



# ABA International

## Canada Committee

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### [Committee Leadership:](#)

#### **Chairs:**

[Marcela B Stras,](#)  
[John W Boscarol](#)

#### **Vice Chairs:**

[Del William Atwood,](#)  
[Paul S Crampton,](#)  
[Marc J Goldstein,](#)  
[Alexander A Jeglic,](#)  
[Mark Katz,](#)  
[Peter E Kirby](#)

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### **Introduction**

#### **Spring Meeting**

Welcome to the second edition of our newsletter which is dedicated to the programs sponsored by the Canada Committee at the International Law Section's Spring Meeting in Washington, D.C., April 15-17, 2009. This Spring Meeting was our largest Spring Meeting in Washington, with over 1200 participants, quite a feat given the status of the economy. The quality of the programs and speakers was unparalleled and the social events and luncheons were sell-outs. The Canada Committee had much to be proud of with five Showcase programs. These programs are summarized in this issue of the newsletter by the program co-chairs.

I had the honor of being one of the co-chairs of the meeting and can confirm that many people worked very hard, mostly behind the scenes, to put it together and make it a success. My co-chairs, Lori Sostowski and Meaghan McGrath Beaumont and the ABA staff (Duane, Annie and Jenny along with Leanne), with assistance from Aaron Schildhaus, Section Chair, and Mike Burke, Section Liaison Officer and co-chair of the 2007 meeting, starting working together and planning the meeting almost one year before the event. Later we worked with the Planning and Sponsorship Committees, to organize the reception and dinner at the Kennedy Center, the dinner/dance at the Fairmount Hotel and the closing reception at the Department of State.

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### **Introduction - Spring Meeting**

We also planned the lunch programs with Congressman Oxley and Abbe Lowell and scrutinized over 160 program proposals. It was a very busy and exciting time, since there were many details and issues to resolve. The largest challenge was raising the required sponsorships at a time when the economy was probably at its lowest point in a long time.

There are too many people to thank here. However, I do want to thank Aaron for having the vision of appointing three women co-chairs of the meeting for the first time in section history.

Marcy Stras  
Spring Meeting Co-Chair,  
Co-Chair Canada Committee



Kennedy Center Washington, D.C.



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## Canada Committee

### **Committee Leaders Appointed**

Glenn Hendrix, Chair-Elect, ABA Section of International Law, has appointed the following members as Canada Committee leaders for the August 4, 2009 to August 5, 2010 term:

Committee Co-Chair(s):

John Boscarol  
Marcy Stras

Vice-Chair(s):

Del Atwood  
Jeffrey Barnes  
Leonard Gold (new appointment)  
Marc Goldstein  
Alexander Jeglic  
Peter Kirby  
Mark Katz

Congratulations to everyone, especially to Len and Alex. We had a great team this year under Aaron's leadership, and look forward to an even better year with Glenn! Since committee appointments are normally made for two-year terms, this is your opportunity to join and be active on the Steering Committee so that you can be appointment next year!

Marcy and John  
Co-Chairs of the Canada Committee

*Congratulations!*



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### The Case of the Squeezed Orange



From the seed of an idea grew a program that was very timely this year, in more ways than one. Those who attended the Showcase Program on Judicial Cooperation in International Cross Border Insolvencies at the Spring Meeting in Washington D.C. were treated to a panel that included two judges, one from Canada and one from the States, as well as two stellar insolvency/restructuring specialists, Bruce Leonard of Cassels Brock and Blackwell, LLP, in Toronto and Leonard Gold of Burns and Levinson, LLP, in Boston. The fact that the panellists are highly respected for their work has only been highlighted even further in recent weeks, when Judge Arthur Gonzalez of New York became the judge tapped with administering the Chrysler bankruptcy case. He along with James Farley, formerly of the Supreme Court of Ontario and now Senior Counsel to McCarthy Tetrault LLP, walked the audience through the key points of insolvency law on both sides of the border including the Model Law on Cross-Border Insolvency. In 2005, the United States adopted the Model Law by including Chapter 15 in the Bankruptcy Abuse Protection and Consumer Protection Act. Canada has adopted many features of the "Model Law" by judicial precedent. The panel focused on the level of judicial cross-border cooperation that has developed over the last 15 years or so between Canadian and American insolvency jurisdictions.

This was an ideal time for a lucky audience to get a glimpse of what strides have been made in judicial cooperation across national boundaries to deal more fairly and effectively with the casualties now flooding the business sections of newspapers all over North America and, indeed, around the globe.



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### **The Case of the Squeezed Orange**

The view from those who know demonstrated that not only was Everfresh a trailblazer in its use of an international protocol, the precedent remains very relevant today, looming large as a model in contexts no less momentous than, for example, cleaning up the financial debris of Lehman Brothers.

An international protocol provides a “roadmap” for a complex process where one must navigate the insolvency laws of one or more jurisdictions. In the protocol complex cross border issues are addressed and mechanics are established to provide communications between the courts and parties in the various jurisdictions. The adoption of a protocol to expedite the handling of an insolvency in such a manner that business value is better preserved, often facilitating the reorganization or sale of part or whole of the now insolvent business as a going concern.

A very positive and encouraging message emerged from the panel as a whole. In the area of cross-border insolvency, in particular, the use of international protocols have proven very beneficial. The message from the panel was that protocols should apply to many other areas of law. The legacy of Everfresh appears to be that the international insolvency bar is a leader in coordination and cooperation among the different courts and parties in the various jurisdictions and that both courts and legislatures are working together both nationally and internationally to improve on that benchmark going forward.

Vanessa Lantin and Scott Fairley  
Program Co-Chairs



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### **U.S. Export Controls vs. Canadian Employment Law Program - Joint Program with Canadian and Ontario Bar Associations**

On February 13, 2009, the ABA SIL Canada Committee presented "U.S. Export Controls vs. Canadian Human Rights and Employment Laws – Conflict or Compatibility?", a program co-sponsored by the Ontario Bar Association International Law Section, the International Law Section of the Canadian Bar Association, and the ABA SIL Export Controls and Economic Sanctions Committee and International Procurement Committee.

The program, offered by video conference at locations in Toronto (Heenan Blaikie) and Washington, D.C. (Steptoe & Johnson) and by teleconference, considered the growing problem concerning conflicts between U.S. export controls and Canadian human rights laws.

Companies engaging in business in Canada with hardware, software, or technical data subject to control under the U.S. Export Administration Regulations (EARs) or International Traffic in Arms Regulations (ITARs) face the challenge of complying with (i) U.S. requirements relating to the sharing of EAR and ITAR – controlled items with non-U.S. persons, particularly those who are born in or citizens of certain proscribed countries and (ii) Canadian human rights and employment laws which require fair and non-discriminatory treatment in the work place.

Moderated by Committee Co-Chair John Boscariol, the program brought together recognized Canadian and U.S. experts, both in-house and outside counsel, who discussed the nuts and bolts of the

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EARs and ITARs as they relate to the hiring and treatment of Canadian employees and the potential conflicts with Canadian human rights laws. The speakers provided their perspectives on navigating both legal regimes and strategies for addressing conflicts. Meredith Rathbone of Steptoe & Johnson presented an overview of U.S. export controls over technology transfers both under the EAR and ITARs while Trevor Lawson of McCarthy Tétrault provided a summary of the issues under Canadian human rights and employment law and set out some strategies for minimizing the risk of exposure when dealing with U.S. deemed export rules.

Kathleen Palma, Counsel, International Trade Regulation at General Electric, provided a U.S. in-house counsel's perspective on these challenges during her presentation on "Mitigating Conflicts with ITAR Nationality Requirements". Stephen Vaz, Counsel and Global Export Compliance Lead at Accenture Inc. delivered his presentation on "Some Practical Considerations for Counsel".

The program was a resounding success, attracting approximately 95 attendees who were brought up to date on the latest developments on these issues and given ideas for addressing these conflicts. It was also a great example of the opportunities available to ABA SIL Committees seeking to reach out to other international bar associations and organizations in order to enhance the quality of their programming.

John W. Boscaroli  
Program Co-Chair  
Co-Chair of the Canada Committee



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### **Between A Rock And A Hard Place: Managing Conflicts Between U.S. National Security Laws And Canadian Privacy Protection Requirements**

The adoption of the U.S. *PATRIOT Act* in 2001 prompted Canada's federal and provincial governments to adopt varying approaches to strictly control access to personal information, both domestically and internationally. As a result, companies whose business models require access to such information increasingly find themselves in a position of having to choose between compliance with those privacy laws and conflicting US laws.

On April 16, 2009 at the ABA Section of International Law Spring Meeting, moderators Mark Field (Co-Chair of the Information Services, Technology & Data Protection Committee) and John Boscariol (Co-Chair of the Canada Committee) presented a panel of leading experts on these issues.

Jennifer Stoddart, Canada's Privacy Commissioner, spoke on the federal government's approach to privacy protection, including key developments in the first eight years of the coming into force of Canada's *Personal Information Protection and Electronic Documents Act*. Marian Tyson, Q.C., Deputy Minister of Justice and Deputy Attorney General of the Province of Nova Scotia, discussed Nova Scotia's legislative response to the *PATRIOT Act* - the 2006 enactment of the *Personal Information International Disclosure Protection Act*. That legislation addresses privacy issues associated with personal information that is in the control or custody of public sector entities and their service providers and requires, with certain exceptions, that access, storage and disclosure of personal information be restricted to Canada.

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These key government leaders were followed by presentations and discussions providing contrasting viewpoints on the necessity of this privacy “blocking” legislation. Mark Plotkin, partner at Covington & Burling in Washington D.C., presented his paper on the significance of the Canadian privacy rules in this context and why these laws address important Canadian policy needs. Professor Fred Cate, Indiana University Maurer School of Law, presented his analysis and perspective on these issues, arguing that the U.S. *PATRIOT Act* poses little risk to Canadian’s personal information held by public bodies and stored in or accessible from the United States and that harms caused by provincial privacy blocking legislation outweigh any minimal risk of access by U.S. officials.

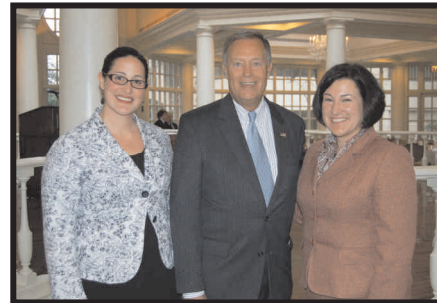
All panel members provided the audience with a lively and timely discussion and analysis of these issues, and in particular, differing perspectives on the appropriate balance of national security and personal privacy.

John W. Boscarol  
Program Co-Chair,  
Co-Chair, Canada Committee



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### **Is There a Future for NAFTA and Other Trade Agreements in the New World Economy?**

According to John Manley, McCarthy Tetrault, Toronto, Ontario, the North American Free Trade Agreement ("NAFTA"), is a successful agreement that has not kept up with the times.

Mr. Manley, who was Canada's minister of industry when NAFTA was ratified 15 years ago, spoke as part of a Showcase program at the Spring Meeting. The event was sponsored by the Canada and Mexico Committees and moderated by Marcy Stras, Co-Chair of the Canada Committee.

In addition to John Manley, the panel included Ms. Thea Lee, Policy Director and Economist, AFL-CIO, Ms. Betty Sutherland Murphy, Partner, Baker and Hostetler, LLP, Ms. Leslie Schweitzer, Senior Negotiator, U.S. Chamber of Commerce, and Mr. Leslie Glick, Partner, Porter Wright Morris & Arthur LLP.

Mr. Manley cited a number of issues on Canada's NAFTA renegotiation list including the "thickening" of the U.S.-Canada border, access to U.S. government and defense contracts, and energy issues, among others.

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He said that the current political climate is not favorable to new "better" trade agreements since protectionism is rising during these times of economic downturn, which is not likely to change in the near future. The other panel members agreed that NAFTA is a 15-year old agreement that has not kept up with the changing times.

Ms. Murphy spoke of the need for greater protection for labor and also mentioned the environmental standards as being on the "wish list" for renegotiation. Ms. Schweitzer, a business owner, spoke of the successes of this imperfect agreement. Lastly, Mr. Glick spoke of the NAFTA trucking dispute with Mexico.

The United States and Mexico have long been at odds over NAFTA cross-border trucking provisions. The provisions were delayed by the United States during the Clinton administration due to safety concerns. The Obama administration has cancelled a Bush administration pilot program, to be implemented by the Department of Transportation, intended to start complying with NAFTA.

The Obama administration has cancelled a Bush administration pilot program, to be implemented by the Department of Transportation, intended to start complying with NAFTA. Subsequently funds for the pilot program were cancelled.

A NAFTA panel has found the United States in violation of its obligations. Mr. Glick said that it was disturbing that members of the legislative branch were able to block the exercise of executive authority to implement the trucking provisions by withholding funds for the program.

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### **Is There a Future for NAFTA and Other Trade Agreements in the New World Economy?**

Ms. Lee told the panel that the NAFTA template is the problem as opposed to the idea of increased trade among the NAFTA parties. NAFTA passed with very weak labor and environmental provisions and strong provisions to protect intellectual property and investment.

All panel members seemed to agree that it would be very difficult to renegotiate NAFTA 15 years after the fact since all three countries have different interests on what they would like to revisit. However, Ms. Lee and Ms. Murphy expressed the hope that a new dialogue could take place recognizing the needs of workers and the environment.

This very well attended program was also available by audio for Section members.

Marcy Stras  
Program Co-Chair  
Co-Chair of the Canada Committee

### **NAFTA AT 15**

The Canada Committee has been asked to take the lead, with the Mexico Committee, in organizing a program for the Annual ABA Meeting in Chicago (July 30 - August 4) titled "NAFTA at 15." The program is to be held on Sunday, August 2, 2009 from 8:30 am to 10 a.m. in the CLE Centre Marcy Stras, Co-Chair of the Canada Committee, will moderate a distinguished panel that will discuss the 15 years that NAFTA has been in force. Please come, listen and participate in a lively discussion!



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### **CANADA COMMITTEE CONTINUES OUTREACH WITH JOINT PROGRAMS IN JUNE**

June was a very busy month for the Committee as it presented two programs on timely international trade matters, both in conjunction with the Ontario Bar Association International Law Section and the Canadian Bar Association National Section of International Law.

Both programs were well attended and involved lively discussion from speakers and participants on the significant economic and trade challenges facing Canada, United States and other nations during this time of financial turmoil.

#### **International Trade, the Financial Crisis and the Role of the G-20 – Do We Need Another Bretton Woods?**

On June 5, 2009, in an informal and interactive session offered via video hook-up at locations in Toronto and Washington DC, the Honorable Pierre Pettigrew, former Canadian Minister of Foreign Affairs and Minister of International Trade, discussed his views on the current economic crisis and whether it raises the need for a restructuring of current international institutions.

In addition to discussing the role of the G-20 and Bretton Woods institutions, Pierre Pettigrew addressed questions and led discussions on a wide range of international issues including climate change and international environmental policy, Buy America, the economic and political role of China in the world today, and United States policy and multilateralism.

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### **Canada – U.S.A. Border Issues: A New Bridge for Old Allies**

On June 9, 2009, the Committee presented a program on Canada - U.S. border issues at locations in Toronto, Ottawa and Washington DC linked by video and web.

Although highly integrated trade relations between Canada and the United States have provided strong and lasting benefits to both economies, developments such as the implementation of the Western Hemisphere Travel Initiative, the inclusion of Buy America provisions in the Obama Administration's stimulus package, and recent statements from the U.S. Administration equating the Mexican with the Canadian border have placed strains on our relationship. These are issues which have taken on a height of significance in the current economic climate.

Former Canadian ambassador to the United States, Michael Kergin and Birgit Matthiesen, a special adviser to Canadian Manufactures and Exporters, provided attendees with an analysis of these challenges as well as potential short and long term solutions. The program focused on the recommendations in the speakers recently released Border Issues Report for the Canadian International Council, titled "A New Bridge for Old Allies" and which can be found at <http://www.canadianinternationalcouncil.org/research/workinggro/borderswor/cicborderi>. The speakers discussed a range of issues raised by participants in all three of the program locations, including BuyAmerica preferences, differing regulatory regimes in Canada and the United States, and other hot-button trade and investment issues arising in the bilateral relationship.

John W. Boscariol  
McCarthy Tetrault LLP, is Co-Chair of the ABA SIL Canada  
Committee, and ABA SIL Liaison to the Canadian Bar Association  
and Ontario Bar Association.



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### COMMITTEE MEMBER



Marcy Stras, Co-Chair of the Canada Committee, is a partner in the International Group at Baker and Hostetler, LLP. Marcy is head of the firm's Business Immigration Practice and heads the Washington, D.C. Customs Practice. She calls herself a port of entry lawyer, and now that Customs and Immigration are together in one agency her expertise makes a lot of sense for clients.

Marcy has more than 20 years of experience counseling clients on business immigration, customs and other trade issues. She served as a lawyer for the U.S. International Trade Commission and the U.S. Department of Commerce before entering private practice. She drafted and negotiated the first countervailing duty suspension agreement, and many others. While in the government, she represented the United States in trade negotiations and in trade cases with foreign governments and companies, and has assisted with drafting trade laws and regulations. In private practice she has represented U.S. and foreign companies in most industries.



Canada is the largest producer of Icewine — a refreshingly sweet dessert wine with high acidity — in the world. The Icewine industry is centred in British Columbia's Okanagan Valley and Ontario's Niagara Peninsula.