

ISSN 1704 - 9377

Winter 2014 - 15

Volume 39, Number 4

Law Matters

The History Issue

The Practice of Law:

Then and Now

A History of Women in the Law

Case Comment

Bhasin v. Hrynew



THE CANADIAN
BAR ASSOCIATION
Alberta Branch

EDITOR'S NOTES

By Robert Harvie, QC

The theme of this edition of *Law Matters* is "History", and as touched on by many of our contributors, as we move forward in the evolution of the law and the judicial system, we are reminded of the continual conflict in the law between the past and the future.

A great part of our justice system relies upon precedent. The sense that if we want our citizens to govern their interactions according to a system of rules, those rules need to have some predictability. So - our current conduct becomes largely governed by the standards set by those that came before us - hence the force of legal precedent. Few would have issue with that.

However.

Society changes and evolves, and standards established a hundred years ago may no longer reflect the standards of conduct we desire today.

Hence the conflict.

A conflict, perhaps highlighted in this issue. Anne Kirker, QC and Maureen Killoran, QC discuss the recent SCC decision in *Bhasin* - adding a new expanded obligation of "good faith" in contractual negotiation and performance. Is this a "new and improved" law of contract or an expansion of uncertainty in the law, leading to litigation based upon "morning after" regret - expanding the burden on a system already buckling under pressures which are becoming increasingly difficult to bear?

Terrance Cooper, QC, writes about the conflict between the need to protect the public interest, and the need to

serve the public demand for services which are "legal" but not from "lawyers". Past history of legal regulation has been seen by many as "turf protection" and "monopoly maintenance". As we move forward, our Law Societies seek to assure that they truly regulate in the public interest - and what that looks like today, could look very different tomorrow. More conflict between yesterday and tomorrow.

Geoff Ellwand discusses the "entrapped" relationship between the future and the past in our profession. How it is so important that we recognize the importance of where we've come from, even as we move forward into our future. As Geoff writes, we must "consider the law and its intimate connection with the past." A connection that will, perhaps for eternity, be reflected in an imperfect dance between the oddest of dance partners - the grizzled and grey yesterday, and the bright-eyed tomorrow.

Fortunately, as we seek to perfect this dance, we are blessed to have so many, including one of my favourite colleagues, a person who helped make my recent tenure as a Bencher with the Law Society of Alberta both a joy and a privilege - Susan Billington, QC. As Ola Malik points out, the work that Susan has done for our profession and the public has been significant, and as we move forward towards our future, it is more than appropriate that we take a moment to remark on one of our own who has shown so clearly how the dance between future and past is guided most capably and passionately by the incredible dedication of people like Susan. Well done, Susan, and thank-you Ola again for highlighting another "unsung hero" in our profession. 🙏

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PRESIDENT'S REPORT

By Steven N. Mandziuk, QC



2015 is well under way, and it is my great pleasure to celebrate over 100 years of the Canadian Bar Association - Alberta Branch representing the legal profession in our province. Our organization has produced many leaders in Canada's legal community. Our past presidents have gone on to become some of the most recognizable names in Alberta's legal profession, serving as national CBA presidents (including the first female national president, the Honourable Cecilia I. Johnstone and our current President, Michelle Hollins,

QC), and as members of the judiciary at all levels in Alberta and the Supreme Court of Canada. In fact, our first recorded past president was former Prime Minister of Canada (1930 - 1935) the Right Honourable the Viscount Bennett, PC, KC. It is a great honour (and very humbling) to succeed these leaders, and to continue to work with the CBA to support our members.

As this issue of Law Matters is arriving on desks, I, along with many other members of our profession will have recently returned from the 2015 Alberta Law Conference, Alberta's premier annual legal event. I want to extend my thanks to the ALC 2015 organizing committee, led by co-chairs Jessica Buckwold and Michael Kraus, QC, who impressed us with an excellent conference. I was pleased to see the theme of the "health" of the profession running throughout the programming at ALC. University of Alberta Faculty of Law Dean Paul Paton, and Law Society of Alberta President Kevin Feth, QC, kicked off the conference with first-rate presentations on the health of the profession as a whole, and what the future may look like, especially with the potential introduction of alternative business structures. Turning the focus to the health of legal professionals, University of Saskatchewan College of Law Professor Marilyn Poitras presented "Law and Happiness 101", based on her research into the mental health of people working in the justice system, while Dr. Stephen Carter, showed us how to "handle stress without distress".

An annual highlight of the Alberta Law Conference is the Distinguished Service Awards, presented in partnership with the Law Society of Alberta. Law Society of Alberta President Kevin Feth, QC and I were proud to present Bruce Churchill-Smith, QC, the late J. Patrick Stopa, QC, and Hersh Edward Wolch, QC, with awards for Pro Bono Legal Service, Distinguished Service to the Community, and Distinguished Service to the Profession, respectively. I also had the pleasure of presenting CBA Alberta past president Gillian D. Marriott, QC, with the Cecilia Johnstone Award for Outstanding Service at the Friday dinner; an award presented to CBA Alberta members who exemplify exceptional involvement, dedication and service to the Alberta Branch.

I invite our members to mark their calendars for January 28 - 29, 2016, for the 2016 Alberta Law Conference in Calgary.

Prior to the conference, the Alberta Branch council held its January meeting and Annual General Meeting. We welcomed guests from across the country, including CBA National President (and Alberta Branch past president) Michele Hollins, QC, and current branch Presidents from British Columbia, Saskatchewan, and Manitoba, Alex Shorten, Gail Wartman, QC, and Sofia Mirza. We also welcomed two additional members from the British Columbia Branch - Catherine Sas, QC, and Kerry Simmons, QC, who are both running for the position of National Second Vice-President in the spring. We wish Catherine and Kerry the best of luck in their campaigns!

2014 was a busy year for advocacy activities within the Alberta Branch. There was a strong focus on increasing sustainable funding for legal aid. As our members will have seen in communications throughout the fall, we (in collaboration with other stakeholders) advocated for a fully-funded legal aid program in a letter delivered to Minister of Justice & Solicitor General Jonathan Denis, QC, and other members of the provincial government, and in meetings with the Minister. We were pleased to see the Minister take the first step towards this by committing to a \$5.5 million increase to legal aid funding in October, and we will continue to advocate for adequate, sustainable legal aid funding going forward.

At the October meeting of Council, we were joined by the Honourable Mr. Justice Hawco of the Court of Queen's Bench, who shared some words on behalf of the Honourable Chief Justice Wittmann. In response to the need for additional superior court justices in Alberta, the Justices of the Court of Queen's Bench have submitted a proposal to the provincial government requesting the creation of an additional 9 - 12 positions. At present, Alberta has the lowest number of superior court justices per capita of any jurisdiction in Canada. The CBA has committed to assisting the Court of Queen's Bench with this initiative, and will be reaching out to members for their help in the coming months. Please watch for further communications from the CBA on this matter.

We have a number of exciting events still to come in 2015. Next up is Law Day - which is held in nine cities and towns across Alberta. Calgary and Edmonton will be hosting Law Day events on Saturday, April 18, 2015, with dates for events in other jurisdictions coming soon. Visit www.lawdayalberta.com for more information.

Also coming soon is the 2015 CBA Legal Conference, which will be held in Calgary August 14 - 16, 2015. This conference gives attendees the opportunity to network with CBA members from across the country, and we are excited to welcome members of our profession to our province. I hope to see a strong contingent representing our branch at this event. Registration will open soon - you can visit www.cba.org for more details.



WHAT'S HAPPENING

February

24: The Ontario Bar Association presents Key Advice to Maximize Your Management and Guardianship Plans. Live and webcast. Visit the website at www.oba.org or contact registrations@oba.org.

24: The Canadian Bar Association presents Demystifying the Lawyer and Auditor Roles in the Financial Context. Online. Contact 1-800-267-8860 or pd@cba.org.

25: The Ontario Bar Association presents Direct from Service Canada: Navigating the New Rules and Avoiding the New Dangers. Live webcast. Visit the website at www.oba.org or contact registrations@oba.org.

28-Mar 1: The Canadian Bar Association BC Branch in partnership with CBABC Women Lawyers Forum presents Get the Point? Effective Communication to Reach Your End Goal. Quaaout Lodge & Spa, Chase, BC. Live and online. Contact 1-888-687-3404 or pd@cbabc.org.

March

2: The Canadian Corporate Counsel Association - Ontario Chapter presents Securities and Other "Oppressive" Litigation: How to Explain the Risk to Your D&Os. Gowling Lafleur Henderson LLP, Toronto, ON. Visit the website at www.oba.org or contact registrations@oba.org or 1-800-668-8900.

3: The Ontario Bar Association presents Tax Dispute Resolution Essentials Series: Practice Advice for Dealing with Tax Authorities. Twenty Toronto Street Conferences and Events, Toronto, ON. Visit the website at www.oba.org or contact registrations@oba.org or 1-800-668-8900.

4: The Ontario Bar Association presents Strategies for Success in the Practice of Family Law for Junior Lawyers and Law Clerks. Twenty Toronto Street Conferences and Events, Toronto, ON. Visit the website at www.oba.org or contact registrations@oba.org or 1-800-668-8900.

5: The Calgary Bar Association presents the 2015 Judges Dinner. Westin Hotel, Calgary, AB. Calgary Bar Association members only. For tickets, contact judgesdinner2015@dartnell-lutz.com.

5: The Canadian Bar Association Alberta Branch (South) presents Personal Injury - The Motor Vehicle Accident Claims Act: A Refresher Course and Tips and Tricks for Handling MVAC Cases. Canadian Bar Association, Calgary, AB. Visit the website at www.cba-alberta.org or contact sections@cba-alberta.org or 403-218-4313.

6-7: The Canadian Bar Association presents the 2015 Annual CBA National Environmental, Energy and Resources Law Summit. University of Calgary, Calgary, AB. Contact Tina Ethier at 1-800-267-8860, ext. 198 or tinae@cba.org.

10: The Ontario Bar Association presents Real Property Bundled Programs: What Lawyers Forgot or Never Learned About Title Searching But Need to Know and Reviving the Lost Art of Requisitions. Twenty Toronto Street Conferences

and Events, Toronto, ON. Live and webcast. Visit the website at www.oba.org or contact registrations@oba.org or 1-800-668-8900.

27: The Canadian Institute for the Administration of Justice presents Genetics and Genomics: What Do I Need to Know? Overview in Medical Genetics and State of the Law. Sheraton Centre Hotel, Toronto, ON. For more details visit www.ciaj-icaj.ca.

31: The Ontario Bar Association presents Strategic Legal Writing: Preparing Persuasive Documents. Twenty Toronto Street Conferences and Events, Toronto, ON. Visit the website at www.oba.org or contact registrations@oba.org or 1-800-668-8900.

April

9: The Ontario Bar Association presents Litigation and Administration of Foreign Trusts and Assets. Twenty Toronto Street Conferences and Events, Toronto, ON. Visit the website at www.oba.org or contact registrations@oba.org or 1-800-668-8900.

18: The Canadian Bar Association presents the 2015 National Criminal Justice Conference. Vancouver, BC. Contact Tina Ethier at 1-800-267-8860, ext. 198 or tinae@cba.org.

May

1: The Ontario Bar Association presents the 13th Annual Current Issues in Employment Law. Twenty Toronto Street Conferences and Events, Toronto, ON. Live webcast available. Visit the website at www.oba.org or contact registrations@oba.org or 1-800-668-8900.

7-9: The Canadian Bar Association presents the 2015 National Immigration Law Conference - Innovation Nation: Reshaping Policy, Reimagining Practice. Ottawa Convention Centre, Ottawa, ON. Contact Tina Ethier at 1-800-267-8860, ext. 198 or tinae@cba.org.

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

August

14-16: The Canadian Bar Association presents the national CBA Legal Conference. Calgary, AB. For further details, visit www.cba.org.

Please send your notices to:
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The New Lawyer: Changes in Delivery of Legal Services and Education

By Beryl McNeill

In her 2008 book, *The New Lawyer: How Settlement is Transforming the Practice of Law*, author Julie Macfarlane critiqued outmoded habits of the legal profession and laid a strong foundation for a settlement-oriented, problem-solving approach to practising law. She wrote:

An adversarial 'client warrior' image dominates historical notions of the lawyer, and a commitment to 'zealous advocacy' remains one of the core norms of the legal model. Yet structural changes within both the justice system and the legal profession have rendered the 'warrior' notion outdated and inadequate, with a shift toward conflict resolution rather than protracted litigation.

A law professor at the University of Windsor, Macfarlane also argued clients no longer want a traditional "rights warrior" lawyer. Rather, they want value for money and practical problem-solving.

So where are we now? I've certainly observed a positive evolution for lawyers and our law practice. When I was Chair of the Canadian Bar Association Family Section-South in 2010, 60 of 130 CBA Family Section members had collaborative law training. A significant and somewhat impressive number, but shouldn't all family lawyers have collaborative law training? And shouldn't we also know all methods of negotiation, given that 98 per cent of cases are resolved outside a courtroom?

Consider Macfarlane's comparison of so-called old and new lawyers. The old lawyer is trained only in a positional negotiation approach. The new lawyer is trained in many negotiation approaches, including principled or interest-based negotiation, which was coined in a 1982 Harvard University Negotiation Project and later written about in *Getting to Yes* by Roger Fisher and William Ury.

As lawyers, we're all well versed in positional negotiation. Two lawyers put together their respective client's best-case scenario and expect to argue their positions back and forth. Ultimately, they settle outside court somewhere in the middle or they attack/defend their cases in court and a judge determines the settlement, also likely somewhere in the middle. It's a widely used negotiation style: you expect back and forth negotiation, before agreeing on terms. Economic game theory holds that if one person puts forward his actual price too early in the negotiation, and the other party's negotiation style is positional, the negotiation will become stuck and take longer to reach agreement. Or the parties will fail to reach agreement altogether. This is because one party is assuming the other party has started with a high or low position, and is expecting a negotiation dance that will result in an agreement somewhere in the middle.

Fisher and Ury say positional negotiation is very hard on relationships. Consider, for example, a business and a supplier disputing a contract in the middle of a project. With a positional negotiation, it's unlikely the business and supplier will keep working together or finish the project. In wondering how the business and supplier could preserve their relationship, Fisher and Ury came up with the interest-based negotiation model.

The following is a very condensed explanation of this negotiation model. The pillars of this negotiation are: framing

issues; exploring information; and generating options. In a collaborative family law case, the issues would include: how the couple is going to co-parent from separate households; and how they are going to divide finances and property. Information would include what the couple and their lawyers need to know to generate options for agreement. This can include everything from the clients' hopes and concerns to their priorities and entitlements and is reviewed in a non-argumentative way. Once the issues are identified and all the information is fully gathered and shared, the clients can generate and evaluate options for agreement.

This negotiation style is easier on the relationship and increases the likelihood of divorcing parents being able to positively co-parent their children after their legal separation is complete. It is helpful in many situations, particularly if the parties are going to have any ongoing relationship.

If a business wants to preserve, nurture or cultivate a relationship, this negotiation style is recommended. I've seen many successful corporate solicitors intuitively use interest-based negotiation in their practice as an effective means to serve the needs of their clients.


To become a good interest-based negotiator, one needs to learn an entirely different way of being and negotiating. Doing this well takes training and practice. I call my law school and litigation training my first language and my interest-based negotiation and collaborative law training my second language. If you're steeped in positional adversarial negotiation, it will take time to get out of the habit of speaking your first language. You'll need to learn and practice your second language.

The International Academy of Collaborative Professionals recommends that collaborative lawyers have a minimum of 57 additional hours of training prior to becoming a registered collaborative lawyer. I see no reason whatsoever why our law schools are not offering this training and giving lawyers both adversarial and non-adversarial ways of approaching a case.

Yes, lawyers need to know how to argue a particular case. But they also need to know how to negotiate, preserve relationships and mitigate conflict.

Macfarlane says "if legal education is to remain relevant to the delivery of legal services in the 21st century, the law curriculum needs to be reoriented and refocused."

The universities of Alberta and Calgary have evolved—somewhat—by offering some optional conflict resolution courses. I welcome the day when law school grads can offer their clients as much insight about out-of-court resolutions as they can about litigation.

The legal profession has changed since *The New Lawyer* was published, but we still have a significant way to go before the New Lawyer model of practice permeates our culture. 



Beryl McNeill is a Registered Collaborative Family Lawyer and Mediator with McNeill Family Law in Calgary, Alberta. Beryl is a former chair of the CBA Alberta Family Law Section (South).

Case Comment: *Bhasin v Hrynew*

The Supreme Court of Canada's release in November 2014 of *Bhasin v Hrynew*¹ was a landmark decision with important implications for the performance of all contracts in common law jurisdictions in Canada.

In *Bhasin*, the Supreme Court took what they described as "two incremental steps" to the common law and recognized: (i) the general organizing principle of good faith contractual performance in all contracts, and (ii) the specific duty of honest contractual performance.² The Court reasoned that although the notion of good faith has deep roots in contract law and permeates many of its rules, the common law has resisted acknowledging any generalized and independent doctrine of good faith performance of contracts.³ As a result, the common law in relation to good faith performance of contracts is piecemeal, unsettled and unclear.⁴ Until now.

For better or worse, the Supreme Court's recognition of the general organizing principle of good faith contractual performance and the specific duty of honest contractual performance will affect the performance of contracts across Canada (other than in Quebec, where good faith in contractual performance is already an established principle in the *Civil Code of Quebec*⁵). According to the Supreme Court, commercial parties reasonably expect a basic level of honesty and good faith in contractual dealings, and a basic level of honest conduct is necessary to the proper functioning of commerce.⁶

From a practical perspective, the scope and implications of both the general organizing principle of good faith as well as the specific duty of honest contractual performance remain somewhat uncertain for contracting parties. Both concepts will require further judicial consideration and development, as *Bhasin* did not set out specific expectations for satisfying either the general organizing principle of good faith or the specific duty of honest contractual performance.

In particular, the expectations for contracting parties to comply with the general organizing principle of good faith contractual performance are unclear. We know that good faith in contractual performance is not a rule, but a standard of behaviour.⁷ The Court has stated that a contracting party may not seek to undermine the legitimate contractual interests of the contracting partner in bad faith, and must have "appropriate regard" to the contracting partner's legitimate contractual interests.⁸ However, given the highly contextual nature of this concept, further judicial consideration is necessary in order for contracting parties to know exactly what the general organizing principle of good faith requires of them in the performance of a contract.

Somewhat more certain is the scope of the specific duty of honest contractual performance. We know that parties must not lie or otherwise knowingly mislead each other about matters

¹ *Bhasin v Hrynew*, 2014 SCC 71.

² *Bhasin* at para 33.

³ *Bhasin* at para 32.

⁴ *Bhasin* at para 59.

⁵ *Civil Code of Quebec*, Article 1375: The parties shall conduct themselves in good faith both at the time the obligation arises and at the time it is performed or extinguished.

⁶ *Bhasin* at para 60.

⁷ *Bhasin* at para 64.

⁸ *Bhasin* at para 65.

By Maureen Killoran, QC and Anne Kirker, QC

directly linked to the performance of the contract. The Court was clear that the duty of honesty does not impose a duty of loyalty or of disclosure or require a party to forego advantages flowing from the contract.⁹ In light of the facts in *Bhasin*, parties should also particularly consider the imposition of this duty in exercising any termination terminating any agreement.

Some other practical considerations that contracting parties will want to consider post-*Bhasin*:


1. Inclusion of a good faith provision in contracts

Parties may want to consider including a provision on good faith performance under their agreements. The Supreme Court is clear that because the duty of honesty in contractual performance is a general doctrine of contract law, parties cannot contract out of it.¹⁰ Therefore, an "Entire Agreement" clause or similar will not exclude parties from the application of the principle of good faith contractual performance. However, parties can likely establish their own standard of good faith performance and specific terms of honest contractual performance.

2. Increased litigation risk

At least in the short term, *Bhasin* may lead to increased litigation regarding the general organizing principle of good faith and the specific duty of honesty. While increased litigation will ultimately lead to further judicial consideration and development of these two concepts, it may also increase litigation risks for commercial parties. It may be prudent for parties to document the process by which they arrived at discretionary decisions and exercised contractual rights, including the manner in which they took into account the interests of other parties.

3. Reference to other jurisdictions

Until such time as these concepts are further defined and clarified in the common law, reference to both the commercial practice and jurisprudence from other jurisdictions that have recognized good faith contractual performance may be useful. In particular, reference may be had to the United States, where good faith in commercial contracts is explicitly recognized in the *Uniform Commercial Code*.¹¹ 

The authors would like to thank Heather Robertson for her assistance in co-authoring this article.

⁹ *Bhasin* at para 73.

¹⁰ *Bhasin* at para 75.

¹¹ *Uniform Commercial Code* at s. 1-302(b): The obligations of good faith, diligence, reasonableness, and care prescribed by [the Uniform Commercial Code] may not be disclaimed by agreement. The parties, by agreement, may determine the standards by which the performance of those obligations is to be measured if those standards are not manifestly unreasonable. Whenever [the Uniform Commercial Code] requires an action to be taken within a reasonable time, a time that is not manifestly unreasonable may be fixed by agreement.



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



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

Susan Billington, QC

By Ola Malik

We are delighted to introduce you to Susan Billington, QC

How do you measure the value of a career's worth of hard work on virtually every important policy matter which the Law Society has been involved in over the last 20 years? And even if you could, what honours or recognition would suffice? I can't think of a trophy or medal grand enough. Can you?

And that's the point. Those who choose to dedicate their careers to something bigger than themselves don't do it for praise or recognition but because it's the right thing to do. That's the unifying characteristic of everyone who has been featured in this profile over the years and it's equally true of Susan.

As many of you know, Susan has spent her career in the service of our profession. She is passionate about making our profession accessible to those who need our services, more inviting to younger lawyers who don't know whether this profession is right for them, and more open to our young female lawyers who are struggling with the difficult juggle of work and family.

Susan first caught the profession's attention when she authored a paper more than 20 years ago in which she explored ways in which the legal profession could be more accommodating of women. That launched her on a 20-year career with the Law Society of Alberta where she became instrumental in shaping much of what our profession looks like today.

From 1999-2009, Susan served on the Law Society's Pro Bono Committee which developed the framework for expanding the pro bono clinic structure to Edmonton, Red Deer, Grand Prairie and Lethbridge. And that work led to what has become one of Alberta's real gems, Pro Bono Law Alberta (PBLA), in which she served as founding Executive Director from 2007-2009. If you work or volunteer with any of Alberta's many pro bono clinics across the Province, remember Susan. She was a tireless champion for replicating the pro bono model that worked so well for Calgary Legal Guidance and expanding that model to smaller communities which required pro bono legal services.

Equally as important, from 1999 to 2007, Susan served as Project Director of the Western Law Societies Conveyancing Project which developed and implemented the Conveyancing Protocol which real estate practitioners use today. Susan also collaborated over the years with real estate practitioners and stakeholders across the province to ensure that the Land Titles system continues to modernize and remain as a publicly operated system.

Over the course of her career, Susan's contribution to the advancement of our profession has been deep and wide. She has developed codes of lawyer conduct for foreign nations, worked



Susan Billington, QC


with the Federation of Law Societies to develop common bar admission standards here at home, been a player in virtually every access to justice initiative in this Province and served on a number of Law Society committees which continue to shape our profession: the Limited Scope Retainer Working Group, the Family Law Stakeholders Working Group, the Alternative Delivery of Legal Services Committee, the Continuing Professional Development Committee, the Real Estate Practice Advisory Committee, the Multidisciplinary Practice Committee and the Retention and Re-engagement Task Force.

In 2008, Susan was appointed Queen's Counsel and in 2012, Susan was awarded the Women In Law Leadership Award by the Association of Women Lawyers and the Counsel Network in recognition of outstanding contribution to the community and the legal profession.

I have known and worked with Susan throughout my time as a lawyer. It had never crossed my mind that she would one day retire from the Law Society. She seemed ever-present, ethereal, ageless. For me, as for many of us, Susan has come to represent the Law Society on many of the most important and impactful policy matters which that organization had ever embarked on.

Not surprisingly, Susan is continuing her contributions to our community. She is serving as a mentor-in-residence and

coaching in the mooting and debating program at the U of C Faculty of Law, sitting as a municipal Councillor for the Kananaskis Improvement District, working as a professional facilitator/mediator, and as an appeal panel member for a professional regulatory body. You can find her at her new office at Billington Barristers.

Susan, you are a sparkling gem. You are a part of our profession's legacy, woven into its fabric. As a profession, we celebrate your achievements. You are an "unsung hero" -- and you represent some of the finest qualities of our profession. 

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

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

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



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

The Practice of Law: Then and Now

By Terrence A. Cooper, QC

When the working title for this article was first penned into the planning notes of the Editorial Board a year and a half ago the general theme of this edition of *Law Matters* was historical perspectives. The intention was for this article to discuss changes in the legal practice and how lawyers need to adapt to those changes.

It later became apparent that this topic had been subsumed in a major initiative being undertaken by the CBA. I am of course referring to the CBA's Legal Futures Initiative.

As that initiative will be the theme of a future edition of *Law Matters* we decided to use this article to give the reader a segue, introduction or simply some "food for thought" as you hear and read more about the Legal Futures Initiative in the weeks and months to come.

Unless you are planning to retire in the near future, you should have a keen interest in the future of the legal profession and the practice of law. The reality is that services we used to exclusively provide for clients are now been offered by others in a variety of ways that take advantage of innovation and technology and are driven by the competitive model of providing service at reduced costs. If we do not change and innovate we run the risk of becoming as relevant to the delivery of law related service as door to door delivery to Canada Post's business plan.

To discuss the changes in the legal profession and the practice of law we need a starting point. I had difficulty identifying a precise frame of reference. What exactly is the Practice of Law?

This is where I experienced a mini identity crisis. When I graduated from law school in 1980 and began my articles I had a clear understanding as to what the practice of law was. Lawyers:

- Represented clients in Court;
- Took instructions and prepared Wills;
- Negotiated and prepared contracts and resolved disputes over contracts;
- Provided advice to business clients, incorporated companies, drafted resolutions; and the list goes on.

In other words, I defined the practice of law by reference to the type of services provided by lawyers. For me the practice of law was what lawyers traditionally did.

Although I might find comfort that Black's definition of the "Practice of Law" would seem to support this approach, the reality is that the areas that were once considered "the practice of law" have been eroded significantly and that this trend will continue at an accelerated rate in to the future. Defining the

practice of law by making a list of what lawyers do would be an error.

In 1979 Mr. Justice MacDermid in discussing how to determine determining whether an activity feel within the practice of law said:

[T]his is the test, considering what the person has done can it be said that such should only be done by members of the legal profession in order that the public be adequately protected from acts by unqualified persons.

This does not provide a static definition but a fluid one that can change as circumstances change.

A speaker at a CLE conference I once attended, in describing the practice of law, said: Lawyers do two things; we help clients avoid disputes and we help clients resolve disputes. The question is: Are we now the only ones capable of doing this? Our clients don't seem to think so. Mortgages are being registered by title

insurance companies, people are getting wills prepared online, "legal agents" are appearing in courts, registry offices are incorporating companies, "paralegals" are processing divorces, and mediators are helping negotiate settlements of family law disputes.

In 1980, when I began articling, the tools needed for dispute resolution and dispute avoidance were largely controlled by the legal profession. Since then new tools and techniques have been developed. Although lawyers

can make use of these new tools we no longer have a monopoly over them and may be hard pressed to argue that we are the only qualified practitioners to wield those tools.

The consequence is that services that we would have previously considered as falling clearly within the practice of law are now being provided by other individuals. The list of those services that should only be provided by lawyers to ensure the public is "adequately protected from unqualified persons" is ever shrinking. We no longer have a monopoly over many services that we provide.

This is important to recognize as we go forward to discuss the future of the legal profession. Our profession needs to evolve but our law societies need to evolve as well.

Why? The law societies regulate their members. Only an active member is allowed to practice as a Barrister and Solicitor. However, law societies do not only regulate us when we provide services that no one else can provide. They regulates us when we provide services related to the law which are no longer exclusively the within the "practice of law".

HOW DO WE BRING
INNOVATION
to the LEGAL
PROFESSION?


continued from p.8

As we move forward to consider and develop alternative methods of delivering legal services to clients which could involve lawyers working with non-lawyers in the delivery of those services it is important that the law societies' jurisdictions extend beyond lawyers to include non-lawyers who are appearing in Courts for clients, assisting clients in the conduct of litigation, preparing pleadings or papers for clients, conveyancing, preparing legal instruments or any kind or giving any form of legal advice (i.e. providing legal services or services relating to the law if they are not "practicing law").

If this does not occur then the lawyer who provides these services to a client will be at a competitive disadvantage to the non-lawyer who is unregulated and does not have the obligations, responsibilities, and overhead which the Law Society places on its members. More importantly, from the perspective of protecting the public, the rules that apply to us and which have been developed to protect the public must extend to others providing legal services especially if those services are being provided through some connection with a lawyer or law firm.

Our failure to act on this could have disastrous results for us and our profession.

When we provide legal services with non-lawyers we indirectly provide them with credibility and "legal trappings". Before we embrace this concept we need to ensure that they are subject to the same rules and ethical standards we adhere to. My concern is not just about protecting our turf. I am concerned about protecting the public, the consumers of legal services.

Tomorrow begins the future of the "Legal Profession". It is hoped that you, the reader, will become involved in the discussion and that as we adapt to the changes we are facing our law societies do as well. 



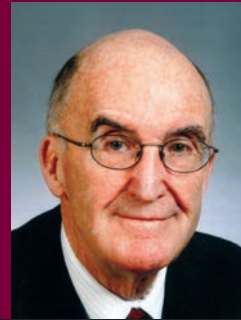
An excellent starting point is the CBA futures website at www.cbafutures.org. That site contains a number of insightful and informative reports of the work the CBA is undertaking. It also hosts forums that invite you to participate in the discussion on Twitter and there are a number of resources that have been developed to assist lawyers in adapting to changes in the legal profession. The resources are only available to CBA members and therefore if you are not yet a member of the CBA this is a good reason to join. Membership does indeed have its advantages. T. Cooper



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

www.cba-alberta.org

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.



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History and the Law: Entwined, Entangled, Entrapped?

By Geoff Ellwand

In 1992 the American academic and philosopher, Francis Fukuyama, provocatively wrote that in the western democracies we had reached “the end of history”. He was not arguing that nothing new would happen but rather that ideologically, liberal democracy had reached a form of perfection. (For a readable summary of the ensuing debate see *The Guardian* and a recent article by Eliane Glaser: <http://www.theguardian.com/books/2014/mar/21/bring-back-ideology-fukuyama-end-history-25-years-on>) But a lot has happened ideologically and otherwise since 1992 and you might say that now Professor Fukuyama’s idea is well... history.

Just consider the law and its intimate connection with the past.

Edward Greenspan, the great Canadian criminal lawyer, who died late last year was a famously busy man. Yet, in spite of his prodigious case load he spent a lot of time telling stories about Canadian justice on radio, television and in print. As he suggested in an introduction to a friend’s book (*Raw Life, Cameos of 1894, Justice from a Magistrate’s Bench Book*, J. Patrick Boyer), legal history appealed to his sense of humanity. The book details the sometimes rough justice delivered in small town 19th Century Ontario. However, many of the crimes from that day are not much different from those that appear on any modern docket, which led Greenspan to observe: “...while we may progress with our technology and civilization, the human experience from generation to generation remains a timeless bond”.

The law is all about human experience. Lawyers and judges whether they care about history or not, whether they labour in the civil or criminal field, whether they are prosecutors or defence, whether they appear before the bench, or sit on it, all work in the factory of law where history, both recent and distance form the basis of all their work.

Consider the *Magna Carta*, one version of which will be visiting Alberta (the Legislative Building, Edmonton November 23 - December 29, 2015) and other parts of Canada this year on the 800th anniversary of its original signing. While it stretches back eight centuries it is still the foundation of such fundamental liberties as freedom from arbitrary detention, jury trials and the right of women not to be forcibly married.

Think back to law school and all that we once knew about the roots of our profession. Revel in the memory of law professors’ favourites such as: *Carlill v Carbolic Smoke Bll Co* [1892] on truth in advertising; *Donoghue v Stevenson*, the 1932 snail in a bottle case that helped establish (among other things) a manufacturer’s duty of care to a buyer; or *Pierson v. Post* [1805] the classic on the possession of a pursued wild animal; or *Rylands v Fletcher* [1868] on tort, or *Salomon v Salomon* [1897] on limited liability.

I could go on.

The point is, our profession is founded and importantly relies upon the past. In civil law property transactions, from a simple house purchase to a complex multi-million dollar corporate deal owe their certainty to precedent, in other words to history. Criminal cases demand respect for the ancient common law rights and freedoms, now *Charter*-protected, of every individual. Within the context of protected rights and the requirement of proof beyond reasonable doubt it can be argued that the criminal courts especially deal with history every day. It is in the criminal courts that the sometimes vague, confusing and disputed accounts of the recent past are analyzed and judged. The court is dealing with the recent past, certainly, but those possibly criminal events are still in the past, and as such they are a form of history.

Consider also the history behind the *Criminal Code of Canada*, the foundation of our modern criminal justice system. The Romans codified their laws as did the French, the Germans and many other European nations each in their own way. But the Brits struggled unsuccessfully from the mid-1500s to shoehorn the Common Law into a code. While it never happened in England, a great deal of groundwork on codification was done by English jurists, Parliamentarians and academics. Largely as a result of their work Canada - rather surprisingly in London’s view - created and in 1892 adopted its own criminal code. As Desmond Brown observes in his book *The Genesis of the Canadian Criminal Code of 1892* it accomplished “the amelioration and systemization of the cruel, capricious, and obscure criminal law by a process of substantive amendment and codification.”

Today the criminal bar, the Crown and the Bench rely on the historic, though frequently amended *Criminal Code*. It is the *Code* and the resulting body of exclusive Canadian case law which along with the *Charter* is used to prosecute, defend and adjudicate criminal law in this country.

The very idea of history and the theoretical and scientific changes which have shaped the modern concept of history



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are paralleled by similar developments in the investigation and prosecution of crime.

In the western tradition, written history can be traced to the Greeks. Most notably perhaps to Thucydides who around 400 BCE wrote a reasonably balanced account of the Peloponnesian War between Athens and Sparta in which he took part. The battle scenes are still vivid and highly readable. The next major critical development in the western tradition of writing history (the historians among you will no doubt quibble) was the work of the 19th century German philosopher Leopold von Ranke. He argued historians must "prove" their assertions by providing documentary or other evidence in support of their arguments. It was a development which imposed the sheen of scientific inquiry on what had largely become the art form of writing history. The same thing was happening in other areas of philosophical, scientific and spiritual inquiry. Most dramatically perhaps was Charles Darwin's explosive publication in 1859 of *The Origin of Species*.

Science also began to gain persuasive momentum in the world of the law. As courts wrestled with trying to determine exactly what happened they increasingly relied on scientifically, or at least systematically gathered physical evidence rather than primarily viva voce testimony. Forensic science was on the rise. Fingerprinting, mug shots, blood typing, bite marks and other scientific and surgical investigations became increasingly common and sophisticated and helped police develop evidence that could assist prosecutors, or perhaps even clear suspects.

In a sense those first forensic scientists were modern historians. They were using the scientific method to discover with some degree of certainty what happened in the past. Forensic science is a now indispensable window into what occurs behind closed doors, or without living or cooperative witnesses.

Even lawmakers, who seek to craft laws that will have future utility, depend on past experience to make those new laws as useful and watertight as possible. Productive lawmaking, effective law enforcement, and the testing of those laws in the street and in the courtroom are all part of an historical continuum.

Of course these examples raise the thorny philosophical question, especially when it comes to the law, are we prisoners of the past or beneficiaries of the creative application of a body of historical knowledge? In 1926, Benjamin Cardozo who was to become Associate Chief Justice of the US Supreme Court tackled that issue in a slim but still relevant little volume called *The Nature of the Judicial Process* (available in most law libraries). He was a man of generally liberal sentiment, though appointed by a Republican. Cardozo wrote "I do not mean that the directive force of history, even where its claims are most assertive, confines the law of the future to uninspired repetition of the law of the present and the past. I mean simply that history, in illuminating the past, illuminates the present, and in illuminating the present, illuminates the future."

It is my position that history is not dead nor has ideological perfection been achieved. History remains vibrantly alive especially within our legal system. A system which continues to evolve based on both the distant and immediate past. It is a system which embodies our society's historical commitment, however imperfect, to regulate our affairs in a demonstrably just and reasonable way. 🗣️



Geoff Ellwand is a Calgary criminal lawyer with an MA in history. A former CBC reporter he continues to write about the law and history. He recently had an article published in the *Saskatchewan Law Review* about Canada's most famous handwritten will.

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Otto Rogers (b. 1935)
Untitled, 1985
Acrylic on Paper
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Provenance: Paul Kuhn Gallery

A Brief Overview of the Last Four Decades

By Virginia May, QC

We are all part of history as we live our own lives. As you get older, you identify with historical trends in the decades behind you.

I am trying to identify with those trends in relation to women in law in Alberta between 1974, when I came to Canada, and 2015.

Immigrating to Calgary from England in 1974, I found that a new law school was to open at the University of Calgary in 1976. My impossible dream in England to be a barrister could be fulfilled. There were only a handful of women barristers in England, and they all came, unlike me, from privileged families.

Calgary seemed like a haven of equality. I saw no barriers. I started law school in 1977, and by 1980, I was able to practice as a barrister.

Now, in 2015 as a retired litigator and teacher, I want to review the period of time from the late 1970's up to the present day. In the last five years I have been Mentor in Residence at the University of Calgary Faculty of Law, helping Calgary graduates, men and women, find articles.

There has been a huge growth in the involvement of women at all levels in the legal and business community in Alberta and, particularly, Calgary between 1979 and 2015.

There is absolutely no comparison to when I first started practice.

When the University of Calgary Faculty of Law opened in 1976, the school had no reputation. Graduates started to appear in 1979. The school was then considered by downtown Calgary and other law schools as more practical and less traditional than schools like Dalhousie and Toronto.

Calgary law firms remained a little suspicious in the first few years of Calgary's students. Not enough black letter law taught, and so many women graduating. And so many women teachers at the law school, include at least three or four female deans of the Faculty of Law.

There was a whisper of "Feminism", that bad F-word out there.

Very different now, as the various fundraising campaigns have shown.

How strange that now women from the University of Calgary Faculty of Law have gone on to be Court of Appeal Justices, Queen's Bench Justices, Provincial Court Judges, senior counsel and owners of law firms, and become senior partners in the so called "big firms". They work in the corridors of the United Nations.

You don't really hear the feminism word anymore. The men

who used it as a negative word now have daughters high up in the legal profession.

But it did not happen overnight, and it was not easy and it is not yet an equal world for women.

When I first started practicing at Burnet Duckworth & Palmer LLP in 1980, there were two women partners. One became a judge, and one moved into senior ranks in a corporation. When I left Burnet Duckworth & Palmer in 1994 to set up my own firm, I was a partner among four other female partners, yet the firm had quadrupled in size and many articling students were women over the years. Many women seemed to have dropped out early on.

Now in the 21st century, statistics for women in senior spots in the big firms are better, but not good enough.

So questions still remain.

Where have the women gone who dropped out of practice altogether?

My answer is as follows.

They remain educated as lawyers and often, after taking time out, they reappear as educators, politicians and entrepreneurs in our community of Alberta.

They raise their kids to follow the same higher education path. They bury their parents. They become the backbone of charity organizations and come back into law in some manner, understanding why rules of law were not actually developed to make the biggest profit as a downtown law business, but to be a service industry with rules to enable us to relate to one another as fellow community members and members of society.

Why are fewer women made partners in big firms?

The reference to the big firms is to fifteen or twenty large international and national firms in the province. That is where the difference between women and men in number of partners is still most obvious. The difference is much less than it used to be because there is more recognition of the need to accommodate women for having and raising families and an acknowledgement of their quality as lawyers.

Satisfaction in the practice of law comes from the way a lawyer's client feels about the service received.

The traditional answer given to me when I first practiced was that the Calgary businessman was not used to dealing with female lawyers on big corporate matters and pieces of litigation involving millions.

You do not hear that said anymore. The business people

SPOTLIGHT ON THE CBA RETHINK

Five Ws with Project Manager Cathy Cummings: On November 1, the CBA began a major project that will examine the association from its roots to its tips to determine why it exists - What does it do? What does it no longer need to do? What does it need to do better? For the who, what, where, when and why of the CBA ReThink, we talked to Project Manager Cathy Cummings. For more information, visit <http://www.cba.org/cba/newsletters-eneews/2014-articles/12-rethink.aspx>.

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CONSULTATION OPEN ON DRAFT JOINT POLICY STATEMENT ON AUDIT INQUIRIES

The CBA has concluded its negotiations with the Auditing and Assurance Standards Board to update the Joint Policy Statement on Audit Inquiries (JPS). Read the proposed draft and an explanatory memo (<http://www.cba.org/CBA/jointpolicystatement/main/>). Among the changes are inclusion of in-house counsel in the scope of the JPS, recognizing the expanded role of corporate counsel in client matters. Also, the new JPS does not require lawyers to consider the applicable financial reporting framework when responding to an audit inquiry. Please take the time to review the material and provide your comments to epii@cba.org.

continued from p.12

are often women themselves. Practice has shown that competency and the ability to make money are not sex-related assets.

The quality of women lawyers has been proven. Women, like me, have opened their own firms, become senior counsel and advisors in major firms across the province, and been selected to sit on the bench as judges in great numbers. The Chief Justice of the Court of Appeal of Alberta is a woman, and there are many women behind her.

In 1980, I believe Mary Hetherington was the only female justice on the Court of Queen's Bench.

Many women head up the recruiting and training sections of big firms. Women fill many of the lead spots in the public service legal world.

In the big firms, the excuse about fewer women partners often is that women do not market will and bring in as much work as men.

Women do drop out of the big firms because the required time commitment is very hard for women to match whilst raising children, working hard for clients and being involved in firm marketing and business plans. The big firms provide a great reputation for this province and its business community, but they do not work for everyone as a work environment of comfort.

CBA INTERNATIONAL INITIATIVES - THE 2014 SAJCEA REGIONAL CONFERENCE

CBA International Initiatives is in the second full year of its Supporting Access to Justice for Children and Youth in East Africa project. Its second annual regional conference, in Dar Es Salaam in November, drew a cross-section of governmental and civil society partners from the three project countries. Read more at <http://www.cba.org/cba/newsletters-eneews/2014-articles/12-international.aspx>.

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CBA TOOLS

Pandemics and the Workplace: A Resource for Lawyers

The CBA's National Labour and Employment Law Section has created a pandemic preparedness resource guide entitled *Pandemics and the Workplace: A Resource for Lawyers* (available online exclusively to CBA members at http://www.cba.org/CBA/sections_Labour/main/Pandemic_Resource_Guide.aspx) to address the key questions for employers and employees and institutions providing health care.

Evaluating Law Firms' Ethical Practices

Do you use the CBA Ethical Practices Self-Evaluation Tool (<http://www.cba.org/CBA/activities/pdf/ethicalselfevaluation-e.pdf>) or other means for assessing the ethical infrastructure of your firm? Take a moment to let us know if your firm is using it, or some other means for ensuring its professional and ethical obligations are met by completing this survey: <https://www.surveymonkey.com/s/Eltool>.


There is now, however, a mature enough business world in Alberta for women to set their own measure of success by choosing a work environment that works for them individually.

Their own success as lawyers over the last four decades has given them that right.

Throughout Alberta, there are many other great law firms of medium and small size to work in outside downtown Calgary's big firms, and many corporations and services that need lawyers.

There are four hundred small and medium size firms in Calgary alone. Or, start your own law firm, set your own standards and be your own senior partner.

Women can make their own yardstick of success, which should always include good quality work for the client, supportive colleagues, solid income goals and mentor availability when required.

Women have earned the right to stretch the profession to meet their own needs. 



Virginia May, QC currently practices independently as a mediator and arbitrator. She is a former Bencher with the Law Society of Alberta and continues to mentor young professionals. In her free time, Virginia is an accomplished painter, and donates a number of her pieces to charity.

FRONT AND CENTRE

Alberta Law Conference 2015 & January Meeting of Council



Branch Presidents attend the January meeting of Council (l to r) Gail Wartman, QC (CBA SK), Sofia Mirza (CBA MB), Alex Shorten (CBA BC), Heather Innes (CCCA), Steve Mandziuk, QC



ALC 2015 organizing committee co-chairs Jessica Buckwold (l) and Michael Kraus, QC (r) with Steve Mandziuk, QC



2014 Distinguished Service Awards (l to r) Kevin Feth, QC, Bruce Churchill-Smith, QC, Hersh Edward Wolch, QC, Peter Wong, QC, Steve Mandziuk, QC



2015 Cecilia Johnstone Award winner Gillian D. Marriott, QC, with Ola Malik (l) and Steve Mandziuk, QC (r)



University of Alberta Faculty of Law Dean Paul Paton presents "Lawyering in the Future: Where are we headed?"



Our lovely hostess for the duration of ALC 2015, Smudge, the official hotel dog of the Fairmont Hotel Macdonald

President's Dinner



(l to r) Maddi Mandziuk, CBA Alberta President Steve Mandziuk, QC, Nicholas Mandziuk, Josie Burgess-Mandziuk
Photo: Monique de St. Croix (www.uniqueperspectives.ca)



Steve Mandziuk, QC and The Hon. Chief Justice Neil C. Wittmann
Photo: Monique de St. Croix (www.uniqueperspectives.ca)

FRONT AND CENTRE

Meanwhile, in Edmonton...



Junior Lawyers 'Meet the Bench' reception (November 3, 2014)
(l to r) Kathryn Rogers, The Hon. Chief Justice Catherine Fraser



Junior Lawyers 'Meet the Bench' reception (November 3, 2014)
(l to r) Terrance Meyers, The Hon. Mr. Justice Brown, Agnieszka Kopacz



Inns of Court (November 19, 2014)
(l to r) Judge J.L. Skitsko, Assistant Chief Judge J.M. Filice, Denise Harwardt, Murray Engelking and Frank Friesacher



U of A Law Students Mentor Reception (January 20, 2015)
(l to r) Siwei Chen, Deidre Fleming, George Wong, Ben Young, Carrie Koperski, Lyndsay Butlin

ALBERTA BRANCH NEWS

ANNOUNCING NEW MEMBER SAVINGS PARTNER



We are excited to announce that the YMCA has come on as a new member savings partner for the Alberta Branch. This partnership allows our members to save up to 10% on their monthly YMCA fees, an offer which also extends to immediate family members. This offer is currently valid at any YMCA location in Calgary (5 locations), Edmonton (4 locations), or Fort McMurray/Wood Buffalo with information on savings in other locations coming soon!

Edmonton (4 locations), or Fort McMurray/Wood Buffalo with information on savings in other locations coming soon!

This offer is valid for all current and new YMCA members. In order to activate your savings, visit any YMCA location in Calgary, Edmonton or Fort McMurray and present your CBA membership card.

For more details on this partnership, visit <http://www.cba-alberta.org/Membership/Savings.aspx>.

2015 CBA LEGAL CONFERENCE

The Alberta Branch is excited to welcome CBA members from across Canada to Calgary, August 14 - 16, 2015 for the national CBA Legal Conference. 2015 marks the first year of the revamped conference schedule, including more interactive PD sessions, and exciting networking opportunities for all attendees.

Registration will be open soon. Visit www.cba.org for more details and watch for further details to arrive via email.

2014-15 SECTION REGISTRATION

If you haven't yet registered for your 2014-15 sections, it is not too late! Our North and South sections have busy calendars of programming that is scheduled through the end of June. Section meetings are an excellent way to meet your individual professional development goals, with recent speakers including Court of Queen's Bench Chief Justice Wittmann and CBA Alberta past president and Provincial Court Assistant Chief Judge O'Gorman. The Alberta Branch offers a total of 71 sections out of our north and south offices, with over 500 meetings per year. We also offer 34 webcasted sections, which are available to those members practicing outside of Calgary or Edmonton.

For more information on sections, or to view upcoming PD opportunities, visit <http://www.cba-alberta.org/Sections.aspx>.

CBA ALBERTA LEGAL DIRECTORY

The 2014-15 Alberta Legal Directory is still available for purchase. This comprehensive resource includes listings of lawyers and law firms within and outside of Alberta. It also features complete listings of members of the Alberta judiciary, listings for regional courts and court services, as well as other legal services around the province.

New in 2014-15 is the introduction of our online legal directory. Search Alberta lawyers by name, location, or area of practice. The online directory also includes complete listings of firms, courts and court services. For more information, or to order, visit <http://www.cba-alberta.org/Publications/Directory.aspx>.

ALC 2015 - Keeping Current, Getting Better

By Lee-Anne Wright

At the 2015 Alberta Law Conference, the health of the profession was a theme that ran throughout two days of programming on January 29 and 30. Different speakers focused not only on the health of the profession as a whole, but also on the health of professionals delivering legal services. We were privileged to be joined by a wide range of speakers, from legal academics, experienced legal professionals, members of the judiciary from two levels of Alberta courts, and non-legal professionals speaking to attendees on areas such as health and wellness, and building a successful practice.

The conference began with the introduction of a new Thursday morning session – this year, featuring the Honourable Jonathan Denis, QC, Minister of Justice and Solicitor General and Dean Paul Paton of the University of Alberta Faculty of Law. Minister Denis treated the room to an overview of the current state of the profession in Alberta, discussing such issues as the shortage of Court of Queen’s Bench Justices and commitments to legal aid funding. Both are issues that the CBA Alberta Branch and Alberta Justice have, and will continue to, work on closely together. Dean Paton led a discussion on the future of the profession, where he spoke on alternative business structures, alternative delivery methods for legal services, and the lawyers’ responsibility to the public in the facing of changing demand for legal services.

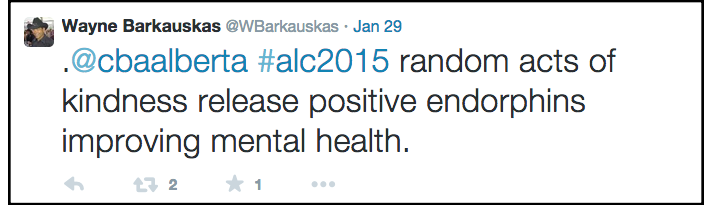
“The quality of this conference makes me want to come back year after year.”
- ALC 2015 attendee



The Law Society of Alberta wrapped up the first morning of professional development with “Changing the Conversation: Alternative Business Structures”, at the “LSA Café”, led by barrister barista, Law Society President-Elect James Eamon, QC. This interactive session saw Law Society facilitators engage in round-table discussions with attendees about innovation in the legal profession.

Two outstanding plenary presentations on mental health in the legal profession were delivered by Professor Marilyn Poitras of the University of Saskatchewan College of Law, and by Dr. Stephen Carter Ph.D., a well-respected psychologist. Professor Poitras gave her popular “Law and Happiness 101” lecture, which focuses on the quest for a healthy justice system through a look at the mental health of the justice worker. Professor Poitras’ advice to improving mental health included participating in random acts of kindness, taking 5 minutes to

meditate and “listen to yourself”, and to give yourself greater flexibility and choice in your practice.



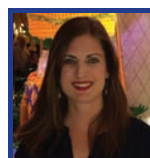
Dr. Carter focused on issues of stress and burnout, which are extremely common in the legal profession. Prior to the conference, he took an informal survey of CBA Alberta members, asking them questions such as how they would rate their stress, and what stressful situations (i.e. client emergencies) they had experienced recently. Dr. Carter used this information to assist conference attendees with handling the challenges of the profession that lead to stress.

Outside of the plenary presentations, eleven professional development sessions were offered over the course of the conference. Our excellent conference planning committee delivered sessions which were relevant to the profession as a whole, such as “Building, Maintaining and Transitioning a Successful Practice”, and sessions that were specific to one’s practice area, with current topics and recent decisions in family law, labour and employment, and criminal law to name a few. We were pleased to have excellent attendance at all sessions, and received overwhelmingly positive feedback from attendees.



The highlight of the Alberta Law Conference is always the opportunity it gives us to recognize the contributions of members of the legal profession in Alberta. In addition to the annual Distinguished Service Awards, presented with the Law Society of Alberta, the CBA Alberta Branch also presented the Cecilia Johnstone Award for Outstanding Service to our own past president, Gillian Marriott, QC (see photos on p.14). Our congratulations and thanks go to all of the award winners for their contributions, which go above and beyond in the profession.

Thank you to all who gave their time to make this conference a success, and to those who attended this year. We look forward to offering another excellent conference again in 2016 - mark your calendars for January 28 and 29 in Calgary. 📅



Lee-Anne Wright is the Communications & Marketing Specialist at the CBA Alberta Branch. Prior to joining the CBA, Lee-Anne worked in the charity sector for Habitat for Humanity Southern Alberta.

A History of Fitness

By Marnie Lusis

In honour of the 100th anniversary of the CBA Alberta Branch, this edition of Health Matters will revisit the exercises that were popular in the 1910's, and how they are still well suited to the present. Quite often, what is popular today is a revival of a previous trend. This is well documented in fashion, food, and design, with fitness being no exception. Just as wide-leg pants, duck confit, and mid-century modern are enjoying a revival, the fitness trends today are comprised of classic exercises that were popular long before Cross Fit and yoga-spin classes were available in every neighbourhood.

1910's work out regimes may conjure up sepia-toned images in your mind of rows of athletes in matching knee-high socks doing simple movements like jumping jacks, torso twists, toe-touches and sit ups. One of the most popular programs at this time was developed by J.P. Müller, a Danish athlete and engineer. In 1904 he published a book called "My System", the regime involved similar movements, plenty of water, rest, and limited consumption of alcohol and cigarettes. His system swept across Europe and North America, and remains one of the most popular and widely published fitness books.

Müller's philosophy towards exercise was simple: every day one should have his or her body set in brisk motion. Müller's routine took fifteen minutes and involved deep breathing, forward bends, arm circles, torso twists, knee raises, push ups, leg swings, sit ups, and lunges. Over a six-week period, the routines became more challenging in endurance and movements. The program focused on cardiovascular conditioning, core stability training, and flexibility. As a regular gym-goer, these three things remain the focus of almost every trainer's philosophy, fitness class, and physiotherapist visit I have experienced.

Recently, I, and likely many others, have been paying a personal trainer to put together work out routines that require nothing more than a timer, a mat and a low bench. My latest work out program could have been ripped right from Müller's book: jumping jacks, push-ups, walking lunges, planks, and sit-ups. My routine has gone from requiring multiple weights, resistance bands, balance boards, and complicated movements (not to mention well over an hour) to needing only half a hour and a small amount of space. The short time commitment also means it is less tempting to sacrifice these work outs on busy days.

Not many people, especially busy lawyers, are able to spend two hours at the gym each day, or attend a three o'clock afternoon aerobics class. Time is at a premium more than ever before, and the fitness industry has recognized this. The hour-long step aerobics classes of the 80's and 90's have given way to gyms that offer express classes at lunch time, outdoor boot-camps, and endless exercise routines that are 10 minutes or less on YouTube. Programs like P90X, Cross Fit, and celebrity trainers like Jillian Michaels utilize basic bodyweight exercises as the foundation for their programs instead of complicated aerobics routines or intimidating amounts of equipment. Most of these new work outs all have similar characteristics: body weight exercises, cardiovascular conditioning, core stability training, and improving flexibility, the very same principals from the 1900's.

In addition to the simplicity of these routines, research has shown that functional movement warm ups (leg swings, knee-ups, walking lunges, and torso twists) provide a better overall warm up for your body than spending an equivalent amount of time on an elliptical machine or treadmill. These movements challenge your core stability, increase circulation, improve flexibility, and most importantly, help prevent injury.

Like all resurgences in trends, there is always improvement on the second, or third, time it resurfaces. For example, the popularity of Tabata sprints and High Intensity Interval Training ("HIIT") take a basic exercise, like push-ups, and rather than just performing repetitions until you reach a certain number, the goal is to perform as many (with correct form) as possible in a short time period followed by a small rest period (just enough time to reduce your heart rate), over a series of intervals. Or, you combine a group of four exercises (say, jumping jacks, sit ups, lunges, and push ups) and perform each exercise for thirty seconds then immediately start the next exercise, only stopping for a rest when you have worked through the whole circuit. This creates a high-intensity program from basic exercises.

Now, this article is not suggesting that you abandon your favourite exercise class and adopt the exact regime that your grandfather or great grandfather may have practiced. The point is, these "back to basics" exercises are oldies but goodies, and the work outs can be anything but basic. Functional movement and body-weight routines remain the easiest, fastest, and most inexpensive way to work out. These work outs can be just as easily done in your living room, the park, or perhaps even behind the closed door of your office. So, as an update on a few one-hundred year old classics, try bringing your grandfather's routine into 2015 by adding bodyweight exercises into your current program, or spend a few extra minutes at the end of your day to stretch. Remember that setting your body into brisk motion can mean anything from a quick walk at lunch, a few calisthenics, and playing with pets or children, no gym required. 🏃‍♀️



Marnie Lusis is an associate with Shea Nerland Calnan LLP in the firm's Business Law Group and her practice focuses on all aspects of business law and securities law with an emphasis on mergers and acquisitions, private placements, and qualifying transactions.



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Taking the Bull By the Horns: Addressing Gaps in Calgary's Legal Market

Across the country more than 50% of lawyers graduating from law schools are women, yet they represent only 37% of practicing lawyers. According to the Federation of Law Societies of Canada, the majority of lawyers who have been in practice five years or less are women. But, instead of moving up the ranks many are leaving. With this trend research suggests that at present rates women would not reach parity with men in law firms until at least 2088.

This discouraging trend does not have to be a reality in Calgary, so let's talk about what we can do to change it.

The Young Women Lawyers Group encourages young women's continued engagement in the practice of law and seeks to provide a support system that may help prevent them from disappearing from practice altogether.

The Young Women Lawyers Group is about engaging in discussions to tackle the tough questions facing young women in law but also to talk about the success stories, the embarrassing moments and the impact young women in law are and can have. It's about learning together and inspiring confidence in one another to create a community of young female lawyers in Calgary. Getting to know each other, building peer mentorships and getting exposed to exciting opportunities within Calgary for personal and professional development with a side of toast and eggs.

The Association of Women Lawyers ("AWL") in Calgary has served as a launch pad for the Young Women Lawyers Group providing us with the support and funding for the initiative. The AWL is a natural partner as they have developed expertise as a successful women-only legal group. A former President of the AWL told us that "women are different from men" so naturally the challenges women face are different from men and these challenges evolve as women develop their practice.

A lesson learned from the AWL membership that has remained in the practice of the law is that they depended on peers and mentorship groups during their critical early years to help find their passion and balance their many obligations in a positive way. The Young Women Lawyers Group fills this gap, uniting young women in law together during the exponential learning process of 5 years post call.

Our first sold-out event was held in a private room at Craft Beer Market. The informal and casual setting built what we believe is circle of trust. We engaged in a discussion about confidence. Why is it that women apply for a job when they are 100% qualified while men apply for that same job when they are 65% qualified?

By Noren Hirani and Danica Doucette-Preville

The Honourable Madam Justice Rosemary Nation from the Court of Queen's Bench talked about how confidence impacted her career progression from a big law firm to a meaningful career on the bench. She left us with some precious gems inspiring us to be true to ourselves. Barbara Cotton, Founder of Bottom Line Research and Communications, spoke of her unique practice as a consultant lawyer and the need to foster confidence over time. Robyn Gurofsky, Partner at BLG, shared her personal and professional appreciation of what being confident means to her.

Justice Nation urged all of us to develop, nurture and strengthen relationships with key people that could be our sounding boards, confidantes and our greatest supporters. This is in essence what the Young Women Lawyers Group seeks to foster.

By meeting regularly for brunch, sharing stories, having frank discussions, learning about interesting issues relevant to us and most importantly, advocating for each other, we could change the statistics in Calgary.

The next event will take place in February, 2015, details of which will be posted on the AWL website. For further information please contact either one of us at noren.hirani@albertacourts.ca or danica.dp@gowlings.com.



Noren Hirani is a student-at-law with Alberta Court of Appeal in Calgary. She is a graduate from the bilingual JD from University of Ottawa, and holds an MSc in Organic Chemistry and a BSc in Biopharmaceutical Science. Noren is a Director on the Association of Women Lawyers (Calgary).



Danica Doucette-Preville is a student-at-law with Gowlings Lafleur Henderson LLP in Calgary. She is a graduate from the bilingual JD from the University of Ottawa. Danica previously worked for over 8 years at the Department of Foreign Affairs, Trade and Development in Ottawa. Danica is a Director on the Association of Women Lawyers (Calgary).

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Helping Self-Represented Litigants

By Gillian D. Marriott, QC and Kendall Moholityn

The navigation of Alberta's court system can be daunting for self-represented litigants. As part of its mandate to increase access to justice in Alberta, Pro Bono Law Alberta (PBLA) has developed two court-based programs in partnership with Pro Bono Students Canada (PBSC) and Student Legal Assistance, in both Provincial Court (PC) and the Court of Queen's Bench (QB) to assist Albertans with court matters.

Civil Claims Duty Counsel (CCDC)

Since 2011, volunteer lawyers have been providing advice and assistance to self-represented litigants in the Provincial Court, Civil Division in Calgary, and in Edmonton since 2012. Volunteer lawyers provide advice about court procedures, assist individuals with claims and other court documents, and sometimes appear in Provincial Court with self-represented litigants. Law students with Pro Bono Students Canada (PBSC) in both Edmonton and Calgary participate in the program by providing triage of clients, initial client interviews and assistance to volunteer lawyers. PBSC students gain valuable experience and mentoring opportunities.

CCDC runs half-day shifts every day from Monday afternoon to Friday afternoon in Calgary, from three offices located on the 15th Floor of the Calgary Court Centre, South Tower. In Edmonton, CCDC runs Tuesdays, Wednesdays, and Thursdays, with offices located on the 2nd floor of the Provincial Court section of the Edmonton Law Courts. Currently there are 12 firms participating in Edmonton and 15 participating in Calgary, but individual lawyers from other firms also volunteer with the CCDC program.

In 2014, CCDC assisted 2400 self-represented litigants with civil matters in Provincial Court both Edmonton and Calgary.

Queen's Bench Amicus (QB Amicus)

The QB Amicus project is designed to provide better access to legal services for self-represented individuals with matters in Queen's Bench Masters and Justice Chambers. The project has been running in Calgary since October 2013, and assisted 1300 self-represented litigants in 2014. Volunteer lawyers serve multiple roles as amicus curiae (friend of the court) – to assist the individual in understanding court processes and procedures; to assist the court in understanding the issues raised and positions taken by the self-represented litigant; and, ultimately, to make the court less mysterious to members of the public and more efficient for members of the legal community. The program is a collaborative one, with strong partnerships between 11 law firms, bankruptcy trustees, PBSC law students, articling students from Student Legal Assistance (SLA) and Children's Legal Resource & Education Centre (CLERC), the court clerks and the Bench.


QB Amicus currently provides amicus in-court assistance to self-represented litigants in Masters, Justice and Bankruptcy chambers in Calgary on Tuesday, Wednesday and Thursday mornings. QB Amicus also provides "storefront" assistance from its office located at Room 8-49 North in the Calgary

Court Centre on Tuesday, Wednesday and Thursday afternoons. On the afternoon shifts, self-represented litigants are provided assistance with document preparation, summary legal advice, and education on court processes and procedures. QB Amicus also provides onward referrals and other legal information to the public, and is designed to raise knowledge and build an individual's capacity to understand the legal issues and court processes involved in his or her matter.

PBLA is looking at the possibility of implementing QB Amicus in Edmonton starting in March 2015 as a pilot project.

Benefits of Court-Based Programs

Both the CCDC and QB Amicus programs provide self-represented litigants assistance with civil matters to increase their knowledge and understanding of court procedures and their substantive legal issues. One self-represented litigant stated, "Duty counsel was able to give me and my 3 kids an extra week to vacate my rental property. I am extremely grateful and ecstatic with the result. Thank you!" Another self-representative stated, "I really had been losing faith in the legal system and did not think much of lawyers. You guys today really turned me around."

Court-based programs also benefit lawyers, students and the legal system as a whole. Court-based programs offer opportunities for lawyers and students to participate in courtroom advocacy in a positive environment, and to gain experience in client interviewing. Participation in court-based pro bono is beneficial for overall professional development, mentoring, networking, building collegiality, and enhancing the public image of the legal profession. Court-based assistance to self-represented litigants also assists the court by facilitating the efficient use of judicial/court time and resources, relieving the Court and court staff of the role of assisting unrepresented litigants, and generally improving the administration of justice. 

To get involved in PBLA's court-based programs or for information about other pro bono opportunities, please contact Joshua Lam, Program Manager, at joshua.lam@pbla.ca or Kendall Moholityn, Deputy Executive Director, at kmoholityn@pbla.ca.



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



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

North

We are past the halfway point for the 2014-2015 year North section meetings, and I am happy to report that there has been excellent programming this year! A few highlights: Creditor & Debtor Law hosted "Christmas Lunch with the Masters" (three of them!); Family Law is hosting a series of speakers discussing the interaction of financial and bankruptcy matters with domestic law issues; Real Property has dealt with fraudulent transactions and residential infill as topics; Junior Lawyers had the chance to interact with several court clerks; Wills Estates and Trusts covered everything from emotional intelligence to bereavement to advance care planning. The depth and breadth of these meetings this year is encouraging and of great service to the profession. Several sections also held Christmas gatherings and other functions as opportunities for members to socialize and network.

No-shows: Unfortunately, a recurring issue is that of no-shows for meetings. It is essential that members who have confirmed for meetings give notice if they cannot come, as soon as possible in advance. Food is ordered, and handouts printed, only for expected attendees, to keep section costs (and waste) down. You may think, "I'm only one person, who will notice?", but as many as 15-20 no-shows (this happens!) makes a large impact, and is a poor reflection on the section when a speaker must talk to a half-empty room. Also, advance notice of cancellation allows other members on waiting lists to take your place. So... if you can't attend, an email you should send! (I coined that...)

From the desk of Frank Friesacher

Inns of Court: Another excellent evening dinner and talk was held for an intimate group of 22 junior lawyers last November, topic "Family and Civil Trial Procedure in Provincial Court". Our 29th Inns will be in May, with another four experienced members of the Bench and Bar presenting, watch for details soon!

Section executives: My coordinator Karen McDougall and I will be planning our annual spring workshop in May for both incoming and outgoing section chairs and executives (details TBA). Now, however, is a great opportunity for members who want to get more involved to approach their section executives or Heather Walsh, and ask if there are openings. Don't assume that all positions are taken, many sections are looking for turnover and fresh faces, and will likely welcome you into the fold! The CBA thrives on its active volunteer base and is a rewarding and enriching experience! ☺



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



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

South

Happy New Year! We hope that you all enjoyed a safe and happy holiday season with some time away from the office to spend with family and friends.

As we reflect on the sombre start to the year with recent tragedies unfolding across the globe and within our own communities, it is also important to highlight some of the wonderful work that south section members have been doing over the last few months. Thank you very much to all of you who volunteered for the Mustard Seed dinners throughout December and January. You undoubtedly brought comfort to some of Calgary's most vulnerable citizens. Similarly, to all of you who collected donations of food, clothing, toys, and other gifts to share with families and neighbours in need over the holidays, we extend another heartfelt thank you. None of these efforts go unnoticed.

Looking ahead to the coming months, there is much to get excited about. CBA Alberta will be hosting the annual national Legal Conference in August here in Calgary, which will bring many opportunities to get involved either as a delegate or a volunteer. It will be a fantastic opportunity to display the strengths and camaraderie of our professional community to our CBA colleagues across the country. In addition to the Legal Conference, Law Day will soon be upon us. There are some opportunities to get involved in those festivities as well. For information about these events, visit www.lawdayalberta.com.

From the desks of Kate Bilson and Anthony Strawson

There is still a lot of time left in the CBA year to take advantage of all the different section offerings. Section executives have been working hard to put together interesting rosters of speakers, including some panel sessions and joint section meetings that bring together members with shared interests. Please be sure to take a look at the calendar online at www.cba-alberta.org to find out what is coming up. If you have any questions about section membership or how to get involved, please feel free to contact one of us or, alternatively, Linda Chapman at the CBA office.

Hopefully, many of you have now had a chance to see the CBA's new offices at 710, 777-8th Avenue S.W. They are bright and sunny, and waiting to welcome you!

Wishing you all the best for 2015! ☺



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



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

University of Alberta

Over the last few months the students at the University of Alberta Faculty of Law have been busy with many exciting things! Specifically within the CBA Law Students' Section, in the fall semester, we ran the Welcome Reception and later a lunch meeting with speakers discussing, "What I Wish I Knew about the Legal Practice While in Law School." This topic expanded from previous years as the speakers spoke about things required to run your own law practice, such as diarization, in the hopes that law students will think beyond their schooling and into their future as a legal professional.

This academic year the Meet the Bench reception was held on November 3, 2014, which was a success. This reception allows students to speak with lawyers and judges in an informal setting, which can be essential to expand one's professional network.


Another exciting event, the CBA Mentor Mixer, was January 19, 2015. Students always look forward to this event. We have both had the opportunity to have a mentor through the CBA and have greatly enjoyed our experiences. The Mentor Program is a great way for law students to make connections within the legal community and learn more information about being a lawyer.

Lastly, the CBA Law Students' Section has another lunch meeting coming up this semester where students are invited to come and hear lawyers speak. While the topic for this meeting is not yet confirmed, in previous years, we have received excellent advice from lawyers and professors with

By Siwei Chen and Lyndsay Butlin

tips on how to write law school exams. We can never get enough tips on exams!

Specifically, within the Faculty of Law many events have also taken place. The LSA Mental Health & Wellness Committee, which aims to "improve student life, reduce stress and raise awareness", has held free yoga classes in the law centre, as well as 10-minute massages during exams to help reduce stress. In the fall semester the University of Alberta men and women rugby teams went to Calgary to compete in the Western Canadian Law Rugby Tournament. Both teams played well and the men's team won the tournament! In February, we have our annual Carbolic Smoke Ball, where students from all three years enjoy a dinner and music. Each class also makes its own video recap of the year to be showcased at the event.

The school year thus far has been full of activities for students to attend, with many more events to look forward to. 



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




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

University of Calgary

The second semester of the school year no less exciting than the first, and is certainly filled with more snow. 1L's, who are still recoiling from their first law school exam experience, have found themselves quickly confronted by the recruitment period for summer jobs. The 2L's, having just hit the halfway mark of their law degrees, had the opportunity to send a team of 11 students to the law games in January at Dalhousie. Finally, 3L students who were on exchange return to the Stampede City to finish their law school journey and prepare for life out in the working world.

This fall, the CBA hosted an extremely successful "Meet Your Mentor" reception where students had the chance to meet their mentors face-to-face. Students are encouraged to attend section meetings (at no cost!) and to meet with their mentors if they haven't already. Can't make it downtown for a section meeting because of your class schedule? No problem...you can attend meetings via webcast!

Students can also take advantage of various discounts through the CBA, including Rogers phone plans, insurance, courier services, hotels, and car rentals. Make sure to check out the CBA website for more details when making plans for your reading week vacation!

We wish all of the U of C students the very best this semester, whether they are interviewing for their first summer position or wrapping up their degree. 

By Camille Sehn and Robert Sevalrud



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



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

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CATASTROPHIC INJURY AND WRONGFUL DEATH CLAIMS

Plan Your Calendar for Spring 2015

By Jennifer Flynn

"It's important to have life, not just law." Tina Huizinga, one of our incredible volunteers, recently shared this reminder with us in an interview for our blog (blog.lesaonline.org). While we know this is true, fitting our lives into our work calendars can be difficult at times.

While LESA may be best known for high-quality seminars and resources targeted to specific practice areas, we also offer general knowledge programs to help improve your practice (and your life) in other ways.

For many lawyers, it is the business side of a law practice that presents some of the greatest frustrations. Let us help you reduce this stress through two upcoming programs - The Business of Law and Making Business Development a Natural Part of Your Everyday Life - both running in April. Once you're prepared with the practical advice these programs offer, we hope you can free up some time in your calendar and fit a bit more "life" into 2015.

Speaking of your calendar, do you have plans for April 19-21? Perhaps you are joining us in beautiful Lake Louise for our 48th Annual Refresher: Wills & Estates. This three-day program covers six informative sessions: Aid in Dying (keynote address), Blended Families, Tax, Estate Litigation, Incapacitated Adults, and the Wills and Succession Act. If you are looking for more (particularly if you're a junior lawyer or new to drafting trusts), you may also want to join us in Lake Louise on April 18 for an add-on, pre-conference program - Drafting Your First Trust.

If you work in the wills and estates area, you also stand to benefit from our New Estate Administration Act seminar, which reviews the new Act, Surrogate Rules, and relevant forms; sessions are running for both lawyers and legal support staff.

Wills and estates not your area? Consider adding these upcoming programs to your calendar:

- All That Touches Family Law (Red Deer) is targeted to those (you guessed it!) focusing on family law;
- Buying and Selling a Business and Legal Strategies in Private Mergers and Acquisitions are targeted to business law practitioners;
- Computers in Criminal Law and Criminal Advocacy are available for criminal law lawyers;
- Summary Judgment Applications is upcoming for those in civil litigation; and
- Commercial Real Estate will appeal to real estate practitioners.

LESA is proud to be your lifelong partner in continuing legal excellence. We know that offering you high-quality live programs is one way to partner with you effectively, but we also know your calendar fills up quickly. For this reason, we're recording select live seminars and offering them as seminars on demand. When you purchase a seminar on demand, you can stream video recordings of the seminar speakers and download course materials - on your schedule.

The following seminars are now available on demand:

- Adult Guardianship and Trusteeship Act Applications for Legal Support Staff
- Collections for Legal Support Staff
- Condominiums: A Practitioner's Update
- Court of Appeal Procedures for Legal Support Staff
- Evidence Law Refresher
- Junior Solicitor Business Law Basics
- iPad for Lawyers
- Running Your First Trial
- Written Advocacy - Preparing Persuasive Documents

Also watch for our New Estate Administration Act seminars (one for lawyers and another for legal support staff) and Drafting Your First Trust as upcoming on-demand titles.

For more information about any of these informative resources and seminars, please visit our website: www.lesa.org



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



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The Past, Present, and Future

He excelled at everything he touched; law being one. At a young age he became sage counsel to clients and friends because of his ability to zero in on the issues and understand the situation from all angles. Finances took care of themselves and his passion for life attracted love and family that together made him feel like he was living the dream. It is not clear when and how things got off track, but everything unraveled, as seamlessly as it all came together.

With help, he got through it, and while not unscathed, sees life with, dare he say, a deeper sense of meaning than ever before. Once again, his courage, passion and determination resurfaces and are directed towards helping others overcome personal difficulties, in this case, alcoholism.

This was the face of peer support when Assist began twenty-five years ago. Based on this long-standing tradition of lawyers helping lawyers, Assist will soon celebrate twenty years since its incorporation in 1996. Today, the face of peer support looks different and now Assist is there to help with all kinds of personal problems.

Leveraging the power of a peer-to-peer relationship, Assist developed a peer support program for the legal profession. Since the program launched in 2011, peer support volunteers have helped fifty-five individuals overcome problems with stress, depression, career, marriage, family, finances, articling, gambling, drugs, and alcohol. The program supplements professional counseling to offer a continuum of services, which together helped over 560 lawyers, judges, law and articling students in 2014. Over the past five years, Assist has helped 12% of practicing members of the Law Society of Alberta. In addition to these numbers, 3,300 members turned to information and resources available on Assist's website.

The profession is not unique in being susceptible to personal problems; they come with the territory of long, intense hours, and a competitive environment. The Assist Board, nevertheless, looks at these numbers as encouraging, because it means that barriers to seeking help may be breaking down.

As CBA Alberta celebrates one hundred years, it is fitting to recognize members that make the Branch and Assist what it is today. Assist's founder, Andy Crooks, and his founding directors, recognized the leadership of Craig Kinsman who laid the foundation of Assist as its first Executive Director. Essential sponsors and sustainable funders include the Law Society of Alberta, CBA Alberta, CBA Legal Profession Assistance Conference, Calgary Bar Association, and major firms who have contributed are Blakes, BLG, BD&P, Bennett Jones, Davis, Dentons, Duncan Craig, Felesky Flynn, Gowlings, JSS Barristers, McCarthy Tetrault, McMillan, Norton Rose, McLeod Law, Parlee McLaws, Peacock Linder Halt, and Wise Scheible Barkauskas. Assist's success is due to financial and in kind support from Cenovus, Merrill Corporation, Alberta Lawyers' Insurance Association, Edmonton Community Foundation, and the government of Alberta and generous individual donors. The next time you meet colleagues with these firms and organizations, please thank them for their vision in making

By Robert Philp QC and Marian V. De Souza, QC

the profession the strongest it can be. The next time you see someone struggling and need support knowing how best to help them, refer to our on-line course: The Distressed Individual, the Conversation and Referral at albertalawyersassist.ca or call 1 877 498 6898.

Assist's long-term vision is prevention. Preventing stress in life and law from becoming distress; preventing distress from turning into crisis; preventing crisis from becoming terminal or debilitating. This means ensuring every legal professional in Alberta is aware help is available and incorporating health and wellness into our professional development. If you would like to be a part of this future, as a peer support volunteer or otherwise, please call 403 537 5508 or email mde Souza@lawyersassist.ca.



Robert A. Philp, QC, is the current Chief of the Commission and Tribunals of the Alberta Human Rights Commission. Mr. Philp was the founding member and has been the Director of the Lawyers Assistance Program since 1995.



Marian V. De Souza, QC, is the Executive Director of the Alberta Lawyers' Assistance Society (Assist) and Past President of the CBA Alberta Branch.

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Reform Matters

By Peter Lown, QC

Most often, law reform deals with problems that have arisen – circumstances change and the law becomes out of date and inappropriate. An example is our project on *Matrimonial Property Act*. The Report for discussion, *Matrimonial Property Act: Valuation Date*, has been published. With the report is an on line survey (<http://bit.ly/mpasurvey>). The deadline for comments on the report and responses to the survey is March 1st.

Sometimes law reform can anticipate issues and deal with a future problem before it arises. Such is the case with our forthcoming Final Report on after born children. To some extent, the issue has been part of common law for a long time – the concept of a child *en ventre sa mère* allows a child in utero, subsequently born alive, to have parentage and inheritance rights. However, this concept does not cover children conceived after the death of a parent using stored reproductive material. While the *Family Law Act* recognizes the genetic links and recognizes parentage if the link is present, there are procedural barriers to fully recognizing parentage when assisted reproduction occurs after the death of a genetic parent. It is important to note that all of these provisions are dependent on the provider of genetic material consenting to the use of the stored genetic material after his or her death. However, where parentage is recognized, it should be possible for the deceased genetic parent to be named on a birth certificate, and for the surviving spouse or partner to have standing to seek a declaration of parentage for the deceased parent or themselves.

The report also examines the implications if parentage is recognised for naming rules, citizenship, dependants' relief, inheritance and intestacy rights, the rule against perpetuities, statutory survivor benefits and survivor benefits under contract. Our conclusion is that recognising parentage will not have an adverse impact on these areas. The implication of our conclusion is that an after-born child will not be eligible for property rights that arise by operation of law at the time of the parent's death. Eligibility for such rights depends on having legal status as a person when the parent dies. However, it is always possible, in a carefully drafted will, for a parent to provide for an after born child.

On an entirely different note, it is a pleasure to welcome two new board members. In the fall of last year Mdm. Justice Karen Horner joined the board. This is the first time a sitting judge has been appointed to the board. Several board members stayed on after their appointment to the bench, most notably former chair, Chief Justice Neil Wittmann; Justices Bonnie Rawlins and Alan MacLeod; assistant Chief Judge Charles Gardner and Judge Nancy Flatters. Karen Platten, QC also joined the board in January.

Our board members have also attracted a number of honours. Mona Duckett, QC was honored with the distinction of Women in Law Leadership award. Anne Kirker, QC was designated as one of the top 100 lawyers in Canada.

James Eamon, QC will take over as president of the Law Society of Alberta in February and Anne Kirker, QC will assume the position of president elect.

We also welcomed two new counsel, Laura Buckingham commenced work in our Calgary office and Robyn Mitchell joined the Edmonton office. We look forward to having them as part of our team and contributing to the law reform effort. Finally, you should all know that we have "gone digital". To make sure you receive our reports, go to this link and sign up: <http://bit.ly/alrisignup>.



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

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Edward S. Pipella, QC

By Kimber Pipella & Tara Pipella

Edward S. Pipella, Q.C., was born in Lamont, Alberta where he was the second youngest of 10 children. He was privileged to attend university, first graduating from the University of Alberta with a BA in Economics in 1954, and then with a Bachelor of Laws from the University of British Columbia in 1957. Mr. Pipella was also proud of his service in the Royal Canadian Air Force RCAF (Aux) 30 Wing 403 Squadron between 1957 and 1964, where he achieved the rank of Flight Lieutenant and served as Legal Officer.

Mr. Pipella commenced his 56-year legal career as a general practitioner, working on family matters, real estate and criminal law. During his career, he set several legal precedents and inspired many lawyers to fight for justice with integrity, respect and diplomacy. His cases were argued before the Alberta Court of Appeal and the Supreme Court of Canada.

Mr. Pipella had a wonderful ability to connect with people from all walks of life. He truly was a "man of the people" and developed deep and lasting friendships with many from all areas of his life. In 1968, a close friend of his was killed in a traffic accident and he was asked to represent the family. He later represented another friend who had sustained an incomplete spinal cord injury. Those experiences, along with the pain he suffered from being diagnosed with Ankylosing Spondylitis at the age of 21, helped him realize the missing pieces in his career -- personal satisfaction and reward. It was then that Pipella chose to dedicate his career to serving persons with disabilities.

Mr. Pipella devoted his working life to personal injury litigation, fighting to ensure that victims of serious injuries and wrongful death received fair compensation. Mr. Pipella always vowed to act only for the injured and was proud to admit that he never represented an insurance company.

Over the course of his career, Mr. Pipella was invited to become



a Court of Queen's Bench Justice on more than one occasion. However, due to his commitment to the disabled community, he declined. When asked if he had any regrets, he always said "that he had great satisfaction from helping people who were catastrophically injured, and that he would not change a thing."

Mr. Pipella's reputation as a litigator was unparalleled, and to this day, people still refer to him as one of the most highly respected trial lawyers in Calgary's history. Since his passing, colleagues report that Ed was always the best prepared Plaintiff's Counsel, who was a fine tactician, and who could drive you "crazy" as you prepared for trial. In Court, he challenged the view of Bar and Bench and was a pioneer in the area. They state that many followed his lead, but none have surpassed him.

He was truly a man whose passion for his clients and their welfare was unwavering. He never settled for second best and was an endless advocate for the "underdog." He was also a true philanthropist, supporting many causes in Calgary and Southern Alberta.

Mr. Pipella never retired because his law firm was his fourth "baby" and was his true labour of love. Pipella's determination and drive to achieve excellence in all of his endeavors, along with his love of family, and his devotion to his clients, are all things that made him a great man and a fine litigator.

Mr. Pipella's passion and enthusiasm shared over the years with his family was inspirational, setting the tone for two of his three daughters to follow in his footsteps and continue his legacy at Pipella Law, led by Tara D. Pipella, whom he mentored for close to 20 years -- a dream of his that came to fruition and which made him extremely proud.

We shall miss him dearly, along with the sparkle in his eyes and the wink he would give, just as he lowered the boom. 🙏

Judicial Updates

PROVINCIAL COURT

Honourable Judge James A. Hunter (Red Deer) was designated as the Assistant Chief Judge for the Central Region of the Provincial Court, effective October 1, 2014

Honourable M. Jeanne Burch (Edmonton Family and Youth) has been appointed as a part-time judge effective November 1, 2014

Gregory Blake Lepp, QC has been appointed as a Provincial Court Judge to the Edmonton Criminal Division, effective December 4, 2014

Honourable Judge A.H. Lefevre (Edmonton) has been appointed as a supernumerary judge, effective January 1, 2015

Honourable Judge D.J. McNab (Edmonton) has been appointed as a supernumerary judge, effective January 1, 2015

COURT OF QUEEN'S BENCH

Honourable Mr. Justice Brian R. Burrows (Edmonton) elected to become a supernumerary justice, effective November 10, 2014

Wayne N. Renke has been appointed to Edmonton Court of Queen's Bench, effective December 11, 2014

Master Judith B. Hanebury (Calgary) has been appointed as an ad hoc Master in Chambers, effective January 3, 2015

Master Andrew R. Robertson (Calgary) has been appointed as a full-time Master in Chambers, effective January 3, 2015

COURT OF APPEAL

Honourable Madam Justice Carole M. Conrad (Calgary) retired as a supernumerary justice, effective November 6, 2014

Honourable Mr. Justice Clifton D. O'Brien (Calgary) retired effective November 11, 2014.

A VIEW FROM THE BENCH

By The Honourable Judge A.A. Fradsham

As I write this, on my desk are the files of those students who have applied for a student-at-law position with the Court in 2016/17. I have also just met the five, third-year law students who are taking the Internship programme this Court offers in conjunction with the University of Calgary. A common thread runs through the backgrounds of all these students, and it is this: I am a fraud.

Well, the accusation is not made directly, but it is pretty clear after reading about all the remarkable things these students have done in their comparatively short time on earth that I am woefully inadequate by comparison. Most of us have had the nightmare in which the university from which we received our law degree calls up and says that it was all a big mistake and the degree must be returned forthwith. If my alma mater looked at my file, and compared it to the student files currently sitting on my desk, I would think that at the very least I should expect a call asking me to hide my degree, and solemnly undertake to never disclose the name of the granting institution (except at fund raising time, when universities call all graduates including those who are dead).

Without doubt, if I was applying for an articling position... good grief, if I was trying to get into law school, in competition with the current crop of applicants, I would have spread out before me a career in which the question, "Would you like fries with that?" would loom large. As an aside, reports that during some sentencing hearings I have asked, "Would you like to super-size that?" are exaggerated.

I must confess that my résumé is a little thin on entries such as: "I've climbed Mount Kilimanjaro"; or "I have won championships for Canada in snowboarding", or "Recently, I spent several months building schools for, and teaching, the disadvantaged in Africa". Even at this end of my career, there is nothing remotely close to that on my résumé, much less when I was a student. In comparison to the people I am interviewing (which seems akin to the Jim Carey character from "Dumb and Dumber" interviewing Albert Einstein), someone pushed the "pause" button for the last several decades of my life.

Frankly, sometimes these files remind me of those Christmas letters people send in which they catalogue the fatal diseases for which their children have discovered cures since last year's letter, and updating you on the Nobel prize total for the immediate family. I feel pretty good if I can just report that everyone is still alive.

Now, I wish to be clear that the students themselves are delightful; they seem completely oblivious to the fact that they are but a few steps short of being god-like creatures from Greek mythology. They are courteous, enthusiastic, and, seemingly, completely hoodwinked into thinking that because of age we on the committee know something. Often, they actually seem a bit nervous about appearing in front of a panel of judges for an interview. Now, if, while waiting to be called from the reception area, my assistant has tried to reassure them by saying that the panel is gentle and kind, they have wisely not uttered the type of response Dorothy Parker made when she was told that a particular person was "always kind to her inferiors". Ms. Parker replied: "And where does she find them?"



Happily, I am not required to make full disclosure to the students of the comparatively meagre contents of my own C.V. As I sit across from one of these students, it reminds me of playing poker while holding a hand in which I am still striving to make a pair of anything. However, I have figured out the trick to success: appear confident, maintain eye contact, and, at all costs, never, never, never revert back to one's true calling by saying, "Welcome to McDonalds! How may I help you?"



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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WILL SEARCH. Robert A. Speidel Law Office is seeking the will for Verner Hansen, late of Edmonton. **Please contact (780) 491-0000** or email **raspc@telusplanet.net.**

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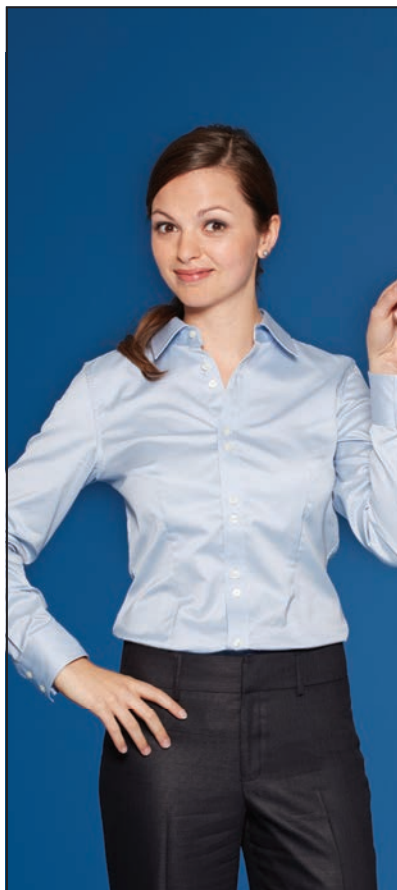
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