

LAW MATTERS

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CANADIAN BAR ASSOCIATION ALBERTA

President 2004-2005 WALTER PAVLIC



A Man for All Seasons by Paddy-Jo Davis

Walter John Pavlic was born and bred in Edmonton and is the product of a colourful and historic lineage. He is a first generation Canadian with roots in a beautifully picturesque Slovenian village near the Italian border.

Walter grew up in Edmonton, graduating from Austin O'Brien High School where he was picked for the baseball team's first base - not to play first base, but to be first base. Shortly thereafter, he turned away from team endeavours, becoming an avid outdoorsman with a thirst for crisp mountain air, content to while away his hours hiking, cycling and skiing in the Rockies, passions he pursues to this day.

Then, the University of Alberta beckoned. In 1981, Walter obtained his Bachelor of Commerce Degree, with Distinction. Subsequently he travelled the world as a management consultant. Seeking greater challenges, he returned to the University and in 1985, completed his Bachelor of Laws. During both his university and early years at the Bar, he appeared studious and serious-minded. Friends observed that when faced with two temptations, he chose the one that wouldn't keep him up late. In addition to his fine fashion sense, he was known for his creativity, exuberance and his dry, and sometimes lethal, wit. He took the initiative in worthwhile causes, sitting on numerous community boards and committees including Chairperson of an inner city agency, the Boyle Street Co-op.

Shortly after graduating from law school, Walter married long-time sweetheart Wendy. Walter and Wendy have two wonderful children, Stephan, aged six, and Anastasia, aged nine. His daughter's name has given rise to much speculation, not denied by Walter, that he is the lost progeny of the Romanov dynasty, the surviving members of which had made their way to Slovenia where they found life under Marshall Tito more agreeable than that under Lenin and successors.

Soon after joining the illustrious Parlee McLaws firm, Walter refined his urbane tendencies and quickly became the epitome of sartorial sophisticated cool. He acquired a taste for Bombay Sapphire martinis and was seen resplendent in Prada suits, tooling through the streets of Edmonton and Calgary in a series of black BMWs en route to the latest theatre, gallery or restaurant opening.

Walter does not suffer fools gladly. No doubt some of this was brought on by his area of practice, labour and employment law. An anonymous source reported that while dining with friends at fashionable Murietta's in Calgary, Walter was able to get some "hands on" experience dealing with labour matters. Much to the amazement of his dining companions, he summarily, but not wrongfully, dismissed his inefficient and incompetent waiter. Practical and ever-mindful of the restaurant's management concerns, he immediately and thoughtfully retained the next waiter passing by his table.

In addition to his sparkling professional career and his leisurely wanderings through Alberta's more fashionable venues, he has also developed his international presence. At various times, he could be found travelling the Kunjerab Pass in Northern Pakistan, visiting the Taj Mahal, trekking in Nepal, schussing the slopes of Val d'Isère à la Jean Claude Killy, and sampling the night life in Bali and Bangkok. Notwithstanding these fabulous adventures he remained down to earth and able to appreciate the beauty of the moment. Friends observed that he had given into the temptation of staying up late, despite his endearing but occasionally annoying, ability to get up very early in the morning.

In his professional life, Walter has been a relentless representative of his clients, frequent witty speaker at local, national and international labour seminars, and prolific scintillating author of legal education publications. He has also been a staunch supporter of the profession as President of the Edmonton Bar Association and chair or member of numerous CBA committees and sections.

Fellow lawyers, this is but a brief review of the life and times of WJP, Renaissance Man and accomplished gentleman of the law, who can now hold his head up presidentially when he runs into those former law school classmates who have merely become Billionaires or Dames. I welcome you to "Wally's World" and invite you to join me in dropping an olive or lemon twist into your Bombays or Tanquerrays, raising your glasses and toasting our newest, and first Slovenian, Presidente of the Alberta Branch of the Canadian Bar Association!

Past President's REPORT

Donald B. Higa, Q.C.



I would like to make my last (now Past) President's message memorable, so I'm going to write about sex. However, stories of my personal experiences in that area would make this message rather brief. Instead, I'll write about lawyers having sex and in particular, sex with their clients.

I hope I have now caught the attention of those of you who generally don't read the "President's Report". Now I must confess that I do not have any exciting stories to tell, or identities to disclose. What I can speak to is the lively and passionate debate heard at the recent CBA national council meeting in Winnipeg on the issue of sex with clients.

Two resolutions were debated in Winnipeg that garnered the attention of national media. Both resolutions arose from a review of the CBA Code of Conduct. Members of the committee given the mandate to propose revisions to the Code believed the Code must specifically address situations where a sexual relationship between lawyer and client could involve unfair exploitation of the lawyer's fiduciary role, in violation of the lawyer's ethical obligation not to use the trust of the client to the client's disadvantage.

One resolution proposed a formal rule be added to the Code prohibiting sexual relations between lawyer and client unless a consensual relationship existed when the lawyer and client relationship began. The second resolution proposed that only a commentary be added to the existing rule prohibiting lawyers from acting for a client where the lawyer's duty to the client and the personal interest of the lawyer are in conflict. The commentary would specifically state that a lawyer's sexual relationship with a client will be an appropriate subject of discipline where the lawyer takes advantage of the client.

National Council by an overwhelming majority rejected both resolutions. The prevailing view was that the existing rules dealing with conflict, ethical responsibilities and fiduciary duties address the committee's concerns. Council members were also concerned that the wording of the proposed resolutions could make situations where there is clearly no issue of improper behaviour or vulnerability, the subject of disciplinary review.

It was somewhat surprising to see the interest the debate generated in the media. For a week after the Winnipeg meeting, articles, editorials and editorial cartoons appeared in newspapers throughout the country. Most of the articles criticized the vote taken by council. However,

the articles failed to convey that the debate exhibited that lawyers take professional ethics and conduct very seriously, and in the context that the resolutions were presented, passing the resolutions was not advisable.

It is unfortunate that when articles about lawyers or issues involving lawyers and the judicial system appear in the media, there is generally a negative comment or criticism involved, or the issue covered is not presented in its proper context, such as the "sex with client" resolutions. The outstanding service and commitment we provide to our clients and our communities is rarely the subject of media attention.

The CBA, both provincially and nationally, devotes substantial resources in addressing the public image of lawyers. Press releases are sent periodically through the year on different issues. The Branch developed a media guide that informs the press on CBA policies and goals and provides essential contact information. Several programs and projects are in place to educate the public about the role of lawyers and the administration of justice. Throughout the spring and during the Summer Olympics in Athens, CBA-Alberta ran an excellent nationally produced television ad specifically addressing the image of lawyers. We are proud of our efforts and we will continue to devote resources in this area.

Again, this is my last message to you. In the past year I have represented the CBA throughout the province, from Ft. McMurray to Lethbridge and made (endured) countless trips between Edmonton and Calgary. (Most of those trips were by small nine seat aircraft, so Gravoil became a necessary companion). Nationally, events have taken me to Whitehorse and twice to Winnipeg and Ottawa. To represent our over 4500 members and be introduced as President of CBA Alberta, was an incredibly rewarding experience.

As a profession, we are well served by the hundreds of lawyers who devote considerable time to the CBA and the Law Society of Alberta. As an organization, the CBA Alberta is blessed to have a wonderful and dedicated staff; incredible people who are not themselves lawyers but who are unbelievably committed to assisting and improving our profession. *Thank you all.*

OFFICE OF THE PRACTICE ADVISOR



Paul McLaughlin, Acting Practice Advisor will provide services including helping members with practice start-up, practice management, career transition, risk management, and solo and small firm management. He is assisted by Molly Naber-Sykes. You can reach Paul at 201, 10060 Jasper Ave., Edmonton, AB T5J 3R8 Ph: 780-412-2301, 1-800-272-8839, E-mail: paul.mclaughlin@lawsocietyalberta.com.

MENTOR PROGRAM

A program of the Office of the Practice Advisor of the Law Society of Alberta to provide mentor contacts. 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

Scott A. Watson



Bad Media

David Asper, executive vice-president of CanWest Global Communications Corp. spoke at a reception in Edmonton following the Opening of the Courts ceremony on September 20th. He focused on how politicians and journalists frequently take pot shots at the judiciary. While he admonished journalists, including those employed by his own company, for routinely misinforming the public on legal issues, he suggested some of the blame might rest with the bar as well. He indicated lawyers need to do a better job correcting the misconceptions being published in the media. In fact, he characterized it as a "duty" that lawyers have to prevent erroneous comments from being left unchecked. Routine topics, he said, which spawn criticism by the media are, of course, the enforcement of the Charter, the independence of the judiciary and something as rudimentary as the judicial tradition of not responding to criticism. The public generally considers journalists' views authoritative and accurate. He said lawyers' failure to correct a journalist's views that are based on fundamental misunderstandings of the law will either leave the public confused or with a completely inaccurate impression about how our judicial system really operates. Following his speech, I refreshed my memory by rereading a section of Alberta's Code of Professional Conduct and noted Mr. Asper's remarks are entirely consistent with the commentary surrounding Rule

2 of Chapter 1 of the Code. You should know that the Executive of CBA Alberta monitors Alberta's major daily newspapers in an effort to detect pieces which exhibit legal inaccuracies about lawyers, the courts or the law. In appropriate cases, the President of CBA Alberta has written a letter to the editor to correct the record. If you see an article or column that you think demands a response by the CBA please contact me or any other member of the Executive.

End of an Era

This is the last joint publication of Law Matters that the CBA Alberta will publish with The Law Society of Alberta. Future issues will be published solely by the CBA. The CBA enjoys an excellent relationship with the Law Society and will continue to offer publication of notices the Law Society may wish to communicate to the bar. The CBA will also continue to send Law Matters to every member of the bar, whether or not they are CBA members and to judges, professors, articling students and university law students. On behalf of the CBA, I would like to thank the Law Society for their involvement with the newsletter over the past 25 years.

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

JUDICIAL LIST

Provincial Court

The Honourable Judge R.W. Bradley of Edmonton Rural was re-appointed as a full-time judge for a further one year term commencing July 17, 2004.

The Honourable Judge P.C.C. Marshall retired as a supernumerary judge of Edmonton effective July 26, 2004.

The Honourable Judge W.G.W. White of Edmonton has been reappointed a supernumerary judge for a further two-year term commencing August 1, 2004.

Thank you Anon!

Ms. Lindell said she requires
A poem which inspires
One to voice observation
Of the new office location

Suffice it to say
Without further delay
The CBA continues to impress
With the new office address

But the best part of all
As we resume visiting this fall
Is the friendly faces from before
Continue to greet us at the door

Anon

MAKING CHILDREN'S RIGHTS WORK: NATIONAL AND INTERNATIONAL PERSPECTIVES NOVEMBER 19- 20 2004, MONTREAL, QC

Summary

To celebrate the 15th anniversary of the Convention on the Rights of the Child (CRC), the IBCR is organizing a conference on the implementation of the CRC. The following topics will be addressed: the progress made since the adoption of the CRC, children's rights and the justice system, child trafficking, and justice for child victims and witnesses of crime.

For more information

Contact: Anabela Dias Cosme, Conference Secretariat, 1185 Saint-Mathieu Street, Montréal, Québec H3H 2P7, Canada Tel: + 1 514 932 7656 ext. 225 Fax: + 1 514 932 9453 Email: conference@ibcr.org. Go to www.ibcr.org/PAGEEN/EPROJECT2.htm

Non-Equity Partnership: Tiers or Smiles?

Sean Dunnigan, Q.C.



Once upon a time, the primary goal of a new lawyer was to survive articles and seven years of the associate grind, all to achieve the hallowed status of partner. For most, partnership promised better money, more power and prestige and the advantages of ownership.

But for many in today's legal talent pool, the pot of partner gold at the end of the rainbow is not as bright and shiny as it once seemed. Many lawyers in the 1-8 year bracket no longer seek to become partners in a firm. Some have opted for permanent associate status, others have sought to move in-house and still others have chosen to leave the profession entirely.

Firms are also in the process of redefining what it means to be a partner in private practice. New types of relationships between the lawyers and the firm are being created, including the counsel/consultant, the permanent associate and the non-equity partner. Yet debates rage in law firms as to the advisability of having multi-tiered "partnership" structures. Some firms in Alberta regard these new classes of relationships with their lawyers as fundamental to the growth of the firm. Others view them as anathema to team building.

Proponents tout non-equity partnership and counsel/consultant relationships as important tools to transition lawyers in and out of the partnership. For many associates, immediate entry into full equity partnership can be akin to a bucket of cold water in the face – their traditional sources of work from partners in the firm tend to dry up as the partners leverage work off other associates. New partners are faced with the daunting prospect of developing a sustainable practice very quickly or suffering the financial consequences at points allocation time. To ease this transition, some firms are using non-equity partnership as a period during which associates with the potential to generate their own practice can, over a period of one to two years, demonstrate a proven ability to generate a self-sustaining practice. Non-equity partnership can also be a useful tool for senior lateral moves. As a non-equity partner, both the firm and the lateral lawyer can spend a period of time looking each other over before taking the next step toward full equity partnership and the new addition having to make the usual capital contribution to the firm.

Critics of the two tiered partnership approach feel the

system can create morale problems. Non-equity partners can sometimes feel like or be viewed as second class citizens and even be paid accordingly. Many firms argue it is better to seek the brightest, most ambitious and most dedicated lawyers to become full partners, with everyone on the same page, performing at the same level and developing excellent practices. Those not up to the task would not be eligible for partnership and face an "up or out" career path. The downside to this approach is the firm may lose very good people whom they have trained for many years and who, while not "stars" are still contributors to the firm.

Both supporters and critics of two-tiered partnership agree that it should not be used to address compensation problems in a firm. One of today's biggest law firm challenges involves dealing with under-producing partners. Correcting this problem is fundamental to the financial success of the business, yet many firms feel reticent to make the hard decision. Some managing partners view non-equity partner status as a valuable stop gap to keep good people in the firm while remunerating them at a level which is fairer to the firm as a whole. However choosing to "demote" or "adjust" a partner to non-equity partner instead of helping the individual relocate to a more appropriate platform can often cause greater pain in the firm. More positively, though, the status may be helpful in transitioning a senior lawyer out of production focused practice into still valuable leadership, client relationship and associate mentoring role.

The structure of partnerships and the style of associate progression are key indicators of the culture of a firm. Deciding whether one approach is better or worse for you is an important part of any lawyer's career review process. Some people are ideally suited to a firm with multi-tiered partnerships and compensation systems. Others flounder or are frustrated by deviations from the traditional progression from articles to associate to full equity partner. Careful consideration should be given to whether the firm you are at or the firm you might want to approach offers the structure best suited to allow you to flourish in your career.



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GAAPs How Many Are There?

Recently, Mr. Don Bishop of Bishop & McKenzie LLP wrote a letter to the attention of the Provincial Section Co-ordinators alerting us to what he saw as an issue of potential concern to Alberta lawyers. I have made a few minor revisions to Mr. Bishop's letter, although the substantive content remains the same.

On behalf of myself and the other Section Co-ordinators, I would like to thank Mr. Bishop for taking time to provide this information to us.

Jason Schlotter

Dear Colleagues:

Re: Canadian Accounting Standards – How many GAAPs are there?

I currently sit as a Public Member of the Governing Council of the Institute of Chartered Accountants of Alberta. Over the past couple of years, our Council has engaged in several discussions relating to the subject of "Accounting Standards in Canada". As a non-accountant, I must confess that from time to time I have allowed my mind to drift somewhat during these discussions. Recently, however, I realized that one of the key issues our accounting colleagues are grappling with impacts directly on the legal profession in Alberta, and indeed elsewhere in Canada; this relates to the question of "Generally Accepted Accounting Principles" (otherwise affectionately known as GAAP).

As a grizzled old practitioner in the area of commercial corporate law, I have on many occasions inserted covenants, warranties, representations, etc. into commercial documents which require a Canadian corporate entity to produce financial statements which are completed "in accordance with GAAP". I now realize that this is a rather imprecise reference, inasmuch as it appears there may be several variations of GAAP which are being utilized by the accounting profession in Canada.

Without attempting the rather daunting task of explaining exactly what I mean by "variations" of GAAP, I would briefly explain that I recently received

a letter written to the Canadian Institute of Chartered Accountants (CICA) by Mr. Myles Bourke, the current President of the Alberta Institute. In that material (with attachments), Mr. Bourke made several references to "core" and "enhanced" GAAP as well as "US GAAP" and "IFRS" (which I understand basically to be "European" GAAP).

... It occurred to me that it might be useful if I were to make some effort to alert members of the appropriate CBA sections, as well as (perhaps) the Law Society of Alberta, that these discussions are ongoing relative to GAAP, and that, in certain circumstances, it might not be sufficient for legal practitioners in this Province to continue to insert general references to GAAP in their documents, when even the members of the accounting profession seem to be unable to agree on exactly what the term means.

For my part, I have indicated to my accounting colleagues – only partly in jest – that from this point forward, my documents would be drafted in such a fashion as to require that financial statements be prepared "in accordance with generally-accepted accounting principles (GAAP), whether that standard be 'core' or 'enhanced' (formerly known as 'big' or 'little' GAAP), or whatever other titles, descriptions, designations, etc. may be used or adopted by the Institute of Chartered Accountants of Alberta at any time in the future". ...

If anyone thought it would be of assistance, I am sure that representatives of the ICAA would be more than happy to discuss these issues further with representatives of the bar, or perhaps even to participate in some type of commercial/corporate seminar sponsored by certain sections of the CBA, or by the Legal Education Society of Alberta.

I trust that by writing this letter I have not created more confusion than that which existed when I embarked on this smallish initiative to bring this somewhat bewildering issue to the attention of my legal colleagues in Alberta.

Yours truly,
Donald G. Bishop, Q.C.

LES A Fall Program News

Ellen Smith

LES A seminars strive to deliver immediately useful information to the busy practitioner and legal support staff. Exceeding expectations is our goal.

Join Justice John A. Agrios, Justice Bonnie Rawlins and their experienced and knowledgeable panel to learn more about **Effective Advocacy in JDRs**, Edmonton October 26 and Calgary October 27 (1:00-4:30 pm). Prepare to be educated, stimulated and involved in this half-day workshop.

Support staff who attend Real Estate for Legal Support Staff, Edmonton, November 09 and Calgary November 16 will learn about tips and traps on condominium files, time savers which speed up conveyancing, the minefield of taxes and adjustments, protocol closings and new standard forms.

Insure that retirement meets your most positive expectations by taking **Starting to Stop: Preparing for YOUR Retirement**, Edmonton November 10 and Calgary November 17.

Due to popular demand we are offering another **Mediation of Family & Divorce Conflicts** seminar, this time in Edmonton February 9-13, 2004. Limited to 24 registrants this highly interactive course is designed to forge a clear sense of the role of the professional mediator. See a detailed outline for each of the five days on the LES A website, www.lesa.org.

Contact LES A 780-420-1987, 1-800-282-3900 toll free in Alberta or by e-mail, lesa@lesa.org.

View from the BENCH

Judge Allan A. Fradsham



The headline "Britain appoints language judges" in a recent edition of the *Calgary Herald* caught my attention. "That should provide new, interesting opportunities for those seeking judicial appointment," I thought. It seems that these judges are to ensure that those applying for British citizenship can speak good... I mean, speak good English... I mean, speak English well...ahhhhh.

I suppose that in the Letters Patent appointing such a judge, the Sovereign will be described not only as Defender of the Faith, but also as Guardian of the Grammar. The parchment would probably read: "Know Ye that reposing especial trust and confidence in your subject-verb agreement, parallel structure, mastery of subordinate clauses, and principled rejection of dangled participial phrases...." Like, that would be so cool.

I suppose it will not be long before the concept of grammarian gendarmes for the general public will be adopted here in the colonies. Of course, special Language Violence courts will not be far behind.

Then I started to wonder about the judgments which would be penned by such judges (or, to use the vernacular: Like, I then, like, wondered, like, what would their judgments, like, look...like.) Perhaps they would look "like" this:

Henry Higgins, J.: The accused is charged that he: "On or about the 1st day of May, 2004, at or near the City of Calgary, in the Province of Alberta, did unlawfully cause a disturbance in a public utterance by ending a sentence with a preposition, contrary to section 13 of the *Code of Decent, Sanitized, Wearisome and Linguistically Logical Observations and Punctuation* (CODSWALLOP)."

The evidence satisfies me that on May 1, 2004, Constable Gilbert Sullivan, a uniformed grammarian officer,

was on duty and conducting normal patrol duties when he noticed an individual, later identified as the accused, being assaulted by a group of three knife-wielding adult males. The accused, reckless of whether his comment would be heard by members of the general public, distinctly called out to the officer: "HELP. They're going to kill me. What are you waiting for?" (Emphasis added)

In all my years on the Bench, I have never encountered such a flagrant example of a dangling preposition. Such dangling in public cannot be condoned in a decent society, and will not be tolerated by this court. The potential for occasioning harm to nearby children causes one to shudder. To what is the world coming? To what did the accused think he was up?

I find the accused guilty.

I suspend (but do not dangle) the passing of sentence for six months and place the accused on probation for a like (no, not *that* "like") period subject to these conditions:

1. Keep the participle and be of gerund behaviour.
2. Perform 50 hours of community service by cleaning the streets of all "g's" dropped from words such as "cruising", "drinking", and "chilling".
3. Contribute \$100 to a charity, the work of which is to provide temporary shelter for misplaced modifiers.
4. Abstain completely from the consumption of the vernacular and all other communicative substances.

Now, such cases will eventually lead to a concern of momentous implication. Assume that someone wants to appeal a decision of one of these judges. Does the question, "What is the appeal period?", violate some rule against double punctuation?

What's HAPPENING

Patty Johnston, Q.C.



OCTOBER:

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 Phone: 1-877-927-7936 or 416-927-7936; or register online at www.CanadianInstitute.com.

NOVEMBER:

4&5: The 8th Annual In-House Counsel Congress presented by The Canadian Institute. The Sutton Place Hotel, Toronto, ON. Contact: See Oct. 28&29 above.

15&16: Fourth Annual National Summit on Income Trusts presented by The Canadian Institute. The Sutton Place Hotel, Toronto. Contact: See Oct. 28&29 above.

16: Building Governance Capacity: Bringing Women on Board presented by the Sheldon Chumir Foundation. The Metropolitan

Centre, Calgary, AB. Contact: Phone: 403-244-6666; Fax: 403-244-5596; e-mail: info@chumirethicsfoundation.ca; www.chumirethicsfoundation.ca.

18&19: 10th Annual Regulatory Compliance for Financial Institutions presented by The Canadian Institute. The Sutton Place Hotel, Toronto, ON. Contact: See Oct. 28&29.

26&27: Fixing the System: Bringing Transparency and Accountability to the Law presented by the CBA Joint National Administrative Law and Labour and Employment Law CLE Conference. Marriott Hotel, Ottawa, ON. Contact: Phone: 613-237-2925 or 1-800-267-8860 Ext. 106; Fax: 613-237-0185; e-mail: esterm@cbc.org.

Please send your notices to Patty Johnston, Q.C.,
Alberta Securities Commission, 400, 300 - 5 Avenue SW, Calgary, AB T2P 3C4
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Photo courtesy of Larry Wong, The Edmonton Journal



Photo left: Chief Justice Allan Wachowich presides over the opening of the court ceremony at Court of Queen's Bench in September. See Editor's Notes p. 4.



Photo right: Mr Justice Ian Binnie of the Supreme Court of Canada was the guest speaker at the 2004 Legal Archives Hysterical Dinners in Calgary and Edmonton. His topic: Legal Humour: Titillating, ghastly, or just plain oxymoronic?



Photographs courtesy of The Legal Archives Society of Alberta and Kristie Magnussen

L- John A. S. McDonald, Q.C. and R- Edward Bredin, Q.C., with their spouses, at the Calgary Archives Dinner where they were bestowed with Honourary Membership in the Society.

The 2nd Annual *Viva Voce* hosted by ZSA Legal Recruitment raised several thousands of dollars for the Children's Legal and Educational Resource Centre (CLERC). Talented bands from Edmonton and Calgary battled for the Lexpert cup. The judges, led by John Martland, Q.C. of Bennett Jones, awarded the 3rd Place KVP Cup to Dr. Friday from Calgary, the 2nd Place Nexen Inc. Cup and the ZSA Cup for Best Stage Performance to *sex parte* from Edmonton, and the 1st Place Lexpert Cup to Thirst n' Howl from Edmonton. The Macleod Dixon Band packed the dance floor with their inspired and lively performance.



A reception to introduce Calgary lawyers to CLERC - Children's Legal & Educational Resource Centre, was held at Wallace Galleries this September. Above are Justice Marguerite Trussler, Justice Beth Hughes and Dale Hensley. Left is Gillian Marriott of the CLERC Board of Directors and Chair of both the Legal Advisory Committee and the Fund Development Committee.

Left is Gillian Marriott of the CLERC Board of Directors and Chair of both the Legal Advisory Committee and the Fund Development Committee.



Walter Pavlic, current President of the CBA Alberta, speaks to law students at the University of Alberta about the benefits of belonging to their professional organization.

Below: Members of the University of Alberta Law Student Section Executive I-r: Brett Plaizier, Chair; Jay Palmer, Vice Chair; Jessica Thomson, Member-at-Large; and Angela Dobie, Secretary.



L-R Judge Fradsham, Associate Chief Justice Sulatycky, Judge Tousignant, Court of Appeal Chief Justice Fraser, Chief Judge Walter, and Assistant Chief Judge Vickery were some of the judges who attended the swearing-in ceremony of Victor Tousignant. See article p. 12.

Right: At the Alliance Française, after Victor's formal swearing-in and reception, Doug Moe pays tribute to Vic's many accomplishments in both his personal and professional life.



Center



Left: Walter Pavlic (R) presents Don Higa, Q.C., Past President of the CBA AB with a Presidents' Appreciation Award in recognition of his significant contributions to the Branch. Right and far right: Dawn Eden and Lindell Larson are honoured for their years of service to the Branch - Dawn fifteen years and Lindell ten years.



The Fall Council Meeting was well-attended by members from across the province. These hard-working volunteers ensure members' needs are constantly being addressed at both provincial and national levels.



The Editorial Committee is working on changes to produce an improved *Law Matters*. Current Committee members are: Above I-r, Justice Willis O'Leary; Devin Mylrea; Scott A. Watson, Chair; and Tony Young; Right I-r, Terry Cooper, Q.C.; Deborah Baradziej; Dragana Sanchez Glowicki; and, Lindell Larson (staff).



Special kudos to the section co-ordinators, section chairs and other section executive members, and Heather Walsh and Linda Chapman (staff), for all of their work in making Alberta section activity the best in the country.



Above and below: The Edmonton Fall Section Workshop was a well-attended and everyone is geared for success in what Art Wilson, Q.C. refers to as the new "school year".



Calgary Natural Resources Section invited the Corporate Counsel Section members to an evening reception at the Palliser.



Calgary *OktoberGuest* Family Law Section meeting with I-r Karen Muir, Deborah McElrath, and speakers Jonathan Nicholson and Sandra Klashinsky.



Below: The Calgary Fall Section Workshop was also a success and a "down to business" meeting.

Cross-Section NORTH

Art Wilson, Q.C. and Diane Young

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

As I write, the days are getting shorter. By the time you get home from the office and have supper, there is not enough daylight left to mow the lawn or to play nine holes. Edmonton has already had its first snowfall to remind us all in Alberta we have ten months of winter and two months of bad skating. These signs of the season also remind us a new "school year" of section activity has begun. It is good to see and talk to old friends whom we may not have seen since June.

Most readers will by now have registered in their sections of choice. If you have been too busy to do so or are a procrastinator, now is the time to do so. Please take a look at the new 2004-2005 Section Handbook. It is the white book with green trim and an artist's rendition of upwardly mobile lawyers that may be gathering dust in your in basket. Those of us in Edmonton are interested in page 24 and following. For each section you will find the smiling face of the chair or co-chairs, the names of the remainder of the executive, a section mission statement and other important information, like when and how often the section meets, how much membership will cost and how many meetings you can expect in the 2004-2005 school year. Please note Education Law and Pension and Employee Benefits Law are new sections.

Let me remind you about the OktoberGuest program held by our sections in the month of October. Normally one may attend a section meeting only if they are a paid member of the section or a Canadian Bar Association member who pays the meeting guest registration fee. You cannot attend a section meeting unless you are a member of the Canadian Bar Association. OktoberGuest is a program to recruit new members to the CBA and the Alberta Branch sections. To do so, one may normally expect the section to strut its stuff by having a meeting on a hot topic or with a high profile speaker. One may expect a high caliber event you would not want to miss. In keeping with the intention of the OktoberGuest program, one does not need to be either a section member or a Canadian Bar Association member to attend a section meeting in October. The expectation is, if newcomers like what they see, they will take out their wallets and sign up. Normally, there is no charge for the attendance of guests. However, depending on the meeting venue, a nominal charge may be levied to cover the cost of a meal. Please consult the applicable meeting notice.

Many readers will be happy and content section members. If so, remember OktoberGuest provides a wonderful opportunity for you to check out other sections that might be of interest to you. For example, if you are a personal injury lawyer, either acting for plaintiffs or insurers, with the advent



of Bill 53, you may consider taking in the Criminal Justice or Real Property OktoberGuest Section meetings. Section membership does not need to be strictly practice related. Depending where you fall on the age spectrum, OktoberGuest is the time to check out the Junior Lawyers or Senior Lawyers Sections. Furthermore, you are our best recruiter. There is truly strength in numbers. The greater the membership of the CBA, the more effectively the National Office and the Alberta Branch can speak out for the legal community and provide other member benefits. A large section membership portends well for the enthusiasm, energy and creativity of a section executive and provides a pool for succession. Please take the time to think of one or two other lawyers who may have interest in the activities of your section and invite them to an OktoberGuest meeting.

I would also like to take this opportunity to welcome Diane Young of Ackroyd, Piasta, Roth & Day LLP who joins me as a Northern Alberta Section Co-ordinator this fall. I look forward to working with Diane over the next school year.

I hope you are as excited about this year as I am. Please contact Diane or me with any questions, concerns or ideas about the northern sections or the CBA Alberta Branch.



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Cross-Section SOUTH

Jason Schlotter and David Steele

From the desk of David Steele

You are reading this column so chances are you are aware of the many benefits of being a member of the Canadian Bar Association in Alberta and one of the greatest benefits we have in this province are the many and varied and vibrant sections in northern and southern Alberta. The Alberta Branch continues to be the envy of other CBA branches across the country because we have such strong sections with dedicated volunteer executives, and interesting, up-to-date, and informative speakers and topics.

We are at the end of the annual OktoberGuest program, which allows lawyers and students who are not members of a section or indeed not members of the CBA to come to Section meetings to see what the sections are like and what great continuing legal education they can get from the CBA sections. The following is just a sampling of the rich selection of topics and speakers in Calgary and Edmonton in October:

- The International Business Law, Immigration, and Criminal Justice Sections brought a speaker from Ottawa for its OktoberGuest breakfast meeting. Terry Bettner, Director and General Counsel of Crimes Against Humanity and War Crimes Section, Department of Justice, presented "The Law of Armed Conflict: Who Cares?".

- The Labour and Employment Law Sections in Edmonton and Calgary brought, from Toronto, Trevor Hitner, President, Hitner Starr Associates Management Consultants, to speak on "Managing Workplace Harassment: Effective Policies and Procedures." Hitner Starr Associates provides support to employers relating to human rights, harassment, diversity and equal employment opportunity. Its client list includes some of the largest law firms and organizations in Canada, and includes the CBA.



- The Young Lawyers Section in Calgary provided a practical session for junior lawyers on "Financial Planning."

- The Policing Section, a unique joint Calgary/Edmonton Section, is connected by teleconference between the two cities. Its OktoberGuest speaker was Donna Shelley, Q.C., the newly-appointed Chair of the Law Enforcement Review Board and she spoke about new initiatives the LERB is undertaking to improve its administrative process.

There is a wealth of sections in areas of legal practice ranging from Business Law, Civil Litigation, Family Law to Law Practice Management Technology, Privacy and Access Law, to Municipal Law and Pension and Employee Benefits. As a materials member of a section, south or north, you receive all the handouts etc. which full members get.

Further, many of the section meetings are videotaped and can be accessed on the website at www.cba-alberta.org, and the sections endeavour to have minutes and handouts available from the various speakers and topics that they have and these are posted on the website as well. So even if you can't make it to a meeting in Calgary or Edmonton, you can still take advantage of the benefits of CBA and section membership. So, each October, take the time to check out a new section. You might even find a new area of the law that you will want to explore! Finally, the section co-ordinators are always pleased to hear which topics you think are germane to your practice.



Alberta Rules of Court Project

The Institute has recently produced the following consultation documents related to its Rules Project for review and comment prior to the deadline.

- | | |
|--------------------------------------------|---------------|
| 12.11- Enforcement of Judgments and Orders | Oct. 31, 2004 |
| 12.12 - Summary Disposition of Actions | Oct. 31, 2004 |
| 12.13 - Judicial Review | Oct. 31, 2004 |

They are available on the Institute website at: www.law.ualberta.ca/alri or by contacting the Institute directly at: 780-492-5291 or reform@alri.ualberta.ca.

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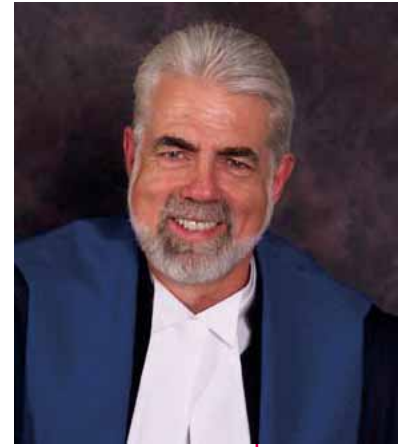
On July 20, 2004, His Honour Vic Tousignant was sworn in as a Judge of the Provincial Court of Alberta.

Vic has been a long time CBA contributor and a tireless volunteer. Vic has been involved in numerous CBA sections and committees, and had been instrumental in setting up the Collaborative Law Association in Calgary, the Dispute Resolution Project in the Court of Queen's Bench, and the Alberta Round Table on Family Law.

Vic has a B.A. in Philosophy from Don Bosco College, New Jersey, a Teaching Certificate from the University of Alberta, a Masters degree in Theology from Berkely, California, a Masters degree in Guidance and Counseling from Gonzaga, Spokane, and an LL.B from the University of Calgary.

In addition to an impressive academic background, prior to the practice of law Vic had been a Jesuit Priest, a high school counselor and a corrections counselor in youth camps. Vic is also well known for his love of the outdoors as well as music. He is an accomplished canoeist, guitar player and folk singer. Vic has been blessed in his marriage to Kathleen and they have three supportive and loving adult children.

The CBA is truly sad to lose such a great volunteer, but clearly Vic is well prepared for his new responsibilities and duties that he will undertake on the bench. His service to the legal community is without question extraordinary, and we are delighted with his appointment. On behalf of the CBA we all wish Vic the very best, and good fellowship on the bench.



Assist on TREATMENT

Craig Kinsman

If you think you or someone you know needs help for a drug or alcohol problem, call ASSIST immediately: 1-800-461-8908.

Statistics tell us that 10% of all Albertans have a problem with drinking. Some suggest that figure is nearly double for lawyers. Lets assume (just this once) that we are average; that means as many as 750 lawyers in this Province are experiencing a problem with alcohol. The numbers are lower for drugs – but still significant.

We all make our living helping others with problems. Ironically, many of us simply ignore or rationalize away our own. In theory, we fix a drug or alcohol problem by abstaining from use. Some quit on their own; most have some help. One form of help is inpatient treatment.

What is in-patient treatment? A review of treatment center literature and a conversation with David Nesbitt, Manager of the AADAC Business & Industry Clinic located in Grande Prairie, make it evident that while there will always be differences between programs, some common elements include:

- It's more than just "drying out". Detoxification may be part of the process but the real goal is to fix the problem on a permanent basis.
- It's an attempt to deal with your physical, emotional, social and spiritual needs – not just the short-term cessation of drinking.
- Individual assessment is key. The program is tailored, as much as possible, to your specific situation.
- Education about the substance and its effects

and the link between use and the problems it creates.

- A plan as to how your day-to-day life has to change in order to avoid or effectively deal with the triggers that contributed to your use in the first place.

- Individual counseling and a strong belief in group therapy.

- Introduction to 12-step programs such as Alcoholics Anonymous. Many integrate the 12-step concept directly into the course of treatment.

- After-care support is essential.

After speaking with someone who has been to treatment, it is clear to me treatment can be life saving and, if successful, life altering. For Ray (real lawyer, fake name) treatment was a "safe place" which allowed him to deal with his problem in an environment conducive to getting help. The program (to a large extent, the group therapy) enabled him to finally take an honest look at his life and to overcome the denial that prevented him from accepting the 12-step program that now helps keep him sober.

To learn more about this issue, please see www.aadac.com. See also www.lpac.ca. For more information on Assist see our website at www.albertalawyerassist.ca or call me at 403-537-5508 (direct) / 800-737-5508 (toll free) or e-mail me at alap@nucleus.com.



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Practice POINTERS

Molly Naber-Sykes and Jo'Anne Streckaf

While Crown disclosure in a criminal proceeding typically benefits the accused, it can pose problems for counsel where the accused is also a defendant in a civil action. Recent decisions in Ontario and Alberta have considered how the mechanics of civil production should apply to Crown disclosure.

The leading Ontario case is *D.P. v. Wagg*, [2004] O.J. No. 2053 (C.A.), affirming on this issue (2002), 61 O.R. (3d) 746 (Div. Ct.). The Court rejected an earlier line of cases holding that Crown disclosure is producible. It held that the defendant's Affidavit of Records should reveal the possession of disclosure. If production is sought, notice should be given to the Crown and to the police service that provided the disclosure. If the parties, the Crown, and the police cannot agree whether disclosure should be produced, an application can be made to the Court. The general approach will be one of production unless there is a valid claim for privilege or immunity, or unless important law enforcement interests or third party privacy interests are at stake.

Madam Justice Greckol addressed the same issue in *Bourgeois v. Bolen*, 2004 ABQB 35. The defendant in *Bourgeois* was charged criminally and sued civilly over a motor vehicle accident. The plaintiff sought production of the Crown disclosure held by the defendant.

Greckol J. holds that there is an implied undertaking with respect to Crown disclosure. The implied undertaking prevents *any* use of Crown disclosure being made outside the criminal proceedings, including production to a plaintiff in a civil action, without leave of the court. By necessary implication, this would seem to prevent any use of the disclosure being made by the defendant outside the criminal proceeding without leave: if the implied undertaking rule does not allow the defendant to produce disclosure in a civil action to the defendant's likely detriment, how can the defendant be allowed to use it outside the criminal proceeding for their own benefit? At one point Greckol J. does refer to disclosure being produced to the plaintiff unless the defendant is advancing a claim of privilege or immunity from production. However, these comments must be read in light of her earlier finding that the case was one where relief from the implied undertaking rule should be granted.

Greckol J. also holds that the defendant in possession of Crown disclosure must set out its existence in an Affidavit of Records. What is not clear is whether the Crown or the police must be notified of any application for relief from the implied undertaking rule. As the Crown had in fact been notified in *Bourgeois*, Greckol J. did not have to address whether this was a requirement. However, Greckol J. recognizes that the public interest and third party privacy interests can be affected by these applications. These must be considered before production is ordered. This suggests that at least the Crown should be notified.

So how should civil counsel deal with Crown disclosure? In light of *D.P. Wagg v. Wagg* and *Bourgeois*, the preferable procedure seems to be this:

(i) Defendant's counsel should disclose the possession of Crown disclosure in the Affidavit of Records, but should not produce the Crown disclosure to the plaintiff without leave of the Court.

(ii) If plaintiff's counsel wants production of the Crown disclosure, or if defendant's counsel wants to make any use of the Crown disclosure outside the criminal proceedings, an application to the Court should be made.

(iii) Notice of the application should be given at least to the Crown, and perhaps also to the police service generating the disclosure. Where significant third party privacy interests are involved, it may also be appropriate to give the third parties notice. A classic example would be a civil action for sexual assault where Crown disclosure identifies potential similar fact witnesses who chose not to participate in the criminal proceedings.

While this procedure may seem cumbersome, neither failing to acknowledge possession of Crown disclosure nor voluntarily producing the disclosure is a safe course of action.

WITH OUR THANKS TO SIMON JOHNSON OF BENNETT JONES LLP



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 3 Arthur Wilson, Q.C. ph: 436-7521 fx: 433-6510
 CBA main phone number s/b 403-263-3707
 5 ADR - Vice-Chair Elaine Seifert
 10 Foreclosure Law – Denise Hendrix e-mail s/b:
 dhendrix@vickerassoc.com
 13 Labour & Employment Law – Clayton Cook e-mail s/ b: chcook@mcgownjohnson.com

Page Edmonton

- 26 Civil Litigation Chair – Aran Veylan, Q.C.
 Commercial Leasing & Tenancies - Chair, Gina Kim has relocated to Calgary; new Chair is Adam Merrick; new Vice-Chair is Ross Swanson
 28 Creditors' Rights - Russ Rimer's e-mail s/b: rrimmer@duncanandcraig.com; Lyle Brookes, e-mail s/b:lyle.brookes@fmc-law.com

- 32 Junior Lawyers - Anita Mohan, Weir Bowen, e-mails/b: amohan@weirbowen.com
 37 Public Sector Lawyers - Ray Bodnarek e-mail s/b: ray.bodnarek@gov.ab.ca
 38 Securities Law - Meeting place s/b Parlee McLaws not the CBA office

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Last Will & Testament for Alydia Lemieux: Please contact Doris Bonora, Reynolds Mirth Richards & Farmer LLP, 3200, 10180 - 101 St., Edmonton, AB T5J 3W8, at your earliest convenience.

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Seeking the Last Will and Testament of DONALD WILLIAM MCLEOD, died in Calgary, AB December 7, 2003. Contact Christopher G. Thomas, Q.C., McLeod & Company LLP, 3rd Flr., 14505 Bannister Road S.E., Calgary, AB, T2X 3J3, Ph: 403-225-6402, Fx: 403-271-1769.

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