

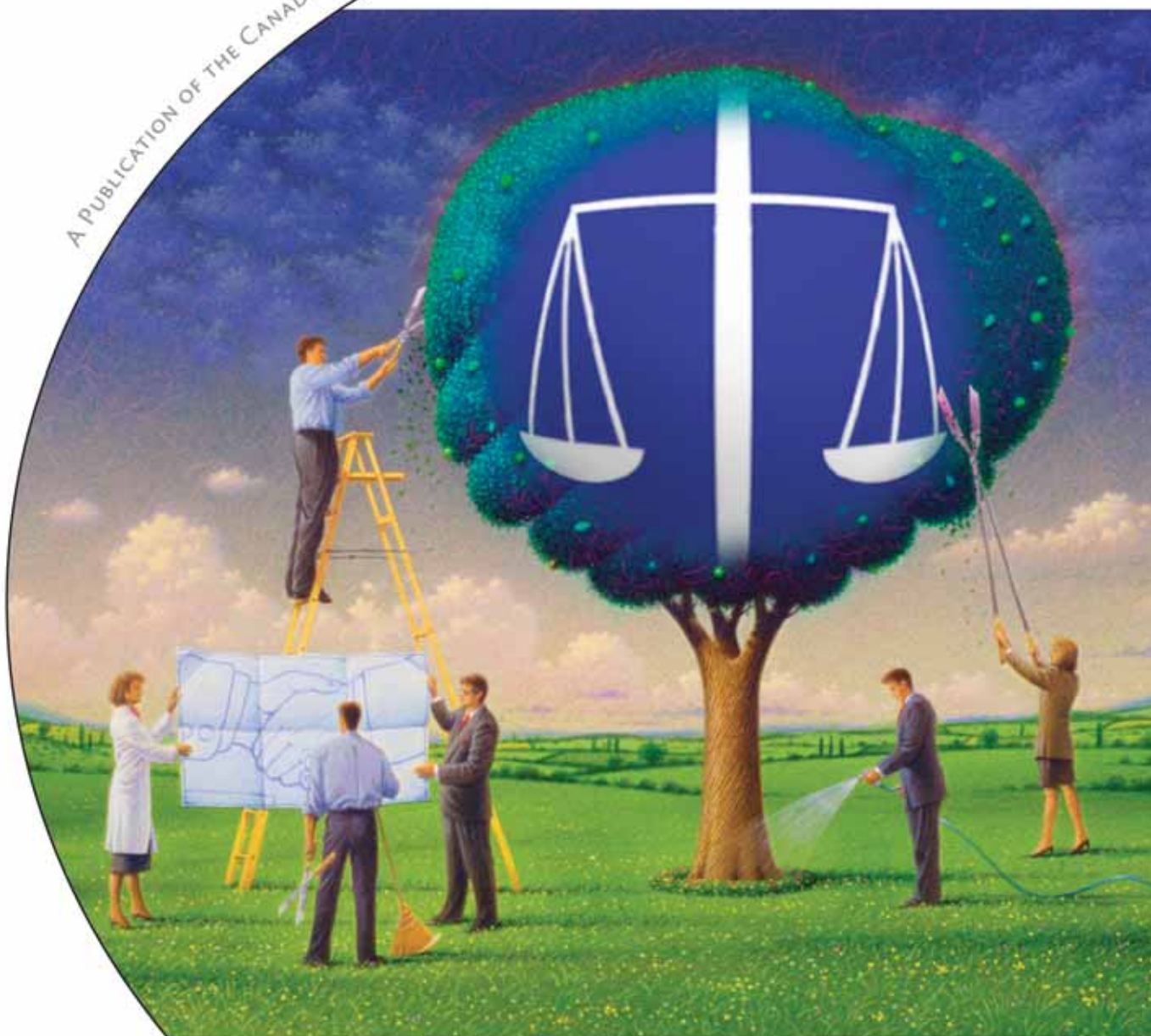
LAW MATTERS

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CANADIAN BAR ASSOCIATION ALBERTA

President's REPORT

Donald B. Higa, Q. C.



THE VOICE OF THE LEGAL PROFESSION

Events of December 6, 1941 changed the lives of many. The raid on Pearl Harbor thrust the U.S. into World War II and dramatically increased the scope and intensity of the conflict. Pearl Harbor also increased the anxiety, fears and emotions of Canadians. Some Canadian citizens became the innocent victims of actions arising from those fears and emotions.

Immediately following Pearl Harbor, the Canadian government issued a series of orders-in-council which dramatically restricted the rights of those Canadian citizens. They were ordered to register with the RCMP. Personal property was impounded, travel was restricted, possession of cameras and radios were prohibited. The Minister of Justice could, without warrant, authorize the immediate detention of those Canadians.

These restrictions were followed by the issuance of PC Order 1665, ordering their complete evacuation from the B.C. lower mainland. Initially, men were sent to road camps throughout the B.C. interior. Women and children were held in cattle barns located on the grounds of the Pacific National Exhibition.

These people were not aliens; they had done nothing wrong. They were simply Canadians who had at the time, the misfortune of their parents or grandparents being born in Japan.

In the spring of 1943, six internment camps were established in the B.C. interior and over 12,000 people of Japanese ancestry were housed in these camps. This detention meant thousands of Canadian citizens were driven from their homes and businesses. They were allowed to take only a few suitcases. All other personal property, including homes, businesses, vehicles and furniture vested to the government and were sold at "fire-sale" prices. Ironically, these proceeds were, in many cases, all families had to survive the years they were held in the internment camps.

My mother and her family and her friends and their families were just a few of the thousands of innocent Canadian citizens who, for reasons of ancestry only, found themselves prisoners of war.

What does this have to do with the Canadian Bar Association? It is this: the legislation that authorized the issuance of the ministerial orders-in council and the internment of Canadian citizens remains in force today, and events following 9/11 show that in times of world altering events, infringements on personal rights and liberties will continue to occur.

The Canadian Bar Association has been a strong and persistent voice in speaking against legislation and policies that are discriminatory and affect personal rights and freedoms. The CBA has intervened before the Supreme Court of Canada in many cases dealing with equality and civil rights issues. The CBA makes frequent appearances before parliamentary committees, seeking to ensure federal legislation is fair, effective and balanced.

The CBA took a very public and aggressive stance regarding Bill C-36, the anti-terrorism legislation. Representations made by the CBA emphasized the legislation must balance security concerns and the rights and liberties of individual Canadians. "Parliament's intention must not be to target people on the basis of race, religion or ethnic background, or to target those who engage in political dissent. The legislation has to be aimed at the terrorists, not at innocent Canadians."

Those representations were made to ensure that Canadians, especially those of Middle Eastern origins, did not experience the same fate as Japanese Canadians in the 1940's. By taking a loud and clear position, the CBA does its part in preventing threats to fundamental freedoms. Personally, this alone is worth the price of membership.

... men were sent to road camps throughout the B.C. interior. Women and children were held in cattle barns located on the grounds of the Pacific National Exhibition.

NOTES

Editor's

Scott A. Watson



What more can you possibly do?

It's been said that success in life will be in direct proportion to what you do *after* you've done what's expected of you.

Consider lending a hand to one of the CBA's initiatives. CBA Alberta is part of a national body which conducts a host of activities. The CBA National has built a reputation for advocacy which is widely respected across the country and on the international stage. Parliamentary and senate committees actively seek the CBA National's opinion. Their high-calibre, carefully researched recommendations receive praise from ministers, MPs and senators alike, even when they disagree on the merits. National CBA's submissions to parliament, interventions in various court proceedings, and targeted international submissions are all based on policies and priorities set out by an elected council and board.

Both branch and national levels of the CBA lobby the federal and provincial governments to ensure laws are practical and just. While lawyers aren't the only group able to discern when society's rights are in danger, they are better equipped than many to articulate it. For the first six months of 2004, CBA National has made over thirty submissions to government on issues ranging from the proposed *Assisted Human Reproduction Act* to the appointment of justices to the Supreme Court of Canada.

I encourage you to visit the National website www.cba.org to examine the submissions which have been presented by committees and sections. You may discover an issue National is pursuing which you feel strongly about and which prompts you to get more involved. Whether you have an interest in a piece of proposed legislation, a certain court case being intervened in or some other aspect of the law which will affect society, you have something of value to offer the CBA and all Canadians as well.

Please send me a note if you have something to share with the bar. You can reach me at swatson@mross.com



LSA RECRUITING FOR TWO PRACTICE ADVISORS

After completing an extensive review of the practice advisor program, the LSA is recruiting to fill two practice advisor positions. One position will be located in Calgary, replacing Barry Vogel, QC, who retired in 2003. The other will be in Edmonton, replacing Paul McLaughlin, acting practice advisor and practice management advisor, who has decided to return to private practice in October, 2004 with his son.

Practice advisors provide confidential advice on ethical, practice and practice management issues to lawyers and students-at-law. They also advise LSA staff, committees and the benchers. They are a trusted resource to the Alberta legal profession.

The position description is posted on 222.lawsocietyalberta.com. Interested candidates should submit their resume and three references to human.resources@lawsocietyalberta.com by August 13, 2004.

LAW OF PROPERTY ACT CHANGES, 2004



Bill 29, 2003, passed by the Alberta Legislature in the spring of last year, has now been proclaimed. It will come into force August 1, 2004. Along with proclamation of the statute, A.R. 89/2004 was passed. It provides for the definition of and mechanics for determination of the "high ratio mortgage" concept.

As of August 1, 2004, the NHA exception to the operation of the mortgage remedy limitations in ss. 40 and 41 of the *Law of Property Act* ("LPA") will be changed. It will not change for then-existing NHA insured loans - they and renewals of them are grandfathered. The pre-Bill 29 rules will apply to them. However, from and after August 1, 2004 new insured loans will not fall within the exceptions unless they are "high ratio" loans.

The new exception will apply not only to new high ratio mortgages insured under the *National Housing Act* but also to new high ratio mortgages insured by other licensed mortgage insurers.

Direct CMHC loans, both new and old, remain exempted under the amendments. The focus of the change is insured loans.

"High ratio mortgage" is defined by the regulation as a mortgage for which the principal sum (adding prior or *pari passu* registered mortgages or encumbrances, where they exist) "exceeds 75% of the market value of the land at the time the mortgage is given." So, on new loans done on or after August 1, 2004, that are insured, if the loan-to-value ratio is 74% at the time of placement the exemption does not apply; but if the loan-to-value ratio is 76% the exemption does apply. And loans with a 76% loan-to-value ratio that are not insured are not exempt.

It will be difficult, going forward, for the lawyer to be sure of when to advise a client about personal liability risks on mortgage loans. The lawyer acting on loan placement will probably be aware or readily able to be informed as to the status of the mortgage. He will generally be informed that the loan is insured, and the value inquiry is easily made of one or both parties (borrower or lender). The purchaser's lawyer acting on a mortgage assumption transaction may not be in the same position. Even today, there are many NHA-insured mortgages that are exempt from the liability limitation that would not be identifiable as such from the registered instrument. Particularly with some of the larger lenders who are fond of nation-wide form consistency, identifying a mortgage as NHA or conventional is not easy.

This problem will become exacerbated after August 1, 2004. The limitation to high-ratio loans and the extension to privately insured loans will require careful research in some cases. The problem will cease to be so great after August 1, 2006. Mortgages placed after that date that secure high-ratio insured loans must contain a prominently published statement of their nature. The form is prescribed by A.R. 89/2004 and is as follows:

"This mortgage is a high ratio mortgage to which sections 43(4.1) and (4.2) and 44(4.1) and (4.2) of the *Law of Property Act* apply. You and anyone who, expressly or impliedly, assumes this mortgage from you, could be sued for any obligations under this mortgage if there is a default by you or by a person who assumes this mortgage."

It is unclear what the consequence of failure to insert such statement will be; but there is a high probability that such failure on loans placed on or after August 1, 2006 will result in the loans not being exempt from LPA sections 40 and 41. The two years *interregnum* is obviously designed to allow lenders and lawyers an

opportunity to revise their forms; but it also leaves a two-year period when extra due diligence will be required on loan assumptions. In fact, even after August 1, 2006, added due diligence will be necessary where one is dealing with a pre-2006 mortgage that has been assumed or renewed or extended.

The Law Society has expressed to the Bar in the past (see *Law Society Practice Guide* p. 12-18) that on NHA loans exempted by the LPA one should specifically warn and counsel clients about the personal covenant remedy availability. The reason for such special counsel will remain after August 1, 2004; but the precise method and form will become somewhat more complicated.

The complication leads the writer to an irresistible aside comment. Why is this area of the LPA not cleaned up on a more comprehensive and solid basis? The opportunity to do so in 1983-84 when the "Dollar Dealer" heyday led to a number of LPA Part V amendments was rejected. The opportunity to do so after the Alberta Law Reform Institute's studies and recommendations in 1991 and 1994 was missed. And in 2003-2004, despite fairly wide consultation with businesspersons and Bar, the opportunity has been dodged again. The LPA rule and exceptions, and exceptions to the exceptions, have now become so complex as to be almost incomprehensible. What sound policy reason is there for this continued intransigence?

But I digress. More important for purposes of this newsletter writing is identification of the change and its practical implications for lawyers. The following items are apparent and noteworthy. Undoubtedly there are others - especially in the foreclosure context - but these leap out on first reflection:

1. The rules change for mortgages placed on or after August 1, 2004; so the conveyancer should be mindful of the need to re-address the form and content of advice given to clients (both lender and borrower) on and after that date.
2. Before August 1, 2006, lenders' lawyers should be sure their client's forms clearly flag - in form prescribed - the nature of high-ratio insured loans.
3. It would be useful for lender's lawyers to get borrower confirmation of the nature of the mortgage even before 2006. Recognition in the mortgage itself may work and would offer a service to future readers of the title documents.
4. Securing a copy of the mortgage on residential transactions, particularly assumption transactions, would seem prudent in every case.
5. Proof of the nature and quality of the mortgage on individual (i.e., non-corporate) mortgages will be desirable in foreclosure proceedings.
6. It should be noted that the practice, followed informally by CMHC, of not seeking personal covenant enforcement on vendors on assumed loans if default does not occur within one year of assumption may not be followed by other insurers.
7. Finally, it should be noted that once a mortgage meets the exemption tests (both old and new ones) it remains exempt through future renewals. The reverse is also true. A non-exempt mortgage will not become exempt if renewed at a time when property value declines have skated the loan-to-value ratio offside; and a post-2004 NHA-insured 75% corporate loan may not remain exempt if renewed in the hands of a subsequent individual owner (see various Alta. C.A. and S.C.C. rulings on mortgage renewals 1986-1996).

View from the BENCH

Judge Allan A. Fradsham



I maintain what, at best, could be described as an uneasy peace with the computers in my life. Indeed, there are times when the peace is shattered, and what comes to mind is a variation of the phrase matrimonial lawyers used to use in the preamble to separation agreements: Unhappy differences having arisen between the TECHNOPEASANT and the GOD-LIKE MACHINE....

My stress level increases most significantly when I am proceeding along and suddenly a loud "ping" is heard and the following message is superimposed on my work screen:

"THIS COMPUTER HAS COMMITTED AN ILLEGAL ACT AND WILL SHUT DOWN".

I have worked a long time in the law, and, when in practice, I visibly flinched whenever one of those "addressographed" envelopes bearing the Law Society crest arrived even though I knew in my heart it was just another mass mail-out of non-earth shattering "stuff". Consequently, the phrase "COMMITTED AN ILLEGAL ACT" can solidify my blood whilst liquefying my bowels. "Committing illegal acts" is the type of thing that causes one to receive one of those Law Society envelopes which has been individually addressed and is preparatory to a mass-mailing of a disciplinary proceedings report.

So when my computer confesses to committing an illegal act, I take the position it is by implication accusing me as well. It seems to me that at the very least what should appear on the screen is something akin the following:

"THIS COMPUTER HAS COMMITTED AN ILLEGAL ACT. YOU ARE ACCUSED OF EITHER BEING A PARTY TO THAT ACT OR COUNSELING THE COMMISSION OF THAT ILLEGAL ACT. ALL PREVIOUSLY TYPED ITEMS WILL BE IMMEDIATELY SEIZED AND IT IS UNLIKELY THEY WILL EVER BE RETURNED.

YOU HAVE THE RIGHT TO RETAIN AND INSTRUCT AN INFORMATION TECHNOLOGY COUNSEL WITHOUT DELAY.

IF YOU DO KNOW ANY INFORMATION TECHNOLOGY COUNSEL, OR ARE TOO ASHAMED TO ADMIT THAT YOU DO, THEN YOU MAY CALL OUR TECHNICAL SUPPORT LINE IN WHICH EVENT YOU SHALL LEARN THE TRUE MEANING OF THE WORD "ETERNITY".

DO YOU UNDERSTAND THESE RIGHTS? PLEASE TYPE YOUR RESPONSE ON THIS SCREEN WHICH WILL IMMEDIATELY CAUSE IT TO GO BLANK THEREBY UTTERLY DESTROYING THE PITIFUL WORK PRODUCT OF YOUR INSIGNIFICANT, MEANINGLESS EXISTENCE."

Now that would be a more honest and forthright way to deal with the accusation. Mind you, when a computer decides it is going to shut down and wipe out hours of your sweat and toil, the most honest message would be this:

"HA! HA! YOU FORGOT TO SAY "MOTHER MAY I".



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International Commission of Jurists

The ICJ was founded in 1952 in Berlin in the wake of the Nuremberg Trials and the adoption of the Universal Declaration of Human Rights. Eminent jurists from 42 countries met to establish a non-governmental organization based on the conviction that justice and the law are two indispensable pillars of democracy. They undertook to build bridges between east and west and south and north in order to promote the legal protection of human rights throughout the world.

The International Commission of Jurists is a non-profit organization. Its headquarters are in Geneva. The modest office of approximately fifteen people, through the direction of its Secretary-General, carries on a worldwide program of activities in the field of human rights.

The ICJ has been instrumental in the drafting and adoption of the 1985 United Nations Basic Principles on Independence of the Judiciary and the United Nations Declaration against Torture and in achieving the establishment of the International Criminal Court and the African Human Rights Court.

The ICJ sponsors fact-finding missions on human rights, particularly in relation to the harassment or persecution of lawyers and judges and communicates its concerns to the relevant national authorities and the international community. ICJ press releases and statements act as constant denunciations and reminders of violations of human rights all over the world.

The ICJ is organized throughout many countries. Its governing body – the Commission – is made up of 60 members who are outstanding jurists from different nations and represent all legal systems and traditions. The Honourable Claire L'Heureux-Dubé, formerly of the Supreme Court of Canada, recently served as President of the Commission. In 2003, the Honourable Ian Binnie of the Supreme Court of Canada was appointed Commissioner for a five-year term.

ICJ Canada

ICJ Canada is a charitable organization established in 1958. It supports the activities of the ICJ, participates in ICJ missions, and organizes lectures and panel discussions.

ICJ Canada also awards the Walter Tarnopolsky Medal; each year, at the Annual Meeting of the Canadian Bar Association, the Medal is awarded to a Canadian who has made a major contribution in the field of human rights.

Over the past few years, the Canadian Section has also been active in promoting international

exchanges with judges and lawyers from Eastern Europe, Africa and South Asia. During the three-year period commencing in the year 2000, for example, visits were exchanged between Canada and Croatia. Through intensive seminars, Croatian and Serbian delegates were introduced to the workings of the Canadian judicial system, with particular emphasis on the independence of the judiciary.

In the summer of 2000, Justice Nasir Zahid, formerly of the Supreme Court of Pakistan, toured Canada and spoke to ICJ members with respect to the independence of the judiciary in Pakistan. These activities were supported by grants from the Canadian International Development Agency and other funding bodies.

In the summer of 2001, the Hon. Anthony Gubbay, who was forced to resign as Chief Justice of Zimbabwe, visited several cities in Canada and participated in the Annual Meeting of the CBA in Saskatoon. In 2002, ICJ Canada also hosted meetings with Hon. Nicholas McNally, who also resigned recently from the Supreme Court of Zimbabwe.

In October 2003, ICJ Canada hosted the visit of Judge Radmila Dacic of Serbia, who was persecuted under the Milosevic regime and is now President of the Serbian Association of Judges. She spoke to judges, lawyers, and law students in Montreal, Ottawa, Calgary, and Banff.

Individual members of ICJ Canada continue to contribute to the goals of ICJ internationally. In recent years, they have participated in missions, meetings, and other assignments in Egypt, Tunisia, Kenya, Northern Ireland, East Timor, South Africa, China, and Swaziland.

Membership in ICJ Canada is open to judges, lawyers, law professors, and law students interested in supporting the objectives of the International Commission of Jurists.

The International Commission of Jurists (ICJ) is an important voice in the global effort to promote human rights and the rule of law. The Canadian Section of ICJ – ICJ Canada – is working to expand its membership. This note provides some background information about the organization. Anyone wanting more information can visit ICJ Canada's website at www.icjcanada.org or contact me directly at 306-347-8000.

*Robert G. Richards, Q.C.,
Vice President – Prairie Region*



Dane Wintermute 1961 - 2004

Immo Sintenis

On April 21, 2004, the legal community lost a great friend and colleague. Dane Wintermute had recently decided to master yet another activity in his life, and in January, 2003 he obtained his private pilot's license. His first passenger after receiving his license was his mom. He took her for a flight on her 65th birthday and by all accounts both Dane and his mom were beaming after this inaugural flight. However on the evening of April 21, 2004, after attending one of his son's lacrosse games, Dane's light plane crashed in a field east of Sherwood Park. I shall never forget where I was the moment I got the terrible news and I suspect many people in the legal community feel the same way.

I recall the day Dane told me he was training for his pilot's license. We were driving down the highway to spend a weekend fly-fishing on the Raven River. Dane had confided this pursuit in very few people and the news came as a surprise. I was struck by how passionate he had become about his new hobby. On reflection, I ought not to have been surprised! If Dane committed his mind to anything, you could be assured he would pursue it passionately and relentlessly and there would be no holding him back. He described flying over downtown Edmonton on a beautiful, cloudless summer afternoon and the sense of giddiness he felt while looking down on the Manulife Building, and thinking about all of his partners, associates and staff, while he was out playing hooky. To use Dane's exact words; "You can't believe how

fun it is, it's kind of like skipping school." Despite Dane's exemplary work ethic, he never lost sight of the importance of playing hooky every now and again! That weekend spent traipsing through the pools and ripples of the Raven River is one of the finest fly-fishing weekends I have ever had, and it was not just because I caught fish and Dane got skunked ... it was because I got a chance to spend time with a friend, whom I had not seen enough of because of our busy work and life schedules.

Dane graduated from the University of Alberta law school in 1985. I believe the members of the class of 1985 will recall Dane as a studious, diligent, kind and very funny guy. Some of us from the class did the obligatory post law school European tour, and we were lucky to have Dane on our crew. Even though Dane knew full well he was going to be joining the world of the blue suits and the billing sheets, a part of him was a rebel who always marched to his own tune. He was the kind of guy who realized having fun and playing hooky are every bit as important as doing an excellent job as a lawyer.

Another fond memory of Dane was "Marks Night". That was the night (if you were fortunate enough to be overseas) you made the call home to find out if you passed your third year exams, or had to go back home to prepare for supplemental exams. We happened to be in Rome on Marks Night. Luckily, we all got good news that night. Someone had had the foresight to drag along our class yearbook and Dane led us through an individual toast to each and every member of the class of 1985. He did not have to know somebody well to come up with something nice to say about them. He was that kind of guy!

I have learned many things from Dane over the years, but I think the most important things I have learned from his passing are we need to spend more time with our friends and families, we need to pursue our interests passionately ... and every now and again, to rebel and leave the office early and unannounced and go play some hooky. Dane would have respected you for it!

ASSOCIATE COUNSEL J.D. IRVING, LIMITED

Our client is creating a new opportunity for an additional associate counsel to join their legal group. This diverse group of companies competing in national and international markets produces a wide range of forest products including; kraft pulp, newspaper, tissue and corrugated medium. As well, they operate modern sawmills in NB, NS, Quebec and Maine and are a Canadian leader in reforestation efforts. They are also successfully involved in rail, sea and road transportation, retail, shipbuilding, construction and food processing.

As Associate Counsel you will be involved with the negotiation and drafting of commercial agreements, intellectual property issues, acquisitions and risk management. You will provide legal and business advice on a daily basis to the management of the company.

The ideal candidate will possess excellent business skills and approximately 2 to 4 years of business law experience either in a major law firm or as counsel of a major corporation. Your excellent communication and detail oriented skills will allow you to flourish in this fast paced environment.

This opportunity offers a creative and challenging work environment and a very competitive salary and benefits package. You will be able to make full use of your skills while you and your family enjoy a unique lifestyle that includes very affordable housing, excellent education and a wealth of leisure pursuits.



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CALA (Calgary Association of Legal Administrators) Mission is to assist our members in acquiring skills for effective law office administration. CALA members enjoy educational and social events throughout the year, and ongoing support from each other through many networking opportunities. Membership inquiries can be made to any one of the 2004-05 CALA board members.



ELOMA (Edmonton Law Office Management Association)
Mission is to improve the quality of management in legal service organizations,

to promote and enhance the competence and professionalism of legal administrators and members of legal management teams, and to represent professional legal management within the legal community and the community at large. ELOMA is pleased to announce its 2004/2005 Executive:

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Please contact members of the Executive with membership or other inquiries.

CCCA selects Legal Recruiter: The Counsel Network National Recognized Supplier

TORONTO – The Canadian Corporate Counsel Association (CCCA) is pleased to announce that, effective April 1, 2004, The Counsel Network has been selected as a Recognized Supplier for the provision of lawyer recruitment services to the members of the CCCA.

Selection of The Counsel Network as a “Recognized Supplier” is national in nature and, as a new initiative of the CCCA, is the first and currently only selection of its kind in Canada. As a Recognized Supplier, The Counsel Network enjoys a select relationship with the Canadian Corporate Counsel Association and will continue to develop and provide specialized in-house recruitment and career expertise to the members of the CCCA.

“This selection formalizes the successful, long-standing relationship we have had with The Counsel Network over the years,” stated CCCA President John Scott. “We are thrilled to be able to recognize TCN’s investment in the CCCA and excellence in service to our members by distinguishing them as a Recognized Supplier.”

“We are equally pleased with the opportunity to formalize our ongoing cooperative relationship,” emphasized Dal Bhathal, National Director, In-House Counsel Division of The Counsel Network. “We look forward to continuing to provide high quality service to CCCA members through our relationship-based service model, which blends the best of search and selection and is unique in Canadian legal recruitment”.

Established in 1988, The Canadian Corporate Counsel Association is the national professional forum and voice for in-house counsel in Canada. With over 8400 members, our in-house counsel represent approximately 1700 corporations and organizations in virtually every industry, from banking and finance to insurance,

telecommunications, health, technology, manufacturing, retail, construction, mining and energy and non-profit.

With offices in Vancouver, Calgary and Toronto, The Counsel Network is Canada’s only national lawyer search firm providing specialized recruitment and selection services to leading Canadian and international law firms and corporations. The Counsel Network is the exclusive National Preferred Supplier to the Canadian Bar Association and subscribes to the Code of Ethics and Standards of Practice of the National Association of Legal Search Consultants.

The Counsel Network offers a dedicated, national in-house recruitment team comprised of Dal Bhathal, National Director - Vancouver, Sameera Sereda, Regional Director - Calgary and Stephen Nash, Regional Director - Toronto. TCN recruiters operate as part of an integrated team of specialized, highly skilled professionals with extensive experience in both law and search. TCN recruiters are respected as dedicated and trusted advisors who intimately understand their clients’ needs and seek to recruit the best lawyer to match those needs while maintaining absolute confidentiality and discretion.

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Sameera Sereda,
Regional Director,
In-House Counsel
Division, Calgary



St. Thomas More Lawyers' Guild of Northern Alberta

Important “Save the Date” Notice for Thursday, November 4th, 2004 Tribute Dinner in Honour of Chief Justice Allan H. Wachowich

The St. Thomas More Lawyers’ Guild of Northern Alberta will honour Chief Justice Allan H. Wachowich at a Tribute Dinner at the Hotel Macdonald in Edmonton, Alberta on Thursday, November 4th, 2004 on the occasion of Chief Justice Wachowich’s 30th year as a member of the judiciary in Alberta and on the occasion of the 40th anniversary of the St. Thomas More Lawyers’ Guild of Northern Alberta, of which Chief Justice Wachowich is a founding member.

Prior to the Tribute Dinner, the Guild’s annual tradition of the Red Mass will be held at St. Joseph’s Basilica in Edmonton, Alberta. All members of the judiciary, Alberta bar, court-house staff and guests are most welcome to attend the Red Mass Celebration and Tribute Dinner.

Additional details regarding the Red Mass and Tribute Dinner will follow in the next Law Matters publication. Seating for the dinner at the Hotel Macdonald is limited. Tickets should be purchased early to avoid disappointment. For further information, please contact Karen Poss at 780-441-6155 or by email at possk@ecsd.net.



Edmonton reception, hosted by the Law Society of Alberta, with Supreme Court of Canada (SCC) Justices: Photos top row L-R: Chief Justice of Canada, Beverly McLaughlin (l) with Pat Blocksom, Q.C.; Bill Rice, Managing Partner of Bennett Jones LLP (l) with former partner Justice Jack Major of the SCC; Sean Dunnigan, Q.C., a past-president of the Branch and Analea Wayne; Photos 2nd row L-R: Justice Maurice Fish of the SCC (l) and Al Shewchuk, Q.C.; Walter Pavlic (l), incoming president of the CBA-AB Branch, Jim Bancroft, Q.C., a past-president of the Branch, and Alberta MLA Marlene Graham, Q.C.

Law Day 2004 was celebrated in Calgary, Edmonton, Red Deer, Medicine Hat, Lethbridge and Fort McMurray. All events were well-attended, informative and fun!



Edmonton Opening: Ribbon cutting with L-R Alexis Moulton and Tracey Beaudoin, Edmonton Chair and a rousing opening band.



Kerrie Carroll (l) and Maria Lavarato, Law Courts liaisons.



Players from the children's trial "Old MacDonald v. Casey the Cow" L - R Jane Steblecki, Chad Brown, Jason McCulloch and Mark Raven-Jackson, Connor Glynn and left of Casey, Laura Freeman and Justice Julianna Topolniski.



Photo left: On the Edmonton bench, Chief Justice Wachowich (l) and Citizenship Court Judge Bhatia preside over the very moving and happy ceremonies to swear-in new Canadian citizens.



Section chairs, committee chairs, and judicial liaisons were honoured at the Edmonton and Calgary Appreciation Dinners.

Attending in Calgary were: L-R Back row: Jeff Wise, Yvonne Chenier, Willie deWit, Jason Schlotter, Clayton Cook, Grahame Loader, Sean Fitzgerald, Middle row: Don Higa, Q.C., Teresa Homik, Elizabeth Miller, Michael O'Brien-Kelly, Robert Kerr, Clint Docken, Q.C., Randal Penman, Jeremy Trickett, Front row: Mark Gerlitz, Jim Lawson, Colin McDonald, Michele Hollins, Anita Szabo, David Steele, and, Judge Allan Fradsham.

Attending in Edmonton were: Standing L-R: Frank Friesacher, L. Christine Enns, Stuart Weatherill, John Carlson, Walter Pavlic, Steve Andrew, Q.C., Eric Oddleifson, David Hiebert, Arthur Wilson, Q.C., Lewis Wasel, Ian Zaharko, and, Remi St. Pierre. Seated L-R: Micia Kawulka, Justice Darlene Acton, Judge Shelagh Creagh, Samantha Babad, Tracey Beaudoin, Jane Steblecki, Colleen Dunlop, and, Scott Watson.



Law Day 2004 continued



Derrick, the Calgary Roughneck's mascot, is the object of the Calgary family custody trial.



The Calgary children's trial "The Cat in the Hat" was a tremendous success with Michael Birnbaum as the Cat.



The Canada Customs agri-dog was on hand to demonstrate contraband sniffing skills.



The winner of the Calgary high school mock trial competition this year was the Webber Academy.

The breathalyzer van is always an interesting and informative feature at Calgary Law Day.



Calgary's Citizenship Court is always a highlight of the day. Back L-R - Richard O'Gorman, Branch Treasurer; MLA Marlene Graham, Q.C.; Assistant Chief Justice Sulatycky; RCMP officer Carrie Doran; and, Alderman Madeleine King. Front L-R - Rob Anders, MP; and, Michelle Fleming, Judge Pat Gleason, Jacquie La Plante from Citizenship court.



What's HAPPENING

Patty Johnston, Q. C.



AUGUST:

15-17: The Canadian Bar Association Annual Meeting and Legal Conference and Expo. Winnipeg, MB. Register online at www.cba.org.

SEPTEMBER:

8-10: M&A Skills Deal-Maker Summit presented by Federated Press. LeRoy Meridien King Edward Hotel, Toronto, ON. Contact: Phone: 1-800-363-0722 or 416-665-6868; Fax: 416-665-7733; E-mail: info@federatedpress.com; www.federatedpress.com

8-10: The 4th Annual Directors' Governance Summit presented by Federated Press. LeRoy Meridien King Edward Hotel, Toronto, ON. Contact: See Sept 8-10 above.

13-15: Securities Compliance. presented by Federated Press. Toronto. Contact: See Sept 8-10 above.

20&21: Negotiating and Drafting Major Commercial Agreements presented by Atlas Legal. Fairmont Hotel Vancouver, Vancouver BC. Contact: Phone: 416-750-4457; Fax: 416- 946-3495; e-mail: register@atlas-sfi.com; website: www.atlas-sfi.com

29&30: The Legal Archives Society of Alberta Historical Dinner 2004 featuring Legal Humour Past and Present with Mr. Justice Ian Binnie.

September 29 at the Fairmont Palliser Hotel in Calgary, AB. September 30 at the Fairmont Hotel Macdonald in Edmonton, AB. Contact: 403-244-5510; Fax: 403-541-9102; e-mail: legalarc@legalarchivessociety.ab.ca

Sept30-Oct1: Negotiating and Drafting Key Business Agreements presented by The Canadian Institute. Intercontinental Hotel, Bloor Yorkville, Toronto ON. Contact: Phone: 1-877-927-7936 or 416-927-7936; or register online at www.CanadianInstitute.com

OCTOBER:

18&19: Income and Royalty Trusts presented by Insight. The Metropolitan Centre, Calgary, AB. Contact: Phone: 1-888-777-1707; Fax: 1-866-777-1292 or register online at www.insightinfo.com

18&19: CEO/CFO Certification - What are Organizations *Actually* Doing? presented by Insight. St. Andrew's Club and Conference Centre, Toronto, ON. Contact: See Oct. 18-19 above.

28&29: The 10th Annual What's New in Environmental Law & Regulation in Alberta presented by The Canadian Institute. Delta Bow Valley Hotel, Calgary, AB. Contact: See Sept 30-Oct. 1 above.

Please send your notices to Patty Johnston, Q.C.,

Alberta Securities Commission, 400, 300 - 5 Avenue SW, Calgary, AB T2P 3C4
Phone: 403-297-2074 Fax: 403-297-6156 E-mail: patty.johnston@seccom.ab.ca

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Assist on DEPRESSION

Craig Kinsman



For persons suffering from depression and persons who care about someone suffering from depression, I'd like to pass on a few things others have said which have real meaning and use:

"The most important thing to remember during a depression is this: you do not get the time back. It is not tacked on at the end of your life to make up for the disaster years. Whatever time is eaten by depression is gone forever. The minutes ticking by as you experience the illness are minutes you will not know again. No matter how bad you feel, you have to do everything you can to keep living, even if all you can do for the moment is to breathe. Wait it out and occupy the time of waiting as fully as you can. That's my big piece of advice to depressed people. Hold on to time, don't wish your life away" (An excerpt from *The Noonday Demon*, by Andrew Solomon).

I read this excerpt in a paper that accompanied a talk at last fall's LPAC National Conference. Not only did that passage hit home but so too did some advice (slightly revised) in the same paper on the do's and don't's when dealing with someone who is losing their time because of depression:

Do:

- "Just be there": listen, accept
- Express caring and offer comfort
- Emphasize: treatability, biological basis, stages of recovery, individual pacing
- Activate and cooperate with the person's network
- Focus on small changes, resources, past and current successes
- Encourage physical exercise, e.g., invite the person for a walk
- Suggest referrals: ASSIST, medical, psychiatric, self help groups, psychotherapy, health/wellness, religious/spiritual

- Actively facilitate treatment contacts (e.g., offer to drive)
 - Ask about suicidal thoughts: (if yes, ask about plans and means; stay with the person; *Get Help*; tell the person you want them to live.)
 - Identify and reinforce reasons for living
 - Model self care
- Don't:**
- Judge
 - Assume you understand
 - Criticize or shame
 - Minimize
 - Advise ("Stiff upper lip", "Cheer up", etc.)

If you would like access to the paper from which I have quoted, please contact me. The paper is entitled: *Clinical Depression: A solution-focused approach*, Heather Fiske, Ph.D., C.Psych.

To learn more about LPAC and for more information on depression and other mental illnesses, please consult the excellent Education Programs and Products found at www.lpac.ca and in particular the Desk Manual on Mental Illness for LAP Directors.

If you are having personal difficulties, you don't need to suffer. Call ASSIST, see your family doctor, talk to a friend – all are productive first steps in dealing with the difficulties you may be experiencing.

ASSIST offers immediate, professional, confidential help. Call toll-free anywhere in Alberta: 1-800-461-8908.

For more information on ASSIST see our website at www.albertalawyerassist.ca and call me at 403-537-5508 (direct) / 800-737-5508 (toll free) or e-mail me at alap@nucleus.com.

LES A Fall Program News

Ellen Smith

"Learning is an ornament in prosperity, a refuge in diversity and a provision in old age." Aristotle

Personal Injury: Insurance Reform (Bill 53) Edmonton, September 14 and Calgary, September 21. Learn how Bill 53 will affect your personal injury practice.

Youth Criminal Justice Act An interactive teleseminar October 7, 14 and 21, 8:30 am-9:30 am. Topics include Bail/Release, Sentencing, Reviews and Suspensions.

Intellectual Property for Corporate Commercial Lawyers Edmonton, October 12 and Calgary, October 19. Find out how to avoid the IP traps in the purchase and sale of a business and learn to identify the IP issues facing your business clients.

Civil Mediation II Edmonton only, October 21-23. Registrants must have attended the Mediation of Civil Disputes I previously offered by LESA or other introductory course approved in advance by the instructors. Registration limited to 24.

Real Estate for Legal Support Staff Edmonton, November 09 and Calgary, November 16.

Mediation of Family & Divorce Conflicts Calgary only, November 11-15. An outstanding 40+ hours of hands-on, intensive skills training. Limited to 24 registrants.

Family Law - Spousal Support & Property Issues Dates to be announced.

Agricultural Law Issues Dates to be announced.

Legal Support Staff - Plan to attend the 2004 National Symposium, "Practicing With Professional Paralegals", October 14-16, 2004 at the Banff Rocky Mountain Resort. This is a joint program of The Alberta Association of Profession Paralegals and The Legal Education Society of Alberta.

Visit our website at <http://www.lesa.org> to find out more detailed information about these and other programs as the dates approach, or to register securely online, or watch your mail for brochures or contact LESA 780-420-1987, 1-800-282-3900 toll free in Alberta or by e-mail, lesa@lesa.org. Our website also features LESA Online CLE which allows you the opportunity to view LESA presentations you may have missed.

Cross-Section NORTH

Stuart J. Weatherill
Art Wilson, Q.C.



From the Desk of Arthur A. E. Wilson, Q.C.

The northern sections have wrapped up the current "school year", many with wine and cheese receptions or something else on a social theme. Will CBA junkies go into some form of withdrawal without section meetings to attend? Fear not, for an exciting new northern section school year will soon be upon us and early indications are it will be an exciting one.

The 2004-2005 Section Handbook has a new look to it. The Handbook will name the entire section executive, not just the chairpersons and vice-chairpersons. Section chairpersons will find their pictures in the Handbook. It lists some planned topics and section mission statements designed to sell the advantages of section membership.

For those of us in Northern Alberta, choices will include two new sections. The fledglings are the Education Law Section, chaired by Teresa Haykowsky, Legal Counsel to the Edmonton Catholic Schools, and Pension and Employee Benefits Law, chaired by Steven Mandziuk, Legal Counsel to Telus Corporation.

Teresa observes education law encompasses many legal aspects such as employment law, litigation, criminal justice, government relations, school board governance, administrative law, Charter and human rights law, freedom of information, corporate law and intellectual property. The mission statement of the Education Law Section is:

through mutual effort and exchange, to provide section members with an excellent means to

enhance their legal expertise, advocacy and professional needs in the area of educational law, and to provide an opportunity for section members to network and contribute to their profession and community.

The section plans to meet on three occasions in the coming school year on the following topics:

- Practice tips before the Board of Reference;
- Nuts and bolts of the professional practice review process for teachers; and
- Trends in criminal issues in the school setting

The mission statement of the Pension and Employee Benefits Law Section is:

to focus on the legal issues that arise from pension, disability and other employee benefit plans. Monthly speakers, both lawyers and other professionals, will present topics specific to this practice area in order to educate section members and stimulate the exchange of ideas.

I would also like to take this opportunity to thank Stuart Weatherill of Emery Jamieson LLP for his efforts as a Section Co-ordinator over the last two years and for being a patient mentor. Stuart is being succeeded by Diane Young of Ackroyd, Piasta, Roth & Day LLP this fall. I look forward to working with Diane over the next school season.

In conclusion, please contact me with any questions, concerns or ideas about the sections of northern Alberta or the CBA Alberta Branch.



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Cross-Section SOUTH

Michele Hollins
Jason Schlotter



From the desk of Jason Schlotter

Summer is here, which signals the end of another successful year of Canadian Bar Association activities. First, on behalf of the CBA, I would like to thank all section chairs and section executive members for their hard work this past year in putting on interesting and informative Section meetings. Your hard work is perhaps best reflected in the high levels of attendance at the various section meetings this past year.

The CBA Calgary office is pleased to announce it has moved from the 5th Avenue location where it has been for the past fifteen years. The CBA's new offices are located in the East Tower of Energy Plaza, at 1725, 311 – 6th Avenue S.W. The new office set up is an improvement in a number of ways, not the least of which are all the meetings rooms are on the same floor, and the set up allows for easier video recording of section meetings for display on the CBA's website at www.cba-alberta.org. More will be discussed about this in the not so distant future.

I would like to welcome David Steele to this page, as he is joining me as Southern Alberta Section Co-ordinator. You can look forward to David's comments in our next newsletter, scheduled to come out in the fall.

You might have already noticed the new look of the Section Handbook enclosed with this newsletter. Many thanks to the Communications Committee who took the initiative to have the Handbook redesigned.

In section news, the FOIP Section has changed its name to Privacy and Access. Although the name has changed, the section will continue its tradition of informative and entertaining speakers and will continue to serve its membership.

Finally, please join me in thanking Michele Hollins for her service these past two years as Southern Alberta Section Coordinator. Though Michele is finished with that position, her involvement with the Canadian Bar Association remains strong as she will move into the Secretary's spot on the Executive Committee, which will in the course of time bring her to the President's role.

Thank you to everyone who was involved with or volunteered their time to the Canadian Bar Association this past year. Have a great summer and see you in September.

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TO BOOK APPOINTMENTS please contact our Western Region Co-ordinator, Julie Wills, at 1-800-661-2034.

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JUDICIAL LIST

PROVINCIAL COURT

Four new judges and two new Assistant Chief Judges have been appointed to the Provincial Court of Alberta effective July 1, 2004:

James C. Koshman has been appointed to the Edmonton Family and Youth Court.

Hugh W.A. Fuller, Q.C. has been appointed to the Edmonton Rural Courts.

J.D. Bruce McDonald, Q.C. has been appointed to the Calgary Criminal Court

Victor T. Tousignant, Q.C. has been appointed to the Calgary Family and Youth Court.

Judge James Richard McIntosh has been named Assistant Chief Judge for Northern Alberta .

Judge A. Gail Vickery has been named Assistant Chief Judge for Calgary Family and Youth Court.

The Honourable Judge F.W. Coward of Lethbridge has been reappointed a supernumerary judge for a further two-year term commencing June 1, 2004.

The Honourable Judge R.L. Tibbitt of Vermilion has been reappointed a supernumerary judge for a further two-year term commencing June 1, 2004.

The Honourable Judge R.S. Dinkel of Calgary has been reappointed a supernumerary judge for a further two-year term commencing June 13, 2004.

The Honourable Judge D.P. MacNaughton of Red Deer retired as a supernumerary judge effective June 20, 2004.

The Honourable Judge J.E. Enright of Stony Plain retired and was appointed a supernumerary judge effective June 21, 2004.

Edmonton: Temporary Relocation

Court of Appeal Registry

Over the years, the Court of Appeal and Court of Queen's Bench Administrations have encountered serious overcrowding to the point that it has become necessary to renovate a portion of the main floor to effectively accommodate staff. In order to facilitate these renovations, the Chief Justice of Alberta and the Chief Justice of the Court of Queen's Bench have approved the temporary relocation of the Court of Appeal Registry to the Barrister's Lounge. The Registry will occupy this space for approximately four to five months (August to December 2004) during the construction phase. Once construction is complete, the Registry will relocate back to the main floor.

In an effort to minimize the disruption to the Bar, two private offices in the Law Society

Library will be made available for use by counsel. These offices can be used for reading, making local telephone calls, meeting with clients/witnesses, etc. In addition, a telephone will be installed directly outside the Barristers' Lounge for use by members of the Bar. Although our meeting/conference rooms are highly utilized we would attempt to make them available to you whenever possible to accommodate any gathering or functions our associations may have during our construction phase.

I wish to thank you in advance for your patience and understanding during this rather short interruption.

Sincerely, *Wayne Samis,*
Senior Manager, Court of Queen's Bench

2004 Legal Directory Corrections

Queen's Bench Justices

Add W.E. Wilson, Edmonton Supernumerary

Firms Listings

Add Foster Stock, 820, 520 – 5 Avenue S.W., Calgary, AB T2P 3R7, ph: 403-261-5333, fax: 403-266-4741, e-mail: info@fosterstock.com.

Vipond Jones LLP fax number is 403- 517-4001.

Lawyers Listings

Chris Davis - phone number is 403-571-0025.

Nancy Dilts - fax number is 403-233-5505.

John S. Huckell - phone number is 780-421-2472, fax is 780-426-1305, e-mail is jhuckell@bishopmckenzie.com.

Add Sharilyn C. Nagina, McCarthy Tetrault LLP, 3300, 421 – 7 Avenue S.W., Calgary, AB T2P 4K9, ph: 403-260-3500, fax: 403-260-3501, e-mail: snagina@cal.mccarthy.ca.

Add Peter Sharpe, Edwards, Kenny & Bray, 1900, 1040 West Georgia Street, Vancouver, BC V6E 4H3, ph: 604-713-4020 or 250-537-4117, fax: 250-537-4024, e-mail: psharpe@ekb.com.

POINTER PRACTICE

Molly Naber-Sykes and Jo'Anne Streck



PRACTICE ALERT

Gone are the days of advising clients they may ignore with impunity the proceedings of foreign courts against them. In *Beals v. Saldanha* [2003] 3 S.C.R. 416, the Supreme Court of Canada rules Canadian courts should extend the principles in *Morguard* beyond interprovincial judgments to recognize and enforce foreign judgments.

Facts

The Ontario appellants sold a vacant lot in Florida to the respondents for US\$8,000. After a dispute arose regarding the sale, the respondents sued the appellants in Florida. The appellants failed to defend the action, and the respondents were awarded US\$260,000 in damages. On the advice of their Ontario lawyer, the appellants did not move to have the judgment set aside or appeal the judgment in Florida. The respondents sued in Ontario to enforce the Florida judgment, which had grown to approximately CDN\$800,000.

Decision

Justices MacLachlin, Gonthier, Major, Bastarache, Arbour and Deschamps for the majority enforced the Florida judgment. The Court held that the "real and substantial connection" test set out in *Morguard Investments Ltd. v. DeSavoye* [1990] 3 S.C.R. 1077, which until now has only been applied to interprovincial judgments, should apply equally to the recognition and enforcements of foreign judgments. The test requires that a significant connection exist between the cause of action and the foreign court.

The majority determined that international comity and the prevalence of international cross-border transactions and movement call for a modernization of private international law, which would include the application of generally accepted principles of conflicts of laws.

The majority also concluded that the common law defences available during interprovincial enforcement actions of fraud, public policy and lack of natural justice should apply equally to actions involving the enforcement of foreign awards.

The defence of fraud provides that neither foreign nor domestic judgments will be enforced if obtained by fraud. However, the desire to avoid the relitigation of issues has led the courts to treat the defence of fraud narrowly and to limit the type of evidence of fraud that can be pleaded in response to a judgment.

The denial of natural justice can also form the basis of a challenge to a foreign judgment and, if proven, permits the Canadian courts to refuse enforcement. The Court held that the burden of alleging unfairness in the foreign legal system rests with the defendant in the foreign action.

A condition precedent to the defence is that the party seeking to impugn the judgment must prove, to the civil standard, that the foreign proceedings were contrary to Canadian notions of fundamental justice and must satisfy the domestic court that the foreign courts have applied minimum standards of fairness. The minimum standards of fairness include ensuring that the defendant was granted a fair process in which there was judicial independence,

adequate notice and the opportunity to defend.

Finally, the defence of public policy prevents the enforcement of a foreign judgment that is contrary to the Canadian concept of justice. The public policy defence turns on whether the foreign law is contrary to the Canadian view of basic morality. However, the Court held that the public policy defence is not meant to bar enforcement of a judgment entered by a foreign court with a real and substantial connection to the cause of action for the sole reason that the claim in that foreign jurisdiction would not yield comparable damages in Canada.

Thus, the Court held the sums involved in a foreign award, even if grossly excessive, are not a reason to refuse the enforcement of a foreign judgment in Canada.

Conclusion

This recent Supreme court case fundamentally changes the law governing the enforcement of foreign judgments. We must advise our clients that actions begun in foreign jurisdictions will be enforced by our courts if there is a real and substantial connection with that jurisdiction, natural justice was not denied, and the judgment does not violate public policy and was not obtained fraudulently. Our clients must therefore treat the proceedings of foreign courts against them with the same attention and seriousness as the proceedings of the courts of Alberta and other Canadian provinces.

With thanks to Jason Roth

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Bottom Line

RESEARCH AND COMMUNICATIONS

Foundations of Justice: Alberta's Historic Courthouses

Author David Mittelstadt, along with the Legal Archives Society of Alberta, has crafted a striking work which features the history of courthouses built in Alberta between 1874 and 1950. Based on the author's extensive research, the book is generously illustrated with architectural drawings, maps and photographs. As part of the overall historical context, the book also presents some of the more colourful aspects of Alberta's little-known legal history. Rich in both anecdotal detail and informed analysis, this attractive 500-page hard-cover is an impressive tribute to the buildings in which Alberta's early legal history unfolded.

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Seeking Last Will & Testament of retired firefighter **GEORGE VANEY** who resided in the City of Edmonton and died there on 14 June 2004. Please telephone Jim Ross at 780-482-3144 or fax 780-424-7379.

Seeking Last Will & Testament of **MARGARET PATRICIA BENNET** b. October 13, 1910, d. May 17, 2001. Will believed to have been prepared by a Calgary lawyer in May 1997.

FAMILY ASSOCIATE LAWYER required for Wright Law Office in Calgary. Please contact David Wright in confidence at 249-8787 (telephone), 249-4776 (fax) or send an e-mail to david.wright@shaw.ca.

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Seeking the Last Will & Testament of **WILLIAM DARRYL DEGRAFF**, died in Calgary on May 1, 2004. Contact David Laidlaw, Fleming LLP, #1500, 736 - 6 Ave. S.W., Calgary, AB, T2P 3T7 Phone: 403-266-5550; Fax: 403-265-6910.

FOR LEASE: Upscale offices, multi-meida boardroom, internet, air conditioned, mainstreet, Stony Plain, AB. Ph: 780-963-5783.

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Seeking Last Will & Testament of **ALFRED JAMES WHITTON, JR.** late of Edmonton, AB, who died February 26, 2004. Any information please contact Michael C. Good, 780-459-0133.

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Wednesday, September 29

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CALGARY

Thursday, September 30

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EDMONTON

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