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:: NOTICES ::

SOCIETY NEWS

Registration now open: An Evening with the Bench – the 2010 Testimonial Dinner

Friday, January 8, 2010

Reception 6:30 pm | Dinner: 7:15 pm

[Invitation, menu and registration information](#)

**Nova Scotia Ballroom
Halifax Marriott Harbourfront Hotel
1919 Upper Water Street**

The Executive Committee of the Nova Scotia Barristers' Society cordially invites members of the Nova Scotia Bar and Judiciary and their guests to attend the 2010 Testimonial Dinner in honour of Nova Scotia's newly appointed judges and those judges who have retired in 2009.

NSBS Council By-election – Call for Nominations

With the recent elevation of two members of Council to the Nova Scotia Provincial and Family Courts, the Society is seeking nominations for two new vacancies on Council. One is for the area of **Pictou County**; the other is for **Southwestern District** (which includes Annapolis, Digby, Queens, Kings, Lunenburg, Shelburne and Yarmouth Counties, and the municipality of the District of West Hants).

To serve on Council, one must be a practising lawyer, practising in the specific area of the vacancy. In order to successfully nominate a candidate, five members from that district must sign a nomination form and return it to the Executive Director by **Friday, December 18, 2009**.

The by-elections themselves (if necessary) will be held between **December 21, 2009** and **January 15, 2010**. This will allow the new members to participate in the upcoming meeting of Council on January 22, 2010.

[By-election Nomination Form](#)

Society offices – holiday hours

The Nova Scotia Barristers' Society would like to wish everyone a healthy and happy holiday season. The Society Offices will be closed all day on:

- Thursday, December 24
- Friday, December 25
- Monday, December 28
- Friday, January 1, 2010

On Friday, December 18, the office will be open from 8:30 to 11:30 am, and will be closed during the afternoon.

The next edition of InForum will be published on Monday, December 21. There will be **no publication on Monday, January 4, 2010**. The regular bimonthly publishing schedule will resume on Monday, January 18, 2010.

Call for submissions – Race & the Law Essay Prize

The Race Relations Committee of the Nova Scotia Barristers' Society presents the second [Race & the Law Essay Prize](#), sponsored by Stewart McKelvey.

Applicants must be enrolled in the LL.B program at Dalhousie Law School, and their essays must discuss both race and the law. Essays will be judged on form, content and race literacy insight. The award for best essay includes a plaque and cash prize of \$500. The Selection Committee will make a decision in the springtime, and the successful applicant will be notified in May 2010.

Deadline: All submissions are **due by midnight on March 31, 2010**

Applicants must email a **PDF or MS Word** version of their essay to the NSBS Equity Officer (equity@nsbs.org)

NSBS membership search tool goes mobile

The membership search function on the Nova Scotia Barristers' Society website is now available in an online tool designed for the Blackberry and other smartphone mobile devices. Visit <http://mobile.nsbs.org/>

This site also includes links to the websites for Courts Nova Scotia and the Legal Information Society of Nova Scotia.

FROM THE COURTS

Swearing-in ceremony for Judge Jean M. Dewolfe

The Honourable Judge Jean M. Dewolfe will be sworn in to the Nova Scotia Provincial and Family Courts at a ceremony in Kentville on Friday, December 18 at 3:00 pm.

Judge Dewolfe, who will be sitting in Amherst, was a partner in the firm Muttart Tufts Dewolfe and Coyle since 1990. The primary focus of her practice was family law, and she was a practising member for 23 years.

The public and the media are invited to the ceremony, which will be broadcast live on the Courts Nova Scotia website at www.courts.ns.ca. If you are planning to attend in person, please RSVP Donna Angel at (902) 424-3690 or angelde@gov.ns.ca by Friday, December 11.

Law Clerk required for Supreme Court of Nova Scotia

Applications are now being accepted for the position of Law Clerk to the Judges of the Supreme Court of Nova Scotia. The deadline is January 31, 2010. For details about this job posting, please visit the Career Opportunities page on the Society's website: <http://www.nsbs.org/careers.php>

FROM THE PROVINCE

Error & Omission Notices - Pictou and Yarmouth County Land Registration Offices

To view the following notices in full, please refer to the Errors & Omissions page on the [Property OnLine](#) (POL) website.

The Pictou County Land Registration Office has provided a new Error & Omission Notice regarding an incorrectly indexed document in the Grantor Grantee Index. Entries were corrected on November 24, 2009. Any questions should be directed to the Pictou County Land Registration Office at 902-485-7063.

The Yarmouth County Land Registration has provided a new Error & Omission Notice regarding an incorrectly indexed document. The error was corrected on Dec. 2, 2009. Any questions, please contact the Yarmouth Land Registration Office at 902-742-3125.

NSBI Appoints Janice Stairs to Board of Directors

An accomplished Nova Scotia lawyer of more than 20 years has joined the board of directors at Nova Scotia Business Inc., the province's business development agency. On November 26, Economic Development Minister Percy Paris and

Doug Hall, chair of NSBI's board, announced the appointment of Janice Stairs, vice-president and general counsel, Etruscan Resources Inc.

Ms. Stairs brings a range of experience in corporate finance and securities law to the role. A former partner, she acts as counsel to the Halifax office of McInnes Cooper and has been a member of the Nova Scotia Barristers' Society since 1985. She sits on the Bar Admissions Screening Committee and has served on the Admissions Committee of Dalhousie Medical School.

Business men and women from communities across Nova Scotia, representing various industry sectors, make up NSBI's private-sector-led board of 13 directors. For further details, see the government [news release](#).

VOLUNTEER & PRO BONO OPPORTUNITIES

Volunteer legal assistance required by The Salvation Army ARIS Project

Invitation to the Legal Community – Atlantic Refugee & Immigrant Services (ARIS) is now operating as a project of the Salvation Army. ARIS provides legal representation and support services to immigrants, refugees and other uprooted people in Atlantic Canada. In particular, ARIS provides assistance with the completion of immigration forms, incorporating a strong focus on family reunification.

ARIS is looking to expand its volunteer legal team to work with clients who otherwise cannot afford representation. Please consider donating some time to this worthy cause. For further details, contact ARIS Coordinator Marie Kettle at 477-5393 or email: arissns@gmail.com.

OTHER NEWS & NOTICES

Ronald J. MacDonald QC new President-elect for Federation of Law Societies

The Federation of Law Societies of Canada is pleased to welcome its new Executive, which officially commenced its term of office on November 15, 2009. John Campion has taken the reins as President, with Stéphane Rivard becoming Past-President. Halifax's Ronald J. MacDonald QC, Criminal Law Policy Advisor with the Department of Justice (NS), becomes President-elect, having first joined the Federation Council in 2004. Ian Donaldson joins the Executive as Vice President.

With Ron's move up the ladder, the Nova Scotia Barristers' Society will be represented on FLSC Council by Catherine Walker QC, of Walker Law Inc. of Halifax.

[Letter from President John Campion](#)

Notice from HRM Community Development

As in previous years, HRM Community Development will be holding a general departmental meeting on Thursday afternoon, December 10. During that time, all three Community Development offices will be closed. The Customer Service Centres in the three offices will remain open and information may be left with our Customer Service Representatives to be forwarded to Community Development the following business day.

We apologize for any inconvenience and thank you for your cooperation in this matter.

Government of Canada introduces legislation to help protect children from sexual predators online

The Honourable Rob Nicholson, PC, QC, MP for Niagara Falls, Minister of Justice and Attorney General of Canada, and the Honourable Christian Paradis, PC, MP for Mégantic-L'Érable and Minister of Public Works and Government Services, introduced new legislation recently to assist in the fight against sexual exploitation of children by requiring suppliers of Internet services to report Internet child pornography.

"The creation and distribution of child pornography are appalling crimes in which children are brutally victimized over and over again," said Minister Nicholson. "A mandatory reporting regime across Canada will strengthen our ability to protect our children from sexual predators and help police rescue these young victims, and prosecute the criminals responsible."

For details, visit the Justice Department's [news release online](#).

Notice from the Community Foundation of Nova Scotia

Are your clients running out of time to make their 2009 charitable contributions? Make it easy by working with the Community Foundation of Nova Scotia. Your clients can give now, receive a charitable tax receipt, then decide in the new year how they would like to put their charitable dollars to work. Donations made prior to December 31, 2009 will be receipted for the 2009 tax year.

Clients can choose to set up an endowed fund in their own name, or to establish one on behalf of a favourite cause or charity. Clients can also choose to flow their charitable dollars directly to one or more of the nearly four thousand registered charities doing good working in communities throughout Nova Scotia each and every day. Popular options include outright gifts, appreciated securities, bequests, life insurance and charitable remainder trusts.

For further details, visit the website at www.cfns.ca or contact:

Community Foundation of Nova Scotia
806-1888 Brunswick Street, Halifax, NS B3J 3J8
Tel. 1-877-999-5907 or 490-5907 (local)
Email: ak@cfns.ca

Allison Kouzovnikov | Executive Director
Community Foundation of Nova Scotia

Missing Wills

Assistance requested in locating two witnesses

Seeking information in regard to two witnesses who signed a will executed in the Kentville area. Witnesses' names are **Raleigh Eagles** and **Abbie Eagles**

Anyone knowing any contact information for these individuals, or who may be able to recognize their signatures or know anyone who may be able to recognize their signatures, please contact:

David R. Hirtle, Barrister and Solicitor
(902) 634-8713 | lawyer@eastlink.ca
PO Box 457, Lunenburg, Nova Scotia BOJ 2C0

Assistance requested in locating missing will in Bedford/Halifax area

Lawyers with any information regarding the last will and testament of Megan Joye Dauphinee are asked to please contact her mother or father Corinne and Don Dauphinee in Bedford as soon as possible. Megan's DOB was September 4, 1976 and she is survived by her son Andrew Michael Donald Dauphinee. If you can provide any details, please contact Corinne or Don at 576-5329 (h) or 221-3858 (c).

Assistance requested in locating missing will in Halifax / Eastern Shore area

Rotraud Vusten of Myers Point, Head Jeddore, NS, passed away Friday, January 16 in Munich, Germany, following heart surgery. She has no family here in Canada and her friends have been trying to determine who should be attending to her affairs. Her financial power of attorney (until her death) in Germany is also asking for a contact person in Nova Scotia. Her friends are very sure she would have had a will (as she was aware of the risk of the surgery). If any lawyer knows of her executor, would you please advise any one of the following, as soon as possible:

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

- Pearl Akers 889-3440 (akerspe@yahoo.ca);
- Penny Bennett 889-3285 (penelope.westjeddoe@yahoo.ca);
- Gary Young 889-3002;
- or Paul Scott 889-2914

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 htcurrie@hotmail.com.

CAREER OPPORTUNITIES www.nsbs.org/careers.php

:: CONFERENCES & SEMINARS ::

NSBS ADMISSIONS & PROFESSIONAL DEVELOPMENT

[Visit the CPD page at NSBS.org](#)

UPCOMING CPD LUNCH & LAW SEMINARS

LAST CHANCE TO REGISTER: Social Networking in a Global Market: Marketing Strategies for Lawyers - Presented by David Fraser, McInnes Cooper

Wednesday, December 9, 2009, 12:00 - 1:30 pm
CPD Center, Suite 408, 1645 Granville Street, Halifax
[Details and registration](#)

The program: New technologies provide a plethora of unique opportunities for lawyers to raise their profiles and reach new clients. Join David T.S. Fraser of McInnes Cooper, who will provide an overview of blogs, social networking websites and other innovative means of marketing your law practice.

If LinkedIn and Twitter leave you scratching your head and wondering what it's all about, this seminar will provide practical insights into these dynamic marketing channels. David will also explore the issues of associated ethics challenges based on the CBA's new Guidelines for Ethical Marketing Practices Using New Information Technologies. Don't miss this unique opportunity to learn the latest and greatest trends for marketing your legal practice.

Fee: \$40 per person plus tax (*lunch included*)

Can't attend in person? Join us from the comfort of your office, with the webinar/teleconference option. The fee includes long-distance charges; instructions will be emailed one day in advance.

Further details about these and other future seminars coming soon – please watch InForum and www.nsbs.org/development.php for updates.

New Seminar: Writing to Persuade with acclaimed legal writing instructor Stephen Armstrong

Friday, April 9, 2010, 9:00 am - 12:30 pm
The Westin Nova Scotian, 1181 Hollis Street, Halifax
[Details and registration](#)

Online *Land Registration Act* training – next session January 25, 2010

The NSBS continues to offer the ONLINE *Land Registration Act* training course. Completion of the course is mandatory for all lawyers wishing to practise property law (and who haven't already completed the course) in the online system. The course begins with a conference call and takes place entirely online – from the comfort of your home or office. You will have seven days to complete the course, and questions may be submitted to trainers on weekdays.

Upcoming dates:

January 25, 2010

April 12, 2010

[Register online](#)

📅 Hold the date: Landmarks, Legislation and their Legacy on Aboriginal People in Canada
Presented by Naomi Metallic, Associate Lawyer, Burchell Hayman Parish

Wednesday, January 13, 2010, 12:00 - 1:30 pm
CPD Center, Suite 408, 1645 Granville Street, Halifax

Details and registration coming soon – This presentation will take participants through the major legal landmarks that contextualize and shape the complicated relationship between Canada and its Aboriginal people.

📅 Lunchtime Seminar Series Tickets
\$40 each or 10 for \$300 plus HST

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

LISNS Holiday Open House

The Legal Information Society of Nova Scotia invites members to its Holiday Open House. Drop in to catch up with other LISNS supporters & find out about big plans for the new year.

Tuesday, December 8
4:30 – 7 pm
5523B Young St, Hfx
[Invitation online](#)

RSVP: 454-2198 or lisns@legalinfo.org | www.legalinfo.org

Canadian Bar Association Nova Scotia - Annual Professional Development Conference

Friday, January 8, 2010
Halifax Marriott Harbourfront Hotel

Don't miss this full day conference entitled, "Get Smart: Keeping Up With the Latest in the Law." This is a professional development opportunity that celebrates the CBA tradition of offering timely, practical and informative sessions for everyone in the law. Sessions include topics from the Securities Transfer Act Update to Hiring and Firing Temporary Foreign Workers and everything in between.

The Honourable Graham Steele, Minister of Finance and Minister of Acadian Affairs, is the event's special guest lunch speaker. For details and registration, call CBA-NS at 902-422-1905 or visit the [CBA website's professional development page](#).

Federation of Law Societies of Canada – National Family Law Program

National Family Law Program

The Victoria Conference Centre, Victoria, BC

July 12 -15, 2010

More details will be available shortly. Please contact Heather Walker, Program Coordinator, nationalfamilylawprogram@sympatico.ca, 705-879-3082 (messages) and refer to the website <http://www.flsc.ca/> for updates.

The conference room rate is 199.00 for a Fairmont room. A limited number of upgraded rooms (Deluxe) are available at the rate of 199.00 as well. The earlier you book the greater the chance to secure one of the upgraded rooms. Please make sure you advise the hotel that you are attending the Federation of Law Societies of Canada National Family Law Program to ensure you receive the conference rates. (721 Government Street Tel: 250-384-8111)

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 their computers. 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 <http://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.

:: CLASSIFIEDS ::

Second-year law student seeks 2010 summer position

Second-year law student Trevin David, a permanent resident of Nova Scotia who is studying in Toronto, seeks a summer position for 2010. As a course component for his second year, he is working this semester as a caseworker at the Parkdale Legal Community Centre, Toronto, with the Immigration and Refugee Division.

Trevin has work experience handling various stages of human rights complaints and the immigration process. He also offers excellent legal research and writing skills; public speaking and debating skills, and holds a BA (Honours) in Political Studies. CV and references available upon request.

Please contact Trevin by telephone at (902) 434-0476 (messages) or by email at trevin.david@osgoode.yorku.ca or bmdavid@ns.sympatico.ca.

Office to share in Bedford

Bedford lawyer has office to share in professional building. Lawyer or other professional preferred. Cost depends on amenities required. Call Connie at 835.7615 or email connierusk@ns.sympatico.ca.

:: NEW FROM LIBRARY & INFORMATION SERVICES: :

Nova Scotia Civil Procedure Rule 60 Gazetted, not yet in force

On November 27, 2009, the judges of the Supreme Court of Nova Scotia enacted Civil Procedure Rule 60A (Child and Adult Protection) and 60B (*Involuntary Psychiatric Treatment Act* and *Hospitals Act* Applications) of Part 13 of the *Nova Scotia Civil Procedure Rules*.

The Rules and associated forms are published in the [Royal Gazette, Part I Vol. 218, No. 48 \(December 2, 2009\)](#) (unofficial copy).

Nova Scotia Legislative Supplement now available online

Library & Information Services prepares brief notes on the legislation passed at the most recent sitting of the Nova Scotia Legislature. The [Legislative Supplement for the First Session of the 61st General Assembly 2009](#) is now available online.

Summaries are included only for that legislation likely to be of interest to the Society's membership. For complete information, please [consult the statutes](#).

Nova Scotia Libraries' Borrow Anywhere, Return Anywhere service

A new library program gives Nova Scotians free access to more than 100 libraries in the province – including Dalhousie's Sir James Dunn Law Library – regardless of where they live.

Under the initiative, a Nova Scotian library card holder of any one participating library can visit any public, university, or college library in the province and borrow or return library items.

Members who do not currently hold a borrower's card may obtain one free of charge at the Circulation desk of any participating library. Two pieces of identification, including one which shows proof of Nova Scotia residence, are required.

That Dalhousie's Sir James Dunn Law Library is participating in this initiative will be of particular value to members. See Dalhousie Libraries' information page for [Off-Campus Borrowers](#) for details.

See the [Libraries Nova Scotia website](#) for more information and a [full list of participating libraries](#).

CanLII improves access to federal legislative materials (<http://www.canlii.org/>)

Tables of contents for federal legislation

Federal statutes and regulations are now displayed with a two-level, automatically generated table of contents, with links pointing to headings, sections and subsections, allowing users to quickly jump to the section of interest.

Former titles and citations

Users can now search by a former title or former citation for legislative materials, when these have been amended since the beginning of [CanLII's](#) point-in-time versions coverage period (for statutes, January 1, 2003).

Borrowing books, online help, reference questions – call us toll-free

For all information requests, members may contact Library & Information Services by telephone at 1-866-219-1202 (toll-free) 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

BANKRUPTCY - Sale of assets - shares of company held by bankrupt company *Bank of Montreal v. Sportsclick Inc.*, Hfx. No. 314220, Duncan, J., November 17, 2009. 2009 NSSC 354; [S601/18](#)

CRIMINAL LAW - Appeals - dismissed *R. v. Cain*, C.A.C. No. 302786, Beveridge, J.A., December 1, 2009. 2009 NSCA 121; [S600/11](#)

CRIMINAL LAW - Assault and uttering death threats - guilty *R. v. Ginnish*, S.N. C.R.S. No. 285725, Edwards, J., September 10, 2008; March 6, 2008 (orally). 2008 NSSC 265; [S601/21](#)

CRIMINAL LAW - Sentencing - assault and uttering death threats *R. v. Ginnish*, S.N. C.R.S. No. 285725, Edwards, J., September 10, 2008; March 9, 2008 (orally). 2008 NSSC 266; [S601/22](#)

CRIMINAL LAW - Sentencing - home invasion and sexual assault, appeal dismissed *R. v. Markie*, C.A.C. No. 308818, Hamilton, J.A., December 1, 2009. 2009 NSCA 119; [S600/10](#)

Note: This decision is not available online. Please contact the Nova Scotia Barristers' Society Library to obtain a copy of this decision. Please ask for decision no. S600/10.

CRIMINAL LAW - Young offenders - sentencing for second degree murder *R. v. D. (T.P.)*, C.R. No. 293417, Hood, J., November 20, 2009; June 26, 2009 (orally). 2009 NSSC 332; [S601/12](#)

Note: This decision is not available online. Please contact the Nova Scotia Barristers' Society Library to obtain a copy of this decision. Please ask for decision no. S601/12.

DAMAGES - Summary judgment - pre-existing conditions *Walji v. Boudreau et al.*, Hfx no. 251021, Wright, J., November 20, 2009. 2009 NSSC 349; [S601/11](#)

ENVIRONMENTAL LAW - Judicial review - construction of quarry *Elmsdale Landscaping Ltd. et al. v. Nova Scotia (Minister of Environment) et al.*, Hfx. No. 314256, Duncan, J., November 25, 2009; November 9, 2009 (orally). 2009 NSSC 358; [S601/23](#)

FAMILY LAW - Child in need of protective services - permanent care and custody and adoption order *Children's Aid Society of Cape Breton-Victoria v. D. (L.) and S. (B.)*, No. 61479, MacLellan, J., November 18, 2009; July 31, 2009 (orally). 2009 NSSC 352; [S601/13](#)

Note: This decision is not available online. Please contact the Nova Scotia Barristers' Society Library to obtain a copy of this decision. Please ask for decision no. S601/13.

FAMILY LAW - Divorce - spousal support and shared parenting *Kenny v. Kenny*, No. 1201-063135, Legere-Sers, J., November 20, 2009. 2009 NSSC 348; [S601/10](#)

FAMILY LAW - Divorce - spousal support, division of assets and debts *Shaw v. Shaw*, No. 1206-5186, Forgeron, J., November 24, 2009; November 20, 2009 (orally). 2009 NSSC 353; [S601/15](#)

FAMILY LAW - Spousal support - jurisdiction to vary interim order *Kuszelewski v. Michaud*, C.A. No. 308191, Roscoe, J.A., November 24, 2009. 2009 NSCA 118; [S600/8](#)

MAINTENANCE - Child support - retroactive child support ordered *Antony v. Antony*, S.F.H.O.T.H. No. 059198, Dellapinna, J., November 25, 2009. 2009 NSSC 343; [S601/17](#)

MAINTENANCE - Child support - variation, application to vary *Cramm v. Mason-Cramm*, No. 1201-61929; S.F.H.D. No. 54086, Dellapinna, J., November 19, 2009. 2009 NSSC 339; [S601/16](#)

MAINTENANCE - Child support - variation, application to vary, hardship argument *Publicover v. Patterson*, No. 1201-55640, Legere-Sers, J., November 20, 2009. 2009 NSSC 327; [S601/9](#)

MOTOR VEHICLES - License revoked - authority of Registrar *Burnell v. Nova Scotia (Registrar of Motor Vehicles)*, Hfx. No. 306296, Hood, J., November 17, 2009; July 16, 2009 (orally). 2009 NSSC 341; [S601/14](#)

PRACTICE - Appeals - extension of time to file notice of appeal *R. v. Silco Contracting Ltd.*, C.A.C. No. 311394, MacDonald, M. C.J., November 30, 2009. 2009 NSCA 120; [S600/9](#)

PRACTICE - Application for summary judgment - occupier's liability *Crook v. LaFarge Canada Inc.*, Hfx. No. 249935, Wright, J., November 30, 2009; November 10, 2009 (orally). 2009 NSSC 357; [S601/24](#)

PRACTICE - Originating notice - application to amend *Nyiti v. Cape Breton University*, Sydney, Bourgeois, J., November 25, 2009. 2009 NSSC 356; [S601/19](#)

PRACTICE - Pleadings - amendments in summary proceedings *Whalley v. Royal Canadian Mounted Police Public Complaints Commission*, C.A. No. 312984, Roscoe, J.A., December 2, 2009. 2009 NSCA 122; [S600/12](#)

REAL PROPERTY - Easements - right of way by prescription or lost modern grant *Amar et al. v. Fricker*, Hfx. No. 309983, Hood, J., November 27, 2009; October 27, 2009 (orally). 2009 NSSC 359; [S601/20](#)

SUPREME COURT of CANADA — recent decisions

Library & Information Services - Keeping you informed

The following decisions were released on the [Supreme Court of Canada Judgments](#) Web site since the last *InForum*. The subject headings and summaries have been prepared by the Supreme Court of Canada.

December 4, 2009

[R. v. Burke](#)

Neutral citation: [2009 SCC 57 \(CanLII\)](#); 2009 SCC 57

File No.: 33031.

2009: November 19; 2009: December 4.

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

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Criminal law — Arrest without warrant — Reasonable grounds — Accused acquitted at trial of narcotic offence — Trial judge finding police officer did not have reasonable grounds to arrest accused without warrant — Whether trial judge imposed burden more onerous than “reasonable grounds” standard for arrest without warrant — Criminal Code, R.S.C. 1985, c. C-46, s. 495(1)(c).

A police officer arrested the accused without a warrant and, following a search incidental to arrest, found a bag of crack in the accused's pocket. The arresting officer did not investigate the accused's claim that he was the brother of the person sought by the arrest warrant at the time of the arrest. At the police station, however, the accused was confirmed not to be the person sought by the warrant. The trial judge acquitted the accused on a charge of possession of cocaine for the purpose of trafficking, finding that, despite the resemblance between the accused and his brother, the officer did not have objective grounds for the arrest because he had not investigated the accused's claim of mistaken identity at the time of the arrest. She concluded that the arrest was illegal, the subsequent search was unreasonable and excluded the evidence. The Court of Appeal, in a majority decision, upheld the acquittal. The issue in this appeal as of right was

whether the trial judge erred in law by substituting a more onerous standard for the requirement of reasonable grounds that a peace officer must have in order to make an arrest without warrant pursuant to s. 495 of the *Criminal Code*.

Held (Deschamps and Cromwell JJ. dissenting): The appeal should be dismissed.

December 3, 2009

[R. v. Legare](#)

Neutral citation: [2009 SCC 56 \(CanLII\)](#); 2009 SCC 56

File No.: 32829.

2009: October 15; 2009: December 3.

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

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Criminal law — Sexual offences — Luring a child — Elements of offence — Man communicating by computer with 12-year-old girl who had said she was 13 — Communication indicating desire of both parties to engage in explicit sexual activity — Telephone contact made and coarse and explicit language used — Accused charged with “luring a child” and acquitted at trial — Whether trial judge misapprehended essential elements of offence — Criminal Code, R.S.C. 1985, c. C-46, s. 172.1(1)(c).

A 32-year-old Alberta man, who had claimed online to be 17, engaged in two private online "chats" with the complainant, a 12-year-old Ontario girl. Both private chats were sexual in nature, and the second included words uttered by both parties indicating a desire to engage in explicit sexual activity with one another. During this second chat, the accused asked the complainant to e-mail her photo to him. She made two attempts, both in vain. Later, the accused inquired about her age — “and u r 14”. The complainant replied that she was 13. The complainant gave the accused her phone number; he, in turn, gave her his postal address. The accused told the complainant that he would call her to “talk dirty”. He called immediately afterward and, in the second of two conversations, told the complainant — in coarse and explicit language — that he “would love” to perform oral sex on her. The complainant hung up and there were no further calls. The accused was subsequently arrested and charged, inter alia, with one count of “luring a child” contrary to s. 172.1(1)(c) of the *Criminal Code*. At trial, the accused was acquitted, but the Court of Appeal set aside the acquittal and ordered a new trial, finding that the trial judge misdirected himself as to the essential elements of the offence.

Held: The appeal should be dismissed.

November 27, 2009

[Desbiens v. Wal-Mart Canada Corp.](#)

Neutral citation: [2009 SCC 55 \(CanLII\)](#); 2009 SCC 55

File No.: 32527.

2009: January 21; 2009: November 27.

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

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Labour relations — Dismissal — Business closure — Evidence — Union certified to represent employees — Negotiations to conclude first collective agreement with employer unsuccessful — Employer announcing closure of business — Complaint by employees that loss of employment was due to union activities — Employer claiming “good and sufficient reason” within meaning of s. 17 of Quebec Labour Code to justify dismissals — Whether employer discharged its onus of proving real and definitive business closure — Labour Code, R.S.Q., c. C-27, ss. 15 to 17.

The workers of the Wal-Mart store at Jonquière chose to bargain collectively through their union, which had been certified by the Commission des relations du travail (“CRT”) in August 2004. After unsuccessful negotiations, the Minister of Labour appointed an arbitrator to resolve the outstanding differences. On the same day, Wal-Mart announced closure of the store. Three employees filed a complaint under s. 16 of the Quebec *Labour Code* claiming that they lost their employment because of the unionization of the store. They sought an order under s. 15 of the Code that they be reinstated in their jobs. The CRT was not satisfied that the store closure was definitive and allowed the employees’ complaint, holding that Wal-Mart had failed to discharge its onus under s. 17 of the Code that the dismissals were for good and sufficient reason. It reserved its jurisdiction to determine the appropriate remedies. The Superior Court dismissed Wal-Mart’s application for judicial review, but the Court of Appeal overturned that decision.

Held (LeBel, Abella and Cromwell JJ. dissenting): The appeal should be dismissed.

November 27, 2009

Plourde v. Wal-Mart Canada Corp.

Neutral citation: [2009 SCC 54 \(CanLII\)](#); 2009 SCC 54

File No.: 32342.

2009: January 21; 2009: November 27.

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

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Labour relations — Dismissal — Business closure — Remedies — Union certified to represent employees — Negotiations to conclude first collective agreement with employer unsuccessful — Employer announcing closure of business — Complaint by employee that loss of employment was due to union activities — Whether employees of closed business can bring their claim under ss. 15 to 17 of Quebec Labour Code and benefit from statutory presumption in s. 17 that they were dismissed because they exercised their collective bargaining rights — Whether definitive business closure still “good and sufficient reason” within meaning of s. 17 to justify dismissal — Labour Code, R.S.Q., c. C-27, ss. 15 to 17.

In August 2004, the union to which P belongs was certified to represent the employees of Wal-Mart in Jonquière. The Jonquière store was the first Wal-Mart store to be unionized in North America. After several fruitless bargaining sessions, the union filed an application under the Quebec *Labour Code* to establish the provisions of a first collective agreement. On February 9, 2005, the Minister of Labour referred the dispute to arbitration and notified the parties of the referral. That same day, Wal-Mart informed the employees of its decision to close the store. On April 29, 2005, P’s employment, along with that of approximately 190 other employees, was terminated. Many proceedings were initiated by the Wal-Mart employees or their union arising out of the store’s closure, which was presented by the union merely as a step taken by Wal-Mart in a larger employer strategy of hindrance, intimidation and union-busting. In this case, P filed a complaint under ss. 15 to 17 of the Code and claimed to have lost his employment because of his union activities. He sought an order that he be reinstated in his job.

The Commission des relations du travail (“CRT”) held that P could rely on the presumption under s. 17, since he had engaged in numerous significant union activities that were concomitant with the termination of his employment. However, the CRT found that Wal-Mart had shown the store’s closure to be genuine and permanent and that in itself, according to a long line of cases from *City Buick* onwards, is “good and sufficient reason” within the meaning of s. 17 to justify the dismissal. The Superior Court dismissed P’s application for judicial review and held that the CRT was correct in not requiring Wal-Mart to prove its reasons for closing the store. The Court of Appeal dismissed P’s motion for leave to appeal. All tribunals rejected P’s argument that the traditional case law should be disregarded in favour of the freedom of association.

Held (LeBel, Abella and Cromwell JJ. dissenting): The appeal should be dismissed.

November 26, 2009

Consolidated Fastfrate Inc. v. Western Canada Council of Teamsters

Neutral citation: [2009 SCC 53 \(CanLII\)](#); 2009 SCC 53

File No.: 32290.

2009: February 19; 2009: November 26.

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

ON APPEAL FROM THE COURT OF APPEAL FOR ALBERTA

Constitutional law — Division of powers — Labour relations — Works and undertakings — Transportation undertaking — Freight forwarding company providing consolidation and deconsolidation and pickup and delivery services to its customers across Canada — Company having integrated national corporate structure with branch offices throughout Canada and contracts with third party interprovincial carriers — Whether labour relations of branch employees subject to provincial or federal jurisdiction — Whether company qualifies as interprovincial undertaking even though it does not itself perform interprovincial carriage of goods — Constitution Act, 1867, s. 92(10)(a).

Fastfrate is a freight forwarding company with branches across Canada, including the Calgary branch. Using its own terminal employees and mostly its own local drivers and trucks, one Fastfrate branch picks up and consolidates freight within the originating province, while another branch deconsolidates and delivers the freight in the receiving province. Fastfrate employees and equipment do not cross provincial boundaries. Fastfrate contracts with third party trucking and railway companies for the interprovincial carriage of the goods and, except in one unusual case, its employees play no role in the operation of those companies transportation systems. Fastfrate has an integrated national corporate structure with a head office in Ontario and a team of three regional vice-presidents who oversee a series of local branch offices throughout Canada, each with a branch manager who is responsible for the day-to-day management of the branch. Employees at the branch offices deal directly with consignors and consignees and manage their own accounts receivable, but decisions regarding rates, asset acquisition and other matters of general profitability are made at the regional or national level.

The union representing the Fastrate Calgary employees applied to the Alberta Labour Relations Board for a declaration on whether the labour relations of Fastfrate Calgary are subject to provincial or federal regulation. This application was in response to an earlier application by another union to be certified by the Canadian Industrial Relations Board as the regional bargaining unit of Fastfrate employees for Alberta, Saskatchewan and Manitoba. The Board held that Fastfrate Calgary was subject to federal jurisdiction because it was part of a single, indivisible, interprovincial freight transportation undertaking. The reviewing judge quashed the Board's decision and reaffirmed the existing provincial certification order, holding that absent any physical involvement in the interprovincial carriage of goods, there was "insufficient reason to displace the dominant presumption of provincial jurisdiction over labour relations". The Court of Appeal, in a majority decision, restored the Board's decision.

Held (McLachlin C.J. and Binnie and Fish JJ. dissenting): The appeal should be allowed.

:: NEW BILLS ::

Library & Information Services – Keeping you informed

The House adjourned on November 5, 2009.

See Progress of Bills of the 1st Session, 61st General Assembly to update the status and view full text of bills, including as passed.

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

:: RISK & PRACTICE MANAGEMENT TIP ::

From the desk of Deborah E. Gillis QC, Risk and Practice Management Advisor, Lawyers' Insurance Association of Nova Scotia

Successful LIANS/RPM solo and small firm conference

We would like to send our sincere thanks to all who attended and promoted the first LIANS/RPM Solo and Small Firm conference on Monday, November 30. Our speakers thoroughly engaged the audience with their information-packed sessions, and left participants with plenty of valuable essentials for running successful solo and small firms. Our immense gratitude goes to [David Bilinsky](#), Practice Management Advisor and staff lawyer for the [Law Society of British Columbia](#) and author of the blog [Thoughtful Legal Management](#); Dan Pinnington, the Director of [practicePRO](#), at the Lawyers' Professional Indemnity Company (LAWPRO) in Ontario; W. Augustus (Gus) Richardson QC; Myrna L. Gillis LL.B.; Susan E. Hayes LL.B.; and Darlene Jamieson QC, who participated in the conference with me.

The success of the conference was due also to the 11 participating vendors whose products and services provide value to our members. Our appreciation goes to Tony Tracey of [SBMTech](#) (IT Products and Support); Rita Newton of [DiscoverUs](#) (Transcription Services & Certified Court Reporters); John and Bea Bardsley of [Canadian Bar Insurance Association](#); Michael Edwards of [Edwards Dean & Company](#) (Chartered Accountants); Darrell Cottam of [Advantage Wireless](#) (Telus/Blackberry™ systems); Denise Healey of [Konica Minolta](#); Cam DiPasquale of [Lawyer Done Deal](#) (Web Applications for Legal Matters-Real Estate, Wills, etc.); Sheila Cameron of LexisNexis ; Iain Wallace of [Microcomputer Science Centre Inc.](#) (Dragon Naturally Speaking Software); Tina Tucker of [CBA Nova Scotia](#); and Deb McLellan of [Better Documents Inc.](#) (Amicus Attorney). Please visit their websites, and contact them to learn about the many products and services they have available. Many of their products or services were discussed in our conference sessions.

I hope that LIANS can make this an annual event, and that those of you who didn't make it out this year will attend our next Solo and Small Firm Conference. Thanks again for your participation. We look forward to having you join us next year for more ways to enhance and improve your solo and small firm practice lives.

Fraudsters continue to target Nova Scotia lawyers

- This week, a Halifax law firm received a bogus \$280,400 real estate deposit cheque from a prospective purchaser. As suggested in our fraud fighting tips, published previously, the law firm took the cheque to the bank to investigate its authenticity. The bank confirmed that the cheque was in fact bogus, and a fraud on the law firm was averted.
- Family lawyers are also being targeted. Within the past two weeks, family lawyers reported receiving email requests for representation from a woman asking for assistance in collecting a \$448,450 settlement due from her husband. As in other schemes, the expectation was that payment would flow through the lawyer's trust account, and a significant payout made before the lawyer would learn that the cheque was bogus.
- Another law firm reported receiving a request for North American representation as a collections agent for a United Kingdom gas company. This same type of email request had already been determined by the Ontario branch of CBA as a fraudulent scheme.

Read [Remaining Vigilant to Fraud](#) and other articles in the [Loss Prevention Resource](#) section of [www.lians.ca](#) to learn of the schemes we see and tips we offer to help you from being victimized.

ABA TECHSHOW 2010

The [2010 ABA TECHSHOW](#) is scheduled to take place in Chicago from March 25 to 27, 2010. LIANS is an Event Promoter for TECHSHOW. By using our Event Promoter code **EP 1021** on your registration form, you will receive a discounted conference registration rate. Consider getting a group of 10 people together to take advantage of the

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

SuperPass (10 people for \$4975.00). This greatly reduces the per person registration fee. If you are interested in being part of a SuperPass registration group, contact me for further details.

If you have any questions on these, or any other risk- or practice-related matters, do not hesitate to contact me, Deborah E. Gillis QC, Risk and Practice Management Advisor, Lawyers' Insurance Association of Nova Scotia at 423-1300 ext. 345 or at dgillis@lians.ca.