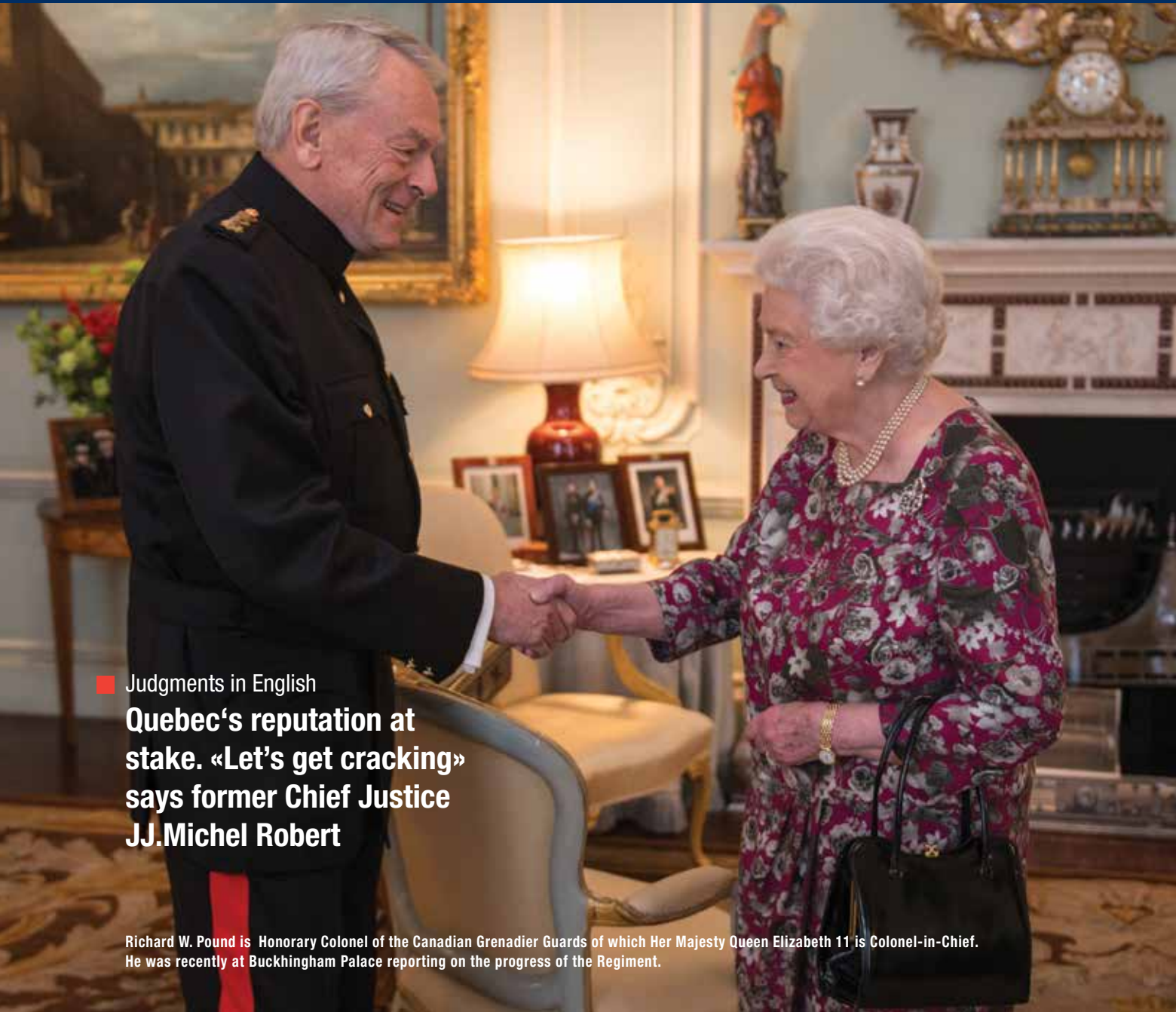




Richard W. Pound

## An outstanding lawyer, intellectual and Olympian



■ Judgments in English  
**Quebec's reputation at  
stake. «Let's get cracking»  
says former Chief Justice  
JJ. Michel Robert**

Richard W. Pound is Honorary Colonel of the Canadian Grenadier Guards of which Her Majesty Queen Elizabeth II is Colonel-in-Chief. He was recently at Buckingham Palace reporting on the progress of the Regiment.



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# An outstanding lawyer, intellectual and Olympian

As told by Richard W. Pound to André Gagnon  
Editor of The Montreal Lawyer

**M**ontreal lawyer and Olympian Richard Pound found himself at the centre of a worldwide story last month. He chaired an Independent Commission (IC) established by the World Anti-Doping Agency (WADA) to inquire into allegations of widespread doping and corruption in Russian track and field that appeared in a documentary aired on German television in December 2014.

The IC developed an investigative plan and engaged experienced investigators to do much of the interviewing, document analysis and forensic examination. A six-month blitz of field work was supplemented by three months of assessment and preparation of a 322-page report that was made public on November 9, 2015, less than a year after the documentary was released.

The contents of the IC Report were shocking. In addition to exposing a dysfunctional anti-doping program in Russia, it found that many of the officials and coaches were actively involved in helping to avoid compliance with the anti-doping rules, providing and administering prohibited substances, avoiding tests and conspiring to hide or cover-up positive cases of doping. It found evidence of officials extorting money from athletes to cover up doping test results. Even beyond breaches of anti-doping rules, the IC found evidence of conduct that it considered as criminal, involving individuals in several countries. It took the evidence to Interpol, which, after studying the materials, encouraged a referral to the French police authorities. Arrests



Richard W. Pound

and interrogations have already occurred and it is likely that criminal charges will result. The IC plans to release the portion of the Report dealing with possible criminal actions in early January 2016.

Immediately following release of the IC Report, WADA suspended the accreditation of the testing laboratory in Moscow and called for the resignation of its director. WADA's Foundation Board declared the Russian national anti-doping organization to be non-compliant with the World Anti-Doping Code and gave notice of such finding to the International Olympic Committee (IOC) and to the international organization responsible for track and field, the International Federation of

Athletics Federations (IAAF). The IAAF has suspended the Russian athletics federation, barred Russian athletes from participating in international events and will withdraw certain competitions formerly assigned to Russia.

The speed with which the international sport community has acted is evidence of the seriousness of the Report's findings.

At the time of going to press, Russian track and field athletes will not be eligible to compete in the Rio de Janeiro Olympic Games in the summer of 2016.

Pound, a 1960 Olympian in swimming, former president of the Canadian Olympic Committee and currently the longest serving active IOC member, is no stranger to controversy. He chaired the IOC's investigation

into the Salt Lake City scandal that erupted in 1999 and was the founding president of WADA, in which capacity he constantly challenged the professional leagues to be more proactive in cleaning up their sports and took on high profile cheaters like Lance Armstrong.

Asked about his focus on doping, Pound replied: "For me, it is a matter of respect. Respect for your sport, respect for your competitors, respect for the rules by which you agreed to play, and respect for yourself. You don't want to see a cheater every time you look in a mirror."

As one might expect from Pound, the IC Report pulls no punches. It confirmed the existence of widespread cheating in Russian athletics. Coaches were identified who attempted to interfere with dop-

ing reports and testing procedures and who were sources and counsellors for the use of performance-enhancing drugs. The director of the Moscow laboratory was specifically identified as an aider and abettor of doping activities and involved in covering up positive doping tests. Immediately prior to an inspection visit by WADA officials, he deliberately destroyed more than 1,400 samples, to obstruct WADA's ability to conduct follow-up analysis. The Russian national anti-doping organization (RUSADA) regularly provided advance notice of tests to coaches and athletes, allowed athletes to travel under false identities for purposes of avoiding doping tests and allowed athletes serving periods of doping sanctions to compete in events. The IC Report recommended life bans for certain coaches, officials and athletes. Russian officials did nothing to investigate the serious allegations of criminal behavior.

"It was worse than we had expected," acknowledged Pound. "Officials on whom athletes depended to ensure that the same rules applied to all competitors were actively involved in conduct that puts the credibility of sport at risk and betrays the trust given to them. Russia now has an opportunity to turn the page in respect of its conduct and perhaps the fact that it is Russia, one of the most important sport countries in the world, that has been caught may send a message to other countries and sports that the time for change has come."

The IC Report comes at a time when two of the largest sports organizations are under scrutiny for major failures of governance. FIFA has seen many of its leaders arrested and charged for criminal offences and the

# PEOPLE MAKING A DIFFERENCE

Stikeman Elliott congratulates **Richard W. Pound** for his outstanding contribution to the sports community.

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IAAF faces similar challenges. Both are very much at a crossroad and should realize that they must change – or be changed.

### Biography

Richard Pound is one of Canada's most-recognized figures in international sport. In his distinguished career, the native of St. Catharines, Ontario was a two-time vice-president of the International Olympic Committee (IOC) and was responsible for all Olympic television negotiations, marketing and sponsorships, up to and including the 2008 Olympic Games in Beijing.

Pound has been a COC executive member since 1968 and its secretary general for eight years before becoming COC president in 1977 (to 1982). He was founding president of the World Anti-Doping Agency (WADA), created in 1999 to coordinate the fight against doping in sport. His involvement continues post-2007 as IOC representative on the WADA Foundation Board.

At the IOC, Pound has had vast and varied roles. Vice-president from 1987 to 1991 and 1996 to 2000, he was a member of the IOC Executive Board from 1983 to 1991 and 1992 to 1996. Pound was chairman of five IOC commissions: the Coordination Commission for the Atlanta 1996 Olympic Games, Protection of the Olympic Games, Television Rights Negotiations, Marketing and Olympic Games Study. Vice-chairman of the Eligibility Commission, he has also been active as a member of many other important IOC bodies that included Preparation of the XII Olympic Congress, Olympic Movement, Juridical and Sport and Law.

His career has touched nearly all aspects of the Olympic Games and Movement. Pound has had many significant Olympic roles for Canada. He was director and executive member of the Organizing Committee for Canada's first Olympic Winter Games, Calgary 1988. He was Deputy Chef de Mission of the Canadian Olympic delegation for the Munich 1972 Olympic Games. He was a director of the Vancouver 2010 Bid Committee, helping influence the successful bid.

As an athlete, Pound was a double Olympic swimming finalist at the 1960 Olympic Games, and captured four medals (one gold, two silver, one bronze) at the 1962 Commonwealth Games. From 1958 to 1962, Pound won several national swimming titles and was elected into the International Swimming and Canadian Swimming Halls of Fame. In 2002 he received the Gold Medallion Award from the

International Swimming Hall of Fame. Pound was also once a nationally-ranked squash player.

Pound is the author of nine books: *Rocke Robertson Surgeon and Shepherd of Change*, *Unlucky to the End*, *Inside Dope*, *Inside the Olympics*, *High Impact Quotations*, *Canadian Facts and Dates*, *Five Rings Over Korea: The Secret Negotiations Behind the 1988 Olympic Games in Seoul*, *Chief Justice W.R. Jaccett*, *By the Law of the Land and Stikeman Elliott*, *The First Fifty Years*. A senior partner of Stikeman Elliott's tax section in Montreal, he is editor or author of several other publications, tax-related.

Pound was awarded the Canadian Olympic Order (Gold) in 1996 and is a member of the Canadian Olympic, Canadian Amateur Athletic and the Quebec Sports Halls of Fame. He is currently Chancellor of McGill University and was chair of its Board of Governors from 1994 to 1999. He is an Officer of the Order of Canada and of l'Ordre national du Québec.

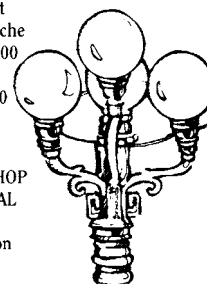
Richard Pound has been promoted as Companion (C.C.) in the Order of Canada.

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# Judgments in English: Quebec's Reputation at Stake



By Edmund Coates, lawyer

■ Let's get cracking!"<sup>1</sup> says the Honourable Michel Robert about the invisibility of our courts' judgments, outside Quebec. He presented a vibrant talk on the translation of judgments, at the conference on the Language of Laws and Judgments organized by the Bar of Montreal and its associates<sup>2</sup>. Me Michel Robert, Ad. E., has served as *Bâtonnier* of Quebec, Chief Justice of Quebec and Chief Justice of the Quebec Court of Appeal. He now practices at the BCF law firm.

Me Robert began by warning that the reputation of the Court of Appeal and that of the Superior Court are suffering a downright disaster, from the absence of English translations of their judgments. It is also a disaster that these courts are prevented from bringing their own contribution, in return for the judgments from outside Quebec which influence our courts. In the absence of translations into English, Quebec's judgments are not cited, they are not read, they are not understood. The other provinces, the United States and the other English-speaking countries of the world will not even know that the Court of Appeal has ruled on that legal issue.

Some critics will say that this concern is insignificant, since the judgments of Quebec's courts are largely in pure civil law. According to Me Robert, the court rolls stand witness to the opposite.

Outside of Quebec City and Montreal, the cases heard by the Superior Court are largely matrimonial. There are also actions following the breakup of an unmarried couple, which rely to some extent on judgments of the Supreme Court of Canada. The vast majority of other civil cases involve questions of insurance. Since insurance is a national industry, the Court of Appeal and the Superior Court draw a great deal on judgments rendered in other provinces, particularly with respect to quantum and other issues related to awards of damages.

Naturally, when the Court of Appeal or the Superior Court render decisions with respect to bankruptcy, insolvency and corporate restructuring, this involves the federal realm. Another example would be the oppres-



*Me Michel Robert*

sion remedy under the Canada Business Corporations Act, an area where influences are on a national and international scale. Other commercial matters often have national and sometimes even international relevance. Industries are similar from province to province; in fact, some industries are both Canadian and American. Finally, the Superior Court also sits in judicial review, an area significantly influenced by judgments from the Supreme Court of Canada and from courts in the other provinces.

Quebec already makes some allowance for the translation of judgments. Under article 9 of the Charter of the French Language, a judgment rendered by a Quebec court will be translated into French or English, if there is a request from one of the parties to the proceeding. According to Me Robert, this arrangement deserves three criticisms. First, the delay between a request and the receipt of the translation: generally a wait of about six months. Second, the low quality of the translations. Third, citizens are poorly informed by the system: they need to know the steps required to obtain a translation, including where they can make their request.

When he was Chief Justice of the Court of Appeal, Me Robert had asked for the help of some of the judges, as an interim measure. These judges agreed to review and correct translations of judgments. But only a few judges have the required level of linguistic skill. Thus, this makeshift measure imposes a heavy burden on those judges and it can only address a tiny proportion of the judgments rendered by the Court.

A good example would be the judgment of the Court of Appeal with respect to the creation of a national securities commission. The Court of Appeal had taken on itself the task of translation here. Thus, judgment and translation were made public at the same moment. The English translation of the judgment drew a high level of interest, from Quebec, from other provinces, and from the United States. According to Me Robert,

there would have been zero interest in a mediocre translation, available six months after the judgment was rendered.

Me Robert noted that there is hardly a uniform geographical distribution of bilingualism among judges, whether at the Superior Court or the Court of Appeal. Judges are offered language training; they can even have a teacher come to their office every morning. Still, acquiring sufficient skill to write judgments in English is a huge endeavour, for a judge whose mother tongue is French, just as acquiring sufficient French is a huge endeavour for an English-speaking judge.

The Court of Appeal tried to have translators who would be part of its own staff and translate a certain number of judgments. But budgets have been sharply reduced, and translation is certainly not among the priorities of the Quebec government. According to Me Robert, the Court of Appeal should have its own translation department, which could also translate certain judgments rendered by the Superior Court. The quality of translations increases when there can be an interaction between the translator and the judge who authored the judgment. Moreover, this approach to translation improves the quality of the judgment in its original language, since the translator's questions bring to light ambiguities, which the judge can clarify before the judgment is made public.

In conclusion, Me Robert noted that the language of a judgment is not always a function of the linguistic skills of the judge. The capabilities of court staff may also be a factor: a large number of clerks of the courts, at first instance, are unilingual Francophones. Thus, a bilingual judge who has English-speaking parties before him is sometimes compelled to render judgment in French, because the clerk does not understand English and the court must render judgment without delay (for example, with respect to interim support or to custody of a child).

<sup>1</sup> "Grouillons-nous!"

<sup>2</sup> The conference was organized by the Barreau de Montréal, the Office of the Commissioner of Official Languages, the Language Rights Support Program, and the Quebec Community Groups Network. It was held in Montreal on 21 October 2015.

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**THE MONTREAL LAWYER**

642, rue Pierre-Tétrault  
Montréal, (Québec)  
H1L 4Y5  
(514) 353-3549

Email : [mtlawyer@videotron.ca](mailto:mtlawyer@videotron.ca)

Website : [themontrealawyer.com](http://themontrealawyer.com)

**Publisher & Editor**

André Gagnon, B. A., LL. L.

**Publication Manager**

Jeanne d'Arc Tissot

**Advertising Director**

Benjamin Gagnon

**Advertising**

642, Pierre-Tétrault  
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Phone: (514) 353-3549

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# Obama and Lynch Address Debtors' Prisons, the Central Issue in the IRP6 Case, Says Advocacy Group, A Just Cause

Independent Experts, Grand Jury, and FBI Say IRP6 Criminal Case Was About Debt.



**A** Debtors' prisons took center stage at the White House on December 3, 2015 as President Obama and U.S. Attorney General Loretta Lynch addressed issues of imprisoning citizens for a failure to pay debts. Debtors' prisons in the United States "are unconstitutional," Lynch said in her

remarks. "While the crux of Ms. Lynch's remarks addressed the injustice of the poor being criminalized for their failure to pay city fines such as traffic and court fees, the criminalization of corporate debt that resulted in the incarceration of six information technology executives running a small business is equally unjust," says Lamont Banks, Executive Director of A Just Cause.

The IRP6 case concerns six information technology executives (five black, one white) of IRP Solutions Corporation. The six men (David A. Banks, Kendrick Barnes, David A. Zirpolo, Gary L. Walker, Demetrius K. Harper and Clinton A. Stewart) suffered a wrongful-conviction in 2011 and

have spent the past 40 months at a federal prison camp in Florence, Colorado. The government alleged the IRP6 conspired together to commit mail and wire fraud by duping staffing companies into signing legal agreements to payroll information technology contractors for work on IRP's Case Investigative Life Cycle (CILC, pronounced "silk") software. The government claims that the men made false statements about "current or impending" contracts with the Department of Homeland Security and New York City Police Department which induced staffing companies to do business with them. "Court records from the grand jury and trial show that the IRP6 case was a civil matter," says Banks, "and independent experts, including a former federal judge, say the IRP6 were criminalized for corporate debt."

According to federal grand jury records, a grand jury took the government to task about criminalizing the debt of the IRP6: "...but that is not a federal crime is it? To that point, is there a federal crime? If I don't pay somebody for the work they've done, that's not a federal crime," a grand juror stated.

Richard Powers, head of the Denver Division of the FBI agreed that the IRP6 case was a civil matter. In a letter

to a creditor of IRP Solutions, Powers states: "We (FBI) are unable to assist you in this matter and therefore no investigation will be conducted... We feel this case would best be handled civilly, and have noted that you have initiated [civil] legal action against the company.

After reviewing trial transcripts, the Honorable H. Lee Sarokin, former federal judge of the 3rd U.S. Circuit Court of Appeals concluded that the IRP6 were convicted for the "crime of failing to pay corporate debts. The government proved that the [IRP6] defendants incurred debts and did not pay them," said Sarokin. The government's actions "made it impossible for them to fulfill their obligations," Sarokin explained. "I feel a grave injustice has been done."

"Why did the U.S. Attorney's Office waste taxpayers' dollars criminalizing a debt collection case?" asked Dr. Alan Bean, Executive Director of Friends of Justice in a report issued after a six-month investigation. "The IRP6 case departs from the typical failed-scam scenario. The government's case can't stand up to scrutiny. The fraud alleged in the federal indictment is a mirage."

During court hearings on November 19, 2010 and October 13, 2011, FBI agent John Smith testified that if IRP had paid their debts there would not have been a trial.

"...As a former federal prosecutor I am hurt," said Ron LeGrand, former Senior Legal Counsel of the U.S. House and Senate Judiciary Committees. "IF! Big IF! If there was a case at all, it was a civil case and should have been handled as such. Which again goes back to over criminalization,"

added LeGrand. "It's the over criminalization effort of both the House and Senate --- one of the things it is intended to do is force our government --- force our Justice Department to look at cases and ask the question: "Is this a civil or criminal cause of action?"

The Heritage Foundation defines over criminalization as "... the trend to use criminal law rather than civil law to solve every problem, to punish every mistake and to compel compliance with regulatory objectives."

Having debtors' prisons is "not the criminal justice system in which those of us who are working for fairness, and for equality are going to be pursuing," said Lynch. "A fundamental sense of disbelief that government is there to serve people, when people see government in many, many ways and forms, as simply a means of extracting money and pressing down on their necks."

"The evidence that the IRP6 were wrongly-convicted on the basis of failing to pay corporate debt is overwhelming," says Banks. "Independent experts who have nothing to gain are speaking out and advocating on behalf of the IRP6 because they recognize that a grave injustice has been done. A Just Cause once again calls on President Obama, Attorney General Lynch and members of Congress to right this wrong and end the continuing pain and suffering of the IRP6 and their families by freeing these men from prison. Make us believe that our government will right such an obvious wrong. These men have lost over three years of their lives and deserve justice," concludes Banks.

*« May you all enjoy to the fullest the  
Holiday Season. Have yourselves a  
Merry Christmas and a Happy New  
Year from The Montreal Lawyer team »*

# What is this, gemstone treatments?

By Olga Shevchenko

**Y**ou have bought a beautiful ring with a ruby. You enjoy wearing it, yet it is a little big for you and you ask a jeweller to resize it. When you come back to pick up your ring in a couple of days, you get a shock. Instead of a gorgeous red ruby, you get a stone which color has become much lighter and you see a kind of a spider-web in the stone. You wonder whether this is your ring and your gem! It is yours, but the ruby in your ring has been originally treated – initially, it has had numerous flaws and its color was not pure red, but red-brownish. So, in order to get a nice-looking ruby, the gemstone was heated at a very high temperature in a special solution and, as a result, a nice red ruby was produced.

Being unaware of the ruby treatment, the bench jeweller started using his torch (i.e. very high temperature) in order to resize the ring, and the filler in the ruby melted changing its color and exposing the fissures in the stone.

Another example would be a diamond with internal fractures. Using special techniques, the latter are filled with a transparent substance making the fractures invisible to a naked eye. This process is called Clarity Enhancement; today, a lot of diamonds undergo this treatment. There is nothing bad about the treatment, but the important thing is that it must be disclosed for it will affect the value and the price of the diamond.

Or even worse – your gorgeous blue diamond starts peeling off because a treatment called “coating” was used to

*Olga Shevchenko*  
Gemmologue certifiée, EGM Évaluateur de  
Bijoux et de Pierres  
Jewelry Olga (Bijoux de design de perles)  
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transform a slightly yellow diamond into a rare and valuable blue diamond.

Treatment of gemstones is alteration of its appearance and properties. Why treatments are used? Good quality gemstones are rare and expensive. So, from old days, people have been using the techniques to improve the appearance and the qualities of gems. For instance, even in Roman and Medieval Europe, in order to improve the appearance of natural pearls, i.e. to remove surface blemishes and to improve color, the pearls were fed to chickens. Or, for whitening the pearls, pearls were left in the sun. Those were the first and very primitive treatments. At present, treatments are numerous and often very sophisticated.

Today, natural rubies, sapphires and emeralds that are not subject to any kind of treatment are becoming very rare and searched-for.

If the treatment is not disclosed, a consumer will believe that the gemstone has naturally higher quality and consequently much higher value. On the other hand, the sup-

ply of natural gemstones is very limited. Actually, treated gemstones allow us to have beautiful jewelry at affordable prices. What is of paramount importance – treatments must be disclosed.

The danger of a treatment is that, improving an appearance of a gemstone, it may affect its durability diminishing it and requiring a special care for the gemstone. As well, some treatments are permanent while some are temporary, which may lead to the gemstone fading and losing its beautiful color with time.

The problem is that the treatments for gemstones are refined permanently, making their detection difficult sometimes. That is why you should always buy jewelry at a reputable jeweller.

In recent years, some gem treatments have become a norm in the industry (we call them "routine treatments"), and it is assumed that nearly all gems are treated somehow. However, the type of treatment and the degree of treatment is very important. Some treatments are stable, so the treated gem will not change its appearance and properties with time. In some cases, treated gems need special care, like emeralds, that have undergone oil impregnation (actually, this is a routine treatment for an emerald). In any case, a treatment affects the value of a gem, and an untreated gem will fetch the highest price. This must be stated in an appraisal certificate issued by a renowned gemological laboratory. I want to emphasize that the document shall be issued by a renowned gem-testing laboratory because some treatments may be detected only by advanced techniques available in the laboratories only.

Just to give you an idea of how prices differ for treated and untreated gems – for fracture-filled diamonds, the price of a treated diamond is 20-40% lower compared to the untreated diamonds with similar characteristics.

Therefore, it goes without saying that any treatment must be clearly disclosed. When you are looking for a jewelry with an important gemstone, make sure that the gemstone has a laboratory certificate describing its characteristics and specifying whether it is treated or not for it drastically affects its value.

If you have any questions, please feel free to contact me.

Next time, we will discuss synthetic gemstones and whether we should we buy them or not.

## Raymond Bachand, a strategic advisor at Norton Rose Fulbright, is awarded the 2015 Mayor's Prize



**R**aymond Bachand, a strategic advisor at Norton Rose Fulbright, was awarded the 2015 Mayor's Prize at the Montréal Inc. gala evening, an event in support of Fondation Montréal Inc.

The prize was presented by Denis Coderre, Mayor of Montréal, in recognition of Mr. Bachand's exceptional contribution as a committed volunteer from the business community who has offered countless hours to advise and guide entrepreneurs of Fondation Montréal Inc. in achieving their objectives.

At Norton Rose Fulbright, Mr. Bachand advises on growth, acquisitions and strategic alliances. During his very successful career in both the public and private sectors, he has maintained an active role in numerous social and cultural organizations and has served on many boards of directors.

Solomon Sananes, managing partner of Norton Rose Fulbright's Montréal office, said, "Speaking for myself and for Norton Rose Fulbright, on the occasion of this fitting tribute by the business community, I offer my warmest congratulations to Raymond for his dedication to encouraging the next generation of business entrepreneurs."



# Real Estate: a fertile ground for fraud?

By Corey Anne Bloom, CPA, CA, CA-IFA, CFF, CFE

## Is Real Estate a fertile ground for fraud?

### The answer is Yes.

According to the Association of Certified Fraud Examiner's 2014 Global Fraud Study "Report to the Nations", real estate industry fraud cases notably account for large losses, ranking second highest amongst the various industries. Although the frequency of such cases was not at the top of the list, it should be noted that the resulting losses when fraud did occur in the industry, were quite severe.

What is Fraud? It can be defined as an intentional or deliberate act to deprive another of property or money by guile, deception, or other unfair means.

Unfair means can include:

- False or misleading documents
- Deceptive behaviour
- Manipulating information
- Falsified financial reporting
- Bid-rigging
- Kickbacks
- Misappropriation of funds

### There are many types of real estate fraud.

One type of fraud I have encountered fairly often is Project Development Fraud. This is generally defined as the co-mingling of the funds of an investor or several investors with those of others, or fraudulently directing the funds to other projects.

How does it happen? It usually occurs in ventures where

two or more partners are jointly involved in a real estate project and one partner is more active in the business than the other(s). In these situations, the more active partner generally carries the responsibility for the back office work, which may include the accounting, procurement, payments and overall expenses pertaining to the development project. It may also include equalization payment allocations calculations.

Without proper controls as well as oversight in place, this individual or persons working for them may be able to inflate expenses, misappropriate funds to other projects or hire a biased management company. I have encountered all of the above in real estate project development frauds over the last few years.

I have also encountered situations where two or more partners have invested in commercial real estate and failed to foresee certain issues which would arise shortly thereafter. In one case, two friends decided to invest in a large commercial property to be developed. The active partner, who had experience in the field, was in charge of both the back office as well as front office, and decided to hire related parties. The silent investor, inexperienced in the field, was not aware of this until he toured the property and noted that numerous employees had begun to leave their jobs and others related to the active partner were being hired. He was told that they left due to argu-



Corey Anne Bloom

ments with the active partner's related party. The silent partner then began to question the hirings as well as all related expenses. The investigation discovered that the active partner had "borrowed" funds and directed them to his own personal projects. There was also an issue with sales tax that had been recovered and directed to another project. This led to a deterioration of the working relationship with the other partner as well as to their friendship.

#### Points to remember

- Contracts should include the right to audit and more important to have the right to determine the intervals at which the audits occur.
- Many investors tend to assume that what was discussed/agreed upon in informal meetings is what is written in the contract. That is not always the case.

#### Conclusion

- Forensic teams are available to review the accounting controls in place in real estate and other ventures and determine whether deficiencies exist.

Such a review is beneficial for all investors, no matter what their role in the ventures. It can be performed proactively to recommend appropriate controls at the outset or even during the project as an independent oversight mechanism.

About the Author: Corey Anne Bloom, CPA, CA, CA-IFA, CFF, CFE is a Partner in MNP's Investigative & Forensic services division. She is a Past-Chair and Regent Emeritus of the Association of Certified Fraud Examiners Board of Regents and has been invited to speak in Canada and internationally multiple times.

## News to use

### Pierre Marc Johnson delivers the closing address at a conference on methane in the lead-up to COP21



In Paris, on November 9, 2015, Mr. Pierre Marc Johnson, former premier of Quebec and counsel at Lavery recognized for his expertise in international trade and cross-border partnerships, delivered the closing address at a conference entitled "Mitigating methane emissions: From science to innovative solutions".

The conference was organized by the Veolia Institute, in collaboration with the Agence Française de Développement and the Prince Albert II of Monaco Foundation, within the scope of preparatory activities leading up to the forthcoming COP21 on climate change.



### 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 able to provide better strategies with better results.

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# “The value of a beneficiary’s interest in a trust”

— Part 2

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

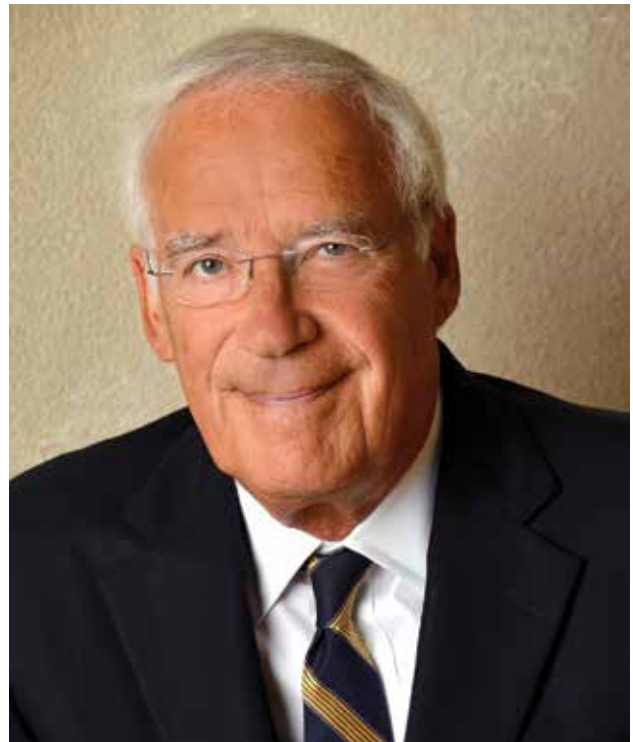
**P**art 1 of this article addressed the various terms employed in trusts, duties of the trustee as well as the valuation of non-discretionary trusts. Part 2 addresses discretionary trusts and the valuation thereof.

## Discretionary Trusts

A discretionary trust is a trust in which the settlor has given the trustee(s) full discretion to decide which (and when) a beneficiary or defined group of beneficiaries is to receive the income or the capital of the trust. With such trusts, the trustees have the power to decide who the beneficiaries will be, the settlor will have identified or described a specific class of beneficiaries (which can include unborn individuals). It is an arrangement under which trust property is set aside, or earmarked, with directions that it be used for the benefit of another, (i.e., beneficiary). It provides that the trustee (whether appointed or otherwise required by law to administer the property) has the right to accumulate — rather than distribute to the beneficiary — the annual income generated by the trust assets or a portion of the assets. Depending on the terms of the trust instrument (trust deed), the annual income can either be accumulated for future distributions to the income beneficiaries or added to the corpus of a trust for the benefit of the remaindermen (those are who entitled to the balance of the estate after a particular portion of the estate has been distributed). The trustee of a discretionary trust has the full discretion to give or deny the beneficiary any benefits under the trust. The beneficiary cannot compel the trustee to distribute or use any of the trust property to the beneficiary's advantage.

## Valuation of Interest in a Discretionary Trust

If the trust is a discretionary trust, the valuator must con-



sider, in addition to the respective factors enumerated above with respect to the valuation of non-discretionary trusts, the fiduciary powers of the trustee(s), in which case the valuator often will consult with legal counsel, as may be appropriate.

Each of the following factors must be considered and evaluated:

- Settlor's overall intentions in the context income tax or estate/succession plan;
- Composition of the trust capital;
- Value of the trust capital;
- Assumed rates of return on trust capital;
- Relationship between beneficiary(ies) and trustee(s);

- Obligations of trustee(s), as specified by settlor/testator;
- Possibility of a change of trustee(s);
- Relationship between the beneficiary(ies) and trustee(s);
- Likelihood of trustee(s) exercising power in favor of certain of the beneficiaries;
- Obligation of trustee(s) to maintain an even hand vis-à-vis all beneficiaries;
- Number of beneficiaries;
- The rights of other beneficiaries;
- Ages, health and needs of the other beneficiaries;
- Life expectancies of other beneficiaries;
- Letter of Wishes, if any, and possible access thereto;
- Legitimate expectations of the other beneficiaries;
- Contingent taxes;
- Degree of control by one particular beneficiary (as trustee or through relationship to trustees) vis-à-vis other beneficiaries;
- History of distributions to beneficiaries; and
- Willingness of trustee(s) to provide beneficiaries with documents, information or reasons regarding exercise of discretion, etc.

#### The Canada Revenue Agency has stated the following:

"It would be unreasonable to conclude that the Fair Market Value of an interest [in] a discretionary trust holding property with significant value has no value simply because it is difficult to measure. In the absence of any term of the trust that would direct the trustees to favour one beneficiary over another, the

even handed principle would suggest that value of each beneficiary's interest was approximately equal. Where the facts support a finding that one beneficiary has a lesser chance of receiving a distribution from the trust than another beneficiary, it may be appropriate to discount the value of one interest and increase the value of another."<sup>1</sup>

Often, the valuator will consult with counsel with respect to certain provisions of the trust deed or will, as well as any other factors that can have a direct bearing on the economic benefits that would be expected to inure to the particular income or capital beneficiary of the trust.

#### Example of Discretionary Powers Afforded the Trustee

"In this Trust Agreement, I have authorized certain discretionary distributions to or for the benefit of designated persons for the suitable support, maintenance, health, and education of such persons. My intention is that the Trustee shall take into account the following factors: (a) the other assets (excluding any personal residence and automobiles and other tangible personal property held for personal use) and the income from other sources of such persons and of any person legally obligated to support any of them; (b) any private or governmental medical insurance or other medical payments to which such persons may be entitled; (c) their relative ages, needs, and customary standard of living; (d) my desire to afford any of such persons an opportunity to enter into a business or profession if the Trustee shall determine in the discretion of the Trustee that it appears more likely than not that the venture will be successful; and (e) such other factors as the Trustee considers relevant. In addition, the Trustee shall have the power to purchase a home



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for such persons in the name of the trust, rather than making a distribution directly to such persons for such purchase if the Trustee determines, in the discretion of the Trustee, that such a course of action would be in the best interests of such persons."

## Conclusion

The Fair Market Value of an interest in a non-discretionary trust will consider such factors as the value of the trust capital, the asset mix, rates of return, beneficiary's life expectancy, the estimated timing and amounts of the distributions, encroachment rights, history of distributions, taxes, etc. However, in valuing a beneficiary's interest in a discretionary trust, additional factors must be considered, such as the fiduciary powers of the trustees, the settlor's/testator's overall intentions, history of distributions, rights of other beneficiaries as well as their ages, health and needs, the relationship between the beneficiary and the trustee(s), the obligation of trustee(s) to maintain an even hand, the testator's Letter of Wishes (if any), availability

of information from the trustee(s), possibility of change of trustee(s) etc.

As with other types of assets, the bottom-line test of the Fair Market Value of an income interest or capital interest in a discretionary trust is, "What would an informed and prudent arm's length party, who is uncompelled to transact, pay for a life interest or reversionary interest?" As there is no definitive economic interest (unless the vendor of the trust interest happens to be the sole beneficiary) in the income or capital of the trust, the Fair Market Value of an interest in a discretionary trust would have, at best, "speculative value" and can even be \$1.00 or nil. In the real-world, life interests and reversionary interests are sold in England for a capital sum in the open market by way of public auction!

<sup>1</sup> Technical Interpretation (External) Document No. 2003-0181465, dated April 3, 2003.



As the year draws to an end, we wanted to take a moment to highlight your continued commitment to learning, and thank you for your continued support.

From the McGill Executive Institute team, we would like to wish you and your loved ones a very happy holiday season!



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## Upcoming Seminars

Mini-MBA Executive Development Course (EDC) - Ottawa	Begins Jan 20
Mini-MBA Advanced Management Course (AMC) Montreal	Begins Jan 29
Effective Leadership	Feb 24-25
Influence and Assertiveness	Mar 10-11
Managing Conflicts & Difficult Situations	Mar 15-16
Mini-MBA Advanced Management Course (AMC) Ottawa	Begins Mar 16
Communicating Effectively	Mar 16-17
Strategic Planning and Execution	Apr 5-7
Leading Change	Apr 7-8
Emotional Intelligence for Workplace Success	Apr 12-13
Le Leadership Efficace - Formation en Français	Apr 12-13
Mini-MBA Executive Development Course Calgary	Begins Apr 13
Mini-MBA Integrated Management Thinking Montreal	Begins Apr 14
Mini-MBA Executive Development Course Vancouver	Begins Apr 18

# Library of Congress hosted Islamic Law Reform Program

**I**n recognition of Human Rights Day, the Law Library of Congress and the Library's African and Middle Eastern Division hosted a panel discussion on Islamic law reform earlier this month.

The event will be held in the Montpelier Room, located on the sixth floor of the James Madison Building, 101 Independence Ave. S.E., Washington, D.C. The event is free and open to the public. Tickets are not required.

The program, "Perspectives on Reform of Islamic Law," will feature a panel of distinguished Islamic scholars. They include Sherman Jackson, King Faisal Chair of Islamic Thought and Culture at the University of Southern California; Issam Saliba, foreign law specialist at the Law Library of Congress; and Harvard Law School professors Intisar A. Rabb and Kristen A. Stilt, who co-direct the university's Islamic Legal Studies program.

Jane McAuliffe, world-renowned scholar of Islam and director of the Library's National and International Outreach Division, will moderate the discussion, which will explore new avenues and perspectives on Islamic law reform with a particular focus on reform within the framework of Islamic jurisprudence itself—as opposed to purely secular or "external" reform processes.

Human Rights Day commemorates the adoption in 1948 of the Universal Declaration of Human Rights (UDHR). The declaration was designed to provide

a global framework for human rights following World War II and the colonial era. The UDHR, the first global enunciation of human rights, is considered the most translated document in modern history. It is available in more than 360 languages, and new translations are still being added.

The Law Library was established in 1832 with the mission to make its resources available to members of Congress, the Supreme Court, other branches of the U.S. government and the global legal community and to sustain and preserve a universal collection of law for future generations. With more than 5 million items in various formats, the Law Library contains the world's largest collection of law books and other resources from all countries and provides online databases and guides to legal information worldwide through its website at [loc.gov/law/](http://loc.gov/law/).

The African and Middle Eastern Division is a center for the study of some 78 countries and regions from Southern Africa to the Maghreb and from the Middle East to Central Asia. For more information on the division and its holdings, visit [loc.gov/rr/amed](http://loc.gov/rr/amed).

Founded in 1800, the Library of Congress is the nation's first-established federal cultural institution. The Library seeks to spark imagination and creativity and to further human understanding and wisdom by providing access to knowledge through its magnificent collections, programs, publications and exhibitions. Many of the Library's rich resources can be accessed through its website at [loc.gov](http://loc.gov).

# McCarthy Tétrault CEO

## Montreal lawyer Marc-Andre Blanchard

### named one of Canada's Most Powerful Business People



Marc-André Blanchard

**M**cCarthy Tétrault is proud to congratulate Marc-André Blanchard, our Chair and CEO, on being named to Canadian Business magazine's list of Canada's Most Powerful Business People for 2016: The Power 50. Noting that Marc-André "Keeps Big Law fresh," the magazine highlighted his leadership of our innovative

service delivery model in direct contrast to the traditional Law Firm model.

"Marc-André's leadership is a driving force behind reimagining how large law firms operate and interact with clients," said Matthew Peters, McCarthy Tétrault's National Leader, Markets. "Under Marc-André's leadership, our firm has embraced innovative service delivery, efficiency and excellence while continuing to exceed our clients' expectations and deliver more value. From challenging the status quo to creating more opportunities for women lawyers, to fostering a culture of innovation through the development of customized solutions in collaboration with clients, Marc-André has made a lasting impact on the industry."

Published annually, The Power 50 Canada's Most Power-

ful Business People recognizes executives, entrepreneurs, politicians, and scholars who are changing the way Canada does business.

#### Biography

Marc-André Blanchard is the Chair and Chief Executive Officer of McCarthy Tétrault, one of Canada's leading national law firms. He also provides advice to companies on governance, strategic and public policy issues.

Prior to becoming Chair and CEO, Mr. Blanchard served two terms as McCarthy Tétrault's Regional Managing Partner, Québec region.

Mr. Blanchard has advised Rio Tinto plc on the acquisition of Alcan Inc. He has represented CGI in an arbitration proceeding concerning an important outsourcing contract. He was part of the litigation teams involved in the fight over the control of both Air Canada and Le Groupe Vidéotron Ltée. He represented a Canadian university in an important international arbitration case. He also represented Rothmans, Benson & Hedges in the constitutional challenge of the Tobacco Act.

Through his tenure as Chair and Chief Executive Officer, he has introduced significant changes, including intensively pursuing a growth agenda and implementing an innovative service delivery model. In 2014, The Financial Times

recognized McCarthy Tétrault as the most innovative law firm in Canada and as one of the most innovative law firms in North America.

In 2013, the Canadian Lawyer Magazine recognized Mr. Blanchard as one of Canada's top 25 most influential lawyers, and he received the Catalyst Canada Honours recognizing his leadership as a diversity champion. Mr. Blanchard has received many other awards and accolades for his leadership and expertise.

Mr. Blanchard is also actively involved in his community. He is a board member of Canada's Heart & Stroke Foundation, The Conference Board of Canada, the Institute for Research in Immunology and Cancer (IRIC), and the Wood-Green Foundation and the advisory board of Glendon College. He is an active member in campaign cabinet for the

Université de Montréal, United Way Toronto, as well as an active member of the Young Presidents Organization (YPO). From 2000-2008, he was President of the Québec Liberal Party and actively participated in the transition teams of several governments.

He holds a Bachelor of Laws degree from the Université de Montréal (1988), a Master's degree in Public International Law from the London School of Economics and Political Science (1990), and Master's degrees in both Public Administration and International Affairs specializing in International Trade Law from the School of International and Public Affairs of Columbia University (1992). He was called to the Québec bar in 1992.

Mr. Blanchard is married to Monique Ryan and has two sons, Laurent and Adrien.

# All That Holiday Music Can Only Mean One Thing: Santa Claus is coming to Town! What better gift to give than the gift of skiing?

**We are in the thick of the holiday season with Christmas being less than two weeks away! If you're looking for the perfect stocking stuffer for a Grade 4 or 5 in your life, then be sure to check out the Grade 4 & 5 SnowPass program!**

Your kids have never skied or snowboarded before? No problem! It is the perfect time to get them started. And the Canadian Ski Council has everything you need to make it easy and affordable for them to learn. For just \$29.95, you can pick up the Grade 4 & 5 SnowPass for your child and receive three free lift tickets for each participating ski area. With 150 locations across Canada, there are hundreds of opportunities for your kids to ski and snowboard this winter!

Registering your child for a SnowPass is easy and any child in grade 4 or 5 is eligible (or those born in 2005 or 2006). Just visit [www.snowpass.ca](http://www.snowpass.ca), upload your child's picture and proof of age, enter your method of payment and presto, your child's personalized SnowPass will be mailed directly to your home in days.

If this is your child's or your first time skiing or snowboarding, the Canadian Ski Council has you covered too! Sign up for a Discover Learn to Ski or Snowboard lesson package, which includes a lesson, lift ticket and equipment rental, all for a very low price. Check out [www.skicanada.org](http://www.skicanada.org) for a full list of ski areas that offer Discover lesson packages and their package prices.

The Grade 4 & 5 SnowPass is a national program and is valid at 150 ski areas across Canada, including 31 ski areas in British Columbia, 21 in Alberta, 1 in Saskatchewan, 2 in Manitoba, 29 in Ontario, 57 in Quebec, 8 in Atlantic Canada, and 1 in the Yukon. So no matter where you live, everyone can take advantage of this fantastic offer. To see a full list of participating ski areas, please visit: [www.snowpass.ca](http://www.snowpass.ca).

Grade 4 and 5 SnowPass information and applications are available online at [www.snowpass.ca](http://www.snowpass.ca) or [www.passeport-desneiges.ca](http://www.passeport-desneiges.ca). Sign up today so you have the SnowPass for Christmas.



# Paris attacks: UN official blames US, West & Israel; “They came to us because we went to them”

**U**N Secretary-General Ban Ki-moon, and the UN ambassadors of the U.S., UK, France, and Germany, must condemn a UN Human Rights Council official for his offensive and morally perverse essay blaming last month's Paris attacks on the U.S., Western colonialism, capitalism, and "Israeli settlers" — and implicitly justifying them as "a response to grave injustices and ongoing abuses perpetrated by the dominant, primarily developed countries, against populations of less developed countries."

Leading figures at the United Nations need to condemn the remarks. Indeed, the UN chief had done so in a virtually-identical case in 2013, when in a blog post former UN expert Richard Falk similarly blamed the Boston Marathon terror attacks on "American global domination" and "Tel Aviv."

The UN Secretary-General must publicly reject Mr. De Zayas' highly offensive comments, and clarify that no grievance, real or imagined, could ever justify the horrific terrorist attacks that killed 130 innocent people in Paris, wounding hundreds more. To grant even the slightest exoneration to the Islamic State and its criminal perpetrators is to insult the memory of the victims.

The UN Secretary-General must remind all special rapporteurs of the need to understand that while they have independent status, their public comments — when the so-called attempt to "understand" terrorism crosses the line into moral exoneration — can undermine the work and credibility of the United Nations.



*Mr. Alfred de Zayas, the UNHRC's Independent Expert on the promotion of a democratic and equitable international order.*

Sadly, with the Human Rights Council's democratic credentials about to sink to the lowest level ever — only 38% of the incoming 2016 membership will be free democracies — we fear more appointments of UN rights experts who will serve as apologists for dictators and terrorism, adding to existing figures like De Zayas, Jean Ziegler and Idriss Jazairy.

De Zayas Blames West For Paris Attacks, Justifies "Tactics of the Underdog"

In a 1500-word essay written in response to the Paris attacks, Alfredo de Zayas, the UNHRC's "Independent Expert on the promotion of a democratic and equitable international order" — an anti-Western mandate which

he acknowledges was initiated by Cuba — purports to examine "the root causes of terrorism," laying most of the blame on what he portrays as Western "abuses of the powerful." Terrorism becomes merely the "tactics of the underdog."

### **De Zayas' argues that "terrorism, albeit neither justified nor justifiable, is partly**

Beyond his litany of alleged abuses by Western, former colonialist powers, De Zayas points the finger at "old religious tensions and conflicts" between "Israeli settlers and Palestinian populations," and twice invokes "Gaza" as well as "occupation."

### **Blaming France for Own Misfortune**

Apparently blaming former colonial power France for its own misfortune, De Zayas repeatedly indicts "colonialism" in Africa and Asia as well as "the humiliation of whole populations," saying that "the victims and the survivors" of historic violence "have neither forgotten nor forgiven."

In a thinly-veiled reference to America, De Zayas says victims are "living in the ruins, in the midst of the destruction wrought by 'smart weapons,' often fabricated in one of the so called P5 States and perpetuated by unilateral or multilateral sanctions." (The U.S. is one of the "Permanent 5" member of the UN Security Council; De Zayas was chosen for his post by Cuba, which sponsors UN mechanisms that condemn all sanctions as human rights abuses.)

While insisting that "nothing will ever justify the killing of innocent people," this is qualified by De Zayas. "Alas," he writes, the "point of desperation was reached."

"The undemocratic and inequitable world order prevailing today," which is the official subject of De Zayas' anti-Western UN mandate, "has caused gravest injustice to many peoples worldwide."

De Zayas lists "idolatries we have invented," and these include "expansion of markets," "laissez faire," "free trade," and "competition."

Among the root causes of terrorism, writes De Zayas, "we must acknowledge the accumulation of hatred... because of very real abuses from various origins affecting millions of human beings."

"They came to us because we went to them," says the UN expert.

## **Guillaume Lavoie, Young Bar of Montreal Lawyer of the year in Corporate Law**



**L**avery is pleased to announce that on November 26, 2015, Mr. Guillaume Lavoie, a business law partner at the firm, won the 2015 YBM Lawyer of the year in the Corporate Law category, at the "Leaders of tomorrow" YBM Gala held at the Rialto Theater. Given out by a committee of selected legal figures and members of the YBM Governing Council, this award highlights the quality and excellence a member of the Young Bar of Montréal has shown through his achievements. The award winner must have distinguished himself on a professional and personal level, as well as through his involvement in the community and his views on the profession and his career.

Guillaume Lavoie's practice focuses on private equity and venture capital. He has developed considerable expertise in setting up investment funds and specializes in structuring complex international funds. He regularly acts as lead legal counsel to fund managers in their fundraising efforts and their investments in Canada, the United States, Europe, and elsewhere in the World.

"We are very honoured that Guillaume Lavoie is the winner of this prize, a recognition of his contribution to our legal profession, as well as the excellence and discipline shown through his work. This award, which is also a tribute to the quality and depth of his commitment to the profession and community, brings honour to the entire firm", said Don McCarty, Lavery's Managing Partner.

# Owning your .com address isn't enough buy the other URLs, possibly including that new .law extension

**W**e recommend your law firm buy most of the more commonly used domain extensions of its name -- what are called uniform resources locators, or URLs -- the unique address for a file that is accessible on the Internet.

There is no question you should do this if your firm uses a single name as its URL. For example, as the venerable Skadden, Arps, Slate, Meagher & Flom does, [www.skadden.com](http://www.skadden.com). Now that .law extensions are becoming generally available it is even more important you do this if you are in a situation like Skadden's.

Yes, you will read that this is unnecessary to buy a .law extension or switch to one purely for search marketing purposes, and we agree with everyone making that point. However, there is another reason to make the purchase(s), below is perspective and an explanation.

Ultimately, .com is still the strongest domain extension. Your firm's name is a critical element of its "branding", as well. So protect your firm from marketplace confusion and buy the .net, .info, .biz and .org extensions of it. This is true even though .org extensions really are intended for non-profits and trade groups and .info is for resource-heavy sites. You never know, you may have a non-profit or training strategy in your future. And, as to simple confusion, do you even recall what .com represents? It stands for the word "commercial", or otherwise a business.

We're talking less than \$20 annually to do this for each of the more common extensions. That's inexpensive brand protection insurance. GoDaddy and Network Solutions are easy places to buy these common domains. This will prevent anyone or group with the same name as that of your firm (lawyer or not) from getting these addresses and possibly creating some market confusion. (Jackson.com is a financial services company, but [jackson.org](http://jackson.org) is a hospital.

At least they aren't in the same town as two law firms with the first name O'Neil are in Milwaukee.)

Buying .attorney or .lawyer will be several times more expensive than the most common URLs listed above. You may be required to prove you are a practicing attorney/firm, but if you have strong firm name recognition in your area and use your name as your URL you might as well buy them, too. You will pay even more for the new .law extension, about \$210 annually at this point, we're told. You will have to buy the .law extension from a list of providers less well-known than GoDaddy.

Don't forget to have all of these URLs set to redirect visitors to your .com site. Your webmaster or IT person can do this. Absent a redirect, if accidentally used, a searcher will go to a largely blank screen with an error message on their phone, tablet or computer screen.

Recently, The Cyber Advocate discussed marketing confusion and the practice of "cybersquatting".

The Cyber Advocate said: "Cybersquatting occurs when someone adopts your domain name, but with a different extension, like someone using [www.thecyberadvocate.net](http://www.thecyberadvocate.net) instead of [www.thecyberadvocate.com](http://www.thecyberadvocate.com). The cybersquatter's purpose is usually to free-ride off of your marketing efforts, getting visitors who intended to go to your website.

"However, they can also be used for more malicious purposes, such as to affiliate your law firm with false, lewd or defamatory content. They can be dangerous," The Cyber Advocate said, adding that "Not only do you risk a potential PR nightmare, but there could potentially be ethical implications, even though you don't have ownership of the other site (do you actually trust the state ethics board to understand the difference prior to a hearing?)."

# Moving Staff Close to Customers the Key to Selling Services in Global Markets

**T**he ability of firms to move their people closer to customers is the single most important policy barrier to selling Canada's highest-value, most time-sensitive business services globally, according to a new Conference Board of Canada report.

"Canada's future economy will be built not only on resource extraction or manufacturing, but on close proximity to clients for knowledge-based service businesses and harnessing strong client services needed for global success," said Jacqueline Palladini, Senior Economist, Global Commerce Centre, and author of *Becoming a Services Superpower: Tapping into the Global Appetite for High-Value Services*.

"Services is a skilled, labour-intensive sector, so the focus on positioning staff close to customers makes sense. It matters for both trade and investment: barriers to people movements are negatively associated not only with trade, but also investment in this sector."

## Highlights

- To capitalize on growing demand for high-value business services, businesses will need to move their people closer to customers and develop a presence in foreign markets.
- Three types of high-value services stand out for Canada: research and development; computer and information services; and technical and scientific services.

- Canada's next generation of trade agreements, such as the Canada-EU Comprehensive Trade and Economic Agreement (CETA) and the Transpacific Partnership agreement (TPP), have begun to address barriers to increasing services exports into global markets.

Businesses will have to take the lead to effectively capitalize on the growth in high-value services through recognizing potential growth markets, possibly setting up local operations, innovating relentlessly, and considering both emerging and traditional markets.

## André Laurin speaks on the duties and liability risks of directors



André Laurin, a Lavery partner specialized in business law, gave a seminar entitled "Devoirs et risques de responsabilité des administrateurs" (Directors' duties and liability risks), to directors and certain executives of Aéroports de Montréal.

This training covered directors' general duties, obligations and statutory responsibilities as set out in laws and regulations applicable and interpreted in case laws.



While demand, technology, and business strategy are likely to be the most important factors driving Canada's future performance, policy factors still matter.

Governments have already started to address policies that affect services in negotiating Canada's next generation of trade agreements, such as the Canada-EU Comprehensive Trade and Economic Agreement (CETA) and the Trans-Pacific Partnership agreement (TPP).

The TPP would allow for easier temporary entry of business people to provide after-sales services, movement of professionals and technicians to most TPP countries, intra-company transfers among countries, and fewer limitations on foreign direct investment.

Canadian governments at all levels need to recognize the shift towards traded services and adapt historical policies at home and abroad to these new realities. These policies include removing cross-border barriers to movements of people, investment, products, and information, and ensuring a competitive and dynamic services environment at home.

This report—the third in a series on selling services in global markets undertaken by the Global Commerce Centre—examines the potential for Canada in global high-value business services, which include:

1. Communications
2. Computer and information
3. Intellectual property (IP)
4. Financial services
5. Insurance and pensions
6. Research and development (R&D)
7. Professional and management services
8. Technical and scientific services

The report's unique contribution is to identify the fastest-growing markets (in both emerging and established economies) in sectors where Canada has proven export strengths. Three types of high-value services stand out for

Canada as offering fast growth opportunities in a variety of markets globally: research and development; computer and information services; and technical and scientific services.

Learn more about the potential for Canadian services exports at the Conference Board's webinar, *The Future of Canada's High-Value Business Services: Servicing the Planet*, on Thursday, January 7, 2016 at 2 p.m. EST.

The Conference Board of Canada's Global Commerce Centre provides evidence-based tools to help companies and governments respond successfully to the trends reshaping the global business environment. Learn more about the Conference Board's trends to watch at the webinar, *A World of Opportunity: How to Leverage Global Commerce Trends in 2016*, on Thursday, January 14, 2016 at 3 p.m. EST.

## Pierre Marc Johnson, Chair of the board of Centre Jacques Cartier of Lyon



Pierre Marc Johnson, former Premier of Quebec and counsel at Lavery recognized for his expertise in international trade and cross-border partnerships, participated in the 28es Entretiens Jacques Cartier as Chair of the board of Centre Jacques Cartier.

During this event which was held in Lyon from Monday, November 16 to Thursday, December 3, 2015, Mr. Johnson presented a lecture on the negotiation of the Canada-European Union Agreement before an audience of scholars and business people interested in the implementation of this type of agreement for businesses.

He also hosted a joint interview between Montreal's and Lyon's mayors at the city hall of Lyon, particularly on environmental issues and city development.

# SNC-Lavalin Avoids Federal Bidding Suspension

**S**NC-Lavalin Group Inc. entered into an administrative agreement with Public Works and Government Services Canada pursuant to the federal government's revised Integrity Regime announced in July 2015.

The SNC-Lavalin administrative agreement represents the first administrative agreement entered into under the revised Integrity Regime. The prior integrity framework was broadly criticized as being overly harsh, including for example a non-discretionary ten-year debarment from federal government contracts for parties convicted of a listed offence. As a result of these criticisms, the framework was revised in July 2015 to include, among other things, the establishment of an administrative agreement framework whereby a supplier that contravenes the Integrity Regime may in certain circumstances apply for an administrative agreement in order to continue to be eligible to bid for federal government contracts provided certain anti-corruption compliance obligations and other conditions are met. For example, a supplier may be required to establish policies addressing competition/antitrust issues and political contributions, appoint compliance officers, and engage in regular compliance training. A supplier must contract with a private sector third party that has expertise in corporate governance and integrity to ensure the terms of the administrative agreement are met.

The revised Integrity Regime provides that a supplier may be suspended from doing business with the federal government for up to 18 months (and potentially longer if legal proceedings are in process) if the supplier is charged with or admits guilt to a listed offence. However administrative agreements may now be used in lieu of suspending a supplier from contract eligibility or in circumstances where a decision is made to continue an existing contract with a supplier who has become non-compliant under the Integrity Regime.

The SNC-Lavalin agreement follows criminal fraud and corruption charges that were filed in February 2015. In connection with the prior integrity framework which provided

for an automatic ten-year debarment upon conviction, SNC-Lavalin's former chief executive officer commented that the impact of criminal charges (even if ultimately not convicted) would be catastrophic because the company would be unable to do business and "if the company can't do business, you really only have two choices. You are going to do some dismemberment and cease to exist entirely, or you are going to be owned by somebody else." [1] The fact that the revised Integrity Regime provides for suspension from eligibility pending a resolution of criminal charges means that it will still have significant consequences for companies that provide services to the federal government. SNC-Lavalin referred to the agreement as a "milestone" that would enable the company "to continue to be an important contributor to the Canadian economy. It protects the public, and is good for our employees, clients, investors and all of Canada." While the terms of the administrative agreement are confidential, SNC-Lavalin has stated that provided it complies with the terms of the agreement, "it will be able to continue to bid on and win contracts to provide procurement goods and services to all Canadian government departments and agencies, in Canada and abroad, until the final conclusion of those charges." [2]

Administrative agreements under the Integrity Regime are distinguishable from deferred prosecution agreements available in other jurisdictions such as the United Kingdom and the United States. Deferred prosecution agreements allow a defendant to avoid prosecution in exchange for ongoing cooperation with the enforcement authority, and are sometimes accompanied by the payment of fines and other behavioural commitments such as improvement of internal anti-corruption controls. It is generally the case that so long as the defendant complies with the agreement for its term, the criminal charges are dropped or stayed. Deferred prosecution agreements are not used in Canada although SNC-Lavalin has been a staunch advocate for establishing this approach in Canada. For details on the first U.K. court-approved deferred prosecution agreement, refer to our December 11, 2015 Osler Update.

# RD Legal Funding, LLC Advances Funds To Attorneys With Delayed Fees In Vaginal Mesh Settlements

**A**s transvaginal mesh (TVM) litigation continues to work its way through the courts, some huge verdicts have been handed down and a small number of settlements have been reached. Even in those vaginal mesh cases where a settlement has been agreed upon, administrative delays can hold up the payment of attorney fees for months, causing cash flow issues for those who have worked hard in the litigation. Since the onset of these cases, RD Legal Funding, LLC ("RD Legal") has followed the developments and has been aware of the payment delay issues that can arise for transvaginal mesh lawyers. Roni Dersovitz, Founder of RD Legal, said "As a former trial attorney, I intimately understand the constraints that attorneys face in these kinds of situations. RD Legal stands ready to offer funding to plaintiffs' attorneys with delayed fees in their vaginal mesh settlements if necessary."

Originally, the purpose for transvaginal mesh was to treat women who had a pelvic floor disorder. It was created to provide extra support for repaired or damaged tissue. As concerns and complications became widespread, many recipients of the mesh needed multiple surgeries to alleviate their problems causing further damage and disruption to their lives. In similar kinds of class action lawsuits, complaints to the Food and Drug Administration (FDA) and other consumer related agencies about faulty products eventually led to lawsuits. Transvaginal mesh followed the same trend and many recipients pursued litigation against various manufacturers.

Several multi-district litigations (MDLs) involving tens of thousands of cases were established in the U.S. District Court of Southern West Virginia. Manufacturing companies

include C.R. Bard, American Medical Systems, Coloplast, Boston Scientific, and Ethicon (a subsidiary of Johnson & Johnson). There have been plaintiff's verdicts in several of the bellwether trials, and some manufacturers (including C.R. Bard and Boston Scientific) have announced settlements in some of their claims this year. The court continues to encourage settlement negotiations among all the parties, and it is hoped that momentum is building for large-scale resolutions of these claims in 2016.

Since 1998, RD Legal has been a pioneer in post-settlement funding with their Fee Acceleration product. For any attorney looking for an advance on their vaginal mesh attorney fee or on any other delayed settlements, please contact RD Legal at 800-565-5177. They can also fill out the application on RD Legal's website, <http://www.legalfunding.com>.

## LKD, now Langlois Lawyers, has moved to 1250 René-Lévesque West in the Marathon tower

LKD, Langlois Kronstrom Desjardins, will now be called Langlois Avocats. The Quebec City based law firm founded in the 1940 has expanded in Montreal. Its offices have moved and will be located at 1250 René-Lévesque West on the 30th floor, the building that housed Heenan Blakie before its demise more than a year ago.

With more than 100 lawyers, Langlois Avocats has offices in the capital, Lévis, and Montreal, where it has developed a growing practice attracting some of the best talents in bankruptcy, labor law and litigation.

# Aubut launches law firm in Quebec City



By André Gagnon

**M**arcel Aubut, the Montreal prominent business lawyer who was involved in a controversy recently and forced to resign as head of the Canadian Olympic Committee and quit his Montreal law firm, BCF, has launched a new law firm in Quebec City.

Located on prestigious Grande Allée street in the Quebec capital, where he started his practice almost 40 years ago, the former head of the Nordiques hockey team in the National Hockey League, is widely known in national and international sports centers as an experienced business lawyer and consultant.

He resigned from BCF, a major Montreal law firm he had joined with the bulk of his former team that had previously merged with Heenan Blaikie before the national firm collapsed more than a year ago leaving some 300 lawyers plus staff in Montreal, Toronto and other cities of Quebec province and elsewhere in Canada without a job. Most lawyers joined other firms while others retired or embraced other fields of work.

Aubut, considered as a wealthy lawyer who has done well financially, is building a firm that is expected to attract talents to serve businesses in commercial, sports and other areas of practice in a very near future. A marketing legal services maverick, Marcel Aubut who is in his early sixties will surely develop another law firm that will soon become notorious. Sources said the new firm will also be present in Montreal.

## Late notice causing prejudice to the insurer: Pierre Bazinet successfully opposes a claim



Pierre Bazinet recently obtained a favourable decision in a case that received ample media coverage at the onset. A couple had been condemned to pay a very substantial award to a schoolteacher whom they had slandered in the media. After having tried to defend themselves all the way to the Supreme Court, unsuccessfully, they finally notified their insurer and claimed compensation for the award that they were to pay and the costs of their defence.

Pierre, who represented the insurer, raised three defences: the late notice that caused prejudice to the insurer, the denial of coverage in a case of intentional fault and the prescription applicable to the costs of the defence.

In a terse decision, the court allowed all three defences and denied the insureds' claim.

# Chrysalis Coaching & Consulting's President Karen Carmody Featured Coach at Massachusetts Conference for Women

**E**xecutive Coach Karen Carmody provided one-on-one "speed coaching" sessions for the third consecutive year at the Massachusetts Conference for Women. The event was held at the Boston Convention & Exhibition Center on December 10. It had a sold out crowd of over 10,000 attendees, making it the largest women's conference in the country.

Karen Carmody is the President and Founder of Chrysalis Coaching & Consulting LLC, a certified Women Business Enterprise (WBE) specializing in executive coaching, organizational effectiveness consulting, and leadership development services. She empowers executives, emerging leaders, and entrepreneurs to unlock their full potential and achieve sustainable changes in their lives, teams, and organizations.

"I love coaching at the Massachusetts Women's Conference. The energy of 10,000 women is electric," said Carmody. "I'm always in awe of how much a client can shift in such a short time. Speed coaching at the MWC underscores for me the power of coaching and reinforces why I'm so passionate about what I do."

The Massachusetts Women's Conference celebrated its 11th anniversary and its 4th anniversary of its partnership with International Coach Federation of New England (ICFNE) providing coaching by ICF certified coaches. The International Coach Federation (ICF) is a non-profit and the leading global organization dedicated to advancing the coaching profession through both personal and business coaching.

The non-partisan, non-profit Massachusetts Conference for Women is the nation's largest and premier event for women, drawing women of all ages and backgrounds for a full day of inspiration, reinvention, and networking. The conference features nationally recognized speakers and provides workshops and seminars to professional women on a variety of topics, including entrepreneurship, professional development, and work-life integration.

This year's keynote speaker was Shonda Rhimes, writer, executive producer, and creator of the hit television shows "Grey's Anatomy," "Scandal," and "How To Get Away With Murder," and one of Fortune Magazine's "50 Most Powerful Women in Business." Conference attendees also heard from The Wharton School's top-rated teacher Adam Grant, Nasty Gal's Sophia Amoruso, Project Runway's Tim Gunn, and artist/designer/urban planner Candy Chang.

In addition to her responsibilities at Chrysalis Coaching & Consulting LLC, Carmody also works with several non-profit organizations. She serves on the Board of Directors of the ICFNE as the Vice President, Education and Professional Development. She is a member of the Greater Boston Chamber of Commerce Workforce Development Committee. Carmody is a coach for Babson College's undergraduate Coaching for Leadership & Teamwork Program (CLTP) and a Developmental Learning Partner for its graduate Managing Talent Program. She also serves as a mentor for the Healthcare Businesswomen's Association Mentoring Program.



# How to Operate a Lean Practice

From ABA Journal Weekly Newsletter

## See how one successful lawyer does it

How does one operate an extremely lean practice, have up to 11,000 cases open at any given time, while providing client service that ensures customer satisfaction, loyalty and retention?

Peter C. Merani, an attorney and Amicus customer based in New York City knows how. His firm has experienced unprecedented growth and success since its inception as a solo practice in 1993, to the 19 person insurance law focused firm it is today. Peter has been an Amicus customer from the beginning, and has never looked back. He has seen the technology grow and has kept his Amicus software current, allowing him and his associates to leverage new features and enhancements as the product has evolved.

Peter advises that "over the years we have been able to streamline our operation, and clients understand that we can handle large volumes of cases in a cost effective manner, while continuing to produce high quality work." Peter is the type of person that looks toward the future. His office is modern, ultimately paperless, and ahead of its time. He recognizes and understands that technology is an important part of running a successful business, and consequently both Peter and his many clients are reaping visible rewards.

Overseeing such a high volume practice necessitates a finely tuned system, and Peter has found that in Amicus. Firm members rely upon Amicus for document management, case management, time tracking and monitoring tasks. "We use the task feature a lot... It helps us stay on top of and manage the file. We have designed precedents for certain files, and use this system to ensure that things move along, and that no dates or tasks are ever missed".

Quite possibly the greatest benefit that Peter sees in Amicus is the efficiency it brings. Amicus reduces overhead, al-

lows him to "operate a lean practice, which in turn benefits his clients", and "with Amicus Attorney's document generation capabilities, the amount of work that would, without a practice management system, take 5 people to do, I can do on my own, in the same amount of time." Without a doubt, Amicus is saving Peter money by lowering overhead, earning him extra money by ensuring that all billed time is captured, and giving him more free time to engage his passions outside the office!

Amicus is fully integrated into Peter's practice from human resources, to case management, to time tracking, and so much more. Amicus has proven to be an invaluable part of the firm's operation. Peter takes advantage of so many amazing Amicus features, including Document Assembly and Precedents.

There are 1,000 customized templates and forms housed in the Amicus structure, allowing firm members to prepare materials for 15 cases at one time. Merani's use of Amicus to automate his practice is unprecedented – Amicus is his lifeline to his business. Custom records and custom pages keep the status of payments, remittances, and so much more for his thousands of files with clients including the New York Port Authority. He is able to access comprehensive, complex data easily within seconds. A variety of documents are generated in moments, reducing the need for manual entry and excessive overhead.

We asked Peter, if he could summarize very simply how Amicus helps, what would he say? "Amicus Attorney gives me the ability to be a great advocate for my clients, but still have a life outside our office. We have looked into other products, and nothing rivals Amicus Attorney."

Discover for yourself how your firm can experience the level of efficiency that Amicus Attorney law practice management software brings to Peter C. Merani's New York practice.



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