

NOVA VOICE



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The Voice of the Legal Profession in Nova Scotia



Taking Centre Stage Lawyers in the Performing Arts

Access to Civil & Family Justice
An Interview with Justice Tom Cromwell

PRESIDENT'S REPORT

By **ROBYN ELLIOTT**

Your CBA-NS team enters 2014 with energy and enthusiasm! We are proud of what our Branch accomplished in the Fall of 2013 and look forward to a busy and exciting start to 2014:

Some highlights of the Fall of 2013:

- Co-hosting "Touchstones for Change: Twenty Years Later" which celebrated the progress of the last twenty years on the issue of gender bias in our profession and considered the significant work that remains to be done to eliminate discrimination, and achieve diversity and inclusiveness in our profession and Canada's Justice System.
- A highly successful Elder Law Conference "Keeping the Golden Years Golden... and What to Do if they Tarnish". 170 CBA lawyers attended this conference.
- A 2 day visit from CBA President Fred Headon including meetings and activities with Nova Scotia justice community stakeholders: Nova Scotia Barristers Society, Nova Scotia's Deputy Minister of Justice, Dalhousie law students, law firm visits, Nova Scotia's Chief Justices and Chief Judges, Provincial Court Judges Association and Nova Scotia Legal Aid.
- 74 Section events planned or held attracting 935 participants.
- The privilege of bringing congratulatory remarks at swearing

in ceremonies for four new Justices of the Supreme Court of Nova Scotia.

As we start 2014, here is what we can look forward to:

- Our 2nd Annual Bench and Bar Reception and Dinner featuring Canada's Justice Minister and Attorney General, Peter Mackay and Juno Award winning musician David Myles.
- two full days of PD at our 2014 Midwinter Conference. Sessions on a wide range of topics including: cultural competence, cyberbullying, dealing with difficult people, mental health difficulties in the legal workplace, access to justice, and practice management.
- Participation by our Branch in access to justice work in Nova Scotia stemming from the CBA "Reaching Equal Justice: An Invitation to Envision and Act" Report and the NAC "Access to Civil & Family Justice: A Roadmap for Change" Report.
- A conference for Legal Assistants.
- Law Day 2014 mock trials in high schools across the province.
- Supporting the work of the CBA Legal Futures Initiative which will report to National Council in August 2014.
- A Women Lawyers' Conference.

I invite you to join me at CBA events in 2014! I look forward to seeing you.

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TABLE OF CONTENTS



3	Sections Spotlight: Living by the Code of Professional Conduct	8	Benchmark: Justice Cromwell speaks to Nova Voce about Access to Civil and Family Justice
4	Trending: Aboriginal Law - A New Role for Administrative Law (Part 2)	10	Outside the Office: Taking Centre Stage – Lawyers in the Performing Arts
5	Career Compass: Good Judgement Needed: Adjudicators discuss their unique role	12	Bulletin Board
6	Ex Amino: Mother is Always Right - Mind Your Manners	13	Young Lawyer Profile: Michelle Chai
7	Nova Voices: Starting A Solo Practice in Rural Nova Scotia - The Early Lessons	14	Giving Back: A Student's Perspective
		15	Legislation and Law Reform Update
		16	Professional Development News

Cover Photo by Bruce Jollimore, L-R Laurie Jones, Carolle Fernando (inset photos by L-R Trina Corkum, Holly Crooks).

Living by the Code of Professional Conduct

By **JENNIFER TAYLOR**

The Nova Scotia Barristers' Society *Code of Professional Conduct* can be a daunting document, but luckily, the General

Practice, Solo, and Small Firm Section benefited from advice on living by the Code from Elaine Cumming, the Society's Professional Responsibility Counsel, on December 11, 2013. Ms. Cumming explained that there has been a general increase in calls from lawyers with ethics questions over the last couple of years. This proactive approach to professional responsibility is a good thing – it's important to protect yourself by seeking, and following, the Society's advice when you're facing an ethical dilemma.

Here is a round-up of recent amendments to the Code, common ethical quandaries in the local legal community, and upcoming developments in professional ethics:

- **Conflicts:** Rules 3.4-1 through 3.4-11 were amended in July 2012. These provisions now begin with a general prohibition on acting where there is a conflict of interest, and the commentary that follows makes it clear that the rule applies to all client relationships, including conflicts of interest between current clients. The definition of conflict of interest was also amended to make specific reference to the duty of loyalty. The rules are once again under review at the Federation of Law Societies level, as a result of the recent Supreme Court decision in *Canadian National Railway Co v McKercher LLP*, 2013 SCC 39.
- **Limited scope retainers:** New provisions governing limited scope retainers came into effect in February 2013. They are meant to encourage this type of legal service, especially for clients who wouldn't otherwise be able to afford a lawyer, while providing parameters on how lawyers can handle these retainers appropriately and effectively. See Rule 3.2-1A and the Commentary, along with Commentary [7.1] to Rule 3.1-2, which requires a lawyer to ensure services under a limited scope retainer can be provided in a competent manner, and Rule 7.2-6A, which permits another lawyer to deal directly with the limited scope retainer client in certain circumstances.
- **Joint retainers:** These are especially common in the real estate context. Rule 3.4-7 requires written consent of the clients, or a written communication confirming their consent.
- **Transfers between law firms:** The goal is to make these provisions more 'user-friendly' as such transfers increase.
- **Language rights:** There is a plan to codify the duty to advise criminal clients of their right to be tried in English or French. A specific rule may be developed outlining steps for lawyers to take with clients who speak a different primary language, to ensure clients understand the legal advice being given. At the moment, language-related issues would fall generally under Rule 3.2, Quality of Service.



Elaine Cumming

- **Physical evidence of a crime:** This has been a hot topic amongst the law societies since Paul Bernardo's former lawyer, Kenneth Murray, was charged with obstruction of justice for holding onto videotapes of Bernardo and Karla Homolka sexually assaulting the women they later murdered. Murray was eventually acquitted. While the tapes themselves were not covered by solicitor-client privilege, the Court also found that the ethical guidelines on what a lawyer should do with physical evidence of a crime were not entirely clear: See *R v Murray*, 2000 CanLII 22378 (Ont Sup Ct J).

- **Civility:** There is increasing interest in the line between civility and incivility after a Law Society of Upper Canada Appeal Panel released its decision in *Law Society of Upper Canada v Groia*, 2013 ONLSAP 0041 this past November. The

Panel, advocating a contextual approach, found Mr Groia committed professional misconduct for comments that he made impugning the prosecutors during the securities trial of John Felderhof, a principal of Bre-X. Groia received a one-month suspension; the final costs order against him will depend on further submissions.

- **Duty to report:** Rule 7.1-3 obliges lawyers to report apparent misconduct by colleagues. While many lawyers are reluctant to do this, the Society encourages it in the hopes that early invention will prevent more serious problems down the road, especially where the other lawyer might be suffering from substance abuse or mental health issues. Note: while an investigation can be commenced following an anonymous complaint, it may be difficult for a complainant to maintain his or her anonymity if the matter progresses.
- **Clients with diminished capacity:** This area leads to lots of questions from lawyers – and to complaints after the fact. A client may be competent to accept legal advice and sign a document on one day but not the next, so it's crucial that lawyers monitor their clients and understand what level of competency is required for the legal act at issue, seeking advice from colleagues and even medical experts as needed and maintaining a well-documented file.
- **Future harm/public safety exception:** This exception to the duty of confidentiality is contained in Rule 3.3-3, and Commentary [1] says it will only arise in "extremely rare" situations. Depending on the situation, the Society may suggest that the lawyer have a follow-up conversation with the client about any threat the client may have made, informing them that the disclosure may have triggered the lawyer's duty to report. If the lawyer reports and the client complains, the Society will consider whether reporting was reasonable in the circumstances.

Sections Spotlight is a recurring feature focusing on a recent meeting or initiative of a CBA-NS section. Jennifer Taylor is a research lawyer at Stewart McKelvey and a member of the editorial board of Nova Voce.

Aboriginal Law – A New Role for Administrative Law (Part 2)



By NAIOMI W. METALLIC

Following up from Part 1 (see *Nova Voce*, Vol. 31, No. 4, Summer 2013), in this article, I discuss another case involving services provided on First Nation reserves where administrative law has been used to remedy perceived unfairness by government actors. Up until now, the focus in Aboriginal law has largely been on constitutional

remedies, but there is new promise for Aboriginal peoples in administrative law, as the recent decision in *Simon et al. v. Attorney General of Canada*, 2013 FC 117 illustrates.¹

First, some background. Although it has the legislative jurisdiction to do so, Canada chooses not to legislate with respect to social welfare on reserve. Instead, Canada regulates welfare on reserve through the exercise of discretion and a combination of funding authorities, policies and contribution agreements with First Nations. Since 1964, Canada's funding authorities on welfare on reserve have provided that rates and standards on reserve should be based on provincial welfare rates and standards.

From about 1967 to 2011, Canada, through the Department of Aboriginal Affairs and Northern Development Canada (AANDC), developed regional policy manuals in the Maritimes for social assistance on reserve, which were based on provincial rates and standards, but which also accommodated specific circumstances on reserve. This has been called the 'reasonably comparable' approach, in that First Nations followed similar, but not identical, rates and criteria for welfare that made some accommodation of differences on reserve. However, in the spring of 2011, AANDC announced that it would require welfare rates and standards on reserve to be identical to provincial rates and standards and make First Nations simply follow provincial social assistance manuals.

First Nations in New Brunswick, Nova Scotia and Prince Edward Island (the Maritime First Nations) voiced many concerns about this decision including that:

- it was done unilaterally and without consultation,
- it would lead to welfare recipients on reserve receiving far less than people off-reserve since people under provincial systems have access to complementary and supplemental programming that is not available on reserve,
- it would result in many people becoming ineligible for assistance

and several other problems related to further impoverishing such a vulnerable group of people.

The Maritime First Nations therefore sought judicial review to quash the decision. The case was heard before Justice Scott, of the Federal Court, who issued a decision in favour of the First Nations on November 4, 2013.

Canada had argued that the Court had no jurisdiction to review the decision because it was a funding decision and therefore purely political. The Court disagreed, finding that the First Nations would otherwise have no recourse to challenge the decision. However, on a reasonableness standard, Scott J. found that it was not illegal for Canada to adopt the mirror approach in principle since a literal interpretation of the words 'adopt', 'consistent with' and 'comparable' to provincial rates and standards in the relevant funding authorities could mean adopting identical rates and standards to the provinces. That said, the Court found that there were some areas of significant impact identified by the Maritime First Nations for which AANDC had not identified reasonable mitigation measures. In this regard, the Court noted that AANDC had not conducted any comprehensive study to measure actual impacts of moving to a mirror approach. The Court also noted AANDC internal documents had highlighted a number of significant risks arising from the decisions, but yet AANDC went no further to measure and quantify those risks. The Court concluded that this was unreasonable.

Finally, the Court agreed with the First Nations that they were never consulted about the actual decision to go to a mirroring approach, but were only told they had to implement the decision after the fact. Applying the five-part test from *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, Scott J. found a breach of the duty of procedural fairness. The Court found there were a number of factors supporting a serious duty of procedural fairness in the circumstances including:

- the provisions of the *UN Declaration on the Rights of Indigenous Peoples*,
- the fact that the decision was going to have significant impacts on First Nations welfare recipients and yet Canada had not studied and did not fully understand the extent of impacts, and
- the fact that AANDC / Canada had made commitments in a number of policy documents that it would work cooperatively with the First Nations and not act unilaterally with regard to welfare reform and had therefore created legitimate expectations

Continued on page 15

¹ In the interests of full disclosure, I was counsel in this case and argued the case before the Federal Court.

Good judgment needed: Adjudicators discuss their unique role

By DONNA BOUTILIER Adjudicators fulfill an important role in our legal system. They make decisions on a vast array of topics that touch many aspects of our everyday lives.

To get a snapshot of what adjudication looks like in Nova Scotia, *Nova Voce* spoke to three distinguished and experienced adjudicators for insight into the work they do, challenges they face, and advice for those interested in getting involved in adjudication.

The Panel

E.A. Nelson Blackburn, Q.C., is owner of Blackburn English. He is a Small Claims Court adjudicator and serves in the following capacities: Chair of Boards of Inquiry under the *Human Rights Act*; Vice Chair of the Labour Board; labour arbitrator and on the Minister of Labour's list of Arbitrators; member of the Pipeline Arbitration Committee (National Energy Board); arbitrator under the *Condominium Act*; and, Consumer Advocate for Small Business before the Utility and Review Board on matters dealing with Nova Scotia Power. Previously he served as a member of the Review Board under the *Involuntary Psychiatric Treatment Act*, and was Chair of the Labour Standards Tribunal, the Nova Scotia Insurance Review Board, and the Psychiatric Facilities Review Board.

Roberta Clarke, Q.C., joined the Utility and Review Board (UARB) as a full-time member in 2009 after over 30 years in private practice. While in private practice she sat on the Regional Assessment Appeal Court, the Federal PILT Dispute Advisory Panel, and a number of disciplinary panels for the Nova Scotia Barristers' Society. The UARB has a broad mandate, ranging from regulated utilities, auto insurance rates, and petroleum pricing to planning, assessment and fire safety and film classification appeals, and other matters.

Gavin Giles, Q.C., is a partner with McInnes Cooper. He was appointed as an Adjudicator of the Small Claims Court of Nova Scotia in 1994 and has been Chief Adjudicator since 2001. He is also a member of the Nova Scotia Private Career Colleges Board and a past member of the Regional Assessment Appeal Court.

NV: What drew you to this type of work?

NB: Becoming an adjudicator evolved from my litigation experience. I had a desire to be involved in decision making and it provided a break from the daily grind of practice.

RC: I was attracted to the process of decision making. The role I am in now was a logical progression as part of my career from practitioner to decision-maker.


GG: I appeared before the Regional Assessment Appeal Court and became interested in this type of work. I find the work intellectually stimulating and it is a complementary sideline to my practice. It [Small Claims Court] is also the most accessible dispute resolution forum for ordinary people. If access to justice does not work for them, it cannot work for anyone, so it is a role I take very seriously.

NV: What are the challenges you see in your role as an adjudicator?

GG: Cases coming before the Small Claims Court are often as complex as litigation before the Nova Scotia Supreme Court. With the value of claims now up to \$25,000, it is not unusual for one or more of the parties to be represented by lawyers. The challenge is to keep the process informal and allow both parties to be heard. And with respect to taxation matters, there is no cap on the value of these cases that come before this Court. Taxation cases can be very complex and can involve amounts as high as \$1 million in the first instance.

Continued on page 17

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Chartered Mediator
Chartered Arbitrator



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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ADR
Alternative Dispute
Resolution

Mother Is Always Right – Mind Your Manners



By ROBERT PATZELT, Q.C.

I truly did not want to start this column (and year) talking about last year's newsmaker – Rob Ford. Hasn't Toronto suffered enough? Once they needed the army to dig them out of snowstorm. Now their "pure as snow" mayor, shall we say has "drifted". My apologies to Mae West. This is truly a gong show. It is like watching a drunk clown chasing a balloon on a breezy day a foot away from the edge of a cliff. Besides the media spectacle and the stripping of his powers by his own council, now there are people saying that he does not have the "moral authority" to lead. It is interesting that he has not been charged with any illegal act, he was duly elected in a free and democratic process and there apparently is no way to remove him from office. That is, he remains there legally. But beyond the voyeurism of watching a tremendous fall from grace, the proposition remains as to whether he should continue to hold his position of leadership. It got me to thinking, which is always dangerous. It begs the question as to what is appropriate behaviour? Is it different if you are a leader? It is also interesting that our great profession and that of many others can discipline an individual for conduct unbecoming yet in the political arena this seems to be wanting.

The term ethics comes from the Greek word ethos which means "character" and it being the mental and moral qualities distinctive to an individual not a person who is referred to as a "character" like your old uncle Harold who was a roadie for the Grateful Dead and lives on the North Mountain and collects heavy construction equipment and redoes the landscape of his back 40 every year based on inspiration from Beatles lyrics. If one takes a deontological approach, deos being derived from the Greek word "duty", one must review any activity not only as to the outcome but whether the action itself was inherently good (or not). This approach focuses on the actions of leaders and their ethical responsibility to do what is right. [It is not relevant but fascinating that the Greeks have provided us so much yet are also responsible for retsina wine. Things must have been tough to make booze out of pine needles but things got better so why is it still there? FYI – exposure to air would destroy wine and before barrels the pine tar was used to seal containers.]

The mayor's original actions were "done in private", if such a

thing truly exists today with the Internet and sites like YouTube. Yet he is a public figure. Does this or should this make any difference? Personally, I say yes. It may not be always fair that your life is not immune from public scrutiny but this is the burden of leadership nonetheless, like it or not. Your job is to serve the people. You are granted powers of personality, position and that of the organization itself that you lead. You have more power, therefore you have more responsibility hence a greater duty. Maybe it is really a matter of trust. If we cannot trust you to attend to matters somewhat properly (albeit not perfectly) in your own life, then why should the public trust you with running things that are of great importance to us all? Maybe it is just some kind of a litmus test. It is not so much that the test itself is directly connected to your ability to discharge your duties but that it is representative of something bigger and more important.

Does failing to put money in the parking meter make you a bad person? Of course not. Should you be turfed from office? Where is the line? And like many things in life, it can be a bit grey. There is a scale and it will move depending on the circumstances. So what should we make of all this? How are we to conduct ourselves? When it really comes down to it, we have two key regulatory systems. Manners prevent us from driving each other nuts and laws to prevent us from doing each other harm. So, be nice, be good and remember the world is watching.

Here are some suggestions and they are not in order of priority and it is not complete. Most importantly, they are not mine. Like publishing a paper, if you copy one person, it is plagiarism, if you have multiple sources, it is called research:

- Lead by example and don't be afraid to follow those who do.
- Just like undertakings, make commitments only if you can deliver, and then deliver them – especially the ones to your own family. See above – your kids are watching you always.
- You are successful if you like who you are and what you do. No one will remember what car you drove or how much was in your bank account.
- There is no such thing as a little lie, small theft, etc. – It is right or it is wrong. Don't suffer the death of a thousand cuts to your integrity. Remember Karma is a bitch.
- The right thing is usually not easy to do and our character is not truly tested until things are tough and the stakes are high.

Continued on page 18

Starting a Solo Law Practice in Rural Nova Scotia – The Early Lessons



By **DAVID NURSE**

My wife and I moved from Halifax to Lunenburg County in 2010 and, after three years of commuting to the big city, spending 20 hours a week navigating Highway 103 (helpfully nicknamed the “highway of death”), I was thinking a lot about my options during the long evening drives last summer.

Commuting was taking me away from my wife and young son, and from my new community – I was effectively living with a split screen, my professional life in Halifax, my personal life in Lunenburg.

I ultimately decided to make the leap back to private practice, and started my practice in mid-September. My practice is focused on business immigration law and government affairs.

Now that I have roughly four months of work under my belt, let me share some of my experiences – let’s call them the early lessons – with you.

Lesson 1 – Help is available

When I began planning to go out on my own, I quickly learned that help is available – in a variety of forms – for a lawyer starting a new practice in Nova Scotia. I was not alone, and I was not really blazing any trails.

Numerous lawyers – including old friends and new connections – offered advice and guidance. I was connected with other lawyers in Lunenburg County, with accountants, and with IT professionals (my new best friends). Other sole practitioners were generous with their time, and provided invaluable insight into how to approach my new practice.

LIANS and Bar Society personnel were friendly, helpful, and patient, answering all my questions and assisting me with the transition back to private practice.

I am also participating in the LIANS mentor program, and I would encourage all lawyers making a major career shift to consider it. My mentor not only gave me key practical advice – for example, on the office equipment I needed and didn’t need – but was also there when I faced some of my first ethical questions as a sole practitioner.

Lesson 2 – A law practice is a business

When I look back on my former job as a lawyer for the Nova Scotia government, and compare it with my new life as a sole practitioner, there are some major differences.

When I practiced law in government, that was all I did – practiced law. I focused on the legal issue in front of me, and left the business side of things to others. We had office managers, accountants and IT professionals who took care of those things. If my e-mail wasn’t working, I called the help desk.

Now I am the help desk.

It was daunting to find myself responsible for all aspects of my law practice including marketing, business development, and the money. The biggest surprise over the early months of my practice has been the amount of time that these business issues can take – I would estimate that up to 40 per cent of my time in the early months was spent on these issues.

There is also a significant psychological shift when you move from being an employee of a large organization to being an entrepreneur. As a sole practitioner you are ultimately responsible for the success or failure of your business. If you don’t attract the work, you don’t get paid. At the same time, you have the independence to make your own business decisions, which is a reward in itself.

Lesson 3 – It can be lonely out there, so stay connected

Another big difference is that I am now working on my own most days. Without the camaraderie that comes with a large, diverse office, I’ve had to look elsewhere for social affinity. For the past few months, I have been spending one day a week working out of the Hub South Shore. The Hub is an inspiring co-working space in Mahone Bay, located at the Mahone Bay Centre. It is the brainchild of three progressive entrepreneurs from the UK, and is a great option for new and independent businesses on the South Shore.

I have also joined the Canadian Bar Association, and am a member of the Immigration section Listserv. This allows me to connect with fellow practitioners, and to follow discussions and conversations about practical legal issues. The CBA immigration law conference in Calgary will undoubtedly be a highlight of 2014!

Final thoughts

Starting a sole practice is not for everyone, but I am very satisfied with my decision to go out on my own. Those 20 hours a week I was spending commuting I’m now investing in growing my own business. I’m also getting home earlier and spending two extra hours each day with my family before my son goes to sleep. That sure beats sitting on St. Margaret’s Bay Road, inching slowly out of town, and dreading the hour ahead on the “highway of death.”

Nova Voices features the viewpoints of lawyers around Nova Scotia. David Nurse recently opened a law firm in Lunenburg County, Nova Scotia.

Justice Cromwell speaks to Nova Voce about Access to Civil and Family Justice

By **HEIDI SCHEDLER**

On December 19, 2013, I had the pleasure of talking with the Honourable Justice Thomas A.

Cromwell about the recent report of the Action Committee on Access to Justice in Civil and Family Matters. The report, which was released in October 2013, is titled *Access to Civil and Family Justice: A Roadmap for Change*. Here are the highlights from our conversation.

HS – The Report starts off strongly and provocatively, saying “There is a serious access to justice problem in Canada”. How did we get to this problem?

TAC – I am sure there are many reasons, but one of the most important, I think, is that there has never been, in the civil and family justice system, a way of bringing all the players together to formulate coherent leadership for the system. The judges have their leadership structure, the government has its leadership structure, the Bar, etc. But it takes everybody to make the system either work or not work. Because of the silo landscape we have in the justice system, which is really nobody’s fault, it is very tough to have any coherent sense of direction. I think that is a very significant contributing factor. Obviously, there are resource issues, historically, and there has been some reluctance from the part of the legal profession to think progressively. Also, the public doesn’t consider that it has any vested interest in what happens in the civil and family justice system.

HS – What can lawyers in the private sector do now to start working towards improving access to justice?

TAC- I think every sector, including lawyers, needs to think of these issues in two ways: what can our own sector do, and what can we do in combination with others? The number one challenge for the legal profession right now, everywhere in the country, is how to find ways of making legal services available for people who need them in more affordable ways. It is not an issue of everybody just charging less; it is a structural issue. The way that traditional practice of law has developed, it has driven costs up. We need to find the structures of practice that will allow lawyers to make a good living, but also make services available to people who need them at more affordable rates. We have the know-how to do that. It has been a long time since I have had to send out a bill, so I am not going to lecture people about that. But, the fact remains that we have a huge number of people who want legal services and who have some capacity to pay for them. When you look at the studies of the self-represented litigant, you are talking about people some of whom are making \$50,000 and more a year. Obviously, those people aren’t rich, but they should be able to afford basic legal services, and they can’t. So, if I had to pick one thing that I would really like to see the legal profession work on urgently, that is how to encourage lawyers to practice in ways that they can deliver services at affordable costs, but in a way that makes them see a successful and sufficiently profitable

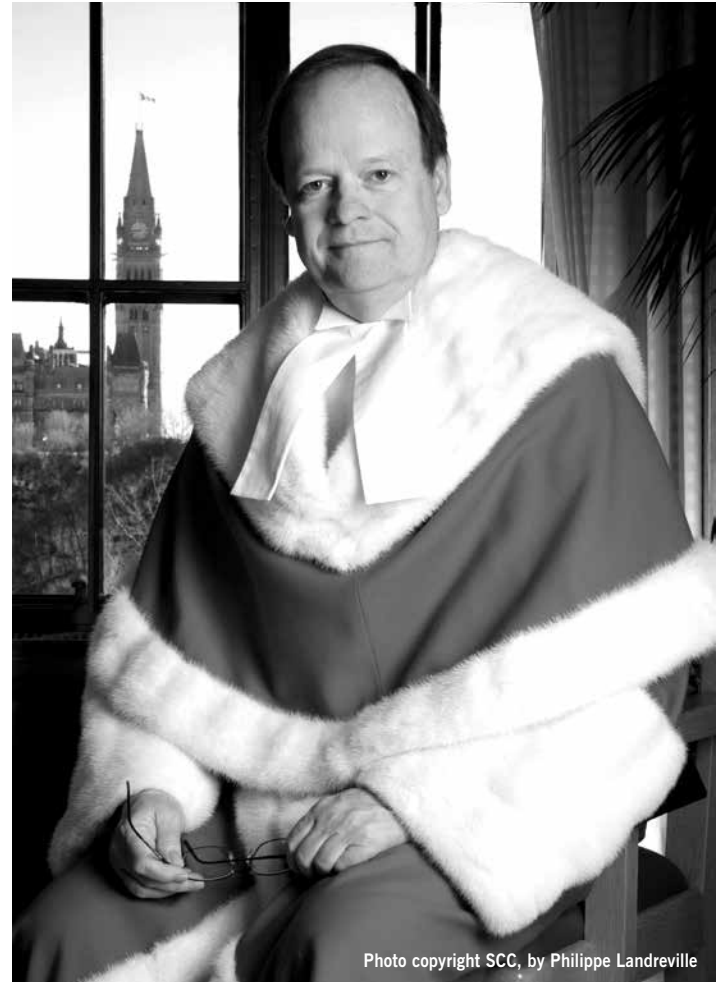


Photo copyright SCC, by Philippe Landreville

professional life. We know the menu of ideas: legal services insurance, unbundling, block fees, etc. I don’t think we need more ideas, I think we need more action in terms of how we can make those mechanisms work for people who want legal services.

HS – There are a significant number of lawyers who have a more public sector role. What can a public sector lawyer do to help improve access to justice?

TAC – I think that lawyers have to always remember that we are problem solvers and that our top goal in every file should be to solve the person’s problem fairly and satisfactorily, with the least expenditure of resources and emotional energy. So, whether that involves being more open to alternative dispute resolution, whether it involves taking a more practical approach to litigation so that it doesn’t turn into a “scorched earth” process, whether it involves simply working with other players in the system – court administration, judges, and so on – to make sure that the process remains absolutely fair, but also as streamlined as possible. I think we can all step back from our day-to-day work and see that there

are probably a lot of things that we are doing a certain way because we have always done them that way. We need to look at everything and ask, is this really necessary? Is it cost effective? Is it proportional to the problem we are trying to solve? I think there is tremendous scope for lawyers in every part of the practice to do that.

HS – As lawyers, we are required to swear an oath to uphold the administration of justice. What, in your opinion, is the difference between access to justice and the administration of justice?

TAC – I don't think there is any difference. There is no justice if it is not accessible. There is not much to administer if nobody can use it. Obviously, we are not at that dire a state, but by the same token, it is not an overstatement to say that there are an alarmingly large number of people in our society for whom there is no functioning justice system, practically speaking. So, I wouldn't see any difference between being a steward of the administration of justice and being an activist for improved access to justice.

HS - One of the quotes in the report is “I don't have much faith in the lawyers or the justice system”. That is an alarming quote to read. What can we do to impress upon the public the importance of the justice system and the need for it to be accessible?

TAC – We need to make sure that the voice of the public is heard in decision making about how the system is going to be run and set up. As we move forward with reform, it must be constantly informed and tested against the public who are interested. The more you bring people in to consult on how the justice system should be structured and operated, the more sense of importance the public will acquire. I think very often people are astounded at what challenges the justice system faces once they become familiar with them. We will achieve a lot in terms of public understanding, the more open we are with involving the public in our reform efforts.

HS – What challenges do you see facing lawyers when they are trying to push change forward and trying to think outside the box?

TAC – It is very difficult to have one set of rules and procedures that will govern all imaginable cases, although we have been committed traditionally to having what one scholar calls the “trans-substantive premise” – one set of rules that applies to everybody. But, we are increasingly learning that if we want to take seriously having procedures that are proportional to what is in dispute and the resources of the parties, we need sometimes to be able to fashion individualized procedures to deal with their particular problem. A great expression I have heard is you can't boil the ocean. Lawyers and judges, along with court administrators and the public, should be identifying particular aspects of our current court process where we are very often engaged in procedure that is too elaborate for the needs of the parties. Whether it is interprovincial enforcement of maintenance orders, interim applications for whatever, it seems to me that we should get together and identify a few places where we think that routinely we are subjecting people to a process that is much more elaborate and time consuming than is appropriate or necessary and work on that. We can't do it all at once, so I would urge, first, to be open to fashioning special procedures for particular types of proceedings, and second of all that we try to identify

a relatively small number of situations where we think that approach would bear fruit and work on it.

HS – Would that include a reshaping or a re-contextualizing of “procedural fairness”?

TAC – I don't think it would require the reshaping of any of the basics of procedural fairness. The expression that I like is that you must have a just process, but you can't have just process. We constantly have to bear in mind that the purpose of the process is to produce practical, real results for the people that have the problems, and I don't think that requires any re-contextualization. I think all it requires is looking around a little more than we do sometimes.

HS – The report recommends using more front-end dispute resolution processes. The reality is that these processes are not being used. Do you think we might have to push so far as to mandate a dispute resolution process?

TAC – I think you can move towards that sort of thing on a more voluntary basis, probably. But, I think the crux of what we were getting at in the report is much broader and more fundamental than simply saying that people need to meet with a mediator before they go to court, or whatever particular process in which you might be engaged. In the working group report on prevention, triage and referral, one of the core messages is that our objective should be to provide the means whereby people can resolve their problems at the earliest point possible and with the least amount of expenditure of resources. That early resolution sector is a continuum, from the providers of legal information – your helplines and legal information providers and so on – right through to the court house steps. The whole front end needs to be rationalized and its objectives made clearer, and we need to have better triage to help people through that. It is a much more fundamental thing than saying that there should be mandatory mediation in the Court of Appeal, or there should be a one hour meeting with a counsellor in Family Court. It is a much more ambitious project that is laid out, but one that is absolutely critical.

HS – I am sure you are familiar with the CBA's Touchstones for Change Report with respect to gender equality in the legal profession. Justice Bertha Wilson apparently indicated to the CBA at the time the report was tabled that achieving the goals of the report will take 20 years. Here we are 21 years later, and some would argue we still have quite a ways to go on that front. Are you concerned that this report on access to justice will get lost in the shuffle, that people won't do what you are suggesting and that they won't take the recommended action?

TAC – Of course. That is the history of civil justice reform, isn't it? You have a beehive of activity around something and yet nothing really fundamental occurs. We acknowledge that very directly in the report, and I always say, history is not on the side of people who think that important significant change can be brought to the civil and family justice system. On the other hand, I think that the report tries to identify why that is so difficult, and addresses those kinds of obstacles very directly. One of the things it suggests is that we need to have some leadership mechanisms built that can keep the focus on reform, and

Continued on page 14

Taking Centre Stage – Lawyers in the Performing Arts

By **JENNIFER TAYLOR**

In the “future plans” section of my high school yearbook, I said I wanted to be a Broadway actress. But despite my (self-described) star turns as Fräulein Kost in *Cabaret* and Veruca Salt in *Charlie and the Chocolate Factory*, I’m sure it didn’t shock my classmates that I ended up in law school instead. After all, they were used to my academic and argumentative ways, and knew better than I did that I was tone-deaf – not the best trait if your job requires belting out show tunes.

I still have a near-constant need to exercise the artsy part of my brain, even though my days are spent at a desk and not on a stage. I played the role of Cinderella in a Christmas pantomime during my LLM at Trinity Hall, Cambridge, and I take a weekly Broadway class at Halifax Dance. Learning the choreography to “All That Jazz” from *Chicago* over the last few months certainly rekindled my flame for musical theatre, and as much as I love the law, maybe it’s not too late for my high school dream to come true?

(Just kidding...sort of.)

Turns out artistic passions run high throughout the Nova Scotia legal community:



Colin Piercey, Stewart McKelvey: I have played various instruments and sung from a very young age. However, suffering from a lack of talent, I realized I would have to earn a living elsewhere, thus my entry into law school. My colleagues were often surprised when they discovered that I studied music before entering law

school, presumably seeing it as an atypical route to an LLB. But the creative thinking that came with my musical background has been a real asset.

Following law school, I did not perform for several years. I was then lucky to get an opportunity to form “Project 501” with other Stewart McKelvey lawyers and staff. This gave me a creative outlet that I had been sorely missing. My fellow band members have diagnosed me as suffering from “LSD” (Lead Singer Disease) but being out front of a band performing is really not that different from arguing in court: You have to be well-prepared and quick on your feet, capture the attention of your audience, and keep your nerves from getting the best of you.

An added benefit of my recent time with Project 501 has been the opportunity to perform at the annual charitable event Rock for Dimes. I am very thankful for these opportunities as they help me maintain a healthy “work-life balance.”



Photo by Holly Crooks

Carolle Fernando, McInnes Cooper: Dance has always been a big part of my life. In 2004, after my first year of practice, I put my legal career on hold to pursue my career as a contemporary dancer and co-founder of local dance company, Mocean Dance. I spent the next eight years performing, touring, and co-managing Mocean. I had the opportunity to work with talented artists from across the country and to create and perform original dance work. I also got to work with my best friends on a daily basis. We managed to build a sustainable dance company that continues to employ local dance professionals and bring high-calibre dance to audiences.

After the birth of my son Cohen in 2011, I decided to retire from dance and my position as Artistic Director of the company and to return to my legal career. This was a daunting career change, but with a year under my belt as an associate at McInnes Cooper, I am feeling quite settled in.

I have no regrets about my unexpected path. Building a charitable organization like Mocean certainly allows for the development of transferrable skills – resilience, resourcefulness, and creative problem-solving, to name a few. I do miss being in the studio on a daily basis. My duties as a mom and an associate do not leave much time for dancing at the moment, but I hope to find time for a few tendus and pliés again in future. Also, I look forward to taking Cohen to creative movement at Halifax Dance beginning next fall!



Daniel Pink, Wickwire Holm: I have always been a big fan of the arts and have tried to get involved with a variety of projects throughout the years. During my third year of law school I founded Artist Legal Information Society (ALIS), a society which provides free legal information to artists in Atlantic Canada. ALIS delivers its services in three ways: information sessions, publications, and a legal aid clinic. We are in the process of finalizing the details for Atlantic Canada’s first entertainment, digital, and IP law conference to be held on March 21-22, 2014. More information is available on our website at <http://nsalis.com/site/conference/>.

I am also involved in a number of boards for arts organizations including chairing the board of the Centre for Art Tapes, an artist-run media arts organization, and serving as a member of the Nova Scotia Creative Leadership Council, which is the board that advises the provincial government on arts and culture in our province.

Alayna Kolodziechuk,

Patterson Law: When I moved to Halifax for law school, my love for theatre followed me. During law school I directed the North American premiere of Badac Theatre’s *The March*, a piece of political theatre that explored the Holocaust, and I wrote, directed, and produced *The Men Who Killed Me*, a production that explored aspects of the 1994 genocide in Rwanda through eye-witness accounts. I am proud to say that both of these pieces were recognized by *The Coast* as top 10 shows in the HRM.



After starting articling and practicing, I have fortunately been able to continue to write and direct. Now, as a lawyer, I am working to develop a practice in providing legal services to artists. I’m currently the Chair of the Board of the Bus Stop Theatre Co-operative, and sit on the Board of the Artists Legal Information Service. Regardless of how I’m involved, I don’t expect theatre to leave my life anytime soon.

Laurie Jones, McInnes Cooper: Since moving to Halifax in 2005 to begin my professional career, I’ve been involved in stage and comedy acts. I have performed in the Atlantic Fringe Festival a number of times since then, doing both one-woman shows and sketch comedy with the all-girl sketch group, Hot Mess. I also perform stand-up comedy with Funny Fundraisers, a company that helps community organizations achieve fund-raising goals through comedy shows.



Recently, the majority of my performances have been with Hot Mess. I met the girls of Hot Mess in 2009 when we joined the cast of the comedy game show *The Pudding Room* in Halifax (Joker’s Comedy Club/Halifax Feast Dinner Theatre). It’s always the highlight of my week to get together with the Hot Mess girls (Ambyr Dunn, Nicole Moore and Lianne Perry) to rehearse, share ideas for new sketches, or do a performance. We have this great ability to make each other laugh and inspire each other in innovative and odd ways. Engaging the creative side of my personality helps blow off steam and de-stress, which allows me to give my best effort at work and at home without feeling overwhelmed. It is also a lot cheaper than therapy!

My father always told me, “If you can’t laugh at yourself, who can you laugh at?” I think this is great advice. Being involved in sketch comedy reminds me how to have fun, not take myself too seriously and how laughter really is the best medicine.

Theresa Graham, Weldon

McInnis: When people find out that my first degree is a Bachelor of Fine Arts in Theatre (Acting) I usually get one of two responses: either, “Wow, took a left turn there!” or “Well, that must be useful.” Both comments are fair enough. I was never asked in law school to sing my way through a presentation or memorize a decision front to back, nor was I stopped halfway through a moot to be told, “Darling, you’re working very hard but I just don’t believe you” (much as the judges may have liked to). On the other hand, some skills from my acting degree are transferable to my law practice, particularly in the courtroom. Both disciplines require creativity, which is why many lawyers who came from artistic backgrounds continue their craft while practicing law. My husband, James Graham, and I always enjoy hamming it up at Christ Church’s annual musical (see photo of us as the irredeemable duo Adelaide and Nathan Detroit in *Guys and Dolls*). For the record, pre-trial butterflies feel pretty similar to pre-show jitters, but there are certainly times during trial that I wish I had a script to fall back on!



Outside the Office is a recurring feature focusing on a lifestyle 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.

What can you do to contribute to equal justice?

Last month, the CBA Access to Justice Committee released its full Reaching Equal Justice report. Consider the 31 proposed targets and the change-oriented ideas it discusses and think of the role you play in the justice system. What is the best way to reach equal justice? Write to us at equaljustice@cba.org to let us know what you think.

To read the full report, go to <http://www.cba.org/CBA/equaljustice/main/>

Welcome New Standing Committee Members

Equity Committee:

- Jack Townsend
Cox & Palmer
- L. Martina Munden
Patterson Law (Truro)

Membership Committee

- Jeanne Desveaux
The Law Practice of Jeanne Desveaux Inc.
- Amanda Dillman
Sealy Cornish Coulthard
- Terrance Sheppard
BOYNECLARKE

CBA President responds to the FLSC's TWU decision

Fred Headon released a statement in December in response to the Federation of Law Societies of Canada's (FLSC) decision to grant preliminary approval to the accreditation of Trinity Western University (TWU) law school. In two letters sent to the FLSC in March 2013, the CBA and the CBA's Sexual Orientation and Gender Identity Conference and Equality Committee articulated their views on TWU accreditation.

Read the President's statement at http://www.cba.org/CBA/News/2013_Releases/12-18-twu-statement.aspx and the letters to the FLSC at <http://www.cba.org/CBA/submissions/pdf/13-18-eng.pdf>

Michelle Chai

Called to the bar: 2013

Firm: Stewart McKelvey

Area of practice: Litigation - corporate/commercial, insurance, and IP

Describe your professional experiences to date:

I summered with Stewart McKelvey in my first and second years at Dalhousie Law. I finished my articles with Stewart McKelvey in 2013, and am pleased to join the firm as a litigation associate.

Describe your current practice:

My practice involves corporate/commercial and insurance litigation matters, with the occasional intellectual property file thrown into the mix. I have been fortunate to have the opportunity to be involved with several large commercial litigation files, as well as interesting insurance and intellectual property matters.

Describe your involvement with the CBA, both past and present:

I was part of the 2013 Law Day Planning Committee, and was the head volunteer for Halifax West High School. I enjoyed helping the students prepare for their mock trial, and acting as a judge for the mock trial. I am currently a member of the Young Lawyers section and Women's Forum. I hope to get more involved with the CBA both at the Nova Scotia and national level.

Describe one of your most satisfying achievements in practice:

I recently was part of a team that prepared for a complex motion in a very short time-frame, leading to the result the client wanted.

What other activities and volunteer pursuits occupy your time?

I am currently a volunteer and team captain for the Legal Information Society of Nova Scotia's fundraiser Play in a Day. The Stewart McKelvey team is busy fundraising and preparing for this 50-person, top-secret play that is organized in only 24 hours! I also sit on the Philanthropy Committee for LISNS and the Stewart McKelvey United Way Committee.

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

To continue to build my practice through relationships with clients, the lawyers and staff at my firm, and lawyers within the Nova Scotia bar. I look forward to expanding my knowledge and experience in a wide variety of practice areas.

What words of wisdom do you have for new lawyers?



Seek out advice from peers and mentors, including mentors outside formal mentorship programs. If you run into a situation unfamiliar to you, chances are someone you know has dealt with the same or similar situation.

What do you wish senior lawyers understood about young lawyers?

What is routine for a senior lawyer may be a novel learning experience to a young lawyer.

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

Building your practice while maintaining work/life balance, and seeking out mentorship/learning opportunities at the same time.

Why did you decide to practice law? What drew you to your area of law?

The short answer is I was a big fan of the TV show CSI, but since I like talking more than science, I went the Law and Order route. I like practicing corporate/commercial litigation in particular because of the complex and unique issues, and the opportunity to work as part of a team.

A Student's Perspective

By **ASHLEY SCHUITEMA**

I joined the CBA-NS Equity Committee in 2012 hoping to get involved with equity seekers in the community and find out what the profession was doing to meaningfully commit to diversity and equality. It turns out the Halifax bar is full of hard-working individuals who are committed to effecting substantive change in the profession. From Burchells Summer Internship and Scholarship Program to the Touchstones for Change event, the equity issue is being discussed around many tables.

On November 1, 2013 the CBA-NS Equity Committee and the Nova Scotia Barristers' Society hosted the Touchstones for Change event to celebrate the 20 year anniversary of the 1993 CBA Report which included various recommendations for breaking down barriers for women and minorities within the legal profession. Speakers included Melina Buckley, chair of the CBA's National Access to Justice Committee, Judge Corrine Sparks of the Nova Scotia Family Court, Ann Marie McInnis of Nova Scotia Legal Aid, Naiomi Metallic of Burchells LLP and Kim Brooks, Dean of Schulich School of Law. This event was very well attended and the round-table discussion period facilitated meaningful conversation with various stakeholders in the community.

Although there is positive work being done in the legal community and despite efforts at the law school to increase diversity, the culture within the law school still routinely privileges certain voices over others. It is often the same voice and the same perspective that is heard time

and time again in class discussion. Gender, race, class, sexuality and disability are issues, which are rarely discussed in a critical context unless a student specifically seeks out a professor who is known to teach from a critical perspective. There has been some discussion of the Indigenous Blacks & Mi'kmaq program losing certain funding, and programs such as Immigration Law, Gender and the Law and Poverty Law are currently not offered.

On a positive note, Schulich School of Law will soon be welcoming some beautiful artwork by Indigenous Black & Mi'kmaq artists in Nova Scotia to make the hallways feel more inclusive. In February 2013, Pro Bono Students Canada and Law Hour hosted a fundraiser to commission this art for the law school. The Dalhousie Black Law Students' Association has commissioned a portrait of Rocky Jones and the Dalhousie Aboriginal Law Students' Association has commissioned a beautiful piece representing Nova Scotia coastal landscapes.

The CBA-NS Equity Committee is in the planning stages of organizing an exciting event that will feature senior professionals in the legal community discussing their experiences navigating through the legal profession as a minority. More details to follow, but this will undoubtedly be an amazing event, so keep your eyes peeled!

Giving Back is a recurring feature highlighting the pro bono work of Nova Scotia lawyers. Ashley Schuitema is a third-year law student at Schulich School of Law at Dalhousie, originally from Baden, Ontario. She has been a member of the CBA-NS equity committee since 2012.

BENCHMARK *Continued from page 9*

can bring the people who can actually design, implement and measure that reform together on an ongoing basis. Some people say, just what we need is another committee, and I am sympathetic to that. But what is being proposed here is not just another committee, it is a leadership mechanism for reform of the civil and family justice system. Without something along those lines, it is very unlikely that anything much will happen.

HS – What are some of the potential consequences if we don't embrace this action, this change?

TAC – Things will just continue to deteriorate. I don't think there is any mystery about that. Some courts are reporting that 70 per cent of the people in court are without lawyers. We have many people reporting to various studies that have been done over the last 5 to 10 years that they simply give up. They can identify legal problems, but they simply despair of having them meaningfully addressed. There is very little to suggest that this is going to improve without some remedial action.

HS – What are the next steps for your committee, the Action Committee?

TAC – We are having a leadership colloquium in January in Toronto, where we will bring together about 100 leaders of the civil and family justice system from across the country, with a view to getting reports

from people who are doing something, and instigating more direct and concrete action on the parts of those who are not. Meetings have already been held in most of the jurisdictions in Canada around this report; high level meetings with senior leaders of the system, as well as many other people. Out of that have come the beginnings of concrete action. I was particularly impressed with the meeting in Halifax that brought together a very interesting cross section of justice system participants. The Bar in Nova Scotia, with the help of the judiciary and the government, is showing real leadership. In terms of the action committee itself, there is a recommendation that it continue on a more permanent basis, to try to keep the spotlight on these issues. We need to make sure that people are exchanging information, that the progress being made in one jurisdiction is being shared elsewhere. 2014 will be a very important year for access to civil and family justice. In parallel with this, I am absolutely delighted to see the commitment of the CBA, not only to the very broad access to justice agenda they set out in their most recent report, but also in their other initiatives: the commitment to get serious about legal expense insurance; the commitment to get serious about helping the profession structure itself so that it responds better to public need. These are all very exciting commitments that the CBA has made, and I am really looking forward to applauding as they move forward.



By **MATTHEW J.D. MOIR**

Even during the election and before the new legislature commenced sitting, there were a few statutory amendments proclaimed in force since the committee's last report in August.

- Sections of the Regulated Health Professions Network Act, S.N.S. 2012, c.48 were proclaimed in

force September 10, 2013, amending the following statutes to grant investigative powers to the Council under that enactment:

Chiropractic Act, Chiropractic Act, Dental Technicians Act, Denturists Act, Dispensing Opticians Act, Medical Act, Medical Laboratory Technology Act, Medical Radiation Technologists Act, Midwifery Act, Occupational Therapists Act, Optometry Act, Physiotherapy Act, Psychologists Act, Social Workers Act.

- Part V of the Cyber safety Act, S.N.S. 2013, c. 2 was proclaimed in force September 25, 2013 to invoke the Safer Communities and Neighbourhoods Act in cases of cyber-bullying.
- The Residential Tenancies Act amendments under S.N.S. 2012, c. 64 to permit termination in cases of domestic violence were proclaimed in force September 16, 2013.
- The new Land Surveyors Act, S.N.S. 2010, c. 38, was proclaimed in force September 10, 2013.
- Housing Nova Scotia Act amended S.N.S. 2013, c. 10, ss. 5 & 9 August 30, 2013.
- Securities Act amended S.N.S. 2012, c. 34, ss. 15 & 20 September 1, 2013.

Since the election, a number of legislative reforms have been passed within a very short time frame. Twelve bills were introduced starting November 29, which made their way to their third readings and royal assent by December 12. That is less than two weeks. It seems the new government wanted to deliver quickly on some of its election promises.

It would not be unfair to characterize the latest spate of legislative

reforms as more political than legal. We will have a new holiday next February. Some measures have been taken to limit Nova Scotia Power's ability to compete with independent producers of electricity. And it is now illegal to import "fracking" wastewater into the province.

But there were also some reforms which would be of more interest to the legal community. A commission will be established to review remuneration for Provincial Court Judges and Justices of the Peace. And some changes to labour and employment law have been implemented, including amendments to the Trade Union Act, which provide for a first collective bargaining agreement by arbitration.

The list of amendments and new legislation is:

- Chapter No. 32 Sir William Young's Benevolent and Charitable Fund Act
- Chapter No. 33 Accountability in Economic Development Assistance Act
- Chapter No. 34 Electricity Reform (2013) Act (Royal Assent December 12, 2013)
- Chapter No. 35 February Holiday Act
- Chapter No. 36 Importation of Hydraulic Fracturing Wastewater Prohibition Act
- Chapter No. 37 Executive Council Act (amended) and Public Service Act (amended)
- Chapter No. 38 House of Assembly Act (amended)
- Chapter No. 39 Justices of the Peace Act (amended) and Provincial Court Act (amended)
- Chapter No. 40 Maritime Link Act (amended)
- Chapter No. 41 Occupational Health and Safety Act (amended)
- Chapter No. 42 Public Service Act (amended)
- Chapter No. 43 Trade Union Act (amended)
- Chapter No. 44 Ladies of the Sacred Heart at Halifax, An Act Respecting the (amended)

Also the Canada Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act (1987, c. 3) amendments enacted this year, protecting the Sable Island National Park Reserve of Canada, were proclaimed in force on December 1.

TRENDING *Continued from page 4*

in the First Nations that it would consult.

Scott J. concluded that Canada had not meaningfully consulted about the mirror approach and serious consultation was required in the circumstances. He also suggested there ought to have been discussions with the First Nations about whether the strict mirroring approach was advisable in the context of overall AANDC policy towards greater autonomy for First Nations in the

management of their affairs.

The decision is now under appeal and will likely be heard sometime in the spring or summer of 2014.

Trending is a recurring feature focusing on a new development in the law. Naomi Mettalic is a lawyer at Burchells LLP in Halifax.

CBA Nova Scotia would like to thank the following organizers and speakers for their outstanding contribution to:

KEEPING THE GOLDEN YEARS GOLDEN...AND WHAT TO DO IF THEY TARNISH

Organizers:

Jessica Lyle, McInnes Cooper
Ann Levangie, Patterson Law

Speakers:

Sharon Avery,
RBC Wealth Management Services
Dr. Daniel Carver,
QEII Health Sciences Centre
Jeanne Desveaux,
The Law Practice of Jeanne Desveaux
Ann Levangie, Patterson Law
Jessica Lyle, McInnes Cooper
L. Martina Munden, Patterson Law

Richard Niedermayer, Stewart McKelvey
John Underhill,
Nova Scotia Department of Justice
Catherine Watson, McInnes Cooper
Natalie Woodbury, Ernst & Young LLP
Jocelyn Yerxa,
Nova Scotia Department of Seniors

Sponsor:

Canadian Bar Insurance Association

Winner of Conference Draw:

Congratulations are extended to Heather Dawe, McInnes Cooper, Halifax, NS. Ms. Dawe is the winner of the draw for a free online CLE registration.

2013-2014 CLE Online Programs & Presenters:

February 21, 2014

"Drunk Driving Criminal, Social Host"

Ian Hutchison, Arnold McKiggan Hutchison
Angela Green, Department of Justice (Canada)

February 28, 2014

"Experts' Bias Independence"

Karen Killawee, MacIntosh MacDonnell & MacDonald
Tammy MacKenzie, Burchell MacDougall

March 14, 2014

"Health Privacy Act"

Karen Bennett-Clayton, Stewart McKelvey

April 25, 2014

"Builders' Lien Topic"

Colin D. Piercey, Stewart McKelvey

May 2, 2014

"Rest of the Tech for the Rest of Us"

Stacey Gerrard, Lawyers' Insurance Association of Nova Scotia

May 16, 2014

"Contracting with Public Sector Bodies: Procurement, Bidding and Privacy"

Speaker to be announced

June 13, 2014

"Insurance 101-Dealing with insurer on the Other Side"

Speaker to be announced



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RC: Similar to what is happening in the courts, there is an increase in the number of self-represented parties before the UARB. This is especially true when dealing with matters such as assessment or planning appeals. Although the UARB process is intended to be more informal, dealing with self-represented parties requires patience and skill. Another challenge for the UARB is a lack of understanding as to what it does and the statutory limits to its authority. People often want a remedy that is not available under the relevant statute.

NB: The Supreme Court of Canada has affirmed administrative tribunals have jurisdiction to determine the constitutional validity of challenged statutory provisions, and accordingly adjudicators occasionally have to deal with Charter arguments before getting to substantive arguments. This often creates delays in hearings as procedural steps have to be taken for such challenges, unless counsel abandons their argument.

NV: What advice do you have for lawyers wishing to break into the field of adjudication?

RC: Develop good writing skills. Decision writing is very different from writing a brief. You also have to learn to listen to both sides of an argument. Look for opportunities that interest you and will allow you to get experience in decision making.

NB: It is important to have a good background in procedure, evidence and litigation, and take courses in decision writing. There are opportunities to get involved with adjudicative boards. Before you apply, give thought to whether you really have the background to deal with the types of matters you would be tasked with. These matters are very serious for the people who bring them before a tribunal.

GG: It is not something you can learn overnight, but comes from a long and rich experience in practice. Having professional judgment and being able to write a good decision evolves over time. You must also have an interest in this type of work, have appreciable general legal knowledge, be a good listener, demonstrate compassion and show good judgment. It has been said that our most important work through our decisions is explaining to the unsuccessful party why she or he was unsuccessful.

Career Compass is a recurring feature focusing on a workplace issue of interest to CBA members. Donna Boutilier is a lawyer with HRM and a member of the editorial board of Nova Voce.

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If it is easy, something is missing.

- Have respect – for all things especially other people. People treat you like you treat them.
- Laugh whenever you can. You know we need to and there is plenty of opportunity. After all, the world has given us things like teenagers, disco, bad hair days and the leisure suit. You have to laugh and it's good for you.
- Always be grateful (especially for getting to be part of a great profession) and say thank you. While you are at it, let people cut in when driving. Honestly, if you are running late, it is not because you got pushed back another 20 feet.
- Eat desert first, you just never know. Cake at breakfast is always allowed.

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

ALTERNATIVE DISPUTE RESOLUTION WORKSHOP



**4-day negotiation and mediation (ADR) program
Halifax: May 12-15**

It's no longer just helpful for lawyers to understand mediation. It's now imperative. Mediation is not like litigation and it's not like deal-making. It's a different animal. A few lawyers understand how to use mediation (and the mediator) to get superior deals for their clients; others just guess and hope that they're getting a good result. If you want to develop the skills to get superior results and to really understand how to make mediation work for you and your clients, you need the best training from the experts in the field. We've designed the ADR Workshops to help you succeed where others just muddle through.



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John Hoyles, **CEO of the CBA**



From left to right:
David Fullerton,
John Hoyles
and David Dennis

The Canadian Bar Association has entered into partnership with Newmarket Knight Frank Devencore as a direct result of our own experience with the firm.

The CBA approached NKF Devencore for help with a commercial leasing issue after we realized that our tenant representative adviser was acting for the landlord as well. We wanted an organization that represented solely the interest of the tenants.

The Ontario Branch of the CBA had been very pleased with the advice it received from NKF Devencore, Canada's largest tenant-focused brokerage firm. Its tenant representative philosophy removed the conflict of interest inherent in the traditional approach.

After conducting our own interview with the firm, the CBA was convinced that by having a tenant representative that did not also work for the landlord, our tenants' leverage would be unrestricted, and we would be able to enjoy the full benefit of our negotiating power. We engaged NKF Devencore to assist us with the lease for our Ottawa premises.

Our situation was challenging: we needed a little more space but the building was full and the expense of moving would have been prohibitive. NKF Devencore conducted a comprehensive market survey, testing the marketplace and finding alternative options. It proposed an approach and handled the negotiations, which resulted in an agreement with our current landlord on favourable business and financial terms.

I was very impressed by the thoroughness, professionalism, attention to detail, confidentiality, and the level of analysis NKF Devencore displayed throughout the process.

As someone who has practised law and dealt with lease space, I know that many firms, particularly mid-size and smaller organizations, simply do not have the time or expertise to handle their own commercial leasing requirements. A partnership between the CBA and a tenant-focused commercial leasing representative seemed to be a logical next step.



NKF Devencore will provide an approach that is all-encompassing: it will conduct studies and assist with project management, space planning; it can also address trends in law-firm workspace.

As part of our partnership, NKF Devencore has agreed to provide a percentage of its fee to the CBA so that we can enhance programs for our members.

We outlined what we were looking for, and NKF Devencore provided us with good counsel, did all the negotiations, and consulted with us. It

was simple. They were professional and we got a good deal.

I would encourage everyone to reach out to NKF Devencore before making any commercial leasing related decisions. If you are interested, please get in touch with Patrick Langdon

Patrick J. Langdon
Vice President/National Director
Business Development
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