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# LAW MATTERS

## Unconscious Biases in Law

**Diversity Best  
Practices**

**Unsung Hero**  
Calgary Women Studying  
Law Association

**Solicitors' Shorts**  
Gender Disclosure Rules



THE CANADIAN  
BAR ASSOCIATION  
Alberta Branch

BY **ROBERT HARVIE, QC**

I was recently pleased to see that a good friend, Gillian Marriott, QC was appointed to the Court of Queen's Bench, somewhat shortly into her tenure as President of the Law Society of Alberta. Upon learning of her appointment, the occasion gave me a moment to consider how the profession has changed over the last generation - where women lawyers are now common-place at the highest echelons of our profession.

And, at the same time, we now read that many law schools now report women comprising over 50% of their graduating classes. Well done legal profession, let's all give ourselves a pat not the back. But wait...

During Editorial Committee discussions this past fall, while we were throwing around ideas for issue topics, the topic of gender equality arose. And after a brief discussion, it became very apparent that while overt sexism in our profession appears to be less and less obvious - there was a not-so-subtle and perhaps more insidious form of sexism continuing within our profession that seems to be getting "wall-papered over" by people who have become adapt at the lingo, but, perhaps, not the actual belief and practice of gender equality.

This issue speaks to that concern - namely, whether or not women are yet truly equal in a profession which professes to be the guardian of equality in our society. As the articles in this issue discuss, unfortunately, it appears we have more work yet to do.

This week, I was engaged in a challenging education session as a Law Society Adjudicator on the topic of "cultural competence." And as part of that session, we watched a portion of a TEDx Talk by speaker Jay Smooth about how to have healthy discussions regarding race - and his comment on the issue of race struck me as relevant to the similar issue of gender equality. That our own individual biases are REAL and probably universal (sorry Twitterati) and that there is a danger when we deny that reality - that our effort to check our own biases is an never-ending work in progress:

There are many things in our day-to-day lives that lead us toward developing little pockets of prejudice, that lead us toward acting unkind to others, without having any intent to do so.

These are things that will just naturally develop in our day-to-day lives, so the problem with that all or nothing binary is it

causes us to look at racism and prejudice as if they are akin to having tonsils. Like you either have tonsils, or you don't, and if you've had your prejudice removed, you never need to consider it again. If someone says "I think you may have a little unconscious prejudice," you say "No--my prejudice was removed in 2005! [Audience laughter] I went to see that movie Crash, it's all good!"

But that's not how these things work; when you go through your day to day lives there are all of these mass media and social stimuli as well as processes that we all have inside our brains that we're not aware of, that cause us to build up little pockets of prejudice every day, just like plaque develops on our teeth. So we need to move away from the tonsils paradigm of race discourse toward the dental hygiene paradigm of race discourse. Basically, if I might just offer one piece of advice.

And in general I think we need to move away from the premise that being a good person is a fixed, immutable characteristic, and shift towards seeing being good as a practice, and it is a practice that we carry out by engaging with our imperfections. We need to shift from, we need to shift toward thinking of being a good person the same way we think of being a clean person. Being a clean person is something that you maintain and work on every day. We don't assume that I'm a clean person therefore I don't need to brush my teeth. And when someone suggests to us that we've got something stuck in our teeth, we don't say "Wh-what do you mean? I have something stuck in my teeth? I'm a clean person!"

The point, I think, is well taken. That we should guard against the notion that we are either "good" or "bad" as regards our own biases, but rather, like maintaining good dental hygiene, good cultural understanding requires ongoing work to clean out the stuff that otherwise might get "stuck" in the back of our mind.

It is with that perspective I would encourage you to read this issue. This is not a "finger wagging" sort of issue, I hope, implying that we, as a profession, are "bad" - but rather, it is an issue that says the effort to be fair to our colleagues - whether based upon gender or other characteristic, is always going to be a work in progress for all of us. Including your flawed editor.

Good reading! 📖

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BY JEREMIAH KOWALCHUK



Playoff hockey made a brief appearance in Calgary this year, and is still going strong for the Edmonton Oilers as I write this column. Needless to say that while I strive to represent all CBA members in Alberta in my role as Branch President - regardless of their choice in hockey team - I cannot pass up this opportunity to say GO OILERS GO!

Earlier this spring, the federal government announced another round of judicial appointments in our province. Please join me in congratulating the newest justices of the Court of Queen's Bench of Alberta: William T. deWit, QC, Michele Hollins, QC (CBA Alberta and CBA National past president), Ritu Khullar, QC, and the Honourable Judge Marilyn Slawinsky. I am happy to note that all four are active CBA members. While the federal government has committed to funding 12 additional superior court judicial positions, they have yet to be filled. We will continue to work with stakeholders in Alberta's legal community to have these positions filled as quickly as possible.

Each year throughout April and May, cities around Alberta host Law Day events. April saw events take place in Lethbridge, Medicine Hat, Red Deer, St. Paul, Edmonton and Calgary. We look forward to a final event in Fort McMurray later in May. This year, Law Day events recognized the 150th anniversary of Confederation through the Canada150 video project. Canadians who have recently received their citizenship were interviewed on what it means to them to be Canadian, what the process to citizenship looked like for them, and what drove them to immigrate to Canada. The Canada150 video is available on the Law Day website at [www.lawdayalberta.com](http://www.lawdayalberta.com).

Each year on Law Day, we partner with Legal Aid Alberta and other community legal partners to host Dial-a-Lawyer, an event which provides free legal consultations to members of the public. This year, our volunteers assisted over 100 people in the areas of family law, criminal law, immigration law, wills and trusts, and civil litigation over the course of the day on April 22. On behalf of the CBA Alberta, I would like to thank all of the volunteers who make Dial-a-Lawyer and Law Day events possible each spring.

In May, our north and south Section Coordinators hosted the annual Section Workshops. These workshops are excellent tools for current Section executive members, and those looking to get more involved in Section leadership. The content delivered through our 72 north and south Sections is entirely delivered through the work of volunteer lawyers, and if you are interested in becoming more involved with the CBA, this is an excellent place to begin. If you missed the Section Workshops and are still interested in getting involved in Section leadership, please contact Heather Walsh in Edmonton at [edmonton@cba-alberta.org](mailto:edmonton@cba-alberta.org), or Linda Chapman in Calgary at [sections@cba-alberta.org](mailto:sections@cba-alberta.org).

There are many volunteer opportunities with the CBA Alberta open to our membership, and we are currently recruiting new volunteers for the 2017-18 membership year. In addition to Section leadership, opportunities are also available with our standing committees, which include Alberta Law Conference, Agenda for Justice & Advocacy, Access to Justice, Equality, Editorial/Law Matters, Law Day, Legislation & Law Reform, and Membership & Member Services. To provide your interest in CBA Alberta volunteer opportunities, please visit [www.cba-alberta.org/Volunteer](http://www.cba-alberta.org/Volunteer).

At our May meeting of the Alberta Branch Council, we heard from two of our distinguished members, Kevin Feth, QC and David Hiebert, who are running for the position of 2017-18 CBA Alberta Branch Secretary. Through June 6, members of Council (which includes Section and committee chairs, and CBA Alberta Past Presidents) will have the opportunity to vote for the incoming Executive Committee member. Please join me in wishing both Kevin and David the best of luck in their campaigns.

Registration is now open for CBA West 2017, the premier conference for legal professionals in Western Canada, held in partnership with the CBA BC Branch. Join us at the Wynn Las Vegas on November 17 - 19 for a weekend of professional development and networking with colleagues from across Canada. We already have a roster of excellent speakers scheduled for the conference, including a session with chief judges and justices from multiple levels of court in Alberta and British Columbia. The CBA West planning committee has also worked to make travel to Las Vegas as economical as possible, with discount codes available for flights with WestJet and Air Canada, as well as discounted room rates at the Wynn Las Vegas for the duration of the conference, as well as the three nights prior and following. For more information and to register, visit [www.cba-west.org](http://www.cba-west.org).

Finally, CBA members can expect to begin receiving membership renewal notices shortly. If you have not already done so, we encourage everyone to switch to paperless billing, which will allow you to receive your renewal invoice right in your email inbox. When renewing, don't forget to add your Portfolio or Portfolio Plus package to your membership - this will give you up to three complimentary materials-level section memberships, as well as credits that can be used towards eligible CBA purchases such as conference registration or other professional development opportunities. As always, our staff in Calgary and Edmonton are available to assist should you have any questions about your membership. ☺

# WHAT'S HAPPENING

## MAY

**25:** The Canadian Bar Association presents the **2017 CBA COMPETITION LAW SPRING CONFERENCE**. Toronto Region Board of Trade, Toronto, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_SPCOMP17](http://www.cbapd.org/details_en.aspx?id=NA_SPCOMP17).

**25:** The Canadian Bar Association presents the **2017 MILITARY LAW CONFERENCE**. Dow's Lake Court Conference Centre, Ottawa, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_MIL17](http://www.cbapd.org/details_en.aspx?id=NA_MIL17).

**25:** The Ontario Bar Association presents **TACKLING INJUNCTIONS**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17CIV0525X](http://www.cbapd.org/details_en.aspx?id=ON_17CIV0525X).

**29:** The Ontario Bar Association presents **MIKE AND MIKE UNPLUGGED: A CONVERSATION ABOUT THE FUTURE OF CERTIFICATION**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17CLA0529X](http://www.cbapd.org/details_en.aspx?id=ON_17CLA0529X).

**29:** The Ontario Bar Association presents **ANNUAL UPDATE ON HUMAN RIGHTS**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17CCL0529X](http://www.cbapd.org/details_en.aspx?id=ON_17CCL0529X).

**30:** The Ontario Bar Association presents **YOUR FIRST INTELLECTUAL PROPERTY MATTER: A PRACTICAL GUIDE**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17YLD0530X](http://www.cbapd.org/details_en.aspx?id=ON_17YLD0530X).

## JUNE

**1 - 2:** The Canadian Bar Association presents the **2017 CBA ABORIGINAL LAW CONFERENCE**. The Fort Garry, Winnipeg, MB. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_ABL17](http://www.cbapd.org/details_en.aspx?id=NA_ABL17).

**4 - 9:** The Canadian Bar Association presents the **2017 CBA TAX LAW FOR LAWYERS CONFERENCE**. Queen's Landing Hotel, Niagara-on-the-Lake, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_TAX17](http://www.cbapd.org/details_en.aspx?id=NA_TAX17).

**5:** The Ontario Bar Association presents **THERE IS A PRECEDENT FOR EVERYTHING: EMERGING TRENDS IN CUSTODY & ACCESS**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17FAM0605X](http://www.cbapd.org/details_en.aspx?id=ON_17FAM0605X).

**6:** The Ontario Bar Association presents **ASSESSMENTS OF ACCOUNTS: UNDERSTANDING THE PROCESS & PROCEDURE**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17CIV0606X](http://www.cbapd.org/details_en.aspx?id=ON_17CIV0606X).

"This research into the current state of the law won't help me in court." Said no lawyer, ever



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**7:** The Ontario Bar Association presents **CHARTER ISSUES AT ADMINISTRATIVE TRIBUNALS**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17ADM0607X](http://www.cbapd.org/details_en.aspx?id=ON_17ADM0607X).

**7:** The Ontario Bar Association presents **SEXUAL ASSAULT ON TRIAL**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17CRI0607X](http://www.cbapd.org/details_en.aspx?id=ON_17CRI0607X).

**8 - 10:** The Canadian Bar Association presents the **2017 IMMIGRATION LAW CONFERENCE**. Westin Harbour Castle, Toronto, ON. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_IMM17](http://www.cbapd.org/details_en.aspx?id=NA_IMM17).

**9:** The Ontario Bar Association presents **VIDEO GAME LAW**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17TEC0609X](http://www.cbapd.org/details_en.aspx?id=ON_17TEC0609X).

**15:** The Ontario Bar Association presents **FINANCIAL METRICS: MEASURING LAW FIRM REVENUE**. Live Teleconference. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=ON\\_17LPM0615X](http://www.cbapd.org/details_en.aspx?id=ON_17LPM0615X).

**22:** The Canadian Bar Association presents **ELDER FINANCIAL ABUSE: ETHICAL & RISK MANAGEMENT CONSIDERATIONS**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_ONJUN317](http://www.cbapd.org/details_en.aspx?id=NA_ONJUN317).

**29:** The Canadian Bar Association British Columbia Branch presents **THE TAKING OFF WITH DRONES: THE LAW IN CANADA**. Live Webcast. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=BC\\_DRONE0617R](http://www.cbapd.org/details_en.aspx?id=BC_DRONE0617R).

## SEPTEMBER

**14 - 15:** The Canadian Bar Association presents the **CBA NATIONAL INSOLVENCY LAW CONFERENCE**. Sheraton Hotel Newfoundland, St. John's, NL. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=BC\\_DRONE0617R](http://www.cbapd.org/details_en.aspx?id=BC_DRONE0617R).

**14:** The Canadian Bar Association presents **FAMILY STATUS ACCOMMODATION: STATUTORY PROTECTIONS AND LEGAL TESTS**. Live Online. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_ONSEP217](http://www.cbapd.org/details_en.aspx?id=NA_ONSEP217).

## SAVE THE DATE

**OCT 20 - 21:** The Canadian Bar Association presents the **CBA LEADERSHIP CONFERENCE FOR PROFESSIONAL WOMEN**. Calgary TELUS Convention Centre, Calgary, AB. To register, visit [http://www.cbapd.org/details\\_en.aspx?id=NA\\_WLF17](http://www.cbapd.org/details_en.aspx?id=NA_WLF17).

**NOV 17 - 19:** The Canadian Bar Association Alberta Branch and British Columbia Branch jointly present **CBA WEST 2017**. Wynn Las Vegas, Las Vegas, NV. To register, visit [www.cba-west.org](http://www.cba-west.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.

## PROFESSIONAL EQUALITY: STILL MORE WORK TO DO

BY ELYSA HOGG AND KRISTA ISBERG

Krista Isberg and Elysa Hogg formed the Calgary Women Studying Law Association (CWSLA) in the spring of 2015 at the University of Calgary.



KRISTA ISBERG

At the time, Krista chaired Calgary LEAF and led PBSC's Discovery House Project. Elysa was Vice President Academic of the Society of Law Students. In these positions, Krista and Elysa wound up in numerous conversations – primarily with the women in the

Faculty of Law – where their peers confided in them with stories of non-trivial harassment. They were frustrated to learn about the range and extent of the harassment that was occurring, but not surprised.

In one case, a peer was told by a senior partner at a law firm that he would never hire her because she was too attractive. In another, a female student had a male associate put his hand on her thigh under the table during a recruitment lunch. In yet another, a partner told a student she wasn't worth hiring because she would eventually "just go off and have babies anyways".

Despite encouraging these women to report their experiences, it became clear that the students were not prepared to make a formal complaint. "As a student, you are vulnerable to the job market and those who control it. No one wanted to be blacklisted, and no one knew if they'd be taken seriously," said Krista.

With permission from their peers, Krista and Elysa approached the Faculty, and identified some of the common behaviors that they had witnessed, which they saw as being harmful to women law students. They told Faculty members of the overt sexualization of female peers by male students, derogatory comments about women as leaders, and unwillingness on the part of female students to speak up for fear of being socially ostracized. In order to change this environment, Krista and Elysa wanted to create a space for women to have these conversations, and to develop the skill-set needed to combat sexism in the profession.

CWSLA started with a two-part mission.

First, Krista and Elysa aimed to change the learning and social environment in the Faculty of Law. To achieve this, CWSLA set out to have conversations around gender equality in the Faculty that not only reinforced women's voices and opinions, but



ELYSA HOGG

saw them as valuable and necessary. Male students were included in select events, in order to provide strong examples of male leaders combatting sexism in the profession.

Second, CWSLA aimed to provide female law students with the mentorship opportunities that many women felt they were being left out of due to the gendered nature of many marketing events. A series of events were held that

brought female students together with female mentor-lawyers in the first five years of call.

Now, the events have changed with as the interest of the executive committee, but the annual "Sexual Harassment Toolbox" event remains. At this annual event, students and mentors get together to

discuss the sexism they have experienced, and the tactics and strategies used for dealing with it. "In the end, students walk away with a toolbox of strategies and in most cases, a few business cards they can rely on if they

ever need to seek advice" says Elysa.

Since starting the organization, both Krista and Elysa have been surprised to realize that many of the more senior men and women in the legal profession believe that the problem of sexual harassment no longer exists for women. It has been particularly rewarding to watch more senior practitioners meet with law students and junior associates and, through honest dialogue, understand that although the form of sexism and harassment may not be the same, it still remains.

Krista and Elysa have been proud to see opportunities for mentorship develop into friendships as a result of their work.

CWSLA is currently rounding-out its second successful year, and a new executive committee has been appointed from the current ranks of the University of Calgary's law student population. Both Elysa and Krista have been excited to watch the organization continue to grow as they remain on the executive committee in an advisory capacity. 🌟

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

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

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



## ALBERTA COURT CLARIFIES TRACING PRINCIPLES IN PONZI SCHEME: **EASY LOAN CORPORATION V WISEMAN, 2017 ABCA 58**

BY **JORDAN DEERING AND EMILY MCCARTNEY**

The exposure of an alleged Ponzi scheme that deprived investors of over \$80 million has helped clarify how trust funds deposited in a single bank account should be distributed to their beneficiaries.

On February 13, 2017, the Alberta Court of Appeal in *Easy Loan Corporation v Wiseman*, 2017 ABCA 58 (the Appeal) upheld Justice Yamauchi's decision in *Easy Loan Corporation v Base Mortgage & Investments Ltd*, 2016 ABQB 77 directing that investor funds held in trust that are commingled in one account should, subject to certain exceptions, be distributed according to the Lowest Intermediate Balance Rule (LIBR), unless the rule is unworkable or the beneficiaries of the funds agreed to another method of distribution.

### BACKGROUND

The alleged Ponzi scheme that led to this Appeal incited investors to invest in a company, Base Finance Ltd., on the false understanding that they would be the beneficial holders of mortgages on land in Alberta. In reality, Base Finance used investor funds to maintain interest payments and principal redemption requirements and invested the bulk of the funds in a U.S. company. The Royal Bank of Canada (RBC) raised concerns about an account held by Base Finance with the Alberta Securities Commission, which later commenced an investigation into the alleged \$83.5 million Ponzi scheme. The account, which RBC subsequently froze, held around \$1.085 million of investor funds. The court appointed a receiver over Base Finance's assets, including its RBC account.

### CHAMBERS' DECISION

In Chambers, Justice Yamauchi found that the frozen funds in the RBC account were subject to a constructive trust, meaning that the investors whose funds were pooled in the account could benefit from a proprietary remedy – tracing – to recover their funds. The method of distributing these funds became the subject of the Appeal.

In his decision, Justice Yamauchi rejected Easy Loan's (the Appellant's) argument that the funds should be allocated to the investors wronged by the alleged Ponzi scheme in proportion to the size of their investment with set-off for amounts already recovered. Rather, the Court sided with the remaining investors (the Respondents in the Appeal) in concluding that the funds should be distributed according to the LIBR. This rule limits the amount that a claimant can recover to the lowest balance in an account subsequent to the claimant's investment but before the next claimant invests in the same account. Justice Yamauchi applied this method by finding that the LIBR is the general rule in Canada unless applying it is practically impossible. Easy Loan appealed Justice Yamauchi's method of distribution that, due to the timing of the Appellant's investment, left Easy Loan with \$309.95 out of the \$5.7 million it had invested in Base Finance.

### DECISION ON APPEAL

The Court of Appeal upheld Justice Yamauchi's method of distributing the funds based on the LIBR. In reaching this decision, the Court first examined the three methods currently used to trace commingled trust funds deposited in a bank

account: (1) the rule in *Clayton's Case*, (2) the *pro rata* approach, and (3) the LIBR.

The rule in *Clayton's Case* is also known as the "first in, first out" rule. This rule provides that the first funds to be deposited into a commingled account are the first to come out. However, the application of this rule in Canada is unsettled, and, given agreement by the parties, the Court of Appeal proceeded on the basis that the rule in *Clayton's Case* did not apply.

The *pro rata* approach divides the balance of the commingled account between the claimants according to the size of their investment.

Under the LIBR, a beneficiary cannot trace his or her investment in a commingled account once the account balance drops below the amount of his or her investment. Rather, beneficiaries of commingled trust funds under this rule are limited to the lowest balance in the account following their contribution. The Court of Appeal provided a helpful example to navigate this rule:

If X deposits \$100 to a commingled account and the balance in the account later drops to \$5, the most X can claim is \$5, the lowest balance in the account; the ability to trace to anything more than \$5 is lost because anything more comes from a funding source other than X. "Intermediate" refers to the period between X's contribution and when X makes the claim against the account. Once the lowest intermediate balance is determined for each beneficiary, each beneficiary is entitled to claim only the lowest balance's proportional share of the final balance of the account.

Determining which rule to apply, according to the Court of Appeal, must be considered in light of the equitable principles of fairness and justice in specific circumstances, balanced against the necessity for practicality and workability.

After surveying the leading decisions in Canada on the subject, stemming exclusively from Ontario, the Court of Appeal concluded that the "LIBR is the general rule for allocating funds among innocent beneficiaries when there is a shortfall in a trust account or in an account that has been impressed with a constructive trust by operation of law" (para 57). This general rule, according to the Court, is subject to two exceptions: (1) where the LIBR is unworkable in that the calculations would be too complex to be properly executed or (2) where the beneficiaries expressly or impliedly intended another method of distribution.

The Court noted that the LIBR will not be workable where the commingled account has many contributors, there are no supporting documents or the time frame of the contributions is lengthy. These issues did not arise in this case. Only 20 of Base Finance's 240 investors contributed to the RBC account, which only remained open for one year. Such relatively straightforward facts are not generally found in cases of commingled funds subject to a Ponzi scheme. Rather, these

# BARRISTERS' BRIEFS

schemes commonly involve a large number of contributors who invest over a very lengthy period of time. Courts determining the method of distribution of commingled funds stemming from a typical Ponzi scheme may therefore opt against applying the LIBR in favour of a different, more workable approach given the complexity of the calculations that these cases would likely require.

The Court did not find that any of these exceptions existed in the circumstances. It concluded that the LIBR was workable given that Justice Yamauchi issued an Order directing the amount that would be distributed to the beneficiaries using the LIBR. The Court also found that there was no evidence in this case suggesting that the investors had agreed to a particular method of distribution.

## TAKE-AWAY

The Court of Appeal's decision in *Easy Loan Corporation* sets a significant – and potentially fairly restrictive – precedent in Alberta by affirming that the LIBR is the “general rule” for distributing commingled trust funds to beneficiaries, subject to certain exceptions. The decision reaffirms that the potential inconvenience of applying this method for allocating funds will not bar its implementation. The interests of fairness in applying this method of allocating traceable commingled funds, according to the Court, will trump any inconvenience that falls short of unworkability.

In essence, this case upholds the principles of tracing by finding that the general rule (i.e. LIBR) precludes early investors from unfairly benefitting from the funds of a later investor. The case reminds investors that the timing of their investment may dictate the amount of their claim as funds cannot be traced when they are no longer present in the account. The fact that Ponzi schemes generally implicate many investors and operate over many years, however, may temper the applicability of the LIBR as the general rule for distributing pooled trust funds. Accounts subject to a typical Ponzi scheme could likely render the LIBR practically unworkable in most circumstances to require the imposition of a different method of distribution.

Given the nature of Ponzi schemes, it is also unlikely that defrauded investors could agree to an intended method of distribution prior to making their investment. However, victims of a Ponzi scheme should be aware that once the scheme has been uncovered, they can collectively agree to an intended method of distributing the pooled funds as a first step to the recovery process. This agreement can be facilitated by joint legal representation of the implicated investors and can mitigate the investors' chances of having a court impose a tracing rule that may not be beneficial for all investors. ☺

*With special thanks to Jordan Deering and Emily McCartney for co-authoring this article.*

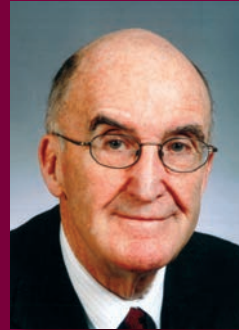


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# CHOOSE FROM ALBERTA'S TOP MEDIATORS AND ARBITRATORS



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.



Virginia M. May, Q.C.

## UNCONSCIOUS OR IMPLICIT BIAS AND GENDER EQUALITY IN THE LEGAL PROFESSION

BY ROBERT G. HARVIE, QC

I'm an idiot, at least some of the time.

I do or say dumb things – even at 55 years of age – that would suggest I'm closer to six than sixty. So, I'm sad to say, I'm perfectly aware that I'm a flawed human being. But, then, who isn't?

But one thing I hope I can say for myself is that I at least try to grow as a person – even now – by looking at the world around me, and, I suppose, being curious about my fellow human beings.

And that, I suppose, is the theme of this article.

Be curious. Be empathetic. Be open to see your own flaws – because we all have them.

In February of 1962 I was a lottery winner. I was born, I later discovered, to be a heterosexual, white male in North America. And while I like to think I am somewhat “self-made” the reality is that as hard as I had to work to get to this point in my life – I was quite blessed not to carry added burdens that many others do carry. Racial burdens, burdens of disability, burdens of sexuality, or gender burdens. I was fortunate enough to have a membership in pretty much every advantageous “club” going.

I was also blessed in that I had a strong and capable mother who worked her ass off (as did my father) to raise her children – in a world where being a working mother was even more of a challenge than it is today. And I was curious. As she came home from work, and expressed her frustration with her day – she never complained about gender bias at work, per se – but she would complain about frustration she encountered with co-workers and supervisors. And I would listen at the dinner table and as I became an adolescent, I'd put myself in her shoes and imagine what I would do in that circumstance – and I would plan to never be the person who was unfair or oppressive in the ways that hurt her or made her life more difficult.

I was later blessed to article for a strong and skilled lawyer who happened to be a woman. She was an extremely hard-working and talented family lawyer – who led me to the practice I have today. And as I learned “the trade” of being a lawyer – I would listen and watch as she would be challenged by frustration with a world where even as she exhibited tremendous skill in court, and ability to generate significant billings from that effort – she still was often marginalized in the practice of law in a hundred different ways. I recall being the butt of many, many jokes implying that there had to be a sexual relationship between us – working so closely – I mean, how can men and women work together without having sex?

And I continued in my practice. Some years ago, I married a woman who was a lawyer and was 11 years younger than I. I knew her through her articles, and often talked to her about her experiences. Over drinks after work, she would share her frustration with her day, with her boss, with her colleagues,

with judges. Stories her female colleagues shared with her as well. Stories of continued difficulty with being a woman in what is still, largely, a “man's world”. Where partners would explain, overtly, to associates, how male lawyers have a burden to support their families, and women lawyers are simply a “second income.” Where judges would make casual sexist commentary on occasion, which colleagues would accept and ignore in the effort to maintain a “working relationship” with judges. And so on.

Eventually, I became the Chair of the Law Matters Editorial Committee. And, in 2016, during a discussion with some female colleagues, we talked about the world today, compared to the world 20 or 30 years ago.

And I listed as one young lawyer advised that there were still circumstances of inappropriate advances made towards her. That even in today's “progressive” climate, she felt unable to address that conduct appropriately for fear of halting her ability to advance both inside and outside of her firm. And I listened as another young lawyer expressed frustration with the focus in her firm with a certain sporting activity which was, pretty much, confined to males. Her experience of other young (male) lawyers spending many, many hours sharing valuable “face time” with senior (male) lawyers in the firm that she couldn't - knowing that this “male bonding time” provided those lawyers advantages that were lost to her.

And with those discussions, I listened, and I was curious, and in discussion with our editorial board, we decided that we needed to devote an article to this continued challenge for women lawyers in the practice. A challenge that according to my earlier work as Chair of the Retention and Re-engagement Task Force with the Law Society of Alberta lead me to understand how ***within 5 years of being called to the bar, 57% of women will have left private practice. How many of those women moved to in-house or government positions, but close to 28% still left the practice of law entirely.***

It is, most certainly, a better world for women in Alberta today than it was 40 years ago – but it is far, far from an even playing field. And in some insidious ways, it may even be worse.

Because we (men and women) are much less likely to be overtly inappropriate or biased in dealing with our colleagues, we may falsely assume that “all is good.” We cease paying attention and being “curious” about the challenges of our female colleagues. And we allow unconscious bias to settle into our profession largely unchallenged and unexamined.

We have, what I call, “illusions of divinity.” We do overtly “good” things, which may give us a sense of smugness allowing us to ignore our more subtle biases.

We hire women, and pat ourselves on the back for being “diverse”, even as we organize golf trips or hockey teams that are entirely or at least predominantly “male activities”. We spend the same amounts on continuing professional



development for our male and female associates – but spend hundreds of hours more with our male associates sharing war stories over lunch or cocktails after work... because spending time with a young female associate would be “inappropriate”.

We go on Twitter, and like good social justice warriors, we gang up and attack some poor stupid sod who happened to make a sexist comment – and then go to bed ignoring how we actively but unconsciously engage in conduct that undermines women in our profession.

We are most certainly a more open and progressive profession now than we were when I graduated law school – but most assuredly, gender bias in our profession continues. In a 2010 Duke University study, for example, it was pointed out that while we’ve been graduating male and female lawyers in near equal numbers for two decades –

- Only **six percent** of managing partners in the 200 largest U.S. Law firms are women; and
- **Four out of five** law school Deans are men.<sup>1</sup>

Indeed, the Duke study suggests that what they call “implicit bias” continues to be a challenge in our profession - biases we carry in our subconscious about what makes a “good lawyer” or a “good judge.” We intellectualize that we should be gender-neutral, but when making choices regarding the “good lawyers” and “good judges” we tend to see traditionally masculine tendencies as the qualities that make them “good.”

The Duke Study points out those stereotypes – regarding gender, race and other qualities – can begin to develop very early – as young as 3 years of age. And over time, those stereotypes became embedded in our psyche:

As the children grow older, their stereotypes harden. Although they may develop non-biased (explicit) views of the world, their stereotypes remain largely unchanged and become implicit (or automatic). In the context of gender stereotypes, children are likely to learn at an early age that men are “competent, rational, assertive, independent, objective, and self confident,” and women are “emotional, submissive, dependent, tactful, and gentle.”

The challenge, it is suggested, is to understand and accept each day that we are, in fact, biased as regards all sorts of qualities – but in particular regarding gender. Among other suggestions, the Duke study posits that if our own implicit or unconscious bias is considered and recognized in a non-defensive manner, we can better overcome those biases and exhibit more neutral and unbiased behavior.

Take just a moment when hiring students or associates, to ask, “Am I possibly allowing unconscious bias to influence my decision?” And then look at the candidates again. Take a moment, when organizing firm events, to consider whether the nature of the activity tends to engage all members of the firm – and be cautious over spending time outside of formal firm events (cocktail time) with one gender in favor of another.

<sup>1</sup> “Implicit Gender Bias in the Legal Profession: An Empirical Study” Levinson, Justin and Young, Danielle, Duke Journal of Gender Law and Policy, Vol. 18:1, 2010 (<http://scholarship.law.duke.edu/cgi/viewcontent.cgi?article=1182&context=djglp>)

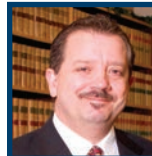
Be curious about yourself and your relationship with your colleagues. Accept the certainty that in our collective socialization we carry gender biases, and as you make decisions each day in your profession ask yourself, “is my bias coming into play?” Am I treating my colleague differently because of their gender?

Contrary to the suggestion of our roving Twitter bullies, bias does not make us evil – it makes us human. And our challenge, each day, is simply to recognize that reality in ourselves, and to try to be a better human today than we were yesterday. To recognize our failings and to do our best to correct them.

To understand, at the end of the day, that we’re all in this together – that life is not a “zero sum game.” As I have learned through the years, making an effort to help all of our colleagues does not detract from our own personal welfare – it enhances it.

As I say, I’m as big an idiot (or bigger) than the next guy – so I’m not casting stones. I work and still often fail to see life and apply myself in an egalitarian fashion. But I make the effort to improve.

So. Be curious. Look around a little, and look inward a little more. 🍷



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## HOW DO WE DO BETTER?

BY **NOREN HIRANI**

In a series of recent opinion pieces and educational articles, such as those published in the Harvard Business Review, unconscious bias has been gaining significant attention and focus. Our legal profession is currently evaluating how we will react to this body of knowledge. The profession could learn from the progress, best practices and example set by accounting firms.

In interviews with directors at KPMG and Deloitte, I learned about how these firms with over 500 partners have strategized to address how they can foster a culture amongst their organization to bring their "whole selves" to work every day.

Their strategic undertaking started by engaging outside auditors to test the degree and level of unconscious bias amongst their top level executives. Executives undergoing this testing realized the extent and degree to which unconscious bias dictated their decision making. The revelation garnered not only support but also engagement from top level management in addressing unconscious bias. They started seeing themselves as inclusion champions. The outside auditor also collected data - gathering statistics on who was getting hired, who was leaving, who was getting promoted, and who was unhappy. The outside auditor was then further engaged to provide coaching and strategic advice to individual executives to help them become more aware of their biases and to give them the tools to be more inclusive.

Next, the strategy evolved to building a national team built up of partners who would champion the initiative and keep their regional groups accountable. This top down approach empowered the team, made up of directors across functional business groups (not limited to human resource leaders), to provide a unique lens on the value of inclusion. These leaders, naturally focused on the bottom line reality of their businesses (such as profitability targets and business development), and offered a very practical perspective that may not have come to light but for their involvement. In addition to the constitution of the team, the national team's leader is a permanent staff, overseeing the strategic development of the inclusion and diversity initiative across the nation as well as setting best practices, consolidating information at a regional level to develop strategic goals and communicating with the firms' international offices. The leader's permanent role conveys long term commitment to promoting inclusion.


The diversity of the practice groups, industry groups and the geographical representation on the national team itself paid further dividends when the team turned to setting inclusion goals and metrics for the organization. This broadly-focused team was able to provide direction that affected many functional areas including employee performance and evaluations (and promotion potential), employee compensation, mentoring, recruitment, retention, business development efforts, client assignments, succession planning, case study based professional development, etc. This increased the opportunity for the inclusion strategy to permeate all levels of the organization.

Once the goals were set, the empowered national team was

able to hold groups accountable, as they were easily able to identify groups that did not meet these metrics and to help them in addressing their local problems. Accountability theory suggests that by having a national group made up of regional managers embedded within the local office will cause regional teams to ask themselves, "Will this look right?" when making decisions.

The accounting firms have set up a model and a strategic approach that our profession could benefit from as we contemplate our next steps towards achieving inclusion.

To this end, the Canadian Bar Association, Alberta Branch hosted a successful panel discussion featuring leaders in diversity and inclusion from KPMG and BLG, as well as the Honourable Madam Justice Sheilah Martin in a keynote address, "getting a pulse on diversity in the legal profession". This event was organized by the CBA Alberta Branch Equality Committee and the Diversity Section (South). For more information on these groups, or to join, visit [www.cba-alberta.org](http://www.cba-alberta.org).



**NOREN HIRANI** practices intellectual property law with Bennett Jones LLP in Calgary, where she advises clients in IP-related corporate commercial agreements. Noren is currently a board member of the Association of Women Lawyers Calgary as well as the Chair of the CBA Alberta Equality Committee.



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## STICKS AND STONES: FEMALE LAWYERS AND GENDERED CRITICISM

BY CARLY ROMANOW

We've all heard the bad lawyer jokes, (i.e. What's the difference between God and a lawyer? God doesn't think he's a lawyer.) We're all aware that lawyers may not be the most publicly loved section of society and these notions of unpopularity are part and parcel of the role of a lawyer. However, it seems that once the jokes are turned toward female lawyers, they seem to be more critical, more personal and more pointed. For instance the popular female lawyer joke: What's the difference between a female lawyer and a pitbull? Lipstick.

More recently with the trial of Jian Ghomeshi, and his defence counsel Marie Henein, and in the more extreme case of Hillary Clinton, critiques of the female lawyer's professional performances were rife with comments on their attire, their personalities and their gender. Alice Woolley, a professor at the Faculty of Law, University of Calgary and President of the International Association of Legal Ethics, and Elysa Darling, a lawyer in Calgary, recently published an article titled "Nasty Women and the Rule of Law".<sup>1</sup> The article tries to articulate the reasons why female lawyers tend to receive more personal and gendered criticism than their male counterparts. The article's thesis is that attacks on female lawyers arise from the intersection between the normative structure of the lawyer's role and sexist stereotypes of females.<sup>2</sup>

The authors begin by contextualizing the role of the lawyer within the rule of law. The authors argue that the role of the lawyer is to pursue the interests of their clients within the bounds of legality, even where doing so inflicts harm or violates valued norms of ordinary morality.<sup>3</sup> The classic example of this is the public disdain for lawyers who represent alleged murders or rapists. The criminal defense lawyer's role in the justice system is to zealously advocate for a client's best interest, (i.e. acquittal), despite the client's allegedly egregious acts. A lawyer in the role of the zealous advocate will always run contrary to someone else's deeply held values, moral or otherwise.<sup>4</sup>

This role of agitator or zealous advocate becomes particularly dissonant when combined with the gender stereotypes about the expected and appropriate conduct of women. In general we believe that men ought to be focused on achievement, to "take charge" and to be autonomous and rational.<sup>5</sup> Women, on the other hand, ought to reflect communal qualities, to be concerned about others, to seek early resolution and to be emotionally sensitive.<sup>6</sup>

The gender stereotypes for women are in direct conflict with the expectations and position of the lawyer in our legal system. The authors summarize the conflict as follows:

By virtue of her role – pursuing client interests within the bounds of legality – a lawyer is required to be competent, authoritative and rational. She acts in the interests of (the) client, not in the interests of others, and will not be deferential, generally concerned with the interest of others or act with emotional sensitivity, except insofar as doing any of those things advances her client's interest within the bounds of legality. But by acting in this way, she not only violates our expectations of what women *can* do,

she also violates our standards about what women *ought* to do.<sup>7</sup>


As a result of this conflict between the traditional role of a lawyer and the traditional role of a woman, the critiques of female lawyers are harsher and more personal, the authors argue, because being a good lawyer means being a bad woman.<sup>8</sup> The role of a lawyer itself violates gender norms for women. Female lawyers may be seen as less suitable for the role and may find the practice of law hostile as a result.<sup>9</sup> The authors do not argue that every female lawyer experiences personal and vicious attacks because of her role as a lawyer; however, they argue that every female lawyer is at risk of receiving additional and harsher critiques as a lawyer due to her gender.<sup>10</sup>

The authors recognize that there have been efforts to increase diversity in the profession of law and to support female lawyers. Yet they point out that "...even if women have better mentoring, or opportunities for flexibility and work-life balance, that will not necessarily place them on the same footing as men in relation to professional opportunities or advancement."<sup>11</sup>

Ultimately, the authors did not research and write their article to preach further doom and gloom about the legal profession. The article is to bring light to the issue of gender stereotypes, especially in the legal profession and to challenge the way that we view and critique female lawyers. The authors conclude with the following:

[W]e also think it's important for people to see it – to see the gender stereotypes that underlie how we perceive, discuss and criticize women lawyers, and to appreciate the costs that that imposes for the particular women subject to it, but also to women lawyers as a whole.

...

[T]he profession as a whole needs to be aware of the unique costs to women in occupying the lawyers' role, however central that role is to the accomplishment of the rule of law in a free and democratic society."<sup>12</sup> 

<sup>1</sup> Alice Woolley and Elysa Darling, "Nasty Women and the Rule of Law", January 21, 2017, University of San Francisco Law Review. ([https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2903214](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2903214))

<sup>2</sup> Supra, at page 3.

<sup>3</sup> Ibid.

<sup>4</sup> Supra, at page 22.

<sup>5</sup> Supra, at page 23.

<sup>6</sup> Ibid.

<sup>7</sup> Ibid.

<sup>8</sup> Supra, at page 26.

<sup>9</sup> Ibid.

<sup>10</sup> Supra, at page 28.

<sup>11</sup> Supra, at page 30.

<sup>12</sup> Supra, at page 32.



**CARLY ROMANOW** is the Programs Director and Staff Lawyer at Pro Bono Law Saskatchewan. She is active in the legal community; where she is the South Saskatchewan Chair of the CBA Women Lawyers Forum and a Director on the Board of Regina Planned Parenthood.



## INNOVATION IN REGULATION

BY ANTHONY G. YOUNG, QC

The Law Society of Alberta (Law Society) has been talking about proactive regulation for a number of years and it is integral to our new 2017-2019 Strategic Plan (<http://lsa-flipbook.s3-website-us-east-1.amazonaws.com/#1>). Traditionally, we have been reactive to changes within the legal profession as well as to pressures in the marketplace. Going forward, we are continuing our shift to be more proactive in how we regulate to protect the public interest.

In February, the Benchers resolved to continue exploring changes in the way the legal profession is regulated. The resolution states that "Changes are needed in our regulatory framework in order to move beyond the regulation of individual lawyers and enable the regulation of entities through which lawyers deliver legal services..." The Law Society is committed to ongoing engagement and conversations with the legal profession as these innovative changes in regulation are considered.

It is important to note that we are at the beginning of our innovation journey. Presently, although no decision has been made to implement unfettered entity regulation, we continue to examine how entity regulation may enhance the regulatory landscape. Similarly, there has been discussion about the concept of non-lawyer investment in legal service providers. These discussions are a necessary part of the regulator's role in facilitating innovation and encouraging progress.

As the regulator, we need to be thoughtful in our approach and enable the types of innovation that support accessibility to legal services while protecting the public interest. Our intent is to identify the work ahead and to highlight our ongoing commitment to working with the profession as we continue to explore these important issues.

Some of the initial steps already taken in innovating regulation include:

- discussions with the legal profession in spring 2016 to gather information and understand various perspectives around enabling entity regulation; and
- ongoing collaboration with the Prairie Province Law Societies to develop a Self-Assessment Pilot Project to determine if the tool will help firms improve their practices and identify for the Law Society where gaps exist within firms so resources can be developed.

### A CHANGING LEGAL PROFESSION AND THE NEED FOR INNOVATION

The practice of law and the regulation of the legal profession around the world are changing. The drivers are new technologies, new business models, access to justice concerns, and a growing public demand for affordable legal services.

As we can see, the marketplace is showing demand for innovative ways to access legal services. Companies like

LegalZoom are already in the market and other ideas like the University of Calgary (U of C) Family Law Incubator are on the horizon.

The U of C has proposed a unique low-cost family law clinic. It would run as a non-profit, and would primarily employ articling students. This would help train a new generation of lawyers while meeting an unmet legal need for those Albertans who are unable to afford full-cost legal services. This is just one example of innovation. We want to enable a variety of forms of innovation, to see which ones thrive. We've studied innovation in legal services, and it is reasonably clear that, if the regulator gets out of the way, innovation occurs.

**"We credit the greatest lawyers with being able to anticipate and predict the course of the law's change and the readiness of society for such change. The legal profession has been a poor lawyer by this measure. The legal profession, as an institution, most often stays blind to change that is happening all around it."**

- James Moliterno, *The American Legal Profession in Crisis: Resistance and Responses to Change*

It is important to realize that this will not create an overnight revolution in the delivery of legal services. We can expect a few innovators at the beginning of the process, and then, hopefully, longer term innovation over a period of years.

The Law Society is concerned about access to legal services for all Albertans – this is an important part of what is fueling our work in innovating regulation. We want to make it easier for the legal profession to try out new ideas and deliver legal services in creative ways that could benefit Albertans from all walks of life.

The Law Society does not want to be blind to the change that is happening all around it. We understand that if the profession does not give Albertans legal services they can access and use, they will get them in other ways. Given our mandate, we will continue to explore alternative ways to achieve our goal of helping the legal profession to explore new ways to deliver legal services for all Albertans. 🗣️



ANTHONY G. YOUNG, QC is the President of the Law Society of Alberta, and currently serves as Counsel at Dunphy Best Blocksom LLP where he practices in the area of family law. Tony is also a long-time member of the CBA Alberta Editorial Committee and regular contributor to *Law Matters*.

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## INCOMING CBA BOARD OF DIRECTORS

The incoming CBA Board of Directors was announced earlier this month. The new board will commence its mandate on September 1, 2017, and is composed of one member from each province and territory, plus the CBA President. Your 2017-18 Board of Directors includes:

- **Kerry L. Simmons, QC** - Incoming President
- **Nabeel Peermohamed** - Alberta
- **Chandran K. Sabharwa** - British Columbia
- **Dean Scaletta** - Manitoba
- **René Basque, QC** - New Brunswick
- **Twila Eileen Reid** - Newfoundland & Labrador
- **Raymond Adlington** - Nova Scotia
- **Stephen Mansell** - Nunavut
- **Vivene Salmon** - Ontario
- **Nancy Birt, QC** - Prince Edward Island
- **Marie Laure Leclercq** - Quebec
- **Jeff Howe** - Saskatchewan
- **Thomas Ulyett** - Yukon

The candidate for the Northwest Territories withdrew prior to the election of the Board. A call for applications was issued in early May, and the new candidate will be announced shortly.

For more information on the incoming Board of Directors, visit <http://www.cba.org/Who-We-Are/Governance/Elections/Incoming-Board>.

## PAPERLESS BILLING

### PAPERLESS BILLING

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For more information on paperless billing, and to change your billing preferences, visit <http://www.cba.org/Membership/Membership-Information/Paperless-Billing>. Or, feel free to contact CBA National Member Services by email at [memberservice@cba.org](mailto:memberservice@cba.org), or by telephone at 1-800-267-8860.



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## LAW DAY 2017

### CALGARY: APRIL 22



The cast of R. v. Batman featuring Calgary Mayor Naheed Nenshi

### EDMONTON: APRIL 22



Edmonton's family law trial featured characters from the Wizard of Oz



Barrister Beaver thanks the Alberta Sheriffs for attending Law Day in Calgary!



CBA Alberta Treasurer Frank Friesacher officially opens Law Day in Edmonton



Some of the smallest participants in Calgary's Law Day event appeared in the Despicable Me mock trial



Citizenship ceremonies were held in many communities across Alberta - including Edmonton



## LAW DAY 2017

### LETHBRIDGE: APRIL 6



Law Day always brings out the cutest visitors!



The theme of Lethbridge's event this year was "Heroes of Justice"

### RED DEER: APRIL 22



Law Day was a firm affair in Red Deer, with great participation from Altalaw LLP!

### ST. PAUL: APRIL 21



St. Paul held its first ever citizenship ceremony this year on Law Day



The Cat in the Hat was on trial in St. Paul

### GO... OILERS?



CBA Alberta President Jeremiah Kowalchuk flies his Oilers pride in enemy territory (the Calgary office!)

# ALBERTA BRANCH NEWS

## CBA WEST 2017



Join colleagues from across Western Canada at CBA West 2017 in Las Vegas, November 17 - 19, 2017.

Getting to Vegas is now easier than ever, and the conference organizing committee has arranged for flight discounts from both Air Canada and WestJet. In addition, host hotel the Wynn Las Vegas is also offering extremely generous room rates, starting at \$179/night for a Deluxe Resort Guestroom.

This month only, register before May 31 and be entered to win a bespoke suit, valued at \$1,200, from conference sponsor LGFG Fashion House. Visit [www.cba-west.org](http://www.cba-west.org) for more details and to register!

## CBA ALBERTA VOLUNTEER OPPORTUNITIES

We are now recruiting CBA members to participate in volunteer opportunities during the 2017-18 membership year. Much of the work that the CBA does throughout the year is only possible with the assistance of a group of dedicated volunteers, and we encourage all members to find ways in which they can get involved.

There are a variety of committees that are always looking for new volunteer members, including Access to Justice, Editorial (Law Matters), Agenda for Justice & Advocacy, Alberta Law Conference, Equality, Law Day, Legislation & Law Reform, and Membership & Member Services. There are also opportunities to participate in Sections, either through Section leadership or as a speaker at one of our many Section meetings.

To indicate your interest in CBA Alberta volunteer opportunities, please visit [www.cba-alberta.org/Volunteer](http://www.cba-alberta.org/Volunteer).

## SECRETARY ELECTION



Kevin Feth, QC



David Hiebert

CBA Alberta members Kevin Feth, QC and David Hiebert have both put forward their nominations for the role of 2017-18 Alberta Branch Secretary.

All eligible voting members (members of Council, Section chairs, committee chairs and past presidents) will have received their ballots for the Secretary election after the conclusion of the May meeting of Council. The election closes on Tuesday June 6, and all ballots must be returned by mail to the CBA Alberta office in Calgary at that time.

All the best to both nominees in their campaigns!



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## NOT JUST A BYSTANDER PODCAST

On March 8, International Women's Day, the CBA National Women Lawyers Forum launched a podcast that grew out of their campaign about sexual harassment in the workplace.

After passing a resolution at the February, 2015 CBA Council meeting calling for an end to sexual harassment (<http://www.cba.org/Our-Work/Resolutions/Resolutions/2015/Sexual-Harassment-in-Canadian-Workplaces>) in the workplace, the WLF ran a campaign called #WriteYourWrong, inviting lawyers – male and female – to write in about their experiences with sexual harassment in law firms.

The podcast, **NOT JUST A BYSTANDER**, is the next stage in the campaign. The title of the podcast is meant to emphasize that it's everyone's job to end sexual harassment – witnesses have to speak up, especially when victims can't.

The campaign received 48 responses, from men and women. While one man wrote in to say he'd never seen evidence of harassment and young women were more likely to complain about not being able to work with the older women in his firm, women reported on a wide range of behaviour, from casual sexism and misogyny – being told they're only successful because they're attractive, for example – to harassment, including being offered to a client as a sexual companion for the evening. Many of the people who wrote in to the anonymous survey talked about bad experiences when they were summer or articling students, or young associates, when the power imbalance is at its most extreme.

Many lawyers who are harassed in the workplace fail to speak out because doing so can be career suicide.

As a student, you feel like you're in an extended audition, wrote one woman, who was assaulted by a client (in a way Donald Trump admitted to being familiar with) after a period in which she belatedly realized she had been treated as the firm's "entertainment," being invited to "client development" events which she had erroneously thought were giving her a

sort of professional advantage. When she tried to talk about the assault with a female lawyer in the firm, the woman said she herself wasn't "that kind of girl."

"As a female student, it can feel like you are being forced to walk this impossible tight rope of at once being fun and outgoing, but not 'slutty,' and professional and appropriate but not 'uptight' or 'stuck up' or 'prudish' (in addition to being smart, hardworking and doing excellent work.)" And when you fall off that rope, "we tend to blame ourselves for not being smarter, better, or whatever thing would have allowed us to avoid the fall, instead of questioning why we're being forced to walk on the damn rope in the first place!"

She adds that silence seemed to be her only option after the assault. "I couldn't imagine a scenario where it wouldn't have been easier for the firm to find an excuse to not hire me back than to take a real stance against the partners/senior associates/clients who had harassed me if I spoke out. The sad part is, I think the perpetrators of sexual harassment know this and feel they are protected as a result."

There are two podcasts, one in English and one in French. Both bring together a diverse group of speakers to talk about what sexual harassment and sexual assault mean in legal terms, why they happen and what can we do – as lawyers, as clients, as members of a society – to fix the problem.

While it began with the Women Lawyers Forum, the podcast is being presented by a number of CBA groups, including the Equality Committee, the National Sexual Orientation and Gender Identity Section, the Canadian Corporate Counsel Association, the National Military Law Section, the National Labour and Employment Law Section, the National Civil Litigation Section and the National Criminal Justice Section.

The podcast is now available online at [www.cba.org](http://www.cba.org). You can also visit [www.nationalmagazine.ca](http://www.nationalmagazine.ca) for Q&A's with English and French podcast participants. 🎧

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## TAKING STOCK OF THE NUMBERS: DATA FROM THE IMPLEMENTATION OF GENDER DISCLOSURE RULES

BY DEVIN MYLREA

In 2014 disclosure rules ("Gender Disclosure Rules") came into effect which imposed the obligation on Canadian public companies to disclose in their annual proxy circular or annual information form, composition data regarding women on boards and in executive positions. The Gender Disclosure Rules came into effect for financial years ending December 31, 2014, and are applicable to TSX-listed and other non-venture companies. The participating jurisdictions are regulatory authorities in Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon.

The Gender Disclosure Rules require companies to disclose:

1. The number of women on the company's board of directors and in executive officer positions and the corresponding percentage of women in those positions compared to men;
2. If the company has policies or initiatives regarding (i) identification and nomination of women directors, (ii) director term limits or other mechanisms of board renewal, and (iii) targets for women on its board and in its executive officer positions. If a company has not adopted such policies, mechanisms or targets, an explanation as to why it has not done so is required;
3. Does the company considers the representation of

women in its director identification and selection process and in its executive officer appointments.

At the time the Gender Disclosure Rules were a significant development in the disclosure requirements for public companies in Canada. Even more significant is the attention being paid to compliance and the resulting data. The Canadian Securities Regulators ("CSA") in particular published its initial report on their analysis of the compliance data in 2015 from the disclosure by companies that had released annual proxy circulars or annual information forms in the first year under the new rules.

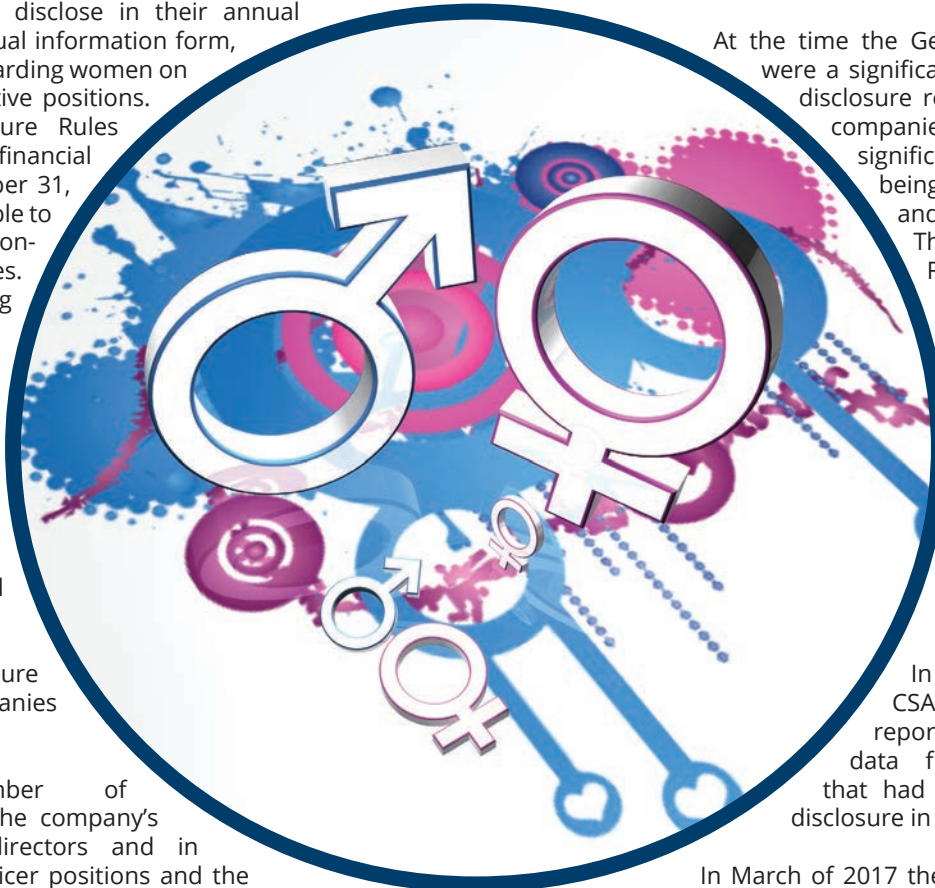
In September 2016, the CSA released its second report on the compliance data from 677 companies that had released their annual disclosure in 2016.

In March of 2017 the underlying data used to compile the CSA Multilateral Staff Notice 58-308, Staff Review of Women on Boards and in Executive Officer Positions - Compliance with NI 58-101 Disclosure of Corporate Governance Practices, was released.

The 2016 results marked some demonstrable shifts in the data between the first year and second year of reporting.

### COMPOSITION AND ORGANIZATION OF THE BOARD OF DIRECTORS

- Women in board positions. 94% of companies complied and disclosed the number or percentage of women on their boards. Of those companies 55% stated having at least one female director. This was a 6% increase in comparison to the first year of data. 10% of those companies stated having three or more female directors. This marked an increase of 2% over the previous year's data.
- Term limits imposed. Of the companies reporting, 20% stated they had adopted director term limits and of those companies: 48% had also set age limits; 23% had set tenure limits; and 29% set both age and tenure limits. Of all of the reporting companies, less



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than 3% failed to provide a reason for not adopting board renewal mechanisms.

- **Purposive Targets Regarding the Representation of Women.** 9% of companies reporting set formal targets for the representation of women on their boards and that number was up 2% from the previous year. The larger a company, the more likely it was to implement a target for board representation, with 31% of companies with market caps over \$10 billion adopting such targets. Only 5% of companies with market caps under \$1 billion had target programs.
- **Consideration of the Representation of Women in the Director Identification and Selection Process.** 66% of reporting companies (an increase of 6%) stated that the company considered representation of women on their boards as a component of the organization's director identification and nominating process. 28% more companies made disclosures of how they consider the representation of female directors on their boards and what identification and nomination processes they engage. Fully 70% of reporting companies.
- **Policies Regarding Representation of Women.** 21% of companies disclosed the adoption of a policy relating to the identification and nomination of women directors. An increase of 6%. And 6% fewer companies disclosed that they did not adopt a policy. Down to 58%. The number of companies who failed to provide disclosure related to policy adoption dropped to 2%, down 6% from the last year.

positions. Of those companies, 59% reported having at least one female executive officer, an increase of 6% over the prior year.

- **Targets Regarding the Representation of Women.** 2% of reporting companies confirmed they set formal targets for the representation of women for their executive officer positions.
- **Consideration of the Representation of Women.** Companies whom disclosed that they consider the representation of women when making executive officer appointments rose 5% to 58%. Showing a significant jump were companies who made disclosure of how they consider the level of representation of women in executive officer positions when making executive officer appointments rose 30% to 38%.

The report confirms an overall increase in compliance with the Gender Disclosure Rules. More significantly, the data reveals the number of women on boards is rising. The report also confirms that companies that have put in place policies or targets for the representation of women have a higher percentage of women sitting on their boards.

Perhaps the most significant results however are not in the data but rather in the discussion and action generated around the boardroom tables of Canadian public companies about gender. And among their investors who have more data available to them with which to make conscious investment decisions. 

## SENIOR OFFICERS/EXECUTIVES

- **Number of Women.** 90% of companies disclosed the number or percentage of women in their executive officer



**DEVIN MYLREA** is a Partner with Shea Nerland Calnan LLP in Calgary, where he practices in the Business Law and Commercial Real Estate Groups. Devin is also a member of the CBA Alberta Editorial Committee and regular contributor to *Law Matters*.

## JUDICIAL UPDATES

### COURT OF QUEEN'S BENCH

**William T. deWit, QC** (Calgary) has been appointed as a Justice of the Court of Queen's Bench, effective March 24, 2017.

**Michele H. Hollins, QC** (Calgary) has been appointed as a Justice of the Court of Queen's Bench, effective March 24, 2017.

**Ritu Khullar, QC** (Edmonton) has been appointed as a Justice of the Court of Queen's Bench, effective March 24, 2017.

**The Honourable Judge Marilyn Slawinsky** (Red Deer) has been appointed as a Justice of the Court of Queen's Bench, effective March 24, 2017.

### PROVINCIAL COURT OF ALBERTA

Part-Time **Justice of the Peace M.S.D. Smith** (Edmonton) resigned effective February 27, 2017.

**William B. Hogle, QC** (Edmonton) has been appointed as a full-time Justice of the Peace, effective April 4, 2017.

**Cathryn A. Duxbury** (Edmonton) has been appointed as a part-time Justice of the Peace, effective April 4, 2017.

**Diane T. Luttmmer** (Calgary) has been appointed as a part-time Justice of the Peace, effective April 4, 2017.

**Dragana Sanchez-Glowicki** (Edmonton) has been appointed a part-time Justice of the Peace, effective April 4, 2017.

**Wes W. Smart, QC**, (Edmonton) has been appointed as a part-time Justice of the Peace, effective April 4, 2017.

**Renee J. Zmurchyk** (Calgary) has been appointed as a part-time Justice of the Peace, effective April 4, 2017.

**Sara L. Bagg** (Calgary) has been appointed as a full-time Justice of the Peace, effective April 21, 2017.

**The Honourable Judge Bruce R. Fraser** has elected to become a supernumerary judge, effective April 25, 2017.

**The Honourable Judge J.G. Easton** (Edmonton) has elected to become a supernumerary judge effective June 11, 2017.

## NORTH

Ah, springtime! When a CBA executive's thoughts turn to ... the Section Executive Workshop! Ring the bells! Shout it from the rooftops! And mark your calendars to attend the utterly fantastic and completely mandatory (for all North Section executives) Section Executive Workshop at noon on **Wednesday, May 31, 2017!** There will be [no] entertainment! There will be [no] prizes! But, there will be a whole lot of fun and section planning going on, and a short presentation from your favourite North Section Coordinators, Kyle Kawanami and David Hiebert. This year, your hard-working CBA administrative staff are pulling out all the stops to provide your Section executives with all new colour charts and graphs to help your Section review its past successes and any "learning opportunities" to better plan your Section meetings for the 2017-2018 year. And, best of all, there will be ice cream! If you attended last year, you'll know how great the workshop was, and this year is sure to be even better! (My favourite comment from last year's workshop was that "it was a little bit rowdy".)

Just as spring is a time of renewal, North Sections ought to turn their thoughts to renewing their executive. Sections do not run themselves—it takes the hard work of your dedicated executives to keep coming up with great topics and speakers. You should give serious consideration to stepping up to join your favourite Section's executive. It doesn't take THAT much time to find a speaker and a topic, especially if your Section attends the utterly fantastic and completely mandatory Section

### FROM THE DESKS OF **DAVID J. HIEBERT** AND **KYLE KAWANAMI**

Executive Workshop mentioned above. And you don't need to be a subject matter expert to serve on the executive. Your primary role is to help find a speaker for each Section meeting, which is a lot easier than doing the actual presentation. So, if you haven't served on a Section executive before, take this as a sign that you should step forward and join the executive of your Section next year!

As the Section year is coming to a close, on behalf of all the CBA members in North Alberta, we wish to thank all the 2016/17 executives for leading your Sections, and give a special thank you to our own Section Registrar, Heather Walsh, and her hard working staff, Melissa Surette and Lana Tensen, who do a lot of unrecognized work behind the scenes to make our CBA Section meetings run smoothly. Great job everyone! 🍷



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



**KYLE KAWANAMI** is a partner at Emery Jamieson LLP, where he practices in the area of civil litigation with an emphasis on creditor and debtor law. Kyle has served on the Creditor & Debtor Law and Junior Lawyers executives, and is currently a member of the Edmonton Law Day Committee.

## SOUTH

Spring has finally arrived and for the first time in far too many years, both the Flames and the Oilers are in the NHL playoffs! Spring time is also an exciting time for our Section executives, who are busy hosting the remainder of Section meetings for the current CBA term and starting to plan for the 2017-2018 term.

The Section coordinators have attended many of the section meetings since September. We are very pleased with the timely and informative presentations since September, which have been well attended by Section membership. In addition to being brought up to date with the latest developments in practice areas, our members have been able to network with their colleagues and discuss future trends and developments in specific areas of practice and in the profession. Our gratitude goes out to the Section executives and the presenters for their hard work and efforts towards making the 2016-2017 season a success thus far.

Without a doubt, the success of the CBA Sections is predicated on volunteerism. We would encourage you to consider volunteering with the CBA, either with a Section executive or a CBA provincial standing committee for the upcoming season starting in September. Volunteering with the CBA is an excellent way to contribute to your profession, network with members of the bench and other lawyers in your area of practice and have greater input in your profession.

### FROM THE DESKS OF **ANDREW BATEMAN** AND **SEAN FITZGERALD**

Section executives met in Calgary for the Section executive planning workshop on May 9, 2017. This is an important event as the Section executives will plan topics and speakers for the upcoming 2017-2018 season and the new Section executives will be discussed. We would encourage you to contact Linda Chapman at the CBA Calgary office (or an existing section executive member) if you are interested in putting your name forward to become a Section executive member. As always, we also encourage you to offer any suggestions as to how we might improve your CBA Section experience.

Finally, please welcome us in joining Bianca Kratt to the position of 2017-18 Section Coordinator, as she takes over from Sean FitzGerald at the end of his two-year term in August. Bianca joins us from her previous role as Chair of the CBA Alberta Membership Committee. 🍷



**ANDREW BATEMAN** is a partner at Felesky Flynn LLP, where his practice includes personal tax planning, corporate tax planning, commodity tax, trust and estate tax planning, and tax representation and litigation. Andrew is a past chair of the Tax Non-Specialist Section.



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



## UNIVERSITY OF ALBERTA

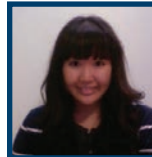
The students at the University of Alberta Faculty of Law have successfully completed another academic year filled with many learning opportunities and life-long memories! We would like to congratulate the graduating law class of 2017 and wish them success in the next chapter of their lives!

The CBA's goal for this year was to best prepare each student entering the legal profession through providing information that aids in the transition between law school and practicing law. In March, we were pleased to organize and host a Speaker Series discussing the "First 5 Years of Practice: Survive and Thrive" to better elaborate on what students can expect in those first few years in the legal profession. Our guest speakers, Noël Papadopoulos, Jessica Buckwold, and Marc Yu shared their experiences and provided wise advice and tips for the law students at the University of Alberta. We would like to thank our guest speakers, as the event was well received and encouraged an open forum for students to ask the speakers questions. The CBA plans to hold similar events in each academic year in order to provide information for young lawyers.

Through the National CBA Law Students' Forum, student Chairs from every Canadian law school have the opportunity to participate in monthly conference calls to share new ideas and different methods to combat similar issues facing law students across the country. The Law Students' Forum is paralleling the

goal of best preparing students entering into the workforce. CBA Connect for Young Lawyers and Students Program has created a series of webinars titled Solution Series for Law Students, which are designed to provide practical solutions to the everyday problems young lawyers will face. CBA Connect is preparing students to work less stressfully, more productively, and more profitably.

As the academic year comes to an end, the CBA Student's Section at the University of Alberta is transitioning into a new CBA executive team! We are very excited to work with our new members and to implement innovative ideas to enhance the CBA experience for all law students at the University of Alberta Faculty of Law. 🎧



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



**AREEZAH JIWA** is the CBA Student Co-Chair at the University of Alberta. She actively volunteers on and off campus through student groups and within the community. This past summer, Areezah went to Dubai to compete at the Jubilee Games, representing Team Canada's women's basketball team.

## UNIVERSITY OF CALGARY

April's here, exams are near! The students at the University of Calgary wrapped up this academic year with a bang! As we prepare for exams and finalize our papers, your beloved CBA Student Section co-chairs at the University of Calgary are planning big things for the fall!

While Holly will remain a co-chair, Geeth will be heading off to Vancouver for the summer and for his third year of law school. We wish him all the best! However, all is not lost - Holly will be joined by Sarah Miller, an incoming 3L. Sarah was previously the 2L Student Representative of the Society of Law Students and a dedicated caseworker in Student Legal Assistance, among other things. She and Holly hopes to take the new year by storm, by working with the CBA to improve student involvement in the CBA.

In addition to the student-lawyer mentorship program and hosting the annual Small Firms, Big Connections event, Holly and Sarah will be exploring new ways to engage students with the CBA and working with the Southern Alberta Section to host a solo practitioner and small firm networking event in early fall.

Holly and Sarah are always open to new ideas and collaborating with the other CBA sections, so if you have an idea, shoot us an email (Holly Wong at [hsywong@ucalgary](mailto:hsywong@ucalgary) and Sarah Miller at [sarah.miller2@ucalgary.ca](mailto:sarah.miller2@ucalgary.ca)). 🎧

### BY GEETH MAKEPEACE AND HOLLY WONG



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



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



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## BEYOND BILLING: ACCOUNTABILITY AND RESPECT IN THE WORKPLACE

BY **SANJIV PARMAR**

Approximately a year ago, I was privileged to found my own law firm. The experience has been incredibly rewarding, particularly in the new opportunities it has provided me to give back to the legal community. These opportunities have enabled me to speak to several law students and young lawyers and, as a result of our discussions, become more aware of relevant workplace issues within the legal community.

A common theme within our discussions is the prevalence of bullying, harassment and discrimination within their law firms and the negative impact of these issues on their well-being. I have been privy to acknowledgements of sexism and sexual harassment, bullying by partners and senior associates, discrimination as a result of abstaining from drinking alcohol, and demeaning conduct towards support staff. My peers often express frustration that continuous displays of problematic behaviour are frequently accepted or ignored if the employee in question is deemed a financial asset to the firm.

Prior to working as a sole practitioner, I worked at Alberta Justice, as a Crown Counsel. My employer implemented a strong Respect in the Workplace program, in which employees were required to attend courses and partake in specialized training. However, within many law firms, Respect in the Workplace continues to be a foreign concept.

Law firms, regardless of size, would be wise in implementing Respect in the Workplace programs. Problematic workplace environments are resulting in the emergence of a trend in which lawyers, especially young lawyers, are increasingly inclined to change firms, continuously seek out more rewarding employment opportunities or simply leave the profession. Young lawyers are only staying at their firms out of necessity, until something "better" presents itself. The heightened stress felt by the lawyers is thus leading to higher levels of burn out and is ultimately a gateway into further problems. ☎

*The views and opinions expressed in this article are those of the author and do not necessarily reflect the official policy or position of the Alberta Lawyers' Assistance Society (Assist).*

Through Assist's Peer Support program, the legal community in Alberta is offered free and confidential practical, emotional, and social support on issues like workplace culture. Peer Support is an integral part of Assist's vision of prevention, and offers 125 trained and qualified volunteers, including articling students and members of the judiciary.

The program is confidential and offered to the legal community in Alberta at no cost. It matches a lawyer or law student seeking help with a peer that understands the person or problem. Since the program launched in 2011, 105 matches have been completed, including 14 in the year 2017.

Work-related issues are the most prevalent seen through Assist's Peer Support program. For resources on creating a positive culture of community in the workplace, including balancing life and law and making a referral, visit Assist's webpage on Workplace Wellness: <http://albertalawyersassist.ca/resources/workplace-wellness/>



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**SANJIV PARMAR** is the founder of Parmar Law, a full-service litigation firm acting in the areas of child welfare, family law, criminal law, human rights and immigration law. Sanjiv is a former Crown Counsel for Alberta Justice.

## HEALING AND RECONCILIATION ACCESS TO JUSTICE PROJECT LAUNCHED IN CALGARY

BY KENDALL MOHOLITNY

Calgary Legal Guidance (CLG) is launching Calgary's first ever program to increase access to justice and legal and cultural supports for urban Indigenous peoples who are experiencing poverty and are unable to qualify for Legal Aid to resolve their legal matter.

An advisory group made up of elders, traditional knowledge keepers, local lawyers, and social justice advocates are joining together to guide the Sahwoo Mohkaak Tsi Ma Taas (Blackfoot for "Before Being Judged") project. The advisory group will also discuss the best approaches

to meeting the justice-related calls to action from Canada's Truth & Reconciliation Commission, through practical legal and support services to Aboriginal peoples. The first meeting of the advisory council took place on March 13, which included an overview of the project and discussion of terms of reference and evaluation.

According to Marina Giacomini, Executive Director of Calgary Legal Guidance, "access to justice is a basic right as well as a key means of defending other human rights. Equal access to justice is a serious problem in Canada, and has been historically for Indigenous peoples. Justice plays an important role in combatting impunity, ending discrimination and poverty, and paving the way for peace and national reconciliation. Calgary Legal Guidance is honoured to play a role in helping Indigenous peoples in Calgary and surrounding areas get the legal support they need for their legal need, and that it is offered in an environment of understanding, respect for cultural practices, traditions, and healing between Indigenous Peoples and a system that has historically participated in their abuse and disadvantage."

Roy Bear Chief, a local expert and consultant on Indigenous issues says "It's important to build trust with Indigenous people around justice, and it can only be maintained through honesty, respect, and equality."

Calgary Legal Guidance is launching the program after noting that less than 7% of the people seeking its pro bono legal services (including services for those experiencing homelessness or fleeing domestic violence) identify as Indigenous. "We know



I to r: Dr. Reg Crowshoe, Marina Giacomini (Executive Director, Calgary Legal Guidance), Roy Bear Chief

that Indigenous peoples are way over represented in the 'sorrow systems' like homeless shelters, domestic violence shelters, child welfare, jails, and prisons. We didn't understand why they weren't seeking our services for help more often, until we truly understood the intergenerational trauma and mistrust that Indigenous peoples may have for those broader systems could also apply to those of us working within them, despite our best intentions", Giacomini says.

The new program includes an Indigenous liaison who helps build bridges to justice by first building relationships through outreach to local and nearby Indigenous individuals, groups and communities, as well as an Indigenous articling student, and access to Calgary Legal Guidance staff lawyers as well as over 200 local volunteer lawyers. The program will also include connections to traditional knowledge keepers and practices for healing, accountability and restoration, and reconciliation.

The program has been made possible by a generous grant from The Calgary Foundation and the Calgary and Area United Way. The articling student and lawyer services are supported through funding from the Alberta Law Foundation. PBLA is pleased to be a member of the Indigenous Access to Justice Advisory Council and looks forward to participating in this fantastic initiative. 🌟



**KENDALL MOHOLITNY, LL.B.**, is the Executive Director of Pro Bono Law Alberta. She is also the Co-Chair of the CBA Alberta Branch Access to Justice Committee.



## OPPORTUNITIES TO CONNECT, LEARN AND GROW

BY JENNIFER FLYNN

Those who know me, know that I love LESA. I love the people, the challenge, and the chance to give back to the Alberta legal community.

My job has given me the opportunity to connect with lawyers, students, and staff at their very best—in their roles as lifelong learners and as passionately dedicated volunteers. I could not have imagined a more inspiring view of the Alberta legal profession. My job has also allowed me to work with the most incredible team of individuals. They are the reason LESA has been named one of Alberta's Top 70 Employers for the second year in a row.

After nearly a decade with LESA's leadership team, I have decided to step aside to allow someone else to experience this unparalleled position. My last day as Executive Director of LESA is May 10; my official announcement is here: [on.lesa.org/lesaalumni](http://on.lesa.org/lesaalumni).

While it is challenging to leave the leadership team of such an incredible organization, I am excited to connect, learn, and grow with LESA in new ways in the future.

### UPCOMING PROGRAMS

As our educational year draws to a close, we have several programs still to run:

- **Personal Property Security and Debt Recovery Essentials** (May 17 in Edmonton, May 24 in Calgary) covers recent developments, key issues and procedures, and common challenges in personal property security and debt recovery law.
- **Foreclosure Fundamentals** (May 18 in Edmonton, May 23 in Calgary) reviews substantive and procedural issues framing the foreclosure process, including orders, priorities, and available options.
- **Rural Property Issues for Alberta Lawyers** (June 2 in Red Deer) examines the unique challenges presented by rural property matters, such as wetlands and noxious weed issues, oil and gas leasing concerns, and OH&S considerations.
- **Criminal Advocacy: Sentencing** (June 3 in Edmonton, June 10 in Calgary) delves into the sentencing implications of cases such as Gladue, Laboucane, and Arcand, including differences between urban and reserve factors, crafting fit sentences, and Gladue-focused evidence.
- **Commercial Leasing Challenges** (June 6 in Edmonton, June 8 in Calgary) focuses on strategies for handling the most pressing and thorny issues arising in commercial leases, including rent restructuring, subleasing, allocation of costs, risk mitigation, and waivers.

Our Mediation of Family & Divorce Conflicts (May 15 to 19) and 35th Annual Intensive Advocacy (June 12 to 17) programs have sold out, but run again next year.

If you missed a program, check out our LESA Library for access to materials (available for most programs). Select programs

are also available as "seminars on demand" through our online LESA Classroom.

### 2017/2018 EDUCATIONAL YEAR

Our 2017/2018 educational calendar hits desks later this spring, but you can save the dates now for the following popular programs:

- **36th Annual Intensive Advocacy** runs June 11-16, 2018 in Calgary
- **51st Annual Refresher: Business** runs May 6-8, 2018 in Lake Louise
- **7th Annual Law and Practice Update** runs October 20-21, 2017 (tentative) in Edmonton
- **Basic Collaborative** runs September 29-30, 2017 in Red Deer
- **Interest Based Negotiations** runs November 16-19, 2017 in Edmonton
- **Mediation of Family & Divorce Conflicts** runs November 20-24, 2017 in Calgary

As we set our programming schedule for next year, we invite you to share your thoughts with us. To participate in this year's continuing legal education discovery survey, please visit [on.lesa.org/clediscovery](http://on.lesa.org/clediscovery).

### OPPORTUNITIES

LESA offers a wide range of options to support your pursuit of continuing legal excellence—options that extend beyond our programs and resources. Some of the greatest opportunities to connect, learn, and grow with LESA are as a volunteer, contractor, or employee. If you are interested in engaging with LESA in one of these capacities, please visit [on.lesa.org/opportunities](http://on.lesa.org/opportunities). On a personal note, I can attest that it was one of the best decisions I have ever made.

To all of you who have been supporters in my time with LESA—whether as customers, students, volunteers, contractors, or employees—thank you. I look forward to connecting, learning, and growing with you in other ways in the future. ☺

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



JENNIFER FLYNN is the Executive Director of the Legal Education Society of Alberta and the Director of the CPLED Program in Alberta.

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## LIFE INSURANCE OR MORTGAGE INSURANCE

BY DAWN MARCHAND

Your \$1 million offer for a house in a great neighborhood has just been accepted. Together, both you and your partner earn a good living and have qualified for an \$800,000 mortgage. But if one of you dies, an important part of the financial equation disappears.

So, before you go to the bank to sign on the dotted line, do a bit of homework and check out your options for insuring the amount of your mortgage. The bank will offer you mortgage insurance but as a member of the legal community, you have exclusive access to term life insurance through the Canadian Bar Insurance Association (CBIA).

Consider this example: for a 41-year-old male non-smoker, the bank will charge \$232.00 per month\* for \$800,000 of mortgage insurance. CBIA term life would only cost \$45.34 per month. Savings for women are even greater; for the same coverage, a 41-year-old female non-smoker will also pay the bank \$232.00 per month but her CBIA term life premium is only \$33.73 per month.

The significant savings is likely reason enough, but wait — there are even more reasons to at least consider term life insurance before signing on for mortgage insurance.

### OWNERSHIP & CONTROL

Unlike mortgage insurance where the bank is the policy owner, with term life insurance, you are the policy owner. When you die, mortgage insurance is paid directly to the financial institution and is used only to pay off the mortgage balance. Insurance benefits are paid directly to your designated beneficiary (i.e. spouse) and they are able to determine how best to use the funds (for example, paying the mortgage and/or covering other expenses such as education, debt or to supplement a loss of income).

### DECREASING VS. LEVEL COVERAGE

With mortgage insurance, the amount of overall coverage decreases with each mortgage payment made. As your mortgage reduces, your coverage goes down but your premiums do not. With a term life insurance policy, the benefit amount is guaranteed for the life of your policy. Premium rates will likely increase at regular intervals but at any point, you can

\* All rates quoted are as at January 2017 and do not include PST (where applicable).

choose to reduce your coverage amount and, if you do, your premiums would also be reduced.

### UNDERWRITING

Typically, there is very little pre-purchase underwriting required for mortgage life insurance; usually just a few simple questions. This is one of the reasons why premiums are typically higher than for term life insurance. Life insurance typically requires a

comprehensive underwriting process prior to purchase. CBIA's Term 80 product was designed to provide a positive client experience with minimal intrusiveness. The degree of underwriting required is dependent on the amount of life insurance applied for.
















### PORTABILITY

If you move your mortgage to another financial institution, or if you buy a new house and need a new mortgage, or if you simply renew your mortgage for a longer term, you may have to requalify for mortgage insurance coverage. You could be considered uninsurable, and would not be able to get mortgage insurance. In contrast, CBIA's term life insurance stays intact as long as you continue to pay premiums, even if you move your mortgage or buy a new home.

So caveat emptor! Remember, mortgage insurance is typically sold by bank employees who may not be

trained to explain the benefits of different insurance options. With CBIA, you receive quality advice from advisors familiar with the many product options available. Working together, you are assured of determining the coverage that is best for your specific situation.

Canadian Bar Insurance Association (CBIA) is committed to being the trusted provider of choice for insurance and investment solutions to the legal community, their families and employees in Canada. Our products and services are planned and designed to meet the needs and reflect the unique characteristics of the legal community at a cost that provides both superior value and stability. It's all we do! 🇨🇦

LIFE INSURANCE	of	MORTGAGE INSURANCE
TERM LIFE INSURANCE		TYPICAL LENDER'S MORTGAGE INSURANCE
<p>You choose the amount of coverage and you are the owner of the policy.</p> 		<p>Amount of coverage is dictated by amount of mortgage and lender is the owner of the policy.</p> 
<p>Coverage remains the same unless you request a reduction.</p> 		<p>Coverage reduces as mortgage reduces.</p> 
<p>Beneficiary is anyone you choose.</p> 		<p>Beneficiary is the financial institution.</p> 
<p>Insurance remains in effect as long as you pay the premiums or decide to cancel.</p> 		<p>You lose coverage when mortgage is repaid, assumed or in default.</p> 
<p>Fully portable even if you move your mortgage.</p> 		<p>You will have to re-qualify if you change or move your mortgage.</p> 
<p>Unique rates based on gender, age, health and smoking status. Lower premiums for healthy clients.</p> 		<p>Rates the same for all clients of the same age.</p> 
<p>Protects whatever you want: family, education costs, debt repayment, etc.</p> 		<p>Protects the lender.</p> 
		<a href="http://barinsurance.com">barinsurance.com</a>



BY THE HONOURABLE JUDGE A.A. FRADSHAM

I have heard it said that one should approach searches of one's genealogy with caution since one might be surprised by what lurks waiting in the shadows of the past.

This was lately brought to mind when I was doing some case research on a very interesting evidentiary question arising from a jurisdictional issue which had been raised in a trial. Well, "very interesting" to me, a fact which may go some distance in explaining a lifetime which has been all but devoid of rousing social interaction.

In the course of my research on the matter of the inferences which may be properly drawn from already proven facts, I came across the decision of *R. v. Marceau* (1914-15), 8 Alta. L.R. 510 (Alta. C.A.).

Parenthetically, and as a bit of a cautionary tale, the facts I am about to relate do not appear in the on-line version of the case report; one only becomes aware of them if one goes back to the hard copy volume of the 1914-15 Alberta Law Reports.

Why, you ask, was I poking about the judicial library looking in a book instead of relying upon the version which was available in my chambers on my computer?

The official answer, which, like many, though not all, "official answers", has some truth to it, is that I don't entirely trust the accuracy of the computer version of old cases. Over time, I simply have found too many errors in them to take the computer versions as being unimpeachable.

The unofficial answer, which like many (well, in truth, all unofficial answers) is entirely true, is that I really like the physical sensations of touching, smelling, and hearing the old law reports. The hearing bit refers to the sound of the pages turning, not the voices in my head.

The simple physical act of handling and reading a very old book brings to me some sort of psychological affinity with the author of the case report being reviewed. However, let me return to my story before this column becomes grounds for the Modern Technology Police to arrest me for challenging the notion that computer storage and research is the exclusive source of all knowledge worthy of consideration. I think the offence is related to Criminal Code section 365(c): "pretends from his skill

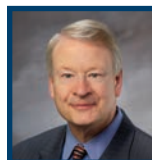
in or knowledge of an occult or crafty science [using real books when researching the law] to discover where...anything [some principle of law or an illustration of its application] that is supposed to have been... lost may be found."



So, as I practiced the crafty science of reading a book, and in particular reading the book version of *R. v. Marceau*, I learned from p. 511 that Ms. Marceau had been convicted by a Magistrate sitting in Calgary of keeping a house of prostitution, and that "[i]n the evidence of the various witnesses, the house is referred to as being located at 326 Sixth Avenue East, but no express mention is made anywhere in the evidence of the fact that the house so located is within the limits of the City of Calgary." Ultimately, the learned Magistrate found that he could infer from all of the evidence that the house was located in Calgary, and that decision was upheld on appeal.

The case was of use to me in my research, but, as a collateral matter, the address of this house of prostitution sounded very familiar to me (no, I was not alive in 1914, so you can desist with the defamatory inferences). It sounded familiar because the courthouse in which I first practiced my other crafty science of "judge of the Provincial Court" was located at 323 Sixth Avenue [South] East, Calgary. Our building occupied all but the western tip of the 300 block of Sixth Avenue, east of Centre Street; it would have had "326" well within its confines. So, if "326 Sixth Avenue East" referred to the Sixth Avenue south of the Bow River, then the fact would seem to be that the court house, which housed the judicial descendants of the learned Magistrate who convicted Ms. Marceau, was built on the very location of the house of ill repute the operation of which our ancestor convicted her. The irony is exquisite, the quirk is delicious, and the revelation is humbling.

And that, dear readers, is an example of the interesting tidbits which one may find when one pokes about in the dusty and forgotten records of the past. 🍷



**THE HONOURABLE JUDGE A.A. FRADSHAM** is a Provincial Court Judge with the Criminal Court in Calgary. His column "A View From the Bench" has been a highlight in the Canadian Bar Association newsletters for over 15 years.



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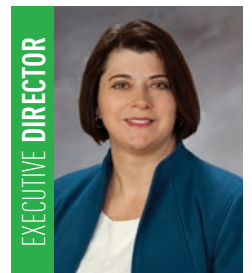
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