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# LAW MATTERS


## #MeToo and the Law

## Feminist Perspectives on #MeToo

## #MeToo and Criminal Justice

## Systemic Harassment in Law Firms

THE CANADIAN BAR ASSOCIATION
Alberta Branch

# EDITORS' **NOTE**

BY **JESSICA ROBERTSHAW** & **JOSHUA SEALY-HARRINGTON**

On September 27, 2019, the Law Society of Alberta released its Articling Survey Report (https://www.lawsociety.ab.ca/2019-articling-survey-results/) which, among other things, found that 32% of new lawyers experience discrimination or harassment during recruitment and/or articling. At pgs. 20-21, Elizabeth Aspinall describes the report—in her words, a "modern-day Dickensian comment on the legal profession"—in greater detail, but the 32% finding alone raises troubling concerns about the culture in Albertan law firms, and the extent to which current processes are seemingly inadequate in addressing that culture. The #MeToo movement has served as a catalyst for greater discourse around sexual violence and accountability—could it be making its way to Canadian law firms as well? That subject, #MeToo and the law, is the focus of our latest edition. And we are thrilled with the variety and quality of our contributors.

At pgs. 8-9, Professor Tuulia Law interrogates several facets of the #MeToo movement: how it can be understood as a contemporary manifestation of feminist "consciousness raising" with respect to "the prevalence of sexual violence"; how its use of "survivor" terminology in sexual discourse may exclude certain people who have experienced sexual violence; how #MeToo can be seen as a "return of the victim", where victimhood is mobilized to justify punitive measures; how #MeToo has generated reflections (some productive, some less so) regarding sexual justice; and how, despite our progress, conventional sexual scripts still permeate our courtship rituals. She concludes with a gesture towards transitioning our sexual discourse from one that centres *victimhood*, to one the centres agency (and respect therefor).

At pgs. 10-11, Professor Lisa Silver discusses the overlapping and, at times, conflicting semiotic processes engaged by social movements like #MeToo and our criminal justice system (an overlap also explored by Emma Wilson, at pg. 17, with respect to recent changes in the frequency and reception of sexual assault complaints). Specifically, Professor Silver explores the impact of the #MeToo Movement on jury impartiality, "a core concept of our adversarial system", with constitutional significance. She notes the delicate balance struck by a system that simultaneously demands *impartiality* and *experience*, and illustrates the complexity of striking this balance in three recent Alberta cases—*Fuhr*, *Shirvastava*, and *Way*—where #MeToo and jury bias were at risk of colliding (though in all three cases the applications to challenge for cause were dismissed). Professor Silver also observes our two "courts"—literal (criminal justice) and metaphorical (public opinion)—have distinct consequences, and thus, distinct evidentiary norms and standards which they apply. Contextualized in this manner, Professor Silver argues how #MeToo, "[i]nstead of a banner of bias … can be an emblem for fairness and balance in our system."

At pg. 12, Gail Gatchalian, Q.C. boldly states: "[s]exual harassment is rife in legal workplaces" (a claim seemingly justified by the Articling Survey Report mentioned above). She then goes on to discuss "the largest ever global survey on bullying and harassment in the legal profession", and its troubling findings of systemic discrimination against women, including that 1 in 3 female respondents had been sexually harassed at work, 3 out of 4 cases go unreported, a principal reason for not reporting is fear of repercussions, and—perhaps most surprisingly—workplaces with harassment policies were just as likely to have harassment as workplaces without them. The ineffectiveness of harassment policies, in isolation, leads Ms. Gatchalian, Q.C. to the view that #MeToo is not only about ensuring that firms have harassment policies in place, but further, that "people care about those policies"—in other words, not only a change in *administration*, but a change in *culture*, too.

Lastly, we include articles that explore how we can respond to sexual violence and #MeToo, both theoretically and practically. At pgs. 18-19, we include a conversation between doctoral student Daniel Del Gobbo and our Co-Editor-in-Chief Joshua Sealy-Harrington regarding critical feminist and queer approaches to legal theory and law reform in the context of sexual violence, as well as emerging questions in feminist thought in light of the #MeToo movement. And at pg. 21 we feature the Elizabeth Fry Society's initiative providing independent legal advice for survivors of sexual assault.

We urge all Alberta lawyers—but especially those with managerial roles at firms—to reflect on these articles, consider what is currently being done in your workplace, and take action to ensure that our legal environments are welcoming to lawyers of all backgrounds—a *true* commitment to merit.

**Cover Art:** "Woman with me too sign on hand": iStockPhoto.com/Motortion

## In This Issue



## Contributing Authors

Elizabeth Aspinall
Gail L. Gatchalian, Q.C.
Tuulia Law
James L. Lebo, Q.C.
Ola Malik
M. Jenny McMordie
Jessica Robertshaw
Joshua Sealy-Harrington
Lisa Silver
Stella Varvis
Emma Wilson
Taylor Woolsey

# PRESIDENT'S **REPORT**

BY **OLA MALIK**

Welcome to the start of another CBA membership year!

I am delighted to have stepped into the role of CBA Alberta Branch President at the beginning of September. Please join me in welcoming the entire CBA Alberta Branch Executive Committee - Vice President David Hiebert, Treasurer Bianca Kratt, Secretary Amanda Lindberg, Past President Frank Friesacher and Executive Director Maureen Armitage.

When our CBA membership ratified the new CBA governance structure at our AGM in February, our members voted for much more than just new bylaws – they voted for a forward-looking culture, one that is inclusive, transparent, democratic, and participatory. With those changes, we will see a wave of young, diverse leaders emerge who will steer the CBA in a new direction, towards the future. Bringing new members into our organization is critical for our continued growth and vitality, and I'm looking forward to welcoming the new eight members to the new CBA Alberta Branch Board of Directors to the team.

In the coming months, we will be introducing new ways for CBA Alberta members to engage with the Branch, including our upcoming Annual General Meeting and Leadership Forum taking place in the first half of 2020. We look forward to seeing you there!

So far, it's been a busy year.

On a blustery day in September, I joined the CBA in its first-ever participation in Calgary's Pride March with a banner reading "Justice for All". The CBA was joined in the parade by a number of other private law firm as well, so we had great company. Our thanks to Cassidy Thompson, Colin Flynn and Michael McLaws for organizing the CBA's entry and participation.

The second annual Alberta Access to Justice Week wrapped up at the beginning of October. Throughout the week, the CBA promoted access to justice events in Calgary and Edmonton, Lethbridge, Medicine Hat, and at the University of Alberta. Our Access to Justice Committee co-chairs Dr. Anna Lund and Tim Patterson and all the members of the Access to Justice Week sub-committee did amazing work organizing this important event. You can read blog posts from Alberta's many justice-serving organizations, as well as a recap of the whole week from co-chair Dr. Lund on the Access to Justice Week website at www.albertaaccesstojustice.com.

With a new provincial budget and a Federal election, the CBA's advocacy is focused on the need to properly resource the justice sector. Governments' spending on the justice sector is a measly pittance, accounting for approximately only 1% of most governments' budgets – and that's when times are good! When times are bad, governments cut back on spending in the justice sector, often with the argument that the justice sector isn't an essential service, unlike spending on health care. But spending on the justice sector IS spending on health care, because we know that providing people with access to legal services avoids the $800 million governments spend a year on health care or social assistance for people whose unmet legal needs have snowballed into other, more serious, issues. If only they called us doctors!!!

Now that the new year has begun, I remind all CBA members to ensure that your CBA dues are up to date and that you have renewed your Section memberships for another year. We offer nearly 70 Sections between Calgary and Edmonton, which are the primary channel through which professional development is delivered at CBA Alberta.

If you are active in Sections or other CBA professional development activities, I also encourage you to consider purchasing a Portfolio or Portfolio Plus package. These packages give you up to three complimentary materials-level Section memberships, education credits to use towards the purchase of Section memberships or other PD activities, and a rebate off next year's membership fee based on your total spend throughout the year. More information about your CBA membership, including details on the Portfolio and Portfolio Plus packages are available on our website at www.cba-alberta.org/Membership.

I look forward to speaking with as many of you as I can during my President's year. If you see me at an event, please come up and say hello – I'd love to meet you! If there's anything you'd like to share with me about your thoughts on your experience with the CBA, about what we do well, what we could work on, or how you can get involved, please call, or e-mail me. I hope to hear from you.

BIANCA **KRATT**

of **PARLEE MCLAWS LLP**

has been elected

**TREASURER OF THE EXECUTIVE**

of the Canadian Bar Association Alberta Branch for 2019 - 2020

AMANDA **LINDBERG**

of **MAINSTREET LAW LLP**

has been acclaimed

**SECRETARY OF THE EXECUTIVE**

of the Canadian Bar Association Alberta Branch for 2019 - 2020

# INTRODUCING OLA MALIK **AND THE NEW CBA ALBERTA**

BY **M. JENNY MCMORDIE**

As summer holidays become a distant memory and children are now firmly back at school, the Canadian Bar Association has also begun its new calendar: September 1 marks the turning over of our new executive members at the national and the branch levels. And it is my pleasure to introduce to you both your new President, Ola Malik, and your new CBA-Alberta.

CBA-Alberta represents over half of the lawyers in Alberta. These members come from large and small centres, in-house, government or private practice; in large national firms and small local firms; represent clients on every side of every issue; and have diverse personal characteristics including gender, religion, sexual identity, ethnic background, country of origin, parental or family status, etc. What is best for one member is not the same for another member. And what one member supports passionately another member may not support at all.

We all agree however, in the value of CBA Sections, which are universally appreciated by our membership. We also know that CBA is the voice of the legal profession and because it recognizes the diversity of its members, when it takes a position following internal consultation, that position is respected by the courts, by all levels of government and by the many stakeholders with whom we engage of behalf of members. The organization is therefore challenged to ensure that diverse perspectives are considered at the board level, and to enunciate broad positions which members can take pride in, even if personally they do not always agree on every point.

Following very recent approval of the new bylaws, CBA-Alberta is now governed by 13 dedicated board members, including the existing five-member executive which also includes Vice-President David Hiebert, recently-elected Treasurer Bianca Kratt, Secretary Amanda Lindberg, and our Past President Frank Friesacher. The board will also include eight further members, elected directly by the membership, to fill out a roster with a new diversity and a broader reach across the Province. Our new board will be supported, as always, with the thoughtful and experienced guidance of our Executive Director Maureen Armitage, and the CBA staff in Edmonton and Calgary who make it easy for members to participate in CBA activities whether section meetings, longer seminars, committees, etc.

As I write, we are in the middle of the first election of the new board of directors who will now govern CBA-Alberta. These individuals will help set policy and guide the organization through interesting debates and balancing of various priorities. Our new eight members will include a north and a south member who are not from Calgary or Edmonton, and a north and a south Young Lawyer (under 10 years at the bar). For this initial election, board members will be elected for one or two years, so that in future years the two-year board positions are staggered to ensure both continuity and renewal as some board members retire and new individuals join each year on September 1.

Unlike in years past, the entire membership may run for these additional board positions (subject to geography and years in practice where indicated), and unlike in years past, the majority of the membership is the electorate. In this way, you determine your new CBA-Alberta Board, and the direction of your CBA-Alberta. The changes to our structure respond particularly to members who felt that they would not have a chance to participate because the 5-year executive ladder was more of a commitment than they could offer, or because they did not know how to get into the "exclusive" club from which CBA executive members were drawn. That 24 candidates put their names forward for 8 board positions demonstrates a much higher level of interest than we have seen in past years, and is a truly rewarding response to our new governance structure, particularly given the high calibre of all of the candidates. As a member-service organization CBA-Alberta will be strengthened by this increased participation from members, whether running for the board or participating as members of the electorate.

One of the most passionate advocates for a new governance structure at CBA-Alberta has been our President for 2019-2020, Ola Malik. Ola is a lawyer in the Law and Legislative Service Department at the City of Calgary, where his practice includes regulatory law, *Charter* litigation and prosecutions. He writes frequently on issues pertaining to freedom of expression in public spaces. Ola is passionate about being involved in his community, serves on the boards of various organizations, including Calgary Legal Guidance and the Alberta Civil Liberties Research Association, and is deeply committed to initiatives which seek to make the legal system more accessible and understandable to the public. Ola is also a strong promoter of the Alberta Wellness Initiative's Brain Story Certification which provides detailed science information for those seeking a deeper understanding of brain development and its consequences for lifelong health.

Those who know Ola know that he is not shy to advocate for change or to disrupt the status quo. He has shown himself to be direct, focussed and a clear thinker, and also to have a deep appreciation of the purpose of CBA-Alberta and the needs of its members. Ola is a compelling speaker and is passionate about access to justice. He is a "doer" and gets things done. Ola will, no doubt, meet as many CBA-Alberta members as possible over his year as President, and when you meet him you will find that he is genuinely interested in you as an individual. He likes people and likes to understand them. On a personal note, Ola loves to learn new things and his recent endeavours have helped him develop expertise in trail running, baking the very best chocolate cakes and playing ukulele. He is very active, likes to walk and to ride his gearless bike, and no one comes before his partner, Jennifer, and his lovely daughter, Zalea.

Many of us were privileged to hear Ola speak at recent Council meetings in which he summarized the activities of the board of directors by reading out an executive meeting agenda, which listed important activities, duties issues for discussion, and diverse wants and needs of members. He also informed us all about the results of governance surveys and how CBA-Alberta needed to restructure to be as inclusive of members as possible. For Ola, access to the CBA is part of access to justice, and he has consistently advanced this goal.

Henry Ford once said, "Coming together is a beginning; keeping together is progress; working together is success." The CBA vision has begun with the new governance structure and Board of Directors in place and I look forward with great anticipation to seeing CBA's successes as our new President and Board of Directors guide us over the coming year!

## NOVEMBER

**19:** The Ontario Bar Association presents **AHEAD OF THE CURVE: ESTABLISHING A MEDIATION PRACTICE IN HIGH-GROWTH AREAS.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19ADR06X.

**19:** The Ontario Bar Association presents **REGULATING DISRUPTIVE TECHNOLOGIES: POLICY AND LAWYERING RESPONSES.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19PUB05X.

**20:** The Canadian Bar Association presents **PROCRASTINATION: UNDERSTAND WHAT GETS IN THE WAY.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=na_na19sol04a.

**21:** The Ontario Bar Association presents **MANAGING PARTNER ROUNDTABLE: THE VALUE OF STRATEGIC LEGAL MARKETING POSITIONING.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19LPM12X.

**26:** The Alberta Lawyers' Assistance Society presents **HAND TO HAND GALA FEATURING JUSTICE CLEMENT GASCON.** Calgary, AB. To register, visit http://albertalawyersassist.ca/event/hand-to-hand-event/.

**28:** The Ontario Bar Association presents **LEGISLATIVE SPOTLIGHT: BILL C-92 AND ITS IMPACT ON YOUR PRACTICE.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19ABO05X.



**28:** The Ontario Bar Association presents **PORT OF ENTRY ALERT - INSIGHTS FROM CBSA CHIEFS AND OFFICERS.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19IMM06X.

**29:** The Alberta Lawyers' Assistance Society presents **NEW PARENTS PRACTICING LAW - BUILDING A HEALTHY RELATIONSHIP WHILE RAISING A FAMILY (PART 2).** Bennett Jones, Calgary, AB. To register, visit http://albertalawyersassist.ca/event/new-parents-practicing-law-building-a-healthy-relationship-while-raising-a-family/.

## DECEMBER

**3:** The Ontario Bar Association presents **IMMIGRATION & REFUGEE LAW PRIMER.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19YLD36X.

**4:** The Canadian Bar Association presents **CHANGING YOUR MINDSET.** Live webinar. To register, visit: https://www.cbapd.org/details_en.aspx?id=na_na19sol05a.

**4:** The Ontario Bar Association presents **2019 FEMINIST DEVELOPMENTS IN THE LAW.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19WLF11X.

**5:** The Edmonton Bar Association presents **2019 CHRISTMAS PARTY.** Yellowhead Brewery, Edmonton, AB. For more information, visit http://www.edmontonbar.com/events/.

**6:** The Legal Education Society of Alberta presents **MEDIA TRAINING 101 FOR LAWYERS.** Aspen Conference Centre, Edmonton, AB. For more information, visit https://www.lesaonline.org/event/media-training-101-for-lawyers/.

**9:** The Ontario Bar Association presents **5TH ANNUAL DIVERSITY CONFERENCE: RESILIENCE IN CHALLENGING TIMES.** Live webinar. To register, visit https://www.cbapd.org/details_en.aspx?id=ON_ON19OBA22X.

## FEBRUARY

**5:** The Canadian Bar Association - Alberta Branch and Law Society of Alberta present **THE 2020 DISTINGUISHED SERVICE AWARDS.** Westin Calgary, Calgary, AB. For more information, visit https://cba-alberta.org/Who-We-Are/About-us/Awards-and-Recognition/Distinguished-Service-Awards.

**5:** The Canadian Bar Association - Alberta Branch presents **THE 2020 ALBERTA BRANCH ANNUAL GENERAL MEETING.** Westin Calgary, Calgary, AB. More information will be available early in 2020.

**19:** The Canadian Bar Association presents **THE 2020 NATIONAL ANNUAL GENERAL MEETING.** Live hubs in Calgary and Edmonton. More information will be available early in 2020.

## SAVE THE DATE

**SEPT 23-25, 2020:** Pro Bono Law Alberta presents **THE 8TH ANNUAL NATIONAL PRO BONO CONFERENCE.** Hotel Arts, Calgary, AB. For more information, visit https://pbla.ca/about-us/national-pro-bono-conference/.

# MERRIFIELD V. **THE ATTORNEY GENERAL**

BY **TAYLOR WOOLSEY**

*Merrifield v The Attorney General*, 2019 ONCA 205, represents the first case in which a Canadian appellate court has considered whether a common law tort of harassment exists. In its decision released last week, the Ontario Court of Appeal declined to recognize an independent and new tort of harassment in Ontario. Indeed, *Merrifield* may provide guidance to Alberta courts, which have recently held that the law surrounding the tort of harassment is not fully settled.

The Plaintiff, a Royal Canadian Mounted Police member, brought a civil claim alleging harassment and bullying from his superiors between 2005 and 2012. Specifically, the Plaintiff alleged that following the discovery of his participation in a nomination meeting for the Conservative Party in his riding, the Plaintiff's superiors made unjustified and unwarranted managerial decisions about him based on unfounded allegations. Ultimately, the Plaintiff alleged that he was investigated and transferred, his reputation was damaged, his career was set back, and he experienced emotional distress as a result.

After a lengthy trial, the trial judge of the Ontario Superior Court recognized a new freestanding tort of harassment and concluded many managerial decisions involving the Plaintiff constituted harassment and intentional infliction of mental suffering. The trial judge awarded $100,000 in general damages, $41,000 in special damages and $825,000 in legal costs. The Attorney General of Canada appealed the trial level decision to the Ontario Court of Appeal.

The Ontario Court of Appeal ("ONCA") overturned the lower court's decision and concluded there is currently no independent tort of harassment in Ontario. The ONCA held that case law does not support the existence of a tort of harassment at present. The ONCA declined to establish a new tort, stating that the creation of a new tort is not an exercise of "judicial discretion"; rather, the legislature is best situated to effect such a change. The Court was not presented with any Canadian or international jurisprudence to justify the creation of a new tort nor was the Court presented with a compelling policy reason to recognize a new tort of harassment. Additionally, the Court stated that "[t]his is not a case whose facts cry out for the creation of a novel legal remedy". Further, the ONCA concluded that there was limited rationale for creating a new tort given the existence of the tort of intentional infliction of mental suffering. In other words, the Plaintiff already had a cause of action for the alleged conduct by advancing a claim for intentional infliction of mental suffering.

Lastly, the ONCA found the trial judge erred in finding that the tort of intentional infliction of mental suffering was established on the facts of this case. The Court highlighted the trial judge's palpable and overriding errors of fact-finding, in particular, "ignoring relevant evidence, considering irrelevant matters, and making findings of fact that are clearly wrong." These errors precluded the finding that the tort of intentional infliction of mental suffering was established.

While the current state of the law does not conclusively recognize the tort of harassment, in the employment context or otherwise, we may see Canadian courts recognize a harassment tort in the future. The ONCA clearly left the door open for the creation of such a tort when it stated "while we do not foreclose the development of a properly conceived tort of harassment that might apply in appropriate contexts, we conclude that *Merrifield* has presented no compelling reason to recognize a new tort of harassment in this case [emphasis added]." At present, employers do not have to defend against an action in tort for harassment; however, employers continue to have obligations to ensure a harassment-free workplace pursuant to human rights and occupational health and safety legislation.

*Merrifield* also serves as a reminder that an employer can be liable for significant damages for mental distress under the tort of intentional infliction of mental suffering. Accordingly, the risk of such awards underscores the importance of proper policies, training, investigation and management relating to harassment, bullying or other misconduct.

**TAYLOR WOOLSEY** is a Calgary-based lawyer whose practice focuses on labour and employment law, general litigation and insurance litigation. She is also a volunteer lawyer with Student Legal Assistance, Pro Bono Law Alberta, and is the coach of the University of Calgary Philip C. Jessup International Moot.

# EMPLOYER **HARASSMENT POLICIES**

BY **TAYLOR WOOLSEY**

Employers are required to establish and implement a harassment and violence prevention plan pursuant to last year's amendments to Alberta's *Occupational Health and Safety Act*. Accordingly, failure to have a harassment policy can potentially render employers liable for non-compliance offenses. Counsel should recommend employer clients have a standalone harassment policy in place that includes the following components:

- Clear and plain language definitions of unacceptable conduct (e.g. harassment, sexual harassment, bullying, etc.) – these definitions set the parameters of acceptable conduct in the workplace;
- An overview of the process to make a harassment complaint, including how to make a complaint and to whom – employees should have a basic understanding of what to expect from the complaint procedure;
- Investigation procedures such as how evidence is collected, who acts as an investigator, who has access to an investigation report, etc.;
- Potential consequences for employees in breach of the policy and potential remedies for complainants, including an explanation on who makes these decisions; and
- Explanation of the scope of confidentiality in harassment complaints: employers have confidentiality obligations to the parties of a complaint and the parties have confidentiality obligations to each other.

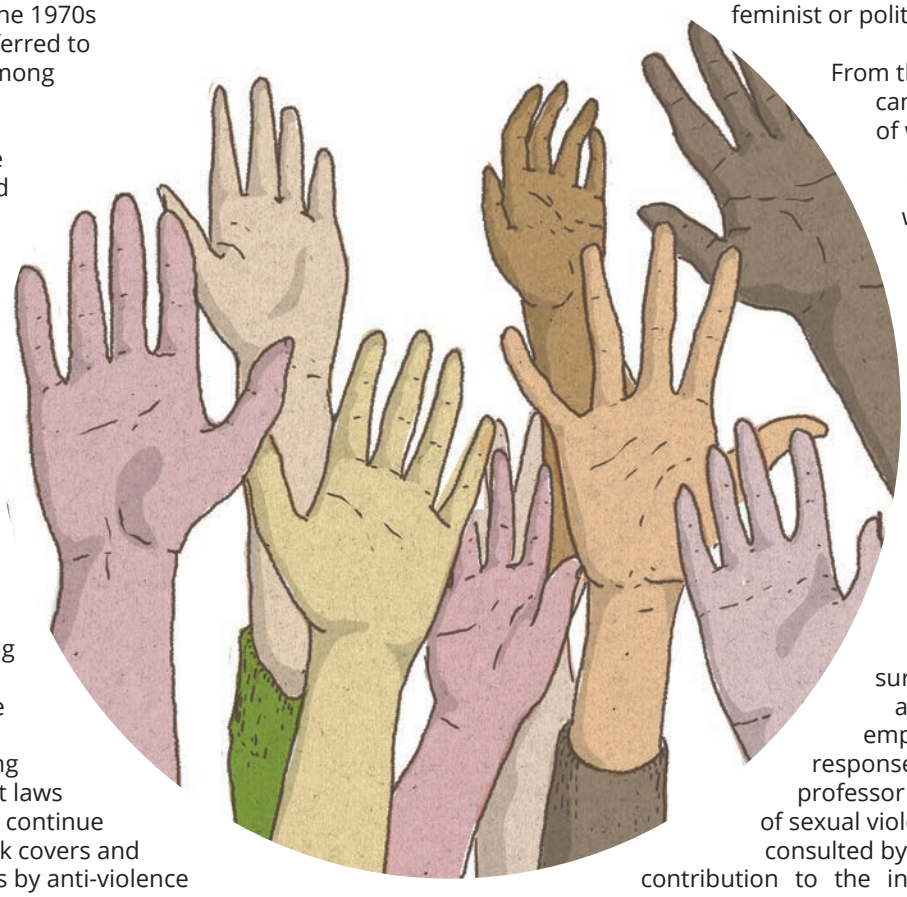
**TAYLOR WOOLSEY** is a Calgary-based lawyer whose practice focuses on labour and employment law, general litigation and insurance litigation. She is also a volunteer lawyer with Student Legal Assistance, Pro Bono Law Alberta, and is the coach of the University of Calgary Philip C. Jessup International Moot.



# #METOO: THE RETURN OF THE VICTIM?

BY **TUULIA LAW**

Contemporary feminists have made some important critiques of the mainstream feminist movement of the 1970s and 80s that is often referred to as the second wave – among them the generalization of women's experience that does not reflect the experiences of racialized and poor women, and relatedly, the ongoing discrediting of unconventional women in criminal justice responses to sexual assault. Yet there remain some striking similarities to earlier feminisms in public and activist discourse around sexual harassment and assault. For example the emotionally arresting image of the woman victim of sexual violence – strategically mobilized by feminists campaigning to change sexual assault laws in the 1970s – is one we continue to see today on textbook covers and in awareness campaigns by anti-violence organizations: she is visibly bruised, filled with terror, alone, and often conventionally attractive and white – a decontextualized, ideal woman victim. And while feminists in the 1970s spread awareness about and shared their experiences of sexual assault through consciousness raising groups, the #MeToo movement can be seen as a similar contemporary feminist project. Perhaps in most ways except its dissemination through online social media, the #MeToo movement resembles consciousness raising insofar as it aims to highlight the prevalence of sexual violence.



As part of this, the #MeToo movement invites first-person accounts to amplify the voices of survivors. Presented as an improvement on the term 'victim' and an important recognition of having gotten over a hardship, the term 'survivor' has been wholeheartedly embraced in contemporary feminism. Although it is meant to emphasize resilience and suggest that sexual assault is something that can be gotten over, I question whether its application in the #MeToo movement and other activist and support contexts is, in practice, any different in meaning than 'victim'. The word survivor is of course important to people in their own sense-making processes but, like victim, it remains a basis on which to claim sympathy and recognition that renders the (self-)labeled an object of pity – a master status that eclipses all other aspects of a person's identity. The preference for this term, and the meanings it suggests, may also exclude or render those who have been sexually victimized but do not wish to identify with this experience vulnerable to criticism as irresponsible feminist or political subjects.

From this perspective #MeToo can be seen as a symptom of what David Garland has called the return of the victim, a cultural turn in which "the interests and feelings of victims… are now routinely invoked in support of measures of punitive segregation" (2001: 11). We have seen this in the proliferation of pseudo-criminal justice responses to sexual violence on university campuses that erode the due process rights of accused persons in attempting to centre survivors at the same time as they allocate far more emphasis and resources on responses than prevention. As a professor teaching on the subject of sexual violence, I remember being consulted by a student group whose contribution to the institution's consultation process called for stronger measures to compel accused who were no longer students to participate in the process (notably in focusing on punitive sanctions they had neglected to consider that this fell far outside of the university's enforcement capacity). Thus, in some respects student activism echoes the #MeToo movement's tendency to call out, shame, and call for punitive consequences for individual men. However, after a few years of seeing these policies in action, students' responses may have become less punitive: I was somewhat surprised to see some students agreeing with my request for more actionable restorative justice options in the sexual violence policy review process at my current institution.

The latter example speaks to the reflection and discourse that #MeToo has generated. On one hand, it has been a reminder of feminism's dark regulatory underbelly – yet another instance in which legal responses are proffered as a solution to an issue rooted in intersecting social inequalities. But on the other hand, #MeToo has generated self-reflection amongst men, and a growing critique of conventional responses. Although it is easy to assume that Twitter is an effective awareness raising platform, I became aware of the former when a male friend told me that even as a bisexual man, #MeToo had made him wonder if some of the encounters he had had with women in his twenties were entirely consensual. Fueled by this self-reflection he disagreed with my suspicions about consent-based education as the preferred prevention tool

for university students – the basis of my ongoing qualitative study of how students mobilize what they have been taught through university prevention efforts in their sex lives, and through which I have begun to see the continuing effects of conventional sexual scripts on even young adults' expectations of sexual interactions. These preliminary findings relate to both of our reactions to #MeToo: reflecting my discomfort with the emphasis on victims/survivors and its perpetuation of women as sexual objects to be acted upon, young women still expect men to make the first move; but aligning with my friend's unsettling second look at some of his past encounters, young men appear to be increasingly concerned about consent, though as with their women counterparts communicating their desires remains awkward.

Amidst the private and public debates about sexual violence and consent occasioned by #MeToo, a 2018 study by the Canadian Women's Foundation found that Canadians' understanding of consent has slightly declined since 2015 – 28% of survey respondents reported they fully understood what it means to give consent in 2018 as compared to 33% in 2015. Though counterintuitive this may be a sign of reflexivity occasioned by public discourse surrounding accounts like that of the woman who felt pressured by American actor Aziz Ansari to engage in sexual activities, similar to the fictional young woman's narration of what was overwhelmingly publicly interpreted as an exploitative sexual encounter in the short story *Cat Person*. In both accounts, the encounter was neither clearly violent nor clearly non-consensual, but the women certainly did not participate enthusiastically. The women's limited sexual agency and capacity for expression in each situation, and also the public response calls to mind critiques by dissident, sex positive feminists in the 1980s that we would do well to remember in the contemporary context of #MeToo: as Carol Vance eloquently argued, focusing exclusively on danger invisibilizes women's sexual pleasure, "overstates danger until it monopolizes the entire frame, [and] positions women solely as victims" (1993: 290). In other words, now that another generation of feminists have exerted considerable energy publicizing the message that sexual violence is prevalent, perhaps it is time to move on from sexual danger to ask, what strategies can we undertake to equip women to be sexual agents and men to respect them as such?

**Opposite:** "Hands of men and women raised...": iStockPhoto.com/Dante1969

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**TUULIA LAW** is an Assistant Professor in the Criminology program of the Department of Social Sciences at York University. Her current research examines sexual assault prevention education delivered at universities by asking students about how they interpret and apply this material in their own sexual interactions.

# SIGN OF THE TIMES: #METOO AND JURY IMPARTIALITY

BY **LISA SILVER**

The #MeToo Movement[1] could not be so prolifically successful without social media.[2] If the burgeoning presence of the internet is a sign of our times, then the hashtag is the sign of a social media event. This character, a metadata tag[3] known to us old schoolers as the pound key,[4] generates the ad infinitum effect so central to the social media ethos. We don't just say it on social media; we create a chain reaction by curating our thoughts and feelings through a hashtag by-line.

The hashtag is not just personal. It can gain momentum and "go viral"[5] by being passed from person to person throughout cyberspace. When a hashtag like #MeToo goes "viral," the tagline becomes a societal lifeline. The #MeToo hashtag becomes a #MeToo Movement, which reveals a pressing and urgent message reflecting who we are as a society. Criminal law, too, invokes societal messaging; it underlines our shared fundamental values by giving a voice to what we care about in society, delineating conduct we find intolerable in a free and democratic society.

But what happens when social media and criminal law collide in the trial arena? The intersections between the two, like cyberspace, can be limitless, but this article engages only a slice of the byte as we consider the impact of the #MeToo Movement on jury impartiality.

Our jury system enjoys a long pedigree having been in use since the Middle Ages in England,[6] a decidedly pre-electronic era. But longevity cannot be equated with foolproof. During many years of use questions have arisen over every aspect of the jury system. In Canada, many of these recent controversies have revolved around systemic racial discrimination[7] embedded in our jury system, eroding the concept of jury impartiality. This concern for fairness has finally created change to the jury selection process through recent amendments to the *Criminal Code*.[8] In choosing a jury, counsel can no longer rely on peremptory challenges, i.e., challenging without cause. Counsel can still, however, challenge a potential juror for cause. Although that regime has been tweaked by the amendments, it is clear, pursuant to s. 638(1)(b) of the *Code* that counsel can challenge a potential juror for not being impartial.

An independent and impartial decision-maker is a core concept of our adversarial system. It finds its expressive voice through s. 11(d) of the *Charter*.[9] That section guarantees the right of an accused person to be tried by an independent and impartial tribunal; a safe place where judges do not pre-judge, where the concept of arms-length justice is armed by the presumption of innocence requiring the state to prove an individual's guilt beyond a reasonable doubt. Jurors, as decision-makers, are also a key part of this constitutional protection.

Impartiality does not preclude the decision-maker from applying their life experiences to a case. Judges must be impartial and unbiased, but they are not expected to be neutral. Decision makers bring their life experiences to their judicial tasks. Similarly, jurors bring their collective common sense to the deliberation process. Even so, we cannot abide decisions based on stereotyping and biases that masquerade as good sense and logic. Such decision making is contrary to the rule of law, being born out of intolerance and personal prejudices. The law requires both judges and jurors to apply the applicable law to the facts as found in the courtroom. A case is to be tried on the evidence heard in court, which is subject to our proof systems. This requires delicacy: to view trial evidence impartially and yet to view the evidence through the lens of experience.

Bias and partiality can also be enhanced and spread by media and publicity, another ground for the challenge for cause. This side of the impartiality challenge does not depend on the potential juror bringing their prejudices to decision making. Rather, a pre-trial publicity challenge is concerned with ready-made influences created by media stories. Still, both kinds of impartiality involve the potential for decision-making based on preconceived notions unconnected to the evidence and the weight of the evidence.

The legal test for challenging jury impartiality considers the out-of-court landscape and the ability of the judge to eradicate bias in court through proper instructions to the jury. These instructions serve to call out biases; to remind jurors of their duty to render a verdict based on the evidence and not on their own personal prejudices or learned biases. Whether this caution actually protects the integrity of the system by persuading an otherwise biased individual to set aside those biases in the name of the law, is another matter. Hopefully, members of the legal system will have a frank discussion about this concern. Change can only occur when issues, however hidden, are recognized and discussed.

In any event, the law presumes jurors are impartial and will abide by instructions. To raise impartiality concerns, such that the judge will permit the potential jurors to be challenged or questioned on their biases, requires evidence. That evidence can come in the form of judicial notice, where the bias is so notorious and well-known, the judge takes notice of the prejudice without proof. Or the evidence can come in the form of testimonial or documentary evidence, which is subject to proof. Whatever the form that evidence takes, a challenge for cause will only be allowed, per *R v Williams*,[10] "where there

1 https://www.canadianwomen.org/the-facts/the-metoo-movement-in-canada/

2 https://en.wikipedia.org/wiki/Social_media

3 https://en.wikipedia.org/wiki/Tag_(metadata)

4 https://www.thefreedictionary.com/pound+key

5 https://www.urbandictionary.com/define.php?term=go%20viral

6 https://www.britannica.com/topic/jury

7 https://theconversation.com/how-racial-bias-likely-impacted-the-stanley-verdict-94211

8 https://www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/c75/p3.html

9 https://laws-lois.justice.gc.ca/eng/Const/page-15.html

10 http://canlii.ca/t/1fqsg

is a realistic potential of juror partiality," which cannot be remediated through proper instructions.

In a series of Alberta cases, *R v Fuhr*[11], *R v Shirvastava*[12] and *R v Way*,[13] jury selection and the Twitter sensation of #MeToo, and other derivative hashtags, such as #IBelieveHer[14] and #IBelieveYou,[15] brought into question the ability for jurors, awash in this wave of social media, to be impartial. In all three decisions, the application to challenge for cause was dismissed. All applications were brought in the context of sexual offences. Generally, the applications leaned on both sides of the impartiality argument. First, it engaged the issue of personal prejudice as the hashtags were a shorthand for unquestionable acceptance of sexual assault narratives. Second, that these sloganized campaigns were so widespread and so readily accessible that the prejudicial effect was pervasive and uncontainable. In other words, this double bias created an atmosphere contrary to the sentiments expressed in s. 11(d) with its focus on trial evidence and burden of proof. It deflected the jury from the ultimate issue of whether this accused committed this offence beyond a reasonable doubt.

The Court in all three decisions disagreed. They found those using the hashtags may have their own personal reason for doing so, but the general objective of the hashtag campaigns was to increase awareness of sexual assault and promote support for sexual assault survivors. Further, there was little evidence of widespread or pervasive bias. There was simply no proof that adding a #MeToo tag to a Tweet implied a biased mentality. In short, there was no connection between social media support for sexual assault reporters and the ability of potential jurors to fulfill their decision-making responsibilities.

Notably, in the *Fuhr* application, counsel referenced comments made by Madame Justice Molloy in the *Nyznik*[16] case, in which she acquitted three police officers of sexual assault. At paragraph 17, Justice Molloy remarked on sloganism in the courtroom, like "believe the victim," having "no place in a criminal trial." Taken out of context, this suggestion appears to support the applicants' concern with potential jurors as purveyors of this message. Read in context, this caution is consistent with all we have discussed thus far; that cases are only to be decided on the evidence introduced at trial and upon application of our standard of proof.

Justice Molloy's caution also represents a different slogan, one for which our adversarial system is known for, which suggests "proof is truth." What we believe is credible and truthful outside of the courtroom cannot be equated with what a decision maker finds credible and truthful within the bounded space of the courtroom walls. Inside those walls, we apply legal principles and rules, put in place to safeguard and protect our principles of fundamental justice. This may run counter to our everyday lives where we accept and reject information based on innumerable factors and reasons – some justifiable and others not. But when it comes to depriving an individual of their liberty, when it comes to labelling someone as a criminal, our legal rules, although imperfect, are there to ensure justice is done.

This article discusses how a societal expression of justice does not necessarily equate with impartiality in the justice process. But, like the huge societal tent that is #MeToo, the Movement is not defined by the potential impartiality tag placed on it by the justice system. Rather, the #MeToo Movement reveals the strength of a grassroots online community as drivers of societal change. Instead of a banner of bias, it can be an emblem for fairness and balance in our system. Recent cases, such as *R v Barton*,[17] reinforce the importance of legal rules that create systemically fair practices for all those affected by the justice system. We want community through social media, and we want fair trials consistent with our constitutional protections. Movements like #MeToo can open the way for conversations about our community sense of justice both in and out of the courtroom.

**LISA SILVER** is an Assistant Professor at the University of Calgary, Faculty of Law, where she teaches criminal law, evidence and advocacy. Lisa also writes on everything that is criminal law on her own award-winning blog at www.ideablawg.ca and produces a podcast series on the *Criminal Code*.

11 http://canlii.ca/t/hr7fq

12 http://canlii.ca/t/hrfhm

13 http://canlii.ca/t/hzvq1

14 https://studybreaks.com/thoughts/i-believe-her/

15 https://www.ibelieveyou.info/full-story

16 http://canlii.ca/t/h59cf%3e

17 http://canlii.ca/t/j0fqj

# #METOO AND ADDRESSING SEXUAL HARASSMENT IN LAW

BY GAIL L. GATCHALIAN, Q.C.

Sexual harassment is rife in legal workplaces. But how can we stop it?

This year, the International Bar Association released "Us Too? Bullying and Sexual Harassment in the Legal Profession," the largest ever global survey on bullying and harassment in the legal profession. The IBA survey heard from almost 7,000 respondents from 135 countries. Some of the findings include the following:

- 1 in 3 female respondents have been sexually harassed at work;
- Sexual harassment victims do not report in 75% of cases;
- Principal reasons for not reporting include the status of the perpetrator and fear of repercussions;
- Individuals at workplaces with policies and training were just as likely to be bullied or sexually harassed as those at workplaces without policies and training

The #MeToo movement has not yet hit Canadian legal workplaces, but it is likely coming.

For example, the large New Zealand law firm Russell McVeagh was the subject of a public independent review because of allegations that male lawyers sexually harassed five female summer clerks. The review found a "work hard, play hard" culture involving excessive drinking, sexually inappropriate behaviour, poor management, and a culture of bullying and fear of speaking out, as well as a phenomenon of women lawyers leaving before partnership. Sound familiar? This could describe many Canadian legal workplaces.

Legal regulators are preparing for what is likely to be an increase in complaints about sexual harassment on the part of lawyers.

In its most recent report, the Ontario Discrimination and Harassment Counsel program—which provides services to individuals who have concerns or complaints about discrimination or harassment by lawyers or paralegals licensed in Ontario—described some of the complaints it had received about workplace sexual misconduct by lawyers:

> [S]exual harassment, including verbal harassment; sexually explicit harassment and comments; persistent unwanted contact outside of work, including one conviction for criminal stalking; sexual advances and persistent pressuring of complainant(s) for sexual relationships; disparaging women in front of colleagues; physical sexual harassment; and the employer's failure to respond appropriately when complaints of harassment were raised.

The Canadian Bar Association has been working to address sexual harassment in legal workplaces.

In 2015, the CBA passed a resolution on Sexual Harassment in Canadian Workplaces, resolving that the CBA "urge federal, provincial and territorial governments, Canadian law firms and other Canadian workplaces take active steps to prevent sexual harassment and sexual assault in their workplaces; and create and provide accessible, safe and non-threatening reporting channels for sexual harassment and sexual assault."

However, the question remains: If workplaces that have sexual harassment policies are just as likely as workplaces without such policies to have sexual harassment (as the IBA survey found), what is the best approach to redressing systematic problems relating to sexual harassment in law firms?

What seems clear is that #MeToo is about so much more than having policies in place. It's about ensuring people care about those policies, and about ensuring they mean something when contravened. It's about changing the culture, in a profession that has historically been slow to adapt to change.

In 2017, the CBA National Women's Forum released a free podcast called "Not Just a Bystander," which addresses why sexual assault and sexual harassment happen in the first place, what sexual assault and sexual harassment mean, legally, and what can we as lawyers can do to fix this problem.

The Nova Scotia Branch of the CBA formed a Sexual Harassment Work Group in 2018 to focus on the development of bystander intervention training to address sexual harassment in legal workplaces. Their goal is to create culture change, to encourage everyone in the workplace to take on the responsibility of addressing sexual harassment, and to take the burden off victims of sexual harassment, who, for understandable reasons, are reluctant to formally complain.

The IBA report encourages the profession to create networks to discuss the issues of bullying and sexual harassment and to share best practices and insights. If you have ideas to share with me, or would like to know more about my work in this area, I would love to hear from you.

**GAIL L. GATCHALIAN, Q.C.** is a partner at Pink Larkin's Halifax office, where she practices employment, human rights, labour and constitutional law. She is a past chair of the CBA National Labour & Employment Law Section, and is the Past President of the CBA Nova Scotia Branch.

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Lisa A. Silver
Sherry Simons
Carolyn E. Simpson
Michelle Simpson
Bradley Sinclair
Shanelle Sinclair
Ashvin R. Singh
Leticia Siu
Jimmy Sladek
Katie Slipp
Phyllis Smith, Q.C.
Steve Smyth
Ronald Sorokin
Angela E. Springate
Amanpreet Sran
Rachel St. John
Daniel C. Stachnik
Charma T. Stang
Lisa Statt Foy
Deanna Steblyk
Sharon Stefanyk
Elizabeth Stewart
Gwendolyn J. Stewart-Palmer
Nikki Stewart-St. Arnault
Claire Stilwell
Stephanie Stimpson
Paul V. Stocco
Tracey D. Stock
Piotr Strozyk
Andrew F. Sunter
Jeff Surtees
Sean Sutherland
Cassandra Sutter
James A.T. Swanson
Joshua Switzer
Jennifer Sykes
Chastine Taerum
Francis Taman
Britt Tan
Benjamin Taylor
Mosi Taylor-Cole
Christina Tchir
Irfan Tharani
Brian Thiessen
Jeffrey Thom, Q.C.
Anita Thompson
Chidinma Thompson
Mike Thorne
Tara Tiefenbach
Filippo Titi
Dustin Tkachuk
Tyler Tollefson
Peter Tomic
Maia Tomljanovic
Susy Trace
Brad Trefan
Thong (Tom) N. Trinh
Aleksandra (Ola) Tundak
Megan Tupper
Anna Turcza-Karhut
Jocelyn Turnbull Wallace
Shad Turner
Brett Turnquist
Matthew Turzansky
Natalie Tymchuk
Stephanie Uhlich
Jason M. Unger
Ashley Urch
Brian A. Vail, Q.C.
Robert C. Van Walleghem, Q.C.
Gordon VanderLeek
Moira R. Váne
Emily Varga
Stella H. Varvis
Rebecca Veinott
Ronaliz S. Veron
Peter Vetsch
Erin Viala
Shyne Victoria
Christine Viney
Faiz-Ali Virji
Jenna Vivian
Mike Vogel
Ian Wachowicz
Michael Waite
Iain Walker
Jocelyn Turnbull Wallace
Janice Walsh
Brianna Wartman
Rod Wasylyshyn
Jeff Watson
Laura Watson
Denise Weeres
Brittany Weikum
Sylvie Welsh
Cristina R.C. Wendel
Russell F. Weninger
Bryan G. West
Kent West
Michelle Westgeest
Jay White
Nathan White
Stephen Whitehead
Ken Whitelaw
Riley Whitlock
Gareth Williams
Jayme Williams
Ruth R. Williams
Arthur Wilson, Q.C.
Danielle Wilson
Desiree Winters
Jeffrey D. Wise, Q.C.
Chris Wolfenberg
A. Michele Wolowidnyk
Adrienne Wong
Alice Wong
Rani Wong
David Wood
Susan L. Wood
William Woodhead
Karen J. Wyke
Christopher Yang
Kamal Yassin
Tera L. Yates
Jo-Anne Yau
Lara Yeung
Christopher Young
Nerissa Young
Marc Yu
Patricia G. Yuzwenko
Amanda Zalmanowitz
Kevin L. Zemp
Katherine Zhang
Sandy Vander Ziel
Dane Zobell
Marita Zouravlioff
Carol M. Zukiwski

# #METOO AND **SEXUAL ASSAULT PROSECUTIONS**

BY **EMMA WILSON**

For many clients accused of sexual assault, the question that weighs most heavily on their mind is "how could this happen?" How is it that an accusation levelled against them from one person can have effects that ripple through every aspect of their lives, and how is it that charges can go forward after only one person's version of events is heard?

In order to understand how we got to this point, it's helpful to know something about the procedural aspects of sexual assault charges and some of the historical hurdles to sexual assault investigations.

Oral testimony is usually the best evidence that Crown Counsel has to prove their case. Indeed, most sexual assault cases do not turn on physical evidence. Either the results from a forensic investigation were unclear or inconclusive, the complainant did not consent to a medical examination or the alleged assault did not involve any actions that would transfer DNA. In cases of historical sexual assault, the events in question happened so long ago that any forensic evidence that did exist is no longer available.

Further, even when there is forensic evidence, there are often multiple explanations available for its existence. The backbone of the Crown's case is almost always going to be based in oral testimony. This means that a sexual assault trial is typically decided based on an assessment of the credibility and reliability of the complainant's statement. This does not mean that just anyone can say anything and get a conviction. It does, however, mean that allegations of sexual assault, whether they are corroborated or not, carry significant weight.

Historically, the victims of sexual assault have faced an uphill battle in getting anyone to believe them (including police, Crown Counsel and judges) and have had their credibility undermined on what are now understood to be irrelevant issues, such as how many people they had sex with in the past or what they were wearing on the night in question. The law evolved in order to address this and encourage more victims to come forward. The changes in law took decades and sexual assault law is still evolving to deal with this ongoing social issue. It does, however, mean that defending someone accused of sexual assault requires a high level of focus and carefully crafted cross-examination that gets at the root of the issue without being derailed by focus on impermissible subjects.

It is important to know that many of the changes to sexual assault law came about either before or concurrent to the emergence of the #MeToo movement in 2017. What did change with #MeToo, however, is that the number of victims coming forward increased,[1] and the state's response to allegations of sexual assault seems to have become more rigorous. In short, a complaint that might not have been made two years ago is now more likely to make its way to the police, and the police are more likely to respond with a thorough investigation than they were in the past.[2] Crown, similarly, may be more likely to approve charges.

An accusation of sexual assault, with or without corroboration, will have a serious impact on the accused person and can have lasting legal consequences. With the advent of #metoo and an increase in reporting, it is imperative that criminal defence lawyers stay up to date with the recent changes in legislation and case law to avoid all-too-common pitfalls in defending their clients against an accusation of sexual assault.

**EMMA WILSON** is an associate at Acumen Law in Vancouver, where she practices primarily in criminal and administrative law. While in law school at the Peter A. Allard School of Law, she was an active volunteer at the Law Students' Legal Advice Program, eventaully serving as the Executive Director.

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1 https://www.thecanadianencyclopedia.ca/en/article/metoo-movement-in-canada#MeTooandSexualAssaultReporting; https://www.ctvnews.ca/canada/after-metoo-canada-sees-sharp-increase-in-sexual-assault-complaints-1.4168894; https://www.theglobeandmail.com/canada/article-canada-experiences-sharp-increase-in-sexual-assault-complaints-in-wake/

2 On fewer police reports of sexual assault being unfounded, see https://www.cbc.ca/news/politics/sexual-assault-unfounded-stats-1.4757705; On the RCMP and other agencies reclassifying previously "unfounded" cases, see https://www.cbc.ca/news/politics/unfounded-sexual-assault-rcmp-police-1.4449342; On police agencies revising their policies based on previously unfounded cases, see https://www.thespec.com/news-story/9040974-70-per-cent-of-unfounded-hamilton-sexual-assault-cases-closed-incorrectly/; https://www.canada.ca/en/department-national-defence/news/2018/11/military-police-launch-sexual-assault-review-program.html; https://www.journalpioneer.com/news/local/unfounded-cases-of-sexual-assault-declining-on-pei-347921/.

# DANIEL **DEL GOBBO**

BY **JOSHUA SEALY-HARRINGTON**

For this edition's "Unsung Hero" column, I sat down with Daniel Del Gobbo, an S.J.D. candidate at the University of Toronto Faculty of Law. His research explores feminist contestations over the use of alternative dispute resolution and restorative justice in campus sexual violence cases. I met Daniel last fall when he was a visiting scholar at the Center for Gender and Sexuality Law at Columbia Law School. As a Trudeau Scholar, CBA Viscount Bennett Fellow, and SSHRC Doctoral Fellow, Daniel is, without a doubt, a rising star in Canadian legal academia, and an unsung hero engaging with critical feminist and queer approaches to legal theory and law reform, including discussion regarding this edition's theme: the #MeToo movement.

DANIEL **DEL GOBBO**

**Acknowledging the breadth of this question, what are your thoughts on whether #MeToo has had a net positive or negative impact on societal discourse around sexual misconduct and sexual expression?**

Overall, the #MeToo movement has had extremely positive impacts. The #MeToo movement confirmed that which many of us have known for years: sexual violence is not a rare or isolated phenomenon, but a pattern of sexual abuse that has beat down upon women and some men for decades. By the bravery of survivors who stood up in solidarity, identified a problem, and publicly named their attackers where the courts of law had failed them, a reckoning was finally upon us. It was a transformative moment in popular feminism. There had emerged a cultural zeitgeist that regarded the severity of the problem in a profoundly different way than our society had before. If there was ever a policy window – a moment in our country's history to mobilize support for workable solutions to end sexual violence once and for all – that window had opened.

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

**How do you think #MeToo has reshaped discourse surrounding ADR in the context of sexual misconduct?**

In my view, the #MeToo movement has served as a catalyst for important and challenging conversations about the realities of sexual violence. However, the political intensity of the movement has legitimately divided feminists about how the legal system can and should to respond to the problem, including whether ADR and restorative justice may be appropriate in some cases.

**Can you elaborate on that divide? I think it's a critical question confronting feminist discourse around #MeToo.**

Psychically and affectively, many feminists responded to the fact of yet another incident of campus "rape culture," yet another report of sexual harassment and assault, yet another person who bravely stood up to identify herself as a survivor in the #MeToo movement. The revelations were totally consuming. Many of our reactions were to feel some combination of profound sadness, interminable frustration, sapping fear, and increasingly sheer rage. These collectively generated public feelings led many of us to formulate swift and impassioned law and policy responses that ignited and inflamed our political positions on these issues. I would argue that feminist law and policy debates in the #MeToo movement have been consumed by a particular orthodoxy about what "taking sexual abuse seriously" requires as a matter of legal and political process. Generally speaking, that is naming, blaming, and shaming as a precursor to demanding criminal justice remedies or institutional discipline. These formalistic and legalistic trends within the #MeToo movement have entailed a principled resistance to, and sometimes categorical rejection of ADR and restorative justice as politically "unfeminist." I think this view is short-sighted.

**Multiple commentators have noted the cyclic nature of sex discourse, e.g. "Sex Wars 2.0", #MeToo being the latest "Sex Panic", etc. And this cyclical nature seems to suggest that our discourse around sexuality follows a trajectory of pendular swings, oscillating between complacency and overcompensation. Ideally, do you think these cycles should be avoided, or do you view them as a necessary catalyst for change in response to political complacency?**

I cannot pretend to know the answer to this question with any certainty, but I think that having a multiplicity of feminist and other critical voices in the conversation about sexual justice is extremely useful. It's difficult to imagine a productive negotiation of sexual justice that lacks some meaningful consideration and principled give-and-take between conflicting feminist positions. This is not to say that conflicting feminist views about the #MeToo movement have equal merit, necessarily, but simply that each side's views may be enhanced by recognizing the contingency of our social and cultural frames of argument.

**The #MeToo debate is often mischaracterized, in my view, as having "two sides", e.g., women's safety vs. men's due process. Is there a middle ground here that better reflects the nature of the problem?**

This is a false choice. Feminists on both "sides" of the #MeToo debate, as you've framed it, should be equally committed to the causes of promoting women's safety and combatting the problem of sexual violence in Canada. However, these feminist commitments can and should be pursued in a manner consistent with feminist commitments to procedural fairness in administrative procedure as well as the presumption of innocence and the state's burden and standard of proof in criminal justice – what American legal commentators have called "due process" in this context. Precisely how feminists should strike the balance between these commitments remains an open legal and political question, but I think it's unhelpful and potentially dangerous to frame them as "either/or" propositions.

**What strikes you as the next emerging questions of sexual justice worthy of further exploration in light of the #MeToo movement?**

The #MeToo movement raises so many interesting questions of sexual justice, but I've been thinking a lot lately about the role of public emotions and affect in feminist legal responses to sexual violence.

On the one hand, emotions have been a particularly effective means of political mobilization and cultural belonging for many survivors of sexual violence as well as survivors' families and other intimates in progressive social movements. Emotions have made it possible for many women to speak as a class that is linked and identified through a shared ethical commitment to eradicating sexual violence on the basis that many women's "anger" or "trauma" characterizes the harms that have followed from men's sexual victimization of women throughout history.

On the other hand, it strikes me that parts of the #MeToo movement have effectively compelled survivors to confess their sexual victimhood to produce transformative testimony and therefore become part of the "solution." As I explained previously, mainstream campaigns against sexual violence have tended to use naming and blaming and shaming as a precursor to demanding punitive and criminal justice remedies as a primary response.

I think it is often easier to moralize than to historicize about sexuality, easier to punish a few "bad apples" who have abused their power advantage in sex than to challenge the structural conditions which have distributed power unequally in our society, often but not always along gender-based lines, which can feel more complicated and less immediately gratifying to many of us. How might feminists negotiate the paradoxes of sexual violence in a less exclusionary and more efficacious fashion than we have done in the past? How might emotions and affect be more productively and redemptively directed toward challenging the structural conditions of gender inequality in our society without recourse to punitive and criminal justice? How might feminists account for the lingering effect of our traumatic histories in the #MeToo movement while at the same time seeking to prevent, address, or resolve complaints of sexual violence in the future, whether by law or otherwise?

**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 communications@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.

**JOSHUA SEALY-HARRINGTON** is a doctoral student at Columbia Law School and public law lawyer at Power Law. His research and practice centres on marginalized communities, particularly sexual, gender, and racial minorities. He is a former Supreme Court of Canada and Federal Court law clerk.

# 2019 ARTICLING **SURVEY RESULTS**

BY **ELIZABETH ASPINALL**

*Privilege*
*: a right or benefit that is given to some people and not to others*
*: a special opportunity to do something that makes you proud*

*Merriam-Webster English Language Learners*

Like many others, law appealed to me because I care deeply about people. I consider it a privilege to work for clients, work with colleagues in resolving clients' legal problems, teach law students, and now — as a Practice Advisor and Equity Ombudsperson -— advise and assist other lawyers. Being a lawyer is indeed "a special opportunity to do something that makes me proud". It is also a particularly special benefit.

Today, that privilege and pride is undermined by the fact that in Alberta, one third of articling students and young lawyers reports experiencing harassment or discrimination during articling recruitment, articling, or in the early years of practice.

In the Articling Student Survey conducted by the Law Society in May and June 2019, students and lawyers called to the Bar in the last five years answered questions about their experience in the articling recruitment process, in articling, and in practice. In addition to questions about how prepared they were for practice after articling, they also answered questions about what resources are available to them, and whether they have experienced discrimination or harassment. Enough students responded to the survey that the sample was representative and the results statistically meaningful.

The statistics revealed that reporting of discrimination and harassment are problems across all firm sizes. These demographics track with the Law Society's overall membership proportions in relation to firm size and urban/rural setting.

In addition to the concerning percentage of students who report experiencing discrimination and harassment, most students and young lawyers report that they are unaware of resources available to address discrimination and harassment. In any event, they believe that no action is taken when discrimination and harassment are reported. Without action by those with the power to address the conduct, the resources are potentially meaningless. The fear of reprisal and potential loss of a student's articling position compel students to stay silent when they are discriminated against or harassed. In short, they just want to get through their articles and will put up with discrimination and harassment so that they can get their licenses.

These are people we know, not unknown people whom we can somehow dismiss as statistics, numbers or unknown people in far-flung corners of the world. These are the young people (mostly women, but also men) who work in the next office and down the hall, people with whom we enjoy lunch, share laughs, and share the stresses and joys of practice. These are our friends and our colleagues, and they are the future of our profession.

Their responses read like a modern-day Dickensian comment on the legal profession. Students are asked to complete personal tasks for principals that are unrelated to practice and that are sometimes demeaning, workplaces are toxic, sexual overtones accompany tasks which students are asked to complete, partners do not believe students who complain about harassment or discrimination, or even if the report is acknowledged as credible, "rainmakers" are protected. The prevailing attitude appears to be that those who bring in work should be protected, whatever the cost. If this was ever acceptable, it is not now.

Students and lawyers alike are legitimately looking to the Law Society, asking what can be and is being done to remedy this situation. The Law Society's immediate response is essentially five-pronged. The Law Society is:

1. Establishing a Practice Foundation Advisory Committee

# ELIZABETH FRY SOCIETY OF EDMONTON: **INDEPENDENT LEGAL ADVICE FOR SURVIVORS OF SEXUAL ASSAULT PROJECT**

BY **JESSICA ROBERTSHAW**

Since December 2018, the Independent Legal Advice (ILA) for Survivors of Sexual Violence Project based out of the Elizabeth Fry Society of Edmonton, has been providing free legal services to survivors of sexual violence. Funded by the former Alberta Status of Women Ministry, survivors are given 4 hours of free legal assistance to provide them with an understanding of their legal options, in civil, criminal, family, and human rights contexts. What makes this program particularly unique is that it is open to any Alberta resident over the age of 18 who has experienced sexual violence, regardless of gender, sexuality, citizenship and income.

Toni Sinclair, the executive director of the Elizabeth Fry Society of Edmonton, explained that the goal of the program has always been to advance the dignity and worth of all survivors of sexual violence by believing and empowering them. By shifting power back to survivors and providing them with the support and information they need, Sinclair noted that we also make progress in eliminating sexual violence in our communities.

Lawyers who participate in the Project are provided with three training sessions in trauma informed practice, intersectional and gender-based approaches and Indigenous historical trauma. Feedback from the Project has been very positive with many clients reporting that they felt more knowledgeable, more comfortable, and more prepared to make decisions that were right for them.

Currently, the Project is recruiting lawyers of all genders from all areas of practice to provide legal services in Northern and Central Alberta, particularly in Fort McMurray, Grande Prairie, Whitecourt, Peace River and Slave Lake. Sinclair understands that these types of services are often centralized and difficult to access for those in more remote communities, which is why the Project is working to expand its services into those areas.

If you are interested in providing services as a part of the Project, or would like more information, please contact Kayla McLachlan, Program Coordinator at legal_advice@efryedmonton.ab.ca.

**JESSICA ROBERTSHAW** is a Calgary-based lawyer with a diverse civil litigation practice at Field Law. In addition to her role as co-editor of Law Matters, Jessica is also on the Board of Directors of the West Village Theatre and coaches junior high school students in debate.

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comprised of members of the profession and Law Society staff. This Committee will link the Law Society to the legal community, will develop recommendations to address immediate issues uncovered in the survey and improve the future of articling. It will also promote further engagement with the profession.

2. Launching a Respectful Workplace Model Policy. The policy will incorporate obligations under the occupational health and safety, and human rights legislation, as well as lawyers' particular obligations under the Code of Conduct. It will be accompanied by materials to provide context for the model policy, and will include guides for complainants and firms. Over the coming months, the Law Society will also be conducting in-person training sessions in Calgary and Edmonton about the model policy, as well as webinars. The Law Society is also partnering in the launch of the policy with the CBA.

3. Investigating mandatory training of principals. Ultimately the Law Society intends to develop recommendations around such training.

4. Developing a proposal for safe reporting to the Law Society regarding harassment and discrimination.

5. Working with the Federation of Law Societies to amend rule 6.3 of the *Code of Conduct* (the harassment and discrimination provisions of the *Code*). The amended provisions will aim to clarify: what constitutes harassment and discrimination; that lawyers should report harassment and discrimination when they see it happening to others; and that conduct is not limited to occurrences "in the office". That is, as lawyers, we have an obligation not to harass or discriminate against anyone at any time.

The reality is that these steps are only the beginning of what will be the long and often difficult process of implementing a systems change within our profession. The ultimate goal will of course be the fundamental altering of a culture that presently appears callous of the particular vulnerability of students and junior lawyers.

Certainly it is clear that the Law Society must lead the profession through the necessary changes. It will do that. Each of us, each law society member, and each firm or in-house department, has an important role in recognizing the needed changes, and working to implement them. Each of us must recognize the problems and, when necessary, have difficult conversations with our colleagues to address the problems. Each of us must work together to bring about needed change.

**ELIZABETH ASPINALL** is a Practice Advisor and the Equity Ombudsperson at the Law Society of Alberta. Prior to joining the Law Society, she practiced at JSS Barristers in Calgary. Elizabeth is a member of the CBA Alberta Editorial and Equality, Diversity & Inclusion Committees.

# THE END OF **ADVERSE POSSESSION?**

BY **STELLA VARVIS**

Squatters. Land rustlers. Property pirates.

No matter how you describe it, the law of adverse possession suffers from a public perception problem. Many Albertans believe that adverse possession is an affront to their real property rights, or that that it simply shouldn't exist within a Torrens land titles system. Despite the fact that adverse possession has existed in Alberta since the province's inception — and that successful cases are relatively rare — the idea that adverse possession rewards a deliberate trespasser, and penalizes a registered owner who is forced to give up some of their titled land without any compensation, continues to persist.


**Our Report and Consultation**

In October 2017, the Alberta Law Reform Institute (ALRI) was asked by the government of Alberta to review the law of adverse possession, including how best to abolish it. Our current project builds on ALRI's previous work in this area, leading to our Report for Discussion #33, Adverse Possession and Lasting Improvements to Wrong Land (https://www.alri.ualberta.ca/images/stories/docs/RFD33.pdf).

**What We're Proposing**

The Report for Discussion attempts to answer this central question: if adverse possession were to be abolished in Alberta, then how do we ensure that the underlying disputes between registered owners and occupiers are resolved efficiently and effectively? Our proposed recommendations include the following:

1. **No title or interest in land may be acquired by adverse prossession after the proposed amendments come into force.**

   Currently, a person who has occupied another's land for at least 10 years can bring a claim to quiet title through adverse possession. The occupation must be exclusive, open, notorious, and continuous.

   Abolishing adverse possession would not affect successful claims to quiet title that have already been granted. Pending claims – those actions commenced before the amendments come into force – would also be allowed to proceed. But if an occupier had a potential adverse possession claim and did not commence an action before the amendments came into force, then the claim could not be brought.

2. **Claims to recover possession of real property can be brought at any time.**

   Currently, claims to recover possession of land are subject to a 10-year limitation period that runs from the time the registered owner is dispossessed of the land. Effectively abolishing adverse possession requires that such claims can be brought at any time, meaning that they ought to be exempted from limitation periods altogether.

   We recognize that excluding claims to recover possession of land from the *Limitations Act* seems, at least initially, a bit unusual. However, it is our position that exempting such claims from limitations — particularly when considered in the context of a land registration system that provides conclusive evidence of ownership — is not inconsistent with the goals of limitations legislation.

3. **Claims regarding lasting improvements made to wrong land under section 69 of the *Law of Property Act* can be**

**brought at any time.**

If the goal of these reforms is to balance the equities between a registered owner — who can bring a claim to recover possession of land at any time — and an occupier who may have spent a great deal of time and resources to build a lasting improvement on the wrong land by honest mistake, then a section 69 claim should also be exempt from limitations legislation. Currently, these claims are also subject to a 10-year limitation period — although the limitation period never seems to run for reasons discussed in the Report.

4. **Section 69 of the *Law of Property Act* should be amended to ensure that occupiers who did not make the lasting improvement have the same range of remedies as the person who made the improvement.**

In our review, we determined that section 69 doesn't require amendments in terms of what constitutes a lasting improvement, the nature or quality of the mistaken belief, or the broad range of available remedies. However, section 69 does require some additional clarification regarding who can bring a claim, particularly when the claimant is not the person who made the original improvement. It is our position that a subsequent occupier should be allowed to bring a claim regarding a lasting improvement, and that they should have access to the same range of remedies as the original improver.

### Why is Reform Needed?

The proposed recommendations would affect the *Limitations Act*, the *Law of Property Act*, and the *Land Titles Act*. They would balance the equities between a registered owner seeking to recover possession of land, and an occupier who has made, maintained, or benefitted from a lasting improvement on land they believed they rightfully owned. Claims based on deliberate and knowing trespass would be excluded, as would claims regarding temporary encroachments or mere use of lands. Section 69 of the Law of Property Act would be the primary dispute resolution mechanism in the absence of adverse possession, thus allowing courts to craft more flexible solutions that take into account the specific circumstances of each individual case.

### Next Steps

ALRI will review all the feedback we receive and determine whether any recommendations need to change. We will then publish our final recommendations for how the law should change.

**STELLA VARVIS** is counsel at the Aberta Law Reform Institute. She graudated from the University of Alberta Faculty of Law in 2001 and was called to the Alberta bar in 2002. Before joining ALRI, she served as the Director of the Legal Research and Writing Program at the University of Alberta Faculty of Law.

# IN MEMORIAM: REMEMBERING SHANNON MCGINTY

BY **JAMES L. LEBO, Q.C.**

I have a favourite memory of my colleague and friend Shannon McGinty, who died on October 5, 2019 after a six-year battle with cancer, to share with you. But first, let me tell you something about this fine person.

Our relationship got off to a halting start. I met Shannon during articling interviews in 2006. Though she presented well and made a good impression, we didn't hire her. That was our misjudgment. Fortunately we had the opportunity to correct that mistake four years later when we hired Shannon as an associate. Shannon never let me forget that initial misstep in our relationship.

In the years that followed my colleagues and I got to know the many facets of Shannon's character. In work Shannon became a valued member of our litigation team. She was a capable lawyer, with good written and practice skills and sound judgment. Shannon was a gracious friend and mentor in the office who provided wise counsel to many articling students and young lawyers. Shannon was also liked by opposing counsel. Following her passing our firm received several messages of condolences from other lawyers and firms, a sign of the respect and esteem with which she was held in the legal community.

Shannon was a giving volunteer. During her third year in law school Shannon worked at CBA Alberta, where she was the Volunteer Lawyer Services (VLS) Coordinator. VLS (now part of Pro Bono Law Alberta) was a program that helped pair non-profit and charitable organizations in need of legal services with volunteer lawyers. She is fondly remembered by the CBA Alberta staff as a joy to work with who was "like a ray of sunshine in the office", and who always gave the best hugs.

Once in practice, Shannon became more closely involved in CBA Alberta. She was active in Sections and Council and played an important role in the evolution of this publication. Shannon was a member of the Editorial Committee from 2009 to 2013, and served as committee chair and Law Matters editor in 2012 and 2013 until her cancer diagnosis and treatment forced her to step down. Outside of law, Shannon volunteered at the Mustard Seed.

Most importantly, Shannon was a wonderful person. She cared about the people she worked with, both staff and lawyers, had a tremendous sense of humour and contributed to firm endeavours, including acting as captain of our firm's dodgeball team (for the one season the league existed). Shannon was fun to be around. She had a great sense of humour, laughed a lot and was a positive presence in many ways.

Shannon did not change following her diagnosis and through very challenging, ongoing treatments Shannon lived life as much as she could. She and her husband Phil travelled the world. Shannon continued to join in our firm retreats and holiday parties. She kept in touch with lawyers and staff, even after they no longer worked at the firm.

Which brings me to my favourite memory of Shannon, the day Shannon and Phil got married. It was a beautiful, warm afternoon and evening in June 2016 at a retreat in the foothills west of Cochrane. In spite of all that had happened in the previous three years, Shannon and Phil gathered their families and friends and exchanged their wedding vows in a ceremony presided over by Judge Sean Dunnigan. The event was fun, it was relaxed and it was a welcome opportunity for all to put aside Shannon's health issues for one day and celebrate life and love. I was fortunate to be present.

Thank you Shannon. I will never forget that evening and I will never forget you.

## MEET YOUR NEW NATIONAL **PRESIDENT & VICE-PRESIDENT**

The leadership of the CBA (National) Board of Directors renewed on September 1 when Vivene Salmon began her one-year tenure as CBA President and Bread Regehr assumed the role of Vice-President.

Vivene is the first person of colour to become President in the 123-year history of the CBA, and only the second President from the in-house counsel community. Brad is the first Indigenous person to serve as Vice-President and will become the first Indigenous lawyer to be CBA President in 2020.

Read more about Vivene, Brad and their priorities for the next year online: **http://cba.org/News-Media/News/2019/September/New-CBA-President-and-Vice-President-begin-their-t**.

## TIME TO **RENEW YOUR CBA MEMBERSHIP**

As a CBA member, you're part of something big. Together, we can truly make an impact. That's why engaging with your CBA colleagues is not only good for your career, it's great for our profession. Here are three important reasons for you to renew your membership and get actively involved:

1. **Influence Change**

   The CBA advocates on issues such as protecting confidential client information across borders and giving all Canadians equal access to justice. In fact, the CBA recently launched a national engagement campaign to put legal aid on the candidates' radar in the 2019 federal election.

2. **Impact Your Career**

   CBA members work collectively to create a real impact. They contribute to the CBA's submissions to Parliament, explore issues affecting our profession, influence public policy, and collaborate on initiatives such as legal aid, legal futures and wellness. These opportunities open doors, lead to business referrals and create lifelong friendships.

3. **Stretch Your Limits**

   CBA Sections and Committees allow members to take a deep dive into issues affecting their practice areas and the profession. Whether your interests lie in Aboriginal law, corporate law, immigration law or further afield, the connections you'll make and the opportunities you can explore all serve to shape your future.

What are you waiting for? Renew your membership today: **www.cba.org/Membership/Join-Renew**.

## RESOLVE TO **PARTICIPATE IN THE 2020 AGM**

The CBA's 2020 Annual General Meeting is about 4 months away, but it is not too early to make plans to attend the Wednesday, February 19 meeting, to debate resolutions and decide whether they become official CBA policy.

Resolutions are an excellent way for members to take part in shaping CBA policy on issues of interest to them and to the benefit of the legal profession. The deadline for submitting resolutions for debate at the Annual Meeting is **Monday, December 9, 2019**.

Resolutions shall not exceed 300 words and shall include:

- The preamble (if any), giving concise, factual information about the nature of the problem or reason for the action being requested; and
- A resolving clause, clearly outlining the action to be taken.

Members will have the opportunity to participate in the AGM and vote on the resolutions remotely at hubs in Calgary and Edmonton.

Read more online: https://www.cba.org/News-Media/News/2019/October/2020-AGM.

## NEW **TRUTH & RECONCILIATION WEBSITE**

The CBA is committed to answering the calls of the Truth and Reconciliation Commission. A central premise of the CBA's ongoing work is to provide a hub of resources to lawyers across Canada to understand the truth and engage in reconciliation with Indigenous Peoples.

The newly-launched Truth and Reconciliation website (**https://cba.org/Truth-and-Reconciliation**) is a communications vehicle for the entire Canadian legal community. A website was one of the deliverables set out by the CBA Truth and Reconciliation Task Force, which presented its final report in January 2019. The Association's philosophy is "when you know better, you can do better," so, in the coming months, the CBA is committed to:

- Offering educational resources to both the legal community and CBA staff to increase awareness of the legacy of the Indian Residential School System, support anti racist/bias training, and increase cultural competency as it relates to the Indigenous community.
- Working towards removing barriers to Indigenous participation in the CBA.
- Engaging in acts of reconciliation.
- Building authentic relationships with the Indigenous community and keeping the conversation going.

A section titled resources educates website visitors about the true history and legacies of Indigenous Peoples in Canada, outlines the work of the CBA and others in responding to the TRC's calls to action, and offers materials and tools to support legal practitioners to work more effectively in cross-cultural environments.

An advocacy section on the site is a resource for visitors to review CBA's ongoing efforts—especially those that improve access to justice for Indigenous Peoples in Canada.

Members are encouraged to visit the website frequently, as it will be an evolving and dynamic platform with regular updates.

Read more online: **http://cba.org/News-Media/News/2019/September/New-Truth-and-Reconciliation-website-a-resource-f**.

## 2019-20 **SECTION REGISTRATION**

### RENEW YOUR **2019-20 SECTIONS**

**WWW.CBA-ALBERTA.ORG/SECTIONS/SECTION-ENROLLMENT**

The grace period for 2019-20 Section registration ended on October 31, 2019. This means that if you have not renewed your Section registration, you will no longer receive meeting notices or be able to attend Section meetings without paying a drop-in fee.

Section registration can be completed on our website at www.cba-alberta.org/Sections/Section-Enrollment. On the enrollment page you will also find information about Portfolio and Portfolio Plus packages, which need to be purchased before you register for Sections. These packages give you free materials-level memberships to up to 3 Sections, education credits that can be used toward your Section registration or registration in other CBA professional development activities, and a rebate on next year's membership fees based on your total spend from 2019-20.

Don't remember if you have renewed your Section registration for another year? Call our team in Calgary (403-263-3707) or Edmonton (780-428-1230) and they can assist you.

## CHANGES TO **LAW MATTERS**

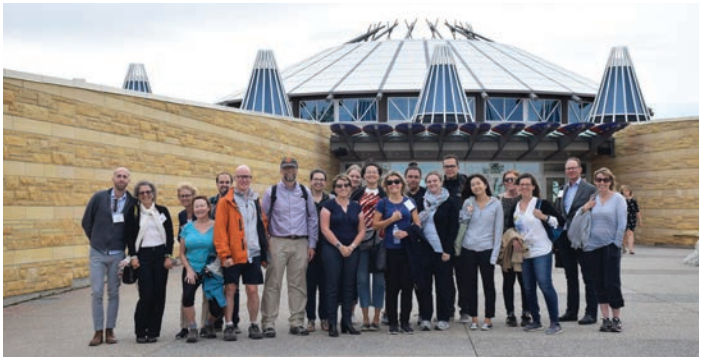
Beginning with the Winter 2019-20 issue of *Law Matters*, the magazine will only be distributed to active members of the Canadian Bar Association - Alberta Branch.

Law Matters articles will still be available on the CBA Alberta website at www.cba-alberta.org/Law-Matters for all those who wish to continue reading our content. If you are not currently an active CBA Alberta member and would like to continue to receive the print version of the magazine and enjoy the content delivered by our hard-working Editorial Committee and contributors, we invite you to become a member and take advantage of this, and other exclusive benefits of membership, including over 50 hours of complimentary professional development, preferred rates on insurance and investment solutions with Lawyers Financial.

Visit www.cba-alberta.org/Membership/Join-Renew to activate your membership today!

## CBA ALBERTA **SUMMER EVENTS**

**Blackfoot Crossing Historical Park Program**



On August 23, forty-nine CBA Alberta members spent the day at the Blackfoot Crossing Historical Park on the Siksika Nation. Participants visited the site of the 1877 signing of Treaty 7 between the Crown of Canada and the Siksika, Kainai, Piikani, Stoney-Nakoda, and Tsuut'ina First Nations.

A guided tour with interpreter led members through the Blackfoot Confederacy's pre-contact way of life, the events leading to Treaty 7, a walkthrough of the historic sites and cultural relics in the museum, and a customized presentation on the modern impact of Treaty 7 on First Nations in Alberta. Members were also treated to a traditional drum and dance following the tour.

**CBA Alberta has Pride!**


The CBA Alberta Branch marched in the Calgary Pride Parade for the first time in early September. CBAAB Calgary Pride Parade Steering Committee members were joined by Branch President Ola Malik, past president (2017-18) Jenny McMordie and other Alberta Branch members who braved the rainy day and marched under a "Justice for All" banner.

## JUDICIAL **UPDATES**

**COURT OF QUEEN'S BENCH**

**The Honourable Madam S.L. Hunt McDonald** (Calgary) has elected to become a supernumerary judge, effective September 9 , 2019.

**Master S.L. Schulz, Q.C.** (Edmonton) has been appointed as an ad hoc master in chambers, effective October 1, 2019.

**The Honourable Mr. Justice R.G. Thomas** (Edmonton) retired, effective October 1, 2019.

**PROVINCIAL COURT OF ALBERTA**

**The Honourable Judge Janet D. Franklin** (Edmonton) retired as a supernumerary judge, effective August 29, 2019.

**The Honourable Judge Eugene J. Creighton** (Calgary) retired as a full-time judge, effective October 1, 2019.

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**OFFICE SPACE AVAILABLE** in downtown Calgary law office. Confidential inquiries to: **Kristen Moore, 403-817-3012.**

**MALE BARRISTER ROBE** - $300.00 incl. free vest. **Pls. contact 403-760-2528.**

**ARE YOU A SOLICITOR LOOKING TO RETIRE OR FOR OFFICE SPACE?** We are located in the Brewery District and would like to hear from you. If you are interested, please email in confidence at **John@MurrayStadnykLaw.com.**

**THOMPSON WOODRUFF INTELLECTUAL PROPERTY LAW.** Registered Patent Agents. Practice restricted to Patents, Trademarks, Designs, Copyright and related causes. **200, 10328 - 81 Ave., Edmonton, AB, Canada T6E 1X2. P: 780-448-0600; F: 780-448-7314.**

**SEEKING LAST WILL & TESTAMENT OF MURRAY PETER VULLINGS** who died on May 8, 2018 at age 55. Will likely made in Calgary. **Contact Les Scholly at Pritchard & Co. Law Firm LLP at (403) 527-4411 or lscholly@pritchardandco.com.**

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**NORTHERN OFFICE**
1501 Scotia Place, Tower 2, 10060 Jasper Avenue NW, Edmonton, AB T5J 3R8
Phone: 780-428-1230 | Fax: 780-426-6803 | edmonton@cba-alberta.org

**SOUTHERN OFFICE**
710 First Alberta Place, 777 - 8 Avenue SW, Calgary, AB T2P 3R5
Phone: 403-263-3707 | Fax: 403-265-8581 | mail@cba-alberta.org

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