

The International Councillor

May 2008

The Newsletter of the Council of International Investigators

Issue 5

Regional Costa Rica meeting a revelation to some attendees

By Ken Kirk, *Glass Key Investigations*

Howling monkeys, flocks of parrots, strange and exotic foods, Costa Rica had all that and more in April of this year...it had the Council of International Investigators at their regional meeting! Seth Derish of Derish Valverde Associates and Nancy Barber of Glass Key Investigations hosted an informational program. Speakers included Brian Harris of Reuters and Garland Baker of Costa Rica Expertise, who dealt on the inner workings of business and life in Central America, and Costa Rica in particular. To some of the participants from the local environs, it was "business-as-usual", but to those of us from more distant shores, it was a revelation. "Ya shoulda been there"!

Attendees came from Costa Rica, Panama, Nicaragua, United States, Germany, Brazil, Mexico and Canada and included Seth Derish, Nancy Barber, Joseph Carroll, Galen Clements, Rob Dallaire, Luis Fernando Molina, William News, Marc Reed, Matteo Bavaro Peter Schmid, Michael Day, Oscar Bello, Brett Mickellson and Sam Brown.



From left to right attendees are: Matteo Bavaro, Rob Dallaire, Oscar Bello, Brett Mickellson, Sam Brown, Fernando Molino and Michael Day.



Speaker Garland Baker, explains the finer points of investments in Central America.



Lively "roundtable repartee" from Marc Reed, Seth Derish, Brian Harris (Reuters), Matteo Bravaro and Rob Dallaire.

From the editor



Fred's brother Jack and his wife Phil (left of photo) accompanied Fred and I during our recent vacation in the U.S. Virgin Islands at Steve Kirby's condo so graciously donated to the Silent Auction at last year's AGM. We had a ball! Here we are on our way out to the Atlantis, a submarine dive on a reef. **What's your silent auction item this year?**

In this issue we have been fortunate to receive the address from the Office of the Privacy Commissioner (OPC) Canada, from the President of the Canadian Association of Private Investigators, Bill Joynt. The article is on page 4 –7 of this publication and warrants reading by all serious investigators. If the OPC takes their "thought" to reality our industry could be impacted worldwide. I was doubly surprised to read of the move by Google, to pixelate the faces of third parties captures in public on their mapping software. Read about that on page 3.

On the social side of things, Jimmy Gahan has apprised us of the latest doings of the POD ball on page 8 and in our June issue we will publish Richard Green's response to the Irish contingent!

Also, look for the latest in the tales of purloined plaid, a harbinger of things to come in Halifax????

The CII Halifax AGM thanks its sponsors on page 10 of this publication. See you in Halifax!

Congratulations to the winners of the \$100 Restaurant Gift Certificates for the Halifax AGM. The names of all those registered before 1 May were entered and the winners of the gift certificates to Fred & Trish's Top Restaurant picks are:

Reg Montgomery &

Jacob Lapid

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*Brett, Sam,
Fernando and
Nancy enjoying
the "après-
conference"
hospitality at
Hacienda
Derish.*



The shape of things to come - maybe

By Brian Bergstein AP Technology Writer

After privacy complaints, Google Inc. is beginning to automatically blur faces of people captured in the street photos taken for its Internet map program. Rolling it out will take several months, however.

Although Google's Street View service was not the first to augment online maps with photos, the detail and breadth of images on the site surprised and unsettled many users when it launched last year.

As specially equipped Google vehicles cruised city streets snapping panoramic images of homes and businesses, the resulting photos revealed people falling off bikes, exiting strip joints, crossing the street, sunbathing - everyday, in-public things but nonetheless, things they might not have wanted preserved for posterity.

Some privacy advocates, including the influential Electronic Frontier Foundation, suggested that Google blur the images of people. That move, the critics pointed out, would not inhibit Street View's goal of helping people become familiar with the look and feel of a location before they travel there.

This week, Google revealed it had indeed begun deploying a facial-recognition algorithm that scans photos for mugs to blur. The changes are happening first in scenes in New York, before slowly expanding to the other 40 cities in Street View.

Google spokesman Larry Yu said the company is still tweaking the system. For now it tends to err on the side of blurring too many things - things a computer erroneously interprets as faces - but that is better

than leaving too many faces unblurred, Yu said.

Yu said Google was responding not only to privacy complaints in the U.S., but also trying to head off legal or cultural objections that might emerge as Street View expands into other countries.

Rebecca Jeschke, a spokeswoman for the Electronic Frontier Foundation, praised Google's decision, but she added that "it's just a shame it didn't happen before the tool launched."



This is the first photo sent out of our son Brett Richard Mikkelson, born on April 23, 2008 at 2346 hrs 1146 PM). Weight 3.0 kilos (6lbs, 9 ozs), measuring 48 cm long. He is in great health and is as beautiful as his mother.

New privacy concerns in Canada may affect PI industry

Editor's Note: The following address, made by the Office of Privacy Commissioner (OPC) at a conference attended by the Canadian health and insurance industry in February 2008, was forwarded to us by the President of the Canadian Association of Private Investigators (CAPI), Bill Joynt. In addition to the surprising actions taken by Google to pixelate photos on the internet, Canadian PI have been blindsided by comments contained in the address below and posted on the OPC website. During his address, Colin McKay, Director, Public Education and Communications, indicated that privacy concerns may be extending to the requirement that all photos of third parties in covert surveillance also be pixelated or disguise even though the video was obtained in a public place. Norman Groot, of Investigation Counsel Professional Corporation, acting as Counsel to the Canadian PI industry, has requested a meeting with the Privacy Commission in an effort to ascertain if this is indeed an action that the Commission may be looking at. However, all PI should be concerning that this indeed may be the shape of privacy concerns to come if our industry is not vigilant and aggressive in our efforts to deter this type of legislation.

"I appreciate this opportunity to speak with you about privacy and the insurance industry. I'd like to share some thoughts with you on a couple of key issues we've been working on with the insurance industry.

The first is how solicitor-client privilege claims are affecting our investigations. The second involves surveillance by private investigation firms working for insurance companies. I also thought it would be interesting to talk about a few of our recent investigations involving health and life insurance.

We are an ombudsman's office, so our approach is to try to resolve problems through mediation rather than heavy-handed enforcement. That said, when conciliation fails and a company refuses to follow our recommendations, we may go to Federal Court to seek an order forcing them to comply. Possible court action is a fairly persuasive tool and most organizations comply with our recommendations.

Our Office also works to avoid problems that

lead to privacy complaints in a number of ways: proactive public education initiatives, funding of privacy research, and audits of businesses to verify compliance with the law.

Let's turn to some current privacy challenges facing your industry

The Solicitor-Client Privilege Challenge

A very important issue for our Office is dealing with complaints from people whose requests for their personal information held by insurance companies have been denied.

Insurance companies often refuse such access requests by claiming solicitor-client privilege. They rely on section 9 (3) of PIPEDA, which provides several situations where access may be refused. Documents covered by solicitor-client privilege are one of the exemptions.

We do recognize the importance of solicitor-client privilege as a fundamental legal principle. However, we are concerned that organizations could thwart individuals' right to access their own personal information by inappropriately asserting this privilege.

This has long been a sticky issue – but, from our perspective, it became more problematic following a decision by the Federal Court of Appeal in what's known in legal circles as the "Blood Tribe case."

Blood Tribe Case

These long-running legal proceedings finally wound up in the Supreme Court of Canada just last week. We don't expect the top court's ruling for some months.

The case began when a woman dismissed from her job with the Blood Tribe Department of Health asked for her personnel file and was denied access. The woman filed a complaint with us. As part of our investigation, we asked for a copy of the woman's personnel file. The Blood Tribe Department of Health provided some records, but claimed solicitor-client privilege over other documents and refused to provide them.

Our position is that we need these documents in order to independently verify the claim that personal information being sought by a complainant was exempted by solicitor-client privilege. In our view, Parliament did not create the Privacy Commissioner's Office to make best guesses about whether personal information may be legitimately withheld on the basis of solicitor-client

New privacy concerns in Canada may affect PI industry

Continued from page 4

privilege. Rather, we believe Parliament intended that our Office make definitive and accurate decisions – which can only be done if we see the documents in question.

We issued an order that the organization produce the records. The Blood Tribe Department of Health went to court to challenge the Privacy Commissioner's jurisdiction to issue this order – bringing the investigation to a halt.

We were pleased when the Federal Court dismissed the Blood Tribe Department of Health's judicial review application. However, the Court of Appeal set aside our order, finding that language in PIPEDA is not clear enough to grant the Commissioner specific power to order the production of solicitor-client privileged documents.

The Court proposed that we apply on a case-by-case basis to the Federal Court to examine claims of solicitor-client privilege in the context of complaints involving refused access to personal information. For obvious reasons, we find this solution impractical in the conduct of our investigations. We hope the Supreme Court will agree with us. We look forward to receiving the Court's guidance on this key issue..

Our Commissioner has said she plans to revisit the issue with the Minister of Industry – who is overseeing possible legislative reforms to PIPEDA – should amendments to the law be needed as a result of the Supreme Court decision.

Insurance Industry

The Court of Appeal decision supporting the Blood Tribe Department of Health's position was very popular with insurance companies.

As I mentioned earlier, solicitor-client privilege is often an issue in insurance-related complaints.

As a first step, we ask an organization if they are willing to show us the documents in question so that we can verify the claim.

If that fails, we ask for information that could help prove the existence of privilege. We consider issues such as: Who wrote the document? Was that person a lawyer? When was the document created? Who is the document directed to? What was the purpose of the document? Is there information in the document which is not privileged?

The answers to questions like these can help us reach the conclusion that a document is privileged. However, if doubt remains, we may not be able to conclude an issue. In those cases, we may take the matter to Court. Unfortunately, this is a very time-consuming process and our investigations are being drawn out longer. Our goal is not to impede on any privileges, but simply to ensure that our investigations are thorough.

State Farm

The case involves State Farm Mutual Automobile Insurance Com-

Continued on page 6

**Deadline for
the next issue
of The Councillor
is 5 June 2008.
Send your news to
tdehmel@
csiinvest.com!**

**CII
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New privacy concerns in Canada may affect PI industry

Continued from page 5

pany. And, while it involves a property and casualty matter, the issues are relevant to the insurance industry. The investigation which led to these proceedings involves a man who came to us with a complaint related to the legal fallout from an accident he'd had with a driver insured by State Farm.

The man had started a civil suit against the other driver and asked for access to his personal information held by State Farm and an investigative firm which the insurance company had hired. Both State Farm and the investigative firm declined to provide access, arguing PIPEDA did not apply. State Farm also questioned the Privacy Commissioner's jurisdiction to investigate a refusal to provide access to personal information and power to compel the production of documents during an investigation.

Last summer, State Farm filed an application in the Court of Queen's Bench of New Brunswick for a declaration that PIPEDA did not apply; that the Privacy Commissioner did not have the authority to investigate the complaint; and that she did not have the authority to compel production of the information sought.

This January, the court granted our motion to have

State Farm's application stayed on the grounds that the Federal Court was the more appropriate forum to address questions of constitutional validity and judicial review of the Privacy Commissioner's authority.

State Farm's right to appeal was recently confirmed by the Court of Appeal in New Brunswick and we expect State Farm to file its Notice of Appeal soon. So, stay tuned

Privacy, Accountability and "Private Investigative Bodies"

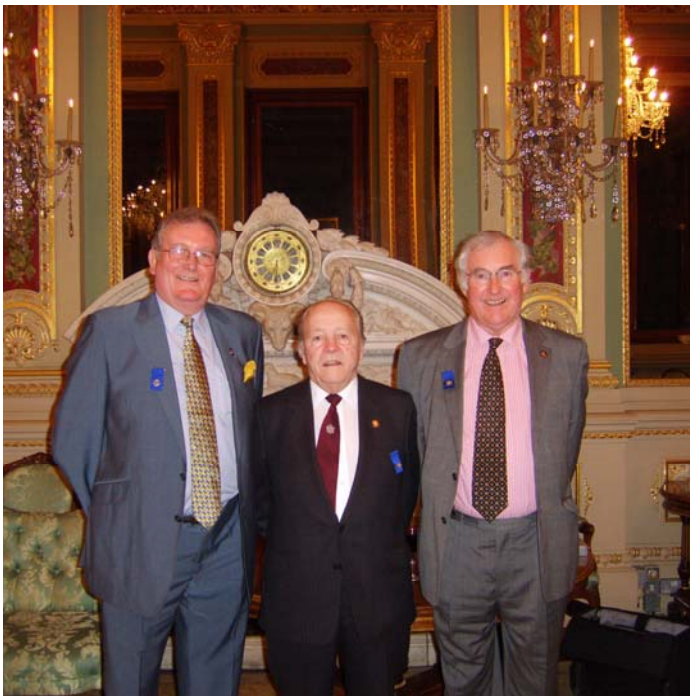
I would also like to spend a bit of time talking about the privacy impact of work conducted by private investigation firms often on your behalf. These investigators are regularly asked to collect personal information about people and, in most cases, this collection is done covertly.

There are provisions for this kind of collection under PIPEDA. The law also includes provisions for designating a private investigation company a "private investigative body," which carries specific responsibilities under the Act. An area of concern that keeps coming up in our complaints is the modus operandi of private investigators.

Some private investigators seem to let their inner

Continued on page 7

The Worshipful Company of Security Professionals attains full livery status



By Tom Davies

Wednesday 19th March 2008 saw a major milestone in the short history of the Company of Security Professionals, one of the youngest of the City of London Livery Companies. Earlier in March the Company had been admitted into full livery status and became the 108th Livery Company of the City of London. On being admitted to full Livery the company is now known as "The Worshipful Company of Security Professionals".

One of the conditions of admittance to Livery status is that 108 of the freemen of the company are required to be "liveried" and henceforth become Liverymen of the company. The ceremony took place in the Grand Hall of the Worshipful Company of Drapers which dates back to the 1500's and is one of the oldest City Livery companies.

Three long standing members of the Council were present on the 19th March 2008 to be "liveried". In order of seniority, Peter Heims (past Chairman), Alan Marr (past Chairman) and Tom Davies (Board member).

New privacy concerns in Canada may affect PI industry

Continued from page 6

cowboy come out during the course of their work. At times this has created something of a Wild West in terms of the collection of personal information. One of our current investigations illustrates what I mean ...

A company had hired a private investigator to conduct covert video surveillance of an employee because it had doubts about the employee's claim that he couldn't work as a result of an on-the-job injury.

The privacy problem arose when the investigator videotaped the employee's wife taking their children to school – even though the surveillance target was not with them.

The images of the target's wife and children were provided to the company along with other surveillance videotape. We are troubled about the issue of innocent third parties being captured on covert video surveillance tapes.

The neighbour of someone under surveillance should not face the risk that images of an over-the-fence conversation will wind up being circulated as part of the package an investigator turns over to a company. This is a violation of that person's privacy in that his or her personal information has been collected without consent.

Few of us would like to be videotaped in a bathrobe on our front steps simply because we happen to live next to someone under suspicion of insurance fraud.

Finding Solutions

What are the solutions? Our office is always pleased to provide in-depth information sessions to groups of private investigators concerning privacy requirements including use of the video surveillance equipment.

There are, however, a few basics:

A private investigator must avoid capturing

third parties on videotape – and it goes without saying that the private investigator should not be following people who are not identified as targets.

When innocent third parties are inadvertently captured on video, their faces can be blurred out – just like you sometimes see during investigative reports on television. In this way, you've protected the privacy of people who have absolutely nothing to do with an investigation.

Finally, very clear contracts and documentation between the client and the investigation firm should be required whenever the private investigator is asked to collect information. This kind of document is even more important if information is to be collected covertly.

One argument we've heard from the private investigation industry is that the context of the target's interaction with someone else may not be immediately clear, so they want to capture as much as possible – just on the off-chance it becomes relevant later on in an investigation. That's called fishing and it's not acceptable. Again, the information being requested needs to be very clearly spelled out.



The cost to pixelate or disguise the faces of third parties throughout a videotape would be prohibitive and would further discourage insurance companies from conducting surveillance.

Taking Responsibility

Our position is that both the investigative body and the client – you folks – are responsible for what occurs during the collection of personal information. There are things that a company hiring a private investigator can do to ensure the surveillance is conducted in a way that respects privacy. The starting point is to consider the following question:

What would a reasonable person consider to be appropriate when an investigation firm is contracted to conduct covert surveillance and there is a possibility video images of innocent third parties – or totally irrelevant or unfairly prejudicial personal information – may be inadvertently collected?

Before turning to an investigation firm, an insurer must first have substantial evidence to support the suspicion that the relationship of trust with an insured individual has been broken. A company hiring an investigator must be able to show that it has exhausted all other means of obtaining the information it requires in less privacy-invasive ways.

Continued on page 8

The Plaid File

By Patricia Natrat

It seems no one is safe from the influence of the mysterious Prince of Plaid whose latest victim was found clutching an empty wine bottle in Point Pleasant Park, 'three sheets to the wind - rather, three tartan sheets to the wind. When questioned several hours and three cups of coffee later, the victim admitted she had very nearly been coerced into selling illegal plaid to unsuspecting students at the private school she attends, (the name of which, of course, must remain private). Had she not passed out when she did, the victim says she may very well have been lured into a life of crime . . . a close call for a frightened teen. Though he is believed to have been in disguise, a police sketch artist is now working with the victim in an attempt to place this mysterious and notorious crime face. The sketch will be released to the media and the hunt will continue . . .

Prince of Plaid plies youth with liquor!



New privacy concerns in Canada may affect PI industry

Continued from page 7

When these fundamental thresholds have been passed, a company hiring an investigator should have a copy of the investigation firm's policies and procedures in order to verify that personal information will be collected in an appropriate manner consistent with all applicable laws. It is worth noting, however, that we have not been able to find a private investigation firm with a policy on videotaping of third parties.

The hiring company should also verify that investigators have been adequately trained in areas such as privacy law and the appropriate use of the technical equipment used in surveillance. As I said previously, I believe it is also reasonable to expect that a request for surveillance be set out in the form of a contract. This contract would outline the grounds for the request, the information being asked for and stipulate that the surveillance must be done in accordance with Canadian law. One specific aspect of Canadian privacy law warrants particular emphasis in this regard: The collection of personal information must be limited to the greatest extent possible.

In the past we have had private investigation firms tell us that they have no documentation setting out the details of a covert surveillance job. This is something we find unacceptable. The good news is that things may be changing. We were happy to see

that one insurance company has created a detailed contract that's now used when it asks for surveillance work to be done. This is a very positive step.

The Privacy Commissioner's Office accepts that there are times when covert surveillance is necessary and acceptable – a position we have affirmed in our investigative findings. When there is reasonable and probable cause to believe someone is committing fraud, for example, covert surveillance is an option if other less privacy-invasive methods to prove the fraud have failed.

Surveillance, when viewed through the PIPEDA lens, is actually the collection of personal information without consent. It is a tool, but it must be used appropriately.

Don't miss these great speakers in Halifax:

Paul Gillespie—C.E.T.S.

Dr. Steve Porter—Lies and Deception

Jon McDowall—International Identity Theft

Tom Davies –Global Terror Update

Disaster strikes with theft of Ancient Irish Trophy—the POD Ball

By James Gahan, Bunclody, Ireland

You will see that I have entered into the modern world with email (and for a very important reason). The next step will be pod casts of my golden voice. I know your publishing deadline is nearing. I was hoping upon hope to get this article into the next Councillor. It would seem that some unsavory character has absconded with the POD ball. Since this has been a traditional part of the silent auction at the AGM, I desperately want to flush this character out. Now you know this would normally be handled by non other than Derek given his investigative prowess. His world travels have lead me to take the bull by the horns.

Disaster! After returning from the wonderful city of Chicago where I and all the PODs enjoyed a wonderful AGM and after having suitably recovered from the weeks festivities, the POD's (at a well attended gathering at Redmonds Pub) opened the shipping box containing the POD ball only to find an American football and a taunting note. The river Slaney nearly spilled over its banks from the tears wept by all those who had gathered to witness the POD balls return to the Emerald Isle. As you will recall, while in Chicago an ancient rivalry was settled by the gracious act of Lord Green (successful bidder of the POD ball) in providing custody of the POD ball to its rightful owner, Mr. Derek Nally. Well, I can assure you that the greatest investigative minds in Ireland were summoned and immediately, a major case investigation was opened and all leads pursued. No stone was left unturned and no suspects were beyond approach. In fact, even the Lord Green was detained during his family visit to the Emerald Island and persuaded to take on vast amounts of the Irish truth serum (Guinness) to exclude him from this dastardly act.

Irrefutable evidence (see photo) would suggest that the POD ball has gone international. It distresses me greatly to have to announce this to the entire CII Community, but even our most brilliant Irish investigative minds have been stymied. We therefore beseech the membership to apply their vast investigative skills to identify the perpetrators of this theft. We know the recent feats of the membership in solving complex crimes, gaining acquittal for innocent people and calling to task faulty investigations would seem to pale to this request, but we



HELLLLLLLLLLPPPPPPPPPP MEEEEEEEEEEEE! Now here's a fine kettle of fish indeed! Where is POD???????

make it nonetheless. All leads will be treated with the highest confidence and may be sent to my right hand man Tony Fagan tfagansecurway@eircom.net or to me James Gahan, at whereispodball@yahoo.com. This golden voice will not be silenced until the POD ball has been repatriated and returned to its rightful and one true owner!

Don't miss our June issue when Lord Richard Green will tell the tale of his detention in Ireland and the happy release of his family!

Florida Association of PI AGM

Our very own Paul Ciolino will be speaking at the Florida Association of Private Investigators, Inc. 2008 AGM on September 18-20, 2008 at the Orlando International Resort & Spa:

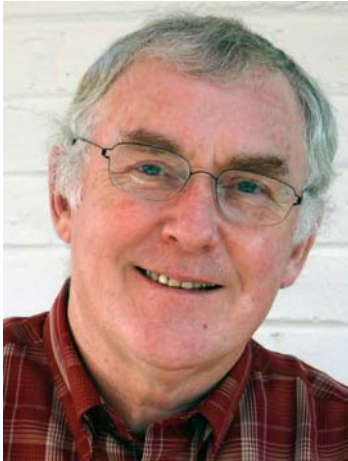
[Mr. Paul Ciolino, C.F.E., BCFE, C.I.I.](#)

Mr. Ciolino, the nation's leading expert in complex criminal defense and fraud investigations, and wrong convictions investigations, is owner of Paul J. Ciolino and Associates, LLC, and Dearborn Process Service, Inc. CBS News Anchor Dan Rather has called Ciolino, "One of America's top five investigators." Licensed in Illinois, Louisiana and Wisconsin, Mr. Ciolino is a popular lecturer, including lectures at Yale Law School. Mr. Ciolino is a past national director of the National Association of Legal Investigators, Inc. (NALI), and a past president and life member of the Special Agents Association in Chicago.

Visit www.myfapi.org for further details.

More 2008 AGM news

Global Terror update- Tom Davies to speak at Halifax AGM



Tom Davies

Prior to establishing himself in the commercial sector, he served between 1962 and 1984 as an Officer in British Military Intelligence. During which time he held a variety of security/risk management, research, investigative and specialist anti-terrorist appointments in Africa, the Middle East, Europe and Northern Ireland. During the past 24 years, he has become internationally recognised as an expert in maritime security, risk management, counter terrorism and the use of the private sector for the custody and enforced

removal of individuals under Immigration legislation. He has also lectured extensively in Europe, Scandinavia, the Far East and the United States of America on maritime security, counter terrorism techniques and international terrorist organisations. He also acts as a specialist adviser to a private equity funding group who specialise in investing in the security/risk management industries.

He was a one of the founder directors of International Maritime Security (IMS) Ltd.

Between 1991 and 2005, he was the Managing Director of the LPI Group of Companies. He has recently been appointed Chairman of Global Custodial Services (UK) Ltd. He is (supposed to be) semi-retired and also advises enterprise companies on strategy and operations.

He is a Liveryman of the Worshipful Company of Security Professionals, a Freeman of the City of London, a Board Director of the Council of International Investigators and a Public Governor of his local NHS Hospital Foundation Trust.

CPI-AC sponsors Halifax CII AGM

CSI, host of the 2008 CII Conference in Halifax, Nova Scotia, is happy to announce that The Council of Private Investigators - Atlantic Canada (CPI-AC) will be helping to sponsor the upcoming AGM. CPI-AC will be sponsoring the guest bags provided to all guests at the Conference. CPI-AC is a non-profit corporation whose purpose is to serve the interests of licensed private investigators in Atlantic Canada.

Formed in 2003, all directors and officers are volunteers, their primary career being private investigators. CPI-AC represent its membership to the regulators of private investigators in the Atlantic Provinces and is the representative to federal regulators in connection with privacy legislation. CPI-AC maintains a website which keeps the industry informed about developments which may affect private investigators. Visit their website at www.capicanada.ca.



Can you identify this slick dude from the Edinburgh CII Conference in 1976?



Make sure you get registered for the Halifax Conference now so your name can be entered in the June draw for one free night's accommodations at the beautiful Harbourfront Marriott Hotel. Everyone who has registered prior to June 1, 2008 will be entered in the draw. As well, make sure you get your hotel room reserved soon, as our conference rate can not be guaranteed once the block is full. Knowing the number of attendees also help us to complete plans to make this an unforgettable experience for our delegates and their guests.

CII Executive-2007-2008

Position	Member	Location	Telephone	E-mail
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1/4 page	\$75.00	Free	Free
Business card	\$50.00	Free	Free

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Nova Scotia Canada
August 24 - August 30, 2008
www.ciiagm.com**

*Register before June 1 and be
entered in a draw for a free
night's accommodation at the
beautiful Harbourfront
Marriott*