

Summer 2018  
Volume 43, Number 2

# LAW MATTERS

## Contemporary Issues in Canadian Federalism

**THE REMAINING STAKES FOR THE SCC  
DECISION IN ORPHAN WELL ASSOCIATION V  
GRANT THORTON LIMITED**

**WEED PREFER YOU HANDLE IT:  
RECREATIONAL CANNABIS AND FEDERALISM  
CHALLENGES**

**PETER HOGG ON FEDERALISM'S RENAISSANCE**



THE CANADIAN  
BAR ASSOCIATION  
Alberta Branch

BY JOSHUA SEALY-HARRINGTON

On August 30, 2018 — the day before this publication “went to the presses” (so to speak, as our annual summer edition is only published online) — the Federal Court of Appeal released its much-awaited decision regarding the Trans Mountain pipeline. In it, the Court of Appeal quashed the Order in Council permitting the expansion of the pipeline and remitted the matter to the Governor in Council for “prompt redetermination” (at para. 774). Canada’s response was divided. Some called the decision a “political disaster”, leaving Canada’s resource industry “closed for business”. Others hailed the decision as triumph for Indigenous consultation and environmental protection. No matter what side you take, one thing is certain: Canadian federalism is as topical now, as it ever was. Indeed, Alberta’s premier, Rachel Notley, immediately responded to the Trans Mountain decision by pulling Alberta out of Canada’s national climate change plan, another space in which federal collaboration between Canada and its provinces is unavoidable.

Federalism is not an issue of importance in current Canadian politics; it is the issue. For this reason, we have devoted our Summer 2018 edition to contemporary issues in federalism. We’re delighted with the contributions we’ve received in this edition, which cover a wide range of contemporary federalism issues.

The edition is introduced by none other than Peter Hogg — Canada’s long-standing leading constitutional law scholar — who notes that “[t]he doctrine of federalism is enjoying a renaissance” with so many heated federalism debates occupying our court dockets and political conversations. Next, Chris Nyberg and Alyssa Moses discuss the federalism implications of Cannabis legalization, and illustrate the consequences of lacking intergovernmental coordination. Further, Professor Fenner Stewart provides his perspective on the upcoming Supreme Court decision in the Redwater appeal concerning Alberta’s “orphan wells”; a highly divisive issue, as illustrated by the majority and dissenting opinions at the Alberta Court of Appeal. As each of these pieces show, the tough compromises required of Canadian federalism are an ongoing battle, and will not be resolved any time soon.

We also take this opportunity to profile an up and coming

legal scholar, already making waves in Canadian federalism conversations. Malcolm Lavoie is a Professor at the University of Alberta who, despite his vintage, has already appeared as counsel before the Supreme Court of Canada, and featured prominently in submissions before that Court in the Comeau appeal. Clearly, while Canadian federalism is divided, it remains in good hands.

And with that, we welcome you to enjoy the fine pieces included in our latest edition, and to reflect not only on what it means to compromise, but what it means to be Canadian. Indeed, our complex national identity is the subtext of so many federalism disputes, making this conversation all the more worthwhile. Happy reading! 📖



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Cover Art: "Pipelines": iStockPhoto.com/onurdongel

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BY JENNY MCMORDIE



As summer comes to a close and the membership year here at the CBA wraps up, I come to the end of my term as President of the CBA Alberta Branch. It has been an honour to represent and advocate for the CBA as I have travelled across the country meeting with members and other stakeholders in the legal profession. With the new year ahead, it is my pleasure to introduce the incoming executive committee for the 2018-19 year. Join me in congratulating Johanna Price who was acclaimed as Secretary in the spring. Johanna will be joined by Treasurer David Hiebert, Vice-President Ola Malik, President Frank Friesacher, Executive Director Maureen Armitage and myself as Past President.

I would like to pay special recognition to our outgoing Past President Jeremiah Kowalchuk. Jeremiah is a person whose dedication to the legal profession combined with his clarity and determination have made him a wonderful leader for the CBA-Alberta. He has tirelessly championed change both provincially and nationally while volunteering in many capacities over the years. It has been a great privilege to work with him, and he will be missed. On behalf of the Executive Committee and the CBA Membership, I want to extend our thanks to Jeremiah for his service to the Branch.

It's an exciting time of year here at the CBA, the grown-up version of back to school. National Membership renewal has officially begun, and I am certain you have received a reminder or two to renew. With section registration now open, we want to make sure you are getting the most from your membership and encourage you to look at the Portfolio and Portfolio Plus enhancements when renewing. These two add-on options offer members additional education credits which can be used towards many CBA Professional Development opportunities, including CBA Alberta Section fees, upcoming conferences like CBA West, and other continuing legal education offerings. If you are a member of more than one section, these options are particularly relevant as they can provide up to three materials-level memberships in CBA Alberta Sections. As a reminder, be sure you have purchased your Portfolio or Portfolio Plus package prior to registering for your sections.

As the Section year opens up many groups are looking for new members to become part of their executive committees. These volunteers are vital for CBA-Alberta as our professional development programming is delivered through their meeting planning and speaker recruitment. I encourage anyone who is interested to reach out to the Executive Committee of their Section of choice and ask about leadership opportunities as this is an extremely rewarding way to volunteer your time and to give back to the legal community. You can also contact our Section registrars in our Calgary or Edmonton offices. Members in Calgary can contact Linda Chapman at [sections@cba-alberta.org](mailto:sections@cba-alberta.org), and those in Edmonton can reach out to Heather Walsh at [edmonton@cba-alberta.org](mailto:edmonton@cba-alberta.org).

If you want to volunteer but are unsure if an executive position is for you, many other volunteer opportunities are available. Section committees are always recruiting to do important work within the Branch. Things such as legislative review, advocacy, support events like Law Day, and even publishing this magazine. If you would like to register your interest in one of our committees, please visit [www.cba-alberta.org/Volunteer](http://www.cba-alberta.org/Volunteer).

It's also a great time to remind you that the CPD declaration period ends on September 30. We encourage all our members to review the 2018-19 Section Handbook, which outlines our offerings for the upcoming year. We have expanded our webcasting sections to all members near and far. This option is ideal for those who can't easily get downtown but still want to be engaged. Another opportunity to realize your CPD plan is this year's upcoming CBA West conference. We are partnering with the CBA BC Branch to put on the premier legal conference for practitioners in Western Canada. This year, taking place in Penticton B.C. the conference will run from April 26-29. You will soon be able to visit [www.cba-west.org](http://www.cba-west.org) for a full schedule and speakers list, and to register.

CBA Alberta's Access to Justice Committee has been busy on a number of different initiatives leading into the summer. These include steps towards the creation of an Access to Justice week which will have its soft launch this year September 29-October 5.

Finally, I would like to sincerely thank all the members of CBA Alberta for the opportunity to serve as President this year. It has challenged and rewarded me both personally and professionally. Through my time spent on the executive I have met many new people across the country. I have had the chance to work alongside with some of the profession's most talented people on the CBA Executive and section committees, all while making lifelong friends. I am so grateful for the experiences the CBA has given me! 🙏

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Alberta Branch for 2018 - 2019



## TOM ACHTYMICHUK

### PAST PRESIDENT

There are so many interesting sides to CBA Alberta's incoming President Frank Friesacher, that it's a bit hard to paint the whole picture.

One big part of Frank, is that he is German. Sometimes, you see rigorous efficiency. That might explain his academic success, earning Dean's List standings and other awards along his way to degrees in Arts, Commerce and Law. After articling with the Court of Appeal and Court of Queen's Bench, he went on to spend his 18 year legal career at McCuaig Desrochers LLP in estate litigation and family law.

Disciplined efficiency might also explain Frank's need to click away on his tablet during our firm meetings. It seemed that agendas, minutes of meetings and footnoted black line comparison versions of documents, all made in real time as we were talking, would arrive on our computers before we even left the meeting room.

But Frank has a laid back side. I think he blames the Austrian influence on his dad's side. You can see him on stage at Heritage Days dressed in lederhosen, folk dancing with The Bavarian Schuhplattlers of Edmonton. That is where he met his charming wife Loretta, beginning more than 25 years together dancing with the group. Frank is an accomplished dancer, German or otherwise. I recall him being in much demand whenever there was a dance floor at a CBA event.

True to his heritage, Frank enjoys German food, beer and soccer. So devastated was he by Germany's early departure from the recent World Cup, he took the flag off - you guessed it, his Volkswagen - right after the elimination. Although a foodie who is enjoying Edmonton's emerging restaurant scene, he still will always know where to find the best Schnitzel.

He has been involved with more German Canadian organizations than I knew existed. His 12 year reign as President of The Bavarian Schuhplattlers seems to be turning into a lifetime appointment. I must ask Frank more about The Blauen Funken German Mardi Gras Association of Edmonton, and his role in it.

Frank also has a social side. If you see him in that setting, you will have the pleasure of meeting one of the most engaging, amiable, funny and charming people I know. He will make it a point to visit with everyone. And when he does, the interest he shows in you is genuine. He seems to want to make sure everyone feels welcome, and included. He does it with warmth and generosity.

Frank is also a bit of a nerd. I admire this about Frank. He is, and always has been, a reader. I'm sure that is why he is so smart. I marvel at his encyclopedic knowledge about, well, almost everything, from important to trivial. But what he reads isn't just left to chance. Who, for the sake of completeness, decides to methodically read his way through all of the past Booker Prize recipients for literature? So when Frank tells

me he's on a mission to spread the message that Moby Dick is the greatest work ever written in the English language, I listen. I just bought it.

He's able to quote at will obscure lines from books, poems or movies, always appropriate for the moment. He has a betting pool with family about which celebrities will die in the coming year, and other major events. He saw Duran Duran in concert. He has a framed picture of Charles Darwin in his office. For Halloween, he dressed up as Bob Ross, the soft spoken TV art instructor on PBS. He has deeply held views on his distinction between "movies" and "films", including how great Seven Samurai is, and how much Batman vs Superman sucked. He dresses with flair. How can one paint the whole picture of Frank Friesacher?

I am looking forward to the CBA Alberta President side of Frank Friesacher. During the 16 years we practiced together, he never failed to treat everyone with respect, interest, and care. He has an infectious enthusiasm for learning, tackling problems and finding solutions. He wants to hear from all sides. He believes it makes for decisions that are not only better, but are supported and sustainable. He looks for new and different perspectives from others. As CBA Alberta navigates through some structural and governance changes over the next year, it will have the benefit of Frank's talents for building consensus.

He cares passionately about the profession and the CBA. He began his journey to CBA junkie-hood while in 3rd year law school. He has been a fixture with CBA since, in many roles on and off the dance floor. At our law firm, he kind of straddled two generations of lawyers. Unfailingly, he wanted to make sure that every person was included and their voice heard, regardless of how old or new to the profession. I think that too, will be invaluable to CBA Alberta.

We are most fortunate to have all sides of Frank Friesacher for the coming year. 🍷



**TOM ACHTYMICHUK** was the CBA-Alberta Branch President from 2002-2003. Achtymichuk was admitted to the Alberta Bar in 1990. He was a partner with McCuaig Desrochers LLP in Edmonton, with experience in civil litigation and business law. Now a Provincial Court of Alberta Judge.

## SEPTEMBER

**4:** The Alberta Lawyers' Assistance Society Presents **WALK FOR WELLNESS** Courthouse (back), 4909 48 Ave, Red Deer 12-1 p.m. For more information, visit [www.albertalawyersassist.ca](http://www.albertalawyersassist.ca)

**6:** The Edmonton Bar Association presents the **2018 JUDGES DINNER**. Hotel Macdonald, Edmonton, AB. for more information, visit [www.edmontonbar.com](http://www.edmontonbar.com)

**6:** The Alberta Lawyers' Assistance Society Presents **WALK FOR WELLNESS** Courthouse (front), 9700 Franklin Ave, Fort McMurray 12-1 p.m. For more information, visit [www.albertalawyersassist.ca](http://www.albertalawyersassist.ca)

**11:** The Alberta Lawyers' Assistance Society Presents **WALK FOR WELLNESS** Courthouse, 460 1 St. SE, Medicine Hat, AB. 12-1 p.m. For more information, visit [www.albertalawyersassist.ca](http://www.albertalawyersassist.ca)

**13-14:** The Canadian Bar Association presents **CBA NATIONAL INSOLVENCY LAW CONFERENCE**. Hyatt Regency Vancouver. Register online at <http://bit.ly/CBAInsolvencyLawConf>

**15:** The Edmonton Legal Build presents **RACE JUDICATA**. Sir Wilfred Laurier Park (13221 Buena Vista Rd NW – Sites #8 and #9) Edmonton, AB. For more information, visit [www.lawbuild.org](http://www.lawbuild.org)

**18:** The Manitoba Bar Association Presents **UPDATED AUTO ORDER CLAUSES FOR FAMILY MATTERS**. Winnipeg, MB. To register, visit [https://www.cbapd.org/details\\_en.aspx?id=MB\\_FAMSEP1818](https://www.cbapd.org/details_en.aspx?id=MB_FAMSEP1818)

**20:** The Alberta Lawyers' Assistance Society Presents **WALK FOR WELLNESS** Courthouse Park, 5th St. and 6th Ave SW. Calgary, AB. 12-1 p.m. For more information, visit [www.albertalawyersassist.ca](http://www.albertalawyersassist.ca)

**25:** The Alberta Lawyers' Assistance Society Presents **WALK FOR WELLNESS** Courthouse, 320 4 St. SW Lethbridge, AB. 12-1 p.m. For more information, visit [www.albertalawyersassist.ca](http://www.albertalawyersassist.ca)

**26:** The Alberta Lawyers' Assistance Society Presents **WALK FOR WELLNESS** Boyle Street Plaza Edmonton, AB. 12-1 p.m. For more information, visit [www.albertalawyersassist.ca](http://www.albertalawyersassist.ca)

**27-28:** The Canadian Bar Association presents **CBA NATIONAL COMPETITION LAW FALL CONFERENCE**. Westin Ottawa, ON. <http://bit.ly/CBACompLaw>

## OCTOBER

**12-13:** The Canadian Bar Association presents **CBA NATIONAL CONSTRUCTION AND INFRASTRUCTURE LAW CONFERENCE** Halifax Convention Centre, Halifax, NS. For more information, [https://www.cbapd.org/details\\_en.aspx?id=na\\_constr18](https://www.cbapd.org/details_en.aspx?id=na_constr18)

**19-20:** The Canadian Bar Association presents **CBA NATIONAL ACCESS TO INFORMATION AND PRIVACY LAW SYMPOSIUM** Fairmont Chateau Laurier Hotel. Ottawa On. St James Cathedral Centre

## NOVEMBER

**8:** The Canadian Bar Association presents **CBA LAW FIRM LEADERSHIP CONFERENCE** Toronto, ON For more information visit, [https://www.cbapd.org/details\\_en.aspx?id=na\\_lf15](https://www.cbapd.org/details_en.aspx?id=na_lf15)

**9:** The Canadian Bar Association presents **CBA NEERLS & DEPARTMENT OF JUSTICE MEETING** Ottawa, ON. For more information, visit [https://www.cbapd.org/details\\_en.aspx?id=na\\_doj16](https://www.cbapd.org/details_en.aspx?id=na_doj16)

**16-17:** The Canadian Bar Association presents **CBA ADMINISTRATIVE LAW, LABOUR AND EMPLOYMENT LAW CONFERENCE** Ottawa, ON. For more information, visit [https://www.cbapd.org/details\\_en.aspx?id=na\\_adm17](https://www.cbapd.org/details_en.aspx?id=na_adm17)

**22:** The Association of Women Lawyers presents the **2018 WILL AWARDS** Hotel Macdonald, Edmonton, AB. For more information, visit [www.willawards.ca](http://www.willawards.ca)

## SAVE THE DATE

**APRIL 26-28:** The Canadian Bar Association Alberta & British Columbia Branches presents **2018 CBA WEST CONFERENCE** Penticton, BC



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## INTRODUCTION

BY **PETER W. HOGG**

I published the first edition of my book *Constitutional Law of Canada* in 1977. At that time, the primary constitutional issues before the courts were disputes about the division of powers between the federal and provincial legislatures. The doctrine of federalism dominated Canadian constitutional law.

The adoption of the Charter and the rest of the Constitution Act, 1982 revolutionized and in many ways reinvigorated the practice and study of constitutional law. In the years since, as courts have been occupied with the continuing work of defining concepts like equality, freedom of association, the principles of fundamental justice, and Aboriginal rights, some observers might be forgiven for concluding that the division of powers in this country was well-settled and uncontroversial.

This past year demonstrates why such an observer would be mistaken. My mind strains to think of another recent year in which so many interesting federalism cases have appeared in the courts and, indeed, the headlines. The doctrine of federalism is enjoying a renaissance.

In April, the Supreme Court of Canada released its eagerly-awaited decision in *R v Comeau*, which interpreted the “free trade” provision of the Constitution in the case of a man who received a \$240 ticket for bringing beer over a provincial boundary. The Court gave fresh eyes to a constitutional provision that, up to now, has not figured prominently in the pages of the law reports. Time will tell whether the Court’s interpretation will give rise to more litigation in the future.

The spring also saw a dispute between the government of British Columbia and the governments of Canada and Alberta over British Columbia’s constitutional authority to pass environmental legislation affecting the Trans Mountain

Expansion Project, a federally-approved and federally-regulated interprovincial transportation undertaking. British Columbia has referred the constitutionality of a draft environmental bill to its Court of Appeal, and in the meantime the federal government has purchased the pipeline. This case will doubtless be followed with great interest by constitutional lawyers and scholars.

That was not the only division of powers dispute this year concerning the energy industry and the natural environment. The governments of Ontario and Saskatchewan have recently announced their intention to challenge the federal Parliament’s authority to require provinces to implement carbon pricing, and have referred cases to their respective courts of appeal.

And, in February, the Supreme Court of Canada heard *Orphan Well Association v Grant Thornton Limited*, a paramouncy case about a potential conflict between the federal bankruptcy regime and a provincial environmental remediation law in the context of the oil wells of an insolvent company. The appeal is under reserve.

This past year has demonstrated that the division of powers is not an ossified area of law, but a fertile ground for fascinating and important constitutional debate. The authors whose work appears in this edition have done an admirable job of contributing to that debate. 🇨🇦



**PETER W. HOGG** is Canada’s leading constitutional law scholar and professor emeritus at Osgoode Hall Law School. He is a published author of numerous books and currently is part of Blakes unique Scholar in Residence program.



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## WEED PREFER YOU HANDLE IT: RECREATIONAL CANNABIS AND FEDERALISM CHALLENGES

The legalization of recreational cannabis has raised many interesting and familiar issues related to federalism which have been exacerbated by the timeline imposed by the federal government and the regulatory challenges facing the provinces and territories. This "rush to regulation" has led to interesting and widely disparate outcomes which will become increasingly evident after October 17, 2018.

As eloquently put by the Supreme Court of Canada in *R v Comeau*: Federalism refers to how states come together to achieve shared outcomes, while simultaneously pursuing their unique interest. The principle of federalism recognizes the "autonomy of provincial governments to develop their societies within their respective spheres of jurisdiction".

In effect, federalism emphasizes balance between the various levels of government and their respective abilities to achieve their goals under ss. 91 and 92 of the Constitution Act, 1867. However, Canada is no stranger to the challenges routinely posed by federalism including those that have arisen in relation to legalization.

It initially seemed that the federal government wanted to pursue a cooperative approach when creating its cannabis framework. Prime Minister Trudeau's 2015 mandate letter to the Minister of Justice directed the Honourable Jody Wilson-Raybould to work with the Ministers of Public Safety and Emergency Preparedness and Health to create a joint process that would lead to the legalization and regulation of cannabis in Canada. This approach suggested that the federal government planned to develop its cannabis framework through the lens of cooperative federalism, which reflects "the realities of an increasingly complex society that requires the enactment of coordinated federal and provincial legislative schemes to better deal with the local needs of unity and diversity."

In June 2016, the Task Force on Cannabis Legalization and Regulation (Task Force) was formed to design the new legislative and regulatory framework. The Task Force was instrumental in developing many of the principles codified in the federal Cannabis Act, which creates an expansive regime for the licensure of various cannabis-related activities and regulates



BY **CHRIS NYBERG AND ALYSSA MOSES**  
**(STUDENT-AT-LAW)**

the possession, distribution and promotion of cannabis, among many other things. What the Cannabis Act does not do in any great detail is regulate the retail sale or use of recreational cannabis. This was foisted upon the provinces and territories to deal with.

Unlike many other circumstances involving questions relating to federalism, the dispute between the federal government and its provincial/territorial counterparts was over who would be responsible for the burden of implementation rather than the usual fight over who has authority to regulate. As a result, no coordinated legislative scheme ever resulted.

Instead, widely varying regulatory approaches were developed that do not always accord with the federal government's goal of accessible and competitive recreational cannabis. A brief overview of the approaches in two provinces, Alberta and Ontario, demonstrates the varying consequences of this lack of intergovernmental coordination.

The Alberta government took a proactive approach to address the gap in regulation with one of the earliest legislative frameworks which closely follows its requirements for the sale of liquor. The Alberta government will be responsible for online sales while retail locations will be operated by private industry which is required to purchase cannabis from the Alberta Gaming and Liquor Commission. This model provides for broad consumer access serviced by highly regulated private licensees as well as a public retailer.

Comparatively, the Ontario government had planned to sell recreational cannabis through a subsidiary of the Liquor Control Board of Ontario both in-store and online. By the end of 2018, it intended to open 40 Ontario Cannabis Store locations which would have eventually been expanded to 150 by 2020. This model changed after a new provincial government was sworn in which favored allowing private retail to operate in Ontario. While a popular idea that will incentivize private sector investment, one effect of the transition is that it will limit access to recreational cannabis in Ontario until the new regime is put in place.

**Photo:** "Cannabis\_Hand": iStockPhoto.com/jedraszak




Unlike the issues related to the implementation of the various regulatory regimes, one area where tensions quickly arose between the federal government and its provincial/territorial counterparts was with respect to the allocation of the proceeds of the excise tax. The excise tax imposed on cannabis is calculated on a per product basis and will either be \$1.00 per gram or ten percent of the product's price, whichever is greater, subject to limited exceptions. The intent of the excise tax was to establish and maintain a coordinated approach that avoids mismatched and overlapping taxation, which would in turn make recreational cannabis uncompetitive with that available illicitly.


The federal government initially proposed an even split of the tax's proceeds. However, there was strong push back from the provinces/territories as they saw themselves as being saddled with the primary responsibility for developing, implementing and enforcing an entirely new legislative framework for a brand new industry. Under mounting pressure, the federal government revised the proposed allocation so that it will now only keep one quarter of the revenue from the excise tax (with a cap of \$100 million per year). The participating provinces/territories will receive the rest of the proceeds.

The lone province which has refused to sign off on this tax sharing arrangement is Manitoba. Instead of receiving a portion of the excise tax proceeds, Manitoba has indicated that it will apply markups of \$0.75 per gram on recreational cannabis plus an additional nine per cent. All licensed retailers will also be required to contribute six percent of their annual revenues attributable to recreational cannabis sales to a "social responsibility fee" effective January 1, 2019. Additionally, while Manitoba will not apply the provincial sales tax (PST) on non-medical cannabis sales, it will continue to apply the PST to the sale of medical cannabis. It is unclear whether, after October 17, 2018, the federal government will pressure Manitoba to reduce the tax burden it intends to pose on the sale of cannabis in order to establish a more consistent taxation regime across Canada.

As is evident from the foregoing, most of the issues that have arisen to date are the result of the ambitious timeline imposed by the federal government and the resulting rush to regulation. As the date of legalization passes and the respective governments become more comfortable with their own frameworks, most will likely be resolved through the typical legislative processes. In the interim, they highlight the unusual challenges related to federalism that could only arise with the birth of a new industry. 🇨🇦



**CHRIS NYBERG** is an associate at Blake, Cassels & Graydon LLP in Toronto. His practice focuses on regulatory, commercial and financing issues affecting the Canadian cannabis and hemp industries.



**ALYSSA MOSES** is an articling student at Blake, Cassels & Graydon LLP in Toronto.



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## THE REMAINING STAKES FOR THE SCC DECISION IN **ORPHAN WELL ASSOCIATION V GRANT THORNTON LIMITED**

BY **FENNER L. STEWART**

For years, Alberta's oil and gas regulator (Regulator) threatened to use its power under section 29 of the *Oil and Gas Conservation Act* (OGCA) to hold trustees personally liable for a bankrupt company's abandonment and reclamation obligations (Obligation). It also threatened to use its section 24 privilege to refuse to transfer licences to produce oil and gas from the bankrupt's wells unless satisfied that the Obligation was met. As between the two sections, the latter was the trump card: no buyer wants a well without the licence to produce from it. Without the licence, the well is merely a hole in the ground. In 1997, the federal government amended the *Bankruptcy and Insolvency Act* (BIA). Afterward, trustees believed that sections 24 and 29 of the OGCA were unconstitutional, and that they were free to conduct their business without regard for the Obligation. For almost 20 years, the Regulator occasionally rattled its sword, but no litigation of the issue resulted. Then, in 2016, Chief Justice Wittmann read down the offending legislation. The Regulator appealed to the Alberta Court of Appeal, but lost. It then appealed to the Supreme Court of Canada (SCC). This decision is still pending.

Environmentalists and landowners watched these in dismay as trustees and receivers disclaimed or renounced assets to the Orphan Well Association. In February 2018, the CEO of the Regulator lamented that, since the judgment, more than \$110 million had flowed from the Obligation's regime to creditors. The Regulator warns that if the SCC upholds the decision, its Obligation regime will be destroyed, leading to greater turmoil and havoc. Meanwhile, Alberta's insolvency community suggests if the SCC overturns it trustees will be forced to refuse mandates that involve environmentally damaged properties. As a result, future bankruptcy proceedings in Alberta will be undermined. However, as the circumstances leading to this litigation – and their fallout – reveal, neither is correct. The SCC's decision will have little impact on either.

This article asserts that only one issue truly hangs in the balance, and the rest is just a distraction. The issue is whether the SCC will reverse the lower court's removal of the disinterested regulator defence. Without this defence (or something similar), a regulator is robbed of its capacity to enforce the public interest upon a bankrupt party when such enforcement depletes the assets that are otherwise available to creditors.

Regulatory compliance always costs money. As a result, detangling debt enforcement from other types of enforcement actions is not as easy as some might assume. Bankruptcy should free one from debt obligations, allowing for a fresh start. However, doing so should not come at the expense of

disinterested regulators, who are merely enforcing the public interest.

Framing this case in proper context begins with an explanation of why it took 20 years for this litigation to occur. The Regulator has always consented to the transfer of a well licence if the buyer accepts the Obligation. Things ran smoothly, because buyers agreed to accept it as standard practice. But why did they agree? One suggestion is that a well inactive today may become a producer tomorrow when the market improves. However, an empirical study has established that such reactivation in Alberta is so rare that this explanation lacks credibility. Another is that Alberta law has never required a time frame for the Obligation to be completed, meaning a buyer could produce from the good wells and ignore the Obligation. The legislature created this loophole; the Regulator had to abide by it; and business calculated its risk based on it. So, the buyers regarded the Obligation as a low risk. Thus, the whole system ran smoothly... that is, unless you were a landowner with inactive wells on your land.

The other piece of this story is the rise of hydraulic fracturing. Prior to hydraulic fracturing, economists confidently predicted \$200 per barrel in the near future. Then fracked crude – particularly from Texas – flooded the global market. Prices plummeted. Texas crude demonstrated that global oil reserve projections were grossly underestimating future supply. Texas crude was high quality, and cheap to produce. Soon, Texas production tripled.

Texas crude sobered Alberta well-buyers, who started to doubt the wisdom of taking the Obligation along with a bankrupt company's other assets. Long before the 2017 CD Howe report estimated the cost of the total Obligation could be over \$8 billion, the Alberta industry feared this market change could trigger regulatory failure. Bankruptcies spiked. Foreign investors fled. Even the bravest had their risk appetite satiated before they contemplated accepting the Obligation of bankrupts. Then it happened. ATB Financial was edgy to liquidate Redwater's assets, and a buyer refused to accept the Obligation. The Regulator entrenched; the trustee pushed back. Next thing, Chief Justice Wittmann was adjudicating the matter.

So, what are the remaining stakes of the SCC's judgment? A few big ones can be crossed off the list. First, creditors are still petitioning companies into bankruptcy or receivership while the going's good (relatively speaking; it is never the creditor's favoured option to have its debtor insolvent), but much of

<sup>0</sup> Dr. Stewart is an Assistant Professor of Law at the University of Calgary Faculty of Law.

<sup>1</sup> When using the term "Regulator" in this article, I am also referring to the Alberta Energy Regulator's predecessors as well, since it has only existed since 2013.

<sup>2</sup> Lucija Muehlenbachs, "80,000 Inactive Oil Wells: A Blessing or A Curse? (2017) 10 SPP Briefing Paper, online, School of Public Policy: <<https://www.policyschool.ca/wp-content/uploads/2017/03/Inactive-Oil-Wells-Muehlenbachs-1.pdf>>.

<sup>3</sup> James W Coleman, 'Pipelines & Power-lines: Building the Energy Transport Future' 79 *Ohio St Law Journal* \_\_\_ (forthcoming 2019).

<sup>4</sup> Benjamin Dachis, Blake Shaffer, & Vincent Thivierge, "All's Well that Ends Well: Addressing End-of-Life Liabilities for Oil and Gas Wells" CD Howe Institute Commentary No 492 (2017), online: CD Howe Institute <<https://www.cdhowe.org/public-policy-research/all%E2%80%99s-well-ends-well-addressing-end-life-liabilities-oil-and-gas-wells>> [Dachis, Shaffer, & Thivierge].

the dead weight has cleared. Moreover, oil markets have adjusted, prices have increased, the cost of production (and transport) is optimizing, and foreign investors are regaining interest in Alberta oil development. In other words, the market has stabilized and the damage is done. The SCC decision cannot change this fact. Second, the regime imposing the Obligation has failed catastrophically, and needs a complete rebuild regardless of the SCC's judgement. Third, the SCC will read down section 29, but trustees were de facto never really exposed to its liability anyhow – it was always a side show.

The only true stake left is a legal one: the salvage of the figure Justice Gascon described as the “disinterested regulator.” The disinterested regulator is Chief Justice Laycraft’s vision of the regulator from the infamous *Northern Badger* case – that is, infamous at least in insolvency circles. This regulator simply enforces the law. It is not a creditor and is not enforcing a debt. Ergo, the regulator is disinterested, and its provincial authority remains, shielded from the doctrine of federal paramountcy. Put differently: if saved, the notion of the disinterested regulator rebuts the claim that a regulator abuses the law to take money that rightfully belongs to creditors, thereby frustrating the BIA. (Which is, in fact, what the disreputable regulator did in both of the leading cases some see as challenging *Northern Badger*.)

However, the lower courts interpreted the SCC in *AbitibiBowater* as having overturned *Northern Badger* and, thus, the disinterested regulator defence. Without such a defence, a regulator must overcome the three-part test in *AbitibiBowater*, that is: (1) a bankrupt must owe an obligation to a creditor (i.e., “creditor requirement”); (2) the obligation must have incurred before bankruptcy (i.e., “timing requirement”); and (3) a monetary value can be attached to the obligation (i.e., “monetary requirement”). The SCC explained the application of the creditor requirement as follows:

At this first stage of determining whether the regulatory body is a creditor, the question of whether the obligation can be translated into monetary terms is not yet relevant. This issue will be broached later. *The only determination that has to be made at this point is whether the regulatory body has exercised its enforcement power against a debtor.* When it does so, it identifies itself as a creditor, and the requirement of this stage of the analysis is satisfied. [emphasis added].

Respectfully, delaying consideration of the monetary requirement is problematic, since a regulator becomes a creditor as a presumption of fact. If a regulatory body is exercising any enforcement power against a debtor, it is a creditor. Bracketing the monetary issue means a regulator is a creditor when it exercises authority, since the regulated party is always a debtor in bankruptcy cases. Ergo, the regulator is always a creditor.

I have argued that the *AbitibiBowater* and *Northern Badger*

decisions complement each other, and thus the disinterested regulator defence ought to be preserved. If the judgment of the lower courts remains, future courts will be led to conclude that a regulator is never disinterested. Respectfully, this conclusion defies both co-operative federalism and common sense. In reality, most regulators enforce the law without any nefarious, self-interested ends. Surely the lower courts did not intend this consequence, but that is now how the law stands. If the law remains unchanged, I predict that it will prove problematic in the future.

In the end, the critical issue is whether the SCC untangles what has been done, thereby providing proper guidance for future courts to identify disreputable regulators from disinterested ones. For more analysis, you can read my articles on the topic. [📖](#)



**FENNER L. STEWART** Dr. Fenner Stewart is an associate professor at the University of Calgary, and the 2018 Dentons Canada LLP Research Fellow in Energy Law and Policy.



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<sup>5</sup> *AbitibiBowater inc.* (Arrangement relatif à), 2010 QCCS 1261, [2010] QJ 4006 at para 176.

<sup>6</sup> *PanAmericana de Bienes y Servicios v Northern Badger Oil & Gas Limited*, 1991 ABCA 181, 81 DLR (4th) 280.

<sup>7</sup> See *Newfoundland and Labrador v AbitibiBowater Inc.*, 2012 SCC 67, [2012] 3 SCR 443, and *Alberta (AG) v Moloney*, 2015 SCC 51, [2015] 3 SCR 327 [*AbitibiBowater*].

<sup>8</sup> *AbitibiBowater*, *ibid.* at para. 26.

<sup>9</sup> *AbitibiBowater*, *ibid.* at para. 27.

<sup>10</sup> Fenner L. Stewart, ‘Interjurisdictional Immunity, Federal Paramountcy, Co-operative Federalism, and the Disinterested Regulator: Exploring the Elements of Canadian Energy Federalism in the Grant Thornton Case’ (2018) 33 *Banking & Finance Law Review* 227 at 258-261 [Stewart].

<sup>11</sup> Stewart, *ibid.*; Fenner L. Stewart, ‘How to Deal with a Fickle Friend? Alberta’s Troubles with The Doctrine of Federal Paramountcy’, in Janis P. Sarra and Barbara Romaine, eds., 2017 *Annual Review of Insolvency Law* (Toronto: Carswell, 2018) 163.

## IN COLLABORATIVE LAW REFORM

BY SANDRA PETERSSON

Law reform is inherently a collaborative process. From start to finish, each ALRI project benefits from input by the profession and the public in suggesting reform topics to shaping final recommendations. As noted in our Annual Report 2017-2018, lawyers and judges volunteered more than 650 hours to share their knowledge and expertise to improve Alberta's laws. Thank you!

ALRI also collaborates with other national and provincial law reform agencies. Since ALRI was founded in 1968, we have worked with the Uniform Law Conference of Canada. The work of the ULCC promotes uniformity of legislation among Canadian provinces and territories and updates to the Criminal Code. This year, ALRI will be looking at two uniform acts to determine whether they should be adopted in Alberta. The Uniform International Commercial Arbitration Act proposes updates to the International Commercial Arbitration Act which Alberta adopted in 1986. The Uniform Public Appeals Act considers the range of implications that flow from raising funds for a worthy cause and whether such funds might be subject to trust principles.

ALRI was also a founding member agency of the Federation of Law Reform Agencies of Canada. The Federation or FOLRAC was formalised in 1990. Member agencies meet every two years for a symposium to share best practices and new ideas for the law reform process. ALRI is hosting the 14th FOLRAC Symposium

in October. This year's panel discussions will include diversity in decision-making, expanding consultation and the role of law reform agencies in responding to the TRC calls to action.

Finally, this year ALRI is also launching a collaborative initiative with the University of Alberta law school. ALRI is providing an internship program for second and third year law students. With guidance from Professors Roderick Wood and Tamara Buckwold, students will review the work of the Canadian Conference on Personal Property Security Law and how Alberta's legislation should be updated. While personal property security legislation was once fairly consistent across Canada, the Alberta legislation has not been updated since the 1990s. Working with ALRI's Executive Director, Sandra Petersson, students will also develop their own proposal for a law reform project and be encouraged to submit it to the appropriate agency for consideration. 🌐



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

**Email:** [reform@alri.ualberta.ca](mailto:reform@alri.ualberta.ca)

**Twitter:** @ablawreform



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

## JUDICIAL UPDATES

### COURT OF APPEAL OF ALBERTA

**The Honourable Mr. Justice J.D.B McDonald** (Calgary) has elected to become a supernumerary judge effective August 31, 2018

### COURT OF QUEEN'S BENCH

**Master Keith Laycock** (Calgary) has retired as an ad hoc Master, effective June 30, 2018

**The Honourable Madam Justice D.C. Read** (Edmonton) has retired as a supernumerary judge effective September 1, 2018

### PROVINCIAL COURT OF ALBERTA

**The Honourable Judge J. Kerby** (Edmonton) has been appointed as a part-time Judge, effective June, 2018

**The Honourable Judge James L. Skitsko** (Edmonton) has been appointed as a part-time Judge, effective July 1, 2018

**The Honourable Judge Randal W. Brandt** has been appointed to Edmonton Criminal, effective July 9, 2018

**The Honourable Judge Andrea B. Chrenek** has been appointed to Grand Prairie/North Region, effective July 9, 2018

**The Honourable Judge Sandra L. Corbett** has been appointed to Edmonton Civil, effective July 9, 2018

**The Honourable Judge Karen E. Hewitt** has been appointed to Wetaskiwin/Central Region effective July 9, 2018

**The Honourable Judge Robert B. Marceau** has been appointed to Peace River/Northern Region, effective July 9, 2018

**The Honourable Judge Donna R. Valgardson** (Edmonton) has been appointed as a part-time Judge, effective July 11, 2018

**The Honourable Judge Hugh W.A. Fuller** (Stony Plain) retired as a supernumerary judge, effective August 15, 2018

**The Honourable Judge Karen J. Jordan** (Calgary) has been appointed as a part-time judge, effective August 1, 2018

### JUSTICE OF THE PEACE

**Malcolm I. Allan** (Edmonton) Has Been Appointed As A Full-Time Justice Of The Peace, Effective July 9, 2018

**T. Catherine Christopher, Q.c.**, (Calgary) Has Been Appointed As A Full-Time Justice Of The Peace, Effective July 9, 2018

**Lisa D. Henderson**, (Calgary) Has Been Appointed As A Full-Time Justice Of The Peace, Effective July 9, 2018

**Jane A. Steblecki Corns**, (Edmonton) Has Been Appointed As A Part-Time Justice Of The Peace, Effective July 9, 2018

**Brenda E. Feehan**, (Edmonton) Has Been Appointed As A Part-Time Justice Of The Peace, Effective July 9, 2018

**Peter P. Roginski**, (Calgary) has been appointed as a part-time Justice of the Peace, effective July 9, 2018

## MALCOLM LAVOIE

BY KRISTJANA KELLGREN

The Editorial Committee is pleased to introduce this issue's *Unsung Hero*: Malcolm Lavoie. No stranger to issues around federalism, Malcolm recently appeared before the Supreme Court of Canada in *R v Comeau* on behalf of an intervener and his scholarship received considerable attention in submissions from other parties before the court in the same case. In humbly relating the experience, Malcolm acknowledged that it was "a bit odd" to be sitting at the counsel table and listening to another lawyer refer to the view of one "Professor Lavoie". An impressive feat for any lawyer (how many of us can claim to have appeared before the Supreme Court, or have our research quoted by others in argument before the court, let alone both?), but particularly so given Malcolm's (relatively) junior vintage.

Malcolm was admitted as a member of the Law Society of Alberta in 2013, after articling at a national firm in Calgary and clerking for the Hon. Justice Frans Slatter of the Alberta Court of Appeal. Thereafter, Malcolm went on to clerk for the Hon. Justice Rosalie Abella of the Supreme Court of Canada and then to complete his Masters in Law at Harvard. He is currently a

candidate for the Doctor of Juridical Science degree at Harvard (his doctoral thesis, entitled *Property Law and Indigenous Self-Government*, is nearly complete), where he has been a Frank Knox Memorial Fellow, Fulbright Scholar, Weatherhead Center Graduate Research Fellow, and Project on the Foundations of Private Law Fellow. Malcolm is also an avid swimmer, and a former Canadian national champion, All-Canadian and member of Canada's national swim team.

Malcolm is currently an assistant professor at the University of Alberta's law school, where he works primarily on the areas of property law, Aboriginal law and Canadian federalism. The areas that he writes about often involve conflicts of underlying values, something that he has always found interesting. For example, his article *R. v. Comeau and Section 121 of the Constitution Act, 1867: Freeing the Beer and Fortifying the Economic Union*, dealt with the tension between the values associated with provincial autonomy and local self-government and the values associated with free trade, including economic efficiency. In discussing his experiences in law school and clerking, Malcolm explained that he believes important perspectives are often



MALCOLM LAVOIE

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.

missing in discussions about Canadian law, including both economic perspectives and "old-school" liberal perspectives that emphasize the importance of legal certainty and predictability. Malcolm was drawn to the law for a number of reasons, not least of which relates to his love of the show *Law & Order* as a child and a desire to be like Jack McCoy (if you meet Malcolm, you must ask him about the "Lavoie & Order" emblazoned on his softball uniform while playing for the SCC law clerks' "Bench Warmers" team). Another reason stems from his belief that the law can distill the wisdom of the past and be a guarantor of personal liberty: "The legal system lets us down from time to time, but I'm happy to report that I still basically do believe that to be true."

Malcolm will soon be adding "dad" to his list of titles and accomplishments, as he and his wife Moira are currently expecting their first child in the fall.

We look forward to what we anticipate will be a great many future contributions to the law from Malcolm Lavoie. Jack McCoy has nothing on you! ☺



**Kristjana Kellgren** is in-house counsel with the Alberta Utilities Commission. In addition to her practice, Kristjana is a member of the CBA Alberta Editorial Committee and will be co-teaching an administrative law class at the University of Alberta this fall.



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# LITIGATION ASSOCIATE

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This is a terrific opportunity for a 2-6 year Associate to work with market-leading lawyers in their field, in a supportive and fast-growth environment. For a confidential discussion on this role, please contact **Mike Race** at [mrace@zsa.ca](mailto:mrace@zsa.ca) referencing job number **#LM27870**.

*CVs sent directly to Dolden Wallace Folick will be redirected to ZSA Legal Recruitment.*

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With a focus on ensuring delivery of service excellence while managing, monitoring and ensuring quality control for injury claims, this role is accountable for evaluating and recommending process changes. The ideal candidate will have a minimum of 3 years' insurance litigation experience.

If you are a strong leader who can provide guidance, direction, and expertise to regions on complex injury claims, then this role is for you. For more information or to apply, please contact **Amrit Rai** at [arai@zsa.ca](mailto:arai@zsa.ca) or **604-681-0706**, quoting reference **#LM28183**.

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Eager to take your career to the next level? Our client, SGI, a leading insurance company, is looking to hire an Associate General Counsel to join their management team in Regina. The preferred candidate will have 10+ years' insurance experience together with experience managing a team of legal professionals. Reporting directly to the General Counsel, the AGC will be responsible for overseeing all legal aspects of Auto Property and Liability claims and issues, and defense of Third party claims services for SGI CANADA nationally. This is a fantastic opportunity for a senior lawyer seeking a strategic management position with one of Canada's premium companies.

For more information or to apply, please contact **Amrit Rai** at [arai@zsa.ca](mailto:arai@zsa.ca) or **604-681-0706**, quoting reference **#LM28189**.

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# ALBERTA CAREER OPPORTUNITIES



## IN-HOUSE LEGAL COUNSEL | 2 – 4 YEARS | CALGARY

Our client is an independent investment management company on a strong growth path. They are now looking to add a junior lawyer to work directly with their General Counsel, as well as assisting on the compliance side. They are looking for a lawyer at 2-4 years of call, coming from a major law firm with a strong corporate commercial background. The core skill-set is general corporate, additionally any experience working in technology contracts, corporate secretarial, or securities regulatory will be considered an asset. Ultimately, they want someone who is willing to undertake a truly broad in-house legal counsel role, and embed closely with the business side. If this sounds like you, please contact **Mike Race** at [mrace@zsa.ca](mailto:mrace@zsa.ca) or 403-205-3444 quoting job LM28117.

## ASSOCIATES | 2 – 3 YEARS | EDMONTON

Our client is a boutique specialty law firm located in the greater Edmonton area. They are seeking bright and self-motivated lawyers to join their growing firm and hit the ground running. If you are an experienced lawyer with at least 2 or 3 years of post-call experience in either civil litigation, family law, or wills & estates and ideally a background in the military and a keen interest in helping with the specific issues and requirements affecting military personnel, this is a terrific opportunity to join a fast-growing, dynamic and collegial law firm. To learn more, please contact **Mike Race** at [mrace@zsa.ca](mailto:mrace@zsa.ca) or 604-681-0706 quoting job #LM28121.

## INSURANCE LITIGATION ASSOCIATE | 2 – 4 YEARS | CALGARY

Our client is a top-tier national law firm. Their Calgary office is on a strong growth path, and is now looking to add a high performing insurance litigation lawyer to their busy and high-performing team. This is a terrific opportunity for a 2 – 4 year Associate to work with market-leading lawyers in their field, in a supportive and fast-growth environment. For a confidential discussion on this role or to apply, please contact **Mike Race** at [mrace@zsa.ca](mailto:mrace@zsa.ca) referencing job #LM28110.

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# FROM THE PRACTICE ADVISORS

## THE PRINCIPLED PRINCIPAL

BY ELIZABETH ASPINALL

It's funny what lawyers think the role of articling students is. Here are a few examples of only some of the things Practice Advisors have heard. For the sake of clarity, Practice Advisors would say these are inappropriate ways to treat students:

- Taking a dog to the vet to be "put down"
- Holding tables at a Stampede event for the entire morning so that the lawyers can arrive much later
- Hand-delivering chocolates in -30 weather
- Paying for and picking up the principal's groceries (even if later reimbursed)
- Doing landscaping at the principal's residence (this student complained that they were not provided with appropriate safety equipment, having arrived at work in a suit)
- Agreeing to look after the principal's pet for a weekend, only to learn on arriving to pick up the pet, that the student would be looking after the principal's young children as well
- Dictating the house in which the student may live, when the student may see their family, and threatening to fire the student for going home to family over the holidays

Unfortunately, none of these issues is isolated, nor are they even the tip of the proverbial iceberg. The list goes on with everything from comments about appearance ("don't wear high heels, they are distracting"), to what can only be constructive dismissal (the firm agreed to pay for CPLED, then backed out at the last minute, advising the student they were too stupid

to pass the course, and unilaterally trying to impose a year as a law student before allowing the student to begin articling).

With many of this year's students now being several weeks into their articles, it seemed like a good time to remind the profession of what makes for an effective and appropriate article. Essentially, the over-riding principles are setting the student up for success, and in doing so, serving the public. Here are ten suggestions:

1. Think long-term: Try to think of the student as a colleague, not as someone who will be gone after a year and is therefore disposable. The legal community is a small one and it is likely that you will encounter the student again in the future on files or within organizations like the CBA. Maintaining a respectful mentoring relationship during the articling year will ensure positive relationships in the future.

2. Check in regularly with your student: Remember that the student is there to learn. Be approachable and discuss what is going well and what could be better. Provide constructive feedback, and give the student an opportunity to ask questions about anything from substantive legal issues to practice management. Give your student your time. Schedule regular meetings. Be present. Students cannot and should not function as "cheap labour". Be present to supervise them and encourage them to join organizations (such as the CBA Students section)

## CHOOSE FROM ALBERTA'S TOP MEDIATORS AND ARBITRATORS



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The Honourable W.  
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where they can network and learn from other members of the profession.

3. Involve your student in files. Even better, if possible, involve them in a file from start to finish: Law school does not and can not fully prepare a student to run a file. Involving students in running files gives them the opportunity to learn office procedures (procedures that are standard to practicing lawyers like opening files or dictating are foreign to students), legal concepts, legal strategy, how to work with difficult opposing counsel, and client management. This contributes to providing them meaningful and challenging work that contributes to the development of a professional.

4. Send your student to court to observe: Observing court gives students better understanding of court processes, who the judges and clerks are, how lawyers engage with each other, and what works (and does not work) when lawyers are making submissions. It also gives the student an opportunity to appreciate different practice areas (eg. criminal, bankruptcy, family, civil litigation). It is not billable time, but it is time well invested.

5. Review the Code of Conduct with them: Too many lawyers do not consider the Code until they have to, usually when something has gone awry. Incorporate the Code as an essential element of ethical practice, and as fundamental to practice as the Rules of Court, or the Criminal Code.

6. Do not impose unreasonable billing requirements: While it is beneficial for a student to learn about billing and to practice recording their time, forcing them to meet onerous billing targets will compromise their ability to learn. Give them the "space" to learn.

7. Do not treat articling as a right of passage: Articling is a place to learn how to be a good lawyer. While it is and should be challenging, it is not meant to be an ordeal. Do not perpetuate the cycle simply because your own article was poor. A bad article really did not make you a better lawyer.

8. Be kind: Kindness is not weakness. Today's students may have stresses that you may not have dealt with as a student (eg. considerable student loan debt, the rapidly changing world of legal services delivery, responsibilities for children, aging parents, or both).

9. Be willing to learn: Mentoring can go in two directions. Lawyers can learn from students – especially with respect to technology. Be open to new ways of doing things.

10. If problems develop, be fair and realistic about the cause of the problems and the best way forward: If the student starts to make mistakes, evaluate the situation to determine the cause of the errors: too much work? Too much responsibility? Discuss the problems with the student (and do not let the problems pile up). Only once you have done that evaluation, if the problems and resulting conflict seem insurmountable, consider parting ways.

Being a good principal is not for the faint of heart, nor is it for the lawyer who wants someone who can work completely

<sup>1</sup> With thanks to Stefanie Kingsbury and Nancy Carruthers

## CBA NATIONAL PRESIDENT

We welcome in new president Ray Adlington and the 2018-19 Board is now complete. With the new board taking over September 1, we say thank-you to the previous board and welcome to the new one.

New members will be joining the CBA Board of Directors on September 1, 2018. Due to of the staggered length of Board terms, members from Alberta, British Columbia, Newfoundland & Labrador, Nunavut, Ontario, Quebec and Saskatchewan will complete the second year of their two-year term in 2018-2019.

The Board will welcome new members from Manitoba, New Brunswick, Northwest Territories, Nova Scotia, Prince Edward Island and Yukon. They are: Christopher Buchanan-NT, Jason Cooke-Nova Scotia, Kevin J. Hache- NB, Kelly Labine-YT, Thomas Laughlin-PEI, Bradley Regehr-MB.

## MEMBERSHIP & SECTION REGISTRATION

Want to know what goes on at Board meetings? In November, the National Board of the CBA resolved to provide greater transparency to members by publishing its minutes online (<https://www.cba.org/Who-We-Are/Governance/Board-of-Directors/Meeting-Minutes>), behind a member wall. Minutes of all Board meetings from November onward will be available. Minutes for the Governance and Equality Committee meetings are also now available on the Committee's web page (<https://www.cba.org/Sections/Governance-and-Equality/About>).

## CBA ALBERTA VOLUNTEER OPPORTUNITIES

We are now recruiting CBA members to participate in volunteer opportunities during the 2018-19 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, 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).

### Continued...

independently (consider whether an associate might be a better fit if that is what you need). Mentoring articling students is an important and challenging process, but ultimately it should be rewarding for student and principal. 🗣️



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

# 2017-18 CBA ALBERTA VOLUNTEERS

**So much of what we do at the Canadian Bar Association would not be possible without the efforts and initiative of our volunteer members. This year, nearly 20% of all CBA Alberta members volunteered their time with us in some capacity. Join us in celebrating all of those members who made our programming and events possible.**

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# NOMINATION DEADLINE SEPTEMBER 5, 2018

## 8th Annual Leadership Awards

Join us to celebrate the distinguished achievements of our Alberta colleagues in the legal profession.

Consider whether you know a lawyer who has significantly contributed to the profession or community, or a law firm that exemplifies leadership in supporting female lawyers. Nominate her and/or a law firm for their outstanding efforts and achievements furthering the success of women in law.

Nominations can be made in seven categories:

-  Leadership in the Profession (Private Practice)
-  Leadership in the Profession (In-House)
-  Leadership in the Profession (Government)
-  Leadership in the Profession (Broader Roles)
-  Leadership in the Community
-  Tomorrow's Leader
-  Law Firm Award

Nomination forms available at [www.WILLawards.ca](http://www.WILLawards.ca)

The WILL Awards dinner will take place on Thursday, November 22, 2018 at The Fairmont Hotel Macdonald, Edmonton.

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**WILL SEARCH.** EVELYN GRACE JOHNSON, late of Edmonton, died February 19, 2018. **Please contact Kristin at 780-451-7557 ext. 225.**

**ARE YOU A SOLICITOR LOOKING TO RETIRE OR FOR OFFICE SPACE?** We are located in the Brewery District and would like to hear from you. If you are interested, e-mail us in confidence at [John@MurrayStadnykLaw.com](mailto:John@MurrayStadnykLaw.com).

## NON-PROFIT ANNOUNCEMENTS

**RESET SOCIETY OF CALGARY** is pleased to announce our first ever Sexual Exploitation Training & Awareness Conference, in partnership with Calgary Police Service October 1 & 2 at the Best Western Village Plus Inn. This event brings together professionals working to eradicate sexual exploitation. The agenda features 3 amazing Keynote Speakers and 22 workshops from 14 North American organizations. **For info and registration visit: [www.resetcalgary.ca/conference](http://www.resetcalgary.ca/conference)**

### UNIVERSITY OF ALBERTA - ALUMNI WEEKEND

Have you thought about developing a mindfulness practice in your legal practice? Join us as we explore the practice of "mindful" lawyering through a combination of lecture, discussion and applied mindfulness practices, including yoga and meditation. In our inaugural Mindfulness in Law Retreat, participants will participate in an interactive dialogue with our retreat facilitators on topics germane to the practice of mindfulness, including the science of it, the physical benefits of a daily practice, and the relationship between mindfulness, practice management, and lawyer wellness. Round out your day by listening to a keynote speech by UAlberta's own Right Honourable Beverley McLachlin '68 LLB, '65 MA, '65 BA as part of Alumni Weekend.

**Sept. 22, 2018 | 8 a.m. - 4 p.m.**

**3rd floor, Law Centre**

**111 89 Ave NW, Edmonton**

**8:00 - 11:45 a.m. - Morning session**

**11:45 a.m. - 1:30 p.m. - Lunch and optional Rt. Honourable Beverley McLachlin presentation (additional cost)**

**1:30 - 4:00 p.m. - Afternoon session**

**Register at <https://www.ualberta.ca/law/about/events/alumnievents/7mobkermvffetu7sn5m2n9hcmh>**

### ECLC ADVICE-A-THON- CALL FOR VOLUNTEERS

Volunteers are needed for the 4th annual Edmonton Community Legal Centre Advice-a-thon which highlights the work that happens at the ECLC every weekday evening. Advice-a-thon lawyers collect financial pledges for their time as donations to the ECLC and provide two half-hour summary legal advice appointments in City Hall. Lawyers can volunteer and collect pledges individually or as a group. For more information and to sign-up go to <http://www.eclc.ca/advice-a-thon/>

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