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Law Matters

Law & Happiness

Collaborative Practice

Better for Clients,
Healthier for Lawyers

Peer Support

*Offering Help and
Asking for Help*



THE CANADIAN
BAR ASSOCIATION
Alberta Branch

EDITOR'S NOTES

By Robert Harvie, QC

Are you running your practice, or is your practice running you? This is, perhaps, the unifying concept running through this issue of Law Matters - focusing on "Law and Happiness".

I've been practicing now some 29 years, and while I can honestly say I love what I do - it wasn't always that way. I do recall, back in the late 80's and early 90's - in the first 5 or 6 years of practice when I hated it. Friends were making more money, carrying less debt, and working waaaayyy fewer hours. It felt like indentured servitude.

Without question, my attitude mirrored that of the respondent in the Law Society survey quoted in my article on Attrition:

...The law is a lousy business. The stress that this creates was overwhelming... I just can't be bothered to put up with the stress and strain of practice anymore. Life is too valuable to go to an early grave practicing law.

But somewhere, I found the light. I discovered the joy of being a lawyer - and maintain that to this day. What was the secret?

Well, the articles in this issue help you find that - articles including an extremely informative view of how Collaborative Law has helped not only clients - but the lawyers who practice it, from Catherine Regier - who shows how removing yourself from your client's dispute not only reduces stress and vicarious trauma - but helps you be more effective in creating solutions.

Terry Cooper provides some advice on "Reducing Stress

Through Practice Efficiency" - advising that tweaking how we do what we do can make us more efficient - and, in so doing, reduce our stress.

Marilyn Poitras brings a great perspective from the view of a mediator and law school teacher as well - helping us to recognize that to feel stress and anxiety and depression does not make you "abnormal" - sadly, they are conditions often endemic to our profession -that we do not need to just "suffer through it", and that there are signs we are learning to change and adapt to a healthier relationship with our jobs. Her article then dovetails nicely with the advice of Jennie McMordie who encourages us to reach out and connect with our peers when we feel stress or difficulty, whether informally to our associates or more formally via the Alberta Lawyer's Assistance Society's "Peer Support Program".

My contentment in the profession, truly, takes advantage of much of the advice in this issue. I reach out and value my staff and my peers, I work to create a practice which is more "in" control than "out", and, ultimately, have learned that there is a great joy in running my practice - and not letting my practice run me.

Now get out and plan some summer holidays - you deserve it! ☺

Correction:

In the article titled "A Brief Overview of the Last Four Decades", which appeared in the Winter 2014-15 edition, Madam Justice Mary Heatherington is listed as the first female justice of the Court of Queen's Bench of Alberta. In fact, it was Madam Justice Elizabeth McFayden.

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PRESIDENT'S REPORT

By Steven N. Mandziuk, QC



At the time of writing, Alberta is in the midst of a provincial election, and we at the CBA have released the "Agenda for Justice". The Agenda for Justice features a collection of backgrounders on issues affecting the justice system in Alberta, including funding for legal aid and the Calgary Drug Treatment Court, and reforms in the family justice system, traffic courts and land titles system. This package includes talking points that members can employ when they are interacting with their

local candidates. On behalf of the CBA

Alberta and our Executive, I want to pass along my thanks to our members for their efforts in advocating for justice issues during this election period. We look forward to continuing to work with the provincial government to advance the interests of the legal profession and the justice system in Alberta.


We are wrapping up a busy spring at the CBA, which began with our annual Law Day events in April. To date, we have hosted events in six different cities around the province, with a seventh event scheduled on May 30 in Fort McMurray. Members of the CBA Alberta Executive took the opportunity this year to travel the province and visit different events. In addition to Executive attendance at the Edmonton and Calgary events, Jenny McMordie represented the CBA in Red Deer on April 18, and Marian De Souza, QC, attended the event in Medicine Hat on April 25. With the issue of access to justice continuing to be top of mind in our province, it remains very important for our organization to support events such as Law Day, which give members of the public the opportunity to access the justice system in a low-stress and educational environment.

The Alberta Access to Justice Committee was also busy with Law Day events this year. That committee held the third annual Dial-a-Lawyer event in cooperation with Legal Aid Alberta, Pro Bono Law Alberta, Calgary Legal Guidance, the Edmonton Community Legal Centre and the Centre for Public Legal Education Alberta. This event provided legal information in the form of 15 - 20 minute free consultations to members of the public in the areas of civil, family, criminal and immigration law.

The committee also produced two Alberta-specific Legal Health Checks, a spin-off of a similar project completed by the national Access to Justice Committee. Alberta committee members were on site at the Calgary Law Day event handing out the checklists on legal information for renters and landlords, and surveying members of the public on the efficacy of the checklists. The committee is looking forward to producing more of these checklists and distributing them across the province.

Since the fall of 2014, I have been chairing the CBA ReThink Steering Committee. The Re-Think project team is committed to a thorough evaluation of all aspects of our association, the goal being to make the CBA more relevant and valuable to our membership and to the legal profession as a whole. The project team has completed the first stages of consultation, which included telephone interviews with members and non-members alike. Starting in June, members will have additional opportunities to get involved in the consultation process. The Re-Think project will be going on tour across Canada, with in-person workshops being held in Moncton, Toronto, Montreal, Vancouver and Calgary. For members residing outside of those locations, a virtual community will be developed, allowing the membership to provide feedback on the same ReThink ideas presented at the in-person workshops. Invitations will be going out to the membership this month from CBA National. Please keep your eyes and ears open for opportunities to contribute. This is a member-centric, grass-roots exercise, and your input is critical to the success of the project.

We will also have the opportunity to engage with CBA members from across the country again in August at the national CBA Legal Conference being held in Calgary. Details of the professional development program have now been released, and the focus will be on three streams - building a better profession, building a better practice, and building a better lawyer. First-rate keynote speakers have been announced, including Michele Westlander-Quaid, Chief Innovation Evangelist for Google, and a decidedly Albertan touch is apparent in the list of networking opportunities, which include the "Meat-Up", a local restaurant dine-around. This is an excellent opportunity for members to become more engaged in the CBA, to meet members from across the country, and to participate in professional development sessions. I look forward to showing off the strong membership present in Alberta. For more information on the conference, and to register, visit www.cbalegalconference.org.

Finally, it is my great pleasure to congratulate Frank Friesacher on recently being acclaimed Secretary of the CBA Alberta Branch Executive Committee. Frank will move into his new role at the conclusion of the CBA Legal Conference in mid-August. The 2015-16 Executive Committee will consist of Wayne Barkauskas as President, Jeremiah Kowlachuk as Vice-President, Jenny McMordie as Treasurer, Frank Friesacher as Secretary, myself as Past President, and Maureen Armitage as Executive Director. 

Frank Friesacher
of
McCuaig Desrochers LLP
in Edmonton
has been acclaimed
Secretary of the Executive
of the
Canadian Bar Association
Alberta Branch
for 2015 - 2016



WHAT'S HAPPENING

May

21-22: The Canadian Bar Association presents the 2015 National Health Law Summit: Critical Issues in Health Law. Rimrock Hotel, Banff, AB. Contact Karen Sagle at 1-800-267-8860, ext. 196 or karensa@cba.org.

24-29: The Canadian Bar Association presents the 2015 Tax Law for Lawyers Conference. Queen's Landing Hotel, Niagara-on-the-Lake, ON. Contact Marianne Pelletier at 1-800-267-8860, or mariannep@cba.org.

26: The Ontario Bar Association presents Up Close with the Experts: The 2015 OBA Workplace Safety and Insurance Law Program. Live and webcast. Twenty Toronto Street Conference and Events, Toronto, ON. Contact 1-800-668-8900 or registrations@oba.org.

27: The Ontario Bar Association presents Bankruptcy 101: A Primer for Sole Practitioners and Small Firms. Live and webcast. Twenty Toronto Street Conference and Events, Toronto, ON. Contact 1-800-668-8900 or registrations@oba.org.

29: The Canadian Bar Association presents the 2015 National Charity Law Symposium. Toronto Region Board of Trade, Toronto, ON. Contact Karen Sagle at 1-800-267-8860, ext. 196 or karensa@cba.org.

29: The Ontario Bar Association presents the Annual Update on Human Rights. Live and webcast. Twenty Toronto Street Conference and Events, Toronto, ON. Contact 1-800-668-8900 or registrations@oba.org.

June

4: The Ontario Bar Association presents Your First Intellectual Property Matter: A Practical Guide. Live and webcast. Twenty Toronto Street Conferences and Events, Toronto, ON. Contact 1-800-668-8900 or registrations@cba.org.

9: The Canadian Bar Association presents the 2015 Competition Law Spring Forum. Toronto Board of Trade, Toronto, ON. Contact Marianne Pelletier at 1-800-267-8860 or mariannep@cba.org.

11: The Ontario Bar Association presents Social Media and Internet Law: Your Comprehensive Guide. Live and webcast. The Albany Club, Toronto, ON. Contact 1-800-668-8900 or registrations@oba.org.

11-12: The Canadian Bar Association presents the 2015 National Aboriginal Law Conference. Membertou Trade and Convention Centre, Membertou, NS. Contact Karen Sagle at 1-800-267-8860, ext. 196 or karensa@cba.org.

16: The Ontario Bar Association presents Employment Law Update. Live and webcast. The London Club,

London, ON. Contact 1-800-668-8900 or registrations@oba.org.

July

7: The Calgary Bar Association presents the Annual Stampede Whoop-Up. Venue to be announced. See website for details at www.calgarybarassociation.com.

17: The Edmonton Bar Association presents the Annual Golf Tournament. Highlands Golf Club. See website for details at www.edmontonbar.com.

August

14-16: The Canadian Bar Association presents the CBA Legal Conference. Calgary, AB. See website for details and registration at www.cbalegalconference.org.

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



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Maureen Enns
Canadian ASA [b. 1943]
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Collaborative Practise: Better for Clients, Healthier for Lawyers

By Catherine A. Regier

The practice of family law is extremely challenging. Our clients draw us into their family dynamics, and their family dysfunction daily. We are challenged to engage with them emotionally, and to take on their concerns, fears and stresses. While the Law Society is becoming more and more progressive - offering the Mentor Program and the Assist Program - lawyers are still loathe to ask for help.

Sometimes we have difficulty even realizing that we need help, or understanding that the work we are doing is harmful to our health. Family lawyers are constantly hearing stories about our client's problems and difficulties. We routinely hear narratives of interpersonal violence, neglect of children, and the ravages of addiction. Some of the stories are very graphic. Those stories, repeated to us daily and often repeated by us, through the preparation of Affidavits and in Court, are the source of vicarious trauma. Vicarious Trauma is not simply secondary or second-hand trauma. It is the effect that listening to or seeing traumatic stories has on our brains and on our health. Brain research shows that the neurons in the brain create a loop which originates in the mirror neurons and travels to the different regions of the brain to create the same sensation in the listener that you would have if you actually experienced the trauma. This is the method by which we are able to empathize with others. In a normal situation, after hearing the story, the listener's brain works through the sensation and slowly returns to its normal patterns. However, when professionals hear these stories, our brains are required to interrupt that normal process and stop the body's natural reaction, to allow us to give our clients legal advice and information, based on the story we just heard. That automatic empathy loop is interrupted. In their book *Day after Day the Price that You Pay: Managing Your Second-Hand Shock*, Ellie Izzo and Vicki Carpel Miller liken this to putting a top to spinning and then immediately stopping it. The listener's brain never has the opportunity to resolve the process of empathizing with the client.

The traditional legal training that I received in law school centered on this type of reaction. Prior to receiving collaborative training, I would completely adopt my client's position. Traditional family legal practice led me to see my client's spouse as "bad" or "evil" or "wrong". I would often add fuel to my client's fire, through the drafting of inflammatory and incendiary pleadings and affidavits. I would express disbelief at what my client's partner had done or threatened to do and would validate my client's feelings of victimization and negativity. All of these things kept me rooted in the vicarious trauma.

However, my collaborative training has helped me to let go of the outcome of the problem for the client. I have come to understand that I do not own the problem that my client brings to me. My job is to help the clients solve their dispute, not to solve it for them. I no longer work harder than my clients at reaching a solution. Instead, I put my clients in charge of reaching a resolution that works for them, their spouse and for their children. This has significantly reduced on me the stress of arriving at a favourable solution for my client.

In addition, when I am fortunate enough to have a full interdisciplinary collaborative team engaged, I am freed through

the process to concentrate on what I know how to do and to do that for which I am trained. I am able to bring value to the clients by using my dispute resolution training. I am able to concentrate on knowing the law, so that I can use it as a reference point for my client to be able to make decisions and reach settlement on each particular issue. It also allows me to off-load the items with which I have over 20 years of experience, but no formal training; items like psychology around a parenting plan and the tax effect of each particular settlement option. I have often said to my clients that my undergraduate training was in Political Science - it was interesting, but is not overly applicable to assisting my clients with their parenting plans and the tax consequences of their agreement. As a result, I do not have to continually stretch to meet my client's needs that are beyond the scope of my expertise and knowledge. In my collaborative practice (and as much as possible in my litigation practice) I no longer engage in those types of activities that keep me up at night.

One of the most important lessons that the collaborative training has taught me is that, since my training is in conflict resolution, my most important job is to try to teach my clients how to resolve their own conflict. I try not to engage in telling clients the answers, or resolving their issues for them. Instead, I work towards giving them a model, a method that they can use in future disputes (which, in family law, are most certainly going to arise) to resolve their differences on their own. This allows me to have the job satisfaction of truly helping the families to move through their separation and divorce and on to meeting the needs of their children. In addition, I do not have to continually suffer the devastation of the client (or to their spouse) who has "lost" and believes that their world is coming to an end. I am not continually suffering that secondary traumatization.

Being involved in the collaborative community has shown me that there is a place out there for me and like-minded individuals who want to accomplish these same goals. There is a group of people who also want to work at creating a solution for each family, instead of wanting to work at creating animosity and adversity within each family. Not only does this group want to work that way, they constantly want to help me do better on each file by providing feedback on what worked and what did not. Shouldn't we all be looking for this type of feedback to help us improve on every file? Finally this group is here to provide a listening ear and assistance when I become enmeshed in the dysfunction of the family and need to regain my perspective to reach a solution for the family we are trying to help.

I truly believe that collaboration is what is best for most clients to be able to reach resolution and move forward with their lives. However, I also believe that it is what is best for me as a practitioner. It allows me to focus on my highest skill set and gives me the satisfaction of truly helping a family move forward. Mostly, it has reduced my vicarious trauma, and helped me to sleep better at night. 🌙



Catherine A. Regier joined Pritchard & Company LLP as an associate in 1994 and became partner in 2008. Her preferred area of practice is family law - divorce, collaborative divorce, mediation and adoption, where she believes in empowering clients to make sound decisions about their futures.

Communicating with Testifying Experts: Time to Exhale

On January 29, 2015, the Ontario Court of Appeal reversed Justice Wilson's decision in *Moore v. Getahun*.¹

In the trial decision, following a challenge to the objectivity of a defence expert's opinion based on multiple draft reports and a telephone call between defence counsel and the defence expert, Justice Wilson concluded that:

- (a) it was no longer appropriate for counsel to play any role in the preparation of expert reports;
- (b) experts must prepare and finalize their reports without eliciting, relying upon or incorporating any comments or input from counsel;
- (c) any changes to an expert's final report as a result of counsel's suggestions must be produced to opposing counsel; and
- (d) any exchange between counsel and experts concerning their reports must be in writing and produced to opposing counsel.²

Not surprisingly, the trial decision caused considerable concern among Canadian lawyers and expert witnesses. The restrictions imposed by the decision were viewed as impairing reasonable and prudent litigation practice, substantially increasing the cost of litigation, and hindering the ability of counsel to present a well-organized case, all of which the profession feared would result in a chilling and restrictive effect on access to justice.³

The trial decision was appealed in part on the basis that the Court went too far in restricting counsel communications with expert witnesses. Many groups intervened in the appeal⁴, including the Advocates' Society of Ontario which made submissions based on principles it asserted should guide counsel and experts in current and future cases.⁵

The Ontario Court of Appeal began its analysis by noting that the new rules relating to experts in the Ontario

By **Maureen Killoran, QC and Anne Kirker, QC**

Rules of Civil Procedure⁶ codified the existing common law rather than introducing new and more stringent requirements.⁷ More specifically, the Court held that the new rules codified the following long standing common law principles:

1. Expert evidence presented to the Court should be, and should be seen to be, the independent product of the expert uninfluenced as to form or content by the exigencies of litigation; and,
2. An expert witness should provide independent assistance to the Court by way of objective unbiased opinion in relation to matters within her expertise... An expert witness...should never assume the role of an advocate.⁸

The Court of Appeal found that there were already processes in place to foster the implementation of these principles, including the ethical and professional standards of the legal profession, the ethical standards of other professional bodies whose members give expert testimony, and the right of cross-examination in the adversarial process which provides the opportunity for courts to deal with cases where there is an air of reality to the suggestion that counsel improperly influenced an expert witness.⁹ Accordingly, the Court held, the new, more stringent, rules introduced by Justice Wilson were not required.

The Court went on to say that it was inadvisable to disturb the well established practice of counsel meeting with

⁶ RRO 1990, Reg 194, r. 4.1 and 53.03(2.1). Rule 4.1 states "It is the duty of every expert engaged by or on behalf of a party to provide evidence in relation to a proceeding under these rules, (a) to provide opinion evidence that is fair, objective and non-partisan; (b) to provide opinion evidence that is related only to matters that are within the expert's area of expertise; and (c) to provide such additional assistance as the court may reasonably require to determine a matter in issue". Rule 53.03(2.1) sets out the required contents for expert reports and requires the expert to sign a certificate acknowledging that his or her duty is "a) to provide opinion evidence that is fair, objective, and non-partisan, b) to provide opinion evidence that is related only to matters that are within [his or her] area of expertise, and c) to provide such additional assistance as the court may reasonably require, to determine a matter in issue".

⁷ *Moore Appeal*, supra note 1 at paras 51-52.

⁸ *Ibid.*

⁹ *Ibid* at paras 56-61

¹ 2015 ONCA 55 [*Moore Appeal*].

² *Moore v Getahun*, 2014 ONSC 237 at paras 5, 50-52, and 298-299. A full discussion of this decision can be found in the Fall 2014 edition of *Law Matters*, Volume 39, Number 3 at page 6, online: <http://www.cba-alberta.org/Publications/Law-Matters.aspx>.

³ *Moore Appeal*, supra note 1 at para 47.

⁴ Including the Criminal Lawyers' Association, the Ontario Trial Lawyers Association, the Holland Group, the Canadian Defence Lawyers Association, and the Canadian Institute of Chartered Business Valuers.

⁵ Those principles are set out in The Advocates Society, "Position Paper on Communications with Testifying Experts", June 2014, online: <http://www.advocates.ca/assets/files/pdf/news/The%20Advocates%20Society%20-%20Position%20Paper%20on%20Communications%20with%20Testifying%20Experts.pdf>. The principles are also summarized in the Fall 2014 edition of *Law Matters*, Volume 39, Number 3 at page 6, online: <http://www.cba-alberta.org/Publications/Law-Matters.aspx>.

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Healthy Lawyers are Happy Lawyers

By Robert Harvie, QC

In 2011 I was elected as a Bencher with the Law Society of Alberta - and eventually became the Chair of their Access to Justice Committee and their Retention and Re-engagement Task Force. And I learned, first hand, of the complex and symbiotic relationship between a healthy legal profession and the public interest.

I learned that a healthy lawyer is less likely to make mistakes, is less likely to “cut corners”, and is less likely to allow stress to compromise their ethical obligations. A healthy lawyer is more likely to remain within private practice, providing adequate lawyers for a growing public need to help them navigate the increasing complexity of our courts and regulatory bodies.

I also learned that the supposed “monopoly” we have as a profession, where we profit from the benefit of limiting the practice of law to licensed, trained, and insured lawyers - isn’t actually resulting in our “living the dream” as many might suggest.

Recent statistics in Alberta suggest not only is the public dissatisfied with the current reality of the legal system - but so too are many lawyers.

In 2010, the Law Society of Alberta implemented the Retention and Re-engagement Task Force, established

initially to encourage strategies to improve diversity and equity in the legal profession, which were seen as integral to improving access to justice. As part of that effort, the Law Society monitored statistics and obtained “exit” information on those leaving private practice, and discovered some rather alarming data:

Within 5 years of being called to the bar, 57% of women and 49% of men will have left private practice. Many will move to in-house or government positions, but close to 30% (28% of women and 29% of men) will have left the practice of law entirely.¹

So much for “living the dream”.

The reality is that while the cost of justice in Canada has grown significantly over the years this has not resulted in a happier or healthier profession. In fact it would appear just the opposite - that, according to the foregoing, approximately one half of our lawyers are leaving private practice within the first five years of practice.

Why?

¹ Retention and Re-Engagement Task Force, Final Report - Law Society of Alberta, October 2014.

cont'd from page 6

experts witnesses to review draft reports for three main reasons. First, expert witnesses need the assistance of lawyers to frame their reports in a comprehensible and responsive way to the pertinent legal issues in each case.¹⁰ Second, it is difficult for counsel to explain the legal issues to an expert witness and then present complex expert evidence to the Court if they are prevented from engaging in communication with the expert as the report is being prepared.¹¹ Third, requiring all changes to expert reports to be documented in a formalized written exchange, and leaving the expert to his or her own devices, would result in increased delay and cost in a system already struggling to provide access to justice in a timely and efficient way.¹²

With respect to the issue of disclosure of consultations in relation to draft reports, the Court confirmed that these communications are protected by litigation privilege and that, “absent a factual foundation to support a reasonable suspicion that counsel improperly influenced the expert, a party should not be allowed to demand production of draft reports or notes of interactions between counsel

and an expert witness”.¹³ The 1½ hour conference call at issue on the appeal was not seen by the Court as meeting the threshold of establishing a factual foundation for allegations of improper influence. Indeed, the Court of Appeal concluded that Justice Wilson erred in law by stating that all revisions to expert reports should be “routinely documented and disclosed” and by ordering the production of the defence expert’s drafts and notes. 🗨️

The authors would like to thank Kelly Moffet-Burima for her assistance in co-authoring this article.



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



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

¹⁰ *Ibid* at para 62.

¹¹ *Ibid* at para 64.

¹² *Ibid* at para 65.

¹³ *Ibid* at paras 68 and 78.

ATTRITION IN THE PROFESSION

cont'd from page 7

Well, thanks to the Law Society of Alberta who has been conducting exit surveys on those leaving practice, the primary reasons given for those who left practice either permanently or temporarily were:

- Pursuit of better work/life balance (69%)
- More rewarding opportunities elsewhere (63%)
- Dissatisfaction with the practice of law (56%)

Some of the specific comments of respondents included:

...There are other career options that might have been more rewarding with less debt. There may be alternative legal areas more suited to me but I have to stay at a "higher end" firm with guaranteed salary income because I can't afford to pay debt and family expenses otherwise. I have friends who are RCMP and firefighters who make what I do, but enjoy significant time off and pensions and are generally happier.

And, more to the point:

...The law is a lousy business. The stress that this creates was overwhelming... I just can't be bothered to put up with the stress and strain of practice anymore. Life is too valuable to go to an early grave practicing law.²

Most telling, perhaps, was the response to the question, "If you could do it all over again, would you become a lawyer?" For those under 30, only 33% responded that they would, and for those aged 30-39, only 40% responded in the affirmative.

Accordingly, it appears clear that we are not a "healthy" profession from the point of view of retaining our youngest and our brightest. And this does not seem to be limited to the Alberta experience - while the numbers were more skewed based upon the gender of those responding, attrition information from places as diverse as Massachusetts and Australia confirm that "work life balance" is the predominant motivator to leave legal practice.

In Massachusetts:

For women—whether they leave firm practice as associates, junior partners, or partners—the most cited reason is "difficulty integrating work and family/personal life."³

²Retention and Re-Engagement Task Force, Final Report, p. 17.

³Women Lawyers and Obstacles to Leadership, Harrington, Mona and Hsi, Helen (2007) http://web.mit.edu/workplacecenter/docs/law-report_4-07.pdf, p. 12.

In Australia:

...work-life balance was one of the top ten elements of work causing job dissatisfaction among practicing lawyers (30 per cent of female respondents and 26 per cent of male respondents).⁴

So, then, what do we make of this? Do we run for the hills, to government or in-house counsel jobs - further exacerbating a growing access to justice problem?

Or, rather, do we recognize the reality that if we don't make some changes - doing our jobs the way we've always done it is likely to kill us, figuratively or perhaps even literally (according to a Psychology Today article lawyers lead all other professions in rates of depression and suicide⁵).

As senior counsel and employers, perhaps it's time to re-conceive the vision of the "successful" lawyer being one who burns the candle at both ends. Perhaps it's time to step off of the hamster wheel for a moment to consider a different business model. Where "work-life" balance becomes a greater priority in our offices. Where, perhaps, we increase office efficiencies, learn to take greater advantage of technology and staff utilization to deliver more while we actually do somewhat less - to the potential benefit of ourselves and our clients.

The length of this article prohibits any great discussion of the answers - that is perhaps best left to you, the reader, to recognize in your own practice where opportunities for greater work-life balance and efficiencies present themselves... but lest we ignore the writing on the walls, the time for innovation and change is now. 🌐

⁴The Holy Grail: Work-Life Balance in the Legal Profession", *UNSW Law Journal* Vol. 38(1), p.288 http://www.unswlawjournal.unsw.edu.au/sites/default/files/g11_drew_datta_howieson.pdf.

⁵<https://www.psychologytoday.com/blog/therapy-matters/201105/the-depressed-lawyer>



Robert Harvie, QC is the current chair of the CBA Alberta Editorial Committee and Editor of *Law Matters*. Rob currently practices in Lethbridge, AB at the firm of Huckvale Wilde Harvie MacLennan LLP.

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CATASTROPHIC INJURY AND WRONGFUL DEATH CLAIMS

Heather Loughlin

By Ola Malik

We are delighted to introduce you to Heather Loughlin.

Dedicating yourself to a career in the service of others can take many forms. For some, it means finding the time outside of work and family to sit on the board of a community organization, drive out to remote communities to provide legal information, participate on legal clinics, or use their legal advocacy skills to fight for a worthwhile cause.

For others in this province, public service means going to work and simply doing their job. By this, I'm referring to the hundreds of lawyers who are employed by government of all levels, not-for-profit organizations, advocacy groups, or other agencies whose primary purpose it is to make our communities better places to live. You might ask: what sacrifice are these lawyers making? Aren't they just getting paid to do their job? Why are they special?

I know many lawyers who work in the public sector or with not-for-profit organizations and I haven't met a single one who isn't deeply committed to the idea that what they do matters in shaping our communities as better places for all of us to live. After all, these lawyers and their families live in the very communities they work for and they understand, perhaps more than others, how the germ of a good policy idea can grow into something tangible and real.

Heather graduated with an LLB from the U of A and was called to the Bar in 2002, whereupon she spent several years with Miller Thomson LLP practising, amongst other things, health law. In 2007, she joined the legal team at Alberta Health Services where she remains today.

Heather is a member of the Clinical and Regulatory Legal Team which consists of 7 lawyers and 4 staff members. This team provides legal advice that is accessible to all frontline workers 24/7 - 365 days a year so that patient issues or legal challenges can be addressed as they arise. Each of the lawyers on the team has an area over which they have responsibility, including addictions and mental health, EMS, public health, patient concerns, corrections, protection of persons in care, and community care. This multi-disciplinary team pools their expertise (and those of the staff) to answer questions, develop a legal framework, and support the development of policy guidelines regarding patient care and support in line with the Mental Health Act and other governing legislation. The team is engaged in a broad range of clinical or organizational legal matters, ensure that vulnerable patients have adequate representation though substitute decision makers, address matters of patient safety and patient rights, and help develop educational resources and practice tools for AHS staff and the public. The team also provides legal advice on a whole range of fascinating issues regarding blood transfusions when they are refused for religious reasons, child




Heather Loughlin

welfare matters, end of life issues, consent and personal directives.

Heather also sits on the Emergency Coordination Centre's team whose task it is to address emergencies that affect the health of Albertans. In that capacity, she has been engaged on issues as diverse as containing the spread of measles outbreaks, managing the health repercussions of Alberta's recent floods, ensuring that the recent Ebola outbreak in Africa didn't spread among Albertans. She has been engaged on a pilot project launched in 2013 by AHS called the ID for Homeless Healthcare Project which identifies

individuals who seek care at an AHS facility but don't have government-issued identification or health care cards. Social workers at AHS facilities in Calgary have been trained to help patients fast-track these vital documents which help patients access many other government services.

No organization is perfect. Government is no different, struggling as it does to meet public expectations regarding the delivery of high-quality services at a cost that is affordable. There is much to be said about government waste, inefficiency and bureaucratic stupidity. But not nearly enough is said about the extraordinary work of the hundreds of lawyers employed in government who have committed themselves to public service. Theirs is not always the easiest of jobs, having to address the perils of government budgets, political decisions and public policy made by others and over which they have no control. But many of these lawyers will tell you it's the best job they'll ever have.

We celebrate Heather's achievements as well as those of the AHS' Clinical and Regulatory Legal Team and the hundreds of other government and not-for-profit lawyers who do amazing work every day - They are "unsung heroes" and, alongside lawyers like Heather, represent some of the finest qualities of our profession. 

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.

Do you know an Unsung Hero?

Tell us about them.

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



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

Stress Reduction Through Practice Efficiency

By Terrence A. Cooper, QC

Googling “stress and lawyers” delivers an unlimited number of articles. Being a lawyer and suffering from stress appears to be a foregone conclusion. The question is not whether you will experience stress, but instead whether you will cope or crash and burn.

You might expect that an article discussing law practice efficiency would focus on the latest gadget, widget, gidget or app that would make you tech savvy and able to squeeze every last minute out of every billable hour. Sorry to disappoint.

The solution is not something you will find on your smartphone. In fact you may need to rethink how you use that smart phone.

Articles about stress identify that a common stressor for lawyers is the demand on their time. A consistent recommendation is we should to improve our time management skills. Although I agree with this in principle unfortunately many lawyers seem to view the goal of time management as getting more billable time out of each day. “If the problem is lack of time then the solution should be more time. So all I need to do is to work longer and harder and “bam” the stress is gone, right?” Wrong.

Consider instead adopting the following ideas:

- Value your work, not your time;
- Technology can be the cure or the curse;
- Don’t work in Real Time; and
- Remember to W.O.R.M.

Value Your Work

The concept of billable hours has us in a trap. We now place a value on our time as opposed to placing a value on what we have accomplished with our time.

I recall a lunch time discussion with a QB Judge perhaps three decades ago. In private practice he had acted for land developers. We were talking about billable hours and he scoffed. He mentioned that when a developer would come to him to develop a new subdivision he quoted his fee based on the value of so many lots. He said that with his experience if he billed on an hourly rate his account would never come close to the value of those lots but other lawyers, with less experience, would likely charge much more. Rather than putting a value on his time, he placed a value on his experience and the work he could do. This was something his client understood and also valued.

If you value your work as opposed to placing a value on your time you will begin to make more efficient use of your time.

You should value what you uniquely offer to your client.

This means you will focus your work on those skills that you bring to the file and delegate things that you don’t need to do. When you are typing a reporting letter to your client on your Blackberry while riding the C-Train home, ask yourself “Would I pay my assistant my hourly rate to type this letter?” If your answer is no, then why are you doing it? You are doing it because you do not value the work you do as a lawyer. However it is your skill as a lawyer that your clients want, not your competency as a typist.

If you look at what you do throughout your normal day I suspect you will find that much of your day is spent doing things that could be delegated to a junior lawyer, an articling student or, most likely, a legal assistant. I’ve read that most of us spend 80% of our time doing tasks that we can delegate. If you can delegate and reduce that ineffective time by even 25% then you can either focus that time on valuable work. You will double your productivity or, if productivity is not the issue, you could go home early.

Technology

Technology can be a cure but for many it has become the curse. Technology enables us to be more efficient but it also enables us to resist delegation. It is now easier for us to do tasks that we would have traditionally delegated to someone. To avoid the curse of technology you need to understand when technology is enhancing the value of your work and when it is simply just burning up your time. Remember, things that burn up your time lead to burn out.

Practicing in Real Time

We have a fascination with “Real Time”. As Dave Bilinski said: “in a world dominated by Facebook and Twitter clients expect enhanced, real time communication from their lawyers.”¹

Enhanced communication is understandable. Real Time communication is counterproductive.

Imagine this: You are reviewing a complex agreement, your assistant rushes in with a letter that has just arrived, as you are reading the letter documents start spewing off your personal fax, you grab the documents but before you can review them your inbox tells you “you’ve got mail”. You start responding to the e-mail that arrived and you get notification of a message on your Smartphone and that another client wants to skype with you to discuss their file. That’s Real Time! Maybe you can bill .10 for each of these interruptions but what have you accomplished.

Perhaps this scenario is a little absurd but it provides a great example how distractions can affect our practice. If you value your work then you will control your distractions that eat up

¹ Dave Bolinski, Practice Management Advisor, Benchers Bulletin 2012, No. 3 Fall Law Society of British Columbia

The Health of Our Profession

By Marilyn Poitras

When I started working at the College of Law I wanted to find something to write on that combined some of my personal interests. I was also really hoping to have found the work that filled me up and made me, well, happy.

I knew from work I had done years ago that vicarious trauma and cumulative stress disorder was prevalent among firefighters, EMT and I had made connections to the police force. My findings of depression, addiction, poor health and family breakdown were so obviously connected to all people who witness stress and social decay (the military) that I began to look at my own profession, law: students, lawyers, judges. I knew lawyers who were drinking alcohol like athletes drink Gatorade, took medical leaves and called them family days, had lost the trust in trust funds and were divorced more than once. I had had an inside look at a few things that were showing me that we might have a few cracks in our foundation.

Sadly, I found that our introduction to conditions that create favorable conditions for major depressive disorders come in first year law. It turns out that thinking like a lawyer has side effects no one had been paying attention to. The subliminal messages about reading cases for legal issues and ignoring the emotional and human crises within the cases adds up. The high stress, one hundred percent finals, socratic teaching, objectivity, adversarial resolution techniques and lack of choice in courses, schedules, and professors, the abundant use of alcohol for socializing and so on, all play a role in creating our life styles. I learned of rates of depression as high as 40% in first year law and depression at rates of 20-30% among lawyers. All conditions that lead to depression and ultimately can lead to suicide (3rd leading cause of death among our ranks).

As my sleuthing for happy lawyers continued, I found articles in the *Lawyers Weekly* on services such as Alberta Lawyers Assistance, and stories about how to detect problems with a partner or an associate, and where to find centres who specialize in PTSD for lawyers. This research started to show me- there are more of us suffering the malaise of law than we acknowledge.

cont'd from page 10

your time. Technology may make it possibly to practice in Real Time but I urge you to resist the compulsion. Real Time means no time.

W.O.R.M.

Work Once Reuse Many times. Precedents are a prime example of this. Office system or procedures are other examples. When we work on a file we create value. Our goal should be to try to identify, capture and reuse that value. Then we have to remember to harvest that value when we are rendering our accounts.

I read news articles and started to hear from law students and lawyers who are dealing with the stress of law. Articles on women leaving the legal work force for anything else - or something else in particular. Articles on men being side tracked and overlooked due to family engagement or who simply wanted to have a life with community, engage more in sports, and others who wanted another adventure all together; other articles on our men who have been conditioned not to have emotional responses, unless it is anger. I read articles on people who found passion for their work and I read a ton more on simple techniques that we can do to lighten our load, work within our skill set and release the tension that is taking our lives in directions we did not foresee when our hopes of becoming a lawyer first crossed our minds. Then I had to practice.

For me, I have to practice what I preach or I am not only professor Socrates, but Hypokrites as well. I took up the practice of mediation. I teach a course on this at the College. I call out students and colleagues who look upset, tired or not themselves. I celebrate the small things and when I have a very bad day- because we will always have those- I reach out for ways and for people to assist me in whatever my dilemma is.

My reading suggests something else, that lawyers in this category are not going to take it any more. There are many lawyers and judges who have suffered silently and found ways of coping and living a life where family and self-care that are now a regular part of their calendar. We have been telling our secrets and sharing our coping mechanisms and looking for 'something' that has meaning to feed our souls and our families and our bank accounts. The millenials are wanting more than a 9-9 work day and the baby-boomers recommend some work-life balance and our legal work culture is shifting. Hop on, enjoy the ride, see the view. 🇨🇦



Marilyn Poitras teaches at the University of Saskatchewan, College of Law, and is a public speaker on Law and Happiness. Marilyn most recently presented on the subject at the 2015 Alberta Law Conference in Edmonton.

Conclusion

Adopting the ideas set out above will lead to efficiencies in your practice which in turn should reduce your stress. None of these ideas are unique or earth shattering. They are all pretty basic. That is why we say, "Getting Back to the Basics will help you reduce stress". 🇨🇦



Terrence A. Cooper, QC, is a partner at Campbell Cooper Law in Fort McMurray. In addition, he sits on the CBA Alberta Editorial Committee, and is a member of the Provincial Council.

Women in the Legal Profession

By Michele Hollins, QC

When I was asked to pen a short article on “Women and Personal Wellness”, I thought that would be easy; I am after all, a woman, and one with a particular and express interest in issues of personal wellness. However, as I began to put fingers to keys, I realized that I didn’t really know much at all about gender differences in issues of personal wellness. My friends at Assist (Alberta Lawyers Assistance Program) told me that while the numbers of women and men seeking services from Assist are close (53% men and 47% women in 2014), when you remember that women are just less than 40% of the practising bar, we can see that women do avail themselves of the services of Assist disproportionately more than do men. Are women quicker to seek outside help in dealing with mental health issues or are we actually more at risk? The answer may be “both”, at least to some extent.

There are some mental illnesses that we know affect women more often, including eating disorders and mental illness associated with menopause (the National Institutes for Mental Health). The World Health Organization says that women are twice as likely as men to suffer from clinical depression. The reasons cited include “gender based violence, socioeconomic disadvantage, low income and income inequality, low or subordinate social status and rank and unremitting responsibility for the care of others.” Before you dismiss that list as inapplicable to the highly driven and successful female lawyers you know, read it again. In 2005, the Canadian Mental Health Association’s study on women’s mental health found that our mental health is more susceptible to environmental and social factors that tend to be concentrated, albeit not unique, to women; a disproportionate responsibility for housework and child care, even in two-income households, lower paid work or wage gaps for equal work and less opportunity for advancement in the workplace. Even gender-based violence is not the province of the “other”. As the CBC/Ghomeshi story illustrated, even in highly sophisticated work environments (like law firms), women are still disproportionately at risk for sexual harassment. Little wonder perhaps that the CMHA study found that women suffered more often from stress and depression relating to workplace conflict.

While I believe that empirical data is important to inform us on this and many other issues affecting our profession, I never wish to discount the impact and value of personal experiences. While my own experience with depression was related to my kids leaving home, “empty nest syndrome” even at clinically problematic levels, is obviously not a distinctly female experience. However, there are some things in the life cycle of a woman lawyer that do seem virtually unique to our experience. I’ve spoken to many young women returning to practice after maternity leave about how difficult that process can be, even in progressive and well-meaning work environments. Certainly, the work of the Justicia Project (begun by the Law Society of Upper Canada in 2008) has illustrated very clearly that female

attrition from the profession is most often related to the challenges of having and raising children. Many women are having children right around the time they are 5-8 year associates, prime for partnership, leaving them with the difficult if not untenable choice of a shortened maternity leave or a permanent dent in the road to partnership, leadership positions and/or pay equity.

I recently met a young woman whose return to work was even more difficult because of her postpartum depression. Typical of many lawyers we all know (and one I know all too well), she had been very aggressive with her return-to-work expectations and had scheduled a trial, in her words “far too soon” after the birth of her child, having assumed that she could control the scheduling (i.e. sleep patterns) and demands of a newborn. Her experience was significantly exacerbated by the fact that she had no one in her environment who had experienced or could really understand what she was going through. Also typical of many of us faced with mental illness, she resisted help or treatment, opting initially to simply try and “get over it”. Her request of me was that the CBA look at creating or housing supports specifically for parents who are struggling to various degrees with how to make our commitments to our families coexist with our commitments to our wonderful but demanding profession. My observation is that most women I know are far less concerned with “having it all” than just trying to do it all.

Perhaps we begin by being more willing to talk about our own challenges in striving for that elusive concept of balance and by recognizing that it is a mutually-rewarding imperative that we find different ways (models even!) of practicing law that are more realistic for us as women, parents and lawyers. ☺



Michele Hollins, QC, is the current national President of the Canadian Bar Association. She served as the President of the CBA - Alberta Branch in 2007 - 2008. Michele is an advocate for mental health issues in the legal profession.



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THE VERY MODEL OF AN HONORARY COLONEL

CBA CEO John Hoyles is now Col. Hoyles, having been welcomed to the position of Honorary Colonel of the Legal Branch of the Department of National Defence on Feb. 6.

"It is a great honour for me to be doing this, and I'm absolutely thrilled by it," said Hoyles in an interview with National Magazine. "I think it's a compliment, not so much to me, but to the CBA."

The position carries a particular honour because of his family's rich history in both the military and the law. Read more online at <http://www.cba.org/CBA/newsletters-eneews/2015-articles/colonel.aspx>.

CHECK IT OUT - CLC PROGRAM NOW AVAILABLE!



There's no doubt: we could all be better.

Both personally and professionally. And that's precisely what this year's CBA Legal Conference (CLC) in Calgary, AB will help you achieve. Three new skills-based professional development (PD) streams will offer tangible benefits to hone the most vital dimensions of your career: the profession, the practice, and the personal.

PD Stream 01: Building a better profession examines the big-picture influences, game changers and issues facing our profession – now and in the future.

PD Stream 02: Building a better practice focuses on the day-to-day aspects of your practice, to help you make the most of your resources and become more tech savvy.

PD Stream 03: Building a better person helps you develop personally and find strategies to become healthier, happier and more satisfied.

Join us this year for this rare opportunity to hear from compelling expert speakers, obtain your yearly PD requirements, and connect with colleagues from across the country.

If you've never attended the CLC before, isn't it time you started building a better lawyer? Do your career justice – check out the full program now! Visit www.cbalegalconference.org.

NSC AWARD OF EXCELLENCE

The National Sections Council (NSC) Award of Excellence is presented annually to a National Section. The award recognizes the outstanding contribution of a National Section in providing service to members and furthering the objectives of the Association. The deadline for applications is May 15, 2015. For more information and for a nomination form, visit http://www.cba.org/CBA/Awards/NSC_Award_of_Excellence/default.aspx.

KERRY L. SIMMONS, QC, ELECTED 2ND VP



Kerry L. Simmons, a managing partner at Cook Roberts LLP in Victoria, has been elected CBA Second Vice-President, putting her in line for presidency of the association in 2017.

Simmons, who earned her LLB from the University of Calgary in 1999, was named Queens Counsel in 2013. Her practice focuses on estate litigation, employment law and family law.

An active member of the CBA since she joined as a young lawyer, Simmons served as President of the BC Branch, where she was an outspoken advocate for access to justice and access to legal services in rural and small communities throughout the province. Nationally, she was a member of the Board of Directors and currently sits on the Membership Committee as the B.C. representative.

CBA TAKES ON BILL C-51

Bill C-51, introduced by the Conservative government in January, was front and centre for the Canadian Bar Association for the better part of March, as the house Public Safety Committee began limited hearings on proposed amendments to the Anti-Terrorism Act.

The CBA, which originally failed to make it onto the short list of presenters before the committee, began preparing a written submission, with input from the criminal, immigration, privacy, aboriginal, environmental, international and charities law sections to provide our comment on the bill. We also considered alternative ways to make our message public before the invitation came to appear before the committee in the evening of Wednesday, March 25. Criminal Justice Section Chair Eric Gottardi and Peter Edelmann, an executive member of the Immigration Law Section, appeared on behalf of the association.

Read the full submission online at <http://www.cba.org/CBA/submissions/pdf/15-15-eng.pdf>.

OTHER ADVOCACY

- CBA submission on Bill C-32, the *Victims Bill of Rights Act* (<http://www.cba.org/CBA/submissions/pdf/14-61-eng.pdf>).
- Letter from CBA President Michele Hollins, QC regarding an amendment to Bill C-279, *An Act to amend the Canadian Human Rights Act and the Criminal Code (gender identity)* (<http://www.cba.org/CBA/submissions/pdf/15-14-eng.pdf>).
- Letter from CBA President Michele Hollins, QC, regarding Bill C-583, *An Act to amend the Criminal Code* (<http://www.cba.org/CBA/submissions/pdf/15-13-eng.pdf>).

FRONT AND CENTRE

Law Day - Calgary



The cast of "The Glass Slipper" mock trial mug for the camera at Law Day in Calgary.



Calgary Mayor Naheed Nenshi and CBA Alberta Past President Marian De Souza, QC, are joined by members of the RCMP and other dignitaries for the Citizenship Ceremony.



Law Day volunteers from DLBH LLP got the whole family involved! These little minions participated in the "Despicable Me" mock trial.



The cast of "R v Batman" at Law Day in Calgary.

Law Day - Edmonton



CBA Alberta President Steve Mandziuk, QC welcomes everyone to Law Day events in Edmonton.



Edmonton Mayor Don Iveson proclaims April 18 to be Law Day with Law Day co-chair Michelle Pidhirney



The cast from the "Queen Elsa v. Princess Anna" Mock Trial.

Law Day - Red Deer



Cast members of the "Cat in the Hat" mock trial in Red Deer



The Cat in the Hat causes trouble at the Red Deer court house

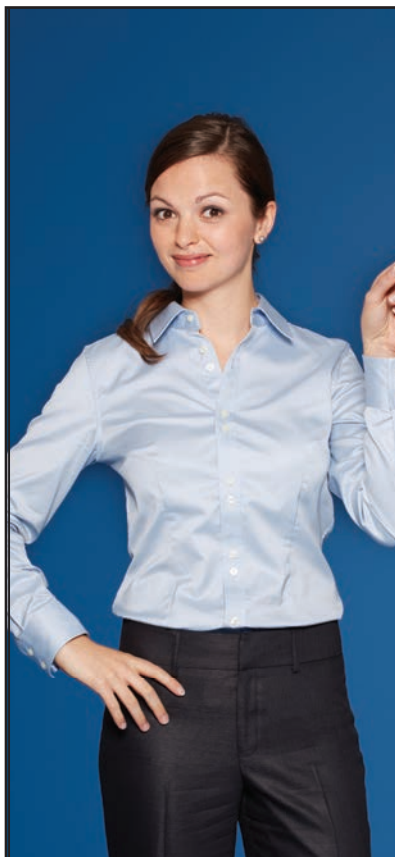
Law Day - Medicine Hat



Curly Pig and Loretta Pig testify in their defense at the "R v Curly Pig and Loretta Pig" mock trial.



Members of the Medicine Hat Police Service K-9 Unit participate in a demonstration with Elvis the dog.



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¹ Approximate amount based on a December 2013 analysis. This amount may vary and cannot be guaranteed. Amounts are calculated in comparison with the rates of other insurers. Discounts and savings are subject to eligibility conditions.

This program is sponsored by the Canadian Bar Insurance Association (CBIA), Canada's only national insurance association exclusive to lawyers, their families and law firm staff. Certain conditions apply. CBIA Sponsored Home & Auto Insurance is underwritten by The Personal General Insurance Inc. in Quebec and by The Personal Insurance Company in all other provinces and territories. Certain products and services may not be available in all provinces and territories. CBIA Insurance Services is a division of 3303128 Canada Inc., a licensed insurance broker. Auto insurance not available in Manitoba, Saskatchewan or British Columbia due to government-run plans.

ALBERTA BRANCH NEWS

CBA ALBERTA BRANCH 2015-16 EXECUTIVE



We are very pleased to report that Frank Friesacher of McCuaig Desrochers LLP has now been acclaimed Secretary of the Canadian Bar Association Alberta for the upcoming 2015 - 2016 term. Frank's position begins August 16, 2015. Congratulations Frank!

The 2015 - 2016 Executive Committee will consist of Wayne Barkauskas of Wise Scheible Barkauskas as President, Jeremiah Kowalchuk of Field LLP as Vice-President, Jenny McMordie of West End Legal Centre as Treasurer, Frank Friesacher of McCuaig Desrochers LLP as Secretary, Steven Mandziuk, QC of Finning (Canada) as Past President and Maureen Armitage, Executive Director.

COMMITTEE INTEREST FORMS

Committee interest forms for CBA Alberta Branch standing committees will be accepted until June 30, 2015. If you are looking to increase your involvement in the CBA, this is an excellent way to start. Help plan annual events such as the Alberta Law Conference or Law Day, work with the Access to Justice committee to address issues provincially and nationally, or review and comment on bills

introduced in the Alberta Legislature with the Legislation & Law Reform Committee. For more information, visit <http://www.cba-alberta.org/About/Get-Involved.aspx>.

SAVVY LAWYERS WEBINARS



Coming up on June 11 is the final webinar of the Savvy Lawyers Series for the 2014-15 year. Join Timothy Burnham of Gurevitch Burnham in Grande Prairie for "What are my fees, and is it any of your business? A thought-provoking look at how we price legal services and why it matters to the business of law."

This webinar is a must-attend for small and solo practitioners and managing partners alike, and covers topics such as theories of pricing legal services, disruptive innovation, case studies which look at pricing for professional and other services, ethical considerations in marketing and pricing legal services and more.

To register, and for more information, visit www.cba-alberta.org.

You may not recognize the next edition of Law Matters, but you're going to want to read it!

For the Summer 2015 edition of Law Matters, we are trying something different. In the past, you have received your glossy copy of Law Matters in the mail. This time, you will receive it in your e-mail inbox, which means you can read it just about anywhere while doing just about anything. But that's not the only change. We're going to tackle a subject which is sure to get you talking...and if you like what you read (and we hope you do), you can tweet about it on Twitter, share it on Facebook or LinkedIn, blog about it on Tumblr, and even take a photo to share on Flickr or Instagram.

This special edition of Law Matters will be devoted to a fascinating discussion from leading contributors regarding Trinity Western University. As you may know, Trinity Western University (TWU) is a private Christian university which received approval from the British Columbia government to open a law school in 2013. TWU has a Community Covenant which it requires its staff and students to adhere to. The Covenant states that TWU's mission, core values, curriculum and community life are formed by a firm commitment to the person and work of Jesus Christ as declared in the Bible. What has become controversial about the Covenant is what it says about traditional marriage (you can find the Covenant at: <http://twu.ca/studenthandbook/university-policies/community-covenant-agreement.html>). The Covenant promotes a traditional, Biblical view of marriage and sexual intimacy as only being between one man and one woman.

Benchers in BC, Ontario and New Brunswick have voted against accrediting TWU while a vote in favour of TWU accreditation by Nova Scotia benchers was conditional upon TWU withdrawing the Covenant's prohibition of same sex relationships (which the TWU has since successfully overturned). The Law Society of Alberta averted deciding whether to accredit TWU by delegating this decision to the Federation of Law Societies, which has granted preliminary approval for the TWU law program. We don't yet know whether the TWU law school will be recognized across Canada, given further court proceedings over TWU's accreditation which are likely to arise.

The TWU debate concerns us all. Of interest are the very important Charter issues pertaining to the freedoms of expression and religion, what role Law Societies (and benchers) should play in accrediting a university law program, whether a belief in the traditional view of marriage is so objectionable to contemporary Canadian values that it should not be recognized, and how far we as Benchers, lawyers, and the public, can go in imposing our social values on others of our profession.

The role of the CBA in this very exciting Law Matters edition is not to pick a side in the TWU debate. Rather, our intention is to bring together contributors who will argue passionately for their point of view so that you, the reader, can ultimately decide. Look for this Law Matters in your e-mail inbox on August 10 and follow the CBA on Twitter and Facebook for updates and more news.

Peer Support: Offering Help and Asking for Help

By M. Jenny McMordie

When we consider assistance for lawyers, we often think about more extreme burn-out and addiction issues, and the need for immediate practice intervention or crisis counselling. Our profession is fortunate that this help is available for anyone who needs it.

But taking a step back to consider those in practice who are not experiencing an immediate crisis, it is important to remember that every one of us, junior or senior, in every area of law, needs support. We all have good days and bad days, times when a file may go sideways or another lawyer has taken a difficult or perplexing position, or when we are handling something new and need some perspective or advice. We also need support dealing with interpersonal and practice management issues. Every one of us needs friends within the profession who are available to answer a call, reach out, or just listen.

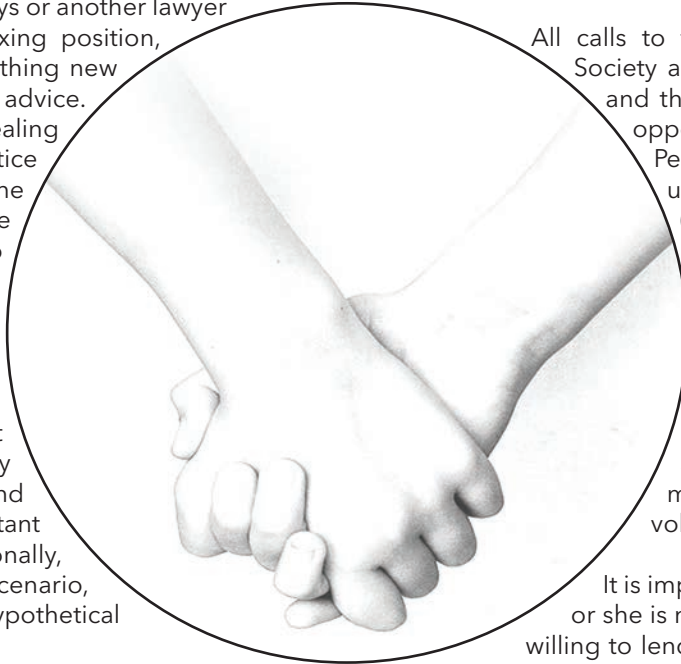
The advantages of making that connection with someone within the legal profession are great - you do not have to begin by explaining what law practice and legal issues entail, or how important confidentiality is to you personally, professionally and to any client scenario, even if discussed only in hypothetical terms.

Personally, I have greatly benefited from reaching out to colleagues on various file, strategy and practice management issues, and sometimes just to have a coffee and share a burden or describe some frustration. While I retain the responsibility to move ahead and resolve the challenges I am facing, my worries about them are lessened, just by involving a caring colleague. I have also been honoured when colleagues have called me to do the same. I am improved as a lawyer when I learn something new from someone wiser and more experienced than me, and I am also improved as a lawyer when someone asks me a question that calls me to consider my own practice and whether there is a better way.

While there has always been some ability informally to share concerns and get support from friends, some of us may not have what we need immediately available through existing contacts. The Alberta Lawyers' Assistance Society recognizes our need for support and has developed the Peer Support Program. Any of us, at any level of practice, and with any type of concern, can call to be connected with a lawyer through the Peer Support Program.

You can expect any Peer Support lawyer to understand law practice, stress, and the struggle to balance work, family and volunteer commitments, all which can be difficult in our

profession. Beyond the basics, however, we can request a Peer Support volunteer with specific characteristics, i.e., some who has understanding of addiction issues, small firm management, succession issues, large firm politics, general practice or specific area of practice, gender, seniority, etc. The goal is that each caller is connected with a Peer Support volunteer who can listen and is able to respond to the specific needs of the caller. Note that Peer Support volunteers are not trained counsellors or psychologists, but callers can also be connected with those services as needed.



All calls to the Alberta Lawyers' Assistance Society are always handled confidentially, and the caller seeking support has the opportunity to accept the proposed Peer Support volunteer or if unsuitable, to ask for another name. (For example, you might not wish your Peer Support lawyer to be someone at your same firm, or someone against whom you are opposite on an active file).

It has been a great pleasure to work with lawyers seeking Peer Support, and I have experienced many benefits as a Peer Support volunteer.

It is important that each lawyer knows he or she is not alone and that there are many willing to lend support in whatever way would be most useful. By reaching out, to offer help and to ask for it, each of us becomes a better lawyer and a stronger person. Support at this individual level also strengthens our profession and our legal community.

For Professional Counselling (24/7) call 1-877-498-6898. You do not need to be in crisis to call and Assist helps lawyers trying to help another.

For Peer Support call 403-537-5508 or toll free 1-877-737-5508. Rebecca McCarthy, Peer Support Program Coordinator is willing to listen and arrange a Peer Support match.

If you are interested in becoming a Peer Support volunteer, visit Assist's website for an online application at www.albertalawyersassist.ca or call Rebecca McCarthy.

Thank you for reaching out to each other and making each of us, and our profession, stronger, healthier and happier. 🌟



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 is currently the CBA Alberta Branch Secretary.

Removing the “Stress” in the “Free” Managing High Conflict Clients in a Pro Bono Setting

By Gillian D. Marriott, QC and Nonye Opara

Conflict is a common facet of human existence and for lawyers, a daily feature of our professional lives. Whether in traditional or alternative dispute resolution scenarios, lawyers play a central role in defusing conflicts and procuring settlements. This is without prejudice to the paying status of our clients. Indeed, the peculiar circumstances of pro bono clients often predispose them to be anxious, emotional and occasionally aggressive. As part of ongoing efforts to ensure that volunteer lawyers are able to provide quality pro bono services in a stress-free environment, Pro Bono Law Alberta recently organized a training seminar on ‘Managing High Conflict Behaviour in a Pro Bono Setting.’ The training was designed as part of a series to help volunteer lawyers deal with high conflict clients and was a sequel to a presentation on Mental Health by the Schizophrenia Society of Alberta in November 2014.

The aim of the workshop was to help our volunteers build the awareness and skills to deal effectively with high conflict personalities. The seminar was led by Michael Lomax, a renowned lawyer, mediator and conflict resolution trainer and was attended by lawyers from sixteen law firms and thirteen organizations. Participants were presented with brain science relating to conflict, high conflict personality patterns and techniques to assist high conflict clients in problem-solving. In addition, the workshop explored strategies to assist lawyers with managing their personal anxieties and setting professional boundaries when dealing with high conflict clients. These include being calm, confident, upfront about limitations in roles and avoiding responsibility for problems or solutions.

Workshop attendees also engaged in exercises to improve their ability to connect with high conflict clients, respond to their needs and assist with the resolution of their disputes. Empathy, attention and respect were identified as useful skills to get past the emotional reactivity of high conflict clients and build effective working relationships. Lawyers were also encouraged to employ B.I.F.F (Brief, Informative, Friendly and Firm) answers in responding to hostility and misinformation from a high conflict client.

In cases where clients become aggressive and hostile, volunteer lawyers were advised to set limits in a matter-of-fact manner, with empathy, attention and respect. According to the High Conflict Institute, the goal in these scenarios is to “calmly and clearly communicate to block the behavior that is aggressively defensive, while avoiding giving negative feedback, retaliating or avoiding dealing with a high conflict personality.” To do this, volunteer lawyers were encouraged to focus high conflict clients on their options or choices; make reference to external rules or boundaries in explaining their limitations to act on behalf of these clients; and explain the consequences of potential actions to be taken by such clients.

Set limits with:

- E - Empathy
- A - Attention
- R - Respect

Calm hostile behaviour with responses that are:

- B - Brief
- I - Informative
- F - Friendly
- F - Firm

Beyond setting limits for high conflict clients, the need to encourage clients to play a greater role in resolving their disputes was also identified as a good practice. Granted, this idea challenges the traditional role of lawyers as problem-solvers and raises concerns about potential irrelevance. However, Bill Eddy, a lawyer and licensed clinical social worker believes that lawyers who encourage their clients to take responsibility for solving their problems by making proposals will quickly shift the client from blaming others about the past to proposing future focused solutions to their problems - even the ones they created themselves. To cap the event, volunteer lawyers were reminded that high conflict behavior is mostly unconscious and borne out of desperation rather than intent to be difficult. These individuals have problem-solving skills that can be accessed with words and actions that show empathy, attention and respect in a candid manner.

Judging from a post-workshop survey, the management of high conflict clients remains a major concern for lawyers in pro bono and other settings. In the words of a participant, “the topic of this session was very interesting. I particularly liked how it applies beyond work and pro bono scenarios to other personal interactions and relationships. Seminars like these create awareness and skills that help us become better people, not just better lawyers and mediators.”

This feedback reinforces PBLA’s commitment to making pro bono involvement as stress-free as can be for its volunteers. Consequently, PBLA will look at the possibility of providing further learning opportunities to explore some of the challenges identified by volunteers in greater depth. Ultimately, while the practice of law can be exciting and challenging, we believe that lawyering for the public good should be these and much more - rewarding and hassle-free. 🙌

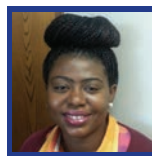
“The session was more than excellent. This was a good seminar for life, not just lawyering. Thank you so much!”

Workshop Participant

PBLA thanks Michael Lomax, workshop participants and lawyers who continually volunteer their time and expertise to provide pro bono legal services to Albertans of limited means. Additional information about dealing with high conflict clients can be found at www.highconflictinstitute.com.



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.



Nonye Opara is the Program Manager at PBLA. She is a graduate of the LL.M. program at the University of Calgary’s Faculty of Law and actively volunteered for both the CCDC and QB Amicus projects prior to joining PBLA. She manages PBLA’s court-based projects and the Volunteer Lawyer Services Program.

Or Watch What I Do?

By The Honourable Madam Justice R.E. Nation

Lawyers spend a lot of their time working with words. Besides creating documents, whether contracts, legislation or policy documents, the exercise involves the interpretation of words and their precise meaning. Court work involves questioning people to ascertain facts. We are trained to listen to words carefully. Does this mean we sometimes forget to watch for the overall impression the witness is making and what their actions are also saying?


As justices, we sit in a courtroom and are asked to listen to evidence (words), decide whose evidence to accept or reject, and determine the facts behind a case. The words a witness says convey meaning and usually drive the decision that is made. But it can be a mistake to ignore the actions of your client or how your client's position or conduct looks when viewed in the context of all the evidence.

You can carefully write down every word a witness says, but if you miss their facial expression, or a hesitation...or if you don't ask: "What did not get said?", you may have missed the meaning the justice sees.

Occasionally, the atmosphere created by the evidence influences the result. This is not to say that decisions are based on emotions or that all you have to do is create a mood and "justice" will be done. Nevertheless, it may be smart to think about the total picture. Too often, the atmosphere created by the evidence is ignored by counsel who are busy weighing each word or arguing about the literal meaning of words rather than considering the impression conveyed by the words.

Have you ever been at a questioning and left thinking you have done a great job, that you got some great admissions from a witness, and that they will make wonderful read-ins to prove your case? Later, when you read the transcript, that great interaction often does not look as conclusive any more. The reason is usually that it was the atmosphere created at the questioning, the feeling you had when you watched the witness and heard their answers, that made you think you had what you wanted on the transcript. The black and white of a transcript cannot convey the same message that attitude, body language and emotion create.

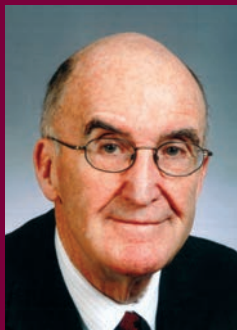
So next time you are calling evidence in court, think not only of the words but of the overall picture that you want to convey. Do you need to develop more of the background of the witness to put their words in context? Is there more to the situation that needs explaining? How do you deal with the emotion of the evidence? Did the actions of your client, the other party or a person testifying seem sincere? Is the witness saying one thing but their actions saying another?

We all know that individuals use words to put their own spin on events. Remember to look beyond the words and view them in the context of all the evidence. 



Justice Nation has been a justice of the Court of Queen's Bench for 17 years. Before that, she practised civil litigation in Calgary. When she is not in Court, you will find her running, skiing, hiking or spending time with her family.

CHOOSE FROM ALBERTA'S TOP MEDIATORS AND ARBITRATORS



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



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



The Hon. Ernest Marshall, Q.C.



Clint G. Docken, Q.C.



Graham Price, Q.C.



E. David D. Tavender, Q.C.



Harold W. Veale, Q.C.



Robert B. White, Q.C.

North

Spring is finally here and section meetings will be wrapping up soon. Time to look back and reflect on the fabulous year of CLE we have had at the CBA Alberta North. There have been many innovative topics, timely meetings on what's new in the law, and lots of good networking. As this will be my last year as a section co-ordinator, I guess I'm feeling a little nostalgic! It has been a great experience volunteering with a great organization. I have particularly enjoyed working with Frank Friesacher, who takes over the reins (laptop? steno pad?) as Secretary of the CBA Alberta Branch Executive. Congratulations, Frank. All of this means that there will be 2 new section co-ordinators for Alberta North come September.

In the meantime, there is still some time left in the 2014/15 season, and more great programming still to come. For instance, one of the highlights of the CBA year is the Law & Literature dinner, happening this year on June 18th at the Sutton Place Hotel, and hosted by the CBA Criminal Justice Section (North). Brian Vail, one of the organizers, says this event has "always been a wonderful evening where judges, lawyers and students rediscover collegiality and 'let their hair down'", and where attendees are encouraged to read to the group - a favourite literary work or something they wrote themselves. This year's event is particularly special because it features Chris Evans QC, author and teller of great "war stories". Cocktails are at 5:00 pm, and dinner is from 6:00 - 8:00 pm. For tickets please contact Heather Walsh

From the desk of Karen McDougall

at edmonton@cba-alberta.org or (780) 428-1230.

Lastly, spring means it's time for section chairs to think about succession planning for next year, and to hold your executive elections. Start mining your membership early for those willing to get more involved -- both junior and senior members. Each segment has something to offer, whether it's good ideas, mere exuberance or years of valuable experience (and good contacts) in your area. Also a head's up: our annual Executive Workshop is coming up on Friday, May 29. All current and new executive members are encouraged to attend for some shared wisdom on how to run a successful section. Chairs, watch for your electronic information packages, including forms to be completed post-election, arriving soon in your email inboxes. Please do not hesitate to contact the CBA offices, Frank or me if we can help you in any way. ☎



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 Acting Associate Director of Educational Resources at the Legal Education Society of Alberta, and is a long-time CBA member and volunteer, currently serving her fourth year as North Section Coordinator.

South

Once again spring is in the air and with the days getting longer and the snow gone our thoughts naturally turn to less winterish activities, such as, say, the NHL playoffs. We encourage you to take a few minutes to go for a stroll with a friend and reconnect with family in between shopping for giant foam appendages to take to a game!

The CBA section meetings are beginning to wind down for the year as we approach summer, and we would like to take a moment to express our gratitude to all of the section executives and the southern Alberta Section Registrar, Linda Chapman, for their enormous effort once again this year. Without each of you these very important meetings simply would not happen and our profession would be the poorer for it.

We would also like to encourage all of you to consider volunteering for a section executive or a CBA provincial standing committee next year. It is a great way to expand your professional network, learn new things about your practice discipline, and spend time with fellow members of the Bar in a collaborative and positive way. We have both found our own volunteer experiences with the CBA to be hugely rewarding.

From the desks of Kate Bilson and Anthony Strawson

If you have any questions about sections, or if you have any suggestions for how we can make the sections even better, please do not hesitate to contact us at astrawson@felesky.com or kate_bilson@transcanada.com. We love to hear from you.

Go Flames Go. ☎



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



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.

University of Alberta

Now that school is out, law students are starting summer jobs and articling positions, which come with their own sets of stress and pressure. Especially if it is the first time a student has worked in a law firm, the professional and social expectations can be overwhelming.

Mental health has surfaced as an issue of utmost importance in the legal field. The workload and balancing it with one's personal life can be difficult for any lawyer. However, mental health is specifically important when it comes to students because we have the added fear caused by a lack of self-confidence in our competence.

As law students, we would not consider ourselves experts in mental health and its solutions, but the Law Students' Association at the University of Alberta has commenced an initiative that aims to provide some support to start the conversation, so we may all feel more assisted and believe that we attend school in an environment that does not stigmatize our struggles.

The Mental Health and Wellness Committee was created in the summer of 2014, and, since then, it has hosted comedy nights, nature walks, regular yoga practices, and massages. According to Winta Asefaw, the Co-Chair of the committee, the committee's future aspirations are not completely developed; however, some ideas include connecting students from different demographics for personal and academic support, a web-based forum for anonymous conversations about mental health, and linking students into groups for shared purposes like going to the gym.

By Siwei Chen and Lyndsay Butlin

It seems like a good way to promote mental health is to encourage genuine human connection amongst our peers. Sharing our experiences either through recounting them or creating new ones with others is paramount to our happiness because we are, after all, social creatures. Often, we do not need someone to give us a solution so much as for us to believe that they understand what we are going through.

For everyone who has ever felt alone, always remember there are other people who have gone through the same thing. If you are starting something new and foreign, believe that you will find familiarity there if you look for it.

Congratulations to everyone who has completed law school. To those who have not, just keep going, you can do it. Remember there is always something that will make new experiences seem harder, but it does not have to be if you seek help and friendship. 🍀



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, and will be articling at Bennett Jones in Calgary.



Lyndsay Butlin is a co-chair of the University of Alberta Law Students Section and is currently in her second year at the Faculty of Law. During the summer, she worked as a student at KCY at Law Professional Corporation in Ontario.

University of Calgary

As the academic year wraps up, students at the University of Calgary are looking forward to a busy summer of work, or perhaps a nice break or vacation. It has been an incredible year, with the 3Ls looking forward to graduation and articles, the 2Ls now on the home stretch, and the 1Ls ready to welcome the incoming class of 2018 in the fall.

There have been many exciting developments with the CBA that we are thrilled to share. Firstly, we have begun planning the annual welcome reception to be held at the University of Calgary in September 2015. This is an opportunity to meet and mingle with the new first year students, returning upper year students and, of course, your CBA representatives. Did I mention the free food?

We have also been working on a plan for a small, mid-sized, and regional firms networking evening to occur in the fall. This will be an opportunity for students to explore the different career paths they can take by meeting with experienced lawyers in a structured networking setting. And, of course, there will be snacks and beverages for attendees. Stay tuned for further developments! And have a lovely summer! 🍀

By Camille Sehn and Robert Sevalrud



Camille Sehn is a second year law student at the University of Calgary and Co-Chair of the Law Student Section of the CBA. She worked with Student Legal Assistance for the summer of 2014 and will continue her involvement with the clinic during the upcoming year as a Group Leader.



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

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Recharge with LESA this Summer

By Jennifer Flynn

One of my continuing legal education colleagues (from a much warmer climate) recently commented, "I'm jealous of Alberta winters - they must make for the most treasured summers." It is true. With the weather turning warm and the sunlight lingering late into the evening, summer is just around the corner.

At LESA, we appreciate that the change of season and close of our educational year allows our staff to take a breath, recharge, and reinvigorate. While there is no true "downtime" at LESA, the change of pace allows us to look ahead and plan for the upcoming year.

Part of our planning includes preparing our Educational Calendar, which we're happy to bring to you this month. If you're also someone who likes to plan ahead, check out the Educational Calendar for complete list of next year's offerings. We're excited to offer you 46 programs in 2015/2016 - more than ever before. We're also looking forward to meeting more of you in your own communities; this year we're holding seminars in Calgary, Edmonton, Lethbridge, and Red Deer.

With so many programs, there's a lot to get excited about. Here are a few highlights:

- If you practice in Real Estate, you'll want to save the date for the 49th Annual Refresher happening in Lake Louise from April 24 to 26, 2016.
- The 5th Annual Law and Practice Update runs in Edmonton on November 13 and 14, 2015. This program updates general practitioners in a full spectrum of substantive and practice management topics.
- Several programs exploring accounting software are running in Edmonton and Calgary - PCLaw Basics (November), PCLaw Beyond the Basics (November), and ESILaw Boot Camp (January).
- If you are looking for efficiencies in your practice, the Legal Project Management seminar scheduled for April of 2016 will teach you how to apply concepts of project management to the legal environment.

We hope this summer offers you time to relax and plan ahead for the fall. While we won't see you at seminars until September, there are many ways to stay connected with us over the summer.

- If you want to take advantage of some downtime to catch up on your continuing professional development, why not access one of our seminars on demand? You can download seminar materials and stream videos of seminar speakers from programs you missed last year.
- Watch for information on how to subscribe to our comprehensive online LESA Library. Access our complete

spectrum of practice manual content, as well as seminar materials, in a convenient, web-based resource.

- Keep up-to-date (and receive special subscriber-only offers!) by signing up for our E-Letter. We send about 4 emails a month, so we won't clutter your inbox and you'll always be in the know.
- Our blog helps you stay connected with LESA updates and developments in the legal profession. Access it from anywhere - the lake, the backyard, the mountains - all you need is an internet connection.
- Follow us on social media (Twitter, Facebook, and LinkedIn). These platforms are great for getting conversations started and letting you share your thoughts with us. We want to hear from you, so don't be shy!

For more information about any of these informative resources and seminars, please visit our website: 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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Starting with a Single Step

By Dan McPherson

Everybody loves a good montage. So rewarding, so fast, so inspiring, so effortless to watch. Or in the words of the parodic song "Montage":

Show a lot of things happening at once,
Remind everyone of what's going on (what's going on)
And with every shot, show a little improvement
To show it all would take to long
That's called a montage

I would dare go so far as to say that we have all, at some point or another in our lives, dreamed of our own montages, with our crescendo theme song of choice, cutting from shot to shot as we run faster, jump higher, lift more and ultimately, raise our arms in triumph.

The problem, of course, is that when it actually comes to walking the walk, few of us make it past those first scenes in which we are slow, weak and out of shape. Too often do we start with the mindset that it is all or nothing, Reebok Crossfit-commercial toned or bust. Or worse yet, we talk ourselves out of taking the first step because we are daunted by all of the steps to follow.

Enter Dr. Matthew Spencer of the Faculty of Medicine at the University of Calgary with this golden nugget of advice: start small. This was one of the many helpful tips conveyed to participants at Assist's inaugural wellness retreat in Banff on a crisp weekend last November. Changing your routine and forming new habits can prove to be onerous. In order to benefit from physical activity, however, you do not have to be an Olympian. Improving fitness, even marginally, will make activities of daily living easier to perform, and will help to prolong independent living. According to Canadian Physical Activity Guidelines, in order to achieve health benefits, adults aged 18-64 years should accumulate at least 150 minutes of moderate to vigorous intensity aerobic physical activity per week, in bouts of 10 minutes or more.

Not surprisingly, more physical activity provides greater health benefits, including reducing the likelihood of depression, anxiety, stress and poor psychological well-being, as well as improving immune function, and cognitive function.

So what's the trick to taking that first step? There is none. You just take it. But Dr. Spencer does offer some advice to help you take the others:

1. Begin by forming small goals that are easy to achieve.

2. Identify activities that you enjoy.
3. Bolster motivation by finding an exercise buddy with similar goals to keep you accountable.
4. Diarize a specific time for physical activity. The earlier in the day you exercise, the less time you have to procrastinate about it.

Now, block some time off in your calendar, pick that theme song, and take that first step. Every montage needs an opening shot. 🎬



Dan McPherson is a Peer Support Volunteer with the Alberta Lawyers' Assistance Society (Assist) and a member of the Assist Communications Committee.



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Reform Matters

By Peter Lown, QC

I have spoken to you before in this column about our process for identifying and choosing projects for law reform. On this occasion, I want to tell you about two recent decisions regarding forthcoming projects.

Our first filter is to take all suggestions and to run them against our selection criteria. Is there a legal problem, is it one that ALRI can address, is any other body the appropriate body to address the issue, and is there any likelihood of implementation. Once that filter is successfully passed, we do further research to determine the nature of the problem, who is affected by it, the scope and methodology of any project and the possible implementation of any solutions. This allows the Board to be in an informed position when determining whether to proceed with the project and what priorities should be attached to the project.

We have recently adopted two new projects, and I would like to describe them to you briefly. The first relates to the property rights of common-law partners. This topic was in fact suggested by the CBA Alberta Branch President, Mr. Steven Mandziuk QC, who indicated that this was a pressing concern among branch members. The latest census statistics indicate that 13.6% of Albertans live in a common-law relationship. Even if these parties can bring themselves within the coverage of the *Adult Interdependent Relationships Act*, for all other family-related matters, there is no statutory property regime which applies to them. The parties can enter into an agreement, but that is not always the case and there is no default regime which would apply in the absence of an agreement. The one available remedy of unjust enrichment is surrounded by uncertainty and may be difficult to establish. So, given the increasing incidence of common law arrangements or cohabiting parties, is it necessary to regulate the property relationships between them and if so, what should that regime be?

The second project relates to the question of the Rule Against Perpetuities. This is a very old rule, which the Institute addressed with recommended statutory reform in the early 1970s. The rule sets out a maximum length of time before which interests in property must vest in an identified beneficiary. However, the criteria are difficult to apply in many circumstances and as a result, the rule creates great uncertainty, not only in the area of family trusts in which the rule was first made applicable, but also to many other circumstances of commercial application.

The Institute's solution in the 1970s was an approach that was taken also in the UK, called the "wait and see" approach. Often, circumstances would eventually show that the rule was not offended, even though it was not possible to assert at the time of the creation of the trust or arrangement that the rule would not be offended. Since the 1970s a number of jurisdictions have reviewed the rule

and taken different approaches. New Zealand and the UK have enacted a fixed number for the perpetuity period, such as 125 years. Other jurisdictions in Canada, such as Nova Scotia, Saskatchewan and Manitoba, have repealed the rule. In Alberta, two statutory amendments have clarified that certain arrangements are not subject to the rule. As a result, the Minister of Justice asked the Institute to determine whether the rule ought to be retained. Our project will determine whether there is any remaining cogent policy reason for a Perpetuities Rule. If there is, how could the complexities of the rule be further reduced? If there are no remaining cogent policy reasons for retaining the rule, then it should be repealed.

These are two contrasting projects. The first is an emerging issue of some importance to a large number of Albertans. The second is a more technical area of law, but one which causes practical difficulties for lawyers and clients alike.

Finally, let me remind you of our next final report on the topic of Reviewable Transactions. This is another old and uncertain area of law which requires attention. Our proposals will allow lawyers to give more clear advice, parties will be able to better assess the risk of a transaction, and the jurisprudence will be assisted by a clearer statutory base. Those of you who have already subscribed for receipt of our report notices will receive a communication in due course. Others can subscribe on our website at <http://bit.ly/alrisignup>.



Website: www.alri.ualberta.ca

Email: reform@alri.ualberta.ca

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.



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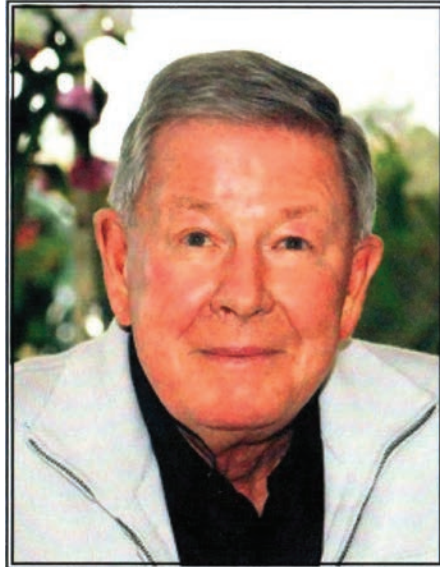
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Donald J. Boyer, Q.C.

Donald John Boyer, Q.C., one of Alberta's highest regarded lawyers during the past 50 years, died on December 21st, 2014 at the age of 79 years.

Don was a leading litigator with simplified rare integrity and decency. His ethics were of the highest level and he always had a commanding presence. He was a formidable opponent and had the full respect of the judiciary and his fellow practitioners. He was always thoroughly prepared, practical, and direct in addressing the issues. He did not tolerate wasting one's time - all qualities rare but necessary in an individual of his stature.



Born and raised in the City of Lethbridge, he came to the University of Alberta where he successfully completed his law studies in 1961, and remained in Edmonton throughout his life. During his university years he was a very active and prominent individual on campus. A leader as a member of the student's council, the executive of law school, and his fraternity Delta Kappa Epsilon. He was a well-rounded dedicated individual who always wished to participate. "There was always a touch of mischief in his eyes" and he was fortunate to be at university during a tolerant era when one was able to be involved in the imaginative endeavours that were then permitted.

Upon graduation, he joined the prestigious law firm that included George Bryan, Eldon Foote, Andy Andrekson, and Bill Wilson. Throughout his years at the firm, which became known as Bryan & Co., he was a leader and was particularly dedicated to the enhancement, not only of the firm, but the junior lawyers. Together with Al Bryan, with support of exceptional associates such as Mike Crozier, Larry Olesen and Bog Romanko, they built one of the finest law firms in Alberta.

Don became known as an outstanding litigator throughout Canada who appeared before all levels of the Courts. He had the uncanny ability to succeed in that which he undertook. During his career he became counsel to the College of Physicians and Surgeons. He was responsible for guiding the medical profession through a most difficult era which saw a change in legislation governing the profession and numerous challenges as to the independence of the medical profession. His creativity was admired by all of his colleagues.

Don, always the consummate outgoing individual was of

By Jack N. Agrios, O.C., Q.C.

the belief that it was important to give to his community and his profession. He served as a director of the Edmonton Exhibition Association. He was President of the Alberta branch of the Canadian Bar Association, also an initial Director of the Canadian Bar Insurance Association. His initiatives were the beginning of a program for the lawyers of Canada which today administers hundreds of millions of dollars.

Don had four children while married to his first wife, namely, Douglas Boyer and Craig Boyer, (both practicing lawyers), Scott Boyer and Joanne Boyer. He was proud of their accomplishments.

Life brings about many changes during one's journey, and Don met Midge Zeidler which was the beginning of a loving relationship of almost a quarter of a century. In marriage, she became his most precious and special friend. As a beautiful couple they were able to enjoy a charmed life of travel and wonderful winter vacations in Palm Desert. Don was a guiding force for Midge and her two daughters Tani and Shauna and was an excellent supporter of Tani's daughter Julia.

He was a truly remarkable person who attracted attention, attracted people - he had charm, he had charisma. Don Boyer left a profound, everlasting impact upon those who were associated with him. While he will be greatly missed, he will never be forgotten. ☪

Rajendra S. Chopra



Rajendra S. Chopra, M.A. (Carlton) LLB. was amongst the first lawyers of Indian descent called to the NWT Bar in 1967, (Canada's Centennial year) and was called to the Alberta Bar in 1974. He opened his own practice in 1975 in the City of Edmonton as R. S. Chopra, then later as Chopra, Chopra and Chopra (with his son, Mani, and daughter, Anne B.) He was dedicated to the legal profession and serviced his clients with loyalty for over four decades until 2011. A CBA member since 1967 and a member of the IBA; he was grateful for the support of both in his career. Mr. Chopra was poised and lived life fully with any challenges he faced. He gracefully passed away on February 10, 2015, leaving his beloved wife, son, two daughters, and four grandchildren. ☪

A VIEW FROM THE BENCH

By The Honourable Judge A.A. Fradsham


I recently learned that Apple is thinking of creating a new car. With all the computer components which are embedded in today's motor vehicles, I guess it was just a matter of time. Now, be clear, I am generally quite content with my iPhone, iPod, and iPad, but I don't think I am far off the mark in saying that these devices sometimes display some rather idiosyncratic behavior. That started me thinking about what might happen if computer companies as a species started to manufacture motor vehicles.

Certainly, there may be some grand advantages enjoyed by the public when computer companies design and manufacture cars. Car repair costs will likely plummet because instead of expensive diagnostic work and part replacement, one will simply have to turn off the vehicle, leave it for a minute, and then re-start it. As far as I can tell, that is the cure for almost anything which might ail a computer. Turn it off and re-boot it (but not literally, as tempting as that may be, and as much as the evil device may deserve it for sending to cosmic oblivion one's cherished work product of several hours). While flat tires and oil changes likely will still require a more traditional response, all the rest of the things which cause odd looking (but angst creating) graphics to light up on a car's instrument panel will be resolved by the closest thing to a miracle cure ever discovered by our civilization: the re-boot. And when we are asked why simply turning off the machine and then restarting it acts as a magic poultice, we will give the same answer as we have heard it from all IT experts since the time when the phrase "floppy disk" was no more than a rude comment: "I don't know, it just works."

For the longest time, I thought that those learned IT experts were simply brushing me off because they knew I would never be able to understand the intricacies of the explanation. Now, I know better. They really don't know why it works, though, in fairness, I must concede that they are correct that, if they did know, I wouldn't be able to understand it.

It is said that Einstein defined "insanity" as the doing of the same thing over and over again but expecting different results. In this age of computers, that would seem no longer to be a universal truth. The identical sequence of key strokes which I have executed dozens of times before in order to achieve a certain result, will, suddenly, and for no reason known in our universe, fail to produce the expected result. Rather than being whisked to the desired location on the internet, or to the file I carefully saved the previous day, I

am faced on the screen with some coloured ball which spins and spins in place for a time period which, in a pinch, would constitute a passable imitation of eternity. Today, "insanity" is defined as expecting the computer gods to react the same way each time a prescribed ritual is identically repeated. I will find it more than a little disconcerting if depressing the brake pedal on my Computer Car does not consistently result in a reduction in my speed; the day it results instead in the perpetual activation of my left turn signal may give new meaning to the term "computer crash".

Finally, I cannot help but wonder if the vehicles designed and manufactured by those who brought us computers will also be subject to the computer world's finest contribution to the insecurity of modern civilization: sporadic, random, and inexplicable "freezing". Currently, a good block heater will usually prevent a vehicle from freezing. However, my computer experience tells me that with a Computer Car "freezing" will mean that the vehicle will capriciously, and at diverse and sundry times, no longer respond to input signals from the operator. I simply observe that a computer which freezes as one is travelling the internet highway is frustrating; a vehicle which freezes as one is motoring along on a major thoroughfare will likely get "booted" in a way never dreamt of by those toiling away in the Silicon Valley coven. 



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

Judicial Updates

PROVINCIAL COURT

Provincial Court Judge R.J. Wilkins (Calgary) was appointed part-time effective March 25, 2015.

Provincial Court Judge G.G. Cioni (Calgary) retired effective April 14, 2015.

Jody Jean Moher has been appointed as a Provincial Court Judge to Edmonton Criminal Division, effective April 17, 2015.

COURT OF QUEEN'S BENCH

James R. Farrington has been appointed as a part-time Master in Chambers of the Court of Queen's Bench of Alberta (Calgary), effective March 27, 2015.

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WILL SEARCH. Nathalie Fricot Law Office is seeking the will for Peter MONKIEWICZ (MONK), late of Calgary and Edmonton. Contact **514-489-8844 or email nathaliefricot@bellnet.ca.**

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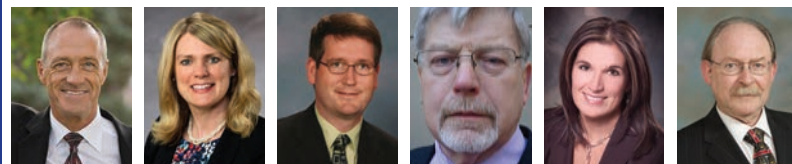


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