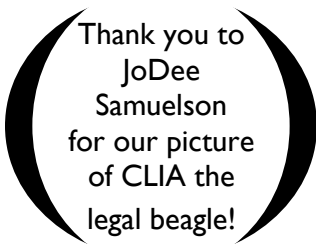


the LEGAL BEAGLE



Community Legal Information Association, Inc.

Summer 2008



CLIA Statistics

- In 2005/6, we had 2,593 inquiry calls
- In 2006/7, we had 2,308 inquiry calls
- In 2007/8, we had 2,231 inquiry calls
- Since 1985, we have had over 43,500 inquiry calls



CLIA has a new website

Our long awaited website was launched at the 2008 Annual General Meeting in June.

The new website provides:

- an easy to navigate design
- improved access to all of our publications
- access to key project reports
- up to date news and events

Coming soon:

- the option for large print and images to facilitate website use
- links to external resources listed close to CLIA information
- the opportunity to support CLIA with secure online donations

With a new program to administer the website, we plan to keep it up to date with news, publications, reports, and



organizational activities. We envision the website as an excellent resource for all Islanders.

We can now be found at www.cliapei.ca

Please free to link us on your own website!

This newsletter is available online and via email through the website.

We are very pleased with the final product. Our thanks to Beti and Sasha Andric of GoldNET.

Self Represented Litigants

We are pleased to announce that Ann Sherman has completed her work on exploring the needs of self-represented litigants on PEI.

Unveiled to great interest at the 2008 AGM, Ann's report highlighted the great need on PEI for formalized support for self-represented litigants.

To read the final report, please visit our website. Hard copies are also available at 892-0853 or 1-800-240-9798.



The Role of the Office of the Attorney General

Cyndria L. Wedge, Director of Prosecutions Presentation made February 14, 2007

I have been asked to speak to you today about the role of the Office of the Attorney General. But first, being a lawyer, I have a disclaimer. If, during the course of this presentation, I express an opinion, you should know that the opinion is mine alone and does not necessarily reflect the position of the Attorney General.

Let's start by going back a little in time. Do you remember 9/11? And, thereafter, do you remember George Bush declaring war on terrorism. And, then, the troops moved into Iraq and then Afghanistan. So we began to see visuals on the news of shooting and bombing and destruction. And we also saw the "human interest stories" - families taking refuge in shelters and camps, and hiding in the cellars and bathrooms, lacking food and water, and concerned that at any moment they might be shot.

Now, let's move the clock forward ahead a little to Hurricane Katrina. Was anyone else, like me, glued to CNN every free moment watching what transpired. If so, we heard news stories such as:

- trucks containing food and water couldn't reach people because the trucks were being hijacked;
- attempts to evacuate patients from a flooded hospital failed because the patients, hospital workers and rescue workers were being fired upon;
- Anderson Cooper reported spending a night in the basement of a police station with no electricity, and the police station being fired upon;
- police officers abandoning their jobs due either to a need to assist their families or fear of how the crowds were dealing with police;
- we saw images of looting (in many cases for items that were necessary to sustain life) but also in lots of cases for

anything that was simply transportable.

So, what do war-torn countries and New Orleans during Katrina have in common? These are two examples of societies that are functioning without the rule of law. They are societies where it is "every man for himself" - frontier environments where society lacks direction and guidance and enforcement.

I would suggest to you that our ability to live our lives as we do (raise our families, go to work, attend a Rotary meeting) is all based upon the fact that we live in a country regulated by the Rule of Law. That Rule of Law is the very foundation upon which we live. It must be in place before a government can engage in other activity such as creating a health system, creating an education system, engaging in social welfare development. The existence of the Rule of Law is the foundation upon which we live our lives.

So, this brings me to the topic of this presentation. What is the role of the Office of the Attorney General? Simply put, the role of the Office of the Attorney General is to maintain and preserve the rule of law in this province. It is often said that the Office of the Attorney General is larger than the person who occupies it. This is not intended to be disrespectful to the current occupant or any of the predecessors. Rather, this statement is another way of saying that the Office of the Attorney General stands for the fundamental presence of the rule of law in the province.

What is needed in order to create and maintain the Rule of Law? There are three requirements. They are:

1. Good Government
2. Laws
3. Effective Tools of Enforcement

Good Government

This is not a reference to a particular political party. Rather, it refers to an accountable, transparent system of government with checks and balances built in. I am constantly amazed by the brilliance and wisdom shown by the Fathers of Confederation in 1867 in creating the BNA Act. Have you ever heard the saying that "Absolute Power Corrupts Absolutely"? Well, the Fathers of Confederation recognized the truth in that saying, and created a government for Canada that has three branches: the Executive (the Premier and his Cabinet), the Legislative Assembly (includes backbenchers and the Opposition), and the Judiciary. Each of these branches oversees and critiques the work of the others. In this way, absolute power doesn't rest anywhere.

Laws

The second essential feature of a society based upon the rule of law is strong laws. All of the laws created by a government are intended to address an evil. And I use the word "evil" broadly. Some are simple to understand - our laws prohibit conduct that hurts another human being (assault, murder, etc.) because, as a society, we value the sanctity of the human being. Our laws protect our property.

Any time you assess a law, you attempt to determine the evil it is intended to address. We have elevator regulations to ensure people are safe when they get into that little box and press a button. We have pressure boiler regulations to ensure that boilers don't explode and hurt people. We have buffer zone regulations as a measure to stop fish kills. These are some examples of the evils laws are intended to address.

When a government creates a law, that law can't be vague or irrational or

overly intrusive. And, guess who decides whether a law is any of these things? The judges. Once again, the checks and balances are at work.

Effective Tools of Enforcement

Effective tools of enforcement are the third requirement to have a society based on the Rule of Law. Tools of enforcement can be either consequences or action.

Consequences can be such things as incarceration, fines, probation, or, in civil law, awards of monetary damages.

The “action” part of enforcement is something different. The best way to explain this is by example. You may recall a couple of years ago seiners were offloading fish in Souris. This upset the local fishermen greatly. Acts of civil disobedience were occurring on the Souris wharf. The seiners obtained an injunction requiring the protesters to permit them to offload the fish and not block their path. The Attorney General called in the RCMP Tactical Squad to enforce the injunction. This is the type of action that is required, on occasion, to enforce the Rule of Law.

A couple of additional comments on that last example:

- Any information I’ve shared with you is public information, so I’m not breaching any confidences;
- Bringing in the RCMP was not the “politically correct” decision in the Souris situation; it was, however, the “legally correct” decision. The

Attorney General **never** makes decisions based upon political expediency. The Attorney General **always** makes the decisions necessary to uphold the Rule of Law. As you can well imagine, this can sometimes make the Attorney General’s chair around Cabinet table somewhat uncomfortable!

So, the answer to the question, “What is the role of the Office of the Attorney General?” is that the OAG exists to maintain and preserve the Rule of Law for the Province. “How does the OAG maintain and preserve the Rule of Law?” By ensuring that there is good government, strong laws, and effective tools of enforcement.

This presentation started off by using examples from Iraq, Afganistan and New Orleans. It is a safe bet that the people in those locations, in the midst of their challenges, were not thinking about what courses were offered in the school curriculum or how far they had to travel to obtain a health care treatment. When that basic foundation of the Rule of Law is gone, everything else pales in comparison.

When I was asked to do a presentation on the work done by the Office of the Attorney General, it was difficult to focus this talk. I thought about talking about the structure of the office, the size of the budget, the number of employees, the differences between being a public sector lawyer and a private sector lawyer, the current crime rates and the socio-economic reasons

for those crime rates. But before you can understand parts of the office, it is necessary to understand the “why” question. Why does the Office of the Attorney General even exist. It is my hope that this presentation has helped you to gain that understanding.

Two points in conclusion.

The first is, the next time a political hopeful is on your doorstep (regardless of their political stripe or whether they are running in a municipal, provincial or federal election) I would encourage you to say to that person when they say to you “Is there anything you would like to discuss” something like “I would like you to know that it is important to me and my family that we have a strong and dependable justice system.”

The second point is a bit of frivolity. If I was a funny person, I would tell you a joke. But I’m not a funny person. Instead, I’d like to share with you the **silliest** question I’ve ever heard in a courtroom. This was during a trial in the mid 90’s. The accused was on trial for a sexual offence. Defence counsel asked the victim the following question “Can you please describe, in detail, those events that you cannot recall.” Think about it.

Quick Facts about the Office of the Attorney General

- The current Attorney General is the Honourable Gerard Greenan, with Edison Shea as the Deputy AG
- The department is responsible for Crown Attorneys; Community & Correctional Services; Consumer, Corporate and Insurance Division; Justice Policy; Legal and Judicial Services; and the Coroner’s Office
- The department is responsible for a number of Boards, including: Court Transcribers Examining Board; Credit Union Deposit Insurance Corporation; Criminal Code Review Board; Human Rights Commission; Judicial Remuneration Review Commission; Law Society Council; Public Trustee Advisory Committee; Supreme Court Finance Committee; Victim Services Advisory Committee

LEAF PEI Renewal

On Equality Day, April 17, the general public was invited to attend a brown-bag luncheon (munchies provided) at the Confederation Centre Art Gallery.

This LEAF PEI Equality Day and Branch Renewal Event included a panel discussion and conversation with the audience around the issue of healthy work, family, life balance.

LEAF PEI member, Sandy Kowalik welcomed the audience and opened the event. Lisa Murphy, chair of LEAF PEI, gave an update on the work of LEAF, encouraging folks to visit the website. She offered to direct any queries to LEAF National and urged all to become members. Lisa then introduced the panel:

- Kirstin Lund, Coalition for Women in Government Coordinator and Mediator
- Sue Connolly, Lawyer and PEI Advisory Council on the Status of Women member
- Jacinta Gallant, Collaborative Lawyer and Mediator with Resolution PEI.

The panel raised some important points about work/life balance, all acknowledging that they have the privilege of being able to say “no” to extra work, while many low wage earners do not have that luxury. Great conversation followed and the time flew by.

About 25 to 30 people attended the event including lawyers, social justice advocates, two MLAs, and previous LEAF PEI volunteers.

The Guardian newspaper covered the event, interviewing Mother of LEAF, Daphne Dumont, LEAF Chair, Lisa Murphy and the panel.

Thanks to LEAF National for providing financial support to help renew LEAF PEI as well as, sending down pens, annual reports and pamphlets to be handed out. Fourteen new memberships were purchased!



CLIA Projects & Publications

Working On:

- Updated *Uncontested Divorce Kit* for CD
- Website construction
- New materials and revised materials based on recent amendments to the Criminal Code of Canada
- Revisions to *Same Sex Relationships* to include changes based on the *Domestic Relations Act*
- Revisions to *Are You Old Enough?* and *Êtes vous assez âgé?*

In Translation Process:

- *Information a l'intention des locataires résidentiels d'Î.P.É.*
- *La médiation a l'Î.P.É.*
- *Ordannances du tribunal pour votre protection*

On the Horizon:

- *Impaired Driving & the Law*
- Booklet on Child Protection
- Booklet on Consumer Protection
- Booklet on Rules of Evidence
- Booklet on Alternative Measures

Legislation News

Provincial

In June 2008, *The Domestic Relations Act* was given Royal Assent. This act changes the definition of spouse to include same sex couples. This change, according to [The Guardian](#), affects 60 pieces of legislation. With this new act, same sex partners will be recognized in *The Adoption Act*, *The Marriage Act*, *The Consent to Treatment and Health Care Directives Act*, among others. These changes must be incorporated into each Act and proclaimed before they take effect. This process will begin with the next sitting of the legislature.

Federal

Protecting Youth and Children from Sexual Predators: The definition of child pornography is changed to include audio files and written materials where the description of sexual activity with children is the predominant characteristic of the text and it is meant for a sexual purpose. There are now increased penalties for child pornography convictions and offenders are no longer eligible for conditional sentences. Maximum penalties have also been increased for other child related offences.

There is a new sexual exploitation offence to protect young people aged 14-18. The court can infer that a relationship is exploitative based on “its nature and circumstances, including the age of the young person, differences in age, the evolution of the relationship, and the degree of control and influence exercised over the young person” (Justice Canada). The age of consent has been raised to 16 years of age. A close in age exception allows 14 and 15 year olds to consent to non-exploitative sex with someone up to five years older than them.

Witnesses and Giving Testimony:

- Testimonial aids will be available for all witnesses under the age of 18
- In cases involving criminal harassment where the accused is self represented, the Crown can apply to have any cross-examination of the victim conducted by an appointed lawyer
- Testimonial aids will also be available to other vulnerable witnesses and victims (including spousal abuse and sexual assault victims) if it can be demonstrated that they would be unable to give full testimony without it

The preceding testimonial aids and practices will be available only as long as their use will not “interfere with the proper administration of justice” (Justice Canada).

Children under 14 will now be able to give evidence if they are able to understand and respond to questions and promise to tell the truth. They do not have to be sworn in.

Voyeurism: It is now an offense to secretly observe or record any person in a situation where there is a reasonable expectation of privacy including when the observation / recording occurs in a place a person is expected to be nude or engaged in sexual activity; when the person is nude or engaging in sexual activity; and when the observation or recording is done for sexual purposes. The intentional distribution of voyeuristic material is prohibited.

Firearms: There are now higher mandatory prison sentences for firearm offences. There are two new firearm offences including an indictable offence of breaking and entering to steal a firearm and an indictable offence of robbery to steal a firearm. In some firearm offences, it is up to the accused person to show why he or she should not be kept in jail while waiting for trial.

Impaired Driving: Drug Recognition Expert (DRE) program is established, where officers are trained to recognize and identify different drug impairments. Refusal to provide urine or blood samples is punishable in the same way as refusal for a breath sample to test for alcohol. Mandatory minimum penalties have been increased for impaired driving offences.

Other: When a person has been convicted 3 or more times of certain violent / sexual offences, he or she must convince the court why they should not be designated as a Dangerous Offender. The Crown must state, in court, whether it considered an application for Dangerous Offender status when the offender has been convicted 3 or more times of certain violent / sexual offences.

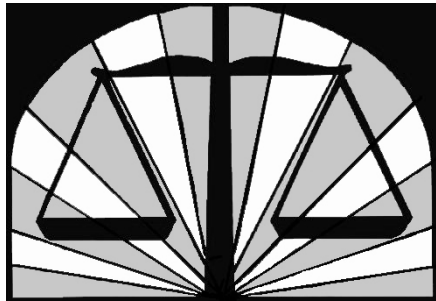
The maximum length of Peace Bonds is doubled.

This summary does not cover all of the recent changes to the Criminal Code or other legislation. Information taken from publications distributed by **Justice Canada**. Some information is directly quoted to ensure accuracy.

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Community Legal Information Association, most commonly called CLIA, is a non-profit organization. We provide information, referrals, and support to Islanders on legal issues.

Our goal is to provide Islanders with understandable and useful information about our laws and our justice system.

This work is called public legal education (PLE).

Our services include:

- Toll free inquiry line
- Lawyer Referral Service
- Speaker's Bureau
- Legal Information Resource Centre
- Free publications in both official languages
- Community outreach and collaboration
- Workshops
- Special projects

Become a Member. Support Islanders.

- Yes! I believe all Islanders have the right to understand the law. Please accept my enclosed gift to provide legal information and education to Islanders.
- I would like to get to know your organization better. Please send me a **Member Welcome Package** and a sample of your publications.

Name: _____

Address: _____

Email: _____

Phone: _____

I prefer to be contacted by Email Phone Mail

