IN THE PUBLIC INTEREST

Work of the Task Force on the Rule of Law and the Independence of the Bar now published

The independence of the bar is a concept much defended and highly esteemed but not easily defined nor readily understood. Moreover, there are few comprehensive works, particularly from a Canadian perspective, explaining the critical importance of an independent bar to a free society.

In the Public Interest aims to fill this gap. The Report of the Law Society's Task Force on the Rule of Law and the Independence of the Bar has now been published, together with six commissioned research papers by leading legal academics. The volume is an invaluable reference work on all aspects of the importance of an independent legal profession.

While recognizing that there is no single definition or understanding of the concept of an independent bar, the report espouses two main idea(1)s — independence of judgment and independence of control.

The first idea (and ideal) of independence is that a lawyer, in reconciling her or his duties to a client and to the court, must exercise independent judgment. The second idea (and ideal) of independence is that the lawyer must remain free of external manipulation, state interference or ulterior influence in performing his or her duties.

- In the Public Interest -

Beginning with a Statement of Principles, and drawing on the commissioned papers, the task force's report explores the evolving concept of an independent bar through four different lenses:

- 1) The independence of the bar as a constitutional principle;
- 2) The origins of the independence of the bar;
- 3) The relationship between the independence of the bar and the public; and
- How the independence of the bar has developed in the context of two recent case studies: the scope of lawyerclient confidentiality in relation to money laundering and

the right to effective representation by a lawyer in relation to security certificates in the immigration and national security areas.

A compelling read, the report offers thoughtful consideration of the history of the independent bar, its meaning and significance in contemporary Canadian society and the particular challenges facing the bar as it evolves in the post 9/11 and Sarbanes-Oxley world – more than exceeding its goal of providing sustenance to the public debate on the issue.

The six commissioned papers included in the volume are equally engaging. By examining the idea of an independent bar through divergent frameworks, the papers help the reader build an increasingly sophisticated understanding of the concept.

To follow are brief descriptions:

 Michael Code and Kent Roach, University of Toronto, "The Independence of the Bar and the Public Interest: the Scope of Privilege and Confidentiality in the Context of National Security"

This paper explores the impact on solicitor-client confidentiality resulting from Parliament's security certificate procedures enacted under the *Immigration and Refugee Protection Act*.

 Angela Fernandez, University of Toronto, "Polling and Popular Culture (News, Television, and Film): Limitations of the Use of Opinion Polls in Assessing the Public Image of Lawyers"

The first part of this paper discusses the inability of positive personal experiences with lawyers to displace global negative perceptions. The second part links negative public perception to lawyer's job dissatisfaction and the third considers the Canadian context. 3) Philip Girard, Dalhousie University, "The Independence of the Bar in Historical Perspective: Comforting Myths, Troubling Realities"

This paper looks at the history of the ideas and practices connected to the independence of the bar, in England and Canada from about 1650 to 1950.

4) Patrick J. Monahan, Osgoode Hall Law School, "The Independence of the Bar as a Constitutional Principle in Canada"

This paper explores the extent to which an independent legal profession can be understood as a constitutional as opposed to a statutory principle in Canada by reviewing a variety of written and unwritten aspects of the Canadian Constitution.

5) Paul D. Paton, Queen's University, "The Independence of the Bar and The Public Interest Imperative: Lawyers as Gatekeepers, or Instruments of State"

This paper reviews the money laundering litigation and Section 307 of the *Sarbanes-Oxley Act* of 2002 as case studies of the changing direction of lawyers' obligations to clients and to the public interest, examining how the idea of lawyers as "gatekeeper" is being recast.

6) W. Wesley Pue, University of British Columbia, "Death Squads and 'directions over lunch': A Comparative Review of the Independence of the Bar"

A comparative review of diverse perspectives on the independence of the bar, this paper examines understandings of an independent bar, various

In the Public Interest



THE REPORT AND RESEARCH PAPERS OF THE LAW SOCIETY OF UPPER CANADA'S TASK FORCE ON THE RULE OF LAW AND THE INDEPENDENCE OF THE BAR



frameworks for conceptualizing professions and alternative regulatory models.

In the Public Interest is available through Irwin Law at www.irwinlaw.com.

About the Task Force

The Task Force on the Rule of Law and the Independence of the Bar was established in the fall 2005 with a mandate to produce a report, to be used by legislators and the courts, examining the interdependence of an independent bar and the rule of law.

The task force included Law Society representatives and eminent

Canadian authorities on the topic. The members of the task force were bencher Neil Finkelstein (Co-Chair), bencher Professor Constance Backhouse (Co-Chair), bencher Earl A. Cherniak Q.C. (Co-Chair), the Honourable Jack Major, the Honourable Michel Proulx, the Honourable Michel Proulx, the Honourable Sydney Robins, Sheila Block, David Scott, Q.C., Jack Giles, Q.C., David Jackson and Professor Richard Simeon.

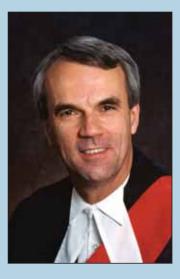
The task force was assisted by Special Adviser Carol Hansell. Professor Lorne Sossin of the University of Toronto acted as the research director.

LL.D.s awarded along with LL.B.s at 2007 Call to the Bar Ceremonies

Every year, as part of its call ceremonies, the Law Society presents honorary degrees of Doctor of Laws (LL.D.) to distinguished individuals who exemplify the values held in esteem by the legal profession. Honourees then serve as inspirational keynote speakers for the graduates.

This year, the Law Society held five ceremonies between June 12 and June 19 to call to the Ontario Bar the province's 1,121 new lawyers. The first ceremony was held in Ottawa, the second in London, and the final three in Toronto. At each ceremony, Law Society Treasurer Gavin MacKenzie presented an honorary doctorate to each keynote speaker: in Ottawa, the Honourable Brian W. Lennox, LL.D., former Chief Justice of the Ontario Court of Justice; in London, the Honourable W. Dan Chilcott, Q.C., LL.D.; in Toronto, Barbara Jackman, LL.D.; and, also in Toronto, on behalf of the late Honourable Justice Archie Campbell, LL.D., Doug Hunt, Q.C., spoke after accepting Justice Campbell's posthumous award.

The Honourable Brian W. Lennox, LL.D.



Your training and your special knowledge, combined with the responsibilities that you are undertaking today in repeating the Barristers' Oath, create an obligation on you that is different from that of any other profession. Our democracy is founded upon the principle of the rule of law: laws that you have studied, laws that you will learn, or laws that some of you may eventually help to create. As lawyers, you have not only the ability, but also now the obligation, to ensure the protection of the enduring values of Canadian society as expressed in our Constitution: freedom of conscience and religion, of thought and expression; democratic rights; life, liberty and security of the person; freedom from arbitrary or unreasonable state intrusion; the right to an independent and impartial tribunal; equality, tolerance and justice. The oath that you take today is neither a hollow promise nor a simple, technical pre-requisite to becoming a lawyer. It is the essence of our obligation as lawyers in society. You are undertaking a professional career that requires integrity and commitment, and you are promising to uphold both the

Constitution and the law. You have worked extremely hard to reach this point. Many of you have made real sacrifices, as have those closest to you; some of you will be continuing a proud, family tradition; others will be breaking new ground and fulfilling an ambition that may have existed in your family for years. It is a proud and a glorious moment for all of you. ◆



The Honourable W. Dan Chilcott, Q.C., LL.D.

Having been at the bar for over 50 years, I can mention a few attributes that may be helpful in your practice whether you are a litigator or doing solicitor's work. I will not expand on them as their everyday meaning is perfectly clear: You will need imagination, energy, discipline, civility, compassion and trustworthiness. Some say the four H's will be enough: Hard work, Humility, Honesty, and Humour. These four are

certainly a good foundation, but I think you must add integrity, common sense (the greatest gift of all), independence, commitment, and courage. All of these add up to REPUTATION – the most precious asset a lawyer can possess. I am told by the practising bar of all ages that the practice of law today is a high-stress vocation. So also remember to relax – enjoy yourself and your family and the world about you – because life is much more than dedication to the practice of law or the pursuit of success and wealth. And never be intimidated: If you wish to try something new, try it. I give you an old but still relevant quote: "The tragedy

of life does not lie in not reaching your goal. The tragedy lies in having no goal to reach. It is not a calamity to die with dreams unfulfilled, but it is a calamity not to dream. It is not a disgrace not to reach the stars - but it is a disgrace to have no stars to reach for. Not failure but a low aim is the sin."

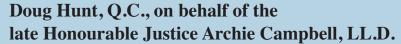


Barbara Jackman, LL.D.

In becoming members of the bar, you do not just have a responsibility to practice ethically in the best interests of your client and as officers of the court, you have a responsibility to work on perfecting our system of justice. For too long, those who participated in the justice system in Canada were mostly men, middle class, and white. Today, there are not only more women entering the profession, but, reflective of our multi-cultural society, there are more minorities. However, as bencher and Law Professor Constance Backhouse wrote in her book, Colour Coded: A Legal History of Racism in Canada, 1900 – 1950, "the Canadian legal system has played a principal and dominant role in creating and preserving racial discrimination. Racism is a deeply imbedded, archly defining characteristic of Canadian history. This is a legacy that has contributed in tenaciously rooted and fundamental ways to the current shape of Canadian society." Despite the fact that there are more minorities and women than ever before in the legal profession, racism and sexism still exists in our legal system. It is of fundamental importance that we all recognize that there are serious problems in our justice system and that we must work to improve it and make it more responsive to the needs of all. The worst that we can do is laud ourselves for what a wonderful system we have. It is good, it is dynamic and it will never be the ideal system of justice that we all want and believe in unless we work at making it so. *

The late Honourable Justice Archie Campbell

Doug Hunt, Q.C.



I am accepting this post-humous honorary Doctor of Laws Degree on behalf of the late Justice Archie Gray Campbell. Before Justice Campbell died, the Treasurer informed him that he would be receiving this prestigious award today. While Justice Campbell undoubtedly knew that he would not be present today to receive it, he was very pleased and excited, because he loved the law and everything about it. He committed his professional life to serving the public. His generous spirit and his personality set Archie apart from all other lawyers and judges of his time. He treated each person with respect and courtesy, no matter what their rank or status. He had a



profound sense of justice and he constantly struggled to be certain that justice was administered fairly and evenly in every situation over which he had influence. What do I think that Archie Campbell might have said to those of you who are so fortunate to be embarking on the great adventure that is the practice of law? I think that he might have exhorted each of you to embrace this new challenge with everything you have, but not to let it consume you to the exclusion of all of the other interesting aspects of life that make it rich and memorable. I think that he might have said that while you should passionately pursue justice at every turn, continue to be open to all of the other delights in the world around you, and do not take yourself too seriously. And he would have undoubtedly said, "Have fun and laugh." \blacklozenge

Law Society hosts symposium on history of Canadian legal profession

To celebrate the 175th anniversary of Osgoode Hall, the Law Society held an on-site symposium on the History of the Canadian Legal Profession on October 12. The one-day event highlighted the legal profession's long and rich history with a diverse offering of papers from scholars across the country. Presenters explored historic themes relating to the profession's early history, legal education, social change, professional ideology and writing legal history.

The symposium concluded with a thoughtprovoking discussion on the future of legal history scholarship and suggestions for encouraging research in the field.

More than 120 people attended the symposium, which was followed by a reception. This was the final celebration held at Osgoode Hall this year in honour of the building's anniversary.

"Early History of the Profession in Canada" panellists are shown here, from left to right: Jean-Philippe Garneau, Professor of History, University of Quebec in Montreal; Deidré Rowe Brown, PhD Candidate, OISE, University of Toronto, and Executive Assistant to the Treasurer, Law Society of Upper Canada; Jim Phillips, Professor of Law, University of Toronto; June Girvan, Volunteer-in-Chief, J'Nikira Dinqinesh Education Centre's History-in-the-Street Initiative: North Star Legacy/Reconciliation Day in Ottawa; and Jeffrey Welsh, PhD Candidate, Queen's University. History symposium Chairs, from left to right: Jim Phillips, Professor of Law, University of Toronto; Law Society bencher Constance Backhouse, Faculty of Law, University of Ottawa; and W. Wesley Pue, Faculty of Law, University of British Columbia.



Panellists for "History Aspects of Professional Ideology" are, from left to right: Rhodri Windsor-Liscombe, Head of Department of Art History, Visual Art and Theory, University of British Columbia; Eric M. Adams, Professor of Law, University of Alberta; Graham Price, Barrister & Solicitor, Member of Alberta, NWT, Nunavut and Manitoba Bars; session Chair Philip Girard, Faculty of Law, Dalhousie Law School; and Hamar Foster, Professor of Law, University of Victoria.

175 Years • 175 ans Osgoode Hall

The panellists who presented "Legal Education in Historical Perspective," are, from left to right: David G. Bell, Professor of Law, University of New Brunswick; Mélanie Brunet, PhD, Sessional Lecturer, Department of History, University of Toronto; and Charles Levi, Graduate Student, Master of Information Studies, University of Toronto.

"The Profession and Social Change: Individual and Collective Studies" panellists are, from left to right: Susan Lewthwaite, PhD, Research Co-ordinator, Corporate Records and Archives, Law Society of Upper Canada; session Chair W. Wesley Pue, Faculty of Law, University of British Columbia; Dorothy E. Chunn, Professor of Sociology & Anthropology, Simon Fraser University; and Law Society bencher Constance Backhouse, Professor of Law, University of Ottawa.

Law Society develops new strategies to assist articling students facing challenges in obtaining articles

The Law Society is forging ahead with New, proactive strategies designed to address challenges students may face when entering the profession. The strategies will be developed based on the findings of the Articling Consultation Report commissioned by the Equity and Aboriginal Issues Committee. The consultation took place in 2006 and the report was presented to Convocation in June 2007.

Conducted by the market research firm, The Strategic Counsel, the study was designed to uncover some of the challenges to obtaining articles, as well as any common issues among those who were unable to find articling positions. The consultation also looked at specific experiences of students seeking articling positions, including those from Francophone, Aboriginal and equality-seeking communities, as well as mature and internationally trained (NCA) students.

"We wanted to make sure we understood the needs of these students so that we could develop successful programs to provide assistance and address the specific challenges faced by some students," explains Josée Bouchard, Law Society Equity Initiatives Advisor. "Not all students encounter the same challenges. For example, mature students don't necessarily face the same challenges as racialized, Francophone, or internationally trained (NCA) students, and mature women may face different challenges than mature men when entering the profession."

A target group of 299 students who were still seeking articling positions or had withdrawn from the process was identified. Of that group, a total of 52 were interviewed.

While those who participated in the consultation experienced difficulty in securing an articling position, three communities of interest to the Law Society reported particular challenges that were in many respects, unique to them: NCA students, mature students and members of racialized communities.

NCA Students

NCA students participating in the consultation said they faced challenges related to finding information about the accreditation process and finding an articling position once they became accredited. In response to concerns identified by this group, the Law Society plans to increase information and networking opportunities for NCA students by organizing two symposiums in spring 2008. The concept builds on the experience of providing similar, specialized symposiums to Aboriginal students. The Aboriginal student symposiums began in 2004 and students and lawyers who have participated in the program have responded very positively.

Mature Students

The consultation found that mature students, regardless of whether they had partners or children, often face challenges that their younger colleagues do not. For example, they often believe that their age is a detriment to their job prospects.

Findings also show that, in particular, female mature students of childbearing age face the greatest barriers – because of perceptions about family responsibilities and how that might detract from their job performance.

As a result of the findings, practical guidelines and resources will be developed to help legal employers adopt recruitment policies and/or practices that are fair and inclusive, and take into account the unique experiences of mature students as well as those of racialized and NCA students.

Racialized Communities

Members of racialized communities who participated in the study also said they faced challenges that their colleagues did not. While they noted that there were no reports of overt racism or racially based inappropriate questions asked during articling interviews, they inferred from their experiences that their racialized status impeded their job search.

Some participants, for example, pointed to cultural conventions that would be difficult for them to adhere to. Additionally, these participants had the perception that there is a greater prevalence of family networks with connections in the legal community among those who are not members of racialized communities.

As a result, practical and helpful strategies to help racialized students in entering the profession are being developed.

Other Strategies

The Equity and Aboriginal Issues Committee also plans to:

- Work with career offices of the Ontario law schools to develop strategies to address the challenges outlined in the Articling Consultation Report.
- Enhance student access to information about diverse career opportunities, including opportunities in legal clinics, with the government, in education, in corporations and in private practice.

The strategies stemming from the Articling Consultation Report complement many other projects and initiatives undertaken by the Law Society, including a recent consultation about developing strategies to retain women in private practice. This important project examines best practices to retain women in private practice and looks at the best practices in other jurisdictions. The study, along with recommendations, will be presented to Convocation in the winter of 2008.

Another recent survey polled some 5,000 lawyers at the entry level to see what factors affect their career choices when entering the legal profession. Results from this study are also anticipated at the beginning of 2008.

The Law Society also recently initiated a mentoring and peer support program tailored to the needs of students and lawyers with disabilities.

"We continue to be proactive in enhancing our programs and looking at new initiatives," says Bouchard. "The Articling Consultation Report provides us with another building block."

For more information about equity initiatives and programs, visit the Law Society website at *www.lsuc.on.ca*. ■



THE ADVOCATES' SOCIETY announces new executive



Michael Eizenga

Michael Eizenga, of Siskind, Cromarty, Ivey & Dowler LLP in London, has been named President of The Advocates' Society for the 2007-08 term. Joining Mr. Eizenga on the Executive Committee are Peter J. E. Cronyn, of Nelligan O'Brien Payne LLP in Ottawa (First Vice-President); Sandra A. Forbes, of Davies Ward Phillips & Vineberg LLP in Toronto (Second Vice-President); Marie T. Henein, of Henein and Associates in Toronto (Treasurer), and Mark D. Lerner, of Lerners LLP in London (Secretary). The Advocates' Society is a professional association for advocates, with some 3,600 members throughout Ontario. It is the primary provider of advocacy skills training in the province and it plays a prominent role in justice reform initiatives and in preserving and strengthening the position of advocates and the rights of the public.

For more information about the Advocates' Society, visit *www.advocates.ca*.



at Osgoode Hall

Osgoode Hall rang with the sound of young voices as the Law Society of Upper Canada again hosted students for the annual Take Our Kids to Work Day on November 7. Lawyers were invited to register grade nine children they knew for a program designed to give students an overview of legal careers.

Over 200 students participated, and the popular program filled up quickly. The students heard from a variety of knowledgeable speakers with a wealth of information including:

- Nancy Reason, Manager, Professional Development, The Law Society of Upper Canada;
- Cettina Cornish, Counsel, Professional Development & Competence, The Law Society of Upper Canada;
- Steve McClyment, Senior Investigation Counsel, The Law Society of Upper Canada;

- Francine Herlehy, Assistant Dean (Student Services), Faculty of Law, University of Windsor;
- Joseph Salmon, student, Osgoode Hall Law School;
- Reena Lalji, Associate, Gowlings;
- and Martha McKinnon, Executive Director, Justice for Children & Youth.

Over the course of the afternoon, participants engaged in presentations and discussions on how to become a lawyer, the law school and the law student experience, working in a firm and a legal clinic and on what makes a bad lawyer. Attendees took home a CD-ROM with interactive resources on planning a legal career.

Take our Kids to Work Day is a national initiative of the Learning Partnership that began in 1994. This is the second year that the Law Society has made the program available to lawyer licensees and their guests.

NEWS · ROUNDUP

Child Advocacy Project

The Child Advocacy Project kicked off the 2007 school year with its Recruitment and Training Session on August 28. Lawyers interested in volunteering with the Child Advocacy Project were invited to participate in the training session, which served as a general primer as it relates to human rights and children. A record 45 new volunteer recruits heard Martha Mackinnon, Executive Director of Justice for Children & Youth, and Jeffrey Rosekat of Gardiner Roberts, speak on recent and upcoming changes to the *Education Act*, safe school policies and education law.

The Child Advocacy Project is a free service of Pro Bono Law Ontario, conducted in partnership with The Advocates' Society (Ontario's largest law association) and Justice for Children and Youth. The program is dedicated to safeguarding the public education rights of children and youth across Ontario. Through the service, volunteer lawyers provide free legal services to:

- Students who are involved in the Special Education process
- Children and youth who are at risk of being suspended or expelled
- Children and youth who are being denied the right to enrol in school
- Students who feel unsafe at school.

For more information, please visit *www.childadvocacy.ca.*

Louis Riel Day public forum looks at co-management issues

Leaders from Métis and First Nations communities gathered at the Law Society on November 16 to discuss perspectives on negotiating and managing co-management agreements with the federal and Ontario governments. More than 90 people attended the forum, held in honour of Louis Riel Day. Aboriginal Affairs Minister Michael Bryant provided opening remarks to the forum, talking about his Ministry's priorities. Shown here, from left to right are: Austin Acton, law student; John Beaucage, Grand Council Chief, Anishinabek Nation; Justice Duncan, lawyer, Ecolustice Canada; Jean Teillet, partner, Pape Salter Teillet LLP; and Tony Belcourt, Métis Nation of Ontario President.

National Aboriginal Day

In recognition of National Aboriginal Day, which is traditionally celebrated on June 21 each year, the Law Society of Upper Canada hosted a public legal education seminar and reception on June 7, 2007. The seminar provided a perspective of both the role of Aboriginal judges and the situation for Aboriginals accused within the criminal justice system. The panel of speakers included two Aboriginal judges – Justice Harry LaForme, of the Court of Appeal for Ontario; and Justice Todd Ducharme, of the Superior Court of Justice of Ontario, who also serves as a deputy judge for the Supreme Court of the Northwest Territories. Justice LaForme, who is the first Aboriginal person appointed to any appellate court in Canada, told the audience

of approximately 120 people that there is a "strong tendency for the media and the public to focus on Aboriginal protesters as law-breakers rather than on the fact that they are protesting broken laws, also known as breaches of treaties or dishonoured treaties." Shown above: former bencher Tracey O'Donnell and Justice Harry S. LaForme.

Pride Week forum examines future of lesbian, gay, bisexual and transgender legal activism To celebrate Pride Week, a group of the legal community's most ardent advocates and activists gathered at Osgoode Hall on June 20, 2007 to discuss potential obstacles faced by the lesbian, gay, bisexual and transgender (LGBT) community. Forum panellists noted that while LGBT activists have successfully achieved a measure of equality in Canada that is among the best in the world, there is still work to be done, primarily in the areas of education and access to justice. The forum attracted some 130 participants. The Law Society and The Sexual Orientation and Gender Identity Section of the Ontario Bar Association co-hosted the forum and the reception that followed.

2008 Nominations Requested



Law Society Medals

The Law Society Medal was established in 1985. The purpose of the award is to recognize outstanding service within the profession, whether in a particular area of practice, the academic sphere or in some other professional capacity. The award may be made for devotion to professional duties over a long period or for a single outstanding act of service in accordance with the highest ideals of the legal profession.

Nominations for this award should be submitted in writing with a current curriculum vitae and letters of support. Persons who have been nominated in past years, but not recognized, may be nominated again.



Lincoln Alexander Award

The Lincoln Alexander Award is awarded annually in recognition of an Ontario lawyer who has demonstrated long-standing interest and commitment to the public and to the pursuit of community service on behalf of residents of Ontario. The award was created in 2002 in honour of The Honourable Lincoln M. Alexander, P.C., C.C., O.Ont., Q.C., former Lieutenant Governor of Ontario, Member of Parliament, federal Cabinet Minister, and 2002 Law Society Medal recipient, to reward his dedication to the people of Ontario and the legal community.

Nominations for this award should be submitted in writing with a current curriculum vitae and letters of support. Persons who have been nominated in past years, but not recognized, may be nominated again.



Laura Legge Award

In May 2007, Convocation approved the establishment of the Laura Legge Award. This award is to be given annually, beginning in 2008, to a female member of the Law Society who has exemplified leadership within the profession.

Laura Legge has been a member of the Law Society of Upper Canada since 1948. She became the first elected female bencher, the first woman ever to serve as Treasurer and is a senior partner of the firm of Legge & Legge. This award has been created to recognize her exemplary professional career, her mentorship of other lawyers, her long-standing service to the Law Society and her admirable contribution to community service.

Nominations for this award should be submitted in writing with a current curriculum vitae and letters of support.

Deadline for nominations is February 29, 2008 Deidré Rowe Brown, Office of the Treasurer Osgoode Hall, 130 Queen St. West, Toronto, Ontario M5H 2N6



The Law Society of Upper Canada

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