lopushinsky of the City of Edmonton Law Branch and Susan Clarke of Public Works and Government Services Canada (Gatineau). The speakers discussed an owner's obligations to bidders, bid compliance, and "bid shopping." The session focused on recent decisions in public sector procurement cases, including *Double N Earthmovers Ltd. v. Edmonton, Toronto Transit Commission v. Gottardo Construction Ltd.*², and *Stanco Projects Ltd. v. British Columbia*.³

The second session was entitled "Speaking Truth to Power." In-house corporate counsel and government lawyers share a similar challenge of speaking truth to power. Their employment can depend on the favour of the bureaucrats, politicians, CEOs and directors to whom they report, and yet they are often required to report on the shortcomings and failings of these same individuals. The panelists for this session were Allan C. Hutchinson of Osgoode Hall Law School and Mr. Justice Alphonse E. Faour of the Supreme Court of Newfoundland and Labrador, Trial Division. The session was well-attended, with approximately 75 to 100 participants, including Chief Justices, Deputy Ministers, and the Privacy Commissioner.

Aside from organizing these sessions, the Public Sector Lawyers Section also recognizes the contributions of its colleagues. The John Tait Award of Excellence was established in 1998 to honour, recognize and celebrate the accomplishments of public sector lawyers in Canada. The award is presented each year at the annual CLC to a

public sector lawyer who has achieved the highest standards of professional conduct and competence and made significant contributions to social justice or community affairs, and who exemplifies preeminent public service. Last year's winner was Vincent Calderhead, a senior staff lawyer with Nova Scotia Legal Aid.

The eligibility criteria, nomination procedure, and nomination form for the John Tait Award can be found on the Canadian Bar Association website: http://www.cba.org/CBA/Awards/john_tait/. The deadline for applications is May 1, 2009. I would encourage you to consider nominating one of our colleagues for this prestigious award. •

1. 2007 SCC 3, [2007] 1 S.C.R. 116.
2. (2005), 77 O.R. (3d) 269 (C.A.).
3. 2006 BCCA 246, 226 D.L.R. (4th) 20.

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Joined March 2009

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Canadian Bar Insurance Association Update

By Hughie Shea



I want to thank the Canadian Bar Association Newfoundland and Labrador Branch for allowing me to send out the membership emails which provided an overview of the new Tax Free Savings Accounts (*Sent: January 15, 2009*) and what my focus was for my clients during the first part of 2009 (*Sent: January 22, 2009*). Naturally the intent of these emails is to generate business and provide topical and time sensitive information to the members. However, I invite you to use the email content as background information when you have discussions with your personal finance person or institution. Hopefully this will provide some added value to your CBA membership since this information was only circulated to the CBA members and my clients.

The Canadian Bar Insurance Association (CBIA) and CBA Financial has been and will be very active locally for sponsorship and networking opportunities. As a quick list we have:

- Family Breakfast at Marble Mountain: Next to Sorrento's the best meal of the weekend;
- CBA Family Easter Breakfast: Wonderful food and a great opportunity not to cook;
- Annual General Meeting over the summer at a venue to be announced;
- Late summer social for new law students;
- Young Lawyers spring social. (Cold beer and suspect food); and

- The Bar Admission Course Wine and Cheese.

In addition we will be hosting a Lunch and Learn Session for young lawyers in order to introduce financial planning basics and investment fundamentals. This was a wonderful idea from the Section Chair Beth Whalen. If you would like to have a similar Lunch and Learn Session for your firm or your staff, I will of course be available.

At CBIA and CBA Financial we appreciate your support and your business. Our organizations have the guiding purpose of providing you, your family and your employees with exceptional value. In addition to our life and financial products, we offer a wide range of products including disability insurance, travel insurance, home and auto coverage, and critical illness protection.

For more information about our products and services or to visit our Education Centre you can look at our revamped websites at: www.barinsurance.com or www.barfinancial.com. Of course there is always the more personal route of calling or emailing me directly. My contact information is included on the blatant marketing ad in this publication. •

THE EDWARD K. ROWAN-LEGG AWARD

The Canadian Bar Association is seeking nominations for the 2009 Edward K. Rowan-Legg Award.

Established by Judi Rowan-Legg in honour of her husband, Edward K. Rowan-Legg of Ontario and Nova Scotia, the Award is designed to recognize a dedicated contribution to the CBA by a student member and encourage student member participation in the Canadian Legal Conference. The 2009 award will be presented at the CBA Canadian Legal Conference Awards Luncheon, Saturday, August 15, 2009 in Dublin.

Nominations must originate in the Branches and be submitted to Stephen Hanson prior to June 12, 2009.

Full details are available on our web site: www.cba.org/CBA/Awards/rowan_legg.



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Unlike many insurance plans, The Canadian Bar Insurance Association (CBIA) offers insurance coverage that **will not cancel if you change employers or leave the legal profession for a new career.** In addition, our premiums remain affordable, regardless of any changes to your future state of health.

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If you are a Canadian legal professional, the spouse or child of one, or a law firm employee, please consider our advantages and purchase CBIA insurance protection. To learn more about our protection, compare our rates, or find answers to questions you may have about insurance, please visit us at www.barinsurance.com. You can also contact your local CBIA Authorized Sales Representative, **Hughie Shea, B.Comm, CFP**, by calling (709) 726,6570 or emailing hughieshea@financialanswers.com.



CBIA

THE CANADIAN BAR INSURANCE ASSOCIATION

For lawyers, by lawyers

CBIA plans are subject to initial eligibility rules and underwriter approval. To learn more please visit www.barinsurance.com for more details.
CBIA Life and Disability Insurance plans underwritten by The Manufacturers Life Insurance Company (Manulife Financial)

Law Day 2009 *(cont. from page 5)*

Last year, as a new event, the Law Day Committee included a food drive as one of its activities. Food and cash donations were collected from participating law firms and legal organizations in the Province as well as the general public at various Law Day events. Due to the success of last year's food drive, the Committee has decided to hold this event again this year as part of its Law Day activities.

The food drive began the week of April 4th, 2009 and will run until April 17th, 2009. Firms are encouraged to collect food and cash donations during this period and to forward them to the office of the Canadian Bar Association, Newfoundland and Labrador Branch.

Once collected, all food and cash donations will be forwarded to the local Food Sharing Network.

As the planning and organization of Law Day 2009 continues, the Committee looks forward to another successful year. All members of the CBA are invited and encouraged to participate in this year's activities and may contact either of the Committee's Co-Chairs by e-mail at amurphy@nf.aibn.com or mwoodland@coxandpalmer.com for more information about up-coming events or volunteer opportunities. •

Young Lawyers Conference *(cont. from page 6)*

recommendations for Nepal's new constitution. The latter was based on extensive research and consultations with almost 1,000 NBA members and over 500 representatives of civil society organizations and community leaders. The Canadian International Development Agency has extended funding for this project to March 31, 2009. Activities will include CLE for young lawyers in the area of rights advocacy, law reform and constitution making and activities focused on building the capacity of women lawyers to engage in the democratic process and to advocate on behalf of women from all cultural, social and economic groups. Ms. Khor emphasized the need for funding of these projects and there has been no commitment from the Federal Government to provide funding after this coming March.

The meetings resumed on Sunday morning to complete the agenda with the Program Exchange. This was an opportunity for YLC chairs to report on the activities in their respective Branches throughout the year. This was a useful exercise to understand other branches and get ideas on how to assist young lawyers in our Province.

For further information on the YLC please see: <http://www.cba.org/CBA/YoungLawyers/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 •

Business Law Section *(cont. from page 9)*

It has yet to be reintroduced and therefore our Section is preparing a report to Government to provide suggested changes.

Our Chair, Bruce King, was sent as a delegate from our Business Section to the American Bar Association's Business Leaders' conference in Chicago. This is an important meeting for us to attend to exchange ideas and foster relationships with those practitioners across the border.

Jennifer Babe, our past Chair, provided an update on the Uniform Law Conference of Canada (ULCC) which Ms. Babe sits on as a CBA representative. The Section continues to provide the practitioner's point of view on business law reform topics, and to find ways to encourage provincial governments to enact the uniform statutes adopted by the ULCC. Efforts are continuing to reform section 347 of the *Criminal Code* on criminal interest rates, given that the payday loan amendments failed to solve the problem it causes for business and real estate transactions. It has been decided to allow the Criminal Section of the ULCC to take the lead on this issue.

The National Business Law Section also conducts meetings by teleconference. We will also use this time as a planning session for the newsletter, website practice links and assisting 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. •

Canadian Bar Association National News

Trinda Ernst, QC, new 2nd Vice President elect

Trinda Ernst, Q.C., of Kentville, Nova Scotia is the CBA's new Second Vice-President-elect, following voting by 189 members of Council. A partner since 1992 at Waterbury Newton, she practises wills and estates, elder law, corporate/commercial law and real estate law. She will become Second Vice President at the Canadian Legal Conference in Dublin in August, the first step on the way to the presidency of the CBA in 2011.

Welcome to the new look of the CBA!

You may notice our CBA has a brand new look that includes a new logo and captures the essence of the CBA today. Formally launched on Feb. 21 at the 2009 CBA Mid-Winter Meeting, the new brand represents the culmination of a process of formal market research and broad consultations with members that began in 2007. In that process, we learned all about what lawyers expect from the CBA, what you want us to do to support you, and how you perceive the CBA.

Parental leave for self-employed lawyers

The recent federal budget contains a promise by the government to create an expert panel on EI and parental leave, a development welcomed by the CBA, which has been working to bring maternity and parental leave benefits for the self-employed to the forefront of the government agenda. Last fall, it commissioned an economic report by Dr. Richard Shillington on the issue and presented it to the Minister of Human Resources and Skills Development, the Hon. Diane Finley. Dr. Shillington recently spoke about employment insurance before the Standing Committee on the Status of Women. Appearing in his own capacity on Feb. 26, Dr. Shillington also encouraged the members of the committee to look at the findings of his report for the CBA.

Report and letter

<http://www.cba.org/CBA/submissions/pdf/08-66-eng.pdf>

Young Lawyers Barometer: Finding balance life

Finding the balance between professional and personal life has been an ongoing challenge for the legal profession. Many young lawyers are often faced with difficult choices between the demands of their chosen career and the growing responsibilities of starting and raising families. While young lawyers rate the notion of work/life balance very highly, the challenge for the CBA is to look at the issue from two perspectives – young lawyers who are experiencing the challenge and more senior members of the profession – including managing partners – who are in a position to help them. The CBA is moving ahead with a new initiative to address the issues facing both young lawyers and law firms.

More...

http://www.cba.org/CBA/YoungLawyers/news/2009-03_barometer.aspx

Win a free online CLE: Tell us what you think

We want to hear from you about the types of Continuing Legal Education (CLE) and Professional Development programs that would help you better meet your changing needs. Our online survey will help us determine how to provide more relevant educational programs to the legal profession. The survey takes approximately 15 minutes to complete, and everyone who completes the survey will be eligible to receive 1 of 10 complimentary registrations to a CBA National Office *Online CLE* being offered before Dec. 31, 2009. Winners will be drawn at random from the pool of completed surveys.

Participate in the survey
www.cba.org/panel



2009 Annual Law Day Food Drive

Please join us in celebrating Law Day 2009 by participating in our Community Food Drive!

**Collect Food and Cash Donations
at your place of work and bring
them to the CBA-NL Branch,
Suite 304 Atlantic Place before
1:00 P.M. Friday, April 17th, 2009**

Proceeds will be donated to

**The Community Food
Sharing Association**

**To provide emergency assistance to
participants in the program**

**THE CBA-NL BRANCH 2009 LAW DAY COMMITTEE
WISH TO THANK ALL PARTICIPANTS FOR
SUPPORTING THIS EVENT!**

Squid pro quo Letters to the Editor

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

Please note the following:

1. Your letter must be single spaced, Times New Roman font, point size - 12 with one inch margins.
2. Letters must not exceed 250 words in length; Published letters will be edited for clarity and length without the prior approval of the author. Unpublished letters will not be returned.
3. Signatures of all authors are required (by fax will be acceptable), together with the author's full mailing address and daytime telephone number. Pen names and anonymous letters will not be published
4. Letters referring to a recent Squid pro quo article must be received within one month of its publication
5. Squid pro quo will not accept responsibility for statements made by contributors.

People and Places

Steve Willar, formerly with *O'Dea Earle*, has joined the *Plato Group* as in-house counsel.

Ken Templeton, formerly with *Stewart McKelvey*, has joined *Oceanex* as in-house counsel.

Todd Newhook, formerly with *Curtis Dawe*, is now with *Nalcor Energy*.

Andrew Wadden, is on secondment with *Johnson Inc.* from *Cox & Palmer*.

Jill Chisholm, formerly with the *Newfoundland & Labrador Legal Aid Commission*, has moved to Halifax.

Chris Hickey, formerly with, *Intergovernmental Affairs*, is now in-house counsel with *Verafin*.

O'Brien & Associates is now *O'Brien & Anthony*.

Nouveaux droits linguistiques dans le *Code criminel*

La Fédération des associations de juristes d'expression française de common law inc. (FAJEF) désire vous informer que, avec l'adoption récente du projet de loi C-13, le *Code criminel* précise que :

- tout accusé, qu'il soit représenté ou non, doit désormais être avisé de son **droit de subir un procès criminel dans la langue officielle de son choix**;
- l'accusé a droit à ce que le **juge de paix** présidant l'enquête préliminaire parle la même langue officielle que lui ou les deux langues officielles, le cas échéant;
- l'accusé a droit à ce que le **procureur de la Couronne** parle la même langue officielle que lui ou les deux langues officielles, le cas échéant.

New language rights in the *Criminal Code*

La Fédération des associations de juristes d'expression française de common law inc. (FAJEF) wishes to inform you that, with the recent passing of Bill C-13, the *Criminal Code* provides that:

- any accused person, with or without legal representation, must be advised of his or her **right to stand trial in a criminal proceeding in the official language of his or her choice**;
- the accused has the right to have a **justice** presiding over the preliminary inquiry who speaks the same official language as him or her or both official languages, as the case may be;
- the accused has the right to have a **Crown Prosecutor** who speaks the same official language as him or her or both official languages, as the case may be.



Information :

Fédération des associations de juristes d'expression française de common law inc.

200, av. de la Cathédrale, bureau 2303, Saint-Boniface (Manitoba) R2H 0H7 | (204) 235-4405 • fajefcl@ustboniface.mb.ca • www.fajef.ca

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