

CBA National Real Property Section Meeting Report

The CBA National Real Property Section met at the Westin Hotel, Ottawa, Ontario on Sunday, November 22nd, 2009. In attendance were the National Officers, Raymond Leclair, Chair, Tim Kennedy, Vice-Chair, Susan LeDrew, Treasurer, Albina P. Moran, Secretary and Raymond Mikkola, Past Chair. The following Branch Chairs were in attendance, Alberta - Bradley Sinclair (Representative), New Brunswick - Erin Hardy, Nova Scotia - Elias Metlej, Ontario - Jeffrey Schwartz and Quebec - Jean-François Hudon.

Raymond Leclair, as the new Chair, identified two areas in which the Bar needs assistance. One being letting lawyers know that the Bar cares and two increasing lawyers' pride in what they do. He identified a two-fold mandate: one, to improve internal communication within the Section through monthly conference calls and regular face-to-face meetings; and two, making the members more aware of the Section through a regular newsletter.

Raymond Mikkola now Past Chair, reported on the period of August, 2008 to August, 2009. There was a good turnout at the CLC held in Quebec City which coincided with its 400 anniversary. The ban against First Canadian Title advertising in Canadian Bar Association publications continues. National Sections Council was held in November, 2008. The Chair of that Council suggested putting together a National Section and super conference however that idea was quelled due to concerns regarding cost. A joint bankruptcy business law and real estate CLE webinar was held May, 2009 at which there were 185 attendees. Raymond Mikkola asked the members to consider ideas for future CLE webinars to ensure that other Sections know what the Real Property Section does.

An issue regarding the payment of GST on the purchase of hobby farms was addressed by the Section which worked with Taxation to make sure lawyers do not make a costly error in determining whether GST is payable. The National Section also had an impact in that lawyers can now confirm GST numbers through the GST Registry.

Limitation periods on Crown forfeitures were examined. The Ontario Business Corporations Act provides for 20 years to act on this claim whereas the Canada Business Corporations Act has no limitation period. The federal government is not interested in changing this at the present time.

A newsletter was published by Richard Wenner, the Past Chair of the Section.

In addition to the submitted reports, each of the attendees highlighted issues and developments ongoing in their particular province, and addressed the status of their branch and its relationship with their Law Society, Real Estate Board and other entities involved in the area of real estate. Some of the issues raised included the difference in continuing legal education requirements from province to province, competition amongst lawyers, and competency issues versus legal fees.

It was agreed that the Section commence with monthly conference calls with the Executive and Branch Chairs, the production of shorter but more frequent newsletters and a regional exchange of information by provinces all of which would increase communication. It was decided to hold 90 minute conference calls every third Wednesday of the month commencing in December.

The Section is to continue its work on the conveyancing practice chart, which will ultimately be placed on the website so anyone interested can see the real estate process from Province to Province.

Additional discussions were held on the following topics:

1. The Federal Government Real Estate National Relocation Services Contract formerly with Royal LePage was recently purchased by Brookfield which is entering into a 5 year contract. The consensus was that the permitted legal fees were very low. It appears that some lawyers may be charging additional fees to the client as opposed to Royal LePage. It was agreed that further investigation should be made into the fees charged and the ability to charge additional fees. After a lengthy discussion, it was agreed that the Section should ask members for input on these issues and a strategy developed based on the responses.
2. The Canadian Real Estate Association (“CREA”) is asking the CBA to support its proposal respecting reinvestment of commercial property, a copy of which proposal was circulated to the members. The proposal purports to allow capital gains tax and recaptured capital costs allowance to be deferred when an income property is sold and the proceeds are reinvested in another income property within 1 year. It was decided that further information was required before the proposal could be supported.
3. ULCC Project on the Law of Interest. Tamara Thomson advised that the Uniform Law Conferences meet once a year in an attempt to harmonize and uniform laws across Canada. Each province has a delegation and private lawyers are also involved. The Section is part of the federal delegation. ULCC goes back to delegations and seeks enactment of draft legislation. It was decided that we should confer with the provincial sections to see whether the Section should be commenting on certain legislation.
4. Competition Bureau. Tim Kennedy brought to the Section’s attention a newspaper article discussing the possibility of the Multiple Listing Service being opened up to non-brokers. This would mean that private sellers could access MLS. It is not clear when such access may be granted. Jeffrey Schwartz suggested this might be a good topic for a newsletter and indicated that a lawyer in Owen Sound was instituting the Scottish model of real estate whereby lawyers were actively involved in the offer process such that a real estate was not required for a good portion of the transaction. The website for this particular lawyer’s model is: propertyshop.ca. A caution was raised by Bradley Sinclair that lawyers should be careful about supporting the open access to MLS as it could alienate business with existing real estate agents upon which many lawyers are dependent.

Lawyers were encouraged to consider whether there are provincial articles on websites or in newsletters of a national interest which should be submitted to the National Section. Raymond Mikkola volunteered to act as editor of our newsletter. It was decided that the newsletter should be published twice a year.

Erin Hardy
CBA-NB Real Property Section Chair