

# newsletter



I C J C A N A D A



## Marcia Kran 2005 Recipient of the Walter S. Tarnopolsky Award

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**L**ongtime international lawyer, teacher, and human rights advocate Marcia Kran of Vancouver was the 2005 recipient of the Tarnopolsky Award presented by Justice Ian Binnie at the Annual Meeting in Vancouver last August. Ms. Kran has had an impressive quarter century of experience working with the United Nations, the Justice Department of the Government of Canada, the Attorney General of Manitoba, and the Open Society Institute/ Soros Foundation. She is currently Democratic Governance Practice Manager with the United Nations Development Programme in Bratislava, where, among other duties, she leads a team of specialists working on democratic governance issues in the countries of Eastern Europe and the Commonwealth of Independent States.

Chief Justice of British Columbia before delivering her address.

Ms. Kran's talk focused on the importance of the United Nations in the promotion of human rights, both in the past and the present. She began her talk with a brief history of the central role of human rights in the early days of the United Nations, culminating in the adoption of the Universal Declaration of Human Rights by the General Assembly of the UN in 1948. However, although the UN's achievements in setting universal standards in human rights has been both extensive and impressive, she cautioned: "Much as we wish that these entitlements would be respected, it requires more than agreement on normative standards to give life and meaning to the universal principles."

Justice Ian Binnie presented the Award to Ms. Kran at the joint ICJ-Canadian Judges Forum meeting, which preceded the ICJ Annual Meeting at which she was introduced by The Hon. Lance Finch,

Thus, the UN has established two mechanisms, the Human Rights Commission and a group of six Committees, each cor-

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PAT WHITING

## Letter from the Editor

The past year has been a good one for ICJ Canada for a number of reasons. First, we have successfully extricated ourselves from an uncomfortable if temporary financial deficit. Thanks to all of you who, through your donations and early December renewals, have made this possible. We also received, for the third successive year, a generous donation from the Paul A. Fournier Foundation.

CIDA's reversal of its position on the continuation and expansion of our international project in the Balkans came as something of a shock, but we can take pride in the good work done by Judge Michèle Rivet and her team, work that will continue to bear fruit even though ICJ Canada is no longer actively involved.

Our Annual Meeting in Vancouver in August was wonderfully successful, and the Executive is busy with new projects for the coming year. The French side of the web site is now up and running, and Me Manon Montpetit has taken on the job of Webmaster, working with Professor Ken Norman, Webmaster for the English side.

A record number of local meetings took place in 2005, some of which were reported in the summer Newsletter. Since then, ICJ Canada has been involved in local meetings in Montreal, Toronto and Ottawa. All these meetings are covered in this Newsletter. One of President Ed Ratushny's priorities has been to establish a real ICJ Canada community through better communication, more active participation of Council members, and more local meetings that can bring ICJ Canada members together

more often than at the the Annual Meeting. In this initiative, he has been ably assisted by the Regional Vice-Presidents and Council members.

This past fall in Ottawa, ICJ Canada was able to join forces with the International Development Committee of the CBA for two meetings with very different lawyers from Zimbabwe, the exiled Gabriel Shumba, working against the repression of the Mugabe regime from without, and the intrepid Arnold Tsunga, working from within Zimbabwe for the same end.

Through arrangements made by Professor Daniel Gervais, both lawyers spoke to capacity audiences at the University of Ottawa law school before having dinner with ICJ members at a local hotel. As Gabriel Shumba's driver, I had the good fortune to spend additional time with him, where I learned things he didn't say at either public gathering: His exile in Pretoria is neither safe nor secure as he continues to experience harassment, including an attempted abduction shortly before he came to Canada. He is forced to move from apartment to apartment every month with his wife and five-year-old daughter. While we were waiting to pick up his train ticket back to Toronto, he told me that South Africa will likely expel him when his passport—which he will not be able to renew—expires in a few months. This will render him essentially stateless and may suspend his doctoral studies indefinitely.

The ICJ web site contains a 2003 letter protesting Gabriel Shumba's arrest and treatment, sent by ICJ Geneva to President Robert Mugabe and his

Minister of Justice. But it's one thing to read about human rights abuses and quite another to hear about them from a frighteningly personal perspective. Meeting Gabriel reminded me of the importance of the ongoing work of the International Commission of Jurists and its extensive network of national sections.

The ICJ's next major initiative is the upcoming Eminent Jurists Panel on Terrorism, Counter-Terrorism, and Human Rights, which will hold hearings around the world to assess the implications of new laws and policies adopted to fight terrorism. One of the hearings is scheduled to be held in Canada in the spring. Details of this meeting will be forthcoming as they become available.

Meanwhile, on behalf of the Executive of ICJ Canada, I wish you all the very best in 2006. •

*Pat Whiting*  
*Executive Director*

# newsletter

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# Annual Meeting in Vancouver 2005

**M**ore than 40 people, including the Right Honorable Beverley McLachlin, Chief Justice of Canada, attended the 2005 Annual Meeting of ICJ Canada, held on Monday, August 15 at the Vancouver Convention Centre, with President Ed Ratushny presiding. President Ratushny asked Chief Justice McLachlin to address the meeting, which she did, emphasizing the long close relationship between the Supreme Court of Canada and the International Commission of Jurists, particularly citing Justice Ivan Rand as a founding member, Justice Claire L'Heureux-Dubé as former ICJ Commissioner and both International and Canadian Past-President, and Justice Ian Binnie as a current Commissioner. Chief Justice McLachlin said that the role of the ICJ is especially important in today's world, in the face of international terrorism and increasing threats to the judiciary. A

copy of Chief Justice McLachlin's remarks may be read on our web site or obtained from the Ottawa office.

President Ratushny thanked the Chief Justice and then presented his annual report on the work of ICJ Canada. He recognized the work of the volunteers whose efforts during the past year had contributed to ICJ Canada's activities, particularly the Hon. Anne Mactavish as coordinator of the Walter Tarnopolsky Award, David Aaron as ICJ Correspondent, Hon. Michèle Rivet as Chair of the International Projects Committee, and Ken Norman and Manon Montpetit as web masters of the English and French web sites, respectively. He also noted the successful membership drive conducted among the Quebec judiciary by Quebec Vice-President Hon. Ginette Piché.

President Ratushny also reported that a

number of new Council members had been recruited, including Paul Fraser, Q.C. of Vancouver, who had agreed to replace Dr. A.J. McClean as Vice-President for British Columbia. Two new members of Council, Justices Janet McMurtry and David Wake would represent provincially appointed judges. Other new Council members include Ian Cartwright of Alberta, Tom Heintzman, Q.C. of Ontario, and Manitoba Chief Justice Richard Scott.

Hon. Michèle Rivet reported on the termination of ICJ Canada's international project in the Southeast Adriatic countries due to changes in funding allocation within CIDA. She expressed her view that ICJ Canada should continue to be involved in international projects when the opportunity arises.

Brian Crane, National Vice-President, delivered the financial and membership reports.

After adjournment for a short meeting of Council, the Annual Meeting resumed with a report on Geneva activities by ICJ Commissioners Justices Ian Binnie and Michèle Rivet. This report was followed by a PowerPoint presentation on the ICJ Canada web site by Webmaster Ken Norman, who was assisted by the new French Webmaster, Manon Montpetit.

Chief Justice of British Columbia, Hon. Lance Finch, then introduced Marcia Kran, 2005 recipient of the Tarnopolsky award.

The meeting was followed by a reception generously hosted by the law firm of Fraser Milner Casgrain at which ICJ members from across the country had a chance to make and renew acquaintances with like-minded colleagues. •



*L-r, the Hon. Claire L'Heureux-Dubé, the Right Hon. Beverley McLachlin*

# ICJ Secretary General Visits Canada



*L-r, Nicholas Howen, Ed Ratushny, and Brian Crane in Ottawa*

**I**n October, Nicholas Howen, Secretary-General of the International Commission of Jurists since April 2004, was in Canada to meet with Canadian government officials, jurists, and ICJ Canada members in Ottawa and Montreal. Mr. Howen, an Australian whose career in the field of human rights spans more than twenty years, including work with the United Nations and Amnesty International, packed an incredible number of meetings into his four-day visit. These included, in Ottawa, the Deputy Minister of Justice and officials from CIDA and the Department of Foreign Affairs. He was accompanied variously by ICJ Commissioners, the Hon. Ian Binnie and the Hon. Michèle Rivet, ICJ Canada President Ed Ratushny, and National Vice-President Brian Crane.

The issues of terrorism and the importance of monitoring counter-terrorism measures to ensure that they do not threaten the rule of law and human rights

were a major focus of many of the meetings (it was the subject of the Berlin Biennial Conference of the ICJ in 2004). Mr. Howen was able to explore possible sources of both co-operation and funding within the Canadian government.

Mr. Howen was the guest of honour at an ICJ Canada dinner held at an Ottawa hotel, where members were provided with an update on Geneva's recent initiatives. During the meal, Nick Howen moved from table to table, having salad at one table, the main course at another, dessert at yet another, to take advantage of the opportunity for informal chats. During his formal talk, he spoke in detail about the ICJ's positive impact on specific cases in Thailand and Nepal, and emphasized the ongoing importance of the ICJ's unique mandate in a post-9/11 world, commenting that few other international organizations have the ICJ's clout to draw on both national and international resources. He mentioned that a few days previously ICJ Geneva President

Arthur Chaskalson (who also serves as the Chief Justice of the South African Constitutional Court) had presented to the press at Geneva the members of the ICJ Eminent Jurists Panel. The Panel is scheduled to hold hearings in a number of countries (including Canada) and regions of the globe. The Panel's purpose will be to generate a report "that will help forge a consensus among countries around the world on what the limits of counter-terrorism should be."

After the Ottawa visit Nick Howen traveled to Montreal for two and a half days of meetings (organized by ICJ Commissioner the Hon. Michèle Rivet) with NGOs and with Minister of Justice Irwin Cotler, who has always been a strong supporter of the ICJ human rights agenda.

Another purpose of Nick Howen's visit to Canada was to help the ICJ Canada drive to increase membership particularly amongst younger lawyers. Present at the Ottawa dinner were two law clerks from the Federal Court of Appeal and one from the Court Martial Appeal Court. Respectively, ICJ members Maria Mascaro (a native Montrealer and University of Ottawa graduate), Renee Miller (a native Calgarian and University of Calgary graduate), and Ryan Ross had dessert with Mr. Howen. Maria suggested that the ICJ create a regional student liaison position and develop a moot or essay-writing competition dealing with topics of interest to the ICJ. Ryan suggested a variety of projects of interest to younger lawyers, such as an internship a program matching ICJ Geneva research needs with Canadian law students willing to do the research for credit. Renee enquired about the ICJ's views on offer-

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## Meetings

# Nicholas Howen Visits Montreal - Hon. Michèle Rivet

I was very pleased to welcome the ICJ's Secretary-General, Nicholas Howen, to Montreal during his October visit to Canada, and accompanying him to all three meetings we had scheduled. During every meeting in Montreal, Mr. Howen made clear that any projects that the ICJ undertakes with Canadian organizations will directly involve ICJ Canada.

On October 21, Nicholas Howen spoke at the JuriClub of Montreal, where he addressed about twenty Quebec judges from the Quebec Court of Appeal, the Superior Court and the Quebec Court on the difficult challenge of respecting the rule of law and protecting human rights while reacting to the threats and harm of global terrorism. Mr. Howen explored the issues relating to the acceptable limits of counter-terrorism measures. A discussion with the judges followed his speech. Those attending the event included former Supreme Court Justice Charles Gonthier and Quebec Chief Justice Michel Robit. After the

lunch, Chief Justice Robert invited Mr. Howen to visit the splendid newly renovated building designed by Ernest Cormier, where the Court of Appeal is now located.

In the afternoon of the 21<sup>st</sup>, Mr. Howen met with Me Jacques Frémont, Vice-Rector of the Department of International Affairs of the University of Montreal, and Me François Crépeau, Director of the Centre d'études et de recherches internationales de l'Université de Montréal (CERIUM). Among those issues discussed was a project of co-operation concerning exchanges of trainees between ICJ Geneva and the University of Montreal, a project to work with expert analysis, and a possible joint Symposium on specific topics. In the evening a dinner was scheduled with Professor Peter Leuprecht, Director of the Institut d'études internationales de Montréal (IEIM), at the University of Quebec at Montreal.

On the 22<sup>nd</sup>, the Secretary-General met with the International Center for Human Rights and Democratic Development (Rights and Democracy). Finally, on the 23<sup>rd</sup>, Mr. Howen had a two-hour meeting with the Hon. Irwin Cotler, Federal Minister of Justice. Among other things, the two discussed the politics of Counter-terrorism in Canada. The Minister expressed his openness to receiving information from the ICJ regarding this complex issue.

As a Canadian ICJ Commissioner, I took the opportunity to discuss with Mr. Howen the follow-up to his visit, the concrete involvement of ICJ Canada in Geneva-generated activities, and improved co-operation between the national sections and Geneva. •

*The Hon. Michèle Rivet is the President of the Quebec Human Rights Tribunal and an ICJ Commissioner.*

## ICJ Geneva Launches Eminent Jurists Panel

ICJ Secretary General Nicholas Howen has announced the formation of an international panel on terrorism, counter-terrorism, and human rights to address the violations of the rule of law and human rights in counter-terrorism measures adopted around the world since the September 11 attacks. Justice Arthur Chaskalson, ICJ President and former Chief Justice of the Constitutional Court of South Africa, will chair the Panel, which will consist of eight internationally renowned jurists from different regions and legal traditions.

According to Mr. Howen, the panel "will spend 18 months making a detailed enquiry into the human rights and count-

er-terrorism laws and policies globally, bringing a strong legal perspective to the issues, going beyond more general enquiries carried out so far, addressing unresolved legal and policy challenges, and reflecting on the role the legal and judicial community should play in ensuring respect for the principles set out in the Berlin Declaration." The Berlin Declaration is available on the ICJ web site at <[www.icj.org](http://www.icj.org)>.

One of the hearings is being planned for Canada in the late fall of 2006. ICJ Canada members will be informed as details become available. •

# Gabriel Shumba Speaks to Ottawa Audience



*Gabriel Shumba and Daniel Gervais*

Commission-Zimbabwe, which is accumulating evidence of the gross human rights violations of the Mugabe government.

Mr. Shumba reminded the audience of the rise, establishment, and record of the Mugabe regime, noting that repression began as early as 1982. At the present time, he said, the rule of law has completely broken down, and neighbouring states are increasingly reluctant either to censure Mugabe or to aid refugees. Mr. Shumba strongly expressed the need for international intervention.

The event was co-sponsored by ICJ Canada and the International Development Committee of the CBA. Professor Daniel Gervais, Law School Liaison on the ICJ Canada Executive, acted as Master of Ceremonies, and Jennifer Khor, IDC Project Director for Southeast Asia and East Africa, spoke briefly about the IDC's activities. Professor Gervais opened the meeting by playing several minutes of a CBC radio interview with Gabriel Shumba taped in South Africa. The ICJ office can make this program available by e-mail to those with MP3 players. We can also make available in electronic form or hard copy the article, "From human rights to human wrongs: the case of Zimbabwe today," from which Mr. Shumba drew his remarks. •

**O**n October 6, 2005, more than 40 people crowded into a University of Ottawa Law School classroom to hear Zimbabwean human rights lawyer and activist Gabriel Shumba speak about the state of human rights in Zimbabwe. Although he spoke of his own experiences of arrest and torture under the regime of Robert Mugabe, he contextualized his personal story within the broader context of oppression and

tyranny in that troubled African state.

Forced to flee Zimbabwe after he was arrested for representing a falsely accused opposition MP, Mr. Shumba was brutally tortured. This was his 11<sup>th</sup> arrest, during which he was tortured for the second time. He and his family, including his wife, four-year-old daughter, and siblings currently live in Pretoria, where Mr. Shumba is Director of the Accountability

## Paul A. Fournier Foundation Award Supports ICJ Canada Again



*Paul A. Fournier*

For the third successive year, the Paul A Fournier Foundation has made a very generous donation to ICJ Canada. 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.

Paul A. Fournier was a successful real estate magnate and ski lift manufacturer who died in 1995. He left the majority of his estate to the Foundation, which

donates funds to a wide range of groups and organizations for work in such fields 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.

Once again, our thanks to Justice Fournier for his thoughtfulness and generosity in supporting the activities and aims of ICJ Canada. •



# Arnold Tsunga Speaks at Joint Meeting in Ottawa

**O**n November 17, 2005, at the University of Ottawa Law School, Arnold Tsunga, Acting Secretary of the Law Society of Zimbabwe and the Executive Director of Zimbabwe Lawyers for Human Rights, spoke at a joint meeting of ICJ Canada and the International Development Committee of the Canadian Bar Association. Professor Daniel Gervais welcomed the audience of more than 50 people, and Ian Morrison, Project Director for the CBA's "Strengthening the Rule of Law in Zimbabwe" Project, a project funded by the Canadian International Development Agency, introduced Mr. Tsunga.

Arnold Tsunga is one of the most prominent human rights lawyers in Zimbabwe. As Executive Director of Zimbabwe Lawyers for Human Rights, he has advocated tirelessly for human rights both within Zimbabwe and in international forums. Most recently, ZLHR has led the legal battles against Operation Murambatsvina, or Operation "Drive Out the Filth," which has left hundreds of thousands of poor Zimbabweans homeless and internally displaced. As Acting Secretary of the Law Society of Zimbabwe, Mr. Tsunga is also responsible for the running of the body charged with regulating the legal profession in Zimbabwe. He is also coordinator of the Human Rights Committee of the South African Development Community Lawyer's Association.

Mr. Tsunga's observations about the situation in Zimbabwe were sadly similar to Gabriel Shumba's; both spoke of the country's serious decline under Robert Mugabe, the thousands of hungry and homeless citizens who live in a state of



*Ian Morrison and Arnold Tsunga*

constant insecurity at best, the government's control of legal structures and the press, and the Western media's inclination to focus on the few murdered white farmers while it ignores the thousands of almost universally black and poor farm workers affected by the land invasions and the 300 extrajudicial executions of blacks between 2000 and 2003. Although Arnold Tsunga and Gabriel Shumba work from different positions, one working on systemic issues from within and the other addressing international implications from a state of exile, both lawyers spoke of being prevented from defending individuals against the government.

The independence of the judiciary to redress human rights violations is negligible when access to justice is seen, as it must be, from the perspective of the 700,000 people displaced by the razing of

houses in Zimbabwe last spring, Mr. Tsunga said. He also said that the Law Society's work with the CBA aims, against the odds, to address the situation, if only for the future.

A lively question period followed Mr. Tsunga's talk. Peter Wigen, a first-year common law student, remarked, "Getting 50 students out to any event without food is a feat in itself, never mind when exams are at hand and papers are due."

Following the talk at the law school about 18 ICJ Canada members attended a dinner held in Mr. Tsunga's honour. •

## International Law Association Conference to Be Held in Toronto

The Biennial Conference of the International Law Association will be held on June 4-8, 2006, in Toronto. ICJ Canada is a "supporting organization" of the event whose theme is "The World Is Here."

The Conference was officially launched on September 21, 2005, when His Excellency Judge Shi Jiuyong, President of the International Court of Justice in the Hague, spoke at Convocation Hall in Toronto. Earl A. Cherniak, Q.C. of Lerner LLP, who served as ILA Lecture moderator, and Conference Co-Chair Barry Leon of Torys LLP, are both long-time ICJ Canada members. National ICJ Canada Vice-President Brian Crane,

Q.C., is a member of the Executive group of the Canadian Branch of the ILA and will serve as liaison on behalf of ICJ Canada.

The International Court of Justice and the International Commission of Jurists share more than an acronym. They came into being at almost the same time, their composition is international, and they share an obvious focus on matters of law and jurisprudence and an implicit commitment to the rule of law and the independence of the judiciary at the global level.

Details of the Biennial Conference may be found at [www.ila1006.org](http://www.ila1006.org). •

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ing non-traditional articling experiences and was pleased to find the ICJ open to trying such a project. It appears there are three elements key to matching an articling candidate with the ICJ: (1) domestic experience; (2) a demonstrated interest in fields of law related to the ICJ's work; and (3) concerns about domestic accreditation. Maria concluded that ICJ Geneva is enthusiastic but it will be up to ICJ Canada to carry the project forward.

All in all, the visit of the ICJ Secretary General galvanized the local ICJ scene in Ottawa and Montreal and was pronounced by ICJ President Ed Ratushny to have been a great success. •

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responding to a particular human rights treaty, to promote and protect the full range of human rights internationally. Justice Walter Tarnopolsky, she noted, was extremely influential in the early years of the Human Rights Committee from 1977 to 1983.

Although significant, these two mechanisms have not fulfilled their potential, Ms. Kran said. The UN Commission on Human Rights has become increasingly politicized and reticent about speaking out against the human rights situation in particular states. Although the six human rights Committees have achieved some of their goals, they have been criticized for failing to function efficiently and effectively, and Justice Tarnopolsky's goal of universal participation has not been realized.

Moves are being made to address these problems, Ms. Kran said. Reforms include the Secretary-General's recommendation that human rights, along with security and development, be made one of the three central concerns of the United Nations.

She spoke then of the integration of human rights and development in her own work: "UNDP tends to concentrate on long-term structural dimensions of human rights reforms, such as supporting the establishment of capable institutions, building the capacity of officials obliged to protect human rights, and raising public awareness about human rights." These difficulties of these initiatives, she said, varies from country to country in the region where she works.

Ms. Kran closed her speech by speaking of the possible reforms in the place of the issue of human rights within the UN, noting that the ICJ has participated in the reform process. If the suggested reforms are implemented, she observed, "the United Nations will be equipped to achieve better results in improving respect for human rights globally."

The full text of Marcia Kran's address is available under Documents at [www.icj-canada.org](http://www.icj-canada.org) or in hard copy from the ICJ office in Ottawa. •



### ANNUAL MEETING IN ST. JOHN'S 2006

The next Annual Meeting of ICJ Canada will take place during the Canadian Bar Association Annual Conference in St. John's, Newfoundland, on Monday, August 14, 2006, from 3:00 to 6:00 p.m. in Salon E of the Delta Hotel.

If you will be in St. John's for the CBA Conference, please plan to attend this ICJ event.