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The quintessential trusted advisor

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Monique Mercier, Executive Vice-President, Corporate Affairs,
Chief Legal Officer and Corporate Secretary, TELUS
"General Counsel Emeritus of the Year 2014"

"The quintessential trusted advisor"

By André Gagnon

Monique Mercier, a corporate lawyer who practiced at Stikeman Elliott in Montreal, with fiscal law stars such as Guy Masson and Maurice Régnier who introduced her to intricate tax and corporate matters, moved to become General Counsel of Bell Canada International and later on Executive Vice-President of Legal Services of Emergis and TELUS.

According to Norm Steinberg, Global Vice Chair and Chairman –Canada of Norton Rose Fulbright, who knows Monique well (and from whom we borrowed the phrase) "She is the quintessential trusted advisor." Norm praised her legal talents at a recent recognition dinner held in her honour at the Montreal University Club. Norm Steinberg's original introduction of Monique is included in a side-bar of this article. It is filled with words of admiration and respect for a colleague who has had an impressive career.

The minute Monique walked into the room, it was magic. She attracted everyone's immediate attention like a magnet, a "rock star" suggested The Montreal Lawyer photographer Paul Ducharme who has been involved in the entertainment business for years. Friends and colleagues rushed to greet her and her party which included her spouse, Shaul Ezer, now author and playwright, and a former law professor and corporate lawyer. In her remarks, Monique thanked him for his legal advice and support during the proxy fights between TELUS and Mason Capital.

Mason Capital is a New York hedge fund which has attempted to block TELUS' consolidation of two classes of shares during a one-year period through aggressive tactics. The battle is discussed at length in TELUS' 2013 Annual

Report that may be consulted at http://about.telus.com/investors/ammialreport2013/files/pdf/en/ar.pdf

It was that case and its conclusion that raised this magazine's interest in her career and her unique personality.

Monique was named "General Counsel Emeritus of the Year 2014"/"Chef de contentieux émérite de l'année 2014" by Le Monde Juridique, The Montreal Lawyer's sister publication, for her outstanding leadership and brilliant corporate law talent.

The Mason Capital/ TELUS case is now taught as a case study at the Harvard Business School.

François Côté, now TELUS' Executive Vice-President and Chair, TELUS Ventures, another mentor of Monique who described himself as "Monique's alter ego" and long-time friend, gave the great event an hilarious boost by telling anecdotes about their business relationship that illustrate commitment to companies they both served and greatly helped develop through the years at their helm. François inspired Monique and guided her career by pointing out

opportunities that she seized based on mutual trust.

Monique met François at Emergis, then a Bell Canada/BCE subsidiary, later bought by TELUS. Since joining TELUS in 2008, Monique has been promoted four times. Today, she is responsible for a team of more than 300 people across the country. As Executive Vice-President, Corporate Affairs, Chief Legal Officer and Corporate Secretary, she oversees a broad portfolio including government relations, regulatory affairs, social and media relations, sustainability, real estate, disaster recovery and corporate services.

They both tipped their hat to Brian Edwards, founder and former CEO of Emergis, and expressed admiration and respect for each other as executives. They also praised the vision of TELUS' former CEO and current Executive Chair, Darren Entwistle.

Monique warmly expressed her appreciation to Sidney Horn of Stikeman Elliott who helped her with sound advice. "Be

Homage to Monique Mercier

Norman M. Steinberg, Ad. E.
Global Co-Chair; Chairman - Canada

On behalf of Norton Rose Fulbright and myself, it is a privilege and a pleasure to have the opportunity to celebrate Monique Mercier's outstanding career.

Monique's reputation precedes her, of course, but it is still essential to go over some of the key milestones along the road she took to professional success. She graduated in law from the University of Montréal and then went on to earn a Master's degree in philosophy and political sciences from Oxford University. She started her career by articling with us when we were Ogilvy Renault and then, after taking maternity leave, continued her career at Stikeman Elliott in Montréal as a tax lawyer.

Five years later, she joined BCE as Assistant General Counsel. Monique played a strategic role at BCE and Bell in many acquisition and financing transactions as well as in governance matters. After eight years at BCE, she joined the new subsidiary Bell Canada International. She was Chief of Legal Affairs there for two years and held various responsibilities, including the negotiation of complex financing arrangements and the implementation of mergers and acquisitions world-wide, including in Mexico, Latin America, Taiwan and South Korea.

In May 1999, she joined another Bell subsidiary, Emergis Inc., as Executive Vice-President, Law and Human Resources. Emergis was a public company listed on the TSX until it was purchased by TELUS Corporation in January 2008. After the purchase, she continued in the same position and was also given responsibility for business development. Monique was recruited in 2011 by TELUS's head office in Vancouver to serve as Chief Legal Officer. She has been promoted many times since then and is now Executive Vice-President, Corporate Affairs, Chief Legal Officer and Corporate Secretary at TELUS.

Despite her outstanding career and very busy schedule, Monique finds time to sit on the boards of several companies, including Stornoway Diamond Corporation, and many not-for-profits, including the Canadian Cancer Research Society. In 2012 and 2013, Monique was named one of Canada's Top 100 Most Powerful Women by the Women's Executive Network.

On a personal note, I have had the privilege of working with Monique throughout her career at BCE, Bell Canada International, Emergis and TELUS. Monique has always exemplified the best in general counsels, demonstrating an exceptional sense of judgment and giving her colleagues invaluable advice. As a leader, she was always able to work through complex situations or files by finding the most effective way to bring together her team and outside advisors. Everyone always enjoyed working with Monique because no matter how great the pressure or difficult the situation, she always remained calm and an absolute pleasure to work with. She is an inspiration to all of us.

She is the quintessential trusted advisor.

patient, try to integrate yourself into the company. TELUS is a great company with lots of opportunities for you. One day, I predict, you will be general counsel," he told her. She said it made her laugh at first...but then she complied.

Monique said it was challenging for her to move in a 65-member legal department in a new company and it was the same for her former Emergis colleagues. "To be the target of a take-over instead of the other way around, being part of the acquisition team, was difficult."

She said she later applied for the general counsel position when the incumbent retired. It was a five-month process led by a talent search firm with many interviews and psychological tests. Monique said she navigated well through the interviews until she was caught off-guard by the last interview...with TELUS' CEO, Darren Entwistle. She never expected the questions he asked her.

Darren is a remarkable man who has unbound energy and intensity. Monique said that François had warned her to, "get ready and prepare yourself; he's a very impressive man; he's a genius and very eloquent." "I thought I was ready, but then I realized I wasn't completely ready", Monique recalls.

At the end of the interview, she told TELUS' CEO that she had just received an email from her daughter Isabelle (a litigation lawyer working in the USA) inquiring about the interview. Darren told her, "You can email your daughter back and tell her the interview went very well." Monique landed the job and moved to Vancouver three years ago.

"TELUS has been a great opportunity for me. I'm extremely happy. I benefit from the support of an extraordinary team to whom I owe my success". She recognized Caroline Poirier, Vice-President of Legal Services, and Michèle Bolduc, former associate general counsel, who were present at the dinner. Monique wanted her great friend, Céline Hervieux-Payette, to be present at the event. She also said a few words about Monique. Formerly with Fasken Martineau, she is now serving as Senator. Céline has also been an inspiring mentor for Monique. Both have worked incredibility hard to ensure gender equality for men and women in the corporate world and have left their mark from coast to coast and beyond.

Monique acknowledged her speech sounded like a retirement speech. "Oh no, I'm not retiring. It's actually just the opposite; believe me!" as the audience cheered and applauded loudly.

TELUS vs Mason Capital

Background and Timeline:

In 2013, Monique and her team successfully closed the case with Mason Capital, a New York hedge fund which attempted to block TELUS' share exchange proposal. Her leadership and dedication were absolutely critical to the successful outcome of TELUS' one-for-on share exchange and the collapse of two share classes, which helped TELUS achieve better liquidity for its investors, including team members, while enhancing the company's important track record in corporate governance.

- TELUS announced a proposal to convert its non-voting shares into common voting shares on a one-for-one basis in February 2012. The proposal to be approved required a favorable vote of 2/3 of common and non-voting shareholders.

- One class of shares would address TELUS' need to:
  - Simplify our company's share structure;
  - Align with best-in-class corporate governance practices;
  - Increase the availability and marketability of TELUS' common shares and allow TELUS common shares to be listed on the NYSE for the first time;
  - Support the increased value of both classes of shares, which immediately jumped in value upon the initial announcement - the value of both common and non-voting share classes increased by a combined $678 million in a single day.

- After announcing the proposal, New York-based hedge fund Mason Capital quietly acquired 19% of TELUS' common shares, while simultaneously borrowing and selling short an almost equal amount of non-voting and common shares.

- This tactic, known as 'empty voting', gave Mason significant voting power despite having almost no economic interest in TELUS and put them in a position to make millions of dollars if they could significantly widen the share price between the two classes of shares and defeat TELUS' proposal.

- Prior to the 2012 Annual General Meeting of shareholders, where the proposal was to be voted on, TELUS withdrew the proposal, stating the company would re-submit a new proposal in the future.

- TELUS's initial proposal required approval of two-thirds of both voting and non-voting shares. It re-tabled a proposal requiring a simple majority of common share votes and two-thirds of non-voting shares.

- October 2012: Mason Capital attempted to challenge TELUS' new share exchange proposal through the court.

- October 15, 2012: The Supreme Court of B.C. rejected Mason Capital's attempt to challenge TELUS' share exchange proposal. The Court confirmed the validity of the order it had initially granted to TELUS allowing the share exchange to go to a shareholder vote, enabling the company's

shareholders to vote on its proposal to exchange non-voting shares for common shares on a one-for-one basis.

- October 17, 2012: Following another proxy battle, TELUS shareholders, at a special shareholder meeting, voted strongly in favour of a proposal to exchange the company's non-voting shares for common shares on a one-for-one basis. None of Mason's Capital's four resolutions received the support from common shareholders required for these resolutions to be adopted. The voting participation was high at 73.6 per cent of the common shares outstanding and 84.6 per cent of the non-voting shares outstanding.

- December 2, 2012: Following shareholder approval, the Supreme Court of BC approved the plan of arrangement. Mason Capital filed an appeal.

- January 2013: Mason Capital abandoned their appeal and thus the decisive ruling from the Supreme Court of B.C. stood, enabling TELUS to move forward with the exchange.

- After completion of the share exchange in February 2013, TELUS had a single class of circa 326 million common shares listed on both the Toronto Stock Exchange (TSX) and the New York Stock Exchange (NYSE).

- Since TELUS first announced its intent to combine its share classes in February 2012 through to January 24, 2013, TELUS' common and non-voting shares went up 18 per cent and 22 per cent respectively, whilst the TSX index increased by just 1.6 per cent. Furthermore, TELUS's total market value increased by $3.5 billion during the same timeframe.

- The Mason Capital/TELUS case is now being taught as a case study at the Harvard Business School.

Source: TELUS Annual Report 2013

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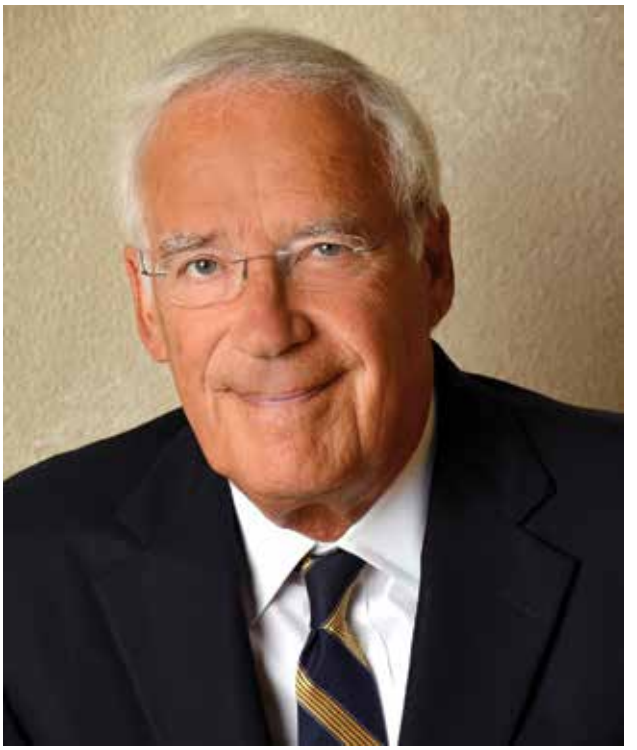
SUMMARY

Cross-examination of plaintiff's lost-profits damages expert: Part 1

by Richard M. Wise



This is Part 1 of a two-part article on the cross-examination of a plaintiff's damages expert. This article outlines the various methods applied by the financial expert in preparing his or her opinion and identifies areas for cross-examination by counsel. Part 2 will discuss alternative damage-quantification approaches adopted by the expert and suggest areas for cross-examination under each method.

INTRODUCTION

The damages expert will rely on counsel regarding (a) the underlying facts, (b) the recovery theory under which the damages are being claimed, and (c) the requisite measure of damages, and will review with counsel the various heads of damages regarding the statutory, contractual, or other legal basis for each compensable category.

The expert's quantification of economic damages, whether in contract litigation or in extra-contractual or delictual litigation (and subject to the remedies set out in the Québec Civil Code), it may involve, inter alia, the quantification of (a) the loss of past and future profits suffered by a plaintiff's business, or (b) the impairment or loss of the value of the business adversely affected by defendant's alleged wrongful acts. In some cases, it might involve a combination of both, or that the affected business may have even been totally destroyed. Depending on the nature of the claim and whether the plaintiff is an established or unestablished business, the lost profits may be past, present and/or future.

When the damages expert quantifies the loss of future profits or the loss in the value of the business, he or she will (a) project the but-for lost future economic income and then (b) convert this stream of projected lost profits to a net present value (i.e., a capital sum), by applying a present-value discount factor that considers both the time-value of money and the risk-profile of the but-for lost profits. The expert's calculations of the lost profits are necessarily judgmental and can be open to intense cross-examination. The various inputs making up the lost-profits as well as the present-value discount rate (i.e., rate of return) used by plaintiff's expert will typicaly be scrutinized and critiqued by defendant's own damages expert and challenged by defendant's attorney in cross-examination.

cross-examination BY DEFENDANT'S COUNSEL

It is beyond the scope of this article to address the qualifications of plaintiff's damages expert, or causation and mitigation issues. This article assumes that the financial expert has been accepted or qualified by the court as an expert in the quantification of economic damages.

There are a number of fundamental questions that defendant's counsel can put to plaintiff's expert in cross-examination. As deemed necessary, counsel will formulate these questions with the input of his or her damages expert. Of course there may well be various other areas giving rise to further cross-examination and/or follow-up questions at trial, often with the input of the cross-examiner's expert.

Without affording the plaintiff's expert a platform, or forum, to explain, expatiate and/or reinforce his or her theory or opinion given in direct testimony, the cross-examination of plaintiff's expert should probe into the following areas, as appropriate, but keeping the expert's replies strictly limited, controlled, and confined to the narrow subject matter contained in the question.

DAMAGES FOR LOST PROFITS – METHODOLOGIES

Plaintiff's expert must support a reasonable approach to the quantification of economic damages in order to demonstrate that the losses have been established or proven with reasonable certainty or reasonable probability.

Most lost-profits damage calculations adopt one of the following three approaches:

1. Sales Projection (But-For) Approach;
2. Before-and-After Approach; and
3. Yardstick (Comparable) Approach.

Sales Projections (But-For) Approach

Adopting this approach, plaintiff's expert creates an economic model for the damaged business, using assumptions as to how the plaintiff's business would have performed but for the defendant's alleged wrongdoing. Based on such assumptions, the expert projects revenues and related costs during the damage period. The but-for results (projected revenues minus projected costs) are then compared to plaintiff's actual results during this period. The excess of each year's projected but-for results over actual results is discounted (present-valued) back to the damage date at a risk-affected rate of return, that considers the time-value of money and the risk-profile of the future lost-profits stream.

Because this methodology requires developing an economic model that includes plaintiff's projected sales and related net profit, a proven, historical track record supporting the expert's extrapolations may be necessary to convince the trier of fact. Industry forecasts of growth and profitability, in and of themselves, might not suffice.

To the extent that the value of plaintiff's business, as a capital asset, has been impaired or destroyed, such loss may also be included in the damages quantification. However, the aggregate of (a) the lost profits during the projection period and (b) the decrease, if any, in the value of the business as a capital asset cannot exceed (c) the present value of the plaintiff's loss of future profits (profits being the principal value-driver), immediately prior to defendant's wrongful conduct. There must be no double-counting.

In measuring damages for lost profits, the plaintiff's financial statements are only a starting point. The loss of revenues, minus the related incremental expenses (variable and direct – see below) incurred to generate those revenues, equals lost "contribution margin" (incremental lost profit margin). "Contribution margin" is defined as revenues less variable costs, including the "variable" component of semi-variable

costs. That is, for every lost dollar of sales, what was the amount of incremental lost profit that would have contributed to the plaintiff's pre-tax "bottom line" (i.e., to reducing fixed overhead, which in turn, would have increased the bottom line results)?

As lost profits (lost gross revenues minus related expenses) are lost net profits (before income taxes), the identification and estimation of these expenses are fundamental to any lost-profits quantification. The damages expert must therefore analyze the cost structure of the plaintiff's damaged business or asset, distinguishing among the "variable", and "fixed" components of the expenses.

Variable expenses are costs that vary in direct proportion to gross revenues or levels of activity (e.g., sales commissions, labour hours, royalties, etc.). Fixed expenses are costs that remain the same regardless of the level of gross revenues or sales volume of the business (e.g., insurance, rent, office payroll). Some fixed expenses may be fixed to the extent that they will not vary up to a certain gross-revenue limit; if the revenues are increased above that limit, these expenses will increase, but may remain fixed at the higher amount up to the new gross-revenue limit. A third category is semi-variable expenses, which are part-way between fixed and variable expenses and occur because the relationship between cost and sales volume is not always regular or linear, but take the form of a "step" function, i.e., they change at certain key-activity levels (e.g., additional rent for increased manufacturing or storage space used to support higher sales volumes; or telephone charges that have a fixed monthly component plus a variable component that relates to major long-distance usage).

As most variable costs of a manufacturing operation can be directly related to the product itself, fixed costs are usually incurred for the benefit of the entire business enterprise as a coordinated unit. Most fixed costs require allocation by the firm's accounting department to processes, departments, divisions, products, or some other identifiable profit centre or reporting unit, of the total enterprise. For example, head office and administration expenses are generally allocated to the various outlets of a chain of retail stores or restaurants.

The defendant will attempt to adduce evidence to show that the expenses of plaintiff's damaged business are higher than what plaintiff's expert had calculated.

Some Matters for the Cross-Examiner to Address

- Duration of the damage period.

- Whether budgets or forecasts made by the plaintiff had already been in existence prior to the damages-causing event.
- The major assumptions under which gross revenues/sales volumes of the affected business were projected.
- Whether underlying assumptions of plaintiff's expert are reasonable and consistent in light of the past performance of plaintiff's business and conditions expected to prevail during the but-for period.
- Basis and support for projected costs/expenses.
- How the expert accounted for the fact that projections are less "reliable" each year as they are made further into the future.
- Definition and interpretation of the term, profits, employed in "lost profits", and its applicability to the subject litigation (whether it refers to, or should be interpreted as, pre-tax profits, after-tax profits, operating income, profits before management bonuses, profits before discretionary expenses, profits before depreciation and amortization, profits before interest charges, adjusted profits, cash profits, economic income, accounting income, etc.).
- Whether, and to what extent, management interviews were conducted and details of the notes taken by plaintiff's expert during the interview(s).
- Whether there was an examination-for-discovery of plaintiff's management/financial officer.
- Whether there had been a business plan prepared by plaintiff (e.g., such as one furnished to the plaintiff's bank prior to the event).
- Whether expert had interviewed independent industry specialists and others, as appropriate.
- Whether plaintiff had future contractual expense-commitments at the damage date that would impact operating results during the post-event damage period (e.g., new labour agreement, new raw materials supply agreement, etc.).
- Whether capital expenditures would be required during the projection period.
- Whether external financing would be necessary during the projection period.
- Propriety of, and support for, the particular costing method used ("direct costing" vs. "absorption costing") by the expert.[1]
- Treatment of depreciation and amortization charges in the calculation of plaintiff's lost profits.
- Treatment of discretionary items (management fees, charitable donations, related-party income and charges, etc.).
- Validity of the terminal, or residual, value of the plaintiff's business.
- Calculation by plaintiff's expert of the discount rate (rate of return) applied in present-valuing the projected lost profits of plaintiff, including considerations regarding:
  - Projection risk.
  - Contingencies.
  - Weighting of the various company-specific factors considered in developing the discount rate used.
- Sources, reliability, relevance and objectivity of data used.
- Whether costs of another division or business unit of plaintiff's operations might be properly allocable to the injuriously affected division, including possible contributory charges.
- Integrity and fair presentation of any graphics prepared by plaintiff's expert to depict various numbers or amounts (might the graph or chart portray a misleading, exaggerated, or unduly dramatic picture?).
- Integrity and validity of the inputs to the regression analysis applied by plaintiff's expert, including the independent variable that was used. Regression analysis is a recognized statistical technique used to establish the relationship of a dependent variable, such as a company's sales, and one or more independent variables, such as gross domestic product per capita, income, and other economic indicators. By measuring exactly how large and significant each independent variable has historically been in its relation to the dependent variable, the future value of the dependent variable can reasonably be predicted.
- Whether plaintiff's expert had applied sensitivity analyses to test the reasonableness of the input variables (a slight variation of any variable potentially having a material effect on the lost-profits calculation). (The cross-examiner should already have in hand his/her own expert's sensitivity analysis and be prepared to confront or challenge plaintiff's expert on this issue.)
- How the expert dealt with inflation in the quantification of damages for lost profits.

Part 2 of this article will address the cross-examination of the damages expert under the Before-and-After Approach and the Yardstick (Comparable) Approach to damages quantification and provide the cross-examiner with issues to delve into in the cross-examination of plaintiff's lost-profits damages expert.

[1] These alternative methods are explained in a presentation by Richard M. Wise to the Faculty of Law at McGill University, "Quantification of Economic Damages", The Civil Law of Damages (Montreal: 1996).

Made In Court

The Montreal Lawyer asked in writing a few questions to Richard W. Pound, CPA and lawywer, who just published a new book which discusses 50 major decisions of the Supreme Court of Canada that in his opinion shaped this country. He wrote this book mainly for non-lawyers.
André Gagnon offers readers a rare interview with an olympic icon who made a major contribution to the world olympic movement in so many ways and who, as a fiscal law expert, may very well have saved the Olympics thanks to a comprehensive business and marketing plan of world brands targeted to maintain for years global games so vital for youth's health and moral fabrics.

Pound is counsel at Stikeman Elliott, specializing in tax litigation and commercial and sport arbitration.

Q. Made in Court: Supreme Court Decisions that Shaped Canada is the latest of several books you have written. What is it that motivates you to write these books?

A. First, I enjoy writing, as well as the background research, so it never seems like hard work. Second, I can write about what interest me and what may resonate with potential readers. The book on Chief Justice Jackett came out of having appeared in front of him and gradually realizing how important he was in the Canadian legal system. The two firm histories of Stikeman Elliott were aimed mainly at members of the firm and clients and the true crime story of Janise Gamble was a description of how a life can be ruined by keeping bad company. There were also three Olympic-related books, a biography of a McGill Principal, a couple of books of quotations and Canadian Facts and Dates. As for Made in Court, I wanted to do a book aimed at the general public, to show how important the Supreme Court of Canada can be in our daily lives and the shaping of modern society. I wanted the book to be completely free of the usual legal footnotes that often distract the reader from the central messages.

Q. You are both a Chartered Professional Accountant (formerly Chartered Accountant) and a lawyer? How did you choose between the two professions?

A. I am convinced that I made the right choice to be a lawyer who understands accounting, rather than an accountant who understands some law. In the law, you tend to be closer to the cutting edge of social change.

Richard W. Pound, counsel at Stikeman Elliott in Montreal

Q. Much of your legal career has been as a litigator. How do you find that to be fulfilling?

A. It tends to appeal to the problem-solver aspect of all those who love legal careers, in the sense that you must marshall your facts, choose the important ones and construct a persuasive argument that can be understood by the court. I also sit on the other side of the table as an arbitrator and appreciate good presentations of cases by counsel, which, in turn, help me understand better what judges look for when they hear cases.

Q. Has your Olympic involvement changed the way you appreciate sport competitions, especially when

athletes become tools in the hands of their country authorities for purposes of winning medals?

A. I certainly have no objection to government involvement in the building of sports installations and supporting athletes in their desire to improve their performances, since both are expensive and beyond the means of most individuals. I object to the de-humanization of sport and its use as some form of political expression, devoid of ethical values and with no regard to the health of the athletes. That removes the essence of sport and its contribution to a healthy society.

Q. In 2001, you ran unsuccessfully for the presidency of the International Olympic Committee. Do you have any regrets?

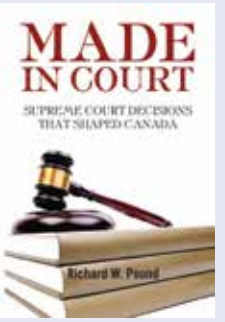
A. You always have regrets if you enter a competition and lose. I only ran for the presidency because I thought I had the most to offer, so it was disappointing that I was not selected. But, life goes on and I was able to continue to make a significant contribution to international sport through presidency of the World Anti-Doping Agency, which has its headquarters in Montreal. And, of course, I was able to continue to practice law, which I enjoy and which I would have had to give up – as well as writing books.

Q. You have been credited with having brought the Olympic Movement from poverty to relatively healthy financial circumstances through negotiation of television and marketing contracts. What else would you have done had you become president?

A. I would have insisted that we use our financial resources to continue improvement of the Olympic Brand, especially in the areas of ethical competition, assisting countries in the development of their athletes, encouraging governments to invest in the health of their communities through sport, being certain that we espoused sustainable development and ensuring that we did not permit any discrimination in sport. I would have made certain that the aspirational values of the Olympics were promoted and have maintained a level of excitement about hosting the Games. It is not necessary to spend billions of taxpayer funds to host excellent Games – in fact, the non-tax base revenues now cover all of the Games costs, leaving host countries to decide what infrastructure investments will produce valuable legacies.

Made in Court:
Supreme Court Cases That Shaped Canada

by Richard W. Pound



Canada has a rich and complex history. Our constitution was provided to us by the British Parliament, three and a quarter centuries after Canada was first inhabited by people largely of European descent. That feature of our history was the result of a treaty between Britain and France signed in 1763, wherein France ceded all its claims to North America save for two tiny islands in the Gulf of St. Lawrence to be used as victualing ports for its fishing fleet. Canada's constitution reflected this complex history and with the additional complication of having been superimposed over whatever legal rights to the territory were possessed by Canada's aboriginal peoples. Our constitution contemplated a federal state, with powers distributed between the federal and provincial governments. Until 1949, the British Privy Council maintained and exercised an avuncular power, with final disposition of appeals originating in Canada, a jurisdiction now exercised solely in Canada by our own Supreme Court. Fifty supreme court cases demonstrate how Canada's Supreme Court has effectively shaped much of what Canadian society is today. The court's role has evolved dramatically since the Canadian Charter of Rights and Freedoms was adopted in 1982 as part of our Canadian constitution, with which all Canadian legislation must comply. Thus our Canadian Supreme Court must rule on such diverse and contentious issues as assisted suicide, possible secession of Quebec, the exercise of religious freedom, and aboriginal claims. Right or wrong, the Court's decisions have a significant impact on the lives of all Canadians.

Richard W. Pound, Q.C., Ad. E. is Counsel in the Montreal office of Stikeman Elliott LLP and is a member of the Bar of Quebec and Ontario. He is Chancellor Emeritus of McGill University having served for ten years as Chancellor and five as Chair of the Board of Governors. He is a member of the International Olympic Commitee, a past president of the Canadian Olympic Commitee and is a member of the International Council of Arbitration for Sport. He has written extensively and been published on legal, sport and historical matters.

The Eternal Beauty of the Jewelry of Carl Faberge

Love of beauty is taste. The creation of beauty is art. - Ralph Waldo Emerson

By Olga Shevchenko

For couple of months, the Montreal Museum of Fine Arts was hosting an amazing exhibition called "Fabulous Faberge, Jeweller To The Tzars". The interest in the exhibition was great – over 100,000 visitors have seen this collection from the Virginia Museum of Fine Arts, Richmond, the largest such exhibit outside of Russia.

The exhibition featured 240 exceptional objects marked by beauty, elegance and originality – it included four of the forty-three remaining famous Easter eggs commissioned by the Romanovs. It was interestingly structured around four iconic imperial Easter eggs, and its organizers managed to create a layout uniting the history of Russia, and its decorative arts, religious and cultural traditions.

Why was this exhibition so popular? What was the source of the success of Peter Carl Faberge (he was appointed the Supplier by Special Appointment to the Imperial Court and later he was named "the Imperial Court Jeweler to the Russian Czars")? Why are people all over the world willing to pay so much for the jewelry signed by Faberge? Why did Victor Vekselberg, a Russian billionaire, purchase nine Faberge eggs from the Forbes publishing family for over $100 million in 2004?

Because he was the Peter Carl Faberge, head of the House of Faberge, or, as it was often referred, the Empire of Faberge.

If you ask people to name an outstanding jeweller, often, the response will be "Faberge". This name evokes the grandeur of the past, exquisite beauty and fantasy, luxury, exuberance and, of course, impeccable taste, elegance and perfection of execution.

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The story started in 1842 when Gustav Faberge, Carl's father, founded The House of Faberge. In 1872, Carl took over the business and within a few years, he created his own world of beauty and fantasy overshadowing steadily his competitors. The name Faberge suggests that his family has a French origin. Being Huguenots, in the 17th century, they had to flee from Picardy where they lived, to settle eventually in the Estonian town of Pernau where they became Russian subjects. There, Gustav Faberge, Carl's father, was born. He moved to St. Petersburg where he became a jeweller and opened a jewelry shop.

But it was Peter Carl Faberge, born in 1846, who would become the world most famous goldsmith, and who would change a small jewelry shop on Morskaya Street in St. Petersburg into the House of Faberge, the supplier of royal courts.

Continued on page 18

«The quintessential trusted advis

«General Counsel Eme

Stéphane Rivard, former Barreau of Québec Bâtonnier, Monique Mercier,Jocelyne Dallaire-Légaré (Memoria),and KPMG's Serge Bilodeau

Stéphane Rivard, André Dorais (ARD Avocats), Monique and Louis Jeannotte, honorary notary.

John Sypnowich (CSL Group), Raymond Lacroix (TELUS) and Laure Guillelmi

Monique Mercier and her daughter, Geneviève Mercier-Dalphond, a brilliant N.Y. lawyer

«Monique with her mother, Mrs Louise Mercier-Montpetit

Robert Paré of Fasken Martineau DuMoulin and Serge Bilodeau of KPMG

Françcois Côté (TELUS), Monique and Brian Edwards, founder of Emergis.

«François Côté of TELUS ignited with anecdotes this memorable dinner

sor» Monique Mercier of TELUS
eritus of the Year 2014»

From L. to R., upper row, YELUS' Sophie Lacoste, Caroline Poirier, Michèle Bolduc, Delbie Desharnais, Mark MacNeil and Pierre-Yves Boivert of the City of Montréal. First row, TELUS' Nadia Jubinville, Charles Lupien, François Gratton, CEO, and Guy Laberge.

Senator Céline Hervieux-Payette, a close friend, Anne-Marie Boivert. Vice-rector, Université of Montréal, Monique and Pierre-Yves Boivert of the City of Montréal

Monique and her mentor, Norton Rose Fulbright, Global Co-Chair and Chairman, Canada, Norman Steinberg, a legal icon and legend, who introduced her at this dinner

François Côté of TELUS, Monique and Francis Legault of Norton Rose Fulbright Canada.

Monique Mercier receiving the traditional honorary testimony from Le Monde Juridique and The Montreal Lawyer Publisher/Editot, André Gagnon

Monique thanking her peers and mentors

«Norm Steinberg intoducing «the quintessential trusted advisor», Monique Mercier of TELUS

Continued from page 16

Lilies of the Valley Easter Egg. A gift of Tsar Nicholas II to the tsaritsa, Empress Alexandra Fyodorovna. Present owner Viktor Vekselberg, a Russian billionaire. Image is taken from https://picworth.files.wordpress.com.

An interesting fact is that Carl attended a commercial school in Dresden where his family lived for some time and later he apprenticed in a goldsmith trade. After his studies, he was sent on a "grand tour" of Europe to visit London, Paris and Florence to see the best that had been created in art and architecture in Europe over the centuries. Already in St. Petersburg, he volunteered at the Hermitage museum cataloguing, appraising and restoring the treasures of the Czars. That "immersion" in the Russian culture was crucial for him as well.

On returning from his European "grand tour", at the age of 24 Carl Faberge took control of his father's jewelry shop in St. Petersburg (obviously, he was a good student at the commercial school!). Soon, he had fairly gained a reputation of one of the best jewellers.

One of the reasons for his astounding success was that Carl Faberge was a great businessman and marketing strategist! He managed to build a trustworthy and long-term relationship with the Russian Tsar Nicolai II who had become his loyal customer. This great relationship opened many doors in Europe for Carl – his clients were royalty, like Queen Alexandra of England, or tycoons like Duchess Marlborough (born Consuelo Vanderbilt) or

A gorgeous vase with delicate flowers created of gold, rock crystals and diamonds. Techniques used: casting, carving, engraving. Image taken from http://subscribe.ru.

Emmanuel Nobel. Moreover, he established in office in London! The English King adored a hardstone carved dog that resembled his favorite dog.

But it is not Faberge's talent as a businessman that made his creations so admired and sought-after. First of all, Peter Carl Faberge was an unsurpassed gifted and skilful goldsmith and lapidary, a multifaceted and courageous ingenious designer with an impeccable sense of taste and class.

Over 500 people, including talented designers and craftsmen, worked for the House of Faberge. While controlling rigorously each step of the creative process, Faberge publicly acknowledged the individual talent of his craftsmen, allowing them to mark their initials along with the firm's hallmark.

Faberge's style was like "a cultural sponge" - it absorbed a diversity of sources and art styles – from romantic Gothic and sensual Oriental, to Art Nouveau and "Russian style" as well as including historical influences. Some creations even anticipated future trends, like Art Deco. Actually, his calling card was the ability to understand the intrinsic quality and peculiarity of each material and to reveal its beauty and soul, regardless of any particular style.

The House of Faberge offered various products to their clientele – along with the magnificent high-end jewelry, it produced various personal accessories (the so-called "Objets de vertu") including cigarette cases, frames, cane and umbrella handles, candlesticks and perfume bottles etc. as well as the so-called "Objects of Fantasy" - unique hardstone carvings, flowers, figurines, and of course, the world-famous unexcelled Imperial Easter eggs. In fact, it was those Imperial Easter eggs that made the name of Faberge known all over the world.

In this article, however, I am not focusing much on his famous Imperial Easter eggs. This citation Géza von Habsburg (a renowned expert on Faberge) describes them very well: "They (the Faberge Easter eggs) are the absolute summit of craftsmanship. They were the sort of apogee of what Fabergé was able to do". And this is true.

I want to highlight some of the other wonderful works of Faberge – often called "objects of fantasy" - hardstone figurines and flowers

The House of Faberge created hundreds of figurines of animals and men; for these, various so-called semi-precious stones like nephrite, bowenite, white and pink quartz, agate etc., that are mined in abundance in Russia, were used. These small, meticulously carved figurines of animals look surprisingly "realistic", capturing a particular posture or tilt of the head characteristic to a particular animal. Looking at these frogs and elephants, dogs and rabbits, we admire their resemblance to the real animal, on the one hand, and the highest level of craftsmanship on the other. The question arises: "How can this be made... out of stone!?" Because, at first glance, they look to be made of porcelain and glazed.

Imperial Coronation Egg. Surprise features a perfect miniature replica of a Coronation carriage. Present owner Viktor Vekselberg, a Russian billionaire .
Image taken from www.yogallerymagazine.com

Other "objects of fantasy" that are admired by whomever sees them are the hardstone flowers. There is a contradiction in these two words used together – flowers and hardstone! Is this possible? Everything was possible for the craftsmen of the House of Faberge.

These flowers are some of my favorite Faberge works. Wonderful flowers, currants and hawthorns, forget-me-nots, violets and others, a real garden, created from various materials, look like real flowers! Moreover, transparent rock crystal was used for the vases and, what is really

Hardstone figurine of a soldier (the personal Cossack bodyguard of the Empress. Sold for a record price at an auction for $5.2 mln in 2013. Image is taken from www.hudsonantiques.net.

incredible, the quartz is polished in such a way that there is an illusion of water in the vase. The flowers are meticulously carved from hardstones –each petal, each stem, thorn, pistil and anther.

The choice of hardstones is exquisite – pinkish red rhodonite as well as white pearls and violet amethyst for the delicate petals; green nephrite for the stems; gold for stems and pistils. Diamonds might be added for creating the sparkling spots. As well, different colored enamel might be used for accents. The resulting effect is unbelievable – a stunning imitation of nature, a work of art.

Queen Alexandra of England was one of the admirers and collectors of the hardstone flowers. At present, the Royal Collection of the British Royal family has over 250 hardstone figurines!

What amazes me as a professional is that for his creations (there is always a desire to say "masterpieces"), Faberge used numerous unconventional and inexpensive materials, such as the so-called semi-precious stones that are abundant in Russia – bowenite, nephrite, quartz, feldspaths. He revealed the beauty and intrinsic character of each stone.

Hardstone flower. Cornflowers with stalks of oats created of gold, rock crystal, diamonds using casting and carving, engraving and enameling. Image taken from http://subscribe.ru

For his magnificent high-end jewelry pieces, Faberge used rare, gorgeous, large and very expensive gems – diamonds and rubies, emeralds and sapphires.

The majority of his fabulous creations, however, are made of so-called semi-precious stones. It is not the value of the materials but his exquisite taste, great design, impeccable craftsmanship and virtuosity of execution — in other words, the highest quality of everything, fineness — that makes the creations of Faberge outstanding and unrepeatable.

Whatever technique was used, Faberge strove to achieve unprecedented perfection. One of these techniques was enameling that he often used to decorate a large area. His translucent enamel was available in almost 150 colors and hues! Today's jewellers are unable to reproduce this marvelous abundance of enamel colors. For gold work, he perfected the technique of using its several different colors. That is why it is so difficult to forge Faberge – the quality of his creations is unique.

Just a few statistics (if the word "statistics" is appropriate to be used in describing the masterpieces created by The House of Faberge). The Easter Imperial Eggs, Faberge's masterpieces, were very labour and time-consuming. It might take a year or even more to create one egg. For example – the creation of the coach in the Coronation Egg took over 7,200 hours! Are there many jewellers in the world who can and who will afford this time and labour? That is why the pieces created by the House of Faberge are so superb and exceptionally precious.

Not that there weren't attempts to do so. The term "Fauxbergé" refers to fake Faberge pieces. An astounding number of fakes, some of which are pretty well made, have flooded the market since 1917. Beware of Fauxbergé if

Carl Faberge crafted this tiara in 1890. The briolette diamonds were a gift made by the Russian Tsar Alexandre I to Empress Josephine after her divorce from Napoleon Bonaparte. Sold at Chiristie's for £1,050,400 (equivalent to US2,071,389. Image is taken from www.christies.com.

you are thinking of purchasing a piece created by the great master. Actually, Faberge has created more than 250,000 pieces, many of these being small items of jewelry like cufflinks, tiepins or miniature eggs.

Fauxbergé is beyond the scope of this article. Just remember, Rule number one: if you are considering buying jewelry, always go to a reputable jeweller or dealer. And do your own research.

After the Revolution in Russia in 1917 Faberge had to flee leaving all his property in Russia. He died in 1920 in Lausanne, they say, of a broken heart.

Today, people pay huge money for Faberge. Not only because it is a well-known "brand" name. Not only because it is a great investment (authentic Faberge jewelry may be a great investment). But there is a desire to possess a piece of jewelry that is single and exclusive (Faberge never multiples of any design– each piece was unique). People want to possess a piece of art, something that is wonderfully exceptional and Faberge created a great deal of wearable art.

That is why antique and vintage jewelry is so appealing. Recently, along with designer pearl jewelry, I have started offering vintage accessories (including vintage jewelry) to my clients (by the way, "vintage' refers to a piece that is more than 30 years old. If is older than 100 years, it becomes "antique". So, nearly all Faberge pieces are antique – they were made before 1917).

Thus, when I come across an interesting piece of vintage jewelry, I have a chance to see how amazing it is – a fusion of an impeccable taste of the designer; meticulously precise craftsmanship and harmony. It is always a pleasure to look at well-crafted vintage jewelry and to hold it. Moreover, there is a factor of rarity and singularity that makes vintage and antique jewelry so attractive and beloved.

At present, a lot of new, often computerized techniques are used to make jewelry. This allows reduce time and labor and helps to produce highly precise, finely detailed jewelry. But this jewelry often lacks something extremely important – the flavor and beauty of uniqueness, exclusivity and rarity. As if you compare a Mercedes with a hand-assembled Ferrari (you know the difference in the design, the quality and the price!). That special thing that makes Faberge creations stand out from the other vintage and antique jewelry.

Looking at the exquisite and unforgettable creations of the House of Faberge we always have a chance to meet the beauty. And even more - to see for certain that there is no limit to human talent and craftsmanship and to see how beautiful and exquisite jewelry can, and, maybe, should, be!

Letter to the Editor

Dear Mr. Gagnon :

With respect to the nomination of Professor William Schabas, dealt with extensively in the last issue of "Le Monde Juridique", we believe that it is imperative for the legal community to which your publication is directed to bear in mind of the comments of the Honourable Irwin Cotler, former Minister of Justice of Canada, recognized worldwide as an expert and ardent proponent of human rights.

Although the academic accomplishments of Professor Schabas are well known, the remarks of former Minister Cotler, with respect to the criteria/indicia applicable to recusation, those regarding elementary principles of holistic statutory interpretation and the apparent violation of the principle guaranteed by the Charter of the United Nations that however great or small that a nation be, there must be "equality of treatment between nations", resonate powerfully in the debate and merit careful examination by your readership.

For these reasons, we annex hereto, in extenso[1], what appears on the website of CJN News under his hand. Professor Cotler writes, inter alia:

> « The International Commission of Inquiry established by a special session of the UN Human Rights Council - now known as the « Schabas inquiry » after its appointed chair. Prof. William Schabas – is not only "tainted at the core", but also partakes of a pernicious tripartite bias.
>
> First, the resolution giving birth to the inquiry presupposes Israeli guilt, condemning "in the strongest possible terms, the widespread, systematic and gross violations of international human rights and fundamental freedoms arising from the Israeli military operations in the occupied Palestinian territory." It is thus an Alice in Wonderland resolution, where the conviction and sentence are secured before the inquiry begins.
>
> Second, and astonishingly so, the biased commission mandate not only presupposes Israeli criminality – which it references 18 times in the resolution itself – but it makes no reference at all to the Hamas spectrum of war crimes and crimes against humanity, let alone its ongoing terrorist war of attrition, during which it has launched 10,000 rockets targeting Israeli civilians since 2007.
>
> Third, and astonishingly again, the resolution refers to Israeli perpetration of "hate crimes", "but makes no reference to the Hamas Charter, which calls for the destruction of Israel and the killing of Jews wherever they may be – the toxic convergence of the advocacy of the most horrific of crimes, namely genocide, embedded in the oldest and most enduring of hatred, namely anti-Semitism – and the perpetration of terrorist acts in furtherance of this genocidal anti-Semitism, which is the root cause of the conflict as a whole." (Underlines, our own).

The controversy relating to Professor Schabas' nomination, persists in the legal world, even though more than three (3) months have passed since the announcement.

The blog of the "European Journal of International Law" of November 4th last, annexed hereto, speaks volumes in that respect.[2] Its Editor in Chief, Professor Joseph Weiler, wrote:

> « ...,When the firing and killing ceases and ju-

[1] *www.cjnews.com/columnists/schabas-must-recuse-himself-or-be-removed*
[2] *www.ejiltalk/after-gaza-2014-schabas*

dicial inquiry takes over it is in the interest of justice and the credibility of the bodies who administer it to adopt those other idioms of the law – dispassionate, « blind », fair – and to heed the wisdom of justice needing not only to be done but to be seen to be done.

It is, thus, appropriate that the UN Rights Council speaks of an "independent" inquiry to investigate "purported" violations of IHL and HR. So it should be."...

[...]

Which brings us to the appointment of Professor William Schabas. Schabas has perfect professional credentials for membership; he is a distinguished and justly influential scholar in the field. I know him to be an entirely honourable person of impeccable integrity. But once his statement, albeit in another context, emerged, available on Youtube, that "Netanyahu would be his favourite to be in the dock of the ICC", I believe the only right thing was to recuse himself and step down.

I do not say this lightly, and saying this does not detract in any way from my laudatory comments about Schabas above. In this instance, the appointing body, in setting up the independent inquiry specifically stated that the Commission was not only to explore purported violations of the law but to identify those responsible.

[...]

Article 4 of the Code of Ethics of the ICC addresses the issue of impartiality. The Commission to investigate Gaza 2014 appointed by the UN Human Rights Council is not the ICC, but given its quasi-judicial function I do not see any reason why the standards of impartiality should be different.

Article 4(1) provides as follows:

1. Judges shall be impartial and ensure the appearance of impartiality..."

> The impartiality of Professor Schabas has been called into question in the light of an answer he gave to the Netanyahu comment. He explained, if press reports are to be trusted, that it was a comment made in view of the findings of the Goldstone Report. It has been pointed out that Netanyahu was in the Opposition during the Cast Lead operation and would have had ipso facto and ipso jure no responsibility for any findings in the Goldstone Report – a fact which could point to unacceptable animus by Schaba.
>
> [...]
>
> But it is hard for me to accept that his pronouncement on Netanyahu as being his favourite to be in the dock of the ICC – regardless of the context of the comment – is consistent with ensuring "the appearance of impartiality". That very question – whether there is evidence to indict Netanyahu for violation of international criminal law, might, directly or indirectly, be before the Commission. In my view, this is a self-evident case where an appearance of impartiality might be created. For the Commissioner, the UN Council, the Commission of Inquiry and William Schabas himself to dig in is, in my view, unwise and counterproductive. When the appearance of justice is compromised, so is justice itself." (Underlines our own)

The publication of these remarks, from our perspective, would contribute to defining and depersonalizing the debate.

At the least, your readership would better understand the juridical basis for the opposition both with respect to the Commission itself and the nomination of Professor Schabas as its Chief.

The whole respectfully submitted.
The Lord Reading Law Association

Per : Theodore Goloff, attorney
Chair, Ad-Hoc Committee for Human Rights

c.c. Me Nancy Cleman, President

Louise Arbour, counsel wi

The Honourable Louise Arbour Joins BLG as Counsel

Borden Ladner Gervais LLP (BLG) is delighted to announce that one of Canada's leading jurists, the Honourable Louise Arbour, former United Nations High Commissioner for Human Rights and Justice of the Supreme Court of Canada has joined the firm as Counsel.

"In our long and successful history as Canada's oldest and largest law firm, serving both Canadian and international clients, BLG has always been committed to providing exceptional counsel," said Sean Weir, national managing partner and CEO. "The appointment of Madam Arbour affirms our commitment to professional and service excellence."

Madam Arbour is a seasoned legal expert with an extraordinary scope of international experience, having most recently served as president and CEO of the International Crisis Group. Her outstanding qualifications and wide-ranging legal expertise are welcomed by everyone at the firm and in particular litigators and arbitration practitioners who anticipate the value her strategic counsel and insight will bring to the firm and its clients.

... meets BLG frie

Guy Pratte , chair of BLG national firm, partner Marc Dufresne and law legend Jean-Louis Baudouin of Fasken Martineau

Simon Grégoire, BLG partner, Louise Arbour and Jacques hamberland of the Québec Court of Appeal

Louise Arbour of

th Borden Ladner Gervais

"Joining BLG provides an opportunity for new challenges in my career. I have long admired the firm's litigation work and its contribution to the profession particularly through work done on a pro bono basis, stated Madam Arbour. "I am most looking forward to being affiliated with the International Trade Litigation and Arbitration Group which has an outstanding reputation"

A graduate of Université de Montréal, she was called to the Quebec Bar in 1971 and the Ontario Bar in 1977. Receiving countless awards and accolades for her celebrated career, she was most recently named in the 2014 edition of Canadian Lawyer's Top 25 Most Influential judges and lawyers for her work on the world stage. Madam Arbour will be providing strategic counsel as part of the firm's esteemed litigation practice.

"BLG is privileged to have such an extraordinary legal authority whose remarkable career, extensive experience and breadth of knowledge will complement our senior leadership and add strength to the firm," said John Murphy, MontrÉal Regional Managing Partner.

nds and colleagues

Jean-Pierre Beaud, dean of UQAM political science and law department talking to Louise Arbour

Louise Arbour and Louise Otis, former justice of Québec Court of Appeal

BLG greets guests

Henry Steinberg memorial lecture invitation

Celebrating the 100th anniversary of the Montreal Municipal Court

By The Honorable Morton S. Minc, Judge-President

On behalf of my colleagues Madame la Juge Nathalie Haccoun et Monsieur le Juge Richard Starck, I thank the Lord Reading Law Society for this privilege to present the Municipal court of Montréal.

In fact, I'm sure you already know about our Court, but perhaps you don't know it well or perhaps you want to update your knowledge.

I promise to tell you briefly about its past to help you understand its present. As for its future ... We'll see if we have time.

So what is the ancestry of the Municipal Court of Montréal?

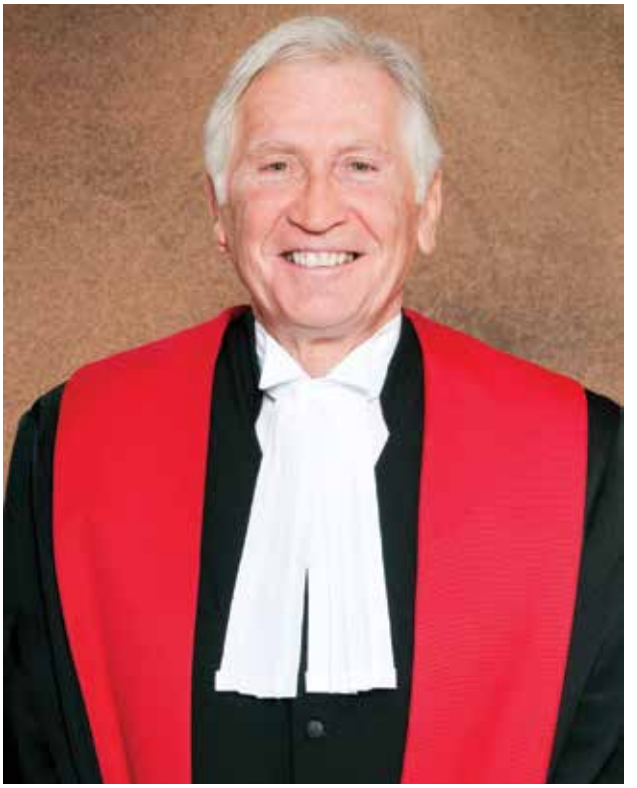
First, the Mayor's Court:

In 1832, the first Charter of the City of Montréal was adopted. It incorporated the City of Montréal. In 1845, the Charter was amended for a second time to create "the Court of the Mayor".

The Mayor and three councillors, armed with the powers of a justice of the peace, heard cases. No legal training was required! Administrative and judicial powers were combined!

The jurisdiction of the Mayor's court extended to disputes concerning:

The collection of taxes, including municipal taxes;



The Honorable Morton S. Minc

Municipal infractions and regulations / by-laws concerning businesses, and by-laws affecting the day-to-day life of the city.

Next, the Recorder's Court:

In 1851, the Charter of the City of Montréal was modified to create the Recorder's Court.

- The Recorder was a lawyer with at least 5 years of experience who was named to hold office (nommé par la Couronne selon bon plaisir) during the Queen's pleasure. This was a considerable im-

provement since the Recorder had legal skills. This improvement, however, was overshadowed by the (bon plaisir) "Queen's pleasure" that should not be confused with (durant bonne conduite) "during good behaviour". The Recorder was therefore at the mercy of a political authority.

The Recorder's Court had a wide jurisdiction in civil and criminal matters, which increased over the years. In addition to the powers already enumerated, the power extended to disputes concerning the payment of wages to servants and workmen. The Court heard litigation in matters concerning housing, taxes, water rights, as well as cases of assault and resisting arrest of police officer in the exercise of their duties. Finally, it heard cases concerning crimes and misdemeanours, just like the (Cour des Sessions) Sessions Court.

• Later, the Court received two very special competencies: the power to commit the insane, and the power to place children under the age of 16 in homes and institutions.

In 1864, the Recorder's Court had its own clerk who was no longer the City Clerk. From that moment, the Recorder's Court was an independent court, even though it continued to sit within the walls of City Hall. It played a central role at the City of Montréal because it touched almost every aspect of the life of Montrealers.

The Constitution Act of 1867 did not affect its jurisdiction. The Charter of the City, which was amended in 1874, placed the Record's Court under the authority of the Québec Legislature.

Have you an idea of what the annual salary of the Recorder might have been?

At first, wages were a minimum of 200 gold pieces. It quickly grew to 300 gold pieces and then, in 1880, the remuneration was fixed at 3,000 dollars per year.

When did the Office of Recorder become irrevocable during good conduct?

In 1885, the function of Recorder became (inamovible durant bonne conduite) irrevocable during good conduct. This was an important step in the notion of contemporary judicial independence.

In what year did the Recorder's Court move to 775 Gosford Street?

In 1914, the Recorder's Court left City Hall and moved to its permanent home at 775 Gosford Street.

In 1933, the Charter provided for the position and function of Chief Recorder since the number of Recorders had increased greatly over the years.

In what year did the Recorder's Court become the Municipal Court of Montréal?

It was in 1952. The Recorders became municipal judges and the Chief Recorder became known as the Chief Justice. There remained twelve to eighteen up until the date of the municipal mergers (territorial jurisdiction widened and the number of judges increased).

So, can we close this chapter on the history of the Municipal Court? What do you know of the Court?

How many judges of the Municipal Court of Montréal are there?

There are currently 32 judges who serve full-time at the Municipal Court of Montréal (almost 1/3 of our court are women and the average age is 56 years old).

Where and how often do judges sit at the Municipal Court? Judges sit in the 14 courtrooms of the main courthouse situated in old Montréal and in the 7 courtrooms of the satellite courts (points de service) according to a rotation system. They sit two weeks and then they have a week of deliberations. There are sessions in the evening at the satellite courts to provide litigants in penal matters the opportunity to contest their tickets without losing their workday. All criminal cases are heard at the main courthouse. Penal matters (i.e. Highway Safety Code, statement of offences, etc.) are called upon every half hour to avoid long delay for the citizen (in groups of 8) (3 avec témoins).

What is the jurisdiction of the Judges of the Municipal Court of Montréal?

The judges of the Municipal Court have civil, penal and criminal jurisdiction in summary proceedings under Part

XXVII of the Criminal Code. They are polyvalent (versatile) and required to be bilingual. I would add that their duties require them to be infinitely patient:

patient because of the presence of interpreters (one hundred languages and dialects are translated annually);

patient because of the increasing number of individuals who come before the Court without a lawyer;

patient because of the increasing number of litigants and witnesses who have personality disorders (i.e. mental health, homelessness, problem of alcohol and drug addictions.

What is the importance of social programs at the Municipal Court of Montréal?

Social programs occupy a very important place in the exercise of the function of judges. Every social program requires the involvement of judges. Some programs already have judges who have shown interest and expertise and are assigned to courtrooms dedicated to these programs, but always with the assistance of team of intervenants (i.e. specialized prosecutors defence counsel and caseworkers. It is "time consuming" but very rewarding to follow a litigant who, little by little, thanks to the programs offered by this Court, through voluntary commitment and with the support of the intervenants, straightens out the course of his or her life.

What are the current social programs?

Program of domestic violence (Programme de Violence Conjugale), which on the one hand, allows the complainant to be followed by a team of social workers, and secondly, affords the defendants, resources to follow anger management or domestic violence programs whilst the judicial proceedings go on;

Conciliation programs that address conflicts between neighbours, employers, employees, owners and tenants, who are afforded an opportunity at a later date to resolve their differences by a negotiated settlement;

The Programme Point Final aimed at repeat offenders who drive while impaired and voluntary enter this rehabilitation program rather than face obligatory prison time;
The Eve Program (associated with the Elizabeth Fry organization) that assists to women offenders who shoplift or commit fraud, with the goal of rehabilitation and decriminalization;

The PAJIC program (Court for the homeless) that assists to the homeless who wish to move away from homelessness and address the infractions they have accumulated whether they be criminal and/or penal offences;

The PAJSM program (Mental Health Court) that assists to defendants with mental disorders who volunteer for support;

The PAJMA program (Elder Abuse Court) that caters to seniors who are victims of crime.

Conclusion as to the present of the Municipal Court of Montréal

At the Municipal Court of Montréal, we feel we understand the needs of the population:

We have seen a significant increase in the multiethnic character of Montréal and we try to render a justice that satisfies its multicultural nature);

We have always served the most vulnerable members of Society (i.e. the poor, the uneducated and elderly);

We are a laboratory of observation which has seen the human suffering caused by alcohol, drugs and mental illness;

We have become a social clinic that offers a variety of resources in order to curb the effects of these individual plagues that damage families and neighbourhoods;

We play a significant role in directing individuals to the appropriate program. As soon as charges are authorized by prosecutors, the files are sent to a specific program tailored to the needs of the defendant, the victims and the family;

All of these programs are voluntary;

We aim for consensus and we pride ourselves on respecting the rights of the individual.

How many penal and by-laws were contested in 2012?

Approximately 60,000 cases.

How many criminal cases were commenced in 2012?

Approximately 15,000 cases.
There you have the description of the current Municipal Court.

Now a few minutes to talk about its future?

We have been preoccupied with the needs of the accused

but what of the victims and their families. To this end, we will welcome the presence of a service known as CAVAC (Crime Victims Assistance Centre). An office with a case-worker of CAVAC will be located within the walls of our court. We are currently in the process of finalizing this project.

I will briefly say that I think very soon, we will welcome an office with a representative of CAVAC. This is a resource that is lacking at our Court. We are currently finalizing the project.

For the moment, we are developing a program to receive seniors who are victims of crime. As you know, the elderly have little tendency to complain and even less to go to Court when their abusers are relatives. Physical abuse, psychological and financial abuse are scourges of society that hide in the darkness and silence people who are already vulnerable due to their age, physical health and generosity. We need to find ways and resources adapted to help the victims and alleviate their difficulties.

Other programs will probably be developed as new issues, unfortunately constantly arise.

There is a very busy future ahead. In this regard, I invite those who are still hesitant, to apply for the positions of judges which have just opened.

On behalf of my colleagues and myself, we are committed to welcoming you warmly.

Ms Suzanne Côté appointed to the Supreme Court of Canada

Prime Minister Stephen Harper today announced the appointment of Suzanne Côté to the Supreme Court of Canada. Ms. Côté will fill the seat previously occupied by Mr. Justice Louis LeBel. The appointment is effective December 1, 2014.

- Suzanne Côté is head of the Montréal litigation group at Osler, Hoskin & Harcourt LLP. She is one of the most experienced litigators in the country with extensive expertise in civil and commercial litigation over a distinguished 34 year career.
- Ms. Côté is the first woman from private practice to be directly appointed to the Supreme Court of Canada.
- Ms. Côté is the second woman appointed to the Supreme Court of Canada by our Government, following Justice Andromache Karakatsanis, and it was this government who made history by appointing the first ever female Chief Justice to Quebec's Court of Appeal.
- Ms. Côté received the Advocatus Emeritus distinction in 2011 from the Barreau du Québec.
- Ms. Côté is a Fellow of the AmericanCollege of Trial Lawyers since 2005.
- Ms. Côté has been recognized as among the Best Lawyers in Canada, the World's Leading Lawyers for Business, and among Canada's Top 25 Women Lawyers.
- Ms. Côté studied at l'Université Laval and has taught at l'Université du Québec à Rimouski, l'Université de Montréal, and the École du Barreau du Québec.
- The Supreme Court of Canada is Canada's final court of appeal.
- The Government's consultations included the Government of Quebec, the Chief Justice of Canada, the Chief Justice of Quebec, the Chief Justice of the Quebec Superior Court, the Canadian Bar Association, and the Barreau du Québec.

"I am pleased to announce the appointment of Suzanne Côté to the Supreme Court of Canada. With her wealth of legal knowledge and decades of experience, Ms. Côté will be a tremendous benefit to this important Canadian institution. Her appointment is the result of broad consultations with prominent members of the Quebec legal community and we believe she will be a valued addition to Canada's highest court." – Prime Minister Stephen Harper

Mandatory Mediation

By Richard McConomy

As a private mediator, I was greatly enthused by the publication of "L'EFFICACITÉ DE LA MÉDIATION JUDICIAIRE", by Alexandre Désy. The author delved into the mysterious subject of delays and costs.

No speaker at the opening of courts has ever resisted the temptation of addressing these two subjects. No study of the judicial system has failed to point out the problem. Yet the problem persists.

There is a calculation that is omnipresent

(i) 95% of cases settle therefore

(ii) only 5% go to trial

In the book, after much analysis and research, the author points out that the establishment of the "Conférence de règlement à l'amiable" has had no beneficial effect on the problem, although this was the reason it was established. The author clearly states that the CRA has not had the promised effect of reducing costs and delays;

To quote the author:

1. Les Couts et les délais judiciaires jugés problématiques au cours des années 80 n'ont cessé de s'accroître et la confiance du public envers ce system semble s'étioler de manière corrélative.....La CRA est présentée comme une solution aux couts, a la lenteur et aux impacts humains négatifs du système de justice traditionnel (Desy, L'ÉFFECACITE DE LA MEDIATION JUDICIAIRE, 2014; Page 1)

2. Les discours, particulièrement dans le milieu juridique, abordent fréquemment le potentiel de la CRA pour faire diminuer les couts et les délais judiciaires. Cependant, dans les discours que nous avons recensés, nous constatons que ces derniers s'accompagnent de peu d'explications démontrant comment la CRA va faire diminuer les couts et les délais. (Desy, L'ÉFFECACITE DE LA MEDIATION JUDICIAIRE, 2014; Page 15)

3. Ainsi, malgré leurs différences, les deux disciplines en viennent à la conclusion qu`il n'est pas nécessairement intéressant d'implanter la médiation judiciaire pour faire diminuer les couts et les délais judiciaires. (Desy, L'ÉFFECACITE DE LA MEDIATION JUDICIAIRE, 2014; Page 130)

In the federal district court for the Western District of New York, they have a system of mandatory mediation with a procedure whereby a serious attempt at mediation is required in order to proceed with a litigation.

Gary Shaffer, poses the question, in his blog (http://ow.ly/BZvub) "Should Mediation be Mandatory"? Shaffer states that, in his opinion, private mediation is the option because private mediation succeeds. The settlement percentages for private mediation are the same as for the CRA. The secret is self-selection. The parties (or the lawyers) choose to make an attempt at resolution. The new Civil Code of Procedure points toward mediation as a preferred option. (articles 1-7; 605 and following)

The New York system controls access to the legal system by requiring all litigants to make a serious attempt at mediation.

So in typical Canadian/Quebec philosophy we will try to invent something new rather that adapt something that has been tried and proven.

Maybe we could use rewards instead of punishment.

Why not fast-track cases that attempt to seriously mediate. If mediation fails, a CRA would have failed and therefore, the cases get priority hearing. In the end, the 5% of contested cases can be identified and at least reduce the cost of waiting.

Serious and responsible litigants can count on either resolution, through private mediation (95% chance) or a speedy trial. The speedy trails could be covered by the resources presently being spent on the CRA.

My position may seem simplistic, but nothing else has worked. Think about it; all we need is a special role for cases that have failed in a serious attempt to mediate.

We really have nothing to lose.

Source : http://www.shaffermediation.com/mediation-mandatory/
http://www.shaffermediation.com/should-mediation-be-mandatory-part-2/

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Bravo Monique!

We are proud to have such an exceptional ambassador representing our leadership values.

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