

: : WHAT'S NEW : :

- Council Highlights from the November 21 Council meeting [...more](#)
- Continuing Professional Development (CPD):
 - *Register now for Lunch & Law December 3: Commercial Bankruptcy & Insolvency* [...more](#)
- UPDATED: Mortgage Discharge Escalation Contact List [...more](#)
- Invitation to Dec. 5 launch for legal guidebook *Safely On Your Way, Child Custody and Access Information for Women Leaving Abusive Relationships and Their Service Providers* [...more](#)
- Canadian Centre for Ethics in Public Affairs names Sheila A. Brown new Executive Director [...more](#)
- Trust in Education - Canadian Centre for Ethics in Public Affairs (CCEPA) [...more](#)
- NOTICE requesting information about missing will in Sydney/Glace Bay area [...more](#)
- NOTICE regarding Property Online tips for MacBook users [...more](#)
- Career postings on the NSBS website [...more](#)
- NEW from LIBRARY & INFORMATION SERVICES:
 - *Laudable Legal Links, new Desktop offering, new books* [...more](#)
 - *New decisions* [...more](#)
 - *New bills* [...more](#)

: : NOTICES : :

Legal guidebook *Safely On Your Way* launches December 5 in Halifax

Members of the Nova Scotia Barristers' Society are invited to attend the launch of a new legal guidebook, *Safely On Your Way: Child Custody and Access Information for Women Leaving Abusive Relationships and Their Service Providers*.

**The Lord Nelson Hotel, Halifax
December 5, 2008, 9 am to 2:30 pm**

The event aims to introduce people working in the justice system to the new resource, a project of The Legal Information Society of Nova Scotia, the Nova Scotia Advisory Council on the Status of Women, the Transition House Association of Nova Scotia and the Women's Innovative Justice Initiative.

Guest speakers:

- Susan Boyd, University of British Columbia law professor, will review trends in child custody and access law
- Linda Neilson is a sociology professor at the University of New Brunswick and author of the forthcoming electronic bench book *Domestic Violence and Family Law in Canada: A Handbook for Judges* (Ottawa: National Judicial Institute). She will lead a discussion on options to enhance family law and community responses to domestic violence.
- Maria Franks, Executive Director, Legal Information Society of Nova Scotia, and Becky Atkinson, Project Coordinator, *Safely on Your Way*, will give an overview of the project and address the need for abuse-tailored child custody and access information

Please RSVP by December 1 by contacting Becky at flipaw@legalinfo.org.

Seating is limited. Refreshments and lunch provided. Please advise of any special dietary needs.

New Executive Director at the Canadian Centre for Ethics in Public Affairs

CCEPA Board Chair William Black is pleased to announce the appointment of Sheila A. Brown, former President of Mount Saint Vincent University in Halifax. He says, "We are fortunate to have Sheila Brown assume this leadership role. She will advance CCEPA's role as a respected forum for critical thinking, discussion and research into the current ethical challenges in society."

In 2005, Dr. Brown was one of the first four inductees into the Atlantic Business Magazine's "Top 50 CEOs in Atlantic Canada Hall of Fame." For further details, see http://www.ccepa.ca/new_exdir.html

NOTICE: Assistance requested in locating missing will in Sydney/Glace Bay area

Lawyers with any information regarding the last will and testament of Emma Theresa Currie are asked to please contact her niece Helen Currie in Dartmouth as soon as possible. Executors are unable to locate a copy of her will, and hope that a lawyer in the Sydney/Glace Bay area may have a copy on file.

Ms. Currie lived in MacKay's Corner, Glace Bay, all her life. She was an elementary school teacher and principal of MacKay Corner Memorial School. If you can provide any details, please contact Helen Currie at 902.469.1319 or hcurrie@hotmail.com.

NOTICE: Property Online tips for MacBook users

Anthony J. Morley, QC, of Amherst, would like to alert fellow lawyers to solutions for using Property Online with MacBooks. If anyone is having problems migrating titles with the Mac due to the requirement for Internet Explorer, Mr. Morley's son Jake can provide advice. The recent Dalhousie Computer Science graduate can be reached at jake.morley@gmail.com, and invites your inquiries.

Seeking nominations for Second Vice-President

The nominating committee will shortly begin its work to prepare for nominations for the Second Vice-President. Members of the Bar are encouraged to contact members of the Nominating Committee to provide suggestions for potential candidates by email.

Catherine S. Walker, Q.C., Chair (cwalker@walkerlaw.ca)
Philip J. Star, Q.C. (pnslaw_phil@yahoo.ca)
Joel E. Pink, Q.C. (jepink@garsonpink.ca)
J. Ronald Creighton, Q.C. (rcreighton@pattersonlaw.ca)
Marjorie A. Hickey, Q.C. (mhickey@mcinnescooper.com)
George P. Ash (gash@boyneclarke.ns.ca)
Moka Case (mokacase@eastlink.ca)
David W. McNairn (dmcnairn@hickslemoine.ca)
William F. Meehan (wmeehan@hotmail.com)

The Committee's nomination will be posted on the NSBS website by no later than February 14, 2009 following which members may submit nominations. The deadline for receipt of additional nominations is March 17, 2009. Nominations should be sent to the attention of the Executive Director, Darrel Pink.

Notice regarding Consolidated Judgment Index Omission Registry of Deeds - Halifax County

It has come to our attention that the Consolidated Judgment Index for August 15th, 2008 did not include the Judgment Debtor Marina M. Crook. This omission was addressed and now appears in the index as of Oct 23, 2008.

Any questions concerning this omission should be directed to the Halifax Land Registration Office.

Kim MacKay
Regional Registrar, Halifax Land Registry

Notice regarding Grantor / Grantee Index Omission Land Registration Office - Cape Breton County

It has come to our attention that an Expropriation document against Angus McMullen, John Devison, Gitta MacLeod, Airway Beagle Club, Seaside Cable Ltd., Universal Negro Improvement, Elcomac Realities Ltd., Nova Scotia Power Commission & Municipality of the County of Cape Breton by the Municipality of the County of Cape Breton recorded May 22, 1981 in Book 1275 Page 92 had never been in our Grantor/Grantee Index although it was indexed in the Planlog. The document now appears in the Grantor/Grantee Index. The error was discovered Oct 27/08 & fixed Oct 28/08.

Any questions concerning this omission should be directed to the Sydney Land Registration Office.

InForum is an electronic newsletter published approximately twice a month. To receive a free subscription, please contact the Society at info@nsbs.org.

John MacLeod, Acting Registrar of Land Titles – Sydney
Sydney Land Registration Office
563-3539

Call for Papers

Yearbook of International Environmental Law vol. 19 (2008)

The Editorial Board of the Yearbook of International Environmental Law is pleased to issue this call for contributions to its 2008 volume. The topic will be "Environmental Security" and the deadline for submission of proposals is December 1.

We are particularly interested in contributions from developing country authors that address perspectives from the Global South. We will accept up to six articles of 10,000-15,000 words each, including footnotes. Proposed topics and outlines should be sent to ybiel-editors@jus.uio.no by December 1. Our review of proposals will be ready by December 15, and the deadline for submitting final articles will be March 31, 2009.

For more information concerning the YBIEL, see: <http://www.jus.uio.no/forskning/grupper/intrel/YBIEL/index.html>

The credit crunch: a practical guide for lawyers

Crisis, opportunity or both?

The credit crunch is rapidly making its way from Wall Street and Bay Street to Main Street, Canada, and is squeezing businesses across a wide swath of industries. For law firms, the issue is twofold: managing your own partnership and growth objectives under adverse economic conditions, and managing projects with clients adversely affected by this situation. There are some proactive measures you can take to help you land on your feet or even in a better place at the end of the ride, and Grant Thornton is prepared to help:

For more information, click here (www.GrantThornton.ca/insights) to read *The credit crunch: a practical guide*.

You Can Make a Difference...

The Province of Nova Scotia is accepting applications from individuals interested in being appointed to serve on its various Adjudicative and Non Adjudicative Agencies, Boards and Commissions, and Tribunals. To learn more, visit www.gov.ns.ca/exec_council or call 1-902-424-4877 in HRM (Toll-free: 1-800-206-6844). The province is committed to affirmative action to promote equitable participation of aboriginal persons, women, persons with disabilities and members of racially visible groups where they are under-represented.

L'Assemblée générale annuelle de l'Association des juristes d'expression française

Le président de l'Association des juristes d'expression française de la Nouvelle-Écosse, maître Roland A. Deveau, vous invite cordialement à l'**Assemblée générale annuelle de notre association** qui se tiendra les **21 et 22 novembre 2008**, à l'hôtel **Ramada Renaissance de Dartmouth**.

Nous vous demandons de bien vouloir confirmer votre présence en retournant le formulaire d'inscription dûment rempli par courriel avant le 30 octobre 2008. Pour plus d'information, contactez juristes@ajefne.ns.ca.

Notice regarding Mortgage Discharges

The Canadian Bankers Association has provided the Federation of Law Societies with [a list of bank officials](#) who may be contacted in the event that mortgage discharges are not provided within 90 days of their request. The provision of the list on a national basis follows a successful pilot project at the Law Society of British Columbia, instituted as a result of discussions between the Federation and the CBA. We are advised that the list will be updated in early 2009 if necessary.

Download PDF list: <http://lians.ca/MortgageDischargeEscalationContactList.pdf>

Challenge to all law firms to 'Feed Nova Scotia'

Atlantica Law Group challenges all law firms to match or better its \$500 dollar donation to Feed Nova Scotia to help in the urgent cry for help to feed over 40,000 people in Nova Scotia each month. Your donation will make a real difference to someone who would otherwise go without a meal tonight. All donations are greatly appreciated.

www.feedbacknovascotia.ca

Discussion Paper from the Department of Justice

The Department of Justice has released a [Discussion Paper](#) regarding a possible merger of the Provincial and Family Courts. Consultation sessions between the Bar and the Department of Justice will be facilitated. Any comments regarding the proposal should be directed to the Executive Director, Nova Scotia Barristers' Society, 1645 Granville Street, Suite 1101, Halifax NS, B3J 1X3, T 902-422-1491 Ext. 315, F 902-429-4869

NS Court of Appeal Justice nominated for Supreme Court of Canada position

In a recent announcement, the Prime Minister's office named The Honourable Justice Thomas A. Cromwell as the government's nominee to fill a vacancy on the Supreme Court of Canada. For more information on the announcement, visit the government's site at <http://www.pm.gc.ca/eng/media.asp?category=1&id=2265>

New printable format member directory now available

Members now have access to a complete directory of all Practising Members and Articled Clerks in a printable format. The printable directory will be updated quarterly, in November, February, May and August. Use and distribution of this directory is for professional purposes only and members are reminded that the on-line directory has the most up-to-date information on our members. The disclaimer on the printable directory is reproduced below.

NOTE: This directory is provided as a service exclusively to our membership who may wish to contact individual lawyers on a professional basis. The information is not to be used for any commercial, marketing or fundraising purposes. This document may be distributed to support staff associated with our membership for the purposes outlined above. Any other reproduction or redistribution of this document, in whole or in part, without the consent of the NSBS is prohibited.

The information contained in this document is current as of the date of creation. For the most up to date information on our membership, please consult our online directory at www.nsbs.org.

Members can access the directory by logging into the “Member Area Login,” selecting “Communities” from the top bar, and then by selecting the “Printable Directory.” You will need the username and password that you used to complete your Annual Members Report.

Land Registration Notice – Cape Breton County

It has come to our attention that a Certificate of Discharge of a Tax Sale was expired in error. The document in question was document number 83187139, the Grantors: Gladys Nash and Cape Breton Regional Municipality, Grantees: Virginia Clarke and Ellen Gillis. The error occurred on Oct 5, 2005; discovered error on August 12, 2008 and correction made August 13, 2008. Any questions concerning this omission should be directed to the Cape Breton County Land Registration Office.

Additional Resources – Real Estate Standard 3.11

Please note that additional resources have been added to Real Estate Standard 3.11, located in the Practice Standards section of the LIANS site at www.lians.ca/Standards/stand311.html.

Bookmark Professional Responsibility [BEST PRACTICES](#) — an online ethics resource for Nova Scotia lawyers.

[Recent Decisions from Professional Responsibility](#)

[Career postings on the NSBS website](#)

:: CONFERENCES & SEMINARS ::

NSBS CONTINUING PROFESSIONAL DEVELOPMENT UPCOMING COURSES:

[Click here to visit the CPD page at NSBS.org](#)

Upcoming Lunch & Laws

New Lunch & Law!

December 3 – Commercial Bankruptcy & Insolvency

presented by: Registrar Richard Cregan, QC and Peter Wedlake, Trustee in Bankruptcy

Register at: http://www.nsbs.org/development.php?events_id=34

Teleconference available

Civil Procedure Rules Training Program: changes to schedule

Tier II Civil Procedure Rules Training Schedule

December 8, 9 (Sydney)

December 16 (Sydney)

Additional Tier II CPR Training dates will be added throughout the province and will be posted on our website.

For further information on training dates and locations: www.nsbs.org/development.php?events_id=30

Registration: <http://members.nsbs.org>

Lunchtime Seminar Series Tickets

\$40 each or 10 for \$300

Location: Continuing Professional Development Centre, 4th Floor, Centennial Building, Suite 408, Halifax, NS

CPD is now offering a booklet of ten seminar tickets for \$300, a discount of \$10 per session! Booklets may be purchased by individuals or firms and are transferable. Tickets may be redeemed for any single seminar offered by CPD that is less than 1.5 hours in length.

OUTSIDE CONFERENCES & SEMINARS

Trust in Education - Canadian Centre for Ethics in Public Affairs (CCEPA)

PART 1: Is our Education System Doing what it's supposed to? Does it Educate Students To Do, To be and To Know?

Speaker: Paul Cappon, President & CEO

Canadian Council on Learning (CCL)

Thursday, December 11, 7:00 pm
Scotiabank Theatre, Saint Mary's University

Free Admission
Info: 428.4731 • www.ccepa.ca

APTLA Online Legal Education

The Atlantic Provinces Trial Lawyers Association invites you to enhance your practice through online legal education! Eliminate travel expenses and hear from top trial lawyers from the convenience of your office, home, or hotel room using a desktop computer or laptop. **SeminarWeb Live!** provides real time delivery of papers, presentations, podcasts and video presentations. Participants can ask questions, participate in surveys, and post comments from your computer during the program.

Upcoming programs include:

- Neuropsychological Diagnosis in Mild Traumatic Brain Injury
- Damages in Small Personal Injury Cases
- Preparing Your Client for Deposition in an Employment Discrimination Case
- Why Do Jurors Blame the Victim?
- How to Use Jury Instructions Pre-Trial & to Establish Themes
- The Plaintiff's Technology Toolbox

There is also a broad selection of self-paced online programs, canvassing all areas of a litigation practice.

To learn more about upcoming programs or the list of available self-paced seminars, visit APTLA's SeminarWeb Live! page at www.seminarweblive.com/ap or call support at 800 443 1757. More information about these and APTLA's other legal education events can be found at www.apvla.ca.

Seminar Series, Health Law Institute, Dalhousie University

The Health Law Institute invites you to attend their incredibly popular lunch time series of seminars on topics related to health law and policy. Speakers come from near and far to share with the audience their research and reflections on the latest issues. In turn, the audience consisting of various interested parties, including representatives from law firms, hospitals, government, universities and the general public, enjoys the opportunity to engage in informal discussions with invited scholars and practitioners.

Room 104, Weldon Law Building, 6061 University Ave., Halifax NS
12:10 - 1:30 PM ([Series dates and information available online](#))
Light lunch served at noon in the Faculty Lounge (Rm. 312)
No registration required, no fee.

Call 902-494-6881 or [visit them online](#) for series information.

: : NEW FROM LIBRARY & INFORMATION SERVICES: :

Laudable Legal Links

Library & Information Services assess and select publicly-available, law-related web sites for inclusion in our [Legal Links](#) database. Search or browse this collection of vetted web resources by clicking on [Legal Links](#) on the [Library Search](#) page of the Society's website.

Recently added or updated websites:

Le Courrier de la Nouvelle-Écosse

<http://journaux.apf.ca/lecourrier>

Nova Scotia's French language newspaper, published each Friday, and hosted on the web by the Association de la Presse Francophone.

Décisions des tribunaux et organismes du Québec

<http://www.jugements.qc.ca>

This French language site has full text decisions (case law) from all levels of Québec judicial courts and numerous administrative tribunals. Decisions are available through full-text search or as monthly lists. Click on English Translation to access unofficial English translations of selected judgments from the Québec Court of Appeal, Superior Court, Court of Québec, and Human Rights and Professional Responsibility Tribunals.

Droit Francophone

<http://droit.francophonie.org/df-web>

On this French language site, L'Organisation Internationale de la Francophonie in collaboration with LexUM provides access to selected legislation, case law, and legal texts of French-speaking states. The site also provides a gateway of links to resource collections of l'OIF member states. Search content and links, limiting by jurisdiction, or browse by date and jurisdiction.

Slots available – online NS Annotated Civil Procedure Rules Desktop training (NEW!)

We still have some slots available for **45-minute training sessions** with law librarian Suzan Hebditch focusing on the **online Nova Scotia Annotated Civil Procedure Rules** on the following dates:

Halifax	November 25, 2008	Dartmouth	November 24, 2008
	December 3, 2008		December 11, 2008
	December 9, 2008	Bedford/Sackville	December 8, 2008

To book a session, contact L&IS by telephoning toll-free 1-866-219-1202 or 902-425-BOOK (2665), or by sending an e-mail to nsbslib@nsbs.org.

This Library & Information Services (L&IS) professional development offering, **Desktop: Enhancing Access to Free Online Resources**, provides one-on-one training in members' offices throughout the province. The goal of the project is to train lawyers to use free, online legal resources, such as the Nova Scotia Barristers' Society website and L&IS

databases, CanLII, and the online Nova Scotia Annotated Civil Procedure Rules (NEW!). This training initiative is funded through a grant provided by the Law Foundation of Nova Scotia.

New Books at the Library

ANIMALS

WILDLIFE LAW : A GLOBAL PERSPECTIVE / Panjwani, Raj -- Chicago: ABA, 2008. **[KB 184 .A6 P187 2008]**

BUSINESS LAW

SALE OF A BUSINESS / Babe, Jennifer E -- 7th ed. -- Markham, Ont. LexisNexis Butterworths, 2008. **[KB 117 B113 2008]**

CORPORATION LAW

THE IMPROVED COMPANIES ACT : A JOINT NSBS/CBA(NS) PROGRAM / Nova Scotia Barristers' Society. Continuing Professional Development; Canadian Bar Association. Nova Scotia Branch -- Halifax, N.S. The Society, 2008. **[KB 109 N935I 2008]**

CRIMINAL LAW

2007 NATIONAL CRIMINAL LAW PROGRAM SUBSTANTIVE CRIMINAL LAW, ADVOCACY AND THE ADMINISTRATION OF JUSTICE / Federation of Law Societies of Canada -- Victoria, B.C. The Federation, 2007. **[KB 92 C212N 2007]**

THE PRACTITIONER'S CRIMINAL PRECEDENTS / Gold, Alan D -- 2d ed. -- Markham, Ont. LexisNexis Butterworths, 2008. **[KB 91 G618P 2008]**

CRIMINAL PROCEDURE

CRIMINAL TRIAL RULES IN PROVINCIAL COURTS IN CANADA : FULLY ANNOTATED / Libman, Rick -- 2007-2008 ed. -- Salt Spring Island, B.C. EarlsCourt Legal Press, 2006. **[KB 92 L694 2006]**

DIVORCE

THE 2009 ANNOTATED DIVORCE ACT THE DIVORCE ACT 2009 ANNOTATED / MacDonald, James C; Wilton, Ann -- Toronto: Thomson Carswell, 2009. **[KB 138 M135 2009]**

EDUCATION LAW

AN EDUCATOR'S GUIDE TO THE ROLE OF THE PRINCIPAL / Roher, Eric M; Wormwell, Simon A -- 2d ed. -- Aurora, Ont. Canada Law Book, 2008. **[KB 72 R737 2008]**

ETHICS

2008 NATIONAL CRIMINAL LAW CONFERENCE CRIMINAL PROCEDURE, ADVOCACY AND CHARTER ISSUES / Federation of Law Societies of Canada -- Victoria, B.C. The Federation, 2008. **[KB 92 C212N 2008]**

EVIDENCE

DNA HANDBOOK / Hageman, Cecilia; Prevett, Derrill; Murray, Wayne -- 2d ed. -- Markham, Ont. LexisNexis Butterworths, 2008. **[KB 192 H142 2008]**

IMMIGRATION LAW

CANADIAN IMMIGRATION AND REFUGEE LAW PRACTICE : 2009 / Waldman, Lorne -- 2009 ed. -- Markham, Ont. LexisNexis Butterworths, 2008. **[KB 24 .E57 W164C 2008]**

JURIES

FURTHER DEVELOPMENT OF YOUR TRIAL SKILLS / Continuing Legal Education Society of Nova Scotia; Dalhousie Law School -- Halifax, N.S. CLESNS, 1983. **[KB 269 C760 1983]**

LEGAL ETHICS

LAWYERS' ETHICS AND PROFESSIONAL REGULATION / Woolley, Alice; Devlin, Richard; Cotter, Brent; Law, John M -- Markham, Ont. LexisNexis Butterworths, 2008. **[KB 265 W913 2008]**

LIABILITY

LIBMAN ON REGULATORY OFFENCES IN CANADA / Libman, Rick – Salt Spring Island, B.C. EarlsCourt Legal Press, 2002. **[KB 92.D3 L694 2002]**

UNEMPLOYMENT INSURANCE

THE 2008 ANNOTATED EMPLOYMENT INSURANCE STATUTES THE EMPLOYMENT INSURANCE STATUTES 2008 ANNOTATED / Lavender T. Stephen -- Toronto: Thomson Carswell, 2008. **[KB 78.U6 R913 2008]**

Toll-Free Telephone Number

A toll-free telephone number is available for members to use when calling Library & Information Services at the Nova Scotia Barristers' Society. The toll-free telephone number is **1-866-219-1202**. For all reference and research requests, members have the option of contacting Library & Information Services by telephone at 1-866-219-1202 or 902-425-BOOK (2665), by fax at 902-422-1697, or by e-mail at nsbslib@nsbs.org.



:: NEW DECISIONS ::

Library & Information Services - Keeping you informed

NEW DECISIONS for the week ending November 21, 2008

ADMINISTRATIVE LAW - Boards and tribunals - appeal of interlocutory order dismissed as being premature
Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission) et al., C.A. No. 290521, Hamilton, J.A.,
November 19, 2008. 2008 NSCA 108; **S580/28**

Halifax (Regional Municipality) v. Nova Scotia (Human Rights Commission) et al.

[Link to printable version of decision](#)

ADMINISTRATIVE LAW - Pension fund - validity of contribution holidays, appeal of decision and of costs
Smith v. Michelin North America (Canada) Inc., C.A. No. 290297, Fichaud, J.A., November 20, 2008. 2008 NSCA 107; **S580/29**
Smith v. Michelin North America (Canada) Inc.

[Link to printable version of decision](#)

ARBITRATION (LABOUR) - Judicial review - standard of review, interpretation of collective agreement not reasonable
Maritime Paper Products Ltd. v. Communications, Energy, and Paperworkers' Union, Local 1520, S.H. No. 296832, Warner, J., November 10, 2008. 2008 NSSC 329; **S582/27**

Maritime Paper Products Ltd. v. Communications, Energy, and Paperworkers' Union, Local 1520

[Link to printable version of decision](#)

CRIMINAL LAW - Appeals - application for judicial interim release allowed
R. v. Hobbs, C.A.C. No. 302995, Saunders, J.A., November 14, 2008. 2008 NSCA 106; **S580/27**

R. v. Hobbs

[Link to printable version of decision](#)

CRIMINAL LAW - Appeals - on grounds of procedural fairness and verdict reasonableness, dismissal
R. v. C. (D.), C.A.C. No. 292422, MacDonald, M. C.J., November 14, 2008. 2008 NSCA 105; **S580/26**

R. v. C. (D.)

[Link to printable version of decision](#)

CRIMINAL LAW - Procedure - right to cross-examine witness regarding offences under young offender legislation
R. v. Upton, C.R.H. No. 287738, Beveridge, J., November 17, 2008 ; September 10, 2008 (orally). 2008 NSSC 338; **S582/31**

R. v. Upton

[Link to printable version of decision](#)

CRIMINAL LAW - Sentencing - firearms offences, joint recommendation accepted
R. v. Muise, C.R.H. No. 302299, Beveridge, J., November 18, 2008 ; November 10, 2008 (orally). 2008 NSSC 340; **S583/2**

R. v. Muise

[Link to printable version of decision](#)

CRIMINAL LAW - Sentencing - sexual and indecent assault, joint recommendation accepted
R. v. B. (R.), Cr. At. No. 289563, MacLellan, J., November 19, 2008 ; October 16, 2008 (orally). 2008 NSSC 335; **S582/30**

R. v. B. (R.)

[Link to printable version of decision](#)

CRIMINAL LAW - Young offenders - refusal of DNA order
R. v. G. (M.), No. 1680788, Williams, J.P.C., September 16, 2008. 2008 NSPC 54; **M18**

R. v. G. (M.)

[Link to printable version of decision](#)

DAMAGE AWARDS - Personal injuries - cervical and lumbar spine, pre-existing condition *Dibattista v. Deslaurier et al.*, S.H. No. 164552, McDougall, J., November 20, 2008. 2008 NSSC 344; **S583/6**

Dibattista v. Deslaurier et al.

[Link to printable version of decision](#)

FAMILY LAW - Custody - grandparents awarded custody with supervised access to mother *B. (L.) v. B. (V.L.) et al.*, No. 54530, Forgeron, J., November 18, 2008. 2008 NSSC 331; **S582/29**

B. (L.) v. B. (V.L.) et al.

Note: This decision is not available on-line. Please contact the Nova Scotia Barristers' Society Library to obtain a copy of this decision. Please ask for decision no. S582/29.

FAMILY LAW - Separation agreement - validity *Dimick v. Dimick*, S.B.W.D. No. 032113 ; No. 1203-001880, MacAdam, J., November 14, 2008. 2008 NSSC 333; **S583/4**

Dimick v. Dimick

[Link to printable version of decision](#)

MAINTENANCE - Child support - application to vary ongoing support and for retroactive support, imputing income *MacGillivray v. Ross*, No. 52187, Forgeron, J., November 18, 2008 ; November 14, 2008 (orally). 2008 NSSC 339; **S583/1**

MacGillivray v. Ross

[Link to printable version of decision](#)

MAINTENANCE - Variation, application to very denied, insufficient change in circumstances, garnishment ordered *H. (A.) v. D. (B.)*, F.B.W.M.C.A. No. 034398, Dyer, J.F.C., November 3, 2008. 2008 NSFC 36; **FC36**

H. (A.) v. D. (B.)

[Link to printable version of decision](#)

PRACTICE - Costs - expert's fees and disbursements *Maritime Travel Inc. v. Go Travel Direct.com Inc. [Addendum]*, S.H. No. 192257, Hood, J., November 6, 2008. 2008 NSSC 328; **S582/26**

Maritime Travel Inc. v. Go Travel Direct.com Inc. [Addendum]

[Link to printable version of decision](#)

PRACTICE - Discovery - solicitor-client privilege *Cornwallis Financial Corp. v. Nova Scotia (Attorney General) et al.*, S.H. No. 274325, McDougall, J., November 19, 2008. 2008 NSSC 341; **S583/5**

Cornwallis Financial Corp. v. Nova Scotia (Attorney General) et al.

[Link to printable version of decision](#)

PRACTICE - Joinder of parties - interpretation of s. 10 of Fatal Injuries Act *Gillott Estate v. Faulkner Estate*, No. 299271, Haliburton, J., November 13, 2008 ; October 28, 2008 (orally). 2008 NSSC 332; **S582/28**

Gillott Estate v. Faulkner Estate

[Link to printable version of decision](#)

REAL PROPERTY - Quieting title - interlocutory order for certificate of title and request for summary judgment denied *Brill v. Nova Scotia (Attorney General)*, S.H. No. 286642, Coady, J., November 7, 2008. 2008 NSSC 330; **S583/3**

Brill v. Nova Scotia (Attorney General)

[Link to printable version of decision](#)

SUPREME COURT of CANADA — recent decisions

Library & Information Services - Keeping you informed

Recent Decisions from the Supreme Court of Canada

<http://scc.lexum.umontreal.ca/en/index.html>

The following decisions were released from the Supreme Court of Canada since the last *InForum*. The subject headings and summaries have been prepared by the Supreme Court of Canada.

November 21, 2008

Canadian National Railway Co. v. Royal and Sun Alliance Insurance Co. of Canada

<http://csc.lexum.umontreal.ca/en/2008/2008scc66/2008scc66.html>

Neutral citation: 2008 SCC 66

File No.: 32062.

2008: May 14; 2008: November 21.

Present: McLachlin C.J. and Binnie, LeBel, Deschamps, Abella, Charron and Rothstein JJ.

on appeal from the Court of Appeal for Ontario

Insurance — “All risks” insurance — Exclusion clauses — Scope of “faulty or improper design” exclusion — Test applicable to exclusion — Construction of largest customized tunnel boring machine — Railway company subscribing builders’ risk policy — Policy excluding from coverage costs of making good “faulty or improper design” — Differential deflection foreseen, but design accommodated expected degree of differential deflection — Tunnel boring machine failed due to excess differential deflection between components of machine — Whether “faulty or improper design” exclusion to coverage applicable — Whether excess differential deflection was foreseeable.

In the early 1990s, CNR established an elaborate and sophisticated process to design and construct the largest customized tunnel boring machine (“TBM”) of its kind in the world for use in the construction of a tunnel under a river. CNR had insured the project under a builders’ risk policy covering all risks of direct physical loss or damage to all real and personal property of every kind and quality including but not limited to the TBM, plus any consequent economic loss occasioned by delay in the opening of the tunnel. The cost of making good faulty or improper design was excluded.

The design of a suitable TBM was a major challenge, partly because structural steel deflects (bends) under pressure. While differential deflection (adjacent components moving towards or away from each other) is acceptable within stated tolerances, excess differential deflection (deflection beyond acceptable tolerances) could lead to failure. This TBM had to withstand 6,000 metric tonnes of pressure from the soil and water above as it progressed under the river. In addition, the main bearing had to be protected from contaminants. To cope with the design challenge, an experienced tunnel equipment manufacturer was selected to design, engineer, and construct the TBM. A technical committee composed of expert tunneling contractors and consultants was formed to advise on the conceptual design parameters, and the technical committee’s work was guided by a steering committee which provided general guidance. A technical review committee also monitored, reviewed and advised CNR on the project as a whole.

As designed, the TBM was 32 feet (9.5 metres) in diameter and its body was 278 feet (83 metres) long. The cuttinghead rotates on roller bearings while the main bearing generates a hydraulic thrust which drives the cutting tool through the earth. To shield the main bearing from damage, a system of 26 independent seals lubricated by the constant injection of pressurized grease was designed to prevent excavated material from getting into the main bearing and to stop the grease from leaking out. To get to the main bearing, contaminants had to get through all 26 seals. The design tolerances for the seals were precise and demanding, requiring a gap of six millimetres, plus or minus three millimetres, between the rotating cuttinghead and the stationary bulkhead. The best engineering advice indicated that there would be no excess differential deflection and that the configuration of the seals to provide a margin of safety approaching redundancy.

After completion of 14 percent of the tunnel, contamination was detected. Inspection revealed that some seals had been worn and destroyed due to excess differential deflection of the cuttinghead. Operations were halted, the main bearing was cleaned, and modifications were made. The project was then completed without further entry of dirt, but the 229-day delay greatly increased costs. The experts were unable to explain how dirt penetrated the 26 seals while leaving some seals intact.

The insurers denied coverage on the basis of the "faulty or improper design" exclusion. The trial judge held the insurers liable. He found that, despite its failure, the innovative design accommodated all foreseeable risks however unlikely or remote and was not faulty or improper according to the state of the art at the time the design was finalized. The majority of the Court of Appeal set aside that decision, finding that the TBM's design had been faulty within the meaning of the exclusion provision since the foreseeability standard also mandated that the relevant design succeed in withstanding all foreseeable risks.

Held (Deschamps, Charron and Rothstein JJ. dissenting): The appeal should be allowed.

November 20, 2008

St. Lawrence Cement Inc. v. Barrette

<http://csc.lexum.umontreal.ca/en/2008/2008scc64/2008scc64.html>

Neutral citation: 2008 SCC 64

File No.: 31782.

2008: March 27; 2008: November 20.

Present: McLachlin C.J. and Bastarache, LeBel, Deschamps, Fish, Abella and Charron JJ.

on appeal from the Court of Appeal for Quebec

Property _ Neighbourhood disturbances _ No-fault liability _ Operation of cement plant _ Whether in Quebec civil law there scheme of no-fault civil liability in respect of neighbourhood disturbances under art. 976 C.C.Q. that applies where annoyances suffered are excessive _ Whether special statute governing plant's activities confers immunity on plant for neighbourhood disturbances.

Prescription _ Interruption _ Judicial demand _ Neighbourhood disturbances resulting from operation of cement plant causing damage that spread out over time _ Whether lawsuit interrupted prescription for damage suffered after lawsuit filed _ Whether that damage arose from "same source" _ Civil Code of Québec, S.Q. 1991, c. 64, art. 2896.

Damages _ Assessment _ Use of average amounts _ Class action _ Neighbourhood disturbances resulting from operation of cement plant _ Members of group divided into four residential zones to ensure that there some basic injury common to residents of each zone _ Recovery subject to individual claims procedure, but amount to be awarded to each member assessed using average determined for each zone _ Whether it appropriate to use average amounts in assessing damages of members of group covered by class action.

A special statute passed by the Quebec legislature in 1952 authorized SLC to build a cement plant in a municipality. After the plant began operating in 1955, neighbourhood problems arose between SLC and neighbours who were displeased with the consequences of the plant's activities. The Ministère de l'Environnement stepped in several times in response to citizens' complaints about problems with dust, odours and noise, and the plant itself produced several environmental incident reports. Alleging various faults in the operation of SLC's plant and also contending that the neighbourhood disturbances caused by the plant were abnormal or excessive, B and C filed a motion for authorization to institute a class action on behalf of the other residents living in areas near the plant. The motion was granted, and the action was filed on August 1, 1994. SLC stopped operating the plant in 1997.

The trial court allowed the class action on the basis that a scheme of no-fault liability in respect of neighbourhood disturbances exists under art. 976 of the *Civil Code of Québec* ("C.C.Q."). Because, in its view, the evidence showed that

there was a common injury, but that it varied in intensity from one zone to another and from year to year, the court awarded damages that varied from zone to zone. It also held that group members would have to file individual claims for the damages being awarded, since it was difficult to determine the exact number of members in each zone. The Court of Appeal allowed SLC's appeal in part with regard to certain aspects of the assessment of damages, but found the company civilly liable on the basis of proven fault under the general rules of civil liability in light of its failure to comply with certain applicable regulatory provisions. The court rejected the theory of no-fault liability in respect of neighbourhood disturbances.

SLC appealed with regard to the Court of Appeal's conclusion that it was liable on the basis of fault, and to the method adopted for determining the quantum of damages, to prescription and to the immunity to which it claims to be entitled under the special statute applicable to its plant. B and C cross-appealed, seeking recognition of a no-fault liability scheme applicable to neighbourhood annoyances that are excessive, and seeking to restore the trial court's conclusions on the quantum of damages.

Held: The principal appeal should be dismissed and the cross-appeal allowed.

November 14, 2008

R. v. Mahalingan

<http://csc.lexum.umontreal.ca/en/2008/2008scc63/2008scc63.html>

Neutral citation: 2008 SCC 63

File No.: 31499

2007: December 7; 2008: November 14.

Present: McLachlin C.J. and Bastarache, Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

on appeal from the Court of Appeal for Ontario

Criminal law — Charge to jury — Defence theory — Accused convicted of aggravated assault — Whether new trial should be ordered because trial judge's instructions to jury on theory of defence inadequate.

Criminal law — Issue estoppel — Application — Whether doctrine of issue estoppel should be retained in criminal law.

The accused was acquitted on the charge of attempted murder arising out of a vicious gang attack, but convicted of the included offence of aggravated assault. The eyewitness who identified the accused as the first attacker also testified that, shortly before the trial commenced, the accused had telephoned him from jail asking that he not testify against him. The accused was subsequently charged with attempting to obstruct justice in relation to the alleged phonecall. His trial on that charge occurred following the conclusion of the trial for attempted murder. The Crown adduced evidence of the telephone call mirroring that put forward at the attempted murder trial. The accused was acquitted. He appealed his aggravated assault conviction, arguing that the trial judge's instructions to the jury on the theory of the defence were inadequate. The accused also argued that his acquittal for obstructing justice should be accepted as fresh evidence in his appeal of the aggravated assault conviction. Based on the doctrine of issue estoppel, he submitted that the acquittal had the retrospective effect of rendering the testimony about the phone call inadmissible at his trial for attempted murder. He further argued that, if the trial record were examined as if the phone call evidence had never been presented in the attempted murder trial, it could not be said that the jury's verdict would necessarily have been the same. The Court of Appeal unanimously allowed the accused's appeal against conviction and ordered a new trial on the ground that the trial judge had failed to outline the position of the defence in his instructions to the jury. The court was divided, however, on the fresh evidence application. A majority of the court granted the application and ordered a new trial on this basis as well. The dissenting judge found that the subsequent acquittal on the charge of obstructing justice did not retrospectively render inadmissible the evidence of the accused's telephone call to the eyewitness and would have dismissed the application.

Held: The appeal should be dismissed.

November 14, 2008

R. v. Solowan

<http://csc.lexum.umontreal.ca/en/2008/2008scc62/2008scc62.html>

Neutral citation: 2008 SCC 62

File No.: 32237.

Hearing and judgment: October 8, 2008.

Reasons delivered: November 14, 2008.

Present: Binnie, LeBel, Deschamps, Fish, Abella, Charron and Rothstein JJ.

on appeal from the Court of Appeal for British Columbia

Criminal law — Sentencing — Summary convictions — Crown electing to prosecute hybrid offences by way of summary conviction — Trial judge imposing maximum sentence — Whether trial judge erred in imposing maximum custodial sentences without first finding that accused was “worst offender who had committed worst offence” — Whether the “worst offender committing the worst offence” principle limits imposition of a maximum sentence where it is otherwise appropriate in light of sentencing principles — Whether sentences imposed proportionate to offences — Whether Court of Appeal disregarded Crown’s election to proceed by way of summary conviction — Criminal Code, R.S.C. 1985, c. C-46, Part XXIII, ss. 718.1, 787(1).

The accused pleaded guilty to three offences, including two hybrid offences upon which the Crown had elected to proceed summarily. He was sentenced to a total of 15 months’ imprisonment. On appeal, the accused argued that the trial judge had erred in imposing the maximum custodial sentence of six months for each offence without first finding that “he was the worst offender who had committed the worst offence”. In rejecting this submission, the Court of Appeal stated that “the maximum sentence was not imposed here. It is available only where the Crown elects to proceed by indictment.” The Court of Appeal nonetheless found the global sentence to be excessive and reduced it from 15 to 12 months. The accused now appeals on the ground that the Court of Appeal disregarded the Crown’s election to proceed by way of summary conviction.

Held: The appeal should be dismissed.

:: NEW BILLS ::

Library & Information Services – Keeping you informed

Nova Scotia Bills

http://www.gov.ns.ca/legislature/HOUSE_BUSINESS/status.html

The House resumed sitting on October 30, 2008.

The following bills were INTRODUCED since the last *InForum*:

Government Bills

Bill No. 217 An Act to Amend Chapter 11 of the Acts of 1992, the Utility and Review Board Act
Hon. Michael G. Baker, Q.C., Minister responsible for the Utility and Review Board Act
First Reading: November 12, 2008
Second Reading: November 17, 2008

Bill No. 220 An Act to Amend Chapter 240 of the Revised Statutes, 1989, the Judicature Act
Hon. Cecil P. Clarke, Minister of Justice
First Reading: November 14, 2008
Second Reading: November 18, 2008

Bill No. 236 An Act to Amend Chapter 240 of the Revised Statutes, 1989, the Judicature Act
Hon. Cecil P. Clarke, Minister of Justice
First Reading: November 21, 2008

Private Bills

Bill No. 218 An Act to Amend Chapter 27 of the Acts of 2000, the Employment Support and Income Assistance Act
Manning MacDonald (Cape Breton South)
First Reading: November 12, 2008

Bill No. 219 An Act to Provide Accountability in the Reporting of Wait Times in Nova Scotia
H. David Wilson (Glace Bay)
First Reading: November 13, 2008

Bill No. 221 An Act to Amend the Household Energy Rebate Program to Provide a Rebate of Tax in Respect of All Residential Use of Electricity
Hon. Darrell Dexter (Cole Harbour)
First Reading: November 14, 2008

Bill No. 222 An Act to Provide for Transparency in Drug Therapy Approvals
H. David Wilson (Glace Bay)
First Reading: November 14, 2008

Bill No. 223 An Act to Amend Chapter 10 of the Acts of 1994-95, the Workers' Compensation Act
Harold Theriault, Jr (Digby-Annapolis)
First Reading: November 17, 2008

Bill No. 224 An Act to Prevent Emergency Room Closures in Nova Scotia
H. David Wilson (Glace Bay)

First Reading: November 18, 2008

Bill No. 225 An Act to Declare Ice Hockey to be the Provincial Sport of Nova Scotia

Chuck Porter (Hants West)

First Reading: November 19, 2008

Second Reading: November 20, 2008

Bill No. 226 An Act Respecting the Enhancement of School Libraries

Leo Glavine (Kings West)

First Reading: November 19, 2008

Bill No. 227 An Act to Declare the Sable Island Horse to be the Provincial Horse of Nova Scotia

Leonard Preyra (Halifax Citadel)

First Reading: November 19, 2008

Second Reading: November 20, 2008

Bill No. 228 An Act Respecting Adult Literacy

Leo Glavine (Kings West)

First Reading: November 19, 2008

Bill No. 229 An Act to Amend Chapter 1 of the Acts of 1995-96, the Education Act, Respecting Busing

Percy Paris (Waverley-Fall River-Beaver Bank)

First Reading: November 19, 2008

Bill No. 230 An Act to Amend Chapter 23 of the Revised Statutes, 1989, the Assessment Act

Diana Whalen (Halifax Clayton Park)

First Reading: November 20, 2008

Bill No. 231 An Act to Amend Chapter 30 of the Revised Statutes, 1989, the Homes for Special Care Act

Hon. Darrell Dexter (Cole Harbour)

First Reading: November 21, 2008

Bill No. 232 An Act to Amend Chapter 197 of the Revised Statutes, 1989, the Health Services and Insurance Act

Michel Samson (Richmond)

First Reading: November 21, 2008

Bill No. 233 An Act Respecting the Effect of an Apology and to Prohibit its Use as Evidence of Fault or Liability

Michel Samson (Richmond)

First Reading: November 21, 2008

Bill No. 234 An Act to Provide for a Privacy Review Officer

Michel Samson (Richmond)

First Reading: November 21, 2008

Bill No. 235 An Act Respecting to Provide for Fair Gasoline Prices in Nova Scotia

Hon. Stephen McNeil (Annapolis)

First Reading: November 21, 2008

The following bills received SECOND READING: since the last *InForum*:

Bill No. 187 An Act to Make Mandatory the Reporting of Child Pornography

Hon. Cecil P. Clarke, Minister of Justice

First Reading: October 30, 2008

Second Reading: November 13, 2008

Bill No. 189 An Act Respecting a Memorial Day to Honour Miners

Hon. Murray K. Scott (Cumberland South)

First Reading: October 30, 2008

Second Reading: November 18, 2008

Bill No. 190 An Act to Amend Chapter 98 of the Revised Statutes, 1989, the Co-operative Associations Act

Hon. Jamie Muir, Minister of Service Nova Scotia and Municipal Relations

First Reading: October 30, 2008

Second Reading: November 7, 2008

Bill No. 196 An Act to Amend Chapter 36 of the Revised Statutes, 1989, the Beneficiaries Designation Act

Hon. Cecil P. Clarke, Minister of Justice

First Reading: October 31, 2008

Second Reading: November 13, 2008

Bill No. 199 An Act to Amend Chapter 40 of the Acts of 2005, the Enforcement of Court Orders Act

Hon. Cecil P. Clarke, Minister of Justice

First Reading: October 31, 2008

Second Reading: November 18, 2008

Bill No. 200 An Act to Amend Chapter 214 of the Revised Statutes, 1989, the Human Rights Act

Hon. Cecil P. Clarke, Minister of Justice

First Reading: October 31, 2008

Second Reading: November 14, 2008

Bill No. 201 An Act Respecting the Practice of Counselling Therapists

Hon. Chris A. d'Entremont, Minister of Health

First Reading: November 3, 2008

Second Reading: November 13, 2008

Bill No. 203 An Act to Amend Chapter 208 of the Revised Statutes, 1989, the Hospitals Act

Hon. Chris A. d'Entremont, Minister of Health

First Reading: November 3, 2008

Second Reading: November 14, 2008

Bill No. 204 An Act to Enable the Transfer of Lands Necessary for the Expansion of the Queen Elizabeth II Health Sciences Centre

Hon. Chris A. d'Entremont, Minister of Health

First Reading: November 3, 2008

Second Reading: November 14, 2008

Bill No. 207 An Act to Celebrate the 100th Anniversary of the First Powered Flight in the British Empire by the Silver Dart in Nova Scotia

Keith Bain (Victoria-The Lakes)

First Reading: November 5, 2008

Second Reading: November 18, 2008

Bill No. 208 An Act to Establish a Tax Exemption for Conservation Property

Hon. Jamie Muir, Minister of Service Nova Scotia and Municipal Relations

First Reading: November 5, 2008

Second Reading: November 7, 2008

Bill No. 210 An Act to Amend Chapter 1 of the Acts of 1995-96, the Education Act
Hon. Karen Casey, Minister of Education
First Reading: November 6, 2008
Second Reading: November 14, 2008

Bill No. 211 An Act to Ensure Fair Registration Practices by Regulating Bodies
Hon. Mark Parent, Minister of Labour and Workforce Development
First Reading: November 6, 2008
Second Reading: November 17, 2008

Bill No. 212 An Act to Protect the Deposits of Purchasers of Newly Built Residential Units
Hon. Jamie Muir, Minister of Service Nova Scotia and Municipal Relations
First Reading: November 7, 2008
Second Reading: November 18, 2008

Bill No. 213 An Act to Authorize the Municipality of the District of East Hants to Aid in the Funding of a Multi-purpose Sports Complex
John MacDonell (Hants East)
First Reading: November 7, 2008
Second Reading: November 18, 2008

Bill No. 215 An Act to Amend Chapter 1 of the Acts of 1995-96, the Education Act, Respecting the Governance of School Boards
Hon. Karen Casey, Minister of Education
First Reading: November 7, 2008
Second Reading: November 17, 2008

Bill No. 216 An Act to Amend Chapter 17 of the Acts of 2003, the Crosbie Memorial Trust Fund Act
Hon. Mark Parent (Kings North)
First Reading: November 7, 2008
Second Reading: November 18, 2008

View the status and full text of bills at
http://www.gov.ns.ca/legislature/HOUSE_BUSINESS/status.html