

The Future of International Law

The ILA comes to Canada.

Story by Jim Tobler
Photography by Doug Forster

The International Law Association (ILA) was founded in Brussels in 1873. This information is taken from their website, and is the first sentence in the section called "History of the ILA". It is interesting, though, for a wide variety of reasons, among them the simple fact that international law is becoming ubiquitous in the world, and the fact that Canada took quite a while to get on

The ILA is not, in the manner of some other international legal organizations, an advocacy group, but rather it tries to manifest its objectives by setting up and following through on what it terms "International Committees". These committees are working committees, comprised mainly of prominent lawyers and academics, and they do real work in real time, usually over a four or eight-year term. The results of

issues impact our daily lives more than ever. Legal issues, both domestic and international, impact on all countries." She goes on to explain that the conference is "not only an exchange of ideas, but reports by committees, so work is ongoing. There is a surprising amount of consensus, in my opinion, even though there are very different perspectives." While the topics may not always hit the top of the evening television news, Professor Walker is vehement, in a good way, when she asserts that "these are lively debates. Intellectual Property [Dan Brown, anyone?] for example, or the committee session I am chairing, on International Commercial Arbitration, these are not at all dull and dry."

There are two excellent reasons for Canadians, not just within the legal community but the citizenry at large, to be pleased that the ILA Conference is coming to Canada. "We are multicultural, and we encourage Canadian lawyers to focus on that. The world is coming to Canada, but we can bring our Canadian perspective to this as well," concludes Professor Walker.

Marie-Claire Cordonier Segger has been active in the ILA for over 10 years, most recently as member of the Canadian Board, but before that as an expert on the sustainable development committee internationally, and participating from the Lauterpacht Centre in the biennials in London, New Delhi and Berlin. "Canada certainly has a place in the world of international law. As a middle power, we depend on respect for international law, and engagement in it." She states just one example of good work being done: "The sustainable development committee's coordination over the course of 10 years to identify seven principles of international law on sustainable development, which were presented to the World Summit on Sustainable Development. Though it is also one of our greatest challenges, this coordination and intellectual collaboration among world experts on specific policy-relevant questions of international law is a significant accomplishment."

William Horton, Partner at Blake, Cassels & Graydon LLP, and Programme Committee Co-Chair, is perhaps more restrained in



ILA Canadian Organizing Committee members William Horton, Elisa Kearney, Barry Leon and (STANDING) Lisa Talbot.

board. Canada joined, or more accurately, founded its branch, only in 1967 (an auspicious year for Canada, certainly). The ILA has a specific set of objectives including, according to its constitution, the "study, elucidation and advancement of international law, public and private, the study of comparative law, the making of proposals for the solution of conflicts of law and for the unification of law, and the furthering of international understanding and goodwill." More on that later.

these committees are then presented at a biennial conference, the 2006 version of which is being held in Toronto.

This is not only quite a coup, but is testament to the work of the Canadian Organizing Committee. The conference Co-Chairs are Janet Walker, Associate Professor at Osgoode Hall Law School, and Barry Leon, Partner at Torys LLP. Professor Walker brings a lot of passion to the topic of the ILA in Canada. She takes time from a teaching engagement in Haifa to speak about it: "International

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his rhetoric, but no less enthusiastic and convincing in his assessment of the ILA. “Everyone recognizes that the international stage is more important than it ever has been. Politics, transportable ideas; class actions in North America, to take an obvious example, are now becoming more common in Europe. But from a purely Canadian perspective, I would say that our Charter of Rights has had an enormous impact, internationally. Canada plays a lead role in human rights because of that.” It should be stressed that Mr. Horton, like all of the experts interviewed here, is a practising professional, and therefore something of a pragmatist. There is very little of the pie-in-the-sky philosophy about human rights here, but rather an understanding that international consensus can, and usually does, take a very long time.

Mr. Horton continues: “There is usually a ‘home-court advantage’ for international disputes, but the ILA looks at alternatives to litigation: tribunals, international arbitration, human rights institutions that are involved with human mobility, fairness in trade. It is replacing old, colonial ideas of self-interest with sustainability, and to be frank, something you could call enlightened self-interest.” And there is more, because the laws of commerce and business transactions are increasingly applied on an international scale. “Large Canadian companies run out of ways to invest their money in Canada, so they must go international for investment. So, the ILA does serious work, on issues relating to retaining your own values while you negotiate with the world.” He goes on to specify China as an example of why this is so important. China has a huge economy, with distinct values. It joined the World Trade Organization quite recently, and it is mainly through legal processes that they engage the world.

“We think of many issues as being local, but they are not. They are issues all over the world. A great example is indigenous people’s law. The ILA is establishing an indigenous law committee at this next Conference. We can learn from other countries, and vice versa, although I must say Canada’s record stands as more or less a resounding failure, but, we may alter what we do because the world is coming here, the world is watching.” One of the most fascinating insights Mr. Horton provides is that “If you are too deeply embedded in a local perspective, that belief that our way is the only way, then you cannot succeed internationally.”

Barry Leon affirms much of this. He says, “Public international law is what most people think of when it comes to international law, but with globalization and the tremendous increase in cross-border commerce, many lawyers are in fact practising international law. Mergers and acquisitions, even litigation is now much more cross-border. Parallel claims, enforcement, class-actions. Canadians, in law as in everything else, are competing not only nationally but internationally.” The ILA conference in Toronto means that “We can raise the Canadian profile, and show we have talented people here, who can and do contribute around

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THE HONOURABLE ROY McMURTRY
ONTARIO CHIEF JUSTICE



The Honourable Roy McMurtry: a unique perspective on international law.

the world. This is a wonderful opportunity to showcase Canada’s considerable talent, and to bring to Canadians leading people in all areas of international law from around the world.”

What Mr. Leon means by that is a distinguished array of luminaries, in this case headlined (if that is even an appropriate word to use in this context), by Lech Walesa (former President of Poland and winner of the Nobel Peace Prize), Hans Blix (Chairman of the independent international Commission on Weapons of Mass Destruction), and Cherie Booth (noted British barrister and human rights advocate, and wife of Tony Blair). In an important sense, that is the tip of the iceberg, and a Canadian icon agrees.

Ontario Chief Justice, Roy McMurtry, is a Canadian icon. He is a member of the ILA 2006 Advisory Board. One of his many jobs over the years in which he has served this country was as High Commissioner to London. From that vantage alone he has a special perspective on international law and the issues surrounding it. But as Ontario’s Attorney General, and now as a Chief Justice, His Honour has a unique view of what the ILA means. “To begin with, it will strengthen the Canadian profile internationally. Exporting legal expertise is a growth industry. The Charter of Rights [the creation of which Mr. McMurtry was an integral part] certainly, but areas that are more commercial also.”

As he gazes around his Chambers, some walls of which act as a kind of gallery for some of the paintings he has done over many years of international travel, he almost muses aloud; “I’ve been around a long time in the legal profession, so at this point I am very impressed with the high level of specialized expertise. When I was called to the Bar, in 1958, it was a completely different world. And by the time I got to London, other ambassadors would tell me, continually, that Canada should perhaps be more active in bringing their expertise to the world. The world knows much less about Canada than we might care to admit, and I mean the world, not just our American neighbours. And given the increasingly specialized nature of international law, any country that does not move forward runs the risk of being ghettoized, in a sense. So, this conference is good for our legal community, but for the country as a whole as well. I learned a long time ago that in many parts of the world there is no looking beyond the United States. Therefore not enough is known about Canada. We have to work a little harder to

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get noticed.” He is, in his considered, august way, very passionate about this. The bottom line is, “There are great people resources, not just natural resources, in this country.”

Ontario Court of Appeal Justice Robert Armstrong, who also serves actively on the ILA 2006 Advisory Board, provides some historical context. “Lord Slynn, of the London ILA headquarters, came to Toronto in 2001. He was on a lecture circuit as Chairman of the ILA. I met him as Head of the Law Society of Canada. Certainly, it is a prestigious organization, not so much a networking association but committed to serious research, actually a hard-working organization.” Justice Armstrong reiterates that here: “In 1967, international law fundamentally didn’t exist in Canada. Now, for example, International Arbitration is a very serious discipline. It existed, but in real terms not in Canada until about 15 years ago. To use the vernacular, it is a booming industry.”

Justice Armstrong points out Yves Fortier and Marc Lalonde as two of the many Canadians who are internationally respected for their expertise in international law and arbitration, and “the international demand for Canadians is increasing”.

Milos Barutciski, Partner at Davies, Ward, Phillips & Vineberg LLP, and President of ILA Canada, practises international law every day. “The ILA has a very long horizon. There are more than 20 working committees, and they change over time. A high proportion of the leading jurists and academics in the world work on these committees, work on how the law should evolve. Their work is therefore cited in courts all over the world, because they are authoritative.” Mr. Barutciski stays consistent with the theme, that international law is increasingly important.

The ILA itself does useful, real work in a variety of specialized areas. “The conference is a point in time, an event. But the committees are constantly working. For each committee, of the top ten experts in the field, you’ll often find nine on the committee, and likely nine of the next ten as well. And there are remarkable people. When the conference was held in India, the Chief Justice of India was there. He is one of the most remarkable intellectuals I have ever met.”

Mr. Barutciski goes on to underline some of the tangible efforts and results: “The United Nations convention against corruption, the introduction of criminal sanctions

against bribes, is just one area where real progress is being made. Twenty years ago, there was nothing. We have to understand that it is a long-term process, that progress and positive change happen gradually, piece by piece. Nothing happens overnight; it takes a lot of work to enact conventions. U.N. reform, for example: in Toronto, there will be a panel discussion, a progress report, and, eventually, real change based on research and expert opinion from around the world.” But there is even more to it. “Most legal disputes are settled before trial. That’s true for international trade

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negotiations as well. Most countries seek an amicable solution. In the absence of rules, there is no benchmark. With international law, there is a benchmark. Realistically, there is no international cop on the street corner, so we need to continue developing treaties, enforcement mechanism, improve the negotiation process. And we have to remember that there is no overnight solution. Sometimes, the best is enemy of the better.”

The practice of international law is exploding, and it is natural (and certainly a potentially smart career choice) that younger lawyers are more interested in it. Elisa Kearney, also at Davies, Ward, Phillips & Vineberg LLP, is an Organizing Committee member for this year’s ILA, and is developing an international law component to her practice. “As a young lawyer practicing in the area of competition law, whether I am working on a cross-border or multi-jurisdictional merger, providing advice on competi-

tion law compliance or defending a global cartel investigation, competition law and policy in foreign jurisdictions around the world is an everyday part of my practice,” Ms. Kearney notes.

She goes on to describe the significance of the conference as a forum for debate: “An ILA Conference has not been held in North America since 1982. Since that time, the world has changed considerably and international law has moved into the mainstream. Globalization has resulted in increasing communication and cooperation in law enforcement which in turn has encouraged greater convergence in law and policy around the world. International law, in its many forms, is no longer a subject matter that can be left for academics and specialists in the field to discuss in closed circles. Today, international law is far reaching and it is important that the Canadian and North American legal communities take part in the dynamic debate.”

When the international law world descends upon Toronto and Canada, some of us outside the legal community may not notice, although we likely should. What transpires, both at the conference and within the committees that continually operate in the ILA, has a real impact on nearly everyone’s daily life. Read any newspaper headline virtually any day of the week, and international legal issues are part of the equation. Extradition, child support and custody, the international rule of the sea, trade negotiations, conflict resolution and enforcement (softwood lumber, anyone?), terrorism bills, and the list could go on for pages, all of it is under the scrutiny of the International Law Association.

It might be good to take back the grossly decontextualized line, “The first thing we do, let’s kill all the lawyers”. It is uttered by a character named Dick, in *Henry IV, Part 2* who is agreeing with his drunken friend Cade about how to run the country, with Cade as King. The point for Shakespeare is how dangerous and facile the law of the land would be without the rule of law, and the professional practitioners thereof.

So it is actually heartening to know that there are lawyers and legal academics the world over, who are dedicated and work hard towards advancing, in even a basic form, the ground rules for international interactions of all descriptions. Canada will play an increasingly important role, and the 2006 ILA Conference puts it all on working display right here in Canada. ♡