



FEDERATION OF ASIAN CANADIAN LAWYERS
FÉDÉRATION DES JURISTES ASIATIQUES-CANADIENS

Strength in Diversity

Federation of Asian Canadian Lawyers 3rd Annual Conference

Saturday, November 7, 2009
Flavelle House, University of Toronto



FACL CONFERENCE 2009:

“STRENGTH IN DIVERSITY”

CONFERENCE REPORT

The third annual conference of the Federation of Asian Canadian Lawyers was held on Saturday, November 7, 2009, at Flavelle House of the University of Toronto Faculty of Law. There were almost 200 attendees at this year’s conference and more than 25 speakers from diverse areas of practice. The day was capped off by a full course Chinese banquet at Dynasty Chinese Cuisine. The summaries below of the plenary speeches and workshop sessions provide some highlights from the discussions (the full conference agenda is attached as an appendix to this report).

Welcome and Introduction

FACL President Jason Leung opened the conference with a heartfelt account of his experience as a member of the FACL Board. Jason described the birth of FACL, its various activities and initiatives, and its partnerships and affiliations, including those with the National Asian Pacific American Bar Association (NAPABA), the Equity Advisory Group of the Law Society of Upper Canada, and the Ontario Bar Association Diversity Committee.

Emily Kuo, NAPABA’s Vice-President – Membership, delivered a message of congratulations to FACL and the Conference Planning Committee for its successful growth and initiatives. She described the mandate and some of the work of NAPABA and its 60-plus affiliates across the United States. FACL is the first Canadian and international affiliate of NAPABA.

Opening Remarks

Professor Anita Anand

Professor Anand commended FACL for its ambitious mandate and observed that the conference agenda was a testament to FACL’s success. She discussed the need for organizations such as FACL because of the existence of two main disparities in the legal profession: (1) disparity in *numbers* (i.e., the disparity between the number of Asian Canadians as a proportion of the population as a whole, as compared to the proportion of Asian Canadians in the profession); and (2) disparity in *wealth* (i.e., the income gap identified between white and racialized lawyers). She also offered some suggestions for FACL’s future agenda, including coordinating with law school and student groups that share similar objectives with FACL, and collaborating with academics who conduct research in areas that are important to FACL’s mandate.



Judiciary Panel: Is Justice (Colour) Blind?

*Justice Russell Juriansz, Justice Shaun Nakatsuru,
Justice Manjusha Pawagi, Justice Maryka Omatsu (Chair)*

Justice Omatsu chaired a panel of three judges to discuss the statement made by recently-appointed U.S. Supreme Court Justice Sonia Sotomayor that was the subject of controversy at her confirmation hearing: *“Whether born from experience or inherent physiological or cultural differences, our gender and national origins may and will make a difference in our judging.”* Before discussing the quote, each judge described their own personal background.

Justice Juriansz came to Canada from India at the age of 8. He was the first South Asian to be appointed to the Superior Court of Ontario and the first racialized person to be appointed to the Ontario Court of Appeal. In his view, judges, like everyone else, are products of their life experience. As a member of a racialized group, Justice Juriansz acknowledged his position as a role model and the symbolic value of his presence on the bench, but stated that he claims no special insight or particular sensitivity to any specific issue. He observed that the quote above was not particularly novel or controversial, referring to examples of various empirical studies and academic articles that analyze the impact of background on judging, including an address delivered by the late Justice Bertha Wilson titled *“Will Women Judges Really Make a Difference?”* While he did not think that a judge’s background determines how he or she will decide a case, Justice Juriansz suggested that diversity among trial judges might be of particular importance because of the discretion available to them. He also observed that appellate courts need to incorporate different perspectives, which is why decisions are made by panels.

Justice Nakatsuru was born and raised in rural Alberta. His parents’ first language was Japanese, and his father was interned during the Second World War. Justice Nakatsuru identified these aspects of his background as giving rise to his enduring feeling of being an outsider wanting to be part of the community. In his view, the statement above is a truism – we cannot escape who we are. Justice Nakatsuru referred to the Supreme Court’s decision in *R. v. R.D.S.* and explained the concept of social context judging. He pointed out that one must always be mindful of the importance of the rule of law and that it is necessary for judges to be careful of overly expansive attitudes with respect to “common sense” and judicial notice of social context.

Justice Pawagi came to Canada at the age of 3. She was recently appointed to the Provincial Court. In her view, the act of judging involves the awesome responsibility of being aware of one’s biases, scrutinizing them for what they are and not being influenced by them. She pointed out that, while we tend not to consider the mainstream or majority perspective as a viewpoint, there is no inherently neutral position. With respect to the issue of diversity, Justice Pawagi observed a person cannot get diversity generally, but only very specifically – that is, a person can only appear before one judge. In her view, diversity can nevertheless have an impact through the common law precedent system and “the messiness and reconciliation of differing perspectives and decisions” that will ultimately enable us to achieve greater justice.



Keynote Address

The Honourable Frank Iacobucci, C.C., Q.C., LL.D.

The Honourable Frank Iacobucci was appointed by the Government of Canada as its Federal Representative with a mandate to achieve a fair and lasting resolution of the Indian Residential Schools legacy. In his keynote address at the FACL conference, he discussed the history of Indian residential schools (IRS) in Canada, some of the procedural history behind the IRS litigation, and the process of resolution of the various legal and non-legal issues arising from the IRS legacy. He described the various aspects of the Settlement Agreement, including the Common Experience Payments and other compensation for physical and sexual abuse, the establishment of the Truth and Reconciliation Commission, and additional funding for healing programmes and national and community commemorative projects. He also discussed some poignant and emotionally-wrenching stories from former IRS students that he encountered during his work as the Federal Representative, and pointed out that, notwithstanding the compensation under the Settlement Agreement, one could never be adequately compensated for the harm resulting from the IRS legacy. He also observed that the IRS legacy belongs to a list of Canadian historical traumas that includes the internment of Japanese-Canadians during World War II and the imposition of the head tax on Chinese immigrants.

He also discussed in particular the history of the apology for the IRS legacy that was made in Parliament earlier this year. He mentioned that the notion of an apology had been brought up on several occasions during the IRS negotiations, but that he had objected to including it as part of his mandate, observing that “to negotiate an apology robs it of any genuineness, and vulgarizes it as an element of bargaining which lacks sincerity.” He described the day in Parliament when the apology was made by the Prime Minister on behalf of the Canadian government and of all Canadians as one of the most moving moments of his life, and his work as the Federal Representative as the most satisfying experience of his legal career.

Workshop A: Legal Updates

Visha Sukdeo, Kathy Laird, Roslyn Tsao, Vanisha Sukdeo (Chair)

Visha Sukdeo, Associate Counsel with the Durham Regional Police Service, discussed the Supreme Court’s recent decisions in *R. v. Grant*, *R. v. Suberu*, *R. v. Harrison*, and *R. v. Bjelland*, which all involved various *Charter* issues and the exclusion of evidence under s. 24(1).

Roslyn Tsao, a partner at Epstein Cole LLP, highlighted a number of trends in family law, including the evolution of the concept of “custody” to “parenting and decision-making”, the increasing number of “parental alienation” being brought, the introduction of a new spousal support chart, recent jurisprudence distinguishing family law domestic contracts from regular commercial contracts, and the movement towards collaborative family law and ADR practices.



Kathy Laird, Executive Director of the Human Rights Legal Support Centre, discussed the recent changes to Ontario's human rights complaints and adjudication system, in particular, the new "direct access and application" model, the new focus of the Human Rights Commission on public education, and the services provided by the Human Rights Legal Support Centre.

Workshop B: Legal Updates

Teresa Cheung, Ron Choudhury, Jason Leung, Carolyn Chambers (Chair)

Teresa Cheung, formerly a civil litigator at Wires Jolley LLP who was recently appointed to the Immigration and Refugee Board, discussed several of the major amendments to Ontario's *Rules of Civil Procedure* that are scheduled to come into force on January 1, 2010.

Ron Choudhury, an associate in the tax group at Aird & Berlis LLP, discussed the concept of "withholding tax" in Canada and the use of LLCs in the United States and Canada.

Jason Leung, an associate at Riches, McKenzie & Herbert LLP, delivered a lecture that illustrated patent issues in a seminar involving a bottle of toilet cleaner and of Coke as props.

Workshop C: Bay Street Initiatives on Diversity

Tariq Remtulla, May Cheng, Kate Broer, André Bacchus, Kevin O'Brien, Fred Gerra (Chair)

Five panelists from several Bay Street firms sparked interesting and lively debate about ongoing issues involving women, racialized minorities, and sexual orientation in big firm culture.

Tariq Remtulla, an associate at Blake, Cassels & Graydon LLP and member of the firm's Equity & Diversity Committee, Kevin O'Brien, a senior associate practising corporate law at Stikeman Elliot LLP, and André Bacchus, Director of Student & Associate Programs at Heenan Blaikie LLP, each shared candid stories about their experiences as visible and "invisible" minorities.

May Cheng, at partner at Fasken Martineau Dumoulin LLP, discussed some of the issues regarding gender equality in private practice. Ms. Cheng was a member of the Expert Advisory Group to the LSUC's Retention of Women in Private Practice Working Group. She shared that many women delay having children because of the pressure to return to work as soon as possible.

Kate Broer, Co-Chair of the National Diversity and Inclusiveness Initiative at Fraser Milner Casgrain LLP, commented on the slow pace of change on Bay Street, noting that big firms "are very complicated organizations" where business has been "done one way for a very long time".



Workshop D: Experiences of Sole Practitioners

Jacqueline An, Ramon Andal, Amer Musthaq, Peggy Chooi, Deanna Santos (Chair)

Jacqueline An, a criminal defence lawyer who started her practice in 1998 after being called to the Ontario Bar, spoke about her experiences as a woman of Asian origin practicing criminal law in Ontario. She spoke about how she became known to the Korean community after being interviewed by the Korean media during the early years of her practice. She also spoke about how she dealt with sexism and racism that she encountered in her practice. Nevertheless, she encouraged more young Asian Canadian lawyers, particularly females, to go into criminal law practice. She spoke of the various advantages of being a sole practitioner, such as having freedom and control over one's practice and retaining 100% of one's profit.

Ramon Andal, who practices insurance litigation at Keyser Mason Ball LLP, discussed his experience as a sole practitioner while he was appointed as a part-time presiding member of the Consent and Capacity Board (CCB). He discussed his experience at the CCB dealing with people with serious mental health issues. He also spoke in detail about the challenge of gaining respect as a sole practitioner from other lawyers during a multi-million dollar litigation proceeding.

Peggy Chooi started her sole practice in intellectual property and business law in 2007. She discussed some of the issues faced by sole practitioners, including feelings of isolation and not being able to readily liaise with other lawyers, and cautioned from her own experience against the mistake of accepting virtually every case offered. However, she also mentioned how being a sole practitioner affords far more flexibility than working in a large firm.

Amer Mushtaq started his sole practice earlier this year and commented favourably about his experiences, particularly about the advantages of being his own boss. He also mentioned that starting a sole practice requires a smaller monetary investment in comparison to other businesses. He said that one of the key ingredients of running a successful sole practice is the ability to manage resources. He also spoke about the importance of networking with other lawyers in order to generate referrals, to exchange ideas, and to obtain assistance when necessary.

Acknowledgements

FACL extends our sincere thanks to the University of Toronto, Faculty of Law, for providing the venue for the conference. We would also like to thank our sponsors for their generosity:



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| Justice Maryka Omatsu | Haiyun Wang |
| Yan Wang | |

PROGRAM

| MORNING | | | |
|---|---|---|---|
| 9:30-10:00 | Registration: Pick up your kits; Membership forms available | | |
| 10:00-10:30 | Welcome: <i>Jason Leung</i> , FACL President; Conference Co-Chairs | | |
| 10:30-11:00 | Opening Remarks: <i>Professor Anita Anand</i> , Associate Professor of the University of Toronto Faculty of Law | | |
| 11:00-12:00 | Judiciary Panel: “Is Justice (Colour) Blind?” (Chair: Justice Maryka Omatsu) <i>The Honourable Justice Russell Juriansz</i> , Court of Appeal of Ontario; the <i>Honourable Justice Shaun Nakatsuru</i> , Ontario Court of Justice; and the <i>Honourable Justice Manjusha Pawagi</i> , Ontario Court of Justice | | |
| AFTERNOON | | | |
| 12:00-1:00 | Keynote Address on Residential Schools by the Honourable Frank Iacobucci, former Justice of the Supreme Court of Canada | | |
| 1:00-2:30 | Lunch and Fair: Child Advocacy Project: <i>Wendy Miller</i> ; Hanvoice: <i>Jack Kim</i> ; Maytree Foundation: <i>Sangeeta Subramanian</i> ; PBLO Law Help Centre: <i>Brian Houghton</i> ; PBLO Volunteer Lawyers Service: <i>Janice Wiggins</i> ; and SALCO: <i>Deepa Mattoo</i> | | |
| 2:30-3:30 | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Workshop A: Legal Updates (Chair: <i>Vanisha Sukdeo</i>) Criminal: <i>Visha Sukdeo</i>; Family: <i>Roslyn Tsao</i>; Human Rights Procedure: <i>Kathy Laird</i>; and Securities: Professor <i>Poonam Puri</i> </td> <td style="width: 50%; vertical-align: top;"> Workshop B: Legal Updates (Chair: <i>Carolyn Chambers</i>) Changes to the Rules of Civil Procedure: <i>Teresa Cheung</i>; Cross-Border Transactions: <i>Ron Choudhury</i>; IP/IT: <i>Jason Leung</i>; and Securities: <i>Dee Rajpal</i> </td> </tr> </table> | Workshop A: Legal Updates (Chair: <i>Vanisha Sukdeo</i>) Criminal: <i>Visha Sukdeo</i> ; Family: <i>Roslyn Tsao</i> ; Human Rights Procedure: <i>Kathy Laird</i> ; and Securities: Professor <i>Poonam Puri</i> | Workshop B: Legal Updates (Chair: <i>Carolyn Chambers</i>) Changes to the Rules of Civil Procedure: <i>Teresa Cheung</i> ; Cross-Border Transactions: <i>Ron Choudhury</i> ; IP/IT: <i>Jason Leung</i> ; and Securities: <i>Dee Rajpal</i> |
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| 3:30-3:45 | Coffee Break | | |
| 3:45-4:45 | <table border="0" style="width: 100%;"> <tr> <td style="width: 50%; vertical-align: top;"> Workshop C: Bay Street Initiatives on Diversity (Chair: <i>Fred Gerra</i>) <i>Blake, Cassels & Graydon LLP: Tariq Remtulla</i>; <i>Fasken Martineau Dumoulin LLP: May Cheng</i>; <i>Fraser Milner Casgrain LLP: Kate Broer</i>; <i>Heenan Blaikie LLP: André Bacchus</i>; and <i>Stikeman Elliott LLP: Kevin O’Brien</i> </td> <td style="width: 50%; vertical-align: top;"> Workshop D: Experiences of Sole Practitioners (Chair: <i>Deanna Santos</i>) <i>Jacqueline An</i>; <i>Ramon Andal</i>; <i>Peggy Chooi</i>; and <i>Amer Mushtaq</i> </td> </tr> </table> | Workshop C: Bay Street Initiatives on Diversity (Chair: <i>Fred Gerra</i>) <i>Blake, Cassels & Graydon LLP: Tariq Remtulla</i> ; <i>Fasken Martineau Dumoulin LLP: May Cheng</i> ; <i>Fraser Milner Casgrain LLP: Kate Broer</i> ; <i>Heenan Blaikie LLP: André Bacchus</i> ; and <i>Stikeman Elliott LLP: Kevin O’Brien</i> | Workshop D: Experiences of Sole Practitioners (Chair: <i>Deanna Santos</i>) <i>Jacqueline An</i> ; <i>Ramon Andal</i> ; <i>Peggy Chooi</i> ; and <i>Amer Mushtaq</i> |
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| 4:45-5:00 | Conclude Conference | | |
| EVENING | | | |
| 6:00-9:00 | Banquet (Dynasty Chinese Cuisine, 131 Bloor Street West, 2nd Floor) | | |