

Law Matters

Diversity in the Legal Profession

Diverse Stories from the Legal Profession

Point/Counterpoint Regulating Diversity

Unsung Hero 2011 - 2016: A Reflection



EDITOR'S NOTES

By Robert Harvie, QC

Diversity.

We all support diversity in the profession, don't we? Sure we do. Talk to your fellow lawyers, and quite likely everyone will be very supportive of a diverse legal profession. All good, no?

Of course, "being in support of" diversity in the profession does not necessarily equate with ACTUAL diversity in the profession... and there is the challenge. I recently had lunch with a colleague who, in discussing judicial appointments, commented on why we shouldn't just pick "the most competent applicant" instead of actively seeking appointments that reflect diversity. My response? Well, if the majority of people selecting judges are white males, it just might end up looking like white males are almost always the best candidates. Consciously or unconsciously, we like people who look "like us". And making a conscious effort to challenge and overcome our own personal bias - even if unintentional, is a necessary step in working towards a more equitable justice system.

Why should we care? Well, look at Ola Malik's "Unsung Hero" article in this issue. Three "heroes" - three lawyers working to make a difference - who all share one thing in common. They are all women. Women who are making effort to do work for people who need it, for people who aren't oil companies, or banks. Lawyers who are making our profession better today than it was the day before.

Serendipitously, about an hour before reviewing this issue and reading Ola's comments, I read a blog from Karen Dyck, an A2J focused lawyer in Manitoba: "Is Delivering Access to Justice Perceived as Women's Work?" It shouldn't be. But one could reasonably argue that a side product of

expanding the role of women in our profession is a more empathetic and compassionate profession - to the benefit of addressing our access to justice concerns.

Certainly there's nothing WRONG with being a white male (I hope), but as also discussed in Noren Hirani's article, a diverse and varied profession is not only a moral goal - beyond that, it assures a diverse and complimentary collection of skills and perspectives, which can only serve to enhance the quality of our work as lawyers and judges - as well, as assure our increasingly diverse population that the legal system is reflective of all Canadians thus enhancing respect and trust in our profession and the legal system as a whole.

How do we get there? Well, that's a good question. Aditya Badami in his article suggests that regulation and imposition upon the profession by our Law Society may not be an optimal solution. At the same time, unfortunately, Joshua Sealy-Harrington points out that we have great work to do - as a profession - and while the examples of continuing struggles in diversity should raise concern, they should also remind us that we are a work in progress. They are a challenge to us for the work yet to be done.

Hopefully, this issue can provoke some thought and conversation towards continuing the important effort towards expanding the diversity of our profession - and great thanks to our writers (a reasonably diverse group I must say), in sharing their time and thoughts on the issue of diversity. Please read, enjoy, and discuss these articles over lunch, over partnership meetings, or over drinks. The concept of diversity in our profession is timely, and it's important. 🍷

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PRESIDENT'S REPORT

By Jeremiah Kowalchuk



The fall season can feel like more of a "new year" than January 1st. Children are returning to school, law schools are back in session, and the CBA begins the start of a new year complete with a new President and Executive Committee. I was honoured to begin my term as CBA Alberta Branch President at the conclusion of the CBA Legal Conference in August, and I look forward to leading our branch, and advocating for our members and the profession as a whole for the coming year. Please join me

in welcoming the rest of the 2016 - 2017

Executive Committee: Jenny McMordie (Vice President), Frank Friesacher (Treasurer), Ola Malik (Secretary), Wayne Barkauskas (Past President), and Maureen Armitage (Executive Director).

As we begin a new year, I would like to take the opportunity to recognize Steve Mandziuk, QC, our outgoing Past President, for his five years of service on the Executive Committee. In addition to his work at the branch level, Steve also lent his leadership as the chair of the national Re-Think committee, which began the process of renewing the CBA for our membership, including the newest generation of lawyers. Steve will continue to provide his expertise as Chair of the Agenda for Justice & Advocacy Committee, whose work you can read more about below.

The Agenda for Justice & Advocacy Committee will be kept busy this year, as the CBA Alberta focuses on advocating on behalf of the profession. Prior to the 2015 provincial election, we created the Agenda for Justice, which provides background information and the CBA position on a number of issues affecting our province, including the division of property among unmarried couples, reforming the family justice system, and legal aid funding. This is a living document that we update regularly and will continue to add new issues to as they arise. The document is publicly available on our website at www.cba-alberta.org/Our-Work/Agenda-For-Justice.

This document is also used in our regular meetings with Alberta Justice as a means of outlining our priorities. The Agenda for Justice was front and centre at the Executive Committee's recent regular meeting with Hon. Kathleen Ganley, Minister of Justice and Attorney General. Resources for the legal system, and especially the urgent need for increased judges, was a focal point of our discussion. The Minister also asked for CBA's support and assistance in encouraging a diverse range of candidates to apply to be judges, as diversity on the Bench is an objective for all levels of the court. The CBA has also spoken nationally on the importance of diversity on the Bench, and we urge those of you who would contribute to diversity to take a second look at applying.

While we are only a few short months into the 2016 - 2017 CBA year, it is shaping up to be an eventful one for our organization.

At the recent meeting of the National Council in August, a resolution was put forward proposing a new governance structure for the CBA, resulting from the Re-Think initiative. The resolution was passed, and will result in the dissolution of the National Council and a revamping of the National Board of Directors. Work on the Re-Think initiative is still ongoing, with teams of CBA staff and members in place to begin transitions to the new governance structure, as well as other organizational changes. More information is available on this resolution and the Re-Think initiative at www.cba.org/resolutions and www.cba.org/CBA-Re-Think.

Throughout the consultations that were done as part of the Re-Think initiative, it was made apparent that a need exists within the CBA to focus on young lawyers (that is, law students, articling students, and those lawyers that are 10 year calls or less). As a result, the CBA has developed CBA Connect, which focuses on meeting the needs of young lawyers. CBA Connect has three parts - Connect-U, ConnectNet and Connexions. Connect-U will focus on the needs of law students, and ConnectNet will be an online resource and "one stop shop" for tools and resources for the young lawyer when it is launched later this year. The Alberta Branch is currently piloting the Connexions program with five other branches, which connects young lawyers who are new to the CBA with member peers in their area who act as "guides" to CBA programs and services. More information about this program is available online at www.cba.org/CBA-Connect.

With fall nearly over, members are reminded that the deadline to renew your national CBA members has passed. If you have not yet renewed your membership, you can do so online at www.cba.org/membership. While you are renewing your national membership, take a look at the Portfolio and Portfolio Plus packages that are available. These packages are ideal for those CBA members who are active in sections, regularly participate in professional development, or attend CBA conferences and other events, as they provide education credits that can be used towards any approved CBA purchase. Other benefits include free materials-level registrations to Alberta sections and rebates on CBA purchases made throughout the year.

Section registration is also still open for all Alberta members. Professional development from the CBA Alberta is primarily delivered through sections, and they are an excellent way to connect with colleagues in your area of practice, or other area of interest. Section meetings are available for attendance in person out of our Calgary and Edmonton offices, or by live webcast for those living elsewhere. For more information on sections in Alberta and to register, go to www.cba-alberta.org/Sections.

This year is shaping up to be one filled with change and opportunity for both the CBA and the profession. The Alberta Executive Committee is dedicated to continuously improving the experience of our members, and advocating for the profession as a whole. We welcome any questions, comments or suggestions that you have for us. You can find the contact information for all Executive Committee members on the CBA Alberta website. Here's to another great year! 🍀

WHAT'S HAPPENING

November

15: The Canadian Bar Association presents Breaking Deadlock: Reopening Hopelessly Blocked Negotiations. Live webcast. To register, visit www.cbapd.org.

16: The Canadian Bar Association presents Cross-Border Retail Insolvency. Live webcast. To register, visit www.cbapd.org.

16: The Ontario Bar Association presents Law and the Older Adult Client. Live webcast. To register, visit www.cbapd.org.

17: The Ontario Bar Association presents LGBTQ Youth Homelessness in Canada. Live webcast. To register, visit www.cbapd.org.

17: The Ontario Bar Association presents the 16th Annual Franchise Law Conference. Live webcast. To register, visit www.cbapd.org.

18-19: The Canadian Bar Association presents CBA Administrative Law, Labour & Employment Law Conference. Fairmont Chateau Laurier Hotel, Ottawa, ON. To register, visit www.cbapd.org.

21: The Ontario Bar Association presents Symposium on White Collar Crime. Live webcast. To register, visit www.cbapd.org.

22: The Ontario Bar Association presents Intellectual Property Litigation. Live webcast. To register, visit www.cbapd.org.

22: The Ontario Bar Association presents Managing Family Conflicts in Estate Administration. Live webcast. To register, visit www.cbapd.org.

23: The Ontario Bar Association presents Commercial Agreements Bootcamp: Building Essential Negotiating and Drafting Skills. Live webcast. To register, visit www.cbapd.org.

23-24: The Alberta Lawyers' Assistance Society presents CPA Assist Speakers Series with Clint Malarchuk - "The Crazy Game: How I Survived in the Crease and Beyond." Hotel Arts, Calgary (Nov. 23) & Matrix Hotel, Edmonton (Nov. 24). To register, visit www.albertalawyersassist.ca or email communications@lawyersassist.ca.

25: The Ontario Bar Association presents Pensions & Benefits Hot Spots: Year End Edition. Live webcast. To register, visit www.cbapd.org.

28: The Ontario Bar Association presents Service Animals and the Law. Live webcast. To register, visit www.cbapd.org.

29: The Ontario Bar Association presents RODA's 2nd Annual Diversity Conference, in partnership with the OBA Strategies for Diverse Lawyers. Live webcast. To register, visit www.cbapd.org.

30: The Ontario Bar Association presents Brokers, Claims Examiners, Lawyers and Experts: How to Work Cooperatively When Managing Claims in Local and International Settings. Live webcast. To register, visit www.cbapd.org.

December

5: The Ontario Bar Association presents the 8th Annual Class Actions Colloquium. Live webcast. To register, visit www.cbapd.org.

6: The Ontario Bar Association presents Tough Conversations: Setting the Stafe for Productive Outcomes. Live webcast. To register, visit www.cbapd.org.

7: The Ontario Bar Association presents Fiduciary Accounting. Live webcast. To register, visit www.cbapd.org.

January

28: The Alberta Lawyers' Assistance Society presents Peer Support Training. Calgary. To register, visit www.albertalawyersassist.ca or email communications@lawyersassist.ca.

February

28: The Ontario Bar Association presents Essential Update on Estate Litigation. Live webcast. To register, visit www.cbapd.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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Barriers to Entering Practice

By Robert G. Harvie, QC

How many of you would classify the effort to get into law school, to complete law school, to obtain articles, and then to be called to the Bar a "cake walk"? Not many - certainly not in my case, and definitely not in the current Alberta economy.

Well then, imagine adding significantly to that burden.

Imagine more exams, in another language, and then trying to find work in a close community where everyone seemed to know everyone else, except you. Where your voice, your appearance, and your customs might identify you as not "part of the club."

This then, is the burden of the internationally-trained lawyer seeking to make their way in Alberta, after having obtained their education and skills outside of Canada.

For those seeking entry into the legal profession after having trained abroad, like most areas of work requiring accreditation, there is some understandable need to assess the training and experience of the applicant coming from a foreign country. Upon admission to the bar, a lawyer is held out to the public as being competent to practice law, including appearing in all levels of court - and the public has a reasonable expectation that governing bodies will review each applicant's background before certifying them as being "competent" to be a lawyer.

In Canada, we have the NCA (National Committee on Accreditation) process, where foreign trained lawyers have their education and experience reviewed and, based upon that review, additional courses or examinations may be directed before they received their "Certificate of Qualification" - essentially affirming the equivalence of holding a law degree granted by a Canadian law school.

From that point, the applicant must then enter the articling stream, finding a principal to provide mentorship for a period of one year, during which time applicant must also complete the CPLED (Canadian Centre for Professional Legal Education).

Seems like a lot of work? Well, here's the rub.

For many foreign trained lawyers, the exams and the continuing education is the easy part compared to fighting through the more amorphous barrier of being an outsider to the "club".

The club? The club of Canadian graduates. The vast majority of Canadian lawyers are graduates of Canadian law schools - and they have a sense of comfort and predictability in hiring Canadian graduates. And if we know anything about lawyers, as a general rule, they are not big risk takers, they tend to fight innovation and change, and they tend to see the billable hour and the need to "run on the hamster wheel" to generate fees as the core of their business plan.

Witness the recent innovation of Lakehead University in including practice training - removing (presently) the requirement of graduates to complete formal articles after graduation before applying for admission to the Ontario Bar. Witness the changes in law school across Canada, where practical training has become much more common as firms pressure law schools to help students "hit the ground running."

Now, then.

If you take the continuing effort on firms to economize, to find students who provide an immediate financial return "out of the gate", imagine then the burden placed upon foreign trained lawyers - particularly where their appearance, speech and

cultural practices may be seen as "out of the ordinary" for a recruiter. Easier many will say to take the "safe road" and hire a Canadian graduate - after all, particularly in today's economy, there's no shortage of applicants.

More insidious, while overt racism has become clearly socially unacceptable, there is, without question, a "smiling" racism where firms may feel "more comfortable" with people who look like them, or may feel "their clients" may not be receptive to people who are "different", then smile and pass over a foreign-trained lawyer as a possible hire.

Unfortunately, this myopic point of view prevents real change in access to justice, prevents innovation in service delivery and, ultimately restricts - not improves - firm bottom lines.

The world is changing. Even in smaller communities, greater numbers of Canadians are no longer descendants of Northern Europeans - and having lawyers in your firm who are from other countries broadens your potential client demographic in a way that the "typical" Canadian graduate may not. The ability to speak a different language, to relate to a different community from your own EXPANDS the market of your firm - where hiring within a narrow cultural profile restricts it.

Beyond the demographic business case, broadening the experiential profile of your firm creates a palate of perspectives and ideas which, over time, will make your firm stronger and more adaptable to what is, without question, a changing legal landscape.

In addition, for larger firms, major business clients are now engaging in a review of the "diversity profile" of prospective firms they are hiring. It may be simply a question of time before this becomes more endemic in smaller firms and smaller centres - and, over time, may not be limited to corporate clients, but will likely become a more common public expectation. For example, we now see major international restaurant chains - even fast-food chains - advertising organic, cleaner produce and meats where such expectation was formerly limited to isolated niche restaurants. One can easily imagine the same sort of public expectation arising as smart, innovative firms begin to advertise the diversity of their members, seeking to cash in on growing "moral currency" in their communities.

So then, I would encourage readers who may have influence in hiring in their firms to take an extra moment to consider the burden of the foreign trained lawyer, to challenge themselves to honestly assess why they may not be considering hiring that applicant, and to imagine what the burden of having to jump so many hurdles may mean to the determination and the focus of that applicant, compared, perhaps, to those who have enjoyed the "cake walk" of being fellow members of the Canadian University Club.

For lawyers trained abroad, I would encourage them to contact the Law Society of Alberta, which has been working hard to streamline and facilitate the inclusion of foreign trained lawyer into the practice in Alberta - for more information see www.lawsociety.ab.ca/membership/InternationallyTrainedLawyers.aspx.



Robert G. Harvie, Q.C., 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 Huckvalde Wilde Harvie MacLennan LLP.

Ursa Ventures Ltd. v Edmonton (City)

The Alberta Court of Appeal (ABCA) recently released a trilogy of decisions under Rule 4.33, otherwise known as the “drop dead rule”, of the *Alberta Rules of Court*, Alta Reg 124/200 (the **Rules**), which states, in part: “[i]f 3 or more years has passed without a significant advance in an action, the Court, on application, must dismiss the action...” In these decisions, the ABCA confirmed a functional approach to the Rules and a focus on substance over form when determining what will constitute a significant advance in an action under Rule 4.33.

The first decision in the trilogy is *Ursa Ventures Ltd. v Edmonton (City)*, 2016 ABCA 135 [**Ursa**]. In *Ursa*, the ABCA reviewed a lower court’s decision to dismiss an application under Rule 4.33 on the grounds that service of the plaintiff’s affidavit of records (just shy of 3 years after service of the Statement of Claim) significantly advanced the action. The appeal raised two issues:

- i. whether a mandatory step under the Rules always “significantly advance[s] the action”; and
- ii. whether the chambers judge erred in finding that the respondent’s affidavit of records significantly advanced the action.

The ABCA dismissed the appeal and confirmed the lower court’s functional approach to interpreting Rule 4.33, which the ABCA found to be consistent with the purpose and intent of the *Rules* and a cultural shift in litigation:

[18] The new Rules use a functional approach. Their purpose and intent, as emphasized in the foundational rule 1.2, is to provide fair and just resolution of claims in a timely and cost effective manner. The foundational rules parallel a cultural shift in litigation that deemphasises trial as the dominant mechanism of resolving civil disputes in favour of procedures such as summary dismissal and alternative dispute resolution. [citations omitted]

The ABCA held that the functional approach requires the court to consider the “content, value, and timing” of the advance in the action within the context of a particular lawsuit, and that it was no longer safe to assume that a “formalistic step” under the *Rules* would protect against a dismissal under Rule 4.33:

[19] Under the delay Rules the functional approach inquires whether the advance in an action moves the lawsuit forward in an essential way considering its nature, value, importance and quality. The genuineness and the timing of the advance in the action are also relevant. This analysis is undertaken in the context of the particular lawsuit. The focus is on substance and effect not form [citations omitted]

[20]...In many instances, the mandated step will not only advance, but will significantly advance, the action....But not every mandated formalistic step will always meet the functional test.

The second decision in the trilogy is *Weaver v Cherniawsky*, 2016 ABCA 152 [**Weaver**]. In *Weaver*, the ABCA considered an appeal from a decision dismissing an action under Rule 4.33,

By Maureen Killoran, QC and Allison Kuntz

and whether an agreement to participate in judicial dispute resolution (JDR) and / or the late disclosure of a “Note” in a supplemental affidavit of records significantly advanced an action for the purposes of defending an application under Rule 4.33.

The ABCA dismissed the appeal and reiterated its holdings in *Ursa* regarding a functional approach to Rule 4.33. The ABCA concluded that the chambers judge did not error in finding that a mere agreement to schedule a JDR did not move the action forward in a meaningful way, or in finding that the Note did not advance the action because it did not offer any new information, or move the parties closer to resolution.

The third decision in the trilogy is *XS Technologies Inc. v Veritas DGC Land Ltd.*, 2016 ABCA 165 [**XS Technologies**]. In *XS Technologies*, the ABCA considered an appeal from a decision which dismissed an action for long delay. In dismissing the appeal, the ABCA held that a plaintiff bears the ultimate burden of advancing the claim and again confirmed the functional approach in *Ursa*.

On the facts, the ABCA concluded that service of a supplemental affidavit prior to the drop dead date was not sufficient to sustain the action because not only was it served 6 years after it had been requested, it largely contained documents which existed prior to the original affidavit of records. The Court also rejected the plaintiff’s argument that service of a Notice of Written Questioning prior to the drop dead was enough to sustain the action because the defendant had not yet responded. In other words, the notice could not advance the action; it was only the substance of the response that had the potential to advance the action.

The trilogy has established a functional, flexible and more discretionary approach to determining applications under Rule 4.33. 📍



Maureen Killoran QC, is the Managing Partner and Partner in the Litigation Group of Osler, Hoskin and Harcourt LLP in Calgary, a Canadian Bar Association Partner Firm. Maureen has been contributing to the “Practice Pointers” column since 2008.



Allison Kuntz is a partner in the litigation department in the Calgary office of Norton Rose Fulbright Canada LLP. Her practice includes corporate and commercial litigation, domestic and international arbitration, oil and gas litigation, as well as securities and financial services disputes

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2011 - 2016: A Reflection

By Ola Malik

In the fall of 2010, the communications committee of the CBA Alberta Branch decided to publish a regular column in Law Matters titled "Unsung Hero". The main purpose of the column was to profile lawyers who were contributing to their communities in a meaningful way but who hadn't yet received acclaim for their hard work. The committee believed that providing public acknowledgement of these lawyers' efforts would encourage them to continue with their work, inspire others to contribute, and provide an opportunity for our profession to recognize and celebrate their terrific achievements.

We have, over the course of 5 years, profiled over 20 lawyers. Writing these profiles, picking up the phone and speaking with each of these Unsung Heroes (most of whom I didn't know), and getting to know who they are and what inspires them, has been an experience more personally meaningful to me than I can convey here. There is nothing more satisfying than celebrating the achievements of one of our own; I have looked forward to writing each and every profile and I have anguished over whether their profile did them the justice which they were so justly owed.

But after having written this column for 5 years, it's now time for me to pass on this opportunity to a younger CBA lawyer. So it is with sadness that I'm announcing that this is my last column.

There are three Unsung Heroes who left a deep impression on me and whom I often think about: Victoria Foster, Corie Flett, and Danielle Collins. Having barely been called to the Bar, Victoria opened her own law firm in Red Deer that caters to those who can't access Legal Aid services but who need a lawyer. Her firm does limited scope service work, doesn't require up front retainers, and explores payment plans. It's the kind of firm that's needed at a time when people are desperate for legal assistance but simply can't find, or afford, a lawyer. As a young articling student (later, the first female lawyer called to the Bar from the Fort Chipewyan First Nation band) Corie got in her car and drove around to remote communities where she put on free legal service clinics for people whom likely had never come across a lawyer before. Prior to being called to the Bar, Danielle Collins worked as a family resource facilitator with the Family Law Office in Edmonton and helped develop an alternative forum for empowering young mothers to find solutions to their life challenges called Just-Us-Girls program which was later accredited as a provincial youth justice committee and then as an Elizabeth Fry Society program.

Victoria, Corie, and Danielle are just a few of the Unsung Heroes that have inspired me to get involved and contribute in my own small way towards building a justice system which is more accessible, fair and just. All our Unsung Heroes have shown me that anyone can make a difference. It's just a matter of finding your own passion and interest and then to move forward, one step at a time.

Let me end on this note - I encourage you to make it your mission to discover and promote those great lawyers amongst us who have committed themselves to improving the lives of those who need our help. Be a champion and advocate for

those lawyers who are trying, the best way they know how, to make a difference. Recognize, encourage and promote them, spread the word to your friends, get their story out, introduce them to others who might be able to help, nominate them for an award. Invest in their success.

It has been a tremendous pleasure and privilege to speak with you through my writing of this column. For those of you who've read this column, passed on a name of someone we should write about, or who've reached out to congratulate our Unsung Heroes because of their profile in this magazine, thank you. 🙏

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.



Ola Malik is a Municipal Prosecutor with the City of Calgary, a CBA Partner Organization, where he writes frequently on cases involving *Charter* issues. In addition to his work with the Access to Justice and Editorial Committees, Ola is currently the Alberta Branch Secretary for 2016-17.



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For Equality and Diversity: A Call to Action

By Noren Hirani

The Canadian population is becoming more diverse. As noted by the Law Society of British Columbia, by 2031 one third of Canada's population will be comprised of visible minority communities. To effectively service the legal needs of this more diverse population, the legal profession must learn to adapt its service models and increase its efforts to better embrace diversity.

The corporate world has also taken notice of Canada's increasingly diverse population and has demanded mirror policies for diversity and inclusion from its legal service providers. For example, Canada's general counsel community introduced an initiative entitled: "Legal Leaders for Diversity: A Statement of Support for Diversity and Inclusion by General Counsel in Canada." This initiative has over 60 signatories committed to practicing and advancing diversity and inclusion within the workplace. The corporate world is not immune to the forces driving diversity.

Meaning of Diversity

Diversity means respect for, and appreciation of, differences in ethnicity, gender, age, national origin, disability, language, sexual orientation, education, socio-economic class, and religion.

Forces Driving Diversity

Migration to Canada and other parts of the world is increasing for various reasons, and this has heightened our awareness of people who may have different cultural, religious and linguistic qualities. The distant other may now be our neighbour.

Another force contributing to greater diversity is the rapid growth of technology (particularly telecommunications) which permits people to communicate faster, at lower cost, and across greater distances. The world as a result has become a smaller place, where people are able to interact across linguistic, cultural or geographical boundaries.

Lastly, the media presents information about distant communities that we in the west may never have head of before, nor were exposed to in the past. The increase in available information through the media may not necessarily contribute to an advancement of our knowledge about these communities, and may in fact result in more confusion as the media may not provide sufficient content to help situate this information. Consequently, this has the potential to threaten our ability to embrace diversity and may lead some to paint people of a certain class, relation, ethnicity, sexual orientation, age, sex, etc. with the same brush.

Importance of Encouraging Diversity Within the Profession

It is important that the legal profession encourage diversity in order to ensure public confidence in the justice system and give all people, no matter what their background, a chance to be heard and represented in a consistent, fair and objective manner.

As Chief Justice McLachlin stated in her remarks at Canada's Legal System at 150: Democracy and the Judiciary: "appointments to the bench should reflect the diversity of the society they are called upon to judge." Accordingly, Chief Justice McLachlin has advocated for minority and indigenous populations to be

appointed to lower courts so that they may work their way up through the judiciary.

A Call to Action

Adapting to serve the legal needs of a more diverse population first requires that we must recognize the importance of promoting diversity within the profession. This requires dialogue, tolerance and an ability to listen to someone that we may not know or like. The process does not simply take care of itself. It requires planning, persistence and creativity. A laissez-faire approach could jeopardize our ability to capitalize on the opportunity that an enriched diversity within the profession presents. These opportunities are:

- Enhance or complimentary skill sets of people with varied backgrounds;
- To better serve clients that are increasingly diverse as a result of globalization, migration and multiculturalism; and
- Different perspectives, best practices and lessons learned that can be brought to the table servicing clients.

Some of the approaches that the legal profession could undertake to promote diversity may include:

- Task forces or committees with diverse members who have credibility with their colleagues and a stake in the outcome. The mission of those groups could be to identify goals, develop strategies and monitor their effectiveness.
- Providing mentoring programs and training in unconscious bias.
- Developing bias-free performance evaluations and work assignment systems. For example, developing evaluation systems that focus on competencies rather than subjective impressions. This could ensure that client service teams capitalize on the diversity of their lawyers and could also address subjective cultural norms that may sometimes guide the way performance evaluations and work assignments are conducted.
- Supporting workplace initiatives and expanding efforts to increase the pool of qualified minority practitioners through scholarships and mentoring.

To make all these reforms possible, policies must not be seen as affirmative action, but as organizational priorities in which everyone has a stake. The legal profession must not simply acknowledge the importance of diversity, but also hold individuals accountable for the results. The challenge is to create a sense of unity and to translate policies and rhetorical commitments into daily practices. Everyone, including the Law Society, the CBA and the individual lawyers share the onus for promoting equality and diversity in the profession. 🌐



Noren Hirani is an Associate in the Intellectual Property Group at Gowling WLG (Canada) LLP in Calgary and Chair of the Alberta Branch - Equality Committee of the CBA. She studied law in French at the University of Ottawa and grew up in Ottawa.

A Case Against Regulating Diversity

By Aditya Badami

The upper reaches of law firms, the judiciary, legal academia, and the law societies appear to be predominantly white, privileged, and male. I suspect this is partially owing to demographic trends, in that today's pool of law firm leaders and judges reflect the demographics of law student ranks of the 1970s or 1980s where, as a percentage of each graduating class, there were more white privileged men attending law school than there are now. But it is also likely the product of systemic, self-perpetuating conditions that, despite shifting demographics, make it easier for privileged white men to advance in law than others, yielding disproportionate representation of the already privileged amongst the upper ranks.

In light of these two features, I cannot conceive of principled arguments against the need for and benefits of greater diversity in the legal profession. Any argument against diversity, or suggesting that the lack of diversity is a non-issue, is likely to be characterized by wilful blindness, racism, classism or some union of those three. The benefits of diversity are manifest. The need for it is too, particularly if we are to uphold the pluralist values underpinning Canadian society and meet the demands of a globalized market.

What one can argue against is the regulation of diversity by the law societies across Canada. Even here I do not think there are particularly good arguments against the law societies regulating, if only with a light touch, diversity in the profession. Nevertheless, there are principled, non-repugnant arguments against regulation and this is my attempt at articulating those arguments.

For the purposes of setting the arguments' backdrop, I presume that the aim of diversity regulation would be to achieve roughly proportionate representation of heretofore underrepresented groups, including ethnic, economic, gender, or orientation. Regulation might also be aimed at achieving equality of opportunity regardless of background. Such regulation would mandate or somehow incent law firms to diversify their ranks or otherwise equalize the playing field such that the opportunities available to a select few to rise to leadership positions are available equally to all.

Why should law societies not engage in such regulation?

First, while certain aspects of legal practice are regulated, lawyers and law firms are otherwise governed by the free market and tradition. They live and die by the quality of the product and service they provide. The market is their judge and tradition their guide. Law firms tailor their offerings as they see fit, and key to that process is hiring and advancing who they see as best fit, focusing on their skillset in that determination. Regulating diversity would undermine this long-standing free market principle and impose strictures on law firms that would improperly affect their ability to hire and advance lawyers of their choosing. Such regulation would also arguably increase the cost of doing business and reduce

margins insofar as meeting diversity requirements would require investment in hiring and human resources functions.

Another aspect to this free market rationale is the suggestion that, insofar as the market for legal services demands diversity, legal service providers will respond and advance diversity at risk of losing market share. This market-driven response belies the need for regulation, would be more globally cost-effective than regulation because the cost of regulation will not be incurred, and more efficient insofar as market forces are more nimble than regulatory forces.

Under this argument, regulating diversity would be costly and would interfere with law firms' ability to mould their ranks. Regulating diversity would also be unnecessary given market forces. Regulating conflicts and trust monies is one thing. Regulating who is hired and why is categorically different, would be too costly, and too great an affront to free enterprise and tradition.

Second, regulating diversity within the legal profession would be merely a Band-Aid solution to what is likely a deeper societal problem of access to post-secondary education and thereby law school itself. Regulating diversity would be ineffectual insofar as the law societies' reach cannot extend far enough into society to address the underlying reasons why prominent positions in law firms and the judiciary are disproportionately held by already privileged demographics.

That is, universities and, even more so, law schools, are still comprised disproportionately of the privileged and monocultural. Accordingly, while regulating the profession may be well and good, if the pipeline to the profession lacks sufficient diversity, such regulation will not yield results, would be wasteful, and should therefore not be pursued at all.

Third, and relatedly, to the extent regulating diversity would be a Band-Aid solution, it would only conveniently bury the concern about the lack of diversity in law. Because the underlying causes of the lack of diversity in law cannot be adequately if at all addressed through the law societies' regulation, the effect of those causes will not be the legal profession's problem. And to the extent it is the profession's problem, the existence of the Band-Aid solution will be identified as the profession's best effort at addressing it. This will alleviate pressure on the profession to diversify its ranks, resulting in marginal improvement or the maintenance of the status quo, neither of which are good outcomes. For these reasons, to avoid these pitfalls, regulation should not occur at all. 🌐



Aditya Badami is an Associate at Norton Rose Fulbright in Calgary and a Sessional Instructor at the University of Calgary Faculty of Law. He studied law at the University of Toronto and is from Montreal -- via Bangalore, India.

In Their Shoes: Diverse Stories from the Legal Profession

By Joshua Sealy-Harrington

Note: Due to length restrictions, the print version of this article is abridged. For the complete article with all testimonials, I encourage you to visit:

[www.cba-alberta.org/
Publications-Resources/
Resources/Law-Matters/
Law-Matters-Fall-2016/
In-Their-Shoes](http://www.cba-alberta.org/Publications-Resources/Resources/Law-Matters/Law-Matters-Fall-2016/In-Their-Shoes)

Introduction

The legal profession has many stories. It is experienced in different ways by different people. Many experiences are universal: long hours, short deadlines, complex analysis. Others are not. And this article shares some of those experiences.

Below, I have compiled anonymous stories from a diverse group of individuals who are currently, or are soon to be, part of the legal profession. Their stories highlight an unfortunate truth: that, despite how far we have come to advance inclusivity and equality in the legal profession, much work remains to be done.

To be clear, these are not the only stories that exist (indeed, many groups are, unfortunately, not represented here). Further, every lawyer has their own subjective experiences and struggles, and I do not intend to define for lawyers, no matter their background, what their experience in the profession has been. But I also know that these stories are not exceptional. They are frequent. And yet, at the same time, go unnoticed by so many in the profession.

So, with that, I encourage you to read these stories (both here and online), recognize the unique struggles only some of us must endure, and, most importantly, reflect on what you can do (or stop doing) to promote greater inclusivity in the legal profession.

.....

Identity: Queer Woman
Occupation: Litigation Associate
Location: West Coast

I've been called "sweetheart" at work so many times I've lost count. I've grinned-and-borne-it as the only woman, and the only queer person, in the room when co-workers



make cracks about some part of my identity. I've been quietly warned about that lawyer—you know, the one who drinks a little too much and then stands a little too close—and then quietly passed on the same warning, because what else can I do?

Dealing with this stuff is so disheartening, because it tarnishes the things about work that I love. Most days I love coming in to the office, and I have so much respect for most of my co-workers, but I'm so sick of wondering if "nice work!" actually means "nice work!", or if it means "nice work—for a girl." It's exhausting, and this job is already tiring enough.

.....

Identity: Black Man
Occupation: Litigation Associate
Location: Canada

As a black lawyer, I have been told, by a partner, to change my natural black hair to advance in the profession. I know many black peers who have been similarly instructed. When I self-identify as a lawyer it is routinely met with skepticism (Really? You're a lawyer? You?), or, at least, the assumption that I must be a criminal defence lawyer (I am not). I have been told by colleagues that I could not possibly experience prejudice in my city and, on the same day, been called a "n**ger" in broad daylight downtown. I can tell that some white colleagues resent my success, and wish to attribute that success to "affirmative action," rather than confront the possibility that a black lawyer could be as capable as (or, heaven forbid, more capable than) they are. Despite all this, I have also been told that my path in the law will be "easy" because diversity is "in" right now (reducing basic equality to a fad). Indeed, diversity is so "in" right now, that seniors at my firm have told us that, for business reasons, it is something we must now take seriously, at the insistence of clients who want to know that the firms they retain value diversity (spoiler alert: many don't). All that said, I have also had positive black experiences. I have had partners in other offices reach out to me specifically because of my race. I have found a community of black lawyers who are loving, supportive, kind, and, above all, empathetic. I have been

DIVERSITY IN THE PROFESSION

continued from p.10

placed on better files because of partners who want to be “seen” as valuing diversity (I’ll take it). I have spoken to young offenders—many black—and told them that being black does not mean that there is only one side of the law that they can participate in. I could tell that seeing a black man, in a suit, tell them this, really meant something to them. It was everything.

.....

Identity: Visually Impaired

Occupation: Litigation Associate

Location: Toronto

Criminal courthouses can be difficult places for the visually impaired. Some are poorly lit. Some have confusing layouts. All are crowded with anxious people who either don’t know where they are going or are too busy to stop to give directions. Dockets are printed in tiny font and are rarely made available online ahead of time. Every courthouse follows its own procedures. Sometimes a counsel sign-in sheet is posted far from the courtroom, other times it is necessary to make eye contact with the Crown to get their attention and let them know who you are representing. Each of these obstacles is a minor puzzle that must be solved even before a court appearance begins.

I began carrying a white cane years ago. I did so reluctantly, in spite of the obvious safety benefits, because of apprehensions of how the people around me would react. Carrying a white cane means encountering a wide spectrum of reactions in courthouses. Many people keep a respectful distance and intervene only if it looks like I could use a hand. Others offer patronizing or offensive comments. It is amazing how often my white cane is taken as an invitation by total strangers to ask intrusive questions about my medical history. On one occasion, a police officer came and sat down next to me. He decided to lighten the mood in the courtroom by telling some jokes about blind people. Obviously, it had not even occurred to him that I was a defence lawyer that could have been cross-examining him that afternoon. 🗣️



Joshua Sealy-Harrington is clerking at the Supreme Court of Canada. He also articulated at the Federal Court for the Honourable Justice Donald J. Rennie (now of the Federal Court of Appeal). His publications centre on criminal law, the *Charter*, and critical theories.

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Justicia Thriving in Alberta

By Cori Gitter

Across the country, roughly half of lawyers graduating from law schools are women, yet once they enter private practice, large numbers do not stay. Attrition rates are notably high amongst women who have practiced for five to seven years. Many women either leave the practice of law altogether or find new positions working as in-house lawyers for corporations or the government. The departure of women from private practice means that the legal profession is losing a large component of its best and brightest in core areas of practice.

Alberta's Approach

The challenge of retaining women in the practice of law is not unique to Alberta; it is a national issue. To combat the problem, the Justicia Project was developed in Ontario where firms worked together to develop policies and best practices, such as parental leave programs, mentoring and leadership opportunities, and flexible work arrangements to keep female lawyers in private practice. The Law Society of Alberta and other law societies across Canada are working to further these retention goals and to provide measurable results.

The Law Society of Alberta is advancing the Justicia project in two targeted phases. In Phase One over 13 national firms, already involved in Justicia programs across Canada, extended their participation by engaging their local offices in Alberta's Justicia project. Phase Two, currently underway, offers the opportunity for regional, mid-sized and smaller law firms from around the province to participate.

Participating firms work on developing policies and programs, with the collaboration and assistance of the Law Society, focusing on four key areas:

- Tracking demographics;
- Parental leave programs and flexible work arrangements;
- Networking and business development; and
- Mentoring and leadership development skills for women.

Meetings are held quarterly with the diversity officers of participating firms, and include discussions on how initiatives from the core areas can be developed and implemented. The model programs and policies created through the Justicia project will be shared with Alberta's legal profession as a whole, paving the way for widespread usage.

A key issue for the Alberta Justicia firms is how to assist women who want to return to practice after a leave or other extended absence. At a Justicia event hosted by the Law Society of Alberta in the fall of 2015, Caren Ulrich Stacy, Founder of Legal Talent Lab & OnRamp Fellowship, shared

some practical advice for women returning to the practice of law:

1. Once you know what you want to do, ensure that your social media profiles -- in particular LinkedIn -- are as comprehensive and up-to-date as your resume. Highlight the specific value you bring to whatever you want your 2.0 career to be.
2. Attend trade conferences and educational seminars in the area of law or type of industry you want to enter or re-enter. You need to know the latest trends, buzz words and who's who to get your foot in the door and "talk the talk" when interviewing.
3. When you interview, don't defend or excuse your decision to take a hiatus from practice. Answer the "why did you leave?" question with one sentence and move on. Your focus should be on what you bring to the table and the value you add to the firm (or company) and their clients.

In addition, Stacy provides this helpful checklist best tackled six - 18 months in advance of your return to work:

- Explore home/life decisions (childcare, transportation for commute, parking, reallocate household responsibilities)
- Attend continuing legal education events and seminars
- Look for informal and formal networking opportunities
- Update social media profiles
- Update resume and cover letter
- Consider self-assessments, coaching, and/or re-entry programs
- Review the Law Society rules regarding reinstatement and understand the regulatory steps required by the process
- Talk to other lawyers who have successfully transitioned and ask for their tips

We are excited to welcome Jennifer Winslow from the On-Ramp Fellowship to our Justicia Summit this month to continue the conversation with Alberta lawyers and firms on how to assist lawyers in re-entering private practice after an absence.

For more about Alberta's Justicia Project, visit www.lawsociety.ab.ca.



Cori Gitter is the Director of Professionalism and Policy at the Law Society of Alberta where she oversees several proactive programs including various equity and diversity initiatives. Prior to joining the Law Society of Alberta, she was the Director of Recruitment and Professional Development in the Calgary office of Dentons LLP.

SPOTLIGHT ON CBA CONNECT

CBA Connect is a program aimed at making the CBA more accessible to law students and those who have just left law school.

The three facets of the program are:

- **Connexions** - New young members (less than five years since call) will be matched with existing young lawyers who won't be mentors so much as tour guides - to show them around the CBA and identify ways for them to become involved and make the most of their membership. A pilot program is launching today (Sept. 15) in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario and P.E.I.
- **Connect-Net** - Essentially, everything the CBA.org has to offer online specifically to young lawyers and law students will be found in one place on the website. Phase 1 of the website population process should already be running, with more to be added soon.
- **Connect-U** - CBA will be boosting both its virtual and its physical presence on campus at orientation and at other times during the year in an effort to establish a sustained relationship with students.

SPOTLIGHT ON LEGAL AID BENCHMARKS

In August, CBA Council passed a resolution endorsing proposed legal aid benchmarks developed by the Access to Justice Committee in cooperation with the Association of Legal Aid Plans of Canada, and "encouraging their adoption and promotion with the public and justice system proponents."

These benchmarks are:

1. A National Public Legal Assistance System
2. Scope of Services
3. Service Priorities
4. Spectrum of Services
5. Quality of Services
6. A supported, Collaborative, Integrated Service Sector.

DEATH OF PAULE GAUTHIER



The Canadian Bar Association is saddened by the passing of Paule Gauthier, P.C., O.C., O.Q., Q.C., on September 21, 2016. She served the Canadian legal profession, her country and our Association well during her long and distinguished career.

Paule Gauthier was national President of the CBA in 1992 - 1993, the first female to lead the Association. She was steadfast in her support of gender equality. During her tenure, she presided over the release of the ground-breaking report on gender equality in the legal profession, *Touchstones for Change: Equality, Diversity and Accountability*.

LAW STUDENTS: ENTER A CBA CONNECT ESSAY CONTEST

The Canadian Bar Association's Essay Contests can help you build your profile within the legal community, connect with senior members of the bar, and hone your research and writing skills. And for the best submissions, we are awarding \$250 - \$2,500 in cash prizes. Enter today for your chance to win!

Submission Deadlines: November 20, 2016

Immigration Law: *Founder's Award*

February 28, 2017

Administrative Law: *Paul Smith Memorial Award*

Construction & Infrastructure Law: *The Atrium*

Environment, Energy & Resources Law: *Gowling WLG - David Estrin Prize*

Intellectual Property

Real Property

Health Law

April 30, 2017

Military Law: *Sword & Scale Competition*

June 30, 2017

Competition Law: *James H. Bocking Memorial Award*

For more information on these and other national Canadian Bar Association initiatives and news, visit www.cba.org/Publications-Resources/CBA-News.

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FRONT AND CENTRE

2016 CBA Legal Conference - Ottawa



Supreme Court of Canada Chief Justice Beverly McLachlin speaks at the 2016 CBA Legal Conference opening plenary.



Minister of Justice & Attorney General Jody Wilson-Raybould speaks at the 2016 CBA Legal Conference opening plenary.



Jennifer Ditchburn (l) moderates "Litigating in the Court of Public Opinion" with Jocelyn Speyer (centre), and Donald Bayne (r).



Judy A. Smith, the inspiration behind the hit TV show Scandal, speaks at the 2016 CBA Legal Conference in Ottawa.



CBA National Past President Michele Hollins, QC, MCs the August 2016 meeting of the CBA National Council.



CBA Alberta Past President Steve Mandziuk, QC presents details of the Re-Think Project at the August 2016 meeting of the CBA National Council.



CBA Alberta member Robert Sevalrud is presented with the Edward K. Rowan-Legg Award, recognizing student contributions to the CBA.



Sam Roberts performs at the 2016 CBA Legal Conference in Ottawa.

FRONT AND CENTRE

Around Alberta



2016-17 CBA Alberta President Jeremiah Kowalchuk recognizes outgoing President Wayne Barkauskas at the October 4, 2016 meeting of Provincial Council.



CBA Alberta Executive Committee members Jenny McMordie, Wayne Barkauskas and Maureen Armitage meet with Kent Hehr, Minister of Veterans Affairs and Calgary Centre MP.

Assist Walk for Wellness 2016



Assist Walk for Wellness Calgary - September 22, 2016



Assist Walk for Wellness Edmonton - September 27, 2016



Assist Walk for Wellness Lethbridge - September 22, 2016



Assist Walk for Wellness Red Deer - September 27, 2016

ALBERTA BRANCH NEWS

SECTION REGISTRATION

Section Registration is now open for all CBA Alberta members. Sections are the primary delivery method for professional development at the CBA Alberta, and are an excellent way to meet your continuing legal education needs throughout the year.

To meet the diverse needs of our membership, starting in September of this year we launched two new south sections - Food & Agribusiness and Internationally Trained Lawyers. Both sections can be attended in person at our Calgary office, or via webcast for members located outside of Calgary.

Effective November 1, all section registrations from the previous membership year have been lapsed. This means that any member who has not renewed the section registration for the 2016-17 membership year will no longer receive section communications, and will be required to pay a \$25 drop-in fee should they wish to attend any section meeting.

To complete your section registration, visit www.cba-alberta.org/Sections/Section-Enrollment. If you have any questions about your registration, please contact Linda Chapman (South) at 403-218-45311 or sections@cba-alberta.org, or Heather Walsh (North) at 780-428-1230 or edmonton@cba-alberta.org.

CBA ALBERTA JOB BOARD

Did you know that the CBA Alberta has a job board? Whether you are looking to make a career change, or recruiting for your law firm, this tool is available for you.

Listings are free for members and non-members alike to view. We also offer preferred pricing for all members looking to post a position. In addition to the online Job Board, all job postings are also included in *The Legal Brief*, CBA Alberta's monthly email newsletter.

The job board can be accessed online at www.cba-alberta.org/Publications-Resources/Job-Board. For more information on posting a position, please contact Lee-Anne Wright at communications@cba-alberta.org.



LEGISLATIVE SUMMARY

The Legislative Summary for the spring sitting of the Legislature is now available on the CBA Alberta website. Limited printed editions are also available. If you would like to receive a printed copy in the future, please email communications@cba-alberta.org.

EDMONTON OFFICE MOVE

The CBA Alberta office in Edmonton has now moved to its new location at:

**1501 Scotia Place, Tower 2
10060 Jasper Avenue NW
Edmonton, AB T5J 3R8**

The fax number, phone numbers and email addresses remain the same. *Please note that the location of the Calgary office has not changed.*



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Diversity Section (South)

Diversity is a hotly debated issue that is currently being addressed as a priority goal at all levels of government. In its second year of existence, the CBA Diversity Section strives to provide insight into how issues of diversity affect lawyers in all practice areas and settings, to increase awareness of the importance of and benefits of diversity, including improving the bottom line, and to help develop best practices to improve diversity in the profession.

Join our Section to meet like-minded members who want to advance the case for diversity and improve the representation of all members of the community in the legal profession.

Our past meeting topics have included the following:

- Professor Ronit Dinovitzer presented her research findings on “Early Legal Careers in Comparative Context: Evidence from Canada and the United States”;
- Narmin Ismail-Teja of Western Management Consulting hosted an illuminating workshop about identifying unconscious bias;
- A panel of women lawyers, including Beth Bilson, QC, Acting Dean for the University of Saskatchewan College of Law and representatives from The Association of Women Lawyers, held a very interesting and candid panel discussion about lessons learned from women in the law;
- A panel of in-house counsel spoke on diversity in the business community; and
- Representatives from the Federation of Asian Canadian Lawyers and CBA Sexual Orientation and Gender Identity Community Section provided insights, inspiration and advice from their personal stories.

This year we will continue to fulfill our objectives through section meetings and partnerships and collaboration with other CBA and non-CBA groups. Our September meeting was a joint meeting with the CBA Alternative Dispute Resolution Section and the Aga Khan National Conciliation and Arbitration Board of Canada. We held a very interesting panel discussion on “Mediation in Pluralistic Societies - Experiences in Faith Communities and Cultural Groups.”

Our October meeting will centre on a debate between the two lawyers who authored a Point/Counterpoint article in Law Matters on regulating diversity.

In November, we will host a social mixer in partnership with the CBA Sexual Orientation and Gender Identity Section,

By Rani Wong & Lara Yeung

the CBA Internationally Trained Lawyers Section, and the CBA Equality Committee. This event will bring together groups with similar goals to facilitate networking and the cross-promotion of each other’s causes.

In 2017 we plan to host a variety of panels to discuss diversity issues and best practices in the recruitment and retention of lawyers, including the composition of law school classes, recruiting articling students and foreign trained lawyers, and assessing workplace cultures.

For more information about the Diversity (South) Section, to access section meeting materials, or to register to attend meetings, visit www.cba-alberta.org/Sections/Diversity-South.



Rani Wong practices family law with Soby Boyden Lenz LLP in Calgary. She has a wealth of international experience, having previously practiced in corporate and commercial law in Singapore. Rani is a co-chair of the Diversity (South) Section.



Lara Yeung is a lawyer with The City of Calgary, a CBA Partner Organization, in the Real Estate and Expropriation group. She is an active CBA member, and currently co-chairs the Diversity (South) Section in addition to being a member of the Equality Committee.

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Protecting Solicitor-Client Privilege in Commercial Transactions

By Joe Brennan

Clients are generally aware that it is in their best interest to maintain solicitor-client privilege over certain information. However, in today's fast moving business environment where information needs to be shared with third parties quickly – whether it be in pursuit of a business transaction, discussions with an auditor, disclosure of material information to the investing public or responding to the demands of a regulator – clients are often unsure of how to share that information in the necessary course of business without losing solicitor-client privilege.

This article summarizes: the general principles of solicitor-client privilege at a high level (including when it applies and how it is lost); some exceptions to general principles that allow privileged information to be shared with third parties; and suggestions for establishing and protecting solicitor-client privilege in those circumstances.

Solicitor-Client Privilege

Solicitor-client privilege is a client's right to refuse to disclose any communication, whether it be to a regulator or to an opposing party in litigation or otherwise, which meets the following three conditions:

1. It is a communication between the client and the client's lawyer;
2. It involves the seeking or giving of legal advice; and
3. It is intended to be confidential by the parties.

The privilege covers oral and written communications and extends to materials directly related to the seeking, formulating or giving of legal advice or legal assistance (e.g., working papers).

However, solicitor-client privilege does not attach to advice provided by someone who is not a lawyer or to any advice provided by a lawyer that is not legal advice (i.e. business or personal advice); the advice must be sought from a professional legal advisor in his or her capacity

as such. "Legal advice" includes a legal opinion about a legal issue, and a recommended course of action, based on legal considerations, regarding a matter with legal implications (e.g. the negotiation of a contract, legal public disclosure requirements, submissions to a regulator, etc.).

Note that solicitor-client privilege belongs to the client and can only be waived by the client (including through the client's lawyer or another person upon receipt of the client's informed consent which may be express or implied depending on the circumstances). But once the client voluntarily discloses the privileged communications to a third party, the client is deemed to have waived solicitor-client privilege for those communications and the privilege, insofar as it applies to those communications, is lost.

Common Interest Privilege

Notwithstanding the foregoing, the courts have held that solicitor-client privilege is not waived where privileged information is confidentially shared among parties "sharing a common goal or seeking a common outcome". Examples of situations in which parties may have a common interest include the following:

1. When they wish to see the successful completion of a commercial transaction;
2. When they share a united front against a common foe; or
3. When a fiduciary or like duty has been found to exist between the parties (e.g., in certain types of contractual or agency relations).

In these circumstances, it may be in the best interests of both parties for one or more of the parties to share certain of their privileged solicitor-client information with the other parties (i.e. legal positions or strategies on certain issues).

Deal Team Privilege

Further notwithstanding the foregoing, the courts have held that solicitor-client privilege is not waived where privileged information is confidentially shared between and among members of a team of experts and advisors assembled by the client for the purpose of completing a corporate deal or transaction. This may apply to business people, employees, ex-employees, accountants, financial advisors, investment bankers, and other consultants and advisors necessary to the deal team. The courts have recognized that the expertise of each of these individuals may be necessary for the lawyer to properly advise the client on a particular matter and that communications

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CHOOSE FROM ALBERTA'S TOP MEDIATORS AND ARBITRATORS



continued from p.18

among the lawyer, the client and these individuals should not be inhibited.

Limitations to Common Interest Privilege and Deal Team Privilege

However, note that the foregoing common interest privilege and deal team privileges will only cover communications that meet the three aforementioned conditions for the solicitor-client privilege to apply:

1. They must be communications between the client and the client's lawyer;
2. They must involve the seeking or giving of legal advice; and
3. They must be intended to be confidential by the parties.

Deal team privilege will not cover purely business advice.


Suggestions for Protecting Common Interest and Deal Team Privilege

Therefore, in order to protect solicitor-client privilege for information shared with another party under either the common interest privilege or the deal team privilege, clients should take the following precautions:

1. Address privileged communications to and from legal counsel (don't just copy legal counsel).
2. State in the communications that they are sent to enable the provision of legal advice.
3. Mark communications "privileged & confidential"

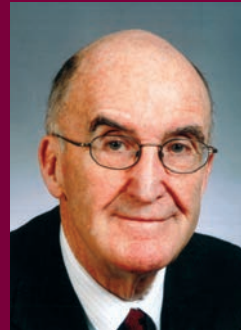
Clients should also take the following additional precautionary steps:

1. Ensure all recipients of the information understand the importance of maintaining confidentiality.
2. Consider having all recipients sign non-disclosure agreements.
3. Limit communication of privileged information to a "need to know" basis.
4. On e-mails, resist hitting "reply all" but rather consider whether each recipient actually "needs to know" the information being shared. Also, for the same reason, be careful when forwarding e-mail chains containing legal advice to anyone.

Every deal and situation is unique and requires some thoughtful consideration in advance in order to set up the right lines of communication for efficiency ensuring all the while that solicitor-client privilege is maintained. 



Joe Brennan is a Partner at Shea Nerland Calnan LLP, where he practices in the areas of business law, mergers and acquisitions, capital markets, corporate commercial law, oil and gas, and securities. He regularly advises clients in respect of ongoing corporate governance, continuous disclosure and regulatory compliance matters.



The Hon. John C. (Jack)
Major, C.C., Q.C.



The Hon. W. Vaughan
Hembroff, Q.C.



The Hon. Ernest
Marshall, Q.C.



Clint G. Docken, Q.C.



Graham Price, Q.C.



E. David D. Tavender,
Q.C.



Harold W. Veale, Q.C.



Robert B. White, Q.C.

North

We're back! Your dynamic duo Section Coordinators (the bold and the beautiful Bonnie Bokenfohr and her enthusiastic, and nearly, but not quite as bold or beautiful, side-kick, David Hiebert) are back for another year of Section Coordinating! We have been honing our Section Coordinator skills all summer and are ready to help your Section executive bring your Section to new levels of awesomeness! With our newly acquired ninja-like stealth Section outreach skills, we have already begun to infiltrate Section meetings with great success! (We were disguised as mild-mannered lawyers, so you may not have noticed us.)

Based on our successful reconnaissance missions to date (and intel we have received from our network of CBA spies), we are pleased to report that our CBA Alberta North Sections are off to a great start! Presentations to date have included topics such as an overview of the debt market, contested adult guardianship applications, after the event legal expense insurance, hot tips from hot mentors, marketing tips for junior lawyers, and enduring powers of attorney and personal directives for blended families. We have also successfully installed a network of hidden (in plain sight) cameras and microphones in the new CBA offices and have been able to spy on a number of the North Alberta Section meetings. (We can share the recordings that we have made of various Section meetings with members of that Section. Section members outside of Edmonton also have the ability to live-stream the

From the desks of Bonnie Bokenfohr and David J. Hiebert

meetings!)

Although we have successfully enlisted the CBA staff into our network of spies, they are not as adept at spy craft as we are – if you are unable to attend a Section meeting, you will still have to tell one of them. A simple email to edmonton2@cba-alberta.org or a call to the office will do, at least until they have mastered how to install tracking software on to your smart phone.

Finally, just a reminder that 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 aspiring barristers, so call the CBA Alberta office in Edmonton soon if you are interested! 📞



David Hiebert 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

The 2016-17 CBA season has begun! Welcome back to all our renewing members and to the new members of the CBA. By now, most of you have confirmed your section registration. For those still unsure which plan is best for you and whether one of the "portfolio" options is best for you, here is a quick recap:

Portfolio Plan: For \$200 in addition to your regular membership fee, you receive \$250 in educational credits. These credits may be used immediately for section registration, towards the cost of CBA (provincial or federal) professional development and other conferences, webinars and virtually anything the CBA offers. You also receive a 3% rebate reward on next year's CBA membership fee.

Portfolio Plus Plan: For \$400 in addition to your regular membership fee, you receive \$500 in educational credits, three "materials only" section registrations and a 5% rebate reward.

Visit www.cba.org/membership for more information on either of these plans!

As reported in our last Cross Section article, two new sections have started up this September: Internationally

From the desks of Andrew Bateman and Sean FitzGerald

Trained Lawyers and Food and Agribusiness. CBA South now has 41 sections covering almost every area of practice and a broad range of emerging policy and practice areas. We, your Section Coordinators, hope you have a rewarding CBA experience for the 2016-17 term. If you have any question about any of the sections or section participation generally, feel free to contact either one of us, the CBA office or a member of your section executive. You may have an interesting or timely topic for a particular section. If so, your section executive would appreciate hearing from you. Finally, the sections could not operate without the dedication, hard work and volunteerism of our CBA members. On behalf of the CBA staff and executive, we thank you. 📞



Andrew Bateman is a partner at Felesky Flynn LLP, where his practice covers a broad spectrum of taxation law including personal tax planning, corporate tax planning, commodity tax, trust and estate tax planning, and tax representation and litigation. Andrew is a past chair of the Tax Non-Specialist Section.



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

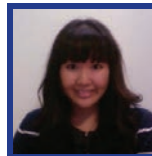
September has come and gone and the University of Alberta Faculty of Law students have once again started off the school year in style! The students are thriving off the diverse ways to get involved through faculty clubs and the CBA is ready to provide yet another year of enlightening events to help pave the path for the future lawyers of Canada.

There are countless ways for law students to hit the ground running this year with many initiatives designed to meet the diverse needs of University of Alberta law students. Bright-eyed 1Ls, as well as experienced returning students, got the chance to register for the CBA and other student groups at Clubs Day this past month. There are clubs for everyone and anyone, regardless of interests. The best part is that the CBA offers a variety of events tailored to the needs of law students hoping to gain information on different areas of law, how to stand out in job interviews, and alternative legal careers. We're excited to bring back our highly sought after event, Meet the Bench, where students get the chance to network with judges in an informal environment. Another popular returning program this year will be the Mentorship program where students are partnered with lawyers over wine and hors d'oeuvres. Students get the opportunity to ask questions, share life stories, and create relationships. On top of our annual programs, this year the CBA is offering students the opportunity to access complimentary webcast

By **Juliana Ho** and **Areezah Jiwa**

section memberships. This gives students access to view meetings when unable to attend in person at the CBA office, thereby creating more convenient methods for getting involved.

As CBA Student Chair, our goal this year is to provide students with the ability to access relevant information without any added stress. Throughout the year, we hope to hear student questions and address them through informative and creative events. The CBA is hosting its annual Welcome Reception on October 17th to inform students of all the benefits the CBA has to offer this year. We are excited to inspire excellence in the talented, accomplished students of the University of Alberta Faculty of Law! 🗣️



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



Areezah Jiwa is the 2LCBA Student Chair at the University of Alberta. She actively volunteers on and off campus through students groups and within the community. This past summer, Areezah went to Dubai to compete at the Jubilee Games, an international sports tournament, representing Team Canada's women's basketball team.

University of Calgary

Another year of law school is under way! Bright-eyed 1Ls roam the halls, cool-headed 2Ls selectively attend classes and well-versed 3Ls count down the days before graduation. This semester started much like any other fall semester would: countless number of networking events, speaker sessions and many free lunches (a student favourite). While 2Ls are ramping up for summer recruitment, it is clear that stress is at an all-time high. While I am also involved in this hectic process, I remind my fellow students that, regardless of the outcome, it is not the end of the world. This process builds character and it is an experience that you will never forget.

Late September, the CBA held their annual Welcome Reception. Students were able to meet the CBA Alberta Executives, sign up for the CBA Mentorship Program, and again, enjoy a free lunch. The CBA Mentorship Program has provided students like myself with meaningful connections. I can recall asking my mentor many questions that I could not ask anyone else. The legal profession is one of the few that actively promotes mentorship of young legal professionals. I urge my fellow students to take advantage of the opportunity to meet new people and to broaden their network.

By **Geeth Makepeace** and **Holly Wong**

Earlier this month, the Diversity and Law Society ("DLS"), a student organization committed to promotion of diversity in the legal profession, held their annual Kick-Off event at the Den. The event was well attended by a number of representatives from the various firms in Calgary. Members were able to engage with like-minded individuals to discuss what diversity means to them, and to consider the ways in which diversity could be enhanced in the practice of law. The DLS, in collaboration with the CBA Diversity Section, will be hosting a panel discussion centred on how diversity fits into the legal recruitment process. More details to follow! 🗣️



Geeth Makepeace is a third year JD/MBA student and Co-Chair of the University of Calgary Law Student Section. Previously, Geeth worked in operations and compliance for a number of major financial institutions.



Holly Wong is second year law student at the University of Calgary, and Co-Chair of the University of Calgary Law Student Section. She currently serves on the Board of Directors of the Servants Anonymous Society. Previously, Holly obtained her MA from the University of Calgary.

Miles Apart

By Marian De Souza, QC

It's Calgary 1995; articling interview; three seasoned litigators are rapidly drilling through the usual interrogation, until one interviewer asks, "Where are you from?" Having recently moved to Calgary, I quickly replied, "Edmonton." The interviewer persists, "No, where are you really from?" The others looked visibly uncomfortable, and quickly redirected the conversation.

Now, I am sure we can debate whether the question was appropriate. I am pleased to say the interview went well; an offer of employment ensued. Perhaps the question was a way to find a connection, rather than place of origin, foreign accent, or colour of skin bearing on the decision at hand. Practically, I was far too focused on securing articles to even consider being offended (remember, this was the early 90's). I won't reveal whether I accepted the offer, in case it exposes the firm. The reality is that I was quite oblivious to being "different."

So what does diversity mean in the 21st Century, and are we there yet? On a recent visit to India, I observed that smart phones are commonplace, where electrical power is not. Is the worldwide web an equalizer? We can befriend anyone around the globe, sharing our lives, activities, and our deepest, darkest secrets. Ivy league experts share their knowledge and wisdom at a click of a button; inventions, cultural, and social phenomena are conveyed in the span of a Ted-talk. So, are cultural, educational, and social barriers breaking down?

Perhaps I am raising more questions than I can answer. The issue came to light once again on my recent visit to Africa. Global Affairs Canada and the Canadian Bar Association invited me to participate in an educational conference for Kenyan judges. I couldn't resist the opportunity to share Canada's experience of helping members of our profession and judiciary cope with personal issues; it was also a chance to return to my birthplace: Nairobi, Kenya, (in final answer to the interviewer's question).

Admittedly, visiting Africa is not as straight forward as the all-inclusive vacay down South. Visits to the travel clinic resulting in a variety of inoculations and vaccinations made this quite clear. But on arrival, the weather (rainy season) was not dissimilar to the hub enroute, London's Heathrow (or Calgary's summer of 2016). Clearly, a side trip to Masai Mara where the airstrip is flanked by water buffalo is not a common landing site. And sure, maneuvering Calgary's construction zones on one's commute is a little less daunting than bypassing riot police on the way to work. Otherwise, Nairobi felt like any other major city.

A visit to provincial court: family and civil, also looked familiar, although there, Family court is filled with children, attending to satisfy the rule that the judge must "lay eyes on the child" before making a decision impacting them. Civil division was familiar, as counsel, armed with diaries, negotiate court dates.

The context of my visit was access to justice for children of Africa, helping the bar and judiciary build resilience against the cases and workload they handle. We began a discussion with bar leaders and the judiciary around personal issues, and

how to prevent compassion fatigue, through peer support. It was against this background that we heard, first-hand, of the challenges Kenyans face: mass poverty, racial wars, high rates of crime, violence and suicide, political, economic and social struggles. Yes, Canada has its challenges; but I couldn't help think that we are worlds apart.

As Executive Director of Assist, what I found interesting is the impact of stress on the human condition. I learned that our experiences of trauma can be different, and yet we may be impacted similarly. The corollary is that we may experience the same trauma and be affected differently. Our response depends on our unique personality and resiliency. So yes, we can be miles apart, different, and yet the same, connected by our humanness.

And being connected is critical. Studies show the primary contributing factor to a mental illness persisting over time, is lack of peer support. Lack of social support trumps childhood trauma and severity of the trauma in prolonging a mental health condition. Seeing all kinds of personal problems affecting our profession, and seeing peer support in action, have shown me the power of shared experience in helping others.

Equally important is that we may share similar backgrounds, physical appearance, and attributes, and still have diverse lives, opinions and attitudes. This means sensitivity to others, such as minority groups, can be cultivated --regardless of our experience.

To me diversity is not just about different backgrounds, nor is our goal to be the same; differences can enrich our shared existence in this vast and varying world we call home. It is about freedom of thought, expression, and political views, and breaking down barriers, at home and abroad, to privileges and rights that equally belong to us all. 🌐



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Marian De Souza, QC, is the Executive Director of the Alberta Lawyers' Assistance Society. Marian is also a past president (2013-14) of the CBA Alberta Branch, and a past chair of the Agenda for Justice and Advocacy Committee.

6th Annual National Pro Bono Conference: Many Voices, One Message

By Nonye Opara and Kendall Moholityn

Pro bono legal service organizations are always looking for ways to better serve those in need, and to enhance access to legal services. The 6th National Pro Bono Conference held in Ottawa on September 28-30, 2016, offered an opportunity for pro bono organizations from across the country to share information and best practices. The Conference, held biennially in a different location in Canada each time, allows pro bono service providers a chance to learn from one another to better serve their clients.

The theme of the 2016 Conference was "Innovations in Action". Several workshops offered attendees the chance

Alberta was well-represented at the Conference. Representatives from Pro Bono Law Alberta, Calgary Legal Guidance, the Edmonton Community Legal Centre, Student Legal Assistance, the Children's Legal & Educational Resource Centre and Pro Bono Students Canada were in attendance.

to learn about models of organized pro bono programming from across Canada, including clinic models, outreach services, courtroom duty counsel programs and medical-legal partnerships.

Speakers from the United States provided insight into developments in pro bono from across

the border. Presentations included information about the use of technology in the provision of legal services, and innovations in law firm pro bono programming in the U.S. Participants had the opportunity to learn about the successes and challenges of these programs.

One highlight of the discussion was the engagement of in-house counsel, government lawyers and retired members of the bar and bench in pro bono service. There are opportunities for these groups of lawyers to become more involved in pro bono service in Alberta, as they are across Canada and in the United States.

Pro Bono Law Alberta and the Edmonton Community Legal Centre presented at workshops about pro bono models.

A National Conference provides many voices, but one strong message: pro bono service remains an important component to the practice of law and the administration of justice. Alberta can be proud of the services provided throughout the province to individuals and non-profits in need of legal assistance. These services are only possible with the incredible volunteer efforts of lawyers, law firms, articling students and law students.

However, there is more work to be done. As pro bono organizations work toward more innovative approaches to service delivery, we encourage lawyers and students to

continue Alberta's strong tradition of pro bono volunteerism. Give back by using your unique skill set. Do what only lawyers can do - provide legal help to those in need. Volunteering has meaningful and positive impacts for access to justice and the administration of justice. And, it feels good! 🙌

PBLA thanks all lawyers, articling students and law students who continually volunteer their time and expertise in various capacities and programs across the province. For more information about getting involved in PBLA's programs and initiatives, contact vlis@pbla.ca.

Get Involved!

Learn about volunteer opportunities with Alberta pro bono organizations.

Calgary Legal Guidance: www.clg.ab.ca

Central Alberta Community Legal Clinic: www.communitylegalclinic.net

Children's Legal & Educational Resource Centre: www.youthlaw.ca

Edmonton Community Legal Centre: www.eclc.ca

Lethbridge Legal Guidance: www.lethbridgelegalguidance.ca

Pro Bono Law Alberta: www.pbla.ca

Student Legal Assistance: www.slacalgary.ca

Student Legal Services of Edmonton: www.slsedmonton.com



Kendall Moholityn, LLB, is the Executive Director of Pro Bono Law Alberta. She is also the Co-Chair of the CBA Alberta Branch Access to Justice Committee.



Nonye Opara is the Program Manager at Pro Bono Law Alberta. Nonye is a graduate of the LL.M program at the University of Calgary's Faculty of Law, and was an active volunteer for both the CCDC and QB Amicus projects prior to joining PBLA.

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Calgary, Alberta

CATASTROPHIC INJURY AND WRONGFUL DEATH CLAIMS

CLE in a Diverse and Changing World

By Jennifer Flynn

Continuing Legal Education in a Diverse and Changing World
For more than 40 years, LESA has been privileged to deliver the bar admission program on behalf of the Law Society of Alberta. This provides a firsthand opportunity to connect with (and learn from) the professionals entering the practice of law each year in Alberta.

Over the past several years, it has been exciting to see increasingly diverse cohorts coming through the bar admission program. Last year we had applicants from more than 70 different law schools – more than half from law schools outside Alberta and nearly one-quarter from law schools outside of Canada. We have also seen a significant increase in students identifying individual circumstances, ranging from medical conditions to complex family responsibilities. These people bring new perspectives and experiences that invigorate the profession – and challenge us to “raise the bar”.

As we embrace these exciting demographic shifts, we are mindful of other changes in law, practice, and legal culture. With increasing complexity in practice today, lawyers and their staff need specific competencies to remain competitive and well-balanced. Extensive educational discovery processes revealed a desire for more education around such complex, but critical, competencies, including practice management, relationship management, and technology. In addition to LESA’s usual slate of substantive law programs, we offer a range of programs targeting these pressing needs.

50th Annual Refresher: Practice Excellence

If you attend only one event this year, we hope that it will be LESA’s 50th Annual Refresher. Our honorary chair is Justice B.A. Browne, with sessional chairs Justice C.M. Jones, Jeffrey Champion QC, Marian De Souza QC, Marie Gordon QC, Leanne Krawchuk, and Jason McCulloch.

In addition to substantive law in four areas (Family, Wills & Estates, Litigation, Transactional), this special anniversary Refresher tackles a range of broadly-applicable critical issues. How fully has your practice embraced signatures and records in a digital age? How prepared are you to manage risk in today’s uncertain world? What does the future of law look like – and what does that mean for you?

Join us in breathtaking Lake Louise from May 7 to 9, 2017 for this once-in-a-career program.

Relationships

In addition to **Being an Excellent Principal** and **Delivering Effective Feedback** (which ran in September), other programs focus on key relationships.

- Attend **Capacity and Influence** on March 1 (Edmonton) and March 8 (Calgary) to explore important issues impacting various practice areas.
- A strong client relationship is essential in many legal practices; join us for **Client Relationship Essentials** this April 18 (Edmonton) and 19 (Calgary).
- **Cultural Competence, Diversity, and Inclusion** runs this April 24 (Edmonton) and 25 (Calgary). Discover how

you can increase your cultural competence skills in an increasingly diverse world.

- **Talent Management** runs May 6 in Lake Louise. Recruit, develop, and retain top talent.

Technology & Law

Technological competence is no longer just a competitive advantage – it is fundamental to legal practice. How are you spending your billable hours? Are you using technology as efficiently as you could? How many hours could your practice save this year with better understanding of technology? This year, LESA has 3 technology-focused programs – each specific to legal practice:

- Attend our half-day **Microsoft® Excel for Lawyers and Staff** on November 15 (Edmonton) and 16 (Calgary) to improve the efficiency of your practice.
- Learn to effectively use PDFs in your practice by attending our half-day **PDF Files for Lawyers and Staff** on November 15 (Edmonton) and 16 (Calgary).
- Discover more about available legal technology and its applications by joining us on February 24, 2017 for the **Alberta Legal Technology Conference**.

Substantive Law

Of course, LESA continues to offer a comprehensive array of substantive law programs designed to keep you up-to-date in multiple practice areas.

Regardless of your area of practice, you will want to join our chair, Justice D. Pentelechuk, and her faculty for Top 10+ (Things Every Lawyer Should Know). Running February 11 (Edmonton) and 25 (Calgary), this program explores how to competently answer the most common questions in various practice areas. 📺

For information about our LESA Library and a full list of programs, seminars on demand, online self-study courses, and publications, visit LESA.org. Stay up-to-date by subscribing to our E-Letter at LESA.org/subscribe.



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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Reform Matters

The Alberta Law Reform Institute advances just and effective laws through independent legal research, consultation and analysis. We operate through the continued agreement of the Law Society of Alberta, the University of Alberta and the Ministry of Justice and Solicitor General. Our operating funding is provided by the Alberta Law Foundation, the Ministry of Justice and Solicitor General and the University of Alberta. Funding in kind is provided by the University of Alberta and the University of Calgary.

ALRI is currently engaged in a strategic planning process. The aim is to outline what ALRI looks to achieve under the next 5-year agreement of our founding parties.

Over the summer we carried out an environmental scan. We conducted an online survey with open-ended questions about law reform. We received 100 responses and are very appreciative that so many members of the profession took the time to comment. We have also conducted twenty-some interviews with internal and external stakeholders.

Key themes from the environmental scan are:

- ALRI's role in advancing better laws in Alberta is well-known
- ALRI's recommendations for legal change are valued for being independent and impartial
- ALRI is recognised for having long-standing expertise in the process of law reform and the flexibility to take on a wide variety of subjects

We also received suggestions as to how we might do things differently in future, such as:

- Broader outreach, including a newsletter
- New approaches to consultation
- Greater clarity in the selection of projects

Many suggestions for new projects were also received. These have been noted and will be added to our project selection process.


We will review the implications of the full scan as we build our strategic plan. If you would still like to provide comments on the future of law reform in Alberta you may do so by emailing lawreform@ualberta.ca.

In addition to preparing a multi-year strategic plan, ALRI is also on track to deliver on its current business plan. That plan targets final reports in the following areas:

- Perpetuities Act: repeal or reform?
- Trustee Act: how best to implement the Uniform Act
- Evidence Act: competence and communication for children and certain adults

By **Sandra Petersson**

We are also on track to publish our report for discussion on property division for cohabiting couples. This topic is also part of the CBA Alberta Branch's Agenda for Justice. ALRI's report will feature the results of our public survey which captured the views of 1,200 Albertans on property division over the summer.

We are excited by the range of information generated by the cohabitation survey. Preliminary review suggests that there is poor public understanding of how the current laws governing cohabitation work - both in establishing a relationship and in dividing property on breakup. However, a common thread is that respondents understood the system to be simpler than it currently is. We look forward to fully analysing the survey results and understanding their impact in shaping legal change. 



Website: www.alri.ualberta.ca

Email: reform@alri.ualberta.ca

Twitter: @ablawreform



Sandra Petersson is the Executive Director of the Alberta Law Reform Institute. She joined ALRI in 2002, having previously held the positions of Counsel and Research Manager. Prior to joining ALRI, Sandra clerked for the Supreme Court of Canada, worked as Executive Legal Counsel to the Chief Justice of Alberta.

estate LITIGATION

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A VIEW FROM THE BENCH

By The Honourable Judge A.A. Fradsham

Aristotle is reported to have said: "Happiness depends upon ourselves." It would seem that Aristotle was having an off-day when he said that. It turns out that "happiness", as with so many things which some of us previously, but foolishly, thought were matters of individual responsibility, falls, in both its creation and management, within the mandate of government.

It was an article on page A14 of the July 2, 2016, edition of the National Post which alerted me to the fact that some governments have kindly taken from their citizens the burden of being happy. The article reported that a state in India has created a "Ministry of Happiness". The state's chief minister was reported to have said, "The state will be made responsible for happiness and tolerance of its citizens..." Consequently, government, the same entity which brought you income tax audits, will now deliver happiness to you. Sounds counter-intuitive to me.

The article reported that the government will now track growth in "gross national happiness". I always thought one combined the words "gross" and "happiness" only to describe movies which portray flatulence as the pinnacle of wit.

As I read the article, I wondered if this was some grand hoax so I checked to see if some other news media had reported on this governmental breakthrough in India. I found that the story was reported in the on-line version of The Times of India. It did concern me that the date was April 1, 2016, but the story was also picked up by The Telegraph in the U.K. with this appearing in the July 1, 2016 on-line version of that paper: "India's notoriously oversized bureaucracy has found a new way to expand - the country's first ministry of happiness, dedicated to 'putting a smile on every face'. The new ministry will be created by the central state of Madhya Pradesh to 'track our growth' in a manner based on Bhutan's concept of gross national happiness..."

On top of that, The Times of India article mentioned that the United Arab Emirates also has a Ministry of Happiness. I checked that out, and the creation of such a Ministry was reported by cnn.com on February 15, 2016. Then I discovered that Venezuela has vice-ministry of "supreme happiness". "A new Vice Ministry of Supreme Social Happiness has been created by Nicolas Maduro, the

Venezuelan president...": the October 26, 2013 on-line edition of The Telegraph (U.K.).

So, I am reasonably confident this is not some great April Fool's Day prank (well, no more so than the creation of any new government department).

It should have come as no surprise to me that the United Nations has also put its oar into these waters. It turns out that there is a World Happiness Report 2016 Update which ranks 156 countries "by their happiness levels". In 2014, Canada was ranked 5th; Switzerland was 1st (I attribute that to chocolate being more popular than maple syrup). In the latest update, Canada slipped to 6th and Denmark leapt from 3rd in 2014 to 1st in the update, with Switzerland falling to 2nd. It would seem that Danish beer makes one happier than Swiss chocolate.

You just know that it will only be a matter of time before some government in Canada decides to take on the role of "happiness" creator and regulator. I foresee the long-form census questionnaire growing by two pages (that won't help improve the level of gross national happiness). There will, of course, be long litigation to determine whether "happiness" falls within provincial jurisdiction (property and civil rights) or federal jurisdiction (the peace, order, and good government residual power), and, happily, that alone will increase the happiness of lawyers and constitutional law professors. ☺



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.

Judicial Updates

COURT OF APPEAL

The Honourable Mr. Justice P.W. Martin (Calgary) elected supernumerary status effective December 31, 2015.

The Honourable Mr. Justice J. Watson (Edmonton) elected supernumerary status effective January 1, 2016.

COURT OF QUEEN'S BENCH

The Honourable Madam Justice B.E. Romaine (Calgary) elected supernumerary status effective January 1, 2016.

The Honourable Madam Justice D.C. Read (Edmonton) elected supernumerary status effective March 1, 2016. April 12, 2016.

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