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ON THE FRONT COVER

Craig A.B. Ferris, Q.C., told us that he felt like he was living in the 17th century having his portrait painted for our cover. Attempts to have our new Law Society president painted on horseback leading a battalion into battle failed. However, you can read all about him starting on page 15.

ENTRE NOUS

The Hong Kong Bar Association condemns all instances of violence and arson yesterday that caused serious and extensive damage and even life-threatening personal injuries. However, the attack on the court building stands out because of its symbolism. It represents an attack on the independent judicial authority of the Hong Kong Special Administrative Region. It is difficult to think of anything that is more corrosive to the Rule of Law.

—Hong Kong Bar Association, November 14, 2019

On June 9, 2019, up to one million people poured into the streets of Hong Kong in peaceful protest against the Hong Kong government. While some estimates put the number of protesters in the mere "hundreds of thousands", footage of the event is simply incredible. It shows a sea of people of every age marching throughout the downtown streets of Hong Kong chanting slogans, singing songs and demanding two things: the resignation of Chief Executive Carrie Lam and the withdrawal of the *Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019* (the "Fugitives Bill").

One million people pouring into the streets of any city for any reason is a remarkable sight, but that number standing up *peacefully* for democratic freedoms in the face of legislation expressly designed to curb those freedoms is nothing less than a huge achievement of democracy. Fundamental democratic freedoms, including freedom of speech, freedom of peaceful assembly and freedom of thought, ensure that such demonstrations can even take place. These and other democratic freedoms have been enjoyed by citizens of Hong Kong for decades, and to see them exercised in such

numbers was inspiring. A scant five months later, however, the weekly protests had degenerated from peaceful demonstrations into an anarchic display of violence and hostility where young masked protesters hurled bricks and set fire to private property, police fired live rounds and drove motorcycles into crowds, armed thugs clubbed otherwise peaceful activists and, in one extreme example of chaos, a pro-government civilian was literally set on fire. The once-peaceful protests have become extremely violent—and tragically fatal—displays antithetical to the rule of law itself.

Originally, the protests emerged as a response to the introduction of the Fugitives Bill, which was designed to "close the loophole" of Hong Kong not having extradition treaties with Taiwan, Macau and mainland China. In 2018 Hong Kong police found themselves unable to extradite a 19-year-old Hong Kong resident who confessed to murdering his pregnant girlfriend while they were tourists in Taiwan; he had returned to Hong Kong after the murder had taken place. Hong Kong does not have an extradition treaty with Taiwan, so authorities were hamstrung in their ability to extradite the man so that he could be charged and prosecuted. While a simple solution would have been for the Hong Kong government to make special arrangements with Taiwan in that one case (as suggested by the Law Society of Hong Kong), it sought instead to seize upon the understandable public outcry in letting a confessed murderer go free and introduced the Fugitives Bill, which included not only Taiwan, but also Macau and, more purposefully, mainland China.

The veil was not difficult to lift. The legislation was an overreach by China to have a direct avenue into Hong Kong to deal with political dissent. Hong Kong, once under British rule, was returned to China in 1997 under a negotiated principle of "one country, two systems", which vowed to preserve the social, economic and legal structures of Hong Kong for at least 50 years. Specifically, Hong Kong's British-based common law system, which recognizes basic democratic principles such as the principle of judicial independence, was preserved until at least 2047. At the time of the handover, Chinese students were quoted in the *South China Morning Post* as expressing various concerns over losing certain freedoms. Twenty-two years later, their fears seem rather portentous:

> Douglas Lui Chi-wah, 21, a third-year biochemistry student at HKUST, said: "Change is more likely in the political or legal system, judging by the past bad record of the People's Republic of China's Government and practices such as coercing dissidents to write letters of repentance."
>
> Sandy Shum Pui-Shan, 22, who graduated in May in business administration from the Chinese University of Hong Kong, said: "I believe Hong Kong will stay prosperous and people will continue to enjoy a good stan-

> dard of living … I believe it will be a continuous challenge for future chief executives to deal with the calls for democracy by local parties on the one hand and what the Chinese Government may require."
>
> . . .
>
> Kitty Make Mei-yee, 21, who has just graduated in public and social administration from City University of Hong Kong was worried immigrants would undermine Hong Kong's standard of living by accepting lower wages. As for the political situation, she said: "I also fear future legislative councils will be under strong influence from China … I don't think China will impose significant restrictions on freedoms but if locals are passive about their rights, China may pass more restrictions."[1]

The Hong Kong Bar Association ("HKBA") was one of the first entities to criticize the Fugitives Bill heavily. It noted that the legislation did not close any loopholes at all, but was instead an attempt by the Chief Executive to assume jurisdiction over extradition instead of allowing the Legislative Council or the courts to vet extradition requests. In a statement issued in April 2019, it noted:

> The practical effect of the introduction of a new special surrender arrangement is to remove the restriction against surrendering persons in Hong Kong to the rest of the PRC [People's Republic of China] and combined with that … to enable the Chief Executive to become the sole decision-maker in concluding case-based arrangements with another jurisdiction, regardless of whether that jurisdiction provides minimum standards for rights protection in its criminal justice system.[2]

The HKBA specifically stated that it was concerned "over the significant differences between the judicial and criminal justice systems practised in Hong Kong and the Mainland in terms of protection of fundamental human rights" and noted that the legislation did not address those concerns.[3] Referring to the Hong Kong Court of Appeal's reasoning in *HKSAR v. Hon Ming Kong*,[4] it noted that Hong Kong's Basic Law

> does not impose an obligation on the HKSAR to 'maintain relations with the judicial organs of other parts of [the PRC]' or 'to render assistance to each other'. … The Basic Law was promulgated in 1990 when the Criminal Law and Criminal Procedure Law of the PRC was in its infancy and it was no doubt envisaged that it would take time for the system to mature, region by region, towards and beyond 1997 to a stage when the separate systems would sufficiently understand how each other worked and could commence and then develop cooperation one with other, with safeguards satisfactory to each separate entity.[5]

Perhaps more significantly, in a rare example of the judiciary wading into the realm of politics, three senior judges and 12 leading commercial and criminal lawyers spoke to Reuters describing the legislation as putting the judiciary on a collision course with Beijing.[6] Their concern was that the new

legislation was unworkable, as it did not recognize the common law requirements that extraditions be based on the presumption of a fair trial and humane punishment in the receiving country. The judges said that the Chinese system was not one that could be trusted.

These are the sorts of legitimate legal and social concerns that understandably fuelled the passions of the million or so people who poured into the streets of Hong Kong back in June 2019 to protest the bill. The Fugitives Bill was viewed as the starting point in eroding key principles of democratic freedom underlying the rule of law enjoyed by Hong Kong. Back in June 2019 over 3,000 Hong Kong lawyers dressed in black and marched from the Court of Final Appeal to the central government offices in protest against the Fugitives Bill.

> "I want to do what I can to ensure the Hong Kong government is forced to backtrack … I am stunned they have come up with this plan," said one mainland Chinese lawyer based in Hong Kong.
>
> "Even if we are not directly exposed, we know better than most just how appalling the criminal justice system is across the border – there is no open fair justice, you can't always even get a lawyer. There is torture."[7]

The Hong Kong government's response was one of intransigence and delay. These tactics allowed emotions to rise until outright hostility broke out between frontline protesters and armed police. During an early escalation, in a response to the black attire favoured by protesters, a group of white-clad citizens armed with rods attacked unarmed peaceful protesters. The police are said to have moved away from the area while the beatings took place. The protesters' demands started to grow and now included a demand for an independent and impartial investigation into allegations of police misconduct. Massive demonstrations resulted in a complete shutdown of Hong Kong's airport (court injunctions prevented further such closures). The protesters, however, are largely leaderless. As their demands grew, so did hostilities. The protests became more violent, with riot police using tear gas to battle angry mobs hurling bricks and petrol bombs. Week after week, Hong Kong, once a global symbol of freedom and economic success, began to resemble a war zone.

Chief Executive Carrie Lam, with the full backing of Beijing, refused to step down and declared emergency law in early October 2019. Tensions continued to rise, and some of the protesters started resorting to violence. By the time the Hong Kong government capitulated and withdrew the Fugitives Bill on October 23, 2019, clashes between police and protesters were a weekly occurrence—many of the clashes were extremely violent not only between police and demonstrators, but also between citizens choosing sides between Beijing and the protesters.

In the ensuing chaos, the protesters have increased their demands, and anti-government protesters and pro-Beijing loyalists have increased acts of violence against one another. Both sides are deeply suspicious of the other concocting violent events to make the other side appear immoral or even barbaric. As seems to be the way these days with controversial and complex issues (think Brexit or impeachment proceedings), the subject-matter is now dumbed down to such a level that rational conversations are few and far between. Families and friends inside and outside of Hong Kong are sharing accusatory social media posts that appear only to enflame and enrage and drive a further wedge between the competing factions. Sadly, both sides appear to have abandoned principled arguments in favour of simplistic statements that only goad, offend and demoralize.

All of this has, in our view, played right into the hands of China. Anarchy in Hong Kong can easily be spun by Beijing as an example of the complete failure of democracy and the freedoms it affords its citizens. The greatest fear of those who love democracy—people like the 3,000 lawyers marching in peaceful protest in Hong Kong—is that Beijing will promote its own version of the "rule of law" by rolling in the tanks as they did against peaceful democratic protesters in Tiananmen Square in 1989.

While Hong Kong courts may have previously envisaged a day when the two legal systems of China and Hong Kong would mature to a point of understanding one another, in the streets something decidedly contrary to such a vision is well underway. Whoever attacked the law courts buildings did so in a fit of anarchy and rage oblivious of or perhaps entirely opposed to the Western concept of the rule of law. "One country, two systems" appears to be on the verge of collapse—possibly by design. Sadly, 2047 might come early this year.

ENDNOTES

1. Farwaz Jarrah, "Hopes and Fears of the Young", *South China Morning Post* (1 July 1997), section 2, p 1.
2. "Observations of the Hong Kong Bar Association on the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill 2019" (2 April 2019) at para 7, online: <www.hkcnews.com/article/19529/bar_association-fugitives_bill-19529/observations-of-the-hong-kong-bar-association-on-the-fugitive-offenders-and-mutual-legal-assistance-in-criminal-matters-legislation-amendment-bill-2019>.
3. *Ibid* at para 8.
4. [2014] 2 HKLRD 710 at para 591.
5. *Supra* note 2 at para 9.
6. Greg Torode & James Pomfret, "Exclusive: Hong Kong Judges See Risks in Proposed Extradition Changes", *Reuters* (28 May 2019), online: <www.reuters.com/article/us-hongkong-politics-extradition-judges/exclusive-hong-kong-judges-see-risks-in-proposed-extradition-changes-idUSKCN1SZ09U>.
7. "Hong Kong Lawyers Protest 'Polarising' Extradition Bill in Rare March", *CNA* (6 June 2019), online: <www.channelnewsasia.com/news/asia/hong-kong-lawyers-protest—polarising—extradition-bill-in-rare-march-11603156>.

ON THE FRONT COVER

CRAIG A.B. FERRIS, Q.C.

By Cliff Proudfoot, Q.C., David Allard, Marko Vesely and Kinji Bourchier

Regulating the legal profession is the core responsibility of the Law Society of British Columbia. At the helm of this oversight role, its president carries a heavy load and must act with diplomacy, delicacy and bravery, in varied measures. Given such nuances, the presidential duties are best carried out by a person who takes on the role with a combination of determination and fine judgment. The president must balance many interests—professional, geographic, political and economic—and maintain an overarching sense of optimism and confidence.

This month's cover features Craig Ferris, Q.C., a member of the B.C. bar since 1991; a partner at Lawson Lundell LLP since 1998; and perhaps most importantly a husband, dad and sportsman. He is also the next president of the Law Society of British Columbia and, fortunately for the profession and the public, he possesses the intellect, skills and personality to meet any challenges he or the profession may face during his tenure. Craig is a leader—in the profession, within his firm, in the community and in the courtroom.

Craig was born in Vancouver in 1964. His mother, Sarah, known to all as "Sylvia", hailed from Vista, Manitoba, and his father, Boyd Ferris, Q.C., came from Winnipeg. They met in Winnipeg and moved to Vancouver so Boyd could finish law school at UBC in 1956. However, the Ferris family often spent summers in Manitoba, which Craig remembers fondly.

Craig, the youngest member of the family, grew up in Vancouver and attended Sir William Osler Elementary School and Magee High School. In 1976 Craig's father, who was then president of the CBA, took Craig to the

opening of the Law Courts in London, England, which was a formative experience and highly influential in Craig's decision to become a lawyer. Indeed, in retrospect, there was never any question that the three Ferris children would become lawyers. Boyd used to practise closing submissions on the three kids (we are not sure whether he took questions from the familial bench) and stressed to them early that becoming a lawyer was a worthwhile life endeavour. This indoctrination was so effective that both of Craig's siblings, Blake and Heather, also became lawyers. Blake is in-house counsel at BC Hydro and Heather was also a partner at Lawson Lundell until her untimely passing in October 2019. Blake and Heather are and were exceptional lawyers in their own right.

After earning a political science degree at UBC in 1986, Craig took the LSAT, excelled at it and then entered law school at UBC in the fall of 1986. During this time, he received a wide range of scholarships, including being a Wesbrook Scholar. Throughout Craig's academic career in both high school and university, sports instilled in him the importance of teamwork, dedication, trust and respect—critical attributes of his that he has bestowed upon his partners, associates and students at Lawson Lundell. While attending high school at Magee, Craig captained the rugby team and led it to victory in the provincial championship, the last time that Magee has achieved this. Craig also played varsity basketball at Magee and later played for both the provincial and national junior rugby squads as a forward. Craig's passion for rugby saw him star for UBC at the varsity level in addition to playing for local club Kats RFC, where he continued to strike both fear and respect into the hearts of opposing players.

1986 was a momentous year for Craig. Not only did he complete his undergraduate degree, write the LSAT and commence law school, but he also met his brilliant life partner, Shelly Hager. The two met in the line for an Expo 86 venue, the 86th Street Music Hall, and entered the club with Robert Palmer's "Addicted to Love" playing in the background. They married four years later in 1990 (we are not sure whether the iconic 80s anthem was played at the wedding) and have been a dynamic partnership since then, raising three already accomplished children of whom they are justifiably proud.

Craig clerked at the Court of Appeal in 1989/90 for Justices Craig, Macfarlane, Proudfoot and Hinds. He has recounted on many occasions some of the wisdom that he learned from that year with the court, including the importance of being clear in submission and in voice, speaking to the public policy issues facing the Court of Appeal and answering the question posed, not simply relying on prepared submissions.

Craig commenced articles at Lawson Lundell—Lawson & McIntosh, as it was then known—in 1990. He was recruited by Bob Mair, Q.C., after Bob eloquently told Craig about John F. Kennedy speaking to his Harvard graduating class.

After being called to the bar in 1991, Craig joined the associate ranks at Lawson Lundell. He was much loved by his contemporaries and much respected by the partners in the litigation department. Lawson Lundell had a rich collection of talented counsel and Craig's most significant mentors were former Chief Judge Hugh Stansfield, Ted Gouge, Q.C. (now sitting on the Provincial Court), Bill Everett, Q.C. (past president of the Law Society), Gordon Weatherill, Q.C. (now sitting on the Supreme Court), Brian Wallace, Q.C. (past treasurer of the Law Society), David Rice, Brad Armstrong, Q.C., and Chris Sanderson, Q.C.

Craig became a partner at Lawson Lundell in 1998 as a litigator working on commercial, corporate and business disputes. He is now head of the firm's Commercial Litigation Group, where he has had the pleasure of working with his own mentors, mentoring the next generation of Lawson litigators and developing strong relationships with his colleagues throughout the firm.

In his time at Lawson Lundell, Craig has been committed to firm service and has chaired the Student Recruitment Committee and was the firm's first Litigation Working Group Manager. He has also taken seriously the commitment to mentorship that he had been shown by his own mentors. His advice to others at the firm is frequently sought and generously and helpfully given.

One of Craig's oft-repeated phrases on mentorship is, to paraphrase, that mentoring is not just telling your mentee they are good at everything. Both Mr. Bourchier and Mr. Vesely (as co-authors) can attest to this maxim. They can also attest to its veracity and its fundamental contribution to their career development. When Craig gives you constructive criticism it is exactly that—an attempt to make you a better lawyer.

Craig served on the Lawson Lundell Executive Committee for 11 years, overseeing the firm's expansion from 80 lawyers located mainly in one office to 165 lawyers spread across four offices today. Throughout that period, Craig's sound judgment was instrumental in managing the firm's growth and success.

As a lawyer, Craig seeks to understand the nuances of each case he works on. He distills the often voluminous material to get to the heart of the matter.

Craig is a superb trial and appellate lawyer, has appeared at all levels of court in B.C. and Alberta and has argued three cases in the Supreme Court

of Canada: *Teck Cominco Metals Ltd. v. Lloyd's Underwriters*, 2009 SCC 11, which examined the question of jurisdiction where a foreign state has asserted jurisdiction over the same matter; *Canada (Attorney General) v. Federation of Law Societies of Canada*, 2015 SCC 7, which involved a challenge to anti-money laundering regulations that required lawyers to report on monetary transactions of their clients (Craig appeared on behalf of the CBA as an intervener, and the case was decided in favour of clients' confidentiality); and *Attorney General of Canada v. British Columbia Investment Management Corporation*, 2019 SCC 63, which examined the constitutionality of the application of GST to a Crown agent that holds assets in a *sui generis* statutory trust arrangement.

Craig also shared with the authors his first brush with advocacy: in grade 6 he challenged his elementary school principal's jurisdictional authority to discipline students outside of school hours and property after a little neighbourhood "disagreement" broke out between kids. The young Master Ferris thought he had an absolutely irrefutable case until his principal, worthy counsel himself, produced a copy of the *School Act* that he kept handy in his suit jacket to defeat Craig's jurisdictional challenge. (*Surely still ripe for judicial review!? – Ed.*)

In recent years, Craig has become deeply involved in the Law Society. He first sat on the Discipline Committee as a non-bencher. He then went on to be elected a bencher in 2013. He will now finish his run as a bencher as president.

Craig has also been very active on pro-bono matters. Not long ago, Craig took on the case of a wrongful death of a middle-age teacher who left a widow and two young children. Craig was determined and tenacious and ultimately obtained a settlement for the deceased's family that altered their lives for the better, forever. Craig's excellence in the pursuit of this case was a critical factor in its early and fair settlement.

Craig also gives generously to his community. He has served on the board of Vancouver's celebrated Bard on the Beach and has coached innumerable youth sports teams.

Outside of law, Craig is deeply committed to his family. Craig has been an active and engaged parent, through coaching his children's various sporting activities and always being present to support them and dispense more of his sound judgment. Craig and Shelly have raised three remarkable children. The oldest, Jack, was born in 1995, graduated from Queen's with a bachelor of commerce degree in 2017, worked for Goldman Sachs and now works for Citadel Global Equities as an investment analyst in New York. Middle son, Alex, born in 1997, is currently attending NYU and will gradu-

ate in 2020 with a B.F.A. Alex has also been accepted into the master's program in dramatic writing at NYU. Bronwyn, the youngest, was born in 1999, and is currently attending Queen's and will graduate in 2021 with a bachelor of commerce degree. She will be a summer intern at Evercore in New York in 2020.

Craig's other passion beyond his family is sports. He is a determined but long-suffering Canucks fan and a devoted Manchester United fan (notwithstanding that his great-grandfather Andrew Hannah captained Liverpool Football Club from 1889 to 1891). He loves to golf and is a keen runner, having completed 14 marathons, including New York, Chicago and, his favourite, Boston, where he recorded his personal best time of 3:09.

Craig is also a devoted parent to a long and proud history of family pets, the range of which has spanned a course of dogs, cats and horses. Initially the Ferris family's brand of dog was the Scottish Terrier—Gordon, Bruce and Audrey were all Scotties. They then decided to upsize with the beautiful but massive Irish Wolfhound, Violet, and two horses, Normandy and Berkeley. Craig is often employed on weekends to help clean out the barn where the horses board in Southlands. We also must mention the cat, Murray.

Craig and Shelly have travelled the world together, often with their three children. Craig's office is adorned with pictures of all the wonderful places they have visited together. Shelly is an elite equestrian rider, and many conversations have been taken up with Craig proudly explaining to his friends and colleagues Shelly's accomplishments riding in the hunter division.

Craig's brother Blake and sister Heather are and were close to him. The recent loss of Heather was particularly painful for both Craig and Blake.

We at Lawson Lundell are very proud of Craig and pleased to share and celebrate his accomplishments. It is a great honour to be the president of the Law Society and a heavy burden that we are confident Craig will carry with tact, sound judgment and determination.

Leanne Christie, Across Port Moody, oil on canvas, 72" x 60"
Available through Art Rental & Sales at the Vancouver Art Gallery
www.artrentalandsales.com

PRINCIPLES ABOUT PRINCIPALS (OR ANOTHER ARTICLE ABOUT ARTICLES)

By Rishi T. Gill and Nick B. Wright*

In handing down the recent decision of *Acumen Law Corporation v. Ojanen*,[1] Gomery J. of the B.C. Supreme Court gave members of the bar useful guidance on what they should likely avoid when stepping into the role of principal to an articled student.

To all present and future principals who have not had the opportunity to review the decision in its somewhat jarring entirety, we can only advise that if you are inclined to think it wise to fire your articled student and at the same time launch a Supreme Court civil claim against them, and to notify the student of this claim for the first time by formally serving her during the student's first week of PLTC in front of the student's classmates, then perhaps you should seek a second, third, fourth and potentially fifth opinion. Actually, feel free to seek a sixth if the opinion is anything other than, at minimum (and conveyed to you in a concerned tone), something along the lines of: "Are you *sure* you want to take such a *bold* step?"

An important question to answer before taking on the significant role of principal to an articled student is what are the basic duties, responsibilities and obligations of a principal? The answer engages general considerations of the role of lawyers within the legal community.

This article is not directed toward articled students; there are abundant materials directed toward this audience. However, as an esteemed senior counsel consulted for this article pointed out in pithy and direct terms, the job of a student, fundamentally and somewhat simply, is to "listen, observe and learn". Conversely, the principal's role is far more subtle, nuanced, challenging, multi-dimensional and fraught.

ACUMEN

Handed down August 13, 2019, *Acumen* centres on the decision of Acumen

* The authors wish to thank the following past and present members of the bar for their contributions to this article: L. Keith Liddle; Peter Leask, Q.C.; Richard C.C. Peck, Q.C.; William B. Smart, Q.C.; Peter J. Wilson, Q.C.; Christopher S. Johnson, Q.C.; Marilyn E. Sandford, Q.C.; Julie K. Lamb, Q.C.; Jeffery T.J. Campbell, Q.C.; A. John Lakes; Timothy Pettit; Trevor A. Shaw; Matthew A. Nathanson; and Maurice D. Mirosolin.

Law and the principal in question (together, the "Firm") to terminate the articles of a student four months into her articling year, report her to the Law Society for alleged misconduct and commence a Supreme Court action against her for what the Firm classified as "notional" damages resulting from her alleged malfeasance.[2] Specifically, the Firm alleged that the student had breached her professional obligations and committed professional and legal misconduct based on her social interactions with fellow members of the Firm, her conduct in her day-to-day practice obligations and her alleged theft of what can perhaps best be described as the intellectual property of the Firm through publication of that information in a separate blog she was alleged to have created outside of her employment with the Firm. The student counterclaimed for wrongful dismissal and represented herself.

Notably, the student was formally served the notice of civil claim and termination papers during her first week of PLTC and in front of her classmates.

In the end, after seven days of evidence, the court dismissed the Firm's claim in its entirety, and the student was successful in her counterclaim; she was found to have been wrongfully terminated by the Firm. Notably, in addition to the damages arising from lost wages, the court concluded that the student was entitled to "a substantial award of aggravated damages", as she had been "the victim of unfair bullying, bad faith conduct by [the Firm] and ha[d] suffered substantial and prolonged emotional distress because of that conduct".[3] The court awarded her $50,000 for aggravated damages and about $19,000 in ordinary damages for lost earnings.

The *Acumen* decision inspired the authors to canvas senior members of the criminal bar to opine on the significance of becoming a principal to an articled student. While *Acumen* is an example of what not to do, this article sets out some principles to consider before taking on such a significant role in someone else's career.

LEGAL BASIS FOR THE PRINCIPAL–ARTICLED STUDENT RELATIONSHIP

Four foundational documents inform the principal–articled student relationship: the *Legal Profession Act*,[4] the *Law Society Rules*,[5] the *Code of Professional Conduct for British Columbia*[6] and the *Articling Guidelines*.[7]

The *Legal Profession Act* is the enabling statute that allows the Law Society to create its own rules and enforce them. As such, it has little to say about the specifics of the articling relationship and roles. However, one point of interest is s. 19, which provides a standard for being enrolled as an articled student, called and admitted or reinstated as a member of the Law Society: a prospective candidate must be "of good character and repute and … fit to become a barrister and a solicitor".

Like the *Legal Profession Act*, the *Law Society Rules* touch on the substance of the articling relationship only tangentially. Rule 2-60(1) allows articled students to provide legal services under the supervision of their principal. In doing so, the *Rules* specify a number of obligatory checks for the principal: the student must be competent, supervised and prepared to a level demanded by the service provided.

The *Code of Professional Conduct* is fairly general in its treatment, both direct and indirect, of the articling relationship. A good place to start is Chapter 2, which deals with "Standards of the Legal Profession". Of note, Chapter 2.2-1 requires that all lawyers conduct themselves honourably and with integrity in all professional matters. Commentary [2] recognizes that "[p]ublic confidence in the administration of justice and in the legal profession may be eroded by a lawyer's irresponsible conduct. Accordingly, a lawyer's conduct should reflect favourably on the legal profession, inspire the confidence, respect and trust of clients and of the community, and avoid even the appearance of impropriety." Commentary [3] recognizes that dishonourable or questionable conduct, even in one's private life, may be subject to discipline by the Law Society. The *Code* also refers to the duties of both the principal and the student. Per Chapter 6.2-3, students must discharge their duties under their articling agreements in good faith. More onerously, a principal, under Chapter 6.2-2, must "provide the student with meaningful training and exposure to and involvement in work that will provide the student with knowledge and experience of the practical aspects of the law, together with an appreciation of the traditions and ethics of the profession".

Finally, the *Articling Guidelines* delve most deeply into the articling relationship. They require principals to instruct their students on the practical aspects of law as well as professional conduct. Professional conduct and responsibility towards clients, the court, other lawyers and the public should receive special attention. The *Guidelines* describe a principal's role as carrying a "very heavy obligation". Principals are discouraged from using their students as "runners" and are advised to limit the time this takes to about four hours per week. Similarly, the *Guidelines* also discourage excessive opinion generation and stress that articles should be focused on the practical aspect of the legal profession.

THE STUDENT'S PERSPECTIVE

As noted in the introduction, this article is directed more toward an audience of prospective or active principals. That said, clearly it is helpful to appreciate the concerns of students moving into the first stage of the legal career they have spent so much time and effort pursuing.

Many students hear horror stories about the articling workload. They often expect to be shut in at the office during their articling term. They anticipate being at the bottom rung of the workplace ladder. That said, students are not necessarily overly stressed about working hard if the work itself is not demoralizing on a day-to-day basis. After many years of academic study students welcome the practical legal world.

However, students will also benefit from a principal who can assist them in making sense of the difference between the theory of law versus the actual practice. The mentoring relationship helps provide context—a roadmap during a stressful time.

Articles vary widely, but many students understand the commencement of their actual legal career will be more stressful than law school. Students are best served when their stress comes more from their lack of familiarity with processes and practices than from poor mentorship from their principal.

WHAT TO CONSIDER WHEN ACTING OR CONSIDERING TO ACT AS A PRINCIPAL

Understanding the Fundamental Obligations of a Principal

Principals and prospective principals should always keep in mind the importance of mentoring the student such that the student will eventually become a positive and contributing member of the profession. Though these words may seem facile, many senior lawyers interviewed for this article remember distinct moments of their articling career, often over two decades ago, where their principal instilled values that they still remember today and that form an integral and substantive part of their professional and personal lives.

It cannot be overstated that the student is not simply at the beginning phase of a "job" so much as entering a profession that is an important part of civil society. More specifically, the student will eventually become a junior lawyer and eventually a senior lawyer. The student may become a judge. Possibly, the student will find law is not for them.

Students' experiences at the start of their career will quite possibly colour their perceptions and foundational beliefs about what the profession means to them and to other lawyers, the court and the public.

In sum, a principal helps shape the student's future. Consequently, principals must approach their role with humility and an appreciation for their responsibility to start the student's career off positively. As one lawyer advised, "If things go off the rails, the student's career can go with it."

The Basics: Experience and Time

Prospective principals must thoroughly consider whether they have the experience and time necessary to properly guide the student.

Lawyers consulted for this article agreed that experience as a lawyer involves not only legal experience, but also the temperament that comes from a certain level of seniority. While Rule 2-57(2) of the *Law Society Rules* allows lawyers who have practised for at least five years to act as a principal,[8] it is generally agreed that only the most exceptional lawyer could provide a suitable level of mentoring at the bottom end of this range.

Senior counsel agreed that the prospective principal must be prepared to put the requisite amount of time in to properly supervise and mentor the student, and although the student may be an employee of the principal, their relationship extends far beyond the basic employer–employee framework. Instead, the principal is responsible for mentoring and guiding the student into a profession that the student has made substantial efforts to enter. Accordingly, the principal must be able to devote a suitable amount of time and energy to ensure the student's articling term is being managed and supervised properly. Similarly, there should be less emphasis on rote and menial tasks (although most students appreciate that not every item of work will be of equal interest) that require very little action by the principal other than giving the initial directions ("Photocopy these documents", "Prepare these binders of materials", "Attend for this uncontested matter for the umpteenth time", "Plug this fact into that precedent") and following up with a cursory review after completion.

The principal must try to understand the student's needs and monitor the student's progress throughout the articling term. As one lawyer interviewed for this article put it, "Articling is less about the principal's needs and more about the student. If what you want is a flunky, then you should not take on a student."

Next Steps: Having a Plan

While introducing the student to a potential lifelong profession may be exceptionally fulfilling to ponder in the abstract, principals must have an actual plan for the articling term. The student is best served when the principal appreciates the importance of the following:

- direct exposure to client meetings;
- participation in strategic discussions;
- encouragement to contribute to strategic discussions (even if that contribution is small);
- interesting work that stretches the student, taking into account the student's level of experience and ability (i.e., the weight of the file should not fall unreasonably on the student's shoulders; where the student does have substantive conduct, their work should be properly supervised and guided as appropriate);

- ethical duties (as one lawyer remarked, "The student needs to understand the often conflicting legal duties that arise in the course of practice and how to navigate the issues")—the student must consider relevant duties to the client, the court, opposing counsel and the public at large;
- day-to-day office management; and
- professionalism—remember that the student may never have worked in an office before.

The Importance of Ongoing Feedback: Professional and Personal

The principal should always keep in mind that mentoring is a dynamic and ongoing experience. There may be lots of interesting work being assigned to the student, but the student's growth often occurs when both the principal and the student can engage in a constructive review of progress from both a practical (basis "How do I address the court?") and an ethical basis ("How do I deal with an unrepresented party?").

Many of the lawyers interviewed for this article stressed that the principal should always be aware of the student's emotional well-being. The principal should monitor whether the student is overly stressed, anxious, worried, etc. Is there appropriate guidance that the principal can offer even where the issues extend beyond the workplace?

A principal should always be aware of the specific temperament of the student and interact accordingly. For instance, some individuals may be more willing to seek guidance and assistance from their mentor proactively. Others may be quieter and therefore more reticent in approaching an individual they consider to be their "boss".

Feedback is a two-way street. Principals should encourage students to offer their perspective on the work product and the principal's mentoring.

Exposure to Members of the Bar and Other Legal Resources

A student benefits by being exposed to a variety of lawyers with different styles of practice and methods for approaching problems. It is important for a student to see the legal profession outside the immediate office environment.

Further, the principal should not hesitate to introduce the student to all the resources available through the Law Society, CBABC and other relevant organizations such as The Advocates' Society, the Trial Lawyers Association and so on. Do not assume the student will discover these resources on their own.

Tips for Success

Lawyers interviewed for this article noted the following tips for success:

- Be sensitive to the student's needs. For example, quiet students sometimes need more proactive support.
- Avoid pigeonholing the student into an area in which they show aptitude. The articling year is about exposing the student to different parts of the profession and practice. They have their entire career to find the right path.
- Supervise and support the student. The "sink-or-swim" philosophy does not work.
- Monitor the student's workload. At firms with multiple lawyers, be aware of how much work other lawyers are asking the student to perform.
- Be aware of generational differences. The current crop of students may not have the same mindset as the students from 10, 20, 30 years ago had.

Where Do We Want to End Up?

By the end of the articling term, students should have a deeper understanding of and respect for the legal profession, increased confidence in their practical skill set (e.g., managing a file on a day-to-day basis; properly engaging with other clients, other counsel and the courts; managing their own time) and their legal abilities (e.g., analyzing the relevant facts and applying the law, puzzling their way through a novel legal situation), and a stronger connection to other members of the bar, especially those who are significantly more senior. More particularly, students should have the confidence to know that it is okay to fail on occasion. Principals must be able to convey that a lawyer's win–loss record is not the best measure of success. If students are not properly prepared for the day-to-day stresses of practice, then every stumble can seem like the end of the world.

Students should come out of their articling year emotionally and professionally better for the experience. If they eventually conclude that law is not for them, that is okay too. The key is that students should not come out of the experience miserable, demoralized and bitter. Students should ideally have a hint of the best and worst aspects of the practice of law.

Perhaps most importantly, by the time they enter the profession as fully qualified barristers and solicitors, the former articled students will know only the absolute bare bones of what they will come to understand if they can make it through 5, 10, 20, 30 years of practice. The endeavour is a continuing process. Success at the end of articling means the student can see more clearly what he or she does not know and still have the desire to continue forward.

CONCLUSION

A career in law can be very challenging but equally rewarding. Similarly, the importance of mentoring a student at the start of his or her career is an awesome responsibility. To do it properly requires much time and effort. It is daunting and should not be undertaken lightly.

That said, we hope that the above does not dissuade those members of the profession who would make excellent mentors, whether formal principals or informal mentors, from taking on the role. We all started as articled students, and then became recently called lawyers, and continued on, and made mistakes, and had successes, and learned to be better. We should endeavour to give back as much or more than we received and strive to make the next generation of lawyers better than we are. We should not be afraid of that challenge and, in fact, we should rise to it.

ENDNOTES

1. 2019 BCSC 1352 [*Acumen*].
2. As the court noted, the Firm conceded that it suffered no financial injury as a result of the student's alleged actions. Gomery J pointed out that the Firm's claimed amounts were "not nominal damages but substantial damages without proof of loss" (para 3).
3. *Supra* note 1 at para 137.
4. SBC 1998, c 9.
5. Online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/law-society-rules>.
6. Online: <www.lawsociety.bc.ca/support-and-resources-for-lawyers/act-rules-and-code/code-of-professional-conduct-for-british-columbia>.
7. Online: <www.lawsociety.bc.ca/Website/media/Shared/docs/publications/mm/ArticlingGuidelines_09-07.pdf>.
8. This rule provides that "to qualify to act as a principal, a lawyer must have (a) engaged in full-time practice in Canada for 5 of the 6 years immediately preceding the articling start date, and (b) spent at least 3 years of the time engaged in the practice of law required under paragraph (a) in (i) British Columbia, or (ii) Yukon while the lawyer was a member of the Society".

COSTS IN DOMESTIC ARBITRATIONS: WHO DECIDES HOW TO DECIDE WHAT IS "REASONABLE"?

By Gerald W. Ghikas, Q.C.

A British Columbia court has once again second-guessed a domestic arbitrator's decision to refuse to order production of a lawyer's file before determining whether the amount of costs claimed as "actual reasonable legal fees" was "reasonable". The result, in *0718698 B.C. Ltd. v. Ogopogo Beach Resorts Ltd.*,[1] was that a final award on costs was set aside pursuant to s. 30 of the *Arbitration Act*[2] (the "Act") and the matter was remitted to the arbitrator. This court intervention in the arbitral process is based on the demonstrably false premise that it is impossible, in all circumstances, to assess the reasonableness of the amount of costs claimed without having access to the lawyer's complete file. Such unwarranted interference is particularly egregious as it involves characterizing an arbitrator's discretionary decision to refuse to order document production, made after the arbitrator heard from both parties on that very question, as a "denial of natural justice". Such intervention threatens the integrity of the arbitral process. It ignores differences between arbitral and court rules regarding document "discovery". It invites applications to set aside any substantive award under s. 30 if a party disagrees with an arbitrator's precursor decision to refuse a document production request.

In domestic arbitrations in British Columbia, both entitlement to and quantification of costs are generally determined by the arbitrator, though there is an option for the arbitrator to decide entitlement and to refer quantification to the Supreme Court with a direction as to how the amount is to be determined. The preferred practice is for the arbitrator to deal with quantification, lest the costs assessment process itself devolve into a time-consuming and expensive litigious proceeding. This preferred practice is expressly authorized by the Act.

Section 11 of the Act states:

> (1) *The costs of an arbitration are in the discretion of the arbitrator who, in making an order for costs, may specify* any or all of the following:
>
> (a) the persons entitled to costs;

(b) the persons who must pay the costs;

(c) *the amount of the costs or how that amount is to be determined*;

(d) how all or part of the costs must be paid.

(2) *In specifying the amount of costs under subsection (1) (c), the arbitrator may specify that the costs include*

(a) *actual reasonable legal fees, and*

(b) disbursements, including the arbitrator's fees, expert witness fees and the expenses incurred for holding the hearing.

(3) In specifying how costs are to be determined, the arbitrator may refer the matter to a registrar of the Supreme Court for assessment.

(4) The registrar is not to assess the costs referred under subsection (3) as though they were costs in a proceeding in the Supreme Court but must assess them in the manner specified by the arbitrator.

[Emphasis added.]

The arbitrator is expressly granted the discretion to decide "the amount" and "how that amount is to be determined". An award of costs is a monetary award that settles a matter in dispute between the parties.

Section 30 of the Act states:

(1) *If* an award has been improperly procured or *an arbitrator has committed an arbitral error, the court may*

(a) *set aside the award, or*

(b) *remit the award to the arbitrator for reconsideration*.

(2) *The court may refuse to set aside an award on the grounds of arbitral error if*

(a) the error consists of a defect in form or a technical irregularity, and

(b) *the refusal would not constitute a substantial wrong or miscarriage of justice*.

(3) *Except as provided in section 31, the court must not set aside or remit an award on the grounds of an error of fact or law on the face of the award*.

(4) Nothing in this section restricts or prevents a court from changing, suspending or terminating all or part of an award, in respect of a family law dispute, for any reason for which an order could be changed, suspended or terminated under the *Family Law Act*.

[Emphasis added.]

Section 1 of the Act defines "arbitral error" as including a "failure to observe the rules of natural justice".

In *Ogopogo* an arbitrator had made an award requiring the respondent to pay as costs an amount that was seventy-five per cent of the claimant's actual reasonable legal fees. The respondent petitioned the court under s. 30 of the Act to set aside the award on the grounds that the arbitrator had

committed an "arbitral error" by failing to grant its request that the claimant be compelled to produce "particulars of the work done" by claimant's counsel. The court found that there had been a denial of natural justice, set aside the award and remitted the matter to the arbitrator. In arriving at this decision, the court followed its earlier judgment in *Williston Navigation Inc. v. BCR Finav No. 3 et al*.[3] There, the court stated:

> [49] Natural justice requires an arbitrator to act with a certain level of procedural fairness. The rules of natural justice and the duty of fairness are variable. *Their content is to be decided in the specific context of each case and will depend on the circumstances of the case, the statutory provisions and the nature of the matter to be decided: Knight v. Indian Head School Division No. 19*, [1990] 1 S.C.R. 653; *Syndicat des employés de production du Québec et de l'Acadie v. Canada (Human Rights Commission)*, [1989] 2 S.C.R. 879. The failure of an arbitrator to give the parties a fair opportunity to argue costs has been held to be a denial of natural justice: *Ridley Terminals Inc. v. Minette Bay Docking Ltd*. (1989), 40 B.C.L.R. (2d) 115 (S.C.), aff'd on other grounds (1990), 45 B.C.L.R. (2d) 367 (C.A.).
>
> [50] Pursuant to s. 11(2) of the [Act], the Arbitrator may specify that costs include the actual reasonable legal fees incurred by a party. The present issue is not the Arbitrator's jurisdiction to make such an award but whether he followed the rules of natural justice in making his award.
>
> [51] BC Rail is not entitled to recover more than its objectively reasonable legal fees. The fact that a solicitor has billed a certain sum does not necessarily make the fee reasonable. This is of particular importance when the other party to the litigation is paying the bill. As noted by Seaton J. A. in *Royal Trust Corporation of Canada v. Clarke* (1989), 35 B.C.L.R. (2d) 82 (C.A.) at 88:
>
> > The party who made that arrangement, the successful party in the litigation, might have made a very poor bargain. The bill rendered pursuant to the agreement might be justifiable between the solicitor and his client but thoroughly unjustifiable to impose on another. The client might have demanded more work to be done than was appropriate in the circumstances, or more lawyers and more expensive lawyers to be retained than were appropriate in the circumstances. Of course, at the taxation, if the other litigant is paying the bill the client will be particularly pleased to see that the bill is as high as possible.
>
> [52] *In order to determine if the legal fee is objectively reasonable a party must know the particulars of what the solicitor did. This requires an examination of the lawyer's work and disclosure of their file*. I adopt the comments of Kirkpatrick J., (as she then was), in *Canadian National Railway Company et al v. A.B.C. Recycling Ltd*. (2005), 2005 BCSC 1559, 47 B.C.L.R. (4th) 185 (S.C.) at ¶ 28:
>
> > ... I cannot conceive that a proper examination of CN's reasonably incurred legal costs could be made without disclosure of CN's file and examination of lawyers in respect of the file and matters arising therefrom. The simple presentation of a clients' bill to the Trial Judge (as

> occurred in *Edwards v. Bell*) combined with counsel's submission would not adequately allow ABC to challenge the reasonableness of CN's legal costs. Nor would it allow for the objective determination of the reasonableness of CN's legal costs.
>
> [53] In this case the Arbitrator *refused to order production of the solicitor's file. Williston was given no meaningful opportunity to challenge the accounts. The Arbitrator's summary determination of legal fees was unfair to Williston and breached the rules of natural justice*. In proceeding as he did the Arbitrator committed arbitral error. The error was far more than a defect of form or technical irregularity.
>
> [Emphasis added.]

In *Ogopogo* the court described the process that the arbitrator had used to determine whether the amount of actual legal fees claimed was reasonable. The arbitrator had convened a hearing to deal with the question of costs and one other matter. During this hearing the arbitrator established timelines for submissions. In accordance with the briefing schedule, the claimant submitted that it should be entitled to its actual legal costs and provided details of the hourly rates, hours billed, disbursements incurred and confirmation that the accounts had been paid. The respondent argued that each party should bear its own costs or that costs should be limited to a party/party scale. In the alternative, the respondent submitted that if costs were to be awarded as actually incurred, then it should receive disclosure of the claimant's solicitor's file in order to determine the reasonableness of the claimed fees. The respondent submitted that the claimant's brief did not provide "any particulars of the work done. It only provides a spreadsheet of time incurred, without any corresponding narrative".[4] The respondent cited *Williston* and submitted that it must know the particulars of what the claimant's solicitors did, and that this required an examination of the solicitor's files. After having heard from the parties, according to the court judgment the arbitrator said:

> 7 So the question here, on the Claimants' application, is whether there is any good reason not to award actual and reasonable costs, having regard to the Claimants' general success in the various applications which were brought before me. *I think there are grounds to award substantial costs but not necessarily full indemnity costs. There are mitigating circumstances here.*
>
> …
>
> 10. *Taking into account all of the foregoing, particularly Mr. Smith's uncooperative and sometimes disdainful misconduct as outlined in Appendix B, I award costs to the Claimants as follows*:
>
> (a) 75% of my fees as Arbitrator, including those which will form part of my final account following this award, for a total of $146,882.43; and

(b) 75% of the fee bills and disbursements of Church and Company amounting to $305,515.86.

[Emphasis added.]

The first thing to note about *Ogopogo* is that the arbitrator did not award the full amount of the claimant's actual reasonable legal fees. Having found that the claimant was entitled to a "substantial" award but "not necessarily full indemnity costs", the arbitrator made an award that was twenty-five per cent lower than the claimant's actual legal fees. While the amount was calculated based on seventy-five per cent of the amount claimed, one might ask why the question of whether the amount claimed was reasonable matters. There was a lump sum costs award for an amount substantially less than the claimant's actual legal fees. Based on the court's reasons, however, it appears that the parties and the court approached the matter as though the quantum awarded by the arbitrator depended on a finding that the *total* amount of fees claimed was reasonable.

In both *Williston* and *Ogopogo*, the arbitrator gave each party the opportunity to present evidence and argument concerning costs. In each case, the act of the arbitrator that the court found amounted to a denial of natural justice was the arbitrator's decision to refuse a request to order further document production. This was found to be a denial of natural justice because in the courts' view it is simply not possible, in any circumstances, to perform an informed analysis of the reasonableness of a lawyer's fees without access to the lawyer's files. Thus, whatever facts and circumstances the arbitrator may have considered, and whatever reasons the arbitrator may have had for refusing the document production request after hearing from both parties, the decision to refuse production was found to be a denial of natural justice. This finding is clearly wrong.

As stated in *Williston*, the content of the procedural fairness obligation "is to be decided in the specific context of each case and will depend on the circumstances of the case, the statutory provisions and the nature of the matter to be decided".[5] There are many circumstances in which an arbitrator in a commercial arbitration can quite properly, and without denying natural justice, refuse a request for document production.

The rules concerning "discovery" in domestic arbitrations in British Columbia are very different from those that apply in court proceedings. Indeed, the term "document production" is used in part to distinguish the process from court-like "document discovery". The main difference is that the arbitrator has a gatekeeper role. No party has a "right" to discovery of documents. Absent agreement, every request for document production must be approved by the arbitrator and enforced through the pronounce-

ment of a procedural order. The arbitrator has broad discretion to grant or withhold the requested relief. A party asking the arbitrator to exercise the discretion to order production of documents generally must show that the requested documents are not only relevant but also material to the outcome of the dispute. They must show that the burden of production is justified. "Fishing" is strictly prohibited. An arbitrator will take into account many different factors when exercising the discretion to grant or withhold a document production order.

Procedural orders, including orders refusing document production, are generally considered not to be reviewable by a court. The Act specifically authorizes appeals to the court from awards and contains provision for enforcing or setting aside awards. It does not provide for the review or setting aside of procedural orders. Section 32 of the Act states:

> Arbitral proceedings of an arbitrator and any order, ruling or arbitral award made by an arbitrator must not be questioned, reviewed or restrained by a proceeding under the *Judicial Review Procedure Act* or otherwise except to the extent provided in this *Act*.

The courts have repeatedly emphasized the importance of deference to arbitral authority. Even where an award—not a mere procedural decision—is statutorily susceptible to being set aside for "error of law", the Supreme Court of Canada has found that the standard of review is reasonableness. In *Sattva Capital Corp. v. Creston Moly Corp.*,[6] the Court stressed that even when a court is asked to "review" an award rather than a procedural order, the nature and purpose of the arbitral regime are to be borne in mind:

> [104] Appellate review of commercial arbitration awards takes place under a tightly defined regime specifically tailored to the objectives of commercial arbitrations and is different from judicial review of a decision of a statutory tribunal. For example, for the most part, parties engage in arbitration by mutual choice, not by way of a statutory process. Additionally, unlike statutory tribunals, the parties to the arbitration select the number and identity of the arbitrators. These differences mean that the judicial review framework developed in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190, and the cases that followed it, is not entirely applicable to the commercial arbitration context. For example, the [Act] forbids review of an arbitrator's factual findings. In the context of commercial arbitration, such a provision is absolute. Under the *Dunsmuir* judicial review framework, a privative clause does not prevent a court from reviewing a decision, it simply signals deference (*Dunsmuir*, at para. 31).

The policy of deference applies with even greater force when the decision in question is a discretionary decision made by an arbitrator on a procedural matter. Section 30 of the Act should not be interpreted or applied as a "back door" to judicial review of discretionary decisions about document

production. Assuming that review of such discretionary decisions under s. 30 is appropriate at all, it is essential that the particular circumstances of the decision be taken into account. It is wrong for courts to simply assume, as they have, that it is not possible to assess the reasonableness of legal fees without access to the billing lawyer's files.

If an arbitrator has decided, after hearing from both parties, that the claimant is entitled to an award of actual reasonable legal fees, the claimant has the onus to prove, first, the "actual" amount of legal fees incurred and, second, that the amount paid was "reasonable". To prove the amount paid it is not necessary to produce the lawyer's file or a detailed description of the work done. A sworn statement by the claimant indicating how much has been paid might be sufficient, though that evidence may be supported by a sworn statement from the solicitor or an oral representation by counsel who is member of the B.C. bar that the amounts said to have been paid are correct. In neither *Williston* nor *Ogopogo* was there any suggestion that the amounts said to have been paid had not actually been paid.

The next question to be considered by the arbitrator is whether the amount of legal fees actually incurred is "reasonable". The question is not whether the fees are reasonable as between the lawyer and the claimant. The question is whether, as between the claimant and the respondent, the amount is reasonable, such that the respondent should be required to reimburse the claimant in full.

Typically, the claimant will, as in *Williston* and *Ogopogo*, submit evidence of the time spent by fee billers and their billing rates. The claimant may or may not submit copies of the lawyer's invoices, with or without redactions to protect privilege, or a brief summary of the role played by each fee biller. Typically, the claimant will then argue that, given the nature of the case and the work done by counsel in connection with it, it is objectively reasonable that the respondent should reimburse the fees actually paid. The respondent, often without tendering any evidence, will submit that given the nature of the case and the work done the fees billed are excessive. The parties and the arbitrator know the nature, complexity and importance of the case. They know the details of the procedural history. The arbitrator will have managed the case from cradle to grave, deciding every contentious procedural application, presiding at the hearing and personally reviewing any post-hearing submissions. The arbitrator and parties witnessed the written and oral advocacy work done by counsel, its effectiveness and efficiency, and its impact on the outcome of the case. Arbitrators are often themselves experienced counsel, chosen by the parties for that very reason. When that is the case, they are particularly well placed to assess the reason-

ableness of the fee charged for the work done in the conduct of the particular case. It is absolutely possible to assess the reasonableness of amounts actually paid without reviewing the solicitor's file. Clients do it all the time.

If the respondent alleges that the amount claimed is unreasonable and also submits that it needs production of the lawyer's files, the respondent makes a document production request. The arbitrator has discretion as to whether to order production. To obtain an order for document production in the context of a commercial arbitration, it is not enough for a respondent to state boldly, "I do not accept that the amounts billed and paid are reasonable." Obviously, the respondent wants to reduce the amount it must pay if possible. In many cases, however—as in *Williston* and *Ogopogo*—the party seeking production presents no factual basis, other than the record of the proceedings, to support the contention that the amount claimed might be unreasonable. The arbitrator might conclude that no further evidence is required to justify a production order. Alternatively, the arbitrator might rightly expect the respondent to have produced some additional evidence to show that the desired review of the solicitor's files is not, as it often is, a fishing expedition in the hope of finding something new that could be used to attack the amount of fees paid.

What kind of evidence might an arbitrator expect to receive in support of a request to prowl through opposing counsel's files as part of a determination of whether, as between the parties, the amount claimed is reasonable? One potentially compelling piece of evidence would be the amounts paid by the respondent to its own counsel, including the time spent and billing rates of the fee billers. Experience shows that often the fees charged by counsel for opposing sides in an arbitration are similar in amount. If there is a significant, unexplained difference, that might be a cogent basis for ordering the production of more information. If, on the other hand, the respondent states boldly that the claimant's legal fees are unreasonably high while declining to put forward evidence of its own legal fees, an arbitrator might properly infer that the unproduced evidence, which clearly exists, would not support the respondent's contention.

If the respondent does produce evidence of its own legal fees in support of its request for document production, and if there is a significant discrepancy that cannot be explained without further information, the arbitrator might well find that document production should be ordered, perhaps bilaterally. It is a matter for the arbitrator's discretion. Alternatively, the arbitrator might conclude that the lower fees charged by an ill-prepared and ineffective counsel for the unsuccessful party are not informative of whether the amounts paid to a well-prepared and effective counsel for the

successful party are reasonable as between the parties. Alternatively, the information provided by both sets of solicitors (time spent and rates) may explain any difference. For example, it may show that the difference is attributable primarily to differences in hourly rates rather than time spent. The question would then be whether the difference in hourly rates is objectively justifiable, taking into account all the circumstances. Differences in time spent may be readily explained by an unequal burden of document production, witness statement preparation or cross-examination, all of which is known to the arbitrator and requires no further evidence. So although the respondent's production of evidence of its own actual legal fees incurred might reasonably be expected in support of a request for production of an opposing solicitor's file, even where that evidence shows a discrepancy there may be circumstances that could lead an arbitrator to conclude that document production is unnecessary. Party conduct throughout the course of the proceeding is also something an arbitrator may take into account when exercising the discretion to allow or refuse a request for document production. If, for example, an unsuccessful party has a history of raising futile arguments, making excessive demands and delaying matters, an arbitrator is entitled to consider whether, in the circumstances, the request to go fishing in the opposing lawyer's files is made in good faith.

In short, decisions about whether to order production of a solicitor's files involve a careful consideration of myriad facts and circumstances with a view to achieving fairness for both parties. It does not by any means go without saying that the reasonableness of a claim for actual costs cannot be assessed as between the parties without access to the lawyer's file. There are many circumstances in which such an order is not justified and in which the arbitrator is empowered to exercise the discretion to refuse to order production. Indeed, to rubber stamp a request for production of a solicitor's file—as the courts say ought to be done—is procedurally unfair to the party resisting disclosure and an abdication of the arbitrator's responsibility.

Williston set a dangerous precedent, not just for costs cases. In the course of the vast majority of commercial arbitrations, arbitrators make orders refusing production of requested documents. In doing so, they exercise their discretion, based on all they know about the circumstances of the case, the evidence and arguments presented by the parties. When they do so, they are mindful that they have a duty to balance fairness and efficiency. These are matters of judgment. There is no objectively identifiable correct or incorrect decision. The orderly conduct of individual arbitrations and the integrity of the arbitral process is generally undermined if courts consider that it is a denial of natural justice for an arbitrator, after having heard from

both parties on the issue, to exercise the discretion to refuse an order for document production.

One can only hope that the *Williston* ruling will be revisited, ideally by the Court of Appeal. The potential that a successful arbitration party may be made whole by an award of actual reasonable legal fees is a tangible benefit of domestic arbitration. The prospect that cost awards will be automatically set aside for "arbitral error" if production of a solicitor's files is refused has had a real detrimental impact on the cost effectiveness, timeliness and fairness of domestic arbitral proceedings in British Columbia. Even more disturbing is the prospect that in addition to being susceptible to an appeal for error of law under s. 31 of the Act, any substantive award may be set aside for arbitral error if the presiding judge happens to disagree with the manner in which the arbitrator exercised his or her discretion in deciding a precursor application for document production.

ENDNOTES

1. 2019 BCSC 1503 [*Ogopogo*].
2. RSBC 1996, c 55.
3. 2007 BCSC 190 [*Williston*].
4. *Ogopogo*, *supra* note 1 at para 10.
5. *Williston*, *supra* note 3 at para 49.
6. 2014 SCC 53.

WRONGFUL CONVICTIONS: A HIDDEN COST OF INADEQUATE LEGAL AID FUNDING

By Connor Bildfell*

Ava was charged with a crime she did not commit. Due to her modest income and sky-high Vancouver rent, she found herself unable to come up with the funds to pay for a lawyer. So she did what many accused persons do when they cannot afford a lawyer: she applied for legal aid. To her disappointment, however, her application was denied because her modest income exceeded the eligibility cutoff. Feeling hopeless, and seeing no other options, she pleaded guilty to a crime she did not commit.

While Ava's story is fictional, the problem it illustrates is real: inadequate legal aid funding raises the risk of wrongful convictions. Some who are denied legal aid may fight their hardest but ultimately fail to defend their innocence unassisted, while others may plead guilty to a crime they did not commit. The harm to the individual, the integrity of the criminal justice system and the public's faith in that system is irreparable. Unless and until legal aid comes to be viewed as an essential public service to which all persons with insufficient means should have access, we will continue to run a heightened risk of wrongful convictions—the ultimate miscarriage of justice.

LEGAL AID IN BRITISH COLUMBIA

Our society is governed by a complex and voluminous body of statutes, regulations and common law principles. In such a society, lawyers play an essential role in advising organizations and individuals of their rights and responsibilities and assisting them in enforcing those rights and fulfilling those responsibilities. This in turn enables them to participate more fully in society.

Yet many in our society lack the means to afford counsel. According to a survey of Canadian lawyers published in April 2019, the average Canadian

* This article is dedicated to the late Honourable Anne Rowles, who was a dear friend and mentor to me. She provided helpful comments on an earlier draft of this article.

criminal lawyer with six to ten years' experience charges about $322.50 per hour.[1] For many Canadians, that rate is out of reach. Since the inability to access counsel may inhibit an individual's full participation in society, this presents a pressing problem to both the individual and society move broadly.

Legal aid, which the Law Society has described as an "integral part of an ordered society",[2] seeks to alleviate this problem by ensuring, as much as possible, that individuals who require legal services but lack the necessary funds will receive state funding for this purpose. By doing so, legal aid promotes access to justice, enables persons of limited means to participate more fully in society and protects their fundamental rights including the right to a fair trial under ss. 7 and 11(d) of the *Charter*, the right to be presumed innocent under s. 11(d) and the right to equality under s. 15.

Today, however, due to stringent eligibility criteria, only a small percentage of British Columbians qualify for legal aid.[3] Beginning with financial eligibility criteria, the current annual income cutoffs for legal aid in standard cases are as follows:[4]

Household Size	Annual Income Cutoff
1	$19,560
2	$27,360
3	$35,040
4	$42,840
5	$50,640
6	$58,440
7 or more	$66,240

To put these figures in perspective, a British Columbian who earns minimum wage ($13.85 per hour) and works 40 hours per week makes about $26,600 per year. That puts the individual above the income cutoff. This means that even those who earn minimum wage—the lower end of the "working poor"—are considered too wealthy to qualify for legal aid. Only the most deeply impoverished can qualify for legal aid, leaving most of the population ineligible. Indeed, according to one estimate, the poverty line in B.C. sits at around $20,000 per year for a single person and about $40,000

for a family of four.[5] Thus, income cutoffs for legal aid in B.C. closely track this estimate of the poverty line.

Financial criteria are not the only restrictions placed on access to legal aid; subject-matter limitations are also imposed. For instance, in criminal matters, which are the focus of this article, legal aid will typically be denied if there is no real risk of imprisonment.[6] This means that many criminal charges sit outside the scope of the legal aid regime, even if the accused is impecunious and even if a conviction would result in significant short- or long-term consequences.

The stringency of these criteria is largely a product of the decades-long underfunding of legal aid in the province. The statistics are disheartening. Despite its relative wealth, British Columbia ranked tenth in Canada in terms of per capita legal aid spending in 2017/18.[7] Per capita legal aid spending that year was a mere $15, representing a sixty per cent decrease in real terms from 1992/93 levels.[8] Further, for many years, the average legal aid tariff—how legal aid lawyers are paid—hovered at around $88 per hour.[9] This state of affairs prompted the Association of Legal Aid Lawyers to vote overwhelmingly, by a margin of ninety-seven per cent, to withdraw its services starting April 1, 2019,[10] a strike which was narrowly averted in March 2019 when the provincial government announced a one-time grant of $7.9 million.[11] Since then, the government has taken important steps in the right direction (see the Attorney General's Page beginning on p. 91), and these developments are encouraging. But we still have a long way to go.

Looking outside B.C., Ontario has recently seen severe cuts. In April 2019, the Ontario government slashed Legal Aid Ontario's budget by thirty per cent ($133 million),[12] which forced the organization to cut funding for, among other things, private counsel at bail hearings.[13] This sparked an uproar within the legal community.[14] And rightly so.

Some accused persons who are faced with serious and complex criminal charges and who have been denied legal aid may seek the assistance of counsel through a *Rowbotham* application. If an accused can show that they lack the means to pay for counsel and legal representation is essential to their right to a fair trial under ss. 7 and 11(d) of the *Charter*, then the court will enter a conditional stay of proceedings until state-funded counsel is provided.[15] However, this is an imperfect solution for several reasons. First, accused persons may require legal assistance to file a *Rowbotham* application—a catch-22. Legal assistance may be especially needed where the accused faces language barriers; struggles with addiction, cognitive deficits or other physical or mental health issues; has limited education or literacy skills;[16] or is being held in custody. Furthermore, an accused's assets or

income, even if modest, may still stand in the way of their ability to secure state-funded counsel through a *Rowbotham* order. The B.C. Court of Appeal has stated that a *Rowbotham* order will be granted only in "rare and exceptional" cases,[17] and in order to qualify, the applicant must show detailed financial evidence of his or her financial circumstances, including efforts to save, borrow money from friends and family, obtain employment or additional employment if already employed, and "reasonably exhaust" his or her own assets.[18] And in any event, the case must be sufficiently serious and complex to warrant judicial action. In short, obtaining a *Rowbotham* order is not guaranteed.

Some accused persons may be fortunate enough to find a lawyer willing to take on their case pro bono. British Columbia is home to many lawyers who generously give their time to assist those who need but cannot afford their services, and the longstanding tradition of pro bono work in our province is something to be proud of. However, relying on lawyers to work for free is no solution, and not all accused persons will be fortunate enough to find a lawyer willing to take on their case pro bono. While pro bono work undoubtedly has a role to play in enhancing access to justice,[19] it is no substitute for a robust state-funded legal aid regime that ensures not only that persons with limited means receive essential legal services, but also that lawyers receive reasonable compensation for providing those services.

INADEQUATE LEGAL AID FUNDING, SELF-REPRESENTATION AND WRONGFUL CONVICTIONS

The Supreme Court of Canada has been unequivocal about the need to guard against wrongful convictions. In *R. v. Seaboyer*; *R. v. Gayme*,[20] McLachlin J. (as she then was) stated that [t]he precept that the innocent must not be convicted is basic to our concept of justice",[21] describing it as a "fundamental principle" and stressing that no "society can tolerate the conviction and punishment of the innocent".[22] Similarly, in *R. v. Hart*,[23] Moldaver J. stated that "[w]rongful convictions are a blight on our justice system and we must take reasonable steps to prevent them".[24] The message is clear: wrongful convictions cannot be tolerated, and steps must be taken to prevent them.

So what are the main causes of wrongful convictions, and what steps can be taken to prevent them? These questions have been the subject of rigorous study in Canada, in part due to high-profile wrongful convictions such as those of Donald Marshall, Jr., David Milgaard, Guy Paul Morin, Thomas Sophonow, Steven Truscott and others, which brought greater attention to the issue.[25] The 2005 *Report on the Prevention of Miscarriages of Justice*,[26] pro-

duced by a working group of senior prosecutors and police officers from across the country, identified a number of leading causes of wrongful convictions, including the following: (1) "tunnel vision", where police and prosecutions cling to an initial theory without remaining open to alternatives; (2) lack of timely disclosure; (3) eyewitness misidentification and false testimony; (4) false confessions; (5) in-custody informants; (6) improper handling of DNA evidence; (7) difficulties with forensic evidence and expert testimony; and (8) ineffective assistance of counsel. It also issued recommendations on steps that can be taken to decrease the risk of wrongful convictions. In 2011, the working group released a comprehensive update to the 2005 report entitled *The Path to Justice: Preventing Wrongful Convictions*,[27] providing a summary of developments in the law and a report on efforts to implement the 2005 recommendations. In 2019, a third report was issued: *Innocence at Stake: The Need for Continued Vigilance to Prevent Wrongful Convictions in Canada*.[28] Each of these reports provides a detailed analysis of many causes of wrongful convictions and steps that can be taken to address them. They are essential reading for police, prosecutors and anyone else involved in the criminal justice system.

But one cause of wrongful convictions that sometimes receives insufficient attention is self-representation.[29] The connection between the two is easily understood. As the Honourable Justice Marc Rosenberg observed, "[a]n accused without legal representation is at a profound disadvantage in the complex system of criminal justice. Without their own lawyers, accused are vulnerable to pressure to plead guilty, not well positioned to challenge the prosecution's case and less able to mount a full defence".[30] Similarly, as the Honourable Justice Michelle Fuerst explained:

> [T]he self-represented accused is usually ill-equipped to conduct a criminal trial. He or she comes to court with a rudimentary understanding of the trial process, often influenced by misleading depictions from television shows and the movies. His or her knowledge of substantive legal principles is limited to that derived from reading an annotated *Criminal Code*. He or she is unaware of procedural and evidentiary rules. Even once made aware of the rules, he or she is reluctant to comply with them, or has difficulty doing so. The limitations imposed by the concept of relevance are not understood or are ignored, and the focus of the trial is often on tangential matters. Questions, whether in examination-in-chief or cross-examination, are not framed properly. Rambling, disjointed or convoluted questions are the norm. The opportunity to make submissions is viewed as an opportunity to give evidence without entering the witness box.[31]

Similarly, as Len Doust, Q.C., noted in his 2011 report *Foundation for Change: Report of the Public Commission on Legal Aid in British Columbia*

("*Doust Report*"),[32] "[w]ithout proper representation, pre-trial processes such as disclosure, admissions of fact, and plea bargaining are ineffective, and unrepresented accused are left floundering with complex processes, procedural, evidentiary, and legal issues".[33]

When accused persons represent themselves, chances are they will struggle to assess their legal position, present their case and challenge the Crown's evidence in a meaningful way. Indeed, the right to make full answer and defence, which is protected by s. 7 of the *Charter*, is largely a fiction when an accused is unaided by counsel. The complexity of a modern criminal law trial is such that most accused persons will require the assistance of a lawyer who is well versed in the substance of criminal law offences and defences and the detailed procedural rules that govern. Thus, where an accused is self-represented, a bedrock assumption of our adversarial criminal justice system—that the defence will vigorously challenge the Crown's case and present every reasonable defence—breaks down. Consequently, the system is less able to deliver on its promise to deliver a true verdict based on a rigorous testing of the evidence.

There is only so much that a judge can do to level the playing field between a self-represented accused and the Crown. On the one hand, trial judges have a duty to ensure an accused receives a fair trial. As the Ontario Court of Appeal stated in *R. v. McGibbon*,[34] "the trial judge is required within reason to provide assistance to the unrepresented accused, to aid him in the proper conduct of his defence, and to guide him throughout the trial in such a way that his defence is brought out with its full force and effect".[35] But this duty is limited. Trial judges must not descend into the fray and act as an advocate for an accused.[36] A judge cannot enter "the impossible position of being both advocate and impartial arbiter at one and the same time"—judges cannot shed their robes and become "an advocate or a tactical advisor to a self represented accused", and the level of assistance provided by a judge "need not rise to the standard expected with representation by competent legal counsel".[37] Thus, the limited assistance that judges may provide is no substitute for representation by competent counsel.

The role of effective counsel play in preventing wrongful convictions is beyond dispute,[38] and this connection is well recognized in the United States. In a 2004 report, the American Bar Association Standing Committee on Legal Aid and Indigent Defendants underscored that "[w]hile there are many reasons why our justice systems far too often convict innocent persons, clearly one of the best bulwarks against mistakes is having effective, well-trained defense lawyers".[39] As former Attorney General Janet Reno explained:

> A competent lawyer will skillfully cross-examine a witness and identify and disclose a lie or a mistake. A competent lawyer will pursue weaknesses in the prosecutor's case, both to test the basis for the prosecution and to challenge the prosecutor's ability to meet the standard of proof beyond a reasonable doubt. A competent lawyer will force a prosecutor to take a hard, hard look at the gaps in the evidence … A competent lawyer will know how to conduct the necessary investigation so that an innocent defendant is not convicted … In the end, a good lawyer is the best defense against wrongful conviction.[40]

The statistics on wrongful convictions in the U.S. bear out these observations. Ineffective defence counsel was a cause of 23 of the first 70 wrongful convictions discovered through DNA testing in the United States.[41] Clearly, therefore, the risk of wrongful convictions is greater in the absence of effective counsel.

In practice, most criminal matters do not proceed to trial. More than eighty per cent of criminal matters in B.C. are resolved before trial.[42] But this does not diminish the value of effective legal representation. Where an accused is left to respond to criminal charges without the assistance of counsel, they are more likely to agree to diversionary measures or to enter a false guilty plea, even if they have a legal justification or defence.[43] While it is impossible to know the precise number of Canadians who plead guilty to crimes they did not commit, studies confirm that false guilty pleas do occur and may be more frequent than many would suspect.[44] A story involving one such false guilty plea is recounted in this edition's "From Our Back Pages" beginning on p. 133.

False guilty pleas occur for a variety of reasons, chief among them being that an early guilty plea allows an accused to avoid the stress and uncertainty of a trial and to receive a lighter sentence than would be imposed following conviction at trial.[45] Some self-represented defendants will plead guilty simply to "get it over with" and move on with their lives.[46] Beyond this, a false guilty plea may be the result of a complex combination of factors such as an accused's mental or physical health conditions, in-custody status (accused persons with low income are less likely to be released on bail[47]), perceptions of pressure from the Crown to plead guilty, mistaken belief that they actually committed the offence (misunderstandings about the elements of an offence may play a role here) or feelings of hopelessness, to name just a few.[48]

Without the assistance of counsel, an accused may not fully understand the consequences of pleading guilty. As noted in the *Doust Report*, accused persons may plead guilty "because they are overwhelmed by the criminal justice system, without understanding the short and long term consequences of a criminal record for their employment and other prospects".[49]

Further, as the Law Society of B.C.'s Legal Aid Task Force has recognized, "[i]t is almost impossible to be dispassionate, analytical and objective when your life is falling apart, and yet that is often the burden placed on those who must navigate the justice system alone".[50] A criminal conviction carries significant consequences. For example, it can lead to imprisonment or other restrictions on liberty, inhibit a person's ability to find work, interfere with immigration and international travel, compromise an individual's credibility in later legal proceedings (e.g., child custody disputes) and present difficulties in obtaining or maintaining privileges such as a driver's licence or a professional licence.[51] But these consequences may not enter into an accused's calculus in the absence of advice from a lawyer. In short, without the assistance of counsel to provide the accused with a reasoned assessment of his or her position, an accused may throw in the towel when they really should put up a fight—a decision they may come to regret.

In addition, self-represented accused are unable to meaningfully engage in sentencing negotiations with Crown counsel.[52] Among other things, this means that self-represented accused may receive sentences that are more severe than they would be if they had legal representation.[53]

Guilty pleas can be set aside, but courts do not do so lightly. In *R. v. Wong*,[54] the Supreme Court of Canada stated that society has a "strong interest" in the finality of guilty pleas, and maintaining this finality is "important to ensuring the stability, integrity, and efficiency of the administration of justice".[55] A guilty plea will be valid so long as it was voluntary, unequivocal and informed.[56] For a plea to be informed, the accused "must be aware of the nature of the allegations made against him, the effect of his plea, and the consequence of his plea".[57] Accused persons seeking to withdraw their guilty plea on the basis that they were unaware of legally relevant consequences must establish a "reasonable possibility" that they would have pleaded differently (or pleaded guilty with different conditions) had they been informed of those consequences.[58] While this test leaves the door open for courts to set aside a plea that was not informed, it may be challenging for some accused persons to demonstrate that there was a reasonable possibility that they would have acted differently had they been informed of all relevant legal consequences. Moreover, even if a false guilty plea is later set aside, the damage may already have been done: the accused may have been deprived of their liberty, denied employment opportunities or suffered other consequences as a result of their conviction.

While the Innocence Project assists persons who allege they were wrongfully convicted to challenge their convictions, the organization typically only takes on serious cases—a substantial majority being murder convic-

tions—and the individual must have already appealed to at least the provincial court of appeal.[59]

While self-representation is not the norm in criminal matters in B.C., it is surprisingly common, albeit less so in serious matters and where the case proceeds to trial. In its 2017/18 annual report, the B.C. Provincial Court reported the following statistics about self-represented appearances in criminal matters:[60]

	2013/14	2014/15	2015/16	2016/17	2017/18
Number of Self-Represented Appearances	93,951	93,789	98,835	98,661	93,025
Rate of Self-Represented Appearances	20%	20%	19%	18%	18%

The rate of self-representation in criminal matters, and the risk of wrongful conviction that it carries, are tied to inadequate legal aid funding. This is because many accused persons who represent themselves do so not by choice, but rather because they have no other option. If eligible for legal aid, most accused persons would opt for a lawyer over going it alone. To the extent that inadequate legal aid funding leads to stringent legal aid eligibility criteria, which in turn leads to accused persons representing themselves, it raises the risk of wrongful convictions.

Inadequate legal aid funding not only leads to accused persons representing themselves; it also makes it more difficult to attract highly skilled counsel, even those most dedicated to public service, to take on legal aid cases and serve their clients to the best of their abilities. The unfortunate reality is that legal aid files do not pay the bills. According to a 2016 survey of B.C. lawyers, forty per cent of lawyers who take on legal aid files do so at a loss, and forty-six per cent barely break even.[61] Those who do take on these files out of a desire to advance social justice may feel overburdened by the sheer volume they have to take on to keep their practice financially viable. But stressed, overworked and underpaid counsel are hampered in their ability to serve their clients to the best of their abilities. Again, this raises the risk of wrongful convictions.

Finally, when legal aid files fail to provide adequate remuneration, the result can be a gradual decline in the quality of the criminal bar more generally. I am told there was a time when the early part of a criminal lawyer's

career would include a substantial component of legal aid files.[62] This was a means of gaining experience, and it played a role in making the apprenticeship model of criminal practice work. The legal aid billings of junior lawyers helped to offset the costs of hiring them, which allowed junior lawyers to receive mentorship from senior lawyers on more complex files, gain experience and receive a basic level of income.[63] But that model no longer works. Legal aid billings come nowhere close to covering the cost of employing junior lawyers, making it less economically feasible to hire them and provide them with mentorship and learning opportunities. Again, while the quality of the criminal bar in B.C. is undoubtedly high, inadequate compensation for legal aid files can lead to an overall decline in the quality of the criminal bar to the extent that it limits the opportunities for junior lawyers to gain the training and hands-on experience that they need to progress in their careers and develop into skilled senior professionals. Ultimately, this harms the public interest.

CONCLUSION

So what is the path firward? As a first step, we should recognize that access to legal representation in criminal matters is not a "should have" but a "must have". It is essential to giving full meaning to an accused's *Charter* rights, including the right to a fair trial under ss. 7 and 11(d), the right to be presumed innocent under s. 11(d) and the right to equality under s. 15.

Furthermore, while the economic case for increasing legal aid funding is strong,[64] we should also try to view legal aid through the lens of justice. The risk of wrongful convictions has too often been lost in the discourse about legal aid funding. That needs to change. The cost of even a single wrongful conviction is immeasurable. It can not only tear someone's life apart, but also undermine the integrity of the justice system and the public's faith in that system, as the legitimacy of a criminal justice system depends on its ability to avoid punishing the innocent. Among other things, legal aid guards against this risk by ensuring that accused persons have an advocate in their corner who will help them understand their legal position, challenge the Crown's case and present every reasonable defence. As explained in the *Doust Report*, legal aid thus serves both the individual and the criminal justice system:

> First, from the perspective of the individual, legal aid ensures that individuals who face the potential of incarceration have the means to adequately defend themselves. Second, from the perspective of the system, legal aid ensures that the criminal justice system can effectively avoid wrongful convictions, function fairly, and ensure that there are proper checks on police and prosecution so that we are all safe from arbitrary

> arrest, detention, and wrongful conviction. We have deemed it essential that we make our best efforts to ensure that each and every one of us can be confident that we live in a society where we will never be punished for something that we did not do, nor will any of our family, friends, associates, or fellow members of our society.[65]

Finally, the provision of essential public services such as legal aid is a governmental responsibility. If we, as a society, are serious about protecting against wrongful convictions, then our government should make resource allocation decisions that reflect that commitment. The province has recently taken important steps in the right direction, but there is still a long way to go. Let us keep moving toward a better justice system.

ENDNOTES

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6. See Legal Services Society, *supra* note 4.
7. See Association of Legal Aid Lawyers, *supra* note 3 at 6.
8. See *ibid* at 6.
9. See *ibid* at 5, 8.
10. See "Lack of Funding Prompts B.C.'s Legal-Aid Lawyers to Plan Service Withdrawal", *CBC News* (14 March 2019), online: <www.cbc.ca/news/canada/british-columbia/lack-of-funding-prompts-b-c-s-legal-aid-lawyers-to-plan-service-withdrawal-1.5056685>.
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15. See *R v Rowbotham* (1998), 41 CCC (3d) 1 (Ont CA).
16. Forty per cent of adults in British Columbia lack the literacy skills needed to function fully in the modern world. See LiteracyBC, "Literacy in British Columbia", online: <www.literacybc.ca/Info/literacyinbc. pdf>.
17. *R v Crichton*, 2015 BCCA 138 at para 52.
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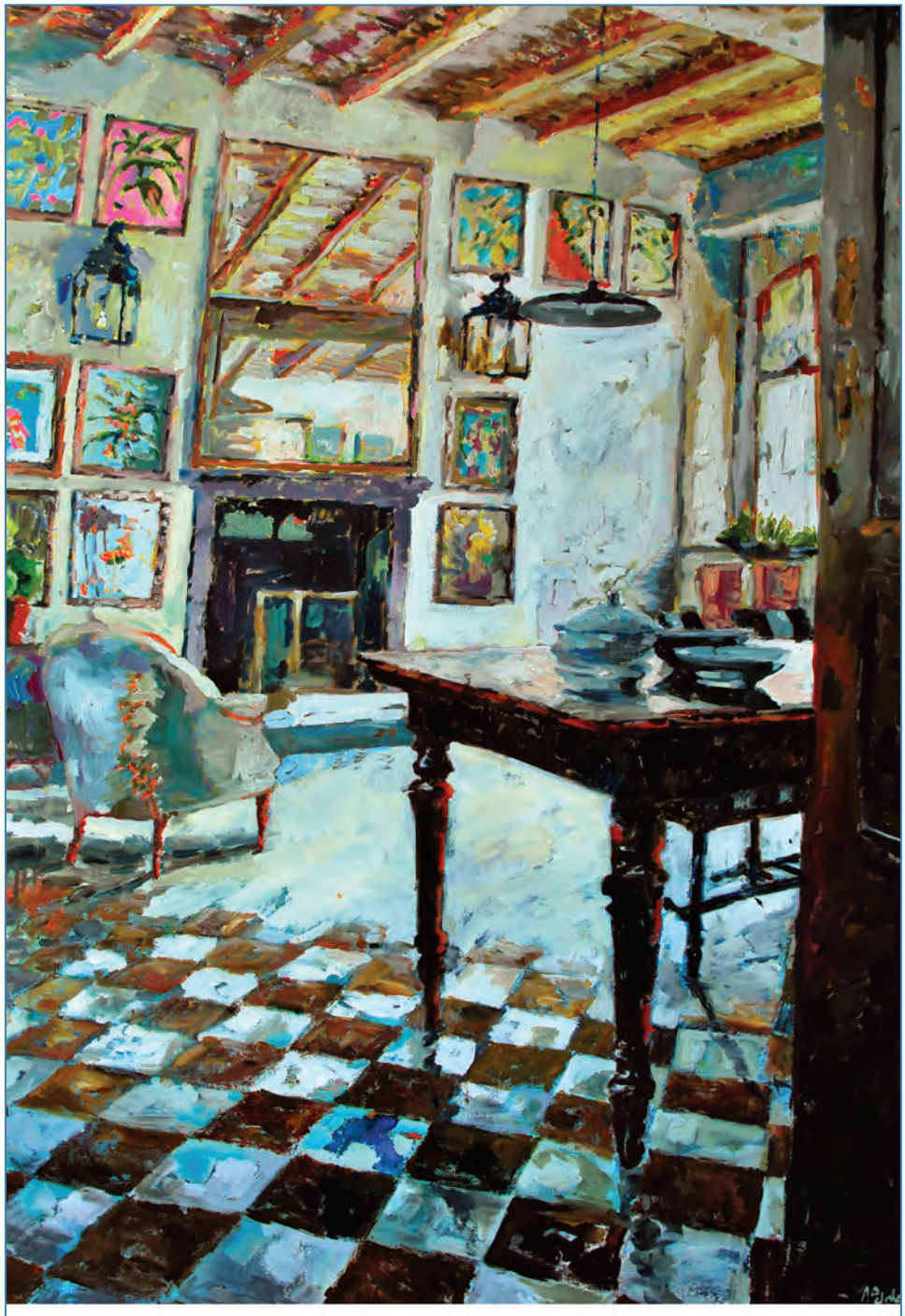
21. *Ibid* at 606.
22. *Ibid* at 607.
23. 2014 SCC 52.
24. *Ibid* at para 8.
25. See Donald J Sorochan, "Wrongful Convictions: Preventing Miscarriages of Justice – Some Case Studies" (2008) 41:1 Tex Tech L Rev 93.
26. Online: <www.justice.gc.ca/mwg-internal/de5fs23hu73ds/progress?id=QegKW7rf1Ta2dPg8AKAHYotmUfcLA9nPRoWHwuWJpsw,>.
27. Online: <www.ppsc-sppc.gc.ca/eng/pub/ptj-spj/index.html>.

28. Online: <www.ppsc-sppc.gc.ca/eng/pub/is-ip/index.html>.
29. While some self-represented accused appear on their own behalf by choice, this article will focus on those who appear on their own behalf because they lack the funds to pay for counsel and have been unable to retain counsel through some other means. Some prefer to refer to these individuals as "unrepresented" accused. See e.g. David Berg, "An Inconvenient Right: An Overview of the Self-Represented Accused's Autonomy" (2015) 62:4 Crim LQ 503 at 505–08.
30. Marc Rosenberg, "Twenty-Five Years Later: The Impact of the Canadian Charter of Rights and Freedoms on the Criminal Law" (2009) 45 SCLR (2d) 233, online: <www.ontariocourts.ca/coa/en/ps/publications/twenty-five_years_later.htm>.
31. Michelle Fuerst, "The Self Represented Accused: The Trial Judge's Perspective" (July 2007) (unpublished) at 2, quoted in Patrick Lesage & Michael Code, *Report of the Review of Large and Complex Criminal Case Procedures* (Queen's Printer for Ontario, November 2008), ch 7, online: <www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/chapter_7.php>.
32. Online: <s3.amazonaws.com/tld-documents.llnassets.com/0007000/7534/pcla_report_03_08_11.pdf>.
33. *Ibid* at 14.
34. (1988), 45 CCC (3d) 334 (Ont CA).
35. *Ibid* at 347.
36. See *R v Tung*, 2016 ONCA 782 at para 52.
37. *R v Mirabi*, 2008 CarswellOnt 1192 at para 43 (SCJ).
38. See Wong Siew Ming Audrey, "Criminal Justice for All? Wrongful Convictions and Poverty in Singapore" (2010) 28 Sing L Rev 67 at 72, citing Adele Bernhard, "Effective Assistance of Counsel" in Saundra D Westervelt & John A Humphrey, eds, *Wrongly Convicted: Perspectives on Failed Justice* (New Brunswick, NJ: Rutgers University Press, 2001) 220.
39. American Bar Association Standing Committee on Legal Aid and Indigent Defendants, *Gideon's Broken Promise: America's Continuing Quest for Equal Justice* (December 2004) at iv [*Gideon's Broken Promise*], online: <www.in.gov/publicdefender/files/ABAGideon%27sBrokenPromise.pdf>.
40. Office of Justice Programs, US Department of Justice, National Symposium on Indigent Defense 2000: Redefining Leadership for Equal Justice (2000) at vi-vii, cited in *Gideon's Broken Promise*, *supra* note 39 at 3.
41. See Audrey, *supra* note 38 at 72, citing Jon B Gould, *The Innocence Commission: Preventing Wrongful Convictions and Restoring the Criminal Justice System* (New York: New York University Press, 2008) at 167.
42. See *Doust Report*, *supra* note 32 at 8.
43. See Lise Addario, *Six Degrees from Liberation: Legal Needs of Women in Criminal and Other Matters* (Department of Justice Canada, 2002) at 28, online: <www.justice.gc.ca/eng/rp-pr/csj-sjc/jsp-sjp/rr03_la20-rr03_aj20/rr03_la20.pdf>, citing Andrew Ashworth, "Legal Aid, Human Rights and Criminal Justice" in Richard Young & David Wall, eds, *Access to Criminal Justice: Legal Aid Lawyers and the Defence of Liberty* (London: Blackstone Press, 1996) at 56. For an in-depth discussion of false guilty pleas, see Christopher Sherrin, "Guilty Pleas from the Innocent" (2011) 30:1 WRLSI 1.
44. See *Innocence at Stake*, *supra* note 28; Sherrin, *supra* note 43 at 6, 34.
45. See *Innocence at Stake*, *supra* note 28.
46. See Addario, *supra* note 43 at 28.
47. See Association of Legal Aid Lawyers, *supra* note 3 at 11.
48. See *Innocence at Stake*, *supra* note 28; Sherrin, *supra* note 43 at 7–13.
49. *Supra* note 32 at 44.
50. *Supra* note 2 at para 15.
51. See Addario, *supra* note 43 at 28.
52. *Ibid* at 28.
53. See *ibid*.
54. 2018 SCC 25.
55. *Ibid* at para 3.
56. *Ibid*.
57. *Ibid*, citing *R v T (R)* (1992), 10 OR (3d) 514 at 519 (CA).
58. *Wong*, *supra* note 54 at para 19.
59. See Innocence Canada, "Are You Innocent?", online: <www.innocencecanada.com/are-you-innocent/>.
60. Provincial Court of British Columbia, *Annual Report 2017/18*, at 48–49, online: <www.provincialcourt.bc.ca/downloads/pdf/AnnualReport2017-2018.pdf>.
61. *A Vision for Legal Aid*, *supra* note 2 at 25.
62. See Association of Legal Aid Lawyers, *supra* note 3 at 35.
63. See *ibid*.
64. See Canadian Bar Association, Access to Justice Committee, *Study on Access to the Justice System: Legal Aid* (December 2016) at 6, online: <www.cba.org/CMSPages/GetFile.aspx?guid=8b0c4d64-cb3f-460f-9733-1aaff164ef6a> (noting that findings from the UK, the US and Australia suggest that for every $1 spent on legal aid, the average social return on investment is $6).
65. *Doust Report*, *supra* note 32 at 14.



Andrea Padovani, Tonight We'll Drink the New Wine, 72" x 54"
Available through Art Rental & Sales at the Vancouver Art Gallery
www.artrentalandsales.com

THE WINE COLUMN

By Michael Welsh, Q.C.*

"We live at the edge of the miraculous."

—Henry Miller

AT THE EDGE

I was in mediations in Kamloops and Salmon Arm recently, and as I drove home in the snow, I noticed how many wineries are strung along the way—in Kamloops, Monte Creek, Tappen, Enderby and Armstrong, to name a few locations. These are generally not spots one associates with wineries. The focus of attention is usually on the Okanagan and Similkameen.

Then, in Spallumcheen, just outside Armstrong, I saw a sign pointing up a snowy sideroad to "Edge of the Earth Vineyards". I decided to explore.

Edge of the Earth wrapped in wintry mist

* Michael Welsh, Q.C., carries on a litigation and ADR practice in the South Okanagan and is a bencher. The views expressed here are his own and not those of the Law Society.

The vineyard, at the end of a long and winding road, was shrouded in fog. I stopped for a picture and the owner, Russ Niles, came out the winery, which was closed for the winter. I explained why I was there and he graciously opened the wine shop for a private tasting. I asked about growing grapes in a more northern climate. He replied, "Primarily, what you get around here are little pockets of land that work. We are lucky to have a south-facing slope of sand. But if you go 500 yards, you can forget it." We sampled his wines, including one whose name he does not know. It is some sort of pinot, he surmises, from rooted prunings that a neighbour gave him some years ago. They were apparently cut and left on the ground in a vineyard at Gray Monk Estate Winery in Lake Country. He calls it "Argus", the name in ancient legend of Ulysses's dog, faithful to the death. It tasted like Pinot Blanc, but not exactly.

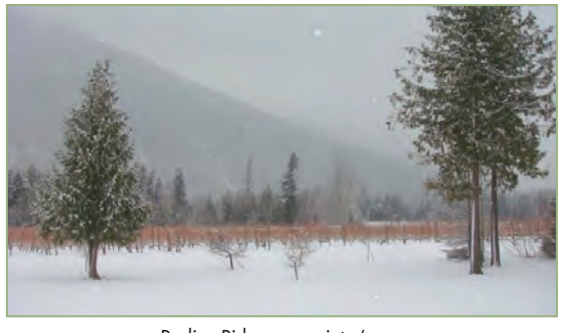
By coincidence, that same evening, I spoke with the marketing consultant for Baillie-Grohman, a winery in the Creston Valley. She told me that this increasingly well-known winery is phasing out use of any grapes not grown in its own vineyards. The owners have confidence in what they produce and want their wines to reflect their origin. Their motto is "On the edge of a new wine region: growing superb cool-climate wines in the Creston Valley."

It started me thinking about those other areas of B.C., from Vancouver Island and the Gulf Islands, the Fraser Valley, up the Fraser Canyon, to Lillooett, and into the Thompson Valley that are becoming established grape wine areas.

At home that evening, I picked up a book entitled *To the Edges of the Earth: 1909, The Race for the Three Poles, and the Climax of the Age of Exploration*[1]. Then, I was on edge—I had an idea for a column. Between my recent winter excursions and choice of reading, it seemed fitting to look at some B.C. wineries that see themselves as at the edge of the known B.C. wine world, and to tell of their challenges and triumphs.

So, starting where I began this exploration, here are those new, increasingly explored wine areas.

Shuswap



Recline Ridge on a winter's eve

The oldest wineries in the Shuswap are Recline Ridge and Larch Hills, both in the Tappen area near Salmon Arm. There are now over a half dozen wineries in Tappen, Celista and Salmon Arm itself, plus those around Enderby and Armstrong.

In preparation for this column, I had a chat with Graydon Ratzlaff, who with his wife Maureen owns and operates Recline Ridge. It planted its first vines in 1994. Graydon admits that, in the early years, there was much skepticism that any vines would grow, let alone grapes ripen. But in these cooler climate areas, the secret is in the varieties planted. Both Russ Niles and he noted how well suited Ortega (a 1948 German-bred crossing of Müller-Thurgau and Siegerrebe) has proven to be in the Shuswap. Other dependable whites, all bred in Germany, are Siegerrebe (itself a crossing in 1929 of Madeleine Angevine and Gewürztraminer), Bacchus (a 1933 crossing of Silvaner, Riesling, and Müller-Thurgau) and Kerner (another 1929 crossing of Trollinger with Riesling). By "crossing" I refer to cross-pollination of the vines of these different varieties.

Shuswap reds are most often Maréchal Foch (a B.C. staple bred in Alsace in the early 1900s and named after French WWI Marshall Ferdinand Foch) and Zweigelt (developed in Austria in 1922 by crossing St. Laurent and Blaufränkisch), plus some plantings of Pinot Noir. The latter is often blended, made a rosé or made a sparkling wine, as ripening it fully can be tricky.

That you may never have heard of some of these varieties, or certain of their parentage, speaks to the need for the ongoing education Graydon says they do with visitors to broaden their wine palates. That and trying to cajole those who only drink Merlot to try some of these lesser-known whites. He says that if they can get the customers to sip, they often convert them over to these easy-drinking floral and fresh whites.

The growing season in the Shuswap is three to four weeks shorter than in the Okanagan, and the number of growing degree days (units indicating when the temperature reaches a point where vines grow and grapes ripen) is significantly lower (1,121 on average versus 1,551 in Osoyoos or 1,533 in the Similkameen Valley).[2] Bud-break (when the leaves bud) can be mid-May as opposed to early- to mid-April in Oliver-Osoyoos. But given the earlier-ripening and more winter-resistant varietals grown, harvest is about the same time as in the Okanagan/Similkameen, starting around Labour Day.

I asked Graydon if he has noted any changes in the growing climate in recent years, either in terms of milder winters or hotter summers. He said that every year is different. There is no average year for growing grapes. 2019 was cooler and wetter, and more care had to be taken due to rot in some varieties. However, this was common throughout all B.C. wine regions.

Creston Valley

Sunny winter panorama at Baillie-Grohman

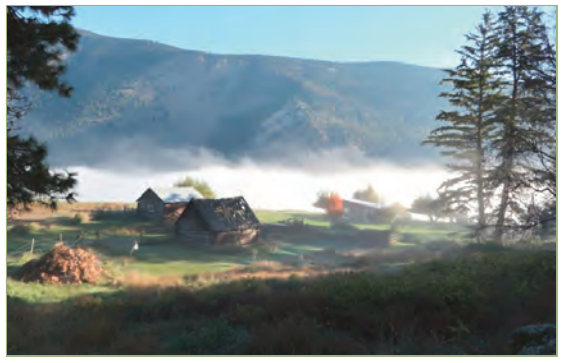
The Creston Valley has four wineries: Baillie-Grohman, Skimmerhorn, Wynnwood and Red Bird. Another, Columbia Gardens, is in Trail. Soils are of glacial origin. The area has hot, somewhat humid summers (1,222 growing degree days) and has long been known for its fruit and vegetable production, especially its cherries. As a result, it can grow some European vinifera grapes, and its wineries favour those from Burgundy or Alsace. The most planted grape varietal in the Kootenays is Pinot Noir, followed by Gewürztraminer, Pinot Gris and Maréchal Foch.

Kamloops

Monte Creek Estate Winery on a summer afternoon

This relatively new wine region has quickly become established and now has four wineries. The first was Harper's Trail Estate Winery. The others are Privato Vineyard & Winery (which does a great Burgundian-style Pinot Noir), Sagewood Winery and, as you head east to the Shuswap, the striking Monte Creek Ranch Winery perched above the Trans-Canada Highway. It features newer cool-climate varieties like Frontenac, Frontenac Gris and Marquette bred at the University of Minnesota. Unlike the Kootenays or Shuswap, and despite having existed for only a decade and having relatively few wineries, it has its own BC VQA designation. Common varieties grown include Riesling, Chardonnay and Pinot Noir along with Maréchal Foch. On average it has 1,402 growing degree days.

Lillooett (Fraser Canyon)



Fog over Cliff & Gorge Vineyards, Lillooett

Lillooett is a relatively new and "hot" winegrowing area. On average, it has the highest number of growing degree days in B.C.: 1,624. It has two wineries so far, the oldest and largest being Fort Berens established in 2011. More recent but very picturesque is Cliff and Gorge Vineyards. The region can grow most vinifera wine grapes, and its plantings most commonly include Riesling, Pinot Noir, Cabernet Franc, Chardonnay and Pinot Gris.

Fraser Valley

This is definitely the most "cool climate" wine region in B.C., with an average 956 growing degree days. The soils are predominantly silty and high in organic matter, and the climate wet, so growing is a challenge. While Burgundian varietals such as Pinot Noir, Pinot Gris and Chardonnay work in a few locations, it must largely depend on the same varietals as Sicamous and on some of the modern cool-climate varietals developed at the University of Wisconsin–Madison and University of Minnesota, or on the Swiss-bred Blattner (named after the scientist who developed them) varieties such as Petite Milo. There are currently about 25 wineries, the oldest of which is Domaine de Chaberton, established in Langley in 1991.

Vancouver and Gulf Islands

Vigneti Zanatta on an autumn evening

These two wine regions, from south to north, have almost as much diversity in climates as does the Okanagan in its south to north. On five of the warm Gulf Islands are seven wineries. We enjoyed a weekend a couple of years back camping on Hornby. While there we ate, drank and danced on a warm summer evening during the Hornby Island Festival, tasting the island's wines from its three wineries. On Vancouver Island are another 32 wineries from Saanich almost to Campbell River, with winemakers well attuned to where their uniqueness lies. The spread of wineries in these two areas means a great diversity in what can be grown and where. The average number of growing degree days is also significantly different, between 900 and 1,200 on Vancouver Island (1,103 in North Cowichan, where most wineries are located) and around 1,015 on the Gulf Islands. In the south are found cooler-climate French and German varietals, and in northern areas similar plantings to those of the Shuswap and Fraser Valley.

And now some whites and reds you will know and some you may not.

BAILLIE-GROHMAN RECOLTE BLANCHE 2018
BC VQA (Kootenays) #620716 $19.90 plus taxes

The name translates as "white harvest". It is fresh, slightly off-dry white, a blend of Pinot Gris, Schoenburger, Kerner and Gewürztraminer. As the back label rather poetically states, "These grapes were grown in the sparkling glacial granite soils of the Creston Valley on the edge of wine country." It has aromas of tropical fruit, lychee, flowers, lemon pie and some wet stone. Those tropical notes carry through on the palate along with yellow peach, some melon and lemon-lime on its medium-long finish. It will go with curries, Asian or Indian, or a cheese plate. Pick it up at select BCLDB stores, private wine stores, B.C. wine stores, Save-On-Foods or online from the winery.

EDGE OF THE EARTH VINEYARDS ORTEGA 2018
Spallumcheen $9.90 plus taxes

Ortega, including this example, has an intensely floral nose of honeysuckle mixed with yellow peach and lychee. The flavours on its off-dry palate are of lemon-lime, and more of the peach and lychee. It ends with a creamy finish of tropical fruit and honey. It is made to pair with spicy Asian (Thai, Vietnamese) or Indian dishes. Look for it in private wine stores, or order from the winery.

LARCH HILLS SIEGERREBE 2015
BC VQA (North Okanagan) #626168 $15.54 plus taxes

This longtime Salmon Arm winery, which has vineyards first planted in

1997, focuses on cool-climate whites like Ortega (which is available in some BCLDB stores) and Siegerrebe (pronounced *see-geh-RAY-buh*). As noted, Siegerrebe is a relatively new variety, with pinkish skins like its parent, Gewürztraminer. It can, if allowed to overripen, become a bit "blowsy". This version has notes of rose petal along with lemon, yellow peach and honeydew melon on the nose. Its off-dry palate displays lemon, lychee, some honey and more melon. It is another match for spicy Asian dishes but will also do well with hard cheeses or shellfish. It is available at private wine stores, BC VQA stores or online from the winery.

VIGNETI ZANATTA DAMASCO 2018

Duncan $14.91 plus taxes

The first estate winery on Vancouver Island, with vines over 30 years old, is set in a bucolic area of Duncan and is complete with a beautiful heritage farmhouse that serves as its wineshop. Apparently, the family has been growing grapes on the property since the 1960s. When we visited in 2017, we had a grand meal on the terrace on an early fall evening, with this wine to start. According to some locals at the table, Damasco has a dedicated following on Vancouver Island. On both the nose and palate, this blend of Ortega, Pinot Auxerrois, Muscat and Madeleine Sylvaner, vinified in a *vinho verde* style to leave a touch of effervescence in the bottle, is fruit-forward and fresh. As it did for us that evening, it makes a perfect appetizer or pre-meal sipping wine but is also very suited to Asian food or seafood like prawns, cracked crab or lobster. It has limited availability in private wine stores or from the winery.

UNSWORTH VINEYARDS ROSÉ 2018

BC VQA Vancouver Island #168294 $21.65 plus taxes

This picturesque winery in Mill Bay, sporting the maiden name of one owner, is doing it right, with its cool-climate grape plantings, both Burgundian and more modern swiss Blattner varietals. Its wines range from traditional, well-made bubbly through a range of white, rosé and red still wines. Its onsite restaurant, sourcing local ingredients, is very popular. This Pinot Noir, with limited skin contact, lees stirring and a malolactic conversion, has an attractive pale peach-pink colour. Its aromas are of wild strawberries, red apple, dried herbs and notes of minerality. The flavours on its crisp palate are lemon-lime, green apple and raspberry, and it has a lifted, lingering finish. It will pair well with hard cheeses, roast chicken or BBQ salmon, or, you can have it on its own as a sipper.

SEASIDE PEARL CHARLOTTE ESTATE PETITE MILO 2017
BC VQA Fraser Valley #284489 $22.00 plus taxes

Seaside Pearl Farmgate Winery is a new winery in the Mt. Lehman area of Abbotsford. As noted earlier, Petite Milo is a Blattner hybrid, Swiss-designed and bred to tackle wet, cool conditions. Straw yellow in colour, the wine's aromas include white flowers, peach, guava, pineapple and wet stone. The flavours are of green apple, lemon-lime, green mango, a bit of honey and some minerality on the medium finish. Again, it will pair well with Asian food. We had it with a spicy Chinese stir fry. It is one of a few wines that will go well with sushi, given its mix of off-dry fruit and steeliness. It is available from the winery, private wine stores or Save-On-Foods.

FORT BERENS ESTATE WINERY MERITAGE 2016
BC VQA Lillooett #78113 $25.99 plus taxes

This is a blend of seventy-five per cent Merlot, fifteen per cent Cabernet Sauvignon and ten per cent Cabernet Franc. A third of the Merlot was estate-grown, with the remainder coming from vineyards in the Okanagan and Similkameen. The grapes were fermented in stainless steel tanks and gently pressed before spending almost a year in French and American oak barrels. It is of a medium body with red fruit and smoky oak on the nose, along with red cherry and cigar box. On the palate is more red fruit (tart red cherry, cassis, red plum) mixed with soft vanilla. The winery recommends it with stews or porterhouse steak, game dishes, flavourful cheeses such as farmhouse cheddar or aged gouda, or chocolate truffles. It will also pair well with tomato-based pastas. It is available at private wine stores BC VQA stores, or online from the winery.

RECLINE RIDGE MARÉHAL FOCH 2015
BC VQA Shuswap $20.89 plus taxes

Foch has a long history in B.C., going back to the days when wines from hybrid grapes were pretty much all you could find. While most others have been supplanted by vinifera grapes, Foch has a cult following and remains a staple. This full-bodied version is aged in French oak. The colour is inky and brooding, and the aromas are of black currant, blackberry and hints of smoked meats. The flavours are of rich and full black fruit, including plum and black currant, mixed with herbs, notes of oak and a touch of vanilla. It has a good, full finish. Good food pairings are hard cheeses, game, pork, beef or rich tomato-based pasta dishes. It can be found in BC VQA and other private wine stores, Save-On-Foods or ordered online from the winery.

HARPER'S TRAIL THADD SPRINGS VINEYARD PINOT NOIR 2018
BC VQA Thompson Valley $24.99 plus taxes

The winery is named after the cattle drive "trail" of pioneer rancher Thaddeus Harper and is the first winery established in the Kamloops area. Pinot Noir is one of its flagship wines. It is aged in French oak and pale in colour, as Pinot should be. The aromas are of cassis (red currant), wild strawberry, cherry and vanilla. On the palate are more cassis, cherry and strawberry, mixed with some light raspberry, rhubarb and notes of oak and bitter cocoa on its medium-long finish. The tannins are soft. Overall, it is a good expression of cool-climate Pinot Noir. For food, try roast duck or other poultry or salmon with grilled vegetables. You can buy it at private wine stores, BC VQA stores or online from the winery.

ENDNOTES

1. By Edward J Larson, published by William Morrow, 2018. It tells of the races to reach the North Pole, South Pole and the highest point on Earth, and it won a Pulitzer Prize.
2. All statistics on growing degree days in this article come from the Wines of British Columbia website: <winebc.com/>.

David Wilson, detail of *Separated by Days*, acrylic on canvas, 54" x 54"
Available through Art Rental & Sales at the Vancouver Art Gallery, www.artrentalandsales.com

Leanne Christie, detail of *Balmoral Hotel,* oil on canvas, 30" x 48"
Available through Art Rental & Sales at the Vancouver Art Gallery
www.artrentalandsales.com

NEWS FROM

CLEBC SOCIETY

By Adam Simpkins*

SIGNIFICANT AMENDMENTS TO THE *LAND TITLE ACT*

In preparation for the amendments to Part 10.1 (Electronic Filing) of the *Land Title Act*, which came into force on November 15, 2019, CLEBC made a number of significant changes to the *Land Title Practice Manual* and the *Land Title Electronic Forms Guidebook*.

The *Land Title Practice Manual* 2019 update incorporates all legislative amendments and necessary changes to Director's Directions (replacing Director's Requirements). In addition, the manual reflects changes to the *Agricultural Land Commission Act* and its associated regulations. The most significant of these changes relate to residential use of and structures on Agricultural Land Reserve land and new soil removal and fill placement rules. As always, the update includes the full *Land Title Act* containing section-by-section commentary with applicable forms, practice tips and case summaries.

Our *Land Title Electronic Forms Guidebook* (the "*Green Book*"), published under authority of the Land Title and Survey Authority of BC ("LTSA"), allows users to prepare electronic forms with accuracy and precision. The 2019 update incorporates all the new forms and presents the November 15 amendments to relevant portions of the *Land Title Act*.

CLEBC is also working closely with the LTSA to provide training on the use of web filing. By June 2020, web filing will be operational, making it possible to fill out and file 23 forms online that are presently completed in PDF form. These topics were also discussed at our annual Residential Real Estate Conference on December 5, 2019. For more information on these updates, consult the CLEBC and LTSA websites.

* Adam Simpkins is CLEBC's marketing manager.

CLEBC WELCOMES NEW BOARD MEMBERS

We are pleased to welcome five new CLEBC board directors beginning September 1, 2019. Several are current CLEBC contributors, and we greatly appreciate their continued support in this new capacity.

- **Dr. Cristie Ford** is Associate Dean, Research and the Legal Profession, and a professor of law at the Allard School of Law at UBC. Her research focuses on regulatory theory as it relates to international, U.S. and Canadian financial and securities regulation.
- **Scott Morishita** is associate counsel at Rice Harbut Elliott LLP. He is an elected member of the CBABC Provincial Council and was recently appointed to the CBABC Access to Justice Committee. He is on the board of RainCity Housing and Support Society and has volunteered with the Lawyers Assistance Program of BC for over ten years.
- **Mary-Jane Wilson** practises in the areas of wills, estates, estate planning and real estate law at Wilson Rasmussen LLP. She has mentored young women lawyers as part of the formal mentoring program of the CBABC Women Lawyers Forum.
- **Greg Palm** is a senior litigation lawyer at Hamilton Duncan. He is an active member of the CBABC where he is a two-term member of the Provincial Council, the current chair of the Professional Issues Committee, a member of the Finance and Audit Committee and a member of the *BarTalk* editorial board.
- **Amanda Krishan** is a co-founder of VK Law Corporation, which provides legal services to those in Kimberley and the East Kootenays. Her practice focuses on immigration law and wills and estates.

A VIEW FROM THE CENTRE

By Leslie E. Maerov*

INTERNET DISPUTE RESOLUTION

The Canadian International Internet Dispute Resolution Centre ("CIIDRC"), a division of the British Columbia International Commercial Arbitration Centre (the "Centre"), has been accepted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the organization responsible for maintaining and coordinating Internet Protocol addresses and the Domain Name System, as a dispute resolution service provider for the Uniform Doman-Name Dispute-Resolution Policy ("UDRP"). The Centre has been providing respected dispute resolution administration services since 1986.

UDRP is a process established by ICANN that applies to all generic top-level domains ("gTLDs") such as .com, .org and .net and allows trademark owners to protect their valuable trademark rights by seeking transfer or cancellation of disputed domain names. The Centre has been successfully managing the country code top level .ca domain name disputes for the Canadian Internet Registration Authority ("CIRA") for the last 16 years.

CIIDRC is the second UDRP provider in the Western Hemisphere and only the sixth UDRP provider worldwide, joining the World Intellectual Property Organization ("WIPO") (Geneva), the Forum (Minneapolis), the Czech Arbitration Court (Prague), the Asian Domain Name Dispute Resolution Centre (Hong Kong and Beijing) and the Arab Center for Domain Name Dispute Resolution (Amman).

For the last 20 years, over 60,000 domain name disputes have been brought by domain and trademark owners under UDRP. The number of gTLDs continues to grow, increasing from 22 in 2012 to over 1,300 in 2018. CIIDRC has established an interactive online dispute resolution platform

* Leslie A. Maerov is the interim chair of the British Columbia International Commercial Arbitration Centre. He is a commercial arbitrator and solicitor.

that will allow parties to a dispute to file a complaint and a response online; this will be a secure online channel for the parties' use. The service went live on November 6, 2019, in conjunction with the annual ICANN conference being held in Montreal.

Over its 30 years of dispute resolution administration and its work for CIRA, the Centre identified a strong need for parties in North and South America to be able to choose their dispute resolution forum and to resolve the current requirement to file multiple proceedings to resolve cybersquatting issues involving both .ca and other domains such as .com. CIIDRC will now provide a one-stop domain name dispute resolution platform in Canada. CIIDRC already has an impressive roster of 30 impartial and professional panelists who have earned high regard in international legal circles. Our mission is to deliver a neutral, efficient, cost-effective and expedited online dispute resolution platform built on professionalism, impeccable reputation and a global perspective.

CIIDRC has a two-tier fee structure that includes a non-refundable filing fee of US$425 due when a complaint is filed, followed by a panel fee of US$1,000 payable at the time of the appointment. This differs from the current UDRP providers' practices, which require all fee payments at the time of filing (although WIPO typically offers a partial refund if a case is terminated before the panel is appointed). CIIDRC's total fees are comparable to those of the two leading UDRP providers: WIPO and the Forum.

UDRP filings are at an all-time high, and it is expected that CIIDRC will initially handle about 200 UDRP cases per year, in addition to its normal commercial, CIRA and underinsured motorist protection caseload, which is expected to be up thirty per cent from 2018. WIPO reported that it handled 3,074 new UDRP cases in 2017 and 3,452 in 2018.

CIIDRC is committed not only to administering domain name disputes, but also to working actively with ICANN and the existing UDRP providers to improve the effectiveness of the UDRP by developing resources for policy and case law interpretation.

This new opportunity will promote Vancouver, British Columbia and Canada as an international centre for dispute resolution, with the goal of expanding the reputation of CIIDRC and its parent, the Centre, as a preferred international dispute resolution centre.

NEW BOARD MEMBERS

In other Centre news, we are pleased to announce that Joe McArthur, Laura Cundari and David Gruber have joined the Centre's board of directors as part of a program to rejuvenate and diversify board membership.

Joe McArthur practises commercial litigation and arbitration and has represented both public and private companies in a range of industries, including mining, infrastructure, utilities, financial services and technology. He is an experienced trial and appellate lawyer and has argued before all levels of court in Canada, including the Supreme Court of Canada. He is co-editor of *The Law of Objections in Canada: A Handbook*. Joe is national co-leader of his national firm's arbitration group, advises on domestic and international arbitrations as counsel and has taken appointments as an arbitrator. He is a member of the ICC Canada Arbitration Committee, the American Arbitration Association's International Centre for Dispute Resolution Panel of Arbitrators and the Centre's domestic and international arbitration panels.

Laura Cundari is an experienced advocate, appearing as lead counsel at all levels of court in British Columbia and the federal courts, as well as before arbitral and administrative tribunals. She has expertise in the arbitration of complex disputes and advises clients on all aspects of arbitration proceedings, including arbitration clauses, interim orders, hearing processes and the enforcement of arbitral awards. Her arbitration experience includes both international and domestic institutional and ad hoc arbitrations, and in particular in the energy (transmission) industry. Laura is a fellow of the Chartered Institute of Arbitrators ("CIArb") and a director of both the Canada branch and the Vancouver chapter of the Canadian branch of the CIArb.

David Gruber completed an undergraduate degree in architecture and then, after law school, articled and practised with a prominent litigation boutique in Victoria, which specialized in constitutional, administrative and commercial litigation. He obtained a master's degree in law at the University of Cambridge in 1998. In 2010 he was awarded a diploma in international commercial arbitration and became a fellow of the CIArb. David practises in the areas of corporate and commercial litigation, arbitration, restructuring and insolvency and class actions. He has appeared regularly in the superior and appellate courts of British Columbia and Ontario and in the Federal Court and has acted in several reported cases. In addition, David has experience in both international and domestic arbitration and other alternative dispute resolution processes and in negotiating and advising on dispute settlements. David's corporate and commercial litigation experience has encompassed shareholder and partnership disputes, including oppression claims, breach of contract cases, securities matters and breach of fiduciary duty cases. He has acted for corporations of all sizes, professional firms, governments, private individuals and public and quasi-

public institutions. In the area of restructuring and insolvency, David has acted for monitors, trustees and receivers, as well as for creditors and other affected parties, primarily in large-scale *Companies' Creditors Arrangement Act* and *Bankruptcy and Insolvency Act* matters.

The Centre welcomes these new directors and the energy and commitment they will bring to the Centre's activities. The Centre is committed to broadening its domestic and international profile as a professional, efficient and modern institution dedicated to the resolution of commercial disputes.

David Wilson, detail of *Main*, acrylic on canvas, 30" x 30"
Available through Art Rental & Sales at the Vancouver Art Gallery, www.artrentalandsales.com

LAP NOTES

By Anonymous

I ASKED FOR HELP, I RECEIVED HELP AND THAT HAS MADE ALL THE DIFFERENCE

I was born into a good home in a good neighbourhood with a lot of advantages. We were not a particularly close family; my dad worked a lot and my mom was busy in the community. They had high expectations for me and my older sister. I mostly lived up to those expectations. I was rewarded for successes and less than excellence was met with silence or perhaps "you'll do better next time". I did not mind at the time, at least not that I remember. I was, however, highly anxious and tremendously competitive. I thought that this was good, as it drove me to get good grades and to make all the teams. I did not know that this was not normal or healthy; it was all I knew. I suppose my parents suspected something was wrong and they send me to a private school—I now gather it was for the discipline. Again, I did not know any better, so getting the strap or getting beaten seemed like proper discipline. I did move to public school near home and I kept doing better at school and in sports.

I went to university, played varsity sports, got good grades and had lots of friends. I had always drank and occasionally to excess, but it was pretty normal for university. It also enabled me to meet people and to socialize normally. It was not a problem; if anything, it was positive. I also experienced a lot of anxiety. I did not consider it a bad thing because it motivated me to work and strive to do better, and then better. When I got to law school

The Lawyers Assistance Program is an independent organization of members of the legal community (lawyers, judges families and support staff). We provide peer support and referral services to help people deal with personal problems, including alcohol and drug dependence, stress, anxiety and depression. We are volunteers and staff committed to providing confidential, compassionate and knowledgeable outreach, support and education. We seek to foster collegiality among our peers and to promote health and well-being in our community. You can reach LAP by telephone at 604-685-2171, toll-free at 1-888-685-2171 or via the LAP website: <www.lapbc.com>.

the anxiety continued. I should have realized that I had a problem. I was socially nervous, especially with women, but that seemed fairly common, and alcohol seemed to solve that problem. The real red flag should have been my inability to speak in class. I would get extremely nervous and have difficulty speaking. I did manage to complete my moot. The judges thought my legal argument was great but commented on my poor speaking ability, including nervousness, stuttering and mumbling. I was in denial about my anxiety or afraid to confront it. I did what I always did: I rolled up my sleeves and worked on my presentation and speaking skills. I still had difficulty speaking in class, but my second-year moot presentation was much better.

I did well in law school and got good articles. I did well at first but then the anxiety caught up with me and I began to be paralyzed. I was not kept on but I managed to find a place that provided me the opportunity to be in court frequently, on very simple matters at first and then increasingly difficult and complex matters. I eventually became so comfortable in court that it became my favourite place to be.

Some other problems began to occur, however. I had difficulty having a boss. Every time he wanted to talk to me I went into a panic and obsessed about some worst-case scenario. I began to resent doing other people's work, even though I liked doing it (mostly). I then started my own law firm with a couple of friends. I was sure that would solve my problems. It did, for a very short time. Then I began to worry about the business. Although I had clients, I worried that would stop. The better things got, the worse my worrying got.

I had married and bought a house in Vancouver, which was no small feat. I panicked after the sale completed; my wife was calm and collected. The problems began at home. I was often withdrawn and non-communicative. I began watching a lot of TV, stopped exercising and stopped seeing friends. I would go into work early, leave late and hide out the rest of the time. I did not drink much, though occasionally I would go out with friends for some drinks. One thing led to another and I began to have affairs. I also tried to outspend my anxiety and bought clothes, electronics and things I did not need.

This all became too much for my wife and our relationship fell apart. At first I felt relief. That was one less worry. But as I came home to an empty apartment, I began to fall into despair. Despite the long hours I was putting in, my work productivity was falling. Finally, I decided to reach out for help. I had heard about the Lawyers Assistance Program of BC ("LAPBC") since law school, but I figured I was never going to need help and could do it on

my own—and, I wondered, what would people think if I sought help? I did call. They were very friendly, even cordial, and we ended about talking about the law. I felt safe to go in and get help. Maybe I just needed some practice advice and everything would be great. The first visit began that way and then it shifted to me, my drinking, my pattern of anxiety, my worrying and my thinking in general. I'm not sure what happened but I left that first session feeling better and more optimistic.

That one session began a period of self-exploration and self-discovery. I worked on changing some unworkable beliefs about myself and about life. I discovered the critic I lived with; I always thought I would fail or others would discover I was inadequate. I heard about "the imposter syndrome". I had a big, relentless case of that. I had to work on identifying my purpose, in life and in my practice, and defining my values. I could be less critically judgmental and more purpose-driven. My life got easier. I was referred to a therapist to help with some childhood issues and some deep patterns I had developed.

LAPBC helped me create a team to support me, and I eventually got a coach to hold me accountable for both my personal growth and my professional and business growth. I am very grateful that LAPBC was there for me when I was stuck and has helped me as I have progressed. They helped me develop in all ways and, yes, my anxiety is gone, at least mostly; I do not have to drink to socialize or to date; and I am once again productive and happy at work.

Leanne Christie, detail of *Bustling Passages, oil on canvas, 30" x 48"*
Available through Art Rental & Sales at the Vancouver Art Gallery
www.artrentalandsales.com

ANNOUNCING THE 2020 *ADVOCATE* SHORT FICTION COMPETITION

ELIGIBLE CONTRIBUTORS

Any person who is now, or has been, a member of the Law Society of British Columbia (including lawyers, judges and masters) or who is an articled student. Contest judges and the "staff" of the *Advocate* are ineligible to contribute.

ELIGIBLE FICTION

A fictional work, written in English, to a strict maximum of 2,500 words that deals, if only incidentally, with legal subject matter.

The contributor must be the author of the work, which must be entirely original and must not ever have been published or submitted for publication or consideration in a writing competition elsewhere.

DEADLINE FOR SUBMISSIONS

The close of business on Friday, September 4, 2020. Submissions will not be returned, so authors should maintain copies of their work.

FORMAT FOR SUBMISSIONS

Two double-spaced, typed manuscript copies, each with a separate cover sheet bearing the work's title together with its author's name, address, daytime telephone number and a word count. The author's name should *not* appear anywhere on or in the manuscript itself, as all submissions will be judged anonymously, strictly on literary merit.

ADDRESS FOR SUBMISSIONS

Advocate Short Fiction Competition
c/o D. Michael Bain, Editor
The *Advocate*
#1918 – 1030 West Georgia Street
Vancouver, B.C. V6E 2Y3

JUDGES

David Roberts, Q.C., Anne Giardini, Q.C., and Peter Roberts, Q.C. The decisions of the judges as to the literary merit of the contributions shall be final.

PRIZES

First prize: $400 gift certificate at a local book store and publication in the *Advocate*

Second prize: $250 gift certificate at a local book store and possible publication in the *Advocate*

Third prize: $100 gift certificate at Zefferelli's Spaghetti Joint and possible publication in the *Advocate*

Winning entries will be selected by, at the latest, February 19, 2021. Contest judges may award fewer than three prizes if, in their judgment, they consider it appropriate.

All submissions, including winning entries, will also be considered for possible publication by the Vancouver Bar Association or an independent publisher in a selection of "legal fictions" to be released at a later date.

TRANSFER OF RIGHTS

In consideration of having their fiction reviewed for:

(a) possible selection as winning entries;

(b) possible publication in the *Advocate*; and

(c) possible inclusion in a selection of submissions to be published in book form;

contributors agree upon submitting their work that the Vancouver Bar Association (publisher of the *Advocate*), or its licensee, shall have the sole and exclusive right, in Canada and for a period of 15 years, to print, publish and sell their work in such form or forms as the Vancouver Bar Association may in its discretion consider appropriate, such right to revert automatically to all contributors whose works of fiction are not selected as winning entries or for inclusion in the selection of submissions to be published.

Contributors further undertake, if required by the Vancouver Bar Association, to execute both a written assignment in order to confirm the transfer of rights described above to the Vancouver Bar Association and a waiver of the moral rights attached to their work, should their work be selected for publication in the *Advocate* as a winning entry or for inclusion in a selection of submissions to be published in book form. All proceeds or royalties, if any, from the sales of such a selection will be paid to the benefit of the Vancouver Bar Association, a non-profit organization.

PETER A. ALLARD SCHOOL OF LAW FACULTY NEWS

By Catherine Dauvergne*

CELEBRATING OUR 75TH ANNIVERSARY

The law school at the University of British Columbia emerged from the long shadow of World War II, founded with the ambition of educating returning veterans. The first students began their studies in 1945 and graduated in 1948. Throughout our 75-year history, the law school's innovative researchers, inspiring teachers and outstanding graduates have made an unparalleled impact on the world. Generation upon generation of our graduates have become leaders in the legal profession, business and finance, technology, public service, academia, government and many other fields. Today, the Allard School of Law is among the world's best law schools—a reflection of the quality of our legal education and research, and the strength of our students, faculty, staff and graduates.

In 2020, the law school will be celebrating its 75th anniversary, and we invite you to join us in celebrating this significant milestone. Tickets are now on sale for a gala dinner and awards evening presented by the Allard Law Alumni Association. This special event will take place on Thursday, April 30 at the Fairmont Pacific Rim Hotel in Vancouver. Celebrations will also be taking place in cities around the world where our alumni live and work, including Calgary, Toronto, New York, London and Hong Kong. We have a number of exciting 75th anniversary lectures and conferences planned throughout the year. In addition, we have a number of special initiatives that alumni can participate in, including a time capsule and the Allard School of Law's History Project. Finally, to mark the occasion, the Allard School of Law has launched a fundraising initiative to increase the financial accessibility of law school. To learn more about our anniversary activities, please visit <allard.ubc.ca/alumni/75th-anniversary>.

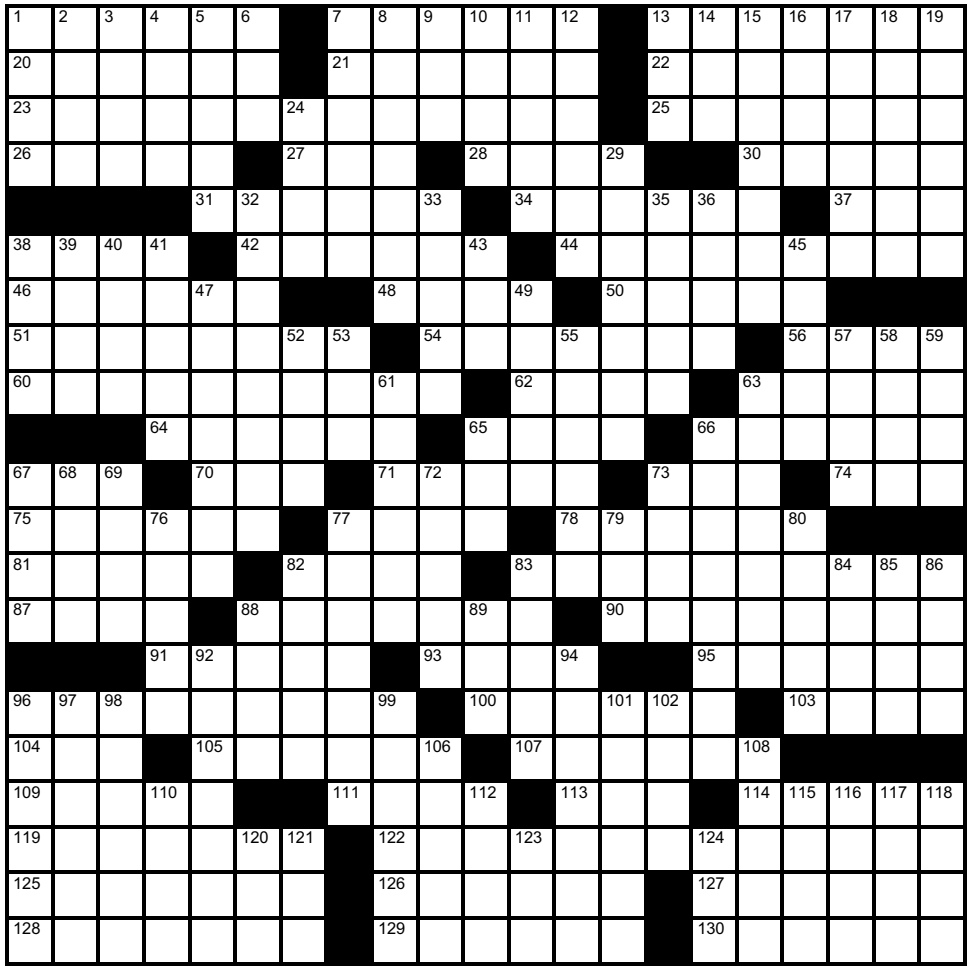
* Catherine Dauvergne is the dean of the Peter A. Allard School of Law.

Crossword Puzzle Contest

Our 75th anniversary crossword puzzle includes clues that will be familiar only to our alumni. The answer key will be posted on the Allard School of Law's website after the contest closes on **April 1, 2020**. Prizes to be won!

To enter online, please visit <allard.ubc.ca/alumni/crossword>. To enter by mail, please send your response to the following address:

Attention: Alumni Engagement Office
Peter A. Allard School of Law
The University of British Columbia
Allard Hall, 1822 East Mall Road
Vancouver, BC V6T 1Z1



META PUZZLE: The answers to the asterisked clues will hint at a four-letter law school acronym.

YOUR ANSWER: _ _ _ _

Puzzle by Will Nediger

CROSSWORD CLUES

ACROSS

1. Phylicia who played Clair Huxtable
7. Go up against in court, say
13. Harvey Dent's villain persona
20. Sunset ___
21. Covert American org.
22. Diamond feat
23. *Appetizing
25. Like most law school courses
26. Living proof?
27. Dragons' locale
28. Ward of "CSI: NY"
30. Canvas for some modern art
31. Encourage
34. Fixed charge
37. 65-Across counterpart
38. Game with banking
42. "I Dreamed a Dream" musical, casually
44. *Try to psych out the other team, say
46. F-1 or H-1B
48. Alfred who was the first Indigenous law school grad at UBC
50. Fertile soil
51. Like some desks
54. Law Review fixers
56. Obscure
60. *Phrase from someone about to compete in the law school's trike race, say
62. "¿Qué ___?"
63. Spread out
64. Hard-to-miss putts
65. See 37-Across
66. Call it quits
67. Big deal
70. Word whose letters are all found in "routine", aptly
71. Word whose letters are all found in "charisma", aptly
73. Low-___
74. Heir, often
75. They're not quite up to par
77. History course topics
78. For a spell
81. Law dean in the 1980s, who is also a moot
82. Many food products, nowadays
83. *Cranberry juice brand
87. Bailiwick
88. Place that makes its own drafts
90. Coke Zero, e.g.
91. Good humour
93. Get top billing
95. Mulligan
96. *Dog star
100. Painter Modigliani
103. Start feeling better
104. Friendly overture?
105. Airport named for two Washington cities
107. Peter A. Allard, Q.C., is one of 10,626 of these
109. Pieces of legal writing
111. Man, e.g.
113. "God Is a Woman" singer, to fans
114. Myanmar, once
119. Great Expulsion victim
122. *Warhol subject
125. Contribute money towards
126. Fighting forces
127. John or Paul
128. Freeloaded
129. Will and Kate, e.g.
130. Law Library invaders, slangily

DOWN

1. Their motto is "*Maintiens le droit*"
2. Moises on the diamond
3. TV lawyer Goodman
4. Buildings that originally housed the law school at UBC
5. Old flames?
6. Morning blanket
7. Adorable animals
8. Prodigies
9. ___ curiam
10. Some meetings with firms, for short
11. Trig functions
12. Bald baby?
13. However, informally
14. What the respondent did at trial
15. Classic brunch orders
16. Spanakopita ingredient
17. First name in soul
18. Law dean in the 1940s, 50s and 60s

19. Catch in a net
24. Together, musically
29. Utterly stumped
32. One of the few venomous mammals
33. Warmer, perhaps
35. Fauna's counterpart
36. Squeezes (out)
38. Labour leader's chant?
39. Home of the Munch Museum
40. Grape-shaped
41. Company that makes the Gold Bunny
43. "Kneel before ___!"
45. Replies to an invite
47. River on the Michigan/Ontario border
49. Visibility helper, often
52. Passing mention?
53. Ink source, or oink source
55. Place for a touchdown
57. Yale students, informally
58. Shakespeare's "busy and insinuating rogue"
59. Law dean in the 1990s, to her friends
61. Money held by a third party
63. Does business with
65. Comes down with
66. Ruined, as a parade
67. "The Winner Takes It All" band
68. Eeyore-like
69. Fairy tale menace
72. Padlock holders
73. Type of 30-Across
76. Put into law
77. Joost Blom and Claire Young, e.g.
79. Get hitched
80. ___ salts
82. Gerwig who directed "Lady Bird"
83. "Becoming" author Michelle
84. Wander about
85. Yemeni port
86. Small gain on a field
88. Nota ___
89. Influential acting teacher Hagen
92. Bad sound to hear from the audience
94. Mark down for a sale, maybe
96. Charts again
97. It's on top of the world
98. Sandwich shop specification
99. Daytona 500 org.
101. Underling's defence
102. Name that's a fruit spelled backwards
106. Mild cigar
108. "A Doll's House" playwright
110. God played by Anthony Hopkins in the Marvel movies
112. Golden Globe cousin
115. American insurance co.
116. Naan relative
117. Think (over)
118. Mimics
120. Put away some dishes?
121. Silent approval
123. ___ mater (brain part)
124. Abbr. on some scales

1945
The UBC Faculty of Law is founded with George F. Curtis as founding Dean.

Army huts serve as the first building.

1948
The first graduating class - affectionately referred to as "The Old Sweats".

1951
The new law building opens.

1959
The UBC Law Review is established.

1962
Frank Iacobucci, future Justice of the Supreme Court of Canada graduates.

1972
The first trike race starts a new tradition.

1974
Beverley McLachlin, future Chief Justice of the Supreme Court of Canada, joins the Faculty.

1975
The Indigenous Legal Studies Program begins.

1976
The George F. Curtis law building opens.

1980
The Centre for Asian Legal Studies is established.

1983
Kim Campbell, future Prime Minister of Canada graduates.

1995
Five Deans led the law school in its first 50 years: George F. Curtis, Albert J. McClean, Kenneth M. Lysyk, Peter T. Burns and C . Lynn Smith.

1997
The Centre for Feminist Legal Studies is established.

2006
The Centre for Business Law is launched.

The Centre for Law and the Environment is established.

2011
Allard Hall opens thanks to alumni, the profession, and the university. The law school is recognized among the top 50 law schools in the world.

2015
Peter A. Allard, QC, donates $30 million and the UBC Faculty of Law is renamed in his honour.

2017
The Allard School of Law earns recognition among the top 20 law schools in the world.

UVIC LAW FACULTY NEWS

By Susan Breau, Pooja Parmar and Deborah Curran*

INTERNATIONALIZATION IN ACTION: UVIC LAW IN BHUTAN, SINGAPORE AND THAILAND

Dean Breau

In July 2019, accompanied by faculty members and doctoral students in the Faculty of Law and Victor V. Ramraj, director of the Centre for Asia-Pacific Initiatives ("CAPI") at UVic, I had the pleasure of visiting some of our academic partners in Asia. In Singapore I visited two of Asia's leading law schools, Singapore Management University and National University of Singapore ("NUS"), where Victor and I had fruitful talks with several faculty members and Dean Simon Chesterman of the NUS Faculty of Law on common interests in research and clinical education.

Our next stop was Bangkok, where we were treated like royalty by Dean Pareena Srivanit and faculty and staff members of the Chulalongkorn University Faculty of Law. Our delegation was also able to visit with the president of the university, who stressed the importance to him of our longtime partnership. The UVic Faculty of Law has long participated in teaching in their master of laws (business law) international program. I was also able to fit in a brief visit to the law firm Chandler MHM, which has hired our co-op students for more than 20 years and has committed to continue to do so. Victor and Pareena showed me areas of Bangkok I had never seen, and it was a truly memorable visit.

Finally, I was thrilled to participate in the first joint conference of the Jigme Singye Wangchuck School of Law ("JSW Law") (Bhutan's first law school) and UVic (represented by both the Faculty of Law and CAPI). The

* Susan Breau is the dean of UVic Law. Pooja Parmar is an assistant professor and Deborah Curran is an associate professor, both at UVic Law as well.

conference theme was "Public Law, Legal Orders and Governance". Participants came from all over the globe, and the conference produced a stimulating discussion of current legal issues. The opening ceremony was attended by the Honourable Prime Minister, the Leader of the Opposition, the Chief Justice, the Chairperson of the National Council and several Supreme Court justices. The opening speech was given by the Chief Guest, Her Royal Highness Princess Ashi Sonam Dechen Wangchuck, who is the president of both the Bhutan National Legal Institute ("BNLI") and the law school. UVic was well represented, with ten speakers with UVic connections, either as faculty or graduate students, as follows: myself, Victor V. Ramraj, Benjamin Lawrence (Ph.D. candidate), Deborah Curran, Helen Lansdowne, Pooja Parmar, Ratana Ly (Ph.D. candidate), Songkrant Pongboonjun (Ph.D. student), Supriya Routh and Neilesh Bose. The conference was co-organized by Nima Dorji, who is both a senior lecturer at JSW Law and a Ph.D. candidate at UVic Law.

Our week in Bhutan strengthened the relationship between the two schools and built on the work begun by Victor Ramraj. At the opening ceremony of the conference, I signed a memorandum of understanding with Dean Sangay Dorjee of JSW Law. We will continue the conversation in a continuation of the conference that will take place in late June 2020. There is also deep work that has gone on with respect to the new law school curriculum, assisted by Pooja Parmar.

Professor Parmar

My two visits to JSW Law in Thimphu, Bhutan have been truly enriching experiences. In 2018 I designed and taught the first property law course in Bhutan in collaboration with Kuenzang Dolma, lecturer at JSW Law. It was extremely rewarding to be able to think about core concepts and principles of property law in new ways and to engage with a group of 25 bright and enthusiastic students. Given my interest in legal pluralism, I was also fascinated to see the ways in which Bhutan's traditional emphasis on mediation, maintaining relations and honoring familial/ancestral obligations inform the Bhutanese conception of private property. As a visiting faculty member, I was also warmly welcomed to JSW Law and staff lunch gatherings whenever I was on campus. These gatherings involved delicious warm food and were a welcome opportunity to get to know so many members of this wonderful community.

In addition to my work in the law school during my visits in 2018 and 2019, I also conducted research on property law and the legal profession in Bhutan. This research (and my visits to Bhutan) are funded by the Queen Elizabeth II Advanced Scholars fellowship and CAPI. It is through this work

that I learned about the important work that the BNLI is doing in legal education and training for mediators and judges, and I was delighted when Lobzang Rinzin Yargay, Director General of BNLI, invited me to deliver a workshop on judicial ethics in July 2019. This one-day workshop was opened by BNLI's president, Her Royal Highness Ashi Sonam Dechen Wangchuck, and attended by a number of judges and court registrars from across the country. I designed this workshop in collaboration with JSW Law lecturer Kesang Wangmo, who is conducting fascinating research on Buddhist ethics.

In addition to writing an academic paper on the legal profession in Bhutan, I am also working on a report for the BNLI and the relatively new Bar Council on the need and design for a continuing legal education program in Bhutan. To understand the needs of legal professionals in Bhutan better, I met with lawyers and judges from four different districts in Bhutan. I am grateful to several people at JSW Law, BNLI and the Bar Council of Bhutan who made this research possible.

My teaching and research in Bhutan have opened up new questions and interests for me (some preliminary thoughts can be found here: <capiblog.ca/2018/08/24/pooja-parmar-blog-1-moving-texts/>). Dean Sangay Dorjee and Vice Dean Michael Peil, along with every single faculty and staff member I met at JSW Law, have created a vibrant community committed to advancing legal education in Bhutan. During my time there, it became obvious to me that it is a community that shares many of UVic Law's commitments. I am very excited about the meaningful and productive collaborations that will be made possible by our new relationship with JSW Law in the form of the recently signed memorandum of understanding.

Professor Curran

These existing and new relationships between UVic Law and law schools in Asia are highlighting our strengths in Asia-Pacific law and transnational governance, environmental law and experiential education. My involvement in the workshop on "Public Law, Legal Orders and Governance" began an examination of what Bhutan's constitutional commitment to gross national happiness could mean for approaches to environmental governance in the West. Working with Professor Tshering Dolkar of JSW Law, we are examining how the overarching principles of wellness are expressed through structures of Bhutanese law and policy, which include an almost constitutional commitment to carbon negativity due to Article 5.3, which requires the maintenance of a minimum of sixty per cent tree cover in the country. These ecological and governance standards, mediated through the Gross National Happiness Commission and National Environment Com-

mission, directly affect the kinds of natural resource projects deemed suitable for Bhutan.

This work on environmental governance will be enhanced next year when I travel to Bhutan to co-teach an experiential unit in the environmental law course at JSW Law. Over three weeks, JSW students will undertake a multiparty negotiation simulation based on a dispute involving different aspects of Bhutanese environmental law. The intent is for students to synthesize their learning about environmental law and apply that law in an integrated way, and to develop their complex problem-solving and dispute-resolution skills by applying their knowledge and creativity in a negotiation simulation.

Other law schools in Asia are also calling on UVic's expertise in experiential education, and staff at our Environmental Law Centre ("ELC"), Canada's oldest environmental law clinic, are developing relationships to internationalize the ELC curriculum. Staff of the ELC met with a delegation from Mongolia earlier this year to discuss our clinical model. I will be traveling with Songkrant Pongboonjun, a Ph.D. student and law lecturer in Thailand, to meet with the members of his law faculty at Chiang Mai University to present the ELC model. The purpose of the meetings is to explore how environmental law professors in Thailand can be involved in UVic's ELC, while we also support the establishment of an environmental law clinic at Chiang Mai University.

TRU LAW FACULTY NEWS

By Bradford W. Morse*

FACULTY SCHOLARSHIP

Since its opening in September 2011, TRU Law has benefited from a number of wonderful law professors who have been both excellent teachers and talented scholars. Having professors who are extremely talented at both of these critical parts of the job is not exactly a widespread phenomenon. Our faculty has been particularly fortunate in this regard.

One of our more recent additions has been Assistant Professor Samuel Singer. While only halfway through his third year as a law professor, he is already gaining significant recognition for his achievements. He was recently awarded the Ontario Bar Association Foundation's Chief Justice of Ontario Fellowship in Legal Ethics and Professionalism Research (2019–2020) for his research on transgender-competent lawyering and judging. He has published a book chapter entitled "Trans Competent Lawyering" in Joanna Radbord, ed., *LGBTQ2+ Law: Practice Issues and Analysis* (Toronto: Emond, 2019). Another of his book chapters that has been recently published is "Rethinking Privilege for Tax Professionals: A Tax Policy Perspective" in Chris Hunt, ed., *Perspectives on Evidentiary Privileges* (Toronto: Thomson Reuters, 2019).

Perspectives on Evidentiary Privileges is a major new book edited by our colleague Associate Professor Chris Hunt. It features a thoughtful foreword by the Honourable Justice Sheilah Martin of the Supreme Court of Canada, along with 12 scholarly papers examining emerging doctrinal and policy issues concerning evidentiary privileges in the following areas:

- Mr. Big undercover police operations;
- protection of journalistic source privilege;

* Bradford W. Morse is the former dean of the TRU Faculty of Law. He is currently on a much deserved sabbatical.

- marital privilege;
- privilege for tax professionals;
- privilege issues surrounding police investigative techniques;
- case-by-case privilege;
- privilege for religious communications;
- Parliamentary records privilege;
- confidential informant privilege;
- privilege against self-incrimination; and
- researcher–participant privilege.

This is the first collection ever in Canada that attempts to address such a range of important issues, including areas that have previously received limited expert analysis, related to the assertion of evidentiary privileges.

The latest issue of the *Canadian Journal of Comparative and Contemporary Law* (2019, vol. 5, no. 1), edited by Professors Chris Hunt and Robert Diab of TRU along with former TRU Professor Lorne Neudorf and students of TRU Law, is now available free online at <www.cjccl.ca/animal-law/>. This is the first time in Canadian legal history that an entire issue of a law journal has been devoted to legal issues concerning animals. Called "Beyond Humanity: New Frontiers in Animal Law", the issue features a foreword by Senator Murray Sinclair and nine contributions from leading scholars in the field from Canada and the United States, including TRU Law Professor Katie Sykes. Her enthusiasm for, and active scholarship in, this field of legal research and advocacy, and the suggestion of Professor Angela Fernandez of the University of Toronto Faculty of Law to pursue this project, have resulted in a 405-page publication on animal law topics.

Associate Professor Ruby Dhand is the latest colleague to have succeeded in obtaining a Social Sciences and Humanities Research Council Insight Development Grant. In her case the grant is for $58,780 over the next two years.

FURTHER TRU LAW OUTREACH

Beyond writing, faculty members at TRU Law have been actively involved in outreach. Professor Singer, for example, has been active in continuing his personal commitment to address access to justice issues through devoting time, energy and expertise to public legal education. A recent example of this is his organizing a workshop entitled "Navigating Non-Profit and Charity Law: A Free Public Legal Education Workshop" along with his research assistants, Carson Davies and Katie Matthews. The workshop was held on

October 30, 2019 at the TRU Community Legal Clinic. The workshop, which included guest lawyer Martha Rans of Law for Non-Profits (<lawfornonprofits.ca>), provided information about applying for charitable status and the requirements and benefits of incorporation and charitable status. It was offered to community groups in Kamloops and the B.C. Interior. "Community organizations offer such valuable services to Kamloops residents, and they often operate on few resources. We offered this legal information workshop to help make the law more accessible," says Professor Singer. "We hope that the workshop and the resources that come out of it will help community groups continue to support the communities that they serve so well."

The workshop was sponsored by the Law Foundation of BC through funding for Professor Singer's research on charity and non-profit law. This public legal education event was part of Access to Justice Week, an initiative to inspire engagement in the access to justice movement.

On that note, TRU Law was pleased to play an active role in the second annual Access to Justice Week, in which all three B.C. law schools worked together to coordinate activities and share a small grant provided by the Law Foundation of BC for this purpose. We happily participated in supporting the Twitter Town Hall on October 28, 2019 led by Chief Justice of British Columbia Robert Bauman, Provincial Court Chief Judge Melissa Gillespie and well-known self-represented litigant and member of Access to Justice BC Jennifer Muller. The week included a number of events held within our law school targeting a broader audience of TRU students, including the Self-Represented Litigant's Game. The week ended on November 1 with keynote presentations by Chief Judge Gillespie and Attorney General David Eby, Q.C., to packed houses on different aspects of the access to justice crisis. Far too many British Columbians are unable to afford a lawyer in the first place or to continue to retain a lawyer as costs mount.

MATURING OF TRU LAW

While one cannot describe a law school—or any institution, for that matter—that has only just passed its eighth anniversary as "mature", I am at a point where I feel comfortable in commenting on how far western Canada's first new law school since 1976 has come since its opening in 2011. I write these words knowing that they will not be published until after my five-year term as dean of the faculty has ended on December 31, 2019. The new decade will dawn under our third law dean. I can only hope that she or he enjoys the position as much as I have over these past five years. I can readily reflect on how much things have changed.

We have moved from a point in time where most law firms had no interest in TRU Law and were unwilling to even meet with me for fear that I had my hand out seeking donations. I could understand their reticence, for our law school received no provincial government funding then and is still not funded by the B.C. government. This leaves us as the only law school in Canada and one of the very few degrees offered by any public university in our nation that is denied funding by its government. Furthermore, we had graduated only one class (of 71) students in 2014 when I started, such that there were few graduates that any members of the profession had met. In addition, a significant number had gone back to Alberta to article.

Our relationship with the legal community, particularly in B.C. but also very much in Alberta and Ontario, has changed dramatically during these intervening years—and all for the better. In my view, the growing reputation of TRU law alumni has been the key to the legal community's dramatic change in attitude. People now comment to me regularly on our current and former students being very noticeably different from law students from other Canadian law schools in so many positive ways. I am told how our students are so extremely outgoing, personable and entrepreneurial, and that they readily realize that the practice of law is still a business that must be profitable or it dies. I am told how our students are well spoken (and well dressed) and that they are especially distinctive as being team players who promote their classmates as much as themselves, if not more so, as well as being tremendous ambassadors for TRU Law. We see this in the record number of second-year students recently hired for next summer in both Vancouver and Calgary. I heard similar praise from two members of the B.C. Court of Appeal a few months ago, commenting on how exceptional the TRU Law graduates that are clerking for them are, and how excellent and enjoyable they are as human beings.

I continue to be amazed, as well as absolutely delighted, by how the reputation of our small law school has grown so phenomenally in just eight years with no government financial support and far too limited staff. I have had the pleasure of presenting applications for tenure and promotion by 15 current or former colleagues within our law school. Each of them had been lauded by leading experts in their fields who were serving as external referees in commenting on their scholarship. I have younger colleagues who are developing reputations at a national and international level for truly becoming leaders whose work is widely read. More important from a student perspective than how many articles or books a professor has published, of course, is the professor's qualities as a teacher. Happily, our students assess my colleagues as ranging from very good to excellent and

comment on their commitment to assisting them in their learning and development.

I can genuinely say that this law school—in beautiful, friendly Kamloops—has created the most supportive, friendly and caring collective personality of any law school I have ever witnessed, anywhere in the world. It is filled with incredibly talented people. I sincerely hope that this remarkable and very healthy culture will be sustained and flourish. I know that I will continue to enjoy the truly unique spirit first created by the class of 2014 when they first arrived in 2011 not knowing what to expect but willing to be part of the journey of creating a brand new law school. It has been an honour and a privilege to help in building this very distinctive law school as dean. I hope you all have the opportunity to meet some of our existing and future alumni in the months and years to come.

I want to thank the many B.C. lawyers who have made me feel welcome after my return to this province so many years after my departure as a graduate of the UBC Law class of 1975 when I headed east for what I thought would be only one year before returning to Vancouver. The benchers of the Law Society have always made me feel valued and befriended. The CBABC Provincial Council members, and especially the presidents, have been tremendously supportive each year as they launch their presidential year as a part of our September welcoming ceremony for the new incoming students. My thanks are also extended to the board of directors and staff of the CLEBC who welcomed me on the board as the TRU representative for the past five years and pursued a formal change of its legal structure, with the full endorsement of the Law Society and CBABC, to reflect the existence of a third law school in B.C.

In addition, TRU Law has benefited greatly from the support of the judiciary of all levels of court in B.C. and beyond. They have been frequent guest speakers, participated in selecting our students as judicial clerks and donated money in significant amounts for student scholarships. They have made our students feel valued, important and part of the legal community. Our local judiciary has participated in an annual judge shadowing program originally organized by our first judge-in-residence, the Honourable Richard Blair, and sustained by his successor, the Honourable Hope Hyslop.

I would clearly be remiss if I did not acknowledge my deepest appreciation to Dean Catherine Dauvergne of Peter A. Allard School of Law and Deans Jeremy Webber and Susan Breau of University of Victoria Faculty of Law for their constant support and collegiality.

Thank you all for your friendship and personal support, but especially for how you have embraced our students and respected my colleagues.

Leanne Christie, detail of *Carnegie Corner,* oil on canvas, 24" x 24"
Available through Art Rental & Sales at the Vancouver Art Gallery
www.artrentalandsales.com

THE ATTORNEY GENERAL'S PAGE

By the Honourable David Eby, Q.C.*

REASONS TO CELEBRATE ACCESS TO JUSTICE WEEK

Up until this year, I have been apprehensive about celebrating Access to Justice Week. My concerns before being elected centred on my belief that the previous provincial government was using Access to Justice Week to distract from a series of failures on the file dating back to the cuts of 2002. These concerns did not magically disappear at the first Access to Justice Week that took place a few months after I was sworn in as Attorney General.

Worries about which direction the new government was headed on this important file were openly expressed by more than a few lawyers. At that stage, things looked pretty much the same to everyone who cares about the right of people in our province to access justice, and a demoralized bar was understandably cynical about the opportunity for change. For example, early in our mandate, I commissioned an external review of legal aid service delivery in B.C. to be conducted by Jamie Maclaren, Q.C., intending that his report would act as our roadmap forward.

Many lawyers who care passionately about access to justice in our province, fatigued by endless reports and persistent injustice, were at best skeptical of the Maclaren report initiative. At worst they were outraged by yet another review—from their perspective a disturbingly familiar government ploy to delay long overdue action. But two years down the road, the story is beginning to change. We have announced major funded initiatives that are real, lasting and increasingly visible to British Columbians both in and outside the legal profession. These reforms are highly informed by the important work done by Mr. Maclaren.

* The Honourable David Eby, Q.C., is British Columbia's Minister of Justice and Attorney General.

In October 2019, in front of the Provincial Court building on Smithe Street, our government hosted a press conference. While the location was singularly inappropriate for a press conference—passing traffic and rain combined to reinforce the obscure maxim that press conferences are best held indoors—it was an entirely fitting place for an announcement of an agreement to establish fair compensation for legal aid lawyers in the province and the first tariff increase for legal aid lawyers since 2006. I had chosen the site because it was there in 2002 that lawyers, legal aid workers and citizens had come together to protest cuts to legal aid that shuttered clinics and marked a two-decade-long devaluing of the work of legal aid lawyers and the lives of those who depend on legal aid in our province.

Beyond a long-overdue tariff lift, we announced a lasting structural change on that rainy October day: an agreement that would provide support for the Association of Legal Aid Lawyers to find their feet and become a champion of the legal aid system in the province—an independent and important safety valve to be there whether the administration of the day values access to justice or not.

In another significant structural development, immediately following this year's Access to Justice Week, our government announced $2 million in funding to establish eight legal aid clinics across the province in partnership with the Law Foundation of BC. A mixture of specialty clinics (for example, focused on the issues of housing, or immigration and refugee law) and generalist poverty law clinics, these clinics will provide frontline legal advocacy, advice and support to British Columbians in crisis.

We announced the location of the first clinic, a specialist housing clinic at the Tenant Resource Advisory Centre ("TRAC"), on November 4, 2019, which turned out to be particularly emotional timing. Just days earlier, staff at the TRAC had learned about the passing of Tom Durning, a well-known and very well-respected housing advocate from that organization. Tom was one of a long line of advocates and lawyers, like Allan Parker, Q.C., and Dugald Christie, Q.C., who spent their lives advocating for the kind of services our government is announcing. It was an honour to participate in realizing part of their vision that day at the TRAC on behalf of the government. The only sadness comes from knowing that they are not here to see what their years of advocacy helped build.

As a final example of the kind of structural access to justice change being embraced by our government, after two years of government partnership and support for the First Nations Justice Council, this Indigenous leadership group is on the verge of announcing a landmark Indigenous Justice Strategy for the province. This strategy for Indigenous peoples was crafted

at countless engagements across the province and at two co-hosted justice summits that included Indigenous community leaders, service organizations, lawyers, members of the judiciary, justice system workers and government.

Remarkably, this will be the first justice strategy in our province's history adopted by government that aims to address Indigenous overrepresentation in the justice system that is authored by and for Indigenous peoples themselves. Our government is honoured to be supporting and participating in this historic process, which included the first (and second) meetings in our province's history with judiciary, lawyers, government and the Indigenous community to discuss this critically important issue and how to move forward. A similar and equally important strategy in partnership with Métis Nation BC is also under development using a similar approach.

For British Columbians, it is becoming clearer that after two years of groundwork our government is living our commitment to the ideals of access to justice as a true partner. While there remains much to do, through real and tangible changes that are already making a meaningful difference in the lives of British Columbians we are beginning to turn the page.

I am very grateful for the commitment of Premier Horgan and my colleagues in government to access to justice, built on a foundation of decades of work by advocates pushing for the reforms we're seeing today. To me, that commitment is something worth celebrating, and not just for a single week—it has been a long time coming.

COURT NOTICES AND DIRECTIONS

British Columbia Court of Appeal

Practice Directive (Civil and Criminal)
Title: Appearing before the Court

Issued: 11 October 2019
Effective: Immediately
Cite as: *Appearing before the Court*
(Civil & Criminal Practice Directive, 11 October 2019)

This practice directive deals with introducing and addressing either a division of the Court of Appeal, a Justice in chambers, or a Registrar. It is primarily for the benefit of more recently called members of the legal profession who are, or will be, making their first appearances before the Court, but may also be of use to those who are self-represented.

The practice before the Court is as follows:

- Counsel are required to gown for all hearings before a division of justices. Counsel are not required to gown for hearings before a single justice. Counsel who are pregnant or have a disability or other reason affecting the ability to fully gown may appear in alternate gowning attire as appropriate to their circumstances;
- The appellant(s) or their counsel sit on the left side of the courtroom (facing the bench) and the respondent(s) or their counsel sit on the right;
- Before the judges enter the courtroom, the appellant(s) or their counsel and the respondent(s) or their counsel advise the court clerk their

names, their preferred manner of address (e.g. "Mr./Ms./Mx./Counsel Jones") and the party they represent;

- Parties rise when the Court is called to order and the judges enter the courtroom. Parties bow when the judges bow and then resume sitting;
- After a case is called, the appellant(s) or their counsel stand and make introductions, indicating for whom they act, and then resume sitting;
- If the appellant is represented by more than one counsel, senior/lead counsel introduces himself or herself and then introduces other counsel, who stand while being introduced; senior/lead counsel resume sitting after introductions have been completed;
- If there are separately represented appellants, then the introductions of counsel for each appellant should, in turn, follow, in accordance with the practice set out above;
- The introductions of the respondent(s) or their counsel follow those of the appellant(s), in accordance with the above practice;
- The introductions of the intervenor(s) or their counsel follow those of the respondent(s), in accordance with the above practice;
- After introductions have been completed, the presiding judge will indicate how the Court wishes to proceed; when called upon, parties should move to the podium to address the Court;
- Only one person should be standing and addressing the Court at any given time.

On motions or applications before the Court or on chambers matters, the foregoing should be read with "applicant" replacing "appellant", and "respondent" being the respondent on the motion or application.

As in the Supreme Court, Justices of the Court of Appeal are referred to as "my lord" or "my lady" or collectively in plural form. In a Registrar's hearing, the Registrar is addressed as "your honour."

Chief Justice R.J. Bauman
for the Court of Appeal of British Columbia

History:

Replaces the Civil and Criminal Practice Note titled *Addressing the Court* dated 24 October 2011.

NOS DISPARUS

Marlene Heather Scott, Q.C.

Marlene loved the good things in life: theatre, singing, musicals, film and a daily Rogers' chocolate. But knowing this is only a small part of knowing this intriguing and wonderful person.

One of two women in a class of 80 that graduated from UBC Law in 1959, she set a high standard for those who followed. Thirty-five years later her contribution to the profession was recognized when she received the Georges A. Goyer, QC Memorial Award for Distinguished Service.

Her practice and her roots were in New Westminster. She and her sister, Jeanette, the James sisters, were among New Westminster's vivacious young women in the 1950s. Marlene had a good voice and her sister would accompany her on the piano. She loved the stage and acted in the local playhouse repertory theatre.

Never interested in sports, Marlene nevertheless took a summer job at the New Westminster Parks and Recreation Department and found herself designated a "sports director" at Hume Park. She researched the rules of baseball and soccer, did the job and years later delighted in telling her legal partners how she had "coached" young Mac Tyler (later a great New Westminster lacrosse player and her legal partner) and taught him everything he knew.

What inspired her to go to law school? Her sister says that her friend Linda Gates dared her, so Marlene, then a second-year arts student, met with the dean of UBC Law, who told her to finish her arts degree first. Marlene told him it was next year or never, and the dean grudgingly agreed to accept her, on the condition she kept her marks up, but he predicted that she would marry and not finish her degree.

However, Marlene thrived at UBC Law and made many lifelong friends, including what became the entire partnership of Ray, Wolfe, Connell, and Lightbody, all '59 alumni. She supported and led her class reunions over the many years that followed.

Finding an articling position was not easy, so Marlene called New Westminster's pre-eminent lawyer, Colin McQuarrie, Q.C.:

M: I'm seeking articles
C: What is the deadline?
M: 4 p.m. today.
C: OMG, you'd better get in here!

Colin's partner Douglas Hogarth was livid ("You hired a woman?"), but that was the start of a new friendship. When Hogarth stood as a candidate for the federal Liberals in 1968, his official agent was the (Conservative) Marlene. She and her sister knocked on doors (even in Sapperton, where they were not always well received), and Doug won.

Her special relationship with Mr. McQuarrie, from whom she could always get sage advice, lasted through the decades. As her law partner Paul Levy said in his homage to Mr. McQuarrie ((2006) 64 Advocate 580 at 582), Marlene was one of his "distinguished" articled students, and "in all who were privileged to work for or with him, [Colin] instilled his life-long values of integrity, diligence and service to the profession he loved and served so well".

After her call to the bar, Marlene travelled to England, but the one-year visit extended as she worked at Theodore Goddard—her time there described by her friend Paul Leonard:

> The hard-worked indentured articled clerks at [the firm] in London in the mid-1960s spent much of their time in the library, not because of the fascinating legal tomes but because of the young Canadian barrister who was acting as librarian by day and painting the town red by night. She was beautiful, great fun and a terrific dancer—and no slouch as a lawyer either.

When the Profumo Affair broke in the English tabloids and Theodore Goddard was retained, depositions were taken. Security was tight. Rather than use court reporters, the firm had Marlene type up the depositions of Mandy Rice-Davies and others, and they knew the confidences would be kept.

In 1967 Watson Hunter, Q.C., formed the firm of McQuarrie, Hunter, Fisher, McKinnon, Gates, Pettenuzzo and Pearce [*What, did they run out of names? – Ed.*], and Mr. McQuarrie convinced Marlene to return to New Westminster to join them. On her return, the James sisters visited the Hastings Racecourse. They were making "$2 to show" bets when they caught the eye

of a handsome former professional hockey player from Winnipeg in the box behind them. Marlene accepted Ford Scott's dinner invitation and soon began a marriage of more than 50 years.

They settled on Caulfeild Drive in West Vancouver and met Ken Burnett, who would become a lifelong friend. He recalled Marlene and Ford's hospitality and remembered a party at their home when she was the managing partner at McQuarrie Hunter. A guest assumed the managing partner was a male and was soon "buttering Ford up" until it was suggested he talk to Mrs. Scott.

Two sons, James and Colin, arrived into this happy family. Never known for her sports expertise, Marlene delighted in telling people of Colin's rugby successes, though she was never quite sure what position he played.

As with many couples, Marlene and Ford held different views on some issues, including politics. How they dealt with this showed their mutual respect: during several elections in the '70s, there were blue signs on the east side of their lot and red signs on the west, reflecting their respective political allegiances.

By 1970 Marlene was the wills and estates expert in a firm that has developed a tradition of excellent woman lawyers, all of whom acknowledge Marlene's invaluable mentoring. Marlene's work ethic was prodigious. She soon became a go-to adviser up and down the Fraser Valley, and she and her colleague Paul Levy turned this into a valuable litigation practice, now run by Jacy Wingson, Q.C.

In 1994, 35 years after talking her way into law school, Marlene's contributions to the profession were recognized with the Georges A. Goyer, QC Memorial Award for Distinguished Service. Only a few of the highlights included that she was the first president of a provincial branch of the CBA, a director of the Public Legal Education Society of B.C. and the first female president of the New Westminster Bar Association.

Remarkably, the long Goyer list of accomplishments omitted mention of her chairing the Law Foundation at a time when that organization faced reduced funding and increasing demands on its resources. She convened public forums and charted a cooperative course forward for this vital contributor to the funding of the provincial justice system. Marlene was only the second woman in British Columbia to be appointed Queen's Counsel (the Honourable Mary Southin, Q.C., was the first). But she was so much more.

She never passed up a challenge. Much like her entrance to law school, her career in leadership in the Canadian bar, Ken Burnett recalled, seemed to start when another candidate spoke down to her as a woman. That was

the gauntlet thrown down. She called Alf Eddy, the executive director, and said, "Alf, I am running!"

She was a leader in the bar and a leader in legal education. She was chair of the wills and trusts section of the CBA, a lecturer on estate topics, a contributor to continuing legal education seminars and co-author of the *Probate Practice Manual*. Ken Burnett convened the group of Marlene, Roger Worthington and Peter Bogardus to draft the manual. They met weekly, in the early morning, at the golf club for a year.

She was a hard-working and engaging colleague. As this article was being prepared friends reached out and described her this way: "She was always making friends and maintained good relationships with lots of people. She was a quality person, gracious, bright, modest, capable, though on occasion I noted when she disagreed with someone, somehow her eyes changed colour." Another said: "Marlene was always well prepared for review and drafting sessions and knew the practice area. She never had a negative word or was other than even-tempered, and she assumed the role of caring conciliator if any of the others 'got their backs up'. It was apparent that she enjoyed what we were doing and loved our practice area, the practice of law and her firm, and that she would have said, 'Those were Golden Years'." Her 1959 classmate and the person who accompanied her to the annual CBA dinners said that Marlene was "bright, enthusiastic, energetic, and always someone you wanted on your team."

She contributed widely to the community. Her wide and varied contributions include volunteer posts at UBC (Law School Alumni Association, St. Andrews Hall, Vancouver School of Theology), West Vancouver Library, Queen's Park Hospital, her theatres and her church.

Kim Floeck was Marlene's star pupil and touched on Marlene's foibles: her addiction to Rogers' chocolates (her office sign said, "I've tried to give up chocolate but I'm no quitter"); her lack of interest in the culinary arts (but Ford could cook); her driving (scary); and her lack of interest in anything athletic (except Ford). She also noted her love of singing and theatre in all its forms (Marlene and Bob Collings shared a passion for the movies that they shared with new students); her empathy and unwavering sense of morality; how she was always gracious with deeply embedded good manners that never deserted her, even when memory loss started to take its toll; and the enthusiasm and fun that Marlene bought to all aspects of the office and that made it a place where you wanted to work.

Jacy Wingson remembers, on first meeting Marlene in 1993, being amazed at seeing a woman so highly regarded in the legal community not in the usual black suit but wearing a bright red suit with a canary yellow

blouse and very fashionable high heels. Marlene was "absolutely effervescent", and this impressed Jacy enormously, to see that one could be a successful lawyer and be a gracious, feminine and fashionable woman.

What a magnificent lawyer and person! We bid fond farewell to our friend, ever in our minds vivacious, energetic, principled, positive and a philanthropic leader of the bar.

Marlene was predeceased by her mother Mina May and her father Evan Percy James and is lovingly remembered by her husband Ford; her sons James and Colin (Amy); her grandchildren Maya, Willa and Evan Scott; her sister Jeanette Munro; her nephew Robert Munro; and her niece Valerie Gillis.

Marlene, you made this world a better place for all who knew you.

Robert Crawford

Nils Jensen

Nils Bo Jensen was born in Copenhagen on July 26, 1949 and immigrated to Montreal with his parents in 1957 at the age of eight. He graduated from Hillcrest High School in Ottawa and went on to receive a bachelor of applied science degree in chemical engineering from the University of Ottawa in 1973 and an LL.B. from Osgoode Hall in 1975.

Nils moved to Vancouver in 1975, where he met his Scottish lass and love of his life, Jean Thomson. He articled with Bull, Housser and Tupper between 1975 and 1976 and was admitted to the B.C. bar in 1976. From 1976 to 1980 he practised as Crown counsel in both Vancouver and Nelson. During that time Nils was a founding member of the Criminal Justice Subsection of the CBA in Ottawa/Hull, the first bilingual interprovincial CBA subsection in Ontario/Quebec.

In 1980 Nils and Jean moved to London, England, where Nils received an LL.M. from the London School of Economics. Upon returning to Canada in

1981, Nils taught law at Carleton University in Ottawa and then from 1983 to 1994 worked again as a Crown prosecutor and defence lawyer throughout the Ottawa Valley, where his two sons, Nicholas and Stewart, were born.

In 1995 Nils and his family moved to Oak Bay, where he would spend the rest of his life. Between 1995 and 2012 Nils worked as Crown counsel in Victoria. During that time, he served as a member of the Chief Judge's Task Group on Sitting Justices of the Peace, receiving the Premier's Award for Innovation and Excellence for leading the creation and implementation of the *Local Government Bylaw Notice Enforcement Act* in 2006. He was also a leader in the use of technology in the courtroom and was awarded the B.C. Public Service Award for video conference system expansion in courthouses and correctional centres in 2001. In 2012 he joined the Legal Services Branch of the Ministry of Attorney General as supervising counsel of the Civil Forfeiture legal team. He retired from practice in 2015.

Aside from his law practice, Nils was dedicated to teaching law and mentoring students and young lawyers. He taught at the UVic Faculty of Law for over 20 years as a sessional instructor and adjunct professor in the areas of advocacy, evidence and ethics, was a sessional instructor at the UVic Faculty of Engineering in 2016/17, was a frequent presenter at CLE events and served as a coach for many mock trial teams. In 2002 Nils was honoured in the legislature by then Attorney General Geoff Plant, Q.C., after having coached a UVic Law mock trial competition team to win the Sopinka Cup, having been instrumental to the team's success by volunteering countless hours of coaching. He was also one of the few sessional instructors to have been invited by the Faculty of Law to teach criminal procedure and advocacy to Inuit students in Iqaluit, Nunavut, at the Akitsiraq Law School.

Nils was a true mentor, a role he exercised with humility, enthusiasm and joy (especially when sharing his many "war stories"). He was always generous with his time with everyone, imparting his experience and wisdom with young lawyers and law students with an indefatigable sense of humour.

With seemingly boundless energy, Nils also devoted much of his time to improving the local community. He served as chair of the Capital Regional District, chair of the Water Board for 12 years, chair of the Oak Bay Police, a member of the Oak Bay High School Steering Committee, director and chair of the governance committee of the CREST emergency radio system, trustee and chair of the governance committee of the Greater Victoria Public Library, group commissioner with the 12th Garry Oak Sea Scouts and secretary of the Greater Victoria Harbour Authority board of directors. He also coached youth baseball and soccer for many years. He was elected a city councillor for Oak Bay in 1996, serving for 15 years until becoming

mayor in 2011 and again in 2014, a position he held until 2018. He was awarded the Queen Elizabeth II Diamond Jubilee Medal for service to the community in 2012.

As his son Nicholas eulogized, however, "[f]or such a busy man, this was perhaps his greatest accomplishment of all: he always had time for his family" and "although he was an exemplary community leader, it was spending time with his family that he loved and cherished most of all." Indeed, Nils's greatest legacy was his wonderful sons, who were with him every step of the way during the last three difficult months before his passing.

After a brief battle with cancer, Nils died on April 7, 2019 surrounded by his family and friends. He was 69 years old. He is survived by his loving wife, Jean, and sons, Nicholas (Helen) and Stewart. To quote Sam Walter Foss's "The House by the Side of the Road", "[Nils] was a friend to man", and he is dearly missed by his family and so many in the community.

Fernando de Lima

Don Campbell

Don Campbell was born in Zweibrücken, in what was then West Germany. His late father, Douglas Campbell, served in World War II as a pilot in the Royal Canadian Air Force. Doug and his wife, Marjorie, stayed in West Germany after the war. There, Don and his older brother, Rob, were born. The family relocated back to Canada the year Don was born, and then they lived in various cities across Canada until they finally settled in Moose Jaw, Saskatchewan in the early 1970s.

Don enjoyed a peaceful and modest upbringing. He and Rob were both fortunate to attend the University of Saskatchewan, being the first in their family to attend university. Don attended the university for both his undergraduate degree and his law degree. By his own account, Don was the chairman of the social committee in law school and revelled in the festivities that accompany the study of law. Don made many friends in his university years, many of whom he remained in contact with for the rest of life.

After law school, Don decided that he needed to work somewhere close to a really good ski hill. He apparently had a lead in Cranbrook, but with what was then called Tod Mountain (now Sun Peaks Resort) only a short drive away, Kamloops had a particularly attractive appeal. He moved to Kamloops in 1986 and took an articling position with the venerable firm of Fulton & Company. While he no doubt learned many things there, he realized two things very early on in his legal career: first, he wanted to have his own firm; second, he wanted to help as many people as he could.

Don founded Don Campbell Law in 1987 and ran it for 32 years. In the early years, he frequently served as duty counsel (which can be one of the hardest jobs in a courthouse), helping people both in and out of custody who do not have lawyers and are often going through extreme periods of distress in their lives. He was a dedicated lawyer. In his practice he applied empathy, compassion, endless patience, his intellect and his humour in a way that gave hope to thousands of people throughout his career.

Although Don practised in Kamloops his entire career, some of his cases took him around the country, including all the way to the Supreme Court of Canada. A notable case of Don's was *R. v. Bjornstrom*, or what more of us would remember as "the Bushman of the Shuswap" case. He was also counsel in *R. v. Pena*, which is remembered as the "Gustafsen Lake Standoff" case. Although Don enjoyed the spectacle of these cases, the vast majority of the cases he did were not the subject of media attention and brought him no glory. His work was mostly about serving people who were voiceless, powerless and penniless, and whose lives were often in states of despair. His gift was to give many of those people hope—to make them smile despite whatever adversity they may be going through. This was his skill, and it was the cornerstone of his service and his ministry.

The best chapter of Don's life began 22 years ago when he met the love of his life, Sandy, on October 7, 1997. They were married on July 25, 1999. Don stepped into the role of loving father to Sandy's three daughters, Kirstin, Jailene and Chianne, who benefited from his support and friendship from childhood through to parenthood. Over the past ten years Don got to play another of his most cherished roles: grandfather to Alexander, Isabella, Sofia, Maximus, Elizabeth and Abigail. Because he knew I did not ski or skydive, and because I have two young girls of my own, when Don and I were not talking about our current cases, we mostly talked about our families. Don loved his family very much. At his funeral and reception, I learned—although it came as no real surprise—that Sandy received a bouquet of flowers on the 7th and 25th of every month for 20 years!

Seven years ago, when I was a law student on the cusp of beginning my career as a lawyer in Kamloops, I immediately became aware of Don Camp-

bell. Here was this super busy criminal defence lawyer who seemed to have all the files. I immediately wanted to know more about this man. Over the past seven years, I had the honour to do so by having an office directly beside his.

Like everyone who was fortunate enough to know him, I can say I was extremely lucky to have met Don. He was an enthusiastic mentor to me and to a great number of law students and young lawyers in the growing legal community in Kamloops, including some through formal arrangements set up by the Thompson Rivers University Faculty of Law, where he also served as a moot judge on a number of occasions.

Don was an especially patient and supportive guide. Whenever I sought his guidance, he never failed to offer sage advice. It usually boiled down to this: "You are not expected to save the whole world. Your job—*our* job—is to do our best and to help people who are going through one of the worst times of their lives. Don't sweat the small stuff. We have to work hard, but we still have to live life and remember that the most important things in life aren't things, but people: friends and family." I take that message to heart, and I will think of Don often, in both good times and bad times.

Members of the Kamloops (and Interior) legal community showed up in throngs to support his family and friends at his service, which was held at the Our Lady of Perpetual Help Church and Parish. The hundreds of attendees included a number of judges, Crown counsel, court staff, deputy sheriffs, members of the defence bar and many of his clients. It was an incredible testament both to the degree of respect he had earned from his peers over the course of his career and to the numbers of lives he touched.

We will all miss Don's exuberant presence at the Kamloops courthouse. But we can take comfort in knowing that he is now looking down on us with his winning smile and endless positive energy.

Goodbye for now, good friend. Keep it groovy!

Jay Michi

NEW JUDGES

The Honourable Mr. Justice Dennis Hori

Dennis Hori became a justice of the Supreme Court of British Columbia on February 8, 2019. He has had an exemplary career in law, always achieving the highest standard while maintaining his extraordinary humility.

Dennis was born and raised in Kamloops. He grew up in the neighbourhood of Brocklehurst, which (according to those who are not from Brocklehurst) is sometimes referred to as "the wrong side of the tracks". In spite of this, Dennis excelled in school, both academically and athletically. He graduated from North Kamloops High School (NorKam) in 1976. He was named valedictorian and received the Principal's Award for his excellence both scholastically and athletically. He has continued to demonstrate the same level of excellence both professionally and in life generally.

After graduating from high school, Dennis went on to earn a bachelor of science degree at UBC in 1980 and then a law degree at UVic in 1983. He joined Fulton & Company in Kamloops in 1983, completed his articles and became an associate in 1984 and then joined the partnership in 1988. He practised all facets of civil litigation from his call to the bar in 1984 to his appointment to the bench in February 2019.

Dennis has excellent advocacy skills and litigated many high-level cases at both the trial level and the Court of Appeal. His approach was always to work exceedingly hard on behalf of his clients and at the same time to maintain civility with his opposing counsel. His ethical standards are second to none in the legal profession.

Dennis has also contributed to the legal profession in many other ways, including through his tenure with the Trial Lawyers Association of British

Columbia ("TLABC"). He was a member of the TLABC from his call to the bar to his appointment to the bench. He served on the executive for many years and was named president in 2013.

Dennis is meticulous in all aspects of his life, both personal and professional, large and small. He is always impeccably dressed—Harry Rosen is very appreciative of Dennis. The most obvious example of his attention to detail is his approach to eating corn on the cob. He eats single rows at a time, without touching the rows above and below.

The bench will also be well served by Dennis' meticulousness, as because of it, he has tremendous writing skills. He is renowned for being a "stickler" when it comes to grammar and punctuation, which lends itself to well-written judgments.

Dennis loves sports. In high school he played all team sports, including volleyball, soccer, rugby and basketball. Three of the four teams for which he played participated in provincial championships. His sports excellence was also demonstrated in downhill skiing. He and his friend John Wilkes became ski instructors at Sun Peaks. The two spent many years refining their (and others') skiing abilities. In his younger days, Dennis went on many ski trips with his buddies John, Andy and David. There are a number of stories that come out of those trips, but of course those cannot be told in this forum.

Dennis is particularly skilled at soccer, and he continued his passion for and participation in soccer right up until his recent appointment. His passion for playing soccer persisted despite his many, many soccer injuries. At Fulton, he was regularly seen limping around the hallways with a big smile on his face. He is an avid golfer, maintaining a 16 handicap. On the golf course, Dennis is, as is the case of most golfers, both elated and exasperated. He always maintains his physical fitness and to this day runs regularly.

Dennis is not just a fit, meticulous athlete; he is first and foremost a dedicated family man. He has been married to Diane for 29 years, and they have one son, Brayden, who is 26 years old. Brayden is their pride and joy.

Dennis has longevity on his side. His parents, Kay and Eddy, are both 96 years old and still living in the home in which Dennis grew up. Dennis is extremely proud of his Japanese-Canadian heritage and is fluent in Japanese. He has been involved in that community in Kamloops all of his life, as have his parents.

Dennis and Diane are both very socially active in Kamloops. They have hosted many functions at their home. They are excellent cooks and gourmands. If you ever have the pleasure of a meal prepared by them, particularly as it relates to their Japanese heritage, you are extremely lucky. Their

sushi and sashimi are as good as at any of the best restaurants that prepare such foods.

Dennis and Diane have also travelled extensively. By far their happiest times have been in Hawaii and particularly in Maui. The only issue for Dennis will be that in keeping with his work ethic he has always had difficulties planning in advance for these trips. Now, in his new role, he will be forced to do so.

Dennis will be well served by his experience with Fulton as managing partner for many years prior to his appointment. Dennis had the pleasure (or not) of chairing partnership meetings and committee meetings. The term "herding cats" comes to mind when you are dealing with many partners and their various differences of opinion on virtually every aspect of a partnership.

If you ask his former colleagues, you will hear that Dennis was instrumental to the development of most of the lawyers and students that have worked or continue to work at Fulton. His door was always open and his mentorship was always present.

Congratulations to Dennis on his appointment. He will, without question, be an excellent jurist.

The Honourable Madam Justice Elizabeth McDonald

Madam Justice McDonald's friends and colleagues were not only delighted that she was appointed to the B.C. Supreme Court in June 2019, but also comforted by the knowledge that, yes, good things *do* happen to good people. And for those of you who do not know her, but soon will, rest assured, Lisa is a good person.

But first, the details. Let us just say that in her youth, Lisa was a bit of a rolling stone, rambling around between the U.S. and Canada. She was born to Arthur and Elizabeth (Liz) in Seattle, Washington, where her dad was, at

the time, a graduate student at the University of Washington. Once her father graduated and became a university professor, Lisa and her family picked up stakes and made their home in various university postings. With her parents and siblings Lisa lived in Ontario, Alberta and California before moving to British Columbia. Growing up, university campuses were Lisa's playground. She now resides on the North Shore with Ian, her devoted husband of 27 years, and their two cherished teens, Liam and Rita.

Lisa is a middle child: she has two older twin brothers, Charles and James, and a younger brother, Travis. On the topic of family size, apparently Liz's motherly advice to Lisa was never to have too many children, advice which has understandably caused Lisa to wonder exactly where Liz wishes she had drawn the line in her own family. Being sandwiched between brothers has no doubt contributed greatly to Lisa's patience, tolerance and sense of humour, to say nothing of her resilience. At various times all six would pile into the family VW van (long before anyone thought they were cool) headed for the newest job posting or family vacation. There were no fancy hotels for this crew. They were inveterate campers and apparently enjoyed many hilarious adventures *en route*.

Having graduated from Simon Fraser University with a degree in political science, Lisa started out her working life as a secretary at Davis & Co. (now DLA Piper). Looking around her workplace, Lisa mused that being a lawyer might be an interesting career move. Not only was she accepted to UBC Law, but she also won a few awards along the way. Lisa was called to the B.C. bar in 1999.

Lisa's legal interests and experiences are varied. After being called to the bar, Lisa first articled and then practised bankruptcy and insolvency law from May 1999 to August 2002 at the same firm where she had been a secretary. In September 2002 she joined the Tax Law Services Section of the Department of Justice, where she attended to a wide variety of litigation matters related to tax recovery and general tax litigation. She left the Department of Justice in September 2011 to pursue construction litigation at FMC (now Dentons), finally returning to the Department of Justice in September 2012, where she practised complex tax litigation and, more recently, business and regulatory law. Lisa excelled as a litigator, successfully representing the Crown in several challenging cases. She demonstrated what has been described as a preternatural ability to digest complex matters and explain them back in a way that was understandable to everyone. Somewhere between the tort actions and misfeasance claims that put her in the B.C. Supreme Court representing the Crown, Lisa looked around and mused that being a judge might be an interesting career move.

Now that you know the basics—Lisa is well travelled, well schooled and well seasoned—here are some of the really important things you should know about her.

Lisa is kind. Anyone who has had the opportunity of working with Lisa, from assistants to colleagues, knows that she is thoughtful and quite probably the nicest person you will ever meet. She is the one person who will organize an office birthday cake to celebrate your special birthday, send you a congratulatory e-mail to acknowledge your successes, babysit your twin babies when you don't have any family in town and commiserate with you over your big and little miseries. Everyone has something good to say about Lisa, and that is attributable to the fact that she always takes the time to be personable, ask questions and listen to the answers. Her colleagues describe her as "patient, compassionate, selfless, thoughtful and encouraging". High praise indeed. In her new role, litigants, members of the bar and other members of the judiciary will no doubt all benefit from Lisa's kindly ways. And if past behaviours are any indication of future behaviours, there will always be a cup of tea waiting to be brewed (although you might want to do a sniff test to make sure the cream hasn't soured since the last time), an assortment of snacks on offer and a conversation to be had in her chambers.

Kindness and civility are excellent mates. And Lisa is civil. In a time where civility at the bar—or, more accurately, the lack thereof—is an area of some discussion, Lisa demonstrates what it means to be civil in both her professional and her personal life.

In her professional life, as a lawyer, Lisa would gently and respectfully cross-examine a witness who had no idea where she was leading him or her (into a corner) until it was too late. She was also civil to all opposing counsel, retaining her calm and patient demeanour in her interactions with all types of personalities. For example, there was one instance where opposing counsel, having exasperated Lisa's co-counsel with a lengthy telephone tirade (which may have led to an inexplicable interruption of telephone connectivity), immediately dialed up Lisa and proceeded to harangue her at length about the obvious weaknesses of the Crown's case. On Lisa's end, the conversation was punctuated with softly murmured "hmmms", "I sees" and "oh yeses" while she continued working on a completely unrelated matter. Apparently, opposing counsel was so engaged with his dynamic presentation that he could not discern the telltale "tap tap tap" of the keyboard coming from Lisa's end of the phone, though this may have been attributable to Lisa's deft manipulation of the mute button—she has never said. Interestingly, and this is where the civility part comes in, Lisa experienced no telephone connectivity issues during that call or any others, no matter how challenging.

In her personal life, Lisa has demonstrated utmost civility in dealing with North Shore wildlife—namely, raccoons who, for a time, made regular appearances in her kitchen. These pesky critters would enter her charming woodlands home through a window left open to enable the family cats Vader and Lucky to satisfy their nocturnal wanderlust. Lisa and Ian (okay, Lisa) would wake up in the middle of the night to odd crunching sounds emanating from the kitchen. Upon (solitary) investigation, Lisa discovered that the neighbourhood rockies were chowing down on Vader and Lucky's dinner. Now the civility part comes in, as this was not a one-off occurrence. No, this kitchen invasion happened pretty much every night for weeks. Why so long? Well, Lisa was concerned that her beloved kitties would be deprived of their preferred mode of egress if she were to close the bathroom window. The Rubicon moment occurred when one uninvited rocky, not content with clattering the cat dishes around the kitchen like a rambunctious forward stickhandling a puck down the ice, ventured into the matrimonial *sanctum sanctorum* looking for a cuddle. Lisa was eventually able to wake Ian up and, once awake, Ian hatched a genius plan to relocate said rocky to greener pastures. His genius plan involved a large wire cage, BBQ gloves, a blanket and a one-way trip under the cloak of night (so many rockies, so many bylaws) to an unspecified location via pickup truck. Ian thought he had caged a raccoon, but if its behaviour was any indication of its *genus*, the wee beastie had more in common with a Tasmanian devil.

Lisa clearly has all the skills necessary to be a formidable judge. She is smart, hardworking, irreproachable and shows great *sangfroid* in dealing with stressful situations.

Lisa is smart. Give her a gnarly factual mess or a legal labyrinth and she, like Ariadne, will follow the threads that lead to the heart of the matter. Woe betide the trickster who tries to lead this lady down the garden path, although no doubt said trickster will be dealt with in such a kindly manner that he or she may be quite unaware that they have been censured. Lisa would take on files that no one wanted and turn them into the type of file that you wished you had worked on, making even the most difficult of cases seem manageable. She was the person that everyone wanted to work with.

Lisa is hardworking. Her work ethic is the engine that drives her capacity to produce prodigious amounts of work. The attributes of Lisa's work that distinguished her as a lawyer will no doubt go on to benefit the public in her new career.

Lisa is irreproachable. When the authors of this piece put our heads together to come up with funny (embarrassing) anecdotes about her, all for the sole purpose of helping you get to know her better, of course, we real-

ized that the "oopsies" were all about us and not about her at all. We were the ones who (may have) had one bevvie too many, danced way too crazy, made that inappropriate comment, spent too much money shopping—you get the idea. Lisa may have been there, cheering from the sidelines (actually, Lisa probably organized the outing at which the "oopsie" occurred), but her own conduct was always irreproachable.

Lisa personifies the adage "never let them see you sweat". No matter how harried she might be or how challenging the circumstances, Lisa maintains a cool, unflappable demeanour. She is grace under pressure. This ability may stem from her experiences as the "new kid" in town as her family relocated so often for her father's work. Remember *Mean Girls*? Lisa attended school for one year in California where her teachers considered her to be gifted with an unusual knowledge of world geography as compared to her "Valley girl" classmates. In times of stress, Lisa never lets slip the Valley girl talk, although from time to time she does let rip some of the funniest sayings we have ever heard, most of which are not appropriate for this particular forum.

Lisa also has artistic flair. She sews, makes stunning floral arrangements and sports the funkiest eyewear. While needlework is not usually a characteristic relevant to the performance of judicial duties, Lisa's expertise as a seamstress, one that she shares with her daughter Rita, is quite remarkable. She can do everything from redesigning a man's shirt into a designer knockoff to making a pair of pants from scratch. While growing up, in addition to giving practical advice on family size, Lisa's mom stressed the need to be educated, independent and self-sustaining. For Lisa's mom, to be self-sustaining meant knowing how to cook yourself a nice meal and how to hem your own pants. Lisa definitely aced the pant-hemming thing and is not only a competent cook, but also the best dinner guest ever. She brings not only the appropriate beverage (usually your favourite and probably times two), but also, if you are lucky, a handmade floral arrangement to grace your table. She will also shower you with sincere praise for your table arrangement and culinary skills.

In her spare time, Lisa likes to snowshoe, travel, debate American politics, go to the movies, watch British crime shows, share some laughs with her friends and family and, yes, shop at fancy stores.

Although we are sorry to lose Lisa as a colleague, we take some solace from the certain knowledge that she is now serving the greater public good in her new role as a justice of the B.C. Supreme Court. We look forward to seeing where Lisa's musings will take her next!

NEW BOOKS AND MEDIA

Cross-Examination: Science and Techniques (Third Edition), by Larry Pozner and Roger J. Dodd. LexisNexis, 2018. 707 pages (hardcover), $310.

Reviewed by Dale Robert Pedersen[1]

> The first one to plead his cause seems right,
> Until his neighbour comes and examines him.
>
> Proverbs 18:17 King James Bible

Marcus Aurelius wrote of the curious tendency of people to love themselves above all others. Yet he observed that people often value others' opinions over their own opinion. It seems an instinctive character trait in almost all of us is to be our harshest critics, so as to guide our own behaviour in society and maybe avoid the negative opinions of others. The cross each person bears in our modern society is not torture, but the stigma of public condemnation. This revelation of Marcus Aurelius also speaks to the power of ideas, clothed in words. This power is particularly pronounced in the courtroom. For instance, a criminal conviction is merely a firm conviction on the part of the trier of fact that the accused is guilty. The word "debt" historically refers to guilt, a throwback to the days when we had debtors' jail. It is accepted that words may be powerful conveyors of the truth or equally work to distort that truth.

Cross-examination has long been considered the greatest engine for exposing the truth in our judicial system. But a common complaint among counsel is the perplexing difficulty in adopting a practical method of preparing and delivering effective cross-examinations. A comprehensive

universal system has long eluded the legal profession. It is not surprising that some legal commentaries describe cross-examination as an art. When conducted successfully, something spellbinding seems to spontaneously and creatively erupt in the courtroom. At its best, cross-examination, like fine artwork, moves the trier of fact to pre-defined, well-crafted emotional and intellectual goals. When done without adequate preparation, often something quite different arises.

Larry Pozner and Roger J. Dodd have recently released the third edition of their book *Cross-Examination: Science and Techniques*. Both are experienced litigators, long recognized experts in this field. Roger J. Dodd has law firms in four states: Florida, Georgia, Oklahoma and Utah. He litigates a wide spectrum of cases. In multiple states, he has been recognized as a Super Lawyer. This is an exceptional accomplishment, achieved by only a handful of counsel. He has also provided private courses for various government and private agencies, including the Federal Bureau of Investigation.

Larry Pozner is a founding partner at the prestigious law firm Reilly Pozner LLP in Denver, Colorado. He is counsel for the Denver Broncos Football Club and represented AIG during the subprime mortgage crisis. For many years he has been listed in the Best Lawyers in America. He was a legal analyst for both the JonBenét Ramsey case and the Oklahoma Bombing case. He is a distinguished professor. Recently, his firm obtained a $391 million dollar jury verdict against PNC Bank.

On the website of Reilly Pozner LLP, Mr. Pozner writes:

> Each case is really a detective story. From the first day we get a case, we start to work on this story—and how the various pieces fit together—so we can tell our client's story to a jury and a judge. At our trials, no one ever gets bored and loses interest! Preparation is the be-all and end-all. The behind-the-scenes work (when no one is watching) is what lets you be good in the courtroom (when everyone is watching). This realization is a wonderful, magical moment in the life of any courtroom attorney.[2]

The authors have penned a book better described as a treatise on cross-examination. All three editions of the book exceed 1,000 pages. The third edition is 744 pages but includes an e-book that may be purchased separately. The e-book includes valuable topics such as controlling the crying witness.

Over the years, there have been some ground-breaking achievements in formulating guidelines for cross-examination.[3] It has been decades since Professor Irving Younger unveiled his ten commandments of cross-examination.[2] In crafting his commandments, Professor Younger considered cross-examination as a form of guerilla warfare. The cross-examiner leapt into battle, fighting intensely before retreating suddenly. Damage pre-

vention was a primary goal. Fear, a direct byproduct of his method, dominated the courtroom. But nonetheless, Professor Younger took a bold and much-needed leap towards constructing rules and guidelines surrounding this arcane subject.

The authors have taken a fundamentally different direction. In doing so, they have created a new approach to cross-examination. Their system of cross-examination is based on scientific principles of persuasion and behaviour conditioning, advanced by psychologist B.F. Skinner. This approach produces cross-examination which assists witness control, prevents distractions and maximizes learning by the trier of fact, in real time. Of great significance, the authors reject Professor Younger's rule that prohibits any questions the answer to which is unknown by the cross-examiner.

Both Pozner and Dodd are members of the National Association of Criminal Defense Lawyers, Mr. Pozner being a past president. This association boasts a membership of over 10,000 lawyers. It is believed that many of the principles were discussed at that association; the authors consolidated the ideas, refined them and built upon them, adding their own ideas and techniques. Their book is a useful guide that can be easily referred to while preparing for any cross-examination. To the legal profession, it will have timeless value. The authors are owed a debt of gratitude.

The system of cross-examination proposed by the authors begins with crafting the competing theories of the case: the theory of your client's case and that of the opposing side. The theory of the case guides pre-trial investigation. Pre-trial investigation then further refines the theory of the case. Cross-examination questions are then drafted based on relevant topics bearing on the theories of the case. Each topic becomes a chapter, a single page of questions, establishing a particular fact that is either a constructive or a destructive fact. Constructive cross-examination elicits constructive facts: facts that support the client's theory of the case. Destructive cross-examination elicits destructive facts: facts that are destructive of the opponent's theory of the case. If not constructive or destructive, cross-examination will impugn the credibility of the witness. The third edition expands upon the idea of constructive cross and its value in relation to destructive cross.

Once all the chapters are drafted, they are arranged in pre-determined sequences. The particular sequence chosen is one that best teaches the trier of fact the theory of the case. Each chapter is a fact and when presented chapter by chapter, or fact by fact, they gradually paint a picture. For destructive cross, each fact becomes a razor cut. With enough facts, the opponent's theory of the case, or opposing picture, may die a death from a thousand razor cuts.

The authors replace Professor Younger's ten commandments with three basic rules of cross-examination. One of the greatest benefits is that, unlike the commandments, a lawyer will know, in real time, when he has breached any of the three rules. Following Professor Younger's commandments, a lawyer usually will not discover that a commandment has been broken until after the question has left his lips in the courtroom, such as asking one question too many.

The authors' three rules of cross-examination are:

1. ask questions that progress from a general topic to a specific fact;
2. ask a question to establish one specific, accurate fact; and
3. ask only leading questions.

Reliance on the above rules provides for real-time learning on behalf of the trier of fact. In the heat of litigation, the rules are easy to follow. The rules prohibit counsel from asking any questions starting with "what", "where", "when", "why", "who" or "how", all open-ended questions. Such questions open the door for the witness to add whatever facts they wish to their answer with impunity. Not coincidentally, the witness's answer usually either supports the opponent's theory or destroys your own client's theory of the case.

The theory of the case guides all aspects of the proceedings, from the beginning of the file to its end. It guides pre-trial discovery, picking jurors, writing the opening and closing statements and every other aspect of the case. The authors stress the importance of formulating the theory of the case and preparing cross-examination as early as possible in the life of the file. In the third edition the authors have provided more useful tips on how to employ their system of cross-examination preparation in the first instance, when the file is first opened, when witnesses are first interviewed, when e-mails and correspondence are first received.

A frequent criticism of the work is that the preparation under the system requires too much time and effort and is not failproof. But this criticism ignores the reality that trial work is ninety per cent preparation. And even the most finely prepared cross-examination may not necessarily win a trial. In the prologue, the authors are quick to remind the reader to "be reasonable with yourself. And with us." Although it is sometimes a burden to prepare cross-examinations under the system, it ultimately leaves the cross-examiner with a clear, organized roadmap to reach certain intellectual and emotional objectives at trial. In doing so, it relieves considerable pressure on the day of trial. The authors also remind us that good cross done consistently becomes great cross. If counsel lacks time to prepare ade-

quately, the system allows for rapid preparation of cross-examination questions topics without too much effort or stress.

Written in plain and simple language, the book's main premise is that excellent cross-examination requires control of the witness and maintenance of counsel's credibility. Control is brought about primarily through the cross-examiner's self-control and the use of leading questions. It also relies on the principles of behaviour modification offered by B.F. Skinner. A feeling of control reduces anxiety considerably, while it has an opposite impact upon an adversarial witness. Positive reinforcement is given to any witness providing a "yes" answer. Negative reinforcement is given to any witness providing a "no" answer. With strict adherence to the facts, credibility of the cross-examiner is always maintained. With both credibility and control established, the cross-examiner is in the best position to meet the goal of cross-examination: to teach the trier of fact the client's story. Control assures the best facts come out. Credibility of the cross-examiner helps the trier of fact to best accept these facts.

In stressing the fundamental teaching aspect of cross-examinations, the authors dispel the notion that cross-examination is an ego contest between lawyer and witness. And its purpose is not to engage in intellectual or emotional combat with the witness. This takes the pressure off of the cross-examiner. The goal is simply to teach the fact finder the client's story, with the most specific and accurate words possible, with the fewest distractions.

The book's layout makes it a handy reference. There are numerous cross-references to related subjects sprinkled throughout the book. The table of contents is very detailed and clearly organized. This makes the first and any subsequent readings that much easier. Barry Scheck writes in the foreword to the third edition that he uses it as a reference book when preparing for any major criminal cross-examination. He acknowledges that the authors have fundamentally changed the pedagogy of Professor Younger's commandments.

Over and above the chapter method and three rules for cross-examination, there are numerous other topics outlined in the book to augment the system, such as:

1. recognizing and controlling bait;
2. basic steps of impeachment; and
3. advanced impeachment techniques.

Litigators are frequently harried by stress. This stress arises from the perceived demands of litigators in the courtroom. When disputes between individuals were removed from the dueling grounds to the "civilized" battlefield

of a courtroom, litigation war became the new public spectacle. Litigators were soldiers of justice. In that battle, words were wielded by them as swords. This approach cast a lawyer as a hired mercenary. The legal profession has become tormented as a result. Many members are plagued by symptoms experienced by soldiers: post-traumatic stress disorder, depression, anxiety, etc. The authors contend that such a state of affairs is unnecessary.

By placing more emphasis or importance on the teaching aspect of a litigator's function, performance is greatly enhanced. The impact on our clients may be profound. And this is particularly important as the courts have been entrusted to make decisions concerning every important facet of our lives. Much of the reason for this trust is the confidence that cross-examination will unveil the truth and hence guide how justice may best serve the parties to the dispute.

Some of the common criticisms of the book are that it could have been shorter, that it is an academic guide rather than a useful tool for the practitioner and that it presents a system that is too time-consuming to practically rely upon. But to its credit, it is an easy read, and it outlines techniques that are easy to follow. It lays out a comprehensive system that, when applied comprehensively, achieves long-term, concrete results. Despite its shortcomings, this book truly is one of the leading books in its field. It is well worth the read for any practitioner venturing into the courtroom.

ENDNOTES

1. Acknowledgement is given to Sebastian Elias of High Road Academy for his important contribution of ideas when preparing this review.
2. Online: <www.rplaw.com/about-us/>.
3. Professor Younger's ten commandments are:
    1. Be brief.
    2. Short questions, plain words.
    3. Leading questions only.
    4. Don't ask a question unless you already know the answer.
    5. Listen to the witness's answers.
    6. Don't quarrel with the witness.
    7. Don't allow the witness to repeat his direct testimony.
    8. Don't allow the witness to explain anything.
    9. Don't ask the "one question too many".
    10. Save the ultimate point of your cross for summation.

THE ADVOCATE

CLASSIFIED

LETTERS TO THE EDITOR

Dear Editor,

Re: Brian McDaniel, *Law and Justice in Ocean Falls* (2019) 77 Advocate 677

As members of the Heiltsuk Nation, we are compelled to address the depiction of the Heiltsuk and other Indigenous groups in Mr. McDaniel's recounting of his childhood in Ocean Falls. Mr. McDaniel presents a narrative spanning a few decades. Properly told, the history of what is now Ocean Falls extends many thousands of years. While this is not the proper forum to elaborate on the Heiltsuk's whole living history of the area, we address four troubling aspects of Mr. McDaniel's article below.

First, Mr. McDaniel paints an idyllic picture of 20th-century Ocean Falls as a self-regulating company town with "little need for formal law", disrupted by law-breaking Indigenous "visitors" from nearby coastal communities.

To the extent that such a place ever really existed, it was built on the back of colonial dispossession of Heiltsuk territory. Present-day Ocean Falls and the surrounding area is within what the Heiltsuk know as Yisdaitxw. One of the Heiltsuk's main villages, Duxwana'ka, was located at the site of what is now Ocean Falls. It is a good village site because it is sheltered from winds and the open water of the outer coast and provided plentiful resources from the land and sea. It was located at the base of Liak, a spectacular waterfall that flowed from several lakes into Cousins Inlet, on which Ocean Falls is situated. At the turn of the 20th century, the government forced the Heiltsuk to "relocate" from Duxwana'ka to reserves such as Bella Bella, in advance of the opening of the Crown Zellerbach pulp mill, the paternal benevo-

* Letters to the editor may be e-mailed to <mbain@the-advocate.ca>.

lence of which Mr. McDaniel speaks fondly. Liak was destroyed when the lakes were dammed to provide power for Crown Zellerbach.

Second, Mr. McDaniel distressingly reproduces "Drunk Indian" tropes in his article. He posits that the principal source of serious crime occupying the RCMP in Ocean Falls involved the "[a]buse of alcohol at Bella Bella, Klemtu, and Oweekeno Village" and attending to "frequently deal[] with drownings where alcohol was also a contributing factor". He also reckons that many of the "serious assaults and confrontations" occurring in the Ocean Falls of his childhood involved "Indigenous visitors from Bella Coola, Bella Bella, Owikeeno, Klemtu, Hartley Bay, and the Charlottes (Haida Gwaii), who sometimes settled—or extended—grievances amongst each other that extended back generations".

We can only begin on this point by referring Mr. McDaniel and the *Advocate*'s readers to the 1996 *Report of the Royal Commission on Aboriginal Peoples* (especially volumes 3 and 4), which contextualizes Mr. McDaniel's comments by providing an overview of the devastating, intersecting and intergenerational effects of alcohol, colonialism and residential schools wrought on Indigenous peoples.

Third, Mr. McDaniel retreads the concept of *terra nullius* roundly rejected by the Supreme Court of Canada in *Tsilhqot'in Nation v. British Columbia*.[1] In reviewing notable case law concerning the town, he observes that "*[e]ven* Aboriginal land claims litigation found its way to Ocean Falls" (emphasis added) in the form of *Heiltsuk Tribal Council v. British Columbia (Minister of Sustainable Resource Management)*.[2]

Such litigation should not come as a surprise, and treating it as such is an erasure of the original laws—Heiltsuk laws—governing the land and water, intimately linked to the Heiltsuk's relationship to place. As Madam Justice Gerow observes in *Heiltsuk Tribal Council*, what is now Ocean Falls lies in the core of Heiltsuk territory, with which the Heiltsuk have a deep, living, intimate relationship in the form of Aboriginal title and rights. She recounts the Heiltsuk's connection to the area, including the displacement of Duxwana'ka we recount above.

Fourth, Mr. McDaniel's narrative of "idyllic company town" vs. "Indigenous outsiders" is complicated by the fact that many Heiltsuk people lived and worked in Ocean Falls during its heyday. Like Mr. McDaniel, Ms. Humchitt (undersigned) also spent an enjoyable childhood in Ocean Falls. Her father, Wilfred Humchitt Sr., a Heiltsuk Hereditary Chief, was on the management team for the mill, and other family members worked

there, too. Núlis, Edwin Newman, also a Heiltsuk Hereditary Chief, even presided as a magistrate in the town, though he would not fit Mr. McDaniel's magisterial mould of "a distinguished English chap who had a good war record and a well-groomed moustache".

In closing, the Truth and Reconciliation Commission's Call to Action Number 27 calls on the Federation of Law Societies of Canada "to ensure that lawyers receive appropriate cultural competency training, which includes the history and legacy of residential schools, the *United Nations Declaration on the Rights of Indigenous Peoples*, Treaties and Aboriginal rights, Indigenous law, and Aboriginal–Crown relations". It is clear that there is much work to be done in this regard.

Yours truly,

Carrie Humchitt, Keith Brown and Saul Brown

ENDNOTES

1. 2014 SCC 44 at para 69 ("At the time of assertion of European sovereignty, the Crown acquired radical or underlying title to all the land in the province. This Crown title, however, was burdened by the pre-existing legal rights of Aboriginal people who occupied and used the land prior to European arrival. The doctrine of *terra nullius* (that no one owned the land prior to European assertion of sovereignty) never applied in Canada, as confirmed by the *Royal Proclamation* of 1763.").
2. 2003 BCSC 1422.

Dear Editor,

Re: *Law and Justice in Ocean Falls* (2019) 77 Advocate 677

My attempt at a lighthearted look at the subject of law and justice in my hometown of Ocean Falls has resulted in criticism from some members of the Heiltsuk First Nation.

It is unfortunate that they have extracted small portions from six pages of a 352-page book to suggest that I am not sensitive to Indigenous issues. Had they read the book, they may have come to a different conclusion.

For example:

- The book "does not venture into the regional examples of indigenous survival or reconstruction … the town's attitude to indigenous people was not exemplary" (p. 11);
- "The name Ocean Falls is derived from the word Tuxnaq in the language of the Heiltsuk (previously Bella Bella), the Indigenous people of the area who used the mouth of the Link (Liak) Lake as a place to gather salmon in the summer. Tuxnaq translates loosely as 'Big Sea out in the Ocean' and refers to a wave breaking over a large rock in the falls that separated Link (Liak) Lake from the ocean at the head of Cousins Inlet" (p. 28);

- "Some of the most significant prehistoric remains in British Columbia have been located in Heiltsuk territory near Namu approximately fifteen kilometres from Ocean Falls. Footprints discovered recently on Calvert Island are believed to be 13,200 years old, making them amongst the oldest archaeological evidence of the presence of humans in the Americas" (p. 29);
- "The journals of Captain George Vancouver from 1793 recorded a short but agreeable interaction he had with the Heiltsuk people as follows:

  > Their dispositions as far as our short acquaintance will authorize an opinion appeared to be civil, good humoured and friendly. The vivacity of their countenances indicated a lively genius and from their repeated bursts of laughter it would appear that they were great humourists for their mirth was not confined to their own party or wholly resulting from thence but was frequently at our expense; so perfectly were they at ease in our society." (p. 32)

  The mirth and humour displayed by the ancestors of the letter writers towards George Vancouver is noticeably lacking in their comments about me.
- The Heiltsuk of Bella Bella and the Nuxalk of Bella Coola "much preferred to employ their maritime and fishing skills in boats on open water and to pursue seasonal employment, rather than commit to permanent work in the smelly confines of a pulp mill" (p. 63);
- "In the 1930s and 1940s the best-known aboriginal inhabitant of Ocean Falls was Dr. Peter Kelly, the renowned Methodist missionary and master of the mission boat the *Thomas Crosby*. Kelly had moved to Ocean Falls in 1933, and was a Haida of noble descent from Skidegate on Haida Gwaii. For fifty years he ministered to the people of the coast and provided political leadership to the indigenous people" (p. 64);
- "The natives of Bella Bella (including Edwin Newman) were instrumental in the establishment of the Native Brotherhood of B.C.—essentially a native fisherman's union which was an early foundation for later political and legal battles for aboriginal rights" (p. 222).

There are many other references in the book to the positive presence of the Heiltsuk people and their culture in the area around Ocean Falls and the positive contribution that the presence

of the community of Ocean Falls made to the entire population of the central coast of B.C.

Most importantly and coincidentally I knew and wrote about Ms. Humchitt's father as follows:

> Wilf Humchitt, like Peter Kelly and Tilly Clarkson[,] was of noble descent. He was the great grandson of Moody Humchitt of the Heiltsuk of Bella Bella (Waglisa)[,] one of the most respected chiefs on the coast and an early and powerful voice for the rights of native people to the continued use and enjoyment of the lands and sea that they had occupied for millennia. Wilf Humchitt worked with me in the mill's stores. He was a quiet, polite and dignified man whose presence immediately commanded respect. (p. 113)

In my book I refer to the "rich material culture and spiritual and oral traditions of First Nations" (p. 8). There is a large body of written material on Indigenous issues relating to coastal B.C. Some of it is mentioned in the bibliography. While the 1996 *Report of the Royal Commission on Aboriginal Peoples and the 2015 Truth and Reconciliation Commission Report* should be read by anyone with an interest in this important issue, we, as lawyers, should recognize that there are may facets to this contentious topic. It should be the subject of informed discussion, not mandatory re-education.

I suggest that the letter writers venture to the Shearwater General Store or the Old Bank Inn in Ocean Falls to buy a copy of my book. Alternatively, they can order it online at <www.oceanfallsbook.com>. I would welcome their comments once they have read it. They may find that instead of reinforcing themes of "colonial dispossession", "distressing[] … 'Drunk Indian' tropes" and "Indigenous outsiders", the book provides a respectful perspective of a time when many Indigenous and non-Indigenous people lived together in close proximity and relative harmony.

Yours truly,
R. Brian McDaniel

GRUMBLES

Dear Editor,
Re: *Bench and Bar*
(2019) 77 Advocate 949

I remain an avid reader of the *Advocate* and am generally uplifted by the high bar it sets in the deployment of language and grammar. It was therefore agony-inducing to see in the most recent issue, at p. 949, the phrase "from whence".

It would be a salve for the soul of every beleaguered reader to see this redundant phrase entirely disappear from English-language communications, but that remains far beyond my purview; I therefore hereby restrict my groveling to this submission to the editorial board of the *Advocate* to at least banish it from its publications.

Rose Shawlee
Vancouver

Dear Editor,
Re: *Bench and Bar*
(2019) 77 Advocate 949

I was going to respectfully object to "from whence" until I consulted the *Canadian Oxford Dictionary*, to learn that history is on your side: "Although it is historically well-established, some speakers and writers of English [me] avoid the expression *from whence* which they consider redundant on the grounds that *from* is implied in the meaning of *whence* and does not need to be repeated." Non-judgmental. So much for that. While we're on redundancy, what about "initially came"?

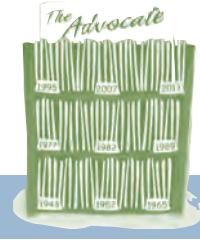
Best regards,
John Edmond
Ottawa

Emerson, Austen, Byron, Shakespeare, the Bible. We're in good company. – Ed.

* Grumbles may be e-mailed to <mbain@the-advocate.ca>.

Leanne Christie, detail of *Free Flow,* oil on canvas, 60" x 72"
Available through Art Rental & Sales at the Vancouver Art Gallery
www.artrentalandsales.com

FROM OUR BACK PAGES



With all this talk about Ocean Falls (see pages 125–129 of this issue), we are reminded of these two reminiscences from 1990—a mere 30 years ago.

FATHER FAGAN ASKED FOR HELP*

By Tony Gargrave

It was the fall of 1964. I had been called to the bar for about two years when Father Fagan wrote. At that time he was the pastor to St. Mary's Church at Chilliwack, British Columbia and was the Roman Catholic chaplain to the Chilliwack Forestry Camps in the area. The camps were a substitute for Oakalla Prison and were modelled after logging camps where the young prisoners did road and bridge work in nearby provincial parks.

One of Father Fagan's charges was a 16-year-old Indian boy from Bella Bella, British Columbia, who had been charged with a sneak theft of $18 from a motor vessel called *Idleours*.

An Indian boy of the accused's description was seen leaving the *Idleours* at 6 a.m. on June 21, 1964. On June 22, my client was arrested. On June 23,

* Reprinted from (1990) 48 Advocate 249.

he pleaded guilty before the local lay magistrate from Ocean Falls on board the RCMP vessel *Tofino* after being questioned by the RCMP for four hours. My client said that he was told by an RCMP constable that if he told the police "what happened you will get off easy". He confessed, and his sister returned $18 to the RCMP, which his mother had borrowed from a neighbour, my client said.

The Ocean Falls magistrate promptly elevated the accused from juvenile court to adult court and sentenced him on the same day to eight months' definite and eight months' indefinite to the provincial young offenders prison system. He was found guilty of breaking and entering, an indictable offence.

The prison guards at the Pierce Creek Forestry Camp felt that his sentence was high for a person that age and there were doubts in their minds that the accused had committed the offence for which he was charged. They typed up his notice of appeal and filed it six days late.

It was at this stage that I was asked to help. I had never appeared in the Court of Appeal, but as lawyers know, a young lawyer is probably better equipped to appear in the Court of Appeal than he is drafting a will or appearing in trial court. That is the way he is trained at law school.

I gathered whatever evidence I could. The Department of Indian Affairs gave me a report on the matter. I was given a copy of a pre-sentence report that was prepared after the boy was sentenced. The court registry provided me with a copy of the magistrate's report to the Court of Appeal. Finally, I found time to drive up to the Pierce Creek Forestry Camp late one evening in the early autumn gloom.

It was about 100 miles from Vancouver. I left Sardis and Vedder Crossing on a narrow gravel road climbing into the Cascade Mountain Range. I kept meeting forks in the road with no signposts of any kind. I always took the right fork. The camp was close to Mount Slesse.

It was dark when I arrived at the prison camp. There were 40 inmates with only two guards in charge. I was expected. A guard met me and told me to lock my car. Apparently four prisoners had escaped while stealing a car a few days prior. The guards were helpful. They knew I needed privacy to interview my client, and they had cleaned out a broom closet without windows. My client and I were given two chairs and ushered into the closet. The door was shut.

My client was young, handsome, unbearably shy and frightened. I was supposed to be helping him, but he never had met me, and I had never met him. He was so painfully shy that I really never knew what happened at Bella Bella so that my appeal would have to be one of law rather than fact.

I did not think that there would be much trouble in asking the Court of Appeal to reduce the boy's sentence under the circumstances, but I wanted to quash the conviction if I could.

It seemed to me bizarre to take a 16-year-old out of a well-organized Indian village like Bella Bella and transport him to the provincial prison system. The lay magistrate said that (a) he wanted to teach the parents and Indian band leadership a lesson and (b) teach the boy a trade. Father Fagan, chaplain to the forestry camps, felt that he should be extracted from the system at the earliest opportunity. Mind you it was fashionable to talk about teaching prisoners a trade in the 1960s.

As I drove back to Vancouver in my 1950 green Plymouth four-door sedan, I fretted about the problem. He had pleaded guilty. It is rather hard to persuade the Court of Appeal to help you when your client has already pleaded guilty to the offence.

I remember watching Mr. Justice Angelo Branca sitting on the Court of Appeal when a young Indian man came up on a sentence appeal. He had stolen a pair of cowboy boots off a sleeping man's feet in the Cariboo. I suppose that in that part of British Columbia it was equivalent to stealing a man's horse. They made him stand up, but he said absolutely nothing; in reply to questions, he remained mute. He was undefended.

Justice Branca then said dramatically "His silence speaks more elegantly than words". He then persuaded his two fellow justices to reduce the man's sentence. I have always known that it does not pay to say too much, either at trial or in the Court of Appeal.

While driving back to Vancouver from the forest camp, I still fretted about the current case. Where was the defence in law? I then remembered a lecture given by Mr. Angelo Branca, as he then was, on criminal law procedure. He reminded his students that criminal courts have no jurisdiction to try a juvenile unless there has been a formal order to elevate the juvenile from juvenile court to adult court and a formal order to that effect is filed in the adult court. There must also be on the face of the record clear reasons for such elevation based upon the wording of what was then s. 9 of the *Juvenile Delinquent Act*. That was the technical defence! The real defence was that a boy of 16 should not have been in the prison system for a sneak theft when he had no previous criminal record or evidence of delinquency, and he should not have been transported 300 miles from his home at taxpayers' expense.

Time was short. I did my legal research and felt sufficiently secure in my technical argument that I did not need to try and rehash the facts, even if the Court of Appeal would permit me to do so.

I fretted about the matter again and then decided to make full disclosure to the Crown counsel, George Cumming, the night before the hearing. There had been no time to amend the notice of appeal, which had been typed up by the guards, and I was bound to give the Crown some notice in any event. I gave the Crown my cases and my argument.

We assembled the following morning in that tiny Court of Appeal courtroom in the old courthouse, which is now the Art Gallery of Vancouver. The courtroom was an odd shape, being wider than it was long, and had the worst acoustics in the province, perhaps in the world. There was an elaborate amplification system to allow the justices to hear counsel and appellants. Many accused appear in the Court of Appeal without counsel.

I began bravely by stressing the youth and good character of my client and then explained that I thought the lay judge aboard the RCMP motor vessel *Tofino* sitting in adult court was without jurisdiction to take the plea and sentence the accused because of his age.

Justice Thomas Norris, who was chairman, stopped me and turned to Mr. Cumming for the Crown. "Well, Mr. Cumming, what do you have to say about that?" he growled. Mr. Cumming stood up, shuffled his papers, looked at me, looked at the three members of the Court of Appeal, paused a bit and said, "I agree with Mr. Gargrave. I think the learned magistrate was without jurisdiction at the time in question". Mr. Justice Lord and Mr. Justice Sullivan began to close their bench books and look at their watches. I wanted to continue the argument! I had spent about two weeks on this case, and I wanted to be heard. As every lawyer knows, the Court of Appeal does not encourage verbose counsel, and in any case, lawyers know that the greatest sin for lawyers or for clients is to say too much or ask one question too many.

Mr. Justice Norris looked at me and said "Well, Mr. Gargrave, that just about settles it. An order will go accordingly."

I wrote to my client at the Pierce Creek Camp and to Father Fagan in Chilliwack telling them of the good news. Father Fagan wrote back. In those days people did not use the long-distance telephone so much as they do now. He signed his letter "Gratefully yours in Christ, Very Reverend J.E. Fagan, V.F.". Well, I guess God does do good work, especially when He gets some help.

FATHER FAGAN OFFERED TO HELP*

By His Honour Judge Cunliffe Barnett

Many years ago when I was in Ocean Falls for a circuit court sitting, I heard of a most remarkable case: *R. v. Gerald Wilson*.

In 1964, when Gerald was a boy of 16 years, he was accused of a small theft and tried before the lay magistrate from Ocean Falls. The trial was held at Bella Bella aboard the police vessel *Tofino*. Although Gerald came from a good family and had never before been in trouble, he was summarily raised from juvenile court to adult court and then sent off to jail. Fortunately this travesty was undone in the Court of Appeal a few months later.

I acquired some papers about the case and kept them. I considered the case to be a terribly clear example of the sorts of injustices the British Columbia justice system used to inflict upon native Indians. I knew from my own experiences that Gerald's case, although starkly extreme, was not unique.[1]

In November 1989 I had an opportunity to talk to Tony Gargrave about Gerald's case. He had acted upon the appeal and recalled the case well; it had been his first appearance in the Court of Appeal. Tony said that he would dig out his old file, and after doing that he wrote a poignant recollection, "Father Fagan Asked for Help". It was published in the March 1990 issue of the *Advocate*.

The story that follows was written by Gerald Wilson himself. I have done some editing (with his approval), but I have not changed the story or the words used to tell it.

Gerald Wilson is now a man of 42 years. He lives in Alert Bay, where he is employed as a counsellor. He has no criminal record. When I talked to him about these events, he told me that he has never forgotten them. He told me that the night before his ordeal began, he had been down at the docks in Bella Bella trying to assist in the rescue of some boaters who had run aground. The next day he heard that the police wanted to talk to him.

> They told me that the sergeant wanted to talk to me down on the RCMP. vessel *Tofino*. It was about 8:45 p.m. when Sergeant Brenner finally showed up and started questioning me. I told him my whereabouts the night before. He kept questioning me and said that I was seen breaking

* Reprinted from (1990) 48 Advocate 581.

and entering the vessel *Idleours*. He kept this up for four hours and said that they had a witness to prove that I was the one who did it. When I tried to ask who was the person that had seen me do it, they told me that I didn't have to know until court day.

I was only 16 years old then. I did not know about going to court or what it was all about.

They even told me that I was going to get off easy if I confessed. Thinking only of that, I finally told them that I did it because I wanted them to leave me alone.

They told me that I was to return the money to them, and they asked me where it was. I told them that I did not remember where I hid the money. I didn't because I didn't take any money or commit the crime. They said that I was supposed to look for it the next morning.

I remember my mother telling my sister to go and borrow the money I was supposed to have taken from my aunt next door.

When they came up the next day they told me that I was to appear in court on June 23, 1964. They went to Ocean Falls to pick up the magistrate and came back the next day.

When I appeared before the magistrate, he wanted to question me first before we even started with the court. He questioned me if I had ever been in trouble with the law before, and I answered him that I never was in any kind of trouble before.

The magistrate told me that I was elevated from juvenile court to adult court, and then he sentenced me to eight months' definite and if I did not behave myself or if I got into any kind of trouble that I was to stay in for another eight months' indefinite.

None of my family was even allowed to be there with me aboard the *Tofino* all this time as this was going on. Before we left for Ocean Falls was the only time I got to see my mother and my aunt for only a few minutes. When we left I was really scared and I was crying inside.

The next day they flew me out of Ocean Falls to spend ten days in Oakalla prison. It was pure hell and very scary also. Then they shipped me out to a forest camp in Chilliwack. I was in for three months when one of the other inmates asked me why I was in. I remember after people discussed my case they said it wasn't fair and Father Fagan told me that he was going to see if he could talk to a lawyer and appeal my case.

A few days after the lawyer came and I told him my story, I found out that I won my appeal.

Even today I still think about what happened to me 26 years ago. I have these scars which have been burning in my mind. I don't know if the other people are still around, but deep down in my heart I will always remember them.

If you see Mr. Gargrave again could you get him to write me a letter so I can either write or phone him to thank him?

And I was very happy for the story I read in the magazine you sent to me.

These days many persons are wont to complain about the complexities of the *Young Offenders Act*, judges who are "soft on criminals" and the squandering of public money to give legal aid lawyers to criminals. The stories told by Gerald Wilson and Tony Gargrave hold lessons and reminders for us all.

ENDNOTE

1. See *Regina v R* [1970] 1 CCC 283 (BCSC), a case from Prince Rupert. I personally encountered similar cases in the Queen Charlotte Islands. I was sent there by the Attorney General with instructions to ask the lay magistrate/judge in Queen Charlotte City not to make automatic "raise orders" on his own initiative. But such orders continued to be made in Queen Charlotte City. Court there used to be held in the RCMP detachment, sometimes in the corporal's office.

   Another similar case from Ocean Falls was *Regina v W & W* [1970] 5 CCC 299 (BCSC). Fortunately the remedy to correct the injustices there was found. The "raise orders" were quashed in certiorari proceedings taken before Aikins J on August 7, 1970.

   An interesting contrast to all of these not-so-old cases is the recent decision of the Court of Appeal in *T (E) (Re)* (1989), 42 BCLR (2d) 40 (CA), leave to appeal refused May 17, 1990).

Leanne Christie, *Changing Cordova,* oil on canvas, 60" x 72"
Available through Art Rental & Sales at the Vancouver Art Gallery
www.artrentalandsales.com

LEGAL ANECDOTES AND MISCELLANEA

By Ludmila B. Herbst, Q.C.*

John Bruce's courthouse lions

THE COURTHOUSE LIONS[1]

Flanking what used to be the front steps of Vancouver's courthouse, the building now occupied by the Vancouver Art Gallery, are two lions said in the site's national historic designation to "symboliz[e] British justice".[2] The sculptures face the expanse of paved area between the former courthouse building and West Georgia Street and retain their dignity despite both the shifting of judicial functions to a different building and the closure of the building's West Georgia entrance, at the same time as its judicial occupants departed, in 1979.

The lions were purpose-built for the neoclassical building, which was designed by Francis Rattenbury. Rattenbury was the architect who also designed the Parliament Buildings in Victoria, the Empress Hotel and the still-surviving historic courthouses in Nanaimo and Nelson.

* Ludmila B. Herbst, Q.C., is the assistant editor of the *Advocate* and thanks Emma Coffin, a summer articled student at Farris LLP, for her review of material at the City of Vancouver Archives. No safaris were undertaken in the writing of this article.

The lions were carved at 1571 Main Street, the site of the stone-cutting workshop of J.A. & C.H. McDonald. (The site, near Main and Terminal, is roughly where a McDonald's restaurant now stands.) A sculptor named John Bruce made the model for the lions and did most of the carving. Bruce was born in Dundee, Scotland in 1863 and lived for times in Seattle and then Oakland; he died in California in 1952.

Bruce modelled the courthouse lions after the four lions surrounding Nelson's Column in Trafalgar Square, in London. And no, for those who might think otherwise, not all sculpted lions inevitably look alike—contrast our courthouse guardians to the two Art Deco lions at the south end of the Lions Gate Bridge. Those were sculpted by Charles Marega, unveiled in 1939 and promptly criticized for being "too stylized" and too like "the Sphinx of Egypt".[3] A longtime Vancouver resident originally from an Italian-speaking area of the Austro-Hungarian empire, Marega also crafted the King Edward VII Memorial Fountain—including a more traditional lion's head—unveiled by the old courthouse in 1912.

Sir Edwin Landseer sculpted the lions in Trafalgar Square after which Bruce's lions were modelled. Landseer was a painter not known for any previous sculpting, which may account for some criticism of his finished product. What can certainly be said, however, is that by the time of his commission he was already well known for his painted depictions of animals (mainly dogs, stags and horses, with an occasional lion thrown in). Landseer had by that time also painted *Trial by Jury* (also known as *Laying Down the Law*), which depicts the Lord Chancellor as a poodle and other members of the legal profession who surround him as dogs, and he had—one hopes for unrelated reasons—become a favourite of Queen Victoria. The "Landseer Lions" in Trafalgar Square were cast in bronze and installed in 1867, almost a decade after Landseer was commissioned to do the work.

Bruce's courthouse lions were made of granite, and each one weighs up to two times any of its bronze-cast Landseer counterparts.[4] The granite that Bruce used came from an island at the mouth of Jervis Inlet; there is some confusion about *which* island, but fittingly it appears to have either been, or been near, Nelson Island, which was named after the admiral celebrated in the Trafalgar Square column. One reputable source[5] contends that the granite was from Hardy Island, which is next to Nelson Island and named after the commander of the HMS *Victory*, on which Nelson was killed during the Battle of Trafalgar.

Bruce's work on the courthouse lions ended in the spring of 1910. Reportedly funds ran out before the lions were complete (in which respect they are incomplete is not clear to a non-zoologist, but reports refer to noses, ears

and/or manes). Even in their apparently incomplete state, the lions cost between $8,000 and $10,000. They were taken by horse dray from Main Street to their present location and installed with the help of "rollers, jacks and manpower".[6]

The lions have suffered somewhat over time. On September 6, 1939, just after World War II had commenced, a vandal painted green swastikas on them. Sandblasting was required to return the lions to normal. Though no member of the legal profession appears to have been suspected, entry requirements for the courthouse—including to access, outside business hours, the law library then located there—were hastily tightened thereafter.

On November 3, 1942, dynamite was planted at the haunches of the westerly lion, causing two explosions that detached its back end and, with pieces of granite flying up to several hundred feet away, smashed windows in nearby buildings, including the Hotel Vancouver, the Hotel Georgia coffee shop, and the courthouse itself. Tremors were felt at a greater distance; a guest at the YWCA, in the bathtub at the time of the explosions, advised that she lost no time getting out as "[a] bathtub is no place to be in during a catastrophe!"[7]

The Vancouver News-Herald said that the November 1942 event appeared to be "the most spectacular act of vandalism in the city's history". Fortunately, however, no one other than the westerly lion was injured. One cartoonist made light of that lion's plight, depicting the easterly lion as getting "a bang" out of the event. The injured lion was fitted with newly carved hindquarters in August 1943.

Citizens who flocked to the scene immediately after the explosion expressed various theories about what had caused it. Those theories ranged from a Japanese air raid to, more prosaically, "the Hotel Vancouver heating system exploding".[8] The culprit was never located, but the prevailing view seems to have been that he—a man in a felt hat was glimpsed running from the scene—was a "crackpot".[9]

Many other local residents who could not go to the scene but had felt the tremor caused by the explosions telephoned the desk of a local newspaper—later so did callers from "outlying districts" (after rumours had spread in their direction) "demand[ing] to know if a ship had exploded in the harbor or if the Courthouse had been demolished". That night *The Vancouver Daily Province*'s on-duty reporter "got excellent practice in the technique of answering three telephones at once".[10]

A later attack on the lions came in the form not of detonated explosives but of explosive words. In 1964, the lions suffered the stinging criticism of Vancouver lawyer Robert Delorme Plommer, D.F.C.[11] (and later Q.C.) when

on the pages of the *Advocate* he advocated for a new courthouse. He called the 1911 variant a "Romanesque granite ruin with lions on the front porch" and took jabs at its "pussy cats" and "feline symbols of the faded imperial past".[12] Plommer's exposé of courthouse defects large and small, actual or perceived, was not confined to the lions. It included the fact that judges in the building were "doubled up in their offices or stuck in some musty garret"; that "[t]he civil servants, who perform in the building with incredible cheerfulness and efficiency, do so in positively Pickwickian surroundings"; and, taking a practical turn, that for 1,100 barristers served by the barristers' accommodation there was "one 8x8 john housing one, each, fifty year old sink, urinal and toilet (with seat falling off)".[13]

As noted above, the courthouse moved to new premises in 1979, and the West Georgia entrance to the building was sealed that year as well. Since then, the lions have witnessed countless celebrations, protests and instances of day-to-day Vancouver life unfolding before them. The lions also seem to have the capacity to bring some comfort to those who come specifically to visit them. As noted by another of our reputable sources:

> The lions proved a suitable balm for my three-year-old son, who got very upset during his first-ever film: *Finding Nemo*. After Nemo's mother was eaten, I took my traumatized son to visit the friendly lions nearby. The gentle patting of a stone lion is indeed a good way to help a young lad overcome his fears. "I'm ready to go back to the movie now," he said.

As noted about the lions in the course of a spirited eventual rebuttal to Plommer's criticism—when a return of the building to courthouse use was being contemplated a decade ago—"[t]he lions still stand guard on the north side of the building … These 'pussycats' are not simply 'feline symbols of the imperial past'. They have become symbols of Vancouver presiding over one of the most popular public areas in the city."[14]

ENDNOTES

1. This article is based on sources including Doris C Munroe, "Public Art in Vancouver" (Thesis submitted in partial fulfillment of the requirements for the degree of Master of Arts in the Department of Fine Arts, University of British Columbia, April 1972); Murray B Blok, "Vancouver Courthouses: A Pictorial History – Part II: 1911–1979" (2010) 68 Advocate 359; Edward Mills, *The Early Courthouses of British Columbia* (Manuscript Report No 288, Vol 1: Parks Canada); Sunshine Coast Tourism, "Nelson Island", online: <sunshinecoastcanada.com/explore/islands/nelson-island>; Canadian Register of Historic Places, "Former Vancouver Law Courts National Historic Site of Canada", online: <www.historicplaces.ca/en/rep-reg/place-lieu.aspx?id=7439>; Creators Vancouver, "Hard Luck Lions" (28 June 2015), online: <creatorsvancouver.com/hard-luck-lions>; Constance Brissenden, "The History of Metropolitan Vancouver's Hall of Fame", online: <www.chuckdavis.ca/whoswho_B.htm>; Martha Perkins, "Here Be Lions: Honouring the Legacy of Lions Gate Bridge Sculptor", *Vancouver Courier* (26 December 2017), online: <www.vancourier.com/news/here-be-lions-honouring-the-legacy-of-lions-gate-bridge-sculptor-1.23129946>; Vancouver Heritage Foundation, "Lion's Gate Bridge", online: <www.vancouverheritagefoundation.org/place-that-matters/lions-gate-bridge>; Bob Speel, "Landseer's Lion Statues in Trafalgar Square", online: <www.speel.me.uk/sculptlondon/landseerlions.htm>; History House, "The Lions in Trafalgar Square", online: <www.historyhouse.co.uk/articles/trafalgar_square_lions.html>; "Sir Edwin Landseer's Lions at the Base of Nelson's Column, Trafalgar Square", *Victorian Web*, online:

<www.victorianweb.org/sculpture/misc/landseer1.html>; "Edwin Landseer", *Wikipedia*, online: <en.wikipedia.org/wiki/Edwin_Landseer>; "Sir Edwin Landseer", *Encyclopædia Britannica* (updated 27 September 2019), online: <www.britannica.com/biography/Edwin-Landseer>; "Sir Edwin Henry Landseer", online: <www.avictorian.com/Landseer_Edwin.html>; "Edwin Landseer", *The Famous Artists*, online: <www.thefamousartists.com/edwin-landseer>.

2. Canadian Register of Historic Places, "Former Vancouver Law Courts National Historic Site of Canada", *supra* note 1.
3. Munroe, *supra* note 1, Catalogue at xv. Despite their different appearance, like Marega's lions the Landseer Lions appear to have attracted some criticism for their sphinx-like character as well: History House, *supra* note 1.
4. For his Lions Gate Bridge sculptures, the unhappy Marega had to settle for a wood and wire frame covered in cement. Reportedly he wrote to family members: "I would have preferred the lions to be in bronze or stone—but it has to be cheap, which annoys me … . However, I have to content myself to get work at all": quoted in Perkins, *supra* note 1.
5. Blok, *supra* note 1 at 361.
6. Munroe, *supra* note 1, Catalogue at ii.
7. *Ibid.*
8. "Dynamite-Bomb Blast at Court House Wrecks 'Lion', Shatters Hotel Windows", *The Vancouver News-Herald* (4 November 1942).
9. "Blast Smashes Courthouse Lion: Explosion Set by Time Fuse Shatters Windows for Blocks", *The Province (Vancouver)* (4 November 1942).
10. "They Tell The Province About It: Bathtub Shook, Says Woman in It as 'Y.W.' Block Quivers", *The Vancouver Daily Province* (4 November 1942).
11. *Nos Disparus* – Robert Delorme Plommer, D.F.C., Q.C. (2012) 70 Advocate 431. Plommer appears to have been an immense character and immensely hardworking, but also modest about his accomplishments. During his years of practice he did not make known to colleagues that he had been awarded a Distinguished Flying Cross (for bomber missions during World War II) or use his designation: *ibid* at 434.
12. RD Plommer, "An Open Letter on the Court House" (1964) 22 Advocate 18 at 19.
13. *Ibid* at 18.
14. "Entre Nous" (2008) 66 Advocate 665 at 667.

BENCH AND BAR

The approaching Chinese New Year will be the year of the rat—and, specifically, the metal rat [*although this is probably not a reference to the U.S. heavy metal band, Ratt – Ed.*]. The rat is the first animal in the Chinese zodiac. Legend has it that the Jade Emperor proclaimed the order would be determined by the order of those arriving at his party. The rat persuaded the ox to give him a ride, then jumped off at the finish line to arrive first. If you are planning to celebrate the rat's victory with a new round of festivities, the website <thechinesezodiac.org> recommends a New Year's menu of "what the Rat likes to eat, which means nuts and all kinds of cheese" and that you "wear during the party the most precious clothes and jewellry, because the rat loves opulence". No matter how you choose to mark the new year's arrival, gung hay fat choy or gong xi fa cai for that matter!

Mark Meredith moves from KPMG Law LLP to join Clark Wilson as a partner. **Denny Chung** also joins Clark Wilson, having been with Dolden Wallace Folick. **Matthew Singerman** and **Dani Marshall** both join Clark Wilson as well. Mr. Singerman came from the Aquilini Group and Ms. Marshall came from Doak Shirreff Lawyers. **Adrian Dirassar** leaves his in-house role at Teekay Corporation to take up general counsel duties at SSR Mining Inc. **Morgan L. Camley**, **Sarah J. Nelligan** and **Roark Lewis** jump from Miller Thomson to Dentons' Vancouver office. **Teio Senda** leaves the sunny climate of Farris's Kelowna office to join Clark Wilson in Vancouver. Over the past summer, **Filza Tariq** joined Gowlings' Vancouver office, having come all the way from Auckland, New Zealand where she had been with the firm

Lawyers who have moved their practices should email details of their past and present circumstances to Peter Roberts, Q.C., at <benchandbar@the-advocate.ca> to ensure an appearance in "Bench & Bar". Note that we do not report changes in lawyers' status *within* their firms (from associate to partner, for example) other than in cases where persons formerly articled have been hired as associates.

AJ Park. In a move of nearly equal distance, and also landing at Gowlings, **Edith P. Geraets** came over from UDL in London.

Stefan McConnell moves to Miller Thomson's Vancouver office from Gowlings. **Jessica Campbell** sashays down the street from Branch MacMaster to join Fasken. **Ellen S. Kief** brings her U.S. immigration practice to Miller Thomson's Vancouver office, having previously been a sole practitioner in Boston. **Jeff Read** leaps from Lawson Lundell to Miller Thomson. **Simon Pinsky** lands at Edwards, Kenny & Bray, following articles at BLG.

Allison Lepp says goodbye to the Calgary office of Bennett Jones to return to her hometown of Vancouver and to join Harper Grey. **Nolan R. Hurlburt** moves from Lawson Lundell to join the Vancouver office of Dentons as their in-house practice support lawyer. **Camille Chisholm** returns to Lawson Lundell after a stint with McMillan. **Mona Yousif** moves from Blakes to Lawson Lundell. **Jim Boyle** joins Peninsula Group as in-house counsel, moving from Lawson Lundell to do so. **Karl Maier** returns to Vancouver Island to join Beacon Law Centre. He was previously with the Office of the Public Guardian and Trustee. **Derek Deacon** takes on a new role as in-house counsel with the Justice Institute of B.C., having previously been with Ardenton Capital Corporation. **Nick Shon** moves to Dentons' Vancouver office, bidding adieu to Lawson Lundell. **Eric Rines** shifts from Bilkey Law to Jensen Law. **Andrea Sam** moves from Lawson Lundell to go in-house with TransAlta's litigation team. **Zachary Rogers** takes a seat at Clark Wilson, moving from Alexander Holburn Beaudin + Lang. **Serin Remedios** moves from Willms & Shier Environmental Lawyers in Toronto to join Miller Titerle + Company.

At the 35th Annual Bench & Bar Dinner at the Fairmont Hotel Vancouver on November 6, 2019, **Robert Brun, Q.C.**, was awarded the 2019 Georges A. Goyer, QC Memorial Award for Distinguished Service. Mr. Brun served the legal profession as CBABC president in 2003/04 and as CBA national president in 2012. He was also a bencher of the Law Society of British Columbia from 2005 to 2011 and was recently recognized by CLEBC as a prolific contributor to legal education. **Ardith Walpetko We'dalx Walkem, Q.C.**, was the recipient of CLEBC's Leaders in Learning Award.

As described under the heading "The Trial of the Autun Rats" at <duhaime.org>, in 1508 the town of Autun, in France, issued a citation to the rats who were infesting the town and eating local farmers' barley crops. In a trial likely held at Autun Cathedral, the rats were defended by noted counsel and scholar Barthélemy de Chassenez. As legend has it, when the rats did not appear to face the charge, "Chassenez pointed out to the Court

that the summons was invalid anyway because his clients were not pack animals and tended to live alone. Each one of his clients had to be served with a summons, individually." Apparently this point gained some traction, and "a summons was duly posted in the churches of all neighboring towns (hopefully near the ground at eye level for the defendants)." Again, however, the rats did not appear. The author continues: "This is where Chassenez really earned his retainer arguing, quite likely, that the unpaved and unlit road from his clients' several residences to the Autun Courthouse, especially in 1508, was fraught with deadly peril: cats, dogs and hostile people. Simply, it was unsafe for his clients to attend the Autun courtroom" or, indeed, a court anywhere else in France. It appears that the rats squeaked by and were acquitted.

Harveen Thauli was appointed as a member of the British Columbia Farm Industry Review Board for a term ending July 31, 2021.

Congratulations to **Khaled Shariff** (In-House Counsel, Squamish First Nation), **Cheryl D'Sa** (Managing Partner, Narwal Litigation), **Sharon Singh** (Associate, Bennett Jones) and **Leena Yousefi** (CEO, YLaw Group), who were all named in the recent *Business in Vancouver* Forty under 40. According to the publication, winners are under 40 and demonstrate excellence in business, judgment, leadership and community contribution.

Roxanne P. Helme, Q.C., was recently appointed to the board of the Canadian Heritage Arts Society, carrying on business as the Canadian College of Performing Arts, for a three-year term.

While more will be said in a later edition in Nos Disparus, we are sad to report that **Justice Patricia Mathilda Proudfoot** passed away on October 9, 2019 at the age 91. She was, as many have said, a "trailblazing judge". Among other things, she was the first woman to be appointed to the Criminal Division of the Provincial Court, the County Court of B.C. and the B.C. Supreme Court. She retired in 2001 after serving on the B.C. Court of Appeal for 13 years. She also sat as a deputy judge of the Yukon Supreme Court. On November 25, 2019, all three levels of court in B.C. held, for the very first time, a joint sitting in the Great Hall of the Vancouver Courthouse to mark and celebrate the life and career of an exceptional person in the legal history of this province.

The film *Ratatoing* is an animated film described as a "blatant ripoff" of the Academy Award–winning animated Pixar film *Ratatouille*. The former was

produced by a Brazilian company called Video Brinquedo, which has been described as "the laziest/cheapest movie studio of all time" by Erik Henriksen of the *Portland Mercury*. Although we are not aware of any lawsuits arising out of the similarities between *Ratatoing* and *Ratatouille*, we heard it described as a "shameless knock-off … even by the ocean-floor-scraping standards of Video Brinquedo".

Mary Ainslie, Q.C., who graduated from UBC Law in 1991, was the 2019 recipient of the UBC Alumni Builder Award. This award recognizes UBC alumni who have significantly contributed to the university and enriched the lives of others and, in doing so, supported alumni UBC's mission of realizing the promise of a global community with shared ambition for a better world and an exceptional UBC.

At the Vancouver Bar Association's annual general meeting on November 12, 2019, **Brian Vick** of Miller Titerle was presented with the Peter S. Hyndman Award. In the mayhem of the general election that followed, **Patrick Beechinor** (McCarthy Tétrault), **Shaun Foster** (Alexander Holburn Beaudin + Lang), **Paul A. Kressock** (Lawson Lundell), **Pamela Lindsay** (Lindsay Kenney), **Niall Rand** (Fasken) and **Vanessa Williams** (Blakes) were elected to the executive of the VBA.

For the first time in its 127-year history, the VBA now boasts an all-female group of officers. They are: **Andrea Fraser** (Guild Yule), president; **Samantha Chang** (McEwan Partners), vice-president; **Carolyn MacDonald** (KPMG Law LLP), secretary-treasurer; and **Cheryl D'Sa** (Narwal Litigation), past-president. Congratulations to all nominees and successful candidates!

On December 6, 2019, the Law Society handed out its award hardware at its annual recognition dinner. **Claire E. Hunter, Q.C.**, received the Pro Bono Award. **Nancy Cameron, Q.C.**, received the Excellence in Family Law Award. **Raji Mangat** received the Equity, Diversity and Inclusion Award. The award for Leadership in Legal Aid Award was presented to the Association of Legal Aid Lawyers and it was accepted by **Marilyn Sandford, Q.C.**, **Christopher Johnson, Q.C.**, **Peter Leask, Q.C.**, **H. William Veenstra, Q.C.** and **Richard Fowler, Q.C.**

In an important decision confirming what we already knew, the Supreme Court of Nova Scotia held that "soft serve ice cream and smoothies are distinctly different from frozen yogurt" (*Second Cup Ltd. v. OPB Realty Inc.*, 2019 NSSC 287 at para. 45). It is not clear whether expert evidence was tendered,

but we would have liked to have been among the group of articling students researching the topic.

In analyzing a copyright claim about whether a car commercial featuring an animated feline had trenched on the world of the Pink Panther, the U.S. District Court for the Southern District of New York stated that "[o]ne could not conduct an intelligent conversation among animators or advertisers with respect to an animated duck, without reference to Donald Duck or with respect to an animated mouse, without reference to Mickey Mouse". As such, "[w]e do not find it surprising … that there should be references to the Pink Panther in a description of what an animated cat would be like, or that comparisons to the Pink Panther should be made. In the Court's view, the Pink Panther is undoubtedly the preeminent animated large feline character. In any discussion or consideration of such characters, the Pink Panther provides an important point of reference": *United Artists Corporation v. Ford Motor Company*, 483 F. Supp. 89 (1980).

At the Law Society elections held on November 15, 2019, the following scurried into positions as elected benchers for the 2020/21 term:

District No. 1 (Vancouver) – 11 elected

- Jamie Maclaren, Q.C.
- Jennifer Chow, Q.C.
- Jasmin Z. Ahmad
- Jeevyn Dhaliwal
- Julie K. Lamb, Q.C.
- Brook Greenberg
- Elizabeth J. Rowbotham
- Jeff Campbell, Q.C.
- Steven McKoen, Q.C.
- Jacqueline G. McQueen
- Karen L. Snowshoe

District No. 2 (Victoria) – 1 elected

- Pinder K. Cheema, Q.C.

District No. 3 (Nanaimo) – 1 elected

- Chelsea Dawn Wilson

District No. 4 (Westminster) – 3 elected

- W. Martin Finch, Q.C.
- Christopher A. McPherson, Q.C.

- **Tom Spraggs**

District No. 5 (Kootenay) – 1 elected

- **Barbara Cromarty**

District No. 6 (Okanagan) – 1 elected

- **Michael F. Welsh, Q.C.**

District No. 7 (Cariboo) – 2 elected

- **Geoffrey McDonald**
- **Heidi Zetzsche**

District No. 8 (Prince Rupert) – 1 elected

- **Lisa Feinberg**

District No. 9 (Kamloops) – 1 elected

- **Michelle D. Stanford, Q.C.**

In addition, each of **Philip A. Riddell, Q.C.**, **Sarah Westwood** and **Tony Wilson, Q.C.**, became life benchers. Pursuant to Law Society Rule 1-5(4), **Craig Ferris, Q.C.**, **Dean P.J. Lawton, Q.C.**, and **Lisa J. Hamilton, Q.C.**, will continue to hold office as benchers until they complete their respective terms as president.

Think you can get away with filing court documents with font sizes below the required minimum? Think again. Rule 4.01 of the Ontario Rules of Civil Procedure requires that court documents be printed in at least 12-point font. But in *Brown v. Kagan (Brown)*, 2019 ONSC 6335, the parties filed their submissions in 10-point font. Charney J. was not impressed: "Since I do not have a magnifying glass, I was not able to read most of their submissions" (para. 3). The decision gives a whole new meaning to the maxim "*de minimis non curat lex*".

One of our readers was recently reminded of filing incorporation documents on behalf of a society, most of whose members had significant vision problems. He remembers the documents used 20-point font (or, as we like to describe it around here, 20 point font!). To be fair, he also tipped off the registrar with an explanatory covering letter and the documents were so filed.

Gillian A. Malfair was reappointed as a member of the board of the College of New Caledonia for a term ending July 31, 2022.

Patricia M. Barkaskas was reappointed to the Multicultural Advisory Council for a term ending November 12, 2021.

The B.C. Supreme Court has remarked, at least in the particular circumstances of the case before it, that one lawyer's description of the other's affidavit as "Mickey Mouse" was "unnecessarily disparaging and lacks civility and good manners which is how discourse between counsel is typically conducted": *Arsenovski v. Bodin*, 2012 BCSC 35 at para. 13. Sorry, Mouseketeers!

In disappointing news, Dr. Yuval Noah Harari notes in his 2014 book *Sapiens*: "Hives can be very complex social structures, containing many different kinds of workers, such as harvesters, nurses and cleaners. Bees don't need lawyers, because there is no danger that they might forget or violate the hive constitution."

Violating the hive constitution reminds us of some juicy quotations that recently flowed from the pen of U.S. District Judge Ketanji Brown Jackson in the case of *Committee on the Judiciary, United States House of Representatives v. McGahn*, Civ. No. 19-cv-2379. Judge Jackson ordered that former White House counsel Donald F. McGahn was compelled to comply with a congressional subpoena. Her decision is currently under appeal.

"What is missing from the Constitution's framework as the Framers envisioned it is the President's purported power to kneecap House investigations of Executive branch operations by demanding that his senior-level aides breach their legal duty to respond to compelled congressional process."

"… DOJ's odd idea that federal courts' indisputable power to adjudicate questions of law evaporates if the requested pronouncement of law happens to occur in the context of a dispute between branches appears nowhere in the annals of established constitutional law."

"… absolute testimonial immunity for senior-level White House aides appears to be a fiction that has been fastidiously maintained over time through the force of sheer repetition in OLC opinions, and through accommodations that have permitted its proponents to avoid having the proposition tested in the crucible of litigation."

"…compulsory appearance by dint of a subpoena is a legal construct, not a political one, and per the Constitution, no one is above the law."

In these very pages a group called "The Paisley Snails" regularly slides about espousing the virtues (or lack thereof) of snails in ginger beer. For all the

praise heaped on *Donoghue v. Stevenson*, let us not forget the sad tale of *Mullen v. AG Barr & Co. Ltd.* (which *Donoghue v. Stevenson* overruled) in which three wee Scottish mice were served up to three wee Scottish children from three wee bottles of Scottish ginger beer. It is the stuff of gruesome nursery rhymes. Nevertheless, it evinces some of the smartest reasoning about mice we have come across. The witness Millar testified as follows:

Q. "How do you suggest that anybody is going to discover a mouse in a stone ginger beer bottle?"

A. "The only method I can see is when the mouse comes out of the bottle."

This is logic we can follow. Does anyone want to help us form The Lochwinnoch Mice to challenge The Paisley Snails to, *inter alia*, a game of proper Scottish pronunciation?

Michael J. Korenberg was appointed to the board of the University of British Columbia for a term ending February 25, 2022.

Susan E. Ross, **Brenda L. Edwards**, and **Jeffrey A. Hand** were all reappointed as members of the Environmental Appeal Board, the Forest Appeals Commission and the Oil and Gas Appeal Tribunal for terms ending December 11, 2022. **Daphne E. Stancil** was also reappointed to each of these boards for a term ending December 31, 2021.

The U.S. District Court for the Southern District of New York commented on the world of fictional children's characters in a trademark infringement claim brought by the publisher of Beatrix Potter's children's books (starting with Peter Rabbit but with subsequent volumes bringing to life "the antics of Squirrel Nutkin, the mischief of the Two Bad Mice, the mysterious ways of Mrs. Tiggy-Winkle, and tales of Miss Potter's many other endearing characters"). The publisher claimed that "[t]hanks to its marketing efforts", the characters portrayed in certain illustrations that were at issue in the case "particularly the 'running rabbit' have attained a place in the public esteem comparable to Mickey Mouse, Peter Pan, and Raggedy Ann and Andy". Though declining to grant summary judgment for either side, the court nevertheless remarked that the "notion that a British cony, however endearing, could gain as important a place in American hearts as Mickey Mouse seems dubious. Both are rodents, it is true, and thus equally entitled to our affections. But Mickey has had the benefit of competing for the American heart and dollar through moving pictures, an insurmountable advantage": *Frederick Warne & Co., Inc. v. Book Sales, Inc.*, 481 F. Supp. 1191 (S.D.N.Y. 1979).

Zahra H. Jimale and **Kimberly J. Jakeman** were appointed as directors of the Property Assessment Appeal Board for terms of three years.

Thelma J. O'Grady was appointed as a public member to the board of the College of Speech and Hearing Health Professionals of British Columbia for a term ending December 31, 2020.

Tajdin I. Mitha was reappointed to the Employment and Assistance Appeal Tribunal for a term ending October 31, 2020. **David J. Handelman** was reappointed and **Michael T. Skinner** was appointed for terms ending October 31, 2021. **Kent Arends Ashby**, **Susan M. Ferguson**, **Barbara D. Insley**, and **David J.H. Roberts** were all reappointed for terms ending October 31, 2023.

As described on the website of the U.K. Parliament, "The government sought to deal with the problem of hunger striking suffragettes with the 1913 Prisoners (Temporary Discharge for Ill-Health) Act, commonly known as the *Cat and Mouse Act*." The summary notes: "This Act allowed for the early release of prisoners who were so weakened by hunger striking that they were at risk of death. They were to be recalled to prison once their health was recovered, where the process would begin again."

Forgotten English: *cockalorum*. A little man with an inflated opinion of himself; believes himself more important than he is. Also, boastful speech. Its origin is 18th-century Flemish: *kockeloeren*, meaning "to crow".

Kathryn (Kate) M. Campbell was appointed as a vice chair of the Civil Resolution Tribunal for a term ending December 11, 2019.

Richard J. S. Rainey was reappointed as a director of the British Columbia Assessment Authority for a term ending February 15, 2021.

Since it passed completely unnoticed at the time, we note that November 22, 2019 was the 50th anniversary of the Vancouver Canucks and the Vancouver Canucks Alumni. Fifty years of hockey futility.

Kenneth M. Kramer, Q.C., was reappointed as a public member to the board of the College of Chiropractors of British Columbia for a term ending December 31, 2022.

Yasin S. Amlani was reappointed as a member of the Real Estate Council of British Columbia for a term ending October 31, 2021.

The Public Prosecution Service of Canada provides us with this Notice to the Profession:

> Since February 22, 2018, all Fentanyl Certificates of Analyst that the Public Prosecution Service of Canada has received from Health Canada's Drug Analysis Service have stated that they analysed the substance to be "Fentanyl or an isomer thereof." The *Controlled Drugs and Substances Act* ("CDSA") Schedule I, item 16, does not list "isomers" as one of the included substances of Fentanyl. However, we have recently been advised by Health Canada that Fentanyl, as listed at subitem 16(5) in Schedule I of the *CDSA*, and Acetylfentanyl, not listed but captured under item 16 in Schedule I of the CDSA, currently have no known isomers that could have been seized and analyzed by Health Canada. As a result, for all Certificates of Analysis that say "fentanyl, or its isomers", the substance referred to was Fentanyl, and for "Acetylfentanyl, or its isomers", the substance referred to was Acetylfentanyl.
>
> For copy of the Health Canada notice or any further information about this subject, please contact Health Canada at: <https://www.canada.ca/en/health-canada/services/health-concerns/controlled-substances-precursor-chemicals/drug-analysis-service.html#a3> or your local PPSC office at 900-840 Howe Street, Vancouver, BC V6Z 2S9 604-666-5250.

Under the *Wildlife Act*, with limited exceptions live import permits must not be issued for any "species of the subfamily *Sigmodontinae* — new world rats and mice" or for "*Neotoma cinerea* — bushy-tailed wood rat", among other mammals.

Graeme V. Keirstead, as the College of Physicians and Surgeons representative, and **Daniel Nam**, as a public representative, were reappointed to the Data Stewardship Committee for terms ending December 31, 2021. Mr. Keirstead was also designated vice-chair.

In the category of "difficult to believe this is a communication from a person in a position of responsibility", President Donald J. Trump tweeted the following in December 2018 with respect to his one-time lawyer: "Remember, Michael Cohen only became a 'Rat' after the FBI did something which was absolutely unthinkable & unheard of until the Witch Hunt was illegally started. They BROKE INTO AN ATTORNEY'S OFFICE! Why didn't they break into the DNC to get the Server, or Crooked's office?"

February 1 to 7, 2020 has been declared World Interfaith Harmony Week.

James B. Stewart was reappointed as a member of the board of Simon Fraser University for a term ending July 31, 2022.

J. Najeeb Hassan was appointed as a vice chair of the Labour Relations Board for a term ending December 2, 2024.

Section 11 of the Homeowner Protection Act Regulation provides that among the items a warranty provider may exclude from home warranty insurance is "any damage caused by insects or rodents and other animals, unless the damage results from non-compliance with the building code by the residential builder or its employees, agents or subcontractor".

There is or has been an unfortunate association in satire, so-called jokes and public discourse between lawyers and rats. The *New York Times* noted this in an October 2000 article, for which it interviewed the "somewhat mysterious West Coast lawyer who goes by the pen name The Rodent and sometimes wears a rat-head costume", all while "satirizing the legal profession" in various written works. Apparently The Rodent, who "agreed to an interview on the condition that his real name and the company where he works as a lawyer not be disclosed", said "the rat association seemed so natural for an underground lawyer-satirist that people rarely questioned him about his nom de plume: 'If I had picked Anteater, say, people would have said, 'Why that?'"

Andrew R. T. Pendray was reappointed as a member and chair of the Workers' Compensation Appeal Tribunal for a term ending November 7, 2022.

Wendy A. King was reappointed as a member of the board of the Royal British Columbia Museum for a term ending July 31, 2021.

Barry D. Penner, Q.C., was reappointed as a public member to the board of the College of Physicians and Surgeons of British Columbia for a term ending September 1, 2021.

Under the authority of the *Expropriation Act*, **Mark G. Underhill** was appointed as an Inquiry Officer in respect of the Notice of Request for Inquiry received from Cold Water Ranch (2011) Ltd. for described land in the New Westminster District.

B.C. Place Names: *Langara Island*. Off the Northwest coast of Graham Island, Haida Gwaii (also Langara Point and Langara Rocks). The Spanish commander Jacinto Caamaño, of Arantzazu, named the island Isla de Lan-

gara in 1792 while surveying Dixon Entrance. Juan Francisco de Langara y Huarte was a celebrated Spanish admiral. Spanish explorers named a number of features of the B.C. coast after him, including a group of islands at the mouth of the Fraser River (probably those now called Sea, Westham and Lulu Islands). The Spanish called them Islas de Langara. Dionisio Alcalá-Galiano called Point Grey Punta de Langara, hence the name of the Vancouver west side Langara. Captain George Vancouver used the name Langara Island on his 1793 chart. The British fur trader George Dixon named the island North Island, after Lord North, the British prime minister. North Island remained on British navy charts until 1907, when Captain Frederick Learmouth of HMS *Egera* resurveyed the region and changed the name back to Langara.

The Haida name for the island is Kiis Gwaii or Kusgwai.

The "Rat Pack" by the 1960s was populated by members including Frank Sinatra, Dean Martin, Sammy Davis Jr., Peter Lawford and Joey Bishop. One story attributes the name to Lauren Bacall (a.k.a. the "Den Mother"), who used to host an earlier iteration of pack members at the home she shared with husband Humphrey Bogart and said at one point of the worse-for-wear group something like, "You look like a goddamn rat pack."

Under the somewhat disconcerting heading of "Careers fit for Rats", the website <chinesenewyear.net> notes that given their "independence and imagination", rats are "suitable for creative jobs" and would be good "authors, editors and artists". Apparently they also "pay attention to fine detail". So far so good—but while they "are alert" they "lack … courage", which apparently "makes them unsuitable as police officers, entrepreneurs or other leadership and political positions". [*Squeek! – Ed.*]

Thought *du mois*:

> In ancient times cats were worshipped as gods; they have never forgotten this.
>
> Sir Terry Pratchett
> (1948–2015) British humourist, satirist and author

CONTRIBUTORS

David A. Allard is a partner at Lawson Lundell, where he practises M&A, corporate and commercial, corporate finance and securities law with an emphasis on the forestry and forest products industry. David is not to be confused with the guy who wants his name on all law degrees issued to UBC grads.

Connor Bildfell is the *Advocate*'s copy editor and an associate in the litigation group at McCarthy Tétrault. As a wee lad, Connor's initial career ambition was to become an ice cream man so he could give free ice cream to his friends and family. To his disappointment, however, he was informed that his proposed business model might not be sustainable. It is perhaps for the best that Connor ultimately landed on law and not business.

Kinji Bourchier was an international man of mystery long before that term fell out of fashion. A partner at Lawson Lundell, where he practises commercial litigation, Kinji is part of the Famous Five, which involves his co-authors (and the cover subject of this issue) galivanting overseas to watch the beautiful game. Kinji is the president of the Peter A. Allard School of Law Alumni Association.

Gerald W. Ghikas, Q.C., practises commercial arbitration from Vancouver Arbitration Chambers in international and domestic settings. He has over 40 years of experience as an arbitrator and counsel resolving matters from the tens of thousands of dollars to the billions of dollars.

Rishi T. Gill is a Vancouver litigator focusing on criminal defence and personal injury matters. He is a former Crown and B.C. Securities Commission prosecutor. If you encounter Maggie the dog on the North Shore, chances are Rishi is on the other end of the leash with his wife and two sons. The latter have made Rishi an expert in LEGO.

Cliff Proudfoot, Q.C., has a penchant for bow ties, a commitment to coaching kids in cross country and track at Seycove Secondary School and, when not focusing on environmental and Indigenous litigation, being the managing partner of Lawson Lundell. Cliff also sits as a board member and corporate secretary of the Metro Vancouver Crime Stoppers Foundation. Cliff is part of the Famous Five hinted at elsewhere in these bios.

Marko Vesely was, back when Park Royal Shopping Centre had a mascot, the man in the bear suit. Having moved beyond his former life of giving high fives to small children and tossing swag at strangers, Marko now practises civil and commercial litigation with style and finesse at Lawson Lundell, where he is a partner. Marko is a fellow of the Litigation Counsel of America, for he's a jolly good fellow.

Nick B. Wright is an articled student working with Rishi Gill, whom he considers to be a fine mentor.

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