

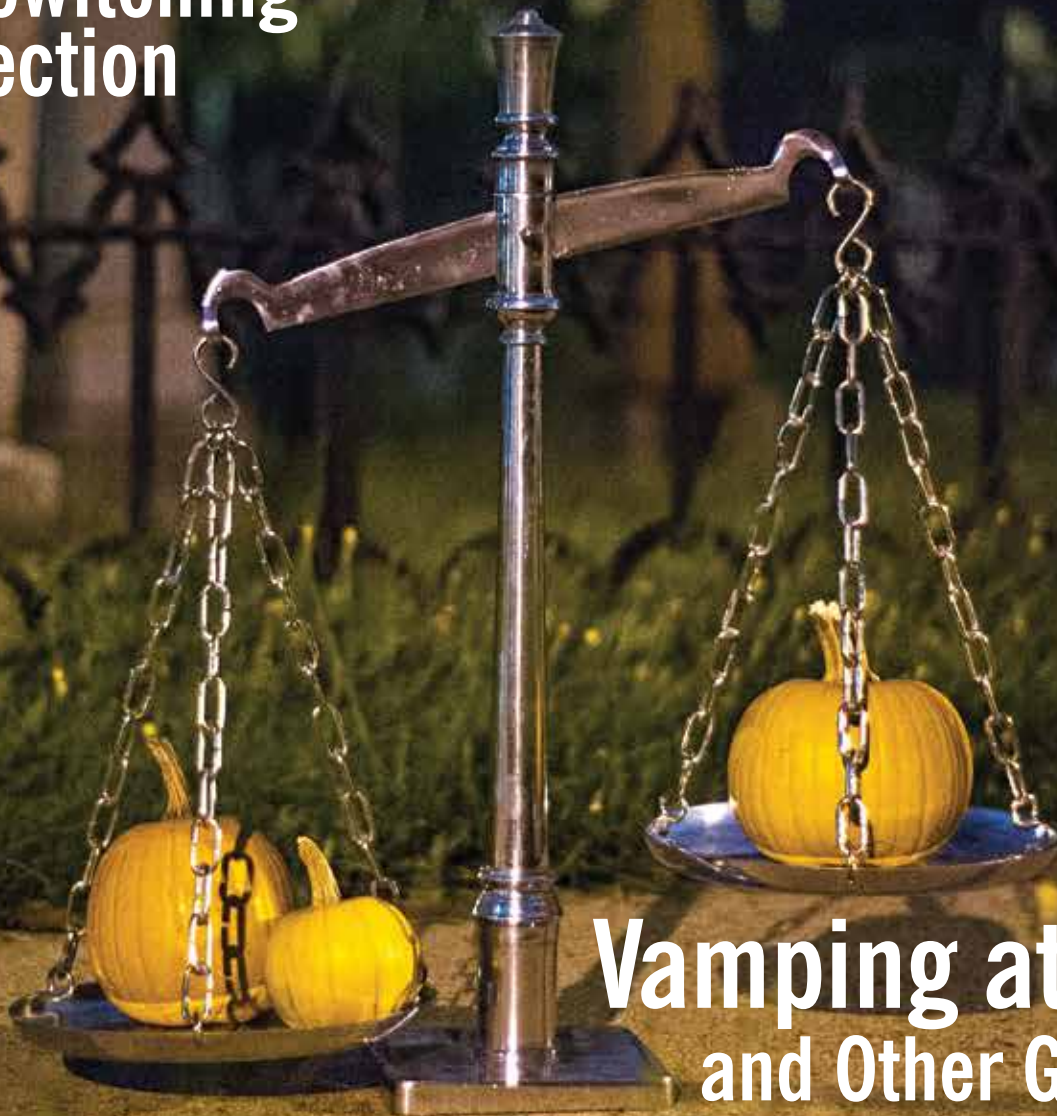
NOVA VOICE



Volume 32, No. 1, Fall 2013

The Voice of the Legal Profession in Nova Scotia

Law and Halloween: the Bewitching Connection



Vamping at Keji and Other Goulsh Memories

PRESIDENT'S REPORT

By **ROBYN ELLIOTT**

I am grateful for the privilege of serving as President of CBA-NS.

The new CBA Strategic Plan contains this vision statement:

“CBA is the essential ally and advocate of the legal profession and a guardian of the rule of law in Canada. CBA members are passionate about their Association and the good it does in their lives, and the world. Staff and volunteers are inspired to exceed the expectations of members every day.”

I am a 25-year CBA member who is passionate about her CBA! Here are a few of the reasons I am honoured to serve as President of our terrific branch:

1. CBA volunteers tackle a challenge or difficult task with energy and enthusiasm

The Legal Futures Initiative and the Access to Justice Initiative are great examples of this. Or there is CBA's advocacy work on Trinity Western University's application to the Federation of Law Societies for approval of a new law degree program (our own Treasurer, Amy Sakalauskas has taken a leadership role on this issue).

2. CBA has influence

When CBA speaks with one voice: governments, courts and

other decision makers listen.

For the last number of years CBA has been doing extensive work on conflicts of interest. There was a Task Force, a Final Report, Recommendations and a Toolkit. This year CBA intervened before the Supreme Court of Canada in a case about the scope of the duty to avoid conflicts of interest.

In Nova Scotia, our Legislation & Law Reform Chair, Matthew Moir, has recently done good work advocating for proclamation of the 2011 statute abolishing the rule against perpetuities.

3. CBA helps build democracies and supports access to justice projects in developing countries

CBA does great international development work. If you are not familiar with this work - check out the CBA website for details. I am sure you will agree this work alone is worth the CBA membership fee.

4. Law for the Future Fund

Through donations to the Law for the Future Fund, CBA lawyers have helped finance more than 135 innovative and timely law and justice research projects.

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COVER PHOTO: BRUCE JOLLIMORE

Cell phone searches on the menu at joint dinner meeting – Criminal Law and Military Law Sections

By **MARK KNOX**

The Criminal Law and Military Law Sections held a joint session, and enjoyed a great meal at the Grand Taj Restaurant on South Street in Halifax during the evening of Friday, June 21, 2013.

Our guests reviewed two topics: one, the basic and general theme of Crown Discretion; two, the “hot button” topic of cell phone searches by the police, which confronts most Crown and defence counsel on a semi-regular basis.

Most Canadians have a cell phone, and some have more than one. “Land line” phones are often replaced in homes by cell phones. In the sphere of criminal law practice, cell phones are sometimes used to plan criminal activity, carry out crimes, photograph the spoils of a crime, and discuss crimes. They record data (phone numbers) and information (text messages/email messages/photos). They have voice mail functions. Cell phone usage and location, at pinpoint times of the day, is determinable by a cell phone forensic analysis. Police find cell phones on persons being arrested (being used at the time or on standby), in cars and in homes, and even at crime scenes, left behind inadvertently.

The Honourable Associate Chief Judge Alan Tufts, Prosecutor David Schermbrucker (Justice Canada) and Ken Greer (Nova Scotia Legal Aid) presented on cell phone searches. All were involved in the Provincial Court trial, **R. v. Hiscoe**, a fundamental case on s. 8 of the **Charter of Rights**.

There are two types of cell phone searches: a quick and brief cursory “screen” review, and a detailed reproduction of the phone’s internal contents. The trial Court adjudicated that the warrantless, “internal” forensic search (also known as a data dump) of the cell phone by the police was unconstitutional in **Hiscoe**. A Crown appeal against this finding was dismissed by the Nova Scotia Court of Appeal. Judge Tufts commented that cell phones (particularly smart phones) contain both mundane information and very personal information. Many cell phones are password protected. Judge Tufts reviewed some of the jurisprudence from other provinces as well. Both David and Ken provided further insight into the case, from their points of view: the police/Crown perspective, and the defence point of view.

Kathy Pentz, Q.C. (Nova Scotia Public Prosecution Service and Vice Chair of the Criminal Section), Brian Casey (Defence, Boyne Clarke) and Major Jason Samson also presented on the topic of “Crown Discretion.” Crown discretion may arise in pre-charge advice to the police; on arraignment (the Crown choosing either the indictable route or a summary prosecution mode); potential charge and plea negotiations; and sentencing recommendations.

The discussion centered around the Crown’s decision to not continue a prosecution when the “public interest” does not support prosecuting the case further. Major Samson discussed the topic within the military prosecution regime, described the military system, and updated our group on a significant appeal case involving discretion by the prosecution. Kathy provided a frank perspective of a Crown attorney dealing with the topic of Crown discretion,

encouraging defence counsel to review the Public Prosecution Service website, and the policy on “public interest”. Brian, who has experience both prosecuting and defending cases, provided a critical and analytical view of this very important principle.

The post-presentation session included a healthy discussion on domestic assault cases, policy exceptions to prosecuting this type of case, and a review of where matters are: studies and submissions from various interested parties regarding potential changes in domestic violence cases; the view from the bench; the prohibition on sending these cases to Adult Diversion; the new Domestic Assault Court in Cape Breton; and concerns on continuously charging and prosecuting these cases. Judge Tufts indicated that (in his experience) there are at least as many women charged with domestic assault as men.

This was the first dinner presentation we have held in several years. Attendees indicated it was successful as a result of top notch presenters/presentations, a great venue, and a healthy turnout.

Sections Spotlight is a recurring feature focusing on a recent meeting or initiative of a CBA-NS section. Mark Knox is a lawyer in Halifax and the past-chair of the Criminal Section of CBA-NS.

Peter J. MacKeigan, Q.C.

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Peter is a full time commercial and labour mediator and arbitrator serving Atlantic Canada. He is a Chartered Mediator and Chartered Arbitrator as designated by the ADR Institute of Canada, a Distinguished Fellow of the International Academy of Mediators and has received an AV Peer Review Rating from Martindale-Hubbel.

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Nova Scotia Legal Aid: Valuing Diversity

By **KAREN HUDSON, Q.C.** **Setting the Stage**

- “Last year, the United Nations called on Canada to take “urgent measures” to reduce the overrepresentation of aboriginals and blacks in the criminal justice system and out of home care” (Toronto Star – March, 2013)
- “...50% spike in the proportion of black offenders filling federal jails over the last 10 years” (CBC – 2011, Interview with Howard Sapers, Correctional Investigator for Canada)
- “African Canadians are 27 x more likely to be imprisoned [remanded] before their trials on charges of drug trafficking...” (Kafele, University of Windsor Colloquium 2005)
- “Nearly half of children under 14 in foster care in Canada are aboriginal children” (National Household Survey – 2013)
- Foster homes are the “new residential schools” (Jonathan Rudin, Executive Director, Aboriginal Legal Services, Toronto)
- “Culture shock...is the physical and emotional outcome of the inevitable confrontation with the unfamiliar” (Immigrant Settlement Integrated Services 2013 Presentation to Nova Scotia Legal)
- “Racialized communities face high levels of poverty...the problem is especially severe among more recent immigrants” (National Welfare Council of Canada)

I bet the above short-snappers got your attention. They are, sadly, not surprising to Legal Aid lawyers.

Nova Scotia Legal Aid: Developing a Diversity Action Plan

As the largest law firm in Nova Scotia providing criminal, family and social justice law, it became apparent to me that we needed to do more to increase our cultural competencies and racial diversity. NSLA recognizes that Nova Scotia does not have a homogenous population. Clients need lawyers who better understand and reflect their cultural experiences.

“In order to effectively discern the goals and needs of clients, advise them of their options and help them achieve their goals, lawyers of today must be...appreciating the social contexts in which clients live and in which they are seeking legal services.” (Voyvodic, ‘Lawyers Meet the Social Contexts: Understanding Cultural Competence’)

Last year we began a Diversity Refocus

“Cultural competence requires that practitioners actually value diversity, not just tolerate it.” (Robert Wright, MSW, 2012 Presentation to NSLA)

What have we done so far?

- We established a NSLA Racial Diversity Committee chaired by Chandra Gosine. Not another committee you say. But at Legal Aid we like to focus on action and this committee helped us meet two goals. First we raised our profile with Indigenous Black and Mi’kmaq students at the Schulich School of Law. As a result, this year we have welcomed three clerks: Two First Nations and one African Canadian. Second, we focused our Professional Development on increasing our cultural competencies to better serve Aboriginal and African Nova Scotians and immigrants.

- We expanded our aboriginal In-Community and Near-Community service delivery. We now go into six aboriginal communities in Nova Scotia for intake and appointments. We developed a closer working relationship with Mi’kmaq Legal Support Network and aboriginal communities.

- Last winter we participated in the Marshall Inquiry Review Community forums. This led us to call together a working group so that Nova Scotia Legal Aid crystalizes an Aboriginal Justice Initiative.

“At present Nova Scotia Legal Aid has its largest representation of staff lawyers, articulated clerks and commissioners with aboriginal descent.” Cathy Benton, Managing Lawyer, Bridgewater Office and Lennox Island Band Member.



“As both an African Nova Scotian and a Mi’kmaq, access to justice is a very

real issue to me and in order to tackle that issue in a meaningful way it is imperative that the voices of those most affected by this issue, marginalized individuals, are heard. It is critical for all members of our Canadian democracy to see African Nova Scotian and Mi’kmaq lawyers. This is why I practice law and why I joined the Racial Diversity Committee at NSLA.”

– David Curry, Staff Lawyer,
Yarmouth Office

¹ Poverty Admin Law – Income and Housing Security Issues: E.I., CPP Disability, Income Assistance, Residential Tenancies

CBA Awards Recognize Work on Equity...and Happiness

By **JENNIFER TAYLOR**

Two young Nova Scotia lawyers recently received national CBA awards recognizing their achievements, and not only are they friends, but there is a common thread in their careers: Using the law as a tool to improve life for those both inside and outside of the legal profession. For Emma Halpern, winner of the SOGIC Ally Award, it's a career devoted to advancing equity issues in Nova Scotia. And for Benjamin Perryman, recipient of the Viscount Bennett Fellowship, it's doctoral research asking whether there is a constitutional right to happiness in Canadian law.



Emma Halpern pictured with SOGIC Hero Award recipient Mile Komlen

Emma has been the Nova Scotia Barristers' Society Equity Officer since 2008. Winning the SOGIC Ally Award, given annually to a member of the legal profession who has advanced the cause of LGBTT communities but is not herself a member of those communities, meant a "tremendous amount." Emma says, "There are significant issues facing LGBTT communities right now, and there are so many important people across Canada who have been working on these issues and it's really mind-blowing for me to be part of it."

Throughout her career, Emma has worked with the SOGIC (which stands for the Sexual Orientation and Gender Identity Conference), the Equality Committee, and the Women's Forum of the CBA-NS, with a particular focus on the local LGBTT communities. The annual Pride Week reception, which has grown into a significant community event, and the Pride Mentorship Program are two highlights of this work. The mentorship program aims to link law students and new lawyers with a more senior LGBTT lawyer who can be their mentor and help them navigate steps like coming out at work. There have been several matches each year, and the program is always there if needed. As Emma explains, "It's still important that we publicly support Pride because there are still many in the legal profession who have discriminatory views."

Receiving the Ally Award is not an indication that Emma's work advancing equity in the legal profession is done. She says that a current hot topic is developing more inclusive workplaces. "We think that we can simply create a more diverse legal workplace by bringing in more people and that is one piece of it, but we have to all take a look at our own workplaces and the culture of our workplaces, the

environments, and ensure that they are really safe and comfortable places for everybody regardless of their backgrounds...[And] when you have people with very diverse views, experiences, and knowledge that they bring to the table, those are the most productive, most successful workplaces."



Benjamin Perryman

Benjamin Perryman's plans for his doctoral research at Yale, a good portion of which will be funded through the Viscount Bennett Fellowship, also reflect the desire for a more productive and successful society. As he says, "I think the fundamental purpose of the law is to create the type of society that we want to live in, and part of that is having a population with a certain level and equality of well-being."

Benjamin's doctoral thesis will look at the interrelationship between happiness and constitutional law in a small group of countries, including Canada: "The big question is whether or not a right to happiness can be derived either from international law or from domestic constitutions. The more specific question is, how can we incorporate the past 30 years of research on what makes humans happy into constitutional decision-making?"

Lots of big questions when it comes to equity and happiness, but these two Nova Scotia lawyers are working hard to find the answers.

Career Compass is a recurring feature focusing on a workplace issue of interest to CBA members. Jennifer Taylor is a research lawyer at Stewart McKelvey and a member of the editorial board of Nova Voce.

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From Horoscope to *Horrorscope*

(A brief review of law, lawyers and Halloween)



By ROBERT PATZELT, Q.C.

My loving and loyal readers, it is now clear that the theme of this edition of Nova Voce is seasonally adjusted to be about the very popular and amusing event renamed and contacted from All Hallow's Evening. After many splendid and complimentary notes about how you enjoyed the horoscope column I unceremoniously received "instructions" from the CBA to

write a column following the aforementioned "theme". As General Counsel and "the client", I am used to (and deservedly so) giving instructions not getting them - but I will do my best.

I will not bore you with the history of this event other than it was supposedly a Christianized pagan holiday. How one gets from traditional Christian values and symbols to wearing outrageous costumes and having children gather enough glucose based treats to destroy the tooth enamel of a small nation is beyond my ken. But, interestingly, Halloween is generally an event where lawyers are noticeably absent in almost all forms.

What first comes to mind regarding lawyers and Halloween is the excellent novel *To Kill a Mockingbird*. As you are fully aware, this American classic novel not only portrays the lawyer Atticus Finch as a moral hero but also puts all legal counsel in the most favourable light. Sadly today fiction, film, and the Fourth Estate tend to paint a picture far less charitable. You will recall in the book that Jem and Scout are savagely attacked and Scout is hindered in her attempt to escape as she is wearing a ham as a Halloween costume. The young girls are saved and Mr. Ewell is found dead with a knife in his ribs - the same knife that cut Scout's costume. They were saved by the previously perceived "scary" Boo Radley.

I thought there would be more connection in film or otherwise between lawyers and Halloween. The ubiquitous use of "Devil's Advocate" naturally conjures up what could potentially be a rich connection to Halloween but alas, all is lost. One could assume that the 1997 movie would have some foundation in legend or lore but it is all fiction. Not surprising, this is Hollywood after all. As it turns out, during the canonization process, the advocatus diaboli is in fact a lawyer hired by Church authorities to search for contrary evidence so the Church can assure itself that the candidate is in fact truly worthy of having sainthood bestowed upon him or her. Even when we are on the "other" side, we are doing God's work.

The tradition of "guising" - dressing up and cadging for treats is of little help. Of course, the lazy among evening revellers who are in need of a quick costume could put on a suit and try to scare others by stating they are dressed as lawyer. But we are not the only ones who don dark pinstripes. It would be far more effective to state one is i) an investment banker from Harvard specializing, as many do, in the invention of weapons of mass financial destruction, or ii) a Canadian Senator appearing before an expense review committee, or the scariest of all iii) tax auditor.

The most common connection to Halloween is naturally related to two key aspects of our profession - litigation and law making. However, the results are an adjunct of those primary areas of work. Cases from the Crypt include some reasonable decisions. As a rule in tort law we have a duty not to harm people but the obligation is modified as in the haunted house decisions where people got hurt reacting from a "good scare". The courts have generally ruled that limited lighting and a surprise are required to give effect to that purpose. Threatening a person with a chainsaw will bring down the law as this is intimidation. Unless you are engaged in lumber jacking there is little reason to brandish a chainsaw but on this evening when one is dressed as "Jason" this is an accepted norm and judges are okay with that.

Municipal lawmakers, perhaps genuinely motivated can enact laws that can be deemed silly. One need only refer to local cat and chicken bylaw matters. In Hollywood it is punishable by a \$1,000 fine to even be in possession of "Silly String" on Halloween. On Halloween it is illegal in Alabama to dress as a priest. In Dublin, Georgia if you are over 16, one cannot wear a mask, sunglasses, hood or any "regalia such manner as to conceal his or her identity." So much for dressing as the Blues Brothers or in fact, being one of the Blues Brothers or Stevie Wonder on that night. But seriously, using the term "regalia" - who drafted this? Regalia are signs of royalty or special office and are hardly dress for the purpose of concealment.

I did find one very tenuous connection to law via "trick or treat". Apparently, the phrase was first used in print in 1927 in Blackie, Alberta. "The youthful tormentors were at back door and front demanding edible plunder by the word "trick or treat" to which the inmates gladly responded and sent the robbers away rejoicing." Trick or treating really did not get popular until the 1930s and only appears next in a national US publication in 1939. Once again, Canadians are on the leading edge or "the front of the toboggan" as it were. The legal connection to the law is Blackie, Alberta named after John Stuart Blackie who

Continued on next page

Practice & Lifestyle: Does Geography Matter?



By SARAH MACINTOSH

I'm often considered a 'rural' member of the CBA. But I admit that the word 'rural' gets my back up. It's not a word I would use to describe either myself, or my practice. I'm proud of my Pictou County roots and enjoy my non-metropolitan lifestyle. But the issue of geography having any significant impact upon one's legal practice

seems as outdated as a rotary dial telephone.

Take the story one of our firm's senior partners, Eric Atkinson, told me. Eric is a transplanted member of the Quebec bar who arrived to practice tax law in Pictou County in 1994. When he first joined Mac, Mac & Mac, he was searching for an arcane piece of Quebec legislation that most law schools would not have and certainly few law firms possessed. Geography was a substantive impediment to this relocated Quebec civil law lawyer who was cutting his teeth in common law Pictou County. Fast-forward 20 years, and Eric has at his fingertips, literally, any type of obscure information that his imaginative tax mind might require. The geographic costs of serving his clients today are nominal to non-existent. Today, Eric works from the interchangeable convenience of both his New Glasgow office and his Antigonish home, representing national and international clients on complex tax and fisheries issues. No more trips to the McGill Law Library required.

As for the client base of a rural practice, we all know that technology has opened doors. The speed of our internet connection is not what allows us to attract and retain our geographically expanding client base. And as like lawyers everywhere, we attract and retain clients by getting the results that they need. By working harder and smarter than they expect. Our access to clients through technology does nothing to earn us new clients. But technology does give a non-metropolitan practice like Mac, Mac & Mac the opportunity to serve in ways not previously cost-effective for our

clients. Over the last 50 years, we have grown from a localized Northern Nova Scotia client base to one that now includes clients on several continents across the globe. Geography is no impediment to client service.

Here's the real proof. Just over a year ago, I moved to Halifax temporarily with my lawyer husband, Mark Wiseman, and our two boys. We had an opportunity to better meet the particular needs of one of our sons if we were based out of Halifax. To move, or not to move? Worse still, to dust off resumes or try to be in two places simultaneously? How would a geographical change impact our respective jobs? Measured in hindsight, it was an easy decision to move for the year. Mark is in-house counsel with Sobeys Inc. The move made little to no difference in his day-to-day activities, where he works with issues that arise across the nation and around the globe. And Mac, Mac & Mac was happy to provide me with the necessary supports (technological and otherwise) to allow me to continue my labour and employment law practice seamlessly from Halifax. When we returned to Pictou County, one of my long-standing employer clients commented that I could move to Timbuktu for all he cared, so long as I stayed accessible and responsive. Other clients didn't even know that my office chair in New Glasgow was collecting dust for a year.

So, does geography impede us when it comes to practice? Like most lawyers, I believe that if you work hard, work smart, and earn the trust and respect of your clients, geography is not a material impediment to a successful solicitor-client relationship, as long as we can exercise personal face-to-face contact from time to time. And what about lifestyle? Suffice it to say that 11 of the 15 lawyers in our firm chose to relocate to Mac, Mac & Mac from jobs and opportunities in cities across the country. Geography be damned. The other four were even smarter: they made a bee-line to Pictou County right from the law school gate.

Nova Voices features the viewpoints of lawyers around Nova Scotia. Sarah MacIntosh is a labour and employment lawyer with Mac, Mac & Mac in New Glasgow.

EXAMINO *Continued from previous page*

only spent six months as a lawyer but subsequently pursued an academic career due to his love of classic literature.

You see my ghouls and boys, Halloween is a silly and frivolous event that comes but once a year and has mutated far from its origins. The term "All Hallow's Eve" does not appear until 1556, which means the law has been around much longer. Hammurabi's code was enacted circa 1760 BC. Although

imperfect, a legal system is taken very seriously and adapts to meet the needs of the society it serves. A night of bats, black cats, goblins and witches is a time for festive fun, but a world without the Rule of Law would be truly scary. Boo!w

Robert Patzelt, Q.C. is a long-standing CBA member and regular contributor to Nova Voce. Ex Animo means "From the Heart."

Vamping at Keji and other Goul-ish Memories



Christine Doucet circa 1977.



Christine's Keji pumpkins 2011.

By CHRISTINE DOUCET

When our editorial board decided back in August to take a Halloween slant in our fall issue, I happily volunteered to co-ordinate this feature. It seemed fitting, since I had already been thinking about Halloween for a few months.

In fact, the lead up to Halloween begins each year in my family in mid-April when the Parks Canada online reservation system opens for the season. Only those who are poised and ready at their computer at 8 a.m. will get a coveted camping site at Kejimikujik National Park for the annual Halloween festivities, held each year over the Thanksgiving long weekend. This year, the sites booked up within a few minutes. I had a satisfying rush of adrenaline when I secured our campsite, albeit with no electricity and on the outermost loop of Slapfoot.

What type of insanity would cause me to voluntarily camp in October, you ask? And with three kids in tow? Both very good questions.

Keji is one of my favourite places in Nova Scotia as it is. Its annual Halloween weekend, however, turns the park from a peaceful, forested wilderness into a giant seasonal party, complete with dollar store décor hanging from the trees and the most amazing pumpkin art you could ever imagine. The kids love the oxen-pulled wagon rides through the campground, the haunted house and, most of all, walking around the campground after dark on Saturday night with their glow-sticks alit to check out the pumpkins. And these are not your everyday jack-o-lanterns. The one that sticks in my mind from previous years was a giant motorized turtle with a moving pumpkin head, a roof rack shell and a litter of baby pumpkin-turtles. Add to that a Thanksgiving celebration (think turkey, deep fryer and

generator), and it's a holiday tradition that I hope will continue long after my kids are grown up.

It seems I am not the only grown up who looks forward to Halloween. I surveyed some other members of the CBA executive and staff, and came up with these memories and traditions:



Robyn Elliott, President: This just might be my best ever costume! I don't remember being that into Raggedy Ann and Andy, so maybe it was my mother's choice. Or my twin brother's?? Nevertheless, Wikipedia tells me Raggedy Ann and Andy had many adventures together. The Elliott twins certainly did as well – at Halloween and always! Digging through the pile of treats at the end of Halloween night was the best!



David Cameron, Vice-President: “Do zombies eat popcorn with their fingers? Answer: No, they eat the fingers separately...”

Second on the list of favourite celebrations of my wife and children, Halloween at our house involves lots of decorations (more and more each year), scary parties for the kids, witches’ fingers (cookies) sometimes cleverly hidden in places where they later will produce intended shock and surprise, and watching Ghostbusters and Cujo. In my usual mask, I greet the neighbourhood kids but scare only our dog who growls and barks repeatedly. (Man’s truest friend proven yet again.) And after trick or treating, one tradition we have upheld since we moved to our new home six years ago, is to return to our old west end street to visit our neighbours. All love to celebrate Halloween just like the kids they once were, and routinely congregate on their front verandahs with each other, swapping stories and sharing drinks while handing out treats and doing their best to figure out just which neighbourhood child is behind each costume.



Les Jesudason, Equity Committee Chair: When Les’ parents came to Canada from Sri Lanka, they thought their new neighbours were playing a joke on them when they informed them that werewolves, ghosts and witches would be coming to their house at night demanding treats failing which they could be pranked.

What a strange country this Canada is they thought! However, they soon learned all about Halloween and happily went along with the tradition.

Over the years, Les’ mom made various costumes for him. However, she drew the line in the sand when he suggested that he should be entitled to dress up as the Invisible Man. Somehow, she did not think it was a good idea for him to walk the streets of Liverpool at night wearing a black sheet over his head. Thus, as perhaps his final act of childhood defiance, Les proudly sports this year’s costume as the Invisible Man. He trusts you will find it very convincing.



Andrew Taillon, Young Lawyer Chair: What I like about Halloween is that it is a chance for your friends, family and neighbours to see you as someone different from your everyday self. This is a picture of me and my son dressed as Star Wars characters.



Tina Tucker, Executive Director: Halloween just wouldn’t feel right without Michael Jackson’s Thriller video. No matter how many times my husband and I watch this video, we’re impressed with everything from the storyline, the lyrics and of course the incredible dancing prowess of the master himself. A bucket of treats nearby also helps get the evening off to howling start.



Dan MacRury, Past President: Dan took an opportunity at the CLC in Saskatoon to try out potential Halloween costumes. We think this look suits him.



Amy Saukalauskas, Treasurer: Halloween was pretty serious business at our place when I was a kid. My two brothers and I are within three years of age from youngest to oldest, so there was a lot of excitement. The costumes, candy, decorations, and scary shows were great, but paled in comparison to our favorite part – the fireworks our Dad lit off in the back yard. We particularly loved the burning schoolhouse. It was always the last one lit, and we would cheer as the flames grew. Now, as a parent, I realize how fun all of that was for Mom and Dad as well. I love Halloween with our kids, even if they fail to appreciate the wisdom in my costume suggestions. Who wouldn’t want to be Goose and Maverick?! This picture is from the in-between, my last Halloween before parenthood. I was Courtney Love and Dorianne, my wife, was Kurt Cobain (albeit, pregnant). It was taken in the early morning hours at Pizza Corner. Ah, the days.



Matthew Moir, LLR Committee Chair: I fear there are many practicing law now who will not remember The Greatest American Hero. It was the most popular show on TV when I was in grade three. I don’t think they sold authorized versions at the time and so my mother made me this one. I wish you could see the excellent replica of the insignia in this photograph!

Outside the Office is a recurring feature focusing on a lifestyle issue of interest to CBA members. Christine Doucet is a partner at McGinty Doucet Walker and, as Communications Committee Chair, also chairs the editorial board of Nova Voce.



I'll take my PD with food, folk & fun!

Highlights from the 2013 CBA Legal Conference (CLC) in Saskatchewan

By **TINA TUCKER**

- The CLC got off to a great start with the **Opening Night Folk Fest at the Bessborough Gardens**—a showcase of Saskatoon's culture and communities.
- Many PD sessions focused on **new approaches to practicing law**, as well as the changes affecting the profession. Attendees could earn up to 12 hours of CPD credits in six learning streams: Advocacy; Your Practice; Public Interest; Your Client; Business; In-house Counsel.
- **Big Issues & Big Name Keynotes:** Canada and Canadians in a Changing World with Peter Mansbridge; The Next IQ: The Next Generation of Intelligence on Diversity & Inclusion in the Legal Profession with Dr. Arin N. Reeves; and The Big Shift, The Seismic Change in Canadian Politics, Business, and Culture and What It Means for Our Future with Darrell Bricker & John Ibbitson.
- Presentation to Council and at the CLC Closing Lunch: Dr. Melina Buckley, Chair of the CBA's **Envisioning Equal Justice Initiative** and Access to Justice Committee provided attendees with a fast-paced tour of the challenges and opportunities facing us.

"If not us, then who? And if not now, when?"

A new report released by the CBA calls on the legal community, politicians and the public to become engaged and make a difference in redressing the imbalance in a world "thick in law but thin in legal resources." The Access to Justice Committee announced 31 targets that set out a timeline for providing Canadians with meaningful access to justice by 2030. The targets are contained in a summary of the report *Reaching Equal Justice: An Invitation to Envision and to Act*, which will be released in full later in the fall. The report characterizes the state of access to justice in Canada today as "abysmal." To read the Report from the Access to Justice Committee, go to: http://www.cba.org/cba/equaljustice/secure_pdf/Equal-Justice-Report-En.pdf

- Monday Night Headline Entertainment: **Live performance by the Sheepdogs!** 2012 JUNO Award winners for New Group of the

Year, Single of the Year and Rock Album of the Year.

- **CBA Closing Gala Untucked!** Held at the Western Development Museum, this wasn't your traditional CLC Closing Gala. The Gala opened with a reception within the interactive *Winning the Prairie Gamble* exhibit where attendees followed 100 years in the life of a typical western family – the Worthys. Dinner was surrounded by the sights, sounds, and stories of the 1910 Boomtown exhibit.
- **Awards:** Emma Halpern of Dartmouth is the winner of the Canadian Bar Association's (CBA) 2013 Sexual Orientation and Gender Identity Conference (SOGIC) Ally Award for her significant contributions in support of the lesbian, gay, bisexual, transgendered and two-spirited (LGBT) communities in Canada.

2013 Resolutions adopted by Council

For details go to: <http://www.cba.org/CBA/resolutions/2013res>

- 13-01-A Harm Reduction Drug Policy
- 13-02-A Health and Wellness for Lawyers
- 13-03-A Pension Coverage
- 13-04-A Equality in Judicial Appointments
- 13-05-A Superior Court Appointments
- 13-06-A Solicitor-Client Privilege Claims at the Canadian Border
- 13-07-A Double Taxation on Legal Fees and Other Professional Services
- 13-08-A Ministerial Direction on Information Sharing with Foreign Entities
- 13-10-A Denunciation of Anti-homosexuality Laws and Enforcement in Cameroon
- 13-11-A United Nations Convention on the Rights of the Child
- 13-12-A Accommodating the Disability of FASD to Improve Access to Justice
- 13-13-A Membership Suspension and Disqualification
- 13-14-A CBA Annual Meeting
- 13-15-A CCCA Regulation Amendment
- 13-16-A National Elder Law Section Regulation Amendment

Tina Tucker is the Executive Director of CBA-NS.

Coming Home to The Gambia

By **ANGELA WALKER**

In the daily practice of law it is easy to forget why we chose this profession in the first place. For me, I had a strong desire to work in social justice. I have a passion for international development and, in particular, assisting women with the struggles they face. I have always felt a pull to the African continent, which I cannot explain. Between my second and third year of law school I had the opportunity to travel to Botswana on an internship program run through World University Services of Canada (WUSC). I worked with an NGO known as Women Against Rape (WAR), where I crafted and taught an eight-week workshop on basic legal rights. In the past two years, I have reconnected with my passion through my work with the Nova Scotia – Gambia Association (NSGA), first by managing its annual fundraising dinner in 2011 and in the past year, by sitting on the Board Executive and leading the fundraising team.

NSGA is a major force in youth education in The Gambia. NSGA has been operative since 1985. In this tiny West African country, Nova Scotia is well-known and revered. The work of the NSGA is impactful and reaches from every corner of the country. NSGA projects emphasize the concept of learning through active involvement. It uses drama and theatre, and peer education techniques to build healthy communities and to introduce its programs focused on gender equity, environmental sustainability, malaria prevention, and sexual and reproductive health, including voluntary and confidential HIV testing and counseling, among many other areas.

I had the opportunity to travel to The Gambia in August of this year and saw first-hand the incredible work the NSGA undertakes in its peer health education programming. The heat, smells of food and sweat and diesel, mixed with the constant beat of African music felt like coming home. The local NSGA staff was phenomenal and skilled beyond belief. I was awe-struck by the incredible educational product that was being delivered despite a lack of resources and infrastructure.

I had the chance to spend a morning with Magistrate Fatou Jeng, who was trained as an NSGA peer health educator while in high school. Fatou graduated from law school recently and now sits as a magistrate adjudicating family and criminal cases. She accredits her success, in large part, to the training and support she received from the NSGA. I sat in Fatou's court for the morning and was able to witness the hearing of two family law disputes. Fatou's decisions are guided by input from a male and female community elder who must reach consensus with Fatou before a decision is reached. Although the surroundings were much different, the decisions reached by Fatou could easily have stemmed from our own Family Court in Halifax.

NSGA is facing tough economic times because of funding cuts from CIDA. The work this small NGO undertakes is life-changing

and needs to continue. In an ongoing effort to increase our funding streams, we are launching the inaugural benefit concert on November 27, 2013 at the Rebecca Cohn, with performances by Dave Gunning, Adam Crossley, Lynnea Rose, and Matthew Panuska (tickets are \$30). Please come and support the NSGA!

Giving Back is a recurring feature highlighting the pro bono work of Nova Scotia lawyers. Angela is a partner with McGinty Doucet Walker and co-chair of the CBA Women's Forum.



From top: Angela Walker playing basketball with children in The Gambia; Lemin Fatty delivering programs funded by The Nova Scotia Gambia Association; Angela Walker and magistrate Fatou Jeng.

Live from Halifax: Inside the Bar

Each year, National hosts a roundtable discussion for its special student issue, bringing together lawyers from a cross-section of firms and organizations to explore trends, developments and changes in the legal industry that will affect students preparing to enter the field.

This year, in conjunction with the CBA membership department and

Young Lawyers section, National hosted its roundtable at Dalhousie's Schulich School of Law. Moderated by Jim Rossiter, this year's panel discussion focused on the role of legal education in succeeding in today's profession. Five lawyers from diverse legal backgrounds shared some of their formative experiences.



CHRISTINE DOUCET is a family lawyer and partner at McGinty Doucet Walker in Halifax. A former journalist who was called to the bar in 2002, she has also worked at a large Vancouver firm and as a legal recruiter.



JAMIE MACNEIL is a managing partner at Boyne Clarke, one of Nova Scotia's largest firms and easily its fastest-growing. A 2001 call, Jamie is among the firm's youngest managing partners, and led its articling recruitment for five years.



HEATHER OKE, a 2007 call, came to law after a career in arts and entertainment that included time at Film Nova Scotia. She is now a lawyer with the province's Department of Justice.



MATTHEW FRASER owns Hood Fraser, a three-lawyer practice in Yarmouth, Nova Scotia. Despite being the newest lawyer on the panel — a 2008 call — he's now looking at life from the perspective of a business owner.



ROB CURRIE, a 2000 call, went on to earn an LL.M. at the University of Edinburgh, and articulated and worked at McInnis Cooper, a regional firm with offices throughout the Atlantic provinces. He is now a professor at the Schulich School of Law here at Dalhousie University.

For questions and answers from the panel, go to <http://www.nationalmagazine.ca/Articles/Student-2013/Live-from-Halifax....aspx>



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Andrew Taillon

Called to the bar: 2007

Firm: Nova Scotia Department of Justice

Area of practice: Labour & Employment law

Describe your professional experiences to date: After my first year of law school and while I was a student at Dalhousie Law, I did legal research for HRA, a labour and employment boutique located primarily in Charlottetown. After my second year, I summered, articulated and then practiced with Cox & Palmer until about halfway through 2012, when I took a permanent position at NS DOJ. In the winter of 2013, I taught a section of Labour Law at the Schulich School of Law and have been invited to do the same in 2014.



Describe your current practice: I deal primarily with grievance arbitrations and related labour and employment issues on behalf of the Public Service Commission of Nova Scotia. I also act on behalf of the Director of Occupational Health and Safety and the Director of Labour Standards. Altogether, it is about 90 per cent tribunal advocacy work.

Describe one of your most satisfying achievements in practice: In my second year of practice, I represented an employee in a wrongful dismissal claim before an employment tribunal. Opposing counsel was a very talented and knowledgeable L&E specialist who was a partner at a large regional firm. The hearing was five days long and we were ultimately successful. The experience gave me a lot of confidence as a litigator.

Describe your involvement with the CBA, both past and present: I coordinated the 'Pro-bono call in day' in 2009, which led to me becoming vice-chair and then chair of the Young Lawyers section of CBANS. As Chair of the YL section I also sit on the CBANS executive and various committees.

I have also spoken at high schools during Law Day.

What other activities and volunteer pursuits occupy your time? I am married with two sons, so family takes up a lot of time. I also have a miniature wiener dog who demands a lot of attention from me. I volunteer as a Cub Scout leader, and am on the board of East Coast Environmental Law. When I do get recreational time, I like reading, ultimate Frisbee and board games.

Why did you decide to practice law? What drew you to your area(s) of law? I affectionately call practicing law 'Plan D.' I realized after finishing my MA that I did not want to do my Ph.D. I worked as a consultant for a few years, but didn't see that as the career for me. I still didn't seem to have a novel finished, so I enrolled in law school. My father was a sole practitioner who became a Judge, so he also had an influence on my decision. I liked labour and employment because of the regular opportunities for litigation advocacy and also because it contained an interesting human element.

What do you consider to be the greatest challenges facing young lawyers? Law school enrollment and graduation rates are up, as is tuition. The market is being flooded with young lawyers who are carrying a lot of debt. At the same time, the big firms are drawing back, refusing to share salary information with one another and abandoning the lockstep promotion to partnership system which had been the norm for many years. This has created a market where young lawyers have even less bargaining power than before. I fear we will see good people leaving the profession or not entering at all.

What do you wish senior lawyers understood about young lawyers? While I don't think I can speak for all young lawyers, my experience has been that many senior lawyers view the interests of their practice as being in direct conflict with the interests of their families. I think many younger lawyers would rather not be stuck in that dichotomy, but they don't see many other options or role models.

What words of wisdom do you have for new lawyers? Don't panic.

NATIONAL NUGGETS

Ninth Annual CBA Law Firm Leadership Conference

Nov. 4-5, 2013 | Halifax NS

The New Economics: Sustainability in Changing Times

The economic environment is rapidly changing. Learn effective strategies to deal with this new reality at the 2013 CBA Law Firm Leadership Conference - the essential professional development event in Canada for managing partners, practice group leaders and executive committee members. This year's conference is especially designed for mid-sized law firm leaders and up-and-coming leaders. Experts will provide practical guidance for effectively tackling intractable law firm management challenges such as economic sustainability, inclusive leadership and much more.

Go to http://www.cbapd.org/details_en.aspx?id=NA_LFL13 for registration details.

National President's message

CBA National president Fred Headon encourages you to tap into your creative resources and join him in putting clients back at the centre of the legal system. A well-funded and well-managed justice system will be the result of socially and politically conscious groups operating a fair, predictable and just legal system. It will take innovation, creativity, leadership and influence to get us there. Read the entire message on <http://www.nationalmagazine.ca/Blog/September-2013/A-functioning-justice-system.aspx>

Interesting findings from the Futures consultation...



The CBA Legal Futures Initiative is mid-way through its consultation phase, and is receiving considerable feedback about the future of the profession. Online polling so far shows that:

- Some 60 per cent of visitors firmly believe that **articling is still the best vehicle** for introducing students to the practice of law. But are clients still willing to subsidize students' entry to the bar?
- Almost 50 per cent of visitors **continue to use the billable hour** in pricing their services. If so, what are the attributes of the clients that are asking the other 50 per cent of lawyers for different pricing models?
- Only 20 per cent of visitors indicate that **globalization has a meaningful impact** on their practices. Does this mean we should ignore globalization as a factor that will change the profession?

You are invited to read what others are saying on a wide range of issues related to the future and to provide your viewpoints at www.cbafutures.org or by email at cbafutures@cba.org.

UPDATE

Legislation & Law Reform Update



By **MATTHEW J.D. MOIR**

We have had a few developments over the summer.

The *Community Easements Act*, S.N.S. 2012, c.2, was proclaimed in force July 9, 2013. This permits the creation of certain kinds of public easements without the need for dominant tenements, which may be granted to certain public bodies.

The new *Cosmetology Act*, S.N.S. 2012, c.39 was proclaimed in force June 25, 2013.

The *Cyber-safety Act*, S.N.S. 2013, c.2 was proclaimed in force August 6, 2013. This is a controversial piece of legislation which follows upon the Retaeh Parsons tragedy. The Act was commented on in national and international media, and has attracted both praise and criticism. The Act creates the offence and tort of cyber-bullying, which is broadly defined, and makes parents liable for their children's cyber-bullying in the absence of due diligence on the part of the parents. Part V, which would permit preventative orders, remains to be proclaimed.

Amendments to the *Labour Standards Code*, R.S.N.S. 1989, c.246, were proclaimed in force to include provisions for parents of critically ill and abducted children July 9, 2013, and regarding foreign workers August 1, 2013.

The *Perpetuities Act*, S.N.S. 2011, c.42 was proclaimed in force July 23, 2013. The rule against perpetuities is no longer law in Nova Scotia! A regime for varying trusts replaces the old rule.

A new *Pharmacy Act*, S.N.S. 2011, c.11, was proclaimed in force August 6, 2013.

Amendments to the *Protection for Persons in Care Act*, S.N.S. 2004, c.33 were proclaimed in force August 20, 2013.

Amendments to the *Securities Act*, R.S.N.S. 1989, c.418 were proclaimed in force August 20, 2013.

Matthew Moir is a partner with Weldon McInnis and chair of the Legislation and Law Reform Committee of the CBA.

5. CBA-NS makes a difference in our local community

This year, CBA-NS took Law Day celebrations to the classroom. Volunteers delivered mock trials or presentations in 15 high schools and two cadet units across the province - having fun and no doubt inspiring a future lawyer or two in the process.

On International Women's Day our Women's Forum made a call for donations for women in shelters - 150 boxes of supplies and \$1,500.00 were collected.

6. CBA Sections

Sections are how most members experience the CBA. More than 30 diverse sections do their thing provincially and nationally. Led by volunteer lawyers, Sections advocate and educate. Through Sections, CBA lawyers support lawyers in similar practice areas, build relationships and have fun.

7. CBA-NS offers top quality PD

This year CBA-NS will offer 5 full days of top quality in person PD and 10 webinars. All this PD is member driven.

8. "CBA-NS punches above its weight" (per Past President Jim Rossiter)

Our mid-sized province has a very active and productive CBA Branch. We are also very well represented in CBA national leadership.

As National Past President Trinda Ernst, Q.C. goes off into the sunset, our Branch Past President Dan MacRury, Q.C. is

campaigning to become the next Nova Scotian CBA National President.

Our Treasurer, Amy Sakalauskas, is National's new Chair of Conferences. Malcolm Boyle, Q.C. and I are officers on National Sections Council. Level Chan is Chair of the Equality Committee. Mick Ryan, Q.C. is the Chair of the International Development Committee. Several National Sections are Chaired by Nova Scotia lawyers. Our lawyers also sit on national standing committees, projects and task forces.

9. Our CBA-NS Executive Committee Team

I am fortunate to work with a fabulous CBA-NS executive team. We work hard for CBA-NS and have fun doing it. I owe special thanks to Dan MacRury, Jessica Lyle and Jim Rossiter for providing excellent examples of how to be CBA President. Our tremendous Executive Director, Tina Tucker's leadership skills are recognized nationally.

10. CBAers are great people

Almost 1,300 of CBAs 37,000 plus members call Nova Scotia home. Through involvement in CBA, I have made many good friends. Almost every CBA meeting attended provides an opportunity to get to meet wonderful new people and get to know old friends better. Engagement with CBA puts a spring in a lawyer's step!

So these are some of the reasons CBA membership matters and engagement matters. Why are you passionate about your CBA?

TRENDING Continued from page 4

- This summer, Youth Criminal Justice Duty Counsel Lawyer, Kai Glasgow, facilitated justice system workshops with African Nova Scotian Youth.
- We sought a closer connection this year with ISIS (Immigrant Settlement Integrative Services) by reaffirming our commitment to provide continuing legal education and summary legal advice to immigrants.
- We updated our French Language Services action plan with the assistance of our French speaking lawyers, Patricia Fricker-Bates, Claire Levasseur and Andrew Melvin.
- We increased the cultural diversity of our Board by welcoming First Nations lawyer,

"As a Mi'kmaq woman and legal aid lawyer, I can say that NSLA initiatives to increase racial diversity and promote cultural competence allow me to provide the Aboriginal community with a constructive voice within the Justice system. This promotes a greater sense of Justice for my Aboriginal clients and the community when they feel that their point of view is clearly understood and articulated."

– Jennifer Cox, Staff Lawyer, Truro Office

Naomi Metallic, Burchells LLP, and African Nova Scotian lawyer, George Ash, Boyne Clarke.

Valuing diversity will help us better serve Nova Scotians and advance access to justice. Dr. Melina Buckley, Chair of the CBAs Envisioning Equal Justice Summit, once quoted Tony Judt. I wrote this quote on my office wall and I think it provides an appropriate close to this article.

"The more equal we get, the more equal we believe it is possible to be"

Trending is a recurring feature focusing on a new development in the law. Karen Hudson, Q.C. is Executive Director of Legal Aid Nova Scotia.



Upcoming Events for 2013-2014

ELDER LAW CONFERENCE

"Keeping the Golden Years Golden... And What To Do If They Tarnish"

Friday, November 15, 2013

World Trade & Convention Centre (Suite 302-303)
1800 Argyle Street, Halifax, NS

Register online:

http://www.cbapd.org/details_en.aspx?id=NS_ELDCN_1113

or call the CBA office at 422-1905 for a copy of the brochure.

2014 MID-WINTER MEETING

Thursday, February 6 and Friday, February 7, 2014

World Trade & Convention Centre
1800 Argyle Street, Halifax, NS

2014 MID-WINTER BENCH & BAR RECEPTION & DINNER

Thursday, February 6, 2014

World Trade & Convention Centre (Room 200A)
1800 Argyle Street, Halifax, NS

LEGAL ASSISTANTS' CONFERENCE

(Real Estate Topic)

Friday, March 21, 2014

Casino Nova Scotia (Schooner Room)
1983 Upper Water Street, Halifax, NS

WOMEN'S CONFERENCE

Friday, May 9, 2014

Casino Nova Scotia (Schooner Room)
1983 Upper Water Street, Halifax, NS

SPIRIT AWARD DINNER

Friday, May 9, 2014 (Compass Room)

Casino Nova Scotia
1983 Upper Water Street, Halifax, NS

ONLINE CLE SCHEDULE 2013-2014

Date: November 29, 2013

Topic: To Be Announced

Date: December 13, 2014

Topic: **Drunk Driving Criminal, Social Host**

Speaker: Ian Hutchison, Arnold Hutchison McKiggan

Date: January 17, 2014

Topic: **Experts' Bias Independence**

Speaker: To Be Announced

Date: February 21, 2014

Topic: **Taking Instruction: Competency of Lawyers and Clients**

Speaker: To Be Announced

Date: March 14, 2014

Topic: **Health Privacy Act**

Speaker: Karen N. Bennett-Clayton, Stewart McKelvey

Date: April 25, 2014

Topic: **Builders' Lien Topic**

Speaker: Colin D. Piercey, Stewart McKelvey

Date: May 2, 2014

Topic: **Rest of the Tech for the Rest of Us**

Speaker: Stacey M.A. Gerrard, Lawyers' Insurance Association of Nova Scotia

Date: May 16, 2014

Topic: **Contracting with Public Sector Bodies: Procurement, Bidding and Privacy**

Speaker: To Be Announced

Date: June 13, 2014

Topic: **Insurance 101 - Dealing with Insurer on the Other Side**

Speaker: To Be Announced

**Don't Miss Out – Be Sure To Mark Your Calendars
Watch for Further Details Coming Soon!**