

**CONSTRUCTION LAW SECTION REPORT
FEBRUARY 2008**

*Little has been done within the Construction Law section since its current chairperson, William Gould, ascended to that lofty position last September. The Construction Law section is currently without an executive, but Mr. Gould intends to circulate a request for expressions of interest for executive positions in the near future. He is aware that the relatively low numbers of committed section members may not yield a full executive slate, but he is optimistic. As for raising the profile of the Construction Law section, Gould plans to attend the CBA Construction Law conference in Banff in April, 2008 (having attended each such conference since 1996) and continue to network with like-minded colleagues in other provinces. He will be seeking ideas and speakers at the national conference for local CLE opportunities. While working for the Crown since 2000, Gould has dealt extensively in construction-related matters and is aware of many topics for CLEs that could work locally. For example, he would like to develop a roundtable discussion forum, to exchange views and ideas, involving plaintiff and defence counsel and representatives of the construction industry (most likely in the form of the New Brunswick Road Builders Association). Other potential CLE opportunities are related to (1) Crown Construction Contracts; (2) Delay Claim Analysis; (3) Liability of Design Consultants; (4) Liability for Adverse/Unintended Site Conditions; and, (5) Pre-Tender Owner and Constructor Obligations. Recently, the British Columbia Court of Appeal, in **Tercon Contractors Ltd. v. British Columbia (Ministry of Transportation and Highways)** [2007] B.C.J. No. 2558, decided that an exclusion clause could cover all process contract defaults, including fundamental breach. That case may alter many of the established conventions in construction contract law dating back to 1981. The **Tercon** decision could well merit a 1/2 day (or longer) CLE by itself, dealing with the inception of the governing principles (1981: the **Ron Engineering** case) through the evolution of the principles to the present day. Several speakers would be required, but the nature of the issue presents an excellent framework for the overall lesson plan.*