

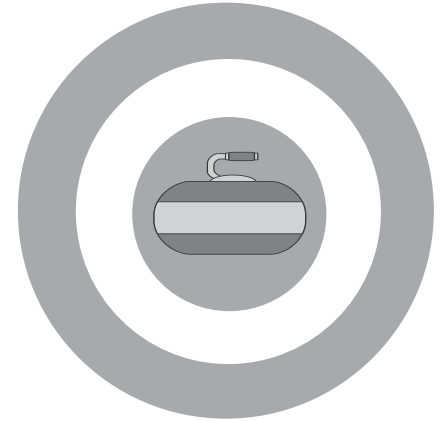
# Headnotes & Footnotes/Titres et rubriques

The Manitoba Bar Association Newsletter  
Bulletin de l'Association du Barreau du Manitoba

Volume XXXVIII No./n° 2  
February / février 2006

## The 2006 Bar Bonspiel

at the Granite Curling Club  
Friday, March 3, 2006



### Entry Fee Includes:

- GST
- Special Contests
- Sit Down Dinner
- Coffee and Doughnuts
- Minimum four games guaranteed (with full turn out of 16 teams)
- and other fantastic prizes . . .

### Entry Fees:

#### CBA/MBA Members

Lawyer / Judge  
Student / CPLED Student

**\$50.00 ea.**

**\$25.00 ea.**

#### Non Members

Lawyer / Judge  
Student / CPLED Student

**\$70.00 ea.**

**\$45.00 ea.**

For registration information contact the organizer:

**Kerry UnRuh or Dana Kochan, Deeley Fabbri Sellen Law Corporation**  
977-3869 (Kerry) or 977-3853 (Dana) or fax 956-4457

### To Enter:

- Entries will only be received by Kerry UnRuh (no entries submitted to the Manitoba Bar Association will be accepted)
- Entries must be submitted to Kerry as follows:

Kerry UnRuh  
c/o Deeley Fabbri Sellen Law Corporation  
903 - 386 Broadway, Winnipeg, MB R3C 3R6  
Ph: 977-3869 Fax: 956-4457

- Teams must enter as a rink of four or more members
- The entry registration **must** list the names of all team members and be accompanied with a single cheque covering the entire team registration (**all cheques must be payable to the Manitoba Bar Association**)
- To give everyone an equal chance to enter, no registrations will be accepted prior to February 6, 2006
- **Registrations will be accepted on a first come first served basis (accompanied with full payment)**
- **Registrations will be cut off as soon as 16 paid registrations are received**

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**Editor & Publisher / Rédactrice en chef :**

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Insert (Documents to be provided) .....\$265

Setting fee for display ads (one time only) ..\$ 26

G.S.T. Registration #R126095728

**Law Day / Journée du droit**  
**MARK YOUR CALENDARS**

**LAW DAY**

Sunday, April 9, 2006

Winnipeg Law Courts, 408 York Avenue

- Guided Tours of the Law Courts
- Exhibits and Displays
- Mock Trials in French & English presented by elementary and senior high school students
- Distribution of the *Charter*
- Legal Information Panel Discussions
- Special Sitting of Citizenship Court
- Poster Contest Award Presentation by The Honourable Gordon Mackintosh, Minister of Justice and Attorney General for Manitoba (invited)
- and much more!!!

**FREE ADMISSION AND REFRESHMENTS**

**The Property Registry**

Land Titles Offices - Surveys - Personal Property Registry

Registration Turnaround Time Report (in calendar days)

December 2005

<u>Office</u>	<u>Q3</u>	<u>YTD</u>
Winnipeg Land Titles Office	3.8	4.7
Portage Land Titles Office	1.0	1.0
Brandon Land Titles Office	2.4	2.8
Morden Land Titles Office	1.8	2.0
Neepawa Land Titles Office	1.2	1.2
Dauphin Land Titles Office	<u>1.0</u>	<u>1.0</u>
<b>Regional Land Titles average</b>	<b>1.5</b>	<b>1.6</b>
Personal Property Registry	same day	same day (printed & electronic)
Survey Plan Registration	3.8	3.8
Survey Plan Examination	20.3	17.7

**PUBLICATION DEADLINE**

The deadline for materials to be submitted for the next edition (**MARCH 2006**) of *Headnotes & Footnotes* is **February 13, 2006**. Materials should be emailed to Stacy Nagle at snagle@mts.net.

**DATE DE TOMBÉE**

La date de tombée pour soumettre du matériel pour le prochain numéro « **mars 2006** » de *Titres et rubriques* est le **13 février 2006**. Veuillez envoyer votre matériel à l'adresse courriel de Stacy Nagle : snagle@mts.net.



John D. Stefaniuk

# President's Message

Step in out of the Wind: See this year's MTC/MBA production

by John D. Stefaniuk



*"If today you can take a thing like evolution and make it a crime to teach it in the public school, tomorrow you can make it a crime to teach it in the private schools, and the next year you can make it a crime to teach it to the hustings or in the church. At the next session you may ban books and the newspapers. Soon you may set Catholic against Protestant and Protestant against Protestant, and try to foist your own religion upon the minds of men. If you can do one you can do the other. Ignorance and fanaticism is ever busy and needs feeding. Always it is feeding and gloating for more. Today it is the public school teachers, tomorrow the private. The next day the preachers and the lectures, the magazines, the books, the newspapers. After a while, your honor, it is the setting of man against man and creed against creed until, with flying banners and beating drums, we are marching backward to the glorious ages of the sixteenth century when bigots lighted faggots to burn the men who dared to bring any intelligence and enlightenment and culture to the human mind."*

From Clarence Darrow's argument in the Scopes Monkey Trial.

From time to time, probably more often than we think and in ways that we are unlikely to ever know, the spheres somehow align to bring together great individuals and causes in ways that would be dismissed as being too improbable if they were set out in a work of fiction.

In May of 1925, George Rappapleya was bristling at what he thought were the insensitive words of a preacher at the funeral for the six year old son of one of his employees. He was looking to take a swipe at religious fundamentalists when he came upon an article in the Chattanooga Times reporting that the ACLU was trying to find a willing defendant for a court challenge of state legislation which banned the teaching of the theory of evolution in public schools. He organized a meeting in Fred Robinson's drug store to which a twenty-four-year-old science teacher, John Scopes, was summoned. In short order, the defendant Scopes and two complainants were recruited. And so the legal tectonics were set in motion that resulted in the collision of two figures of continental stature: three-time Democratic Presidential candidate William Jennings Bryan and, perhaps the best-known legal figure of his day, Clarence Darrow, in the great upheaval known as the Scopes Monkey Trial.

Darrow and Bryan were as much the same as they were different. Both ran for Congress as Democrats (although Darrow was unsuccessful in his bid). Both championed the causes of the ordinary citizen. Bryan campaigned vigorously for women's suffrage, consumer protection and for the workers of America, earning him the nickname "The Great Commoner" and eventually a position as Secretary of State. Darrow left a career as a railway lawyer to take on criminal cases and social issues and became one of the most successful trial lawyers of the last century, having acted in the Bill Haywood and the Leopold and Loeb trials. But in 1925, they were two aging titans battling before a rapt nation.

Over twenty years later, in the climate of McCarthyism, playwrights Jerome Lawrence and Robert E. Lee set their play, *Inherit the Wind*, against the background of the Scopes trial, but in the fictional town of Hillsboro with fictional lawyers Brady and Drummond. A central theme is the protection of freedom of thought against forces that would suppress ideas. Many best remember the film version and the performance of Spencer Tracy as Drummond.

And so, a bit more than eighty years after the Scopes trial, we in Winnipeg have the opportunity to revisit the clash of freedom of thought against the agents of legislated correctness in this year's annual Manitoba Theatre Centre and Manitoba Bar Association production of

*Inherit the Wind*, running April 27 - 29. This is the latest in a series of productions that started in 1990, cast entirely with lawyers, the MBA's finest thespians. Over the years, over \$450 thousand has been raised by the production in support of MTC and it has garnered the prestigious National Post Award for Business and the Arts. Last year's production of *Cabaret* sold out a full six weeks before the opening curtain.

What's more, the full-price productions include a post-show reception catered by some of Winnipeg's finest hotels. Tickets are only \$85, with a \$55 tax receipt (there is a two-for-one preview night on April 26).

Come out and enjoy yourself while supporting a very worthwhile cause. If you are interested, cast members will be approaching you to purchase tickets and to consider placing a program ad. Otherwise, just contact me or the MBA office.

Great trials and the protagonists involved are fascinating, but they are, and should well be, overshadowed by the great ideals that are being fought for. Come out and see the play. Be entertained. Be inspired. Have the fires of idealism rekindled in your heart. Then take that rediscovered passion and bring it to your home, to your community and to your practice.

(Information Source: The Clarence Darrow Home Page, <http://www.law.umkc.edu/faculty/projects/ftrials/darrow.htm>)

If you have any comments or concerns, please feel free to contact me at (204) 934-2597 or by e-mail at [jds@tdslaw.com](mailto:jds@tdslaw.com).

## The Canadian Bar Association and Manitoba Bar Association gratefully acknowledges the support of these Universal Firms:

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# Notices to the Profession

## Avis aux avocats

### 2006 LEGAL DIRECTORY CHANGES

P 9 & YOUNG, J. Graeme  
174 Campbell, Marr LLP  
10 Donald Street  
Winnipeg, MB R3C 1L5  
Ph: 925-5309 (D)  
Fax: 943-7997  
gyoung@campbellmarr.com

P 83 BOWMAN, Myfanwy E.  
Fax: 985-8544

P 90 COGGAN, Derek M.  
Manitoba Justice – Public  
Prosecutions  
500-405 Broadway  
Winnipeg, MB R3C 3L6  
Ph: 945-3795  
Fax: 945-1260

P 109 HAMILTON, William D.  
21-520 Kenaston Blvd  
Winnipeg, MB R3N 1A1  
Ph: 488-6736

P 123 KULYK, Corrine L.

### NEW MEMBERS

The Canadian and Manitoba Bar Association welcome the following new members:

Mr. Peter Baumstark, Bueti Baumstark  
Ms Eva Bima, Orle Davidson Giesbrecht  
Bergen  
Mr. Stephen Robertson (Law Student)  
Ms Fanni Weitsman (Law Student)

### COURT OF QUEEN'S BENCH RE: WINNIPEG JUDICIAL CENTRE UNCONTESTED CIVIL MOTIONS LIST

Effective March 1, 2006 the daily Uncontested Civil Motions List will be limited to fifteen (15) matters during the months of September to June each year and to eighteen (18) matters during the months of July and August each year. Motions of an urgent nature will continue to be entertained by the court at all times.

The Honourable Marc M. Monnin  
Chief Justice

DATE: December, 2005

### COUR DU BANC DE LA REINE OBJET : LISTES DES MOTIONS CIVILES NON CONTESTÉES CENTRE JUDICIAIRE DE WINNIPEG

À compter du 1er mars 2006, la liste quotidienne des motions civiles non

contestées sera limitée à quinze (15) causes pendant les mois de septembre à juin et à dix-huit (18) causes pendant les mois de juillet et d'août chaque année. Les motions de nature urgente continueront à être entendues par le tribunal en tout temps.

Le juge Marc M. Monnin  
Juge en chef

DATE : Décembre 2005

### LAW SCHOOL ESSAY CONTEST

The CBA's National Environmental, Energy and Resources Law Section (NEERLS) has established a law school essay contest to promote interest in environmental, energy and resources law in Canada and in the CBA.

Entries must be received by CBA no later than February 15, 2006. The executive of NEERLS will select a jury of 3 or more persons to evaluate essays submitted and to select the best scholarly essay.

More information is available on the NEERLS webpage at <http://www.cba.org/CBA/Sections/Els/>.

### THE CANADIAN BAR REVIEW SPECIAL EDITION ON ETHICS

#### Call for Submissions

The *Canadian Bar Review* invites submissions for a special issue on ethics and the legal profession to be published in June 2006, which will contain articles and comments from selected authors. The special issue seeks to include a broad range of subject areas and perspectives. Suggested topics include conflicts and the duty of loyalty, whistleblowing, the adversarial role, judicial ethics, emerging legal ethics issues from new technologies, parallels between legal ethics and other professions, the legal history of ethics, ethics issues that arise in relation to such areas as environmental, human rights, privacy, international or health law, or any other aspect of ethics and law.

The special edition will be featured both online and in the 2005 bound publication of the *Canadian Bar Review*. Maximum article length is 10,000 words.

Articles should be formatted according to the Canadian Guide to Uniform Legal Citation (5th edition) and may be submitted electronically in either English or French in

Microsoft Word format. Articles should be accompanied by a statement that the article is not under consideration for publication in other journals and has not been previously published.

Submissions should be sent on or before the closing date of March 31, 2006 to:  
[review@cba.org](mailto:review@cba.org)

The Guest Editor of the special edition is Dr. Elizabeth F. Judge, an Assistant Professor at the University of Ottawa, Faculty of Law, Common Law Section. The Associate Editor of the special edition is Professeur Patrice Deslauriers, Droit civil, Université de Montréal. Please direct all English queries to Dr. Judge, [ejudge@uottawa.ca](mailto:ejudge@uottawa.ca) and all French queries to Professor Deslauriers at [patrice.deslauriers@umontreal.ca](mailto:patrice.deslauriers@umontreal.ca)

### NUMÉRO SPÉCIAL DE LA REVUE DU BARREAU CANADIEN SUR LA DÉONTOLOGIE

#### Invitation à soumettre des textes

*La Revue du Barreau canadien* invite les personnes intéressées à proposer des textes en vue d'un numéro spécial sur la déontologie et la profession juridique qui paraîtra en juin 2006 et renfermera des articles et analyses rédigés par des auteurs et auteurs choisis. Ce numéro spécial vise à explorer un vaste éventail de sujets et de perspectives. Parmi les sujets proposés, citons les conflits d'intérêts et le devoir de loyauté, la dénonciation, le rôle contradictoire de l'avocat, la déontologie judiciaire, les questions de déontologie juridique qui découlent des nouvelles technologies, la déontologie dans la profession juridique par rapport à ce que prescrivent les autres professions libérales en la matière, l'histoire de la déontologie juridique, les questions d'éthique qui surgissent en rapport avec des secteurs comme l'environnement, les droits de la personne, le respect de la vie privée, le droit international ou le droit de la santé ou encore tout autre aspect de la déontologie relatif au droit.

Ce numéro spécial sera publié dans le volume relié 2005 de *La Revue du Barreau canadien* en plus d'être affiché en ligne. La longueur des articles soumis ne doit pas dépasser 10 000 mots.



# Notices to the Profession Avis aux avocats



Les articles doivent en outre respecter les conditions de format énoncées dans le *Manuel canadien de la référence juridique* (5<sup>e</sup> édition) et peuvent être soumis par voie électronique en anglais ou en français en format Microsoft Word. Chaque article doit être assorti d'une déclaration attestant qu'il n'a pas été soumis à un autre journal en vue de son éventuelle publication et qu'il n'a jamais été publié auparavant.

Les propositions d'articles doivent être envoyées le ou avant la date de clôture, soit le 31 mars 2006 à :

[review@cba.org](mailto:review@cba.org)

La rédactrice invitée à l'occasion de ce numéro spécial est Elizabeth F. Judge, professeure adjointe à l'Université d'Ottawa, faculté de droit, Section de common law. Le rédacteur adjoint de ce numéro spécial est Patrice Deslauriers, professeur (droit civil) à l'Université de Montréal. Veuillez faire parvenir vos requêtes ou questions à madame Judge pour le volet anglais au [ejudge@uottawa.ca](mailto:ejudge@uottawa.ca) ou à professeur Deslauriers pour le volet français au [patrice.deslauriers@umontreal.ca](mailto:patrice.deslauriers@umontreal.ca)

## **AN OPPORTUNITY EXISTS TO SERVE ON JOCELYN HOUSE BOARD**

Applications are now being accepted for Jocelyn House board members. Jocelyn House is a four bed, free-standing, nonsectarian palliative care hospice serving the Winnipeg community in the quiet residential neighborhood of St. Vital. Jocelyn House was the dream of a young teenage girl, struck by terminal cancer. Jocelyn passed away in 1980 but not before making sure that her legacy of death with dignity, respect and caring lived on, in Jocelyn House. For the past 20 years, her dream of a home where dignity and respect are the cornerstones of care, has been a reality for the many residents of the House.

Jocelyn House requires talented and energetic citizens who are interested in making a significant contribution to hospice care in Winnipeg. The volunteer board is currently establishing governance and policy for the House using an Integrated Risk Management Framework. Partners in the community include the Winnipeg Regional Health Authority, Hospice & Palliative Care

Manitoba and Cancer Care Manitoba. The House is supported by a management staff as well as dedicated nursing staff and volunteers.

Jocelyn House is currently embarking on an exciting capital fund raising campaign with the goal of expanding to provide end of life care to more residents. We are seeking Board members who are financial (preferably with an accounting designation), business, medical, legal, academic, public relations and marketing professionals, as well as members with capital project/construction experience and/or fund raising knowledge.

Those interested in becoming a Jocelyn House board member and joining our unique and dynamic team are encouraged to submit a letter of intent including a resume to the Jocelyn House Board Nominating Committee:

Jocelyn House  
177 Egerton Road  
Winnipeg, MB  
R2M 2W7  
[jbouchard.jocelynhouse@shaw.ca](mailto:jbouchard.jocelynhouse@shaw.ca)

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# Section & Business News

## Activitiés des sections

### NOTICE OF CONSTITUTIONAL / HUMAN RIGHTS SECTION JOINT CLE WITH THE LAW SOCIETY OF MANITOBA

Sponsored by the Manitoba Bar Association's Constitutional/Human Rights Law Section and The Law Society of Manitoba's Equity Ombudsperson

**DATE:** Monday, February 20, 2006

**TIME:** 1:30pm – 4:30pm

**LOCATION:** Law Society Classroom  
219 Kennedy Street

**TOPIC:** Avoiding Workplace Human Rights Violations: Protect Yourself, Your Office and Your Clients!

Employers, including law firms and other legal workplaces, have an increased responsibility to take active steps in meeting their legal duties to accommodate. Those duties include creating workplaces that are both inclusive and respectful. Learn how to protect yourself and your clients against litigation sparked by allegations of harassment, bullying, and failure to accommodate. Get the latest on what today amounts to "undue hardship." Also, hear a discussion on the most recent trends in respectful workplace policies and receive helpful advice on how to implement your own policies. A panel of experienced lawyers with varying perspectives will share current views on how to avoid workplace human rights violations at this very topical seminar. Register today to ensure your spot!

Program Co-Chairs:

Brenlee Carrington Trepel, Equity Ombudsperson, Law Society of Manitoba

Lisa Cupples, Manitoba Justice - Pubic Prosecutions

Presenters:

Grant Mitchell, Q.C., Taylor McCaffrey LLP

Naomi Levine, Lawyer and Canadian Forces Grievance Board Member

Dianna Scarth, Manitoba Human Rights Commission

Sharon Cartmill, Taylor McCaffrey LLP

To confirm your attendance, please register with the Law Society. The half-day cost is \$65 (\$50 for MBA members, \$30 for students/support staff) plus GST. Watch for further advertising in the Law Society CLE mail-out.

Advance Registration is Required.

### REAL PROPERTY LAW SECTION NOTICE OF MEETING

**DATE:** Tuesday, February 21, 2006

**TIME:** 5:00pm

**LOCATION:** Pitblado LLP - 25th Floor Boardroom  
360 Main Street, Winnipeg, MB

**TOPIC:** The Ins and Outs of Subdivision of Land Under the *Manitoba Planning Act*

At this meeting, Mike Teillet, Director, Manitoba Provincial Planning Services, will lead a discussion on the principles and the practicalities involved in subdivision of land outside of the City of Winnipeg, and will also focus on the changes brought about by the new (effective January 1, 2006) *Manitoba Planning Act*.

In order to enable us to properly plan for this session, we would appreciate your calling us to let us know if you are coming. Please contact Kim Joss' secretary at 926-5260, or Ned Brown's secretary at 956-0560, ex 303. PLEASE DIARIZE NOW!

Ned Brown

MBA Real Estate Section Co-Chair

Pitblado LLP

2500 - 360 Main Street

Winnipeg, MB R3C 4H6

Ph: 956-3503

brown@pitblado.com

Kimberly R. Joss

MBA Real Estate Section Co-Chair

Great-West Life Assurance Company

4C - 100 Osborne Street North

PO Box 6000 Stn Main

Winnipeg, MB R3C 3A5

Ph: 926-5284

Kimberly.joss@gwl.ca

### NOTICE OF JOINT MEETING MANITOBA BAR ASSOCIATION ABORIGINAL LAW SECTION WILLS & ESTATES LAW SECTION

**DATE:** Friday, February 24, 2006

**TIME:** 12:00 Noon to 1:30pm

**LOCATION:** Law Society Classroom  
219 Kennedy Street, Winnipeg

**TOPIC:** Wills and Estates of First Nations members on reserve

Our presenters will be Lore Mirwaldt, Q.C. (Mirwaldt & Gray), Charles Marcoux (Director, People and Trust Responsibilities Directorate, Indian and Northern Affairs Canada) and Brad Regehr (D'Arcy & Deacon). Their presentation will cover such topics as the need for First Nations members to have a testamentary will and related instruments such as a power of attorney and living will; property distribution on an intestacy; *Indian Act* provisions relating to Indian and Northern Affairs Canada's (INAC's) jurisdiction, requirements for a will, and possession by a First Nations member of reserve land; INAC's forms and processes; arrangements between INAC and The Public Trustee's Office for incompetent persons and minors; burial issues; and aboriginal customary laws relating to marriage and adoption. If you are an aboriginal law or wills and estates practitioner, you won't want to miss this session.

# Section & Business News

## Activitiés des sections



Please RSVP to the Manitoba Bar Association RSVP Line @ 927-1211 or by return email (cba-mba@mts.net) by Noon on Thursday, February 23, 2006. Please confirm if you would like Lunch (sandwiches) and advise of any dietary restrictions. Lunch is available upon request only in advance at a cost of \$7.00.

Brad Regehr  
Co-Chair, MBA Aboriginal Law Section  
D'Arcy & Deacon LLP  
Ph: 925-5388  
bregehr@darcydeacon.com

Brenda Johnston  
Co-Chair, MBA Aboriginal Law Section  
D'Arcy & Deacon LLP  
Ph: 925-5395  
bjohnston@darcydeacon.com

Peter Glowacki  
Co-Chair, MBA Wills & Estates Section  
Thompson Dorfman Sweatman LLP  
Ph: 934-2572  
pjpg@tdslaw.com

Jacob Giesbrecht  
Co-Chair, MBA Wills & Estates Section  
Inkster Christie Hughes LLP  
Ph: 947-6801  
jacobjgiesbrecht@inksterchristie.ca

on Monday, February 27, 2006. Lunch is available upon request only in advance at a cost of \$7.00.

Lawrence Pinsky  
MBA Family Law Section Member-at-Large  
Taylor McCaffrey LLP  
900-400 St Mary Ave  
Winnipeg, MB R3C 4K5  
Ph: 988-0451  
lpinsky@tmlawyers.com

### CORPORATE COUNSEL SECTION CANADIAN CORPORATE COUNSEL ASSOCIATION – MANITOBA CHAPTER NOTICE OF DINNER MEETING

**DATE:** Wednesday, March 15, 2006  
**TIME:** 6:00pm – 10:00pm  
**LOCATION:** The “Galleria” - Centro Caboto Centre  
1055 Wilkes Avenue, Winnipeg

- I. PRESENTATION TOPIC:** Corporate Liability for Identity Theft: The Next “Big Hit” to the Bottom Line?  
**II. SPEAKER:** Ms Sara A. Levine, Fasken Martineau (Vancouver & Toronto)

Sara Levine serves as the Regional Privacy Officer for Fasken Martineau (Toronto) and Vice-Director of their Privacy & Information Protection Practice Group (Toronto).

Ms Levine practices in the areas of privacy, freedom of information, and health law. She advises a diverse group of clients on privacy compliance, preparing policies, drafting agreements, and ensuring that information handling practices comply with the applicable statutory requirements. She has co-authored numerous privacy-related publications and has lectured extensively on all aspects of privacy law and practice.

Ms Levine comes highly recommended as a knowledgeable and engaging speaker.

**PLEASE RSVP TO:**  
Dean Scaletta  
Telephone: 985-8802  
E-Mail: dscaletta@mpi.mb.ca

**NOTES:**  
Cost - \$40.00. Seating is limited to 64. Dinner will be an Italian buffet. Wine will be included with dinner (2 bottles per table of 8).

A cash bar will be available before and after dinner. Wine by the bottle and soft drinks will also be available for purchase.

Cheques should be payable to the “Manitoba Bar Association” and sent to Dean Scaletta, 702-234 Donald Street, Winnipeg, MB R3C 4A4.

### FAMILY LAW SECTION NOTICE OF MEETING

**DATE:** Tuesday, February 28, 2006  
**TIME:** 12:00 Noon to 1:30 pm  
**LOCATION:** The Law Society of Manitoba Classroom  
219 Kennedy St., Winnipeg  
**TOPIC:** Reading and Understanding Financial Statements: A Roadmap to finding Treasure  
**SPEAKER:** Joel Lazer

Reading and understanding financial statements is a key component in addressing issues of support and property in applicable cases. In order to uncover favourite potential hiding places for income and/or assets, one must have a clear understanding of the financial statement and its potential uses and abuses in the family law context.

We are fortunate to have Joel Lazer, a founding partner of Lazer Grant, as guest speaker to navigate us through these very interesting waters.

In the event your practice involves the determination of support and/or property division, or otherwise requires the ability to read and understand financial statements, this Section Meeting is a must.

Other guest speakers may be announced.

Please RSVP to the Manitoba Bar Association message line @ 927-1211 or via return email (cba-mba@mts.net) by Noon



# MBA Council Highlights

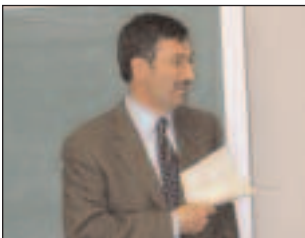
On December 15, 2005 at The Law Society of Manitoba Classroom in Winnipeg, the Council of the Manitoba Bar Association discussed the following issues:



- The Community Service Award was presented by John Stefaniuk to Gail Asper.
- The Equality Award was presented by Veronica Jackson to Patricia Lane.



- Guy Joubert gave a presentation on his campaign for 2nd Vice-President of the CBA.



- Resolutions were passed to change the name of the Gay and Lesbian Issues Section to the Sexual Orientation and Gender Identity Conference (SOGIC) Section and the Public Sector Lawyers' Section to the Public Sector Lawyers' Forum.

- A Resolution was passed to present a resolution for the Canadian Bar Association Council Meeting in February 2006 to call on the Parliament of Canada to enact legislation to establish the Canadian Museum for Human Rights.
- John Stefaniuk, President, highlighted his work done on behalf of the MBA including: Senior Counsel Designation, Parker MacCarthy, Q.C.'s visit to Winnipeg, the Mentorship Reception, Guy Joubert's Campaign for 2nd Vice President of

the CBA, Future of Law Committee, meetings with the Attorney General and his attendance at an Ontario Bar Association Meeting.

- Antoine Hacault, Vice-President, highlighted his work done on behalf of the MBA including: the CBA Vice-President's visit, the Mentorship Reception, the Pitblado Lectures, Legal Aid Advisory Committee, the 2006 Mid-Winter Organizing Committee, Section Meetings, Video Conference Sessions and CPLED.
- The financial statements to October 31, 2005 were distributed.
- Barry Effler, Communications/Public Relations Chair, highlighted his work done on behalf of the MBA, including his attendance at the first International Section meeting.
- Michael Law, Membership/Member Services Chair, highlighted his work done on behalf of the MBA including: Habitat for Humanity fundraising event, new member welcome letters, Parker MacCarthy, Q.C.'s visit and the Mentorship Reception.
- Veronica Jackson, Past-President, highlighted her work done on behalf of the MBA including: the MBA By-Law review, CBA Board of Directors meeting, the CBA Ipsos Reid survey and the Clementi Report.
- Karen Clearwater, Co-Chairperson 2006 MBA Mid-Winter, reported that preparations for the conference are going well.
- Robert Dawson reported on his appearance on behalf of the MBA at the Public Utilities Board hearing of the 2006 MPI rate application.
- A joint meeting with The Law Society Benchers and the MBA Council was held with Garth Smorang, Q.C. and John Stefaniuk Co-Chairing the meeting. The topic for the panel discussion was the Canadian Judicial Selection Process with speakers Jeff Harris, Doug McGillivray, President of the Law Society of Alberta, Garth Smorang, Q.C. and John Stefaniuk.



# Call for Nominations – CBA Standing Committees

The CBA is seeking candidates for its National Standing Committees for 2006-2007. All CBA members are eligible to apply for positions on the following committees:

- Awards
- Communications
- Continuing Legal Education
- Equality
- Ethics and Professional Issues
- International Development
- Judicial Compensation & Benefits

- Legal Aid Liaison
- Legislation and Law Reform
- Pro Bono
- Resolutions, Constitution and Bylaws
- Supreme Court of Canada Liaison

For information and an application form, contact Stacy Nagle at the Manitoba Bar Association (204) 927-1213 or by email snagle@mts.net. The deadline for applications is Noon, Tuesday, April 11, 2006.



# CPLED News

by John Martens\*



Happy New Year and best wishes to all! I hope this column finds you in a mood of good spirits and generous billings. Today, as I'm writing this, I realize it's Friday the 13th. Whether you are of a superstitious persuasion or not, Friday the 13th can be an ominous occasion. At our firm, it just happens that today is our quarterly Articling student office move. So perhaps the menace of my day is the foreboding that under all these piles of cases, texts, minute books and CPLED materials that must be moved to the office downstairs, I may come across an overdue memo...or that turkey sandwich that went missing and seems to be aromatizing my office.

This is the time of year when us Articling students realize that the end is in sight, that we're on the final stretch...the last leg. For those of you who had 'Bar Ad' classes, note that the modern equivalent is CPLED, a legal education program developed in conjunction with Law Societies in the western provinces. Since September, we have met twice at the Law Society for week long face-to-face sessions. At those classes, we are taught many of the practical aspects of the legal practice by lawyers who generously volunteer their time. At the end of the sessions, we have various

Competency Evaluations (exams) on the areas we study. In fact, one such 'exam' involved an evaluation of our skills by interviewing a 'client' played by actors hired by the Law Society.

During the rest of the CPLED year we have e-assignments that appear on the CPLED webpage. The assignments have us doing everything from real estate reporting letters to memos on retroactive child support. Again, we thank the many lawyers who have volunteered their valuable time to be available for on-line chats and in providing feedback on the assignments. Of course, the staff at the Law Society must also be thanked for keeping the program running smoothly. The Law Society and lawyers can rest assured that their time is not all for waste, as I believe I have finally realized that talk of "ex parte motions" and "per stirpes" are not references to lawyer-prone infections.

So thanks to all for helping us Articling students learn the ropes (and pass our weekends indoors) and please wish us luck in the final months of the Articling year.

\* John Martens is an Articling Student with Aikins, MacAulay & Thorvaldson LLP and the CPLED student representative on the MBA Council.

## CBA 2006 Mid-Winter Meeting of Council February 16-19, 2006



# Take flight from the February blues!

Leave the winter behind and join CBA colleagues in Cancun for the best-ever Mid-Winter Meeting of Council.

### Professional development

- Power up your PowerPoint skills
- NAFTA and the softwood lumber case: What newspapers aren't telling you

### CBA business

- Update on Futures
- Resolutions and policy debates

### R & R

- An evening at XCARET where the Mayan culture comes alive through dance and song, followed by a fabulous dinner
- Welcome Reception and President's Dinner
- Golf

Cancun Mexico  
[www.cba.org/Cancun](http://www.cba.org/Cancun)



# What's Happening?

by Dean Scaletta\*

Most Brandonites are acutely aware of (and no doubt chagrined by) what has become known as "Perimeter Highway Syndrome". (You know - "If it hasn't happened in Winnipeg, it hasn't happened at all.") With only a few exceptions, this column has suffered to some extent from the same affliction. (My "radar" may be low, but it doesn't extend all the way to Brandon!) Well, things are about to change on that front. I have recently acquired a "reliable source" who is familiar with the Brandon legal scene and who has indicated a mildly unnerving willingness to "name names". (Are you paying attention, Bill??)

Look for more "non-Winnipeg" items in future columns. For now, on with Round 5...

**David Matas**, has been busy in recent months promoting his latest book "*Aftershock – Anti-Zionism and the Contemporary Rise in Anti-Semitism*" (The Dundurn Group – June, 2005), in which he attempts to explain how verbal attacks against Israel for human rights violations have turned into physical attacks against the Jewish community worldwide. Since 1987, David has written, or collaborated on, at least four other books dealing with various aspects of international law and human rights.

The legal community was instrumental to the success of the St. Boniface Hospital & Research Foundation 2005 International Award Gala Dinner held on November 30, 2005. At the dinner, Dr. Frank Plummer, Dr. Allan Ronald, and Mr. Stephen Lewis, all of whom were honoured for their work in the fight against HIV/AIDS in Africa, were presented with their awards.

**Gwen Hatch** (D'Arcy & Deacon LLP) is the current Chair of the Foundation and also served on the Sponsorship Committee along with **Richard Good** (Fillmore Riley LLP), **Kevin Williams** (Taylor McCaffrey LLP), and **William Norrie, O.C., Q.C.** D'Arcy & Deacon LLP was listed as a "Sponsor" of the event, along with Fillmore Riley LLP in the "Special Friends" category, and Thompson Dorfman Sweatman LLP and Taylor McCaffrey LLP in the "Supporters" category.

The December 9, 2005 edition of *The Lawyers Weekly* contained an article entitled "Winnipeg-based law firm finds niche with real estate investment trusts". The article describes how the Securities Law Practice Group at Aikins MacAulay & Thorvaldson LLP has, under the leadership of **David Filmon**, established itself as the pre-eminent supplier of legal services to five prominent Canadian real estate investment trusts. It features colour photos of an appropriately serious **Edward Warkentin** (appropriate for a managing partner, that is), a relaxed and confident, albeit somewhat sardonic-looking, **David Filmon**, and a positively beaming **Allan Fineblit, Q.C.** (CEO, Law Society of Manitoba). [The photo of Allan puts me in mind of that obscure Yiddish proverb - "Smile. It makes people wonder what you're up to."]

(In case you missed it, David was awesome in Nutcracker. Very nimble. For a big guy. Oddly enough, though, the RWB program credited somebody named "Natalie Test" in the role of "Filbert, the Bear". Must be David's stage name ...)

One of the "Top News" stories in the December 17, 2005 *Winnipeg Free Press* reported on the announcement the previous day that a further \$6 Million in private donations had been secured for the Canadian Museum of Human Rights. Fundraising Campaign chair **Gail Asper** (CanWest Global Communications) was featured in the accompanying photograph and was quoted extensively in the article. The list of entities which had donated at least \$100,000.00 each

included Pitblado LLP and Thompson Dorfman Sweatman LLP. Gail was also featured in a January 13, 2006 article in the *Winnipeg Free Press* (along with a photo of her and singer/political candidate, Ray St. Germain) about her January 10, 2006 luncheon presentation to the Laurier Club, again in support of the Museum.

**Colleen Kroecker** (Taylor McCaffrey LLP) is on the 2005-2006 Board of Directors for Sara Riel Inc., an organization which provides community rehabilitation and employment support for adults with mental health concerns.

This next item proves once again that some people have way too much time on their hands. A "Letter [more likely an e-mail] to the Editor" from **Mark O'Neill** (City of Winnipeg Legal Services) was published in the Winter 2005/2006 edition of the Lang Michener LLP newsletter *InBrief*. Mark waxed eloquent, and at some considerable length, on the realization that - because he was wearing Lang Michener merchandise while on his daily run - he had become a "walking, running advertisement for Lang Michener". (If he had had an LM jacket to go with the cap and T-shirt, there's no telling how long this fascinating testimonial might have gone on!)

Mark also got a mention in January 13, 2006 and January 17, 2006 articles in the *Winnipeg Free Press* dealing with the resolution of a long-outstanding matter of dispute between the City and a former councillor and mayoral candidate.

At the most recent annual conference of the American College of Trial Lawyers, held in Chicago in October, 2005, **D. Wayne Leslie** (Fillmore Riley LLP) was inducted as a Fellow of the College. Membership in the College is granted only to lawyers who have demonstrated exceptional professionalism and skill as advocates, and cannot exceed one per cent of the total lawyer population in any state or province.

**Jennifer Jones** (Wellington West Capital) had the distinction of being the only individual winner of two "Rockhead Awards" for 2005. The tongue-in-cheek awards are "presented" annually by *Winnipeg Free Press* curling writer, Paul Wiecek. Jennifer was recognized in the category of "Most Dramatic Performance By An Actress In A Leading Role" (for delivering "The Shot" that won her team the Scott Tournament of Hearts in February, 2005) and in the category of "Gutsiest Performance By An Actress In A Leading Role" (for her tenacious, albeit unsuccessful, play in the Olympic Trials competition in December, 2005).

**Karine Pelletier** (Thompson Dorfman Sweatman LLP) is a member of the 2005-2006 Board of Directors for the Youville Centre, a community-based primary health centre and diabetes education resource in St. Boniface.

**Rekha Malaviya** (Manitoba Justice - Public Prosecutions) is among those spearheading the 2005-2006 All Charities Campaign on behalf of Manitoba Justice (which includes, among others, the Prosecutions, Civil Legal Services, Courts, Family Law, Legal Aid, and Constitutional Law branches, and the Public Trustee's Office). The campaign encourages all provincial government employees to donate to a fund which is then used to benefit literally hundreds of charitable organizations. Last year, Manitoba Justice raised almost \$186,000.00, a total which Rekha hopes to exceed this year. As she writes: "How's that for giving back to your community and helping to support extremely worthwhile causes? Very excellent." Very excellent, indeed. Well done!

The 2004/2005 Annual Report from the University of Manitoba identifies **Terry Sargeant** (Manitoba Clean Environment Commission), **Tom Strutt** (Manitoba Public Insurance), and **Shirley Van Schie** (Legal Aid Manitoba) as the members of the University of Manitoba Board of Governors who were appointed by the Lieutenant-Governor-in-Council. Mr. Sargeant also serves as Vice-Chair of the Board.

The December, 2005 edition of the University of Manitoba Alumni Association magazine *On Manitoba* features a front cover photograph of **William Norrie, O.C., Q.C.** and an article entitled "*Chancellor Bill Norrie: A Commitment to his Community*". The article mentions a mere handful of his countless contributions over some 50 years of community service, including President of the University of Manitoba Student's Union, Rhodes Scholar, Chair of the Winnipeg School Board, second longest serving Mayor of the City of Winnipeg (13 years), Chair of the Boards of the North Portage Development Corporation, the Forks Renewal Corporation, the 1993 Jimmy Carter Work Project Foundation (Habitat for Humanity), and the St. Boniface Hospital Research Foundation, member of the University of Winnipeg Board of Regents and the Winnipeg Foundation Board of Directors (24 years each), Chancellor of the University of Manitoba (since 2001), and the Winnipeg-based Honorary Consul-General for Japan.

**Alain Laurencelle** (Taylor McCaffrey LLP) sits on the 2005-2006 Board of Directors for the St. Boniface Health Centre, a facility which offers bilingual primary health care services in St. Boniface.

**Antoine Hacault** (Thompson Dorfman Sweatman LLP) is quoted in the French-language article "*La lente ascension [The Slow Rise]*", and in the English sidebar "Minority retort: language laws and the courts", in the December, 2005 edition of the *CBA National* magazine.

A photograph of **Russell Wookey** (D'Arcy & Deacon LLP) accompanies an article entitled "Customer call centre entitled to damages" in the December 23, 2005 edition of *The Lawyers Weekly*.

**Colin MacArthur** (Aikins MacAulay & Thorvaldson LLP) is also quoted.

The same edition includes an article entitled "In disability claim, independent psychiatric assessment ordered" dealing with a motion by a disability insurer to compel the claimant to submit to a psychiatric evaluation. **Richard Van Dorp** (Hill Abra Dewar) represented the insurer.

Still with *The Lawyers Weekly*, **Chief Provincial Court Judge Raymond Wyant** was named a "Newsmaker" who "played a vital role in reform to his institution". The article, accompanied by an appropriately-solemn photograph of Chief Judge Wyant, describes his efforts to reduce backlogs and waiting times in his court. (My eldest daughter happens to be friends with his step-daughter. I address him as "Your Honour". My daughter calls him "Ray". Says a lot about my place in the world, eh? Not that I'm bitter ...)

**Gregory Juliano** became a partner with the firm of Campbell Marr LLP effective January 1, 2006. Greg articulated with the firm and has been an associate since his Call to the Bar in 1999. He is also a member of the 2005-2006 Board of Directors for the St. Amant Foundation

Several other Manitoba firms also welcomed new partners recently. **Devan Towers** and **Sharon Cartmill** (Taylor McCaffrey LLP), **Candace Everard** and **Adam Herstein** (Pitblado LLP), and **Daniel St-Jean** and **Shayne Berthaudin** (Fillmore Riley LLP) were all admitted to their respective partnerships effective January 1, 2006.

On a sombre yet curiously uplifting note, the January 2, 2006 edition of the *Winnipeg Free Press* contained a lengthy list of prominent Manitobans who had passed away in 2005. Three long-time MBA members – **Harold Stubbs, Q.C.** (who was the MBA President in 1957-1958), **Robert Smellie, Q.C.** (Aikins MacAulay & Thorvaldson LLP), and **Campbell Wright** (Pitblado LLP) – were among those honoured by their inclusion on the list. In terms of these three

gentlemen, the headline "They left huge legacies" was indeed appropriate.

**Maria Grande** (Thompson Dorfman Sweatman LLP) is Honourary Counsel to the 2005-2006 Board of Directors for the Italian Canadian League of Manitoba. **Kathy Buetti** (Gindin Wolson Simmonds) sits on the Board as a representative one of the many ICLM member organizations. **Remo De Sordi** (Monk Goodman LLP) recently spearheaded efforts to revamp and modernize the ICLM By-Laws.

Legendary accordion virtuoso **Barry Gorlick, Q.C.** (Monk Goodman LLP) once again serenaded diners at the 22<sup>nd</sup> Annual Polar Bear Lunch at Orlando's Seafood Grill on January 5, 2006. The fundraising lunch (at which patrons pay handsomely for the privilege of eating outdoors in January!) was launched during a particularly balmy January in 1984. Some years, however, the mercury has dipped well below -25° Celsius. This year the event raised over \$6,200.00 for CancerCare Manitoba.

**Gail Asper** (CanWest Global Communications) has been selected by renowned Canadian photographer Tony Hauser as one of his 60 or so "icons of inspiration". Her photographic portrait will be included in his traveling exhibition - *The Power of Passion* - which will be at the Manitoba Museum from April 7, 2006 to May 8, 2006.

The 2005-2006 Board of Directors for the St. Boniface General Hospital includes **Gwen Hatch** (D'Arcy & Deacon LLP) and **Jeffrey Schnoor, Q.C.** (Manitoba Justice – Courts Division).

**Michael Mercury, Q.C.** (Aikins, MacAulay & Thorvaldson LLP) got a passing mention in article in the January 7, 2006 *Winnipeg Free Press* entitled "Nothing could be finer ... than a homey corner diner". Michael was one of the original owners of what went on to become the iconic Southdale restaurant. The Jolly Mug was a fixture at the intersection of Lakewood Boulevard and Fermor Avenue for 23 years from 1969 to 1992.

Photographs of **Arthur Mauro, O.C. O.M., Q.C., Harold Buchwald, C.M., Q.C.,** and **Gail Asper** (CanWest Global Communications) accompanied a full-page feature in the January 8, 2006 *Winnipeg Free Press* concerning the presentation, on November 30, 2005, of the 2005 B'Nai Brith Canada Award of Merit. Mr. Mauro was an Honorary Chair of the event while Mr. Buchwald was one of four Co-Chairs. Fillmore Riley LLP was listed as a sponsor in the "Associates" category while the firms of Hill Abra Dewar and Thompson Dorfman Sweatman LLP were listed as "Sponsors".

**Gail Asper** was featured again in the January 10, 2006 *Winnipeg Free Press* when she was photographed "[sharing] a few words" with Paul Ruseabagina just before his address to a packed house at UMSU previous evening. Mr. Ruseabagina was the manager of the Hotel des Milles Collines in Kigali, Rwanda when the 1994 genocide erupted. He has been credited with saving the lives more than 1,200 Rwandan Tutsis. The story his courageous actions was depicted in the Oscar-nominated film *Hotel Rwanda*.

**A.J. (Telly) Mercury, Q.C.** (Aikins MacAulay & Thorvaldson LLP) sits on the Board of Directors for the Hong Kong Canada Business Association. (For those who may be wondering ... Yes, the "A" does stand for "Aristotle"!)

A large photo of **Leonard Asper** (CanWest Global Communications) accompanied an article in the Business section of the *Winnipeg Free Press* under the headline "TV division top priority for CanWest, Asper says". The article reported extensively on remarks made by Leonard at the annual meeting of CanWest shareholders which had been held the previous day in Toronto.

Submit information for *What's Happening?* to Dean Scaletta by email at [dscaletta@mpi.mb.ca](mailto:dscaletta@mpi.mb.ca).

\* *Dean Scaletta is a Senior Solicitor with Manitoba Public Insurance and is a member of the Manitoba Bar Association Council.*





# Just Ask . . .

by Barry Effler\*



Barry Effler

In this column, I am addressing questions submitted from the membership, as well as questions referred by Sections. I refer questions about substantive law areas to the respective Sections for their assistance and input in preparing the answers.

In order for the matter to be timely for the person asking a question, I provide the writer of the question with their answer and then have the Q and A published in *Headnotes & Footnotes* subsequently.

Send your question to the MBA office or contact me directly at 945-0445 or beffler@gov.mb.ca.

I had the pleasure of attending at a recent Corporate Counsel Section meeting. Antoine Hacault and his partners, James Edmond and Douglas Forbes, delivered papers. Several people in attendance indicated that they thought there was information of great use to them and other lawyers. I agree with that thought and, accordingly, this Q and A is mostly based on Antoine's paper *Parties to a Contract*.

### Question:

There are a lot of different letters being seen after a corporate or business name indicating this is a special type of corporation or entity, usually from outside of Manitoba. Some of them I have seen before but there are a couple of oddballs ones. What do they mean?

### Answer:

**LLP:** This is a Limited Liability Partnership. In Manitoba, you should look to *The Partnership Act* for the authority of the entity. A contract should name the Limited Partnership as the party to the contract. If the LLP is from outside of Manitoba, it should be careful to register as an extra-provincial LLP in Manitoba pursuant to *The Business Names Registration Act*. Failure to do so will make the partners liable as if they were an ordinary partnership for all business transacted in Manitoba (see section 78 of *The Partnership Act*).

**Nova Scotia Unlimited Liability Company:** An NSULC is a Canadian entity treated as a corporation for Canadian tax purposes, but is also eligible to be "disregarded" for tax purposes in the United States. This will be of interest to companies with interests in both countries. An NSULC is incorporated under section 9 of the *Nova Scotia Companies Act*, which allows a company to be incorporated "with or without liability" and "not having any limit on the liability of its members". An NSULC is a separate legal entity and is the proper party to a contract.

Shareholders of an NSULC are immune from liability for the debts and activities of the company, however, shareholders are liable if the creditors of the NSULC obtain a court order for the winding up of the company or if it becomes bankrupt. Then current and past shareholders up to one year previous to the commencement of the winding up are liable to contribute to the payment of the debts of the NSULC and the costs of the winding up.

**Alberta Unlimited Liability Corporations:** *The Business Corporations Act* (Alberta) was amended on May 17, 2005 to harmonize Alberta's laws with federal legislation and allow for unlimited liability corporations to be incorporated in Alberta. The intent was to modernize the legislation and ensure Alberta remained attractive to businesses.

Bill 56, the *Business Corporations Amendment Act*, was introduced on November 24, 2005. If passed, the proposed changes will protect minority shareholders who vote against converting the corporation to or from an unlimited liability corporation. Without this amendment, shareholders who disagree with a conversion to an unlimited liability corporation could be held personally liable for the debts and obligations of the corporation without their consent.

The amendments also limit the time that former shareholders of unlimited liability corporations are liable and clarify that only registered shareholders of corporations have voting rights at shareholder meetings. (Source for Alberta ULC information, Alberta Government Press Release, November 25, 2005.)

As the Alberta legislation is in flux, a direct comparison of Alberta contrasted with Nova Scotia is beyond the scope of this article. There appear to be significant differences regarding number of Canadian directors required, fees for incorporation and potential liability rules for shareholders.

**LLC:** This is a Limited Liability Company incorporated under various U.S. State Laws. It is an entity that is not a corporation or a partnership, but shares features of both. Owners are called members, not partners or shareholders. There is no limit to the number of members and members may be individuals or corporations. A LLC exists as a separate legal entity similar to a corporation and members are not personally liable for debts. A LLC is dissolved upon the death or bankruptcy of a member. LLC have flexibility in how they distribute profits to members.

\*Barry Effler is the District Registrar for the Winnipeg Land Titles Office and is the Manitoba Bar Association Communications Chair.

**Shewchuk, MacDonell, Ormiston, Richardt & Fregeau LLP** is a full service law firm in Kenora, Ontario in which lawyers enjoy a busy practice and a relaxed lifestyle living on beautiful Lake of the Woods.

We are seeking an associate with two to three years experience in civil, family and criminal litigation, and administrative law to join our practice.

The ideal candidate will have superior academic credentials and excellent written and oral communication skills.

Expressions of interest with accompanying resume can be directed in confidence to the attention of:

John S. Fregeau  
E-mail: lawoffice@kenora.com  
Phone: 807-468-9828  
Mail: 214 Main Street South  
P.O. Box 1970  
Kenora, ON P9N 3X8



# Legislative Update

by Elona McGifford\*



The following is a list of the Acts passed by the fourth session of the 38th Legislature (October 27, 2005 - present). Information is current at the time of preparing this article. While every effort has been made to ensure the accuracy of the information provided to you in this article, lawyers should refer to the specific legislative or regulatory provision. Current versions of Manitoba statutes and regulations are available online at <http://web2.gov.mb.ca/bills/sess/index.php>.

## ***Private Investigators and Security Guards Amendment Act, S.M. 2005, c.49 (Bill 2, 4th Session, 38th Legislature)***

**Royal Assent:** December 8, 2005

**Amends:** *The Private Investigators and Security Guards Act*, C.C.S.M. c. P132

### **Summary:**

This *Act* provides tighter controls over 'in-house security guards' who work permanently and exclusively for one employer. The guards must be trained and licensed and the employers must be registered and must notify the registrar of the names of their guards.

Businesses who provide private investigators or security guards require insurance as set out in the regulations.

**In force:** On a day fixed by proclamation.

## ***The Enforcement of Canadian Judgments Act, S.M. 2005, c.50 (Bill 3, 4th Session, 38th Legislature)***

**Royal Assent:** December 8, 2005

### **Summary:**

Both monetary and non-monetary judgments from other Canadian jurisdictions may be registered in the Court of Queen's Bench and then enforced in Manitoba in the same manner as a judgment of the Manitoba Courts. However, civil protection orders from other provinces and territories would be deemed to be an order of the Manitoba Court, and therefore capable of enforcement by local law enforcement agencies, whether or not the order has been registered with the Manitoba Courts.

**In force:** On a day fixed by proclamation.

### **Makes consequential amendments to:**

- *The Reciprocal Enforcement of Judgments Act*, C.C.S.M. c. J20
- *The Limitation of Actions Act*, C.C.S.M. c. L150

## ***Dental Hygienists Act, S.M. 2005, c.51 (Bill 5, 4th Session, 38th Legislature)***

**Royal Assent:** December 8, 2005

### **Summary:**

This *Act* defines the practice of dental hygiene and provides for self-regulation of the profession. It also establishes the College of Dental Hygienists of Manitoba, requires the

registration of hygienists and creates a process for complaints and discipline.

**In force:** On a day fixed by proclamation. s.71, which provides for a provisional council for the college, comes into force upon royal assent.

## ***Dental Association Amendment Act, S.M. 2005, c.52 (Bill 6, 4th Session, 38th Legislature)***

**Royal Assent:** December 8, 2005

**Amends:** *The Dental Association Act*, C.C.S.M. c. D30

### **Summary:**

This *Act* permits the Manitoba Dental Association to register and govern dental assistants. It also includes amendments necessary as a result of the development of self-regulation for dental hygienists, and housekeeping amendments such as changing references to "rules" to "by-laws", modernizing the language, and repealing several provisions no longer necessary.

**In force:** On a day fixed by proclamation.

### **Also makes consequential amendments to:**

- *The Hospitals Act*, C.C.S.M. c. H120
- *The Interpretation Act*, C.C.S.M. c. 180

## ***The Architects and Engineers Scope of Practice Dispute Settlement Act (Various Acts Amended), S.M. 2005, c.48 (Bill 7, 4th Session, 38th Legislature)***

**Royal Assent:** November 30, 2005

### **Summary:**

The *Act* amends three *Acts* to settle the scope of practice dispute between architects and engineers. The amendments clarify the circumstances in which an engineer can do engineering work that would also be considered architectural work. They also facilitate the joint practice of the two professions and provide for a more timely dispute resolution process.

**In force:** Upon Royal Assent. Ss. 4-9 are in force on a day fixed by proclamation.

### **Makes consequential amendments to:**

- *The Architects Act*, C.C.S.M. c. A130
- *The Buildings and Mobile Homes Act*, C.C.S.M. c. B93
- *The Engineering and Geoscientific Professions Act*, C.C.S.M. c. E120

## ***The Official Time Amendment Act, S.M. 2005, c.53 (Bill 8, 4th Session, 38th Legislature)***

**Royal Assent:** December 8, 2005

**Amends:** *The Official Time Act*, C.C.S.M. c. O30



# Legislative Update cont'd

**Summary:**

This Act provides that, starting in 2007, daylight saving time will run from the second Sunday in March to the first Sunday in November.

**In force:** Upon Royal Assent.

**Farm Practices Protection Amendment Act S.M. 2005, c.54 (Bill 9, 4th Session, 38th Legislature)**

**Royal Assent:** December 8, 2005

**Amends:** *The Farm Practices Protection Act*, C.C.S.M. c. F45

**Summary:**

This Act protects the Farm Practices Protection Board, its members and acting members and any other person acting under the authority of the Act from liability.

**Coming into Force:** Upon Royal Assent.

**Convention Centre Corporation Amendment Act S.M. 2005, c.55 (Bill 10, 4th Session, 38th Legislature)**

**Royal Assent:** December 8, 2005

**Amends:** *The Convention Centre Corporation Act*, S.M. 1988-89, c. 39

**Summary:**

This Act changes the make-up of the board of the Winnipeg Convention Centre, reducing the number of city councillors from four to two, and increasing the number of citizens

appointed by the board from two to four. It also makes other minor administrative amendments.

**In force:** Upon Royal Assent.

**Highway Traffic Amendment Act (Countermeasures Against Impaired Drivers and Other Offenders) S.M. 2005, c.56 (Bill 18, 4th Session, 38th Legislature)**

**Royal Assent:** December 8, 2005

**Amends:** *The Highway Traffic Act*, C.C.S.M. c. H60

**Summary:**

For the purposes of suspension of drivers' licences and of related administrative sanctions, alcohol-related offence committed in the United States are treated the same way as those in Canada. The same status is also given to offences in which the offender is found guilty and given a discharge. The Act also restricts certain offenders to driving only motor vehicles equipped with an ignition-interlock device after their suspensions expire.

**In force:** On a day fixed by proclamation.

**Also makes consequential amendments to:**

- *The Drivers and Vehicles Act*, S.M. 2005, c. 37, Schedule A

\* Elona McGifford is in 2nd year law school at the University of Manitoba and is the MBA Assistant Editor/Writer for Headnotes & Footnotes. Thank you to Jacqueline Désorcy at Manitoba Justice for reviewing the article.

## Mark Your Calendar

The Young Lawyers' Section  
*presents*

### THE ANNUAL *Judges Luncheon*

*Keynote Speaker:*

The Honourable Judge  
Christine Harapiak  
Dauphin Provincial Court

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12:00 Noon

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# Civil Decisions

by Melanie R. Bueckert \*



If the following summaries don't satiate your appetite for recent Manitoba case law, I would recommend reading the Court of Appeal's decision in *SR & J Customer Care Call Centres Inc. v. Craig Wireless International Inc.*, 2005 MBCA 136, which contains some interesting comments about pre-judgment interest, costs and GST. Another interesting case is Justice Nurgitz's decision in *Neusitzer v. GFK Capital Base Corporation et al.*, 2005 MBQB 265, which contains some helpful hints for counsel about giving proper notice to your opponent about your case and how to prevent a trial from being re-opened on the basis that such notice was not properly given.

## **MANITOBA PUBLIC INSURANCE CORP. v. DAY & ROSS INC., 2005 MBQB 277**

The issue in this case was whether a plaintiff who sued for \$7,500 damages - after waiving a portion of his claim to fall below the Small Claims Court limit - was found to be contributorily negligent and should have his claim reduced based on his actual loss or based on the lesser amount he actually claimed. The case was thought by counsel to be the first of its kind in Manitoba.

The case arose out of a three vehicle collision. Manitoba Public Insurance Corp. ("MPI") sued Day & Ross for \$7,500.00, waiving a claim for the additional sum of \$981.00. After a trial of the issue of liability, the Court found that all three drivers were negligent and divided liability equally amongst them. The issue then arose whether MPI was entitled to judgment against Day & Ross for one third of their actual loss, or only for one third of \$7,500.00.

The Court recognized that there were two lines of authority on this point, both arising out of Ontario. Relying on the Supreme Court of Canada's *obiter dictum* in *Burkhardt Estate v. Beder*, [1963] S.C.R. 86, the Court found that there was nothing in *The Court of Queen's Bench Small Claims Practices Act* that prohibited a plaintiff from adducing evidence of a loss greater than \$7,500.00. Thus, the reduction for contributory negligence should be based on the actual loss adjudged by the Court or agreed by the parties. Of course, if an unusual case arose where a party made unreasonable use of the procedure, the court should fashion a remedy to deal with that abuse of process.

In the result, MPI succeeded in increasing the amount it was entitled to recover.

## **CARDILLO v. NN LIFE INSURANCE COMPANY OF CANADA ET AL., 2005 MBQB 281**

This motion raised an interesting and important issue concerning the confidentiality of documents filed in the course of mediation proceedings.

The plaintiff in this case was injured in a bicycle accident. A dispute arose as to whether the plaintiff was entitled to certain rehabilitation benefits under a contract of disability insurance with the defendants. A statement of claim was issued by the plaintiff.

The parties sought the assistance of the Court through the use of the judicially assisted dispute resolution process, in an attempt to resolve the matter by way of a negotiated settlement. Unfortunately, the mediation was unsuccessful and did not lead to a settlement.

The parties had agreed that the mediation would be on a "without prejudice" basis and that any material filed or discussions that took place during the mediation process would not be used in any subsequent proceedings.

The plaintiff forwarded certain materials, including mediation briefs, to a doctor who prepared reports and whom the plaintiff intended to call as a witness at trial. The defendants argued that the sharing of their mediation brief with the doctor disqualified him from giving evidence at the trial. It was argued that this disqualification should extend to his reports and any *viva voce* testimony.

Several Ontario cases involving "without prejudice" mediations were cited. Counsel for the plaintiff attempted to distinguish them on the basis that they dealt with situations where the discussions had or material filed at the mediation were sought to be presented at a subsequent hearing. The plaintiff in this case had no intention of referring to the mediation brief at trial.

Justice Simonsen expressed concern that by allowing the doctor to testify, the mediation brief would find its way into court, which would be unfair to the defendants. Paragraph 31 of the decision states, "Parties who participate in a mediation must have an assurance that what is said at the mediation remains confidential. It is integral to the process, and if there were risk of the discussions or documents being disclosed, it could affect the approach taken by parties at mediation and much diminish their effectiveness."

In Paragraph 36, Justice Simonsen concluded, "discussions at and materials filed in the course of mediation must be kept absolutely confidential. Any step away from this principle should be resisted." For these reasons, the doctor was disqualified as a witness at trial, both through the filing of his reports and *viva voce* evidence.

\* Melanie R. Bueckert practices with the law firm of Pitblado LLP, with a focus on legal research in the civil litigation, labour, employment and privacy law fields.



# Criminal Law Decisions

by Diana Cameron\*

December was a prolific month for the Supreme Court of Canada. Frankly, I was unable to choose just one or two cases to report on. So, at the risk of sacrificing substance for brevity, I am going to attempt to summarize a number of decisions regarding cross-examining an accused on his or her prior testimony, the meaning of violent offence, the test for indecency and weapons prohibitions.

## R. v. Henry [2005] S.C.J. No. 76 (Q.L.)

In this precedent setting case, the Supreme Court of Canada revisited two previous decisions, *R. v. Mannion* [1986] 2 S.C.R. 272 and *R. v. Kuldip* [1990] 3 S.C.R. 618 relating to self incrimination under *Charter* s. 13. In *Henry*, the Court held that s. 13 only applies to compelled testimony, as opposed to testimony voluntarily given. This is a complete turnabout from its earlier ruling in *Mannion*, which held that s. 13 prohibited the Crown from cross examining an accused who voluntarily testified at a retrial on his or her testimony at the first trial, even though the testimony was significantly different. Moreover, cross examination is no longer restricted to the issue of credibility as it was in *Kuldip*, and inferences may now be drawn regarding the accused's guilt as a result of the cross examination. The case provides an in depth review of the development of s.13 jurisprudence, and also gives guidance regarding the weight to be put on the Supreme Court's *obiter dicta*.

## R. v. C.D.; R. v. C.D.K. [2005] S.C.J. No. 79 (Q.L.)

Section 39 of the *Youth Criminal Justice Act* (YJCA) provides that a youth should not be committed to custody short of four defined exceptions. One exception pursuant to s.39 (1) (a) is when the young person has committed a violent offence which is not defined in either the YJCA or the *Criminal Code*. In undertaking an extensive statutory interpretive analysis including a review of judicial interpretations of violence, the intent of the YJCA and *Hansard*, the court adopted a narrow approach to the definition of violent offence, finding a harm based interpretation was appropriate. Thus, a violent offence was defined as "an offence in the commission of which a young person causes, attempts to cause or threatens to cause bodily harm". Short of exceptional circumstances property related offences are not included. As well simple assault may be disqualified.

## R. v. Labaye [2005] S.C.J. No. 83 (Q.L.)

By a seven to two majority, the Supreme Court of Canada once again changed the test for "indecency". The community standards test has been replaced by a two step harm based test that was first mentioned in *Towne Cinema Theatres Ltd v. The Queen* [1985] 1 S.C.R. 494 and refined in *R. v. Butler* [1992] 1 S.C.R. 452. The first step is to identify the type of harm targeted by the indecent conduct under the *Criminal Code*. The harm must be one that society has recognized in the Constitution or similar fundamental laws (e.g. human dignity, personal autonomy, liberty). To date, there are three types of harm that have been recognized by the court. They are: 1) harm to those whose autonomy and liberty may be restricted by being confronted with inappropriate conduct; 2) harm to society by predisposing others to anti-social conduct; and 3) harm to the individuals participating in the conduct. This list has room for expansion in the appropriate circumstances. The second test is that once identified, the harm must be serious. In fact, it must be so serious that it is *incompatible* with proper societal functioning.

## R. v. Wiles [2005] S.C.J. No. 53 (Q.L.)

S.109(1)(c) of the *Criminal Code* provides for a mandatory 10 year weapons prohibition upon a first conviction for unlawfully producing cannabis contrary to s. 7(1) of the *Controlled Drugs and Substances Act*. The Accused, having been convicted of producing cannabis argued that the mandatory prohibition breached s. 12 (cruel and unusual punishment) of the *Canadian Charter of Rights and Freedoms*. Rather than calling evidence as to how the prohibition effected him, the Accused chose to rely on hypothetical situations. In applying the law as stated in *R. v. Morrissey* [2000] 2 S.C.R. 90, the court held that while the section constituted a "treatment or punishment" (as conceded by the Crown), the punishment was not *grossly* disproportionate for the offender, such that Canadians would find it abhorrent or intolerable. The Court further found that s. 113 of the *Criminal Code*, which permits the court to lift the order for sustenance or employment reasons, had an ameliorative effect on s. 109(1)(c).

\*Diana Cameron works with the Constitutional Law Branch of Manitoba Justice and is the Co-Chair of the MBA Criminal Justice Section. The opinions expressed in this article are not necessarily those of Diana's employer.

**J. Lloyd Feinstein, CA, CBV, ALA.**

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# Family Decisions

by Deeley Fabbri Sellen, Family Law Group\*



File No. FD 99-02-207

## **TORNBLOM v. TORNBLOM**

Manitoba Court of Queen's Bench –  
Master Harrison,  
Pat L. Fraser for the Wife  
Robert L. Patterson for the Husband

By way of background, the parties separated in 1999 after a 25 year marriage and were divorced in 2000. At the time of divorce a child and spousal support order was put in place. In 2005, a motion was brought to vary child and spousal support. An order was pronounced that varied child support. The issue of varying spousal support was adjourned.

Negotiations on the issue of varying spousal support occurred between the parties. The husband took the position that an agreement had been reached. The wife did not accept this position. The husband brought a motion for summary judgment pursuant to the Queen's Bench Rules. The Court was now faced with two motions which were mutually exclusive (the motion for summary judgment and the motion to vary spousal support). The husband filed Affidavit material in support of his motion for summary judgment and to support his opposition to the wife's motion to vary spousal support.

The wife brought a notice of motion to expunge portions of the husband's Affidavit. The difficulty for the Court was that the motions that were pending were mutually exclusive, yet the Court was being asked to rely upon a single Affidavit to determine the merits of each motion. On the motion for summary judgment, the evidence to be looked at would be those facts which proved that an agreement had been reached between the parties. With respect to the motion to vary spousal support, the facts related to whether or not there was an agreement reached by the parties were not relevant for a consideration of a variation of spousal support.

The Master determined that the proper procedure for this type of situation is to produce two photocopies of the Affidavit in question. The Master would then review the Affidavit and expunge what is irrelevant for the summary judgment motion. This Affidavit would be provided to the court when hearing the motion for summary judgment. The second copy of the Affidavit would be reviewed in the context of a motion to vary, and any evidence contrary to the Rules would be expunged. Thus, if the motion for summary judgment was not successful and the Court proceeded to hear the motion to vary, it would have the relevant evidence before it.

File No. FD 02-01-65827

## **SIDHU v. SIDHU**

Manitoba Court of Queen's Bench-Diamond, J.  
R. Grenville Waugh for the Husband  
Judith M. Blair for the Wife

This case involved costs following a five day trial where the main issue was the determination of the husband's income for the purposes of fixing child and spousal support.

The wife was successful at trial and was seeking an order of solicitor-client costs. Alternatively, the wife was seeking double costs pursuant to the Tariff.

At the trial, the husband argued that his income should be set at \$97,115.00. Following the trial, the Court imputed income to the husband of \$261,349.00. The court determined this income after reviewing the husband's personal income tax return, monies diverted to his common law spouse and unreasonable deductions of expenses for tax purposes, and the pre-tax income from the business.

Counsel for the wife argued that the determination of the husband's income was extremely complex and confusing, largely due to the fact that the husband failed to make full financial disclosure and was dishonest in the disclosure that he provided.

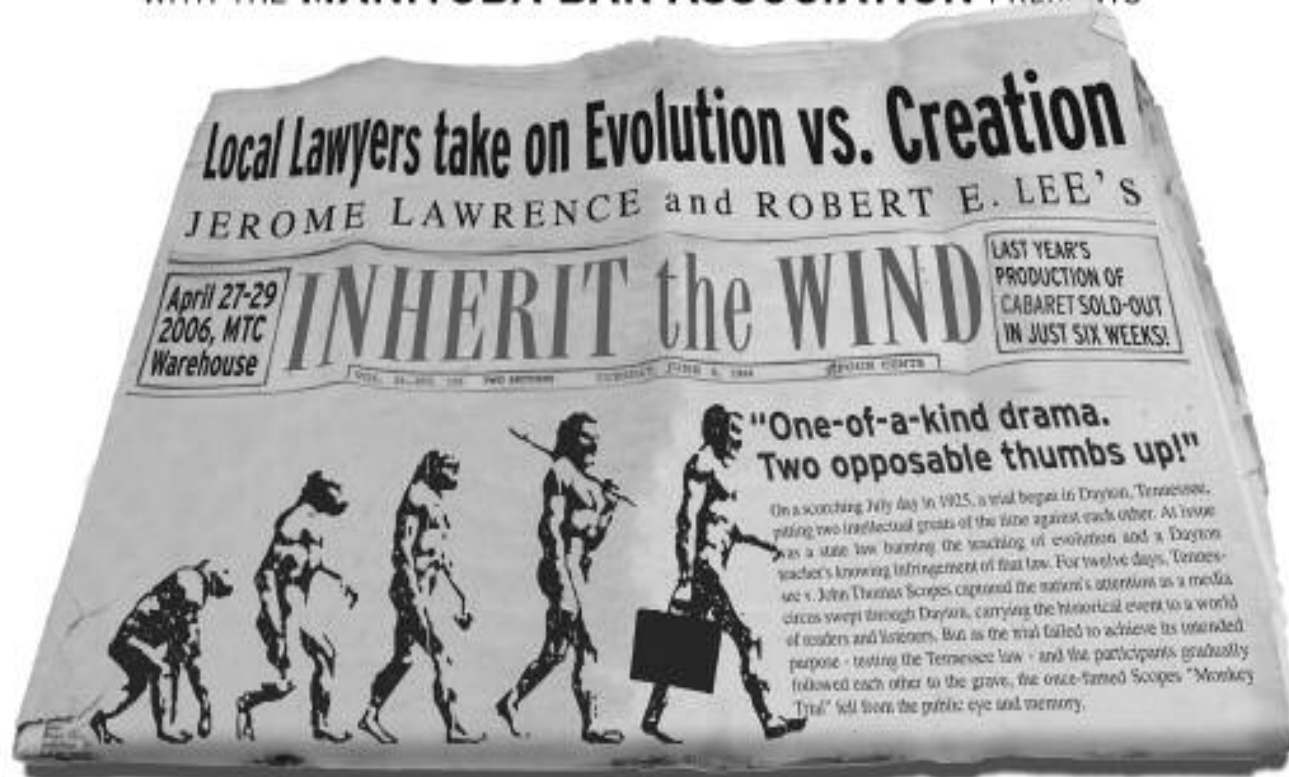
The Court concluded that the husband's position put forward concerning his income and his claim for undue hardship were completely without merit and had no prospect of success. Further, the Court found that the husband failed to make full financial disclosure and deliberately attempted to reduce and divert income, which made the task of determining his income very difficult. However, the Court noted that the wife had not sought proper disclosure prior to trial. There were no examinations for discovery or motions seeking financial disclosure with respect to the husband or his business. As a result, the trial became a mechanism to compel production and ascertain information that should have been requested and produced prior to trial. On this basis, the court found that solicitor-client costs were not appropriate as it was not merely the husband's behaviour that caused the delays that put the wife to unnecessary costs, but also the wife's failure to compel the appropriate production in advance of trial.

Despite the fact that there were no examinations for discovery, nor motions for production, the Court did note the husband had an obligation pursuant to section 20 (2) of the Child Support Guidelines to provide full financial disclosure. The Court noted that this obligation existed independently of any formal court proceeding to compel production. As a result, the Court determined that it was appropriate that the husband pay double costs pursuant to the appropriate class of the Tariff.

\* Jennifer A. Cooper, Q.C., Randall A. Horton, Andrea C. Dodgson, Kerry L. UnRuh, Coral D. Lain.

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## C L A S S I F I E D S / A N N O N C E S

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Anyone having information as to the whereabouts of a Last Will and Testament of **GEORGE HALAYKO**, please contact Chapman Goddard Kagan, Barristers & Solicitors, 1864 Portage Avenue, Winnipeg, Manitoba, R3J 0H2, ATTN: Donna G. Kagan Ph: (204) 888-7973, Fax: (204) 832-3461 E-mail: [dgk@cgklaw.ca](mailto:dgk@cgklaw.ca)

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Anyone having information as to the whereabouts of a Last Will and Testament of **EDWARD FREDRICK LORCH (also known as Eddie Lorch)**, please contact KREKLEWICH & KINNEAR LLP (Attention: Lucy Kinnear), P.O. Box 97, Portage la Prairie, Manitoba, R1N 3B2, Telephone: (204) 857-7809, Fax: (204) 856-1231.



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Justice Robert Carr	.....945-2050
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Judge Robert Kopstein	.....945-3461
Judge Judith Elliott	.....945-3461
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