

ISSN 1704 - 9377

Spring 2014

Volume 39, Number 1

Law Matters

The Futures Issue

Three-Stream Versus Traditional Articling

Battling the shortage of
articling positions in Canada

Co-op Law Schools

Legal Information and the Open Web



THE CANADIAN
BAR ASSOCIATION
Alberta Branch

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EDITOR'S NOTE

By Shannon McGinty & Robert Harvie, QC

This installment of Law Matters is entitled "The Futures Issue", and engages our readers on several fronts with the changing face of our profession. To be certain, our profession is changing right before our eyes, and it's a daunting reality to those of us who are "fighting alligators" to consider setting aside some time to consider how to respond to the challenge of change.

There are three models of response, I think – first, we can put our head in the sand and ignore it, second, we can fight it, or third, we can adapt and overcome. I think the third is preferable – and this issue gives us some guidance towards that effort.

As discussed by CBA President, Marian De Souza, Q.C., the CBA is strongly engaged in the Legal Futures Initiative and in other efforts to help us move forward in adapting to change.

From there, Anne Kirker, Q.C., Maureen Killoran, Q.C. and Clarissa Pearce provide us with some guidance regarding the clarification of what "fiduciary obligations" are and when they arise in our practice – touching on the recent Supreme Court of Canada decision in *Galambos v. Perez*.

Ola Malik exposes yet another "Unsung Hero" in our profession, Allan Delgado – an Edmonton lawyer who comes to our practice and our province as a result of his father's decision to bring his family to Canada from Nicaragua. Allan is an example of the old (lawyers giving back to their community) and the new (expanded cultural diversity) in our Profession – bringing us a valuable reminder of the

importance of the Rule of Law following his father's experience in a country where the freedoms we enjoy were not so available.

Brian Curial and Tony Young, Q.C. report on the some challenging and provocative discussions regarding how we become lawyers in the first place, whether the path to becoming a lawyer includes the traditional avenue of a "bricks and mortar school" or traditional concepts of "articling".

From there, Maryanne Forrayi talks about how smaller firms might consider the recruiting of articling students to augment their business model.

Feeling stressed? I recommend the one-two combination of Terry Cooper, Q.C. and Devin Milrea's article on technology and time management to reduce stress, followed by Simon Shakibaei's article on the availability of the Lawyers' Assistance Society – a peer network available for Alberta lawyer to reach out to when the stresses feel like they are, perhaps, too much. There is no longer a stigma to reaching out for a helping hand when you feel like you need it.

Change and challenge? They are coming and they are here, but as Winston Churchill once said, "The pessimist sees difficulty in every opportunity. The optimist sees the opportunity in every difficulty."

Time to look forward to expanded opportunities. ☀

Contributing Authors this Issue

Dale Barrie	Hon. Judge A.A. Fradsham	Kathryn Kitchen	Jenny McMordie
Siwei Chen	Katherine Fraser	David Louie	Kendall Moholitny
Terry Cooper, QC	Frank Friesacher	Peter Lown, QC	Devin Mylrea
Brian Curial	Maryanne Forrayi	Linda M. Lynch-Staunton	Clarissa Pearce
Marian V. De Souza, QC	Patricia Johnston, QC	Ola Malik	Simon Shakibaei
Enrique Dubon-Roberts	Maureen Killoran, QC	Gillian Marriott, QC	Anthony Strawson
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PRESIDENT'S REPORT

By Marian V. De Souza, QC



This year's CBA Executive term began with a promise of increasing communication with members, partners and stakeholders. I must say this has become increasingly challenging, with all that has been going on, especially if I am to remain within the word-count of this President's report.

Thankfully, a new look and design of CBA's publication, *Law Matters* will advance this goal, along with a brand new website, redesigned with you in mind. I

hope that you find the online publication *Legal Brief*, helpful, and I was delighted to see many tweets of CBA's recent events, "favourited" or if you prefer, "favorited."

In the wake of the Alberta Law Conference, each of our major cities played host to significant events. The Canadian Corporate Counsel Association spring conference took place in Calgary where Steve Mandziuk QC, CBA Vice President and I joined Michele Hollins QC, CBA National First Vice President in welcoming colleagues from across the country. The appropriate theme was Energy Matters, and a nod to Calgary as the fastest growing membership of in-house counsel in Canada.

Later that week, Edmonton hosted Chief Justices from across Canada, and marked the Centenary of Alberta's Court of Appeal. A gala dinner and symposium brought the bar and judiciary together with innumerable distinguished guests. Justice Eric Macklin set the tone for a dignified and delightfully funny evening. Special thanks to the organizing committee, led by Greg Harding QC, with Heather Walsh and Maureen Armitage and the CBA staff, speakers and volunteers who ensured the celebrations commemorated our rich history of People, Principles, and Progress of justice in Alberta.

It was also a proud moment for Wayne Barkauskas, Treasurer and I, to attend the University of Calgary William Howard Memorial lecture, and hear the Honourable Peter MacKay, Federal Minister of Justice and Attorney General, acknowledge the work of the CBA in the context of addressing issues affecting the profession, improving the justice system, and contributing to public service.

It was an opportunity to thank Minister MacKay for considering the national resolution moved by CBA Alberta, urging the federal government to appoint sufficient superior court judges to meet the demand of a growing population. This resolution was successful thanks to background work of Wayne Barkauskas, Maureen Armitage and Tamra Thomson, CBA National. With ongoing follow up by the Executive, we are able to convey an

assurance by Minister MacKay more judicial appointments, in addition to the two new positions announced in the federal budget, are forthcoming.

Other advocacy and stakeholder representation that the Executive and dedicated committee and section representatives have been involved with include: reform of civil and family justice, traffic court, and employment standards. Pursuant to CBA stakeholder involvement in proposed changes to Alberta's land titles system, our members were satisfied by Government's response to their concerns.

With a view to sharing information and combining resources on the broader issue of access to justice, CBA appointed Ola Malik, as Chair of the CBA Access to Justice Committee, to be a standing representative of the Law Society committee devoted to the same subject. We can expect significant advancement in this area building on CBA's national project, *Envisioning Equal Justice*.

With a website dedicated to Law Day, I will simply say that this event, designed to engage the public, continues to be an annual highlight. Law Day is proudly hosted in more cities and towns in Alberta than any other province. It was a pleasure to welcome on your behalf, 250 visitors to St. Paul's inaugural Law Day and join Mayor Naheed Nenshi and Minister Jonathan Denis QC in welcoming 100 new citizens in Calgary. Bringing the profession and legal services closer to the community fits within CBA's goal of ensuring Albertans have a better understanding of the profession and justice system.

I hope these developments assure you of the value of membership and meet our promise of increased communication and collaboration among stakeholders and with you, our members. Albertans were quick to understand the benefits of Portfolio Plus membership, a level designed to reward participation, as we lead the country in this category. On behalf of the Executive, we value your engagement that is no surprise, given the collegiality and spirit of commitment of the Alberta bar. It is my hope that our progress and publication will further inspire you to be involved in your CBA.

To keep up-to-date on all CBA news, visit our website at www.cba-alberta.org, follow us on Twitter @CBAAlberta, "like" us on Facebook, and follow us on LinkedIn. ☼

M. Jenny McMordie
of
West End Legal Centre
in Calgary
has been acclaimed
Secretary of the Executive
of the
Canadian Bar Association
Alberta Branch
for 2014 - 2015



WHAT'S HAPPENING

By **Patty Johnston, QC**

May

21: The Canadian Bar Association presents 2014 National Charity Law Symposium. Toronto Board of Trade, Toronto, ON and online. Contact Lauren DalBello at 1-800-267-8860, ext. 190 or laurend@cba.org.

23: The Canadian Bar Association presents 2014 Competition Law Spring Forum. Toronto Board of Trade, Toronto, ON and online. Contact Lauren DalBello at 1-800-267-8860, ext. 190 or laurend@cba.org.

25-30: The Canadian Bar Association presents the 2014 Tax Law for Lawyers Conference. Queen's Landing Hotel, Niagara-on-the-Lake, ON. Contact Nicole Suthers at 1-800-267-8860, ext.198 or nicoles@cba.org.

29-30: The Canadian Bar Association presents the 2014 Annual CBA National Environmental, Energy, and Resources Law Summit. Ottawa Convention Centre, Ottawa, ON. Contact Lauren DalBello at 1-800-267-8860, ext.190 or laurend@cba.org.

June

2: The Canadian Bar Association presents First Ethics Forum. Toronto, ON. Contact Melissa McGurran at 1-800-237-0815, ext. 196 or melissamc@cba.org.

3-5: The Canadian Corporate Counsel Association presents the In-House Counsel World Summit 2014. Raffles City Convention Centre, Singapore. Visit the website at www.icwsingapore2014.sg.

6: The Canadian Bar Association present 2014 Military Law Conference: Ethics and Military Law. R.C.A.F. Officers' Mess, Ottawa, ON. Contact Melissa McGurran at 1-800-237-0815, ext. 196 or melissamc@cba.org.

10: The Canadian Bar Association presents Cross-Border and Inter-Provincial Environmental Disputes. Online. Contact 1-800-267-8860 or pd@cba.org.

12: The Canadian Bar Association presents CBA IP Day 2014 - Town Hall Meeting, Afternoon Professional Development & Federal Courts Judges' Dinner. Fairmont Château Laurier, Ottawa, ON. Contact Clarisse Titus at 1-800-267-8860, ext. 198 or clarisset@cba.org.

12: The Canadian Bar Association presents Managing Your Client's Expectations. Online. Contact 1-800-267-8860 or pd@cba.org.

19-20: The Canadian Bar Association presents 2014 National Aboriginal Law Conference. Frobisher Inn, Iqaluit, Nunavut. Contact Nicole Suthers at 1-800-267-8860, ext. 198 or nicoles@cba.org.

22-24: The Canadian Bar Association, ABA, and IPEBLA present Benefits Without Borders: 2014 Global Pension and

Employee Benefits Lawyers Conference. The Drake Hotel, Chicago, IL. Contact Lauren DalBello at 1-800-267-8860, ext. 190 or laurend@cba.org.

27: The Canadian Bar Association presents 2014 National Constitutional and Human Rights Conference. Ottawa Marriott Hotel, Ottawa, ON. Contact Terry Hancock at 1-800-267-8860 ext. 192 or terryh@cba.org.

August

14-16: The Canadian Bar Association presents the CBA Legal Conference. St. John's Convention Centre, St. John's, NFLD. Visit the website at www.cba.org for more details. ☼

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



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AVOIDING & RESOLVING DISPUTES

Your Digital Footprint: Be Careful Where You Step

By Enrique Dubon-Roberts

For those of us who could still change the ribbon of a typewriter or find our way around the mimeo, without getting ink all over ourselves, micro-blogging, 6-second looping videos, or starting every word with a hashtag, which, turns out, is just the old “#” sign, can be daunting tasks. And then, there is the task of managing the information that is available about us online, whether we intended to put it there or not.

I recently heard of the term “digital footprint” and it became clear to me that mine is usually a few steps behind from those younger than me. The term digital footprint refers to our online presence: through our conscious actions and sometimes, through our careless ones. As lawyers, most of us have learned to manage our professional online persona. Our Code of Conduct applies to our online presence, and we have been provided with guidelines and ethical boundaries in relation to marketing, communicating online, and keeping the e-divide between legal information and legal advice. Two great resources to help us navigate our online output can be found on the CBA’s website: Guidelines for Practicing Ethically with new Information Technologies, and Guidelines for Ethical Marketing Practices using New Information Technologies.

It isn’t hard to find extreme examples where public figures, private employees and even members of the bar, have made career limiting blunders in 156 characters or less. However, there is a less extreme, and yet disquieting side to our online presence. A few days ago, I was trying to find an acquaintance’s office phone number, and rather than opening the phone book, which keeps my computer monitor propped up, I used a search engine. What happened next was eye opening: the search results included her running time from the last marathon she ran, a review she had made of the last hotel she had visited, comments she had made on the website of the league she played in, and the newsletter for the school that her children attend, and where she volunteers. Admittedly, these pieces of information standing alone are innocuous, but their sum may not be. We need to proactively manage our digital footprint.

My initial client meeting includes a standard “be mindful of your online presence” and a “know that your online posts may be closely scrutinized”. I think that all of us can benefit from this advice. Having an online presence is almost inescapable for our profession and the very tools that allow us to do our jobs, could be contributing to the proliferation of information that should be kept outside of the public realm. We have seen a movement towards protecting our e-privacy through legislation, work policies and judicial involvement. Even the

private sector has made an industry of the issue as there are companies dedicated to erasing one’s online persona. But not all of us need to resort to such extremes and some simple steps to keep the divide between our private and public professional life will suffice for most of us.

We all now know to set privacy setting on our preferred networking site to levels that make us comfortable and to adjust our output on these sites accordingly. Our technology has made it so easy for us to instantly broadcast every thought, but remember that most things that are posted publicly can be hard to get rid of, and their effects can be felt long after we have tried to erase them. Therefore, be mindful of what and where you post (“stop-think-post”).

Knowing that our involvement in our community through sports, school and other social activities may lounge us into the electronic world, we should address the issue of online communications with schools, clubs and sporting events. We may not be able to stop our online presence, but we can at least inform ourselves about their potential and make the appropriate decisions around them.

Finally, know that most of us are on the same path – some of us are just be a few steps behind. Since it is inevitable for us to have an online presence, let’s develop skills to manage our digital footprint. ❁



Enrique Dubon-Roberts is a family law practitioner with the firm of Matkovic Allan LLP in Calgary. Prior to earning his law degree from the University of Calgary Faculty of Law, he was an educator in both secondary and post-secondary institutions in Calgary.

ANNOUNCEMENTS

This text-only section is provided for non-profit organizations free of charge. To include your organization’s announcement, please contact the Communications and Marketing Specialist at 403-218-4310 or communications@cba-alberta.org.

MARK YOUR CALENDARS FOR STUDENT LEGAL ASSISTANCE’S 10TH ANNUAL GOLF TOURNAMENT

on July 24, 2014 held again at the Sirocco Golf Club. Early birds pay \$225 (by June 1) and after that the entry fee is \$250. Check our website at www.slacalgary.com for more information or contact Michelle Christopher directly at mchristo@ucalgary.ca.

PRACTICE POINTERS

Fiduciary Duties - Clarifying the Confusion

As lawyers, it is important to be aware of the professional duties and obligations that arise when entering into a solicitor-client relationship. Not only does every lawyer owe his or her client a duty to provide the agreed upon services to the standard of a reasonably competent lawyer in the circumstances, the client is also owed certain additional duties given the fiduciary nature of the solicitor-client relationship.¹

But, what does that mean? In many cases, the answer seems unclear. The jurisprudence governing fiduciary breach (allegations of which are often included in professional liability claims) is complex and inconsistent. As aptly put by La Forest, J. in *International Corona Resources Ltd v Lac Minerals Ltd*²:

There are few legal concepts more frequently invoked but less conceptually certain than that of the fiduciary relationship. In specific circumstances and in specific relationships, courts have no difficulty in imposing fiduciary obligations, but at a more fundamental level, the principle on which that obligation is based is unclear. Indeed, the term “fiduciary” has been described as “one of the most ill-defined, if not altogether misleading terms in our law.” It has been said that the fiduciary relationship is “a concept in search of a principle.” Some have suggested that the principles governing fiduciary obligations may indeed be indefinable, while others have doubted whether there can be any “universal, all-purpose definition of the fiduciary relationship.” The challenge posed by these criticisms has been taken up by courts and academics convinced of the view that underlying the divergent categories of fiduciary relationships and obligations lies some unifying theme.

[Citations Omitted]

However, the lack of clarity has not resulted in a corresponding reluctance by litigants or the courts to invoke ill defined fiduciary duties in professional liability cases, among others. As noted in *Girardet v Crease & Co*,³ “the word fiduciary is flung around now as if it applied to all breaches of duties by solicitors, directors of companies and so forth.” This should give us all reason to pause and reflect on what, if any, fiduciary obligations may arise in a given situation.

The exercise of discerning what fiduciary duties arise in a professional relationship begins with the following caution articulated by the Supreme Court of Canada in *Galambos v. Perez*:⁴

A claim for breach of fiduciary duty may only be founded on breaches of the specific obligations imposed because the relationship is one characterized as fiduciary: *LAC Minerals*, at p. 647. This point is important here because not all lawyers’ duties towards their clients are fiduciary in nature. Sopinka and McLachlin JJ. (as the latter then

By Anne Kirker, QC, Maureen Killoran, QC & Clarissa Pearce

was) underlined this in dissent (but not on this point) in *Hodgkinson*, at pp. 463-64, noting that while the solicitor-client relationship has fiduciary aspects, many of the tasks undertaken in the course of the solicitor-client relationship do not attract a fiduciary obligation. Binnie J. made the same point in *3464920 Canada Inc. v. Strother*, 2007 SCC 24, [2007] 2 S.C.R. 177 (S.C.C.), at para. 34: “Not every breach of the contract of retainer is a breach of a fiduciary duty.” The point was also put nicely by R. M. Jackson and J. L. Powell, *Jackson & Powell on Professional Liability* (6th ed. 2007), at para. 2-130, when they said that any breach of any duty by a fiduciary is not necessarily a breach of fiduciary duty.

In other words, care must be taken by lawyers, and by the courts, to maintain the distinction between: 1) fiduciary duties that arise from and are specific to the fiduciary relationship; and, 2) the duties of a lawyer to meet the requisite standard of care.

In *Galambos*, the Supreme Court of Canada provided some guidance in this respect. In that case, an employee of a law firm (the office manager) advanced personal funds to the firm when it was in financial distress. The firm: 1) did not request the funds; 2) did not initially know about the employee’s loans; and, 3) upon discovering the facts, ordered the employee to repay herself. As the firm’s financial situation deteriorated, the employee continued to cover firm expenses with personal funds despite being directed not to do so. Ultimately, the firm was placed into receivership and the employee became an unsecured creditor, recovering nothing. The employee (who had earlier received some free legal work from the firm on unrelated matters) sued the firm and its principal lawyer alleging negligence, breach of contract and breach of fiduciary duty. The trial judge dismissed the claim, finding that the employee’s rights were as a creditor and nothing more. The Court of Appeal set aside that decision finding that there were *ad hoc* fiduciary duties owed which had been breached. The Court of Appeal reasoned that there was a power dependency relationship between the parties and that it was not necessary that there be any mutual understanding that the lawyer had relinquished his self-interest in favour of the employee in order for the fiduciary duty to arise. The employee was

⁵ *Galambos*, supra at para. 69.



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¹ 3464920 Canada Inc. v. Strother, 2007 SCC 24 at para. 34; See also Paul B. Miller, *A Theory of Fiduciary Liability* (2011) 56:2 McGill LJ 235 at p. 267.

² *International Corona Resources Ltd v Lac Minerals Ltd*, [1989] 2 SCR 574 at para. 24 [*Lac Minerals*].

³ *Girardet v Crease & Co* (1987), 11 BCLR (2d) 361 (BCSC) [*Girardet*].

⁴ *Galambos v. Perez*, 2009 SCC 48 at para. 37.

CHOOSE FROM CANADA'S TOP MEDIATORS AND ARBITRATORS

vulnerable and, according to the Court of Appeal, the lawyer had taken advantage of the employee's trust.

The Supreme Court of Canada allowed the appeal emphasizing that "a critical aspect of a fiduciary relationship is an undertaking of loyalty: the fiduciary undertakes to act in the interests of the other party." Relying on this principle, the Court proceeded to clarify two long-standing points of confusion. First, power-dependency (i.e., vulnerability) in a relationship cannot, alone, lead to fiduciary obligations, as has been held in some prior jurisprudence and second, fiduciary duties do not arise simply from the reasonable expectations of one party (as had been held by the Court of Appeal below).

Instead, the Court held that fiduciary obligations only arise from the undertaking by the fiduciary, express or implied, to act in the interests of the beneficiary with respect to the matter in issue.⁶ Where the undertaking is absent, there can be no fiduciary duty or breach. It is the duty of loyalty that arises from the undertaking that lies at the heart of the fiduciary obligation. While there is some confusion in the case law about the extent to which other duties (such as the duty of candour and the duty of commitment) are fiduciary in nature, what can be fairly said about fiduciary duties is that:

(1) they are those duties that require the lawyer to pursue his or her client's cause faithfully and to the best of the lawyer's ability;

(2) they prohibit the fiduciary from putting his own interests ahead of those of the beneficiary and from compromising the interests of his beneficiary in favour of the interests of a competing third party (even in circumstances where the fiduciary's self-interest is not in play);⁷

(3) they include the obligation on the part of the lawyer to be candid about his or her abilities and capacity to take on a matter, to commit to the client's cause and to honourably address all matters relevant to the retainer⁸ (the latter point underscoring the importance of a clearly defined retainer); but,

(4) they cannot arise where the fiduciary has no discretionary power to affect the other party's legal or important practical interests. ❁

⁶ *Galambos, supra* at paras. 75-82.

⁷ See Paul B. Miller, *Justifying Fiduciary Duties* (2013) 58:4 McGill LJ 969 at 977.

⁸ *R. v. Neil*, 2002 SCC 70 at para. 19.



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

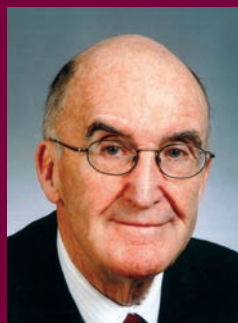


Maureen Killoran QC, is the Managing Partner of Osler, Hoskin and Harcourt LLP in Calgary and a Partner in the Firm's Litigation Group. In addition to her management responsibilities, Maureen maintains a full commercial/energy litigation practice. She has been co-writing "Practice Pointers" with Anne Kirker since 2008.



Clarissa Pearce is an associate at Norton Rose Fulbright who practises in the area of litigation, and has a particular interest in arbitration and alternative dispute resolution.

Alberta Panel



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



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



The Hon. Ernest Marshall, Q.C.



Clint G. Docken, Q.C.



Graham Price, Q.C.



E. David D. Tavender, Q.C.



Harold W. Veale, Q.C.



ADR
CHAMBERS

UNsung HERO

Allan Delgado

By Ola Malik

We are delighted to introduce you to Allan Delgado.



Allan's family comes from Nicaragua. They came to Canada in the late eighties to escape the political fighting back home. At the time, the ruling communist party was conscripting men to fight the Contra rebels. To avoid this, Allan's father decided to bring his family to Edmonton to give his children a better future. This story is no different than thousands of other immigrant stories. It's a story of sacrifice, of calling

a new place home, of the challenges of being a newcomer in a strange land but also of the opportunities that are available to immigrants to Canada.

Allan began considering becoming a lawyer while pursuing his undergraduate degree at the U of A. He had always been interested in politics and history and how the rule of law is the foundation of a successful civil society. With the military coups, violence and instability in Nicaragua in the late 80's which uprooted his family, Allan says he appreciates how Canada's legal system can be a force for good. He decided to volunteer with the Elizabeth Fry Society's court program to learn and get involved.

During his law studies at the U of A, Allan volunteered with student legal services, providing legal assistance to those who had no money to hire a lawyer. He summered, articulated and spent part of his first year at the Bar with (then) Fraser Milner Casgrain LLP, a firm which encouraged Allan to volunteer with the Edmonton Community Legal Clinic (ECLC). In 2010, he started volunteering with the ECLC by providing legal information to those who attend ECLC's evening clinics and through public library presentations. Since 2010, he has run weekend clinics with the assistance of an interpreter at a Chinese community centre for immigrants who can't speak English and who need help with tasks that most of us might think of as trifling: getting their employer to pay them, organizing proper travel papers so they can visit home, understanding what their insurance company will do if they're involved in a car accident... Allan's work for the

Chinese community in Edmonton is critically important. He's providing assistance in exactly the place where it's most needed – a community centre where Chinese families meet their friends, feel comfortable, speak to each other in their own language, bring their kids, and get the help they need.

Presently, Allan is counsel in the law department of The City of Edmonton. In addition to time with the ECLC, Allan is part of the Canadian Bar Association (North) Insurance section executive. He understands the value of volunteerism because it creates the bonds between our profession and our communities which are so important in promoting a civic culture that is vibrant, rich and strong. He credits Christine Stevens and Jackie Horesji at the Elizabeth Fry Society for this. He is passionate about his involvement with the ECLC, and the work it facilitates with the Chinese community and encourages anyone, especially young lawyers, to get involved and see what a difference they can make. He notes the ECLC has numerous options for lawyers willing to give some of their time, so there is always a way to fit it into a busy schedule.

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

I wonder whether Allan's mother and father had any idea when they left Nicaragua how proud they would become of all of their six children, all of whom have succeeded in making this country their home. Allan is better off for having come here, and we are better off with him.

We celebrate Allan's achievements – Allan is an "unsung hero" -- and he represents some of the finest qualities of our profession. 🌟

Do you know an Unsung Hero?
Tell us about them.

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



Ola Malik is a Municipal Prosecutor with the City of Calgary. He is the chair of the Alberta Branch Access to Justice Committee, and a long-time Law Matters contributor with the "Unsung Hero" column.

TODAY'S LEGAL EDUCATION

50 Years Behind the Curve - Distance Education is the Future

By Brian Curial

Legal education today is mired in the past. We are training twenty-first century lawyers using nineteenth century methods. Law students and today's legal environment have changed in ways that have profound implications for legal education. Today's lawyers operate in a digital environment and on-line distance education offers a promising response to this environment.

A New Breed of Lawyers

In a 2006 to 2012 study, a number of game-changing differences between today's students and their predecessors were found¹. Most notably today's students' are increasingly familiar with and reliant upon technology.

The Law School class of 2014 was born into a world in which Apple and Microsoft already existed. Laptops, mobile phones, email, instant messaging and the internet are, for this generation, as ordinary as pen and paper were for previous generations. By the time the children born in the 1990's were in kindergarten, this technology was their reality. Before the Class of 2014 finished elementary school, Google, Wikipedia, blogging, and the iPod had arrived. By their early teens, Skype, iTunes and Facebook were all the rage. They had to wait until high school for YouTube, Twitter and the iPhone, but by then one-quarter of the Earth's population was on-line. This ubiquitous technology has irrevocably altered these students' understanding of and interaction with the world.

Today's students expect remote access to people, goods and services via their digital devices 24/7 from wherever they may be. Passive learning from books and lectures is not the way they choose to learn. Today's students prefer interactive learning, involving multi-tasking, technology and Twitter-size bits of information. They grew up with a vast breadth of information at their fingertips where a quick Google search on a mobile device can immediately verify or debunk any position. They are comfortable with and adept at using technology.

Today's Law Schools Don't Work for Twenty-First Century Students

Current technologies have influenced law students' preferences and changed how they learn, work, socialize and live. The result is a growing and fundamental mismatch between traditional casebook and lecture-based law schools and the digitally adept students that are enrolling in them today.

This divergence is producing problems in the classroom. Faculty members complain about students who text, surf the net, email, take phone calls and listen to music in class. Academic integrity has grown ambiguous in the digital age as opportunities for copying and plagiarism expanded on the internet. Students routinely engage in file and idea sharing of all kinds. Do we fight this or embrace it? Can we not take advantage of technology rather than demand our students ignore it out of a rigid adherence to a traditional, albeit outmoded, approach to learning?

¹ Levine, A. and Dean, D.R., Generation on a Tightrope: A Portrait of Today's College Student (Jossey-Bass, 2012).

Our law schools have failed to embrace today's digital world. Conventional legal education has been confined to the classroom. Law schools remain analog institutions seeking to educate digital students. Too many law programs believe they are keeping pace by switching from chalk & blackboards to laptops & PowerPoint. They couldn't be more wrong. Instead of fighting a losing battle against technology, law schools need to embrace technology and actively engage the twenty-first century law student.

Currently there is a shortage of lawyers in small communities. One cause of this problem is rural students relocating to a major urban centre to obtain a professional education and not returning to their home community to practice or failing to move to a large urban center to obtain a law degree in the first place.

To give credit where it is due, today's law schools are graduating excellent researchers and writers with the skill set necessary to specialize at the big city law firms. However they are not graduating lawyers with the general skills to run a small town practice. BUT there is a potential cohort of students in rural communities that could remedy this problem if they were given the opportunity offered by distance education.

A Solution

Distance education, through the use of technology, would allow aspiring lawyers to complete a substantial portion of their legal education while remaining in their home communities. This can help solve the severe shortage of lawyers in smaller communities. Such a program also affords wider access to legal education, increased participation by under-represented groups and promotes greater diversity amongst the profession.

A blended form of distance education could include part online delivery, part on the job training and part classroom delivery. This could go a long way toward solving the above problems. The blended delivery model incorporates both face-to-face and online components. It would be well suited to collaboration with an established "bricks and mortar" law school, which could provide the physical infrastructure and faculty for in-person instruction during the spring and summer when law schools typically sit unused.

The ultimate goal of an online distance law program is to widen access to legal education, improve access to justice and benefit citizens with the services of increased numbers of lawyers in smaller communities. Such a program could make legal education, and legal services, more accessible for historically disadvantaged groups including lower income individuals, rural residents, aboriginal people and others who encounter practical barriers to pursuing a traditional legal education and obtaining legal services. ❁



Brian Curial is a practicing lawyer of 27 years and a partner with Miller Thompson LLP. Brian is the vice-chair of Athabasca University's Law program advisory committee.

THREE-STREAM ARTICLING

Where Do We Go From Here?

By Anthony G. Young, QC

When I first contemplated a piece on “Two Stream Articling” in Ontario I was not aware how quickly the professional licensing landscape is changing. The growth in candidates for professional licensing has been astronomical. The number of students entering Canada with foreign law degrees coupled with the expansion in the number of law students graduating from Canadian Universities has resulted in excessive demand for articling positions. This pressure has necessarily resulted in regulators of the legal profession searching for creative ways to accommodate the increasing numbers of students. The creative thinking has been driven by a corporate desire to enhance access to justice by licensing as many qualified lawyers as may be reasonably admitted while still ensuring quality and professionalism.

Foreign trained students must complete an assessment by the Federation of Law Societies of Canada’s National Committee on Accreditation (NCA). “The mandate of the NCA is to help Canada’s law societies protect the public interest by assessing the legal education and professional experience of individuals who obtained their credentials outside of Canada or in a Canadian civil law program. An assessment is done before an individual may apply for admission to a law society in a Canadian common law jurisdiction, and is based on the academic and professional profile of each applicant.”

To illustrate how rapid the numbers are changing in Alberta it is only necessary to look at the last year. On March 31, 2013 a total of 63 NCA students were registered to article. NCA students represented 15% of the students articling in Alberta. This number grew to 74 by October 31, 2013. The most recent statistics reveal that as at March 31, 2014 there are a total of 90 NCA students articling in Alberta, making up 20% of all articling positions. Most are articling in Calgary with either sole practitioners or in a smaller firm setting (2 to 10 lawyers), however there are some placements in Edmonton as well.

In Alberta there is currently only one way to obtain a license to practice law; by way of articling.

In Ontario there will soon be three - articling; Law Practice Program; and Integrated Practice Curriculum

Articling

Students may obtain their license to practice law only through the articling process. Articling involves the student and principal entering a contract called Articles of Clerkship. In this contract the student is “bound” to the Principal for the duration of articles. The student must obey and faithfully serve the Principal while adhering to and upholding all of the rules, regulations and ethical considerations of the legal regulator. It is an ancient and time honoured process. The articling term is typically one year. It is expected that during that time students gain the competency of an entry level practitioner. I suspect that the Articles of Clerkship have not changed much since it was first conceived.

Law Practice Program

In contrast the Law Practice Program (LPP) consists of a four-month training course and a four-month work placement. The

LPP is first being offered at Ryerson University (in English) and the University of Ottawa (in French) commencing in the late summer of 2014. The program is intended to “replicate the experience of working in a law firm using interactive web-based modules and digital simulation tools. The training course component of the LPP at Ryerson will be offered largely online.” The French language candidates attending the University of Ottawa will be expected to attend in person for the duration of the 4 month training course.

Integrated Practice Curriculum

On November 22, 2013 Lakehead University in Thunder Bay, Ontario received approval from the Law Society of Upper Canada for law students enrolled in a 3 year law degree to complete the experiential component of their training while enrolled at the University. The news release about the program from Lakehead University contemplates that students enrolled in the program will complete their experiential training within the three-year degree.

“The focus of Lakehead’s Law Program is to have students graduate ‘practice ready’ for work in the North and main street Canada. This means that students need to be knowledgeable in Aboriginal law, resource law, and the realities of small firm practice.”

The Lakehead program is intended to be an “alternative” Law Practice Program similar to those offered by Ryerson University and the University of Ottawa but integrated into the 3 year course stream.

Where do we go from here?

The Federation of Law Societies of Canada has announced that “In 2013 law societies agreed on a new mobility agreement that is expected to come into force later in 2014. The National Mobility Agreement 2013 will extend the mobility provisions to permit Canadian lawyers to transfer between Quebec and the common law provinces with ease regardless of whether they are trained in Canadian common law or civil law.”

This means that lawyers trained in Ontario in any one of the three streams may be coming to Alberta to practice. Albertan lawyers should therefore have a keen interest in the success or limitations of the programs offered. Additionally and inevitably, there will be plans for change and innovation in the Alberta professional licensing landscape. Although these plans are in their infancy, the pressure of increasing numbers of students and the demand for licensed lawyers will drive the agenda.

Many lawyers may be skeptical of the new processes. No one, especially lawyers, are comfortable with change. But change is coming.

Stay tuned. ☼

TRADITIONAL ARTICLING

Can We Stay the Same?

By Anthony G. Young, QC

For the uninformed reader (not that any of you are) I have briefly explained the articling process in the preceding article.

During a recent seminar on corporate governance that I attended, I became acquainted with some psychological phenomena about our natural biases and preferences. I was told that some of what we prefer, we simply prefer because it is the same or familiar. The example cited was that “if we regularly wear business attire our impressions of strangers who we meet wearing business attire will be more favourable than those that we meet that are not. If this same phenomenon applies to our impressions about articling, it stands to reason that those of us (all of the lawyers in Alberta) who have completed our professional licensing through traditional articling will favour students who have completed the accreditation in a manner similar to us.



There is little doubt that the Law Practice Program and the integrated Practice Curriculum will be viewed by many Alberta lawyers as being inferior. This will be disadvantageous to those students who have completed the alternative licensing regime.

My cursory (and unscientific) review of informal opinion has revealed that there is an impression that students who are licensed through the alternative programs will not be as good as those who have served traditional articles. In fact, it is also thought that only students of lesser ability will be the ones channeled into such programs. This acts as a “double whammy” against these students finding employment after completion. The “triple whammy” comes when the students that are unable to find places to work in law firms or elsewhere decide that the best thing for them to do is to hang out their own shingle. They will likely be vulnerable and ill prepared for the vagaries of solo private practice.

On the other hand, the Law Practice Programs are advertised to offer concentrated and enriched practice experiences focused on many of the practical aspects lawyers face on a daily basis. If the programs live up to their lofty aspirations many more competent lawyers will be licensed and able to serve the public and aid in access to justice.

Unquestionably, the alternate programs will help mitigate the

articling dilemma currently facing all law students. How can more opportunities to become qualified be a bad thing? It is clear that there has been a failure on the part of corporate legal departments, law firms, and governmental entities to keep pace with the thirst for articling positions. Creative solutions must be developed and tried.

Care must be taken, however, to ensure that the alternative programs are exceptional. Otherwise, a two tiered system may develop. Theoretically, the alternative programs could be found to be superior to traditional articling. I am sure that the 3 year (instead of 3 years plus 1 year articling) program offered by Lakehead University will be popular. If the program gets a student licensed one year faster it is likely to have its proponents. The elephant in the room is that not all articling experiences are of the highest quality. Some are excellent and others are appallingly deficient. There has been no reliable evaluation of the spectrum of articling programs offered by various firms. The Law Practice Programs on the other hand will no doubt be standardized. There will be some form of quality control. Students in these programs will receive a great deal of practical advice on the workings of a law practice. They may not receive this type of training in other articling situations.

In this article I was trying to think of some of the common reasons in support of traditional articling followed by counterpoint in support of the alternatives. What I found I was doing was criticizing without really knowing what the outcome might be. For that we will have to wait.

One thing that is certain is that lawyers accredited by Law Practice Programs will have no restrictions on them. They will be fully licensed by their regulator. They will be free to practice as any other lawyer can. The only problem may be acceptance by the rest of us.

Only time will tell. ❁



Anthony G. Young, QC is a lawyer with Dunphy Best Bloksom LLP in Calgary. He is a long-time member of the Canadian Bar Association, in addition to being a Bencher with the Law Society of Alberta.

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CATASTROPHIC INJURY AND WRONGFUL DEATH CLAIMS

RECRUITING FROM THE BOTTOM UP

Why Smaller Firms Should Consider Hiring an Articling Student

Would it surprise you to know that 55% of articling placements in Alberta are with firms of one to forty lawyers?*

Many smaller law firms are seeing the value of incorporating articling students into their recruitment and human resources strategy, but we are still finding that there are more students than articling placements, particularly in concentrated areas such as family law, as well as in small general practices where students have the opportunity to work hands-on with clients early in their career.

Vogel LLP is one Calgary firm that has been hiring students for more than ten years, as part of their longer-term recruitment strategy. In this article, Victor Vogel, Managing Partner at Vogel LLP, and articling student Kelly Tang (JD'13) share their perspectives on the key role an articling student can play in a smaller firm.

Q. Victor, can you provide a perspective on how Articling students have contributed to your firm over the years?

A. Vogel LLP opened its doors in 1996 and we hired our first summer law student in 2000. We had hired new associates, our practice was expanding and we thought it would be a good way to recruit talent to the firm. This student was a huge help to our personal injury practice.

We have regularly hired articling students since then, and they have helped out with certain tasks that lawyers would otherwise have had to carry out, such as conducting research, drafting affidavits, briefs and agreements, meeting with clients and assisting with chambers applications. While most applications are uncontested, once the articling student has developed skills, they have also assisted with contested applications and have handled matters from start to finish (with supervision). Students have also contributed to firm communications projects, such as the Spousal Support Case Summaries that we publish for the family bar throughout the year.

We benefit from students in so many ways - they'll often see opportunities and angles in files that we may not have considered, which is great for pointing out blind spots or bias—every lawyer needs this to be at his or her best. Our relatively young firm has developed in the areas of law that we practice largely by hiring articling students and keeping them long-term.

Q. Kelly, what has an average work week looked like during your Articling year?

A. I'm in court once or twice per week. I'll often attend representing a file that another lawyer in the office is working on and then I'll take other lawyers' consent orders or ex parte orders with me at the same time. Although most of the applications I've handled are uncontested, I've also handled a few contested applications. I'm one of the very few of my peers (that I know of) who has had the opportunity to do this. In the office, I usually spend my time

By **Maryanne Forrayi**

drafting applications, affidavits or letters, or conducting research. I work with both associates and partners.

I also attend a lot of client meetings and mediations with the lawyers. If the matter is small, I will often attend client meetings on my own after being introduced by the lawyer in charge of the file.

Q. Victor, have Articling students been a drain on the bottom line of the firm?

A. Students save the lawyers time on tasks, they're cost effective for clients and they really contribute to the intellectual capital of the firm. Realistically, we think of it as a long-term hiring strategy and an investment. We hire students with the hope that they'll stay on for years or for the rest of their career after articles.

Q. Kelly, what have you enjoyed most about articling at small to mid-size firm?

A. I know that a lot of my peers at larger firms spend most of their time writing memos. I wanted to attend court and client meetings, and articling at a smaller firm has given me the opportunity to do this. I feel my work is truly valued here at Vogel LLP.

Q. Victor, do you have comments or suggestions for sole practitioners in how hiring a student can assist them with their succession planning?

A. Sole practitioners often find themselves way too busy to deal with daily tasks and a heavy workload. Students can help with this. The lawyer might be even busier until the student gets up to speed, but if he or she hires the right student, it can be a real benefit to the practice in terms of responsiveness, task management and client work. If the student stays on after and practices with the lawyer for a few years it would likely work out well in terms of succession planning.

University of Calgary Law students bring a broad range of legal skills and knowledge

University of Calgary law students bring a high level of professionalism and knowledge, gained through our practical skills training and high academic expectations, to your firm. If you are interested in discussing how a student could contribute (through full or partial articles) to your firm, please contact us at (403) 220-2177 or at forrayim@ucalgary.ca.

* As reported by the Law Society of Alberta, October 2013.



Maryanne Forrayi is Director of the Career & Professional Development Office in the Faculty of Law at the University of Calgary and regularly provides advice to both law students and law firms on recruitment strategy and career planning.

CBA National News

NATIONAL PUBLIC INQUIRY ON MURDERED, MISSING ABORIGINAL WOMEN

The CBA has renewed a call for a public inquiry into missing Aboriginal women. The root causes of this problem were not adequately addressed in the report released by the House of Commons' special committee on violence against indigenous women. The CBA recommends that the government collaborate with Aboriginal communities on strategies to end acceptance of violence; encourage investigations into all the disappearances and murders; fund programs and services to address violence; and engage a national strategy to address violence against Aboriginal Women.

DAN MACRURY, QC, VOTED CBA 2ND VICE PRESIDENT

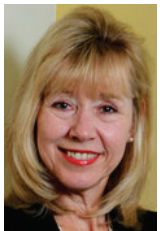


Dan MacRury, QC, of Sydney, NS won the election for incoming Second Vice-President of the CBA. This position is the first step on the ladder to the national presidency, a post he will assume in August 2016.

CBA President Fred Headon made the announcement on March 27 following a national CBA Council election.

"Congratulations to Dan on his successful campaign," said Headon.

CCCA HAS A NEW CHAIR: HEATHER INNES



CCCA welcomes new chair Heather Innes, global process leader, international trade law, at General Motors. She says she's looking forward to working with CCCA's sections and volunteers and "equipping our members to be effective and strategic legal advisers aligned with the objectives and needs of increasingly global organizations."

CBA LEGAL CONFERENCE: ST. JOHN'S, NEWFOUNDLAND AND LABRADOR, AUGUST 15 - 17

Earn all of your Professional Development (PD) accreditation hours in one weekend with unique sessions tailored to your area of practice and to our in-house counsel members.

The 2014 CBA Legal Conference - Converging Futures is your go-to place for accredited PD that addresses the issues facing your area of practice and the changing legal landscape. This year's conference program features a wide selection of interactive programs to inspire your legal career; thought-provoking discussions on the changing legal landscape, and national perspectives on important issues for all legal professionals.

Register now for the 2014 CBA Legal Conference - Converging Futures. You don't want to miss this! For more information, visit <http://www.cba.org/cba/cbaclc2014/main/>.

CBA INTERNATIONAL INITIATIVES

The CBA's International Development Program will now be known as CBA International Initiatives.

The name change, effective March 3, better reflects the program's objectives and collaborative approach to working with overseas partners in 29 different countries. It does not affect the program's basic philosophy or goals established over the last 20 years.

The program is founded on knowledge-sharing and establishing institutional links that transcend individual projects, which are designed and implemented in close cooperation with partners to be responsive to their needs.

To find out more, or to get involved, visit <http://www.cba.org/cba/idp/interdev/>.

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Lupe Rodriguez (1953-2008), Untitled 1983
Goache and Pastel on Japanese Rice Paper
23.5 x 32.5 in (59.5 x 82.5 cm), Hand-crafted frame by Jarvis Hall

FRONT AND CENTRE

University of Calgary Regional & Small Firm Day



Lawyers from small communities and small firms participate in a career panel at the University of Calgary Faculty of Law

Young Lawyers Calgary Networking Event



Members of the Young Lawyers section, and other young professionals, spend an evening networking in Calgary

Court of Appeal of Alberta Centennial: People, Principles, Progress



(l) The Right Honourable Beverly McLachlin, Chief Justice of Canada and Marian V. De Souza, QC, President of the Canadian

Bar Association, Alberta Branch; (c) The Right Honourable The Baroness Hale of Richmond, DBE, PC, QC, FBA Deputy President of the Supreme Court of the United Kingdom; and (r) The Three Ten(s)ors, Francis Price, QC, Norman Picard, QC, and Andrew Hladyshevsky, QC, accompanied by Gary Cable, QC, perform at the Centennial Gala.

Law Day St. Paul



(l) Marian V. De Souza, QC cuts the cake with Justice Eldon D. Simpson to celebrate a successful first Law Day in St. Paul; and (r) Law Day St. Paul Chair, Renee Moore of Lamoureux Culham LLP, gets "arrested" on St. Paul's inaugural Law Day

**Thank you
to all of
our Law
Day 2014
volunteers!**

Law Day Drumheller



(l) The RCMP participate in a demonstration with their canine unit; and (r) Merlin the Magician and "Hairy Porter" go to trial in Drumheller

Law Day Edmonton



(l) The team from Zebra Child Protection Centre participates with their lovable dog; and (r) Edmonton Mayor Don Iveson acts as "town crier" to open Law Day 2014

Law Day Calgary



(l) Ralph the Dog of the Calgary Stampede warms up the crowd before his custody trial in "Battle on the Gridiron"; and (r) adorable drug-sniffing dog Rusty makes friends (and gives kisses!) to the youngest Law Day attendees.

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Alberta Branch News

CALGARY OFFICE RELOCATING

Effective July 1, 2014, the Calgary office is relocating to First Alberta Place at Suite 710, 777 - 8 Avenue SW. The new location is +15 accessible, and is convenient to a number of parking options, the Calgary Courts Centre, and to Calgary Transit.

We will look forward to welcoming all of our members to the new office space when section meetings resume in September.

ALBERTA LAW CONFERENCE 2015

We are excited to announce the 2015 Alberta Law Conference co-chairs - Jessica Buckwold of Stantec Consulting Inc. and Michael Kraus, QC, of Emery Jamieson LLP.

Thanks to the excellent feedback received from the Alberta Law Conference survey conducted at the conclusion of the event this year, we have some exciting changes coming for ALC 2015. Stay tuned as more details about the conference will be released leading up to the event.

Save the date now, as the 2015 Alberta Law Conference will be held January 29 & 30, 2015 at the Fairmont Hotel MacDonald in Edmonton, AB.

CBA ALBERTA DIRECTORIES



With the upcoming introduction of an online legal directory, the printing of the 2014 Legal Directories has been delayed until fall 2014.

All CBA Alberta members who have purchased a Portfolio or Portfolio Plus package will receive one complimentary copy of the printed directory, as well as complimentary access to the online directory. All other CBA members will have the option of purchasing the online and printed directories at a discounted rate.

We expect that the online directory will be active prior to the fall 2014 release of the printed directory. All CBA members will be granted a complimentary "preview" of the directory at this point which will last until the fall.

Further information about Legal Directory pricing, advertising, and new features will be provided in the coming weeks. In the meantime, any questions can be directed to Lee-Anne Wright at communications@cba-alberta.org.

Magna Carta Canada

By Scott A. Watson, QC

"No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, nor will we proceed with force against him, except by the lawful judgment of his equals or by the law of the land. To no one will we sell, to no one deny or delay, right or justice."

These ideas and others (which include women's rights and rights to the use of natural resources) which were articulated in Magna Carta in 1215, radically altered the rights of individuals and their rulers, and established the foundation from which our democratic societies, based on the rule of law, have evolved.

Plans for commemoration of the 800th anniversary of the issuance of Magna Carta in 2015 are well underway in the United Kingdom, the United States and, now, here in Canada.

Magna Carta Canada is a not-for-profit organization established to bring to life a once in a lifetime opportunity to highlight the importance and relevance of Magna Carta to the people of Canada by bringing to Canada an original copy of Magna Carta, and an original copy of its companion document the Charter of the Forest, for a six month, four city, touring exhibition. The exhibition will travel across the country, starting in June, 2015 in Ottawa (the Canadian Museum of History), followed by stops in Edmonton (the Province of Alberta Legislative Assembly Visitors Centre), Toronto (Fort York National Heritage Site) and Winnipeg (the Canadian Museum for Human Rights).

The exhibition is being arranged with the participation of Durham Cathedral, which is located in Durham, England. Durham Cathedral is fortunate enough to hold three copies of Magna Carta; the copy visiting Canada will be the 1225 version, the first document to be issued voluntarily under the seal of a reigning monarch, King Henry III. It will be joined by one of only two surviving copies of the 1217 Charter of the Forest, the first document to include the concept of universal rights.

The documents will be accompanied by interpretative material, focused on the key themes of 'the History of the Charters', 'Beyond Britannia - how the achievements of the charters spread to the Americas', and 'Justice Today', looking at how Magna Carta influences our lives today.

Magna Carta Canada is very excited to be a part of the programme of events marking the 800th Anniversary of Magna Carta around the world and to work to help ensure that Canadians are aware of the importance of Magna Carta and the Charter of the Forest to our day-to-day lives.

At this time, Magna Carta Canada is in the process of raising the funds necessary to create and mount an exhibition worthy of these iconic documents. It is their hope that this exhibition will be enthusiastically embraced by the Canadian legal community. If you are interested in sponsorship opportunities, making a donation (for which a tax receipt will be issued) or in becoming involved as a volunteer of Magna Carta Canada, you may contact the Chair of Magna Carta Canada, Len Rodness at lenrodness@magnacartacanada.ca, or visit their website at www.magnacartacanada.ca, and you may follow them on Twitter (@MagnaCartaCAN).

Technology and Time Management

By Terry Cooper, QC and Devin Mylrea

There are countless articles, books and seminars offered to lawyers which are focused on helping lawyers be more effective, efficient, productive and profitable. There are also countless articles and books about stress, how stress affects our health and how to manage that stress.

On one hand we want to be successful, for many the measure of our success is dependant on our productivity. On the other hand, we want to be able to enjoy the fruits of our success.

These two goals appear to be contradictory. The first goal suggests we should work more. The second goal suggests we should work less. We suggest that the true solution for the first goal, to be successful, is - Work Smart. Likewise, we suggest that the solution for the second goal, reduce stress and enjoy life, is - Work Smart. There are two practices you can embrace to Work Smart:

- Time Management , and
- Effective Use of Technology

Time Management

1. Take a Time Management Course or Take an Update

You may be extremely effective in managing your time. Even if you are, there is always more you can learn. A time management course provides ideas to make effective use of your time, reinforces techniques you have already adopted and it provides for you to take the next step in implementing changes in your practice.

2. Track Your Time

Most lawyers track their time for rendering accounts. Track the time you spend at the firm which is not for a specific client file. Be specific in tracking your non-billable time. A better understanding of what you spend your time on is important if you are going to truly manage your time.

3. Control Your Time

In private practice, we do not have just one boss to report to. Every client is our boss and they feel that their file should be our top priority. Often we cannot control when these files need our attention but we can control our time.

Controlling your time means setting rules on how you will work and prioritize the work you need to do for your clients. It means managing distractions.

You need to be able to set aside time in your work day to work on those files you have decided need your attention. When distractions divert you from what you intended to work on you relinquish the power to decide what work you do.

Establish an e-mail protocol for dealing with emails and responding to emails. Use your voice mail, put your phone on “do not disturb” and make sure your voice mail message says when you are likely going to return the call. Establish a procedure for clients to contact you during your “do not disturb” times in cases of urgent matters.

4. Schedule Your Time – Both Your Work and Non-Work Time

You can be the most spontaneous person alive if you just have the opportunity to set aside the time. If your work e-mail is forwarded to your smart phone and your smart phone goes home with you at night, aren't you really saying that you are working on call 24/7? Do you need to be available 24/7? What clients need to be able to contact you when you are not in the office? Distinguishing or scheduling when you are working and when you are not working is an important step in finding a proper balance.

During your work day or work week, are there routine tasks that you wish to accomplish? Would it benefit you by scheduling “do not disturb” blocks of time at a regular time each week?

Technology That Can Assist in Making More Effective Use of Your Time

1. Go Paperless

The technology is readily available to have a paperless, or rather, a less paper practice. Scanners are fast and inexpensive. Hard drive storage space for paperless documents is cheap. The benefits of a paperless practice are immeasurable.

2. Dual Monitors

Ensure your computer has at least two monitors. We believe every computer should have the ability to run two monitors. Most laptops can be docked in a port replicators which will support multiple monitors.

Multiple monitors save time. Try it you will never go back!

3. Set Up Remote Access

Remote access allows you to log into your office from another computer. With remote access, a paperless practice and digital dictation your office is wherever you are. Granted, this means that you could work 24/7 if you were inclined to do so. More importantly however, this provides a tool that allows you to have balance. You can take that holiday but still review an important contract when needed.

Health Matters! A successful career is of little value if it affects your health and prevents you from enjoying life with your family. It is ironic that the iconic symbol of our profession embraces the concept of balance while many in our profession struggle to find balance in their profession and home life. We believe that time management and effective use of technology are tools that will assist in finding this balance. ☼



Terry Cooper is a Partner of Campbell & Cooper in Fort McMurray. He moved to a “less paper practice” in 2008. The firm has a number of assistants who work remotely.



Devin Mylrea is an Associate Partner with Shea Nerland Calnan LLP in Calgary. His firm utilizes many of the technologies and methods in this article.

LEGAL EDUCATION SOCIETY OF ALBERTA

CPLED 101: What You Need To Know

If you are a current CPLED student, recent grad, or one of our 200 facilitators and evaluators, you probably already know what the CPLED Program entails. If not, here are the answers to some of our most commonly asked questions about Alberta's bar admission program:

By Jennifer L.C. Flynn

What exactly is "CPLED"?

The Canadian Centre for Professional Legal Education ("CPLED") Program is the bar admission course delivered in Alberta, Saskatchewan, and Manitoba. The Legal Education Society of Alberta delivers the CPLED Program on behalf of the Law Society of Alberta.

What is the goal of CPLED?

The CPLED Program is designed to bridge the gap between law school and practice. Background readings, learning exercises, assignments, and feedback from skilled professionals help candidates develop entry-level competencies. Mandatory competency evaluations, administered throughout the program, help ensure that candidates have the knowledge, skills, and abilities to be successful as a practising lawyer.

Can anyone take CPLED?

To be eligible for the CPLED Program, an individual must first apply for admission to the Law Society of Alberta as a student-at-law.

How does someone get admitted to CPLED?

Admission to the CPLED Program requires (a) a completed Application for Admission to the CPLED Program, (b) a signed CPLED Program Agreement, (c) payment of tuition, and (d) confirmation of student-at-law status.

What do students take?

The CPLED Program consists of three face-to-face sessions, six three-week online modules, and an Ethics & Professionalism competency evaluation. Students also complete an online Trust Accounting Fundamentals self-study course. Students are automatically enrolled in the following online sessions:

- *Legal Research & Writing*: September 4, 2014 to September 25, 2014
- *Drafting Pleadings*: October 2, 2014 to October 23, 2014
- *Drafting Contracts*: November 6, 2014 to November 27, 2014
- *Written Advice & Advocacy*: November 27, 2014 to December 18, 2014
- *Practice Management*: January 15, 2015 to February 5, 2015
- *Client Relationship Management*: February 12, 2015 to March 5, 2015
- *Ethics & Professionalism*: March 5, 2015 to March 12, 2015

Students also register for three face-to-face sessions—Oral Advocacy & Professional Responsibility, Interviewing & Advising, and Negotiations & Practice Fundamentals. These sessions are each offered twice per year in each of Edmonton and Calgary.

What does it take to "pass" CPLED?

Students must attend all face-to-face sessions, participate in all online modules, and achieve a grade of Competency Demonstrated in all 10 competency evaluations. A student who receives a grade of Competency Not Yet Demonstrated can complete a supplemental competency evaluation (up to a total maximum of three) during the Reserve Period, which runs March 26, 2015 to June 18, 2015.

How much does CPLED cost?

Tuition is set by the Benchers of the Law Society of Alberta. For 2014/2015, tuition is \$2,761 (plus GST). Tuition covers registration fees, enrolment in all modules and competency evaluations, any re-marking or supplemental fees, all administration fees, and access to a wealth of LESA online resources.

What are the deadlines to register?

The registration deadline is May 31, 2014. Students who do not apply by this date are subject to a non-refundable late filing fee. Documentation and fees are due July 31, 2014. Students whose documentation and fees are not received by this date may have their applications cancelled and/or be delayed entry into the CPLED Program.

How do I get involved or find out more?

For more information about the CPLED Program or to learn how to get involved as a facilitator or evaluator, visit www.lesa.org.



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



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PRO BONO LAW ALBERTA

Partnerships for the Future

By Gillian Marriott, QC and Kendall Moholitny

After a long, cold winter, we are turning our faces toward the sunshine, and looking ahead to the future. This spring, PBLA is brokering new partnerships and strengthening continuing ones. In partnership with volunteer lawyers and law students, PBLA works to enhance access to justice for members of the public.

New Partnerships: Taking Pro Bono into the Community

PBLA has brokered two new partnerships to engage pro bono lawyers in an area of extreme need and with a vulnerable population. The Discovery House and the Brenda Strafford Centre are safe places for women and children who have been impacted by domestic violence. Widdowson Kachur Ostwald Menzies LLP (WK Family lawyers and Mediators), will provide legal assistance to women who are clients of Discovery House. Similarly, volunteer lawyers from Foster LLP have a new partnership with the Brenda Strafford Centre in Calgary. Both programs provide legal services in the form of legal clinics and public legal education sessions.

These types of partnerships are important to the future of pro bono, as they help to achieve access to justice for individuals who are not able to seek out other sources of assistance due to their particular circumstances.

Law Student Pro Bono: Building for the Future

Pro Bono Law Alberta is pleased to work with Pro Bono Students Canada (PBSC) chapters at both the University of Alberta and the University of Calgary. PBSC projects and partnerships provide law students with opportunities to do pro bono work and foster a sense of service to the community.

PBLA has partnered with PBSC students in its court-based programs. The Civil Claims Duty Counsel Project (CCDC) partners volunteer lawyers and law students to give legal assistance to self-represented litigants in Provincial Court, Civil Division. CCDC runs in both Edmonton and Calgary, and PBSC students from both Alberta chapters participate.

The PBSC chapter at the University of Calgary also participates in the Queen's Bench Amicus Project (QB Amicus), assisting self-represented individuals with chambers applications in the Court of Queen's Bench. The project uses teams of volunteer lawyers, bankruptcy trustees, PBSC law students, and an articling student from Student Legal Assistance (SLA) to provide assistance in chambers, legal advice and document preparation support.

In both the CCDC and QB Amicus programs, the PBSC students play an important role in assisting volunteer lawyers in delivering service to the public, and fostering access to justice for self-represented litigants in both programs. The programs offer students opportunities for mentorship with the volunteer lawyers, and to gain experience with client interviewing and other skills.

These programs are successful due to the continuing support of several law firms in Edmonton and Calgary who regularly step up to the plate to volunteer. Thank you for your commitment!

Alberta lawyers have an opportunity to give back throughout the province. Pro Bono Clinics are located in: Calgary, Edmonton, Lethbridge (Medicine Hat), Central Alberta and Grande Prairie. The pro bono clinics offer unique volunteer opportunities in a wide range of legal areas. You can also choose to join PBLA's Volunteer Lawyers Services Program, where you define the scope of your commitment and involvement. All volunteer opportunities can be found at www.pbla.ca

Spring into pro bono....get on board! 



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



Deputy Executive Director Kendall Moholitny joined the PBLA team in February 2013. Kendall articulated at Dunphy Best Blocksom several years ago and also practiced civil litigation at Peacock Linder Halt.



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CROSS SECTION

North

In the spring, our thoughts turn to renewal and making things grow. I'm talking, of course, about the Canadian Bar Association's sections and not your gardens. On May 29 we plan to hold a spring workshop for both outgoing and incoming chairs. This new idea is to facilitate debriefing those chairs stepping down and also to welcome new chairs with some valuable information to help in the transition process. That is, we are going to plant the seeds of success (sorry). We promise to be brief, and to provide information that you will find valuable to help grow your sections and plan for next year's section programming! Watch for more details.

On May 27 the CBA is pleased to present the second of two yearly Inns of Court evenings. This is a great opportunity for junior litigation lawyers to interact with judges and experienced members of the bar. Space is limited, with preference to lawyers at the bar five years or less. Featured speakers are Justice Clackson, Madam Justice Shelley, Robert Curtis QC, and Karen Hewitt on "The Court of Queen's Bench Trial: Preparation and Advocacy". Call the CBA office at 780-428-1230 for more information or to register.

The Women's Law Forum is a northern section worthy of mention, having held some successful and innovative meetings this year. One meeting offered up mentor advice

from Justice Bielby, Michele Hollins QC and Ingrid Meier on work-life balance and achieving success in the legal profession. Another involved a book launch of *Breaking Through: Tales from the Top Canadian Women General Counsel*. The section also featured *Candid Conversations*, an annual event held in conjunction with the Law Society, and also a session involving *lean in circles*, giving attendees the chance to engage in a mentoring circle and to get practical advice on their legal careers.

The WILL (Women in Law Leadership) Awards are coming to Edmonton for 2014, and are restricted to women lawyers practicing in Edmonton and Northern Alberta. See the WILL website for more information (www.willawards.ca). Nominations open on May 15, 2014. ❁



Frank Friesacher is a partner with McCuaig Desrochers LLP in Edmonton. He is an avid CBA member and volunteer, having previously served as Internet Advisor, Legislative Review Committee member, and more, in addition to acting as North Section Coordinator.



Karen McDougall is the principal of Casefinder, and is a long-time CBA member and volunteer, currently serving her third year as North Section Coordinator.

CROSS SECTION

South

It is finally starting to feel like spring (although admittedly by the time this article goes to print it may well be snowing again), and in spring we all know our thoughts turn to only one thing – filing those tax returns! Oh, and playoffs.

Below are some tips to help keep your sections running smoothly:

- When planning a large meeting (e.g., multiple sections) remember to check with Linda at CBA Alberta first to ensure that suitable arrangements are made.
- Consider the possibility of bringing in a high profile speaker, including someone from out of town, subject to available room in your budget.
- On the topic of budgets, CBA administration fees charged to sections are increasing to \$40 per member, so remember to take that into account when planning your budgets.
- Ask your section members and executives how CBA can "add value" to the members. For example, can the section arrange for bulk discounts on texts or other necessities?

- Remember to send details on your meetings to Linda as early as possible so that notices may be sent out three weeks prior to the meeting. Later notices usually translate into lower attendance.

A quick reminder that there will be a spring section workshop in Calgary on May 2, 2014 at noon. All section executive members, including existing and incoming executive members at all levels, and any members interested in joining a section executive, are invited to attend. Please RSVP Linda at sections@cba-alberta.org. The spring workshop will be replacing the traditional annual fall workshop. We hope to see you there! ❁



Anthony Strawson is a partner with Felesky Flynn LLP, where his practice is restricted to taxation law. Anthony is a frequent speaker and writer on taxation matters.



Jenny McMordie practises civil litigation (commercial, estate and personal injury) and is a proud partner at a two-lawyer firm, West End Legal Centre. Jenny has participated in many CBA sections over the years, and values both the CLE and networking opportunities that the CBA sections offer.

THE STUDENT PERSPECTIVE

University of Alberta

Once again, the school year has come and gone. Students are now onto exciting summers of work, travel, fun, and further education. Many have graduated, and we wish them the best of luck and success in their future.

The Mentor Mixer in January was well attended. Students and mentors had their first opportunity to meet before embarking on a year of learning. Mentors and students are encouraged to keep in regular contact. Even over the summer, depending on what you want your mentorship relationship to look like, students may have a more relaxed schedule to see their mentors more regularly than in the school year.

In March, we held a meeting called “You vs the Examination: Time, Preparation, and Tactics.” Professor Wayne Renke was kind enough to make the presentation, providing suggestions on time management, study strategies, and how to properly respond to the question asked on the test (rather than the question some students would like to answer). Many students attended in the hopes of learning some more about tackling the law school exam. Needless to say, students came away

from the meeting knowing answers to questions they did not even have before.

We at the CBA Law Students section would like to thank all of our presenters who have made our events possible, the students who have made those very events so successful, and Heather Walsh, who has pulled off another year of excellent student programming. Congratulations to the class of 2014, and we look forward to the next academic term! 🌸



Siwei Chen is the co-chair of the University of Alberta Law Students section. She is currently in her third year at the Faculty of Law, summering at Bennett Jones in Calgary.



Katherine Fraser is the outgoing co-chair of the University of Alberta Law Students section. She has just graduated from the Faculty of Law, and she will be clerking at the Provincial Court and finishing her articles at MLT, both in Edmonton.

THE STUDENT PERSPECTIVE

University of Calgary

As I finish up by last month of law school, I thought I would share what I feel I have gained through my three years in Murray Fraser Hall. While I am certainly leaving Calgary having gained a vast amount of legal knowledge, one of most important aspects of my legal education has been the skill I have gained as an advocate. So much of the knowledge gained in law school will be tempered if we are unable to communicate with both clients and the court regarding the needs of our clients. Organizations like SLA, PBSC and the CBA certainly help to foster this type of learning as well as facilitate the growth of these skills. I can say with the utmost certainty that I will be better off as a Student-at-Law as a result of the advocacy skills I have gained from these programs.

Another valuable asset I have gained in addition to legal knowledge and advocacy skills is an established network. So many students believe at the beginning of law school that the purpose of networking is to gain names and relationships for the job hunt. In reality, the majority of these names and relationships do not turn into employment. However, what they do turn into are invaluable mentors and resources for your legal practice. There are so many areas of the law that it impossible to be knowledgeable in all of them. But having contacts in various areas of practice and having someone

to call up for advice on a file is an asset that truly creates a competent lawyer. I truly believe that the existence of all three of these assets is what truly creates an effective lawyer. I know I will take all three into the beginning of my practice in hopes of becoming a valuable member of the legal community.

I would also like to take this opportunity to introduce Camille Sehn and Jenson Leung as the CBA Student Committee Co-Chairs (South) for the upcoming year. I have no doubt that the CBA and the University of Calgary will be served well and I wish them good luck! 🌸



Kathryn Kitchen is a co-chair of the University of Calgary Law Students section. After completing her third year at the Faculty of Law, she is articling at a general practice firm, Trobert Law, in Estevan, Saskatchewan.



David Louie is a co-chair of the University of Calgary Law Students section. After completing his third year at the Faculty of Law, he is articling at the labour and employment firm Roper Greyell LLP in Vancouver.

ALBERTA LAW REFORM INSTITUTE

Reform Matters

Rethinking Communication

ALRI continues to review its communication plans to determine how best to serve the profession and the public in the digital work. While we expect to maintain hard copy publication of final reports for a while longer, the majority of our communication is now digital and runs through ALRI's website, www.alri.ualberta.ca.

We appreciate the support of the Canadian Bar Association and Law Society of Alberta by including notices about law reform consultation opportunities in communications to members. Last year, ALRI received more than 950 consultation responses from lawyers and members of the public. It is very exciting to be able to engage the profession in new ways and to ensure that our recommendations take into account as broad a range of views as possible. Independent law reform relies on the profession's willingness to share its expertise to develop sound proposals for legal change. Our thanks go to everyone who took time to respond.

Recommendations Adopted - Criminal Practice Rules, Court of Appeal Rules, and Estate Administration

The Court of Queen's Bench issues new Criminal proceedings Rules in February. The new rules address several of the issues noted in ALRI's *Criminal Trial Proceedings* (Final Report 100) and adopt many of the recommendations.

The Alberta Rules of Court Amendment Regulation, 2014, A4 41/2014 will bring in new rules for the Alberta Court of Appeal. The new rules come into effect September 1, 2014 and address the issues raised in ALRI's *Rules: Civil Appeals* (Consultation Memorandum 12.21).

The *Estate Administration Act* (Bill 4) pass third reading on March 20. The Act adopts the majority of recommendations from ALRI's *Estate Administration* (Final Report 102).

New Report - Beneficiary Designation by Substitute Decision Makers (Final Report 104)

Beneficiary designations are commonly used for RSPs, RIFs, TSFAs, pension plans and insurance policies. Designations can be made, changed, or revoked as long as the owner has testamentary capacity. However, once the owner loses testamentary capacity, the law offers little guidance to substitute decision makers regarding the future designation of beneficiaries if plans or policies need to be changed. There may also be inconsistent policies among financial institutions and insurance companies.

The Report recommends allowing a trustee acting under a trusteeship order or an attorney acting under a power of attorney to re-designate the same beneficiary when a plan or policy is renewed, replaced or converted. However, if the owned did not designate a beneficiary the substitute decision maker will not be allowed to add one.

This Report also recommends that a beneficiary designation in favour of a spouse or adult interdependent partner should be revoked by law when the marriage or partnership ends. This

By Peter Lown, QC

recommendation is consistent with the *Will and Succession Act* which revokes gifts to a former spouse or partner. The recommendation adopts the same criteria for determining the end of a relationship and includes the same protection for a family member who may have been an adult interdependent partner.

The acts identified for amendment in this Report are: *Adult Guardianship and Trusteeship Act*, *Insurance Act*, *Powers of Attorney Act*, *Public Trustee Act*, and *Wills and Succession Act*.

Work in Progress

ALRI continues to work in the following areas that are likely to result in final reports in 2014:

- Oaths and Affirmations under the Evidence Act
- Assisted Reproduction: Parentage and Succession for After-Born Children

ALRI will be consulting on proposals for reform in the following areas in 2014:

- Non-profit Corporations
- *Matrimonial Property Act*: Debt, Dissipation of Assets, and Valuation Date

ALRI is also working on how to best implement two uniform acts adopted by Uniform Law Conference of Canada:

- The Uniform Reviewable Transactions Act (2012) replaces the statutory and common law of fraudulent preference and conveyances. In March, ALRI had the opportunity to speak about this project to sections in both Calgary and Edmonton.
- The Uniform Trustee Act (2012) preserves the key purposes of trustee legislation while proposing updates that are consistent with how modern trusts operate.

Law Day in St. Paul

ALRI made its first Law Day appearance at the first Law Day held in St. Paul. It was a great event, and we appreciate the opportunity to meet local lawyers and members of the public. ☀

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If you would like to be included on the mailing list for any of these projects, please send an email to [reform@alri.ualberta.ca](mailto:reform@alri.ualberta.ca).



**Website:** [www.alri.ualberta.ca](http://www.alri.ualberta.ca)  
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**Twitter:** @ablawreform



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

# ALBERTA LAWYERS' ASSISTANCE SOCIETY

## The Check Up: Health and Wellness of the Legal Profession in Alberta

By Simon Shakibaei

*Logan is an ambitious first-year associate at a medium-sized regional law firm. He is recently married and his wife is a substitute teacher at a local elementary school. With billable targets looming, he has spent the last four weekends at the office, leaving his wife to take care of all household duties. He's just been handed some complex files from an influential partner he would like to impress. His level of anxiety is escalating.*

*Logan has told his family and friends he is feeling stressed about his workload. He spends most Fridays working late and drinking Scotch.*

This fictional story embodies some of the characteristics identified by Ipsos Reid in its 2012 study of the health and wellness of lawyers in Alberta and across Canada. For example, more than 94% of legal professionals surveyed identified stress and/or burnout as the most prevalent health-related concern. Anxiety was the second most common condition encountered. Those who encountered these issues reported they engaged in unhealthy behaviours like working over the weekend and not exercising regularly.

The Ipsos Reid study revealed that practitioners in Alberta are divided on whether they will use a lawyer assistance program when confronted with a personal issue. One of the reasons for not seeking help was a negative perception of people with "problems." This suggests there is a stigma in the legal profession associated with seeking treatment. The most common reasons for not seeking help included:

- Help was not needed;
- They preferred to deal with the issue themselves;
- They were too busy;
- They did not know where to turn for help; and
- It was simply part of the job.

Yet, those who had personally used Assist, or referred someone to the program, were more likely to indicate they would use the service again.

Recommendations cited by the Ipsos Reid study included: removing the stigma associated with mental and physical issues or personal problems;

### Ten years later...

*Logan has moved to the Calgary office of a national law firm. His eventual recognition of the stress he was under led him to contact Assist for professional help. He has become more assertive in imposing upon himself a more reasonable work-life balance. His drinking has stopped; he is getting enough sleep at night, and is using the vacation time he is given. Having given birth to twins, the couple is now a family of five. Logan recently signed up to coach his daughter's under-6 soccer team requiring him to leave work promptly at 5 p.m. and he didn't hesitate to take on the volunteer commitment.*

Not all stories turn out as well as these fictional accounts. Still,

89% of lawyers across Canada perceived the Lawyer Assistance Program as an effective way of dealing with health and wellness issues. Professional and peer support is there if needed; services are confidential and free.

To help overcome the issue of stigma and raise awareness, Assist held an inaugural fundraising dinner featuring Senator (ret'd General) Roméo Dallaire. The event was attended by the Hon. Chief Justice Fraser of the Court of Appeal; Chief Justice Wittmann of the Court of Queen's Bench; Deputy Chief Judge McLellan of Provincial Court; Chief of Police, Rick Hanson; Deputy Chief of Police, Murray Stoke; Minister of Justice and Solicitor General, Jonathan Denis, Q.C. Thanks to 300 members of the profession for supporting the event, with major sponsors Davis, Burnet Duckworth and Palmer and Dentons. For more on the event, visit us at [www.albertalawyersassist.ca](http://www.albertalawyersassist.ca).



Simon Shakibaei is an associate practicing in the area of civil litigation in Calgary. In addition to writing for Law Matters, Simon is also an active volunteer for the annual Law Day events.

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# (RE)SEARCH: RESEARCH OR JUST SEARCH?

## Legal Information and the Open Web

By Dale Barrie

It was recently stated in these pages that access to legal information is growing and anything but grim. It was further posited that one can now get online and fairly easily find legal information. I do not contend the fact that the amount of legal information found online is growing, or that it can be found easily. I would suggest however, that the type, usability and quality of legal information found freely online, and the ease with which one can access such information is something that should be given greater pause for consideration.

Issues related to conducting free web-based research for information have been identified by members of the health and medical professions, and I would suggest that similar conclusions can be drawn when considering a similar type of search for freely available legal information. Such shortcomings when relying on free web-based research would include, (i) the uneven quality of legal information available on the Internet; (ii) difficulties in finding, understanding and using this information; (iii) lack of access for the unconnected population; and (iv) the potential for harm in misapplying information found on the open web. To be able to overcome these shortcomings, it is important that practitioners and professionals be involved in the design, dissemination and evaluation of web-based legal information and resources. Equally important is that the limitations in providing information via this medium be acknowledged, and in turn that alternate methods or modes of access to legal information continue to be supported and explored.

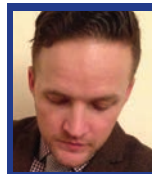
A number of reputable organizations across the country have and continue to make great efforts in creating and offering a variety of web-based content that is useful to individuals who have a legal information need, be it aimed at members of the general public, self represented litigants, legal researchers or members of the legal profession. Such efforts include making court or procedural guides developed by the courts freely available, posting prescribed court forms in a useable format, compiling tip-sheets and FAQ type databases, and making copies of case law and legislation freely available. Even with such efforts as these in place, it has been found that for one group to whom many of these efforts are targeted (self represented litigants), no matter how complete, comprehensive and user friendly they may be, online resources are insufficient to meet SRL needs for face to face orientation, education and other support (see: Final Report: Identifying and Meeting the Need of Self-Represented Litigants, Dr. Julie Macfarlane). Certainly it would be fair to say that the breadth and depth of information found on the open web that is aimed at members of the legal profession, also has its limits.

When considering the type of information that is freely available online, one will soon notice that though things like current case law and legislation are freely available, the tools that explain and help us apply the law are generally not. The web-based tools that provide this type of added value are by and large subscription based, or "fee" rather than "free" based research

tools. Undoubtedly the relevancy, accuracy and currency of information are crucial factors when conducting legal research, and unsurprisingly the accuracy and authority of information in these fee-based tools is far easier to qualify than that which can be found on the open web (as a drastic example, consider citing the Wikipedia entry on Constitutional law versus citing Hogg's Constitutional Law in Canada). Acknowledging this shortage of freely available secondary content, CanLII launched CanLII Connects in April 2014, a website that offers case digests and commentary. This is a commendable addition to legal resources on the open web, yet even though the legal information landscape is changing, the characteristics of effective and efficient legal research will remain the same: One must still be able to identify, locate, evaluate, and effectively use information for their issue or problem at hand.

In an open and endless world wide web, finding information and answers is seemingly easy. Again, one must not simply be able to locate information, but rather be able to confidently identify the information found as being accurate and relevant, and to see the interconnectedness of (re)search results. This task is not always easy to do when relying on sources found on the open-web. The gathering of information is but one aspect of legal research, and the additional requirements of effective and efficient research call for the right tools, time and indeed a particular skill set.

Ultimately, the open-web can be a helpful tool with which to conduct legal research. An Internet connection does not equate to "access to justice" however, and posting information online does not make it useful simply by virtue of its existence, nor is there any guarantee that posted information will be found, that it will be identified as relevant, or that it will be understood or applied correctly. Practitioners and professionals should continue to take an active role in improving the legal information landscape of the open-web, yet the limitations in providing information via this medium must be acknowledged, and alternate methods or modes of access to legal information must also continue to be supported and explored. 🌐



Dale, a member of the Alberta Law Libraries team, takes a particular interest in considering the Internet - the latest in a series of major information breakthroughs - and the resulting "information hall of mirrors" it has created. This interest is certainly greater than the pleasure he takes from writing in the third person.

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# IN MEMORIAM

## Christopher Thomas, QC June 7, 1948 - February 21, 2014

As many of you will know by now, our profession suffered a huge loss with the death of Chris Thomas on February 21, 2014. Chris lost a lengthy and courageous battle with Lymphoblastic Lymphoma at the age of 65.

I am haunted by words I heard again recently while watching the Return of the King and immediately thought about Chris.

How do you pick up the threads of an old life? How do you go on, when in your heart you begin to understand. There is no going back. There are some things that time cannot mend. Some hurts that go too deep. That have taken hold.

It feels so descriptive of our office (and world) without him in it. The hurt is indeed deep and the hole that is left is overwhelming. Chris was an amazing lawyer and an amazing person, an amazing friend and well-loved. He was what many of us strive to be.

Chris worked his way through university and law school by working at radio stations as a DJ. First in Calgary for XL radio and later CHED in Edmonton. His legal career spanned nearly 40 years and within that time has earned the esteem of his colleagues and clients.

When news spread about Chris, there was an outpouring of sympathies from the legal community: both colleagues and clients describing Chris as a wonderful man, a true gentleman, a kind and generous man and of course a very skilled lawyer. His drafting has been described as elegant, his approach very practical and client centered and overall he was instrumental in many of our lives and careers, either through advice and encouragement, mentorship or simply by being our friend.

He has left a true legacy of incredible legal knowledge but also as a teacher and mentor. He remains the standard in my world. "What would Chris Thomas do?" is often how I come to know what the right course of action is. As I was learning how to do things in the profession, which I later learned the reasons for, but when I started, the reason for doing much of what I do, was because "this is how Chris does it". I am sure many in the profession would agree, as Chris was often a sounding board for other lawyers and always had time for people with questions.

Along with his immense professional reputation was Chris' dedication to his family. He cherished his time with family and it was clear to everyone who knew him that family was the most important part of his life. Chris would proudly tell us of the latest news with his family's accomplishments from new jobs to hunting or fishing or his camping with his grandchildren. He was a model for striking the balance between his professional life and his cherished family life.

Chris was also a dedicated volunteer who enjoyed volunteering for Calgary Legal Guidance, Uncles at Large, VRRRI, the Special Olympics, Willow Park Community, the Calgary Foundation and the Canadian



Bar Association, Wills and Trusts subsection.

Chris also had a passion for hobbies. He was an avid fisherman, golfer, outdoorsman, hunter and as many of you can attest, loved cars and motorcycles and touring them on our scenic highways.

Chris was able to bring such kindness and generosity to everything that he did. He was generous with his time, whether it was to mentor on a file or to hear the latest news of one's personal life. I will never forget his "looks good on ya" when I told him of how I spent my first bonus or bought a new car. He often would say as he was leaving the office, "don't stay past 11" and his sense of mischief and humour was always evident. He had the best laugh and loved to play jokes on people:

"Bermuda shorts Fridays" never did take off (he was never able to convince anyone that it was real), but he did successfully orchestrate jokes involving Ms. Lisa Bynders and Mr. Beau Tye. Those of you who knew of these (or were the victims) will smile.

At Chris's memorial in Calgary, there was a wonderful quote by Dr. Sues that said, "Don't cry because it is over, smile because it happened." With all due respect to my friend and colleague, I am doing both. As I am sure all of you in the profession would agree, we are all blessed to have known him and feel his loss profoundly. Thank you Chris for all that you have done for me and for us. 🌹

### Postscript:

Since writing this article, there have been strong efforts to remember Chris in very special ways. Two specific efforts have been organized and both are fantastic testaments to Chris and the impact he had on all of us.

1) In honour of Chris Thomas QC McLeod Law LLP has founded the Chris Thomas QC Endowed Memorial Award through the University of Calgary, Faculty of Law. If you wish to contribute to this award please contact Shelley Waite at 403-254-3683 for further information.

2) The Inaugural Chris Thomas Memorial Tour d'Fish Car Rally, which will raise money for lymphoma research. Chris loved cars and bikes and the outdoors particularly fishing, so this is a way to remember Chris through a leisurely tour through Kananaskis Country, with stops along the way at some of his fishing holes. Details are as follows:

Date: Saturday, June 21, 2014

9:30 – 10:45 am – arrival at Willow Park Golf and Country Club for registration and Show & Shine

11:00 am – Depart

3:30 pm – arrival back at Willow Park Golf and Country Club for garden party and barbecue

For further information and registration, please contact Anthony Cox at 403-217-7670, [adcox@shaw.ca](mailto:adcox@shaw.ca) or Linda Lynch-Staunton at 403-254-3867, [llynch-staunton@mcLeod-law.com](mailto:llynch-staunton@mcLeod-law.com).

# A VIEW FROM THE BENCH

By The Honourable Judge A. A. Fradsham

At the outset of this tale, I will acknowledge, and with only minimal shame, that I am of a certain generation for whom our current computer technology controlled society was once the stuff of science fiction. In short, I am a dinosaur in a robe, waistcoat, winged collar, and tabs. I get that. However, even dinosaurs continued to function at some level until they were obliterated.

And it is not that I reject out of hand all new technology. Certainly not... When I die, Amazon will have to downwardly adjust its profit projections. No, what drives me to again check the *Criminal Code* to confirm that it really would be a crime to throw my computer under a train is the capriciousness of how I am treated by computers and their programmes.

Recently, I attempted to sign into my bank account. I have successfully signed into this bank account hundreds of times in the past. I can do it almost as easily as my creditors do. However, on this particular morning, though I used the same user name and password as I had on countless other occasions, the computer screen told me that one of them was WRONG. Though I am aware that no less a genius than Einstein said, "Insanity is doing the same thing over and over again and expecting different results," I wish to point out that he never had to deal with online banking. So, I tried a few more times using what I knew to be the correct user name and password. Given that the apex of computer repair knowledge is encapsulated in the advice "turn off the computer, wait a minute, and turn it on again," my approach of blind repetition did not seem so silly. However, the computer continued to insist that what I had typed was wrong, in accurate, and generally an offence against nature.

I don't know how a computer can do it, but when it rejects a sign-in attempt, it has a way of both conveying both the rejection, and a strong implication that you have been caught in an act of fraud second only to those of the infamous Carlos Ponzi. Having been brought up in a profession which frowns on fraud, and which reacts with righteous indignation when unfair and unfounded accusations are lobbed at the innocent, being told that I have wickedly transgressed against the rules governing computer usage deeply wounds me. Worse yet, I am used to a system in which one has a chance to confront accusations and put one's own case in rebuttal (well, at least in the office; that process is a bit more hit and miss at home). So, when the computer accuses, tries, convicts, and sentences me without a nanobyte of due process, I begin to understand road rage on the cyber highway.

As it turned out, there was a telephone number to call (how quaint) if I was experiencing "difficulty" in matters of signing-in. In the best traditions of the golden rule of statutory interpretation, and taking a purposive approach, I concluded that "difficulty" in matters of signing-in included an appeal process for wrongful conviction, and called what was amusingly named a "help line".

I actually spoke to a human being... A person on this planet (cannot vouch for which continent). She said she could assist me in changing my password which would have been lovely if that is what I had wanted to do. However, it soon became evident that "assisting me in changing my password" was the only thing on offer; it was either that, or be cast back into what Dante, had he

possessed a computer, would have called the tenth circle of hell.

Fine, let's change my password. First, she said, I must answer a security question. Fine, ask away. She did; I answered. Should be no problem there since long ago I had made up the question, and the answer was very personal to me. There was a long pause. She asked the question. I answered the question... Again. The implication of fraud dripped from the telephone receiver. Finally, she spoke (perhaps deciding that anyone who needed the "help" line wasn't smart enough to be dishonest), and told me we would now re-set my password, and she would stay on the line with me as I did this.

First, she gave me a temporary numerical password to use on the "change password" page. She told me to type in that password and all the other information the page demanded. I am sure I heard the drumming of fingers as I began to type in the necessary information: account number, new temporary password, the proposed new password, the proposed new password again, and a new security question (too bad, because my old security question was so good). I hit "submit"... rejected. My new proposed password too close to my old password (that would be the password the rejection of which when I tried to sign in originally had let me to this process of having to change my password... Odd how they can now recognize it and use it as the basis for yet another indictment). So, back to square one. I chose yet another password, and began again to type in all that information. Well, creating new words and new security questions and typing all that stuff while SHE waits on the other end of the line is very stressful and puts a guy under heavy pressure. A guy cannot perform under such pressure; its like filling a specimen bottle on command. After a couple more failed attempts at typing accurately (honest, lady, this has never happened to me before!) I finally got the password changed, and obtained access to my account.

Too bad that by then I couldn't remember why I had wanted into the account in the first place. ☹



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

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## Judicial Updates

### COURT OF APPEAL

**Justice Thomas W. Wakeling** (Edmonton Court of Queen's Bench) has been appointed to the Court of Appeal effective March 7, 2014.

**Justice Russell S. Brown** (Edmonton Court of Queen's Bench) has been appointed to the Court of Appeal effective March 7, 2014.

### COURT OF QUEEN'S BENCH

**Debra A. Yungwirth** has been appointed as a Justice of the Court of Queen's Bench (Edmonton) effective March 7, 2014.

### PROVINCIAL COURT

**Judge David J. Plosz** (Red Deer Provincial Court) was appointed as a supernumerary judge effective March 18, 2014

**Judge Donald E. Demetrick** (St. Paul Provincial Court) retired on April 1, 2014.

**Gary H. Cornfield, QC**, has been appointed to Provincial Court, Calgary Family & Youth, effective April 9, 2014.

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