

# NOVA VOICE



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The Voice of the Legal Profession in Nova Scotia



## ACCESS TO JUSTICE

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*The views expressed in this magazine are exclusively those of the contributors and do not reflect the position of the Canadian Bar Association – Nova Scotia Branch.*

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## EXECUTIVE UPDATE

# WHAT DOES ACCESS TO JUSTICE MEAN TO YOU?



Agnes MacNeil,  
Department of  
Justice

## PRESIDENT

There are so many facets of access to justice. For many of us, who are privileged because of class, culture, education, wealth or the colour of our skin, we may never have experienced any barriers or even thought about it in our personal contexts.

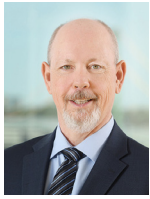
During the COVID lock-down, many people had difficulties obtaining physical access to a courtroom so that their case could be heard. Some lawyers had challenges accessing their files in circumstances where it was strongly encouraged that they work from home. The bench and the bar had to adapt to practicing law and furthering litigation through technology which was a definite challenge for many. All of these challenges faced by the actors in the administration of justice impact on access to justice.

Out of curiosity, I googled 'what is justice' to see what would come up, and one definition said justice was "just behaviour or treatment – 'a concern for justice, peace, and genuine respect for people.'" Discrimination is unjust. It is the opposite of genuine respect for people. In my eyes, access to justice includes the

concepts of fairness, equity and respect.

More difficult are the barriers we may not be aware of, such as access barriers for those with mobility challenges or low vision. And while we like to think that racism is a thing of the past, it is still endemic in many parts of our communities. It can be seen in the recent story in the CBA National of the young non-Caucasian lawyer in a big firm who was repeatedly mistaken for an Uber delivery driver when entering the office after hours with his supper, in the human rights complaint by a Caucasian employee harassed because his wife was black, and in lawyers of colour who are automatically assumed to be the accused because they are in a courthouse where criminal matters are heard. Many acts of discrimination arise quietly, in an exchange between a few people. It may not be visible to most but it is very sadly still here.

The issues at times seem so large they are overwhelming, and we think there is nothing we can really do, individually, to change the world. Awareness would be the first step. Education. Discussion. Not being a bystander if you see something you know is not right. Hopefully the CBA can be a forum for advancement of better understanding, increasing access to justice, and providing a voice for all.



Terry Shepperd,  
BoyneClarke

### VICE PRESIDENT

Whenever thinking about Access to Justice, I think of the late Gordon Proudfoot, Q.C. One of the many innovative programs he championed was pro bono days here at BOYNELCALRKE LLP where, for a day or two, people were invited in for a free half hour consultation on any topic. Participants were always so grateful for the opportunity to speak with a lawyer even for these short meetings. I learned that often people’s legal issues were not complex and that a little bit of advice goes a long way in pointing them in the right direction.

Kathleen McManus,  
Department of Justice

### TREASURER

As a law student, I did not appreciate how difficult accessing justice would be for those impacted by legal events. I was busy learning this new world of legal subjects and procedures of the court. I was impressed with how the law could resolve disputes and recognize legal rights of individuals, which could change their lives. As a practicing lawyer, access to justice has become one of my leading concerns. Legal events can have a significant effect on a person’s life both present and future. The worry of not having the monies to access legal services can cause someone not to pursue a legal right or to assume the challenging role of acting as their own lawyer.

As more individuals must choose to be self-represented, I cannot sufficiently praise the Nova Scotia Courts for their leadership in creating and operating free legal aid clinics in different regions throughout the province to provide guidance for self-representatives in civil matters. These clinics have been further

enhanced by the publication of the impressive workbook [Going to Court: Self-Represented Parties in Family Law Matters](#). This workbook takes the non-legally trained person through all stages of the court proceeding, providing assistance and guidance to the self-represented. The concrete steps taken by the Nova Scotia Courts is a challenge to all of us to reflect and implement ways that we as lawyers, on an individual basis, can assist in improving access to justice.



Dan Wallace,  
McInnes Cooper

### PAST PRESIDENT

Depending on the context, access to justice can mean many things. To me, it means that a person is able to have their legal dispute or issue resolved in a timely manner with the assistance of competent legal counsel. Unfortunately, we have serious impediments to access to justice in Canada.

The CBA recognizes that lawyers have a very important role to play in facilitating access to justice on both a systemic and individual level. The CBA, nationally and here in Nova Scotia, has consistently advocated for additional funding for legal aid, modernizing court services and community outreach. The CBA also promotes and recognizes its members’ pro bono work and seeks to include similar access to justice issues in its professional development offerings.

Over the last two years, CBA-NS has continually advocated for the provision of legal aid services for refugee claimants in Nova Scotia, as is provided in six other provinces. Whether a refugee claimant is granted protection in Canada may literally be a matter of life or death,

and the claimant should not be required to have their claim considered without legal counsel.



Jennifer Taylor,  
Stewart McKelvey

### ADVOCACY COMMITTEE CHAIR

When I think of access to justice, I think of concrete work like the [Free Legal Clinics](#) at courthouses in Halifax, Yarmouth, Truro, and Sydney, where lawyers can assist “self-represented litigants who have limited or no experience navigating the legal system”, and the [Land Titles Initiative](#), the Nova Scotia Legal Aid program that helps African Nova Scotians in historic Black communities obtain legal title to their land under the Land Titles Clarification Act.

I think about calls for free period products to be placed in courthouse washrooms, which Julianne Stevenson and I wrote about in the [Herald](#) earlier this year. We wrote that: “Access to justice means many different things, like being able to afford legal advice; to communicate with lawyers, judges and court staff; and to understand one’s legal rights. But on a more practical level, access to justice also means being able to physically attend court in comfort and dignity, whether as a party, juror, witness or supporter. Access to justice can look like a bus pass, an accessibility ramp, and – yes – a tampon or pad.”

Then I think about how so much of lawyers’ and courts’ work has moved online during the pandemic — and realize that doesn’t make proceedings any more accessible for people not versed in legal language and those who don’t have high-speed internet.

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## ACCESS TO JUSTICE

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More broadly, I also think back to the [Marshall Inquiry](#), and how we're still having the same [conversations](#) about systemic racial discrimination in the Nova Scotia justice system 31 years later. I'm starting to think we can't provide true 'access to justice' without completely reimagining what 'justice' means. This will be an underlying theme for the Advocacy Committee in 2020/2021, and I look forward to hearing ideas on how we can reimagine justice together.

## EQUITY COMMITTEE CHAIR

Access to justice remains an important issue for the legal profession to tackle.



Matthew Moulton,  
Cox & Palmer

While much ink has been spilled on the need for equal access to legal services that are inclusive to all, there still remains a large gap in ensuring all Nova Scotians and Canadians have access to legal advice and representation. As the voice of the legal profession, it is the CBA's mandate to continue to strive for a legal system that is equal and responsive to all. Diversity, inclusion, and access to justice will remain at the forefront of the CBA's mandate as we head into 2021 and beyond.

Growing up in a small community in rural Newfoundland and Labrador has taught me that accessing legal services can be challenging in rural areas. Depending on your social situation and means, it can be even more difficult. Hopefully, if we have learned something from the COVID-19 pandemic, it is that the justice system can offer its services in new and innovative ways. We must build on these models to ensure that the legal profession is front and center of the

push for an equal and inclusive justice system.



Courtney Barbour,  
Wickwire Holm

## YOUNG LAWYER CHAIR

For me, access to justice means equal opportunity for all to come before the law. That means ensuring all persons have the same opportunities

to understand their rights, obligations, and benefit from our laws and justice system. Access to justice requires an understanding of the barriers that have impeded, and in many ways continue to impede, vulnerable groups from fair and equal access to the law.

The CBA's role in access to justice is to provide a platform for lawyers to identify these barriers and advocate for their removal. The CBA gives the legal profession an opportunity to come together and recognize the diversity of our membership. To achieve true access to justice, our profession must appreciate how that diversity serves our communities and commit to real measures that level the playing field for all.

The CBA Young Lawyers' Section is one of the largest and most diverse in terms of the makeup of our membership. Our section has committed to ensuring that the professional development and speaking opportunities we offer, and the advocacy work we do, is reflective of that diversity.

## MEMBER SERVICES CHAIR

I think many of the issues around access to justice are well known in our



Jason Cooke,  
Burchells LLP

legal community: the need to better support legal aid, the attempts to make Court procedures and processes more friendly to the public, the ability to have alternate dispute resolutions that can avoid going to Court with the time and expense. As a lawyer in private practice, I realize one tangible contribution we can make to access to justice is through pro bono work. Whether it is acting on a particular matter or providing services for clients such as non-profit organizations, we can provide legal services to those who would not be able to afford it otherwise. It is also a great opportunity for lawyers to find clients and matters that align with our interests and values. While systemic change is essential to address access to justice, pro bono work can make a difference in the meantime.

## EDITORIAL BOARD

Michael Murphy, McInnes Cooper

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Emily Roeding, CBA-NS

The CBA-NS would like to thank Tammy Wohler (Barrister and Solicitor, Nova Scotia Legal Aid) for her work as Chair of the Communications Committee, as well as a special thanks to everyone who contributed to the magazine. If you could like to get involved in future issues of Nova Voce, please reach out to the Executive Director at [jane.bates@cbanova.ca](mailto:jane.bates@cbanova.ca).

# LAW TECHNOLOGY AND INNOVATION LAW CLINIC



JACQUELINE WALSH

Dalhousie Schulich School of Law

***Tell us about the Dalhousie Schulich School of Law Technology and Innovation Law Clinic.***

The *initio* Technology and Innovation Law Clinic at the Schulich School of Law (the “Tech Law Clinic”) is a new program offering legal services to technology start-ups in Nova Scotia. We are so grateful to Stewart McKelvey for their generous three-year donation to make this service possible. The Tech Law Clinic allows us to build new partnerships within the community, share our expertise with a critical sector of the Nova Scotia economy, and train students to become engaged members of the entrepreneurial ecosystem through ‘learning by doing.’

***Where did the idea for the Tech Law Clinic come from?***

The concept for the Tech Law Clinic grew from consultations among the law school stakeholders about ways the law school and Dalhousie could continue to innovate, how to prepare students for the practice of law through experiential learning, and how to address access to justice issues that are prevalent in our society. In the same year that we are opening the Tech Law Clinic, the law school is celebrating the 50th anniversary

of the Dalhousie Legal Aid Service, one of the first clinical law programs of its kind in Canada. Both clinics showcase the law school’s innovativeness, commitment to student learning, and dedication to solving access to justice issues.

***Do you see the Tech Law Clinic as solving an access to justice issue?***

I see the Clinic as an example of the law school’s tradition of public service by creating greater access to legal services. Nova Scotia has a vibrant start-up culture that will continue to help grow the regional economy. Research tells us that there are many barriers that prevent start-ups from seeking legal services, including cost, intimidation, time, and lack of knowledge about their own legal needs. We also know that start-ups in more rural areas have an even greater challenge when it comes to accessing certain legal services. For those start-ups in the technology space, the legal needs can become quite complex when dealing with issues of intellectual property and selling to global markets at very early stages of their operation. This is true even for companies still in the ideation or customer validation stage. This is the space in which we are most likely to have the greatest impact.

***How, exactly, are you solving these access challenges for technology start-ups?***

Our goal is to break down the barriers that prevent technology entrepreneurs from seeking legal services. We plan to solve these access problems through

our innovative business model and state-of-the-art technology. We are providing our services at a very low cost and offering companies the choice of a subscription or a flat rate model. This will allow companies to learn how to budget for legal services and make it part of their cashflow statements. We hope this transparency in billing will help eliminate some of the uncertainty around reaching out to a lawyer for assistance. We will also provide consultations for free so companies do not need to worry about whether they should contact us for advice on legal matters. Our service offerings will be virtual so that they are accessible by technology start-ups across Nova Scotia. Some amazing new companies are being created with the assistance of the many entrepreneurial support programs that exist outside HRM. We hope to help these companies with their legal needs. We have invested in the latest software in practice management, contract creation, and legal research. And of course, we have learned to love Zoom, Teams, Google Meet and similar technologies. We also have a beautiful new physical space in the law school where our students can work together and learn from each other.

***Tell us about the student experience.***

Third year law students will sign up for the Tech Law Clinic course and will dedicate 17 hours of each week during the term to working in the Clinic.

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## LAW CLINIC

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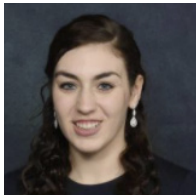
Students will not only learn how to provide value to start-up companies by using their legal knowledge, but also through using their skills in business, technology, critical thinking, problem solving, communication, and project management. Working directly with start-ups is a great way to develop this important skill set. In addition to working directly with companies, a large component of the student's grade will be based on community outreach and education. Students will be expected to blog on the Clinic's website ([www.dal.ca/initio](http://www.dal.ca/initio)), to engage in social media, and to educate other students and companies on issues of intellectual property and business law.

*What excites you most about the Tech Law Clinic?*

I see so much potential for the Clinic to have a positive impact in the start-up ecosystem, in the legal community, and for our law students. For example, we have already formed great relationships throughout the Dal Innovates initiative. Our goal is to help students prepare for

the future practice of law by providing them with a practical experience and the ability to use the latest in legal technologies. This summer, the Clinic employed two student interns and three research assistants. And, we have started a joint program with the Dalhousie Legal Aid Service which allows two articled clerks to spend 6 months in each clinic for their articling experience. There are so many possibilities to grow this initiative and we have only just begun!

# THE HIDDEN COST OF A CRIMINAL RECORD



CYDNEY KANE

Burchells LLP

Imagine you have recently started working at a job when you are suddenly fired because the employer has discovered that you have a criminal record. You are unable to find another job that you are qualified for and that does not require a clean record check.

The record that is causing you so much

trouble? A single conviction for stealing a bottle of pop, twenty years ago.

This is the reality for a client participating in the Record Suspension and Vital Statistics Clinic, hosted by the Elizabeth Fry Society of Mainland Nova Scotia. The Clinic is staffed exclusively by law student volunteers from Dalhousie University's Schulich School of Law. We support women through the process of applying for a record suspension from the Parole Board of Canada. Once granted, a record suspension (formerly known as a "pardon") separates a criminal record from the regional police level and

returns a clear criminal record check. The requirements include completing a waiting period of either 5 or 10 years depending on whether the offence is summary or indictable, evidence of rehabilitation, and completing an application with the accompanying fee.

A purported goal of the criminal justice system is rehabilitation. A sentence is imposed upon offenders with the idea that it is the punishment for their wrongdoing, allowing the offender to rehabilitate and reintegrate into society after the sentence has been completed. The attachment of a criminal record to

your identity, however, is permanent unless a criminal record suspension can be obtained.

The consequences of a criminal record are profound and far-reaching. The Canadian Bar Association's 2017 report [Collateral Consequences of Criminal Convictions: Considerations for Lawyers](#) illustrates that it can affect all aspects of one's life, from employment to personal relationships, and can actually prevent successful rehabilitation back into society.

Conversely, the opportunities and increased quality of life that a record suspension can provide women are equally as powerful. A record suspension enables women to re-enter the workforce, pursue higher education, provide for their families, and re-integrate fully into society. These are pursuits which may otherwise be unattainable.

The cost of applying for a record suspension is \$644.88. This application fee does not include associated costs such as fingerprinting, obtaining record checks and court information sheets, or postage. In total, we ask the Clinic's clients to budget for \$1,000 to complete the process. The sheer expense of this process acts as a barrier for many of our clients who are without regular income. There are no sources of external funding or grants to support prospective applicants.

A vicious cycle is created; an individual is unable to obtain employment because of their criminal record, but unable to afford a criminal record suspension due to lack of income.

I began volunteering with the Elizabeth Fry Society in 2018 and now am a co-coordinator for the Clinic. I have been touched by the stories of our clients, coming to us in the hopes of gaining new opportunities through a record suspension. "C" works for a non-profit organization but is ineligible to apply for a promotion because of her record. "T" has been unable to volunteer at her children's school or obtain gainful employment. "N" has struggled to support her family without stable work because of a shoplifting conviction. None of these women have the regular income or savings to afford the exorbitant record suspension application fee and associated costs.

It was while listening to these stories that I realized that we could be doing more to help our clients. While we were able to provide procedural and emotional support through the application process, our clients also need financial support to be able to access a record suspension. For that reason, I have been leading our dedicated team of law student volunteers in a fundraising project to raise money to sponsor record suspension applications for women in need of this support. This has included writing letters soliciting donations, outreach on social media, and presenting at local law firms.

Through our Clinic's work and fundraising efforts, we have submitted record suspension applications for all three of C, T, and N. N's application was recently approved, and her record has been successfully suspended. Our

fundraising efforts continue so that we can support our new clients like "M," whose job applications have been turned down because of a single DUI from over a decade ago.

If you would like to help people like our clients, please support legislative reform that would decrease or eliminate the application fee for criminal record suspensions in Canada. You can donate to our project online at <https://www.canadahelps.org/en/charities/elizabeth-fry-society-of-mainland-nova-scotia/> and include 'record suspension' in the message field. If you are a member of a law firm or other organization interested in learning more, our team would be happy to come and speak about the effects of a criminal record on someone's life, the benefits of a record suspension, and our Clinic.

A criminal record continues to oppress its holder, long past the completion of a sentence. To those unable to obtain a record suspension because of the cost, there is no being rid of even a single charge for stealing a bottle of pop. With support from the community, we hope to change this for our clients.

*The views expressed in this article are solely those of the author, and not of the Elizabeth Fry Society of Mainland Nova Scotia.*

*If you or someone you know is looking for support to apply for a criminal record suspension or to change your vital statistics designation, contact the Record Suspension and Vital Statistics Clinic at [efryclinic@gmail.com](mailto:efryclinic@gmail.com) or (902) 454-5041.*

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# A LITTLE ADVICE CAN MAKE A HUGE DIFFERENCE



THE HONOURABLE  
**MICHAEL J. WOOD**

Chief Justice of  
Nova Scotia

It has been five years since the province's first free legal clinic opened its doors at the Law Courts in Halifax — a pilot project that quickly became permanent, inspiring the Judiciary and the Bar to work together on similar initiatives in Sydney, Yarmouth and most recently Truro.

These are important steps forward that we should celebrate. But does that mean our work is finished? Far from it. More clearly needs to be done to improve access to justice and legal services for Nova Scotians in other areas of the province.

In 2015, Michael MacDonald, my predecessor as Chief Justice and a former co-chair of the province's Access to Justice Coordinating Committee, rightly pointed out that Legal Aid provides duty counsel services to help self-represented individuals with criminal and family law matters, but there was nothing available for other types of cases.

The Courts' pro bono clinics were designed to fill that gap. Lawyers and law students have responded admirably, recognizing the value to the public, as well as their duty to help provide meaningful access to justice for everyone.

Since then, hundreds of people have accessed advice and support through

private appointments with volunteer practicing lawyers, on everything from residential tenancy issues to wrongful dismissal cases to probate matters. As the COVID-19 pandemic continues, the operations of the clinics have been reduced and offered only by telephone. We need to find new and innovative ways to connect this important service with those who need it.

Surveys completed by those attending the clinics are overwhelmingly positive and the law students who have volunteered their time at the Halifax clinic report that the opportunity to observe effective interactions between lawyers and the clients is invaluable.

The feedback is similarly positive from the lawyers involved.

*"The clients who come in are often stressed and anxious. That colours how they interact with people and just heightens the tension," Truro lawyer Cassandra Armsworthy reports. "After only an hour together explaining how the Courts work, how the law might apply to their case, and what options they have for moving forward, you can see that anxiety start to melt away. It's a great experience to be able to give back to the community in this way."*

*"For the most part, it's simple questions you're addressing, but not simple for someone who doesn't have the legal experience," says Phillip Star, one of nine lawyers on the volunteer roster for the Yarmouth clinic. "You're giving a little bit of your time, but the reward is huge for the people you're helping."*

Having been a lawyer and a judge for many years now, I can tell you from personal experience that the legal profession in this province is filled with wonderful, considerate, and dedicated individuals who give generously to projects like this. For that, we cannot thank you enough.

That includes our judges, too. Although they're not involved in operating the clinics, judges, especially in the districts, have played an important role in identifying the need and coordinating with the Bar to open these clinics. Continued support from the Bench is essential if we hope to expand this initiative to other courthouses.

If you haven't already, I encourage you to get involved. Talk to your colleagues, share your ideas, and reach out to the Judiciary through the Bench-Bar liaison committees. With your help, we can further improve access to justice and legal services for more Nova Scotians.

**The Nova Scotia Courts' Free Legal Clinics are urgently looking for lawyers across Nova Scotia!**

To volunteer, contact the relevant Court Administrator in your local area:

**Halifax:**  
[communications@courts.ns.ca](mailto:communications@courts.ns.ca)

**Truro:**  
[Kim.Myatt@courts.ns.ca](mailto:Kim.Myatt@courts.ns.ca)

**Yarmouth:**  
[Jean.Brown@novascotia.ca](mailto:Jean.Brown@novascotia.ca)

**Sydney:**  
[Nancy.Orkish@novascotia.ca](mailto:Nancy.Orkish@novascotia.ca)



# LAW GRADUATES' STUDENT LOAN BURDEN

*In Nova Scotia, 43.6% of the population lives in the Halifax Regional Municipality, however the vast majority of lawyers (69.5%) are practicing here. Does this leave other communities underserved? Should there be incentives, much like there are for medical professionals, to encourage young lawyers to set up shop outside of HRM?*

Why do Canada's law graduates gravitate to big cities – and why is that a problem? Maybe because they can't afford to work elsewhere. A recent survey in Ontario found that most law students are in debt, and graduates owe, on average, more than \$83,000 in their final year of law school. Many finance their studies through a combination of government loans, grants, and private loans, such as lines of credit. When they graduate, they're forced to take higher-paying urban jobs to service their debt. The clumping of lawyers in big cities means smaller communities – and smaller legal issues – get ignored, contributing to this country's access to justice crisis.

In March 2019, the Canadian Bar Association's Young Lawyers and Law Students Sections wrote to Employment Minister Patty Hajdu asking the federal government to extend its loan forgiveness program, currently available to family doctors and nurses who agree to practise in rural and remote areas, to new lawyers. Because in the same way that serious illness can develop when minor medical problems are left untreated, unaddressed legal issues can have a domino effect on

other parts of peoples' lives, often creating a burden on areas as health, employment, and housing.

"Expanding loan forgiveness to new lawyers would be a winning solution for everyone," says Kang Lee, past Chair of the CBA's Young Lawyers Section. "It would give people in rural and remote areas better access to legal advice by making it financially viable for law grads to accept rural or remote positions that might be more professionally rewarding."

"The high cost of law school tuition is a deal-breaker for promising students from low-income backgrounds, and if there's no light at the end of the tunnel – just years of working to barely service a punishing debt – they won't even apply," says Kanika Sharma, past Chair of the CBA's Law Students Section. "But the legal profession needs that diversity of backgrounds and of voices to serve the people who would be our clients."

While patchwork solutions exist across the country, depending on the province and the debt load, the Law Students and Young Lawyers Sections asked the government to show leadership by developing a comprehensive national response to the problem. Although the issue is yet to be solved, rest assured that it remains on the CBA's agenda.

*This article is based largely on a press release from the CBA National office dated April 11, 2019, titled "Law grads' student loan burden is an access-to-justice issue".*

## QUICK FACTS

- People in rural and remote communities tend to have more barriers to accessing legal services than those urban areas including fewer affordable transportation options, more limited digital and communications technologies, and the limited number of service providers.
- There are far fewer legal professionals working in rural and remote settings – for example, in 2016, 75 per cent of the lawyers in British Columbia worked in Vancouver, Victoria and Surrey.
- There are far fewer public and free options for legal assistance in rural and remote areas.
- The average annual tuition for common law programs in Canada in 2017-18 was \$17,000. In 2018-19, University of Toronto's law school had the highest annual tuition, at \$36,720.
- The Law Students Society of Ontario's (LSSO) 2014 "Just or Bust" survey suggested as few as 40 per cent of students finish their undergraduate degree debt-free, meaning that most will carry undergraduate debt over into their next degree. Yet 61 per cent of respondents started law school debt-free, possibly meaning students with debt were less likely to go to law school.
- Also, according to the LSSO's 2014 survey, the combination of loans and grants available to law students would cover less than half of the University of Toronto tuition.



# BAR COSTS AND BARRIERS TO PRACTICE



MARK T.  
KNOX, QC

Knox Law

The global pandemic has hurt the legal profession. Whether it's filing a document as a self-represented person at probate court/small claims court or defence counsel preparing for a jury trial – regardless of the type of matter (civil/family/criminal/administrative law), our world has dramatically changed in 2020.

Since the commencement of the pandemic in March there has been a significant decline in trial work and “general” court work (such as chambers, for arraignments). Many private practice lawyers doing criminal work depend on legal aid certificates (for conflicts and serious charges), but “no court” equals “no billings” – meaning no income to

pay oneself or staff, and the continuation of bills (including bar fees, rent, phone, copier leases and service agreements, parking, internet, health care premiums, etc.). Some have needed to find additional resources to help, many continue to struggle, and others may not be able to continue their practice.

Counsel with a salaried position in a public law role have been very fortunate. In private practice, it's probably more comfortable if you've been practicing for a while.<sup>1</sup> But if you're a young lawyer working independently (some work from home) or in a small firm (where you cost-share or share your billings), financial distress is likely.<sup>2</sup>

After inviting members' input on suggestions regarding fees, the Nova Scotia Barristers' Society's Task Force provided a report to the Society, and provisions were made for some members to apply for a reduction in fees for the 2020-2021 period.<sup>3</sup> As a member of a national group that is currently

interested in this topic across the provinces and the territories, I contacted a few busy young defence lawyers asking for their thoughts regarding this experience in the private practice, criminal defence field in Nova Scotia. Here are two responses:

1. *“I think their solution to deferring the [monthly] fees ... is too short. We are still not out of the woods yet. At this time, it's unclear how long this will go on for, so to set the deferral till September is unrealistic. My worry for the young lawyers, who either just got called or [are] a few years in, is that they might just take a year off and do something else. Not because they want to, but because unless you are paid salary, the cost of practicing is too high and there is too much uncertainty at this time... this person advised me law was just not for them. I found this hard to believe, for they were just recently called and about to practice...”*

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<sup>1</sup> I have also been reminded that seniority does not guarantee income protection during the pandemic.

<sup>2</sup> This fact has been reported in the media on several occasions, including Colin Perkel, *Globe and Mail*, May 22, 2020, where defense counsel from Halifax cites a 35-40% reduction in billings, staff layoffs, and concerns about firms closing (<https://www.theglobeandmail.com/canada/article-financial-help-lacking-as-covid-19-pandemic-shuts-most-of-canadas/>).

<sup>3</sup> 1-7 years at the bar, or from an equity seeking group, or in a primary care-giving role re: dependents and with a job loss or reduced employment income of 40% or more due to COVID-19, or provable gross income losses of 40% during one of two specific comparable periods of time – for accurate and complete details, please see the [NSBS website](#).



### BARRIERS TO PRACTICE

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*For me, my firm pays the full [bar fees] amount upfront, then I pay half back to the firm with my monthly draw. My worry for the young lawyers, ones on their own, and ones that have a different arrangement for their fee is that even with September's deferral, there isn't much help out there for us. Even with the Government [e.g. CEWS], I don't think any of the help that has been given out, applies to us." [May 2020]*

2. *"There were a number of files I was able to work on, such as estate work drafting and signing wills and other legal drafting, which did not require any Court filings. However, even with that work there were difficulties with clients signing their wills, as the witnessing requirement caused issues with social distancing. Some clients chose to delay their meetings until the situation improved, causing billing for said work being pushed back as well.*

*Ultimately, the COVID-19 pandemic caused issues with me having enough billables to cover my Bar bi-monthly fees, which I am responsible for, along with my student loans. Although both ended-up offering deferments, we were still at the height of the [first wave of the] pandemic within Nova Scotia and the future was very unknown. Even if I were to take the [NSBS] deferral option, it*

*would not have helped or reduced the anxiety I felt about knowing I was not able to cover my monthly expenses. My line of thinking was, if I cannot pay for it now, how would I be able to pay an increased amount in the future?" [July 2020]*

Today, lawyers with fewer than ten years of experience in Nova Scotia are a diverse group. Progress toward diversity began thirty years ago with the recommendations of the Marshall Inquiry.<sup>4</sup> In the last ten years, our diversity has progressed further, recognizing our profession needs to help and encourage marginalized groups to become barristers and solicitors. Today, the number of practising lawyers with 1- 10 years at the Bar is 796 (37% of our practising lawyers).<sup>5</sup> Of those that identified in this group, 358 are men and 378 are women, and 143 self-identify as being from a diverse group. Without a more racialized and diverse bar, the Nova Scotia bench would not be a leader in diversity. Ensuring (and supporting) diversity in our profession supports success in practice and on the court.

What's been proposed nationally? To summarize, the NSBS permitted a deferral of monthly payments (for last year's fees), and the NSBS has now adopted recommendations from

the Task Force that will help some.<sup>6</sup> I'm familiar with a few developments elsewhere. The Department of Justice Canada considered (but didn't develop) a program to facilitate tariff payments to private lawyers to assist in the pending backlog through Pre-Trial Conferences. British Columbia surveyed its members regarding the impact of COVID-19 in April and May and established a relief fund.<sup>7</sup> Ontario's benchers considered a motion in September (recognizing the financial distress to racialized and marginalized groups) to suspend fees – based on pandemic income – pending a return to regular activity in the courts. I'm advised that Manitoba has not made any reduction in fees, and that Alberta's has been insignificant.

Let's help all lawyers through these difficult financial times that will continue for a while to come; past lost revenue doesn't simply re-appear once the courts open again. Otherwise, Nova Scotia runs the risk of losing diversity in practitioners and future members of the judiciary – a focus for the last thirty years that can quickly disappear. And why not continue to offer new ideas regarding assisting with fees for lawyers new to the bar, from equity seeking groups, or in primary care-giving roles in Nova Scotia, and otherwise too?

<sup>4</sup> Royal Commission on the Donald Marshall Jr. Prosecution; Digest of Findings and Recommendations (Halifax: Province of Nova Scotia, 1989). The "IB&M" Program at Dalhousie Law School was established as a result of a recommendation of the Royal Commission Report, page 10.

<sup>5</sup> While in the group of lawyers with 27+ years of experience, the gender breakdown is about 77% male and 22% female.

<sup>6</sup> I also learned of several novel ideas discussed privately and in a preliminary manner, including gifts/loans from senior members to junior members.

<sup>7</sup> BC is also now offering free CLE programs.



# SUCCESSION PLANNING IN RURAL NOVA SCOTIA



**DAMIEN  
BARRY**  
Louisburg  
Seafood Limited

*Just as we advise clients of the importance of estate planning, we as lawyers also need to have a firm succession plan in place for our own practices, especially those lawyers in sole practice or in smaller firms. This is especially important in the practice of law outside of the Halifax Regional Municipality, where lawyer's options are often more limited and require significant advance planning. I spoke to Elizabeth Cusack Q.C., a lawyer currently navigating the process, and Rob McCleave, Staff Lawyer - Legal Services Support with the Nova Scotia Barristers Society ("NSBS"), to get their perspectives on this important topic.*

Elizabeth Cusack, Q.C., has been a practicing lawyer in Cape Breton for 45 years and is currently counsel to Portside Law LLP, based in Sydney, NS. However, for the majority of her career, Elizabeth practiced primarily as a sole practitioner and serviced countless rural based clients, in areas such as family law, wills and estates, litigation and labour law. Elizabeth plans to retire in 2020 and has seen first-hand the challenges faced by smaller, rural practitioners when deciding to wind down or leave the practice of law.

As Elizabeth herself states from her own personal experiences, *"young lawyers don't want to be sole practitioners and most firms don't want to take on a more senior lawyer so it's a catch 22 when trying to put in place a succession plan."* Gone are the days when a more senior lawyer could sell his or her practice to a new lawyer or associate entering the practice.

Elizabeth has observed former colleagues being forced back into practice in rural Cape Breton either owing to an inability to find someone to take over their practice or being forced to do so for other unforeseen circumstances such as a proposed merger or buy out falling through at the last minute. As Elizabeth notes, rural practitioners feel an obligation to their clients and the smaller communities they serve, and often end up postponing retirement plans in order to ensure that existing clients continue to be serviced.

Elizabeth also states that the NSBS needs to consider the impact of trust account regulations on smaller rural practitioners when they are trying to wind down their practice. Often, matters such as uncashed trust cheques in small dollar amounts can cause significant delays to efforts to wind up a practice.

In addition to trust regulations, Elizabeth also cites the difficulty in finding a practicing lawyer to take over

responsibility for a lawyer's exiting files when they are retiring. In Elizabeth's own case, it took her five years to find a lawyer willing to do so.

Finally, Elizabeth highlights the importance of preparing at an early stage for the day that a lawyer surrenders their practising status. As she states, *"it is extremely hard psychologically to disengage yourself. You fight for years to serve your clients and then you have to change your mindset to not take on new clients and avoid taking on long term files, which can be a challenge after working at a significant pace for so long in your career."*

Rob McCleave is Staff Lawyer - Legal Services Support at the NSBS. Rob's mandate includes offering support to help lawyers develop their succession plans using the *Triple P* approach, namely being proactive, proportionate, and principled.<sup>1</sup>

Rob was called to the bar in 1989 and has extensive experience himself in practicing in small and medium firms as well as being a sole practitioner. This experience allows him to give first-hand knowledge when advising lawyers and smaller firms with respect to succession planning.

Rob notes that younger lawyers are not as willing as they were in the past to make

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<sup>1</sup> <https://www.lians.ca/sites/default/files/presentations/successors-mccleave.pdf>



## SUCCESSION PLANNING

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the financial and long-term commitment to set up a law practice in smaller communities. He sees rural practitioners being more creative in how they try to attract lawyers to their communities. Some of these strategies include finding lawyers in practice elsewhere who have a family or spousal connection and might want to come home, and networking with people who know everybody in rural communities, such as politicians, church, and community leaders. NSBS is also currently working with the Schulich School of Law to connect students interested in rural practice with practitioners.

Outside of larger practices buying up existing sole or small practices, it is extremely difficult for rural practitioners to cash out, so to speak. As Rob notes, “there is no value in a paper file, the value is in the relationship with your clients, and practitioners have to figure out a way to realize the value in these relationships.”

NSBS has just developed a range of tools to help firms and sole practitioners put succession plans in place. Having functioning plans negates the need for costly custodianships. As Rob notes, “succession planning is a lot more than simply checking a box owing to a regulatory

requirement. It involves a range of planning tools such as financial planning, making arrangements with your bank, finding the right person to step in to the breach as well as standard estate planning documents.”

Finally, Rob notes that the NSBS is trying to reduce barriers to succession with a group of lawyers and staff currently working on making trust account transition more streamlined. As Rob notes, “files will become less of a problem as we work with lawyers to find the right solutions for them and light the path to file destruction. Other potential solutions are in the works.”

# THE PATH: YOUR JOURNEY THROUGH INDIGENOUS CANADA

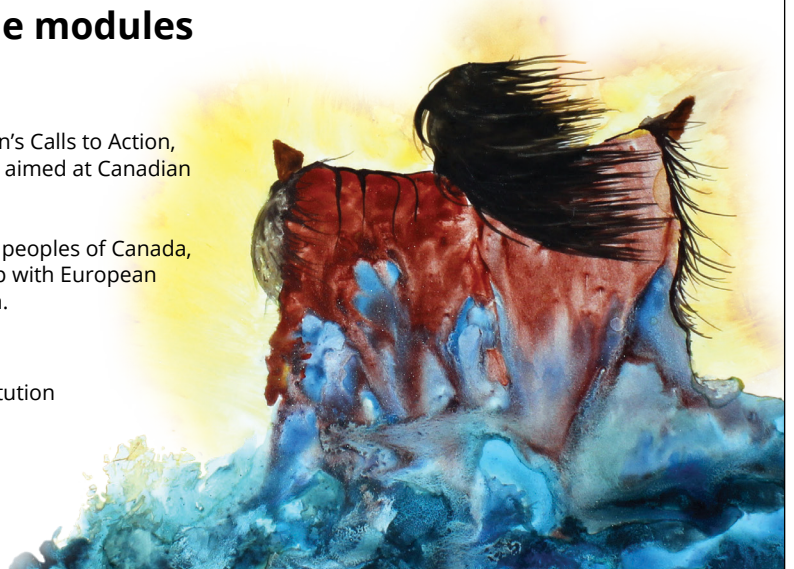
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THE CANADIAN  
BAR ASSOCIATION

# IN RURAL NOVA SCOTIA, ACCESS TO JUSTICE TAKES A VILLAGE



**SHAWNEE  
GREGORY**

Power, Leefe,  
Reddy, Rafuse

Your client lives one hour from your office as well as the courthouse, has unreliable access to transportation (which is a car – there is no rural bus service) and their cellphone is out of minutes. This is the life of many criminal lawyers but particularly rural lawyers. I could go on about the file conflicts, the lack of resources, the difficulty connecting with incarcerated clients – issues that criminal lawyers are painfully aware of. However, I prefer to focus on what has worked for me. Making community connections has greatly improved access to justice issues in my practice.

I have been practicing in Bridgewater for just over three years. About two years ago, I was lucky to connect with a group called Community Hub via my volunteer work as a board member of the South Shore Community Justice Society. Hub is a bi-weekly meeting that brings together social service providers such as Schools Plus, Men's Intervention, Second Story Women's Centre, Mental Health, Employment

Solutions, lawyers, and police officers – to name a few. In this group, we discuss the many barriers our clients are facing and seek solutions to complex cases without providing identifying information. Through my involvement with Hub, I have found many valuable resources to provide my clients. I consider it a somewhat out of the box solution to the hurdles I was facing every day in the criminal justice system. For example, these connections are vital for bail and sentencing plans. If a client cannot get bail because they have nowhere to go, I have a direct line to housing support. If a male-identifying client needs anger management and support to become the best parent he can be, I can refer him to the Dad's Group at Freeman House. I have found a web of resources to build and rely on. Rather than working in a silo; we are working together.

While this may seem like additional work for already over-taxed lawyers; reaching out can save time. Reaching out made me realize there are often others struggling with the same barriers I am. Others who may have already found the solution! A probation officer and I were seeking to create a list of employers willing to

hire individuals with criminal records. Through Hub, we realized this work is already being done by Employment Solutions. There was no need to re-invent the wheel when our time and energy could be best expended elsewhere.

Where the resources might be scarce, I've seen people work together to find solutions to multi-faceted problems. For example, the amazing team at Freeman House realized the connection between homelessness and a lack of education and employment. So, they applied for a grant to try to solve these issues under one umbrella and Level Up was born. I now have a wonderful program for my under 30 year-old clients.

I know that this is by no means a perfect or novel solution. Gaps in service and issues such as a lack of housing still exist. However, I am proud to be practicing law in rural Nova Scotia and I remain in awe of the tireless efforts of community groups here.

Rural practice doesn't have to be isolating. If you reach out you will find that there are others dealing with similar barriers and searching for solutions. Weave a web together.



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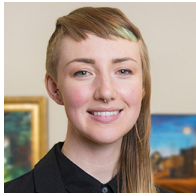
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# PRIDE WAS “BORN IN PROTEST”



JAMIE  
BURNET

Pink Larkin

Judge Jean Whalen has spoken more times than she can recall, about race and racism in the legal profession and justice system, but her speech to members of the bench and bar at the virtual Pride reception, hosted by the Nova Scotia Barristers’ Society and the Canadian Bar Association – Nova Scotia on July 16, 2020, was her first time speaking publicly about her identity as a queer woman. Quoting African Nova Scotian social worker Robert Wright, she said she was “too busy being Black to be queer.”

Judge Whalen was born and raised in Dartmouth, Nova Scotia, with strong family ties to the Black community of Whitney Pier in Sydney, Nova Scotia. She has degrees in finance, education, and law, and studied toward a degree in theology. She graduated from Dalhousie University Law School in 1984, and practiced as a Crown Attorney with the Public Prosecution Service for 20 years, before being called to the bench of the Provincial and Family Court in 2009. She was the third person of African ancestry to be appointed to the judiciary in Nova Scotia. Since her appointment, she has been a member of the International Association of LGBTQ+ Judges.

In her speech marking Pride, Judge Whalen explored the intersections of

race, sexual orientation, and gender, including those in her own life. She spoke of the racism she experienced growing up as a child in a Black Baptist household in a largely white Catholic neighbourhood, as well as her departure from the church after her pastor told the congregation, “God loves homosexuals, but marriage is between a man and a woman.”

She stated that the unique perspective of queer racialized women, based on their complex experiences of discrimination, must be heard. She noted that the Pride movement itself was “born of the passionate work of queer and trans racialized people” and “born in protest,” and connected the fight against police brutality at Stonewall in 1969 to the growing swell of the recent Black Lives Matter movement in response to Black people’s deaths at the hands of police.

But, she asked her audience, “Why did it take so many Black and Brown bodies losing life for us to join this movement?” She concluded, “Probably because we question experiences not our own.”

She encouraged potential allies to start from the understanding that systemic

discrimination exists, to listen to queer and trans racialized people, educate themselves, and use their authority to create a more inclusive culture, including by working to improve the experiences within the bench and bar of colleagues from diverse backgrounds.

Hanging on the wall behind Judge Whalen as she spoke was the “Progress” Pride flag, a recent reworking of the well-known rainbow version. In this new flag, pink, blue, and white stripes representing the trans community, and black and brown stripes representing racialized and other marginalized community members, form an arrow, pointing forward across the traditional red, orange, yellow, green, blue, and violet, indicating movement and the need for further change.

“Just as our flag is diverse, our bench and bar need to be more diverse,” said Judge Whalen, because that’s what “a properly functioning justice system, one that the public can trust,” requires. Reflecting on the Progress flag and growing movements against systemic oppression, Judge Whalen concluded, “Change is coming. Embrace it.”

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# HERSTORY IN PURSUIT OF JUSTICE



FOLAMI JONES

Law Student

My father, Dr. Burnley “Rocky” Jones was born on August 26th, 1941 in Truro, Nova Scotia. He was brought up in a highly matriarchal family, with my grandmother Willena Jones running the house of seven girls and three boys. This is not to undermine the role my grandfather Elmer Jones played—he was the quiet and constant man who never missed a day at work, serving in the military during WWII, and later in the post office. Truro was very segregated—he’d often speak about the different “rules” for blacks than whites, and the importance of education as a cornerstone to our freedom.

Be it a Sunday afternoon or Tuesday evening, I used to find my father sprawled out on the couch reading for hours—the writings of Thomas Sankara, Frantz Fanon, Kwame Ture, and Kwame Nkrumah. He read poems like *The Cremation of Sam McGee* by Robert Service, or fishing guides of Newfoundland and Labrador. His library was an homage to the civil rights movement and encapsulated memorabilia of a rural black man’s life in Nova Scotia. Black Panther power

badges, international delegate letters, fishing reels and a moose call whistle were common sights found in his office. And, of course, a sweet bottle of Havana Club for his Friday night buddies and an old pack of cards for a friendly game of poker. He was a man that walked many roads, made many friends, and always remembered his home. He was proud to be Nova Scotian, a black man born and raised on the “marsh” in Truro.

He hit many glass ceilings but was relentless in pushing through numerous structures of racism. Invariably, he’d find a soft spot through constant agitation. He was busy, always involved with some kind of initiative—a think tank, social movement, or community mediation. There wasn’t a time he wasn’t working for the people. A day out with my father might mean you’d end up in a protest, or at someone’s kitchen table listening to hours of debate and loud talking. Or maybe you might find yourself at a shoreline gearing up your fishing lines and dragging a boat out to catch mackerel. No matter how the day went, it would be filled with lessons that I’d come to understand more as a woman later on in life, which have deeply contributed to the person I am today.

My father always told me that if you see something wrong and you don’t stand up for what is right, then you are a part of the problem. Perhaps that’s why I ended

up studying in a Juris Doctor degree of law, after pursuing nursing, midwifery, and a masters in lifelong learning (all but thesis). I think being a trailblazer requires a resilience that is rooted in a thirst for change and a desire to expect better.

My father saw the disparities in his community: the over-representation of African Nova Scotians in the judicial system and little to no representation of Black legal counsel. So, what did he do? He started an initiative to support Indigenous Black and Mi’kmaq students attending Dalhousie Law School 30 years ago, which has graduated more than 200 students from those communities. I am also a proud student of this initiative, and although the barriers of racism are still great, initiatives like this are the mechanisms that make the burden lighter.

When people say to me, “oh you’re going to be just like your father,” I bow in humility. Dr. Burnley “Rocky” Jones was a hero, and a man of courage that never whimpered in the eyes of injustice. It’s an honour to be his daughter. But I am a woman. A woman rooted in my own reality, where the revolution advances in my distinction as *her*.

I am an African Nova Scotian woman whose hair is curly and wide taking up space in boardrooms, courts, and parliament houses. Sometimes my skirt passes the man beside me, leaving diverse

fragrance of success and, I dare to say, my brown skin brings hues of radiant transformation. The desire for equity is palpable in the legal profession, as the times for sustainable employment and equal opportunities becomes paramount to a changing culture.

Many firms that historically have been predominantly white and male are grappling with how to support implementing diversity and inclusion within their organizational structure. A few firms have begun to adopt these improvements, and I'm proud to say McInnes Cooper has taken up the task and welcomed me into their establishment as

a student and articling clerk.

The implementation of equity and inclusion requires an element of scrutiny, and a critical evaluation of effectiveness. It brings me hope to see those same ceilings my father pushed against shatter, with diverse women leading the Canadian Bar Association, such as Past President Vivene Salmon, a first in 123 years.

What does this mean for the future of Canadian law? I'd say a myriad of differences, hemmed by a unified demand for equitable justice, and a profession that directly reflects a larger source of experience and knowledge.

My moose whistles and Black Panther badges sit deep in my purse—full of yesterday's tools to build tomorrow's bench.

*Folami Jones, RPN, BSc. H, MAEd[c], Graduate Midwife, Juris Doctor candidate of 2021, is an Indigenous African-Nova Scotian woman whose community dates back over 400 years. She has worked with diverse local and global communities around many facets of social justice and equity issues. She is a mother of three and is currently in her last year at the Schulich School of Law at Dalhousie University with her articles with McInnes Cooper in Halifax.*

# 30 YEARS OF THE INDIGENOUS BLACKS AND MI'KMAQ (IB&M) INITIATIVE



**KELSEY  
JONES**

IB&M Initiative  
at the Schulich  
School of Law

The Indigenous Blacks and Mi'kmaq (IB&M) Initiative at the Schulich School of Law was established in 1989 to reduce structural and systemic discrimination by increasing the representation of Mi'kmaq and Black lawyers. The IB&M

Initiative was established due to three main contributing factors: the first being the commitment of African Nova Scotians and Mi'kmaq people across the province striving to gain access to legal education and to address racism in the judicial system. Their dedication and advocacy were the catalyst for the second factor, a report from Dalhousie University entitled "Breaking Barriers: Report of the Task Force on Access for Black and Native People," which

explored issues of access to education. Lastly, the Royal Commission issued the landmark report on the Donald Marshall Jr. prosecution, which recommended that the IB&M Initiative be supported financially by the Government of Canada, the Government of Nova Scotia, and the Nova Scotia Barristers' Society.

Presently, there are 12 spots reserved for incoming Mi'kmaq and Indigenous Black students annually in Schulich

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### IB&M INITIATIVE

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School of Law's first-year class. Once admitted, IB&M students join the first-year class, completing the same course requirements and exams as their peers. However, the IB&M Initiative provides academic and cultural support to help students succeed throughout their law school journey.

Kelsey Jones has recently stepped into the role of Director of the IB&M Initiative. Kelsey Jones is an African Nova Scotian woman from the small town of Amherst and a proud alumna of IB&M Initiative. After graduating with her Juris Doctor in 2014, Kelsey articulated with the Nova Scotia Department of Justice in Halifax. Upon being called to the Bar in 2016, Kelsey was selected to participate in the Canadian Bar Association's Young Lawyers International Program. As part of the program, she worked as an Access to Information Intern at the South African History Archive in Johannesburg. In this role, Kelsey submitted and monitored Promotions to Access Information Act requests on behalf of the public and non-governmental organizations.

Most recently, Kelsey Jones worked at St. Francis Xavier University (StFX) as the African Descent Student Affairs Coordinator. As the Coordinator, she worked collaboratively to ensure that students of African Descent were well supported, encouraged, and guided throughout their pursuit of post-secondary education. Prior to leaving StFX, Kelsey helped organize the Black Lives Matter March in Antigonish, Nova Scotia, which brought together over 4,000 community members. In addition

to a Juris Doctor from Dalhousie, Kelsey also holds a Bachelor of Arts, with a major in Political Science from the University and has recently been awarded a degree in Master of Education, Administration and Leadership with a focus on culturally responsive pedagogy from StFX.

### ***What interested you in the role of the Director of the IB&M Program?***

I have always been passionate about supporting historically marginalized communities, specifically members of the Mi'kmaq and African Nova Scotian community. From a young age, I came to understand the power of education and its transformative ability, not only for the individual but also for society. It has always been my desire to create societal change and promote social justice, which led me to apply for law school in 2011. The IB&M Initiative helped make the opportunity a reality.

It was upon admittance to the Schulich School of Law that I first met former Director of the IB&M Initiative, Prof. Michelle Williams. It was her dedication towards students like myself, along with much needed support and advice, that helped me cross the stage and accept my law degree in 2014. Prof. Williams inspired me to move into a student support role at the university level, which led to my position at StFX. Due to my work in the legal profession and a long history of providing academic support to African Nova Scotian students, as well as working collaboratively with the Office of Indigenous Student Affairs at StFX, I felt I had the lived experience and professional expertise to lead the IB&M Initiative and provide the culturally responsive support required for incoming and current Mi'kmaq and Black students.

### ***What do you see as the priorities during your first year in the role?***

The Schulich School of Law faces unprecedented challenges due to the impact of COVID-19. As the Director of the IB&M Initiative, my first priority is to ensure the success of our current students. I also want to find innovative and responsive means to support their educational and cultural needs as they adapt to online learning. My second priority is to help identify employment opportunities for recent IB&M graduates by working collaboratively with the Schulich School of Law, the Nova Scotia Barristers' Society, African Nova Scotian, and Mi'kmaq communities. Lastly, I want to raise awareness around Mi'kmaq and African Nova Scotian access to justice issues with a diverse group of stakeholders. The IB&M Initiative will continue to advocate for current students and alumni, while focusing on equitable institutional and systemic changes within the law school and beyond.

### ***What message do you have for Black and Mi'kmaq students interested in a career in law?***

To Black and Mi'kmaq students interested in a career in law, you bring invaluable perspectives and voices. Those voices have been underrepresented in the legal profession for far too long. Your unique lived experience and valuable insights strengthen the academic environment, which is beneficial to all students attending law school. If you are interested in law school, please consider applying to the Schulich School of Law through the IB&M Initiative. My priority is to provide you with the support you need to become the successful law grad you have the potential to be.

# AFRICAN NOVA SCOTIAN JUSTICE INSTITUTE



**VANESSA  
FELLS**  
Nova Scotia Decade  
for People of  
African Descent  
Coalition

Nova Scotia is no different. The torture and murder of George Floyd by police reminds us of the history of enslavement and segregation, upon which Nova Scotia was built, on Mi'kmaq territory. The police maintained that social 'order' too, and since then have never been held accountable in any meaningful way for their treatment of African Nova Scotians.

The legacy of slavery and segregation – which, in Nova Scotia, includes the disproportionate targeting (racial profiling), criminalization and incarceration of African Nova Scotians (especially males) – has caused profound trauma and hardship for African Nova Scotians and negatively impacted our access to power, resources and opportunities.

Today, we renew calls for lawmakers, police agencies and society to finally address the ongoing issues of Anti-Black racism, police brutality, racial profiling, discrimination, and the trauma caused to the African Nova Scotian (ANS) people and communities.

We must remember that the

enslavement and segregation of African Nova Scotians was often legally enforced and created a racialized structure that continues to infuse contemporary Nova Scotian society. African Nova Scotian communities were geographically separated from White townships; public schools were legally segregated; sundown 'laws' were enforced to stop African Nova Scotians from being in White towns after dark; and African Nova Scotians were forbidden from socializing together at certain times in our history. All the while, "customary" codes of segregation were maintained by law enforcement as in the case of Viola Desmond (1946).

When enslavement and segregation formally ended, the hypercriminalization of the community continued at the hands of the police departments through systemic and direct Anti-Black racism throughout the province. That pattern of discriminatory law enforcement has not been significantly disrupted despite centuries of protest and resistance by African Nova Scotians. This criminalization - whether intentional or arising from unconscious/implicit bias - has involved excessive surveillance, monitoring, charging, and sentencing. The Kirk Johnson case (2003) and the Nova Scotia Human Rights Commission studies on consumer racial profiling (2013) and racial profiling (Wortley Report) provide further evidence of the

daily racism that African Nova Scotians face, especially young Black men. Such surveillance and over-policing contributes to over-incarceration. For example, a statistical snapshot in 2014-2015 showed that African Nova Scotians made up 14% of all adults and 16% of all youth in the prison system, whereas African Nova Scotians comprise only 2.3% of Nova Scotia's population.

Given the above evidence, the continued illegal use of street checks under the guise of "suspicious activity", and the unimplemented recommendations of the Donald Marshall Jr. Royal Commission report, the Kirk Johnson case and the Wortley report, the Nova Scotia Decade for People of African Descent Coalition (ANSDPAD Coalition) has called for a major overhaul of policing and all other facets of the criminal justice system, policy and practices, to ensure fair, legal and constitutional treatment of African Nova Scotians. The United Nations has repeatedly called for such work to be done here in Canada.

Purposeful neglect – and treating African Nova Scotians as second-class citizens – is not legally acceptable in the context of Canada's constitutional and human rights framework. The old way of doing business needs to stop, and a new relationship with African Nova Scotians as a distinct people must be established.

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## JUSTICE INSTITUTE

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It is not an ask. It is a continued assertion of our dignity, humanity, vision and contribution to this province. The ANSDPAD Coalition has developed an African Nova Scotian Justice Strategy that includes an African Nova Scotian Policing Strategy and an African Nova Scotian Justice Institute (ANSJI) led by African Nova Scotians.

The ANSJI would work collaboratively with community, government, local experts, and organizations to identify issues, review, and change current policies, and provide provincial programming to address systemic anti-

Black racism in all facets of the criminal justice system. These programs would include the ANS Policing Strategy to review and monitor police policies and practice; a Human Rights Monitoring & Advocacy Programme to support the safe filing of third party complaints; a Community Justice Legal Defense; an African Nova Scotian Court Worker and Restorative Justice Program, an Incarceration Support/Reintegration Program, Victims Services, Data Collection Unit, Forensic Assessment & Treatment Services to train, oversee, and conduct cultural assessments and develop and deliver services needed by persons

under correctional supervision; and Public Education/Youth Development/Prevention Programming.

The work of ANSJI has begun through the mostly volunteer efforts of ANSDPAD Coalition members. The ANSDPAD Coalition will continue to build strength and health across ANS communities, and to forge a renewed working relationship with government(s) that creates conditions for all African Nova Scotians to thrive. We call upon other Nova Scotians who value justice to support our movement and our work.



**The Youth Project**  
2281 Brunswick St. Halifax  
(902)429-5429  
carmel@youthproject.ns.ca



The Youth Project's mission is to make Nova Scotia a safer, healthier, and happier place for 2SLGBTQIA+ (Two Spirit, Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, Intersex, Asexual, +) youth since being founded in 1993.

The Youth Project is a multiservice organization hosting an education team, programming team, and support services worker with an aim to further the inclusion and wellness of 2SLGBTQIA+ under the age of 25, foster knowledge exchange and training, increase access to public services for 2SLGBTQIA+ youth while providing social and cultural programs, services and celebrations for youth and their communities. Our team aims to work from an anti-racist, anti-oppressive, trauma-informed framework which centres youth voice and community leadership.

Our education team proudly offers professional development and policy development and consultation for organizations, businesses, and workplaces for a small sliding-scale fee. Workshop topics include: An Introduction to Gender Identity & Sexual Orientation, Supporting the 2SLGBTQIA+ Community, Creating Inclusive, Equitable, and Affirming Spaces, Celebrating Workplace Diversity, and Building Safer Spaces & Disrupting Homophobia and Transphobia.

To inquire about workshops please email [nik@youthproject.ns.ca](mailto:nik@youthproject.ns.ca) and they will send you a request form!

# ACCESS TO JUSTICE THROUGH TECHNOLOGICAL COMPETENCE



**ELAINE  
CUMMING**

Nova Scotia  
Barristers' Society

I attended the Canadian Bar Association-Federation of Law Societies of Canada's Ethics Forum in Toronto on March 13, 2020. This annual event is always very well attended and draws together legal scholars and practitioners from across Canada to discuss emerging issues and trends in legal ethics and professional regulation.

This year was slightly different. Although the Forum's high-quality content remained, attendance was down and there were few hugs or handshakes between reunited colleagues. Such was the beginning of Canada's experience with the COVID-19 global pandemic, and the Nova Scotia Premier soon admonished us all to "stay the blazes home".

What did this mean for the practice of law? Most lawyers regularly meet with clients, witnesses, and other professionals to review documents, discuss client files, and sign legal documents. Many lawyers also appear before Courts and tribunals as part of their practice. All of these "normal" processes that lawyers typically engage in had to be rethought. As a result, all lawyers regardless of practice area or location had to rely on technology to connect with others. Client meetings could take place via Zoom; virtual signing of documents was being facilitated through Microsoft Teams. This was familiar territory for some technologically

savvy practitioners, but for others this was new and overwhelming.

What some lawyers may not have been aware of was that Council approved new Commentary to rule 3.1-2 of the *Code of Professional Conduct* (the Code) regarding technological competence in January 2020:

### **Competence**

*3.1-2 A lawyer must perform all legal services undertaken on a client's behalf to the standard of a competent lawyer.*

### **Commentary**

...

*[4A] To maintain the required level of competence, a lawyer should develop an understanding of, and ability to use, technology relevant to the nature and area of the lawyer's practice and responsibilities. A lawyer should understand the benefits and risks associated with relevant technology, recognizing the lawyer's duty to protect confidential information set out in section 3.3.*

*[4B] The required level of technological competence will depend upon whether the use or understanding of technology is necessary to the nature and area of the lawyer's practice and responsibilities and whether relevant technology is reasonably available to the lawyer. In determining whether technology is reasonably available, consideration should be given to factors including:*

- a) The lawyer's or law firm's practice areas;*
- b) The geographic locations of the lawyer's or law firm's practice; and*
- c) The requirements of clients.*

The purpose in developing commentary on technological competence was to prompt lawyers to consider both the benefits and risks associated with the use of technology. Commentary [4A] is meant to remind lawyers of their obligation to be, and remain, technologically competent. The language reflects the understanding that the required level of competence is contextual, depending on a lawyer's practice areas and circumstances.

Commentary [4B] provides interpretive guidance. It clarifies that determining whether a lawyer has maintained the required level of technological competence is a contextual inquiry. The paragraph includes a non-exhaustive list of factors for lawyers and the Society to consider in determining the appropriate level of technological competence for a particular lawyer. For example, the technological competence that might be expected in a rural area with unreliable internet connectivity will be different than what might be expected of a lawyer working in Halifax.

In the new COVID-19 world in which we are all now working, reliance on technology is a necessity for almost all lawyers. As a result, there has been great innovation amongst the Bar and other justice partners. Lawyers are obligated by rule 3.1-2 of the Code to be technologically competent, and the timing of this amendment seems to have foreshadowed the current state of the practice of law.

If you have any questions about the application of this rule or any other part of the Code to your practice, please contact the Society.



# REVIEW OF THE INTESTATE SUCCESSION ACT



**ILANA  
LUTHER**  
Law Reform  
Commission of  
Nova Scotia

Nova Scotia has a high net-worth disparity which is further complicated by whether you live in rural or urban parts of the province and whether you are a member of an equity-seeking group. Canada's 2016 Census showed us that the top 20% of the province owns over 40% of net worth while the bottom 20% owns only 2.6%.

In the Access to Justice & Law Reform Institute's (Institute) review of the *Intestate Succession Act*, the Institute needed to create an act that works for everyone with certain principles in mind: access to justice and preventing economic vulnerability of close family members on the death of the intestate, and where possible, respecting the presumed intentions of the intestate. This means understanding and, where possible, responding to the needs of Nova Scotians and ensuring they are not adversely affected by reforms. To this end, Institute staff met with Nova Scotians in public libraries all across the province and asked them about their experiences and how they would

want their estates to be distributed.

What we heard has a strong bearing on access to justice. In particular, many people did not understand that common law partners are not entitled to the same rights as married partners. Many people thought that being "common law married" meant that you were treated as married in the eyes of the law. People were very surprised to hear that they would have to register as Domestic Partners if they wanted to be treated at law the same as common law partners.

We heard from lawyers that for many of their low-income clients, fees associated with probate were prohibitive and many questioned why, if all heirs to the intestate estate agreed, could bonding requirements not be waived as with testate estates.

It is noteworthy that with the changing family form in Nova Scotia, aside from issues facing common law couples, the failure of the Act to keep pace has created other difficulties for some families – LGBTQ2S+ families, in particular. The Act's outdated understanding of 'issue' (the intestate's "lawful lineal descendants") doesn't cover all the parent-child relationships that are possible with artificial reproductive technologies.

This discriminates against the children of non-genetic non-adoptive parents, and for children conceived posthumously. The Institute is currently working on a parentage project to address this gap that is left by the fact that Nova Scotia is the only jurisdiction in Canada without a child status act.

Of course, the best way to make sure that one's estate is distributed in the fairest and most intended way possible is to promote the use of wills in Nova Scotia. We have been promoting the Legal Information Society of Nova Scotia wills app and there are Wills Projects run by Pro Bono Students Dalhousie. But more has to be done in order to ensure that everyone who wants a will can get one without having to resort to holograph wills. This will be especially important for groups with complicated estates such as new immigrants and Indigenous persons with property both on and off reserve. More needs to be done to raise awareness among the bar of the complicated nature of these estates and how they engage complicated questions of conflicts of laws, including the Indian Act, and cultural competence.



# THE EVOLUTION OF LEGAL AID IN NOVA SCOTIA



MEGAN  
LONGLEY  
Nova Scotia  
Legal Aid

From the time legal aid plans began to emerge in Canada, legal aid and access to justice have been inextricably linked. The belief that ensuring those who are most disadvantaged and vulnerable in our society can access legal services remains necessary to ensuring an inclusive justice system. From the beginning legal aid plans have not only provided direct service for criminal, family and civil matters but have also worked to advance civil rights through strategic litigation and law reform. Facilitating the exercise of legal rights by those who are economically or historically marginalized, usually against the social policies of the government or where government is the opposing party, is something greater than a business transaction. In the words of Gord Murray, QC, Nova Scotia Legal Aid's founding Executive Director, "Legal aid is a movement."

It is noteworthy that at the moment of writing this article, the first comprehensive amendments to the Legal Aid Act have passed third reading, and expressly state as part of the legislated objects of the Commission: "s.5B (b) improve access to justice for Nova Scotians."

As legal aid has matured and 'A2J' has become a common part of the vernacular,

legal aid plans have by necessity, adopted bureaucratic processes that include detailed policy and protocol management along with significant consideration given to budget control to ensure they operate efficiently and effectively as good stewards of public monies. However, this has not meant a shift in purpose as legal aid needs to remain at the forefront of system change. The focus must be on the people who need to use the system. Meaningful access to justice for people engaging with these systems is dependent upon ensuring that all people can not only equally access the systems but challenge them where necessary. This is particularly true for members of immigrant, indigenous, racialized, rural, disabled, and other vulnerable groups who have been economically and historically marginalized.

Changing systems sometimes happens in slow, almost imperceptible ways, and sometimes in ways that are bold and shocking. Either way, legal aid is often there helping individuals and impacting communities and the whole justice system. By pushing boundaries and bringing forward big ideas, we have Courts now regularly accepting evidence of cultural impact in matters where African Nova Scotians are appearing before criminal courts; Courts recognizing that poverty does not equate with bad parenting in child protection matters; and a ruling that people with intellectual disabilities have the right to live in their communities in a manner that is the most inclusive and

least restrictive. All of these examples see people who have experienced more barriers to justice than access.

Legal aid is also found outside of courts endeavouring to reach people who may never otherwise book an office appointment, or who may not even define the challenges in their lives as legal issues. You can find lawyers and staff available to Nova Scotians where they live or access other supports: in First Nations communities, in women's centres, and at community roundtables. Legal aid lawyers give advice and information to people appearing without lawyers in every family and criminal court in the province. Social workers support Mi'kmaq and African Nova Scotian clients in their pursuit of justice. An early intervention team of lawyers and staff offer advice to parents as soon as government social workers become involved in their parenting to help keep matters out of court and children with their families.

These initiatives and improvements to justice systems would not happen if those who work here thought of Nova Scotia Legal Aid as just another government funded service. So every day I go back to the words of Gord Murray who reminds us that today's legal aid plan is administratively more efficient and accountable than in the past, but it must not rely only on accounting and analytics but also on the collective social conscience of those who believe in or work for legal aid.



# Q & A WITH SUSAN JOHNSON

**Called to the Bar/Bar Admissions:** New Brunswick (2018) and Nova Scotia (2019)

**Firm:** McInnes Cooper

**Areas of Practice:** Banking and Financial Services; Corporate and Business; Estates and Trusts; Tax.

**Describe your professional experience to date:**

Prior to pursuing a legal career, I worked in the banking and financial services industry for over ten years. I articulated with the Department of Justice, New Brunswick at the New Brunswick Court of Appeal. Since joining the Firm in October 2018, I practiced briefly in Civil and Insurance Litigation, and in Corporate and Commercial, before transitioning into a practice more focused on Corporate Tax and Estates and Trusts.

**Describe your current practice:**

My current practice focuses on simple to complex corporate transactions, tax-efficient corporate reorganizations, tax business planning strategies, and a wide range of tax and estates and trusts related matters.

**Describe the unique qualities you bring to your practice:**

As a newcomer to Canada with a wealth of business experience, I bring a practical, comprehensive, and diverse business perspective to my practice and



my clients. My curiosity and intuition, which complement my analytical and problem-solving skills, allows me to find new, different, and creative ways of solving complex problems.

**What other activities and volunteer pursuits occupy your time?**

Pre-pandemic, when I am not in the office, you would find me at a paint party honing my newly acquired painting skills, on a flight to an exciting new (sometimes old) destination or finishing a 5K race. Since the pandemic, I have discovered my interest in jigsaw puzzles and music, and I now spend my waking-non-working hours either completing

travel-related jigsaw puzzles or actively working on my once non-existent musical talents by learning to play the guitar. I enjoy engaging with the wider community and serve as Chair of the Audit Committee of the Smythe Street Cathedral Inc.'s Board of Trustees. I am an active member of the CBA and the current Nova Scotia Board Member of the CBA National Board of Directors. I am also a member of the Canadian Association of Black Lawyers, the Law Society of New Brunswick, and the Nova Scotia Barristers' Society. Finally, as lifelong learner, I am currently pursuing the Chartered Professional Accountants' In-Depth Tax Course.

***What do you consider to be the greatest challenges facing young lawyers?***

Navigating the business of practicing law is perhaps the greatest challenge a younger lawyer will face, whether in a large, medium, or small firm. It is not just about client engagement and management – finding and retaining clients but knowing how the numbers add up; over-head costs, payroll expenses and the gamut of other business decisions that goes into successfully managing a legal business. Knowing the law is key for any lawyer’s success but knowing the business of practicing law is how you make partner, support your firm’s overall financial success, or successfully

branch out as a sole practitioner.

***What word of wisdom do you have for new lawyers?***

GET A COACH! Find a mentor; be proactive; set goals for your life and your career; seek feedback. It is okay to make mistakes but be sure to learn from them. Never be afraid to ask the “stupid” questions because it is okay not to know, but be sure to know what you don’t know and go know it. Irrespective of age, gender, race, it is important to set aside time to take care of yourself. A lawyer’s most valuable asset is our good judgment. Investing in yourself, mentally, physically, spiritually, and

intellectually, through rest, relaxation, and the occasional enlivening experience, is one of the best ways to protect this valuable and important asset.

***What are your goals for your career as you become a more seasoned lawyer?***

I look forward to developing an expertise in Canadian Tax Law, with a specialty in corporate tax and HST/GST issues. I also look forward to leveraging my work and life experiences and the opportunity to contribute to the leadership of the legal profession in Canada through my involvement in the CBA and my role as member of the National Board of Directors.

# SECTIONS AND PROFESSIONAL DEVELOPMENT UPDATE

After a successful Section Executive Orientation in September, our Section activities are in full swing with dozens of meetings held in October, November, December and many more planned for early 2021. We will continue to offer Section meetings virtually for the immediate future and remain committed to ensuring the safety and wellbeing of our members.

With our Annual Professional Development Conference not possible this year, we have held two virtual, half day conferences since June, focusing on: [Moving the Courts Online](#) and [COVID and the Workplace](#). Both conferences contain 3+ hours of content and the

recordings and associated materials are available for purchase online for the member only price of \$80 (+ tax). Additional conferences are being planned for 2021, including [Accelerating Your Career](#) which will be taking place on January 14, 2021.

We thank our members for their flexibility and understanding throughout the last seven months as we have made necessary changes in our processes and programming. We are excited to continue utilizing technology to bring you high quality substantive, wellness, practice management and advocacy related professional development opportunities in the months to come.

## SAVE THE DATE

The CBA-NS Annual General Meeting will be virtually held on **January 21, 2021**.

Check the CBA-NS website for further details about our special guest speaker and information on how to register to attend.

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