Happy Birthday, Hugh!

GLASSES ARE RAISED TO ONE OF THE NORTH’S MOST REPUTABLE LAWYERS
Arctic Obiter is a joint publication of the Law Society of the Northwest Territories and the Northwest Territories Branch of the Canadian Bar Association. It is published on a monthly basis to keep lawyers practicing in the NWT informed of news, announcements, programs and activities. Comments, articles and photos for consideration can be submitted to Ben Russo. Past and current issues are available on the Law Society website.

FROM THE EDITOR

I had the pleasure and honour of speaking briefly with Mr. Hugh Latimer in preparation for this specially-themed newsletter. So much can happen in 80 years, both good and bad. To me, at far less than the 30-year mark, the encounter left me humbled and with much to think about.

I see Mr. Latimer time and again on the street, usually heading to and from the courthouse. He walks with a lot of history in his shoes, a lot of promise in his eyes and a lot of determination in each stride. Now, knowing him as more than just a name on the Law Society’s roll, I admire him both as a representative of the justice system and as a human being.

To you, Mr. Latimer, I hope your example in and out of court inspires the many younger (and older) members of our Bar to strive for the same professionalism in their work and dedication in their goals as you have displayed time and time again.

Cheers,
- Ben
Summertime in the Northwest Territories is a very busy season. We all try and schedule as much activity as we possibly can into two to three months of what is hopefully beautiful sunny weather. Scheduling events can be challenging because people are travelling, or taking advantage of our huge backyard to camp, fish and explore.

Summertime for the NWT legal community is no less busy. This month saw two notable events take place. Our Annual Court of Appeal Barbeque, organized by our Social Committee, was, as always, a great success. This event, intended to bring together the bench and bar in an informal social setting, has been ongoing for more than 35 years. It is a great opportunity to get to know our esteemed Judges, and also to meet and mingle with members of our profession that we may not work with or interact with on a daily basis. It was the first organized event I attended when I moved to Yellowknife three years ago, and was definitely indicative of the close, friendly and welcoming bar I was joining. Our Social Committee does a great job each year, and this year was no exception. A huge thank you to Shannon Gullberg, Lisa Strueby and Sarah McDermott for a job well done, and to Chris Buchanan for his assistance with the event. And, as usual, Linda, Ben and Amy provided invaluable support.

Another event which attracted guests from all aspects of our legal community was the surprise birthday party for a long-time resident member, Hugh Latimer. The Hon. Judge Robert Gorin, Chief Judge of the Territorial Court, opened his home to fellow judges, lawyers, support staff, court staff and even members of Hugh’s family who were surprise guests. Paul Falvo, sole practitioner and close colleague of Hugh, made sure Hugh had an entrance and celebration deserving of a king. The party was to not only celebrate Hugh’s 80th revolution around the sun*, but also his long standing role in the legal community. Hugh became a lawyer in 1955 and later became a member of the Law Society of the Northwest Territories in 1989. The wealth of knowledge and experience that is accumulated through that many years of practice and of living life is definitely something that should be acknowledged and celebrated. Happy Birthday, Mr. Latimer, and thank you for your dedication to the legal profession!

After this edition, the Arctic Obiter will be returning to bi-monthly publication. A lot of hard work from Ben goes into every edition of the Obiter, and a lot of his patience goes into waiting for people tardy with their submissions, of which I’m probably the worst! He’s doing a phenomenal job, one that has been noticed by law societies across the country. However, his job can be made easier, and our publication made better, by more submissions from you, our members. Contributions to the Obiter are always welcome and encouraged. Please, get in touch with Ben with your ideas and hopefully the next edition will feature some words from some fresh faces!

* A descriptive way of describing a birthday milestone that, unfortunately, I can’t take credit for – nor can I remember where I heard it!
Unauthorized Practice

In the March 2010 edition, I focused my remarks on the Quebec Mobility Agreement and the dilemma facing the three territories as the expiration of the current Territorial Mobility Agreement looms.

A recurrent theme during the Mobility Task Force discussions is unauthorized practice and what is perceived as a trend on the rise. Three scenarios are repeated:

- Members from other jurisdictions who are not aware that the Northwest Territories [as well as Nunavut and Yukon] are not signatories to the National Mobility Agreement;
- Members from other jurisdictions who do work in the Northwest Territories and then have someone from their office (who is a member) sign off on the work; and
- Members from other jurisdictions who think their activities do not fall within the definition of the practice of law or think that just because they do not appear in court, that they are not required to be authorized to practice.

The Northwest Territories’ Legal Profession Act clearly defines the practice of law and states that “no person shall engage in the practice of law unless he or she is an active member of the Society” or “hold himself or herself out as or represent himself or herself to be an active member of the Society, or a person lawfully entitled to practice law or to carry on the practice or profession of a barrister and solicitor.” Section 71(1) provides that every person who contravenes this part of the Act is guilty of an offence and liable on summary conviction to a fine not exceeding $5000 or, in default of payment, to imprisonment for a term not exceeding one year.

The alternative to a full membership in the Society is a Restricted Appearance Certificate (RAC). The Society grants these certificates to deal with a single matter, a series of closely related matters or a number of matters over a limited period of time, as in the case of PPSC lawyers who are required to go on a circuit.

Labour Arbitrations are also covered by policy. Provided that the arbitration falls under the Canada Labour Code, lawyers appearing as counsel in labour arbitrations in the Northwest Territories will not be required to hold an RAC or become a member of the Law Society. This also applies to non-members appearing in Federal Court on behalf of an NWT client or before federal tribunals in the Northwest Territories.

Chapter XVII of the Code of Professional Conduct covers “Practice by Unauthorized Persons”, requiring that “the Lawyer should assist in preventing the unauthorized practice of law.” The first of the guiding principles reads:

“Statutory provisions against the practice of law by unauthorized persons are for the protection of the public. Unauthorized persons may have technical or personal ability, but they are immune from control, regulation and, in the case of misconduct, from discipline by any governing body. Their competence and integrity have not been vouched for by an independent body representative of the legal profession. Moreover, the client of a lawyer who is authorized to practise has the protection and benefit of the solicitor-client privilege, the lawyer’s duty of secrecy, the professional standards of care that the law requires of lawyers, as well as the authority that the courts exercise over them. Other safeguards include...
As the value of client matters and transactions increase over time, so too does the need to secure adequate levels of errors and omissions insurance. The CLIA Voluntary Excess Program (VEP) has been protecting subscribing firms in the legal community for over 20 years, and continues to be the leading provider of excess errors and omissions insurance in the province.

The CLIA VEP program is proud to be a not-for-profit plan designed by lawyers for lawyers, with stable coverage and rates during both “soft” and “hard” market conditions. Firm wide coverage includes partners, employed lawyers, professional corporations, service/management companies, as well as former partners and employed lawyers for services rendered prior to retirement.

Rates for July 1, 2010 are as follows [see table] – please keep in mind that there may be further reductions based on a firm’s historical participation if claims experience allows for a distribution of existing profit sharing coming out of prior years. These reductions, if available, will be applied against these rates.

It is important to note that lawyers that have retired from practice continue to be responsible for work performed prior to retirement. Now available is the option for retired lawyers to purchase excess coverage on an individual basis, to address any unforeseen circumstances that may develop after retirement, provided they are retiring as a current member of CLIA’s VEP, either as a sole practitioner or as a member of a firm.

CLIA VEP applications are available at www.clia.ca. For more information on the CLIA VEP program, please contact Linda Whitford at the Law Society Office 867-873-3828.

Excess Professional Liability Insurance

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FAREWELL TO AMY
Our Administrative Assistant, Amy LeBlanc, has decided to move back to British Columbia at the end of July to be closer to friends and family. We wish her well and hope she has a safe trip south.

Over the next couple of weeks, Amy will be working with Arlene Baker, who will eventually take over as Administrative Assistant. You will meet Arlene in the next edition.

MORE CHANGES
This summer is full of change at the office. The Law Society office will be moving to larger quarters at the Diamond Plaza (Yellowknife, NT). Watch for details in your weekly bulletin.

The Obiter is also changing to a bi-monthly format. The next edition, the “summer” issue, will be published in August.

Until then, have a safe and happy summer!
NEW MEMBERS

GLEN W. RUTLAND
LEGAL SERVICES BOARD - YELLOWKNIFE, NT

MICHELLE T. KUNNEL
FIELD LLP - EDMONTON, AB
Michelle joined Field Law as an Associate in 2010 and is currently a member of the Firm’s legal team which represents hundreds of aboriginal clients advancing claims against Churches and the Government, pursuant to the well-known Indian Residential School Settlement.

Michelle also practices in the area of general litigation.

MICHAEL R. DANYLUIK
DAVIDSON GREGORY DANYLUIK STUFFCO - EDMONTON, AB
Michael received his bachelor of arts [honors] from the University of Western Ontario and his bachelor of Law degree from the University of Alberta, and was called to the Alberta bar in 1994.

Michael has worked with the Attorney General of Alberta and gained extensive experience with all major criminal prosecutions. Since moving to Davison Gregory, Michael has defended clients charged with murder, sexual assault, fraud, trafficking, proceeds, breach of trust and other serious and complex offences. His practice also extends to providing representation and advice to members of professional associations including police agencies who are either under investigation for, or charged with administrative or criminal offences.

Since 2004, he has been a member of the Edmonton regional legal aid committee, a principal and mentor for articling students and young lawyers, and has lectured at law and advocacy related conferences and seminars.

JAMES D. JODOUIN
BAINBRIDGE JODOUIN CHEECHAM - SASKATOON, SK
Jim represents numerous First Nations in Saskatchewan and the Northwest Territories, providing legal services respecting all aspects of aboriginal law. He has appeared in all levels of court in aboriginal and treaty rights cases.

JEFFREY R.W. RATH
RATH & COMPANY - PRIDDIS, AB
From 1985 through 1987, Jeff was mentored in First Nations’ law, politics and social issues by numerous First Nations’ Leaders and Elders while employed at the Indian Association of Alberta. He graduated from the London School of Economics and Political Science, Faculty of Law, in 1987 with an Honours Degree in law. He started his legal career working in the field of oil and gas, regulatory law and administrative law.

Jeff has appeared on behalf of First Nation clients before numerous courts, boards and tribunals, including the National Energy Board, the Alberta Energy and Utilities Board, the Alberta Energy Resources Conservation Board, and the British Columbia Environmental Appeal Board. His commercial experience includes completing one of the largest private financings of a public building on First Nations’ land.

Jeff was also a Sessional Lecturer for “The Law of Trusts” course at the University of Calgary, Faculty of Law in the 2000-2001 academic year. He is a frequent contributor to political debate in Alberta, having had numerous articles and letters on First Nations’ legal issues published in the Calgary Herald, the Calgary Sun, the Edmonton Journal and the National Post.

ALEXANDER P. GODFREY
PUBLIC PROSECUTION SERVICE OF CANADA - YELLOWKNIFE, NT

MEMBERSHIP STATISTICS

Active Residents: 132
Active Non-Residents: 233
Inactive Members: 84
Total Membership: 449
(Restricted Members: 66)
An entourage of CSIS agents, or a bunch of colleagues suited up with radios? To Hugh Latimer, the truth was obvious at first sight, but it was still a sight to be seen.

Months of preparation and invitations to a surprise party of grand proportions, organized by Paul Falvo, lawyer and friend of Hugh Latimer, went unnoticed by the guest of honour as his 80th birthday quickly approached. The rest of the legal community, however, was well aware and very secretive.

Paul’s invitation to a small-scale and casual “birthday dinner” was tossed in uncertainty by the modest Latimer until a surprising all-in confirmation for the dinner caught everyone by surprise, including his own assistant. (It was only later that the organizers discovered someone had sent their regrets for not attending the upcoming party directly to Hugh.)

While Hugh apparently knew something was up, the details were still a bit out of focus. So, when a large entourage arrived at Hugh’s residence with walkie talkies in hand, the adventure began. Caroline Wawzonek, Nikolaus Homberg, James Mahon, Daniel Rideout and Abdul Khan donned official-looking sunglasses and paved the way for Mr. Latimer’s safe travels to the event.

The waiting limousine and security convoy escorted the seemingly nonchalant Latimer to the main entrance of the Chateau Nova. Flown in from Alberta as a surprise, Latimer’s son, daughter and granddaughter were there waiting to welcome and join their father/grandfather on the journey to the party.

The convoy, now complete with police escort, drew attention on the streets while the limo slowly cruised to its final destination at the Gorin residence. Chief Judge Robert Gorin met the overwhelmed Latimer and his family at the car.
Introductions and greetings were finished, and Chief Judge Gorin invited Hugh into his home where yet another surprise awaited.

Hugh entered the foyer and was welcomed by a standing-room-only crowd of judges, lawyers, court staff, support staff and friends sung a loud and stunning rendition of Happy Birthday.

After some snacking, toasting and mingling, it was time to formally recognize the passing of time at the NWT Bar. Hugh was surrounded by admirers as, one by one, politicians, judges, lawyers and friends celebrated Hugh’s 80th.

Paul Falvo, now posing as the event’s master of ceremonies, first presented Hugh with letters of recognition from Ottawa. A certificate from the Prime Minister of Canada read, “It is a great pleasure to send you best wishes and warmest congratulations on the occasion of your eightieth birthday.” The Hon. Jack Layton of the New Democrats also forwarded his greetings and congratulations.

Letters from the Hon. Eva Aariak, Premier of Nunavut, and the Hon. Floyd K. Roland, Premier of the Northwest Territories, recognized Hugh’s birthday and service at the Bar. As well, a letter from Gordon Van Tighem, Mayor of Yellowknife, reflected congratulations and best wishes.

Further wishes were sent by Hugh’s brothers Bob and David, sister Karen, and nephew Kevin.

Sandra Aitken, speaking for the PPSC, poked at Hugh’s endless hand-written affidavits which, at some points, would be enough to tempt prosecutors to surrender their case.

James Mahon, a close colleague of Hugh’s, flew in from Fort McMurray, Alberta, to deliver a large reprint of Norman Rockwell’s “Jury Room” in honour of Hugh’s time in front of the criminal bench.

In their own salutations, Justice Richard and Justice Charbonneau shared similar compliments regarding Hugh’s model of professionalism and civility in the courtroom.

Peter Fuglsang, Hugh’s colleague and former principal,
congratulated Hugh on his many years at the bar and wished to see him at the office for many more.

Sheila MacPherson spoke on behalf of the Law Society in congratulating Hugh. Having just finished a trial in Nunavut with Latimer as her opponent, Sheila recalled the recent heated exchange she had with Hugh over very difficult details of the trial, which ultimately resulted in both lawyers red with anger for the remainder of the night. At a meeting the next morning, Hugh began with his thoughts: “Sheila,” he said, “I’ve been thinking about this all night. Your friendship is the most important thing to me. Our clients can dislike each other, but we don’t have to.” The comment may have been the key for what Sheila calls, “the most civil and cordial trial I’ve ever had!”

Many others spoke to Hugh’s accomplishments, while leaving room for the occasional humourous recant, including the party’s host, Chief Judge Robert Gorin.

The Hon. Justice Neil Sharkey of the Nunavut Court of Justice was also present to shake hands with his friend and former adversary.

Last to speak was Hugh’s son, Brian, who thanked everyone for supporting his father. “I did not realize the impact my father had in this community,” he admitted, “and I’m much the wiser now. Thank you so very much.”

Hugh, full of surprise and shock, and left with little to say, repeated himself quite a few times. “I’ve said it before, and I’ll say it again. I am, at this moment, the happiest man in the world.”

The Law Society of the Northwest Territories and the Northwest Territories Branch of the Canadian Bar Association congratulate Hugh on his 80th birthday and thank him for dedicating many, many years to serving the public in the justice system. May you live in excellent health for many more years to come.
At eighty years old, Hugh Latimer still hangs his shingle as a Yellowknife-based criminal lawyer. Strolling around the downtown streets of NWT’s capital, chances are you’ll run into him on his way to the courthouse library or to the local coffee shop. It’s also likely he’ll be whistling or humming a tune as he goes.

Latimer, born in Boston, Massachusetts, moved to Halifax and earned his Law degree from Dalhousie University in 1955. He was called to the Nova Scotia Bar later that year. Two years later, his practice then brought him to the Ontario bar, where he stayed until 1965. He then returned to his legal homeland of Nova Scotia.

BATTLING ADDICTION

In 1979, Latimer’s battle with a drug and alcohol addiction finally caught up to his personal life and professional practice. Latimer’s family left the East Coast for Western Canada. Latimer was also separated from his vocation to law. After losing his membership with the Nova Scotia Barristers’ Society, he resigned from the Law Society of Upper Canada.

It was then that he was admitted to an addiction centre for rehabilitation.

One year later, after his successful treatment in Nova Scotia, Latimer made the move to the North. Yellowknife was a place to make a change and to start anew, but Latimer admits the real reason he arrived here was for his ex-wife and his kids.

ON THE RIGHT PATH

For several years, Latimer worked in Yellowknife as a paralegal and as an officer at the Worker’s Compensation Board. His mode of transportation was a ten-speed bike, and he spent much of his time at the community pool and local swimming holes. He also became active with the Yellowknife Choral Society and the United Church Choir.

It was at the United Church that he met Rev. Jim Ormiston, a pillar of support and guidance for a man learning to walk again. With support from the Reverend, fellow parishioner Jack Wedel, and local lawyer Peter Fuglsang, Latimer hit the law books once again. Meanwhile, connections with his...
family in Alberta were mended and he was soon making regular visits to Calgary and Edmonton.

After passing the Bar Admission Course in Alberta and articling with Peter C. Fuglsang & Associates, Latimer was called to the Northwest Territories Bar in 1989 by Justice M.M. de Weerdt. “[He was] a jurist I greatly admired,” he adds.

“I think during the next two decades I became a kind of product of the Yellowknife Bench and Bar,” says Latimer, citing the strong involvement both Mr. Fuglsang and the Legal Services Board had on his career. “This gave me a second chance.”

Latimer’s battle with alcohol was over, due in large part to his court work and the inspiration he found with his church. “It never bothered me not to drink again.”

Meanwhile, Latimer’s respect and admiration for the judges and lawyers in the North grew. Good health became a priority for him, and it became his most important piece of advice to any lawyer working in the North. “You need it!,” he preaches. “It’s a must! Nothing can be more daunting than to square off with a good-looking, confident complainant before a Jury in a tough criminal case.”

WORTH IT
As many can vouch, health is a top priority to have when practicing criminal law in the North. “There is no doubt that lawyers doing work for the NWT Legal Aid plan are confronted with sometimes unbelievable challenges in difficult cases,” says Latimer, “but it may only be in losing yourself in the peril – fighting for the poor and the disenfranchised – that one can truly earn his or her ‘bread and cheese’.”

An old friend of Latimer’s, John Jennings (now the Hon. Justice Jennings of Ontario’s Superior Court of Justice) once told him, “Latimer, the thing I like best about you is your devotion to lost causes.” Recalling this, Latimer’s rebuttal is that, “there are really no lost causes, just unpopular ones. That’s where lawyers have to shine.”

It is in these ‘unpopular’ cases that Latimer really does earn his bread and butter, and perhaps for the greater cause. In the low points of many cases, Latimer has (rhetorically) asked Lucy Austin, Executive Director of the Legal Services Board, why they do what they do. His response has remained the same: “We are looking for a ticket to heaven.”

ON THAT NOTE
Speaking with Latimer, heaven (or at least the musical hints of heaven) seems to be an ongoing theme. Colleagues will often joke about the occasional composition (on vinyl record) accompanying legal briefs or statements - call it a stress relieving agent, as Latimer would hint.

His free time is easily filled with music and singing. Of course, if he’s not listening to sonatas and concertos, or even a classic riff of jazz, he’s probably out singing with a choir.

One of those choirs is the Yellowknife United Church choir, which Latimer describes as “of the the big supports of my life.”

Latimer’s court cases can sometimes take him abroad on circuit or leave him strapped to his desk, often for months at a time. The choir is fully aware of his disappearing tricks, and the response is the same each time he returns: “Welcome back, Latimer!”
**COURT OF APPEAL**

*Dr. Richard Bargen v. Medical Board of Inquiry*

2010 NWTCA 06  
Presiding: Justice P. Martin  
Justice L. Charbonneau  
Justice J.D.B. McDonald  
For the Respondent (Appellant): A.A. Garber  
For the Applicant (Respondent): C. Boyer

The Respondent appealed the judgment of the Supreme Court of the Northwest Territories which upheld a decision by a Board of Inquiry established pursuant to the *Medical Profession Act*, R.S.N.W.T. 1988, c. M-9.

Finding: Appeal dismissed. There was no reasonable apprehension of bias on the part of the Medical Board of Inquiry; the Board did not err by failing to draw an adverse influence from the failure to call certain witnesses; there is no merit to the contention that the notice issued to Dr. Bargen failed to disclose the true nature of the case against him and the Board did not misconstrue the notice.

**CASES CITED**


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**SUPREME COURT OF THE NORTHWEST TERRITORIES**

**CIVIL**

*MacDonald v. MacDonald*

2010 NWTSC 34  
Presiding: Justice L.A. Charbonneau  
For the Petitioner: K. Peterson, QC  
For the Respondent: E. Keenan Bengts

Application by the Petitioner for severance of the divorce from the other proceedings. Application denied. There is no Court order in respect of child support and no agreement between the parties. These issues are unresolved and contentious and this “…makes it difficult for this Court to be satisfied that reasonable arrangements are in place.” [para 11]

Application by the Respondent to compel disclosure of financial information. "The Court should not be asked to order parties to do things that they have already done.” [para 18]

Orders: (1) request for compliance with the Notice to Produce is adjourned sine die to be brought back on 5 days notice if the information already in possession of counsel is not complete; (2) Respondent’s counsel to provide Petitioner’s counsel with the Respondent’s personal tax returns and notices of assessment; (3) the parties to provide each other through counsel with personal tax returns and notices of assessment, etc.

**CASES CITED**

*R. v. Tymosovski* 2008 SKCA 88  
*R. v. Ouellette* 2005 ABCA 282  
*R. v. Leonen*, 2007 ONCJ 6  

**CRIMINAL**

*R. v. Evaglok*

2010 SCNWT 35.cor1  
Presiding: Justice L.A Charbonneau

For the Respondent: A. Côté  
For the Respondent: S.A. Petitpas

Appeal from a conviction on a charge of assault with a weapon. Two grounds of appeal were advanced - that the Trial Judge erred in law because she took into account the court process in deciding that identity had been established, and that the Trial Judge reached an unreasonable verdict.

"The focus of the inquiry on this appeal is not what other evidence the Crown could or should have called to prove identification. The question, rather, is whether it was open to the Trial Judge to arrive at the conclusion she did in light of the evidence that was before her.” [para 50] "…notwithstanding some gaps underscored by the Appellant, there was considerable circumstantial evidence bearing on the issue of identity. This evidence, combined with the information emerging from the court records and process, and the absence of any contrary evidence, left it open to the Trial Judge to reach the conclusion that she did." [para 51]

**CASES CITED**

*R. v. Tysowski* 2008 SKCA 88  
*R. v. Ouellette* 2005 ABCA 282  
*R. v. Leonen*, 2007 ONCJ 6  

**WORKS CITED**


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**R. v. Lafferty**

2010 NWTSC 36  
Presiding: Justice L.A. Charbonneau  
For the Crown: G. Boyd  
For the Accused: A. Khan

**Memorandum of Decision as to Venue**

Venue for the jury trial is Yellowknife. An attempt was made to form a jury in Behchoko, on February 15, 2010. That attempt failed:

> The main factors that reduced the number of prospective jurors at the selection process... were the number of people who failed to attend the selection process, and the number of people who were excused. There is nothing to explain why so many people failed to attend in response to their jury summonses. ... there was nothing unusual, such as a funeral, or another important community event, that impacted on people's availability to attend the selection process.... [para 15]

The closest venue with the most chance of success for forming a jury is Yellowknife.

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**R. v. Tatzia**

2010 NWTSC 47  
Presiding: Justice D.M. Cooper  
For the Crown: M. Lecorre  
For the Accused: S. Petitpas

**Reasons for Sentence**

The accused was found guilty by jury of sexual assault. Alibi evidence was provided and disbelieved by the jury. The offence was characterized as at the lower end of the scale of sexual offences. Crown sought two years less one day plus three years probation and a no contact order.

The accused was 42 years of age, with a Grade 10 education, certificates for drilling and blasting, a sporadic work record as a heavy equipment operator and underground labourer at a diamond mine. He has an 18 year old daughter who the accused supports when he is working. The accused's criminal record dates from 1987 and includes careless use of a firearm, failing to comply with a recognizance, sexual assault (sentenced 4 years), firearms prohibition, 6 drinking and driving convictions from 1991 through 2007, mischief, assault with a weapon, possession of a narcotic, and a number of convictions for failing to comply with undertakings.

The accused was released from custody in July of 2009 and the error was not discovered until January 8, 2010, and he served remand since that date due to 2 breaches of recognizance related to the present charge.

The victim was clearly traumatized and very negatively affected emotionally.

There were no mitigating factors: the accused did not plead guilty and expressed no remorse. Sentence: two years less one day with credit for time served of six months, so the accused had still to serve 18 months. DNA order, registration as a sex offender and to report under the *Sex Offender Information Registration Act* for 20 years; firearms prohibition for 10 years; probation order for 3 years, no contact order.

**CASES CITED**

R. v. Chinkon [no citation given]  
R. v. Zoe [no citation given]  
T.L.G. case [no citation given]  

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**Plante v. HMTQ**

2010 NWTSC 48  
Presiding: Justice V.A. Schuler  
For the Appellant: H. Latimer  
For the Respondent: A. Côté

Appeal of a conviction by a Justice of the Peace pursuant to s. 154(2) of the *Motor Vehicles Act*. "I find that the Justice of the Peace erred and did not apply the correct test with regard to the burden of proof and the appeal must be allowed on that ground." [para 13] Conviction quashed, new trial ordered.

**CASES CITED**


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**TERRITORIAL COURT OF THE NORTHWEST TERRITORIES**

**R. v. Mantla**

2010 NWTTC 03  
Presiding: Judge R.D. Gorin  
For the Crown: A. Paquin  
For the Accused: J. Bran

Accused acquitted of the charge of wilfully obstructing police officers engaged in the execution of their duties (s. 129 of the *Criminal Code*). "In this case the Crown particularized the charge so that it alleged that the Accused 'prevented' the two officers from entering the residence. On its face the charge appears to allege that the Accused committed a positive act which impeded the officers from entering a home. In reality she simply made it clear that was not giving them permission to enter her home. She was not legally required to provide such permission...." [para 9]
APPEAL JUDGMENTS

CHARTER: REMEDIAL JURISDICTION OF ADMINISTRATIVE TRIBUNALS

*2010 SCC 22 (LexUM)* | June 11, 2010
If a tribunal has the power to decide questions of law, and if Charter jurisdiction has not been excluded by statute, the tribunal has the jurisdiction to grant Charter remedies in relation to Charter issues arising in the course of carrying out its statutory mandate. A tribunal which has the jurisdiction to grant Charter remedies is a court of competent jurisdiction.

CIVIL PROCEDURE: FOREIGN ARBITRAL AWARDS

*Yugraneft Corp. v. Rexx Management Corp.* (Alta. C.A., August 5, 2008) (32738)
*2010 SCC 19 (LexUM)* | May 20, 2010
Under international arbitration law, limitation periods are left to the local procedural law of the jurisdiction where recognition and enforcement is sought. The applicable limitation period is therefore the law of the province (in this case Alberta). An arbitral award is not a judgment or a court order, and it therefore not eligible for a 10-year limitation period, but subject to the general two-year limitation period applicable to most causes of action.

CRIMINAL LAW: CONFESSIONS

*2010 SCC 20 (LexUM)* | May 27, 2010
The S.C.C. held:
- the distinction between an admission and a confession is apposite: under the rules of evidence, statements made by an accused are admissions by an opposing party and, as such, fall into an exception to the hearsay rule; they are admissible for the truth of their contents; when statements are made by an accused to ordinary persons, such as friends or family members, they are presumptively admissible without the necessity of a *voir dire*; it is only where the accused makes a statement to a person in authority, that the Crown bears the onus of proving the voluntariness of the statement as a prerequisite to its admission
- the derived confessions rule excludes statements which, despite not appearing to be involuntary when considered alone, are sufficiently connected to an earlier involuntary confession as to be rendered involuntary and hence inadmissible
- it is not necessary, nor would it be appropriate on the record in this case, to decide whether the derived confessions rule extends to admissions made to ordinary persons
- in deciding whether there was clear evidence that ought to have triggered the need for the trial judge to raise the issue on his own motion, an appellate court must consider the question from the perspective of the trial judge at the time the decision was made
here, the most significant circumstance is that the defence consented to the admission of the evidence.

CRIMINAL LAW: (MANDATORY) PUBLICATION BANS
2010 SCC 21 (LexUM) | June 10, 2010
Section 517 of the Criminal Code (whereby a justice of the peace is required, if an accused applies for one, to order a publication ban that applies to the evidence and information produced, to the representations made at a bail hearing and to any reasons given for the order) is constitutional.

LEAVES TO APPEAL GRANTED

ABORIGINAL LAW: FISHING RIGHTS
Lax K’ul’aams Indian Band, represented by Chief Councillor Garry Reece on his own behalf and on behalf of the members of the Lax K’ul’aams Indian Band, Others v. Attorney General of Canada and Her Majesty the Queen in Right of the Province of British Columbia (B.C.C.A., December 23, 2009) (33581)
June 10, 2010
What is the content and scope of an aboriginal claim for “Fisheries Resources” in the “Tribal Territories” of a First Nations group.

CLASS ACTIONS: COMMON ISSUES
In the context of monies paid by residents of long-term care facilities, what are the common issues.

CLASS ACTIONS: CROWN IMMUNITY
Her Majesty the Queen in Right of Canada v. Imperial Tobacco Canada Limited (B.C.C.A., December 8, 2009) (33559) May 20, 2010
Can a third party notice be brought against officials at Health Canada who had directed tobacco companies to develop, market, and promote light and mild cigarettes.

CONSUMER PROTECTION IN QUEBEC: "CONGRATULATIONS, YOU JUST WON A VACUUM CLEANER"
Is an “Official Sweepstake Notification” that you have won a large sum of money misleading advertising, or simply part of the “advertising game”.

PROFESSIONS IN QUEBEC: WRITING TO A JUDGE; DISCIPLINE
Did the content of a letter to a judge justify disciplinary action against the lawyer.

TOBACCO LITIGATION
Can tobacco companies bring third party proceedings against Canada for contribution and indemnity.

TORTS: CROWN LIABILITY
Bernard Gerardus Maria Berendsen et al v. Her Majesty the Queen in Right of Ontario (Ont. C.A., December 1, 2009) (33543) May 20, 2010
Is there government negligence where the Ontario Ministry of Transportation buried asphalt and concrete waste from a highway reconstruction project in an unlined pit on a nearby dairy farm.

Eugene Meehan, Q.C., is a Litigation Partner at Lang Michener, Ottawa. His primary area of work is with the Supreme Court of Canada, mainly assisting other lawyers in taking cases (both Leave to Appeal and Appeal). He also does Public Law generally. For previous summaries, and to keep up-to-date with all SCC appeals and leave to appeals, contact Eugene at emeehan@langmichener.ca.

Eugene Meehan, QC, returns to Yellowknife in September for an exciting lecture.
Watch the Obiter and weekly bulletins for details.
NOTE: THE NWT LEGISLATIVE NEWS IS NOT A COMPREHENSIVE REPORT OF LEGISLATIVE ENACTMENTS. ONLY ITEMS CONSIDERED TO BE OF INTEREST TO THE BAR ARE LISTED.

EXEMPTIONS ACT
The new Exemptions Act, S.N.W.T. 2010, c.4, replacing the existing Exemptions Act, comes into force on July 1, 2010 by virtue of a commencement order registered as SI-003-2010 on June 24, 2010. The categories of property that are exempt from seizure under a writ of execution are updated and expanded to include types of property essential for subsistence of the debtor and his or her dependants. Transitional matters are provided for, and the Public Service Garnishee Act is consequentially amended. Note also that new Exemptions Regulations, setting out the monetary limits applicable to certain categories of property exempt under the new Act, were also made on June 24, 2010 and registered as R-052-2010. The new regulations also come into force on July 1, 2010.

MOTOR VEHICLES ACT
The Motor Vehicle Registration and Licence Plate Regulations were amended by regulations made on June 28, 2010 and registered as R-054-2010, to increase certain fees payable under the regulations and to prescribe the new Northwest Territories licence plate. The amendments come into force July 1, 2010.

RESIDENTIAL TENANCIES ACT
An Act to Amend the Residential Tenancies Act, S.N.W.T. 2008, c.9, streamlining the application and hearing processes and expanding remedies available to the rental officer, comes into force on September 1, 2010 by virtue of a commencement order registered June 24, 2010 as SI-004-2010. Note also that new Residential Tenancies Regulations, implementing certain of the amendments to the Act, were also made on June 24, 2010 and registered as R-052-2010.

STATUTORY INSTRUMENTS ACT
The Statutory Instruments Regulations were amended by regulations made on June 24, 2010 and registered as R-050-2010, to repeal certain fees previously payable under the regulations and to make a number of miscellaneous changes.

SUMMARY CONVICTIONS PROCEDURES ACT
The Summary Conviction Procedures Regulations were amended by regulations made on June 28, 2010 and registered as R-055-2010, to establish a ticket for a new offence set out in the amendment to the Motor Vehicle Registration and Licence Plate Regulations, and to improve the organization of certain items in the Schedule. The amendments come into force July 1, 2010.

WORKERS’ COMPENSATION ACT
The Appeals Tribunal Rules of Procedure were enacted by an instrument made by the Appeals Tribunal on May 31, 2010 and registered on June 8, 2010 as R-049-2010. The new rules replace the previous Appeals Tribunal Rules of Procedure enacted in 2002.

IT’S ALL ONLINE!
UPCOMING EVENTS

NOTE: REGISTRATION FEES MAY APPLY. SEE THE WEEKLY BULLETIN FOR EVENT DETAILS

MILITARY JUSTICE: AN INTRODUCTION
WEDNESDAY, JULY 7, 2010 - 12:00pm
Champagne Room (Yellowknife)
Lieutenant-Colonel James MacMillan, Deputy Judge Advocate (Yellowknife), returns to the Law Society to discuss the rationale and framework of military justice. Learn about recent changes to the court martial system, the nature of summary trial systems (both inquisitorial and adversarial), and the reason for a military justice system. This seminar will be of interest to all lawyers.

MEETINGS

WOMEN LAWYERS FORUM
JULY 20, 2010 - 12:00pm
Law Society Boardroom

LABOUR & EMPLOYMENT SECTION
JULY 29, 2010 - 12:00pm
Law Society Boardroom

STAY CURRENT
Find events on the Law Society website: www.lawsociety.nt.ca/membership/calendar.html

REGISTER EARLY!
Avoid hassles and secure your seat at any event by registering now. Registration information can be found in the Weekly Bulletin.

PROFESSIONAL DEVELOPMENT CAN BE THIS SIMPLE

With the Professional Development (PD) environment continually changing, remaining current with your legal skills or meeting new reporting requirements can be complicated.

Professional Development is now a great deal easier to navigate with the Canadian Bar Association’s new PD website.

Featuring many unique tools, this site empowers you to learn and succeed like never before. You can search accredited CBA programs from across the country, tailor the site to your areas of interest and monitor your PD progress with an innovative, members-only tracking tool.

The CBA’s new PD website – just one more way we’re providing quality legal education when, where and how it suits you best.

Don’t be left behind. Start your new PD journey at www.cba.org/pd
NOTICES

The Supreme Court of the Northwest Territories

SCHEDULING NOTICE
TO MEMBERS OF THE BAR

PLEASE TAKE NOTICE THAT THE NEXT SUPREME COURT GENERAL CRIMINAL LIST WILL BE CALLED ON:

Thursday, September 2, 2010 at 14:00 hrs
AT YELLOWKNIFE NT

IN COURTROOM #1

NOTE:
1. All Counsel (Crown & Defence) with pending matters are to attend the Calling of the List, either personally or by agent.
2. For those pending matters in which the Accused person has elected trial by Judge and Jury, counsel (both Crown & Defence) are to advise the presiding Judge at the time of, or prior to, the Calling of the List whether the matter will indeed be proceeding as a contested Jury Trial and, if so, the estimated duration of the Jury Trial.
3. For those with Summary Conviction Appeals, please be reminded of Rule 117 of the Criminal Rules of the NWT.

Court of Appeal of the Northwest Territories

NOTICE TO MEMBERS OF THE BAR

PLEASE TAKE NOTICE THAT THE LIST OF CASES PENDING AND THE GENERAL APPEAL LIST WILL BE CALLED BY A JUDGE IN CHAMBERS ON

Thursday, September 2, 2010 at 15:00 hrs
at Yellowknife NT

IN COURTROOM #1
for the Court of Appeal Assize commencing

October 19, 2010

COUNSEL ARE REMINDED OF THE FOLLOWING NEW FILING DEADLINES FOR APPEALS FILED AFTER MARCH 1, 2006:

CIVIL APPEALS and CRIMINAL APPEALS

a) Appeal books must be filed not later than 12 weeks from the date on which the notice of appeal was filed.
b) Appellant’s Factums must be filed within 60 days of filing of the appeal book or within 7 months of the notice of appeal whichever date is earliest.
c) Respondent’s factum must be filed within 30 days of being served the appellant’s factum.
d) Only those appeals that have been perfected as at September 2, 2010 will be set for hearing at the October 19, 2010 assize.

OUT OF OFFICE

James R. Scott (Edmonton, AB) will be out of his office from July 9, 2010, until August 4, 2010. For urgent matters, please contact his assistant, Cheryl Money, at cmoney@scottlaw.ca.

The office of Cayley Thomas (Yellowknife, NT) will be closed from July 1, 2010 until August 4, 2010.
LAWYERS’ ASSISTANCE

The Legal Profession Assistance Conference (LPAC) of the Canadian Bar Association is dedicated to helping lawyers, judges, law students and their families with personal, emotional, health and lifestyle issues through a network of Lawyer Assistance Programs, a national 24-hour helpline and Provincial Programs. If you need assistance, please call the helpline or visit their website.

1-800-667-5722
www.lpac.ca

Practice Advisors

The Practice Advisors from the Law Society of Alberta are available to discuss legal, ethical and practice concerns, and personal matters such as stress and addiction. Members are invited to contact the Practice Advisors at any time:

Ross McLeod (Edmonton)
Tel: 780-412-2301 or 1-800-661-2135
Fax: 780-424-1620
ross.mcleod@lawsocietyalberta.com

Nancy Carruthers (Calgary)
Tel: 403-229-4714 or 1-866-440-4640
Fax: 403-228-1728
nancy.carruthers@lawsocietyalberta.com

Mentor Program

Members from Northwest Territories and Nunavut are invited to call the office of the Practice Advisor and ask for the Mentor Program. Please be advised that not all of the mentors may be totally familiar with NT statutes and practice. There is no cost.

1-888-272-8839

The Law Society of the NWT and the CBA-NT Branch have partnered with Human Solutions to offer members free, private and confidential professional counseling and consultation for the resolution of personal issues or work related difficulties.

This service is available 24 hours a day, 7 days a week. Call any time.

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*Approximate estimated savings based on a comparison of total cost by age 65 between a 10 year renewable term life policy and CBIA Term 80 coverage at standard, non-smoker rates. Cost includes the Waiver of Premium rider, an extremely important benefit that may pay your premium should a serious accident or illness prevent you from working.

The least expensive competitor cost is based on a premium ranking of insurers by LifeGuide industry comparison software as of February 8, 2010. LifeGuide is a registered trademark of Computrace Software Inc. The CBIA is not responsible for any errors or omission in this software. CBIA cost does not include Ontario PST or Quebec QST (if applicable).

While CBIA Term 80 coverage rates are not guaranteed and can vary with plan experience, we have a long history of stability, rate reductions and no added cost benefit improvements. In addition, your face amount is guaranteed and your coverage will not terminate if you leave the legal profession.

CBIA Term 80 Plan underwritten by The Manufacturers Life Insurance Company (Manulife Financial).