

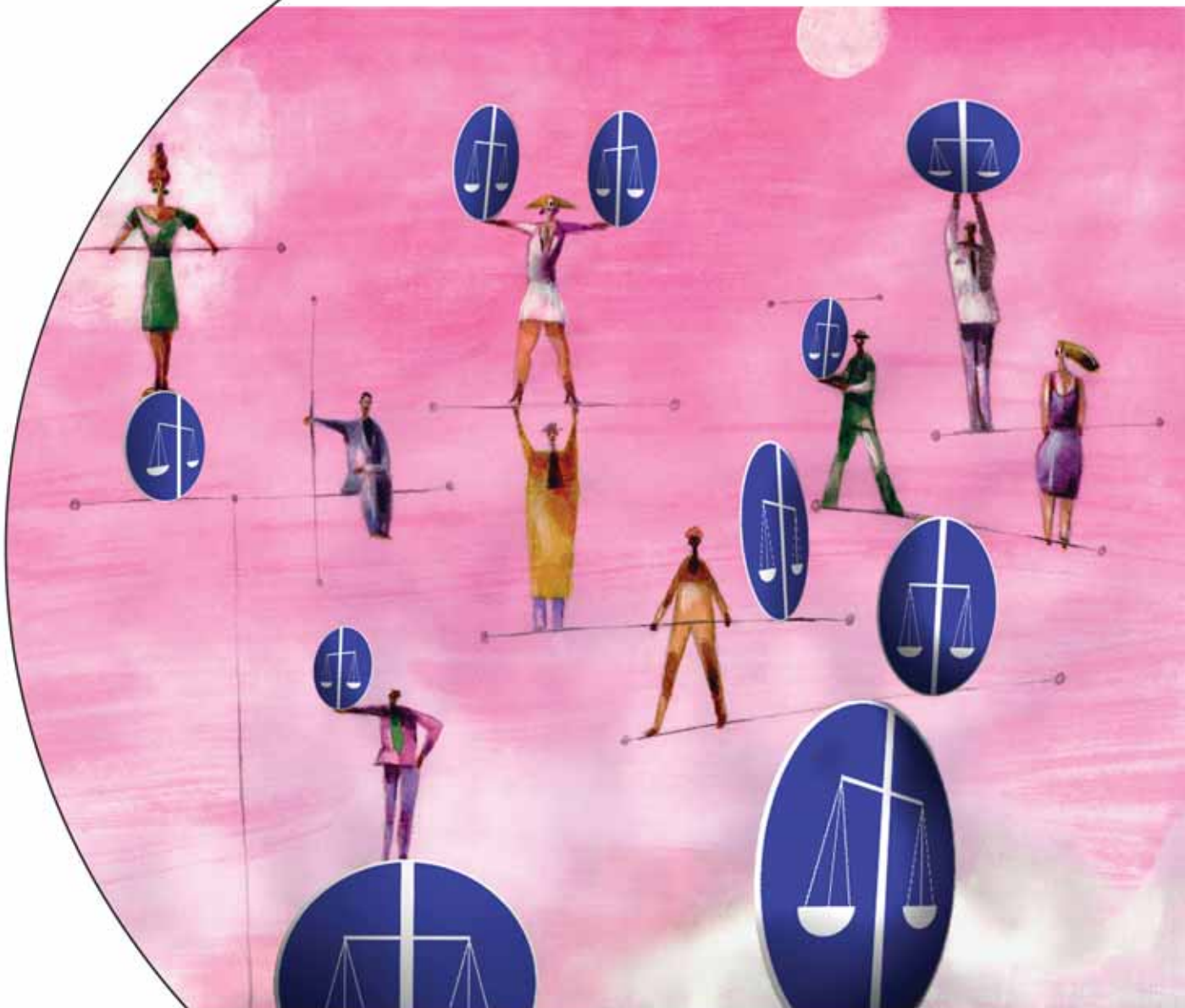
LAW MATTERS

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A PUBLICATION OF THE CANADIAN BAR ASSOCIATION ALBERTA



CANADIAN BAR ASSOCIATION ALBERTA

President's REPORT

Richard O'Gorman



In January I attended and spoke at the British Columbia Provincial Branch Council meeting, and in February I attended the National Mid-Winter Council meeting in Cancun, Mexico.

Closer to home, last month I accompanied our National President, Brian Tabor, Q.C. when we both spoke to the law students at the University of Calgary. This was in conjunction with the start of the Alberta Law Conference 2006. The Conference began with the Law Society Plenary entitled *Unscrupulous Scams and Schemes – How to Avoid Being an Instrument of Fraud*. The panel did a great job, and thanks to the President of the Law Society, Mona Duckett, Q.C., for all of their involvement with the Conference. This included the Distinguished Service Awards, which are jointly presented by both organizations. Mona and I were pleased to honour the four recipients: John Law, Donald Bishop, Q.C., Robert Campbell, Q.C. and John Henderson, Q.C. In addition, the Outstanding Service Award for the CBA was presented to Jim Lebo, Q.C. Jim was also a candidate for the National Executive. The Friday evening entertainment was brilliantly handled by Allan Shewchuk Q.C. (entitled *A 20-year Review of the CBA*) and then Tony Young's band took over and they were excellent. Finally, a very special thanks goes to the Co-chairs of the Conference, Gillian Marriott and Jeff Wise for a tremendously successful event.

As mentioned in my last report, the Alberta Branch had been approached by the Alberta Civil Trial Lawyers Association for a financial contribution of \$50,000.00 toward their Court challenges regarding the *Insurance Amendment Act*. The resolution came before our Council on February 8, 2006. Although the CBA supports ACTLA in their challenge, the majority of Council could not support the concept of providing CBA funds toward legal fees. Our longstanding CBA tradition is to rely on volunteers and we could not allocate our monies towards third party litigation. Nevertheless, Council has agreed to assist and cooperate with ACTLA in non-financial ways.

Finally, some other professional matters that may be of interest to the membership include:

- Branch membership increased by 3.1% over last year (we now have 4,607 members in Alberta)
- The National CBA Conference will be held in St. John's, Newfoundland August 12-15, 2006 (the 2007 National Conference will be in Calgary)
- The Calgary Courts Centre is scheduled to open in June of 2007 (Phase II of the project has now been approved).

In conclusion, I would like to thank all of those individuals who contacted me on the issue of the ACTLA request, and I encourage anyone who has a question or concern about the CBA or the profession to contact me directly.

Gillian Marriott
of Dunphy Best Blocksom LLP
has been acclaimed
Secretary
of the Canadian Bar Association
Alberta Branch for
2006-2007.



NOTES

Editor's

Jason Schlotter



As I write this with summer almost here, I stand looking out my office window at the progress of the Calgary Court House and am amazed how quickly it is being built. With the year flying by, the opening in June 2007 seems just around the corner.

The Honourable Mr. Justice W.E. O'Leary has tendered his resignation as a member of the Law Matters Editorial Committee, though he has graciously offered to stay on until June 30, 2006 to allow us to find his replacement. Law Matters has greatly benefited from Justice O'Leary's contributions and through him, our ties to the Bench. On behalf of the Editorial Committee, I thank Justice O'Leary for his involvement and assistance.

It is my pleasure to congratulate Gillian Marriott of Dunphy Best Blocksom LLP on becoming the next Secretary of the Canadian Bar Association, Alberta Branch. I look forward to working with Gillian in the future.

As a reminder, the annual Section Chair Appreciation Dinner will be held this year, in Edmonton on June 12 at the Old Timer's Cabin, and in Calgary on June 27 at Fort Calgary. The dinner is a thank you from the Canadian Bar Association to the section chairs for the work they have done on behalf of the CBA in the past year chairing their respective section.

By way of update on the Futures Consultation at the CBA Council meeting in January, Kelly Smith of Ontario and Frank Kraemer, Q.C. of British Columbia (both members of the CBA Futures Committee) attended and facilitated the discussion. Council discussed and ranked the recommendations in the "Crystal Clear" report and the future direction of the Canadian Bar Association. In June, at the National CBA meeting, over 80 volunteers from across the country will participate in a Futures Summit, with the outcome of that Summit coming back to the individual provincial branches.

The Communications Committee will be conducting a pilot project to produce live web casts of south section meetings to communities outside of Calgary so that CBA members

from those communities can watch section meetings live. The Communications Committee hopes the pilot project will be up and running by September 2006. Look for this new category in the Section Registration Handbook.

Personal safety and security continues to be a concern of members of the legal profession. To that end, with thanks to the Ontario Branch of the CBA, who produced the original booklet, the Alberta Branch will be reprinting a handbook for distribution to our members.

Look for the reinstatement of the 'People and Places' column in upcoming issues of Law Matters. You can submit your comments for publication to peopleplaces@cba-alberta.org. The People and Places column will also be regularly updated on the Canadian Bar Association's website, www.cba.org.

Finally, look next issue for the announcement of the first volunteer award winner, the qualifications for which were announced in the last issue. In short, we are looking for nominations of Canadian Bar Association members making unsung volunteer contributions to the profession or their community. Nominations can be submitted to newslet@cba-alberta.org.

LETTER TO THE EDITOR

Re: Judge Fradsham's August '05 Article

I just returned [January '06] from travelling in Europe for an extended period of time and was reading over the issues of Law Matters that I had missed while I was gone. I read Judge A.A. Fradsham's article in the August 2005 issue and was amused to find that he experienced the same thing my husband and I did when we were travelling between European countries. To our surprise, there was no passport control as we went from Sweden to Denmark to the Netherlands. I was very surprised so I looked into it a bit and found that there is this thing called the Schengen Agreement or Treaty which means that there is no passport control as you travel through the "Schengen" countries. Most European countries are members so it means you can travel freely through them without your passport being checked.

Anyway, I thought Judge A.A. Fradsham might be interested to know that so feel free to pass this information on if you wish. Thanks.

Melissa Moulton Tennison

Re: Donated Gowns January '06

Thanks to Donald Kramer, Q.C. who responded to the request of Virginia Engel, Q.C. for a donation of gowns to the Canadian Cancer Society Jail-N-Bail Fundraiser. Our apologies to Virginia for the typos published in her request letter.

We are looking for additional Board Members to join our team.

As a Board Member, you will collaborate to govern our organization and to achieve the goals set out in our Vision and Mission Statements.



For more information call Fran Matthews on (780) 451-4589

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Edmonton, AB T5M 1G2
Tel: (780) 451-4589
Fax: (780) 944-2566
Email: outreach@shaw.ca

The Scope of the CBA's Advocacy Work

Joan Bercovitch, Senior Director,
Legal and Governmental Affairs, CBA



Introduction

The CBA periodically reviews various aspects of its mandate, testing for continued relevance, appropriateness, effectiveness, etc. (eg. CLE, governance, international development, revenue generation/distribution).

Lately, in light of some controversial policy matters (Same sex marriage, Aboriginal residential schools), the issue of the scope and breadth of CBA's mandate in law reform is "de jour".

Some have framed the question this way:

"Should CBA engage in matters of social policy, or should it restrict its advocacy role to issues concerning the administration of justice, technical legal issues or matters directly affecting the legal profession?"

The "camps" line up this way: Those who argue for a restrictive advocacy mandate suggest that the CBA's engagement in "social" policy risks dividing the membership, alienating individuals or groups within the membership, limiting the freedom of expression and abusing the freedom of association of its members, and ultimately, discrediting the CBA.

Those who argue in favour of a broader advocacy role suggest that it is essential to the mandate of a professional association of lawyers; that members achieve connection and derive meaning from an Association that does this work; that the ability to develop collective views on important issues of the day enhances lawyers' freedom of expression and association; and that the credibility of the legal profession is thereby enhanced.

Wherever the CBA ultimately comes out on this, the discussion is timely. The Futures Report focuses on the relevance and vitality of the CBA 10 years into the future...and examines how the various elements of the CBA mission fit into that vision. It asserts as an important value role of the Association "Contributing to Social Value and the Public Interest".

The eternal question is: who is the CBA here to serve? Clearly, our members. Some might also answer – the broader justice system. Others would say – the broader community via protection of the rule of law, democracy and freedom.

Today, I want to share with you the rationale for CBA's engagement in law reform in a social policy context (I should clarify that this is not my personal view of why

CBA should be engaged in this work. It is, rather, the way the CBA itself has acted on its mandate.

Why should the CBA have a public presence on matters of "social policy"?

The short answer is – **we're supposed to**, according to the Mission Statement of the CBA. To paraphrase it, the mission of the CBA is to:

"Improve the law and the administration of justice, and to promote access to justice and equality. In so doing, the CBA represents the legal profession and promotes the interests and excellence of its members".

The long answer is – **"It's the right thing to do"**, based on the way the CBA has understood the role of lawyers in society and, by extension, the role of the Association itself.

There are five principles on which the CBA has based its law reform work thus far:

1. Lawyers bring a unique perspective to the law reform process.
2. It is impossible to distinguish legal policy from social policy.
3. CBA's representative and democratic processes result in responsible CBA positions.
4. CBA's work on law reform in a social context is relevant to members.
5. CBA's work on law reform in a social context is the basis for CBA's credibility.

I'll deal with each principle separately.

1. Lawyers bring a unique perspective to the law reform process.

The CBA is in a unique position among advocacy groups because our only ideology is that the rule of law must be followed by and applied to all citizens, and that the law must work for everyone. This is a point that CBA President Brian Tabor has made recently in National magazine. Where the CBA makes submissions on "social policy" issues, it is not to advance a particular moral or ideological position. It is to uphold the rule of law. CBA's same sex marriage position is not based on morality or religion. It's based on the requirements of the Charter; on equality analysis mandated by the Constitution. Similarly, our racial profiling position is based not on politics but in the Charter and the rule of law.

Governments seek out the views of the CBA because lawyers are in a position to see the practical impact of the law. That experience is not limited to the technicalities

Continued on page 5

Continued from page 4

of the law or simply the administration of justice. It's about how the law affects real people; how it frames business and the economy; how it defines the social, political and economic values of our society.

So ... lawyers and the CBA are essential in shaping the justice system and its place in society.

2. It is impossible to distinguish legal policy from social policy.

CBA makes 60-70 written submissions each year to the federal government, and about as many provincially through the branches.

Whether an issue encompasses "social policy", the interests of the profession or the administration of justice, is often in the eyes of the beholder. Arguably, every law is in response to a perceived social need and for the good of society, whether in matters of family law, competition law or tax law. Is creditor-proofing RRSPs a technical tax issue? Is it a fairness issue? Is it "social policy"? I would suggest that it's all of the above, as well as being a popular CBA policy.

Again, as President Brian Tabor has said, "We have to be very careful not to fall into the trap of using 'social policy' as shorthand for 'I don't like the CBA's stance on this issue'".

3. CBA's representative and democratic processes result in responsible CBA positions.

Clearly, while every member may not agree with the particulars of every policy adopted by Council, we can all embrace the democratic processes that permit open and fair deliberation on important issues of the day.

Absolute consensus is not a prerequisite for an organization to speak on a certain issue, and collective action does not mean unanimous action.

But collective action, to be credible and responsible, carries with it a requirement of representativeness and due process.

The CBA is a grassroots organization. Members identify policy issues and drive the CBA's policy agenda. Every member can make their views known within the CBA by participating in sections, bringing resolutions to Council, speaking to them directly, or through their representatives on Council. Potential policies are subjected to open discussion and debate, and the vetting and approval processes ensure that all aspects of an issue have been canvassed.

The result is policy that represents the collective views of the membership, even if it is not necessarily unanimous. And that's the best that can be expected of democracy.

4. CBA's work on law reform in a social context is relevant to members.

CBA market research consistently shows that "advocacy" is a top-ranked member service for the Association

The number of active section members doing law reform work grows each year; young lawyers are battling for positions on section executives to be able to do law reform work; big firms are competing to do *pro bono* work for CBA in our

interventions before the Supreme Court. Students tell us that they go into law to "help society". Advocacy is relevant to all these members and potential members. They want the CBA to be there to ensure that fundamental rights are protected, and they want to do this work.

If you review the CBA submissions list, you'll notice that very few of the submissions are confined to technicalities of the law. Most deal with broad policy issues.

We know that some lawyers join the CBA because the CBA addresses big picture issues, and some only if they can participate in that process. It's a relevance thing. And a market share matter for CBA – if we don't do this work, other groups will. And we can't predict the impact that may have on our membership levels.

Finally, the last principle ...

5. CBA's work on law reform in a social context is the basis for CBA's credibility.

Advocacy in the public interest is a meaningful "image of lawyers" initiative. To the extent that lawyers are seen by the public as contributing to the public good, we build our credibility.

The CBA's credibility with government, the courts, the media and the public stems from our being more than just a self-interested lobby group. We are the experts on how the law is working for all segments of society. If we eliminate our presence on "social policy" issues, we lose our position as objective experts and define ourselves by "what's in it for me?".

The "what's in it for me?" issues ... the interests of the profession issues ... are critical. But they lose their lustre, and we lose our likelihood of success with them, if that's all we do.

Conclusion

In conclusion, I think that whether the CBA wants to be engaged in so-called "social policy" issues is really a question of whether we want to retain law as a "profession" or simply be technicians of the law. Contributing to the public good is, in part, what establishes the law as a profession. It always ranks highly in reasons why people go to law school, and is one benchmark of how happy lawyers are in the profession. It has never been just about the money or prestige for most lawyers. It's about making a significant difference.

Lawyers give their clients a voice.

The CBA gives lawyers a voice... our own voice, on important issues. CBA gives lawyers a home in which to make a difference.

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Jim McCartney, B.A., LL.B, Cert. Med

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The Honourable Justice Peter Martin

On January 20, 2006, Justice Peter W.L. Martin was sworn in as a Justice of the Court of Appeal of Alberta. The courtroom was filled to overflowing with Peter's family, friends, members of the bar and of the bench, including a number of retired justices.

Justice Martin's family immigrated to Canada from Germany when he was 3 years old. Peter credited his family with instilling him with a valuable work ethic and an appreciation for our quality of life. Justice Martin obtained his law degree from the University of Manitoba and articulated in 1976 with the Attorney General's Department in Alberta. He stayed on with prosecutions from his admission to the bar in 1977 until 1995, by which time he was appearing almost exclusively before the Court of Appeal and the Supreme Court of Canada. In

1995, Justice Martin left the Crown's office and joined his good friends Chris Evans and Earl Wilson in forming a criminal defence firm, Evans Martin Wilson. He also served as President of the Law Society in 1995-1996 and throughout this time, gave generously of his time to speak to many groups, legal and otherwise, about the criminal justice system.

On June 26, 1998, Justice Martin was sworn in as a Justice of the Court of Queen's Bench of Alberta. Barristers agree he has always been well-prepared, quick-minded and very fair in his courtroom and we look forward to many years of his similar dedication to the work of the Court of Appeal.



Michelle Hollins

The Honourable Justice Alan Macleod

On January 13, 2006, His Honour Alan Macleod was sworn in as a Justice of the Court of Queen's Bench of Alberta.

Alan has been a long-time CBA friend and contributor, having been a member of our organization since 1971. A true leader within the profession, Alan was President of the Law Society of Alberta in 1993. As President, he helped reorganize the Legal Aid Society of Alberta, and helped to create a new governance model that continues to the present day. In addition to changing the governance structure, the notional hourly rate paid to the Legal Aid Bar was increased, and as the President Alan urged the government to provide more resources to Legal Aid. He encouraged the greatest possible assistance to those who could not otherwise afford legal representation.

As President, Alan repeatedly spoke of and emphasized a close working relationship between the Law Society and the CBA. In 2002, Alan helped

create the Law Society Plenary Session that is now held annually in conjunction with the CBA Alberta Law Conference. The first Plenary Session held was on Civility and it was a tremendous success.

In addition to an accomplished career, which included some of the largest and most complex litigation in the Province, Alan has also been extremely involved in the community. Alan volunteered for many groups, including the University of Calgary Faculty of Law, and the Calgary Interfaith Food Bank, where he acted as honorary counsel.

The CBA congratulates Alan on his appointment. Alan's dedication to his work, contributions to the profession and participation in the community at large are well known. On behalf of the CBA, we wish Alan the very best, and good fellowship on the Bench!



Richard O'Gorman

OFFICE OF THE PRACTICE ADVISOR

The Law Society of Alberta Practice Advisors: **Nancy Carruthers**, in Calgary, at 403-229-4714 or 1-866-440-4640; **Ross McLeod**, in Edmonton, at 780-412-2301 or 1-800-661-2135.

MENTOR PROGRAM

A program of the Office of the Practice Advisor of the Law Society of Alberta. The Mentor Program accepts no liability arising from assistance given. Call 429-3343 in Edmonton or 1-800-272-8839 elsewhere in Alberta.

Notices to the Profession

The Court of Appeal of Alberta Practice Notes: Consolidated Practice Directions; 2007 Court Sitting Dates

The Consolidated Practice Directions and Practice Notes can be found on the Alberta Courts' website at www.albertacourts.ab.ca/ca/practicenotes.

C.A. Fraser
Chief Justice of Alberta

Alberta Justice Practice Note: Re: Section 7(2) of the *Limitations Act*

I wish to advise that section 7(2) of the *Limitations Act* has been proclaimed and effective April 1, 2006.

Terrence (Terry) J. Matchett, QC
Deputy Minister of Justice and Deputy Attorney General

JUDICIAL LIST

COURT OF APPEAL:

The Honourable Madam Justice E.I. Picard of Edmonton elected to hold office as a supernumerary justice effective March 1, 2006.

COURT OF QUEEN'S BENCH:

The Honourable Mr. Justice R.M. Cairns of Calgary elected to hold office as a supernumerary justice effective March 22, 2006.

PROVINCIAL COURT:

The Honourable Judge N.P. Lawrence of Red Deer was re-appointed for a one-year term effective February 17, 2006.

The Honourable Judge D.C. Abbott of Edmonton retired effective February 20, 2006.

The Honourable Judge T.G. Schollie of Red Deer was re-appointed for a one-year term effective February 25, 2006.

The Honourable Judge H.R. Chisholm of Edmonton was appointed as a part-time judge effective March 9, 2006.

The Honourable Judge D.J. Plosz of Red Deer was re-appointed as Acting Assistant Chief Judge of the Central Region, effective March 18, 2006 for a term to expire on August 15, 2006.

The Honourable B.E. Scott of Calgary was re-appointed as Assistant Chief Judge of the Civil Division for a one-year term effective March 29, 2006.

The Provincial Court of Alberta Practice Note: Courtroom Video Link Appearances

This Practice Note will be in effect as of July 4, 2006 and supersedes any previous Practice Note in relation to this topic.

The Practice Note is available through the website: <http://www.albertacourts.ab.ca/go.aspx?tabid=400>.

E.J.M. Walter
Chief Judge, The Provincial Court of Alberta

Our Apologies
The Honourable A. B. Sulatycky,
Supernumerary in Calgary,
was inadvertently missed in our
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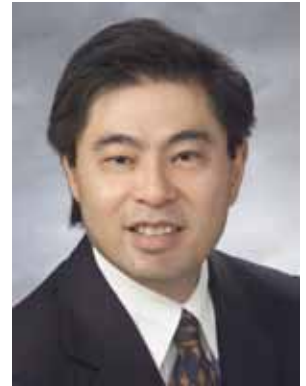
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VOLUNTEER LAWYERS SERVICE

Robert Omura ~ Active in Volunteering



Robert Omura of Caron and Partners LLP, is the first lawyer chosen to be featured in this Volunteer Profile Series, not only because he has been the most active volunteer in the Volunteer Lawyers Service program, but because he genuinely exemplifies the spirit of volunteerism.

Since joining the Volunteer Lawyers Service in February 2005, Mr. Omura has been matched with four individual files, and he has developed a workshop for the VLS, which helps new charitable organizations with their programs' start up concerns. Mr. Omura facilitated this workshop for the first time last year, and due to its success, he will continue to run the workshop annually each May. He is also currently working collaboratively with a U of C law school student on a "self-help" workbook to assist these organizations.

We asked Mr. Omura a few questions about his experiences in volunteering for our program, and here is what he had to say:

Q: How did you first hear about the Volunteer Lawyers Service?

A: I think I first found out about the VLS program from a notice that was sent around to all lawyers, probably in the CBA materials.

Q: What prompted you to join the volunteer roster?

A: I thought I could contribute something useful. Often in the practice of law it's difficult to get a sense that you've actually made a difference. By volunteering you get a fairly concrete sense of doing something that really mattered. It's surprising the knowledge we have and take for granted. Most people out there do not know where to start looking for information. Where it might take a layperson weeks to find the answer to a question, often we can answer in a few minutes. In the fast paced life we live in these days it's important to take a few hours to put something back into the community. I know the stats are high for the Calgary bar's volunteer commitment to the City, but there are still many out there who do not take the time to put something back into the community. Volunteering is a wonderful way to do that, make a difference and have some fun. How could anybody refuse an offer like that?

Q: What is it about volunteering for the Service that appeals to you?

A: The appreciation that people have for your help, the satisfaction that you have something to contribute to others, and the knowledge that it does make a difference. These are wonderful qualities of volunteering.

Q: What has your experience working with matched organizations through the VLS been like?

A: The matched organizations have put a lot of thought

into what they are looking for. This makes it easier to deal with their concerns. I think there seem to be two groups: those who are just starting out and require basic information; and, those who have a clear idea what they are looking for from a volunteer lawyer – a specific plan in mind.

Q: What made you decide to facilitate the workshop that you hosted last year? And what was that experience like?

A: I think it was a wonderful opportunity to organize the process in my own head and to think about how to explain it. The experience was wonderful. Small groups are a good way for some one-to-one discussion. The feedback is immediate. Unfortunately, there simply wasn't enough time to address all the questions. In the future I would like to have more of a panel discussion approach, with an accountant, and even perhaps someone from Industry Canada. A workshop could be arranged to have two components or two separate workshops – the first to explain the process and the second to help put together the forms.

Q: Would you recommend colleagues to participate in this program?

A: Absolutely. I think that colleagues can get a lot from a small commitment of a few hours a month.

Mr. Omura was called to the bar in 2000. Although he began his career in the area of personal injury law, his primary practice interests include civil litigation, corporate/commercial, family, real estate and wills and estates. Prior to his career in law, Mr. Omura completed his undergraduate degree in psychology, and then worked as a child and youth/family crisis worker, for about ten years. Later he completed a Masters in History before entering Dalhousie Law School in Halifax, NS. In his free time, Mr. Omura enjoys hiking, and climbing in the mountains, skiing in winter and cycling and running in summer. Throughout the course of his studies and careers, he has always remained active in volunteering.

Win an iPod by volunteering on our Roster ! A recruitment form is included in this package.

To find out more about the Volunteer Lawyers Service, contact Cyndy Morin, VLS Project Coordinator at 403-218-4317, or by e-mail at vlis@cba-alberta.org.

Note: Canadian Lawyers Insurance Association insurance coverage is available for lawyers who take on a *pro bono* file with this Service.

View from the BENCH

Judge A. A. Fradsham



Gloria and I have a nine month old grandchild which puts us in the enviable position of giving grand advice learned from the mistakes we made as we raised children, but without having to actually do the work again. I like to think of us fulfilling an appellate function.

One of the things we hope little Alex learns is to enjoy a wide variety of foods, and that he will avoid becoming a "picky eater". Life will be easier for him in the future if, when invited for dinner by potential in-laws, he can actually enjoy some unusual dish instead of the unseemly response of recoiling in horror, or, in a futile effort to advance his cause, gagging it down.

However, I confess that this theory, like so many of my theories, suffered a bit of a setback recently. I was reading the February 18, 2006, issue of the National Post, and found on page WP2 an article about a new restaurant in Beijing. Though Beijing is a little beyond my usual court circuit with its meal allowance, I read on. That may have been an error. Now, I pause here, dear reader, because I have to find a delicate way to put this which will not offend the sensibilities of this Newsletter's editors. You see, this restaurant has a specialty. Every dish they serve has the same main ingredient which is....well, it rhymes with "Venus". It can be fried, boiled, roasted...well, anything except left where it belongs. If Lorena Bobbitt opened a restaurant, this would be it.

This branch of the culinary arts may put the lie to the comment "size does not matter", though, speaking for

myself, the smaller the better. And if it is true that "you are what you eat", I now finally understand some of the people I have met in my life.

The author of the article, Richard Spencer, says that "when you make a reservation, you are assigned a trained waitress and a nutritionist, who can explain the menu and the medicinal virtues of the offerings." Um, no thanks. I think I will follow the general "hot dog" (how appropriate) rule: sometimes it's just best not to know.

As I read the article (it was much like watching a traffic accident occur: I wanted to turn away, but could not), I had to wonder what would cause anyone to think of creating such meals; meals which give a whole new meaning to the psychological concept of ...well, it sort of rhymes with "heinous envy". I imagine it went like this: "Let me think. What shall I make for dinner for my husband, Dick? Oh, I know!"

Maybe this delicacy will catch on. Maybe we males are doomed to spend all our time in restaurants with crossed legs. But my "grandfatherly" advice to Alex is going to be very simple: if you are at your girlfriend's home, and her family serves up a platter of something that is, or should be, covered by a fig leaf, you might want to consider a new girlfriend.

Edmonton Centre for Equal Justice

is looking for lawyers to volunteer their time at evening clinics on Tuesday and Wednesday evenings. Our clients are people who are challenged by low incomes and need legal advice. The areas of law we deal with are civil, landlord/tenant, administrative, employment, debt and human rights. If you have an interest in committing your expertise, please contact Valerie Nelson at 780-702-1725.

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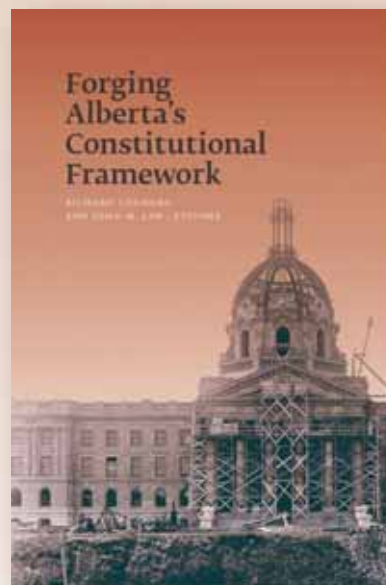
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What's HAPPENING

Patty Johnston, Q.C.



MAY:

8&9: The 2nd Annual Western Canada Aboriginal Law Forum – Understanding the Changing Legal and Business Horizon presented by the Canadian Institute. The Metropolitan Hotel, Vancouver. Contact: Phone: 1-877-927-7936 or 416-927-7936; Fax: 1-877-927-1563 or 416-927-1563; or register online at www.CanadianInstitute.com.

10&11: Western Canadian Forum on Pension Law, Litigation and Governance presented by the Canadian Institute. Delta Bow Valley, Calgary. Contact: See May 8&9.

11&12: Privacy Compliance – Meeting Your Obligations and Challenges presented by the Canadian Institute. Four Seasons Hotel, Toronto. Contact: See May 8&9.

15&16: International Competition Law- Real World Issues and Strategies presented by Insight Information. St. Andrew's Club & Conference Centre, Toronto. Contact: Phone: 1-888-777-1707; Fax: 1-866-777-1292; or register online at www.insightinfo.com.

18: National Summit on Private Equity presented by the Canadian Institute. Windsor Arms Hotel, Toronto. Contact: See May 8&9.

24: Real Estate Equity and Debt Financing presented by Insight Information. Casino Nova Scotia, Halifax. Contact: See May 15&16.

24&25: Managing and Resolving Insurance Disputes presented by the Canadian Institute. Marriott Bloor Yorkville, Toronto. Contact: See May 8&9.

30&31: The Corporate Counsel Summit presented by Insight Information. Coast Plaza Hotel & Conference Centre, Calgary. Contact: See May 15&16.

30&31: Corporate Due Diligence & Disclosure – Best Practices for Preventing Liability presented by the Canadian Institute. Metropolitan Hotel, Toronto. Contact: See May 8&9.

31: Private Placements – What You Need to Know About the Law and Practice of Private Placements presented by Insight Information. The Drake Hotel, Chicago. Contact: See May 15&16.

JUNE:

6&7: Mergers & Acquisitions – Profitable Strategies for Targeting, Negotiating and Closing Deals presented by Infonex. Toronto. Contact: Phone: 1-800-474-4829; Fax: 1-800-558-6520; or register online at www.infonex.ca

7&8: The Securities Law Forum – U.S./Cross-Border Securities Law and Advanced Securities Litigation presented by Insight Information. St. Andrew's Club & Conference Centre, Toronto. Contact: See May 15&16.

19&20: Pension Law, Litigation and Governance presented by the Canadian Institute. The Sutton Place, Toronto. Contact: See May 8&9.

26&27: Advanced Forum on Mergers & Acquisitions presented by the Canadian Institute. The Sutton Place, Toronto. Contact: See May 8&9.

JULY:

10-13: The Federation of Law Societies of Canada presents The 2006 National Family Law Program. Delta Lodge at Kananaskis, Kananaskis, AB. Contact: Heather Walker at Phone: 705-879-3082; Fax: 705-374-4131 or E-mail: nationalfamilylawprogram@sympatico.ca.

Please send your notices to
Patricia (Patty) Johnston, Q.C.
c/o FirstEnergy Capital Corp.

Ph: 403-262-0642

E-mail: pmjohnston@firstenergy.com

Canadian Bar Association 2006 Canadian Legal Conference

Mark your calendar now for the CBA 2006 Canadian Legal Conference in St. John's, Newfoundland! Your registration brochure was in the March *National* magazine. Conference dates: August 13 to 15, 2006.

www.cba.org/CBA/annualmeeting/main/

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or contact Jeff Wise at 403-263-6601
or Meenu Ahluwalia Brar at 403-260-8571.

Legal Aid Project in Afghanistan (Kandahar)

The ravages of Soviet occupation, a decade of civil war, and the Taliban regime have left Afghanistan facing enormous challenges in building an effective criminal justice system and establishing the rule of law. Therefore, the International Criminal Defence Attorneys Association (ICDAA), a Canadian non-governmental organization with its headquarters in Montreal, in collaboration with the International Legal Foundation (ILF), based in New York, launched a legal aid project for Afghanistan in order to instil a culture of the rule of law and to strengthen the right to a fair trial. In 2003, the first public defender's office was opened in Kabul, Afghanistan. Even though the new Afghan law provides for legal aid for the indigent, they are the primary providers of criminal defence services in Afghanistan.

Currently, the legal aid project is in its second phase, i.e. providing legal aid services also in the Afghan provinces, namely Kandahar. The funds for setting up such a public defender's office in Kandahar were fully made available by CIDA, through CANADEM. The office opened April 1, 2006. The project endorses sustainable approaches by emphasizing the training of local criminal defence lawyers and support staff, who are mentored and supervised by international and Canadian criminal defence lawyers (the international fellows). The international fellows assist the local lawyers, who have a solid expertise in Afghan criminal law, mostly in overall case management, pleading techniques, and interactions with authorities. In the past year, the legal aid team has represented over 300 detainees and obtained relief in 30% of their cases. Moreover, the

fellows organize workshops for prosecutors and judges on the new Afghan criminal code enacted in 2004. Advocacy for a local, independent and effective legal aid service for Afghanistan is another core element of the fellows' work.

CANADEM and the ICDAA are recruiting a team of international fellows to help make this public defender's office in Kandahar operational, while the ILF is supervising the day-to-day implementation of the project. Ultimately, these Canadian efforts will contribute to a culture of defence and the rule of law in Afghanistan, while building and strengthening respect for human rights.

For further information on this project, you may contact

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FRONT &



A Futures Consultation Update was presented at the CBA Alberta Branch Council Meeting in February. L - Kelly Smith of Ontario and Frank Kraemer, Q.C. of BC facilitated discussion on the future direction of the CBA.

Photo right: The Alberta Branch Executive, These hard-working volunteers attend to the business of the Branch and National matters. L-R: Walter Pavlic, Q.C., Past President; L. Diane Young, Secretary; Michele Hollins, Treasurer; Scott Watson, Vice President; and, Richard O’Gorman, President.



Council volunteers assess recommendations of the “Crystal Report” at the Futures Consultation Update. See the Editor’s Notes p. 3.



Photo left: Sandra Hildebrand, one of the CBA’s outstanding volunteers and Chair of the Family Law Section South, presents to the Section in March.



The Legislative Review Committee (South) met recently with E. (Sonny) Mirth, Q. C., of Edmonton (far right), Legislative Officer and North Chair. Bill Ranson, unavailable for this photo, is the South Chair. This Committee has existed for over thirty years, providing comments and assistance to the bar and government.



John Armstong, Q.C., (right) of the Charities Section introduces Mick Mulloy (left) of The Calgary Foundation who presented in March.

Below: Participants in a Skills Training Workshop delivered by the CBA International Development Committee in Vientiane, Lao People’s Democratic Republic. See story p. 16.



The Insolvency Section (South) held a Registrars’ Luncheon this March. On the far right is Master Lionel Alberstat, a guest presenter at the meeting.



& CENTER



The 2006 Distinguished Service Awards presented at the 2006 CBA Alberta Law Conference L-R: Richard O'Gorman, President, Canadian Bar Association Alberta and co-presenter of the Distinguished Service Awards; Robert J. Campbell, Q.C., recipient of the Service to the Community award; Donald G. Bishop, Q.C., recipient of the Service to the Profession award; John T. Henderson, Q.C., recipient of the Pro Bono Legal Service award (new award); and, Mona Duckett, Q.C., President, Law Society of Alberta and co-presenter of the Distinguished Service Awards. Missing from the photo is John M. Law, recipient of the award for Legal Scholarship.



Gillian Marriott, Co-chair of the 2006 Alberta Law Conference with husband Justice

Hawco (center) and Jeff Wise, Co-chair of the Conference with Gillian.



The Honourable Ron Stevens, Minister of Justice and Attorney General of Alberta updated Conference attendees on government activity.



Jim Lebo, Q.C., receives a CBA Outstanding Service Award from President Richard O'Gorman for his many contributions to the Association and its members.



Gillian Marriott and Jeff Wise announce the winners of the prize draws at the Conference wind-up.



Below: Richard O'Gorman presents Allan Shewchuk, Q.C. with a token of appreciation for his stellar presentation "A Twenty Year Review of the CBA".



Photo ops in Cancun, Mexico at the 2006 National Mid-Winter Meeting. Photos to left: Virginia Engel, Q.C. and a CBA-AB Past President with Anton Melnyk, Q.C. (on the far left) and Scott A. Watson, Alberta Branch Vice President and incoming President (August'06) on the right.



L-R: Robert Patzelt, Q.C., President of the Canadian Corporate Counsel Association and Past President of the Nova Scotia Branch, with Virginia Engel, Q.C. and Jim Lebo, Q.C., both Alberta Branch Past Presidents, address the participants at the National Meeting in Cancun on Jim's bid for the Second Vice President position at National.



Below: Darrell Bricker of Ipsos Reid, International Director of Ipsos Public Affairs, addresses the attendees at the Cancun Meeting.

Getting Fit So That YOU "FIT"

Sutapa Bridgman & Kerry Parker Smith

The spring hiring cycle has begun. Want to get in on it? Check out these interview tips that will be key to seizing that golden opportunity.

Congratulations – you got the interview. Your goal now is to be well prepared. Research the company/firm in advance to gain a strong understanding of the culture and/or business objectives.

Remember, you are as much interviewing them as they are interviewing you. Be prepared with good questions to ensure that the opportunity will be the right fit and corresponds with your long-term career plan. Given that the actual interview process varies for each context, bear in mind the following pointers:

The In-House Interview

Often, the Human Resources Department will participate in the interview process. In addition to skills-oriented questions, you will likely have "HR type" or behavioural questions arise. To be successful, you will need to discuss your legal skills in relation to the following:

- Your ability to work with internal clients and manage outside counsel;
- Your ability to prioritize the many demands placed upon in-house counsel;
- Your ability to understand the difference between the role of in-house counsel compared to that of outside counsel; and
- Your ability to understand the business role that in-house counsel play within the corporation.

Make sure you also come prepared with specific examples from your career which showcase your teamwork and leadership abilities.

The Private Practice Interview

Law firm interviews vary from one-on-one casual conversations to panel settings. Do your own investigation of what a specific firm has to offer by canvassing colleagues and/or associates. At the interview, be prepared to answer and pose targeted questions that might include issues such as:

- How you believe the firm will best match your personality and long-term career objectives;
- What challenges you face in your current situation;
- How your current practice and skill level will strengthen the practice group;
- What the partnership process will look like for you entering as a lateral associate;
- How you will fit within the department from a work-flow perspective; and
- What the firm offers in terms of associate mentorship and/or partnership grooming programs.

Preparing for an interview is like training; it is a process that takes effort and focus. If you understand your goals, research the corporation or firm, talk to your colleagues, consult a career management advisor and keep our pointers in mind, you will be ready for game day. The right preparation will lead you closer to the right fit. *Game On!*



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Thursday, June 1, 2006 - U of A Conference Centre, Edmonton

PLENARY SESSIONS:

THE IMPORTANCE OF ADMINISTRATIVE TRIBUNALS IN THE ACCESS TO JUSTICE:

Mr. Justice John M. Evans, Federal Court of Appeal

CURRENT TRENDS IN ADMINISTRATIVE LAW:

Mr. Justice Frans Slatter J.C.Q.B.A, William W. Shores, James T. Casey Q.C.

CONCURRENT SESSION TOPICS:

DEALING WITH TROUBLESOME PRESENTERS

INVESTIGATIONS-PROCESS AND REPORTING

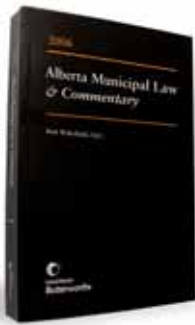
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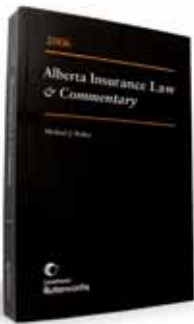
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New CREW in Calgary

Calgary is the newest Canadian city to join CREW Network, an international organization promoting women in commercial real estate (Commercial Real Estate Women). The Calgary chapter, fourth of its kind in Canada, (with Toronto, Vancouver and Montreal) is incorporated as a non-profit society to provide the most effective organization to represent and promote the interests of women in commercial real estate. While encouraging networking and fostering leadership in the industry, what makes CREW network unique to industry affiliations is that it is multi-disciplinary. Calgary members must also meet a pre-requisite of five years' commercial real estate experience.

Already, CREW Calgary comprises almost every facet of commercial real estate: law, leasing, brokerage, property management, finance, acquisitions, environmental, construction, engineering and title insurance. CREW Calgary represents every sector of the industry necessary to put a deal together and looks forward to

submitting its networking story of the year for recognition as a major transaction completed by CREW members.

Founding President, Marian De Souza, long standing CBA member, enjoys telling how her male colleague, John Rider, inspired her to bring CREW to Western Canada. Marian attended the 2004 CREW Network convention in Toronto where the size and success of CREW Network motivated her to introduce the 7,000 member organization to Calgary. More than 1300 professionals attended the 2005 convention in Seattle, WA.

If you would like to learn more about CREW and the calendar of events, please contact Membership Chair, Trish Morrison at Borden Ladner Gervais or any of the Board of Directors: Marian V. De Souza, President at First Canadian Title; Olivia Colic, Vice President, at Faskens LLP; Allison Braun, Vice President and Karen Price, Secretary, both at Oxford Properties; and, Leanna Way, Treasurer, at Sabal Crafted Homes.

International Development Committee in Lao PDR Skills Training Workshop

William B. Hogle

The Canadian Bar Association, through its International Development Committee, delivered a Skills Training Workshop from December 5 – 9, 2005 in Vientiane, Lao People's Democratic Republic.

The workshop was attended by approximately 80 members of the Lao Bar Association. Advocacy and drafting skills were acquired by the participants through lectures, demonstrations, group work and role plays. Jennifer Khor of Ottawa, a Canadian Bar Association Director of International Development, led the team of trainers, comprised of Pierre Fournier from Montreal, Sheila Redel from Winnipeg and Bill Hogle from Edmonton. The trainers volunteered their time to write the materials and deliver the training in Lao PDR.

Lawyers in Lao PDR are in the process of establishing their roles in a communist system that seeks foreign investment. The governing Lao People's Democratic Party has expressed an interest in moving to a rule of law system to accommodate this. The Lao Bar Association, currently controlled by the government, hopes to achieve independence in the future.

Education, experience and qualifications vary dramatically among members of the Lao Bar

Association. Some lawyers have experience working for the government and little legal training while others hold master's degrees in law obtained from foreign universities. Similarly, while English language training is encouraged for Lao lawyers, most members of the Lao Bar Association were not fluent in English and interpreters were used throughout the workshop.

In addition to the advocacy and drafting skills acquired by the participants during their training, member of the Lao Bar Association obtained a greater understanding of their roles as lawyers, and a sense of belonging to a profession practicing within and beyond their borders. Many of the concerns expressed by the Lao lawyers are also held by Canadian lawyers, including the challenges in advocating for clients with limited resources, the standard of civility among lawyers, the use of funds held in trust by lawyers and the management of client expectations.

This initiative demonstrates the important role that the Canadian Bar Association has to play in the development and organization of programs to promote and assist in the administration of justice. As a national body representing lawyers throughout Canada, the CBA is well positioned to assist in these endeavors and advance basic human rights.

See photo page 12

AA (Alcoholics Anonymous)

Craig Kinsman



Is alcohol affecting your life? If you want to stop drinking, AA can help. Check it out – go to a meeting.

To find out where to go for a meeting:

- Go to this website: www.area78.org; or
- Call the number closest to you:
 - ✓ Calgary: 403-777-1212
 - ✓ Edmonton: 780- 424-5900
 - ✓ Grande Prairie: 780-532-1772
 - ✓ Lethbridge: 403-327-8049
 - ✓ Medicine Hat: 403-527-2065; or
- Consult your local phone directory; or
- Call me at 1-877-737-5508 or e-mail me at alap@nucleus.com, or, call our professional service provider, Kelly Luttmmer & Associates at 1-800-461-8908.

Any of these sources will help find you the closest meeting – wherever you live in Alberta. If you want to learn more about AA and what happens at a meeting, call me and I will put you in touch with someone who can help.

Lawyer specific AA groups are available in both Edmonton and Calgary. If you are a lawyer and want to stop drinking, you are encouraged to attend.

Alcoholics Anonymous is an international fellowship of men and women who have had a drinking problem. It is nonprofessional, self supporting, multiracial, apolitical and available almost everywhere. There are no age or education requirements. Membership is open to anyone who wants to do something about his or her drinking problem.*

To learn more about AA see www.aa.org. To learn more about alcohol and its effects, see www.aadac.com.

**From A.A. World Services Inc. literature.*

Craig Kinsman is a Calgary lawyer and Executive Director of the Alberta Lawyers Assist Program

CANCER SUPPORT:

The Alberta Lawyers Cancer Support Group has developed a Critical Illness Practice Checklist. The checklist is designed to be a tool to help the lawyer who has been newly diagnosed with cancer (or other significant illness) deal with the immediate and negative impact a diagnosis can have on the individual and their practice. If you want to contribute to this group or if you have a cancer diagnosis and could use some help from a peer, please contact Phil Stuffco at 780-720-0005, e-mail philstuffco@shaw.ca, or, John Campbell at 780-434-8777, e-mail johncampbell@telusplanet.net.

The group is also organizing a Calgary presence. A meeting for early summer of 2006 is being planned. If you would like to participate in the Calgary group, contact Rich Bell at 403-260-9656 or e-mail richard.bell@blakes.com or contact me.



Alberta Lawyers Assistance Society

The Alberta Lawyers Cancer Support Group is a group of lawyers helping lawyers. We have all been affected directly or indirectly by the endemic of cancer. A small emerging group has formed to provide confidential support and assistance to fellow legal professionals who are suffering from the consequences of cancer or similar debilitating disease.

Assist is an independent, not for profit Society, which offers immediate, professional, confidential help to lawyers and their immediate families. See our website at www.albertalawyersassist.ca. Call toll-free anywhere in Alberta: 1-800-461-8908

LESA Program News

Ellen Smith

Never stop learning. Knowledge doubles every fourteen months.

Law school taught you the law. Let our faculty link this to needs of the business client. At **Business Boot Camp for Lawyers**, Edmonton only May 12, 19 and June 2, 1/2 day am, junior lawyers learn about key business concepts.

Workers' Compensation Update 2006, Edmonton, May 17 and Calgary May 24 is intended to assist lawyers understand and apply recent changes in Alberta WCB law arising through legislative amendment and case law.

Of interest to estate and family law practitioners, **Advising Blended & Non-Traditional Families**, Edmonton May 25 and Calgary May 30 will include family trusts, pension and other benefit plans, *Dependants Relief Act*, drafting issues and more.

Gain the Edge-Negotiation Strategies for Lawyers, Edmonton June 20 and Calgary June 21 will help you approach negotiations with a strategic mindset making the difference between winning and walking away empty-handed.

Check for the following programs in planning: Real Estate for Legal Support Staff, Driving Offences. If you have an idea for a seminar, contact us - we'd like to hear it.

Visit our website at <http://www.lesa.org> for more information or to register. Our site also features LESA Online CLE with recent LESA presentations. Contact us at 780-420-1987, 1-800-282-3900 or at lesa@lesa.org.

Cross-Section NORTH

L. Diane Young and
Dragana Sanchez Glowicki

From the Desk of Diane Young

This column is being written while I am on a road trip from Winnipeg to Milwaukee (don't ask!). While I'm not suggesting that the scenery is anything other than breathtaking - let's put it this way - I'm glad I have this column to occupy my time rather than having to answer my son's question of "are we there yet" for the 100th time.

There has been a lot going on with the CBA these past few months. Highlights include:

1. "March Madness" - and no, this does not mean basketball - for the CBA it means the annual Alberta Law Conference - a hugely successful event held in Calgary in March. The panels were superb and included a *pot pourri* of legal topics such as: Agriculture - From Cradle to Grave; Barristers' Briefs; Drafting Agreements; Family Quickies; Energy Regulatory; The Art of Advocacy; Solicitors' Shorts (I guess that answers the question of boxers or briefs? - see above!); Virtual Hell; Wills and Estates; and Corporate Counsel. The topic titles alone generated considerable interest!

Seriously - as I continue to preach to you about the virtues of the CBA - it really does have something to offer everyone - and the Alberta Law Conference is just of the many benefits.

The Conference was extremely well-attended and nothing but the best comments came back to the CBA. My thanks for the amazing work done by the organizing committee, co-chaired by Gillian Marriott and Jeffrey Wise. If you have any feedback on the Conference, please let me know. Better yet - if you want to get involved, get hold of me - the Conference will run next year in Edmonton.

2. Another great CBA event is Law Day and by the time you read this column, it will have come and gone for another year. Yet again, the Edmonton planning committee worked extremely hard to ensure the success of Law Day. If you have not attended Law Day in the past - make sure you do so in the future - you won't be disappointed. All kids, big and small, love it.

I'm very proud of the fact that a bursary, funded by the legal community here in Edmonton, was to be presented at Law Day to McCauley Elementary-Junior High, an inner-city school in need of funding to allow for students at the school to experience many things that most of our children likely take for granted - such as field trips.

3. There have been some really great section meetings these past few months. In case you missed them:

- James Christianson, the Taxing Officer, spoke at the Civil Litigation section meeting in March on the topic of "Cost Rules Re-Write Highlight and Costs Update" - as is usually the case with Civil



Litigation, there were a lot of people at the meeting and Mr. Christianson was extremely well-received by the group.

- Andy Sims, a leading labour and employment lawyer in the Province, spoke at the Administrative Law section meeting in March on "Duty of Disclosure in Administrative Law" - there was a great turnout for Andy and he received rave reviews.

- by all accounts, the Junior Lawyers section also had a great meeting with David Hawreluk speaking on the topic of "Effective Cross-Examination at Discovery and Trial".

- the Privacy and Research sections held a joint meeting that was very well-attended with The Honourable Madam Justice Fruman speaking on the topic of "Open Courts - Electronic Access to Court Records and Privacy" - lots of food for thought there.

4. In the coming months, look for Professor David Mullan, a distinguished scholar from Toronto, to speak on an administrative law topic.

A reminder to all section executives - you should plan to hold your elections for the executive positions available in your sections as early as possible in the spring. This is so the incoming members of the executive can come to the Spring Workshop held in late April or early May and be geared up and ready to go for the fall.

Finally, for all those thinking of retirement (myself - I am on the "Freedom 95" plan), someone sent me these "ramblings of a retired mind":

- I was thinking about how a status symbol of today is those cell phones that everyone has clipped onto their belt or purse. I can't afford one. So, I'm wearing my garage door opener.
- I was thinking about old age and decided that old age is "when you still have something on the ball, but you are just too tired to bounce it".

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Paul McLaughlin

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Cross-Section SOUTH

David Steele and Marian De Souza

From the desk of Marian De Souza

Unbelievably, with work/travel and publishing delays, this is the first opportunity I have had to wish you all a Happy New Year. So, a belated offering fitted for a lawyer audience:

From me (“Wishor”) to you (“Wishee”), please accept without obligation, implied or implicit, my best wishes for an environmentally conscious, socially, responsible, politically correct, low stress, non-addictive, gender neutral, financially successful, personally fulfilling and medically uncomplicated recognition of the onset of the generally accepted calendar year 2006.

By accepting this greeting, you agree to be bound by the following terms and conditions:

1. This greeting is subject to further clarification or revocation.
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Seriously, looking back at the past year, the sections continue to represent one of the great strengths of the Alberta Branch. It is a privilege to join David Steele in supporting the Chairs build upon this success.

Section chairs continue to select pertinent topics and engage speakers that “wow” us away from our desks. Already well into their term, current chairs are no doubt beginning to think about their successors, so don’t be surprised if you get a call and rest assured that you will be well supported should you rise to the occasion.

What better time to participate in the sections, than now, against a backdrop of debate regarding mandatory continuing legal education. The sections provide one of the best ways to keep informed of changes to the law and our respective practices in a convivial, roundtable format. The sections also provide an opportunity to get involved in law reform.

Among topics recently covered at section meetings were tax updates, for specialists and non-specialists alike, effective whistleblower policies for corporate counsel. Charities Law analyzed the impact of the new privacy laws, the Family Law Section looked at proposed amendments to the *Matrimonial Property Act*, and the Commercial Real Estate Section looked at how title insurance improves real estate transactions. The sections also delivered invaluable legal education at the



Alberta Law Conference held in Calgary, March 9 & 10. Topics ranged from uncovering mortgage fraud presented in “Unscrupulous Scams and Schemes” at the Law Society of Alberta Plenary to an unprecedented learned panel of presentations and demonstrations on the Art of Advocacy.

Sounds too serious? Well, who said lawyers can’t kick up their heels? This was literally the case thanks to the new Balancing Life and Law section. Previously, the CBA offices were converted to *La Dolce Vita* with Al Shewchuk’s culinary delights. Next, the familiar meeting Room A morphed into a dance studio, likened to a scene from “Shall we Dance?” Think it’s hard to top that? Well, by the time you read this, Meeting Room A will have seen the likes of a Shrek swamp party. So peel back those onion layers and remember all CBA members are welcome to attend this pay-as-you-go section that has proven to be excellent value.

Okay, I admit despite expert teachers, some of us still can’t dance, but a welcome chance to leave our desks to catch up with colleagues and friends is a nice change of pace ... or should I say sashay?



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Angus ROLLS UP THE RIM

Paul McLaughlin



When I got to the coffee shop, Angus was sitting at a table with two small paper cups of coffee in front of him. I was surprised: he usually has an extra large.

"Is one of those mine?" I asked.

"No way," he replied with a twinkle. "It's R-r-roll up the r-r-r-rim time, laddie. You have to buy your own ticket."

When I got back from the counter with my decaf coffee and a glazed cinnamon bun, he passed me a printout of the reasons for judgment on a case.

"What's this?" I asked.

"A case report."

"I can see that. Where did you get it?"

"Off the internet."

"Off the internet? I thought you hated technology."

"Well, not all technology. At least, not this technology. It's pretty neat. Every couple of days the Court of Appeal sends me an e-mail telling me that a decision is about to be posted on the court website. I click on the link and download the decision. If it looks interesting, I print it. I know how to look up cases on CANLII too."

"You never cease to amaze me."

"I've been reading cases for nearly 50 years. It's in my blood. Why stop now?"

I took a bite of my cinnamon bun. "So what's interesting about this one?"

He leaned forward, his eyes gleaming with excitement. "The Defendant applied to get Plaintiff's counsel punted because another lawyer in the Plaintiff's firm represented the Defendant's bank on a refinancing a couple of years before this action commenced. They acted for the bank again on a postponement of the security, after the action started. The Defendant argued that the Plaintiff's firm 'directly or indirectly' represented the Defendant in the refinancing and should therefore be presumed, based on the Supreme Court of Canada case of *Martin v. Gray*, to have received confidential information about the Defendant from the bank. It said that the law firm has the onus of proving that it didn't receive confidential information, and if it can't meet the onus, it can't act."

"What did the Court of Appeal say?"

"They didn't buy it. The judgment makes it very clear that the presumptions in *Martin v. Gray* only apply where there has been a lawyer-client relationship between the owner of the confidential information and the law firm."

"Okay," I said. "And that's important because ..."

"Because it sets a limit to *Martin v. Gray*," said Angus a little crossly. "You can see this dynamic in the common law all the time. The Supreme Court puts out a seminal judgment, and at first we don't know how far its doctrine extends. In subsequent cases, the doctrine is either extended or limited. In this case, an important line is drawn. *Martin v. Gray*

only applies to information that is received from a client. Since the Defendant was not a client of the Plaintiff's firm—only the bank was—the presumption doesn't apply."

Angus finished one of his coffees and rolled up the rim. To my raised eyebrows, he responded, "Please Play Again."

He started second coffee and continued. "But that didn't finish the Defendant. It also argued that the equitable duty of confidentiality applied. The difference is this: in *Martin v. Gray*, the Defendant can rely on a presumption that the law firm has to rebut, but in the law of confidentiality, it has to prove where the information came from, and under what circumstances. The QB Chambers judge found as a fact that the lawyer who acted for the bank did not receive any confidential information of the Defendant. The bank made the decision regarding the financing entirely on its own and the Plaintiff's firm was only retained to close the deal. Ditto the postponement. The Court of Appeal said the court should not act on a supposition that a lawyer acting for a bank on a financing would receive confidential information of the borrower. The onus is on the applicant to prove that the law firm got confidential information, and where there is no evidence, there is no basis for invoking the equitable law of confidentiality."

"Sounds reasonable to me," I said.

"I agree," said Angus. "The court recognizes the uniqueness of the lawyer-client relationship, but it doesn't impose any special expectations on lawyers who receive confidential information of non-clients."

I rolled up my rim, smiled and handed the cup to Angus to read.

"You lucky dog," he said as he handed it back.

Notes: The case discussed in the article is *Dreco Energy Services Ltd. v. Wenzel Downhole Tools Ltd.*, 2006 ABCA 39. To sign up for the Court of Appeal e-mail notification service, go to www.albertacourts.ab.ca and click on Subscription Services under the Court of Appeal tab. CANLII is at www.canlii.org.



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This issue we will discuss the amendment to the *Limitations Act*, R. S. A. 2000 c. L-12 which prohibits the reduction of the Act's limitation periods and the decision of the Alberta Court of Appeal in *Braun (Trustee of) v. Braun*, 2006 ABCA 23 dealing with the civil contempt rules.

The Amendment

Section 7(2) of the *Limitations Act* is proclaimed in force as of April 1, 2006. It provides:

An agreement that purports to provide for the reduction of a limitation period provided by the Act is not valid.

This section has an interesting history. The 1996 Bill which introduced the new *Limitations Act* expressly permitted agreements to reduce or lengthen statutory limitation periods. The Bill was amended by deleting reference to the ability to shorten limitation periods, leaving section 7(1) which allows parties to lengthen the limitation. Section 7(2) was introduced in 2003, proclaimed in force May 13, 2003 to be effective June 1, 2003 but was rescinded before the effective date in response to concerns about the possible effect of section 7(2) on commercial transactions. The issue was referred to the Alberta Law Reform Institute for further study but now has been again proclaimed in force.

This amendment to the Act raises many issues:

1. Do time limited contractual representations and warranted which arguably confer, rather than restrict, rights violate section 7(2)?
2. Can contracting parties successfully avoid section 7(2) by choosing the laws of a province which permits limitation shortening as the governing law of the contract?
3. Can parties conclude a tolling agreement once the limitation period has started to run?

Stay tuned for the answers as the courts wrestle with these and other issues.

The Decision

Cheryl-Lynne Braun refused to file an affidavit detailing money paid or received by her or her dissolved company and did not attend the examination of her by the trustee in bankruptcy. She was found in contempt on July 20, 2004. She thereafter was sentenced to 14 days' imprisonment when she did not purge her contempt. On

October 20, she was sentenced to a further four months' imprisonment because she still refused to comply with the court orders. In March 2005 Braun was found again to be in civil contempt and was sentenced to another four months' imprisonment. The March order was stayed pending the appeal in which the issue was whether the Court was *functus officio* following the October 20, 2004 contempt order and sentence of determinate imprisonment.

The Court of Appeal ruled that by ordering a determinate sentence under Rule 704(1)(b) (rather than an indeterminate sentence under 704(1)(a)), the court was *functus*.

Justice Berger, writing for the Court of Appeal, adopted the reasoning of May LJ in *Enfield London Borough Council v. Mahoney*, [1983] 2 All E.R. 901 that there is only one contempt, only one *actus reus*. Once this contempt has been adequately punished, there should be no further punishment for the same contempt. Justice Berger suggests one way of proceeding would be to adjourn once a finding of contempt is made and to schedule a sentencing hearing at a later date. If the *contemnor* purges his contempt, this may be mitigating factor. If not, continued disobedience is not relevant as the sentence should assume continued non-compliance. Justice Berger concludes:

Of course, the present restrained and measured practices of the Courts will continue. Judges who find a party to an action in civil contempt will almost always first consider non-penal sanctions such as the striking of pleadings and the imposition of costs. That said, if a penal sanction such as imprisonment or a fine is imposed, the judicial arsenal is not thereby depleted. The Court retains control over its own process and, if the unpurged contempt affects the fair adjudication of the suit, non-penal sanctions may still be invoked. (paragraph 28)

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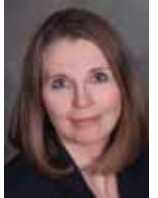
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