



« THE VOICE OF MONTREAL ENGLISH-SPEAKING LAWYERS

Pamela McGovern, a 30-year seasoned litigator and former general counsel at Hydro-Québec, joins a business law boutique

> Pamela McGovern, senior counsel at Aust Legal Inc.

William B. Rosenberg, Senior Partner at Stikeman Elliott LLP, Begins Term as Chair of American Bar Association Business Law Section

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# Pamela McGovern, a 30-year seasoned litigator and former general counsel at Hydro-Québec, joins a business law boutique

#### Par André Gagnon

fter spending 25 years as a litigator at Lavery and over five years as general counsel at Hydro-Québec, Pamela McGovern has moved on to a boutique business law firm Aust Legal Inc., founded by Thomas Laporte Aust. It's a change which gives her both flexibility and independence for this next chapter of her career.

Over the years, Ms. McGovern acquired extensive experience in commercial, insurance, surety and construction, and many other areas of law while working on fascinating and complex matters, including a lengthy construction dispute which ended in arbitration, the winding up of a prominent Montreal-based contractor, the bankruptcy and subsequent claim settlement of a discount charter airline, and a historic case involving two provinces in Canada. As in-house counsel, she assisted in the worldwide commercialization of significant patented battery technology while working alongside a team of brilliant scientists and excellent outside counsel. She was also involved in multi-jurisdictional files which exposed her to parties with different cultural backgrounds, allowing her to become more creative in the negotiating and drafting of agreements and arriving at the resolution of disputes.



work with a strong team, many of whom are now on the bench. They developed strategies, rendered opinions and prepared cases together, leaving Ms. McGovern with a good understanding of the judicial thought process. She recalls, for example, several discussions where the importance of identifying the issues and presenting them with clarity

At Lavery, Ms. McGovern had the good fortune to

boiled down to the "keep it simple" method of approaching and arguing a case.

Ms. McGovern has drafted many agreements and there is no doubt that her litigation background assisted her in identifying issues which could ultimately bring the parties before the Courts. There were countless times in the drafting process when she would consider how the Court would interpret and apply certain clauses, and would therefore try to limit the amount of words as "too many words" could make a judge wonder if there was some hidden or obscure meaning giving rise to an unintended interpretation of the parties' rights and obligations.

Recently, and as a result of her experience in private practice and in-house, Ms. McGovern took a course to become a civil and commercial mediator. She also sees acting as an arbitrator, as a good way of putting her years of practice to use. Alternative dispute resolution methods allow parties to be more directly involved in the resolution of their problems and to craft solutions which can be better adapted to their commercial realities. She knows how expensive full blown litigation can be and has no doubt that those costs in time and in money could be put to better use. While Ms. McGovern is well aware that not all disputes can be resolved through mediation, she believes that parties should make all efforts to settle through this process as there is more flexibility in finding resolution to the problems at hand. For example, a judge is not necessarily in a position to set out a staggered payment schedule which would enable one of the parties to perhaps consider paying more to the other party than it would otherwise. In many circumstances, the desire for a continued business relationship could also motivate a party to settle rather than pursuing litigation which could bring

Aust Légal Inc.

Pamela McGovern Senior Counsel | Avocate-Conseil

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an end to a commercial partnership.

Should the parties not be able to arrive at a negotiated settlement through mediation or otherwise, Ms. McGovern considers arbitration to be another alternative to the Courts as the parties may choose a specialized arbitrator or panel which facilitates the presentation and comprehension of the issues as well as providing an expedient manner of ending the dispute as the parties have a more direct control of the schedule. Another benefit is that there is no appeal in most such cases.

For the past 10 years, Ms. McGovern has been actively involved with the International Association of Defence Counsel ("IADC") as the Chair of the International Committee, a board member as Vice-President International and now as Vice-Chair Surety of the Construction Committee. This invitationonly association of approximately 2,500 members throughout the world was founded in 1920 and Ms. McGovern follows in the footsteps of her former colleagues Vince O'Donnell and Claude Baillargeon who were also active in the IADC. Throughout her years with the association, she has participated in panels presenting on varied topics such as fracking, managing patent litigation and mediation.

Outside of her law practice, Ms. McGovern is committed to the community through her involvement as a trustee with the Canadian Irish Studies Foundation which finances the study and teaching of Irish and Irish Canadian history and culture at Concordia University. She is also a board member of the Maison Bieler Inc., a home for veterans, where she is working on a housing project for veterans suffering from post-traumatic stress disorder. This project is close to her heart as her father was a veteran and her uncle was killed in the Second World War and is buried in Cassino, Italy.

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# William B. Rosenberg, Senior Partner at Stikeman Elliott LLP, Begins Term as Chair of American Bar Association Business Law Section

William Rosenberg will be the first Canadian to chair the Business Law Section

that counts more than 52,000 members

WW illiam Rosenberg, a Senior Partner in the Montréal office of Stikeman Elliott LLP, has begun a one-year term as Chair of the American Bar Association (ABA) Business Law Section.

Mr. Rosenberg is the first non-US lawyer to be named as an Officer of the ABA Business Law Section, one of the largest specialty groups within the ABA. He is a past Editor-in-Chief of The Business Lawyer, a Section publication and the premier peerreviewed business law journal in the United States, and he has been an active member of the ABA since 1992.

"I am grateful for the privilege to serve as Chair of one of the largest specialty groups within the ABA. As the first non-U.S. lawyer to hold this position, I look forward to using my unique perspective to help expand and strengthen the Section's global network of business lawyers, and to reinforce our position as the premier community for business law professionals by constantly improving our valuable member benefits and services."



Mr. Rosenberg practices corporate and commercial law and is recognized by many industry publications as a leading practitioner in the areas of mergers and acquisitions, and private equity. He has significant experience acting as lead counsel on numerous M&A transactions, representing clients from across Canada, the United States and Europe. He has been a lawyer at Stikeman Elliott LLP since 1989.

# Fraud Prevention and Detection

#### By André Gagnon

A s a specialist in forensic accounting, fraud prevention and detection, risk management, dispute resolution and anti-money laundering, Corey Anne Bloom, a partner at MNP, has provided training to chartered professional accountants and taught at the MBA level at McGill University and the Graduate level for the University of Toronto. As a CPA, CA, CFF, CA·IFA, CFE, Corey Anne Bloom is a Regent Emeritus of the ACFE (Association of Certified Fraud Examiners) an organization with nearly 75,000 members worldwide, of which she is a past Chairman of the Board. She has numerous accomplishments to her credit.

### "Fantômette" (The Phantom)

Nicknamed "Fantômette" by La Presse for her finesse, experience and modus operandi – not to mention her small stature and smiling appearance that has her blending in practically unnoticed – her qualities make her a mighty investigator with unparalleled skill.

When acting as special investigator of suspected or alleged fraud, she visits the client's place of business, as an adjuster would. She has a discussion with the individuals concerned and carries on her own investigation. Once she has the information she needs, Corey Anne interviews persons of interest to attain her objective: detect fraud and suggest measures for preventing fraud.

With this approach, Corey Anne Bloom has succeeded in bringing to light various cases of fraud involving hundreds of thousands of dollars embezzled by employees, management and even business co-owners who manipulated company funds for their own benefit.

As Corey Anne points out, the damage inflicted on an or-



ganization by the advent of fraud is not restricted to the company's interests alone, but has an impact on its many individuals in ways that are often difficult to fathom.

"All companies, regardless of size, should have a fraud prevention and cyber-fraud detection program. This also applies to law firms that pay their invoices by wire transfer" advises Corey Anne Bloom.

At a time when information technology has revolutionized the work and working methods of many companies, this specialist suggests setting up a fraud prevention and detection plan. Since companies are turning more than ever to wire transfers (where banks deposit company funds directly into the supplier's bank account) and other payment methods, fraud risk and the risk of error

are on the rise. MNP's Corey Anne Bloom has put together a training program to support healthy risk management.

By reviewing fraud risk, upgrading information technology and reviewing the risks surrounding it, this program can help deter financial losses and setbacks.

"More companies are becoming proactive in this area in order to reduce the risk of fraud. Be proactive not reactive" she suggests.

An ounce of prevention....

## 22 Law Firms Launch Ally Law, a Global Provider of Legal Services

Ily Law, a legal services organization of 1,300 lawyers in ten countries announced its official launch today. The organization was created by 22 premier law firms in response to client demand for sophisticated legal services delivered with a greater orientation to value and efficiency.

Paul Franke, Chair of the group that organized Ally Law and a litigation lawyer based in Denver, Colorado said, "Ally Law's unique business model offers corporate clients distinct advantages. Our firms understand the nuances of their local business climate and culture. We are efficient and agile, since we do not have the bureaucracy, and excessive overhead found in local offices of firms headquartered elsewhere. My top tier clients want firms that understand their unique business needs and satisfy those needs as their operations expand. That's why we formed Ally Law."

Ally Law firms have offices in 56 major business centers across North America, Europe, China, Australia and Mexico.

Members offer the full complement of services requisite

to global law firms, including corporate and securities, environmental, intellectual property, labor, employment and employee benefits, government and regulatory, litigation and tax.

Ally Law also has exceptional depth in key industry sectors, for example, healthcare, leisure and hospitality, real property and construction, retail, and technology.

Michael Herbst, a Seattle, Washington lawyer who helped organize Ally Law commented, "Ally Law firms are recognized by Chambers and Partners, Legal 500, Best Lawyers and other rating entities for the quality of their legal expertise. Each has completed a rigorous due-diligence process before joining our group, and their continued participation is subject to maintaining high levels of client satisfaction."

Ally Law has its origins in the International Alliance of Law Firms, a major global network founded 25 years ago. With 64 member firms in 43 countries, the Alliance is a distinct advantage for clients that require broader geographic coverage.



## **Protecting Your Business** Where It Counts.

Corey Anne Bloom and her team of anti-fraud and forensic IT specialists help businesses protect themselves against financial and cyber-fraud. The newly constructed high-security forensic technology lab at MNP allows her and her team to investigate commercial crime and financial fraud by spotting illegalities. Backed by years of experience, Corey and her team are

Contact Corey Anne Bloom, CPA, CA, CA•IFA, CFE, CFF at 514.228.7863 or corey.bloom@mnp.ca

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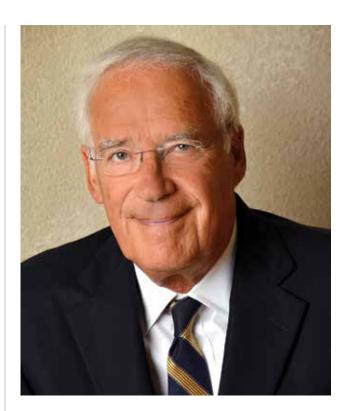
# "The value of a beneficiary's interest in a trust"

– Part 1

#### By Richard M. Wise, FCPA, FCA, FCBV, FASA, C.Arb.

he value of a beneficiary's income interest or capital interest in a trust must consider numerous factors in the context of the trust instrument: The trustee(s) appointed by the settlor or testator, the respective relationships between the trustee(s) and each of the beneficiaries, and the respective attributes of the properties under administration. Moreover, there can likely be vastly different conclusions of value depending on whether, for example, the valuation is for income or estate tax, matrimonial, trust or estate law, insolvency, or for other purposes. For example, the valuation of an interest in a trust for matrimonial purposes would generally be in a Fair Value or Value-to-Owner context (a "subjective" standard of value), whereas a valuation for income tax purposes would be in a Fair Market Value context (an "objective" standard) - a term that is employed 1,270 times in the Income Tax Act (Canada). Value-to-Owner has been defined by the Supreme Court of Canada as what a prudent owner would be willing to pay for an asset rather than be deprived of it (Diggon-Hibben Ltd. v. King [1949] SCR 712). Fair Market Value has been defined as the highest price at which an asset would transact between informed, uncompelled, arm's length parties in an open and unrestricted market (Henderson Estate and Bank of New York, (1973) CTC 636, at p. 644), i.e., the so-called "willing-buyer/willing-seller" standard of value (value in exchange).

Contingencies can affect future distributions of income or capital, in which case actuarial input might also be required in valuing a trust beneficiary's interest. As with other types of assets, marketability and liquidity are also factors that have an impact on value.



This article will identify the factors to be considered in determining the Fair Market Value of a beneficiary's income interest and capital interest in a trust or estate.

### Trusts - Overview

The civil law applicable relating to trusts in Quebec is contained in the Civil Code of Québec, L.R.Q., c.C-1991("CCQ"), Book Four, Title Six, Chapter II, Sections I-IV.

There are two types of trusts: an inter vivos trust (living trust) and testamentary trust (estate created upon death). Particularly in the case of inter vivos trusts, there are a myriad of alternative structures that can be put into place for income tax and estate planning purposes, depending on different fact-based considerations.

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Inter vivos trusts are often created where a parent is the settlor and the children are the beneficiaries (or a grandchild would become beneficiary, say, if a child were to predecease the parents). A trust can also have contingent beneficiaries, e.g., grandchildren, unborn children or unborn grandchildren.

The administration of a trust is subject to the provisions of Section III of the CCQ. As noted above, a trust generally involves at least three "persons" in its creation and administration: (1) a settlor, grantor or testator, who settles or creates the trust; (2) a trustee (fiduciary) who administers and manages the trust and its assets (corpus), and (3) a beneficiary who receives the benefits of the transferred property held and in the trust and administered by the trustee. Beneficiaries hold "equitable title" to trust assets and receive the benefits of trust property, subject to the trustee's "legal title" ownership and control under the terms of the trust agreement as established by the grantor/settlor or testator. In the case of an estate, a decedent's last will and testament creates the testamentary trust. There is a trust instrument (trust deed or will) when there is an inter vivos trust or testamentary trust, respectively, and a transfer of property to the trust. In certain situations, the court may appoint a trustee where the settlor has failed to do so or where it is impossible to appoint or replace a trustee or, in the case of death, when there is intestacy.

In the international arena, a trust protector might be appointed, having powers over the trust that may be superior to those of the trustee(s). The advantage of using a protector is that he or she can cause the trust to adjust to unanticipated events or unforeseen conditions without applying to the court or seeking the beneficiary's approval. (Debate continues in certain overseas jurisdictions as to whether a protector is a fiduciary.)

In the U.S., there are many types of trusts and related structures. These are referred to as grantor trusts, non-grantor trusts, and "intentionally defective grantor trusts as well as "GRATs", "GRUTs" and "GRITs", being forms of irrevocable trusts often used in estate planning.

It is beyond the scope of this article to address additional valuation issues regarding potential United States income tax consequences where, say, a distribution is made by a Canadian resident trust to a U.S. beneficiary and, under U.S. tax laws, the trust is considered a foreign trust (requiring a determination as to whether the trust is a "foreign grantor").

trust", or a "foreign non-grantor trust", with the attendant U.S. tax consequences.

### **Income Interest**

An income interest is a right (whether immediate or future and whether absolute or contingent) entitling the beneficiary to receive all or any portion of the income that is generated periodically by the assets of the trust. A capital interest entitles the beneficiary to all or a portion of the trust assets, but the amounts and timing of distributions may not be readily determinable at a specific point in time (valuation date).

However, certain income beneficiaries may have the right to receive capital based on that beneficiary's needs in the judgment of the trustee(s). Such an encroachment right of an income beneficiary would increase the value of his or her interest in the trust and would decrease the value of the capital beneficiary's interest. For example, if a trust is a spousal trust (established for the exclusive benefit of the testator's widow), she could live off the income generated by the trust's assets, with the trust's capital inuring to the next generation (the children). But, even as an income beneficiary, she would nonetheless have the ability under the terms of the trust to encroach on capital, say in the case of a family emergency, the children's education, family health problems, economic difficulties, and so forth.

### **Capital Interest**

Simply put, a capital interest in a trust includes all rights that a beneficiary has under the trust other than an income interest.

### **Duties of a Trustee**

It is well established that a trustee's duties to the trust beneficiaries are one of the law's "highest duties". Generally speaking, there are nine main duties that a trustee must discharge. Each of these duties places the following specific responsibilities on the trustee:

- Duty to administer trusts To manage the trust in accordance with its terms for the duration of the trusteeship.
- Duty of loyalty An obligation owed by a trustee to a beneficiary, binding the trustee to act in the best interests of the beneficiary while refraining from placing the trustee's own interests above those of the beneficiary.
- Delegation by a trustee A responsibility that a

trustee owes to the grantor and beneficiary to personally carry out the management of trust assets and other matters that the trustee has agreed to undertake.

- Duty to keep and render accounts A trustee must maintain proper records and provide transactional details.
- Duty to furnish information Beneficiaries have the right to receive a copy of the trust deed, along with detailed information including all material facts, accountings, and transactional data.
- Duty to exercise reasonable care and skill A trustee has a fiduciary duty to exercise reasonable care and skill in executing the duties and responsibilities in the capacity of trustee.
- Duty to take control of trust property A trustee must ensure proper designation and title of trust property to secure the corpus to be administered by the trustee.
- Duty of impartiality A trustee must administer the trust in an even-handed manner so as to afford each beneficiary the same level of benefits and protection. This duty extends to current as well as successive beneficiaries (e.g., unborn grandchildren).
- Duty with respect to a co-trustee There is a dual accountability of a trustee for his or her own actions, inactions, and decisions, as well as those of their co-trustee(s).

For valuation purposes, whether it is an income interest

or a capital interest (see below), it is essential to consider whether it is a discretionary trust or a non-discretionary trust. It is also important for the valuator to consider whether the interest is vested, i.e., it is not (no longer) dependent on satisfying specific requirements (e.g., a beneficiary reaching a specified age or surviving another beneficiary) or if the interest is unvested, it will be dependent on one or more specified requirements being satisfied (e.g., a beneficiary's reaching a certain age or surviving another beneficiary). Contingencies are among the most important considerations when valuing an income interest or capital interest in a trust. Contingencies are dependent upon a future event occurring and therefore the valuation (the present value) of the respective interests of the beneficiaries will be a function of the present value of the potential "entitlements" of contingent beneficiaries based upon actuarial input (and an actuarial reserve).

The value of a beneficiary's interest in a trust is:

- a. Income beneficiary's interest the present value of the future income stream of the trust, discounted for the time-value of money, contingencies, risks and taxes.
- b. Capital beneficiary's interest the total value of the trust less the income beneficiaries' interest, discounted for contingencies, risks, and illiquidity.

**Non-Discretionary Trusts – Valuing an Income Interest** The following factors are considered in valuing an income interest in a non-discretionary trust:

- Beneficiary's life expectancy;
- Composition of the trust's assets;



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- Estimated rate at which income will be generated by trust capital;
- Estimated timing of income distributions/receipts;
- Estimated amount of the income distributions;
- Rate of return required to present-value future, aftertax cash to be generated;
- Income taxes the beneficiary must pay on the trust income received;
- Contingencies (e.g., surviving relative(s));
- The financial resources of the beneficiary;
- Encroachment rights of other beneficiaries (income and capital) and trust's history of encroachments made.

Difficulties can be encountered in valuing an income interest in a trust if the trust assets include, say, a portfolio of fixed-income securities, publicly-traded and private equity shares, cash, rental property, and in other situations in which the trust's asset-mix varies. Further difficulties could possibly arise because of the relationship among the income beneficiaries, capital beneficiaries and the trustee(s). For example, what if there were a possible bias of the trustee(s) toward investing the trust corpus in capital (growth) assets rather than income-producing assets, which latter assets would favor the income beneficiaries?

### Value of Capital Interest in Non-Discretionary Trust

The starting point is the value of the trust capital. This is determined as a function of the following:

- Asset mix;
- Expected appreciation rate(s) on trust's assets;
- Expected annual rate(s) of return/income yield;
- Expected total capital to be distributed to beneficiaries;
- Expected distribution date(s); and
- Expected capital distributions to other beneficiaries.

In basic terms, the present value of the future capital will be equal to the lump sum amount that the beneficiary would accept as of the Valuation Date rather than await the future receipt of funds from the trust. Discounts, as appropriate, will then be applied in respect of:

- Contingencies (e.g., surviving relative)/actuarial data;
- Legal costs, etc.;
- Lack of marketability; and
- Required holding period to the capital interest.

Part 2 of this article will address discretionary trusts and the valuation of an interest therein.

## SEMINAR The Language of Statutes and Judgments

## October 21, 2015, 12:30 P. M. to 6 P.M.

St-James Club (1145 Union Street, Montreal)



### Registration fees (meal included)

\$75 for the members of the Bar of Montreal\$90 for members of the Barreau du Québec, outside Montreal

### Schedule

- Noon Welcome and registration
- 1:00 P.M. Presentations by Canada's Commissioner of Official Languages and the Director of the LRSP
- 2:30 P.M. English Version of Quebec Laws
- 4:45 P.M. Lack of Visibility of Quebec Jurisprudence in the Rest of Canada

INFORMATION/REGISTRATION: www.barreaudemontreal.qc.ca



Prevent disaster, perform due diligence:

# The importance of forensic due diligence during a real estate acquistion

Sophie Lyne Zaretto, CPA, CA, CA-EJC, CFF, MBA, and Joseph Steben, CPA, CA, Forensic Accounting / Fraud Investigation & Dispute Services – Ernst & Young

n today's fast-paced and globalized economy, many real estate industry leaders will at a minimum, implement a financial due diligence process to gain some reassurance about the company they wish to acquire. But what lies beneath the company's numbers? Every revenue stream and expense account has a potential story behind it that should be considered before signing on the dotted line, as once this occurs, avoiding disaster becomes much more costly. To paint a better picture, consider the following scenario:

A beautiful commercial property in a strategic location is for sale. All competing real estate companies consider the property to be a goldmine that can generate a substantial return on investment in the future, along with a healthy and immediate revenue stream upon closing. The deal needs to be closed before any of the competition get involved. Preliminary meetings are held and financial due diligence is performed, albeit briefly, on the target acquisition's financial statements which show great promise. The building has long-term contracts signed with a foreign government consulate and building management has excellent relationships with subcontractors charged with



keeping the building well-maintained. All signs point to signing and closing the target acquisition as soon as possible, and you do.

What the financial due diligence failed to discover, is that a foreign government official was involved in a bribery scheme in exchange to occupy a vacant floor long-term and the president of the building management company was sub-contracting maintenance work to several of his close friends and receiving a kickback on the contract earnings.

The result...your company inherits a range of signifi-

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cant problems including financial, operational and legal. From a legal perspective, bribing a government official is a serious offense, and in Canada under the Corruption of Foreign Public Officials Act (CFPOA), is punishable by imprisonment of up to 14 years and has unlimited financial fines to both individuals and corporations involved. From an operational perspective, both building management and the sub-contractors engaged in the maintenance of the building have done a tremendous job and are well- liked by tenants, but they will need to be replaced, as you have no intention of maintaining ties with parties that have severe conflicts of interest, and of course, skimming from the top. As mentioned before, behind each number is a story, and the operational and legal issues just described can result in astronomical financial hardships. These could range from losses in rental revenues from long-term contracts obtained from corruption

# Announcement

The English-Speaking Section of the Bar of Montreal will be putting on a series of eight (8) courses on the New Code of Civil Procedure. The courses, which will feature some of the most prominent members of the Montreal Trial Bar, will take place at the St. James Club, 1145 Union , Montreal, on Tuesdays, from 8:30 – 10:30 am. ( doors opening at 8:00 am for coffee and light early morning snacks), beginning on Tuesday, September 29th,2015.

The following are the lecture dates and lecturers:

- October 13th,2015: Family Law and Procedure (Me Lynne Kassie, Robinson Sheppard Shapiro)
- October 20th,2015: Appellate Proceedings (Me Doug Mitchell, Irving Mitchell Kalichman)
- November 10th,2015: Use of Experts and Assessors (Me Peter Kalichman, Irving Mitchell Kalichman)
- November 17th,2015: Efficiency of the Litigation Process and Use of Technology – Changes in the Terminology
- Used in the NCPC ; ( Me Michael Bergman, Bergman & Assoc.)
- November 24th,2015: Pro- se Litigant / Self-Representation (Me George Hendy)
- December 1st,2015: Administration of Proof (The Honourable Pierrette Sevigny)

Please note that if you are not available to attend a particular session in person, the session(s) will be made available by webinar on the date of the lecture or later during the course of the two year cycle.

I urge you to register for all eight (8) courses which will be accredited by the Quebec Bar for CLE purposes (2 hours per course; 16 hours for all 8 courses). Registration is now open on the website of the Barreau de Montreal at: www.barreaudemontreal.qc.ca.

I would also ask you to circle the date of November 5th, 2015 on your calendar. On that date, the Section will be holding its 7th annual "Trial Practice Do's and Don'ts: Hot Tips From The Experts" Conference from 4:30 -6:30 pm in Salle 5.15 (Salle Jules Dechênes)of the Montreal Courthouse. Our "Do's and Don'ts" Conference has proven to be one of the most popular and widely-attended conferences of the year. Further details will follow shortly.

Ian M. Solloway Chair English-Speaking Section Bar of Montreal " and bribery, unlimited fines under the CFPOA and of course, the financial effect of a tarnished business reputation which is often the most costly.

The story above is unfortunately, a very realistic scenario. We can blame this on greed being cemented in human nature but can also analyze why these instances occur. Fraud experts have concluded that most instances of fraud occur in a situation in which an individual is in a pressure filled environment, can rationalize the decision and has the opportunity to commit the act. Can fraudulent acts be avoided altogether? Highly unlikely due to the power of the almighty dollar; that said however, disaster during a property acquisition can be avoided by conducting a thorough forensic due diligence process.

# The forensic due diligence process and its related benefits

It goes without saying that the traditional financial due diligence process is an absolute necessity in the acquisition life cycle, no matter what the industry. At the same time, a forensic due diligence process during an acquisition will assist in painting an overall "big picture" for the acquirer, telling the underlying story regarding the conclusions reached in the financial due diligence phase.

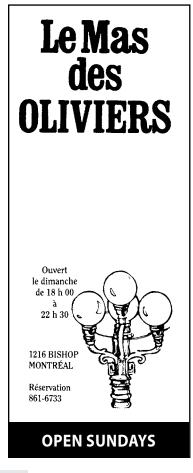
The primary objective of the forensic due diligence analysis is to evaluate the potential future loss in value that results from inappropriate or unethical business practices undertaken by the target. Analyses and procedures implemented will vary on a case by case basis but focus is maintained on the higher fraud risk areas. Some of the more common fraud risks specific to a real estate acquisition include:

- Collusion with valuators relating to revenue streams and asset valuations
- Awarding work to subcontractors or vendors in exchange for kickbacks
- Improper accounting treatments (i.e. questionable use of accounting estimates, misreporting of transactions and profit or intentional misclassifications in financial statements)
- Inappropriate interactions with public officials (i.e. planning permission or tenant occupancy).

• Manipulation of sales terms of the process in exchange for kickbacks or to benefit undisclosed related parties.

Findings from a forensic due diligence process can help the acquirer in negotiations and can assist in reducing risk and disruption from the transaction after the deal has been closed. It is important to distinguish between the two phases of an acquisition process, those being pre and post-acquisition, as there are crucial activities that need to take place during each phase.

In the pre-acquisition phase, there are three important activities: strategic and pre-transaction planning, due diligence activities and, negotiation and execution. With the focus on a forensic due diligence process, an analysis of the risks of fraud, bribery and corruption, money laundering, related-party transactions, conflicts of interest and regulatory actions is a necessity. The forensic due diligence procedures could include, CFPOA (or applicable country's law) and anti-corruption due diligence, background investigations using open source data, government



contracts due diligence, contractual language assessments and technology enhanced electronic data review.

Once the deal is finalized, the post-acquisition integration phase commences. This phase is also essential due to today's everchanging economy that will always contain uncertainties with valuations, their underlying assumptions, and continuous company exposure to a wide variety of significant risks after the transaction is closed. This part of the forensic due diligence phase is important in order to avoid disputes between parties and help integration between differing company cultures and environments. Some of the more important forensic activities in the integration phase are:

- Post-acquisition fraud and anti-corruption analysis, including anti-bribery and corruption analytics
- Development and implementation of a compliance program
- Implementation of anti-corruption policies and training

As nearly one-third of all closed acquisition transactions result in a dispute between the parties involved, it is important to be thorough during both phases of the acquisition process. Yet, according to EY's 13th Global Fraud survey, 38% of businesses never conduct forensic due diligence. There is a cost associated with performing these procedures, but the benefits often outweigh such costs many times over. At a glance, some of the potential benefits in performing forensic due diligence procedures are:

- Purchase price reduction and/ or improved terms and conditions of the sale
- Inclusion of appropriate indemnities, applicable warranties and certifications
- Reduction in the risk of criminal and civil proceedings
- Limitation of future reputational damage
- Overall improvement of busi-

ness practices, ethics and environment

As a whole, there is always risk where lies reward. The right acquisition of property could be the ticket to a company's progress towards success. However, without weighing this risk versus reward in the proper manner, the dream deal could turn quickly into a nightmare. Nowadays, information is widely available to the general public and thanks to social media, can spread like the plaque. Therefore I caution you... before signing on the dotted line, make sure you know the story that lies beneath the numbers.

ASSOCIATION CANADIENNE DES PARAJURISTES CAP vers l'action 1 Impliquore-nous 1 CANADIAN ASSOCIATION OF PARALEGALS CAP in Action 1 Let's est involved 1

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# Today's Favourites Fancy Colored Diamonds

### By Olga Shevchenko, FGA

ancy colored diamonds in yellow and brown, green and blue, black, violet, pink or the extremely rare red are in great demand. Their distinctive look, a blazing scintillation, results from combining color with the high dispersion that is characteristic of a diamond.

All fancy coloured diamonds are rare, the red ones being the rarest and most expensive of all.

What makes them so coveted and distinct is that they seldom occur.

Of all the diamonds that are mined annually, only 0.1 percent are naturally colored. Since one of the major factors determining how much jewelry is worth is rarity, it is not a surprise that fancy colored diamonds lead the wellOf course, they also fetch the highest prices.

Because the supply of colored diamonds is extremely limited, fancy colored diamonds sell for record prices.

The most expensive jewel sold in 2014, for example, was a spectacular 9.75-carat Fancy Vivid Blue known as



the Zoe Diamond. The Zoe Diamond, which once belonged to Mrs. Paul Mellon was sold for \$32,645,000 at Sotheby's. The \$3,348,205 per carat price tag set a new world auction record for a blue diamond.

Diamonds take on various colours due to a variety of factors. Some of the color in diamonds may be due to various



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••• 17

of the Earth. Defects in their crystalline structure, presence of certain trace elements (like nitrogen, boron and hydrogen) or irradiation also adds colour to diamonds. For instance, nitrogen is responsible for the yellow color in diamonds, while boron makes diamonds blue. Pink and red diamonds get their hues from plastic deformation of the crystalline lattice.

When diamonds are coloured due to these natural causes, they fetch astronomical prices.

Less expensive versions of fancy coloured diamonds are those who get their colours through various treatments. For example, HPHT (High Pressure High Temperature) treatment will change a non-expensive white-off diamond into a beautiful yellow, green or blue- green gem with an intense color.

Treated diamonds are more affordable than naturally occurring fancy coloured diamonds. There's nothing wrong with having them either, as long as the fact they are treated is disclosed if they are sold.

There is a great difference in price between fancy colored diamonds having natural colors and treated diamonds. For instance, a 1 ct Fancy Intense Pink diamond VS with natural color sells at a minimum of \$75,000 per carat, while the same diamond with enhanced color through treatment costs about \$6,000. That's some difference in price, isn't it?

Thus, if you want to invest in a fancy colored diamond with natural color, go to a reputable jeweller. Moreover, ensure that a reputable gemological laboratory, e.g. a GIA laboratory (GIA stands for the Gemological Institute of America) has issued a laboratory report indicating that the color of this fancy colored diamond was attained through natural forces. This will help you avoid expensive mistakes.

If you have any questions ask Olga Shevchenko. Next time, we will discuss whether gem treatments are accepted or not.

Olga Shevchenko, FGA Certified Gemmologist, EGM Certified Gems and Jewelry Appraiser. Jewelry Olga (Designer Pearl Jewelry, Vintage Jewelry and Accessories) 2122 Rue Crescent, La Maison Ishi, 514-884-4980 info@pearljewelryexpert.com www.pearljewelryexpert.com

## Lex Mundi Welcomes Two General Counsel to the Lex Mundi Client Advisory Council

ex Mundi is pleased to welcome two new members to its Client Advisory Council. This distinguished group of senior in-house counsel from some of the world's leading companies provides advice and guidance that enhance the ability of Lex Mundi member firms to serve their clients better and to meet the needs of in-house counsel.

The new members of the Lex Mundi Client Advisory Council are Paul Kaleta, Executive Vice President & General Counsel, First Solar; and Andrew Thorson, Vice President and Global General Counsel, Automotive Experience and Asia, Johnson Controls.

These new members join an eminent group of existing Client Advisory Council members:

- Gianpaolo Accossato, General Counsel, Magneti Marelli S.p.A.;
- Luis Miguel Briola, General Counsel, Grupo Bimbo, S.A. de C.V.;
- Debra Clements, VP, Senior General Counsel and Corporate Secretary, Milliken & Company;
- Javier Illescas, Director of Legal Services for Business Operations, Banco Santander, S.A.; and
- Ria Sanz, Executive Vice President: Group General Counsel and Company Secretary, AngloGold Ashanti Limited.

Carl Anduri, President of Lex Mundi, comments, "Our Client Advisory Council is an extremely valuable resource for Lex Mundi and its member firms. With these new members, we add to the experience and expertise available through the Council to help guide our World Ready network in finding the best ways for in-house counsel and outside counsel to work together."

Lavery is the local member of this world legal group.

# Passing of Yvon Martineau, Great Jurist and Builder of Quebec Inc.

t is with great sadness and emotion that Blakes learned of the death of its Senior Counsel, Mr. Yvon Martineau, who succumbed to a grave illness. Mr. Martineau passed away at Saint-Jean-sur-Richelieu, surrounded by his loved ones, on July 28, 2015 at the age of 68.

"Mr. Martineau was a man of compassion and conviction who was fully dedicated to his clients and worked relentlessly until the bitter end to promote their interests. His constant commitment in both the legal and business communities and his contribution to Quebec's economy is exemplary. His keen mind, seasoned perspective and spot-on analyses of the business world will be sorely missed," said Robert Torralbo, Managing Partner of the Montréal office of Blakes.

Everyone at Blakes would like to extend their most sincere sympathies to Mr. Martineau's family with whom we mourn a remarkable man. Our thoughts are with Mr. Martineau's wife, Maria Del Roble Flores, and his children, Yvon François, Jean Philippe and Charles André.

### A Builder of Quebec Inc.

Mr. Martineau greatly contributed, both in Quebec and abroad, to the development of several large Quebec companies. He made his mark as a leader in several practices and led some important operations that greatly influenced the evolution and restructuring of financial institutions in the province. He made significant contributions to the Quebec community by promoting and defending its interests, be it at a cultural, professional, cooperative or economic level.

In the cooperative world, he acted as main external legal counsel of Fédération des caisses Desjardins du Québec. For more than two decades, he acted as the main external legal counsel of Agropur (an agricultural cooperative) and its subsidiary, Natrel, and advised them during their extraordinary growth during the 1980s, 1990s



Yvon Martineau of Blakes-Montreal

and early 2000s. He also advised both governments and cooperative businesses in the drafting of legislative frameworks for cooperative activities in Canada, including in the financial and agricultural sectors.

In the private sector, Mr. Martineau was vice-chairman of the board of directors of Groupe Jean Coutu (PJC) inc. and, as an external counsel, contributed to the remarkable development of this company, including its initial public offering in 1986 and its remarkable expansion later on.

Mr. Martineau was the chair of the Quebec Task Force on Financial Sector Regulation that led to the birth of the Autorité des marchés financiers. He was also chairman of the board of directors of Hydro-Québec and served as a legal counsel and/or a board member of several other companies such as Le Groupe Canam Manac Inc., Industries Sanimax inc., Plaisirs gastronomiques inc., Société d'Investissement Jeunesse, Québecor Inc., Berger-Levrault International Inc. and Groupe Accueil International Ltée.

Furthermore, Mr. Martineau was at the forefront of the creation of AMBAQ (the association of MBAs in Quebec) and served as the chairman of AEMBA (the aHEC-MBA students association in Montréal). Mr. Martineau put his shoulder to the wheel of the Quebec economy and developed significant experience in corporate law. In 1995, he was awarded "A leader is someone who, through their decisions and actions, inspires their peers and shapes the future." - Yvon Martineau

### An Influential Jurist

Mr. Martineau practised in London, England, from 1982 to 1985. He was recognized by The Best Lawyers in Canada in Corporate Law and Banking Law.

Mr. Martineau was also very involved in his professional order. He was a member of the board of directors of the Bar of Montréal and a member of the General Council of the Quebec Bar and its administrative committee. He also served two terms as chairman of the Quebec Bar Congress.

Mr. Martineau also played a major role in the public sector, including as in-house legal counsel with the Office of the Premier of Quebec from 1994 to 1995. He contributed to the preparation and drafting of various statutes and regulations, both private and public, including the Act respecting financial services cooperatives.

### A Remarkable Man

Mr. Martineau was recognized by his peers for his professionalism, his outspokenness, his ethics, his ability to listen, his pragmatism and his ability to reconcile diverging opinions. All this made him an engaged citizen who cared deeply about the advancement of our society. As his colleague and long-time friend Paul Martel puts it: "Mr. Martineau was a pillar and a beacon in the corporate law world. He was a model of leadership, exceptional integrity and extraordinary professionalism."

But beyond his professional commitment, we will remember Mr. Martineau as a man who was affable, kind and generous. Many of us were touched by his positive spirit and his great sense of humour. He appreciated every moment of his life and will remain a true source of inspiration for all of us. We will miss him.

Sympathies can be expressed as a donation to the "Fonds Yvon Martineau en droit des affaires de l'Université Laval" that will be set up in the near future. If you would like to make a donation now, you can do so here. Your donation will be transferred to the "Fonds Yvon Martineau en droit des affaires de l'Université Laval" as soon as it has been set up.

## The protocol of protocols

By Richard McConomy

At the inside cover of the of minister's comments on the NCCP a long list is reproduced concerning changes in terminology (a two page list). Nowhere are we treated to a mention of the "pre court protocol" found in art 2 of the NCCP. In the minister's comments we are instructed to use the "case protocol" of Article 148 as our reference.

And so here is my interpretation of what one should do: If the mediation is successful the protocol should deal with the necessary follow-up such as homologation, confirmation by a ministry or a board of directors. It should deal with implementation of the mediation agreement.

If the mediation fails, then referring to Art 148 a protocol should be completed with the cooperation of the mediator (Art2). The protocol of Art 148 is used for case management, Hence:

### "Chapter III,

CASE MANAGEMENT"

Art 148 in its first paragraph breaks down as follows:

Arrive at a settlement or do the protocol

Set out agreements and undertakings

The issues in dispute

Deal with consideration given to ADR (a mediation has happened)

Steps to be taken to assure orderly progress of the proceedings Assess the time completing these steps could require

Assess the foreseeable legal costs Set deadlines to be met within the strict time limit for trial readiness

The balance of art148 is not new, it deals with a possible CRA, experts, pre trial examinations, delay for a defence and other preliminary matters. The last paragraph of art148 determines a reserve for things that are premature and for identification of matters upon which the parties were unable to agree.

The role of the case management judge will be to assess all the information and assist the parties in finalizing the cases readiness for trial on a fast track.

For those who missed it the fast track can be found on our web site (www.rmcconomy-mediator.com)

# Ian M. Solloway grateful to the Barreau de Montréal

Comme le grand écrivain américain Mark Twain a dit :

"Avec une telle introduction, je peux difficilement attendre pour entendre ce que je vais dire moi-meme".

M. le Bâtonnier, Mme la Bâtonnière élue, Messieurs et Madames les anciens bâtonniers et bâtonnières, membres du conseil du Barreau de Montréal, distingués invités, chère famille, chers collègues, et chers amis,

Je veux d'abord remercier le conseil du Barreau de Montréal, le comité de sélection du mérite et le conseil des anciens bâtonniers, pas seulement pour ce grand honneur que vous m'accordez ce soir, que j'accepte avec une énorme fierté et humilité, mais aussi pour votre engagement et dévouement continus envers notre Barreau de Montréal. Merci.

Mesdames et Messieurs, pour être mentionné dans le même cercle des récipiendaires distingués de ce prix, qui m'ont précédé, c'est vraiment un grand honneur. Me Gabriel Lapointe, Me Jean-Jacques Gagnon, Me Pierre Fournier, L'Honnorable Michel A. Pinsonnault, maintenant juge à la Cour Supérieure, et le grand Me Phillip Casgrain, entre autres, sont des noms illustres dans notre profession, connus et respectés par tous et par toutes pour leurs contributions soutenues et remarquables à la profession et à notre barreau montréalais.

Quoi que je suis entré en pratique en 1975, et que j'étais membre du comité de discipline du Barreau de Québec et du comité de liaison à la Cour Supérieure en matières familiales dans les années 1990 et 2000, mon implication au sein du Barreau de Montréal a vraiment débutée en 2009, lorsque j'ai pris charge de la Section anglophone du Barreau de Montréal. La Section anglophone était mieux connue à ce temps-là comme "un dead poet's society", la seule et unique fonction de laquelle était de se réunir une fois par année en mars, sous une pleine lune, en présence de 6 ou 7 avocats, pour choisir nos 3-4 candidats pour le prochain conseil du Barreau de Montréal". En prenant charge de la Section anglophone, j'ai décidé que cette culture devrait changer, et, je suis fier de dire aujourd'hui, 6 ans plus tard, avec le support, travail et détermination de plusieurs de mes collègues, nous avons atteint notre objectif.

I am extremely proud to say that the English-Speaking Section of the Bar of Montreal, which I have been privileged to Chair for the past 6 years, is now a respected, active, visible, and major participant in the Montreal legal community – a participant that is recognized for the excellence of our programming, for the thoughtfulness of our interventions, and perhaps most importantly, for the embodiment of the uniqueness of our Montreal Bar and the diversity that it represents. Je me rejouis de notre participation et contribution dynamique de la section Anglophone a l'evolution de la communaute jurididique montrealaise, mais également a l'épanouissement d'un système de justice respectueux des droits et libertés de l'ensemble de nos concitoyens et concitoyennes.

En 2009, nous avons inauguré notre première conférence de la Section anglophone en presque 100 ans d'histoire – le "Trial Practice Do's and Don'ts: Hot Tips from the Experts", laquelle est devenue synonyme de la section anglophone. Quand nous avons décidé de mettre en place cette conférence, notre objectif était d'offrir une conférence de la plus haute qualité, menée par des plaideurs les plus chevronnés de notre barreau et des juges les plus respectés de la magistrature, qui participeraient comme conférenciers dans une conférence qui sera reconnue par son excellence et pratique, avec l'application quotidienne pour tous les plaideurs. Je suis fier de vous dire ce soir que le "Do's and Don'ts " est devenu une des conférences le plus connues et anticipées du barreau chaque année.

C'était en 2011, quand le Bâtonnier à l'époque, Me Nicolas Plourde m'a invité à faire partie du comité organisateur de la "Conférence des présidents des barreaux des grandes villes mondiales" tenue à Montréal, que j'en suis venu à comprendre et à apprécier réellement le très grand respect que les barreaux des plus importantes villes du monde accorde à notre Barreau de Montréal. Et ça ne devrait pas être une grande surprise. Nos avocats Montréalais sont chefs de file de la profession légale du monde par notre bilinguisme, notre tradition bi-jurale, notre polyvalence, et notre expertise dans des domaines divers. Nous sommes capables de représenter des clients québecois, canadiens, américains, européeans, bref, des clients à travers du monde de très grande envergure.

# LE MÉRITE du BARREAU de MONTRÉAL awarded to Ian M. Solloway

The Bâtonnier of Montreal, Me Greg Moore, announced that Me Ian M.Solloway will be the recipient of the 2014-2015 prestigious Mérite du Barreau de Montréal in recognition of his exceptional contribution to the Montreal Bar and its activities.



Me Solloway is the Chair of the English-Speaking Section of the Bar of Montreal, having occupied this position for an unprecedented six years since 2009. In 2004, Me Solloway was awarded The Past-Presidents Medal of the Lord Reading Law Society in October 2014 for having achieved excellence in the profession ; having made a significant contribution to the community and being of the highest integrity.

The Mérite du Barreau was presented to Me Solloway at the Annual General Meeting of the Montreal Bar held on Wednesday, May 6th, 2015 in Salle Jules Deschênes) of the Montreal Courthouse. Mesdames et messieurs, ce soir est une occasion qui me permet d'offrir quelques remerciements.

Je veux d'abord remercier ,Me Mélanie Dugré , pour son très gentil article sur mon parcours professionel dans la récente édition de " l'Infolettre du Barreau ". Comme un de mes collègues m'a dit après avoir lu l'article:

"lan ", he said, "it just goes to prove that if you hang around long enough, they're bound to give you something".

Je veux reconnaître et remercier aussi pour leurs présences ce soir, mon beau-frère, Me David Linetsky et ma bellesœur, Hugette, ainsi que mon cher ami Monsieur Richard Wise, et mes associés avec qui j'ai travaillé depuis tant d'années.

Mes remerciements et salutations à notre directrice générale du Barreau de Montréal, Me Doris Larivée, pour sa contribution exceptionnelle au fonctionnement quotidien du notre barreau, ainsi que pour son appui continu et soutenu pendant ma présidence de la Section anglophone du Barreau de Montréal.

Au nom de la section anglophone anglophone de barreau et en mon nom personnel, je veut aussi profiter de cette occasion pour saluer, féliciter et remercier notre Bâtonnier et mon ami, Me Greg Moore pour "son leadership sage et exemplaire " qu'il a démontré pendant son bâtonnat.

Je veux remercier aussi mes collègues du Barreau de Montréal qui ont donné et donnent encore de leurs temps et talents en participant aux comités et / ou aux activités du Barreau de Montréal. Grâce à votre participation, vous avez contribué au rayonnement de notre barreau, de notre communauté légale, et de notre ville de Montréal. Ce sont tous nos membres qui profitent de votre implication au sein de notre barreau.

Lastly, but certainly not least, I have been blessed with a wonderful, loving family. A ce temps, je veux reconnaitre la presence de ma chère famille que je veux remercier – my extraordinary wife Louise and my terrific children – my daughter Heather, my son-in-law Adam, and my son, Bryan, all of whom are making their own individual and distinct marks in their chosen fields of endeavour.

Louise, although you often refer to the Lord Reading Law Society and the English-Speaking-Section of the Bar of Montreal as " my other wives", I thank you so very much for your love, patience and understanding, and for allowing me whatever "time and space" I needed to fulfill my various professional and community responsibilities and commitments. I know that you don't like the spotlight or being the focus of attention. However, I want to say publicly that you are my love, my inspiration and my best friend.

One person who is not present tonight, but whom I wish to recognize publicly for the very first time is my first grandchild, ma petite-fille, Emma Saks, a baby girl and our family's newest pride and joy, born at the St. Mary's Hospital on March 18, 2015 to two loving parents, my daughter Heather and my son-in-law Adam.

And I want to assure everyone present to-night that it is absolutely untrue that the first words Emma will be taught are :

" Don't forget to reserve my rights under Art.54.1".

Mesdames et messieurs, j'ai eu le privilège, durant ma vie d'être un membre d'une merveilleuse profession que j'adore, et d'avoir grandement apprécier, au moins la plupart du temps, de la pratique du droit de la famille, ainsi que d'avoir eu l'occasion de donner en retour à ma profession et à la communauté dans son ensemble. Ca peut sembler banal et cliché, mais je ne peux m'exprimer autrement, que si j'ai contribué quelque peu à notre profession au fil des ans, je ne pouvais pas le faire sans l'enthousiasme, l'engagement, et de l'aide de beaucoup d'entre vous ici ce soir. Je remercie tous ceux qui ont encouragés, soutenus, et travaillé avec moi, et m'ont fourni de conseil au fil des ans. Vous savez qui vous êtes. Je vous remercie beaucoup

En terminant, je veux dire que j'ai toujours essayé de vivre et de me conduire par le mantra de Monsieur Winston Churchill qui a dit:

«We make a living by what we get; We make a life by what we give»

Encore une fois, thank you, merci, et en hébreu, " todah rabah", pour ce mérite distingué et priviligié que vous m'accordez ce soir.

I shall cherish it forever.

"Anee Mo-keer et Zeh La- Nehtzach".

Je vais le chérir pour toujours.

## Full potential of Women Needs to be Utilised

By Me Marie-José Nadeau, president of the World Energy Council

Significant talent is being wasted because organisations still don't know how to fully utilise the potential of women, says Marie-José Nadeau, Chair of the World Energy



Council. The global persistence of gender inequality in the workplace and the link between women's participation in the workforce and economic growth and sustainable energy is becoming increasingly clear, particularly in the energy sector.

Marie-José Nadeau is leading the charge for more equality in the energy industry and a more diverse workforce at a time when there are many challenges in the energy sector. She said: "Finding solutions for a sustainable energy future requires a diversity of voices.Businesses need to be able to wrest the full value of more than half of the world's labour pool. One way companies benefit from gender diversity is a more balanced mix of leadership strengths.

"The reasons for the global persistence of gender inequality in the workplace are numerous: educational disparities, cultural norms, women consistently taking on the double burden of balancing work and domestic responsibilities and the absence of consistent enabling infrastructures in countries around the globe. Amongst other things there are the barriers of antidiscrimination laws and lack of support for child and elderly care. If we are to find the solutions for a sustainable energy future then there must be a diversity of voices, and that includes women."

Commenting on the challenge of eradicating energy poverty and achieving sustainable energy for all, Marie-José Nadeau said: "World Energy Council scenarios' work tells us that we are not on the right path to eradicating energy poverty by 2050 when as many as 350,000 to 500,000 people will still be deprived from access to energy. And without energy, there can be no adequate health care, sanitation, education, economic growth or job creation."

# McMillan LLP, Haynes and Boone LLP and Guanes, Heisecke & Piera Enter into a Ground Breaking Relationship with IATA for Legal Services Across the Americas

ollowing a competitive bidding process conducted in late 2014 and early 2015, an alliance comprised of McMillan LLP (Canada), Haynes and Boone LLP (United States), and Guanes, Heisecke & Piera (Paraguay) has secured a three year joint retainer to act as the primary legal services provider for the International Air Transport Association (IATA) across all of the Americas and Caribbean. The relationship will be quarterbacked by McMillan out of its Montreal office, where IATA also has its head office.

The innovative arrangement between IATA and the alliance members will see them working together to provide IATA with a full range of legal services across North America, Central America, South America and the Caribbean. To this end, the alliance team members will leverage an innovative "One-Stop Shop" approach, which will see the three firms working hand in hand and pooling resources. Local collaborators have also been enlisted in several countries and all of the participants will use state-of-the-art collaborative web tools to manage matters, budgets and invoices on a unified and seamless way for IATA. The alliance will introduce innovative technologies that are intended to normalize costs, enhance predictability and promote efficiency and cost-



effectiveness throughout the covered geographic area.

Éric Vallières, Co-Chair of McMillan's Aviation Practice, Janice Sharry, head of the Aviation Practice at Haynes and Boone, and Dr. Alejandro (Alex) Piera, head of the Aviation Practice at Guanes, Heisecke & Piera will each act as Regional Managers.

Jeffrey N. Shane, General Counsel of IATA, said: "We were impressed by the alliance's innovative "One-Stop Shop" approach as well as with the quality and depth

of the alliance's network. The alliance's unique and creative fee arrangement is also expected to bring us greater cost predictability, and its centralized billing platform will bring much greater efficiency to the management of our external legal bills across the entire continent. We look forward to this collaborative effort to support the activities of IATA on behalf of our membership."

Éric Vallières, who will also assume full responsibility for the administrative aspects of the relationship and who will be the single point of accountability for IATA, declared that: "This represents an exciting time for us at McMillan. We have had a longstanding relationship with the aviation industry and with IATA in particular, and the firms that form the alliance are honored to have been selected as primary legal services providers of IATA following a very thorough process. The alliance is deeply committed to assisting IATA with its legal needs across the Americas and we enthusiastically look forward to this collaborative effort."

Jan Sharry added: "We are excited about the opportunity to further expand our services to the aviation industry in this collaborative and innovative arrangement for IATA. We bring with us a depth of experience representing both U.S. and foreign commercial passenger, cargo and charter carriers and believe that this relationship will enhance our ability to meet the needs of our aviation clients. We also believe that this creative partnership with our client will enhance our ability to provide costeffective and innovative arrangements with all of our clients."

Alex Piera commented: "We are delighted with the opportunity of working closely with IATA on this new initiative. Our Alliance has substantial experience and intimate knowledge of the aviation industry. We are confident that these factors will significantly contribute to advancing the legal work of IATA in the Americas."

IATA is the trade association for the global airline industry. The organization works with its member airlines and the air transport industry as a whole to promote safe, reliable secure and economical air travel. IATA currently represents some 250 airlines or 84% of total air traffic across the globe and handles over USD 385 billion of financial transactions annually. business law firm serving clients across key industries in Canada, the United States and internationally. McMillan offers solutions-oriented legal advice through offices in Vancouver, Calgary, Toronto, Ottawa, Montreal and Hong Kong.

Haynes and Boone (www.haynesboone.com) is an international corporate law firm with offices in Texas, New York, California, Colorado, Washington, D.C., Shanghai and Mexico City, providing a full spectrum of legal services. With more than 550 attorneys, Haynes and Boone is ranked among the largest law firms in the U.S. by The National Law Journal.

Guanes, Heisecke & Piera (www.ghp.com.py) is an innovative law firm in Paraguay with experience in providing legal advice to local and international clients alike. The firm offers wide range of legal services in numerous industries and has a long-standing relationship and commitment with the aviation industry.

Gérard Coulombe appointed to the board of directors of the Fonds de solidarité FTQ



r. Gérard Coulombe, Q.C., Ad. E., a Business Law partner at Lavery, was appointed independent member of the board of directors of the Fonds de solidarité FTQ during the annual general meeting which was held on September 26, 2015.

Mr. Coulombe carries on a general practice in business and commercial law, focusing in particular on matters involving financial institutions and Crown corporations as well as the formation of financial and industrial conglomerates.

### About the alliance members:

McMillan (www.mcmillan.ca) is a modern and ambitious

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# McCarthy Tétrault Partner Stéphane Duval named President of CBA's National Immigration Law Section

cCarthy Tétrault is very pleased to announce that Stéphane Duval, partner in the firm's Labour and Employment Law Group and leader of the Immigration Law Practice, was recently named chair of the National Immigration Law Section of the Canadian Bar Association (CBA).

Under Mr. Duval's leadership, the National Immigration Law Section will pursue its mandate to maintain a dialogue with Ministers and senior officials of Citizenship and Immigration Canada, Employment and Social Development Canada, the Canada Border Services Agency, the Immigration and Refugee Board, and other stakeholders. As part of his mandate, he will review existing legislation and proposed legislative changes; ensure that abuses in the enforcement and administration of immigration law are made public; conduct continuing legal education seminars.

Recognized as a leader in immigration law in Canada, Mr. Duval has developed an expertise specifically relating to the international mobility of workers and business people. He provides individuals, Canadian companies and multinational corporations with a wide range of legal advice regarding strategic international mobility issues. These often relate to corporate restructurings, mergers and acquisitions, or labour shortages. Mr. Duval appears in the Canadian Legal Lexpert Directory and in The Best Lawyers in Canada. He is a seasoned lecturer and moderator on immigration law in Canada and abroad.



# CPBO Honors Best Buy and Volunteer Lawyers Network for Their Decade-Long, Sustainable Collaboration

orporate Pro Bono (CPBO) announced today that it has selected Best Buy, a signatory to the CPBO Challenge® initiative, and Volunteer Lawyers Network (VLN) to receive the 2015 CPBO Pro Bono Partner Award - Small Law category for their more than decade-long collaboration with VLN. CPBO, the global partnership project of Pro Bono Institute (PBI) and the Association of Corporate Counsel (ACC), will present the award at the 2015 PBI Annual Dinner on November 5 in New York.

Since 2004, nearly one-third of Best Buy's attorneys have partnered with VLN, assisting in the organization's Housing Court Project and Conciliation Court Clinic. The Housing Court Project is a walk-in clinic that provides legal advice to low-income tenants by preparing them to present their defenses and explain their situation in housing court. The Conciliation Court Clinic provides legal advice to lowincome persons on conciliation court matters.

"We are impressed and encouraged to see this longstanding partnership providing a vital service to communities in need of this kind of legal assistance," Brad Smith, president and chief legal officer of Microsoft Corporation and co-chair of the CPBO Advisory Board said.

Through this partnership, the twelve Best Buy attorneys participating in this pro bono project dedicate hundreds of hours annually to assisting VLN on these two efforts. This consistent, long-term dedication and substantial time commitment by Best Buy lawyers has helped VLN generate extraordinary results and has allowed the organization to rely on Best Buy lawyers' growing expertise in these areas.

With the aid of Best Buy attorneys, VLN's Housing Court Project assists more than one hundred households avoid homelessness each year. However, Best Buy's long-term partnership with VLN not only means the organization can provide free legal advice to more people, it also helps VLN provide higher quality legal advice to those who need it most. Because Best Buy attorneys have developed significant expertise through the years of working on the Housing Court Project and Conciliation Court Clinic, VLN routinely refers the most difficult cases, as well as those with language or disability barriers, to the clinics where Best Buy lawyers will be present.

"The partnership between Best Buy and VLN represents an exemplary corporate pro bono relationship," said Veta T. Richardson, president and CEO of ACC. "Their long-term affiliation offers Best Buy's lawyers many fulfilling opportunities to provide needed legal services, gives pro bono clients access to the most experienced lawyers, and can help yield the best case results."

Best Buy and VLN's decade-long commitment to work together demonstrates the critical impact generated by sustained partnerships. Together, these projects are aiding hundreds who cannot afford legal assistance each year with high-caliber level of assistance that is the result of the continued relationship and tradition of service between Best Buy and VLN.

"We are very honored to receive this award. I am proud of the long-standing relationship our department has had with the Volunteer Lawyers Network and grateful for the group of lawyers from our team who have been pioneers in demonstrating how corporate legal departments can be leaders in pro bono service," Best Buy Co. Inc. General Counsel Keith Nelsen said. "The dedication of our team over a period of many years has been quite inspiring and we look forward to continuing to make a difference for those in need of our services."

# IU McKinney to host exhibit about treatment of Jewish lawyers under Nazi regime

he Indiana University Robert H. McKinney School of Law will host a traveling exhibit that focuses on the plight of Jewish legal professionals in Nazi-controlled Germany.

The exhibit, "Lawyers Without Rights: Jewish Lawyers in Germany Under the Third Reich," runs April 20 to 28 in the Ruth Lilly Law Library on the first floor of Inlow Hall, 530 W. New York St. It will be available for viewing from 7:30 a.m. to 5 p.m. Monday through Friday.

The traveling exhibit focuses on the fate of Jewish lawyers, judges, law professors and civil servants

throughout Germany who were disbarred and stripped of the right to practice law shortly after the Nazis came to power in 1933.

In 1998, an Israeli lawyer asked the regional bar of Berlin for a list of Jewish lawyers whose licenses had been revoked by the Nazi regime. The bar decided not only to compile the list of names but to try to find out what happened to the lawyers. Some were able to leave the country, but many were incarcerated or killed. The Berlin bar's research was transformed into the "Lawyers Without Rights" exhibit, with other regional bars adding their own information.

# ITechLaw Elects 2015-16 Officers and Directors

New President Is Jenna Karadbil

The International Technology Law Association (ITechLaw; http://www.itechlaw.org) has elected a new slate of officers and board of directors for the coming year. The announcement was made during ITechLaw's 2015 World Technology Law Conference and Annual Meeting in San Diego, held April 29-May 1. With members on six continents, ITechLaw is the premier organization for legal professionals practicing in the global technology sector, bringing them together with industry leaders.

The new President of ITechLaw is Jenna Karadbil. founder of the Law Offices of Jenna F. Karadbil in New York City. Prior to branching out and starting her own firm, Ms. Karadbil worked at prominent American law firms both New York and Los Angeles. She also has worked in-house, as general counsel for an international software company. Ms, Karadbil is licensed in Arizona, California, Nevada and New York, and is a Certified Information Privacy Professional in the United States. She focuses her practice on intellectual property, technology, entertainment, advertising, and privacy matters, including prosecution, transactions and litigation. Prior to her legal career, Ms. Karadbil worked in the technology industry, developing extensive experience in computer programming, software and hardware design, implementation and support, and a variety of Internet-related matters. She has been part of ITechLaw since 1999.

The new ITechLaw officers, who together make up the organization's executive committee, are:

President -- Jenna Karadbil, Law Offices of Jenna F. Karadbil, New York

Vice President -- Susan Barty, CMS Cameron McKenna LLP, London

Treasurer -- Robert Weiss, Neal Gerber Eisenberg LLP, Chicago

Secretary -- Christian Frank, Taylor Wessing LLP, Munich

Assistant Secretary-- Charles Morgan, McCarthy Tetrault LLP, Montreal

Immediate Past President -- Sajai Singh, J. Sagar Associates, Bangalore

"I am honored to be named President of ITechLaw, which is

a uniquely valuable organization for the legal profession," said Ms. Karadbil. "During my tenure I will endeavor to build on the strong foundation laid by my predecessors, and I will work with my fellow officers and committee leaders to expand benefits to members as well as to provide resources and education to benefit the general public, across the globe."

The newly elected directors are: Belen Arribas, Monereo Meyer Marinel-lo, Barcelona Claire Bernier, Bersay Associes, Paris Ceylin Beyli, CBL Law Office, Istanbul Philip Catania, Corrs Chambers Westgarth, Melbourne, Australia Domenico Colella, Orsingher, Rome Kevin Erdman, ReichellP LLP, Indianapolis, United States Truiken Heydn, TCI Rechtsanwalte, Munich Peter Huppertz, Hoffmann Liebs Fritsch & Partner, Dusseldorf Hele Karja, Glimstedt Law Firm, Tallinn, Estonia Gabriela Kennedy, Mayer Brown JSM, Hong Kong Roland Mathys, Wenger Plattner, Basel Robert Milligan, Seyfarth & Shaw LLP, Los Angeles Jose Ramon Morales, Garrigues, Barcelona, Spain Jeremy Morton, Harbottle & Lewis LLP, London Matthew Mousley, Duane Morris LLP, Philadelphia, United States Charles Mudd, Jr., Mudd Law Offices, Chicago Rory J. Radding, Locke Lord LLP, New York Peter Ruby, Goodmans, Toronto Talha Salaria, L.A.W. (Lawyers At Work), Bangalore Stefan Schicker, SKW Schwarz, Munich Steven de Schrijver, Astrea by cyba, Brussels Jürg Schneider, Walder Wyss & Partners Ltd., Zurich Dag Thorstensen, Haavind, Oslo Eugene Weitz, SAI Global, Plainsboro, NJ, United States Reinoud Westerdijk, Kennedy Van der Laan, Amsterdam In addition, two new committee chairs were elected:

Program Committee Chair -- Ira Schwartz, Parker Schwartz PLLC, Phoenix

North American Conference Chair – Jessica Franken, Quarles & Brady LLP, Milwaukee



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