# SQUID PRO QUO THE VOICE OF THE LEGAL PROFESSION

CANADIAN BAR ASSOCIATION - NEWFOUNDLAND & LABRADOR BRANCH

Fall 2015





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Mental Health and Wellness in the Legal Profession





## Squid pro quo

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## **Seeking Editor**

Squid pro quo is looking for an editor!

If you have an interest in writing and editing, please email the Branch office at **cba-nl@cba.org** for more details on this position.

### SAVE THE DATE UPCOMING EVENTS

2015 President's Reception

Thursday, December 10, 2015 5:00om - 7:00pm Sheraton Hotel St. John's, NL

### **CONTACT US**

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## Past President's Report

By Beth McGrath, Past President (2014-15)

It has been my pleasure to serve as CBA-NL President for 2014-15. 2014-15 was a very busy year for the CBA both nationally and provincially. At the national level, the past year included the launch of many new initiatives, including the Strategy Guide for Lawyers, the Mental Health and Wellness in the Legal Profession online course and the CBA Election Engagement Strategy.

As we enter into a new CBA year, I am pleased to report on some of the Branch accomplishments in 2014-15.

#### Access to Justice

The Newfoundland and Labrador Access to Justice Steering Committee, chaired by CBA-NL Past President Cheryl Mullett, continues to be active and meets on a monthly basis. The Committee consists of members representing the Newfoundland and Labrador Public Legal Information Association, Law Society, Department of Justice, Supreme Court of Newfoundland and Labrador, Provincial Court, Legal Aid, Provincial Advisory Council on the Status of Women, CBA-NL and the Newfoundland and Labrador English School District.

The Committee held its second provincial access to justice stakeholder roundtable on June 16 at the Admirals Green, Pippy Park, St. John's, with over 45 stakeholders in attendance. During this year's gathering attendees were given an update on the progress of access to justice in the past year from the Steering Committee. Many Steering Committee member groups have made progress and developed initiatives based on the access to justice barriers identified at the 2014 stakeholder meeting, specifically related to education, navigation and simplification. During the meeting the Committee sought feedback from stakeholders on the work that has been done to date and what can be done better.

The meeting also featured keynote speaker Trevor Farrow, Associate Dean and Professor, Osgoode Hall Law School and Chair of the Canadian Forum on Civil Justice, along with greetings from the Minister of Justice and Public Safety Darin King.

Formation of the Newfoundland and Labrador Access to Justice Steering Committee has been an invaluable asset to the

Branch, providing opportunities for monthly dialogue with justice stakeholders, information sharing and opportunities for collaboration.

#### Advocacy

On September 30, 2014, the provincial government announced that the Department of Justice would be replaced with the newly created Department of Public Safety. The Branch was highly disappointed and concerned with this change and took immediate action to voice our concerns to the Premier and Minister. On October 10, 2014, following media attention surrounding the Branch's position and attempt to discuss the issue with government, representatives from the CBA-NL Executive Committee were invited to meet with the Premier. Later that afternoon the Premier announced that the name of the Department would change to the Department of Justice and Public Safety, to reflect feedback from stakeholders. The Branch was very pleased with the outcome and received positive feedback from members on how the issue was handled by the Branch and the end result.

### Professional Development

The Branch Mid-Winter half-day Professional Development seminar, Mental Health/Addictions and Court: Effective Representation of Clients with Special Needs, took place on Friday, February 6. Topics discussed included issues in representing clients with special needs, sentencing concerns, issues in representing civil and family law clients with mental health/addictions issues and issues in having a self-represented opposing party with mental health/additions issues.

Thank you to all of the speakers who participated and members who attended this seminar on a very important issue. You can find a recap of the seminar, by Branch Professional Development Chair Kellie Cullihall, in this issue.

A Professional Development session was held in conjunction with the Branch AGM on July 7, 2015, in St. John's. The session focused on the Personal Property Security Act and discussed issues related to registration, enforcement and litigation. Seminar speakers included Geoff Spencer, McInnes Cooper, Christopher Lewis, Stewart McKelvey and Mark Russell, Cox & Palmer.

## Past President's Report

Continued from Page 2

The Branch continues to host Section Professional Development Luncheons, organized by Branch Section Chairs and held at the Branch office. Our Section Professional Development Luncheons are free and open to members only. Lunch continues to be supplied by the Branch and members outside of the St. John's area can access the PD luncheons via teleconference and live webinar.

Finally, as you may know, 2015 marks the 400<sup>th</sup> anniversary of the holding of the first Court of Vice-Admiralty by Sir Richard Whitbourne on June 4, 1615, in Trinity, NL. To mark this occasion, a symposium was held in Trinity from June 3-5. The Branch was a sponsor of the Symposium organized by the National Judicial Institute.

The symposium, "Discourse and Discovery: Sir Richard Whitbourne Quatercentennial Symposium 1615-2015 and Beyond," consisted of a variety of presentations and lectures related to the theme, celebrating 400 years of law, courts and the legal system in Newfoundland and Labrador - reflecting on our past - focusing on the future. The symposium featured speakers such as the Honourable Justice Thomas Cromwell, Jordan Furlong and Fred Headon.

Congratulations to the symposium organizing committee for putting together a great event!

### HELP US HELP YOU CBA-NL Professional Development

As you know, mandatory continuing legal education for members of the Law Society of Newfoundland and Labrador will commence in 2016. To help you reach your mandatory credit hours and provide practical information that will help improve your practice, CBA-NL looks forward to expanding our professional development offerings, including:

- More Section Professional Development Luncheons ("lunch and learns"), free, members only, 60-90 minute seminars offered in person at the CBA-NL Branch office, live online and by teleconference.
- Full and half day professional development conferences.

To assist us in developing a program that meets our members needs we want to hear from you.

What topics would you like to learn more about? What practice areas are you most interested in?

We look forward to hearing from you, please email **cba-nl@cba.org** with your feedback.

### Squid pro quo Letters to the Editor

*Squid pro quo* welcomes letters to the editor from members of the Canadian Bar Association wishing to express observations, opinions, corrections, very brief reports, or comments on previously published articles.

*Please note:* letters must not exceed 250 words in length. Published letters will be edited for clarity and length without the prior approval of the author. Unpublished letters will not be returned. Signatures of all authors are required, together with the author's full mailing address and telephone number.Pen names and anonymous letters will not be published.

Squid pro quo will not accept responsibility for statements made by contributors.

### CBA Welcomes Speakers on Mental Health Issues By Kellie Cullihall, Professional Development Chair

Mental Health has become a very prominent issue in this province over the past year or so, with the untimely death of Louis Jones Bernard, son of Andy Jones and Mary-Lynn Bernard, several awareness campaigns and the development of an All-Party Committee on Mental Health.

While usually viewed as simply a medical issue, mental health also becomes a legal issue when people with mental illness come before the courts. The CBA felt that it was important to provide a forum for discussion on this issue.

At the Mid-Winter Professional Development Session this year CBA members welcomed several high-profile speakers on this topic. Held on February 6 at the Murray Premises, the session focused on how to represent clients with mental health issues in criminal and civil courts.

The criminal law panel featured Judge David Orr, Provincial Court, Dr. Nazir Ladha a well-known psychiatrist and Mark Gruchy, a defence lawyer and the Past President of the local Branch of the Canadian Mental Health Association. Judge Orr was responsible for setting up the mental health court in St. John's and he spoke about therapeutic justice.

Judge Orr's presentation focused on the idea that the law is not neutral and that legal rulings and sentences have an impact on the emotional and psychological well-being of the accused. He noted that in countries who have a therapeutic justice model, such as Sweden, recidivism rates are significantly lower than in countries without such models. He also spoke about the detrimental impact current laws can have on accused with mental health issues such as the Ferguson case were the offender was held in a hospital for two years for two public mischief offences.

Dr. Ladha provided some insight into his role as a psychiatrist overlaps with the legal system. He stressed that people who have mental illness do not do well in prison, the need for offenders who are mentally ill to receive proper treatment and the importance of having detailed information when assessing people regarding their competence to deal with the legal issues that have brought them before the court.

Mark Gruchy focused on the need for counsel and courts to be

aware that there is rarely a person who is globally incapable of dealing with any legal issues he or she may be facing.

The civil panel featured Justice Gillian Butler, Supreme Court, St. John's, Michelle Coady, lawyer with the Legal Aid Commission, Joan Dawson, lawyer with the mental health office and Peter Ralph, lawyer with the provincial government.

Justice Butler spoke about the difficulty faced by courts when one of the parties is self-represented which is then compounded if that person also has mental health issues. She indicated that in dealing with these litigants judges should be aware of their body language, tone of voice, volume, speed, the content of their words, eye contract, and even posture and gestures. Unrepresented litigants could view a simple nod as being an indication that the judge is siding with the person who is speaking. She referenced the move towards having representative agents to assist parties as well as how the current availability of Amicus Curiae may be useful in many cases.

Michelle Coady discussed the difficulty of effectively representing a client in a family context where the lawyer is aware that what is truly best for a child may be different than what the client is seeking. As well she spoke about client's having unrealistic expectations and the delays that can be caused when an opposing party is unprepared for the various steps of the court process.

Joan Dawson and Peter Ralph both of whom have worked extensively with the mental health office of the Legal Aid Commission, relayed stories of significant problems with the lack of support for mentally-ill persons coming before the court. As well Ms. Dawson stressed her concern with the significant increase of individuals being held involuntarily on certificates permissible under the Mental Health Care and Treatment Act and the lack of legal rights individuals have in that situation.

The session was well-attended and several members and judges who could not attend took the time to contact the CBA to express their support for this type of seminar and their regret at having to miss it.

### Canadian Bar Association National News

### **Equal Justice**

The CBA has launched a new toolkit on preventive legal health to help lawyers develop the skills of preventive lawyering. A little preventive legal health can keep small legal issues from growing into huge legal problems. Learn more about this initiative at www.cba.org/cba/equaljustice/resources.

### Legal Ethics in a Digital World

The CBA Ethics and Professional Responsibility Committee has released updates to its guidelines for meeting ethical obligations while using technology. With a focus on security, marketing and providing services electronically, this practical resource, Legal Ethics in a Digital World, provides a guide for managing the risks inherent in using technology in your practice. Among other updates in this rapidly evolving field, the guide responds to the CBA Access to Justice Committee's call to action in its Reaching Equal Justice report by highlighting how to use technology in your practice to enhance access to justice, and avoid creating unintentional barriers to access. Regardless of your practice area, or size of firm, you'll want to include this guide in your toolkit of critical practice resources.

### Syrian Refugee Crisis – call for volunteers

Immigration and refugee law practitioners have known for some time that the Syrian refugee situation was reaching crisis proportions, but we, along with many other Canadians, felt a renewed sense of urgency to do something in light of recent events.

In anticipation of the government moving to assist more Syrians, the Immigration Law Section executive is putting together a list of members willing to provide pro bono services to help prepare the applications and provide an initial legal consultation on the application. This list will be advertised on the CBA webpage, its existence will be made known to the Syrian community in Canada.

If you wish to offer your services, please contact the CBA Immigration Law Section (cbaimmigrationlaw@cba.org) to be added to the database.

### A Guide to Strategy for Lawyers

#### What's your strategy for navigating the legal future?

Strategy? That's for big firms, says the solo or small-firm practitioner who's paddling like mad just to stay afloat.

Meanwhile, the leaders of big firms might say the only strategy they need is to keep doing what they're doing because it's worked for them so far.

And they're both wrong. In fact, in today's rapidly changing legal landscape the lawyer who doesn't have a clear path to follow can easily get lost.

The CBA Legal Futures Initiative has done the work to identify some of the changes affecting the legal profession. And with the help of special adviser Richard Susskind it's offering guidance to firms large and small trying to navigate those changes.

"For twenty years or more, the 'strategy' for most law firms was to repeat the previous year's performance, ideally with a bit more fee income and some cutting of costs," Susskind writes in A Guide to Strategy for Lawyers, published in the summer of 2015, which is meant to complement the Futures report. "The lesson of Futures is that tomorrow's legal landscape will not look like yesterday's, that the old ways of working need to be replaced, that legal businesses need to re-consider what services they offer, how they deliver them, and how to work more closely with their clients."

Formulating strategy, he says, is above all about setting the overall direction for the firm.

Susskind drew on his 25 years' experience advising law firms and legal departments, offering up some of the tools he's used to help law firms develop their own strategies for the future.

Susskind has worked with firms and departments of all sizes and says it is "fundamentally mistaken to assume that small firms do not need to think through their strategies." A portion of the guide is aimed specifically at small firms.

"Every business should think through the pivotal issues... and basic questions such as 'which markets should we serve? and 'how can we best compete in these chosen markets'?" The guide is a member-only benefit available on **cbafutures.org**.

## Mental Health and Wellness in the Legal Profession

Recognizing that you have a problem is the first step to dealing with it, they say.

Recognizing that you have a problem, and knowing what that problem is, however, can be two different things altogether. Alcohol or drug addiction can be fairly easy to pin down, once you're willing to have that conversation with yourself, but understanding that the thing that's dragging you down and making your world seem grey is depression or some other form of mental illness is a far more difficult task.

While it seems like everyone's talking about mental health these days, members of the legal profession still face a heavy stigma if they dare to talk about their problems, because the nature of their work requires people to be able to trust that they're of sound mind.

So what do you do when you think you're not?

The CBA has partnered with Bell Let's Talk and the Mood Disorders Society of Canada to develop an online course aimed at the legal community to raise awareness of the issue; help people understand the nature of depression and mental illness – what can trigger it, and its effects on the body and mind; and lead them to resources for prevention and treatment.

Mental Health and Wellness in the Legal Profession is free, confidential and available to members and nonmembers alike. It is accredited by all of the provincial law societies, except New Brunswick and British Columbia, for up to 6 hours of professional development. It's a source of reliable information both for those who think they have a problem, and those who need or want to expand their knowledge in order to be able to identify issues when they arise. It also addresses the question of stigma in the context of the legal profession, and suggests ways to deal with it. The end goal is to help the profession build a culture of wellness.

"Dealing with mental health issues is fraught with stigma," former CBA President Michele Hollins told Council members when the course was presented to them in August. Hollins has been open about her own experience with depression about 10 years ago, and made lawyer wellness one of the key issues of her term. She said studies have shown that lawyers have the highest rates of depression among the professions.

Her own bout of depression was "the most confounding and frightening experience of my life," Hollins said. "Every day became more debilitating and I was powerless to fix it."

Subject Matter Expert Doron Gold, a former lawyer and practising psychotherapist, points out that it's interactive, in that participants will be able to comment and see others' comments on the modules. Connecting with others, knowing that they're not alone in what they may be experiencing, "breaks the stigma," he says.

### **VOLUNTEER OPPORTUNITIES**

CBA-NL is currently looking for volunteers to sit on the following committees:

- Squid pro quo (volunteer committee members to write articles and assit with editing the magazine)
- Professional Development
- Law Day
- Pro Bono

### CALL FOR SUBMISSIONS

We welcome members to submit articles and ideas for upcoming issues of *Squid pro quo*.

Advertising opportunities are also available, please contact the Branch office for more information.

### In Personam with The Honourable T. Alexander Hickman, Q.C. By John Brown

"Do not seek to be successful, rather seek to be of use." (Albert Einstein)

When you visit the home of retired Supreme Court Chief Justice T. Alexander Hickman, you might expect to see rooms filled with trophies and medals like a professional hockey player. After all, it was only last year that Memorial University of Newfoundland and Labrador awarded him his third honorary degree.

Instead you find a clean well - lighted place (to quote Hemingway), tastefully adorned and inviting. Nancy Hickman; lively and youthful; almost formally introduces you to the tall slim man whose only concession to his 89 years of life is a wooden walking stick.

On my arrival Ms. Hickman offered me a drink of water then silently disappeared with a practised ease that showed just how often she introduced people to her husband. They are a team.

When Thomas Alexander Hickman was born in Grand Bank Newfoundland in 1925, the Island and Labrador comprised a sovereign nation. He would have been seven years old when Prime Minister Alderdice turned the reins of power over to a Commission of Government. Justice Hickman would take a train to St. John's to attend Memorial College for two years, where he boarded at a United Church residence complete with curfew. Later at Dalhousie University in Nova Scotia, where he earned his law degree, he had to be called to the Nova Scotia bar as a requirement to being called at the bar in Newfoundland.

"It was tough on lawyers back then. I told my father that I would likely work in Halifax or Toronto, but he told me about a firm in St. John's where the lawyers all had their law degrees. He suggested I check in with them first before I left the island." So it was that in 1948 that he had his name placed third, on the sign of the three-person firm.

Things seemed to happen to him almost by chance.

"When I was eight years in practice, I got a call from Mrs. Madeleine Pinsent to go straight over to the Benchers office. I thought I was in trouble as Mrs. Pinsent told me was that it was urgent and to stop whatever I was doing and go there. After I arrived I was told to take a seat and maybe an hour later I was told

that I was now a Bencher so that there would be enough of us to have a quorum." It turned out that the senior bar were astounded, since most benchers were very senior by the time they took that post. Leaning back in his chair the judge smiled. It was only the first time, out of many times to come, that serendipity would play a role in defining a great legal career of more than 50 years.

He told me about his children, Peter, Sandy, Heather, and Harry and about their past times, especially sports, most notably soccer and volleyball. Although he apologized for talking so much, it actually took a great deal to get him to discuss his three-part career as lawyer, politician, and judge.

He spoke placidly about milestones that he had been involved in. As a cabinet minister he split the Supreme Court into two halves, family, and the general division.

"I didn't think it was appropriate for married couples going through hard times to have to listen and see all the criminal work that was going on." Hickman made it mandatory to have a law degree to practice in Newfoundland. That could not have been easy considering he had to convince senior lawyers and judges who had never spent a day in university, but he had his reasons.

"Earning a law degree helped to level the field so that law was not strictly practised by people from rich families and deep connections to the bar."

In his autobiography "No Holds Barred", former MP John Crosbie spoke of Hickman as a politician who "didn't have the the stomach to become premier." As we spoke however, I wondered if my host was led by personal ambition at all in accomplishing one thing after another. A good example is how he became an MHA.

"Joey Smallwood had a brief conversation with me and when he left I suddenly realized that I was the Attorney General." In that cabinet role Hickman found that he could get more done if he didn't tell the premier about it.

"In all of Canada there were only two places we could not get a divorce from a court, Québec, and Newfoundland. You had to appear before the Senate in Ottawa to get a divorce, and what regular person then could afford to do that?... Most of the clergy were on board and I was surprised to get support from the Roman

## In Personam with The Honourable T. Alexander Hickman, Q.C. Continued from Page 7

Catholic Archbishop Skinner." It's turned out that his worship had no qualms as he felt his parishioners would not avail of this new convenience very much.

"David Day was a real number cruncher and he showed me statistics later that the largest group to use the courts in this matter were the Catholics."

Hickman would later approach the Dean of Law at Dalhousie with a proposal.

"Only three magistrates had law degrees and none of them wanted to become Provincial Court Judges for various reasons. So I suggested to the Dean that Dalhousie should take two magistrates a year as students, regardless of their academic background. After a few years we had magistrates returning as judges with a commitment to work in that capacity for at least nine years. I felt it important that the judges had to practice in rural communities and that the government could not move them around without their consent. This made people in rural Newfoundland feel more attached to the justice system and it increased the independence of our judges."

We talked about the Ocean Ranger disaster and the inquiry into it that he chaired and the Marshall Inquiry he chaired in Nova Scotia.

"I didn't want to do the Marshall Inquiry. I was exhausted over the Ocean Ranger but Brian Dixon (then Chief Justice of the Supreme Court of Canada) called me and said that I had to do it because it needed a chief justice and it couldn't be one from Nova Scotia since their whole legal system was on trial."

Some of the positive consequences of his work were unexpected. Quoting from one of his inquiries Canada's high court used the same logic to ensure that a person accused of a crime would have a copy of all the Crown and police notes and evidence that was going to be used against them in Stinchcombe versus R.

As a former legal aid solicitor and area director, I was surprised to learn he had a role in putting legal aid together. Again one goal lead to other positive outcomes.

"When legal aid started most of the lawyers are hired temporarily

to go handle cases in rural Newfoundland. I believe that was a starting point for the spread of law firms throughout the whole of the province."

His voice got a little dry. He had gotten elegantly thin since I last saw him. I had clients in Bay Roberts, so we stopped at that point. The man who helped start the first Unified Family Court in Canada; who helped purchase Mr. Herbert Alderbridges house to put this new court into; who helped fund legal aid with \$10,000 that he thought they could never spend, only to see it become the biggest criminal and family, low income law firm in the province; who helped get Worker's Compensation for deep-sea fishermen; this man; a life member of the Bar Association who grumbled that he wasn't getting notice about CBA events or their magazine; this Companion of the order of Canada; still wanted to be involved.

"Nobody will read this you know?" He said to me.

"Nobody remembers me and why should they? I'm not that important." And with that, one of the most important figures in the history of Newfoundland and Labrador gave me a firm handshake and wished my family well as I was out the door.

### **CBA-NL SECTIONS**

In order to keep our records up to date and to ensure that you receive notices and correspondence tailored to your practice and/or interest areas, please take a moment to complete the **Section Registration Form** available on the Branch website.

Newfoundland and Labrador Sections represent 29 groups of CBA-NL Branch members, organized according to specific areas of law and are the CBA's greatest resource for:

- Expertise in specific areas of law and matters relating to the objectives of the Association;
- CBA initiatives addressing matters of concern to the legal profession;
- Professional Development services.

To learn more about the work and resources of the National CBA Sections please visit the CBA website at **www.cba.org**.

## Mark Your Calendar

#### UPCOMING CBA-NL SEMINARS AND EVENTS

Wills, Estates and Trusts Section PD Luncheon: The Benefits of a Corporate Executor November 12, 2015 12:30pm, CBA-NL Branch Office

**2015 Bar Ad Reception**\* Friday, November 20, 2015 5-7pm, Magnum & Steins \*by invitation

**Presidents Reception** Thursday, December 10, 2015 5-7pm, Sheraton Hotel Court Garden

**Young Lawyers and Law School Students Holiday Social** Monday, December 21, 2015 5-7pm, Location TBC

Wills, Estates and Trusts Section PD Luncheon: Planning for Incapacitated Beneficiaries January 26, 2016 12:30pm, CBA-NL Branch Office

Wills, Estates and Trusts/Family Law Section PD Luncheon February 25, 2016 12:30pm, CBA-NL Branch Office

**CBA-NL/CBIA Easter Egg Hunt and Brunch** Sunday, March 20, 2016 10am-12pm, Geo Centre, St. John's

For more information on CBA-NL seminars and events, please email **cba-nl@cba.org**.

Section Professional Development Luncheons are open to CBA members only as a benefit of membership. There is no cost to attend and lunch will be provided. Members outside of the St. John's area can access all sessions via live webinar or conference call.

### FALL 2015 CBA NATIONAL CONFERENCES

**Leadership Conference for Professional Women** November 20-21, 2015 Vancouver, BC

Administrative Law, Labour & Employment Law Conference November 27-28, 2015 Ottawa, ON

#### UPCOMING ONLINE PD

Negotiating and Drafting Effective Risk Allocation: Integrated Liability And Insurance Clauses November 19, 2015 12:00pm-1:30pm (Eastern Time)

**Effective and Ethical Representation of Young People** November 19, 2015 12:30pm - 2:00pm (Eastern Time)

Legal Project Management: Driving Profits, Increasing Utilization and Enhancing Client Loyalty November 23, 2015 5:00pm - 7:00pm (Eastern Time)

Canada's Significantly Amended Trademark Laws: What Canadian Brand Owners and In-House Counsel Need to Do Right Now November 25, 2015 12:00pm - 1:30pm (Eastern Time)

The Votes are In: A Rule of Law Analysis of the 2015 Federal Election December 8, 2015 12:00pm - 1:30pm (Eastern Time)

For more information and to register, please visit www.cbapd.org

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