



## The Honourable Rosalie Abella, 2004 Recipient of the Tarnopolsky Award

### Inside

Letter from the editor . . . . . p. 2

Donation to ICJ Canada . . . . . p. 2

Annual meetings . . . . p. 2, 8

ICJ Biennial Conference . . . . p. 4

Project update . p. 5

Council Emeritus . . . . p. 5-6

News of our members . . . . . p. 7

**CALL FOR NOMINATIONS 2005 TARNOPOLSKY AWARD . . . . . p. 6**

**T**he Honourable Rosalie Abella of the Supreme Court of Canada and formerly of the Ontario Court of Appeal, was the 2004 recipient of the Walter S. Tarnopolsky Award for her outstanding contributions to the field of human rights. The Award was presented at the joint ICJ Canada/Canadian Judges' Forum meeting at the CBA Annual Conference in Winnipeg in August by the Honourable Ian Binnie, also of the Supreme Court and an ICJ Commissioner. Justice Abella, who was a close personal friend of Walter Tarnopolsky, has been a longtime supporter of ICJ Canada and a member of Council since 1982.

Following her introduction by the Honourable Constance Glube, Chief Justice of Nova Scotia, Justice Abella delivered an impassioned and moving address to the ICJ Annual Meeting.

She began by calling attention to the many groundbreaking achievements of

Canadian jurists in the fields of human rights, equality rights, and social justice and to the real advances made in these areas by Canada generally in the past 50 years. But her focus was not on the past but the present, on international indifference to the alarming rise and persistence of large-scale global injustices in the past decade that have occurred despite the lessons of the Nuremberg trials and the resulting proliferation of international laws, treaties and conventions designed to put an end to human rights abuses forever.

"We have been far too timid as an international community," she said, "about insisting on the centrality of human rights enforcement as a civilizing, global requirement. It is not just about having the right laws; it is about having and enforcing them. It is not just what you stand for; it is what you stand up for."



PAT WHITING

## Letter from the Editor

The past year has been a busy one for ICJ Canada. Judge Michèle Rivet and her team have successfully completed and wrapped up our Regional Project in Serbia, Croatia, Montenegro, Kosovo, and Bosnia Herzegovina, and we're eagerly awaiting CIDA's decision on our most recent proposal. Local meetings have taken place across the country, in Vancouver, Calgary, Toronto, Montreal, and Halifax, and meetings are already in the works for 2005 in Ottawa, Halifax, and Saskatoon, as well as plans for our Annual Meeting in Vancouver in August.

On the administrative front, our new assistant Susan Noad brings to ICJ Canada not only administrative and

bookkeeping skills, but also much-needed computer skills that have allowed us to streamline many routine office tasks. There was very positive response to the suggestion of sending many communications via e-mail to those who wish to receive them in that form, and we are looking into the cost and feasibility of implementing what is required by Revenue Canada to issue receipts by e-mail, a procedure that is complicated by our status as a charitable organization.

We have also made great strides in bringing our financial revenues into line with the cost of our increased activity. We are grateful, once more, for a generous financial contribution from the Paul A. Fournier Foundation, presented by

Justice Pierre-Claude Fournier to Justice Ginette Piché, his colleague on the Quebec Superior Court and our Vice-President for Quebec. At this point, it looks as though we're close to a break-even 2004 fiscal year, a vast improvement over 2003.

Response to the Executive's changes to the membership renewal process was positive and immediate, and there has been a terrific increase in membership among Canadian Provincial Court Judges as a result of President Ed Ratushny's initiative. Justice Danielle Grenier, former Vice-President from Quebec, also conducted a successful membership drive among Quebec Court justices earlier in the year. Other membership drives in other sectors are being planned for 2005.

On behalf of the Executive, I want to take this opportunity to thank each of you as a member of ICJ Canada for your enthusiasm and support over the past year and to wish you all the very best in 2005. •

*Pat Whiting*  
*Executive Director*



### Paul A. Fournier Foundation Makes a Second Donation to ICJ Canada

For the second consecutive year, ICJ Canada is the recipient of a very generous

donation from the Paul A. Fournier Foundation. The donation was made by the Honourable Mr. Justice Pierre-Claude Fournier of the Quebec Superior Court in Sherbrooke, who is the nephew of Paul A. Fournier and the Administrator and Governor of the Foundation. Justice Fournier commented at the time of the donation that his uncle had approved of the ICJ as a good organization.

Paul A. Fournier was a successful real estate magnate and ski lift manufacturer who died in 1995, leaving the majority of his estate to the Foundation, which donates funds to a wide range of groups and organizations whose focus includes such diverse aims as medical research, the arts, education, and outreach. The Foundation has contributed to the fight against hunger on a global level and support for victims of domestic violence in Canada.

We are most grateful to Justice Fournier for his thoughtfulness and generosity in supporting the activities and aims of ICJ Canada. •

# newsletter

- President:** Ed Ratushny
- Past-President:** Michèle Rivet
- Vice-President:** Brian Crane
- Secretary-Treasurer:**  
Charles Hackland
- Executive Director/Editor:**  
Pat Whiting
- Graphics/Layout:** Ken Watson



**International Commission of Jurists**

500-865 Carling Avenue  
Ottawa, Ontario K1S 5S8

Phone: 613-237-2925, ext. 125  
Email: patw@cba.org  
Web Site: www.icjcanada.org



## Meetings

# 2004 Annual Meeting in Winnipeg



*Hon. Rosalie Abella and Hon. Lloyd Axworthy at the ICJ Annual Meeting in Winnipeg*

**T**he Annual Meeting of the Canadian Section of the International Commission of Jurists took place on Monday August 16, 2004, at the Winnipeg Convention Centre. President Ed Ratushny presided over the Meeting, which was attended by approximately 40 members from across the country.

Following approval of the minutes, President Ratushny delivered the President's Report, which began with an update on the initiatives he had set out at the Montreal Annual Meeting in 2003. The special Executive positions created to carry out specific tasks were established and already functioning, but changes to the Administration are still under-

way, he said. A number of successful local meetings organized by Regional Vice-Presidents also took place in the previous year. He spoke about the establishment of a "Bar Committee," chaired by Ron Atkey, Vice-President for Ontario, which will explore the recruitment of more lawyers as members, a potential internship program with ICJ Geneva, and a sponsorship program that would encourage large law firms to make financial contributions to ICJ Canada by sponsoring specific activities such as the Newsletter or web site.

President Ratushny recognized the "tireless contributions" of National Vice-President

*continued on page 8*



The Honourable Ian Binnie

## ICJ Biennial Conference in Berlin

up in southern Africa in an atmosphere of increasing repression, each carefully crafted legislative measure building on the failure of the last. He expressed particular concern about powers of indefinite detention, now widespread in Europe, as a curtain behind which aggressive security forces can work free of judicial or even administrative supervision. At some point, even in developed countries, counter-terrorism measures may become such that the citizens may feel safer but they will no longer feel as free as they would if the needs of “Counter-Terrorism” were kept in proper perspective.

There was general agreement that “terrorism” is a poorly defined concept, and this lack of definition can lead to what was called “function creep.” This occurs when a poorly targeted counter-terrorism measure adopted for a laudable purpose is so vague that it can be applied by the police or security forces for purposes outside the original scope contemplated by its framers. Such topics were discussed in a series of working groups, sometimes divided by subject matter (e.g. the response of international organizations to terrorism and counter-terrorism), sometimes by geography (e.g. sub-Saharan Africa), who then reported the outcome of their discussions to the plenary session. At the conclusion of the two-day conference, conducted in both French and English (with simultaneous translation), the delegates adopted a resolution on counter-terrorism measures, which is available at [www.icjcanada.org](http://www.icjcanada.org) under Documents or by e-mail or regular mail if requested.

It is a pity that more Canadian judges and lawyers were unable to attend the Berlin conference. The tremendous resources and clout of the ICJ were on full display. Regrettably, Canadians did not play a larger role, which they could and should have, with all due respect. The next ICJ biennial conference will likely be held in Hong Kong or other Southeast Asia location in the summer of 2006. •

Members of ICJ Canada who occasionally wonder what the organization is up to might have considered going to Berlin this August to attend the ICJ's biennial conference. ICJ members from five continents representing all of the major legal systems of the world except China (Taiwan was there) met to talk about “Counter-Terrorism Measures and Human Rights.” The discussion was livelier than the *gravitas* of the topic might suggest, ranging from tongue-in-cheek Australian judges (“we're being outmanoeuvred by the wily Europeans”) to activists from Togo (“the real terrorists are multi-national corporations”) and from the curmudgeonly Lord William Goodheart (“we need some clear thinking on judicial appointments to the European Court”) to the high velocity re-energized Louise Arbour, U.N. High Commissioner for Human Rights (“every day we are moving closer to making international human rights a universally enforceable branch of international law”).

While terrorism itself is the most egregious denial of the human rights of its victims, the conference focussed on the ways in which counter-terrorism measures have or may overshoot their limited purpose. There was general argument that adoption of a “war” paradigm (i.e., the “war on terror”) had produced a chilling effect on public discussion. Not so in Berlin, where the intellectual resources on hand were impressive. Those appalled by recent disclosures of torture in many countries, including the Middle East, could obtain some insight from the U.N. special *rapporteur* on Torture, Theo Van Boven. Others, galvanized by the recent events in Darfur,

could chat if they wished with Professor Abdullah An Na'im of the Sudan, currently a visiting professor at the Emory School of Law in the United States. Those concerned about the evolving U.N. treaty on Forced Disappearances could talk to delegates from Argentina and Chile, who had firsthand experience of the subject. Ms. Hina Jilani, ICJ member and U.N. Special Representative on Human Rights Defenders, provided an Asian perspective. Speakers such as Mr. Mokhtar Trifi, of the *Ligue Tunisienne pour la Défense des Droits de l'Homme*, provided insights into terrorism in North Africa. Mr. Robert Goldman, recently named special U.N. Independent Expert on Human Rights and Terrorism, solicited views of ICJ members at the many social gatherings (including a visit to the Reichstag laid on by our hosts, the German Department of Foreign Affairs). The eclectic group included an ICJ member on the U.N. Human Rights Committee (Sir Nigel Rodney), retired judges (including Claire L'Heureux-Dubé), current judges (including Michèle Rivet), activists, scholars, lawyers, and a reporter from the *Wall Street Journal* (“governments are monopolizing the anti-terrorist discourse”). By the end of the session, almost everyone was on speaking terms with almost everyone else.

Delegates who wished to raise their international profile networked furiously in and out of the working sessions. For those looking for distraction, the bright lights of Berlin were on the doorstep.

For my part, the most moving address was from ICJ President Arthur Chaskalson, Chief Justice of the Constitutional Court of South Africa, who described growing



## Projects



Me Caroline Meilleur - Project Director

### **ICJ Project to Support the Independence and Impartiality of the Judiciary in the Southeast Adriatic Countries**

ICJ Canada has concluded its Project in the Southeast Adriatic countries with two final Regional Conferences.

In the field of Court Efficiency, a final Regional Conference was held from June 17 to 20, 2004, in Palic, Serbia, where more than 110 participants were presented with the results achieved in the past two years. This audience was composed of members of the judiciaries, lawyers, representatives of international and regional organizations, as well as state institutions from Serbia and Montenegro, Croatia, Bosnia Herzegovina, Macedonia and Slovenia. The Canadian delegation was made up of Judge Michèle Rivet, Justice John Agrios, Me Bernard Grenier, and Me Caroline Meilleur.

At the Conference, many Chief Justices vigorously expressed an interest in implementing similar Projects within their own courts.

The published results of the Pilot Courts Project and the legal publications on Court Efficiency were distributed to more than 2000 jurists in Serbia and Montenegro during the summer.

In the field of Human Rights, the Project organized its final Regional Conference in Bjelolasica, Croatia, which was attended by more than 110 participants. The Canadian delegation was composed of Judge Michèle Rivet, Chief Justice Catherine Fraser, Me Caroline Meilleur, and Me Manon Montpetit.

It is clear from the success of these Regional Conferences that more such events are needed. Judges were able to learn from the experience of the others and share different approaches related to their daily jobs. Following the disintegration of Yugoslavia, the legal and judicial structures of most newly independent countries focused their energy internally, forgetting

the common roots of their legal traditions. The Regional Conferences made clear to many attendees the necessity and desirability of exchanging views with their colleagues in neighbouring countries.

In the past five years, ICJ Canada's Project has accomplished a great deal and has organized many activities whose positive outcomes have paved the way for future, more in-depth activities in the fields in which it has become expert. In June 2005, ICJ Canada submitted to CIDA a new proposal that would allow us to pursue our activities in the region for the next four years. The project has successfully passed all internal review committees at CIDA and is awaiting the final Minister's approval. •

## **Council Members Emeritus**

In 2003, Ed Ratushny established the new category of Council Members Emeritus, simply as a prerogative of the President. Following the Annual Meeting in Winnipeg last August, he circulated a draft policy to all Council Members for their comments. There was overwhelming support for this initiative, and as a result, the following pol-

icy has been adopted and appears on our web site, together with the names of those appointed to date.

**Council Members Emeritus have served with Special Distinction as Council Members in the past or have made a Profound Contribution to the Goals of ICJ Canada in addition**

**to serving on the Council. Their names appear in the order in which they were appointed. The following Guidelines apply:**

- **Appointments are made by the President in consultation with Council Members;**
- **Not more than three appointments may be made in any calendar year;**

*continued on page 6*

# The Honourable Walter S. Tarnopolsky Human Rights Award

## DESCRIPTION

Named in honour of the late Walter S. Tarnopolsky, a talented human rights advocate and scholar, the Award recognizes a resident of Canada who has made an outstanding contribution to domestic or international human rights.

## ELIGIBILITY

- Candidate must be a Canadian resident.
- Under the terms of the Trust, every third award must be made to a person who has not yet reached the midpoint of her or his occupation, vocation, professional career or business career during the year for which the award is made. The year 2006 award will fall into this category.
- Groups are not acknowledged as candidates.
- There are no posthumous awards.

## PRESENTATION

The award takes the form of an inscribed bronze medallion and an honourarium of one thousand dollars. The Award is presented at the Annual Meeting of the International Commission of Jurists (ICJ) held during the Canadian Bar Association Annual Meeting in August.

## NOMINATION PROCEDURE

- A formal nomination form to be obtained from ICJ Canada must be completed;
- Nominations must be accompanied by 1) two letters of support for the candidate's nomination and 2) a concise curriculum vitae of the nominee;
- Articles and testimonials may also be submitted;
- All of the above documentation must be submitted with the nomination;
- Nominations will stand for the next three years

## AWARDS COMMITTEE

The Award is administered by the International Commission of Jurists (ICJ), Canadian Section. The selection committee is comprised of one representative from the Canadian Bar Association, the Canadian Association of Superior Court Judges, the Canadian Association of Law Professors and ICJ Canada. The Selection Committee is constituted annually.

## DEADLINE

The deadline for nominations is April 30<sup>th</sup>.



### For a nomination form or additional information, contact :

Dr. Pat Whiting, Executive Director  
International Commission of Jurists  
500-865 Carling, Ottawa (ON) K1S 5S8  
Tel. : (613) 237-2925 / ext. 125  
Fax. : (613) 237-0185  
patw@cba.org

*continued from page 5*

- **A Council Member Emeritus is no longer eligible to serve on the Council;**
- **Membership Emeritus continues even after the death of an appointee, and appointments may be made posthumously.**

In 2003, the Hon. Bertha Wilson, the Hon. Ken Lysyk, Dr. Donat Pharand, and Dr. Edward McWhinney were appointed. In 2004, the Hon. Walter Tarnopolsky and the Hon. Mark MacGuigan were added. Upon being advised of his appointment, Dr. Donat Pharand wrote:

“When you say that I was one of the pioneers, I suppose it is true. I recall becoming a member shortly after I arrived in Ottawa from The Hague, in March 1956, when Judge Thorson was President....I accept with pleasure.”

Dr. McWhinney also felt honoured by his selection:

“ Please be assured that I appreciate the honour involved, particularly since it is in association with some old friends and colleagues whom I respect very much. I am happy to accept the nomination.”

If you wish to recommend someone for appointment as a Council Member Emeritus, either a past Council Member or one whose appointment is expiring, please write directly to the President in support of your recommendation. •

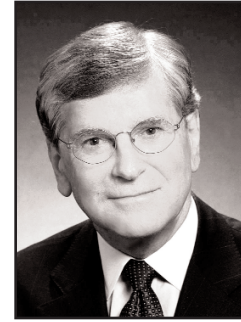


## Member News

Ontario Vice-President Ron Atkey featured prominently in a July 3 *Toronto Globe and Mail* article commemorating the 25<sup>th</sup> anniversary of the arrival of the Vietnamese boat people to Canada in the summer of 1979. At the time, Mr. Atkey was in the early days of his appointment as Minister of Immigration in the Joe Clark government, but he and the fledgling government were able to achieve great things in spite of considerable demands coming from all directions. Canada was the first country to respond to the overwhelming crisis of the thousands of Vietnamese and ethnic Chinese who had been dispossessed and disenfranchised by the Communist regime in Vietnam and who were fleeing the country by any means possible and without any clear destination.

Through the efforts of Ron Atkey and External Affairs Minister Flora MacDonald, who devised a program that combined public and private sponsorship, more than 60,000 predominantly Vietnamese refugees came to Canada over the next two years.

Although the experience was not without its dark side—the safety of Mr. Atkey and his family was repeatedly threatened through anonymous letters that warranted RCMP protection—it remains a most memorable period in his career. “This program showed Canada working at its best with government matching the private sector in generosity,” said Mr. Atkey. “The parallels with the current tsunami situation in southern Asia are striking.” •



**Ron Atkey, P.C., Q.C.**  
**Vice-President for Ontario**

When ICJ member Robin Sully took up her duties as Director, International Development for the Canadian Bar Association in 1994, she shared a CBA secretary with another department; now she works with a team of seven other committed individuals to carry out programs throughout the developing world.

As Director, Robin is responsible for the overall management of the International Development Committee’s (IDC) programs and projects, which are funded primarily through CIDA. Over the years, working with lawyers’ associations, ministries of justice, and advocacy groups in China, Vietnam, Cambodia, Bangladesh, South Africa, East Africa, and Zimbabwe, Robin and her Committee have conducted projects in areas such as law and criminal justice

reform, advocacy skills-building, access to justice, human rights, legal education, and ADR.

Within the CBA offices, the office of ICJ Canada is located in the space occupied by the IDC for a reason. “The work of the ICJ and the work the CBA’s International Development Committee are very compatible,” said Robin Sully. “Both groups recognize the central importance of the rule of law and secure legal frameworks for truly sustainable social and economic development, and ultimately the importance of developing a voice for the poor and disenfranchised.”

ICJ Canada and the IDC have undertaken a number of joint initiatives, including a local meeting in Ottawa and collaborative meetings at the CBA Annual Conference. •



**Robin Sully,**  
**Director,**  
**International Development for the CBA**

*continued from page 1*

How did it happen, she asked, with all our international laws to protect human rights, that the international community was able to ignore the evidence of incipient and then actual genocide in Rwanda, Bosnia, and the Congo; gross violations of the rule of law and judicial independence in Zimbabwe, Colombia, and Indonesia; widespread targeted human rights abuses in Sudan, Chechnya, and Afghanistan? The answer: "Indifference is injustice's incubator...we felt entitled somehow to defer consideration of our international moral obligations, and hide behind contraceptive terminology like 'domestic sovereignty' or 'cultural relativism.'"

Setting her own perspective as a child of Holocaust survivors against the twin horrors of events in Darfur and the world's "astonishingly aenemic" response to them, Justice Abella made a compelling case for proactive international responses to such international crises.

"We have still not learned the most important lesson of all — to try to prevent the abuses in the first place. We have not finished connecting history's dots. All over the world, in the name of religion, national interest, economic exigency, or sheer arrogance, men, women, and children are being murdered,

abused, imprisoned, terrorized, and exploited. With impunity.

"We have no international mechanism to prevent the ongoing slaughter of children and other innocent civilians, and no overriding sense of moral responsibility that informs the international community and helps develop a consensus for when responsive multilateral military action is required to protect rights and freedoms. We have, in fact, no consensus on what our international moral responsibilities are period, and that is why we are so desperately lacking in enforcement mechanisms, legal and otherwise.

"Almost 60 years after the Nuremberg trials, we still have not developed an international moral culture which will not tolerate intolerance. Nations debate; people die. Nations dissemble; people die. Nations defy; people die.

"Where injustice is preventable, it should be prevented when first identified, not permitted first to create its human devastation before being held to account."

Not surprisingly, Justice Abella received a standing ovation from all those present.

The full text of Justice Abella's address is available online at [www.icjcanada.org](http://www.icjcanada.org). A hard copy may also be obtained by calling the ICJ office in Ottawa. •

*continued from page 3*

Brian Crane and thanked him for his continuing efforts on behalf of ICJ Canada, and he thanked the Honourable Ian Binnie, who made himself available to speak at local meetings in Halifax and Vancouver. He also noted the appointment of the Honourable Michèle Rivet as ICJ Commissioner, joining Justice Binnie as a Canadian representative to that body.

President Ratushny concluded his address by naming the following objectives for the coming year: to strengthen the administration, to recruit new members, and to explore and establish new sources of institutional funding.

The President's Report was followed by a report on the international projects, delivered by Brian Crane and Caroline Meilleur. A report prepared by the Project was tabled.

Brian Crane also delivered the membership and financial reports, and the 2003 audited statement was tabled. Price Waterhouse Coopers was re-appointed ICJ Canada auditor for 2004.

The report of the Nominating Committee was adopted, and a short meeting of Council followed.

The meeting concluded with an address by the Honourable Rosalie Abella, winner of the 2004 Walter Tarnopolsky Award.

The President's Report and the draft minutes can be obtained from the Ottawa office or read in full on our web site at [www.icjcanada.org](http://www.icjcanada.org). •

## **Vancouver Annual Meeting 2005 Put it on your calendar!**

It's not too early to begin thinking about next year's ICJ Canada Annual Meeting, which will be held in Vancouver on Monday, August 15, 2005. The meeting will take place in two phases, with the Tarnopolsky Award being presented at the end of

the joint ICJ Canada/Canadian Judges' Forum meeting from 8:30-10:30 a.m. The ICJ Annual Meeting, followed by a reception, will begin at 3:00 and end at 6:00. More details will appear on the web site as events unfold.