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Law Matters

**Alternative
Service
Delivery**

**Unauthorized
Practice
of Law**

CBA Futures

How We Got to
Recommending ABS

Unsung Hero

Dennis Edney, QC



THE CANADIAN
BAR ASSOCIATION
Alberta Branch

EDITOR'S NOTES

By Robert Harvie, QC

Well. This issue is amazing. We are so indebted, again, to those who gave of themselves to share their insights - particularly on the topic of this issue, "Alternative Service Delivery" and the related question of why lawyers matter and why lawyer regulation matters.

We have some excellent content this issue from some very savvy people, from former CBA President and current Chair of the CBA Futures Committee Fred Headon, to Associate Dean of the University of Calgary Faculty of Law Alice Woolley, to Law Society President-elect, Anne Kirker, Q.C., to esteemed counsel Susan Billington, Q.C., the founding director of Pro Bono Law Alberta.

We also have an assortment of other usual contributors, including one by myself touting the incredible example of a lawyer who clearly sees the legal profession as so much more than a way to earn income - Dennis Edney, Q.C.

It is in light of the excellence of the contributions herein that I resist putting many of my own thoughts to paper here, however, as you read on in this issue, I would urge you to consider the fundamental dilemma that the regulation of the legal profession faces, being the struggle to answer two competing questions:

a) Would this world be better off if we had no Wal-Mart or Apple or Microsoft - businesses that greatly reduced consumer cost for our daily needs and created massive innovation benefiting all of us in a million different ways?

b) Should we be concerned if the practice of law allows for the creation of the law firm equivalents of Bear Stearns, Goldman Sachs and Lehman Brothers?

As former committee member of the Law Society of Alberta Alternate Business Structure committee, these were the questions I constantly had in my head. How to allow for innovation and expansion of service - while not losing sight of the reality that the legal profession in many respects is the cornerstone of a free and democratic society and must be protected and regulated on some level. It's a difficult balance - and I'm indebted to our contributors and so many others who are working to try and create a healthy balance in Canada between moving forward but not forgetting the importance of where we come from.

Good reading! 



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PRESIDENT'S REPORT

By Wayne Barkauskas



It was with great pride that I began my term as President of the CBA Alberta Branch at the conclusion of the recent 2015 CBA Legal Conference in Calgary. Our 2015-16 Executive Committee will also consist of Vice President Jeremiah Kowlachuk, Treasurer Jenny McMordie, Secretary Frank Friesacher, Past President Steve Mandziuk, QC, and Executive Director Maureen Armitage.

The conclusion of the 2014-15 year also brought about the end of Marian De Souza's five-year term on the Executive Committee. Marian was, and will continue to be, a bright spot in the CBA Alberta family, and I look forward to continuing to work with her in her new capacity as Chair of the Agenda for Justice and Advocacy Standing Committee. You can also continue to read about her work as the Executive Director of the Alberta Lawyers' Assistance Society in the pages of *Law Matters*.

Now that the fall season is upon us, members are reminded to renew their national and branch section memberships. Multiple payment options are available to members for their national memberships, including pre-authorized monthly payments. For more information this and on alternative payment options, call the CBA national office at 1-800-267-8860.

For those CBA members who participate in multiple sections, the Portfolio and Portfolio Plus packages offer significant cost savings. Packages include complimentary materials-level membership to as many as three sections, education credits that can be used for section registration, conference attendance, or other CBA products and services and a complimentary CBA Alberta Legal Directory. These packages can be purchased with your membership renewal online at www.cbamembership.org.

As we move into the fall, the CBA has many initiatives on the go. One of these is the CBA Wellness initiative, which most recently unveiled a new online wellness course at National Council in Calgary in August. Please check it out at www.cba.org/wellness. As part of overall wellness initiatives, here in the Branch, we are also looking to encourage law firms to consider the placement of Automatic External Defibrillators (AEDs) in their workplaces. AEDs can save lives during cardiac emergencies by reducing the critical time before treatment. Having AEDs appropriately located in workplaces can improve survivability, a desired outcome

for all. CBA Alberta is looking to partner with AED vendor(s) willing to participate in a campaign to build awareness of AED products and their effectiveness in saving lives, and provide persuasive pricing strategies to encourage firms to purchase AEDs. Look for more information on this initiative in the months to come.


New this fall to the Alberta Branch is the Agenda for Justice and Advocacy Standing Committee. This committee will continue work on the Agenda for Justice, which was released by the Branch in advance of the provincial election earlier this year. It will also work on other advocacy initiatives as the need arises. We recognize that advocating on behalf of the profession and the legal community is important to our members, and we look forward to sharing the ongoing work of this committee.

One of the most pressing crises we recognize is the critical lack of Q.B. Justices and the enormous delays to justice being created as a result. Our Executive Committee continues to look for any way possible to help alleviate this crisis. We continue to advocate on this matter and are trying to find creative ways of ameliorating the effects, but are always looking for support and ideas from our members in this regard.

This summer, the CBA Alberta Executive Committee had the opportunity to meet with our new Minister of Justice and Solicitor General, Kathleen Ganley. In addition to meeting with the executive, the Minister also made herself available to join our fall meeting of Council in September. Minister Ganley has welcomed the CBA as a contributing stakeholder on matters involving the legal community in Alberta, and we look forward to reaching out to our membership for consultation on matters that the Minister brings to us.

One of the priorities of my presidency is to find ways in which to improve member engagement, based on discussions that took place at the spring 2015 meeting of Council. We have created a Member Engagement Task Force to make recommendations with respect to ways to overcome barriers to volunteering, vehicles for engagement and types of recognition. I look forward to sharing the results of our task force with members in the coming months.

The 2016 Alberta Law Conference is taking place at the Westin Hotel in Calgary on January 28 & 29, 2016. After receiving feedback from attendees on previous conferences, the ALC organizing committee, led by co-chairs Loretta Bouwmeester and Johanna Price, has developed a new format for the Alberta Law Conference. This new format includes a focus on keynote speakers, and this year we are excited to welcome CBC Dragon and co-founder of Minhas Brewery, Manjit Minhas, and local comedian and former CityTV anchor Jebb Fink, among many other distinguished speakers. Please see the insert included with this issue of *Law Matters* for more details on the conference.

Registration is now open! 

WHAT'S HAPPENING

November

10: The Canadian Corporate Counsel Association, Ontario Chapter presents Hot Button Issues for In-House Counsel and Business Lawyers. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

13: The Ontario Bar Association present TECHxpo 3.0. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

16: The Ontario Bar Association presents Maintaining Professionalism and Civility in Your Human Rights Practice. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

17: The Canadian Corporate Counsel Association, Ontario Chapter presents the First Annual Xerox Legal Symposium - Service Contracts: From Negotiation to Managing Relationships. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

18: The Ontario Bar Association presents When Construction Liens and Real Estate Collide: How Liens Can Ruin a Landlord or Receivers' Day and Other Title Nuisances. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

19: The Ontario Bar Association presents The Enterprising Lawyer: Taking Care of Business - Series A: Starting Your Own Firm. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

20-21: The Canadian Bar Association presents the CBA Leadership Conference for Professional Women. The Fairmont Waterfront, Vancouver, BC. Contact Marianne Pelletier at 1-800-267-8860 or marianep@cba.org.

23: The Ontario Bar Association presents Commercial Agreements Bootcamp: Building Essential Negotiating and Drafting Skills. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

25: The Canadian Corporate Counsel Association presents Cybersecurity and Data Breaches: Essentials for Corporate Counsel. In-person. Toronto, ON. Contact Kristina Unsworth at cle@ccca-cba.org.

26: The Ontario Bar Association presents Recent Appellate Decisions. Live webcast. To register, call 416-869-1047, or email registrations@oba.org.

27-28: The Canadian Bar Association presents the 16th Annual Administrative Law, Labour and Employment Conference. Westin Ottawa, Ottawa, ON. Contact Karen Sagle at 1-800-267-8860 or karensa@cba.org.

December

1: The Ontario Bar Association presents the 7th Annual Class Actions Colloquium. Live webcast. To register call 416-869-1047 or email registrations@oba.org.

9: The Ontario Bar Association presents Understanding Back Pain. Live webcast. To register call 416-869-1047 or email registrations@oba.org.

January

28-29: The Canadian Bar Association, Alberta Branch presents the Alberta Law Conference. Westin Calgary, Calgary, AB. Visit www.cba-alberta.org for more information.

February

23: The Ontario Bar Association presents Drafting Trusts: Avoiding Common Pitfalls. Live webcast. To register call 416-869-1047 or email registrations@oba.org.

Please send your notices to:
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Patricia (Patty) Johnston, QC, is Executive Vice President, Legal & General Counsel at the Alberta Energy Regulator and has been a regular contributor to Law Matters and its predecessor publications for over 20 years.



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Alternative Business Structures and the Modern Regulatory Dilemma

By Alice Woolley

Canadian legal regulators have required that delivery of legal services to the public occur through entities owned and operated by lawyers. They have also placed limits on the extent to which legal and non-legal services can be provided together, and on sharing of profits between lawyers and non-lawyers.

Should that change? Proposals for alternative business structures (ABS) suggest it should. They argue that reducing restrictions on the structures for delivering legal services will increase access to justice, foster innovation and serve the public interest. Others disagree. They argue that while current rules may have their limitations, they provide necessary protection to clients and the public, ensuring the ethical integrity of legal services. They also suggest that the purported benefits of ABS are overstated, particularly with respect to access to justice. The Law Society of Upper Canada's website includes submissions from proponents and opponents, (<http://www.lsuc.on.ca/ABS/>), although there are many other contributors to the debate across the common law world.

As with many public policy issues, the debate over alternative business structures generates more heat than light. One column on SLAW by Mitch Kowalski, *Anti-ABS Arguments Continue to be Based on Emotion – Not Fact*, (<http://www.slaw.ca/2014/12/30/anti-abs-arguments-continue-to-be-based-on-emotion-not-fact/>), generated 96 comments but, as far as one can tell, largely more argument and emotion, not more agreement, and only a few more facts. But also like many questions of public policy, the ABS question forces an answer: either we do nothing or we do something. Either is a choice, and either will have consequences, good or bad (or both). So then the question becomes, how do people who care about the issues that underlie the ABS debate take a position on which answer is the right one? We know an answer is inevitable. What stand should we take?

The September 2015 submission to Convocation of the Law Society of Upper Canada's Working Group on Alternative Business Structures – "Next Steps" – provides a helpful framework for considering this question (available as part of the Professional Regulation Committee Report, at <https://www.lsuc.on.ca/with.aspx?id=2147501771>). It also, though, reveals some deep regulatory challenges that the profession faces, ones that create risks of failure whatever option is chosen.

In terms of the framework, the Working Group submission I think accurately identifies the criteria against which ABS need to be assessed. Those include access to justice, responsiveness to the public, maintenance of professionalism (including avoidance of conflicts, protection of confidentiality, competence, integrity and service to the administration of justice), protection of solicitor-client privilege, promotion of innovation, orderly transition, and efficient and proportionate regulation.

It also provides a balanced and informed assessment against those criteria of the most dramatic ABS proposal, permitting majority non-lawyer ownership. The submission argues that evidence from Australia and England/Wales shows that this form

of ABS has fostered modest innovation. It has also facilitated some increase in access to justice. It has not been shown to create significant risks to lawyer professionalism. There has been some positive involvement from the non-profit sector in ABS, which has been associated with increased access to justice. In general, though, the adoption of this form of ABS has not resulted in either revolutionary innovation or significant increases in access to justice. Greater innovation has occurred outside the regulatory governance of the legal profession, through initiatives such as LegalZoom, Axiom and Neota Logic. Further, the shift to ABS has required significant regulatory change, and the evidence against risks to professionalism is not yet sufficient to be sure that such risks could not materialize.

Based on this analysis, the Working Group submission reaches the conclusion that the costs of permitting majority non-lawyer ownership outweigh the possible benefits. It suggests that more modest and incremental change be considered, with a focus on minority non-lawyer ownership; permitting multi-disciplinary services; permitting a franchise model; allowing non-lawyer ownership from charities, non-profits and unions; and, possibly allowing new legal service providers.

This conclusion appears sensible and moderate. It reflects a conservative approach to regulation, focused on avoiding unnecessary risk in pursuit of uncertain advantages.

As earlier noted, however, it also demonstrates the fundamental regulatory challenge faced by regulators of legal services.

Innovation and change exist. And, as the Working Group notes, they largely exist outside the ambit of traditional regulatory governance. Further, access to justice remains a significant and unsolved social problem – lawyers do not appear able or willing to fulfill the legal needs of the many. It is hard to argue with the perception that change is desperately needed and, with technological opportunity, will inevitably arrive, whether we "permit" it or not. Which may argue in favour of an innovative regulatory response. Otherwise change may come in a way that simply does not include traditional legal service providers. And which, as a consequence, places at risk the role we have played in serving and protecting the rule of law.

It may be that avoiding undue regulatory risk is rational. It's hard to argue in favour of pursuing uncertain risks while incurring certain costs. And the Working Group is certainly right that undoing bad regulatory change is impossible (I'd look at electricity deregulation in Alberta as an example; others would have different perspectives and their own examples). But it may also be that being unwilling to explore real change ensures our mutual destruction. The way forward is unclear. 🍷



Alice Woolley is Professor of law and Associate Dean (Academic) at the Faculty of Law, University of Calgary. She is the author of *Understanding Lawyers' Ethics in Canada* and is co-author and co-editor of *Lawyers' Ethics and Professional Regulation* 2nd edition.

Ambiguous Retainers: Lawyers Beware

You have heard it from us before, but it bears repeating: two recent decisions from the Ontario Superior Court of Justice (*Trillium Motor World Ltd. v. General Motors of Canada Ltd.*¹ and *John Doe v. MacDonald*²) serve as a reminder of the consequences that can arise from a failure to properly consider and document your retainers.

In *Trillium*, a lengthy decision released July 8, 2015, McEwan J. of the Ontario Superior Court of Justice awarded \$45,000,000.00 against the Defendant law firm for damages arising out of breaches of fiduciary duties, breach of contract and negligence.

The claim arose in connection with General Motors of Canada Limited's (GMCL) dissent into insolvency at the height of the global financial crisis. The law firm accepted retainers from three different entities to protect their interests in any CCAA proceedings: i) a group of Saturn dealers; ii) Industry Canada; and iii) the Canadian Automobile Dealers Association (CADA), a not for profit organization representing over 3000 dealers from a variety of manufacturers across Canada. CADA purported to be acting in the interest of GMCL dealers (the Dealers), many of whom sent money to CADA to be used to pay the law firm's fees.

Subsequent to counsel accepting CADA's retainer, GMCL, in an effort to avoid insolvency by reducing its network of dealers, offered 240 Dealers Notices of Non-Renewal and Wind-Down Agreements (WDAs), which, if accepted, would terminate their relationships with GMCL. The plaintiff, Trillium Motor World Ltd. (*Trillium*), was the representative for 181 Dealers who accepted the WDAs following a telephone conference with counsel. Trillium subsequently alleged that, as a result of the law firm's breaches (most notably its acceptance of retainers from parties with conflicting interests), Trillium et al lost the opportunity to negotiate with GMCL for better compensation for the WDAs.

At the outset, the law firm took the position that, although CADA was its client, no solicitor-client relationship existed between the law firm and the other Dealers.

Relying on the 12 indicia itemized by Hawco J. in *Jeffers v. Calico Compression Systems*,³ McEwan J. found that a reasonable person in the position of the Dealers with knowledge of all the facts would reasonably have believed that the law firm was acting as legal counsel for the Dealers.

The law firm then argued that if a solicitor-client relationship existed with the Dealers, the retainer was limited to the CCAA proceedings, and did not include advice regarding the

¹ 2015 ONSC 3824, 2015 CarswellOnt 10246 [*Trillium*].

² 2015 ONSC 4850, 2015 CarswellOnt 12134 [*MacDonald*].

³ 2002 ABQB 72: (i) a contract or retainer; (ii) a file opened by the lawyer; (iii) meetings between the lawyer and the party; (iv) correspondence between the lawyer and the party; (v) a bill rendered by the lawyer to the party; (vi) a bill paid by the party; (vii) instructions given by the party to the lawyer; (viii) the lawyer acting on the instructions given; (ix) statements made by the lawyer that the lawyer is acting for the party; (x) a reasonable expectation by the party about the lawyer's role; (xi) legal advice given; and (xii) any legal documents created for the party.

By Maureen Killoran, QC and Anne Kirker, QC

WDAs. McEwan J. rejected that argument, saying:

Where a retainer clearly limits the scope of legal services to be provided, a client generally cannot, at a later stage, criticize the lawyer for failing to perform services that fall outside the scope of the retainer.

On the other hand, where a retainer has not been reduced to writing, a heavy onus is on the lawyer to show that its version of the scope of the retainer is correct. This is especially true in cases involving ambiguity as to the scope of the retainer. As Justice Hoilett stated in *Coughlin v Comery*:

... the onus is on the solicitor who seeks to limit the scope of his/her retainer and where there is ambiguity or doubt it will, generally, be resolved in favour of the client.⁴

[Citations removed]

The Court concluded that the firm had failed to satisfy its burden of demonstrating that the retainer was of a more limited scope than alleged by the Dealers:

First, the scope of the retainer was ambiguous. Even if Cassels honestly believed that the retainer excluded major pre-filing events such as the WDA, it woefully failed to delineate the scope of the retainer and document its terms of engagement. Lawyers and law firms who use limited scope retainers must clearly define the scope of the legal services to be provided and candidly explain these limitations to their clients. The fact that the GMCL client group was a large, loose association of individual dealerships organized by CADA and represented by the Steering Committee does not relieve Cassels of this fundamental obligation.⁵

Turning to conflicts, McEwan J. held that the law firm breached its contractual and fiduciary duties by accepting the Dealers' retainer despite having already agreed to act for

⁴ *Trillium*, supra note 1 at paras 469-470.

⁵ *Ibid* at para 142.

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Unauthorized Practice of Law

By Karl Seidenz

Lawyers in Alberta know that the Law Society of Alberta (the "Law Society") acts in the best interests of the public by promoting a high standard of legal services and professional conduct among lawyers.¹ They may not know, however, that in addition to acting as their regulatory body, the Law Society also plays an important role in preventing the unauthorized practice of law ("Unauthorized Practice").

What is Unauthorized Practice?

There is no definition of what constitutes Unauthorized Practice. Collectively, sections 102-111 of the *Legal Profession Act* (the "Act")² establish who may practice law, the exceptions to that list, and what can be done about Unauthorized Practice when it occurs.

The definition of who may practice law is set out in section 106(1) of the Act:

Practice of law

- 106(1)** No person shall, unless the person is an active member of the Society,
- practice as a barrister or as a solicitor,
 - act as a barrister or as a solicitor in any court of civil or criminal jurisdiction,
 - commence, carry on or defend any action or proceeding before a court or judge on behalf of any other person, or
 - settle or negotiate in any way for the settlement of any claim for loss or damage founded in tort.

The wording of section 106(1) of the Act is not as precise as similar provisions in other jurisdictions which typically list specific activities that are deemed to be the practice of law. In Alberta, it is the Courts that have provided guidance over the years about what specific types of activities are considered Unauthorized Practice. These decisions have evolved over time. For example, earlier this year, after analyzing the Act and the "new" Rules of Court, Associate Chief Justice Rooke came to the following conclusions about the legality of non-lawyers appearing in the Court of Queen's Bench:³

1. An individual may represent himself or herself in the Court of Queen's Bench;
2. An estate, corporation, or litigation representative must be represented in the Court of Queen's Bench by a person authorized to practice law under the Act;
3. Any common law or inherent discretion to permit representation in the Court of Queen's Bench by a non-lawyer has been extinguished by the New Rules;
4. New Rule 2.23 allows any person to provide only silent and passive support in court, provided those activities are restricted to a "McKenzie Friend" role;⁴ and
5. *Professional Sign Crafters (1988) Ltd. v Wedekind, Pacer Enterprises Ltd. v Cummings*, and *Balogun v Pandher* are no longer good law in relation to the right to physically appear in court as a representative and have been overruled by *Lameman v Alberta* (C.A.).⁵

¹ LSA Website (www.lawsociety.ab.ca).

² RSA 2000, c L-8.

³ 908077 *Alberta Ltd v 1313608 Alberta Ltd*, 2015 ABQB 108 at para. 56.

⁴ A "McKenzie Friend" (from *McKenzie v McKenzie* [1970] 3 All ER 1034 (C.A.)) is a person who may provide passive in-court support to a litigant. See paras. 20-21 of the decision.

⁵ These cases had concluded that it was permissible under certain circumstances to allow non-lawyers to appear in the Court of Queen's Bench. See paras. 39-49 of the decision.

cont'd from page 6

Industry Canada in relation to any GMCL CCAA proceedings. Additionally, McEwan J. found that the firm was negligent and breached its contractual duties to the plaintiff class members by acting for both the Dealers who received WDA offers and those who did not, as the two groups had divergent and adverse interests after the WDA offers were made.

The Ontario Superior Court of Justice again grappled with a dispute about the terms of a retainer in *John Doe v. MacDonald*. The Plaintiff retained the Defendant lawyer to represent him in a veterinary malpractice action. The Plaintiff argued that the Defendant agreed to provide his legal services on a *pro bono* basis, whereas the Defendant testified that the two had entered into a contingency fee arrangement. Faieta J. canvassed the case law speaking to the risks of oral retainers, emphasizing the "heavy onus" that is placed on a lawyer to prove his/her version of the retainer. Ultimately holding that Mr. MacDonald had failed to satisfy this onus, Faieta J. aptly concluded:

Misunderstandings about the terms of a retainer not only have consequences for the solicitor and his client, but also reflect poorly on the legal profession. Such a misunderstanding in this case was entirely avoidable had [the Defendant] followed the Law Society's guidance and reduced the terms of the retainer to writing.⁶

With special thanks to Lara Mason and Samantha Jenkins for their able assistance. 🙏



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Anne Kirker, QC is a partner with Norton Rose Fulbright in Calgary, a Canadian Bar Association Partner Firm. She was recently named as the Best Lawyers Lawyer of the Year in the area of Legal Malpractice.

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On appeal, and in considering an application for security for costs, Mr. Justice Slatter ordered the corporate appellant, which was represented by its non-lawyer directors, to retain counsel within 60 days, failing which the appeal was deemed to be abandoned.⁶

Several exceptions to section 106(1) are set out in section 106(2) of the Act. Two of the more commonly-encountered exceptions include the right of a person to act on his or her own behalf⁷ and the right to have a person appear as an agent before a justice of the peace, the Provincial Court, or a provincial judge, if permitted by statute.⁸ It is this latter provision that allows non-lawyers to act as agents in the civil⁹ and criminal¹⁰ divisions of the Provincial Court, which retains the discretion to deny the right of appearance to unsuitable persons.¹¹ Section 106(3) of the Act prohibits disbarred lawyers from acting as agents in Provincial Court.

In addition to the exceptions listed in section 106(2) of the Act, many pieces of provincial and federal legislation permit non-lawyers to appear as agents before various tribunals. Examples include the *Workers Compensation Regulation*¹² and the *Social Security Tribunal Regulations*.¹³

Unauthorized Practice and the Protection of the Public

Pursuant to section 6.06 of the Code of Conduct, every lawyer in Alberta is required to assist in the prevention of Unauthorized Practice. Some might argue that the Law Society is simply trying to protect its turf by preventing non-lawyers from entering the field. However, similar arguments have been made to the Court of Appeal, which has disposed of them on the ground of protection of the public.¹⁴ For example, the Court of Appeal had the following to say about the regulation of lawyers, doctors, plumbers, and electricians:¹⁵

The Legislature plainly thinks that it is dangerous to the public that an unlicensed person prescribe medicine or wire houses. Whatever may be the motives of doctors, electricians, plumbers, or lawyers, the Legislature's aim is obviously public protection, not monopoly protection. It is not for the courts to say the contrary, and presume that there is no danger carrying on such a profession or trade without a license or enrolment...

In other words, the Law Society is involved in preventing Unauthorized Practice because it is in the public interest to prevent the practice of law by unqualified, unregulated, and unaccountable people. As stated in the Commentary to Rule 6.06 of the *Code of Conduct*, "unauthorized persons may have technical or personal ability, but they are immune from control, from regulation and, in the case of misconduct, from discipline by the Society." In the absence of such oversight, there are also

⁶ 908077 *Alberta Ltd. (Escape & Relax) v 1313608 Alberta Ltd.*, 2015 ABCA 117 at para. 5.

⁷ Section 106(2)(h) of the Act.

⁸ Section 106(2)(l) of the Act.

⁹ Section 62(1)(b) of the *Provincial Court Act* allows a litigant to be represented by a non-lawyer agent in the civil division of the Provincial Court, aka, Small Claims Court.

¹⁰ See *R. v Frick*, 2010 ABPC 280. The combined effect of sections 800(2), 802(2), and 802.1 of the *Criminal Code of Canada*, of Alberta Order in Counsel 334/2003, and of section 106(2)(l) of the Act allows non-lawyer agents to appear in Provincial Court in summary conviction offences where the accused is liable for a period of incarceration of six months or less.

¹¹ See *R. v Hansen*, 2015 ABPC 118, in which a non-lawyer agent was denied the right to appear in Provincial Court.

¹² Alta Reg 325/2002, section 11.

¹³ SOR/2013-60, sections 10, 24, 35, 40, and 46.

¹⁴ *Lameman v. Alberta*, 2012 ABCA 59 at para. 17.

¹⁵ *Law Society (Alberta) v. North American Escrow Inc.*, 212 AR 222 (CA) at para. 11.

risks to the integrity of the justice system. A recent manifestation of these risks was described in *R. v. D'Arcy*,¹⁶ in which the Court dismissed criminal proceedings against an accused for want of prosecution when a non-lawyer purported to act as the agent of the accused when she in fact was not authorized to do so.

Additional reasons for prohibiting non-lawyers from practicing law include:

- Lawyers must meet appropriate standards of education, training, and qualifications before being licenced to practice law;
- Lawyers must maintain standards of competence and conduct, including compliance with the requirements of the *Code of Conduct*, failing which they may be subject to disciplinary proceedings;
- Lawyers must carry professional liability insurance and must contribute to a fund that compensates clients who are victims of misappropriation;
- Lawyers are regulated in how they maintain trust accounts and manage trust monies;
- Lawyers are subject to Court procedures that allow clients to review their bills; and
- Lawyers are bound by the lawyer-client privilege and by their duty of confidentiality.

Complaints and Penalties

Complaints of Unauthorized Practice are reviewed and investigated by the Law Society. When a report is received, and it is clear that Unauthorized Practice has taken place within the meaning of section 106(1) of the Act and that an exception does not apply, the first step is to seek voluntary compliance by the subject of the complaint. If voluntary compliance is not forthcoming, the Act contemplates two additional remedies: the first is for the Law Society to apply for an injunction in the Court of Queen's Bench;¹⁷ the second is to prosecute the non-lawyer in the Provincial Court.¹⁸ Prosecutions are conducted by the Ministry of Justice and Attorney General (the "Ministry") or by designated counsel of the Law Society as agents of the Crown pursuant to Agency Agreements with the Ministry. The Act contemplates penalties of escalating fines or imprisonment for a term of up to six months for Unauthorized Practice.

Summary

If after reading this article, a person is still in doubt about what constitutes Unauthorized Practice, the most prudent course of conduct is to report it to the Law Society in writing,¹⁹ by telephone,²⁰ or by email.²¹

The author would like to thank Hind Masri and Janna Crown for their assistance in drafting this article.

¹⁶ 2015 ABPC 6.

¹⁷ Pursuant to section 111 of the Act.

¹⁸ Pursuant to section 109 of the Act, which prosecution must be commenced within 2 years after the commission of the offence.

¹⁹ To the Calgary or Edmonton offices of the Law Society (addresses on the website).

²⁰ 1-800-661-9003 #4789.

²¹ complaints@lawsociety.ab.ca.



Karl R. Seidenz is counsel in the Office of the General Counsel at the Law Society of Alberta. Before joining the staff of the Law Society, Karl was a partner and litigator in the Calgary office of Norton Rose Fulbright Canada LLP and its predecessor, Macleod Dixon LLP.

CBA Futures: How We Got to Recommending ABS

By Fred Headon, CIC.C, Ad. E.

I would like to thank the Alberta Branch for the opportunity to provide some of the context and rationale behind the CBA Legal Futures Initiative's recommendation that not only lawyers should be allowed to own law firms. I would also like to thank the many members of the Branch who participated in our work, and, in particular, the leadership of Dean Holloway of the University of Calgary Faculty of Law who led our Education Team.

CBA Futures sought to help our members understand the causes of changes we were seeing in the market for legal services and to help them adapt to those changes, with a view to better serving our clients. By better responding to client expectations, there is opportunity to better serve our clients, to grow our practices and, as a profession, to better play our role in society.

Our research found that how law has been traditionally practiced has contributed to our inability to meet our clients' changing expectations. For example, clients spoke to us about their desire to see more interaction with the lawyers happen online, for legal services to be delivered using more structured processes which allowed for greater participation by them, and for prices for legal services to be predictable. As we considered how we could assist lawyers in learning how to practice in new ways which better resonated with clients, we noticed that the required skills and knowledge have not traditionally been taught in law school. Further, while some lawyers may have a passion for learning those skills and that knowledge, many we met would like to just practice law. Our research also confirmed that there is, indeed, a demand for our services and many unmet needs for legal services. For lawyers who would like to help meet that need and focus on practicing law, there may be room for other professionals to assist us in transforming how those services are delivered. Bringing their skill and knowledge to our practices could be facilitated, we concluded, by allowing them to have an equity stake in law firms.


We understood that these "non-lawyers" may have the power to make decisions within the firm and yet, under the current regulatory framework, would not have any obligation towards our law societies, nor would they necessarily have professional obligations towards our clients. We also heard - and agree - that the values and principles on which the lawyer-client relationship is based are not only important to clients and the proper functioning of our legal system, but also go to the core of how we distinguish ourselves from other professions. Our recommendation that "entity regulation" be adopted in Canada is an essential part of the ABS framework we propose for those reasons. In short, we recommended a balanced approach to ABS: the liberalizing of regulation on the one hand and the introduction of new forms of regulation on the other.

Data from Australia and England and Wales, where ABS firms are now permitted, suggests that properly regulated, the ethical standards of firms can be maintained (even enhanced) and innovation is starting to take root. In England and Wales, the many ABS licenses are held by small firms and in both countries some unexpected entrants have come to the market: for example, Salvos Law which offers corporate commercial

services, the profits from which are used by the Salvation Army to provide services to those in need and British Telecom's in-house lawyers, who now offers legal services to other businesses.

We should also be clear that we did not see in ABS a panacea. We do not suggest that all firms need to become ABSs, nor that ABS' will solve all that ails our legal system. It may facilitate progress towards solutions, however, and given the extent of the challenges we face, we believe this balanced approach is worth trying. For years we have seen access to justice remain out of the reach of many citizens and we now see many Canadians simply forego the assistance of a lawyer when a legal problem arises, even if they can afford one. Our research suggests that the reasons some Canadians do without legal assistance are rooted in things we can change. If that is so, as professionals, it behooves us to look into how we can make that change. Working more closely with those who bring to our practice skills and knowledge about how we could do things differently is one way to do that. We do not envisage them replacing us, but rather, like technology, helping us do our jobs better - in ways that better meet client expectations.

That said, ABS or not, we have much work ahead of us. ABS was only one of our 22 recommendations and we look forward to continuing the dialogue on how each of them may assist in ensuring that Canadians continue to benefit from the vibrant and relevant legal profession they rightly expect and deserve. A constructive dialogue is our preferred way to understand the challenges we face and the opportunities before us.

For more information, please visit www.cbafutures.org, join our Twitterchats or send us your questions and comments. We have enjoyed discussing our work online and in person, and in rolling out the first of the tools we are preparing to help lawyers bring our recommendations to life in their practices. We look forward to doing more of the same in the months ahead and to hearing from you. 



Fred Headon is a General Counsel for Air Canada, and a past national president of the Canadian Bar Association (2013-14). Fred is the current chair of the CBA Legal Futures Initiative.



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Dennis Edney, QC

By Robert G. Harvie, QC

What does it mean to be a lawyer in our society? What is the current "value" to be ascribed to an independent profession and to that amorphous concept known as the "Rule of Law"? How many of us, really, ever take even a moment in our practice to consider the philosophical foundation of our profession and the nature of our relationship with the broader society around us?

My sense is these questions are asked very infrequently by very few lawyers. We have, in this age of international law firms, ABS's and LegalZoom.com, become accustomed to spending more and more time struggling with what might be referred to as the "commoditization" of the practice of law.

Maximizing profit and minimizing waste.

More and more, the "profession" of law seems to take a backseat to the "business" of law. Such was my experience until somewhat late in my career.

However, in November of 2011 I was elected as a Bencher with the Law Society of Alberta - and soon after became acquainted with, and later became a friend of a remarkable lawyer and fellow Bencher, Dennis Edney, Q.C..

Dennis is, without exaggeration, one of the finest stewards of our profession's reputation that I have ever had the good fortune to meet - because Dennis embodies the reality of why what we do "matters" to society.

Dennis Edney is a criminal lawyer based out of Edmonton, but originally hailing from Dundee, Scotland. Dennis came into his now chosen profession somewhat later than most, after playing some professional football in San Francisco, after operating construction and trucking companies in Canada, and then finally going to law school when he was 35 - attending Northumbria University in Newcastle, England. Following his graduation, Dennis was then admitted to the Law Society of Alberta in 1989.



Dennis Edney

This feature titled "Unsung Hero" is intended to introduce a member of our profession who has demonstrated extraordinary leadership, innovation, commitment, or made significant contributions to social justice and community affairs.

In the context of his work, Dennis has taken on numerous high profile and perhaps less popular clients including most notably of late, Mr. Omar Khadr. While most lawyers seldom find their way to the Supreme Court of Canada, Dennis has been there seven times - invariably, arguing against the might and power of the state being exerted unfairly upon an individual.

The Khadr case in particular has been an incredible effort and sacrifice on Dennis's part - with significant cost to his practice and his family. For over a decade, Dennis has worked to assist Omar Khadr in receiving a fair consideration and some semblance of "justice". Due to Dennis's unceasing effort, on May 7, 2015, Omar Khadr walked out of jail - released on bail, conditional upon his residing with Dennis and his wife, Patricia - for the first time since being captured in Afghanistan in July of 2002 when he was 15 years old.

Why should we, in a free society, welcome this outcome? This supposed "terrorist" being released into Dennis's care?

Mahatma Gandhi is quoted as saying:

The true measure of any society can be found in how it treats its most vulnerable members.

This is what Dennis embodies, and what Dennis does. He is a tireless and passionate advocate - not only for people like Omar Khadr, but in fact, for all of us - for an injustice to any of us, is an injustice to all of us.

This is why our profession matters. Dennis's work is the very embodiment of the Rule of Law - that all are accountable under the law, from the lowest and meekest individual, to the state itself.

Dennis's work has not gone unnoticed.

Dennis Edney was honored as a co-recipient of the Canadian National Pro Bono Award in 2008, in 2008, he was named by Alberta Venture magazine as one of Alberta's 50 most influential people, in 2009, Mr. Edney was the recipient of the Human Rights Medal, awarded by the Lieutenant Governor of British Columbia and more recently, in 2013, Dennis received a further human rights award from the John Humphrey Centre for Peace and Human Rights.

Do you know an Unsung Hero?

Tell us about them.

If you know a lawyer who deserves to be recognized, please send us an email to newslet@cba-alberta.org with the lawyer's name and the reasons why you believe they are an "unsung hero". The only formal requirements for nomination are that our "unsung hero" be an Alberta Lawyer and a CBA member.

Walter Kubitz, Q.C.,
Susan Fisher & Peter Trieu
Phone: 403-250-7100
Calgary, Alberta

CATASTROPHIC INJURY AND WRONGFUL DEATH CLAIMS

Reflections on a Lawyer Profile

By Susan V.R. Billington, QC

With the many ways to keep up with the news these days such as Facebook and Twitter, I admit, I still read the morning newspapers. I have my morning ritual of sitting at the kitchen table with a strong cup of java to ease my way into the day by scanning the papers to see what the headlines and editorial pages are reporting that morning. You would think that one would tire of starting the day with the perpetual cynicism, however, for those of you who know me, idealism is one of my annoying (or I like to think endearing) qualities. However, last month, when I read the first line of an editorial column in the local paper, I let the words get under my skin. The editorial column started with: "Just as it's understood that a good lawyer will say almost anything to see her client walk free,..."

This rather bold assertion jolted me awake as I interpreted this statement as an assault on the legal profession in general and a sweeping broad, uneducated and cynical generalization of the key role that lawyers play in our society. From my perspective, lawyers play a unique role in our society as trusted legal advisors to their clients and with a sworn duty to uphold the principles of justice.

My concern is that this Editorial statement perpetuates a myth about lawyers. If this is truly reflective of what the public thinks

makes a good lawyer, no wonder there is so much skepticism about our profession. People then are led to believe that they do not want or need a lawyer and it costs too much anyway which then leads them not to seek legal advice or to represent themselves.

What does a person do when they have a legal problem or want information about legal services? I can tell you what they don't do. They don't pull out the yellow pages anymore to look for a lawyer. The burgeoning availability of legal information and the proliferation of alternate forms of legal service from unregulated pseudo-legal providers online have changed the dynamic completely. Heck, you can find legal information on just about anything by a Google search, from incorporating a company in Florida, to making a will in Australia or getting a divorce just about anywhere.

In general, the increased availability of legal information to the public is a good thing and hopefully will foster a better understanding by our citizenry of their rights and responsibilities under the law. This in itself can have a prophylactic effect. However, for those embroiled in the stress of a legal crisis or for those wanting to be proactive to plan their affairs, the legal information they acquire online likely will not equip them to

cont'd from page 10

Somewhere, in the midst of all this, Dennis also became a Bencher with the Law Society of Alberta in November of 2011 and continues to serve our province and our profession to the present date - an obligation of significant commitment of time and effort.

Why does he do this? What motivates a man who has clearly given more than his share?

When I asked Dennis, his reply was, simply, this:

I had never thought that in my lifetime I would be in a torture centre called Guantanamo Bay. Nor did I expect to find a young boy chained to the floor of a cold windowless cell in one of the three secret prisons which the Pentagon describes its use "for enhanced interrogation techniques", namely torture.

My first image of Omar was that of a small broken bird. He shivered all the time as his cell was kept cold so he could not rest. His body had multiple injuries. He looked exhausted and had withdrawn into himself. In all my years visiting Omar, he was always chained to the floor. I could not believe that anyone, not the least a young Canadian boy, could be so abandoned by so many who should know better. Throughout his years in Guantanamo, he was not allowed visits from family, friends, and human rights organizations, Canadian consular visits, simply abandoned.

We are the only Western country that chose not to request the return of their citizen detained in Guantanamo, a boy at that. Every other Western country requested the return

of their detainees; adults every one of them, and that was granted. We are also the Western country that has not criticized Guantanamo.

I made a promise to Omar that I would not leave him although there were times when I wanted to do so. My law practice had suffered. I had missed time with my family including my children's graduations from school and I was relying on my personal savings.

To date, not one single Alberta lawyer has offered me a penny or any help, other than my co-counsel, Nate Whitling. I recall that on receiving the National pro bono award, in Vancouver, a number of years ago. I received a standing ovation from over 200 lawyers. Yet, I did not receive a single call the next day. So what does that say about our commitment to justice?

And would I do it again? You bet. I am the better for this journey in terms of a being a lawyer and a human being. At the end of the day, it will not be your big house or car that will justify your existence; rather it will be your commitment to Humanity that will distinguish you.

I hesitate to try and follow this up, as my words and my own commitment to my community pale by any comparison - however, I would like to say, "Thank-you" to Dennis for both shaming and inspiring me to understand what we do, as lawyers, is so much more than just "business".



Robert G. Harvie, QC is the Chair of the CBA Alberta Editorial Committee and Editor of *Law Matters*. Rob is also a former Bencher of the Law Society of Alberta, and currently practices in Lethbridge at the firm of Huckvale Wilde Harvie MacLennan LLP.

BACK TO BASICS

cont'd from page 11

resolve their legal issue.

Let's face it, the complexities of our laws and regulatory framework can be difficult to understand and navigate in almost any area of law. Many of the automated solutions for alternate legal service delivery now available on the internet mostly fall into the categories of legal information and/or summary legal advice. When someone really needs a tailored solution and advice respecting life's legal challenges, the relationship with a lawyer will be needed more and more as the intricacies of our legal and regulatory framework become more complex.

How is it as lawyers we can remain relevant and accessible? Fortunately, the Canadian Bar Association has provided a terrific resource for lawyers entitled *A Guide to Strategy for Lawyers* by Professor Richard Susskind, OBE. In reviewing this guide, it is like none other I have seen. It is not a checklist on various aspects of the law. Rather it is a strategic planning tool that challenges lawyers to understand that tomorrow's legal landscape will not look like yesterday's and that legal businesses need to re-consider what services they offer, how they deliver them and how to work more closely with their clients. It provides a practical guide on strategic thinking for lawyers in private practice to position their legal services within an evolving marketplace. There are some tips for in-house lawyers as well. I commend it to your reading.

So back to the Editorial and the question of "what is a good lawyer"? How is it that we as a profession we can address the editorial perception that jolted me awake?


The late Alan Hunter, QC in an article written for the National Conference on the Legal Profession and Ethics in 1995 profiled 18 professional and personal characteristics of a good lawyer as follows:

- A thorough understanding of the law;
- A recognition that the law is not immutable and that there is a need to have a continuing interest in changes in the law (indeed the lawyer should continue to be a student of the law);
- A demonstrated analytical ability;
- Demonstrated written and oral communication skills;
- Conscientious and a good understanding of human nature;
- A good imagination for creative solutions;
- A strong interest in problem solving before there is a problem, in risk aversion and risk minimisation and after there is a problem, in dispute resolution;
- Wisdom;
- Good judgement;
- Diligence;
- Efficiency;
- Competence;
- Honesty;
- Candour;
- Discretion;
- Care and prudence;
- Fearlessness; and
- That he or she is a person of the utmost integrity.

Prophetically, Mr. Hunter addressed the challenge we face as a profession even today in the concluding paragraph of his article by saying:

...the private practice of law is not immune from economic

realities. Business efficiencies become of greater importance in difficult economic times. Cost cutting and more efficient delivery of legal services become the operative paradigm. All this is taking place at a time when the consumer of legal services is becoming increasingly sophisticated in legal matters and the matters themselves are increasingly complex. The future is now for those considering the practice of law in private practice...

One could say that these are idealistic attributes and antiquated values from a bygone era. To me, these characteristics of a good lawyer are timeless. They are what will ensure that the legal profession remains relevant into the future and ultimately differentiates our services from others in the business community. I don't think I am being idealistic to believe these characteristics will continue to be necessary and will be increasingly valued given the complexities of our society and legal system. With the evolving legal services marketplace, the challenge for each lawyer and for each law firm is to think strategically about the future of the delivery of legal services and to develop the business acumen to maintain or increase our accessibility and availability to our clients' as their trusted legal advisors who most importantly (and unlike the characterization in the Editorial) have the duty to uphold the principles of justice. 



Susan Billington, QC practices in the areas of litigation, mediation and facilitation at Billington Barristers in Calgary. In her previous work with the Law Society of Alberta, Susan was the founding Executive Director of Pro Bono Law Alberta.



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SYRIAN REFUGEE CRISIS

As the Syrian refugee situation grows to crisis proportions, immigration and refugee law practitioners, along with other members of the CBA and many Canadians, are taking steps to help.

A joint effort, including CBA lawyers working in cooperation with the University of Ottawa's Refugee Hub, was announced to provide assistance, free of charge, to help Canadians and permanent residents in Canada who wish to sponsor Syrian refugees. Here's how you can help.

- If you wish to offer your services as an immigration lawyer, please contact the CBA Immigration Law Section (cbaimmigration@cba.org), so we can add your name to the list.
- For information on sponsorship, please visit the sponsorship page on the University of Ottawa's Refugee Hub's website (<http://refugeessp.ca/sponsorship/>).
- If you're looking for a lawyer offering pro bono assistance, please check the list on the University of Ottawa's Refugee Hub's website (<http://refugeessp.ca/sponsorship-support-lawyer-list/>).
- As individuals, we can also choose to make a financial contribution. The federal government will match individual donations to registered Canadian charities aiding refugees in Syria. Visit http://www.cba.org/CBA/sections_Cship/main/ for a list of registered charities accepting donations.

MENTAL HEALTH & WELLNESS IN THE LEGAL PROFESSION

The CBA is pleased to announce the official launch of our newest initiative, Mental Health and Wellness in the Legal Profession: An online course. Developed in partnership with the Mood Disorders Society of Canada and Bell Let's Talk, the

online educational program gives law students, lawyers, judges and notaries in Quebec information about mental health and depression, their causes and symptoms, as well as prevention and treatment options. It offers support and resources for recovery and maintaining wellness. It also addresses the question of stigma in the context of the legal profession, and suggests ways to deal with it.

The course is confidential, free of charge and available to all members of the legal community. For more information, go to www.cba.org/wellness.

2015-2016 LAW SCHOOL ESSAY CONTESTS

Do you want to building your profile within the legal community? Connect with senior members of the bar? Hone your research and writing skills? Win a cash prize from \$250 - \$2,500? If you are a law school student or young lawyer, enter a CBA essay contest today!

Deadlines:

- Founders' Award (*Immigration Law*) - Nov. 30, 2015
- Paul Smith Memorial Award (*Administrative Law*)
Feb. 29, 2016
- The Atrium (*Construction & Infrastructure Law*)
Feb. 29, 2016
- David Estrin Prize (*Environmental, Energy & Resources Law*) - Feb. 29, 2016
- *Intellectual Property* - Feb. 29, 2016
- *Real Property* - Feb. 29, 2016
- Sword & Scale Competition (*Military Law*)
Apr. 30, 2016
- James H. Bocking Memorial Award (*Competition Law*)
Jun. 30, 2016

Visit www.cba.org/CBA/Awards/Main/ for more details.

Magna Carta Canada

2015 marks the 800th anniversary of the issuance of Magna Carta by King John at Runnymede meadow in England. Magna Carta Canada, a Canadian charitable corporation, has organized Canada's only national commemoration of this event, in the form of a travelling exhibition featuring an original copy of Magna Carta and the Charter of the Forest.

As a member of the legal community, you are in the unique position of knowing the importance of understanding the principles and historic forces which combined to create our Canadian rule of law, parliamentary democracy and civil, human and women's rights. I hope you agree that it is important that as many Canadians as possible are afforded the opportunity to share in this knowledge.

The Magna Carta exhibition is in Canada until the end of 2015 (it opened on June 12 at the Canadian Museum of History in Ottawa/Gatineau, and attracted over 23,500 Canadians). It is presently at the Canadian Museum for Human Rights in Winnipeg, (August 15 to September 18), followed by visits to Toronto (Fort York Visitor Centre, October 4 to November 7) and Edmonton (Legislative Assembly of Alberta Visitor Centre, November 23 to December 29).

While the exhibition is the cornerstone, the true legacy of our project is our education program. Our educational and legal experts have developed an Education Guide and a Timeline for use by teachers in elementary, middle, and secondary schools, coast to coast. These education materials are available in both official languages free of charge. To date, our education materials have reached 53,000 teachers across Canada. Our intention is to continue to develop these materials to provide a compelling and sustainable education legacy for future generations.

Fundraising has not yet offset all of the costs of the design and development of the exhibition and the creation and distribution of the education materials. Many lawyers, judges and others in the legal community are involved in this project, both as volunteers and as donors. This is a singularly unique opportunity for the legal community to be seen as leaders of this extraordinary endeavor for the benefit of all Canadians. I invite you to join us by visiting our website, www.magnacartacanada.ca, and making a financial donation, for which Magna Carta Canada will gratefully issue a tax receipt.

FRONT AND CENTRE

2015 CBA Legal Conference



CBA National CEO John Hoyles presents CBA Alberta North Section Registrar and Office Administrator Heather Walsh with the 2015 Jack Innes Achievement Award at CLC 2015. See page 16 for more details.



The Honourable Kathleen Ganley, Minister of Justice & Solicitor General, speaks at the opening ceremonies of CLC 2015.



The Right Honourable Beverly McLachlin, Chief Justice of the Supreme Court of Canada, speaks at the opening ceremonies of CLC 2015



CBA Alberta Past President Marian De Souza, QC presents at CLC 2015



Former Google Chief Innovation Evangelist Michele Weslander-Quaid speaks at CLC 2015



CBA members from across Canada enjoy the opening night reception at Flames Central.

Fall Meeting of Council



President Wayne Barkasuskas (l) and
Past President Steve Mandziuk, QC (r)



Steve Mandziuk, QC, is recognized for his year of service as
the 2014-15 CBA Alberta President

2015 Race Judicata



The Wachowich family attends the 2015 Race Judicata, which
raised \$30,000 for the legal community's 2017 Judge Edward
Wachowich Memorial Build with Habitat for Humanity

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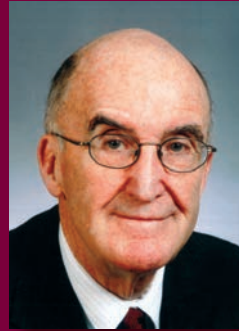
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ALBERTA BRANCH NEWS

2015 JACK INNES ACHIEVEMENT AWARD

The Jack Innes Achievement Award was established in August 2007 and recognizes outstanding contribution to the CBA by a current staff member who has exhibited creativity, innovation, leadership and commitment.

The CBA Alberta Branch congratulates our own Heather Walsh, North Section Registrar and Edmonton Office Administrator, winner of the 2015 Jack Innes Achievement Award.

Heather has been a fixture at the CBA office in Edmonton for almost 20 years. In the letters of support for her nomination, she is singled for, among other things, her dedication to her role and her constant encouragement and support of CBA members in Alberta.

On behalf of all CBA Alberta members and staff, we would like to congratulate Heather on her achievement!

See page 14 for a photo of Heather being presented with her award.

SECTION REGISTRATION

The grace period for section registration has now ended, and any members who have not re-registered for the sections will no longer receive email communication from the sections they were registered for in 2014-15.

A reminder that if any members are interested in purchasing Portfolio or Portfolio Plus packages should do so before they register for sections, as the education credits cannot be applied retroactively.

Section registration is available on our website at www.cba-alberta.org. Please contact Linda Chapman (Calgary/South) at 403-218-4313 or Heather Walsh (Edmonton/North) at 780-428-1230 with any questions about registration.

2016 ALBERTA LAW CONFERENCE

The 2016 Alberta Law Conference may look a bit different to our members, as we introduce our new format conference in January. The theme of this year's conference is "The Art of Persuasion".

Schedule at a Glance:

Thursday, January 28, 2016

Morning (8:30am - 11:45am)

Welcome Address (8:30am - 9:30am)

Law Society Plenary (10:00am - 11:45am)

Luncheon & Debate (11:30am - 1:25pm)

"Resolved that Canada must strengthen its protection for victims of human trafficking"

Afternoon

Body Language and Communication (1:30pm - 2:15pm)

Bench & Bar Joint Session (2:30pm - 4:00pm)

Evening

Exhibitor's Reception (4:00pm - 5:30pm)

Dinner & Keynote Presentation (5:30pm - 9:00pm)

Featuring Manjit Minhas

Friday, January 29, 2015

Breakfast (8:00am - 9:00am)

Morning

Discussion Roundtables (8:15am - 10:15am)

"Survival of the Witty-est" (10:30am - 11:30am)

Featuring Jebb Fink

Lunch (11:30am - 1:30pm)

Distinguished Service Awards Luncheon

Afternoon (2:00pm - 4:30pm)

"Talkin' 'bout my Generation"

Registration is now open! For more information on ALC 2016, see the insert in this issue of *Law Matters*, or visit our website at www.cba-alberta.org.

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www.cba-alberta.org



Manjit Minhas
The Power of Resilience



Jebb Fink
Survival of the Wittiest



Joy Smith
Anti-Trafficking Crusader

Alternative Business Structures and Wellness

By **Rachelle Tilden**

As Canadian provinces contemplate permitting new firm structures and potential non-lawyer ownership, management and investment, much of the focus has, understandably, been directed towards the maintenance of ethical standards and client service, and the concern that law firms will become purely profit driven. But how might new forms of ownership, management and investment affect the health of lawyers and the space they work in?

You don't need to look far to find any number of articles regarding the unhealthy and unhappy lifestyle many in the legal profession lead. Our profession has been slow to change, with the majority of our work hours still spent sitting at a desk, focusing on billable targets and working long hours. This has left little room for creativity, physical health and mental "downtime", and is likely a contributing factor to the attrition rates at many law firms and lawyers leaving the practice of law altogether.

One aspect of ownership that may change the look of the traditional firm is collaboration with other professionals, allowing for complimentary professions to work together. Sharing space and ownership interest with other professions may bring new ideas to an otherwise often stale model.

Consider a criminal or family law firm that also offers services provided by psychologists, counsellors, mediators or arbitrators with an ownership interest. Or perhaps a business law firm that has non-lawyer partners, or shareholders, specializing in marketing, business technology services, accounting, business consulting or financial advising.

How could co-ownership change our systems?

Few other professions base their fees on the billable hour model, a system that, arguably, does not benefit the lawyer or the client. As other professions pair with lawyers there may be a push to move to a flat fee system, charging clients for the service provided, not the amount of time spent providing such service. Something that could provide greater certainty for all parties involved and minimize the unnecessary pressures that lawyers face in reaching billable hour targets.

How could co-ownership change our space?

Non-lawyers may encourage firms to think outside of the box, both literally and figuratively. A number of companies have incorporated spaces that promote informal meetings, inspirational areas and open concepts in the tired office space model. Well known examples include games rooms and sports courts in the offices of Skype and AOL, or a slide instead of stairs at the offices of Google. Many of the creative office spaces that come to mind are within industries focusing on creativity, such as marketing, technology and architecture, but there is no reason to limit creative office space to those industries. Consider a simpler change for law firms. Much of our day is spent reading. A reading room designed with comfortable chairs, a view of the city, a kitchenette or reading nooks would encourage lawyers to leave their office, even just for a short period of time, to review a document. Informal and artistic meeting spaces with whiteboards, smart boards, or touch screen systems would allow for lawyers to meet outside of the standard boardroom setting to work through client issues with both clients and colleagues.

You don't need to be sitting to brainstorm. Movement can promote a healthier, more active office and unlimited discussions. Conducting walking meetings or playing sports while discussing a file won't necessarily limit productivity. The law school that I attended had a ping pong table in its student lounge. Students could use this as a break from studying during exams and you

would often hear players discussing a case or legal concept while playing.

Some forward thinking law firms are already implementing non-traditional spaces that are designed to encourage lawyers to move away from their desks, brainstorm with colleagues informally, or take a mental break. Simply a change of scenery is sometimes all that is needed to prompt a new way of characterizing an issue or curtailing mental fatigue. The act of moving around a dynamic space is itself a health benefit and collaborative patterns will develop relationships and morale within a firm.

Alternative business structures raise a number of concerns that would need to be assessed, such as how lawyers maintain a level of confidentiality with an open concept office or in meeting spaces shared with other lawyers and non-lawyers. There will be skepticism regarding the productivity of lawyers working in informal meeting spaces or games areas. And, of course, there are those that may question whether lawyers need a creative space at all. However, the current dialogue on alternative business structures may very well breathe new life into old work environment models and foster new ideas that motivate lawyers to stay in this profession longer. 🌱



Rachelle Tilden is an associate in the Business Law group at Shea Nerland Calnan LLP, where she focuses on mergers, acquisitions and financings.



Cozen O'Connor would like to welcome Michael Bailey Q.C. Of Counsel to its Toronto office. Michael brings more than 30 years of litigation experience, and will work with the Subrogation & Recovery Group.

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Provincial Access to Justice Initiatives

By Gillian D. Marriott, QC and Kendall Moholityn

Alberta's pro bono organizations have found innovative ways to deliver pro bono services to Albertans. By bringing services into the heart of the community in a one-day format, these organizations have assisted access to justice for many Albertans who would not otherwise receive assistance.

Advice-A-Thons Across Alberta

On September 12 and 14, 2015, Calgary Legal Guidance (CLG), the Central Alberta Community Legal Clinic (CACLC) and the Edmonton Community Legal Centre (ECLC) participated in a provincial access to justice initiative with each hosting a legal Advice-a-Thon event. These one-day, open air events represent an alternative model for pro bono service delivery. The goal of these events was to increase services to vulnerable individuals requiring legal support and to raise awareness of what the clinics do to support individuals with low income and to strengthen communities. The Advice-a-Thon concept was modeled from a similar event held annually in British Columbia.

Calgary Legal Guidance (CLG) hosted their event at the City of Calgary Municipal Building on September 12. The event was set up as a summary legal advice clinic, similar to what the clinics do on a daily basis but instead held outside and on a Saturday. The intent was to support individuals who may have difficulty attending a daytime or evening clinic and offer a weekend option as a more manageable time frame. In addition to the clinic, CLG hosted a free identification (ID) clinic, and notarized picture identification. This identification is often helpful for those who are homeless and/or fleeing family violence situations. CLG offered 90 clients free legal advice and administered 30 ID's. A total of 30 volunteers and 24 staff offered 120 volunteer hours and 120 staff hours.

Justice Minister Kathleen Ganley and Human Services Minister Irfan Sabir spoke about the important work the clinics are doing for community members by creating safe places for individuals experiencing complex issues to obtain support for their legal and social needs.

Central Alberta Community Legal Clinic (CACLC) celebrated its 10th Anniversary on September 14, 2015 in conjunction with the Advice-a-Thon event. CACLC offered both free legal summary advice clinics and Photo ID (Affidavits of Identification) to 50 people in a two hour time frame. Three volunteer lawyers, new to CACLC, supported five long term volunteers with the high volume of clients. In addition to the legal help, a number of CACLC Board Members, staff from PBLA, and even guest speakers rolled up their sleeves to assist and to cook over 200 hamburgers for clients and guests to enjoy.

Edmonton Community Legal Centre (ECLC) held its event on September 12, 2015 as a public awareness and fundraising initiative. A total of 36 Edmonton lawyers volunteered one hour of their time to provide 30 minutes of free legal advice to two low-income people each in an open-air setting in Sir Winston Churchill Square in

downtown Edmonton. Each participating lawyer was asked to collect a minimum of \$500 in donation "pledges".

The event exceeded all expectations. A total of 93 low income people received free legal advice, many of the volunteering lawyers stayed for extra shifts to see clients, and a total of \$31,785 was raised--\$23,535 by the volunteer lawyers from their friends, family, and colleagues, and \$8250 by corporate sponsors--most of them Edmonton law firms--including the "Gold" sponsor, the Edmonton Bar Association. ECLC was highlighted by all three main Edmonton television news programs that evening and as a feature guest on CBC Radio Active the night before. Deputy Justice Minister Philip Bryden stopped by to talk to people and show his support for the work ECLC does in the community.

Other Events

Lethbridge Legal Guidance Society (LLG) hosts an annual event in conjunction with Law Day at the Lethbridge Court House. The event, held since 2012 in Lethbridge, has also been hosted in the additional locations of Blairmore, Medicine Hat and Brooks. The Ask-a-Lawyer event is possible through the tremendous support and enthusiasm of the local bar association. In 2015, 12 volunteer lawyers, eight legal assistants and three volunteers assisted 106 clients with their legal concerns during the Ask-a-Lawyer event. Feedback from the volunteer lawyers noted 100% satisfaction with their experience and a suggestion that it be held twice per year.

Lloydminster Legal Clinic. In true 'Border City' fashion, Pro Bono Law Alberta (PBLA) and Pro Bono Law Saskatchewan (PBLs) joined forces to provide residents with free legal advice through a one-day legal clinic in Lloydminster on Friday, September 18, 2015. The clinic provided an opportunity for individuals in the Lloydminster community and surrounding area to meet with a volunteer lawyer for up to 30 minutes of free legal advice. Through the combined efforts of the event partners and 11 enthusiastic volunteer lawyers a total of 66 individuals received free legal advice. The volunteer lawyers suggested that the event be held annually if not every six months. 📍

PBLA thanks the following organizations for their contributions to this article: Edmonton Community Legal Centre; Central Alberta Community Legal Clinic; Calgary Legal Guidance; and Lethbridge Legal Guidance.



Gillian Marriott, QC is a past president of the Canadian Bar Association, Alberta Branch. She is the Executive Director of PBLA, and practices family law with Widdowson Kachur Ostwald Menzies LLP.



Kendall Moholityn is the Deputy Executive Director of PBLA, having joined the organization in 2013. Prior to joining PBLA, Kendall completed her articles at Dunphy Best Blocksom LLP and practiced at Peacock Linder Halt.

North

These are exciting times at the CBA and we are thrilled to be your new Section Coordinators. We wish to thank our predecessors, Frank Friesacher and Karen McDougall, for their long and dedicated service, and for their guidance to us. In our new role, we plan to attend as many Section meetings as we can to introduce ourselves to each Section's executive.

Our CBA Alberta North Sections are off to a fantastic start! Presentations to date have included topics such as the duty to consult, the future of injunctive relief, disaster response, tips for women from the bench, a case review regarding security deposits under leases, as well as a basic first aid course. Upcoming topics include challenging self-represented litigants and a presentation by the Alberta Law Reform Institute on the proposed changes to Alberta's trustee legislation. An increasing number of North Sections are available to members outside Edmonton via webcast.

The exceptional Inns of Court program for junior litigation lawyers (5 years or less at the bar) starts again in mid-November. Space is limited to just 20 participants, so call the CBA Edmonton office soon if you are interested.

Did you know that you can watch Section presentations that you may have missed? Many Sections who hold their meetings in the CBA offices are recording their presentations and these are available to Section members on the CBA website. If you registered for a meeting and were then unable to attend, contact the CBA office and they will walk you through accessing the

From the desks of Bonnie Bokenfohr and David J. Heibert

video and material.

Please let the CBA office know if you are unable to attend a section meeting, even if you just find out that morning. A simple email to edmonton2@cba-alberta.org will do. This information is vital for CBA staff to pass along to the executive and presenters. It also assists in managing last minute requests to attend.

Finally, we encourage all Section members to seriously consider contributing to your Section, either by joining the executive, or taking some time to think about and suggest a topic for presentation by your Section. However, if nothing else, please consider thanking your executive for volunteering their time. Section presentations don't happen by themselves—they happen because your executive works diligently behind the scenes to come up with topic ideas and to find speakers for each Section meeting. 🗣️



David Heibert is a partner at Witten LLP in Edmonton. David is a long-time CBA member and volunteer, having served on Council, as a member of the Alberta Law Conference committee, and as chair or co-chair of a number of different sections.



Bonnie Bokenfohr is in-house counsel and the Public Complaint Director with the Edmonton Police Commission. Bonnie has been a member of the CBA since her very first days at the bar, serving on the executive of the Privacy Section for many years.

South

Welcome to a brand new CBA year! It is hard to believe that the summer is over and that fall is now officially upon us. The new season also brings a new face to this column. Sean FitzGerald, a partner at Miles Davison LLP, has joined on as a Section Coordinator for a two-year term and promises to bring some great ideas and much enthusiasm to the role. We are both excited at the prospect of meeting with our northern counterparts and CBA staff early next month to discuss our collective ideas about how to better serve the sections and what kinds of broader initiatives we may be able to take on this year.

Thank you to all those members from CBA Alberta Branch who volunteered and attended the annual national CBA Legal Conference (CLC) here in Calgary in August. There were many thought-provoking sessions, canvassing both substantive law topics and issues around improving the health and well-being of the profession and its members. The CLC provided a great opportunity to catch up with old friends, network and connect with new contacts, and learn from one another. In addition, the focus on well-being seemed particularly important given the challenges facing the legal community in these uncertain economic times.

Section activity is well under way now. There have been an incredible range of presentations to date, including some joint section meetings. For example, the Privacy and Labour

From the desks of Kate Bilson and Sean FitzGerald

& Employment sections joined forces in October to present a session on managing privacy breaches in the employment context. The level of collaboration between the sections is very encouraging and we look forward to seeing it continue over the coming months. In addition, we are seeing a variety of approaches to meetings, including panel discussions, individual presentations, and social opportunities, that will surely assist in keeping this year's calendar of events fresh and engaging for all members. Thank you to all the section executives for your energy and enthusiasm.

If you have any questions about sections, or if you have any suggestions for how we can make the sections even better, please do not hesitate to contact us at fitz@milesdavison.com or kate_bilson@transcanada.com. 🗣️



Kate Bilson is Senior Legal Counsel, HR and Immigration Law at TransCanada Pipelines Ltd. Kate is a previous chair of the Privacy and Access Law (South) section, and also sits on the Editorial Committee.



Sean FitzGerald is a partner with Miles Davison LLP in Calgary, where he primarily practices in general civil litigation. Sean has previously sat on the executive committees of the Civil Litigation, Employment Law and Insolvency Law sections.

University of Alberta

It's already October, and students at the University of Alberta Faculty of Law have settled into their studies, with paper outlines looming and thoughts about exams beginning. Now that the semester is in full swing, many have started exploring how to supplement their studies with professional development opportunities and are looking to the valuable resources provided by the CBA as a way of fulfilling those goals.

Students showed a keen interest in learning more about the legal profession when signing up for memberships this year at Clubs Fair, many of whom were excited by the wide range of learning and mentorship opportunities the CBA has to offer its student members. Amongst those renewing their memberships, the generous invitations to attend the CBA section meetings during lunchtime were extremely popular. Students shared how the opportunity to hear experts speak about different areas of the law was not only an extremely valuable way to apply and expand their learning outside of the classroom, but was also a way for many to explore areas of practice that they had not yet considered. The chance to chat about what practicing is like in an informal setting provides valuable opportunities to learn and to network. Both new and returning members had the chance to learn about the CBA and more specifically, what benefits law students can receive by being members at the annual welcome reception that was

By **Lyndsay Butlin and Juliana Ho**

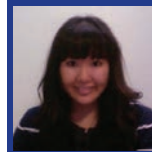
held at the Faculty of Law in October.

Many students also cited how much they have benefited from the CBA's Mentor Program, which links law students with practicing lawyers who can shed light on what life is like after law school and provide advice on how to integrate into the legal community post-graduation. Opportunities to talk informally about what to expect as a member of the legal profession is incredibly useful and important towards early career development.

We hope many students will take advantage of the generous opportunities provided through their CBA memberships, in order to start building on the practical and transferable skills that will pave the way for success later. After all, most of us are only law students once! 🍀



Lyndsay Butlin is the Co-Chair of the University of Alberta Law Students section. She is currently in her third year at the Faculty of Law, and will be articling at Agro, Zaffiro LLP in Hamilton, Ontario



Juliana Ho is Co-Chair of the CBA Law Students section at the University of Alberta Faculty of Law, and is in her second year of studies. She is born and raised in Edmonton.

University of Calgary

The fall is always an exciting time for law students, as the 2L and 3L students are reunited with their classmates after the summer break, and the fresh-faced 1L students begin their exciting journey into uncharted territory.

This fall is especially unique for the University of Calgary as it is the first time that our new "Calgary Curriculum" is in full effect. The new curriculum aims to provide students with substantive competence along with opportunities to learn and experience performance of those competencies. The goal is to prepare students to become excellent lawyers upon graduation. One of the more substantial changes includes a three-week "Foundations in Law and Justice" course for 1L students where they cover introductory legal concepts, reading and briefing cases, critical perspectives on law, and the role of lawyers. The feedback from the students has been overwhelmingly positive, as they are more prepared for their substantive courses such as Torts and Criminal Law, but also have a greater appreciation for the context of their legal studies.

The U of C has many 3L students participating in the exchange program this fall, with students attending classes all the way from Hong Kong to Oslo. While we miss their presence on campus, we are pleased to have so many ambassadors abroad representing the U of C law school.

By **Camille Sehn and Robert Sevalrud**

For 2L students, the fall also means summer student recruitment season, and when combined with the regular commitments of law school, the months of September and October can be extremely hectic. We wish everyone the best of luck, and by the time of publication, most students should have heard back from firms.

On behalf of the U of C student section of the CBA, I would encourage all students to get involved in the mentor program, which is an excellent opportunity to meet a practicing lawyer and pick their brain about the legal profession. CBA membership also brings with it a number of other benefits for students, including discounts on car rentals and insurance, as well as free access CBA Section Meetings.

Best of luck with your studies this fall! 🍀



Camille Sehn is a third year law student at the University of Calgary and Co-Chair of the Law Student Section of the CBA. This year, she is continuing her involvement with the Student Legal Assistance clinic as a Group Leader.



Robert Sevalrud is a first year law student and Co-Chair of the University of Calgary Law Students Section. Previously, Robert worked as an engineer for Imperial Oil and completed his MBA at the University of Calgary.

LESA Library Launch

By Jennifer Flynn

My husband and I once had a friendly wager: at issue was whether our young son (who we've always considered bright and savvy) could correctly identify and explain a "mystery artifact" that showed up as a sample on our doorstep one day.

As a family that had long-consumed news in an array of digital forms, we were pleased (albeit mildly surprised) that he correctly identified the "mystery object" as a newspaper. Beyond speculating that the item was intended to convey "news", our son admitted to being puzzled. His bewilderment grew as we impressed upon him the popularity of this household staple. His list of questions and concerns was endless ... "But, Mom, how would you even search it?" and "It isn't even linked to anything!"

While we chuckled at the innocence of our "born-digital" offspring, his comments struck a chord.

We know it isn't just grade-schoolers who expect content to be accessible in a convenient online format. We know that today's Alberta lawyers, articling students, and support staff need access to quality, reliable, and Alberta-specific legal information. We also know that members of our Alberta legal community don't just work from the confines of their office or library.

It was around the time of the "newspaper incident" (perhaps not coincidentally!) that LESA decided to embark on a project to create an online, searchable, and hyperlinked digital resource to help meet the changing needs of Alberta's legal community. After various iterations (and a period of a beta testing), we are pleased to announce that our LESA Library is now available on a subscription basis.

LESA Library subscribers gain access to many resources:

- Searchable, encyclopedia-style articles derived from LESA's practice manual and fundamentals series content;
- Recent seminar materials, available as downloadable PDFs; and
- Checklists, fillable forms, and editable precedents, available as downloadable Word documents.

One of the things we are most excited about is the ability users have to access information from anywhere on any computer or mobile device. Subscribers can even set customizable notifications to inform them when changes are made to topics of interest that they identify.

Our online LESA Library currently contains the equivalent of over 11,000 printed pages; resources that, if purchased separately, would run more than \$14,000. In contrast, an annual individual LESA Library subscription can be purchased for \$795 + GST - offering a much more cost-effective way for lawyers to complete their libraries! Firms looking to provide firm-wide access can also consult our website for discounted firm rates.

Find out more about why we're excited about the LESA Library by visiting LESA.org/library. There, you can watch a short introductory video, learn more about what the LESA Library has to offer, and find out how to purchase an annual subscription.

You'll also want to save the date for the 49th Annual Refresher: Real Estate that runs April 24-26, 2016 in beautiful Lake Louise. The pre-conference program on April 23 - Alberta Land Titles Online - also promises to be an informative and useful session that outlines the new changes to the online Land Titles platform coming in 2016.

To see our full list of upcoming programs, visit LESA.org and navigate to the Live Events tab for details on all of our 2015/2016 programs.

We look forward to seeing you at our upcoming seminars. Until then, have fun exploring the new LESA Library! 📱



Jennifer Flynn is the Executive Director of the Legal Education Society of Alberta and the Director of the CPLED Program in Alberta.

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Update from the Executive Director

By Marian V. De Souza, QC

Thanks to your support, Assist has reached several milestones in recent months.

Programs and Services

Wellness Initiative: Once a month on a Saturday, the Wellness initiative will bring lawyers and students together to develop healthy habits. Participants will join together over a fun activity, focusing on both fitness and creativity at a limited to no cost for participants.

The first event took place on October 17, a mixed spin and weight training session at Union Athletica in Calgary. The program was launched in October through Assist by Chantel Cabaj, Alexandra MacCarthy, and Heather Patrao.

Professional Counselling Services: Through Forbes, We continue to serve more people through professional counselling. From November 2014 to July 2015, almost 400 individuals accessed Assist's professional counselling services. We have served an increase of 167% from areas outside major centers, and an increase of 145% by family members. Use by articling students continues to rise and there has been uptake by law students, all of which is attributed to increasing awareness with these groups.

Peer Support: Since the program's inception, Assist has facilitated 64 Peer Support matches. 90 Peer Support volunteers are trained and qualify to support their peers overcome personal challenges. In 2015, there have been 36 new volunteer inquiries and 39 new volunteer trainees, exceeding our goal of 30.

Peer Support volunteer training took place in Calgary, Edmonton, Red Deer, Vegreville, and Iqaluit (Nunavut).

Fundraising

Mass Mail Campaign: In October, Assist wrote to all practicing lawyers and members of the judiciary across Alberta. The purpose of the letter campaign is to increase awareness and show support for Assist's programs and services, and generate funding.

We are thankful for the support of all who donated toward Assist's programs and services. A fully funded Assist program means helping to protect important objectives such as personal health and relationships, thriving legal practices, and the privilege of a self-regulated profession.

Q.C. Campaign: It has been a tradition for new Q.C.s to make a donation to Assist in honour of their appointment. Member support of this initiative is appreciated by congratulating and encouraging Q.C.s to give back.

Partnerships and Awareness

Marian De Souza participated on two panels that were attended by over a hundred delegates at the CBA Canadian Legal Conference. The event took place at the Telus Convention Centre in Calgary in August. The topics covered were "Life Balance for Lawyers: Unattainable Ideal or Conscious Decision?" and "Compassion Fatigue: Symptoms and Remedies." Special

thanks to Nancy Dilts, Q.C. and Judge Todd LaRochelle PCJ for participating.

Assist launched a psychologist in-residence program at the University of Alberta in September.

Professional counselling is now available to law students on campus by appointment or drop-in on the third Tuesday of every month. The program is about prevention, and partnering with the University Faculty of Law helps deliver the message to law students that it is okay to seek help, if needed.

Awareness

- Assist hosted a booth at the CBA Canadian Legal Conference in August, themed "Recharge". Conference attendees dropped by to comment on the value of Assist's services and enjoy a complimentary massage by students from CDI College. To coincide with our theme, our booth offered free portable phone chargers to all that came by.
- Cmr. Robert Philp, Q.C. delivered a stellar introduction at the University of Alberta student orientation on the topic of Assist's programs and services in September.
- With the help of two volunteers, Adeel Mulla and Josie Saab, Assist hosted a booth at the University of Alberta Club Fair to increase awareness of the Peer Support program. Five students signed up for peer support training. The event was held on September 8th at the University of Alberta Law Centre.
- The annual Walks for Wellness were held in September in Calgary and Edmonton, and an inaugural Walk in Lethbridge, thanks to the leadership of Rob Harvie, Q.C. The Walks took place at the respective courthouses during the lunch hour, to promote health and wellness. The events included healthy snacks, juice samples, and draw prizes donated by sponsors. Thank you to our sponsors, volunteers and guests for participating and helping to make the events a success.
- Assist hosted a booth at the University of Calgary Law Career Day in September, along with a volunteer, Veronica de la Rosa. The theme was "Networking."
- In November, Assist will host a lecture for law students at the University of Alberta, called the Healthy Habits Lunch. The purpose of this event is to educate students on living a healthy lifestyle despite the stresses of law school. Along with a lunch lecture, Assist is providing sleep kits and caffeine-free teas to encourage better sleep.

Thanks for your attention as we celebrate these milestones and for your continued dedication to Assist. 🙌



Marian V. De Souza, QC, is the Executive Director of the Alberta Lawyers Assistance Society. Marian is also a past president of the CBA Alberta, and currently chairs the Agenda for Justice & Advocacy Standing Committee.

Reform Matters

By Peter Lown, QC

In my last column, I spoke about the project selection process and two projects which were approved coming out of that process. In this column I would like to describe four projects which are either complete or have reached a significant consultation stage.

Publications

In fact we will be producing four reports in four months. The first, which you will already have received by the time you read this column, is Report for Discussion 27 published in August, Competence and Communication in the Alberta Evidence Act. Our legislation, despite significant reform in other provinces has not been significantly updated since 1910. It is out of step with the law in other provinces and with the thinking relating to children's evidence. The report recommends repeal of the requirement of corroboration and the replacement of competence inquiries with a presumption of competence which is rebutted only if the proposed witness is unable to understand and respond to questions. The report moves the inquiry away from the technical requirements of an oath so that a child will be presumed competent to provide evidence provided they can understand and respond to questions, and provided that they have promised to tell the truth. The report also includes recommendations with respect to adult witnesses who face communication barriers, with the result that the means of communication should not affect the determination of competence. Readers are also encouraged to complete an online survey at bit.ly/AEA_survey by December 1, 2015.

The second report, Final Report 107 also already published, deals with the specific issue of the Valuation Date for Matrimonial Property applications. Valuing property at the date of trial builds in an uncertain future date, makes the determination of value in advance problematic and has had a negative impact on meaningful settlement discussions. As a result, the report recommends that the parties should be able to agree upon a valuation date, and in default of such an agreement, the default date should be the date of separation. In addition the report proposes adjustments to the section 8 factors to deal with post valuation changes in property. These recommendations should facilitate settlement, reduce cost and delay and allow decisions to be made on the basis of more accurate information. Draft statutory provisions are included

The third report, to be published in October, is Report for Discussion 28 on the Trustee Act. This report will build on the recommendations of the Uniform Law Conference and adapt those proposals to the Alberta context. The report attempts to modernize both the provisions of the Trustee Act, and to modernize its operations so that it is more attuned to the use and practices of trusts that have developed over the last 30 to 40 years. Among other things, the proposed act will establish trustee powers that are necessary for the proper administration of trusts where the trust instrument does not do so adequately, and will describe the court authority to direct trustees and otherwise intervene if necessary to ensure trusts function properly. The proposals would also maintain our existing more modern provisions on prudent investor requirements. This

report for discussion will be the subject of joint consultation with the Department of Justice to avoid duplication of consultation and ensure that the consultation focuses on the areas of greatest concern to the legal community. When the final report is concluded, the result will be a draft statute that has been developed nationally, commented on by wills and estates practitioners both in Alberta and across the country, and will form a statutory base for years to come.

Our fourth and final report relates to the centuries-old law of fraudulent conveyances and fraudulent preferences. Again, building on the work of the Uniform Law Conference, the Institute has prepared a blueprint for how the Uniform Act may be enacted in Alberta and fitted specifically into our context. The current law is old, convoluted and unclear. The new proposals are designed to balance the right of creditors to recover what they are owed against the right of a transferee to be free of unsuspected claims to property or value received from a person who has creditors. The proposals will not only clarify commercial transactions but provide lawyers with a rational basis upon which to advise their clients. Final Report 108 will be published in early November. This report includes draft legislation.

This is a remarkable level of productivity and Board and Staff are to be congratulated on bringing these various pieces of work to this level of completion.

Farewell

This will be my last column as Director of the Institute, since I will be retiring from that position on December 31 of this year. I bid adieu to the CBA community with a great deal of thanks and appreciation. In particular I have had the opportunity of working with a large number of people who have been in leadership positions with the Branch and it has always been a pleasure to do so. We often say that the sections are the lifeblood of the branch. They are also the lifeblood of our consultation on law reform proposals. Often we are not able to go directly to the persons impacted by our proposals and we rely on the information and response of intermediaries. Among our most important intermediaries are section members; they have been invaluable in helping us craft and fine-tune recommendations in a large number of areas. I thank you for that contribution and look forward to it continuing in the future.

I am confident that your support and involvement in law reform with the Institute will continue on the future projects we bring to you for review. 📧



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Peter Lown, QC is Director of the Alberta Law Reform Institute. He is a Professor Emeritus at the University of Alberta Faculty of Law and has been an active member of the Law Society of Alberta since 1973.

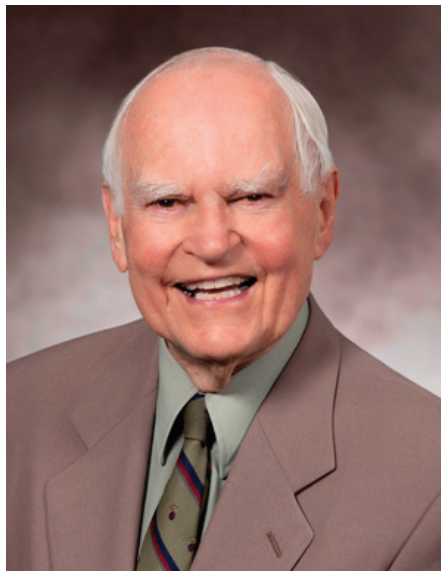
The Honourable R.A.F. Montgomery, QC

By Andrew R. Robertson, QC, Master in Chambers

Mr. Justice Robert Archibald Fraser Montgomery (retired) (aka "the Commander", aka "RAF", but known to most of us as "Bob") died on April 2, 2015.

Over the years Bob had become a good friend of mine, always supportive, always cheerful, ever thoughtful and inquisitive, always a gentleman.

Bob was born in 1928 in Toronto. He studied at the Royal Canadian Naval College, Arts at Queen's, Law at U of T (1954), articulated in Vancouver, worked in Ottawa with the Department of National Revenue, with Borden & Elliot in Toronto, and came to Alberta and joined Macleod Dixon in 1958. He was appointed Queen's Counsel in 1978. He remained at MD until he was appointed a Justice in 1982.



Bob was interested in everything and everyone, but he was most interested in his lovely and engaging wife Margaret and their three children, Fraser, Heather, and Scott, and their seven grandchildren. Bob was always home for dinner to be with his family, and then he would go back to work into the evening.

He paid attention to every detail - sometimes this was a source of frustration to counsel who appeared before him - but he took great pride in his work. In his last ten years he did not reserve his judgments, except overnight. He reviewed the exhibits and the law in the evenings so he was prepared to give his decision at the conclusion of the trial. His decisions on the law were clear and well thought out.

Along the way he was involved in just about everything. He was active in the Primary Naval Reserve, and served as Commanding Officer of HMCS Tecumseh. He was President of Arts at Queen's, President of Law at U of T, President of the Alberta Branch of the CBA, Member of the National Council of the CBA, Director of the YMCA, President of the Naval Officer's Association and of the Men's Canadian Club of Calgary, a Member of the Calgary Police Commission in different periods, and an elder at Grace Presbyterian Churches. That is only a partial list of his community and professional contributions.

He was Chair of the Calgary Bar Association Committee on the Feasibility of a Law School at the University of Calgary and a Director of the Calgary Children's Hospital Foundation. Bob was a very active member of a generation that helped shape Calgary. He had a significant impact on the legal profession, particularly because of his support of the creation of the Law School.

Bob had a wonderful generous spirit and self-deprecating sense of humour. I found him one evening standing in the lobby of the Macdonald Hotel wearing only a housecoat. He had accidentally locked himself out of his room and, wearing almost nothing, he was asking the clerk for a new key - as the clerk was asking for his identification! I identified him, and we had a laugh. He laughed at himself as he told the story many times later.

After his retirement Bob returned to MD (which I had joined in the meantime) as a mentor, and he enjoyed his role. He came to every meeting of the Employment Law Practice Group when he was able, he assisted in presenting an annual seminar on Chambers Practice, he presided at practice chambers applications or appeals, and he assisted in the litigation training sessions we conducted. He was supportive of young lawyers.

As always, Bob wanted to be involved, he wanted to contribute, and he was always smiling when he did. I am better for having known him. 🍷

Judicial Updates

COURT OF APPEAL

The Honourable Mr. Justice J.E.L. Cote (Edmonton) retired on August 14, 2015.

PROVINCIAL COURT

The Honourable Judge R.B. Camp (Calgary - Criminal) has been appointed to the Federal Court of Canada, effective June 26, 2015.

Lloyd W. Robertson, QC has been appointed as a Provincial Court Judge to the Calgary Criminal Division, effective September 3, 2015.

Marilyn D. Slawinsky has been appointed as a Provincial Court Judge to the Calgary Criminal Division, effective September 3, 2015.

The Honourable Judge Kenneth L. Rostad (Camrose) retired as a supernumerary judge effective September 7, 2015.

Diana Mah has been appointed as a Provincial Court Judge to the Calgary Family & Youth Division, effective September 18, 2015.

Master W.H. Breitkreuz (Edmonton) has been appointed as an ad hoc master in chambers, effective October 1, 2015.

Master S.L. Schulz, QC (Edmonton) has been appointed as a full-time master in chambers, effective October 1, 2015.

A VIEW FROM THE BENCH

By The Honourable Judge A.A. Fradsham

Those of us involved in the legal profession and the administration of justice would seem to enjoy a palpable advantage over many of our fellow citizens for the simple reason that we are trained to prove a conclusion by showing a path of logic to that conclusion. I should add an important caveat to that statement: there is absolutely no advantage in using cold, objective logic when having a “discussion” with one’s significant other. Indeed, resort to “lawyer mode” virtually guarantees a collateral “discussion” in which you will without doubt fare badly.

Consequently, we are a bit flummoxed when we find ourselves in a situation in which there is a complete and irrational resistance to acknowledging a set of facts clearly established by independent, physical evidence. This is the position in which I recently found myself when dealing with a very large societal institution: a chartered bank.

Banks collectively are an interesting entity. They all seem to be of the view that there lies buried somewhere in either their originating charter, or enabling legislation, or both, an all but irrefutable presumption that banks do not make errors. The doctrine of papal infallibility pales in comparison to the banking industry’s view that its members do not make mistakes. The legal maxim “rex non potest peccare” (“the King can do no wrong”) amounts to no more than a mere suggestion of mediocrity when measured against a bank’s view of its place as the repository of all that is accurate and true.


So, when a banking behemoth with which I do business pronounced that I had missed a required account payment, my initial reaction was that I must have missed the required payment, though that did not accord with my memory of having made the payment. However, if the bank said I had erred, then I must have erred, regardless of my contrary memory. Surely it would be contrary to the laws of nature for a bank to be in error, but I was plagued by such a clear and stubborn memory of writing the cheque and walking it to the bank branch. So, rebellious fellow that I am, I trotted off to what passes for my personal filing system, burrowed about for a bit, and came up with the account statement bearing the bank’s stamp acknowledging receipt of the money. I then retrieved a copy of the cheque cashed by the bank (I wish to make it clear that I did so by electronically accessing my bank account and printing a copy of the cheque; I trouble you with this ostensibly superfluous information because being able to do so ranks as a major accomplishment worthy of note for someone of my advanced vintage and limited computer skills).

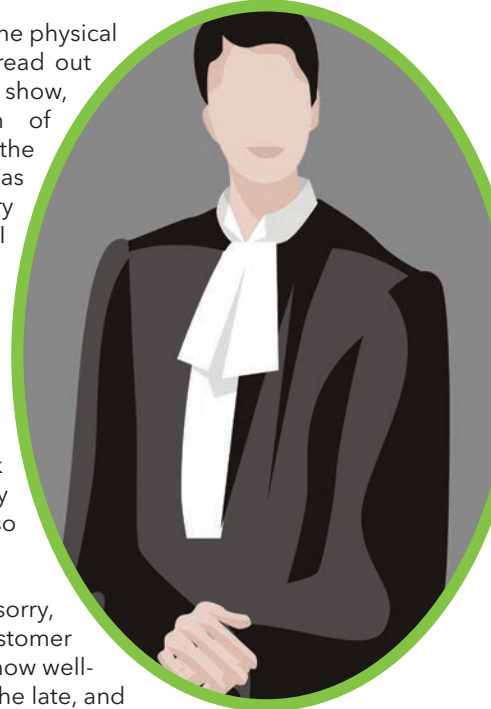
Armed with what I thought was insurmountable proof that I had been grievously and wrongly accused of dereliction of duty, I called the telephone number listed in the letter by which the bank had informed me that I had fallen below the standard of conduct they expected of me. As soon as I gave my name and satisfied the person on the other end of the line that I was who I said I was, I was told that the whole matter could be resolved by me authorizing a transfer of funds from one account to another. “But”, I interjected, “the bank is wrong. I did make the payment.” This seemed to be the banking world’s equivalent of loudly breaking wind in the middle of a benediction. There was a pause, and the very pleasant voice suggested that I was confused. I was of a mind to quote Sir Winston Churchill’s comment that “men occasionally stumble over the truth, but most of them pick themselves up and hurry off as if nothing ever happened”, but

decided that a bout of verbal thrust and parry with a person who could easily eliminate my entire electronic existence with one keystroke would not be the preferable course of action.

I explained and described the physical paperwork which I had spread out before me. My efforts to show, through a logical chain of reasoning, that it really was the bank, and not me, that was wrong were met with very polite suggestions that I must be mistaken about the facts. To her credit, she said she would make “a note” on my file, though I feared that it would be a note in which the word “deranged” figured prominently. She told me to go to the bank branch and show them my paperwork. Fair enough, so off I went.

I told the very polite teller (sorry, my age is showing again, customer service representative) my now well-worn tale. In the words of the late, and much missed Yogi Berra, “it was déjà vu all over again.” The initial reaction was that I was wrong because the bank’s records said I was wrong. The copy of the cashed cheque bearing the relevant account number must relate to something else. The receipted statement must be a mirage. She was very polite and courteous, but the curtain of bank infallibility which surrounded her seemed impenetrable. She kept staring at her computer screen, and then, as if the clouds had parted and let the sun shine through, she said, “I think I know what happened. The money was put into someone else’s account.” Now, normally, hearing that my money has, without my authority, been put into another person’s account would not be the source of great personal joy. Nevertheless, in this case it was. No longer was the bank questioning my sanity (or worse), and no longer was I doubting my own grip on reality. That feeling alone was probably worth the missing \$400.

I felt some sympathy for the bank employee since this startling revelation that the bank, and not the mere mortal customer, had made a mistake must have ranked equally with the childhood trauma of learning that Santa Claus is a concept and not a person. However, she rallied, and clutching copies of all my documentation, said that she would look into it. Though I knew that she was really buying time in the hope that somehow all the mounting evidence in my favour would prove illusory, I politely thanked her, and left, bathed in the warmth of the admittedly petty thought that, at some point, when removing my money from the account into which it had been erroneously placed, the bank was going to have to make to someone else another fresh admission of imperfection. 



The Honourable Judge A.A. Fradsham is a Provincial Court Judge with the Criminal Court in Calgary. His column “A View From the Bench” has been a highlight in the Canadian Bar Association newsletters for over 15 years.

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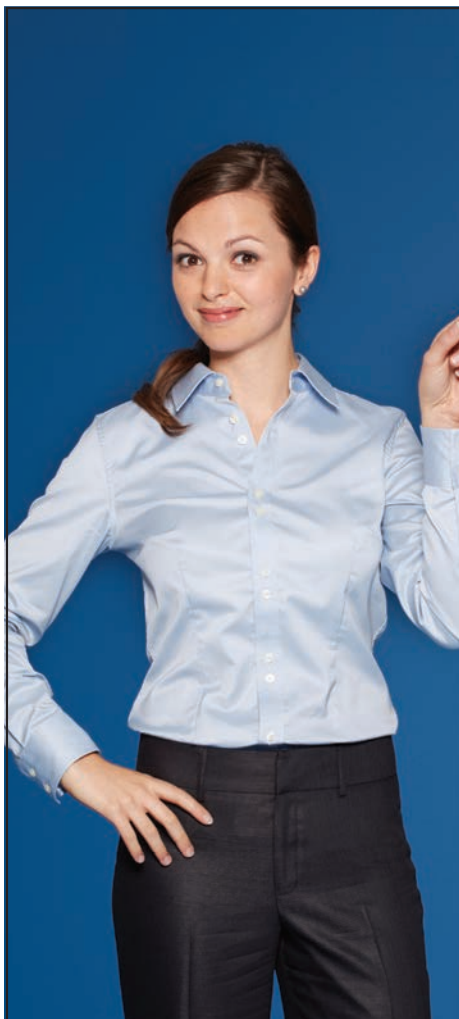
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Alberta Branch

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following the Winter 2016 Meeting of Council

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