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# SQUID PRO QUO

THE VOICE OF THE LEGAL PROFESSION

CANADIAN BAR ASSOCIATION - NEWFOUNDLAND & LABRADOR BRANCH

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# Squid pro quo

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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.

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# Letter from the Editor



Pamela Taylor

This will be my last edition as Editor of the *Squid pro quo Magazine*. I have been a part of the Magazine Committee for the last six years. As I have stated previously, production of the Magazine is a collaborative effort. My sincerest thanks to past and present members of the Magazine Committee that I have worked with over the years. A special thank you to our Executive Director, Laura Churchill. Laura's knowledge and hard work has been invaluable to the Magazine. Janet Grant will be taking over as Editor of the Magazine and as the Communications Chair on the Canadian Bar Association Newfoundland & Labrador (CBA-NL) Branch Executive. Janet has been a long time member of the Magazine Committee. I look forward to the new ideas and perspective that she will bring to the Magazine. This also signals the end of my involvement with the CBA-NL Executive. I have enjoyed my time with the Branch but plan to take a hiatus for a little while. I will miss all those I have worked with over the last few years.

The Branch elections took place recently and the results can be found on the back page in this edition of the Magazine. Our Branch is lucky to have a membership that is continually willing to step up to the plate and become involved. This was quite evident in the fact that this year we had two contested elections. I would encourage everyone to check out the various Sections and Committees and consider becoming involved if you haven't all ready done so. Participating in Sections and Committees is a great way to get to know fellow members of the profession and keep abreast of developments in the law.

Over the past few months a number of changes have taken place within our judiciary. Chief Justice Green and Chief Justice Orsborn have taken over their new postions with the Court of Appeal and Trial Division. Chief Judge Reid has retired from the Provincial Court after a very long and distinguished career. There have been new judicial appointments to the Trial Division and to the Court of Appeal. In upcoming editions of the Magazine, we hope to be able to include In Personam articles on all of these individuals. In this edition, Sharyl Rowsell provides us with an informative and interesting In Personam article on Justice Charles White. Justice White was kind enough to speak with Sharyl about the motivation that led him to a career in law and his subsequent distinguished legal career which has led him to the Bench.

Our Section Chairs have been quite busy since the last edition of the Magazine. The abundance of Section reports in this edition are proof of their involvement. One Section Chair and Magazine Committee member must be signaled out for recognition here. Dan Glover, an ongoing Magazine contributor with his Case Digest feature, also provides us with a Section update and an article on the benefits of CBA membership. Thanks Dan!

I would like to wish all of you an enjoyable summer and, for those attending the Canadian Legal Conference in Dublin this year, a fabulous time!•

# President's Report

by Christopher Pike



I took my first Canadian Bar Association (CBA) job in September, 1993, when I became Chair of the Branch's Insurance Law Section. Senior members of the Bar may remember that this was the same time I finished parental leave which I had taken to stay home with my son, Matthew. Matthew finished high school in June. I cannot believe that it has been 16 years since I stayed home with him as a toddler, so you can only imagine how quickly my year as your President seems to have passed.

This has been a year of change in our courts, with the retirement of Chief Justice Wells resulting in Chief Justice Green and Chief Justice Orsborn assuming their new duties in the Court of Appeal and the Trial Division respectively, and with the retirement of Chief Judge Reid in the Provincial Court. I wish Chief Justice Green and Chief Justice Orsborn every success in their new positions and Chief Justice Wells and Chief Judge Reid long and happy retirements.

We also face a time of change in the profession. Commentators like Richard Susskind suggest that the next decade will see significant changes in our profession. In his book, "The End of Lawyers?", Mr. Susskind speaks of disruptive technologies, so called because they will prompt radical change, which will transform our profession and profoundly impact the way we interact with our clients. The Branch's next leaders will have to grapple with these same technologies to ensure that we stay relevant to our members. I am confident that they will be up for the challenge.

The success of the Branch this year has been the product of the hard work and team effort put forth by the Executive Committee and the members who serve on our various committees. In April, during Volunteer Week, I acknowledged each of the Branch's volunteers individually and said thank you to them on your behalf. I wish to repeat that thanks for all their hard work here. It is only with their efforts that the Branch can deliver good value for the fees you pay.

When I say thanks for the efforts that have made this year a success for the Branch, I must single out Laura Churchill, our Executive Director. Laura has brought a fresh perspective to the work of the Branch. She is well in tune with the outlook and expectations of our Young Lawyers, while being sensitive to the needs of our long time members. Laura has worked hard to advance the interests of the Branch and I thank her for her support, patience, good humour and especially her courage to nag me when I deserved it.

I must also thank my wife, Anita, and children, Matthew and Caroline. Since I took that first CBA job in 1993, I have served three years on the national Board of Directors and chaired the National Sections Council. In addition, I have served on several committees and boards within CBA, and ran for national President in 2003. It would be a huge understatement to say I needed their support to do so. I deeply appreciate their willingness to accept my absence on so many evenings and weekends while I worked on one CBA project or another.

My final thanks goes to you, the members. Thank you for the opportunity to serve as your President. It has been an honour and a privilege to work on your behalf. •



CBA-NL 2009 Annual General Meeting Dinner



# The Benefits of Membership

By Daniel M. Glover



In my view the most important benefit to Canadian Bar Association (CBA) membership is the opportunity for personal enrichment, the ability to use and develop communication and analytical skills that are crucial for practicing law and to become actively involved in current trends and issues facing lawyers. This sentiment was echoed by the Chair of the National Civil Litigation Section at our meeting in Ottawa. An experienced litigator, who stated that such meetings provide invaluable insights that she sees as an integral contribution to her practice. The meeting was a great opportunity to discuss current developments in civil litigation from around the country. Beyond a static reading of informational reports, the meeting provided an opportunity for lively debate, discussion and sharing of ideas on changes to procedural rules being enacted and contemplated across Canada. I am grateful for the opportunity to be involved in this work.

In our own jurisdiction the opportunity has come before us as CBA members and as lawyers to affect the future direction of how litigation, in particular the awarding of costs, is done in this Province. Although this issue has been circulated via a general email from the law society, the CBA affords its members the chance to meet and formulate a position that advocates specifically on behalf of practicing litigation lawyers having regard to their concerns and their clients' interests. CBA members have vigorously seized similar opportunities in other jurisdictions. Their efforts have included lobbying of Justice Ministers and rules committees in order to stop controversial and arguably detrimental changes that focus less on access to justice and every citizen's right to pursue a remedy before our Courts and more on streamlining the justice system.

Another opportunity being offered by the CBA for active participation is the recently initiated *pro bono* mentorship program. The program supports lawyers currently providing, or wishing to provide, *pro bono* legal services. Other provinces have had a number of *pro bono* success stories. In British Columbia, for instance,

Dale Darychuk, a 25-year call in a civil litigation practice, approached the Administrative Judge and Small Claims Registrar about providing *pro bono* duty counsel in Small Claims Chambers which runs two days per month. With many individual lawyers contributing their time to this project, the local bar has been able to provide for every Chambers date since January, 2007.<sup>1</sup>

CBA court interventions are also made possible by the generous contributions of CBA lawyers as only disbursements are funded by the CBA.<sup>2</sup> In 2008, the CBA intervened at the Supreme Court of Canada in *Privacy Commissioner of Canada v. Blood Tribe Department of Health*. At issue was whether the Privacy Commissioner could compel production of documents when a claim of solicitor-client privilege is asserted during an investigation under the Personal Information Protection and Electronic Documents Act (PIPEDA). These interventions would not be possible without the continued support of CBA members and the active role taken by dedicated individuals willing to donate their time. •

1. See [probononet.bc.ca/recognition.php](http://probononet.bc.ca/recognition.php).  
2. See [www.cba.org/CBA/Advocacy/LLRcommittee/Public.aspx](http://www.cba.org/CBA/Advocacy/LLRcommittee/Public.aspx), article 13(2)(e) of the CBA Regulations.



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## SECTION UPDATE

### Aboriginal Law Section

By Steven Scruton



The Aboriginal Law Section has been busy since the last update, particularly at the National level, where the Section has been actively liaising with the Federal Court in multiple forums on the practice of aboriginal law in the Federal Court and other issues of importance to the Section. Representatives from the National Section also met with the Federal Department of Justice in November of 2008 to discuss various topics related to aboriginal law, and are set to meet again this November, 2009.

In addition to these meetings, the National Section has been actively involved in considering and making submissions on issues of legal and legislative reform, including on the Indian Residential Schools issue. A draft resolution has been prepared for submission at the upcoming Canadian Legal Conference for the new federal specific claims tribunal, and Bill C-5, which contemplates certain amendments to the federal *Indian Oil and Gas Act*. One topic of particular relevance which is being addressed in consultation with the National Family Law Section relates to the proposed Bill C-8, which purports to change the present legal situation for family homes and matrimonial property on reserves.

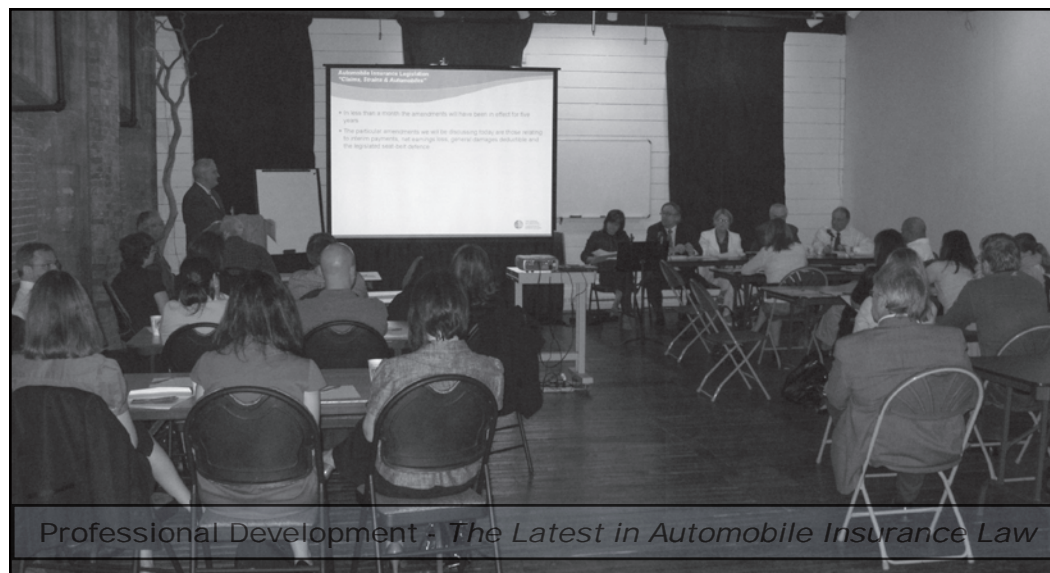
At the local level, the Section arranged to show “The

Meaning of Life” in conjunction with the Criminal Justice Section. This documentary by Hugh Brody examines the special rehabilitation model at Kwikwèxwhelp, a correctional facility which involves a collaboration between the Chehalis Nation of British Columbia and the Correctional Service of Canada, wherein Aboriginal spirituality and community are included as central elements in the rehabilitation process. The film offered insight into alternatives to our traditional models of punishment and rehabilitation, and provided an honest and uncompromising view of some of the advantages and challenges involved with using such models. The film is now held by the Canadian Bar Association (CBA) and is available to be borrowed by any interested CBA member by contacting Laura Churchill at [cba-nl@cba.org](mailto:cba-nl@cba.org).

The foregoing summarizes some of the key Section activities over the past few months. As always, I am happy to hear from any CBA members interested in becoming involved in the Section, and would welcome the chance to chat at greater length about our activities and the legal changes in this practice area. I can be reached via e-mail at [sscruton@smss.com](mailto:sscruton@smss.com).



2009 AGM Dinner



Professional Development - *The Latest in Automobile Insurance Law*

## SECTION UPDATE

By Daniel M. Glover

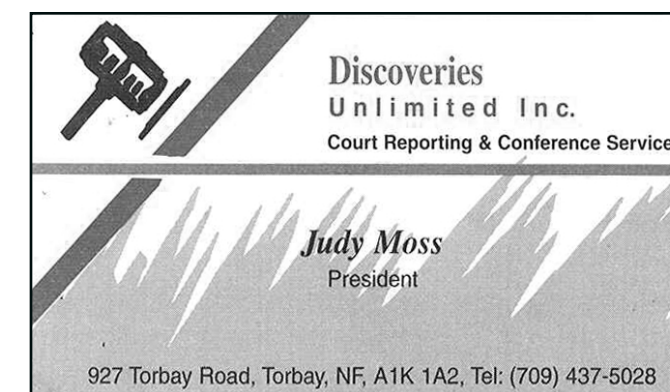


The spring meeting of the National Civil Litigation Section was held in our nation's capital. I was happy to meet such a pleasant and highly capable group of colleagues from around the country. After introductions, the first item on the agenda for the meeting was a recent proposal brought to the Ontario Bar Association (OBA) executive for the creation of a National Working Group to develop a harmonized pan-Canadian approach to national class actions or class actions that are extra-provincial in scope. The Chief Justice of Ontario and the class action subcommittee of Ontario's Civil Litigation Section will be involved in consultation among courts and practitioners in all the provinces concerning possible approaches to jurisdictional issues. It was resolved that a national working group should be supported in principle and that the National Section would work with the OBA. Since the meeting a “steering committee” has been formed including members from around the country that will give direction to the project. Canadian Bar Association (CBA) staff member Kerri Froc also reported on the National Class Actions Database. Compliance across the country varies, although feedback has been generally positive, and upgrades to the system are underway.

The Branch reports from the various provincial Civil Litigation Section Chairs and the ensuing discussion provided some excellent insight into the issues facing the various jurisdictions. In Alberta, efforts have been focused on the final report of the Rules of Court project from the Alberta Law Reform Institute, by virtue of which new rules are expected to come into force in 2010. Some of the proposed changes have generated controversy. Members in British Columbia are also engaged in discussions concerning controversial rule changes. One includes replacing the previous goal stated in the British Columbia Rules of Court of securing “the just, speedy and inexpensive determination of every proceeding on its merits” with the objective that all proceedings should be dealt with justly and pursuant to the principles of proportionality. The British Columbia branch has been actively engaged in making submissions in response to draft Rules changes. Ontario also has

proposed rules changes that will become effective January 1<sup>st</sup>, 2010. Lee Akazaki reported that the OBA and the Attorney General in Ontario have developed a good relationship. The OBA were consulted well in advance of the rules changes. There was discussion of the death of the civil trial in Ontario since 90% of Supreme Court trial time is now dedicated to criminal matters and similar trends were reported from other jurisdictions. Anne McConville from the Yukon reported that the Territory's first set of Court Rules became effective September 15<sup>th</sup>, 2008 and that their Section has been focusing on this major development as well as planning regarding litigation document management systems and software. Prince Edward Island will be introducing a new *Judicature Act* and realigning the trial and appeal courts as a result. Quebec has instituted mandatory CLEs and sole experts in order to cut Court time taken up by competing experts. New Brunswick has been focusing on a new minor personal injury cap and Saskatchewan on proposed rule changes including electronic document discovery. My report focused on the proposed change to the scale of costs, our plan to meet and make submissions concerning the proposal and discussions from Section meetings held over the last year.

There was also discussion of various CLEs planned for the upcoming year and the newsletter which was distributed on July 8<sup>th</sup>, 2009.



## SECTION UPDATE

### Construction Law Section

By Jennifer Newbury



At the Branch level, the Construction Law Section hosted a Lunch and Learn Session on May 21, 2009, with guest speakers the Honourable Robert Wells and John O'Dea. The topic for this Session was entitled "How to Plan a Construction Litigation Claim and How to Use Mediation and Settlement Conferences as an Effective Means to Resolve a Construction Law Dispute". The guest speakers provided helpful tips and insight into navigating through and resolving a construction litigation claim.

A follow-up Lunch and Learn Session is scheduled for September, 2009, with guest speaker Stephanie Hickman of Cox & Palmer on the topic "A Primer for Mechanic's Liens".

The National Construction Law Section meeting was held on May 30, 2009, in Ottawa. During the meeting there was discussion regarding the 2010 spring CLE for construction law tentatively scheduled for Quebec City. The Section is hoping to repeat the success of the previous CLE held in Banff, Alberta in 2008.

Provincial Branches provided updates regarding activities in their jurisdictions. In Nova Scotia, there have been several recent decisions in the tendering area. In each case, the plaintiff was successful in obtaining a ruling that Contract A had been breached and in particular the implied term in Contract A that all bidders must be treated fairly. See *Force Construction Ltd. v. Queen Elizabeth II Health*, 2008 NSSC 214, 2008 CarswellNS 463; *Port Hawkesbury (Town) v. Borchardt Concrete Products Ltd.*, 2008 NSCA 17, 2008 CarswellNS 74; and *Amber Contracting Ltd. v. Halifax (Regional Municipality)*, 2008 NSSC 208, 2008 CarswellNS 345.

One of the most interesting decisions this year for Ontario Construction Law Practitioners was the decision of *Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada*, (2008) 299 D.L.R. (4th) 1 (S.C.C.). This case originated in the Ontario Superior Court of Justice. The applicability of an exclusion clause

in a builder's risk insurance policy was at issue.

In British Columbia, there was an interesting presentation by the CEO of a company, TRE Canada Inc., that uses satellite borne radar that senses and records earth movement. This technology has been relied upon in legal proceedings in Europe in an effort to prove the cause of structural damage and has started to become better known in Canada. Certain builders are also using the technology during construction to assess the impact of their projects on surrounding structures. The technology has been used on the Canada Line transit system being built between downtown Vancouver and the Vancouver airport to determine whether the tunnel excavation has impacted the stability of certain buildings located along the alignment.

South of the border, the American Bar Association Construction Law Forum recently held a meeting in New Orleans to discuss developments in energy, sustainability and green building. The meeting was attended by a representative of the National Construction Law executive, who was among the approximately 400 construction law practitioners, consultants and exhibitors in attendance. The meeting presented a unique opportunity to review the focus of the new Obama administration on renewable energy such as wind, solar, geothermal, tidal and biomass as well as the renewed interest in nuclear energy.

There are a number of new federal, state and municipal legislative initiatives in the United States, which will likely impact Canadian green energy companies. •



## SECTION UPDATE

### Family Law Section

By Suzanne Orsborn



On June 19 and 20, 2009, St. John's played host to the spring meeting of the National Family Law Section (NFLS), following the trend over the past few years of the NFLS meeting in a smaller jurisdiction. This provided an opportunity for the Section to participate in a Public Legal Education Session held at the Geo Centre on the evening of June 18, 2009, and a Professional Development Session, held at The Studio on June 19, 2009. Several members of the NFLS were on hand at the Public Legal Education Session to present on different topics, along with Jacqueline Pelletier from the Department of Justice as well as myself. The enthusiasm of the presenters, however, was not met with an equal enthusiasm from the public and we were disappointed to greet only one person at the session. Fortunately, attendance at the Professional Development Session, "Hot Topics in Family Law" was quite good. A number of members of the NFLS and of the local bar, as well as one member of the bench, participated in a variety of presentations over the course of the morning. A special thank-you to all who presented, and in particular to our local presenters Brian Furey, Q.C., Lori Savory and the Honourable Madam Justice Deborah Fry. Many thanks as well to Laura Churchill, Executive Director of the Newfoundland and Labrador Branch of the Canadian Bar Association (CBA) for her very hard work in putting this event together.

There were several highlights arising out of the June 19 and 20 meeting of the NFLS. Ms. Lise Lafrenière-Henrie provided an update from the Federal Department of Justice. Of particular note is Bill C-422, otherwise known as the "Velacott Motion", which received first reading in Parliament on June 16, 2009. This Bill, if passed, would introduce significant amendments to the *Divorce Act*. In particular, the amendments would create an obligation upon the court when making a "parenting order" to "apply the presumption that allocating time equally between the spouses is in the best interests of a child of the marriage" and to "apply the presumption that equal parental responsibility is in the best interests of a child of the marriage." These presumptions would

only be rebutted if it is "established that the best interests of the child would be substantially enhanced by allocating parenting time or responsibility other than equally". The CBA has taken a strong position against similar bills in the past, and intends to do so in this case. The primary concern of the CBA is that this bill inappropriately shifts the focus in custody and access orders away from the best interests of the child, and will result in increased litigation of custody and access issues. All practitioners are strongly encouraged to review this bill, which may be accessed through the Parliament of Canada's "LegisInfo" website at <http://www2.parl.gc.ca/Sites/LOP/LEGISINFO/>.

Another issue discussed at the meeting was the impact that tax regulations have in a family law context. This includes the requirement to provide receipts and records of payments made to receive a tax deduction for spousal support as well as the fact that a payor of spousal support is not eligible to deduct legal fees relating to spousal support determination, whereas a recipient of spousal support may deduct such fees. Anyone interested in providing input on this issue may contact me.

The issue of a Code of Conduct for family law lawyers, which is one that the NFLS has been addressing for some time, was also discussed. The initial reaction of the NFLS was that it was generally opposed to the concept of a Code of Conduct specifically for family law lawyers (though there was some support in British Columbia, where this is an active issue). British Columbia is now considering implementing a "Statement of Core Values/Principles" as opposed to a Code of Conduct, and this concept received a more positive reception from the NFLS.

Perhaps the most significant development from across the country was the recent release of the "Report of the Access to Family Justice Task Force" in New Brunswick.

(Continued on page 23)



## SECTION UPDATE

### Health Law Section

By Colin Feltham



The National Health Law Section meeting took place on May 20<sup>th</sup> and 21<sup>st</sup> in Vancouver, British Columbia. Colin Feltham was unable to attend so I went on his behalf. We began with a working dinner on the evening of May 20<sup>th</sup>. All Branch Chairs or representatives were in attendance, with the exception of a representative from Nova Scotia. Reports were presented over two days on Section activities and legal developments in the various jurisdictions. The written reports will be posted on the Section webpage for those who are interested at [www.cba.org/CBA/sections\\_Health/main/](http://www.cba.org/CBA/sections_Health/main/).

Our Branch report focused on the Commission of Inquiry into Hormone Receptor Testing since it has been at the forefront in terms of recent health issues in Newfoundland and Labrador. The meeting attendees were very interested in this topic, particularly Eastern Health's unsuccessful application to protect certain reports from public disclosure. Some concern was expressed about Commissioner Cameron's recommendations that Government consider whether s. 8.1 of the *Evidence Act*, R.S.N.L. 1990, c. E-16 remains relevant and that disclosure to patients with respect to adverse events involve providing patients with a copy of any peer review or quality assurance report. It was recommended that these rights be entrenched in legislation and given priority over any prohibition contained in s. 8.1. Commissioner Cameron also recommended that Government adopt apology legislation and it was noted that many jurisdictions have already done so. Our own *Apology Act*, S.N.L. 2009, c. A-10.1 received Royal Assent on May 28, 2009 and it outlines the effect of an apology on liability.

Our report also highlighted the fact that the *Personal Health Information Act*, S.N.L. 2008, c. P-7.01 was assented to in June of 2008 but is not yet in force. This *Act* will apply to a wide variety of custodians of health care information, including health care authorities, the Workplace Health, Safety and Compensation Commission and health care providers. It gives a framework for the collection, use and disclosure of personal health information. The related

area of electronic health records and privacy issues was one of the topics explored at the CLE Conference: "Critical Issues in Health Law: A National Summit" from May 21-22. The presenters did a good job of canvassing many of the potential benefits and challenges of the e-health environment.

The Conference was co-chaired by Lonny Rosen and Kimberly Jakeman, Chair and Vice-Chair respectively of the National Health Law Section. One session involved presentations in the area of medical ethics, end of life and critical care decisions. The well-publicized case of *Golubchuk v. Salvation Army Grace Hospital* 2008 MBQB 49 was discussed. This case involved an 84-year-old patient with brain damage and an untreatable heart condition who was being maintained on life support in hospital. The patient's kidneys started to fail but then his condition plateaued. His treating physicians concluded that termination of life support was appropriate, but the Patients' Committee successfully brought a motion for an interim injunction restraining the physicians and hospital from terminating life support. This injunction was then continued until trial. Since Mr. Golubchuk passed away before trial, there are still unanswered questions relating to termination of life-sustaining treatment.

There was also a presentation on the advent and impact of shared care and collaborative practice as well as a very thought-provoking session on the duty of care in the "wrongful life" context. *Paxton v. Ramji* 2008 ONCA 697 was analyzed from various perspectives. That case involved a 25-year-old patient who was prescribed a teratogenic drug (Accutane) by her family doctor. The physician advised Ms. Paxton of the necessity of not becoming pregnant while taking the drug, and determined that her husband had undergone a vasectomy about four years earlier. The physician had administered two pregnancy tests which came back negative. It was then discovered that the plaintiff was in fact pregnant, her husband's vasectomy having failed.

(Continued on page 23)

## SECTION UPDATE

### Insurance Law Section

By Peter Shea



As Insurance Law Section Chair, I was pleased to assist with the arrangement of the professional development component of the Branch's Annual General Meeting (AGM). The idea of a five year retrospective on the 2004 amendments to the *Automobile Insurance Act* was initially a proposal for a Lunch and Learn Session for the Insurance Law Section, and with the help of the Branch Executive and Professional Development Committee we assembled a great panel to discuss this issue, as well as the issue of bifurcation of claims, as part of the AGM's professional development component. Our panel included representatives from the judiciary, defence bar, plaintiff bar as well as the insurance industry in order to provide a 360 degree perspective to seminar attendees.

In the most recent edition of the Canadian Bar Association (CBA) National Insurance Law Section Newsletter, I contributed an article entitled "*Light at the End of the Tunnel an Oncoming Train for Insurers: Canadian National Railway Co. v. Royal and SunAlliance Insurance Co. of Canada*." This article discussed the Supreme Court of Canada decision noted in the title as it related to the "faulty or improper design" exclusion common in all-risks policies.

On December 11, 2008, the Insurance Law Section held a Lunch and Learn Session entitled: "*Use or Operation of a Motor Vehicle: The Evolving Two-Part Test and the Implications for Automobile and General Liability Insurers*", with guest speaker Jorge P. Segovia of Cox & Palmer. Jorge, who had recently published a paper on this issue in the *Canadian Journal of Insurance Law*, gave an informative lecture and discussed the implications of recent jurisprudence on this topic to those in attendance.

Our National Insurance Law Section meeting took place on December 6, 2008 in Ottawa. What an exciting time to be in our nation's capital! You will all recall that Parliament was prorogued that week, and the atmosphere in Ottawa was electric. Our meeting wasn't prorogued however, and there was an excellent round table discussion

on developments and news across the country. A consistent theme was tort reform. Here are some highlights from the reports from across the country:

There have been no legislative developments in the area of insurance law in the past year in Newfoundland and Labrador, and there is no ongoing process of tort reform within the provincial judicial system.

Cases of note within the past year include *Hefferan v. Andrews*, which clarified the law with respect to implied consent to possession of a motor vehicle for the purposes of vicarious liability under our *Highway Traffic Act*. The operator in this case only had permission to drive the vehicle on the farm on which he worked. He travelled outside of the farm, and an accident occurred. The insurer argued that as the operator breached the restriction on which he was given possession of the vehicle, he accordingly had no consent to operate the vehicle. The judge disagreed, and held that a breach of a condition or restriction going to the mode of the operation of a vehicle does not negate the statutory presumption of consent to possession. This was a significant clarification of the law in this jurisdiction, and the decision was not appealed. Accordingly, if a person has consent to possession, regardless of any restrictions placed on operation, an insurer will not be able to argue that there was no consent for the operation of the motor vehicle.

Another notable decision handed down in the past year was *Kennedy v. CGU Insurance Co.* Kennedy claimed against her Section D insurance in respect of an injury sustained in Florida. Kennedy's Section D coverage provided her with the lesser of \$200,000.00 (minimum limits in Newfoundland & Labrador), and the minimum limit in the jurisdiction in which the accident occurred. There is no requirement for liability coverage under Florida Law, and Florida accordingly did not prescribe minimum limits of insurance.

(Continued on page 24)

## SECTION UPDATE

### Intellectual Property Law Section

By Erin Best



I stepped into the position of Intellectual Property (IP) Section Chair on March 18<sup>th</sup>, 2009. In the past few months we have had a few interesting developments.

On March 31st, 2009, Mandy Woodland, a member of the Canadian Bar Association (CBA) IP Section, and I met with Cecile Klein, Canadian Intellectual Property Office (CIPO) Business Development Officer. Ms. Klein has been traveling around Atlantic Canada providing outreach services for many years. One of their central goals is to create, in the mind of business owners, an awareness of the importance of a well organized IP strategy. Of course, this business strategy includes legal advice, especially in the areas of patent and trademark registration s as well as licensing. The relationship between CIPO and Newfoundland and Labrador's IP law practitioners is symbiotic and promises great things in the future.

On April 2nd, 2009, Ms. Klein participated in a round table discussion at the CBA office as part of the IP Section's Lunch and Learn Session. Once again, Ms. Klein had valuable information to offer on the climate and practice of IP law in Canada.

On May 21st, 2009, I met with CIPO Patent Officer Luc Louis-Seize. In preparations for our meeting I asked Newfoundland and Labrador's newest Patent Agent, Nicholas Whalen of McInnis Cooper, to prepare a few discussion topics for Mr. Louis-Seize to address at our meeting. Mr. Louis-Seize was pleased to address all three, beginning with a discussion of the proposed updates to the Manual of Patent Office Practice (MOPOP). If you would like to make a comment or offer a suggestion regarding the updates to the MOPOP please visit the MOPOP website at [www.cipo.gc.ca](http://www.cipo.gc.ca) and send an email to Chris Evans. Your email will be posted on the site and will be considered by the MOPOP updating committee.

Our second topic involved the timeline for the changes required to bring Canadian patent legislation into

conformity with the *Patent Law Treaty*. According to Mr. Louis-Seize, such changes are in the very early stages of contemplation. The committee dealing with this has decided to tread slowly and cautiously. We may expect to see some changes in the legislation within the next five years.

Lastly, we discussed the new rules regarding CIPO fee payments which came into effect on June 8th, 2009. There is a new form on the CIPO website for all fee payments. CIPO will not longer encourage registrants to maintain a long-term balance in a CIPO account. Instead, on the payment form, you will be asked for a primary and alternate method of payment for each registration. If the primary payment amount is not sufficient CIPO will access the alternate payment source.

On June 29th, 2009 a presentation on my Google Book Settlement presentation was scheduled as a part of the IP Section's Lunch and Learn Session. Unfortunately the session was cancelled. The Google Book Settlement involves a class action lawsuit that involves the Google Library Project. In 2004, Google announced that it had entered into agreements with several libraries to digitize books, including books protected by American copyright law, in those libraries' collections. Several authors and publishers brought this lawsuit against Google, claiming that its digitization without permission infringed their copyrights. Instead of resolving the legal dispute over whether Google's digitization and display of the books is permissible under American law as a "fair use," the parties negotiated a settlement. This settlement applies to authors in Canada and abroad. See [www.googlebooksettlement.com](http://www.googlebooksettlement.com) for more information

The Intellectual Property Institute of Canada (IPIC) will be holding their 83<sup>rd</sup> Annual Meeting and Conference here in St. John's this September 23rd to 25th, 2009.

(Continued on page 24)

## SECTION UPDATE

### Maritime & Admiralty Law Section

By William Cahill



The 2008-2009 year has been an active one with respect to the activities of Maritime and Admiralty Law Section, particularly on the National level due to an unusual amount of maritime related legislation before the House of Commons and the Senate. The following is a summary of the current legislation and the activities of the National Maritime Law Section with respect to said legislation:

1. Bill C-7 amendments to the *Marine Liability Act* and the *Federal Courts Act* has attracted much debate from the legal community as well as from industry groups in the marine sector. On April 21, 2009, the National Maritime Law Section made a submission to the Standing Committee on Transportation, Infrastructures and Communities. The submission addressed various issues surrounding adventure tourism, maritime liens and marine limitation periods.

In addition to the formal submission, representatives from the National Maritime Law Section appeared as late as June 16, 2009 before the Senate Committee on Transportation and Communications to address the concerns of the Senate, particularly with respect to the exclusion of the adventure tourism sector from certain elements of the *Marine Liability Act*. To date, Bill C-7 has not received 3<sup>rd</sup> reading and it appears that the Senate may be proposing amendments to the Bill due to the concerns raised by organizations such as the Canadian Bar Association (CBA).

2. Bill C-16 an Act to amend the *Antarctic Environmental Protection Act* received Royal Assent on June 18, 2009.

3. In conjunction with the National Environmental Law Section the National Maritime Law Section prepared a submission respecting former Bill C-32 an Act to amend the *Fisheries Act*. Unfortunately, this Bill never went past first reading and has yet to be revived. However, the joint submission reached

the final stages of approval and may still be submitted in the near future to ensure that when the Bill is revived, the concerns of the CBA are addressed.

4. Finally, the National CBA Maritime Law Section prepared a submission in March 2009, as a follow up to a previously made submission on the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea ("Rotterdam Rules"). In the updated submission, the Section stated that the Rotterdam Rules, while not perfect, represent the best attempt to achieve harmonization in the world's shipping sector and that Canada should send representatives to sign the convention subject to ratification.

In addition to legislation reform work undertaken by the National Maritime Law Section, a pivotal decision from the Supreme Court of Canada regarding fishing licences was rendered in October 2008. In *Royal Bank of Canada v. Saulnier*, the Supreme Court of Canada held that a fishing licence was unquestionably a commercial asset under the *Bankruptcy and Insolvency Act* and s. 2 of the *Personal Property Security Act* (Nova Scotia). As a result of the decision of the Supreme Court, fishing licences now form part of the estate of the bankrupt and can be seized and sold by the trustee for the benefit of the estate's creditors. The effects of this decision are beginning to be seen in Newfoundland and Labrador, especially among fishermen and women who have declared personal bankruptcy or were planning to do so. To date, it remains to be seen how the Federal Government may deal with the decision. The Maritime and Admiralty Law Section is planning a Lunch and Learn Session on the *Saulnier* decision in the near future for members of the CBA.

Feel free to contact me at [wcahill@coxandpalmer.com](mailto:wcahill@coxandpalmer.com) for further information on any of the information above or to suggest topics for future Lunch and Learn Sessions.

(Continued on page 24)



# In Personam

## The Honourable Justice Charles William White

The Honourable Mr. Justice Charles William White was appointed as a Justice of the Newfoundland and Labrador Court of Appeal on April 29, 2009. A swearing-in ceremony, held on June 3, 2009, was attended by many co-workers, family and friends.

Justice White, the eldest of five children, was born in 1947 to Delilah and the late George White. For the first seven years of his life, Justice White lived in Dunville, Placentia Bay while his father worked at the American military base in Argentina. The family then relocated to Mount Pearl.

Justice White was involved with the Air Cadets as a child and was accepted to Royal Military College after high school. However, an ear infection damaged his hearing so that he could not fly with the military. He decided to enroll at Memorial University of Newfoundland (MUN) in the Arts program. After a year, he switched his program to Commerce, graduating from MUN with a Bachelor of Commerce in 1968. He considered studying for his Masters, but ultimately decided to attend Dalhousie Law School, where he was joined in his first year of studies by now Justice Margaret Cameron and Chief Justice Derek Green.

Justice White graduated from law school in 1971 and articulated under now retired Court of Appeal Justice William Marshall. He was called to the bar in February 1972 as the 327<sup>th</sup> member of the Law Society of Newfoundland and Labrador. Only two others were called to the bar at that time: Justice Margaret Cameron and Lloyd Easton. He began his practice of law by going into partnership with his articling principal. Marshall and White boasted only one assistant when it began in 1972. The firm

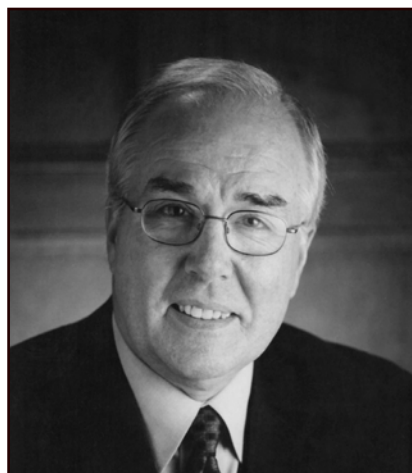
expanded over the years, eventually becoming White, Ottenheimer and Baker, as we know it today, a law firm with more than 50 lawyers and staff.

It is interesting to note that Justice White's appointment to the Court of Appeal was announced at the same time as the appointment of the Honourable Valerie L. Marshall, Q.C. to the Supreme Court of Newfoundland and Labrador, Trial Division. Justice Valerie Marshall is the daughter of Justice William Marshall and a former articling student of Justice White.

Justice Valerie Marshall's is not the only legal career influenced by Justice White. John Baker, Q.C., a partner at White, Ottenheimer and Baker, was introduced to the legal profession as a student in Justice White's Business Law class at MUN, which he taught for four years. In fact, Justice White encouraged him to apply to law school and wrote a recommendation letter for him, with the hope that he would return to St. John's to practice with Justice White's firm.

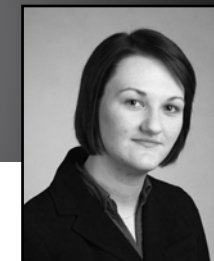
When asked why he entered into the legal profession, Justice White said the idea first came to him when, owing to his mother's encouragement, his father brought him to hear John Diefenbaker speak at Pitts Memorial Hall during the federal election in the late 1950's. Even at that early age, Justice White was interested in the many opportunities available to someone with a law degree, which he still feels is true today. Justice White spoke of the law as a tremendous profession, providing many opportunities to volunteer and be involved in the business community.

At the beginning of his career, Justice White had a diverse practice. He particularly enjoyed litigation, but soon decided to develop the firm's commercial practice, leaving much of the litigation to now Chief Justice



Justice Charles William White

By Sharyl Rowsell



Green, who worked with him for 18 years. His decision to practice commercial law was clearly a good one. Since the 1980's, Justice White has been sought as a legal advisor in countless major commercial litigation and commercial transactions.

Justice White was appointed Queen's Counsel in 1984 and Master of the Supreme Court in 1990. He received an Honorary Doctorate of Laws from MUN in 1989. In 2005, he was awarded the Gerald Schwartz School of Business and Information Systems' Distinguished Leader award from St. Francis Xavier University.

Justice White has been a Canadian Bar Association member since he first started his practice. He served on the Discipline Committee of the Law Society of Newfoundland and Labrador for approximately 10 years. He also chaired the Scholarship Committee until his appointment to the judiciary.

In addition to his many law-related activities, Justice White has been involved with numerous other organizations. He has served as Chair of the Board of Regents of MUN, Chair of the Mental Health Review Board, Chair of the Public Accountants Licensing Board, Chair and Director of the Boards of Aliant and Newtel, Chair and Trustee of BMO Mutual Funds, Deputy Chair and Director of Unifund Assurance Company, the Johnson Corporation, Director of North Atlantic Refining Ltd., Director of Stratos Global Corporation and Director of Royal and Sun Alliance Insurance Company of Canada. He also served as the Newfoundland and Labrador Vice-Chair of the Board of Governors of APEC, Vice-Chair of the Labour Relations Board and a member of the Board of ACOA.

Justice White believes that his new role as a Justice of the Court of Appeal will give him the opportunity to get back to "pure law", in which he has always been very interested. He will, however, miss the people at White, Ottenheimer and Baker, and he will particularly miss going to lunch with the junior lawyers. He loves talking

to young lawyers and enjoys their enthusiasm.

When asked about his advice for practicing solicitors who will appear before the Court of Appeal, Justice White emphasized the importance of respect between solicitors and judges. He says that he has an appreciation for the effort that goes into putting together a Court of Appeal case.

In his spare time Justice White enjoys salmon fishing. He and his wife, Susanne, visit their cabin in Placentia Bay on many weekends, both summer and winter. He has two daughters, Kimberley and Andrea, and a son, Andrew, who works as a Legal Aid lawyer.

It is clear that Justice White greatly enjoys the practice of law, not only because of the subject matter, but because of the people he works with. No matter if he's discussing co-workers or fellow directors or committee members, he always emphasizes the pleasure of working with each person. I'm sure this trend will continue as he works with the other justices and administrative staff at the Court of Appeal.

On behalf of the *Squid pro quo* Magazine, I would like to thank Justice White for taking the time to speak with me. •

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## SECTION UPDATE

### Privacy & Access Law Section

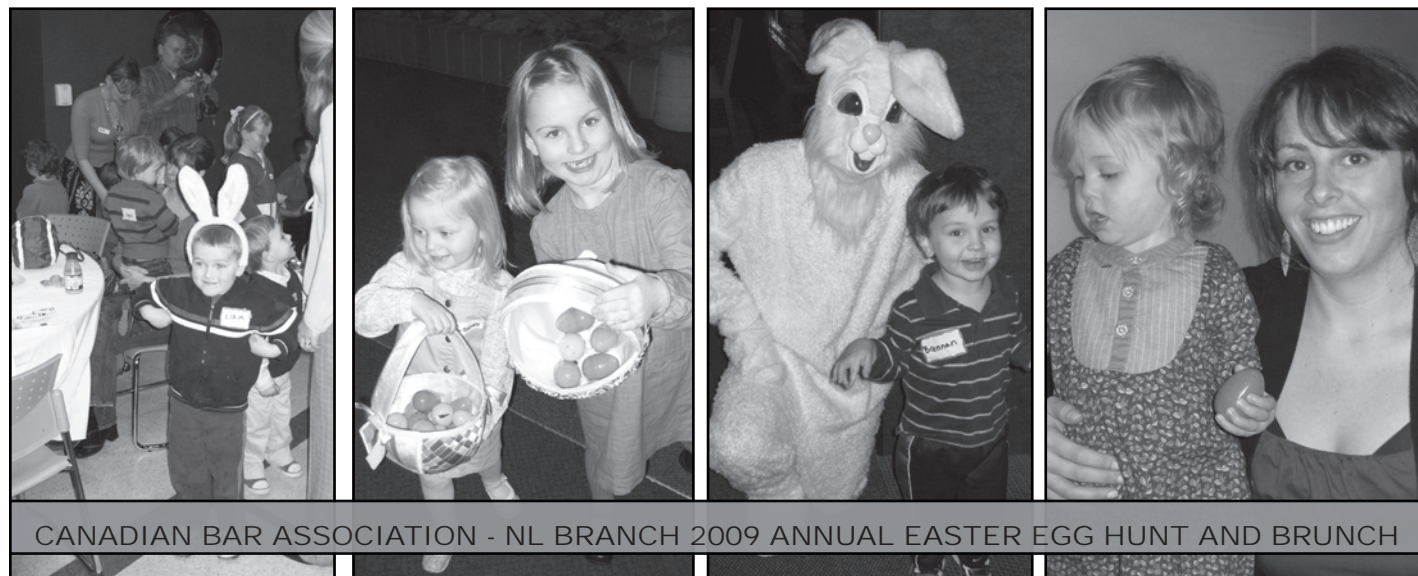
By Mandy Woodland



The Newfoundland and Labrador Privacy & Access Law Section held two successful Lunch and Learn Sessions this year. Our Section is quite small, but we have been fortunate to have involvement of members of other sections for each of our sessions. On December 15, 2008 Sandy Hounsell (Outreach Advisor for the Federal Privacy Commissioner's Office) led a roundtable discussion of the Supreme Court of Canada "Blood Tribe" decision (2009 SCC 44). Because of its implication to the area of solicitor-client privilege, the civil litigation section participated in this session, and an excellent discussion was held surrounding the Privacy Commissioner's mandate and potential consequences of the recent Supreme Court of Canada decision. On January 13, 2009 our Section hosted a second Lunch and Learn Session with presentations from the Office of the Information and Privacy Commissioner (OIPC). Ed Ring, Information and Privacy Commissioner for Newfoundland and Labrador, and Dan Peyton, Senior Investigator with the OIPC, discussed awareness of the OIPC, the evolution of this office, legislative issues in privacy and access, and summarized interesting Commissioner's decisions from 2008. Members of the government and Public Sector Section also participated in this session.

Nationally, our section has held numerous conference calls and addressed a number of issues, including consultations with the federal Department of Justice on cross-border law enforcement, review of the Canadian Medical Association's Health Information Privacy Code, organization of an online CLE, issues of legislative reform (PIPEDA, Privacy Act, and ATLA), privacy issues relating to cross-border data transfer, and joint initiatives with the provincial information commissioners, which include jurisdictional issues and Right to Know/Right to Privacy Weeks. We hope to have the National Section meeting for 2009 in St. John's in September, in conjunction with a meeting of the federal and provincial Information Commissioners.

Section members are encouraged to contribute to the section newsletter, "Privacy Pages" and/or to volunteer with one of the many national section committees. Feel free to contact me (mwoodland@coxandpalmer.com) for further information. I encourage you to visit the section website at: [http://www.cba.org/CBA/sections\\_privacy/main/](http://www.cba.org/CBA/sections_privacy/main/) to view previous editions of Privacy Pages, find information on committees and join the listserv!•



CANADIAN BAR ASSOCIATION - NL BRANCH 2009 ANNUAL EASTER EGG HUNT AND BRUNCH

## SECTION UPDATE

### Real Property Law Section

By Susan M. LeDrew



The rising prices in residential realty have kept real estate practitioners busy over the course of the past year, bucking trends elsewhere in the Country. The status of the industry in the Province was featured recently in the Canadian Bar Association (CBA) *National* magazine.

I attended the National Real Property Section meeting in Ottawa last fall, where all were pleased that the issue of advertising bans placed on certain title insurance companies had been settled and focus was placed back upon developing the Section and its communication with its members. The issue of title fraud was canvassed as well as discussion about conducting some joint conferences with other sections, including the Family Law and Bankruptcy and Insolvency Sections, to discuss how these areas intersect. Again I am able to confirm that the Canada Mortgage and Housing Corporation (CMHC) has yet to receive the approval it has sought to require title insurance on all of its high-ratio mortgages. The Section continues to be opposed to this requirement on the basis that it may not offer clients all the protection they are accustomed to having, and that it will basically

eliminate the requirement of most of the real estate bar. Nationally, I finish my position of Secretary of the National Section and will take the role as Treasurer in September, 2009.

Provincially, we continue to have the transaction levy in place on many forms of transactions and the imposition of the Client Identification Rules. The issue of obtaining mortgage releases in a more timely fashion has significantly improved. Although not yet in force, there is a new *Registration of Deeds Act, 2009*, which will affect members, Its impact is yet to be known and members should stay tuned!

Finally, we held a Lunch and Learn Session earlier this year in February where the issues of mandatory title insurance and possibly the issue of how far back in time to carry out Sheriff's searches on acquisition of property was discussed. I invite suggestions from members of the Section for future topics. I can be contacted at [smledrew@swd-law.nf.net](mailto:smledrew@swd-law.nf.net).•

### New CBA Members

John Drover - Roebathan McKay Marshall

Melissa May - Poole Althouse

Padraig Mohan - O'Dea, Earle

Peter Ralph - Simmonds Breen Sullivan

Glen Seaborn - Poole Althouse

Lily Anne Wroblewski - White Ottenheimer & Baker





## SECTION UPDATE

### Women Lawyer's Forum

By Kate McGarry



This year the Newfoundland and Labrador Branch of the Canadian Bar Association's (CBA) Women Lawyers Forum (WLF) has worked with other branches across the country via conferences and by telephone and e-mail to plan a CLE session at the CBA's 2009 Canadian Legal Conference (CLC) in Dublin, Ireland. The WLF is presenting a session entitled "Transatlantic Plight: Challenges of Women in the Legal Profession and Strategies for Change". To date, several panelists have been confirmed including Michelle Ni Longain of BCM Hanby Wallace Solicitors in Dublin, who will be speaking on her experience as an equality lawyer.

There has also been a substantial amount of time devoted to discussions pertaining to the results of the Law Society of Upper Canada's Retention of Women in Private Practice Working Group. The Law Society has various recommendations suitable to the needs

of women practicing in Ontario. With respect to future activities of this Branch, it would be ideal if the Newfoundland and Labrador Branch of the WLF could explore and detail, in conjunction with the Law Society of Newfoundland and Labrador, specific issues and needs of women practicing in Newfoundland and Labrador.

The WLF has also been asked by the CBA's Overcoming Barriers to Leadership Committee to research means of attracting women to leadership roles and to recommend further measures to encourage women to offer and serve in leadership positions within the CBA. The WLF is currently attempting to obtain funding to develop and circulate a survey designed to encourage women in the profession to advise of the issues they are facing and how the CBA can best serve and support them. •



CBA-NL 2009 Mid-Winter Meeting - Corner Brook, NL

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# Case Digest

By Daniel M. Glover



## Internet Evidence – Careful What You Facebook

As one court has commented, “the volume of electronic disclosure of information has been expanding explosively on an exponential basis.”<sup>1</sup> Along with such expanding disclosure comes a consideration of the extent to which such information should be available and usable in Court proceedings or kept private.

*Terry v. Mullooney*<sup>2</sup> is a recent example of the Court considering information disclosed online on the social interaction website Facebook. The Plaintiff sought damages arising out of two motor vehicle accidents. The Defendants admitted liability and they had agreed to a division of the burden of the damages between them. The Court was asked to decide on an overall assessment of damages. The decision of Justice Adams provides an extensive discussion of the medical and quasi-medical evidence provided to the Court including reports and testimony of the Plaintiff’s family physician, occupational therapist, two thoracic surgeons, a neurologist, a registered massage therapist and a functional capacity evaluator. One of the Plaintiff’s witnesses, a second functional capacity evaluator, was refused permission to testify after a *voir dire* focusing on her qualifications. Evidence of an occupational therapist hired by the insurers is also discussed.

Adams J. was satisfied that the Plaintiff suffered a whiplash injury in each of the accidents and was entitled to general damages for pain and suffering arising therefrom. However, as the injuries were soft tissue injuries there were no objective medical findings which could support the plaintiff’s position that he was entitled to damages for loss of earning capacity, loss of housekeeping capacity and cost of future care. All of the medical or quasi-medical witnesses based their findings on the subjective reports of the Plaintiff. The Plaintiff’s credibility was therefore a central issue.

The Court found that the Plaintiff’s testimony was unreliable and inconsistent. He exaggerated the effects

of the injuries and demonstrated that his memory was unreliable. In particular the Plaintiff stated that his social life had been severely curtailed by the effects of the accidents. He said he was no longer able to play pool with his friends and he essentially had little or no social life, except the occasional weekend outing. Counsel for the defendants confronted the Plaintiff on cross-examination with printout excerpts from Facebook on which the Plaintiff had an account. The excerpts convinced Justice Adams that the Plaintiff in fact had a full and active social life, hosting parties, attending weekend outings at summer cabins, drinking alcohol frequently and smoking marijuana daily. After being confronted with this information the Plaintiff shut down his Facebook account saying he didn’t want “any incriminating information” in Court. Justice Adams drew an adverse inference on account of this statement concluding that the Facebook account which the Plaintiff shut down, and particular messages which he deleted prior to shutting down the account, contained information which would have damaged his claim.

In the decision Justice Adams allowed the general damages claim but dismissed the other damages claims since the Plaintiff failed to establish a real and substantial possibility rather than mere speculation that he would be prevented from pursuing his career as a mechanic or suffered from a diminished earning capacity.<sup>3</sup> •

1. *Irwin Toy Ltd. v. Doe*, 2000 CarswellOnt 3164 (SCJ), at para. 9.  
2. 2009 NLTD 56.  
3. See, in particular, paras. 146 and 164.

INTERESTED IN GETTING INVOLVED WITH THE CBA-NL BRANCH?

The CBA-NL Professional Development (PD) Committee is looking for dedicated volunteers to help with initiatives for the 2009-2010 year.

If you would like to be a part of this Committee or you are looking for more information on CBA-NL PD, contact the Branch at (709) 579-5783 or [cba-nl@cba.org](mailto:cba-nl@cba.org).



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# Canadian Bar Insurance Association Update

By Hughie Shea



## Mortgage Insurance – Don’t bank on it.

Buying a new home is an exciting experience. However, most of us need to finance a large part of the purchase price of our homes. Taking on a mortgage is a big responsibility.

When you negotiate your new mortgage, one of the things that your lending institution might suggest is that you apply for life insurance. This is a good idea. After all, if you should die prematurely you want to ensure that your family is looked after. A fully paid mortgage would make their life a lot easier.

Your new lender may suggest that you purchase insurance alongside your mortgage. This purchase may be quick and easy, but beware... there are pitfalls with this type of protection.

When you purchase life insurance through your lender, the insurance is only in effect for as long as your current mortgage contract. Should you decide to refinance your home (maybe you want to finance a large renovation) or move your mortgage to a new lender, you may have to reapply for the insurance coverage. If you have had a change in health, you may no longer qualify for this protection.

Because this type of insurance is intended for the sole purpose of retiring your mortgage, the actual amount of protection decreases as your mortgage balance decreases. However, your premium payments stay the same. Making additional payments to your mortgage principal will not reduce your premiums. After you’ve paid off a substantial portion of your mortgage, you may be able to apply to have your premiums reduced. When your mortgage is paid off, this insurance protection ends.

Your lender, not your family, is the owner and sole beneficiary of this coverage. The insurance company pays the lender when death occurs. But what if your spouse wants a say in what is done with your life insurance proceeds? Perhaps you have a very low mortgage interest rate and can do better by investing the insurance

proceeds. Maybe the mortgage can be renegotiated to a level that provides a comfortable payment leaving the insurance proceeds for other immediate needs. With this type of insurance, your heirs don’t have the ability to make these decisions.

On the other hand, a personal insurance plan is not tied directly to your mortgage. You are free to make any changes to your mortgage that you want without having to worry about how those changes might affect your insurance protection and your family’s security. The death benefit does not reduce. Your family may be able to pay off the mortgage and still have funds left over for other expenses. Of course, if you wanted to reduce your coverage, most plans will allow you to do that at any time by notifying the insurance company in writing. Keep in mind that some companies may have minimum insurance requirements and may not let you drop your benefit below their minimum. Your insurance agent can help you understand any limitations that might apply.

As well, personal insurance protection allows you to maintain control over your life insurance. You can name your own beneficiary and your beneficiary can decide what the best use is for the insurance proceeds. You could even use the proceeds to set up a trust or leave a charitable bequest. The decisions are yours to make.

A personal insurance policy can also combine your need to insure your mortgage balance with other insurance needs, such as replacing your income. Many insurance policies provide a lower premium rate per thousand as the amount of insurance that you purchase goes up. So combining your mortgage insurance needs with other insurance needs may save you money.

Here are a few simple questions to ask your mortgage professional before signing on the dotted line:

- Will my health be verified now or at the time of claim?

- If I refinance my mortgage or move it to another institution will I lose my insurance coverage?
- If my insurance is decreasing, how or when can I decrease my premiums?
- What choices for the proceeds will my family have?

While insuring your mortgage is a smart decision no matter how you go about it, it is important to know your options. This could be one of the most critical decisions that you will ever make for the benefit of your family. Not all insurance protection is created equal and you should know what you are purchasing.

Canadian Bar Insurance Association provides competitive, high quality life insurance and disability income insurance to protect you and your family at a cost often lower than you can get elsewhere, including your bank. For more information contact me at [hughieshea@financialanswers.ca](mailto:hughieshea@financialanswers.ca)•

## Family Law *(continued from page 9)*

On June 2, 2009, the Minister of Justice and Consumer affairs in New Brunswick announced a new pilot project set to start in the fall of 2009 which will implement the major recommendations set out in the Report. Broadly speaking, the recommendations in the report are focused on moving family law cases, to the extent possible, away from the adversarial model and instead to a system that focuses on what resources and remedies are available to assist parties. Notably, when parties enter the judicial system under this model, they will complete a standard set of forms which sets out their basic information, as well as their request for relief, but there will be no accompanying affidavit. Affidavits would only come later if the parties have to go to court. The Report highlights many issues faced by all jurisdictions in the area of family law, and may be accessed online at <http://www.gnb.ca/0062/FamilyJustice/FinalReport-e.pdf>.

On the local front, the June 19, 2009 professional development session was the main continuing legal education event for the family law section. In January 2009, members of the Section were invited to attend a Lunch and Learn Session to discuss the anticipated upcoming review by the provincial government of the *Family Violence Protection Act* which enables the Provincial Court to grant Emergency Protection Orders.

Unfortunately this topic did not garner much interest as the topic of a lunch session, though some members did provide written comments. To date, this review has not occurred.

I will be stepping down as chair of the Family Law Section, which has been a very challenging and rewarding post that I have enjoyed immensely. I wish all the best to the next chair. In the meantime, as always, I welcome any suggestions and comments on future initiatives and ongoing activities of the section by contacting me at [suzanneorsborn@oipc.nl.ca](mailto:suzanneorsborn@oipc.nl.ca)•

## Health Law *(continued from page 10)*

She stopped taking the drug in March, 2002 and learned of the pregnancy in April, 2002. The child was born with severe disabilities as a result of drug exposure in utero. The plaintiff, her husband and children brought an unsuccessful action for damages in negligence against the physician and the child then appealed the finding that the physician had met the standard of care. The appeal was dismissed and the court found that the physician’s direct relationship and duty were to the female patient which prevents a relationship of requisite proximity between physician and future child because the interests of mother and child may possibly conflict.

Continuing legal education was also discussed at the Section meeting on May 21<sup>st</sup>, with the suggestion of a possible joint program with the Elder Law and other Sections at the Canadian Legal Conference in Niagara, Ontario in 2010. The area of advance care planning is of significant interest. Mr. Brent Windwick from the Canadian Patient Safety Institute (CPSI), of which the Health Law Section is a member, addressed the meeting as well.

A special plea was made by the new co-editors of the *Pulse* Newsletter, Christine Kark and Annette Lefebvre, for submission of health law related articles between 300-1000 words. Please contact them if you have anything to contribute at [news@cba.org](mailto:news@cba.org).

If you have any questions about the Section meeting or the Conference, please do not hesitate to contact me at (709)722-5181 or [jhennebury@curtisdawe.nf.ca](mailto:jhennebury@curtisdawe.nf.ca). Colin can be reached at (709)753-5805 or [cfeltham@wrmmlaw.com](mailto:cfeltham@wrmmlaw.com)•



## Insurance Law *(continued from page 11)*

As Florida had no minimal limits of insurance, the court held that there was no recourse for Kennedy under her Section D coverage. This decision was affirmed by the Newfoundland & Labrador Court of Appeal in June of this year.

In October of this year, the Insurance Bureau of Canada submitted a Bulletin specifically with respect to the interpretation of Category One Medical Services under Section B Accident Benefits of the SPF in Newfoundland and Labrador.

The dominant insurance topic in Nova Scotia has been the constitutional challenge to the cap on general damages. As well, there have been significant changes to the civil procedure rules, including provisions respecting e-discovery.

British Columbia is currently undergoing significant changes to its civil procedure rules as part of a process of extensive tort reform, with a view to making the litigation process and associated costs proportional to the value of claims. This includes a stream-lined process for claims under a certain value. As well, British Columbia is instituting a *Health Care Costs Recovery Act* that imposes duties on insurers with respect to payment of expenses caused by tortfeasors, with the most interesting aspect allowing for the collection of future costs of care.

It was noted that the cap on non-pecuniary general damages withstood a constitutional challenge at trial (recently affirmed by the Alberta Court of Appeal). It is expected that this issue will ultimately be dealt with by the Supreme Court of Canada.

Stay tuned for information on a joint National Civil Litigation and Insurance Law Section CLE that is being planned for this fall in Banff, Alberta. If Section members have any questions, or would like to suggest topics for a Lunch and Learn Session, please do not hesitate to contact me at [pshea@coxandpalmer.com](mailto:pshea@coxandpalmer.com).

## Maritime & Admiralty Law *(continued from page 13)*

Additionally, I encourage you to visit the Section website at [www.cba.org/CBA/sections\\_maritime/main/](http://www.cba.org/CBA/sections_maritime/main/) to view all of the submissions discussed above.

## Intellectual Property Law *(continued from page 12)*

IPIC has offered members of the Canadian Bar Association in Newfoundland and Labrador a half day registration fee to attend. Please note this special half-day rate of \$295.00 (including breakfast) is not normally extended. This rate will be available for the morning session on Thursday, September 24th, 2009. The sessions which may be of interest are the Keynote Addresses with the Hon. Mr. Justice Marshall Rothstein, Supreme Court of Canada and the Right Hon. Lord Hoffmann U.K., House of Lords, and Canadian and U.S. Judicial Perspectives on IP Enforcement: Similarities; Special Issues with Presenters the Honourable Elizabeth Heneghan, Federal Court of Canada and the Honourable Colleen McMahon, U.S. District Court of the southern District of New York.

I hope to see you there. •



# Canadian Bar Association National News

## Beyond Our Borders

The Canadian Bar Association's International Development Committee has begun a two-year program dedicated to improving access to justice in South-East Asia and East Africa. This program will focus on key stakeholders, including the legal profession, as they address gender issues, and on increased collaboration among stakeholders.

Building on recent CBA efforts which first began in South-East Asia and East Africa in the mid-1990s, the new initiative will involve seven target countries: Cambodia, Laos, Vietnam, Ethiopia, Kenya, Tanzania and Uganda. The CBA's international programs are funded by the federal government through the Canadian International Development Agency (CIDA).

### East Africa

<http://www.cba.org/CBA/IDP/programs/estafrica.aspx>

### South-East Asia

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

## CBA PracticeLink

An expanded practice resource for young lawyers, solos and firm leaders, CBA PracticeLink launched a brand new look that includes enhanced content and navigation for young lawyers, solo and small firm practitioners and law firm leaders. With links to our podcasts and the new Work-Life Balance Resource Centre, the redesigned site offers a more in-depth treatment of the issues that matter in your practice.

Whether you're a lawyer concerned about growing your practice, riding out the recession, going solo, making partner, dealing with clients, or leading law firm change, you're sure to find the strategies and advice that can benefit you.

Visit CBA PracticeLink

<http://www.cba.org/cba/PracticeLink/Home/>

## Walter S. Tarnopolsky Human Rights Award

The deadline for nominations for the Tarnopolsky award is August 15. Named in honour of the late Walter S. Tarnopolsky, a talented human rights advocate and scholar, the award recognizes a resident of Canada who has made an outstanding contribution to domestic or international human rights.

### Details

[http://www.cba.org/CBA/Awards/walter\\_human\\_rights/](http://www.cba.org/CBA/Awards/walter_human_rights/)

## Minimum Sentences for Drug Offences Opposed

The CBA opposes Bill C-15, amendments to the Controlled Drugs and Substances Act, arguing that the legislation would create a complicated system of escalating mandatory minimum sentences for drug-related offences that would not be an effective deterrent to crime.

"The CBA suggests that public safety concerns can be met with existing laws," explained Sarah Inness of Winnipeg, member of the CBA's National Criminal Justice Section. "The Bill could create unjust and disproportionate sentences and ultimately would not achieve its intended goal of greater public safety."

Sarah Inness presented the CBA submission to the Standing committee on Justice and Human Rights on May 13.

### News Release:

[http://www.cba.org/CBA/News/2009\\_Releases/2009-05-13-Bill-C-15.aspx](http://www.cba.org/CBA/News/2009_Releases/2009-05-13-Bill-C-15.aspx)

### Submission

<http://www.cba.org/CBA/submissions/pdf/09-27-eng.pdf>





Calls to the Bar

<i>Roll Number</i>	<i>Name</i>	<i>Roll Number</i>	<i>Name</i>
1436	Mark A Russell*	1449	Candace Summers
1437	Colin P Sullivan*	1450	Jeffrey A Summers
1438	W Jeremy Andrews*	1451	Jenniger M Gorman
1439	Stephanie M Hillier*	1452	Tanya L Bath
1440	John R Whelan*	1453	Beverley A Lane
1441	Allison M Battcock*	1454	Lori-Lee M St. Crox
1442	Jennifer E Lundrigan*	1455	Krista M Atkins
1443	Patricia AG Beh*	1456	Jonathan D Regan
1444	Nicholas J Whalen*	1457	John FE Drover *
1445	Edward J Vanderkloet	1458	Jarret W Hann
1446	Glen Seaborn *	1459	Brian R Gatien
1447	Theodoric A Nowak	1460	Amy E Kendell
1448	Wayne G Silliker*		

\* Denotes CBA Member

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

Nick Whelan, has joined *McInnes Cooper*.

Chad Blundon, formerly with *O'Dea, Earle*, has joined *Municipal Affairs*.

Johnathan Fowler, is now with *Ches Crosbie Barristers*.

Andrew Wadden, formerly with *Cox & Palmer*, has joined *Johnson Inc*.

Suzanne Orsborn, formerly with *Benson Myles*, has joined the *Office of the Information and Privacy Commissioner*.

Jennifer Gorman, formerly with the *Department of Justice*, has joined *Benson Myles*.

2009-2010 Executive Committee

<b>President</b> Sheri Wicks, <i>White Ottenheimer</i>	<b>Membership</b> Cheryl Mullett, <i>Curtis Dawe</i>
<b>Vice-President</b> Janie Bussey, <i>Stewart McKelvey</i>	<b>Professional Development</b> David Moores, <i>Wells &amp; Company</i>
<b>Treasurer</b> Susan Gover, <i>Canada-Newfoundland Offshore Petroleum Board</i>	<b>Communications</b> Janet Grant, <i>Stewart McKelvey</i>
<b>Past President</b> Christopher Pike, <i>Benson Myles</i>	<b>Young Lawyers Chair</b> Beth Whalen, <i>White Ottenheimer &amp; Baker</i>
<b>Secretary</b> Isobel O'Shea, <i>Stewart McKelvey</i>	<b>Central Regional Representative</b> Renee L.T. Moore, <i>Easton Hillier Lawrence Preston</i>

2009-2010 Section Chairs

<b>Aboriginal</b> Steven Scruton, <i>Stewart McKelvey</i>	<b>Criminal Justice</b> Robin Fowler, <i>Government of NL</i>	<b>Law Practice Management &amp; Tech.</b> Chris Pike, <i>Benson Myles</i>
<b>Administrative Law</b> Jamie Martin, <i>Robothan McKay Marshall</i>	<b>Environmental</b> Antoinette Fekete, <i>Rogers Bussey Lawyers</i>	<b>Maritime / Admiralty</b> Kim Walsh, <i>Stewart McKelvey</i>
<b>Alternative Dispute Resolution</b> Andrew Wadden, <i>Johnson Inc.</i>	<b>Family</b> Melanie DelRizzo, <i>Smyth, Woodland, Del Rizzo &amp; LeDrew</i>	<b>Natural Resources / Energy</b> Greg Moores, <i>Stewart McKelvey</i>
<b>Bankruptcy</b> Stacey O'Dea, <i>Cox &amp; Palmer</i>	<b>Government / Public Sector</b> Tracey Pennell, <i>Government of NL</i>	<b>Privacy</b> Mandy Woodland, <i>Cox &amp; Palmer</i>
<b>Business</b> Beth Whalen, <i>White Ottenheimer &amp; Baker</i>	<b>Health</b> Richard Rogers, <i>Rogers Bussey Lawyers</i>	<b>Real Property</b> Susan LeDrew, <i>Smyth, Woodland, Del Rizzo &amp; LeDrew</i>
<b>Civil Litigation</b> Dan Glover, <i>Curtis Dawe</i>	<b>Immigration</b> Blair Pritchett, <i>McInnes Cooper</i>	<b>Taxation</b> Michael Drover, <i>Michael Drover</i>
<b>Constitutional</b> Farrah Carrim, <i>Cox &amp; Palmer</i>	<b>Insurance</b> Peter Shea, <i>Cox &amp; Palmer</i>	<b>Wills &amp; Estates</b> David Moores, <i>Wells &amp; Company</i>
<b>Construction</b> Jennifer Newbury, <i>Martin Whalen Hennebury &amp; Stamp</i>	<b>Intellectual Property</b> Erin Best, <i>Cox &amp; Palmer</i>	<b>Women Lawyer's Forum</b> Andrea Murphy, <i>French, Noseworthy &amp; Associates</i>
<b>Corporate Counsel</b> Christine Healy. <i>Government of NL</i>	<b>Labour &amp; Employment</b> Jamie Martin. <i>Robothan McKay Marshall</i>	