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CANADIAN BAR ASSOCIATION ALBERTA

President's REPORT

Scott A. Watson



Win some – lose some

It is with great pleasure that I congratulate The Honourable Richard J. O’Gorman on his appointment to Calgary’s Family and Youth Division of the Provincial Court of Alberta.

The appointment, effective June 1st, caused Richard to resign from the office of president of the Alberta Branch which he held for the past nine months. With Richard’s term ending a few months early, the remainder of the Alberta executive have each been given a field promotion and will hold their new office until August 2007. I am pleased to report that Walter Pavlic, Q.C., has agreed to stay on for another year as past-president.

While I will certainly miss Richard’s sage counsel around the boardroom table, his appointment will be of great benefit to the busy Family and Youth Court in Calgary.

Not enough lawyers

Experts predict Alberta will continue to have one of Canada’s top performing economies in the future. At present, Albertans have the highest disposable income in the country. The state of Alberta’s economy however isn’t without its downside. The fast pace is putting pressure on businesses province-wide. Finding and retaining capable employees is the new challenge. Alberta’s law firms know this only too well.

Half of all practising lawyers are in Calgary. Young lawyers, especially students, are drawn to Calgary because of the tremendous opportunities, not to mention the salary premiums that help reduce those big student loans. Calgary is also drawing lawyers from all across Canada. Even then, Calgary is having trouble meeting the demand. Similar stories can be heard in Edmonton, which holds about one-third of the practising bar.

Alberta’s two largest urban centers are not the only places run off their feet. The gravitation of lawyers to Calgary and Edmonton raises concern for rural Alberta. When the existing bar of senior rural practitioners retire, who will there be to take over their practice? This is not only a retirement and estate planning issue for those lawyers; it also raises issues of continued access to justice in rural Alberta.

Perhaps Canada’s law schools need to increase their output, having been kept relatively static over the past thirty years. Maybe we need to develop new employment models (ie. less than full-time) to attract the supply of female lawyers who are ready to come back into the market after having children. Perhaps we need to find more efficient ways to practice, such as off-loading research and rudimentary legal work to common-law trained lawyers in India.

The CBA is looking into these and related issues on both a provincial and national scale with a view to seeing what we can do to assist. I should add that Alberta’s experience is not entirely unique from the rest of Canada. I welcome your thoughts on where you think the answer lies for Alberta’s future legal supply.

I am proud to take over as President of CBA Alberta and invite you to contact me on this or any other issue facing Alberta’s lawyers today.

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.

NOTES

Editor's

Jason Schlotter



The theme of this issue is public confirmation hearings for Supreme Court nominees. The recent public hearing before a select House of Commons committee concerning the nomination of Mr. Justice Rothstein attracted the interest and concern of the legal profession. The previous government perceived a need for greater transparency in the appointment of Supreme Court judges, which perception was apparently shared by the current government.

The process adopted for the Rothstein hearing was *ad hoc*. Though it seems likely that some form of public confirmation hearing will accompany future appointments to the Supreme Court of Canada, the form those hearings might take is open to debate. The CBA has made several recommendations over the past few years on this subject. Recommendations for the structure of future confirmation hearings will have the benefit of the experience of the Rothstein hearing. The CBA will continue its interest in shaping the structure of the nomination and confirmation process.

We are fortunate that two extremely well-qualified individuals have prepared articles on this subject for publication in this issue. The Honourable Anne McLellan, former Minister of Justice and Deputy Prime Minister, outlines the steps taken by the previous government toward implementing a public hearing process. The academic community has also taken an interest in this matter and, in that regard, Dr. Patricia Hughes, former Dean of the Faculty of Law at the University of Calgary, has contributed her assessment of the process. We are grateful to both for enhancing our understanding of the impetus for a public hearing process. Their views will assist the profession in making useful contributions to the structure of future hearings.

I am pleased to announce that Madam Justice Picard has kindly agreed to join the Law Matters Editorial Committee, replacing the outgoing Mr. Justice O'Leary, who added so much during his time with us. We look forward to working with Justice Picard, and through her, continuing our ongoing relationship with the Bench.

Finally, the Disciplinary Tribunal of the Institute of Chartered Accountants of Alberta (ICAA) has issued a decision regarding the CBA's complaint against Deloitte & Touche LLP. As you will recall, in 2003 there was a heated debate about whether the Alberta government should pass legislation to cap damage awards for auto accident injuries. In that debate, the Insurance Bureau of Canada (IBC) claimed that rapidly rising auto insurance premiums were caused by bodily injury awards. According to the IBC, rising claims were due to more people making claims, judges giving excessive damage awards, and lawyers encouraging litigation. CBA Alberta retained Gordon Smith, CA, of Deloitte & Touche in Edmonton to examine whether there was merit to that argument.

Mr. Smith's report concluded that premium increases were not being driven by bodily injury claims. Immediately after the CBA made the report public, Deloitte & Touche requested

the report be pulled from circulation for revisions, and then later completely withdrew it.

After the Discipline Tribunal hearing, Deloitte & Touche LLP was found guilty of professional misconduct for acting in a conflict of interest and breaching client confidentiality. The Tribunal found there was evidence that Mr. Graham Segger, CA, of Deloitte & Touche's Toronto office was communicating directly with IBC soon after the release of the report. According to the Tribunal, "As the situation developed, it became clear from numerous e-mails entered into evidence that the IBC's concerns and [Deloitte & Touche's] self-interest were taking precedence with Mr. Segger over the duties owed by Deloitte & Touche LLP to its client, the CBA."

The Tribunal went on: "Deloitte & Touche LLP owed a duty of loyalty to their client, the CBA. Evidence was entered that Mr. Segger gave greater priority to the interests of the IBC and [Deloitte & Touche]. Notwithstanding the duty of loyalty owed to the CBA, Mr. Segger undermined the interests of the CBA. Evidence showed that Mr. Segger viewed the CBA as a potential adversary. There is evidence that Mr. Segger instructed Mr. Smith to make revisions to the report at least partially based on the IBC's concerns. Deloitte & Touche LLP withdrew the report before an agreement with the client on revisions to the report was reached. The Tribunal concluded that the withdrawal of the report was motivated solely by self-interest."

The Tribunal found that Mr. Segger and others with Deloitte & Touche in Toronto disclosed to IBC officials and the press, confidential communications between CBA and Deloitte & Touche LLP. Finally, the Tribunal found that after the CBA sent a letter asking for an explanation of events, the reply letter from Deloitte & Touche LLP "deflected, obfuscated and made misleading and disingenuous statements. There was a calculated decision not to communicate honestly."

On the other hand, the Tribunal found that there was no evidence that Mr. Smith's report was flawed or contained serious deficiencies.

In the end, Deloitte & Touche LLP was reprimanded in writing, ordered to apologize to the CBA, and to Mr. Smith, given the maximum fine of \$40,000, and ordered to pay the costs of the hearing.

The appeal period expires on July 31, 2006. After that period has passed, if anyone is interested, a summary of the Discipline Tribunal's decision will be posted on the ICAA website, at www.icaa.com. Alternatively, you may e-mail me at jschlotter@fieldlaw.com, and I will send a PDF copy of the complete decision.

Enjoy the rest of your summer.

Justices of the Supreme Court of Canada The "New" Selection Process

The Honourable Anne A. McLellan, P.C.



The process by which we appoint judges to the Supreme Court of Canada (SCC) has been in the news again recently, due to the vacancy created by the retirement of the Honourable Jack Major. There has been a longstanding debate in this country around the judicial selection process and this debate has become progressively more heated and political since the passage of the Charter of Rights and Freedoms. The allegations around "activist" judges, usurping the "rightful role" of legislators has become part of our constitutional and legal discourse, as it has been in the United States for many years.

I have been directly involved in this discourse for some time, first as a Professor of Constitutional Law and then more directly as the Minister of Justice and Attorney General of Canada from 1997 to 2002. During that time I recommended to the Governor-in-Council dozens of names of men and women who were appointed to either the superior courts of the provinces and territories or to the federal courts. In addition, during that time I made recommendations to the Prime Minister regarding three new appointees to the Supreme Court of Canada and I participated in the consultations on the selection of Madame Justice Beverly Macloughlin, as Chief Justice of Canada.

My comments in this short piece will focus on the "new" process of appointment for SCC judges, in light of the recent appointment of Mr. Justice Rothstein. I will describe this process and offer my thoughts on its transparency.

Puisne judges of the Supreme Court of Canada are appointed by the Prime Minister. When a vacancy arose, I would first contact the Prime Minister to confirm that I was about to begin a consultative process, albeit informal, with the Chief Justice of Canada regarding the skills and characteristics he/she would like the new judge to possess. I would then consult with the Canadian Bar Association (CBA), the relevant provincial attorney(s) general, provincial law societies, legal academics and any others with views on the appointment or the process. I always welcomed comments from the general public and in fact, solicited such comments. Based on that input, we would develop a short list of three to five names that we would then ask the CBA, the relevant provincial attorney(s) general and others to assess carefully. I asked for candid and detailed assessments of the short-listed candidates. At the same time, I asked officials within my department to begin a detailed assessment of the judgments and writings of the candidates. These assessments formed a valuable part of the overall evaluation process. Finally, I made a recommendation to the Prime Minister based on my consultations. Particular attention was paid to the views of the Chief Justice of Canada, as it related to his or her assessment of the needs of the Court. This consultative process, while informal, had an acknowledged structure and rhythm to it.

Not surprisingly, there was on-going criticism of this informal process as lacking not only transparency

but participation by Members of Parliament (M.P.'s). While very few critics argued for a United States style appointment process, with its too often partisan nature, there were many who argued for a more structured and transparent consultative process. Then Prime Minister Chrétien felt that the existing process of informal consultation had produced high quality judges and a well regarded court, both at home and around the world. Prime Minister Paul Martin, however, believed that more transparency was required and asked then Minister of Justice Irwin Cotler to consult on a new process for appointments to the Supreme Court of Canada. The process that was used to fill the vacancy on the SCC, left by the retirement of Mr. Justice Jack Major, was the result of those consultations.

Briefly, the new process involves the Minister of Justice compiling a short-list of between five - eight names that will then be submitted to an Advisory Committee for further review and assessment. That Committee will recommend a short list of three names to the Minister of Justice who will then make his/her final recommendation to the Prime Minister. Our constitutional framework provides that the Prime Minister appoint SCC judges. There is no veto power in any Committee of Parliament - unlike the United States nomination and appointment process where the President puts forward a nominee who is then confirmed, or not, by the Judiciary Committee of the Senate (Section 2(2) United States Constitution). After the change of government on January 23, Prime Minister Harper added an element to the declared process, requiring that his nominee, chosen from the previously mentioned short-list of three, appear before the House of Commons Standing Committee on Justice and Human Rights to make a public statement and answer questions from committee members. The Standing Committee would then make a "non-binding" recommendation to the Prime Minister in relation to the nominee. Concern was expressed by a number of individuals and groups that this public appearance by the nominee and the expectation that he would answer questions put to him by the all-party committee could devolve into the overly partisan process too often seen in the United States.

The consultative process by which then Minister Cotler compiled his short list of six candidates was extensive. He set out the process that he would follow in public protocols - these protocols included information regarding with whom he would consult and the criteria he would apply in selecting individuals for inclusion on his short list. Mr. Cotler went so far as to include advertisements in newspapers seeking input directly from the public, whether as to specific names or the general characteristics that people wanted to see reflected in this appointment.

The Advisory Committee to which Minister Cotler submitted his six names was made up of nine members; one (1) member from each of the four parties represented in the House of Commons, one (1) retired judge appointed by the Canadian Judicial Council, two (2) persons appointed by the Province (or in this case the Provinces of Alberta, Saskatchewan and Manitoba). One of these two people was selected by agreement among the three provincial attorneys general and the other was selected by agreement among the three law societies. Finally there were two (2) laypersons appointed by the federal Minister of Justice. The Chair of the Committee was Brent Cotter, Dean of the University of Saskatchewan Law School, who was chosen by his fellow committee members to be Chair. The Committee's mandate was to take the six names provided by the Minister of Justice and do a detailed examination and assessment of each.

It is possible, in this process, for the Committee to add an additional name or names to the list submitted by the Minister of Justice. But before a name could be added, the Minister would need to consult in the same manner that he did for his original short list.

The Advisory Committee would create a short-list of three, from which the Minister of Justice would recommend one to the Prime Minister.

This is a highly consultative process – indeed one might say “top heavy” with consultation – consultation by the Minister of Justice – then by the Advisory Committee – and finally by the Standing Committee on Justice in the House of Commons. The public knows who is being consulted by the Minister – the public knows the characteristics and skills that the Minister is looking for in nominees and they can provide their own views and insights, either as it relates to individuals or to the process.

For those seeking Parliamentary involvement or oversight in relation to these important appointments – each of the four parties represented in the House of Commons has a member on the Advisory Committee which compiles the short-list of three and all parties are represented on the Standing Committee.

Therefore, this entire process involves consultation with elected officials, the judiciary, provincial attorneys general, provincial law societies, legal academics and the general public. It accommodates regional concerns and should accommodate other issues of diversity. In reality, based on my experience, regardless of the exact nature of the consultative process chosen, consensus forms around a relatively small number of possible nominees very quickly.

In contrast, looking at the process for appointments to the United States Supreme Court, we know very little about with whom the President consults before making his recommendation to the Senate Judiciary Committee. With whom did George Bush consult, if anyone, before nominating Harriet Myers? Our process of extensive consultation should ensure that a candidate's credentials and suitability are assessed rigorously before any recommendation is made to the Prime Minister by the Minister of Justice. It would be interesting to know what process a President adopts, albeit informal, before making his nomination public and with whom he consults and what form those consultations take.

Of course, the Senate Judiciary Committee does conduct public hearings and often compiles a lengthy witness list, but not always. However, it seems that, too often, these witnesses are more interested in scoring partisan political points or destroying the reputation of the

nominee or calling into question his or her good character rather than offering considered, dispassionate interventions on the candidate's judicial skills and abilities and overall suitability for the highest court in the land. Hence the relatively new concept in our English lexicon – “to be borked”.

The name of Mr. Justice Rothstein, a Manitoban, then sitting on the Federal Court of Appeal, was recommended to Prime Minister Harper by Justice Minister Vic Toews. To this point the process was exactly as set out by former Minister of Justice Cotler. The new government decided Justice Rothstein should appear before the Standing Committee and answer questions. As mentioned earlier, there was much concern expressed about this by judges, politicians and others. Some saw this as a further “Americanization” of our institutions, potentially leading to an increased politicization of the judiciary. Others saw this as an important enhancement of transparency and an opportunity for not only parliamentarians, but the general public, to learn something of a person who would hold such an important position in our country before his appointment was made final.

In the end, most would agree that the “Rothstein hearing” was respectful, marginally informative and uneventful, with Professor Peter Hogg laying down the ground rules to M.P.'s in a “no nonsense” way – setting out the purpose of the hearing and the appropriate parameters for questions and comments.

To the credit of my former colleagues, they generally operated within those parameters and appointed themselves well. Mr. Justice Rothstein was candid, straight-forward, well prepared and leavened his answers with humor, where appropriate. Many commentators described the hearings as “boring” or “uninformative” - nothing was learned about the candidate or his judicial philosophy. Perhaps those critics were looking for the highly politicized and theatrical nature of the U.S. confirmation hearing. But it is my view, that if the earlier consultation processes have worked effectively, it would be very unusual for there to be any shocking revelations or “smoking gun” at this late stage in the appointment process. All should be known long before someone like Mr. Justice Rothstein is nominated by the Prime Minister and appears before the Standing Committee.

So overall, my conclusion is that we have a balanced process – one respectful of our constitutional framework – the authority of the Prime Minister to appoint; the desire of elected M.P.'s to play a role; the desire on the part of Canadians to have a more transparent process in which they get to know something of the women and men who play such an important role in our society.

It is possible that in the future an appearance by a prospective S.C.C. judge before the Standing Committee could become an unseemly spectacle that undermines the independence and integrity of the judiciary. If that were to happen, with no constitutional imperative to have a nominee appear before any committee, such excess could be avoided by simply not requiring future nominees to appear. Actually, that reality may be enough to ensure that M.P.'s, who have for so long argued to be part of the process, conduct themselves in a constructive and respectful manner.

As Irwin Cotler, M.P. said after Mr. Justice Rothstein appeared before the Standing Committee “it was a structured, after the fact job interview.” Overall, I think it was a benign addition to our judicial appointment process. Increased transparency around such important appointments is a good thing – most of the time.

Public Hearings for Supreme Court Nominees: A GOOD IDEA?

Dr. Patricia Hughes



We should think about the hearing into the appointment of Justice Marshall Rothstein to the Supreme Court of Canada as the trial run of a potentially more hard-edged appointment process.

The support of public hearings reflects the Court's increased role in affecting public policy (all protestations by the Court itself to the contrary). After all, if politicians are elected on the basis of how they will decide public policy issues (such as medicare), shouldn't the public expect some "accountability" from judges who may, indirectly, influence those issues? And in an era of supposedly increased transparency in government, shouldn't transparency extend to Supreme Court appointments? The nominee himself commented that the process showed the public the considerable work involved in reviewing possible nominees and how highly qualified potential nominees were; it helped demystify the appointment process and the work of the Court. Ostensibly, the process was intended to make our judicial system seem less elitist, less secret, more "accessible" to the lay public.

The reality is that the Supreme Court is more "accessible" today than ever before. The judges speak publicly to an unprecedented degree, their comments reported in the media. They write journal articles. They make an effort to "reach out," knowing like everyone else, that mere competence does not justify their holding such an august position. They must also be judged acceptable by the light of public opinion. Aren't public hearings just more of the same?

Recognizing that greater public understanding about the Supreme Court is a good thing, there was not a great deal to complain about with this proceeding. All involved tripped over themselves to make sure it "worked," that it was pleasant and respectful. Peter Hogg, Q.C., considered Canada's foremost constitutional expert, was on hand to explain — in his usual careful, plain speaking and reassuring fashion — what was to happen and why.

Minister of Justice Vic Toews, who chaired the Ad Hoc Committee, was clear about the limits of questioning: nothing about cases already decided, nothing about future cases. Indeed, Nominee Rothstein was given the final say about which questions were appropriate and, with the Justice Minister's prompting, he did refuse to answer several questions. The civility of the process was achieved through the pressure exerted by certain members of the committee who were opposed to the process. It is notable that Minister Toews reminded the committee members that since they were not in this context a parliamentary committee, they did not enjoy privilege with respect to defamatory statements.

One fellow phoned CPAC prior to the session to say that he thought it was about time we learned about any "skeletons in the closet" of Supreme Court nominees. No joy there: there were no questions of a personal nature. But should there be? Should politicians ask questions about whether the nominee's children attended private school or public school — or French immersion? Whether he or she and his or her spouse (which sex?) hired a nanny of dubious immigration

status to whom they paid cash? By the time the nominee appears before the committee, the Prime Minister will almost certainly know everything there is know about him or her, as will many of the other people involved in the extensive review process.

Of course, a public hearing could bring to light information inappropriately suppressed, should that occur. It could also provide a forum for embarrassing not only the nominee, but the Prime Minister.

It was delightful to hear Justice Rothstein exhibit his self-deprecating sense of humour, but if the nominee were grim-faced, would the Prime Minister not confirm his or her nominee? (On the other hand, I wonder what effect a flash of impatience at — perish the thought — politicians' clumsiness or self-serving agendas would have?) Nor are we likely to learn from a public hearing whether the nominee is competent on measures such as in-depth and nuanced understanding of the law, ability for legal analysis and capacity for writing clear and well-crafted decisions.

This apparently benign process, with its stated objectives of education and openness, cannot be separated from the Prime Minister's critical comments during the election campaign about the perceived "activism" of the Supreme Court of Canada. The Prime Minister approved of Justice Rothstein, already on the Liberals' "short list," as someone who "applies the law and doesn't make the law." Indeed, perhaps the most important "revelation" of the hearing process was Justice Rothstein's reassurance that he favours judicial restraint — no surprise to anyone familiar with his judgments and other writings.

The main concern about public hearings can be summed up as the "Americanizing" our judicial appointment process. That fear must be placed in the context of the differences between our two systems, however. For example, consistent with a clear separation of powers between the executive and the Congress, the American Senate votes on nominees; our Parliament does not — not yet, at least. Nevertheless, those who believe this process is all good and relatively harmless should consider this image: a future nominee to the Supreme Court of Canada answering to hostile politicians whose aim is to score points and rein in judges. Whither then judicial independence? This may not happen. But we should treat the possibility of this seriously. As the "protocol" of the hearing process evolves, it is important that nominees not be forced into either an adversarial position with the parliamentarian politicians or into compromising their answers to avoid giving offence to the members of the committee who will have party-defined diverse agendas. In this era of audience participation, perhaps we should have the viewers call in their votes: oh no, sorry, I have confused appointments of the judges to our highest court with judging singing idols. I have, haven't I?

Confirmation Hearings: About the Authors this Issue

THE HONOURABLE A. ANNE MCLELLAN, P.C. (See page 4)

On May 12, 2006, the Honourable A. Anne McLellan, P.C. was appointed Distinguished Scholar in Residence at the University of Alberta and the first Distinguished Scholar appointed to the newly established Institute for United States Policy Studies at the University.

Anne McLellan served four terms as the Liberal Member of Parliament for Edmonton Centre from Oct. 1993 – Jan. 2006.

Ms McLellan was Deputy Prime Minister of Canada and Minister of Public Safety and Emergency Preparedness (Dec. 2003 - Jan. 2006). In addition to ministerial duties, she chaired two Cabinet committees: the Operations Committee and the Security, Public Health and Emergencies Committee. She also sat on the Aboriginal Affairs Committee and, as Deputy Prime Minister, was an *ex-officio* member of all other Cabinet committees.

Ms McLellan was Minister of Health (Jan. 2002 – Dec. 2003), Minister of Justice and Attorney General of Canada (June 1997 – Jan. 2002) and Minister of Natural Resources and Federal Interlocutor for Métis and Non-Status Indians (Nov. 1993 – June 1997).

From 1976 to 1980, Ms McLellan was an assistant professor of law at the University of New Brunswick. In 1980, she moved to Edmonton to take a position as associate professor of law at the University of Alberta. She served as associate dean of the Faculty of Law between 1985 and 1987 and was acting dean from July 1991-June 1992.

Ms McLellan has also served on the boards of directors of the Canadian Civil Liberties Association and Alberta Legal Aid and was Vice-President of the University of Alberta's Faculty Association.

She holds Bachelor of Arts and Law degrees from Dalhousie University and a Master of Laws degree from King's College, University of London. Ms McLellan was admitted to the Bar of Nova Scotia in 1976.

DR. PATRICIA HUGHES (See page 5)

The past Dean of Law at the University of Calgary, Patricia Hughes previously served as Counsel in the Policy Development Division of the Ontario Ministry of the Attorney General, as a Vice-Chair of the Ontario Labour Relations Board, as Alternate Chair of the Ontario Pay Equity Hearings Tribunal and as the Mary Louise Lynch Professor in Women and Law at the Faculty of Law, University of New Brunswick. She began acting as a private arbitrator in 1989.

Dr. Hughes received her Ph.D. from the University of Toronto in 1975 and her LLB from Osgoode Hall Law School in 1982. She is a member of the Law Society of Upper Canada and will soon be called to the Alberta Bar.

She has published and spoken extensively in the areas of dispute resolution, labour law, legal education and constitutional law, including issues around the rule of law and judicial independence. She is currently co-authoring a book on the constitutional ethos reflected in Supreme Court of Canada jurisprudence.

Dean Hughes completed her term on June 30, 2006, and has joined Bennett Jones LLP's Calgary office as Executive Director Education (Alberta) and Scholar-in-Residence.

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Notice FAMILY LAW MATTERS

The Family Law Committee of the Court is inviting input into the development of a protocol for receiving comment from the family law bar with respect to any changes to the family practice notes, family law rules or any family practice in general that are being considered by the Family Law Committee of the Court. It would be appreciated if you would send any suggestions on how the committee might receive input to either Justice Hawco or Justice Trussler.

Practitioners are also reminded of the obligation on clients who have children 16 and under to attend The Parenting After Separation seminar. A recent survey of attendees would seem to indicate that counsel are not advising their clients at the first interview about the necessity to attend the seminar. One of the more common comments that is found in the evaluations completed by attendees at the seminar is that they wish their counsel had told them at an earlier stage about the seminar. It would be appreciated if all members of the family law bar would institute a practice of advising their clients about the seminar at the first interview.



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Regulations Update

MINOR INJURY

Walter Kubitz



On October 1, 2004, the Government of Alberta passed the Minor Injury Regulations. These Regulations significantly restrict the recovery of damages by the most Alberta motorists who suffer muscle, tendon and ligament injuries (including complete tears). Although the Regulations are touted to increase the no fault

benefits available for treatment, in reality, the new Regulations have seen injured Albertans receiving less treatment than before they were passed.

As a result of the Regulations, the rights of all Albertans to fair compensation and to adequate treatment have been seriously eroded.

Most Albertans who now suffer a "whiplash" injury are unable to find a lawyer who is able to assist them on a contingency basis, and in most cases, the claim is not economically viable to pursue on an hourly retainer basis. This state of affairs has left most "whiplash" claimants without legal counsel or advice, which disadvantage is compounded when the victim is uneducated or of another culture.

A Charter of Rights challenge is being mounted by two CBA members, Mr. Robert Graesser, Q.C. and Mr. Harris Hanson. In light of

recent Supreme Court of Canada decisions and academic writings, there is cause for optimism.

The basis for the challenge is that the Regulations discriminate against injured Albertans contrary to section 15 of the Charter, and that they violate Albertans' right to life, liberty and security of the person, contrary section 7 of the Charter. The Government of Alberta is defending its legislation, with the support of the Insurance Bureau of Canada as an intervener.

The trial of the injury claim and the Charter issue is tentatively set for the latter part of 2006.

Both sides have exchanged Affidavits containing the factual basis of their case, and are waiting for their respective expert's opinions. The documentation is voluminous, and examinations on affidavits will be lengthy.

As the legislation affects many CBA members, the CBA has permitted the Alberta Civil Trial Lawyers Association Public Advocacy Committee to approach CBA members, and ask for contributions towards the cost of the Charter challenge. Contributions can be made to ACTLA - PAC by calling 1-800-665-7248 or by email to admin@actla.com.

CBA members, indeed, all Albertans, thank you in advance for your generous support.

Walter Kubitz is a former Chair of the CBA Personal Injury Section South and the current President of ACTLA.

Notice to the Profession

I am writing to advise Bill 5, the *Justice Statutes Amendment Act, 2006*, received Royal Assent on March 23, 2006 and came into in effect June 30, 2006.

The amendments affecting the *Judicature Act* clarify and refine previous, unproclaimed amendments to that Act contained in the *Justice Statutes Amendment Act, 2004*. The original amendments allowed the courts to order that monetary awards be paid in installments to help protect the current and future needs of persons impacted by injury or death. One of the amendments provides clarification of the court's discretion to order a structured settlement when it is in the best interest of the plaintiff. The other amendment reflects the provisions of the *Income Tax Act (Canada)* to ensure the tax-free status of structured settlements.

Bill 5, the *Justice Statutes Amendment Act, 2006*, can be found at www.assembly.ab.ca.

Ron Stevens, QC
Alberta Minister of Justice and Attorney General

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.

View from the BENCH

Judge A. A. Fradsham



Recently, quite the stir was caused in the general public when it was discovered that Mr. Justice Peter Smith, the judge who heard the plagiarism trial concerning the book *The Da Vinci Code*, had inserted into his written judgment a coded message. Well, those of us in the legal profession have known for years that there must be hidden messages in some judgments. I think back to law school and some of the tax and constitutional cases that I read, and there just must have been messages

hidden in them because there certainly were no obvious ones.

Laskin, C.J.C. may have suspected that there was a hidden message in the Reasons for Judgment he was reviewing in *R. v. Westendorp* (1983) 41 A.R. 306 (S.C.C.). In speaking of the appellate court's analysis of the concept of "pith and substance", he said, at p. 315:

"This assessment of 'pith and substance' is to me baffling ... It becomes doubly baffling ..."

Perhaps the problem was not with the assessment, but that his Lordship had failed to crack the hidden code.

Justice Smith's bit of fun is not unique in judicial circles, though it clearly has attracted more attention from the popular press. Having some fun with a judgment has a long and honourable history. Our colleagues to the south seem to be quite adventuresome. Consider the judgment of the United States Bankruptcy Court (Southern District of Florida), in the case of *In re Love* 61 B.R. 558 (1986). I am sure it is no coincidence that it was also the courts in Florida which gave us so much fun with hanging chads. When reading *In re Love*, it helps to know that *sua sponte* means "of his or its own will or motion; voluntarily; without prompting or suggestion". That comes from *Black's Law Dictionary*; I certainly did not know. I don't think I've ever heard a question such as: "And did you take the car *sua sponte*?" So, with that in mind, what follows is the Florida court's judgment (no doubt with apologies to Edgar Allan Poe and his poem *The Raven*):

"A. JAY CRISTOL, Bankruptcy Judge.
ORDER DENYING SUA SPONTE MOTION TO DISMISS UNDER
11 U.S.C. § 707(b)

This cause came on to be heard *sua sponte* upon the court's own motion to dismiss this chapter 7 petition pursuant to 11 U.S.C. § 707(b) and the court having received the inspiration for the motion from a little old ebony bird and not from any party in interest or any other person and having considered the presumption in favor of debtor provided in 11 U.S.C. § 707(b) and not deeming it appropriate to take evidence, the court finds:

Once upon a midnight dreary, while I pondered weak and weary
Over many quaint and curious files of chapter seven lore
While I nodded nearly napping, suddenly there came a tapping
As of some one gently rapping, rapping at my chamber door,
'Tis some debtor' I muttered, 'tapping at my chamber door –
Only this and nothing more.'
Ah distinctly I recall, it was in the early fall
And the file still was small
The Code provided I could use it
If someone tried to substantially abuse it
No party asked that it be heard.

'Sua sponte' whispered a small black bird.
The bird himself, my only maven, strongly looked to be a raven.
Upon the words the bird had uttered
I gazed at all the files cluttered
'Sua sponte,' I recall, had no meaning; none at all.
And the cluttered files sprawl, drove a thought into my brain.
Eagerly I wished the morrow -- vainly I had sought to borrow
That this case would not remain as a source of further pain.
The procedure, it seemed plain.
As the case grew older, I perceived I must be bolder.
And must *sua sponte* act, to determine every fact,
If primarily consumer debts, are faced,
Perhaps this case is wrongly placed.
This is a thought that I must face, perhaps I should dismiss this case.
I moved *sua sponte* to dismiss it for I knew I would not miss it
The Code said I could, I knew it.
But not exactly how to do it, or perhaps some day I'd rue it.
I leaped up and struck my gavel.
For the mystery to unravel
Could I? Should I? *Sua sponte*, grant my motion to dismiss?
While it seemed the thing to do, suddenly I thought of this.
Looking, looking towards the future and to what there was to see
If my motion, it was granted and an appeal came to be,
Who would be the appellee?
Surely, it would not be me.
Who would file, but pray tell me, a learned brief for the appellee
The District Judge would not do so
At least this much I do know.
Tell me raven, how to go.
As I with the ruling wrestled
In the statute I saw nestled
A presumption with a flavor clearly in the debtor's favor.
No evidence had I taken
Sua sponte appeared foresaken.
Now my motion caused me terror
A dismissal would be error.
Upon consideration of § 707(b), in anguish, loud I cried
The court's *sua sponte* motion to dismiss under § 707(b) is denied."

If you want some other delightful examples, take a look at the book *Corpus Juris Humorous*, compiled by John McClay and Wendy Matthews (1994, Barnes & Noble Books). There are some great bits of whimsy in the judgments reproduced there. I particularly like *Brown v. The State of Georgia* 216 S.E.2d 356 (1975) (Court of Appeals of Georgia) which starts out:

*"The D.A. was ready / His case was red hot.
Defendant was present, / His witness was not."*
And on it goes. That must be one interesting appeal court.

But to return to judgments with hidden messages. Consider Master Funduk's famous explanation of judicial hierarchy. In *South Side Woodwork (1979) Ltd. v. R.C. Contracting Ltd. et al.* (1989) 95 A.R. 161 (Alta. Master), the learned and witty Master said, at pp. 166-167:

"I am bound by decisions of Queen's Bench judges, by decisions of the Alberta Court of Appeal and by decisions of the Supreme Court of Canada. Very simply, Masters in Chambers of a superior trial court occupy the bottom rung of the superior courts judicial ladder.

I do not overrule decisions of a judge of this court. The judicial pecking order does not permit little peckers to overrule big peckers. It is the other way around."

On reflection, if there is a message there, maybe it is not particularly well-hidden.

What's HAPPENING

Patty Johnston, Q. C.



August:

22&23: Meeting Your Duty to Accommodate – Benchmark Your Return to Work, Mental Health and Disability Accommodation Programs presented by Infonex. Calgary, AB. Contact: Phone: 1-800-474-4829; Fax: 1-800-558-6520; E-mail: register@infonex.ca; Website: www.infonex.ca

September:

5&6: The 2nd Annual Intellectual Property Licensing presented by Federated Press. Toronto. Contact: Phone: 1-800-363-0722 or 416-665-6868; Fax: 416-665-7733; website: www.federatedpress.com

6-8: The 7th Annual Securities Compliance Conference presented by Federated Press. Toronto Hilton Hotel, Toronto. Contact: See Sept. 5&6

11-13: The 8th Annual M&A Skills Deal-maker Summit presented by Federated Press. Toronto. Contact: See Sept. 5&6.

18&19: The 5th Annual Conference on Energy Contracts – Effective Strategies for Drafting Contracts in the Energy Sector presented by Insight Information. The Metropolitan Centre, Calgary. Contact: Phone: 1-888-777-1707; Fax: 1-866-777-1292; or register online at www.insightinfo.com.

18&19: The 8th Annual Regulatory Compliance for Financial Institutions presented by Insight Information. St. Andrew's Club and Conference Centre, Toronto. Contact: See Sept. 18&19 above.

20&21: E-Discovery and Electronic Records Management – Protecting Your Organization from Legal Risks and Mismanagement of Information presented by Infonex. Toronto. Contact: See Aug. 22&23.

25&26: International Business Transactions – Maximizing Business Opportunities in China, India and Other Emerging Markets presented by Insight Information. Courtyard by Marriott Downtown, Toronto. Contact: See Sept. 18&19.

26&27: The 11th Annual Financial Institutions Regulation conference presented by Infonex. Sheraton Centre Toronto Hotel. Contact: See Aug. 22&23.

26&27: 7th Annual National Forum on Litigating Class Actions presented by The Canadian Institute. Marriott Bloor Yorkville Hotel, Toronto. 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

28&29: Negotiating and Drafting Key Business Agreements presented by The Canadian Institute. In-depth interactive forum: Sept. 27. The Sutton Place, Toronto. Contact: See Sept. 26&27.

28&29: Electronic Records, E-Discovery and Access to Information presented by Insight Information. St. Andrew's Club and Conference Centre, Toronto. Contact: See Sept. 18&19.

October:

12&13: Advanced Insolvency Law & Practice – Effectively Managing Evolving Insolvency Challenges presented by The Canadian Institute. Telus Convention Centre, Calgary. Contact: See Sept. 26&27.

18&19: 6th Annual Advanced Forum on Employment Law – Essential Information for Managing Non-Unionized Workforces presented by The Canadian Institute. Plus: Interactive Workshop on Termination – Doing it Right on October 20 (9:00 a.m. to 12:00 p.m.). Marriott Bloor Yorkville Hotel, Toronto. Contact: See Sept. 26&27.

19&20: 6th Annual Advanced Administrative Law & Practice – Key Updates and Best Practices for Overcoming Adjudicative and Investigational Challenges presented by The Canadian Institute. Hilton Lac-Leamy, Gatineau, Ottawa. Contact: See Sept. 26&27.

26&27: Intensive Course in Securities Law & Practice presented by the Canadian Institute. Intercontinental Bloor Yorkville Hotel, Toronto. Contact: See Sept. 26&27.

26&27: Advanced Forum on Mergers & Acquisitions presented by The Canadian Institute. Telus Convention Centre, Calgary. Contact: See Sept. 26&27.

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

Ph: 403-262-0642

E-mail: pmjohnston@firstenergy.com

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or Meenu Ahluwalia Brar at 403-260-8571.

Balancing Life and Law

I wish to thank all of the CBA Members who shared their special life experiences outside the law with us. "Emeril" is passé as our own Al Shewchuk, Q.C. delighted us with an exquisite five star luncheon for thirty-eight of his closest CBA Members. Gerry Quigley and his partner Rita demonstrated their elegant and flamboyant professional Cha Cha and Rumba steps. Alice Ho mesmerized us with her provocative Argentine Tango movements complimented by her fiery red Latin dress. Robert Kerr and his wife captured the fun and excitement of a genuine Stampede Hoe-Down. Winnie Chow led the "Not Ready" for primetime dance troupe through some basic Rumba moves. We thank Winnie for donating her artistic and creative gifts for this event. Ian Savage (our very own



wine connoisseur) marveled about his Napa and Sonoma wine tasting adventure while displaying the many varieties of wine glasses. Craig Sherburne delighted the crowd with his humorous anecdote of aspiring to be a true wine connoisseur for under twenty dollars. John Armstrong, Q.C. emphasized the importance of finding enjoyable activities and interests outside the practice of law. Anne Kirker taught us the importance of being true to yourself in the day to day quest of developing new clients.

If you have any ideas for an interesting presentation, please contact:

Maureem McConaghy mconaghylaw@shaw.ca

Robert Knight knight@telusplanet.net

D. L.

Agatha Christie's "The Mousetrap"

The world's longest running play, "The Mousetrap", has kept audiences guessing for more than five decades.

Rather than traveling to London, England, Edmonton lawyers, judges, clients, friends and relatives all came out to see "The Mousetrap" at the Westbury Theatre at the Arts Barns in Edmonton, on Friday 2nd June. Six lawyers, an articling student and a judge performed the classic whodunit, directed by well-known Edmonton director, Ron Jenkins. The show was a fund-raiser for Workshop West Theatre, and was a sell-out. Support for the project and the camaraderie



at the reception which followed was inspiring. Thanks to everyone who was a part of this great experience.

The suspects L-R:
Front: Laura Stevens, Q.C.; Felicity Hunter; Anne Ferguson Switzer.

Back: Judge Bob Philp; Rick Stroppel, Q.C.; Kevin Mott, Graham Johnson; Francis Price, Q.C.

(Youthful) Critic's Review

Did you hear the one about six lawyers, an articling student and a Judge putting on a play? They have all been rehearsing for three months to put on a production of Agatha Christie's "The Mousetrap". Under the able direction of Ron Jenkins, this production of "The Mousetrap" was a murder mystery hit. The play keeps you guessing to the very end. All the actors were excellent. Special mention must be given to Bob Philp, whose character Paravacini's laughter will haunt your dreams. Felicity Hunter was born to play Mrs Boyle. She is a quick wit with a sharp tongue. Graham Johnson's Christopher Wren is a brilliant display of a barmy young man with a mysterious interest in nursery rhymes. Theatre audiences have vowed not to reveal the murderer - the fun is to try and detect, along with the cast, who amongst them is the killer. As Paravacini says, all is revealed in the final chapter . . . and for this reviewer, it was a real shocker. **Great job for a bunch of lawyers!**

Sam Ahluwalia-Malmberg (age: 11 years)

Frustrated Artists!

Pondering what to do with all that artistic talent? A group of lawyers and other professionals are planning a cocktail party and silent art auction for the fall of 2006 to raise money for CLERC and the Women's Emergency Shelter. We are asking lawyers and legal staff to donate either their own works (paintings, sculptures, etc) or second hand items for auction. Please contact Dale Hensley, Todd LaRochelle or Judge Richard O'Gorman regarding donations or for more details. Date and place of auction TBA.



Todd LaRochelle

Law Day

FORT MCMURRAY



Mila Mydliar, the Accused, Ellie the Elephant and Kevin Fotty, the Judge.



Al Vinni, Law Day Organizer, watching from the gallery.



Tamara Epple plays the Prosecutor.



Clifton Jang, Witness, the Mouse That Roared.

EDMONTON



Naomi Schmol, Program Manager from the Centre for Constitutional Studies sang 'O Canada' at the Opening Ceremonies.



Diane Young, (left) CBA AB Treasurer making the presentation of a bursary to the Principal from McCauley Elementary-Junior High School.



Cast of children's trial "The Paper Bag Princess v. The Dragon". L-R: Hubert Martineau, Charlotte Burrows, Judge Philp, Anita St. Georges, Lori Sim, Natalie Tymchuk, Trina Ludwig.

CALGARY



Opening Ceremony: Far left and far right: Legion of Honour guards Clyde Elford and Bob Kerr; L-R: Len Willmott, QB court staff and Law Day Committee member; Cynthia Scheible and Wayne Barkauskas, Co-Chairs of the Law Day Committee; (seated), Justice Rooke; (now) Judge O'Gorman; and, Ron Stevens, Q.C., Alberta Minister of Justice and Attorney General.

Crowds gather for the Opening of Law Day.



Left: Honour guard Bob Kerr, a terrific CBA Alberta Branch volunteer.



On left, another hard-working volunteer, Louise Huard-Peake, assisted at a booth at the Calgary Teachers Convention to promote Law Day and CBA programs to teachers.

ay 2006

Y GOES BANANAS!



Donny Scott, Slippy Sam the Defence Attorney; he must be good as Ellie was acquitted in both trials!

Julia Coombe - Narrator and Mock Trial Organizer, picks the children for the jury.



Tim Byron, Witness, Leo the Lion.



The players are all local lawyers or articling students (missing in these photos is Shannon Rennie who played the Arresting Officer). The script finds Ellie the Elephant in the peanut shop without lawful excuse or colour of right. Ellie's defence is a combination of: one, having been scared by the mouse and unwittingly seeking refuge in the peanut shop, and two, her charm and good looks.

GETS IT DONE!



Cast of family trial "Jack Russell v. Jill Right". Front L-R: Michelle Mackay, Martine Sallaberry, Justice Gill, Ning Ramos. Back L-R: Sharlin King, Brian Kash, Cindy Turner, Elizabeth Berg.

Alexis Moulton and Mark Raven-Jackson, Law Day Co-chairs: Congratulations on a great job!



Mascots WillPower and Barney the Bear from EPS with a couple of helpful cadets.



Scott A. Watson, CBA AB President and his son getting hints from the military.

Y ROCKS!



Citizenship Court is always very moving; Judge Pat Gleason (seated) talks with a child attending the swearing-in ceremony for new Canadians.



Marc Cunningham, a Law Day Committee member, is pleased to present the award to one of the Poster Contest winners.



Above & below: The booths and displays set up at Law Day each year are impressive; these booths etc. are staffed by volunteers just as the judges, lawyers and court personnel are all volunteers.



A court-house security officer handcuffs a young girl - handcuffing and the bleakness of the cells is memorable for visitors.



To Rent or To Buy?

That is the question...



In this hot housing market and time of low interest rates, the answer may seem obvious. But does the same principle apply in a law firm? Is "buying in" to a partnership really the light at the end of the tunnel we all strived toward after articles?

Partnership isn't what it used to be. Some may say it is much, much better. Others don't ever want to make partner. The changing face of partnership has garnered much debate, and we see partners everyday who ask us about the pros and cons of a multi-tiered partnership structure. Here is some information to help you understand the reasoning behind the different structures so that you can ultimately determine the best scheme for you.

The Evolution of Partnership

Seventy percent of U.S. law firms with more than 75 lawyers have more than one level of partnership. We are not far behind. The traditional model of partnership is evolving to address the ever-changing needs of the profession, from the perspective of both lawyers and law firms. The traditional law firm system can be defined as firms which are comprised of partners who own the firm and associates who are salaried employees. In a two-tier system, there is an additional level between equity partners and associates, referred to as non-equity, income, or junior partnership.

Retention

One of the main reasons firms have incorporated a two-tier structure is to retain its valuable associates who are not yet ready to become full equity partners. It provides lawyers with the status of partner while giving them the opportunity to build a larger profile and practice. This "look see" approach is also valuable for you in determining whether you really want to buy in to the firm.

Recruitment

Bringing in partners laterally can be both a risk for the lawyer and for the firm. It can sometimes take up to a year to determine whether a partner from another firm is going to be the right fit. Allowing you to not lose your partnership status while not requiring an immediate buy in can be very attractive.

Compensation

Remuneration for equity partners vs. non-equity partners varies from firm to firm, but most often, profit sharing and voting rights are given to equity partners whereas income partners are on salary. Some argue that there is really no difference between a senior associate at a traditional firm and a junior partner at a two-tier firm. In the end, clients don't care how people are compensated internally. What they care about are your hourly rates, the service you provide, and sometimes, your title.

Testing the Waters

If you are a partner with a large portable practice and you are contemplating a move, you may not want to become a full equity partner at your new firm right away, particularly if the culture is quite different from your current firm. You may want to take at least a year to decide whether the investment is the right fit for you. However, you will also not want to move as an income partner and just go on a salary given your large practice. In these circumstances, firms provide an additional tier called "of counsel" or "associate counsel". This title is also reserved for lawyers who may be winding down a practice or who are on an alternative work structure.

Buying is Best

Ultimately, you have to decide what is best for your career growth and which firm will offer you the best fit. Taking the time and care to research your options will ensure that when you do buy that house, it will become your home.

Sameera Sereda is the Managing Director, Prairies of The Counsel Network (ssereda@headhunt.com).

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An Evening of Recognition Volunteer Lawyers Service

Over 100 volunteer lawyers have been contributing their time *probono*, serving community organizations across the Province for over ten years through the Volunteer Lawyers Service ("VLS"). On June 1st of this year, the VLS hosted its first Volunteer Recognition Reception to honour all of those lawyers who have assisted and supported this worthwhile program. The evening was graciously hosted by CBA Past President, Virginia Engel, Q.C., VLS Advisory Committee Chairperson and Law Society Representative Bruce Churchill-Smith, Q.C., and VLS co-founder and Advisory



Virginia Engel, Q.C., Bruce Churchill-Smith, Q.C.

Committee member-at-large, Francine Swanson, Q.C. Special Speakers in attendance included United Way President Ruth Ramsden-Wood, and Law Society President Elect Jim Peacock, Q.C. The invitation list to this event also included all lawyers in the past decade who assisted with the program; Rodney Smith, Association of General Counsel representative; and Mary Leung and Patricia Bond of the United Way. Representatives of organizations who have taken part in this program both past and present came out to show their appreciation as well. Those lawyers who were able to attend this event were presented with Certificates of Recognition for their service and a small gift as a token of appreciation for attending. In addition to these certificates the VLS also named and honoured Robert Omura of Caron and Partners LLP as our Volunteer of the Year for his many contributions to the VLS, and for being the catalyst in expanding the program to offer workshops to charities in the start up stage. Other special awards of recognition were presented on this evening as well; to Suphala Rao of the United Way who participated with the program since its inception as

application intake coordinator and to Francine Swanson Q.C. and Bill Hartnett for their joint efforts in creating this



Robert Omura

Service and turning an excellent idea into reality. Because of their vision, multiple organizations have benefited from the Service and by extension, our communities have also benefited. Finally, another special award was created for Diane Vimy who was the first volunteer in 1995. In addition to the presentations, the rest of the evening was spent with fine people, fine catering, and of course the much anticipated draw for an iPod Nano held for those lawyers who were on our roster as of May 31st, 2006. Manoj Gupta, in-house counsel with the Workers Compensation Board of Edmonton, was the winner of the draw – congratulations Mr. Gupta! For those lawyers across the Province who were unable to attend this event, you have not been forgotten. Watch your mail boxes for your certificates of appreciation to come your way. If you are currently on our roster you will be sent an



Volunteer Lawyers L-R Elizabeth Shepherd, Yvonne Chenier, Louise Huard-Peake

additional gift with your certificate. If you do not receive your certificate by August 1st, please be sure to contact Cyndy Morin at 403-218-3417. If you are not yet a part of our roster, and would like to find out more information on how you too can assist, please send your request to us at phone 403-218-4317, fax 403-265-8581 or e-mail vls@cba-alberta.org. Thanks again to all the lawyers who have helped to make this program a success. C. M.

HOT OFF THE PRESS!

A Perfect Summer Read

Edmonton lawyer and writer Jeanne Kirwin and family took a year off to do what everyone fantasizes about *i.e.* sail around the Carribean. Jeanne wrote a book about the experience, *Greetings from Cool Breezes*. *Cool Breezes* has won the 2005 Exporting Alberta Award from the Canadian Authors Association - Alberta.

A New Tool for your Legal Tool Box

Maureen F. Fitzgerald, Ph. D., is a lawyer, the author of six books and a recognized expert in conflict and collaboration. Born and raised in Calgary, she took her B. Comm. at the U. of A., has two law degrees and has taught law at two universities. As President of Centrepont Conflict & Collaboration Inc., she is dedicated to helping organizations and groups have authentic conversations. Her latest book,

Corporate Circles - Transforming Conflict and Building Trust Teams is now available in bookstores. You may read an excerpt from the book through the website www.centerpointinc.com.

- Severe Injury
- Loss of Life
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kubitz**

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The Honourable Justice Anne H. Russell



On May 1, 2006, Justice Anne H. Russell of the Alberta Court of Appeal retired from the bench after serving eight years as a Provincial Court Judge, two years as a judge of the Court of Queen's Bench, and twelve years as a judge of the Court of Appeal.

Justice Russell was born in Winnipeg. Her mother was a nurse and her father an RCMP officer. The family settled in Edmonton when Justice Russell was ten years old.

At the very young age of 12, Justice Russell decided she wanted to become a lawyer and never wavered in that ambition. She entered law school in the early 1960's as one of only four women in her class.

By graduation, Justice Russell was married and had started a family. She has since successfully balanced family life with a busy legal career. She articulated with a prominent Edmonton lawyer, Jack Shortreed.

Following her call to the bar, Justice Russell moved with her husband Don and young family to Europe for three years, where Don served in the military as a physician. Upon their return to Edmonton, Justice Russell worked part time as a Crown prosecutor for several years while raising three young children. In 1970 she assumed full-time responsibility as the sole Juvenile Court prosecutor and Family Court solicitor in the City of Edmonton. She held that position until 1972 when she worked briefly for the Alberta Law Reform Institute before accepting an appointment as Director of Legal Services and Legislative Planning for the Alberta Departments of Health and Social Development. During her 12 years in that position, Justice Russell was involved in preparing over 20 pieces of legislation, including the *Child Welfare Act*, the *Public Health Act*, the

Dependent Adults Act, the *Health Occupations Act* and various professional acts. During seven of those years she was also a sessional lecturer in children's law at the University of Alberta's Faculty of Law. She was appointed Queen's Counsel in 1984.

On July 1, 1984, Justice Russell was appointed to the Provincial Court of Alberta, Family and Youth Division, where she sat for eight years until her appointment to the Court of Queen's Bench of Alberta on November 27, 1992. Less than two years later, Justice Russell was appointed to the Court of Appeal of Alberta.

As a lawyer Justice Russell had significant influence on modern social legislation in the Province. As a judge she authored and participated in many important decisions. She also served on the Board of the Friends of the Faculty of Law, and the Board of the Legal Education Society for several years, and was chair of LESA for two years.

Justice Russell is admired by the legal community as an intelligent, fair-minded, conscientious and pleasant judge.

Lawyers appearing before her were always confident she was fully prepared and would accord all parties a full, fair and courteous hearing and render a fair and thoughtful decision.

Despite her busy professional life, Justice Russell has maintained a strong sense of balance, giving a high priority to her family and friends. It is those relationships she looks forward to preserving and fostering in her retirement.

Justice Russell's presence will be missed by the legal profession and her judicial colleagues.

COURT OF QUEEN'S BENCH OF ALBERTA



CELEBRATING 100 YEARS IN 2007

The Court of Queen's Bench OPENING OF THE COURT

Chief Justice Allan Wachowich and Associate Chief Justice Neil Wittmann cordially invite all members of the Bar of Alberta to attend a ceremony marking the Opening of the Court for the year 2006-2007.

When: Tuesday, September 12, 2005 at 11:30 a.m.

Where: Courtroom 317 at The Law Courts, Sir Winston Churchill Square, Edmonton.

Chief Justice Wachowich will deliver a brief address about the work of the Court and the profession, and the changes anticipated in the coming year. Preliminary remarks will also be made by Scott A. Watson, the President of the Canadian Bar Association Alberta.

A reception will follow in the Barristers Lounge, where lunch will be offered -- compliments of the Chief Justice.

Come and meet the judges and your colleagues at the Bar!

R.S.V.P. by August 25, 2006 laurie.webb@gov.ab.ca 780-422-2293

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A Farewell for Justice Cecilia Johnstone

Down at the trashy Strathcona Hotel the U of A law class of '74 gathers for drinks after Thursday night contracts class. There are no empty chairs, the towel-clothed covered tables are awash with 35¢ draught beer and the air is cigarette smoke blue. Over in the corner, the boy barristers are 'talkin' law' with the Molson Canadian legal wisdom 'runnin' high.' Squeezing in among the beer drinking boys, with her long curly cinnamon hair and bold banter, Cecilia Johnstone, then a 20 year old law student, says "Can one of you Perry Masons pass me a beer?" We did that night and many more Thursday nights thereafter did we close down that wretched watering hole or the pizza joint next-door.

On 15 April, 2006, Justice Cecilia Johnstone, 54, daughter, sister, wife, and dear friend to many passed away after a five year fight with cancer. She had come a long way from growing up in a small house in the blue collar Bonnie Doon district of Edmonton. Her Dad, Lawrence Johnstone, a postal worker, died suddenly when Cecilia was 11. Losing the only family income earner, her Mother Anne, younger brother Tim and Cecilia soon felt the anguish that comes from having little or no money. Cecilia at 12 years old helped her Mom sell hot dogs at the Edmonton Eskimos football games. Her notable gutsiness appeared early when a customer from Calgary asked for a hamburger. When told they didn't have hamburgers, he said "In Calgary they sell hamburgers." To which young Cecilia replied "Then go back to Calgary, here we sell hot dogs!"

Despite always working a part time job, Cecilia graduated from high school with the highest marks in the Catholic school system. She went on to the University of Alberta and did the combined BA/LLB getting her BA in 1973 and her LLB in 1974. After practicing wills and estates law for 21 years she was appointed to the Court of Queen's Bench in 1996. Her career is an affirmation of leadership and commitment by a woman at the local and national forefront of a venerable profession where women and other minorities nonetheless struggled for fair treatment. She was President of the Edmonton Bar Association (1988-89), President of the Alberta Branch of the Canadian Bar Association (1990-91) and National President of the CBA (1993-94). For her leadership on gender equality in the legal profession, Cecilia was honoured with the CBA's Touchstone Award (1997). She received the Law Society of Alberta and CBA's Distinguished Service Award (1995), the CBA Alberta Outstanding Service Award (2005) and was one of the first to receive the University of Alberta's Alumni Honour Award (2000). In the greater community she volunteered on and led many not-for-profit boards and committees including her distinguished appointment as Chancellor of Newman Theological College.



Cecilia wanted to be a leader and she was up front and honest about it – not only with herself but with the men with whom she worked and shared her life. She taught law students and lawyers about wills and estates but also taught them about gender equality. She believed she couldn't make something of herself as a woman lawyer unless she bettered the whole profession for women. She saw the two as one. The theme of her gender equality work was to draw the legal profession's attention to the female lawyer departure rate and the loss of talented women with proven skills. The profession was not losing them to babies – the all too convenient male explanation – it was losing them to more enlightened employers outside the profession. Employers who understood the need for human resource policies that would accommodate the reality of most working women's lives.

Cecilia knew that making change to the legal profession was nothing but hard work and pain. Regardless of the formidable and often hostile opposition she encountered she developed effective skills to get her points across. Knowing that women have always faced special disadvantages, she would nevertheless turn those disadvantages into advantages. Often the only woman in the room, she would direct that negative reality into a positive. Men tended to listen to her more closely because she was a woman – a curiosity, and they remembered her and what she had to say the next time she made a presentation. And she also knew how to share the spotlight. Once progress started to be made she wasn't shy about spreading the word and she made sure her male colleagues got some of the glory.

Because she was smart, curious, beautiful, heartfelt and full of fun she attracted all kinds of people around her – even some she didn't want. I recall one lawyer's convention in Jasper in the mid 80's where a number of us turned up to not only attend the convention but celebrate our law class' 10th anniversary. Cecilia was there among other class members as we partied together and with the bigger group of lawyers and judges. The fast dancing and imbibing went late. As we were roving home we noticed a jurist, jolly with the juice of the grape, pursuing Cecilia all around the main log building at the Jasper Park Lodge, eventually pounding on her cabin door. The episode ended with a male classmate, using all the unpleasantness of a nightclub bouncer, telling the tipsy trier of fact that, with the greatest of respect "court[ing] was adjourned."

We would often meet for a drink or dinner when schedules meshed and we would find ourselves in the same city, usually Edmonton or Calgary. One evening years ago, at a restaurant in Edmonton that she liked, we visited over a meal. I would inevitably ask her how things were going and she would tell me the latest funny stories about the odd experiences and characters in her busy professional and personal life.

Continued on page 19

Johnstone - Continued from page 18

As to how she was coping, she said with a pause and fatigue resounding in her voice "We have a few more hurdles in our path, but we'll get there". I said "you're crying." She replied, "I've been up since 5 a.m. flying back from CBA business in Ottawa so I can meet with clients and keep my practice from collapsing. I have fifty pairs of shoes in my office because I'm never home. Tomorrow, I have meetings all day, files to work on and a function at night. I'm exhausted but the only way we will ever change things is by working to change them. But how long do I have to do this?" Then a colleague of hers passing through the restaurant came over to the table and she rallied a smile and a greeting and didn't mention it again.

She was a long distance runner, a grand entertainer, world traveler and devoted church-goer. I could see that she was impatient that her failing health was slowing her down. In one of our last conversations, after she had been living with cancer treatments for about five years, she told me her recent medical check-up was not good. Knowing that she never gave up and that she was devout in her faith, I found it easy to say something like "Don't worry, Cecilia, you will soon beat this, your faith and energy will restore your health." She told me that "there was no magic energy that can cure her illness. As for faith, whether or



not I recover has been decided and cannot be changed. My fate is settled, and there is nothing more I can do."

Her funeral mass at St. Joseph's Basilica was a reflection of the woman she was. The religious solemnity of the ceremony spoke of her lifetime faith. Radiant with humour, music, grace and tenderness, the service embodied the virtues of the person whose life we had come to celebrate. Her ability to communicate to men and women, young and old, rich or poor, mainstream or minority was made apparent by the diverse nature of the hundreds in the congregation. Her husband John Day, who had

brought her so much happiness by regularly taking her away from the combat zone, stated it best in his insightful and descriptive eulogy when he said: "With Cecilia there was always lots of people around."

Cecilia is survived by her husband John and his three daughters, Jennifer, Jacquie and Olivia, her mother Anne and brother Tim. Along with many of her friends, I will miss her phone calls, personal notes, cards with photographs and the funny way she would put her head around the edge of my office door to surprise me.

Justice Bryan Mahoney

Law school classmate, Queen's Bench colleague and long time friend of Justice Cecilia Johnstone.

JUDICIAL UPDATES

COURT OF APPEAL:

The Honourable Madam Justice A.H. Russell of Edmonton retired effective May 1, 2006

COURT OF QUEEN'S BENCH:

The Honourable Madam Justice C.I. Johnstone of Edmonton passed away on April 15, 2006.

PROVINCIAL COURT:

The Honourable Judge R.S. Fowler (Edmonton, Family and Youth) was re-appointed for a one-year term effective April 11, 2006.

The Honourable Judge G.G. Cioni (Calgary, Criminal) was appointed as a part-time judge effective April 13, 2006.

The Honourable Judge W.N. Gilbert (Calgary, Criminal) passed away on April 23, 2006.

The Honourable Judge A.G. Chrumka (Edmonton, Criminal) was re-appointed for a one-year term effective May 8, 2006.

The Honourable E.J.M. Walter's term as Chief Judge expired May 11, 2006. Judge Walter will sit as a regular judge in Edmonton, Criminal.

The Honourable A.G. Vickery was appointed Chief Judge effective May 12, 2006.

The Honourable Judge L.S. Witten (Edmonton, Family and Youth) was appointed as a part-time judge effective May 26, 2006.

The Honourable Judge F.W. Coward (Lethbridge) was re-appointed as a supernumerary judge for a two-year term effective May 31, 2006.

The Honourable Judge R.L. Tibbitt (Vermilion) was re-appointed as a supernumerary judge for a two-year term effective May 31, 2006.

The Honourable Judge E.R.R. Carruthers was designated as Acting Assistant Chief Judge, Calgary, Family and Youth, effective June 1, 2006, for a term to expire on September 30, 2007.

Richard J. O'Gorman was appointed as a judge to Calgary, Family and Youth, effective June 1, 2006.

James J. Ogle, Q.C., was appointed as a judge to Calgary, Criminal, effective June 5, 2006.

The Honourable Judge M.M. Donnelly (Edmonton, Civil) was appointed as a part-time judge effective June 5, 2006.

The Honourable Judge M.G. Tomy (Edmonton, Rural) passed away on June 6, 2006.

The Honourable R.S. Dinkel (Calgary) was re-appointed as a supernumerary judge for a two-year term effective June 12, 2006.

The Honourable Judge J.C.M. Spence (Edmonton, Criminal) was appointed as a part-time judge effective June 15, 2006.

Monica R. Bast, Q.C., was appointed as a judge to Red Deer, effective June 19, 2006.

The Honourable Judge N.A.F. Mackie (Edmonton, Rural) was appointed as a part-time judge effective July 6, 2006.

Cross-Section SOUTH

David Steele and
Marian De Souza

From the desk of Marian De Souza

So, how many of you are caught up in World Cup hysteria? All eyes are on David known for his leadership, precision and style ... David Steele that is, outgoing Section Chair Co-ordinator. As for the other David, all that I can hope for is that with England's chances, my #7 Beckham jersey will be worth a whole lot more in a few weeks.

Welcome to Sandra Hildebrand, whose quiet dedication and commitment to the Canadian Bar Association and the profession will ensure continuing success of the sections.

Despite lunch-hour competition with the most-watched, world-wide sports programming, the sections have held elections and appointments of next year's executives, while delivering another month of brilliant topics and speakers. To name a

Notice to the Profession The Provincial Court of Alberta Amended Practice Note:

Courtroom Video Link Appearances

This Practice Note is 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>.

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Chief Judge, The Provincial Court of Alberta

Ron Everard
Chartered Mediator

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few: Civil Litigation looked at class actions as well as recent Alberta treatment of certification applications. Labour and Employment Law included human rights issues in employment. Privacy and Access Law discussed the possibility of a Section submission to the provincial government, which recently announced a review of Alberta's *Personal Information Protection Act* ("PIPA").

On behalf of David Steele and myself, thanks to each Section Chair for making 2006 another outstanding year for the sections. By the time you read this, we will have had the chance to thank many of you in person at the Annual Chairperson's Appreciation Dinner. Until next time ... *olé, olé, olé, olé.*

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Cross-Section NORTH

L. Diane Young and
Dragana Sanchez Glowicki

From the Desk of Dragana Sanchez Glowicki

The Canadian Bar Association Northern Sections are winding up after another successful year. This year attendance was higher all across the board and two new sections were added, those being Elder Law and Corporate Counsel. The new sections grew in leaps and bounds and proved to be a very valuable resource to lawyers practising in those areas. The Elder Law Section took a creative approach and invited, to many of its meetings, other sections such as the Wills, Family, Criminal, Civil Litigation, Constitutional, and Pension and Employee Benefit Sections. Congratulations to the executive of both of these new sections! Various sections chose to hold their year-end wind-up parties at locations across the city. The Junior Lawyers celebrated their successful year at Sherlock Holmes Pub, while the Pension and Employment Benefits section enjoyed an evening at Ceili's Bar and Grill. And, the Family Law Section chose an evening at the Royal Glenora Club.

But, even through the sections' wind-up of another year the Canadian Bar Association continues to work hard planning a number of other well-attended events. The much awaited Criminal Justice Section is hosting its annual "Law and Literature" evening at Sutton Place Hotel. This event is highly attended by the judiciary and is truly a lovely evening. In keeping with the tradition of this event, the members of the Bar and their guests are invited to read from poetry, books and various other literature which they have written throughout the year. The CBA North Office is also planning the Inns of Court 10th anniversary celebration. This year the focus will be on issues affecting female lawyers. This event is always interesting to junior barristers, and will be particularly interesting to female barristers this year. Watch for further notices about this event as the date approaches.

You will also soon be receiving your mentor form. The mentor program matches practising members of the bar with University of Alberta law students. If you would like to become involved with the Canadian Bar Association, but just can't seem to find the time to do so, well, this is a perfect way to get involved! Volunteering for this program takes very little time, yet the return to the students is significant. Those students who had contact with their



mentors last year, unanimously said that they derived a benefit from being able to ask their mentor about practice issues, and speak about the current climate of the legal profession in Alberta. I would urge everyone who has not been involved with the CBA, or who has previously been involved, but currently is not involved, to think about volunteering for the mentor program.

We also bid farewell and good luck to Diane Young who completes her two-year term this August as North Section Co-ordinator and who is, as most of you know, a member of the Canadian Bar Association Provincial Executive. Replacing Diane Young as the North Section Co-ordinator will be John Williams and I look forward to working with him. John has volunteered for the Canadian Bar Association in various capacities and for many years. His experiences will certainly add value to the Northern Sections.

In closing, I wish you a wonderful summer and look forward to seeing everyone in September.

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SUICIDE

Suicide accounts for 16% of all deaths among those aged 25 to 44 years*. For every completed suicide, 10 people are intimately affected**.

If you or someone you know is suicidal right now call 9-1-1 immediately.

If you want help for yourself or someone you know who may be contemplating suicide call Assist's professional service provider at 1-800-461-8908.

For a listing of crisis centers across Alberta, go to www.suicideinfo.ca. This is the website for the Centre for Suicide Prevention. While not a crisis center itself, it is a source of information to help locate a resource near you. Go to the "Information Section" then to "If you or someone you know is suicidal" and follow the links to Canada then Alberta.

Suicide is devastating for those close to people who die by suicide.

Survivors are affected in many ways: Socially (stigma, isolation, etc); Spiritually (search for meaning, questioning prior beliefs, etc); Physically (fatigue, anxiety, etc); Behaviorally (over-protectiveness, etc); Cognitively (confusion, loss of perspective, fixation on "why"); Family Dynamics (balance can be lost, scapegoating, etc); and Emotionally (denial, guilt, shame, anger, sadness, etc).

If you have lost someone to suicide, there is help available. Suicide recently touched my family. We turned to the Canadian Mental Health Association's Bereavement Services. The help they made available was an excellent beginning to the healing process. There are other resources that are also very helpful. Go to: www.alberta.cmha.ca to locate services near you or you can call me..

Suicide is preventable.

To learn more about suicide prevention and what you can do to help someone you care about who may be at risk for suicide call Assist, 1-800-461-8908 or call the Center for Suicide Prevention,

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



403-245-3900. Knowledge helps.

*Stats Canada, 2003

**Canadian Mental Health Association

A few special thank-you's from Assist. First to the organizers of the Kosowan & Wachowich Game Dinner (Edmonton) and all of the generous lawyers, judges and friends who contributed over \$21,000 to Assist. Thank-you. Next, to hosts Brian Felesky (Felesky Flynn), Harry Campbell (BD&P), Web Macdonald (Blakes), Quincy Smith (FMC) and Kerry Dyte (EnCana) and the many lawyers, judges and friends who attended the June 8th Assist reception (Calgary). Thank-you.

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

To learn more about Assist, see our website at www.albertalawyersassist.ca or call me at 403- 537-5508 direct; 877- 737-5508 toll free or e-mail me at alap@nucleus.com.



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A partner from the Dubai office (himself a Canadian lawyer) will be visiting Toronto and Calgary in July to interview prospective candidates. If you would be interested in meeting us to hear more about our firm and opportunities please contact our exclusively retained consultant Ted Remillard, Managing Director, Modus Legal Recruitment by phone at 416-203-7800 or by e-mail at tremillard@moduslegal.com. All direct and third party applications will be forwarded to Modus Legal Recruitment.

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