

# SDLA LEGAL BRIEFS

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## THE CHARTER & LAW DAY

Thirty-three years ago today the *Canadian Charter of Rights and Freedoms* was signed. Every year, Law Day commemorates this significant event. Since 1982, the *Charter* has helped shape the Canadian legal system and continues to be argued in many cases across the country at all levels of court. The *Charter* seeks to balance the interests of the individual with those of society by setting out rights and freedoms that are part of our free and democratic society, including certain protections for

those accused of a crime, the right to equality, and the freedom of conscience and religion.

I was attending high school in Toronto at the time the *Charter* became law. Religion was not high on my priorities even though since kindergarten the public school day began with the recitation of the Lord's Prayer. But in high school there was a significant shift in the practice that had become rote to me: We no longer had to stand eve-

ry morning to listen to the Lord's Prayer repeated over the public address system. We still stood for the morning exercises but now we heard spiritual readings and prayers from some of Canada's aboriginal cultures, Zoroastrianism, the Baha'i faith, Sikhism, Buddhism, various Christian faiths, Judaism, Islam...Enough variety to ensure a different reading every single day.

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## PRESIDENT'S MESSAGE

I would like to express my gratitude to the SDLA members who took time from their busy schedules to attend the AGM February 17, 2015 at Alexandria's Restaurant. Greatly appreciated.

Furthermore, on behalf of the SDLA our thanks, to Orlando Da Silva, President of the Ontario Bar Association, for attending to speak to the members pre-

sent on such a timely and sensitive topic.

Thank you Orlando!

I understand it had been many years since an election for an Executive position had taken place. The 2015 election and member turnout at the AGM is a great indicator of interest and show of support for your Association.

I would like to thank Tanya Farkouh Martin, Alex Caza and Stephanie Baker for letting their names stand for the position of Secretary to the SDLA Board.

A warm welcome to Ms. Baker, being the newly elected member of the Board. Executive Board members look forward to working with you in your role on the Board.

PRESIDENT'S MESSAGE CONT'D FROM PAGE 1

As mentioned at the AGM your Executive members are working with the Ministry of the Attorney General to refurbish the Barristers' Lounge at the Elm Street Court House.

Your 2015 Executive has begun the process of revising the outdated by-laws of the Association.

We will keep you posted on this task. The goal is to have the revised by-laws ready for the 2016 AGM, where your

approval by vote is required.

The Executive Board meets monthly at the law library. We welcome suggestions and comments from members.

As your executive we look forward to serving the interests of the members of the Sudbury District Law Association.

*Ed Paquette  
President  
Sudbury District Law Association*

This newsletter was slated for publication earlier in the month of March, however publication was delayed.

We would like to extend our deepest sympathy to the family and friends of Leo Arseneau.

The Sudbury Bar has lost a true and dedicated advocate with the passing of Leo P. Arseneau.



The Sudbury Food Bank and Club Richelieu charities were recipients of donations from the Sudbury District Law Association.

Both charities received donations to assist with their many needs over the 2014 Christmas Season!

The Association received a heartfelt "grand merci" from

Club Richelieu Sudbury!

Continuing our investment in the Sudbury community, the SDLA contributes to a scholarship at Laurentian University.

The Ken Dryden / Sudbury District Law Association Scholarship supports the academic achievements of a Laurentian University student

annually through this Bursary.

Photo above : Past SDLA President John Michael Bray pictured with Sudbury Food Bank , Executive Director, Dan Xilon.

## THE CHARTER OF RIGHTS & FREEDOMS & LAW DAY

In elementary school we had been taught that Canada is a cultural mosaic, made more beautiful by each unique piece that is added. The change to morning exercises showed us, in a lovely and poignant way, the great variety of spirituality and religions that make Canada one of the best places in the world to live. It took just moments a day to send a message of tolerance and understanding.

I was unaware why this shift had occurred but discovered a Sudbury connection years later when I attended law school. Among the required reading in first year constitutional law was a case called *Zylberberg et al v. Sudbury Board of Education*. Three Sudbury families with children in public elementary school objected to the practice of reading the Lord's Prayer during morning exercises.

One family was Jewish, another Muslim, and the third preferred a secular approach. All were concerned about the effect the practice had on non-Christian children. The children's whose families objected were given the option of stepping outside the classroom into the hall during the morning exercises, but was this the right response?

The Court of Appeal for Ontario considered this question and mentioned the Toronto School Board's practice when analyzing whether the required reading of the Lord's Prayer violated *the Charter*.

Ontario's highest court ultimately ruled that the practice of reading the Lord's Prayer violated the Charter's guarantee of freedom of religion even when the children had the option not to participate.

The court had this to say:

*"...the right to be excused from class, or to be exempted from participating, does not overcome the infringement of the Charter freedom of conscience and religion by the mandated religious exercises. On the contrary, the exemption provision imposes a penalty on pupils from religious minorities who utilize it by stigmatizing them as non-conformists and setting them apart from their fellow students who are members of the dominant religion."*

The Zylberberg decision had repercussions all across Ontario and Canada and is often still cited in other jurisdictions and in academic legal literature. The decision reminds us all that Canadian law must be interpreted in a manner consistent with the preservation and enhancement of the multicultural heritage of Canadians. The message of tolerance and understanding is part of our Constitution and is enshrined in the Charter. It is part of what makes us Canadian.

*By Grace Alcaide Janicas*

## LETTER TO THE EDITOR : LAW BALL 2014

May I add my voice to the Law Ball summary.

First of all, my sincere congratulations to Mme. Sophie Mageau and her executive. Very well done!

Secondly, I was honoured to be asked to toast Her Majesty Queen Elizabeth II. I wondered why then I realized I was one of the only members of the Sudbury Board who met the Queen just before she assumed the throne, at Hart House, University of Toronto.

Thirdly, my University classes had

the last cohort of serviceman from WWII and in my early years at SDLA a number of the lawyers were ex-military.

The Law Ball was in early days held at the Curling Club, what is now the armory. One dance led to a broken leg (fall down the stairs) which seems not likely to be repeated.

The early form was an "address to the ladies" followed by "the ladies response". Long time ago.

What very much appealed to me

was that a number of lawyers not tied to spouses came by themselves.

Further, I was quite taken with Mr. Leo Arseneau's attendance, again, in a non-dancing couple. To me it is a compliment to all lawyers that their camaraderie is not limited.

Again, thank you Sophie and executives, I had a ball.

*Edward James Conroy*

*Conroy, Trebb, Scott, Hurtubise*

## LAWPRO— CAMPAIGN CONTRIBUTIONS 2015—A RANT

THE pinch of sending out a cheque to LawPRO for mandatory errors and omissions insurance coverage in early February is still palpable. In part this may be because it is the biggest cheque I write every year for office expenses. For 2015 the sum was \$3,861. Perhaps you can relate?

To put that in some perspective it is equivalent to 1,544 500 ml cans of Smithwicks ale, or a little over 4 tallboys a day, every day of the year. I wish I had paid less in E & O insurance so that I might buy a few more Smithwicks.

The newspapers recently reported that LawPRO was a contributor to the Liberal by-election campaign of G. Thibeault in the Sudbury riding. LawPRO gave Glenn the maximum corporate donation for this campaign, \$9,975. or the equivalent of almost 4000 cans of Smithwicks.

You might ask why would Glenn want 4000 cans of Smittys? The question is specious. A more compelling question is: what the heck is LawPRO doing sending Glenn almost 10 grand? And tangentially, who else is on the receiving end of these political donations from LawPRO, and for how much? Feel free to convert whatever answers you might get to these questions to the cost of tangible items of a discretionary nature that you may fancy so as to better relate to the quantum.

Here's my beef. The mandatory payments I am obliged to make to be a LI licensee should not be used to fund political campaigns. Best I can figure, to be a member of this honourable profession of law in Upper Canada I am compelled to purchase E & O insurance coverage from LawPRO. Compelled as in "no choice."

It may not surprise the reader to learn that being required to buy E & O insurance from LawPRO is a notion I can abide.

That said, the million dollar minimum coverage has long struck me as being a bit rich for many lawyers.

What I have trouble abiding is how some portion of my mandatory premium payments find their way to support political candidates in their election campaigns. In my view neither the Law Society of Upper Canada nor LawPRO should use its mandatory member fees to support candidates in political election campaigns.

At some general level, I believe there ought to be a clear distinction between the functions of a regulatory body and an occupational advocacy group.

LSUC is our governing body, LawPRO is a wholly owned subsidiary of the LSUC (far as I know). And I imagine that a subsidiary company ought not to be able to do it either. And as a general proposition I do not believe that regulatory bodies should participate in the political arena by supporting particular candidates for office.

For clarity, I have no problem whatever with lawyer groups with voluntary membership getting actively engaged in the political process. If the Ontario Bar Association, or the Ontario Trial Lawyers Association or any other professional group with optional membership wishes to support political candidates with donations, go for it.

But the LSUC and LawPRO are fundamentally different and should avoid political contributions.

Another concern is the lack of openness or transparency (to use fashionable terminology) by LawPRO as it concerns these political payments. I would like to know about these practices from the source and not from some newspaper report. I regularly read the material that LawPRO and the Law Society put out. I have never seen either openly

acknowledge that it makes campaign contributions to certain politicians or political parties. And, not that it's conclusive, but a search of LawPRO's website yields, no matches for "political campaign contributions".

Let me close by way of saying that my beef is not that LawPRO funds went to Glenn Thibeault or to the Ontario provincial Liberal party. While I carry a brief for neither, I wish both Glenn and the current Ontario government well.

I'd like to believe that our local community may benefit from a sitting MPP on the government side. But in my view no candidate and no party should get funding from professional bodies that burden me with compulsory payments.

### **Addendum -**

Since this article was first composed it has come to my attention (thanks Rannah) that an earlier media report indicated that in the general provincial election of June 2014 LawPRO and LSUC were major campaign donors. Here is what "Law Times" reported.

*Among legal organizations, the Law Society of Upper Canada and LawPRO were generous donors last year. The law society gave \$9,000.00 to both the Conservatives and the NDP. LawPRO matched the law society's donations to the Conservatives and the Liberals.*

By my calculations that's \$27,000.00 to the losers and \$6,000 to the winning party. For some it might serve to explain why only the Liberals (governing party) received funding in the by-election; catch-up. Or maybe it was simply because our regulator and insurer wanted to indicate support for the governing party.

These comments should not detract from my thesis that all such contributions are wrong headed.

*T. Michael Hennessy, Esq.*

# SUDBURY MOCK TRIAL COMPETITION 2015

The Annual Sudbury Mock Trial Competition was held on Friday January 9, 2015. This year approximately 85 local Grade 12 students participated in the competition. The mock trial season began with 15 teams from 9 different schools (and two different school boards). Confederation Secondary was the last team standing and successfully defended their championship from last year. Kevin Ludgate (Crown Attorney's Office) coached Confederation Secondary in their pursuit of the 2015 Hennessy Cup.

"The students are faced with the difficult task of proving a criminal offence beyond a reasonable doubt," says Madame Justice Patricia C. Hennessy. "To succeed, they must understand how to best present the evidence and to argue their positions." She adds: "Win or lose, they learn how difficult the job of proving a case can be and how the court grapples with different types of evidence. These are important concepts in a democracy. At the end of the day, these students, our future community leaders, will learn lessons they will never forget, skills they will always use, and develop a confidence that will stand them in good stead no matter what they do or where they go."

The Sudbury District Law Association and its members continue to make significant contributions to this event each year. Coaches generously donated their time and knowledge of the law to coach students in their quest for victory. We would like to thank all of the coaches this year (listed alphabetically by firm):

Lindsey Santerre (Beckett Criminal Law Office)

Renée Costantini (Children's Aid Society)

Dale Brawn, Janelle Proulx (Conroy, Munro Law Office)

Michael Macnamara, Mathieu Ansell (Conroy, Trebb, Scott, Hurtubise)

Kevin Ludgate (Crown Attorney's Office)

John Saftic, John Recoskie, Maya Smith, Milena Soczka (Legal Aid Ontario)

Alex Caza, Adam Kosnick, Meaghan Boisvert, James Rouleau, Julie Bourassa (Miller, Maki LLP)

Mike Gauthier, James Ross (Orendorff & Associates)

Kayla Seyler, Renée Gregor, Dhiren

Chohan (Weaver, Simmons LLP)

Teachers and coaches also recently attended an informal meeting to discuss this year's event and brainstormed some ideas to further improve the mock trial competition in the future. The event was held at Oscar's Grill and was graciously sponsored by the Sudbury District Law Association and the Ontario Justice Education Network. The event was well attended and much appreciated input was received from everyone in attendance.

We encourage all lawyers, newly called to the bar and seasoned veterans, as well as articling students to get involved in this amazing project. Please feel free to contact me if you are interested in coaching a team next year.

Trevor Kestle

After his many years on the Bench, the Honourable Justice John Kukurín will retire.

Please save the evening of June 4, 2015 to celebrate his achievements and commencement of his blissful life.

More information to come...

Message printed on behalf of Algoma District Law Association

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## SUDBURY DISTRICT LAW ASSOCIATION

### 2015 EXECUTIVE

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<u>PAST PRESIDENT</u>	JOHN MICHAEL BRAY ORENDORFF & ASSOCIATES 1533 BELLEVUE AVE SUDBURY, ON

### COLLOQUIUM 2015

**Colloquium 2015** is being held on **October 22nd—23rd, 2015** in Sudbury. If you have not already done so, mark your calendars to hold these dates.

The initial organizing and planning has already commenced. The program will be accredited by the LSUC. This year, we plan on offering programs in Trial Advocacy, Appellate Advocacy and Aboriginal Law, as well as in a number of substantive areas of law. We hope to again partner with the Advocates' Society to offer a mentoring program. We are in the planning stages of organizing programming directed to French language practitioners throughout Northeastern Ontario.

This year's dinner, which will celebrate the 5th year of the program, will take place on Thursday evening at the Tavern at Science North. Former Chief Justice Patrick Lesage is confirmed as the keynote speaker. The dinner will be followed by the ever-popular Hospitality Suite.

If anyone has any ideas for this year's conference, including possible speakers, please contact me at [erin@wallbridgelaw.com](mailto:erin@wallbridgelaw.com)

*Kathleen Erin Cullin  
Chair Organizing Committee*