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## :: NOTICES ::

### SOCIETY NEWS

#### New Queen's Counsel

The Nova Scotia Barristers' Society congratulates the following lawyers on receipt of their Queen's Counsel designations:

##### DARTMOUTH

Peter Coulthard QC  
Timothy Gabriel QC  
Arthur Theuerkauf QC

##### GLACE BAY

Steven O'Leary QC

##### LUNENBURG

Claire Milton QC

##### HALIFAX

Michelle Awad QC  
Janice Beaton QC  
Colin Bryson QC  
Bruce Clarke QC  
Roland Deveau QC  
James Dickson QC  
Mary Ellen Donovan QC  
Cheryl Hodder QC  
Daniel Ingersoll QC

This honour recognizes outstanding contributions to the legal profession and the community, as well as integrity, leadership, good character and a minimum of 15 years as a member of the Society. The Honourable Mayann E. Francis, Lieutenant Governor of Nova Scotia, will bestow the new Queen's Counsel commissions in a ceremony tomorrow (May 11) in Halifax.

### Register soon for 2010 Annual Meeting: June 18-19 in Digby

#### The Zen of Practising Professionally: Ethics and Professionalism Across the Generations

#### The 2010 Annual Meeting

June 18 & 19, 2010, The Digby Pines Golf Resort & Spa

[Details and registration](#)

Generation gaps are going under the microscope at the 2010 Annual Meeting, as the Nova Scotia Barristers' Society invites members to explore how the practice of law is evolving to meet the changing needs of lawyers, their clients and the public. The event is in Digby this year, with two days of substantive legal education programming and social activity in a relaxed, family-friendly environment. \* Attendees with fewer than 10 years at the Bar will receive one full day of Continuing Professional Development, which is a new feature.\*

Keynote speakers include **W. Stanton Smith**, who will help decode generational differences in the workplace, and the **Hon. Justice Thomas A. Cromwell** of the Supreme Court of Canada, who will share his insights in practising ethically when advocating on a client's behalf.

The workshops cover a range of topics – from the growing risks and benefits of using social networking and e-communication with clients to complications that can arise from volunteer and political activities outside the practice of law. Speakers and moderators also include the **Hon. Justice Jamie Saunders**; **Robert Wright**, Executive Director of the Child and Youth Strategy (and Lay Member of the NSBS Race Relations Committee); **David T.S. Fraser**, McInnes Cooper; **Deborah Gillis**, Risk and Practice Management Advisor for LIANS; **Andrew Inch**, Municipal Enterprises; **Emma Halpern**, Equity Officer; and more.

Networking opportunities include participation from such organizations as Nova Scotia Legal Aid, the Canadian Bar Association (NS), the American College of Trial Lawyers, the Nova Scotia Criminal Lawyers' Association and the Real Estate Lawyers Association of Nova Scotia.

Members and their guests and families will also enjoy a leisure activity lineup that includes yoga, golf, geocaching, forest hikes and a performance by La Baie en Joie Dancers. The President's Banquet features entertainment by The Piranha Brothers, a band of Nova Scotia lawyers. Day trips include a vineyard tour – complete with wine tasting and grape crushing – and a visit to the Bear River First Nation Cultural Centre, followed by a picnic lunch at a beautiful swimming hole. A children's program and private babysitting services are also available throughout the weekend.

## **Memo from the Professional Standards Committee/Real Estate**

The Real Estate Standards are based on the existing law (common law, legislation and regulations) and therefore must be amended from time to time as the law changes. The Standards are a statement of the lawyer's obligations in the conduct of a real estate transaction. They are not created by the Nova Scotia Barristers' Society Professional Standards Committee/Real Estate without an existing legal basis.

Recently, Council has approved changes to three of the Real Estate Professional Standards, namely:

- Standard 3.2 - Possessory Title
- Standard 3.3 - Prescriptive Rights
- Standard 3.5 - Judgments

The following is a summary of the recent changes. Each title links to a copy of the new Standard.

### **Standard 3.2 - Possessory Title**

Paragraph 2 of this standard was amended to clarify the lawyer's obligation when certifying title based on possession.

The evidence of possessory title must be **documented** and that documentation must be recorded as proof of such evidence. The evidence must be **sufficient** to meet the tests set by the courts. The evidence must be of **facts** (not legal conclusions) that extinguish the title of the paper title holder.

### **Standard 3.3 - Prescriptive Rights**

Paragraph 2 of this standard was amended with the same changes referred to above in 3.2 but with the difference that the evidence must be that to establish prescription and not possession.

### **Standard 3.5 - Judgments**

This standard was clarified to confirm that judgments are searched at the time of migration and at the time of a purchase or mortgage. Specifically, the current owner is searched from the date of the last revision of registered ownership. At the time of revision, the lawyer making the revision must ensure that the Seller does not have any judgments against him or her such that a subsequent lawyer is able to rely on the fact that up until the date of revision, there are no judgments against that owner.

## ***On the Move: NSBS Changes of Category since January 2010***

This regular feature of *InForum* is published quarterly.

### **We welcome the following new members, recently called to the Nova Scotia Bar:**

- |                         |                             |
|-------------------------|-----------------------------|
| Ms. Lisa Jane Avramenko | Mr. Stewart Frederick Hayne |
| Ms. Bronwyn Kate Duffy  | Mr. Brent Eben Sabean       |

### **The following members have returned to practice from Non-Practising status:**

- |                                    |                              |
|------------------------------------|------------------------------|
| Ms. Nicole Ann Rovers              | Mrs. Rachel Ann Henderson    |
| Ms. Kara Kathryn Burry             | Mrs. Carolyn Anne MacAulay   |
| Ms. Tanya B. Carter                | Ms. Heather Ellen Burchill   |
| Mr. Matthew James Sinclair Dorreen | Mr. Andrew James Minty Munro |
| Ms. Christine Julia Doucet         | Mr. Mark Jeffrey Walton      |
| Ms. Joanne Margaret Heudes         | Ms. Megan Elizabeth Cuming   |

### **The following members have moved to retired status:**

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

Mr. Dana William Giovanetti QC  
Mr. Brian Scott Norton QC

Mr. David Kent Macdonald  
Ms. Stephanie Ann Robinson

### **Annual Members Report – deadline June 30, 2010**

Once again, it is time for all Practising Members to complete their Annual Members Report. The purpose of the AMR is to allow the Society to have current information about the membership in several important areas, such as contact and practice details, as well as continuing professional development activities. In accordance with Regulation 4.9.2, this information is kept confidential by the Society.

The Annual Member Report for 2010 is now available on the Society's website. Please fill in the AMR online through the NSBS members-only area at <http://members.nsbs.org>. Contact Pierre Benoit at [pierreb@nsbs.org](mailto:pierreb@nsbs.org) if you require assistance.

The deadline for submission is **June 30, 2010**. Once the report is completed, your obligation to provide this information for the year will be satisfied, and the Society will contact you next year to provide your information for 2011.

### **Membership feedback requested: Proposed amendments to Chapters 5 and 7, *Legal Ethics and Professional Conduct: A Handbook for Lawyers in Nova Scotia***

The Ethics and Professional Responsibility Committee (EPRC) has recommended amendments to Chapter 5 – Confidentiality and Chapter 7 – Conflict of Interest Between Lawyer and Client, in *Legal Ethics and Professional Conduct: A Handbook for Lawyers in Nova Scotia*, 2nd ed. (Halifax: Nova Scotia Barristers' Society, 1998), ("the *Handbook*"). These amendments were approved by Council to be circulated to the membership for feedback before their final approval.

Please submit any comments you have regarding the two proposed amendments to Elaine Cumming, Acting Director, Professional Responsibility, at [ecumming@nsbs.org](mailto:ecumming@nsbs.org), by **May 21, 2010**.

#### **Proposed amendments to Chapter 5 ([view](#))**

Solicitor-client privilege and the confidentiality of client communications are foundational principles in a solicitor-client relationship, and vital to the effective functioning of the justice system. Therefore any exceptions to this rule in the *Handbook* must be very clear. For this reason, the existing exception in Chapter 5, Commentary 5.11, was reviewed by the EPRC and a proposed amendment was developed. The amendment is intended to provide more clarity and guidance to members regarding the ethical duties that are owed in a situation where disclosure of confidential information may be warranted or necessary.

The existing exception in 5.11 has been broken down into a new 5.11 and 5.12, which address disclosure related to fees and disclosure to defend against criminal or other allegations, respectively. In both cases, the need to limit disclosure to the extent necessary is critical, and the addition of the new 5.13 is intended to provide guidance on this point. The need to exercise restraint in making such an assessment, and the importance of considering to whom the allegations were made, are both addressed in 5.13. It also addresses the appropriateness of advising a client where disclosure of the client's confidential information is required to defend against allegations made by a third party.

#### **Proposed amendments to Chapter 7 ([view](#))**

The EPRC was of the opinion that the existing Rule 7(f) of the *Handbook*, regarding the preparation of wills for clients, does not accurately reflect the current thinking in the Nova Scotia legal community about conflict of interest. The EPRC has recommended an amendment to the rule that would require any lawyer who is the recipient of a testamentary gift to send the client for independent legal advice (ILA). A definition of ILA has been added to the Guiding Principles of Chapter 7 in order to clarify that ILA must be provided by a lawyer who is not an associate of the referring lawyer.

On the recommendation of Council, following the example of the *Model Code of Conduct* developed by the Federation of Law Societies of Canada, the EPRC included an exception to the amended rule for close family members. The EPRC developed a definition of 'family member' for clarity, which will be included in the Guiding Principles section of the chapter.

Under the current Rule 7(f), lawyers are required to disclose to the client the nature of the benefits which would accrue to the lawyer as a result of being named as the executor or executrix in the client's will. In order to ensure the protection of clients, the EPRC has recommended that this disclosure be provided in writing to the client, along with the recommendation of ILA (but not a requirement of it), in order for the lawyer to obtain the client's informed consent and proceed with the transaction.

For more information, please contact the Department of Professional Responsibility at 902-422-1491.

## **Changes to Skills Course for 2010-2011: Memo from Jacqueline Mullenger, Director, Admissions & Professional Development**

Exciting new delivery methods are at the heart of a revamped Skills Course starting this fall at the Nova Scotia Barristers' Society. This will mean less time in the classroom and more self-directed learning during the articling period, with a significant portion of course material to be offered online for the first time.

The online component will emphasize development of the skills most relevant to new lawyers at the outset of their careers, with less focus on courtroom advocacy. Clerks will also benefit from learning key skills early in their articles, at the same pace as their peers rather than the current staggered approach in spring and fall.

## **Nova Scotia Law News - Volume 35 No. 2 April 2010**

The Nova Scotia Barristers' Society is pleased to provide you with an **electronic and printable** copy of [Nova Scotia Law News](#). This new edition, **Volume 35 No. 2 April 2010**, can also be accessed on the Library & Information Services page of the website: <http://www.nsbs.org/library.php>.

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## **IN MEMORIAM**

The Society wishes to advise members of the recent deaths of these friends and colleagues. We extend our condolences to their families at this time of their grief.

- Mr. Edward R. Rettie, Seabright – March 2, 2010 [Obituary](#)
- Mr. Scott Andrew Gillis, Kentville – May 2, 2010 [Obituary](#)

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## **FROM THE COURTS**

### **Notice from Court Services: Amendments to Probate Court Practice, Procedure and Forms Regulations (Order in Council 2010-175, dated April 13, 2010)**

Please be advised of amendments to regulations made by the Governor in Council pursuant to Section 106 of the *Probate Act*. The Governor in Council, on the report and recommendation of the Minister of Justice, dated March 24, 2010, and pursuant to Section 106 of Chapter 31 of the Acts of 2000, the *Probate Act*, is pleased to amend the Probate Court Practice, Procedure and Forms Regulations, N.S. Reg. 119/2001, to correct a number of deficiencies identified by the Registrars of Probate and to ensure that probate matters are administered in an efficient manner, in the manner set forth in Schedule "A" attached to and forming part of the report and recommendation, effective on and after April 13, 2010.

For details, see the [Royal Gazette, Part II, Vol. 34, No. 9](#), dated April 23, 2010. **NS Regulation 63-2010** outlines the recent amendments to the Probate Regulations/forms.

## **Notices to the Bar**

Important updates for the legal profession are routinely posted on the Courts Nova Scotia website, on the "Notices to the Bar" page under the RESOURCES links on the left side of the website. Subscribe to the RSS service to be automatically notified whenever something new is added to the web page. For instructions, visit <http://www.courts.ns.ca/General/bar.htm>

## FROM THE PROVINCE

### Amendments introduced to *Legal Profession Act*

On May 4, Justice Minister Ross Landry introduced amendments to the *Legal Profession Act*. Based on recommendations from the Nova Scotia Barristers' Society, the proposed amendments aim to clarify and modernize the five-year-old law. The changes will allow the Society to be more proactive if a lawyer is experiencing capacity issues that may affect client service. It also aligns the legislation with that of some other professions that govern their members.

Nova Scotia Department of Justice [news release](#)

### *Insurance Act* amendments

Concerns about the fairness of the minor injury cap on pain and suffering awards for automobile accident injuries have been addressed with amendments to the *Insurance Act* and draft regulations, introduced on April 28.

"We are replacing the existing cap with measures to ensure both fair compensation for accident victims, and affordable, stable premiums for all of Nova Scotia's drivers," said Finance Minister Graham Steele.

The amendments and regulatory changes will:

- amend the definition of minor injury to mean strains, sprains and whiplash-associated disorders, mirroring the definition used in Alberta
- increase the maximum pain and suffering award limit to \$7,500
- index the limit to inflation
- enable the introduction of optional full-tort coverage, which allows injured person to seek greater compensation at a later date.

The new measures apply to injuries on or after April 28. The amendments and regulatory changes will come into force July 1 to allow insurance companies time to make necessary system changes. Optional full-tort coverage requires additional time to develop. Government will conduct a broader review of automobile insurance this fiscal year.

Responses to a public discussion paper and the findings of an actuarial study were used to help make the insurance changes. Summaries of these documents, and more details about the amendments, are available on the [Department of Finance](#) website, under What's New.

### Error & Omission Notices

A number of new *Land Registration Act* and *Registry Act* Error & Omission notices have recently been posted online. Please note the new notices from the **Cape Breton**, **Colchester** and **Cumberland County** Land Registration Office.

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

### You Can Make a Difference...

The Province of Nova Scotia is accepting applications from individuals interested in being appointed to serve on its various Non Adjudicative Agencies, Boards and Commissions. To learn more, visit [www.gov.ns.ca/exec\\_council/abc](http://www.gov.ns.ca/exec_council/abc) or call 1-902-424-4877 in HRM (Toll-free: 1-866-206-6844). The Government of Nova Scotia has an Employment Equity Policy and we welcome applications from Aboriginal People, African Nova Scotians and Other Racially Visible Persons, Persons with Disabilities and Women. If you are a member of one of the equity groups, you are encouraged to self-identify, on either your application form, covering letter, or your resume

## MUNICIPAL NOTICES

### **Town of Digby – changes to Deed Transfer Tax to take effect June 1, 2010**

The Town of Digby wishes to advise NSBS members of upcoming changes to its Deed Transfer Tax, due to take effect on June 1, 2010. The Digby County Registry of Deeds/Land Registration Office will act as the Town's agent for the collection of Deed Transfer Tax, as per section 110 of the *Municipal Government Act*.

For complete details, please see the attached [letter and notification](#) from Matthew Raymond CA, Director of Finance for the Town of Digby.

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## FROM THE FEDERAL GOVERNMENT

### **Government of Canada introduces legislation protecting children from online sexual exploitation**

On May 6, the Honourable Rob Nicholson, Minister of Justice and Attorney General of Canada and the Hon. Pierre-Hugues Boisvenu, Senator, announced the introduction of legislation to help protect children from online sexual exploitation, by requiring suppliers of Internet services to report online child pornography.

### **Government reintroduces legislation to crack down on organized drug crime**

On May 5, the Hon. Rob Nicholson, Minister of Justice and Attorney General of Canada and Mr. Daniel Petit, Parliamentary Secretary to the Minister of Justice and Member of Parliament for Charlesbourg–Haute-Saint-Charles, announced that legislation was reintroduced in the Senate proposing tougher penalties for drug crimes. The bill specifically targets gangs and other organized criminal groups who participate in the illegal drug trade.

### **Government introduces legislation to stand up for victims of white-collar crime**

On May 3, the Hon. Rob Nicholson, Minister of Justice and Attorney General of Canada, and the Hon. Christian Paradis, Minister of Natural Resources, announced that the Government reintroduced legislation to provide tougher sentences for fraud, to help combat white-collar crime.

For details on all of the above, refer to the news area of the [Department of Justice Canada](#) website.

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## OTHER NEWS & NOTICES

### **Goldberg Thompson Moves in with Cox & Palmer**

Seven lawyers from Halifax law firm Goldberg Thompson relocated to Cox & Palmer's premises at Purdy's Wharf in Halifax, effective last Monday, May 3, 2010. The move follows a merger between the firms.

"Although our location and name have changed, our commitment to our clients remains steadfast," said Victor Goldberg, co-founder, Goldberg Thompson. "Cox & Palmer shares our high standards for client service and work ethic. The cultural transition has been smooth – the collaboration between our teams has come naturally."

"We're pleased to welcome such a talented group of lawyers into our firm," said Danny Gallivan, Chief Executive Officer of Cox & Palmer and Nova Scotia Managing Partner. "Their experience in business law, bankruptcy, litigation, real estate and wills & estate planning will be a great asset."

Lawyers relocating to the Cox & Palmer office at Purdy's Wharf, Tower One, are partners: Victor J. Goldberg, Paul W. Goldberg, Paul L. Thompson, Harry D. Thompson, QC, John G. Stewart, and Peter C. Rumscheidt; and associate Martha L. Mann. For further details, see [www.coxandpalmerlaw.com](http://www.coxandpalmerlaw.com).

## Notice from the East Coast Paralegal Magazine (ECP)

ECP is the first magazine to enhance, educate, support and recognize Paralegals, Legal Assistants and Paraprofessionals in the Atlantic provinces. Released quarterly, ECP includes feature paralegals/legal assistants and law firms. ECP is subscribed to by e-copy and published as well with discounts given to law firms that subscribe for their staff. For more information or to subscribe: [amallen@eastlink.ca](mailto:amallen@eastlink.ca)

Many lawyers have read ECP and have given positive feedback, as the magazine contains useful information for them but also keeps them up-to-date on how the paralegal profession is changing and moving forward. ECP's first podcast was released with the spring issue, which is available on our blog along with all of ECP's updates and a copy of our special edition: [www.theeastcoastparalegal.blogspot.com](http://www.theeastcoastparalegal.blogspot.com)

Ann-Marie Allen, Editor-in-Chief  
The *East Coast Paralegal Magazine*

## New report on Community Development Assets – Youth

Notice from member Blair Kasouf, Sydney Mines: A new "[Asset Development Strategy Report](#)" regarding youth may be of interest to members involved in community development, criminal law, municipal planning and health. The report examines asset development in youth and arose from a project from the recently disbanded Cape Breton Community Partnership on Drug Abuse. Its author Marcie McKay is a graduate from Sir Wilfred Laurier University, with an MA in Community Psychology. She received a national leadership award in 2005 from the Canadian Institute of Child Health.

## LISNS Play in a Day – register soon

**40 people. 24 hours. 1 performance.**

Registration is now open for the Legal Information Society's Play in a Day fundraiser, scheduled for October 22-23, 2010 at Bella Rose Arts Centre, Clayton Park. The play will be called *Juliet and Romeo and Romeo*, a tale of star-crossed love and mistaken identity.

There is limited space and teams are already signing up ... so gather your friends, family or coworkers together and get registered right away! Go to [legalinfo.org](http://legalinfo.org) for all the details about the fundraiser and registration.

## Launch of the Constitutional Affairs Essay Competition – May 31 deadline

With the support of Ogilvy Renault LLP and the Canadian Constitutional Affairs Conference (CCAC), Policy Options magazine, published by the Institute for Research on Public Policy (IRPP), is launching the annual Constitutional Affairs Essay Competition. The competition aims to promote debate on constitutional affairs in Canada by publishing the best student essays on the topic and compensating their authors. The competition has been created in recognition of the CCAC's national conference for law students and constitutional experts, which took place in Quebec City in 2008. This conference focused on Canadian federalism and identity and sought to increase the opportunity for, and quality of, debate among students from across Canada.

The competition is open to all students enrolled full-time at a Canadian law school and completing their first degree in law. Essays can be drafted in either French or English and must not exceed 2,500 words. The content of the essay may focus on any aspect of constitutional affairs in Canada. For judging criteria and award details, please see the [Competition Poster](#) (PDF).

Deadline for submissions is **May 31, 2010**. Submit entries to [constitution@ogilvyrenault.com](mailto:constitution@ogilvyrenault.com)  
For further details, email [constitution@irpp.org](mailto:constitution@irpp.org).

## VOLUNTEER & PRO BONO OPPORTUNITIES

### Volunteer legal assistance required by The Salvation Army ARIS Project

ARIS – Atlantic Refugee & Immigrant Services – 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 Marie Kettle, at 477-5393 or email: [arissns@gmail.com](mailto:arissns@gmail.com).

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## MISSING WILLS

### Seeking contact with family or former colleagues of Halifax lawyer John M. Hutton

Seeking information on whereabouts of family or colleagues of the late John M. Hutton (lawyer), formerly of 5407 Spring Garden Road, Halifax. Law firm of Patterson Law requires an affidavit to prove a Last Will and Testament witnessed by late Mr. Hutton. Please contact Ivan Rutherford at 896-6127 or [irutherford@pattersonlaw.ca](mailto:irutherford@pattersonlaw.ca).

### Seeking missing will for Halifax woman

Seeking the original Last Will and Testament of **Gail Lottie MacIntyre**, late of Halifax, County of Halifax, Nova Scotia. If anyone has the original will, or information on its whereabouts, please notify the named Executor, Wayne MacIntyre, care of Catherine Walker QC, at Walker Law Inc. 425.5297.

*Yours very truly,  
Catherine S. Walker QC, Walker Law Inc.*

### Assistance requested in locating missing will in Inverness/Baddeck area

Lawyers with any information regarding the last will and testament of **Catherine MacDonald**, who died on February 11, 2010 are asked to contact:

Fiona Imrie, Office of the Public Trustee of Nova Scotia  
5670 Spring Garden Road Suite 405  
P.O. Box 685, Halifax, NS B3J 2T3  
Email: [imriefm@gov.ns.ca](mailto:imriefm@gov.ns.ca)  
Phone 902-424-7760  
Fax 902-424-0616

Catherine MacDonald resided latterly in Baddeck and previously in Inverness. Her date of birth was June 15, 1916.

### Seeking missing will in Kings County

My sister **Rose Ellen Meagher** of Woodville, Kings County passed away on Feb 21, 2010. We are currently looking for any barrister within Kings County, and possibly Halifax, who may have been involved with the creation of the will for Rose Ellen Meagher. The will may have been created in the late 1990s or early 2000s.

Her civic address was 5982 Hwy 22, Kings Co., and her recent mailing address was General Delivery Coldbrook, Kings Co., B4R 1B6. Her previous mailing address was RR2 Cambridge Stn, Kings Co., B0P 1G0.

I can be contacted by email at [meagher7@telusplanet.net](mailto:meagher7@telusplanet.net) or by phone at (403) 782-3689 (Home) or (403) 598-5111 (cell).

Regards, Thomas P. Meagher, P.Eng.

## Seeking original will for Paqtnkek First Nation resident

We are trying to locate an original Will for **Rita May Martin**, who was a resident of Paqtnkek First Nation at the time of her death on December 9, 2009. Ms. Martin also lived in Halifax and New Glasgow in the later years of her life. Anyone with information regarding her is asked to contact Shelly A. Martin, of the Confederacy of Mainland Mi'kmaq, at 1-877-892-2424.

## Assistance requested in determining existence of a will

Barbara M. Glover, daughter of the late **Cyril Balcom** and **Gertrude Halley** died in Halifax on December 29, 2009. She resided in Halifax all of her life and is survived by sons Donald, Bradley and Robert and daughter Lisa, all of Halifax. If any lawyer knows of any information regarding the last will and testament of the deceased, please contact Bradley Glover at (902) 430-5119.

## Seeking will for former Meadowvale and Bridgewater resident

Seeking will for **Basil Snyder**, formerly of Bridgewater, living in Meadowvale, Annapolis County at the time of his death on July 24, 2009. If you have any information, please contact Jennette Steadman at 902.765.0429.

## 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](mailto: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:

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

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**CAREER OPPORTUNITIES** [www.nsbs.org/careers.php](http://www.nsbs.org/careers.php)

## :: CONFERENCES & SEMINARS ::

### NSBS ADMISSIONS & PROFESSIONAL DEVELOPMENT

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

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### UPCOMING LUNCH & LAWS: register now!

#### **Last chance to register! Introduction to Chambers Practice Lunch & Law**

- Wednesday, May 12, 2010 - Halifax, NS

[Details and registration](#)

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#### **Trust Everyone but Always Cut the Cards: malingering and other distortions in psychological assessments**

Nova Scotia Barristers' Society - Continuing Professional Development

DATE: Friday, May 21, 2010 | 12:00 - 1:30 pm  
CPD Centre, Suite 408, 1645 Granville Street, Halifax

[Details and registration](#)

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#### **Environmental Law: Litigation of Civil Claims Arising from Environmental Contamination**

Nova Scotia Barristers' Society - Continuing Professional Development  
Wednesday, May 26, 2010 | 12:00 – 1:30 pm

\$40.00 plus tax (includes lunch)  
Can't travel? Join us by teleconference and webinar.

[Details and registration](#)

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#### **Breaking down the Barriers: improving communication between lawyers and clients living with a disability**

*Nova Scotia Barristers' Society, Continuing Professional Development and the Equity Office*

June 2, 2010, 12:00 - 1:30 pm  
CPD Center, Suite 408, 1645 Granville Street, Halifax

[Details and registration](#)

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#### **Sunset Series with the Bench: Civil Advocacy Tips for Lawyers**

**Seats are going fast! Register now to avoid disappointment!**

- Trial Advocacy May 20, 2010
- Appellate Advocacy May 27, 2010
- The Unrepresented Client June 3, 2020

[DOWNLOAD PDF FLYER](#) | [Details and registration](#)

## Register for the NSBS 2010 Annual Meeting

*The Zen of Practising Professionalism: Ethics and Professionalism in 2010*  
June 18-19, 2010 | The Digby Pines

[More information and to register](#) | [View or print the brochure](#)

Rooms are going fast at the Pines. Please register early to avoid disappointment.

**New this year!** Attendees with fewer than 10 years at the Bar will receive a credit toward one free day of NSBS sponsored Continuing Professional Development of their choosing. Registrants who meet this criterion are encouraged to contact Maureen Farmer, Officer Professional Development & Events at [mfarmer@nsbs.org](mailto:mfarmer@nsbs.org).

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## Civil Procedure Rules, Part 13 - Family Proceedings

The Judges of the Supreme and Appeal Courts have enacted Civil Procedure Rules, Part 13 - Family Proceedings. These Rules come into effect on June 30, 2010.

We are offering the following training sessions at the following times:

- June 9 - 9:00 am to 12:30 pm - Halifax (CPD Centre, NSBS Offices)
- June 17 - 9:00 am to 12:30 pm - Halifax (CPD Centre, NSBS Offices)
- June 21 - 1:00 pm to 4:30 pm - Truro (Best Western Glengarry)
- June 22 - 9:00 am to 12:30 pm - Port Hawkesbury (Port Hawkesbury Civic Centre)

[Details, information and registration](#)

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## 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 has booklets 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.

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## OUTSIDE CONFERENCES & SEMINARS

Visit our [Other Professional Development](#) page on our website.

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## 2010 National Citizenship and Immigration Law Conference

May 13-15, 2010 | Halifax NS

[Details and registration information](#)

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## Dreamscape 2010: The Disco Ball – A Celebration of the '70s

*In support of Phoenix, making positive change in the lives of our community's homeless and at-risk youth*

May 14, 2010 at the Cunard Centre

**Tickets:** Contact Crystal at 405-3078 or [ccowie@phoenixyouth.ca](mailto:ccowie@phoenixyouth.ca)  
(\$150 each or \$1,500 for a table of 10).  
Find out more at [www.phoenixyouth.ca/specialevents](http://www.phoenixyouth.ca/specialevents)

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## The Canadian Maritime Law Association - Current Developments in Canadian Maritime Law

**June 3, 2010 from 8:45 am – 5:00 pm**  
**Westin Nova Scotian Hotel, Halifax, Nova Scotia**

The Canadian Maritime Law Association cordially invites its members and others to attend its upcoming seminar on June 3, 2010 followed by the 2010 Annual General Meeting on Friday, June 4, 2010.

[Download PDF](#) for seminar program and registration form

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## ADR – 4-day Workshop

*Presented by Paul Godin and Peter Dreyer and accredited by the Law Society of Upper Canada.*

**Halifax | June 7 - 10, 2010**  
**Price - \$2200.00 + GST = \$2,310.00**

The Stitt Feld Handy Group and The University of Windsor Law School will be holding the Alternative Dispute Resolution (ADR) Workshop in Halifax from June 7-10. Participants will receive a certificate from the Law School.

The ADR Workshop will provide an overview of interest-based negotiation and mediation. The workshop is designed to give you the skills to negotiate better deals for clients (and for yourself). You will also learn how to be an effective mediator. The workshop gives you a chance to fine-tune your skills in a highly interactive learning environment, focusing on the skills you need.

At the end of the workshop you will know how to:

- find solutions to difficult problems
- deal with emotional people
- resolve disputes while preserving relationships
- negotiate thorny issues
- have a process to mediate disputes

**Questions?** Please contact the Stitt Feld Handy Group at 1-800-318-9741 or visit their [website](#).

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## reachAbility - CELEBRAT10N

Please join reachAbility for Celebrat10n as they commemorate their **10th anniversary** of service to the community.

**Saturday, June 12, 7:00 pm - 10:00 pm**  
**Argyle Fine Art Gallery, 1869 Upper Water Street, Halifax**

For the past decade reachAbility has been helping individuals living with all types of disabilities. We want to mark this special milestone by recognizing our clients, staff and supporters along with the many individual lawyers and law firms who donate their professional services to our clients each year.

Reception & Silent Auction - Business or Evening Attire  
Hors d'oeuvres (It's All Greek To Me), complimentary cocktail & cash bar  
Single Tickets \$50

***From the Crisis & Trauma Resource Institute Inc.***

**Violence Threat Assessment - Planning and Response**

**Moncton – June 15 (Early Registration Deadline - May 25)**

Knowing how to respond to a threat is a tremendous challenge. After a violent incident, it is not uncommon to find that many different people were aware of clues that an attack was being planned. Yet, without the proper mechanism to gather information and assess the situation, prevention is nearly impossible. This workshop provides a communication and decision-making model to help businesses, schools, organizations and communities become proactive in their management of threats. Strategies to help you identify, assess, and manage individuals who make threats will be explored.

Some of the topics covered

- Types of Threats and Behaviours of Concern
- Possible Characteristics of an Assailant
- Threat Assessment Team and Plan Development
- Guiding Principles in Investigation and Assessment
- Considerations Related to Mental Illness

<http://www.ctrinstitute.com/winterspring10/nb.html>

**Mental Illness - Awareness and Support**

**Moncton – June 16 (Early Registration Deadline - May 26)**

This workshop is designed for anyone seeking a better understanding of the complexities that surround mental illness. Statistics show that at least one in five people will experience a mental illness at some time in their life. While common, understanding the signs and symptoms related to mental illness can be confusing and overwhelming. This workshop will give participants a general overview of common adult mental illnesses and their symptoms, causes and treatment.

Some of the topics covered

- Schizophrenia and Psychosis
- Mood Disorders - Depression, Bi-polar
- Anxiety Disorders, Personality Disorders
- Related Concerns: Suicide, Substance Use, Violence
- Assessment and Support Strategies

You may download forms from the website at [www.ctrinstitute.com](http://www.ctrinstitute.com).

**WORKSHOP FEES**

\$160.00 - Early Registration (3 weeks prior to workshop date) | \$190.00 - Regular Registration

ON-SITE TRAINING - Call or email to receive a fee structure.

WEBINARS - No matter where you live, you can easily access many of CTRI's workshops right from your desk.

For more information:

Web: [www.ctrinstitute.com](http://www.ctrinstitute.com) | Email: [info@ctrinstitute.com](mailto:info@ctrinstitute.com)

Phone: 204-452-9199 | Toll Free: 877-353-3205

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**Federation of Law Societies of Canada – National Family Law Program**

**The Victoria Conference Centre, Victoria, BC**

**July 12 – 15, 2010**

New details are available for the conference. Please visit the website for the latest update:

<http://www.flsc.ca/en/lawSocieties/familyLaw.asp>

For more information, please contact Heather Walker, Program Coordinator, [nationalfamilylawprogram@sympatico.ca](mailto:nationalfamilylawprogram@sympatico.ca), 705-879-3082 (messages).

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## **37th Annual National Criminal Law Program – Last chance to register before the HST goes up July 12 - 16, 2010 | St. John's, Newfoundland**

*Join over 600 Crowns, defence counsel and judges for Canada's largest and most prestigious criminal law conference taking place July 12 to 16, 2010 in spectacular St. John's, Newfoundland.*

The Federation of Law Societies of Canada's 37th Annual National Criminal Law Program, Substantive Criminal Law, Advocacy and the Administration of Justice, is over **60% sold out**. Register today to avoid disappointment. For the program brochure, click [here](#) or visit the Federation's website at [www.flsc.ca](http://www.flsc.ca).

**Please note the following important HST update information:** Ontario's HST (Harmonized Sales Tax) will take effect on May 1, 2010 (instead of the previously scheduled July 1, 2010). Introduction of the HST will **increase taxes on Program registration fees to 13%, instead of the current 5% GST**. Registration payments must be received by April 30, 2010 to avoid the increase. For the National Criminal Law Program, this means registrants who pay by April 30 will save \$60.00. Those called to the bar June 2005 or after will save \$38.60. Payments for registration fees received after April 30 that do not include the higher HST will receive an additional invoice for the difference between the GST and HST.

Enrolment is limited. For the program brochure, click [here](#) or visit the Federation's website at [www.flsc.ca](http://www.flsc.ca).

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## **3rd Biennial Conference on Brain Development & Learning: Making sense of the science July 16-20, 2010 | Vancouver, BC**

This is an interdisciplinary conference with relevance to legal issues in medicine and health, children's rights, and parenting.

[Conference website](#) | [Brochure](#) | [Registration](#)

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## **Re-imagining the Law: Legislative Drafting Redefined**

*presented by the Canadian Institute for the Administration of Justice*

**September 13 & 14, 2010  
Crowne Plaza Hotel, 101 Lyon Street, Ottawa**

How is law-making evolving in a diverse and global community? How do legislative drafters contribute to its development? This year's conference will explore the legislative design in light of new and broader concepts and the value of drafters in the legislative process.

Come and exchange points of view about Re-imagining the Law: Legislative Drafting Redefined.

For further information on the program or CIAJ, call (514) 343-6157, email ([iaj@ciaj-icaj.ca](mailto:iaj@ciaj-icaj.ca)) or visit [www.ciaj-icaj.ca](http://www.ciaj-icaj.ca).

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## **Canadian Institute for the Administration of Justice 2010 Annual Conference Sentencing and Corrections: Sentencing theory meets practice**

**October 14 & 15, 2010  
The Sutton Place Hotel, Vancouver, British Columbia**  
[Details](#) (PDF)

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## **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.aptla.ca](http://www.aptla.ca).

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## :: CLASSIFIEDS ::

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### **Women's court clothes for sale**

Women's Harcourts Barrister's Robe, Waistcoat, Shirt and Tabs for sale – \$350

Hardly worn, in excellent condition. The shirt is a size 14 ½ - 32, while the robe and jacket are approximately a size 6. The price for these items would be over \$1,000 if purchased new.

If interested, please email [srix@coxandpalmer.com](mailto:srix@coxandpalmer.com). Photos are also available by email.

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### **Office space available in North End Halifax**

Halifax lawyers have a self-contained office space available for rent on North Street. Two offices and one small administrative room. Reasonable space for a law practice or other professional. \$1200.00 per month.

Please contact Angus at 492-2866 or by email at [aschurman@reieron.ns.ca](mailto:aschurman@reieron.ns.ca)

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### **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](mailto:connierusk@ns.sympatico.ca).

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## :: NEW FROM LIBRARY & INFORMATION SERVICES ::

### Labour decisions and agreements: Labour and Workforce Development vs. CanLII databases

CanLII has recently begun providing access to decisions of four Nova Scotia labour tribunals, boards, and appeal panels.

Nova Scotia's Department of Labour and Workforce Development has recently made freely available all of their labour decision and agreement databases.

**What source should I use?** For comprehensive coverage, search both CanLII and Labour and Workforce Development databases. While both are updated regularly, one source may be more current than the other at any given time. Overall, Labour and Workforce Development databases are more comprehensive; WCAT decisions from 2010 are available exclusively on CanLII.

In addition, annotations of noteworthy WCAT decisions are provided on the [tribunal's website](#), organized by issue and year, with links to full text. Look for 2009-2010 noteworthy decisions to be posted in June.

	<a href="#">Labour &amp; Workforce Development Databases</a>	<a href="#">CanLII (Nova Scotia)</a>
<b>Grievance Arbitration Decisions</b>	Indexed abstracts from 1978. Contact L&WD to request full text of decision. Decision may require redaction before release.	Not available through CanLII
<b>Labour Agreements</b>	Includes collective agreements, voluntary recognition agreements, letters of intent, and other types of labour agreements from 1977 to the present. Partial prior coverage back to 1958. Some full text of current and archived agreements. Contact L&WD to request full text if not online.	Not available through CanLII
<b>Labour Relations Board and Construction Industry Panel Decisions</b>	Full text from 1944	Full text from January 1, 2009 of reasoned decisions only. Partial prior coverage.
<b>Labour Standards Tribunal Decisions</b>	Full text from 1973	Full text from January 1, 2009
<b>Workers' Compensation Appeals Tribunal Decisions</b>	Archive of full text from 1997 to December 2009. Partial coverage for 1996. <i>This database is no longer updated.</i>	Full text from January 1, 2010
<a href="#">Occupational Health and Safety Appeal Panel Decisions</a>	Full text from 1997	Full text from January 1, 2009

### New photocopy cards required in Library & Information Services

Library & Information Services (L&IS) has acquired new photocopiers. Consequently, existing photocopy cards need to be replaced. If you have a photocopy card in your firm, please bring it back to the Library to exchange it for a new card. We will be able to exchange cards up until and including August 1, 2010.

Please note, in addition, that it is no longer possible to pay for copies using coins. If you anticipate you will use the photocopiers during non-staffed hours (evenings and weekends), please contact us to purchase a new copy card.

If you have any questions concerning this, please do not hesitate to contact L&IS by telephone at 902-425-BOOK (2665) or by e-mail at [nsbslib@nsbs.org](mailto:nsbslib@nsbs.org).

## Law stamps price change as of July 1, 2010

As of July 1, 2010, the HST will be 15%. Consequently, a single law stamp will cost \$28.75 (\$25.00 + \$3.75 HST). Please ensure your accounting department is aware of this change in law stamps.

## Free copies available of Youth Gambling Problems DVD/CD tool kit series

McGill University's International Centre for Youth Gambling Problems and High-Risk Behaviors has produced *Youth Gambling Problems: Practical Information for Professionals in the Criminal Justice System*.

The package includes a DVD and CD-ROM with materials geared toward professionals in the legal system. The DVD features four independently produced video segments with information about youth gambling. The CD-ROM offers a selection of seminal papers about youth gambling for legal professionals.

Visit Library & Information Services in Halifax to pick up a free copy, or contact us.

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## 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 email at [nsbslib@nsbs.org](mailto:nsbslib@nsbs.org).

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## ::: NEW DECISIONS :::

### *Library & Information Services - Keeping you informed*

**BARRISTERS AND SOLICITORS – Stay of execution – pending appeal** *W. (D. L.) v. Nova Scotia Barristers' Society*, C.A. No. 325970, Hamilton, J.A., April 30, 2010. 2010 NSCA 40; [S606/27](#)

*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. S606/27.*

**CIVIL RIGHTS – Unreasonable search and seizure – admissibility of evidence** *R. v. Borden*, No. 1975562-64, Tufts, J.P.C., May 7, 2010; February 19, 2010 (orally). 2010 NSPC 36; [M22](#)

**CRIMINAL LAW – Breathalyzer – refusal, reasonable excuse appeal dismissed** *R. v. Sears*, CR. Amh. No. 321751, Moir, J., April 22, 2010. 2010 NSSC 160; [S609/6](#)

**CRIMINAL LAW – Dangerous driving – causing death and bodily harm** *R. v. Delorey*, No. 312887, MacLellan, J., April 13, 2010. 2009 NSSC 421; [S609/25](#)

**CRIMINAL LAW – Procedure – application for severance** *R. v. P. (K.)*, Syd. No. 321250, Edwards, J., May 4, 2010. 2010 NSSC 185; [S610/11](#)

*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. S610/11.*

**CRIMINAL LAW – Procedure – voire dire to determine whether sufficient evidence to issue a warrant** *R. v. Fougere*, Pt. H. No. 322062, Edwards, J., April 22, 2010. 2010 NSSC 169; [S609/16](#)

**CRIMINAL LAW – Sentence – appeal of sentence for damage to property, assaulting a police officer and resisting arrest** *R. v. McKenna*, Pt.H. No. 322120, Scaravelli, J., March 19, 2010. 2010 NSSC 121; [S609/10](#)

**CRIMINAL LAW – Sentencing – aggravated assault, misleading police, breach of an undertaking, possession for the purposes of trafficking ecstasy, and cocaine** *R. v. Bowers*, Cr.H. No. 317933, Kennedy, C.J., April 30, 2010. 2010 NSSC 184; [S610/4](#)

**CRIMINAL LAW – Sentencing – dangerous driving causing death and bodily harm** *R. v. Delorey*, No. 312887, MacLellan, J., April 13, 2010. 2010 NSSC 161; [S609/28](#)

**CRIMINAL LAW – Sentencing – life imprisonment, minimum sentence that must be served before eligible to apply for parole** *R. v. Ward*, Cr.H. No. 303841, Cacchione, J., May 4, 2010. 2010 NSSC 183; [S610/10](#)

**CRIMINAL LAW – Sentencing – possession of a loaded prohibited firearm without authorization** *R. v. Phinn*, Cr. No. 310683, Wright, J., April 30, 2010; February 26, 2010. 2010 NSSC 99; [S609/29](#)

**CRIMINAL LAW – Sentencing – robbery and related offences, joint recommendation** *R. v. Thompson*, Cr. No. 316826, Wright, J., March 22, 2010; March 18, 2010 (orally). 2010 NSSC 106; [S609/3](#)

**CRIMINAL LAW – Sentencing – sexual assault** *R v. H. (J.)*, Cr. S.P. 313547, Scaravelli, J., March 18, 2010. 2010 NSSC 120; **S609/9**

*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. S609/9.*

**CRIMINAL LAW – Sexual assault – guilty** *R. v. Oickle*, Cr.H. No. 308883, Cacchione, J., May 4, 2010. 2010 NSSC 182; **S610/9**

*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. S610/9.*

**CRIMINAL LAW – Sexual assault – not guilty, inconsistent evidence** *R v. J. (R. B.)*, Pic. No. 302963, Scaravelli, J., April 1, 2010. 2010 NSSC 122; **S610/1**

*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. S610/1.*

**CRIMINAL LAW – Voir dire – admissibility of statements** *R. v. Ward*, Cr.H. No. 303841, Cacchione, J., January 7, 2010. 2010 NSSC 3; **S610/6**

*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. S610/6.*

**CRIMINAL LAW – Voir dire – admissibility of statements** *R. v. Ward*, Cr.H. No. 303841, Cacchione, J., January 8, 2010. 2010 NSSC 4; **S610/7**

*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. S610/7.*

**CRIMINAL LAW – Voir dire – Scopelliti hearing, admissibility of character evidence** *R. v. Ward*, Cr.H. No. 303841, Cacchione, J., January 7, 2010. 2009 NSSC 406; **S610/5**

*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. S610/5.*

**DAMAGES – Procedure – costs** *McKeough v. Miller et al.*, Pic. No. 261422, Scaravelli, J., April 27, 2010. 2010 NSSC 172; [S609/23](#)

**EMPLOYMENT LAW – Wrongful dismissal – costs** *Boutcher et al. v. Clearwater Seafoods Limited Partnership*, Hal. No. 244471, MacLellan, J., April 26, 2010. 2010 NSSC 64; [S609/26](#)

**ENVIRONMENTAL LAW – Liability – breach of Petroleum Management Regulations** *3021386 Nova Scotia Ltd. v. Barrington (District)*, Hfx. No. 309535, Duncan, J., April 27, 2010. 2010 NSSC 173; [S609/24](#)

**FAMILY LAW – Appeals – corollary relief judgment** *Reeves v. Reeves*, C.A. No. 318614, Farrar, J.A., April 28, 2010. 2010 NSCA 35; [S606/24](#)

**FAMILY LAW – Child in need of protective services – appeal of permanent care and custody** *M. (F.) v. Nova Scotia (Community Services)*, C. A. No. 321159, Saunders, J.A., April 29, 2010. 2010 NSCA 37; **S606/25**

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. S606/25.

**FAMILY LAW – Child in need of protective services – permanent care and custody order** *Children's Aid Society of Pictou County v. B. (S.) et al.*, F.N.G.C.F.S.A. No. 41987, Wilson, J.F.C., November 30, 2006. 2006 NSFC 41; **FC37**

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. FC37 (*Children's Aid Society of Pictou County v. B. (S.) et al.*).

**FAMILY LAW – Child in need of protective services – suspension of parent child contact prior to final disposition** *K. (J. M.) v. Children's Aid Society of Inverness/Richmond*, S.F.P.A.C.F.S.A. No. 062149; 060546, Legere-Sers, J., April 27, 2010. 2010 NSSC 171; **S609/22**

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. S609/22.

**FAMILY LAW – Child support – arrears** *Best v. Best*, S.F.H.I.S.O.S. No. 38993, Legere-Sers, J., April 19, 2010. 2010 NSSC 148; [S610/8](#)

**FAMILY LAW – Child support – child support guidelines, appeal** *MacLellan v. MacDonald*, C.A. No. 313755, Hamilton, J.A., April 28, 2010. 2010 NSCA 34; [S606/23](#)

**FAMILY LAW – Common law relationship – division of pension** *Hiltz v. Shee*, Amh. No. 323285, Moir, J., April 28, 2010. 2010 NSSC 164; [S609/20](#)

**FAMILY LAW – Costs – divorce** *Grady v. Grady*, No. 1201-060920, O'Neil, J., April 14, 2010. 2010 NSSC 144; [S609/11](#)

**FAMILY LAW – Custody and access – variation, primary care to mother** *J. (C. L.) v. J. (K. A.)*, No. 1207-002887, Duncan, J., January 7, 2010. 2010 NSSC 59; **S609/19**

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. S609/19.

**FAMILY LAW – Custody – application sole custody** *Casey v. Chute*, F.AM. No. 97-0057; F.AMM.C.A. No. 038761, Dewolfe, J.F.C., April 20, 2010. 2010 NSFC 8; [FC37](#)

**FAMILY LAW – Custody – application to strike a variation application** *Feltmate v. Cool*, No. 1201-061947, Gass, J., April 22, 2010. 2010 NSSC 166; [S609/15](#)

**FAMILY LAW – Custody – joint custody and child support** *MacRae v. Hubley*, S.F.S.N.M.E.A. No. 064723, Dellapinna, J., May 3, 2010. 2010 NSSC 178; [S609/30](#)

**FAMILY LAW – Custody – joint custody maintained** *D. (S.) v. D. (J.)*, No. 1201-062700, Legere-Sers, J., April 19, 2010. 2010 NSSC 145; **S609/31**

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. S609/31.

**FAMILY LAW – Divorce – custody and access and unequal division of assets** *W. (J. G.) v. W. (T. L.)*, No. 1202-

001632; 049993, Duncan, J., January 11, 2010. 2010 NSSC 58; **S609/18**

*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. S609/18.*

**FAMILY LAW – Spousal support and division of assets – costs** *Kent v. Carrigan*, S.F.H.M.C.A. No. 046667, Williams, J., April 16, 2010. 2010 NSSC 165; [S609/14](#)

**GUARDIAN AND WARD – Incompetent persons – guardianship application** *B. (D.) v. J. (J. M.)*, Hfx. No. 310421, Bryson, J., April 22, 2010. 2010 NSSC 137; **S609/27**

*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. S609/27.*

**INSURANCE – Appeals – punitive damages** *Kings Mutual Insurance Company v. Ackermann*, C.A. No. 317679, Hamilton, J.A., May 5, 2010. 2010 NSCA 39; [S606/29](#)

**LABOUR LAW – Jurisdiction – of court to hear action involving member of collective bargaining unit** *MacNeil v. Nova Scotia (Attorney General)*, Hfx. No. 267469, Wright, J., April 27, 2010. 2010 NSSC 167; [S609/21](#)

**LAND REGULATION – Zoning – appeal, permitted uses** *Halifax (Regional Municipality) v. Anglican Diocesan Centre Corp. et. al.*, C.A. No. 319426, Fichaud, J.A., May 4, 2010. 2010 NSCA 38; [S606/28](#)

**MAINTENANCE – Child support – application to terminate, child of marriage** *Roose v. Roose*, No. 1201-46516, Jollimore, J., May 5, 2010. 2010 NSSC 180; [S610/3](#)

**MAINTENANCE – Child support – application to vary** *Putnam v. Putnam*, No. 1207-002218, LeBlanc, J., March 31, 2010. 2010 NSSC 115; [S609/4](#)

**MAINTENANCE – Child support – variation, tax benefits, extraordinary expenses** *Provost v. Marsden*, No. 1201-057557, O'Neil, J., April 21, 2010. 2010 NSSC 162; [S609/13](#)

**MAINTENANCE – Spousal support – ex parte application for a provisional termination order** *Van Dijk v. Van Dijk*, S.AMD.V.R.O. No. 065034, Moir, J., May 3, 2010. 2010 NSSC 176; [S610/12](#)

**MORTGAGES – Priorities – fraud** *CitiFinancial Canada East Corp. v. Touchie et al.*, Hfx. No. 297572, Bryson, J., April 22, 2010. 2010 NSSC 149; [S609/7](#)

**OCCUPATIONAL HEALTH AND SAFETY – Offences – failure to take every precaution, guardrails** *R. v. Eagles*, No. 1715571; 1715572; 1715573, Tax, J.P.C., February 12, 2010. 2010 NSPC 18; [M22](#)

**PRACTICE – Application to set aside order – dismissed, lack of action by defendant no excuse** *Consumer Impact Marketing Ltd. v. Rzepus*, Claim No. 197150, Richardson, Adjudicator, September 24, 2003. 2003 NSSM 9; [SmCI15/28](#)

**PRACTICE – Costs – negligent misrepresentation action** *Adshade v. Auld et al.*, Hfx. No. 282654, Hood, J., January 28, 2010. 2010 NSSC 35; [S609/2](#)

**PRACTICE – Costs – pre-judgment interest** *Brown v. Newton*, S.CK. No. 304120, Giles, Chief Adjudicator, April 21, 2010. 2010 NSSM 33; [SmCI15/27](#)

**PRACTICE – Costs – settlement offer and disbursements** *Marshall v. Annapolis County District School Board et al.*, Hfx. No. 123323, Pickup, J., May 4, 2010. 2010 NSSC 179; [S610/2](#)

**PRACTICE – Costs – whether new (2008) or old (1972) rules apply** *MacIntyre v. Cape Breton District Health Authority*, No. 225468, MacLellan, J., April 26, 2010. 2010 NSSC 170; [S609/17](#)

**PRACTICE – Small Claims Court – appeal** *Delano v. Craig et al.*, BW.T. No. 318283, McDougall, J., February 16, 2010. 2010 NSSC 60; [S609/8](#)

**PRACTICE – Statement of claim – application to dismiss** *Innocente v. Canada (Attorney General)*, Hfx. No. 311509, LeBlanc, J., March 25, 2010. 2010 NSSC 111; [S609/5](#)

**REAL PROPERTY – Quieting title – adverse possession** *Boudreau v. Pellerine et al.*, No. 292004, MacLellan, J., May 5, 2010. 2010 NSSC 188; [S610/13](#)

**SALE OF GOODS – Goods not fit for purpose intended – breach of implied condition** *Sawler v. Barrett*, S.C.C.H. No. 323987, Richardson, Adjudicator, April 20, 2010. 2010 NSSM 32; [SmCI15/26](#)

**WILLS AND ESTATES – Probate – resulting trust, family farm** *MacRae Estate (Re)*, Pt. H. No. 301816, Edwards, J., April 23, 2010. 2010 NSSC 157; [S609/12](#)

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## SUPREME COURT of CANADA — recent decisions

*Library & Information Services - Keeping you informed*

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

**May 6, 2010**

### [R. v. Szczerbaniwicz](#)

Neutral citation: [2010 SCC 15](#) (CanLII)

File No.: 33189.

2010: February 8; 2010: May 6.

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

ON APPEAL FROM THE COURT MARTIAL APPEAL COURT OF CANADA

*Criminal law — Burden of proof — Reasonable doubt — Assault conviction — Whether military judge failed to apply W. (D.) principles properly.*

*Criminal law — Defences — Defence of property — Wife throwing accused's diploma on floor during heated argument — Accused using force against wife to protect personal property — Accused convicted of assault — Military judge finding that accused's defence of property under s. 39(1) of Criminal Code not made out because of his use of excessive force — Whether military judge failed to properly apply relevant facts with respect to defence of property — Criminal Code, R.S.C. 1985, c. C-46, s. 39(1).*

The accused, a Lieutenant-Colonel in the Canadian military, had an argument with his wife. The wife took the mounted diploma which the accused had earned for his master's degree off the wall and threw it on the floor. The accused then pushed her and she fell backwards onto the staircase, bruising her back, legs and elbow. The next day, she learned that her finger was broken. The accused was charged with assault causing bodily harm and tried by a Standing Court Martial. The accused and wife testified, and the military judge accepted the wife's testimony that she fell as a result of being pushed or shoved by the accused. The accused conceded that he intentionally applied force to his wife without her consent, but argued that under s. 39(1) of the *Criminal Code* the assaultive behaviour was justified because he was protecting his personal property, namely, the diploma. The military judge found that the accused used more force than was necessary in defence of his personal property and, therefore, that the s. 39(1) defence could not serve to justify his actions. The accused was convicted of the lesser and included offence of assault. The majority of the Court Martial Appeal Court upheld his conviction.

*Held* (Binnie and Fish JJ. dissenting): The appeal should be dismissed.

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## :: NEW BILLS ::

*Library & Information Services – Keeping you informed*

The House opened on March 25, 2010.

See [Progress of Bills of the 2nd Session, 61st General Assembly](#) to update the status and view full text of bills.

**The following bills were INTRODUCED since the last *InForum* to May 6:**

### **Government Bills**

Bill No. 46 An Act to Provide for Defraying Certain Charges and Expenses of the Public Service of the Province

Hon. Graham Steele, Minister of Finance

First Reading April 26, 2010

Second Reading April 26, 2010

Third Reading April 26, 2010

Bill No. 47 An Act to Amend Chapter 1 of the Acts of 1995-96, the Education Act

Hon. Marilyn More, Minister of Education

First Reading April 27, 2010

Second Reading April 29, 2010

Third Reading May 4, 2010

Bill No. 51 An Act to Amend Chapter 17 of the Acts of 1995-96, the Revenue Act

Hon. Ramona Jennex, Minister of Service Nova Scotia and Municipal Relations

First Reading April 28, 2010

Second Reading April 29, 2010

Third Reading May 4, 2010

Bill No. 52 An Act to Amend Chapter 231 of the Revised Statutes, 1989, the Insurance Act

Hon. Graham Steele, Minister responsible for the Insurance Act

First Reading April 28, 2010

Second Reading April 30, 2010

Bill No. 53 An Act Respecting the Fur Industry

Hon. John MacDonell, Minister of Agriculture

First Reading April 29, 2010

Second Reading May 3, 2010

Bill No. 55 An Act to Amend Chapter 8 of the Acts of 1995-96, the Internal Trade Agreement Implementation Act

Hon. Percy A. Paris, Minister of Economic and Rural Development

First Reading April 30, 2010

Second Reading May 4, 2010

Bill No. 58 An Act to Amend Chapter 352 of the Revised Statutes, 1989, the Powers of Attorney Act

Hon. Ross Landry, Minister of Justice

First Reading May 3, 2010

Bill No. 61 An Act to Prohibit the Sale and Use of Non-essential Pesticides

Hon. Sterling Belliveau, Minister of Environment  
First Reading May 4, 2010

Bill No. 62 An Act to Repeal Chapter 314 of the Revised Statutes, 1989, the Nova Scotia Hospital Foundation Act  
Hon. Maureen MacDonald, Minister of Health  
First Reading May 4, 2010

Bill No. 63 An Act to Amend Chapter 28 of the Acts of 2004, the Legal Profession Act  
Hon. Ross Landry, Minister of Justice  
First Reading May 4, 2010

Bill No. 64 An Act to Amend Chapter 25 of the Acts of 2004, the Electricity Act  
Hon. Bill Estabrooks, MB, Minister of Energy  
First Reading May 5, 2010

Bill No. 65 An Act to Amend Chapter 203 of the Revised Statutes, 1989, the Homes for Special Care Act  
Hon. Denise Peterson-Rafuse, Minister of Community Services  
First Reading May 5, 2010

Bill No. 67 An Act to Amend Chapter 39 of the Acts of 2008, the Halifax Regional Municipality Charter  
Hon. Ramona Jennex, Minister of Service Nova Scotia and Municipal Relations  
First Reading May 5, 2010

Bill No. 68 An Act to Amend Chapter 380 of the Revised Statutes, 1989, the Public Utilities Act  
Hon. Ramona Jennex  
Minister of Service Nova Scotia and Municipal Relations  
First Reading May 6, 2010

#### **Private Member Bills**

Bill No. 44 An Act to Amend Chapter 160 of the Revised Statutes, 1989, the Maintenance and Custody Act  
Hon. Karen Casey (Colchester North)  
First Reading April 26, 2010

Bill No. 45 An Act to Amend Chapter 120 of the Revised Statutes, 1989, the Day Care Act  
Hon. Manning MacDonald, C.D. (Cape Breton South)  
First Reading April 26, 2010

Bill No. 48 An Act to Amend Chapter 140 of the Revised Statutes, 1989, the Elections Act  
Hon. Stephen McNeil (Annapolis)  
First Reading April 27, 2010

Bill No. 50 An Act to Amend Chapter 37 of the Acts of 2005, the Correctional Services Act, and Chapter 31 of the Acts of 2004, the Police Act  
Hon. Michel P. Samson (Richmond)  
First Reading April 28, 2010

Bill No. 54 An Act to Establish Joseph Howe Day  
Diana Whalen (Halifax Clayton Park)  
First Reading April 29, 2010

Bill No. 56 An Act to Amend Chapter 438 of the Revised Statutes, 1989, the Special Places Protection Act, to Require the Designation of Certain Lands of Archeological Importance to the Shubenacadie Canal

Andrew Younger (Dartmouth East)  
First Reading April 30, 2010

Bill No. 57 An Act to Amend Chapter 217 of the Revised Statutes, 1989, the Income Tax Act  
Harold Theriault Jr (Digby-Annapolis)  
First Reading May 3, 2010

Bill No. 59 An Act to Amend Chapter 380 of the Revised Statutes, 1989, the Public Utilities Act  
Andrew Younger (Dartmouth East)  
First Reading May 3, 2010

Bill No. 60 An Act Respecting the Review of the Green Energy Equipment Tax Credit in Manitoba for Implementation in Nova Scotia  
Andrew Younger (Dartmouth East)  
First Reading May 3, 2010

Bill No. 66 An Act to Amend Chapter 260 of the Revised Statutes, 1989, the Liquor Control Act, to Permit the Operation of Businesses that Assist Others in the Making of Beer, Wine or Cider  
Diana Whalen (Halifax Clayton Park)  
First Reading May 5, 2010

Bill No. 69 An Act to Amend Chapter 371 of the Revised Statutes, 1989, the Public Highways Act  
Kelly Regan (Bedford-Birch Cove)  
First Reading May 6, 2010

## Local and Private Bills

Bill No. 49 An Act to Amend Chapter 283 of the Acts of 1903, An Act to incorporate the Royal Cape Breton Yacht Club (amended)  
Hon. Manning MacDonald, C.D. (Cape Breton South)  
First Reading April 27, 2010  
Second Reading April 29, 2010

**The following bills have received SECOND READING since the last *InForum* to May 6:**

## Government Bills

Bill No. 13 An Act to Amend Chapter 293 of the Revised Statutes, 1989, the Motor Vehicle Act  
Hon. Ramona Jennex, Minister of Service Nova Scotia and Municipal Relations  
First Reading March 31, 2010  
Second Reading April 27, 2010  
Third Reading May 3, 2010

Bill No. 16 An Act Amend Chapter 450 of the Revised Statutes, 1989, the Summary Proceedings Act  
Hon. Ross Landry, Minister of Justice  
First Reading April 1, 2010  
Second Reading April 20, 2010  
Third Reading May 3, 2010

Bill No. 18 An Act to Amend Chapter 494 of the Revised Statutes, 1989, the Vital Statistics Act  
Hon. Ramona Jennex, Minister of Service Nova Scotia and Municipal Relations  
First Reading April 7, 2010  
Second Reading April 27, 2010

Third Reading May 3, 2010

Bill No. 19 An Act to Amend Chapter 293 of the Revised Statutes, 1989, the Motor Vehicle Act  
Hon. Bill Estabrooks, MB, Minister of Transportation and Infrastructure Renewal  
First Reading April 8, 2010  
Second Reading April 27, 2010  
Third Reading May 3, 2010

Bill No. 22 An Act Respecting the Provision of Security Services and Investigative Services  
Hon. Ross Landry, Minister of Justice  
First Reading April 9, 2010  
Second Reading April 29, 2010

Bill No. 23 An Act to Establish a Day to Recognize the Royal Canadian Sea, Army and Air Cadets and the Navy League Cadets in Nova Scotia  
Hon. Darrell E. Dexter, President of the Executive Council  
First Reading April 12, 2010  
Second Reading April 27, 2010  
Third Reading May 3, 2010

Bill No. 24 An Act Respecting Certain Financial Measures  
Hon. Graham Steele, Minister of Finance  
First Reading April 13, 2010  
Second Reading April 27, 2010

Bill No. 29 An Act to Amend Chapter 18 of the Acts of 1998, the Municipal Government Act  
Hon. Ramona Jennex, Minister of Service Nova Scotia and Municipal Relations  
First Reading April 14, 2010  
Second Reading April 27, 2010  
Third Reading May 3, 2010

Bill No. 33 An Act Respecting the Transfer of Securities\*  
Hon. Ramona Jennex, Minister of Service Nova Scotia and Municipal Relations  
First Reading April 16, 2010  
Second Reading April 27, 2010  
Third Reading May 4, 2010

Bill No. 35 An Act Respecting Provincial Financial Administration  
Hon. Graham Steele, Minister of Finance  
First Reading April 19, 2010  
Second Reading April 29, 2010

Bill No. 36 An Act to Amend Chapter 148 of the Revised Statutes, 1989, the Engineering Profession Act  
Hon. Ross Landry, Minister of Justice  
First Reading April 19, 2010  
Second Reading April 27, 2010  
Third Reading May 3, 2010

Bill No. 38 An Act to Establish the Nova Scotia Voluntary Carbon Emissions Offset Fund  
Hon. Sterling Belliveau  
Minister of Environment, First Reading April 22, 2010  
Second Reading April 29, 2010  
Third Reading May 4, 2010

Bill No. 41 An Act to Amend Chapter 13 of the Acts of 2002, the Volunteer Fire Services Act  
Hon. Marilyn More, Minister of Volunteerism  
First Reading April 23, 2010  
Second Reading April 27, 2010  
Third Reading May 3, 2010

## Local and Private Bills

Bill No. 43 An Act to Amend Chapter 6 of the Acts of 1844, An Act to authorize the Congregation of the Baptist Church at Canard, in Cornwallis, to appoint Trustees to take charge of the said Church, and Cemetery adjoining the same, and to enclose and ornament the same  
Jim Morton (Kings North)  
First Reading April 23, 2010  
Second Reading April 29, 2010

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## :: PROCLAMATIONS UPDATE ::

No proclamations were published in the *Royal Gazette, Part II* since the last issue of *InForum*.

Proclamations are published in the *Royal Gazette, Part II*, which is issued every other week and is available by [subscription](#). Unofficial copies of the *Royal Gazette, Part II* are available [online](#) through the Registry of Regulations website.

The Office of the Legislative Counsel maintains a Proclamations of Statutes database, providing the effective dates of proclamations for statutes from 1990 to date. The database is updated with information received weekly from the Executive Council Office. To access the database, go to the Office of the Legislative Counsel's [website](#), then select Proclamations from the list of links on the left side of the page. The information provided by the database is for convenience only. For purposes of interpreting and applying the law, please consult official sources.

The orders in council authorizing the proclamations can be searched via the [Orders in Council](#) database maintained by the Executive Council Office. This database contains information about orders in council dating back to 1991.

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## :: PR: DECISIONS & DISPOSITIONS ::

### Formal Hearings - Dismissal

#### John W. Morgan - Dismissal - February 8, 2010

The lawyer, who had practising status and was the mayor of Cape Breton Regional Municipality, made comments to the media at the conclusion of a court case involving the municipality in which he stated, *inter alia*, that judges in Nova Scotia are "part of the political structure," that the presiding judge had ties to the Conservative party, and that he would have preferred to have a judge from outside of Halifax deal with the case. He was charged with professional misconduct with regard to these comments.

On February 8, 2010, the Hearing Committee dismissed the charges. A lawyer who holds public office has a duty to adhere to the standards required by *Legal Ethics and Professional Conduct: A Handbook for Lawyers in Nova Scotia*. The lawyer, as a practising member of the Bar, was bound by the provisions of the *Handbook*. Although the panel found that the lawyer had breached his duties and obligations under the *Handbook*, as his comments were intemperate, unsupported allegations that were contrary to a lawyer's duty to encourage public respect for justice and to uphold and try to improve the administration of justice, the lawyer was not engaged in the practice of law when the comments were made. Rather, the comments were made in his "personal or private capacity" and, while inappropriate and not condoned, did not constitute professional misconduct. The Committee also found that the lawyer's comments were not protected by s. 2(b) of the *Charter* as law societies have a right to impose reasonable restraint on the freedom of speech of their members and a right to discipline members who act contrary to such reasonable regulations.

*Nova Scotia Barristers' Society v. Morgan*, [2010 NSBS 1](#)

### Complaints Investigation Committee Dispositions - Caution

#### Caution - December 9, 2009

The lawyer was retained to act in connection with the administration of an estate. The client complained that the application for grant of administration identified only two out of 11 beneficiaries; the administrator was wrongly identified as the executor of the estate; the application wrongly indicated that an individual who had renounced her claim had an interest in the estate; the estate was not probated, resulting in extra legal costs; although a Quit Claim Deed had been prepared, no renunciation had been obtained from the potential beneficiary of a bank account; settlement offers were not communicated; the lawyer was verbally abusive and rude to various individuals; and the bill for legal services was intended to "shock" the client and cause extra costs to the estate.

The Complaints Investigation Committee (CIC) dismissed all but the first and fifth complaints and, on December 9, 2009, issued a caution with respect to those complaints. In regard to the first complaint, the lawyer confirmed that he did not recall making any inquiries as to the extent of the heirs or giving any consideration to s. 8 of the *Intestate Succession Act*. In regard to the fifth complaint, the lawyer explained that although he had not been retained to probate this second estate, he did do a small amount of work for the estate, including the preparation of a Quit Claim Deed.

The CIC determined that proper consideration had not been given to any potential claim against the estate by the children of one of the deceased beneficiaries and that when the lawyer prepared the Quit Claim deed, he had failed to make the necessary inquiries in the circumstances. His failure to refer to the *Intestate Succession Act*, make the necessary inquiries to determine all the heirs-at-law and research the relevant law breached Chapter 2 of the *Handbook*. Lawyers who assume responsibility for a complicated file have a duty to inform themselves of all the relevant aspects of the law.

## **Complaints Investigation Committee Dispositions - Directed Staff Letter of Advice**

### **Letter of Advice - January 22, 2010**

The lawyer was retained to represent the complainant's mother with respect to a property transaction involving a newly constructed home. It was alleged that she released the mechanic's lien holdback and neglected to secure the occupancy permit prior to occupancy of the home; that although the Agreement of Purchase and Sale and associated documents made reference to a warranty, no such warranty existed; and that a condition contained in the agreement between the home owner and the builder had not been complied with. The complainant requested a review of the initial dismissal of his complaint on the basis that, although he was not alleging any intentional wrongdoing on the lawyer's part, by failing to secure an occupancy permit (which would have required the work to be completed and a final inspection conducted), she demonstrated professional incompetence resulting in the client incurring additional expenses.

On January 22, 2010, the Complaints Investigation Committee determined that although there was no breach of the *Handbook*, a Letter of Advice should issue. Examples of expected practices that could have prevented a complaint from being filed included ensuring that an occupancy permit was secured before the client took possession of the home, retaining a copy of the home warranty certificate in the file and creating and adhering to a complete checklist for property transactions of newly constructed homes. Although the facts were not found to constitute professional misconduct, conduct unbecoming or professional incompetence, clear quality of service issues were associated with the representation of the client. The importance of adhering to the duties contained in Chapter 3 of the *Handbook* was stressed.

## **Complaints Investigation Committee Dispositions - Dismissal**

### **Dismissed - January 22, 2010**

The client's original lawyer (who had been retained to represent both him and the vendors in a property transaction) withdrew, after a dispute arose concerning funds held in trust for the client's benefit in the event that the well water for the property was not potable. The original lawyer changed law firms shortly thereafter and advised the client to contact another lawyer in the firm to determine the status of his file. The client alleged that although he left several voice mails for this second lawyer, he did not return any of the calls. When he was finally able to contact the lawyer, he requested that the client provide him with any missing papers and water test results and indicated that he might be able to write a cheque for the amount being held in trust. Although the client complied with these requests, he did not hear back from the lawyer and was unable to reach him for another month, at which time the lawyer indicated he was unable to write a cheque but would be attending at the courthouse in a few months and would seek a judgment in order to close the matter at that time. This never occurred and it had now been 14 years since the money had been placed in the firm's trust account.

The lawyer explained that, not being the original lawyer on the file, his only involvement was to review the file. He was unaware of any attempts by the client to contact him and since there appeared to be a dispute regarding the money held in trust, the only viable solution to resolve the matter was a court application. He provided correspondence from the client, in which the client confirmed he had been advised that a court application appeared necessary in order to have the funds returned and he did not wish to incur the legal fees this would involve. The client went on to state he had reached an agreement with the vendors regarding the resolution of the matter.

Mediation was unsuccessful and the client was advised that, in the absence of evidence of any unethical conduct, the Society's jurisdiction to investigate complaints against lawyers does not extend to matters before the court. There was no evidence to substantiate the client's allegation that the lawyer had failed to respond to numerous attempts to contact him and, given that the lawyer was never retained to represent the client's interests, he had no ethical obligation to communicate with him.

The client requested a review of this decision and a further investigation was conducted, in which it was determined that the matter was not currently before the courts as had been indicated but rather, the issue was primarily legal in nature and would be most appropriately addressed through legal proceedings and not the complaints process. The Complaints Investigation Committee reviewed the matter on January 22, 2010, and determined that the original decision to dismiss the complaint had been correct. The evidence that might reasonably be believed could not support a finding of professional misconduct, conduct unbecoming or incompetence, nor would the facts merit a caution or counselling. The complaint was dismissed.

**: : RISK & PRACTICE MANAGEMENT TIP : :**

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

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**s. 58 LRA request for certificate of *Lis Pendens***

Lawyers wanting to know the procedural requirements for obtaining and discharging a certificate of *Lis Pendens* under s. 58 of the *Land Registration Act* should read the decision of *Dempsey v. Dempsey* 2008 NSSC 137 (Can LII) (2008), 266 N.S.R. (2d) 196.

In this case, Wright J. sets out:

- the procedural requirements that need to be met to obtain a certificate of *Lis Pendens*
- the role of the Prothonotary in signing the certificate or referring a request for one to a judge for further directions, and
- the procedure to be followed in discharging a certificate of *Lis Pendens*

*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](mailto:dgillis@lians.ca).*