

**CBA-NB: REPORT OF CIVIL LITIGATION SECTION TO COUNCIL**  
**(January 23rd 2009)**

**Limitations Law Reform: Bill 28**

On December 16th 2008, the new proposed Limitation of Actions Act, Bill 28, received first reading in the Legislature. Following First Reading in the Legislature, the Bill was referred to the Standing Committee on Law Amendments. The Standing Committee will hold public hearings on the Bill February 24-25th 2009. *Bill 28 is a very important piece of legislation for all civil litigation practitioners.* It does address a number of the points which our 2006 CBA-NB law reform submission drew to the attention of the Government. It contains a number of provisions which are based on the Uniform Law Conference "model" limitations act. It also proposes other changes which were neither raised by us, nor contained in the "model" statute. An explanatory document entitled "**Commentary on Bill 28**" (January 2009) has been created by the Office of the Attorney-General and may be accessed on the Legislature website by those interested. The undersigned is coordinating an effort to review Bill 28 for CBA-NB as soon as possible. We hope to be able to address the Bill in detail before the Standing Committee of the Legislature, although the limited response time available is less than we would have liked. In the circumstances, the undersigned will report further to CBA-NB Council, or to the CBA Executive for authority, as developments warrant, and as time permits.

**Coroner's Act Law Reform**

In February 2003, CBA-NB made a submission to the Provincial Government of the day, advocating reforms to the *Coroner's Act* in this Province which would include, amongst other things, standing for interested parties at Coroner's Inquests. The Government in 2003 responded that they were not interested in this issue. The present Government introduced, in Spring 2008, proposed changes to the *Coroner's Act* which would make Coroner's Inquests for workplace fatalities mandatory in some circumstances. On April 21st 2008, we presented a written submission to the Minister of Public Safety, requesting his commitment to immediately create standing for victims and other interested parties at Inquests, and to initiate a comprehensive review of the *Coroner's Act* with a view to modernizing it as almost all other Provinces have already done. (Research indicates that the only other Province which does not provide standing for interested parties is Newfoundland.) The Minister of Public Safety declined to incorporate our recommendations for the legislation in the 2008 Bill, but advised that our submission would be reviewed in more detail in due course. Having had no further response from the Government in the next following six months, I contacted Minister Foran on October 31st 2008 to inquire the status of this matter. I was advised on November 26th 2008 by Minister Foran that the focus of his office recently has been the creation of a Domestic Violence Death Review Committee and the reconstitution of the Child Death Review Committee. He further advised that as that work was completed, his office staff could shift focus to considering broader reform issues such as our own recommendations. This matter became topical in the media during the Autumn of 2008 in conjunction with the Inquest into the "Bathurst High Basketball Team Accident". In conjunction with that news story, the undersigned gave interviews to the media publicizing our position. The undersigned recommends that CBA-NB continue to advocate this area of law reform.

**Immunity of Firefighters and Fire-Fighting Authorities From the Courts**

Effective April 30th 2008, members and former members of Fire Departments, as well as Fire Departments, Municipalities, and the Crown, became immune from lawsuit for anything in good faith done or omitted to be done by members or former members of Fire Departments: *Municipalities Act*, Section 193.3. CBA-NB opposed this change in the law. The undersigned contributed an article to the Fall 2008 issue of the *Solicitors Journal* entitled "**Firefighters, Immunity from the Courts and Law Reform in New Brunswick**" to raise the profile of this problematic new provision for our members. It is recommended that CBA-NB should now advocate amendment of the provision so as to restore vicarious liability of the Crown and municipalities for the torts of firefighters, and also to stipulate that the legislated immunity from the Courts should not extend to accidents involving the use or operation of motor vehicles.

**National Civil Litigation Section**

The next National Civil Litigation Section Meeting is scheduled for October 2009 in Alberta. The National Civil Litigation Section is organizing a National Civil Litigation CLE program for October of 2009. Further details of this will be provided, once finalized.

**Civil Litigation CLE Program:October 17th 2008**

The "**Don't Miss CLE**" at the Woo Conference Centre in Fredericton October 17th 2008 was a "multiple topic" program designed to benefit both junior and seasoned practitioners. The program attracted a very large attendance. Judging from informal feedback received by the undersigned, it

appears to have been very well received. Congratulations and sincere thanks are to be extended to the organizers: Madam Justice Kathleen Quigg, Basile Chaisson, c.r., and George McAllister, as well as to all speakers.

**Respectfully submitted,**



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