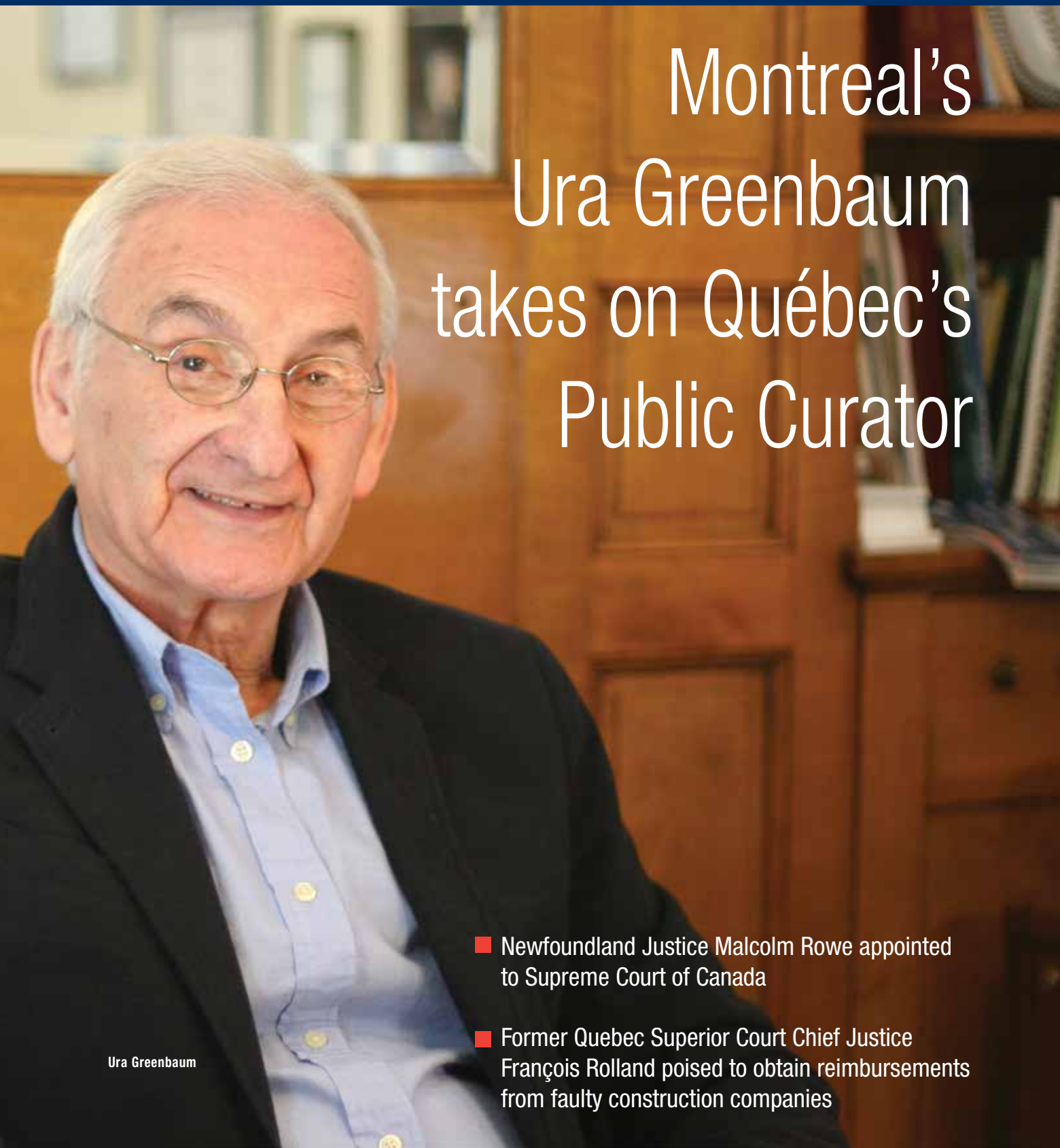




Montreal's Ura Greenbaum takes on Québec's Public Curator



Ura Greenbaum

- Newfoundland Justice Malcolm Rowe appointed to Supreme Court of Canada
- Former Quebec Superior Court Chief Justice François Rolland poised to obtain reimbursements from faulty construction companies

WHO PAYS YOUR LAW FIRM'S EXPENSES WHEN YOU CAN'T?



Protect yourself
with CBIA sponsored
Business Expense
Insurance.

Contact your CBIA Authorized Independent Advisor in Québec

COACHING FINANCIER TREK

Call: 514-334-8701 (1-877)

Visit: barinsurance.com

Underwritten by
The Manufacturers Life
Insurance Company (Manulife)



CBIA

INSURANCE FOR LAWYERS

Montreal's Ura Greenbaum takes on Québec's Public Curator

By P.A.Séigny

Twenty years after he first began to help some of the more vulnerable and helpless people in the province, a growing pile of files on his desk indicates that Montreal's Ura Greenbaum is still busy, and unless the government does something to help reform Québec's Curatelle Publique, he told *The Montreal Lawyer* that he believes that he's going to be busy for a long time to come.

"You must remember that most of the people who are being cared for by the Public Curator don't have the kind of legal resources to defend themselves or their property," said Greenbaum. "As most of them are isolated with few, if any family members to look after them, they really don't have access to the kind of law that they need to protect themselves and their assets."

As a working lawyer back in the early 1990's, Greenberg said that he and his family had the best of intentions when they decided to put their mother under the curator's care following the death of his father.

"We thought it was the best thing to do for her," he said. "But we really didn't know what we were getting into and what that decision was going to cost the family."

Within a few months, Greenbaum's sister received a



Ura Greenbaum helping the helpless

call from a notary asking her to come into his office because he wanted her "... to just sign a few documents." Following a cursory inspection, Greenbaum discovered that the documents were little more than a notification to the family requesting their approval to proceed with the sale of a well-located family property in the Laurentians along with all of its contents as the curator already had an accepted offer for the property.

"Of course, we refused," said Greenbaum. "So they took us to court after which we lost the case, lost the house and lost all of its contents including several family heirlooms."

Following his initial investigation into the curator's



activities, Greenbaum discovered that what happened to his mother's property was not an isolated case.

"I discovered several cases in which people were systematically being systematically stripped of all their assets," said Greenbaum, "...and the sad thing is that there was nobody around to look out for them or their property."

As Greenbaum was already winding down his legal career, the ongoing investigations into the curator's activities began to take up more and more of his time.

"Little by little, the word got out and before long, people were coming in to see me in order to see what I could do about to help them out with their problems with the curator."

In 1995, he established L'Association pour la Défense des Personnes et de leurs Biens sous la Curatelle Publique in order to represent the interests of anyone and everyone who was having problems with Québec's Public Curator. As more and more files began to pile up on his desk, Greenbaum began to send copies to Derek Jacoby who was Québec's first ombudsman as well as a colleague and a good friend. Within weeks, Jacoby had enough evidence to initiate a special report on the Public Curator's office. Based upon the furor it caused following the 1997 release of the ombudsman's report, Québec Premier Lucien Bouchard's PQ government ordered the province's auditor-general to investigate the Public Curator's office. Ac-

cording to Greenbaum, the auditor's report was even worse than the ombudsman's original effort after which the Bouchard government was forced to reform the curator's office in order to restore its credibility.

"It was a step in the right direction," said Greenbaum, "...but ultimately, it was still a failure because nothing was done to correct the issue that lay at the heart of the problem."

Following up on two decades of experience in dealing with the bureaucrats who work in the curator's office, Greenbaum told *The Montreal Lawyer* that two issues continue to affect the curator's credibility.

"The curator's affairs must be transparent because without any kind of transparency, it's almost impossible to hold the curator's office responsible for its actions," said Greenbaum. Simply put, he believes that the curator can no longer hide behind privacy issues in order to cover its tracks and defend what are finally "indefensible" actions.

"It's far easier to fight a case in court than it is to fight the system," he said. "And Québec's public Curator is very much a part of the system."

As the curator continues to consider their client's files to be confidential information, Greenbaum said that it's up to the client to get his own file, and if the client has any kind of a mental condition such as Alzheimer's Disease or senile dementia, the curator's officials can effectively do what they want with both the client and their property "...because many of these people really don't have any idea as to what is really going on with their property."

"It's sad," he said, "...because many of these people don't have any family or friends left who are willing to speak up for them."

When asked about the reasons why he was willing to spend thousands of hours of retirement time fighting for some of the most vulnerable people in the entire province for little or no pay at the end of the line, Greenbaum told *The Montreal Lawyer* that it was all very simple.

"As Rabbi Hillel once put it," he said, "...If I don't do it, then who will?"

Michael Bergman's legal vocation

By P.A. Sévigny

Thirty eight years after he left McGill University in order to get ready to join the bar, Michael Bergman still considers the law to be just as much an inspiration as it was when he was a young lawyer working on his first case.

"In my day, there were no legal specialists," he said. "We were just lawyers who had to practise law for a living."

Decades later, Bergman is known to be a veteran legal strategist with almost forty years of experience in front of the trial and appeal courts in both Ontario and Québec, the nation's federal courts and before the Supreme Court of Canada. Aside from his international work during which he helped guide and coordinate commercial litigation between several countries, Bergman has also represented several clients before official committees in both the Canadian Parliament and before Québec's national Assembly.

"Our reputation is our benchmark," he said. "At the end of the day, we're only as good as the results of our last case."

During an extensive interview that took place in his office that's located only a couple of hundred meters down the street from Montreal's McGill University, Bergman talked about his career, several cases and what nearly four decades in front of the bar has taught him about the law such as it exists in Québec as well as in the rest of the nation. Although he tacitly agrees that the legal 'specialties' have become the spokes of a "...very big wheel," he went on to insist that "...the hub is the law," and it's the law that remains at the heart of the matter and that it's up to the lawyers to deconstruct and reconstruct the law and to do whatever is legally possible for their client.

"It's been 800 years since the king (England's King John the First) signed the Magna Carta (1215) and we're still working on the jurisprudence," he said with a smile. "In the end,



words make up the law, but words are finite and it's up to us (lawyers) to expand about what's (really) meant by the written word."

When asked about the case that still keeps him up at night, Bergman hesitated before he simply said "...the spoiled ballots."

Although he was reluctant to discuss its details, he did say that the issue was certainly worth at least a PHD in any Canadian University and that the last word has yet to be heard about the Québec's spoiled ballots and what actually happened during the fateful day when the provincial government held its second (1995) referendum.

"At least one judge (un-named) congratulated me for the work I did on the case," he said. "When I asked why, he said that I established the right of every voter in the nation to seek redress in the nation's courts."

According to Bergman, there's still a lot to be done in order to bring the law up to date in order to have the law define the society we live in.

"If the law is your vocation," he said, "...there's a lot to do for people who really want to make a difference." Michael Bergman is on the board of the Bar of Montreal as treasurer of the English-speaking section for 2016-17.

The deadline for submitting a notice of intention under the Voluntary Reimbursement Program is November 1, 2016

The deadline for submitting a notice of intention under the Voluntary Reimbursement Program, in order to repay any amount improperly paid in connection with the awarding or management of a public contract over the last 20 years, is November 1, 2016. As a result, enterprises and individuals have less than four weeks left to file a notice of intention with the Program Director's office..

"We have almost reached the deadline for taking advantage of the Program, and negotiations with enterprises that have made a proposal are advancing rapidly. In accordance with the Program, the total amount recovered will be announced 6 months after the Program expires in November 2017," said the Honourable François Rolland, Director of the Voluntary Reimbursement Program.

So far a number of companies have taken advantage of the Program. Some have made their participation public in order to obtain a general discharge. The Voluntary Reimbursement Program, which came into force on November 2, 2015, was created by the Act to ensure mainly the recovery of amounts improperly paid as a result of fraud or fraudulent tactics in connection with public contracts and is based on best practices in the field of participatory justice. The Program offers a win-win situation and ensures that taxpayers recover any overpayment made.

It is also important to note that the Program is self-funding, and therefore cost-neutral for taxpayers. A lump-sum



Former Quebec Superior Court Chief Justice François Rolland administrator of government program

amount of 10% of the amount of each settlement must be paid in to the Program by an enterprise or individual that reimburses a public body.

For more details on the Program or to view the list of enterprises whose participation in the program has been made public, go to the website www.prv.gouv.qc.ca.

Recent estimates show tens of million dollars are believed to have been overcharged in Quebec government and City of Montreal construction and other public works contracts.

Public Curator's blunders continue to attract government's attention

By P.A.Séigny

After spending most of his life on the streets working in the city's tough scrap-metal trade, 79 year-old Francesco Benicci must now find a lawyer to help him convince the courts to reverse a previous decision that he lost because he did not know he was being sued by Quebec's Public Curator.

"It doesn't end there," said Montreal's Ura Greenbaum. "Last week, he (Benicci) showed me the letter that informed him that the curator's office won their lawsuit and now they're after him for another \$70 000 in fees and interest for their services."

As the Executive Director of Montreal's Association for the Defense of People and Property under Public Curatorship, Greenbaum described how the province's Public Curator stripped Benicci of almost all of his assets and savings during the time (2 years) when he was in their care.

In 2011, and as the result of the nervous breakdown that eventually cost him his wife, his children and his sanity, local health authorities asked the Public Curator to step in and take care of Benicci when they noticed that he had alienated his entire family and was totally unable to take care of himself. However, and only a few months later, anger began to replace his depression as Benicci began to notice how the curator's office was slowly liquidating all of his assets in order to pay for what they described as "their fees" for taking care of his affairs. Although it took nearly two years of legal wrangling before the courts allowed him to assume his own autonomy, Benicci no longer had any assets and was left with little more than a few thousand dollars when he moved into a tiny apartment in Montreal North.

Further investigation indicates that Benicci never showed up in court to defend himself because he did not know that he was being sued. Although documents indicate that the court's bailiff twice tried to visit Benicci's apartment, the old man is almost completely deaf and could not hear the bailiff's ring because the Curator's office never replaced the hearing aid that was lost when they first took over his affairs. As he is illiterate, he never knew that he was being sued until he received the registered letter that informed him that he now owes the Public Curator nearly \$70 000 to pay for their "fees".

"Now he has no money, and at 79 years old, he has to find a lawyer who is willing to help him fight an abusive court decision," said Greenbaum.

As of last week, Greenbaum also learned that Benicci was recently rushed to hospital with a heart ailment after which he was immediately admitted for an emergency cardiac bypass operation. Although he is presently recovering from his operation, Benicci recently told Greenbaum that he has very little money and that he does not know what he is going to do once he leaves the hospital and has to go home. "What home," he said. "I have no home."

Although Québec cabinet minister Rita De Santis knows all about what happened to Benicci while he was under the curator's care, her executive assistant said the minister would not be available for an interview because she was already in Québec City getting ready for the National Assembly's Autumn session. Although Pierre-Luc Lévesque – a press agent for Québec's Public Curator – did respond to a request for information about the Benicci file, the curator's documents only confirm that Benicci failed to appear in court and must now pay them a further \$70 000 in assorted fees (and interest) as a result of the two years during which he was in their care.

Volume 3, number 2

THE MONTREAL LAWYER

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

Email : mtlawyer@videotron.ca
Website : themontrealawyer.com

Publisher & Editor

André Gagnon, B. A., LL. L.

Publication Manager

Jeanne d'Arc Tissot

Advertising Director

Benjamin Gagnon

Advertising

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

Graphic design

Image-innée

COPYRIGHT 2013 - COPYRIGHT THE MONTREAL
LAWYER AND LE MONDE JURIDIQUE

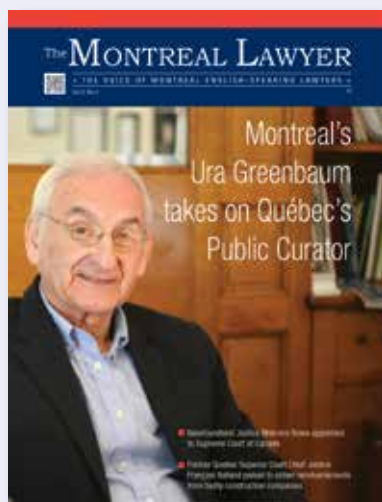


Table of Contents

Montreal's Ura Greenbaum takes on Québec's Public Curator <i>By P.A.Sévigny</i>	3
Michael Bergman's legal vocation <i>By P.A.Sévigny</i>	5
The deadline for submitting a notice of intention under the Voluntary Reimbursement Program is November 1, 2016	6
Public Curator's blunders continue to attract government's attention <i>By P.A.Sévigny</i>	7
The valuation of a law practice. Part 3 <i>By Richard M. Wise Partner, MNP LLP</i>	9
Seeking Documents and Information for Financial Analysis in Matrimonial Litigation <i>Richard M. Wise, Partner, and Alissa Kahan, Manager</i>	12
How much do solo lawyers make? More than IRS data suggests, law pros assert <i>By Debra Cassens Weiss</i>	14
Lawyers' Committee and National Bar Association Announce Launch of National Program to Provide Legal Support for Protesters and Demonstrators	18
Tiffany vs Costco <i>By Olga Shevchenko</i>	21
Robert Leckey appointed Dean of Law <i>By McGill Reporter Staff</i>	22
Mary Robinson to receive 2016 Stockholm Human Rights Award	23
A.G. Schneiderman announces Beau Buffier as new chief of Antitrust Bureau	24
Male partners make 44% more on average than female partners, survey finds	25
Be it Resolved by the Board of Advisors of the Association for Title IX Administrators that Black Lives Matter	25
College Choice Releases its 2016 Ranking for the Best Online Law Schools	26
The Prime Minister, Justin Trudeau, today announced the nomination of Mr. Justice Malcolm Rowe for the Supreme Court of Canada.	27
Prime Minister announces new Supreme Court of Canada judicial appointments process	28
Payam Akhavan named Member of the Permanent Court of Arbitration	30

The valuation of a law practice

— Part 3

By Richard M. Wise Partner, MNP LLP

Parts 1 and 2 of this article addressed the valuation of a law firm and the identification of the various intangible assets, including goodwill and IP, which could attach to a law practice. Part 3 of the article identifies many of the principal factors that are often considered by a firm's compensation committee in determining the share of partnership profit (i.e., "profit points" or "units") to be allocated to the partners of a law firm for a specified period

Size and Depth of a Partner's Practice within the Firm

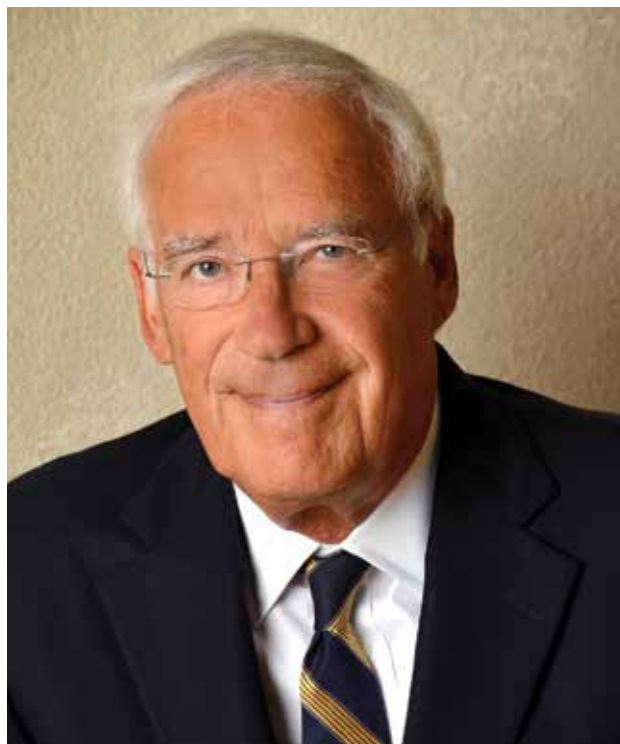
A larger practice/client base usually generates a larger amount of goodwill for the firm. Other factors such as the stability of the partner's client list, the number of years that the average client on his or her list has been with the firm and the composition of that partner's client base also impact the partner's compensation. More firm's profit points" would be allocated to partners having the larger and more diversified client base.

Advertising and Promotional Activities a Partner

Promotion of a law firm's practice through activities carried out by a partner helps in creating and maintaining the firm's visibility and goodwill. Participation at corporate and community events as well as professional conferences helps to enhance the visibility of the firm. More profit points would be attributable to partners involved in such types of firm promotion and business development.

Type of Clientele Serviced by a Partner

The nature and type of business serviced by a partner can impact his or her ability to generate "excess earnings" for



the firm. Clients in business lines or in an industry enjoying growth will generate higher goodwill than mature businesses or declining industries. Therefore a partner having clients in growth industries would be allocated more profit points than a partner servicing clients in declining industries.

Average Size of a Partner's Accounts

Larger accounts are generally more valuable to a professional firm than smaller accounts, mainly because they are important contributors toward a firm's overhead costs and might also help attract new clients. Partners having the largest clients will often be allocated a larger share of the firm's profit points.

Growth of a Partner's' Respective Accounts

Historical growth of a partner's client base and/or billings per client is also a reliable indicator of a partner's ability to generate "excess earnings" for the firm. The higher rate of growth in a partner's client base, the larger the allocation of profit points, as this creates better operating results and more goodwill.

Tenure of a Partner with the Firm

The number of years with the firm can also impact the allocation of profit. As goodwill of a firm builds up over time, there is a natural tendency to attribute more profit to those partners who have been with the firm the longest (subject

to productivity). Continuity and stability are viewed by the market as positive attributes of a law firm.

Inclusion of a Partner's Name in the Firm's Name

Having his or her name included in the firm's name enhances the visibility of the partner in the marketplace and community among clients and potential clients. As such, clients — and most importantly, potential clients — might increasingly perceive such partner as "being the firm" and be inclined to direct their business to that partner. There is a reason why a partner's name is included in the firm's name! Accordingly, more profit points would be allocated to those partners whose names are included in the firm's name.

Home « Newswire » CBA Statement on the Nomination of Justice Malcolm Rowe to the SCC

CBA Statement on the Nomination of Justice Malcolm Rowe to the SCC. The Canadian Bar Association greets today's announcement of the nomination of Justice Malcolm Rowe of the Newfoundland and Labrador Court of Appeal to the Supreme Court of Canada.

"The CBA welcomes the nomination of Justice Rowe as the first Supreme Court of Canada nominee from Newfoundland and Labrador in the Court's history," says CBA President René Basque of Moncton.

Today's announcement means that the Supreme Court will soon be operating at its full complement of nine justices.

The CBA was pleased to contribute to the new process to fill vacancies on the Supreme Court. The process includes open applications, publicized selection criteria and an advisory committee with a broad range of stakeholders.

The CBA recognizes the need to balance many important merit qualities in its Supreme Court of Canada appointments including diversity, linguistic ability, perspective and expertise on Indigenous law, and regionalism.

"Looking to the future, we urge the government to maintain this balance in Supreme Court nominations," says René Basque. The CBA looks forward to a continuing collaboration with the government on the nomination process to the highest court.

Number of Years of Experience of a Partner

Experience is a major criterion in allocating profit. There is a positive correlation between the experience and know-how of a partner and the profit points allocated to such partner; hence, more profit points would be allocated to the more experienced partners.

Types of Services Offered by a Partner (Generic, Specialized or Special Work)

Different types of mandates usually result in different profit margins for the law practice. Specialized services such as taxation, consulting (e.g., mergers and acquisitions) and litigation can generally be quite profitable. Accordingly, more profit would be attributable to partners offering principally specialized services.

Community Involvement

A partner's involvement in community activities can often result in making contacts and expanding networks. Serving on board or committees of charitable and professional organizations allows partners to interact with executives and professionals from various business and professional organizations and increases the potential for future referrals.

Recognition of a partner among his or her peers and in the business community can have an impact on referrals and, consequently, on goodwill attributable to that partner as well as the firm. Accordingly, more profit points would be allocated to those partners who are highly regarded by their peers and by the business community in general.

Percentage of Outside Referrals to a Partner

Referrals are a good indicator of the ability to generate more profits for the firm. As a general rule, the higher the percentage of a partner's accounts originating from refer-

rals, the more profit points attributable to that partner.

Number of Clients Meeting with Each Partner

A client does not associate the firm with the partners of that firm with whom he/she has never met. Accordingly, allocation of profit points can also be a function of the number of clients that a partner meets with in a given year. Level of Interpersonal, Communication and Technical Skills of Each Partner

Although assessment of interpersonal and communication skills (and, to a lesser extent, technical skills) is subjective, some weight is given to these qualities when allocating a firm's profit points among partners. A larger share of profit would be allocated to those partners who are perceived as having the highest level of interpersonal, communication and technical skills.

Mobility of Each Partner

Partners who demonstrate the highest willingness and ability to travel in order to serve their clients or obtain potential new clients might be allocated additional profit points for having the highest mobility.

Degree of a Firm's Dependence on a Partner

Each partner may have a different role in the firm and some partners may have additional responsibilities. As a result, the firm is more dependent on certain partners than on others. More profit points would be allocated to those partners on whom the firm is dependent and who are considered crucial to the firm's ongoing success.

Governance Role and Strategic Role of Each Partner

As the role of a key partner goes beyond fulfilling certain administrative tasks, those partners who are instrumental in defining and implementing a firm's strategic plan are

allocated a larger share of profit points.

Specialty, if any, of a Partner

Partners servicing a special niche of clients or having specialization (e.g., taxation, certain types of consulting, etc.) that other partners do not have, also add value to the practice and enhance the firm's profits and goodwill. Accordingly, more profit points would be attributable to partners having recognized and sought-after specialties.

Billings of a Partner

Billings (top line) are often used to establish the goodwill value of law practices (as noted in Part 1 of this article). More profit points are allocated to partners who have higher client billings.

Chargeable Hours of a Partner

Although not necessarily directly tied to profitability, chargeable hours provide valuable insight regarding the time spent by a partner toward contributing to the firm's profitability or, stated differently, covering the firm's operating overhead.

Total Budgeted Hours of a Partner

Total hours devoted to firm activities (including both chargeable and non-chargeable hours) are a factor indicative of a partner's overall commitment to the firm and its development. The more hours that are spent on clients and other firm-related matters (e.g., administration, marketing, research, community involvement) is a factor in allocating profit points.

Most of the foregoing, non-exhaustive, factors are geared to the medium-size to large law practices. The "boutique" firm will employ other criteria and negotiating points to address a partner's compensation each year.



The expertise you need, just around the corner.

MNP
SENGER LLP / LLP

Getting the right advice shouldn't take you across the country. At MNP, you can access - right down the street - the leadership and insight you need. With more than 75 dedicated professionals and support staff across the country, we devote extensive resources to understand the respective industries, markets and unique challenges in the Montreal business community. This ensures better results in shorter time.

Contact Richard M. Wise, FCPA, FCA, FCBV, CA-IFA, CFF, C.Arb. at 514.861.6523 or richard.wise@mnp.ca

ACCOUNTING > CONSULTING > TAX

MNP.ca

Wherever business takes you.



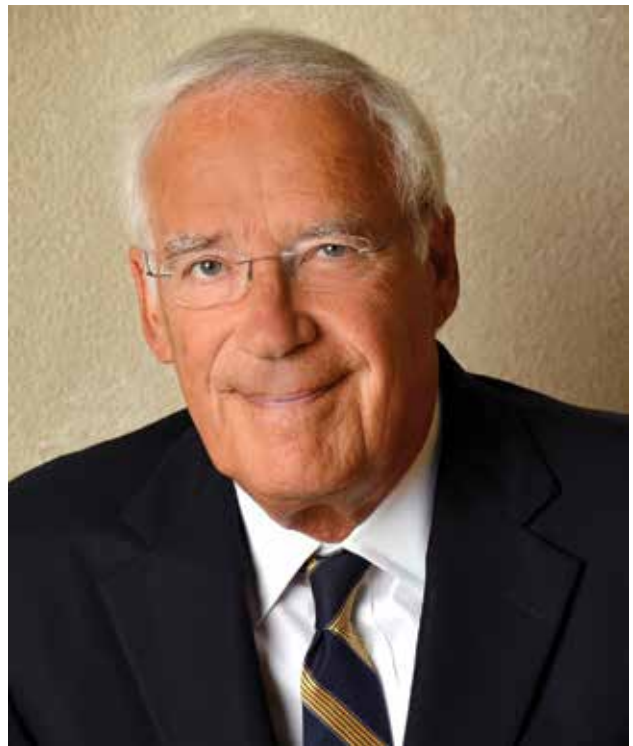
Seeking Documents and Information for Financial Analysis in Matrimonial Litigation

Richard M. Wise, Partner, and Alissa Kahan, Manager

In performing a forensic analysis in matrimonial litigation, the business valuator or investigative accountant ("Expert") will typically request a number of documents considered relevant, as well as access to various parties who could provide additional information and explanations. As noted below, there are situations in which the Expert might be denied the requested data. This article provides examples of the types of documents and information generally required by the Expert (joint expert or other) in order to determine the value of the moneyed spouse's assets and his income-earning capacity ("notional income" or "real income")¹ in connection with spousal support, child support, lump-sum payment and/or compensatory allowance. For a number of items, it also provides reasons why the documents and information requested are relevant for purposes of the Expert's analysis.

In Québec, the rules relating to expert evidence are found in the new Code of Civil Procedure ("NCCP").² The regulation relating to child support payments prescribed under the NCCP and the Civil Code of Québec³ is Regulation Respecting the Determination of Child Support Payments.⁴ The Civil Code is accompanied by the Child Support Determination Form (7 pages) and table.⁵ There are also the Spousal Support Advisory Guidelines⁶ and Federal Child Support Guidelines⁷, which provide guidance on the definition and determination of notional income, considering, inter alia, adjustments pursuant to Schedule III (Adjustments to Income).

In many instances, the non-moneyed spouse can be a



critical resource for information about the moneyed spouse's financial state of affairs, because during the "better" days of the marriage Defendant may have disclosed valuable information about his business operations, investments, others assets, sources of cash and various economic benefits over which he has control (nominees, trusts, offshore accounts, etc.). As an example, Plaintiff may allege that the business operations of the private companies ("Companies") that Plaintiff or Defendant control are actually highly profitable and that both he/she and his/her businesses have substantial unreported or undeclared income. Plaintiff might also disclose that much of the family's lifestyle is paid

for by Defendant in cash, including, for example, expensive ocean cruises and other vacation trips at exotic resorts where the family stays at five-star hotels in luxury suites. Expenses for personal travel in the United States or Canada are typically booked through the business, which records these in its accounts as operating expenses (rather than as shareholder advances). Other personal and living expenses, such as the children's nanny, golf club, hockey tickets, landscaping, gardening, interior decoration, home renovations, roof repairs, electronic equipment, country home, summer sleep-away camps for the children, art, jewelry and vintage wines, are paid by Defendant in cash. The automobiles of Plaintiff and children are leased by the business from the car dealership and recorded by the business as "automobile expenses", as are gas, oil and maintenance of the autos and watercraft (at the lakeside cottage in the country and/or the condo in Florida). Florida condo expenses are booked by the Companies as travel expenses.

Plaintiff may also be in possession of important documents, such as copies of deposit slips or credit memoranda issued by offshore banks, plans and specifications of interior designers and architects, copies of suppliers' invoices, etc.

While this example might appear somewhat exaggerated, it is the authors' experience that there are many real-life situations where this has been the norm. The Québec Superior Court (Family Division) has rendered

many judgments in this regard, following lengthy in camera proceedings in each of these cases.

In valuing Defendant's business ownership interests in matrimonial litigation, the Expert will prepare a detailed list of the documents and information he or she requires in order to perform the financial analysis.

Defendant's counsel might refuse to allow his or her client to produce the documents and provide the information enumerated on the Expert's request list, claiming that most of these items are not relevant. In such cases, Plaintiff's counsel may ask the Expert to prepare an affidavit that would be filed in court, enumerating the documents and information the Expert still requires to perform the valuation and income analysis, explaining why each specific document or item of information is necessary for a meaningful analysis to be used in the preparation of the Expert's Report. The Expert (whether joint expert or consulting expert) may be examined on the affidavit by Defendant's counsel, requiring the Expert to justify why the particular documents and information requested (including any interviews and site tours) are relevant for the analysis. Often, Defendant's counsel attempts to characterize the Expert's document and information request as a "fishing expedition". The Expert should reply that, to the contrary, the Expert is "hunting ... for the truth!"

This article provides a partial list of the documents and information the Expert often requires, along with the re-



Trade-mark Services

Corporate Research and Analysis Centre

Benefits of Trade-mark Registration in Canada

- Presumption as to trade-mark's ownership
- Exclusive right to use the trade-mark throughout Canada
- Incontestability after 5 years of registration
- Efficient means of dissuading third parties from adopting confusing trade-marks
- Increased market value

Other Services Offered by CRAC

- Due Diligence
- Name Searches
- Corporate Services
- Minute Books and other Corporate Accessories

Advantages of Using our Trade-mark Services

- Variety of searches to meet every budget
- Strategic advantage: we provide a summary evaluation as to availability
- Interruption of a search if a highly similar mark is located (Canada & U.S.)
- Filing and Registration services
- Services available in Canada, the U.S. and around the world

Other IP Services

- Ordering Official Documents
- Registration of Assignments and Securities
- Trade-mark Watching Service
- Opposition Proceedings (Canada)
- Summary Expungement Proceedings (Canada)
- Trade-mark Agent Support

Visit www.crac.com for a free quote

spective reasons why each is relevant for purposes of his or her analysis. The latter portion of the list identifies additional types of documents and information that the Expert may request, as appropriate in the specific circumstances; it does not provide the respective reasons.

Examples of documents and information requested by expert

A. NET ASSETS

1. Personal balance sheet of Defendant as of the Valuation Date and financial schedules, pre-

pared for whatever reason, including data filed with any banks or other financial institutions, wherever located and for whatever purpose (including loan guarantees on behalf of third parties whether or not at arm's length).

Basic information and necessary starting point for purposes of establishing true net worth and financial state of affairs of Defendant, including identification of income-generating assets.

How much do solo lawyers make? More than IRS data suggests, law pros assert

By Debra Cassens Weiss

How much do solo lawyers make? According to a University of Tennessee law professor who examined IRS data, the answer was an average of about \$49,000 a year in 2012. But can the IRS data be trusted?

The question is being debated by two blogging law professors who are challenging the figure by University of Tennessee law professor and book author Benjamin Barton. In an article published by Business Insider last year, Barton said the average income for all solos fell 34 percent since 1967, when figures adjusted for inflation showed solos earned a little less than \$74,000.

Two law professors who think the \$49,000 is too low are Seton Hall University law professor Michael Simkovic, writing at Brian Leiter's Law School Reports, and Santa Clara University law professor Stephen Diamond, writing at his own blog. They both rely on Census data that suggests the number could be higher.

Simkovic suggests the actual average earnings of solos could be closer to \$100,000.

Barton relies on Schedule C data for solo proprietorships in the legal services category for his figures, Simkovic says. That data doesn't take into account that some solos are moonlighting on the side, earning money in other jobs.

There is another problem with relying on the IRS figures, Simkovic says. "Small business owners dramatically underreport their revenue and overstate their business expenses to reduce their tax liability," he says.

Simkovic gets his estimate of about \$100,000 from the U.S. Census Bureau's American Community Survey for lawyers who are "self employed, not incorporated." Simkovic views that category as an imperfect proxy for a small legal practice. When part-time workers in this category are excluded, the earnings average is \$160,000 to \$165,000.

Barton answers the criticism in the comments at Diamond's blog. He believes the Census data may reflect gross revenue, while the IRS data reflects income after deductions. "Income is the relevant question, not gross receipts," he says.

Barton also says the ABA's count of solo practitioners is relatively close to the IRS count. And he says IRS data on shrinking income matches the After the JD survey and other bar surveys.

2. Listing, including copies of purchase invoices and insurance coverage, of works of art, antiques, paintings, coin, stamp and wine collections and jewellery owned by Defendant, wherever situated.

Will helps establish the true net worth of Defendant. Insurance coverage generally provides indication of replacement value of assets.

3. List of Defendant's life-insurance policies, indicating the names of insurance companies, face values of policies, the type of insurance and the cash surrender value of each policy, names(s) of beneficiary(ies), and whether such policies are owned by Defendant personally or by a corporation in which Defendant has an equity ownership interest.

Relevant for purposes of establishing true net worth of Defendant and may provide indication of his own views of his net worth, as policy(ies) may have been purchased to provide liquidity for succession planning purposes and/or fund the post-mortem acquisition from his estate of Defendant's private-company shares.

4. Copies of (or access to) auditors' or accountants' year-end work papers, including journal entries, in respect of each of the Companies for the relevant fiscal years.

A review of these auditors' or accountants' work papers may provide information with respect to adjustments necessary for valuation and income-measurement purposes.

5. Copies of shareholders' agreements, including buy-sell covenants, to which either Defendant or his nominee was party, as well as copies of such agreements that were previously in effect.

Shareholders' agreements generally include buy-sell provisions that contain a formula or other mechanism to acquire or sell shares of the Companies, as well as references to price/value "formulas", when there is a "triggering event". Such agreements can also include provisions restricting the transferability of shares, and provisions regarding payments and distributions of profits and gains.

6. Copies of all major contracts and agreements to which the Companies were party as of the Valuation Date.

Will facilitate the assessment, for valuation purposes, of the nature and amount of any contractual benefits or obligations of the Companies, as the case may be. Further information that might be provided by such contracts and agreements may include the timing of such benefits or obligations. For purposes of the valuation analysis, a materiality threshold could be applied, limiting the request to all contracts and agreements involving

Procedure of Selecting and Appointing the UN Secretary-General

President Thomson renewed the commitment President Lykketoft made to run his Presidency in the most open and transparent manner possible. This also applies to the process of selecting and appointing the next United Nations Secretary-General.

The position of Secretary-General is one of great importance that requires the highest standards of efficiency, competence and integrity, and a firm commitment to the purposes and principles of the Charter of the United Nations. The President of the General Assembly and of the Security Council invite candidates to be presented with proven leadership and managerial abilities, extensive experience in international relations, and strong diplomatic, communication and multilingual skills.

Member States are invited to present candidates in a letter to the President of the General Assembly and the President of the Security Council.

The Presidents of the General Assembly and of the Security Council will jointly circulate to all Member States, on an ongoing basis, and publish on this webpage, the names of individuals that have been submitted for consideration.

financial consideration that, say, are in excess of \$20,000.

7. Copy of insurance policy (or summary sheet) covering the Companies' fixed assets (other than land) and inventory, including business interruption.

Will help corroborate the value of the Companies' tangible assets, as well as the Companies' profitability and intangible value. The business interruption portion of the policy might indicate what the Companies' own management considers to be the level of profitability of the business(es).

Profitability can directly impact corporate value, the ability of the Companies to make corporate distributions of income by way of dividends or otherwise, invest in capital projects and/or repay debt.

8. Copies of municipal valuations for land and building used in business operations.

Will help corroborate the values of the Companies' tangible operating business assets, which in turn impact the value of Defendant's shares.

9. Copies of any arm's length offers received within

Suffolk Law Professor Predicts Driverless Cars Will Shift Accident-Liability Focus

Cases Likely to Entail Product Safety Rather than Driver Fault

The advent of the driverless car will be accompanied by a shift in the focus of liability insurance from personal fault to product safety, according to Professor Michael Rustad, the Thomas F. Lambert Jr. Professor of Law and co-director of the Intellectual Property Law Concentration at Suffolk University Law School.

Rustad also foresees personal injury attorneys having to change their practices if the new cars live up to predictions that they will greatly reduce collisions.

"Auto accidents make up the single largest category of state tort claims," said Rustad, who teaches high technology law, cyberspace law, and torts. "We can be assured that self-driving cars are going to be much safer, and they're coming online sooner than many people realize."

Rustad, who is available to comment on legal considerations associated with self-driving cars, is the author of 26 books, most recently the *Global Internet Law Hornbook* (Westlaw 2016). He also is the editor of *Computer Con-*

tracts: Negotiating and Drafting (Lexis/Nexis 2016). He is a member of the American Law Institute and a leading scholar in the fields of torts, commercial law, and information technologies.

He predicts that legal action will shift from driver-involved accident claims to claims against car and component part manufacturers, including the software vendors.

"We seldom see car accident cases that involve product liability today, but in time nearly every vehicle accident will generate a product liability case," said Rustad.

He speculates that, in time, there could be a limited liability system created to afford protection to auto makers, similar to the federal Vaccine Act, which offers limited recovery to those who suffer adverse effects from vaccines through a victims' compensation fund. Yet he warns that giving car makers comprehensive immunity could lead to an abrogation of responsibility. And he notes that, even if there were a software defect, a driver with hands on the wheel might easily make a correction, and that should be a factor to be considered.

immediately preceding 24 months in respect of Defendant's real estate holdings.

Will help corroborate the values of the Companies' investment properties, which in turn impact the value of Defendant's shares.

10. Copies of any arm's length offers received during the three years immediately preceding the Valuation Date for the Companies' business assets and/or issued shares.

Will help corroborate the indicated value of the Companies and/or their assets, as arm's length, open-market transactional market data may provide a good indication of price/value.

11. List of securities owned directly or indirectly by Defendant in public companies and private corporations wherever located throughout the world; investments and other beneficial interests in entities in (but not limited to) Bermuda, The Bahamas, Liechtenstein, Luxembourg, Switzerland, Cayman Islands, Turks & Caicos, Cook Islands, or elsewhere; stock rights and warrants; bonds; debentures; guaranteed investment certificates; term deposits; bankers acceptances; treasury bills and bonds; interests in limited partnerships; interests in commercial partnerships; undivided co-ownership and joint tenancy interests in real estate; interests in joint ventures; pension plans; retirement savings plans; employee profit sharing plans; put options; call options; tax shelters; and any other investments or business ownership interests of any nature, held directly, indirectly, or in any manner whatsoever, located throughout the world.

Will help establish the true net worth of Defendant in that it would disclose his direct, indirect and/or beneficial interests in various investment vehicles and other assets.

12. Schedule of loans, accounts and claims receivable as of the Valuation Date, along with related particulars.
13. Details of any patents, patterns, designs, trademarks, trade names, traded secrets, copyrights and any other intellectual property owned and/or licensed by Defendant.

14. Details of any contingent assets and liabilities of Defendant, including litigious claims by or against him, and respective status of each (other than with respect to subject matrimonial proceedings).

B. NET INCOME

15. Federal and Québec personal income tax returns for the last five years, as well as respective notices of assessment (and reassessment, if any) and any correspondence to and from the respective income tax authorities during the period.

The information contained in these documents is relevant for identifying income by source, assets generating such income and disposal of capital assets during the period under review. The tax notices of assessment and reassessment may contain tax authorities' revisions, if any, to Defendant's declared income, based on information that they might possess. Correspondence with tax authorities may contain detailed explanations by them and/or by Defendant relating to income-inclusion items and/or legitimacy of certain deductions, in arriving at income reported on his Defendant's tax returns.

16. (a) Cancelled checks and bank statements of all personal checking, savings and other bank accounts, located throughout the world, for the three years immediately preceding the Valuation Date.

Will help establish Defendant's sources of income, cash receipts, living expenses, allocation of his funds, lifestyle, possible existence of non-arm's length payees and unrecorded investments, and other assets acquired by him.

- (b) List of all bank accounts closed or transferred within the past three years.

There may have been cash transactions that occurred in bank accounts that are now closed, but with respect to which these transactions would be relevant for determining Defendant's real income.

- (c) List of all safety deposit boxes in Defendant's name (and in the name(s) of nominee(s) or al-

ter egos, if applicable), including location of each box over which Defendant has signing authority, wherever situated throughout the world, along with schedule of visits during the three years immediately preceding the Valuation Date and list of all persons having access to said boxes during the said period.

Relevant for establishing location of Defendant's assets. May provide information as to when safety deposit box contents might have been added or removed, possibly indicating unrecorded cash transactions during relevant period, as well as additional information regarding Defendant's net worth.

17. Details of all sums received by Defendant and/or paid or credited to him by any third persons, com-

panies, firms or corporations either as salaries, bonuses, fees, dividends, profit-share redemptions and/or sale of shares, reimbursement of loans, advances, liquidation or sale of assets, payment and/or reimbursement of expenses (expense accounts), expense allowances, car allowances, golf club, yacht club, social club, and other club dues and expenses, entertainment, sporting events (including season tickets), and other emoluments or forms of payment or remuneration received or enjoyed by Defendant, directly, indirectly or in any manner whatsoever, including those received constructively.

Relevant for obtaining a complete perspective of all cash in-flows and out-flows to/from Defendant during the relevant period for purposes of determining his real income, sources of receipts,

Lawyers' Committee and National Bar Association Announce Launch of National Program to Provide Legal Support for Protesters and Demonstrators

Today, the Lawyers' Committee for Civil Rights Under Law (Lawyers' Committee) and the National Bar Association (NBA), launched a national campaign to provide legal support and resources for individuals and organizations engaged in peaceful protest and demonstration, particularly in the wake of calls for policing reform. The campaign includes release of state-specific "Know Your Rights" materials to help ensure that individuals are aware of their first amendment right to protest and demonstrate. The campaign also includes legal support to help provide individual-level assistance to those who are detained or arrested while protesting. The "Know Your Rights" materials inform protestors of their rights in their respective jurisdictions and of what to expect if arrested. Demonstrators may call 1-844-3RIGHTS (1-844-374-4487) to be connected with a pro-bono attorney if arrested. State-specific brochures are currently available for Atlanta, Baton Rouge, and Washington, D.C. Versions for Phila-

delphia, Chicago, Los Angeles, Dallas, Houston, Minnesota, New York, and Pittsburgh will soon be available.

"Communities across the country are mobilizing to call for policing reform" said Kristen Clarke, president and executive director of the Lawyers' Committee for Civil Rights Under Law. "However, these efforts sometimes bring protesters and demonstrators into contact with the very law enforcement agencies that are the subject of their protest. Citizens should be free to exercise their first amendment rights and provided the support needed when engaged in such protest."

"The right to protest is a fundamental component of our democracy and we urge all of members of all NBA Affiliate Chapters to contribute to this cause," said National Bar Association President Kevin Judd. "The NBA has is deeply committed to providing protection to protestors who take to the streets to make their voices heard."

disposals of assets, and possible identification of existence of other assets.

18. List of all personal credit cards held in Defendant's name, or that/those of his nominee(s) with respective account numbers, as well as monthly statements of his credit cards for the 24-month period ended on the Valuation Date.

Relevant in determining Defendant's level of living expenses, lifestyle, standard of living, identification of payees and assets, etc.

19. Copies of all pages of Defendant's passport and, if passport had recently been renewed, copy of immediately preceding passport.

May assist in measuring more accurately indicated real income of Defendant by providing details (e.g., destinations and length of visits) of his personal travel charged to business but enjoyed by him as a personal benefit. To extent that there is indication of frequent visits to tax-haven jurisdictions, it might be a sign that further enquiry is necessary.

20. Copies of all bank, mortgage loan and government grant applications of the Companies during the relevant period, including all documentation filed with the particular lending institution(s) for purposes thereof.

Applications for financing are serious documents and may provide Defendant's or management's own assessment of income and value. Defendant derives his primary sources of income and value from the Companies.

21. Copies of all contracts and sub-contracts with respect to any and all repairs, renovations and improvements made at any of Defendant's residence(s) or with respect to any real estate which he owns or has an interest in, and names and addresses of architects, engineers, designers, roofers, electrical and plumbing contractors, and gardeners who rendered services at any time during the three years immediately preceding the Valuation Date.

Will provide information as to expenditures that may have been charged to, and paid by, Defen-

dant's Companies, but which were for his personal benefit. Also possibility that certain of these contractors/suppliers may have been paid partly or totally in cash. This may impact both the value of Defendant's shares as well as his real income and help trace the sources of cash used to make the payment.

22. (a) Names and addresses of any persons to whom Defendant has given power of attorney and/or a mandate (whether general or specific) within the immediately preceding five years.

(b) Copies of relevant documents applicable to Item 22.(a).

23. Schedule of all vehicles owned or leased by, or for the personal use of, Defendant and his family, including (but not limited to) automobiles, aircraft, snowmobiles and watercraft, including sea-doo's and jet skis.

C. NET ASSETS AND NET INCOME

24. Details of any non-arm's length, or related party, transactions of the Companies during the three fiscal years immediately preceding the Valuation Date.

Such details are relevant in determining Defendant's real income through the determination of personal (or other non-business) amounts and to assess the level and quality of the income generated by each of the Companies. Moreover, given the closely-held, family-run nature of the Companies, any non-arm's length or related-party transactions involving consideration not at market values or market prices, or non-operational in nature, may distort the true income-generating capacity and, hence, the value of the Companies' business. The Defendant's principal sources of income and business equity value are derived from the Companies.

25. Schedule of all payments made on Defendant's behalf and/or for his benefit by any of his Companies with respect to his use of credit cards or charge cards such as (but not limited to) American Express, Master Card, Discovery, Visa, retail stores, restaurants, or any other credit cards, including copies of all credit card statements.

Relevant for purposes of determining Defendant's real income. Will assist in analysis of nature and amount of expenses paid by his Companies on his behalf, thereby forming part of his real income (whether directly, indirectly or constructively received or enjoyed), as well as for determining value of his Companies for purposes of establishing Defendant's true net worth. In addition, expenses paid by any of his Companies on Defendant's behalf, or expenses claimed by such business that are not effectively connected therewith (untaxed benefits in his hands) should be adjusted in payor company's accounts (income for valuation purposes), thereby increasing company's valuation and, hence, value of Defendant's ownership interest therein.

26. Schedule of all out-of-town travel (business and pleasure) (outside radius of 300 miles from office/home) during the immediately preceding 36 months, including:
 - (a) Purpose of visit.
 - (b) Place(s) visited.
 - (c) Duration of stay.
 - (d) Copies of invoices for hotel and other accommodation.
 - (e) Copies of airline tickets (or e-mail itinerary).
 - (f) Person(s) by whom Defendant was accompanied.
 - (g) Approximate cost per trip.
 - (h) Names and addresses of travel agents used to book Defendant's travel.
 - (i) Copies of all airline frequent-flyer statements and other air-miles program statements.

Will assist in analyzing expense items such as travel, promotion, etc., paid by Defendant's business which may, in fact, be of a personal, non-operational nature and which may have to be adjusted on books of the business(es) in determining value thereof for purposes of establishing Defendant's true net worth. Moreover, this information is relevant for establishing, more accurately, the real income of Defendant (forming part of the recipient's notional income).

27. Copies of all applications submitted by Defendant to any third-party or financial institution, which were accompanied by his personal balance sheet.

Applications for credit are serious documents,

providing Defendant's own representations and assessments of his income and net worth.

28. Copies of financial statements of the Defendant's corporation for the immediately preceding three fiscal years.
29. Federal and Québec corporation income tax returns of the Companies, along with respective notices of assessment (and notices of reassessment, if any).

Notices of assessment and reassessment may contain the taxation authorities' revisions to the Companies' respective declared incomes, based on information tax authorities might possess. Schedules appended to corporation income tax returns might contain other information relevant from a valuation standpoint, such as tax cost bases, tax credits, loss carryforward balances and identification of related parties, etc. The information contained therein may impact value of the Companies and, as Defendant derives his income mainly from his family-controlled entities, such information will also assist in measuring his income-earning capacity for spousal and child support purposes.

30. Access to minute books of the Companies, including articles of incorporation, amendments, by-laws, as well as minutes and resolutions of shareholders and directors during the relevant period.

Relevant for ascertaining the rights, privileges, restrictions, obligations, and other attributes of the Companies' shares, as contained in articles of incorporation, by-laws, minutes and resolutions, and the existence of contracts and shareholders' agreements. These factors, in turn, may have a direct and material impact on the value of Defendant's shares, to extent that the documents may refer to shareholder agreements, dividend rights, profit-sharing and bonus arrangements, management fees and other potential income distributions.

Not every case is simple or straight forward. The items included on this list are only some of the types of data an Expert may require in order to value a spouse's business interests and other assets, and to calculate income for spousal and child support purposes, when there is resistance by the Defendant to disclose.

Tiffany vs Costco

By Olga Shevchenko

This exciting story started in 2012, when a Tiffany customer advised the company that a Costco store in California was selling diamond engagement rings marked Tiffany. Obviously, the lady was not happy.

Tiffany has started an investigation, and it turned out that, indeed, Costco was selling unauthorized diamond engagement rings with Tiffany marks although those rings were not made by Tiffany. Tiffany has promptly filed a lawsuit against Costco February 2013 for infringing Tiffany's trademarks and confusing the customers. It looked like hundreds if not thousands of Costco members had purchased those "Tiffany" diamond rings assuming that they are buying authentic Tiffany rings (at a more tempting price).

Costco's response was – they meant that Tiffany setting was a generic term.

A bit of history. Tiffany setting was created in 1886 by Charles Lewis Tiffany. Before, diamonds were set in a bezel in a way that only its top (or crown) was seen. Charles Louis Tiffany designed a setting for a diamond solitaire engagement ring where 6 raised prongs are used to securely hold the stone. It was an innovation. The setting shows off the diamond, and more of its surface is exposed. As a result, its brilliance is maximized. This type of setting has become extremely popular.

The lawsuit lasted for two years. The Judge, Laura Taylor Swain, stated that if a term is generic, it must serve as a generic descriptor. But when people (9 out of 10 customers) come across the name "Tiffany", first, they think of a retailer, not of a particular diamond ring setting.

September 2015, a New York Federal Court ruling was that Tiffany setting is not a generic term and that Costco is guilty of counterfeiting and trademark infringement.

*Olga Shevchenko, FGA
Certified Gemmologist, EGM Certified Gems
and Jewelry Appraiser
Jewelry Olga (Designer Pearl Jewelry)
info@pearljewelryexpert.com
www.pearljewelryexpert.com
514-884-4980 By appointment only
1472 Sherbrooke O., Montreal (Kast boutique)*



The latest development of the story: At the beginning of October, a federal jury in New York has awarded Tiffany & Co \$5.5 million in damages. Couple of days later, the jury ruled that, in addition, Tiffany is entitled to punitive damages in the amount of \$8.25 million. Total \$13.75 mln. The final amount of punitive damages is at the discretion of the judge based on the jury decision. Costco can still appeal.

This victory does not mean money only for Tiffany. The message is – if you want to buy a Tiffany ring, you go to Tiffany. Not anywhere else.

For more information, please check <http://www.reuters.com/article/us-tiffany-costco-wholesale-lawsuit-idUSKC-NOR82KY20150908> and <http://www.seattletimes.com/business/retail/costco-owes-tiffany-at-least-75m-over-mislabeled-rings/>

There is a development of the story Tiffany vs Costco. Costco must pay \$8.25 mln in punitive damages. <http://www.seattletimes.com/business/retail/costco-owes-tiffany-at-least-75m-over-mislabeled-rings/>

You may purchase designer jewelry created by Jewelry Olga at the Boutique of Museum of Fine Arts of Montreal.

Robert Leckey appointed Dean of Law

By McGill Reporter Staff

During the closed session of its April 21, 2016, meeting, McGill's Board of Governors approved the appointment of Professor Robert Leckey as Dean of the Faculty of Law. The appointment came on the recommendation of the Advisory Committee for the Selection of a Dean of the Faculty of Law, which conducted an extensive, international search. Leckey's five-year term begins on July 1, 2016. He succeeds Daniel Jutras, who finishes his six-year term as Dean (which followed 10 months as Interim Dean) at the end of June.

Leckey is a graduate of McGill (BCL/LLB'02). He joined the Faculty of Law in 2006 after completing his doctorate, as a Trudeau Scholar, at the University of Toronto. He specializes in constitutional law and family law, and his publications include the monograph *Bills of Rights in the Common Law* (Cambridge University Press, 2015). His teaching has been recognized by the Principal's Prize for Excellence in Teaching (2010) and the McGill Law Students' Association's John W. Durnford Teaching Excellence Award (2009). His research has earned him the Canada Prize of the International Academy of Comparative Law (2010) and the Prix de la Fondation du Barreau du Québec (2007).

"He is, by any measure, one of Quebec's pre-eminent scholars of private and public law," said Dean Jutras when Leckey was made full professor this past November, "and his reputation on the global scene is nothing short of spectacular." "Professor Leckey has distinguished himself in a leadership capacity, both within McGill and across Canada," wrote Provost and Vice-Principal Academic Christopher Manfredi



Robert Leckey has begun his five-year term on July 1.

in an announcement to the McGill community. Manfredi cited Leckey's current position as director of McGill's Paul-André Crépeau Centre for Private and Comparative Law, and his past role as chair of the McGill Equity Subcommittee on Queer People. Leckey has also been involved with *Egale Canada*, a national LGBT advocacy group, serving as both the chair of its board and legal issues committee, and is the former director of research for Quebec's Inquiry Commission on the Process for Appointing Judges.

Leckey's decanal appointment is actually his second big news of the week. On Wednesday, the Faculty of Law announced that he is the new Samuel Gale Chair of Law.

Mary Robinson to receive 2016 Stockholm Human Rights Award

Mary Robinson, the United Nations High Commissioner for Human Rights from 1997 to 2002, is announced as the 2016 recipient of the Stockholm Human Rights Award. Bestowed annually by the Swedish Bar Association, the International Bar Association and the International Legal Assistance Consortium in recognition of work in the pursuit of advancing international justice and strengthening respect for human rights, the Award will be received in person by Ms Robinson at a ceremony in Stockholm, Sweden on 23 November.

Ms Robinson, the seventh – and first female – President of Ireland, held office between 1990 and 1997. She is widely regarded as having been a transformative figure for Ireland and is credited with revitalising and liberalising the presidency. Upon taking up post at the UN in 1997 she was given the mandate to set the human rights agenda within the organisation and internationally.

Presently, as President of the Mary Robinson Foundation – Climate Justice, Ms Robinson staunchly advocates for global justice for people most vulnerable to the impacts of climate change – the poor, the disempowered and the marginalised across the world. She lectures tirelessly on the topic, travels the globe to engage with all who are concerned for global justice, and calls constantly and persuasively on world leaders for swift, far-reaching and ambitious climate action. The impact of climate change on people and their rights – to food, safe water, health, education and shelter – is what drives her work.



Mary Robinson

In a TED talk delivered in September 2015, Ms Robinson lamented her coming late to the issue of climate change and detailed how, when leading Realizing Rights – The Ethical Globalization Initiative and working on issues of development and human rights in African countries, she would hear a phrase uttered ubiquitously: 'Oh, but things are so much worse now, things are so much worse.' Exploring what lay behind it, she found the issue to be about climate shocks, such as extreme changes in the weather. The threat that human-induced climate change may one day cause an entire nation to disappear under water, as in the case of Kiribati, has affected her profoundly and accelerated her efforts.

Ms Robinson has spent most of her life as a human rights advocate and is the recipient of numerous honours and awards throughout the world, including the Presidential Medal of Freedom from President Obama. She is a member of the Elders, former Chair of the Council of Women World Leaders and a member of the Club of Madrid. She will be presented with the 2016 Stockholm Human Rights Award on Wednesday 23 November 2016 at Berwaldhallen, Dag Hammarskjölds väg 3, Stockholm, Sweden.

A.G. Schneiderman announces Beau Buffier as new chief of Antitrust Bureau

Attorney General Eric T. Schneiderman today announced the appointment of Beau W. Buffier as the new Chief of the Attorney General's Antitrust Bureau, a part of the Division of Economic Justice.

"I am pleased to welcome Beau Buffier to our office, where he will spearhead some of our office's most innovative and critical work," Attorney General Schneiderman said. "Beau brings a breadth of experience in antitrust matters, and will be a true asset to both our ongoing and future antitrust work."

Beau Buffier said, "I am privileged to be joining an agency with such a long and proud history of antitrust enforcement. Under Attorney General Schneiderman's leadership, New York has won ground-breaking cases that have promoted competition and protected consumers not only in New York but nationwide. I am excited to become part of such a dynamic office and I look forward to working with the talented team at the Antitrust Bureau to ensure that all New York consumers and businesses receive the benefits of competitive markets."

Beau W. Buffier is currently a partner in the New York office and co-head of Shearman & Sterling's Global

Antitrust Group. Over the past 15 years, Mr. Buffier has developed deep expertise across a diverse array of antitrust matters including global price-fixing investigations and follow-on litigation, monopolization and abuse of dominance cases, merger investigations and challenges, competitor collaborations, antitrust compliance and intellectual property-related matters. He regularly speaks and publishes on significant antitrust matters and was recognized by the New York Law Journal as a "Rising Star" in the top 40 attorneys under 40 in 2013 and by Law360 as one of 2015's top competition attorneys under 40. Mr. Buffier received his LL.B. from the University of Sydney and LL.M. from New York University School of Law. Beau's first day at the Attorney General's office will be October 10.

The Antitrust Bureau is responsible for enforcing New York State laws prohibiting anticompetitive business practices, and representing the interests of New York and New York consumers in national antitrust matters. Beau Buffier will lead a team dedicated to ensuring that New York consumers and local businesses receive the benefits of full and fair competition. The Division of Economic Justice is led by Executive Deputy Attorney General Manisha M. Sheth.

Male partners make 44% more on average than female partners, survey finds

A new survey confirms the gender pay gap among law firm partners. Male partners make 44 percent more on average than female partners, according to the survey by Major, Lindsey & Africa. Law.com, Bloomberg Big Law Business and the Wall Street Journal Law Blog covered the results.

Average compensation is \$949,000 a year for male partners and \$659,000 for female partners.

A difference in origination credit accounts for much of the difference, according to study author Jeffrey Lowe, managing partner in Major, Lindsey & Africa's Washington, D.C., office. Average origination was \$2.59 million for male partners and \$1.73 million for female partners.

"That's the crux of the issue: Why are men generating more business than women?" Lowe told Law.com. "Is there some boys club aspect or not?"

The survey nonetheless showed women partners have increased their origination credit more than males since the last survey in 2014. Origination credit increased 40 percent for female partners and 18 percent for male partners.

The survey also found some gender differences in partner billing rates and billable hours. The average partner billing rate was \$701 for men and \$636 for women, while average billable hours were 1,703 for men and 1,632 for women.

Overall, average compensation was \$1.1 million for equity partners and \$367,000 for nonequity partners.

More than 2,150 partners responded to the survey.

Be it Resolved by the Board of Advisors of the Association for Title IX Administrators that Black Lives Matter

A TIXA stands in support of the essential truth that Black Lives Matter. As an association dedicated to fighting discrimination, ATIXA expresses its solidarity with colleague associations and brothers and sisters dedicated to this movement and the long-overdue and necessary national conversations surrounding issues of racism, bias, and hate.

ATIXA expresses its sympathy to those families whose lives have been blighted by racism and whose families have lost loved ones to race-motivated violence.

ATIXA condemns those who shoot unarmed, defenseless, and innocent people who are peacefully going about their daily lives.

Though saddened and disturbed at the continuing daily violence and hatred threaded throughout society, ATIXA sees an opportunity to do better, to unravel strands of hate, weave new coalitions, broaden tolerance, and promote justice.

Through its civil rights commitment, ATIXA recognizes the frequency of compound discrimination in this work, the perniciousness of systemic racism, and the intersectionality of various forms of hatred and oppression. Racism impacts all of us and therefore all of us are obligated to rededicate ourselves to equality.

ATIXA's members work tirelessly each day to help address systemic issues of violence, discrimination, harassment, and hatred. Their strength and dedication remind us that we all are, and can be, part of the solution. Society is facing difficult truths, but accepting those truths and calling to be better selves and for a more civil society is the only path to make our nation and our world a better place.

College Choice Releases its 2016 Ranking for the Best Online Law Schools

College Choice, a leading authority in college and university rankings and resources, has published its 2016 ranking for the Best Online Law Schools

<http://www.collegechoice.net/best-online-law-schools/>

Getting a law education online has been difficult for several years. This is because the American Bar Association, the accrediting body for law schools in America and also the home to the qualification lawyer exam, has been reluctant to accredit online schools. But online law education is perfect for students who have a busy work schedule or other commitments. The demand for online law degrees has led many well-respected colleges and universities to provide these degrees, even without accreditation, and that's why this ranking was created.

Christian Amondson, Managing Editor of College Choice, was quick to point out that the tide may be changing in favor of online law schools: "While online law schools have struggled to match and maintain the rigor of traditional on-site programs, many accredited online law schools have been raising the bar to meet professional demands and opportunities. In fact, several fully online law degrees are keeping up with professional expectations in both examination and professional performance, and state law is following suit."

College Choice created the 2016 ranking for the Best Online Schools by researching ABA-accredited online programs, then moving on to schools that offered separate alternatives for students who wish to sit for the bar in their state. Sample factors included regional and independent accreditation, the variety of programs, on-campus residency requirements, and more. This information was collected

from individual school websites, the ABA's accreditation website, and statistical sites such as the National Center for Education Statistics. The College Choice 2016 ranking for the Best Online Schools is led by Villanova University. It is followed by Washington University in St. Louis and the University of Southern California.

The complete rankings are as follows:

Abraham Lincoln University, Los Angeles, CA
Arizona State University, Phoenix, AZ
Atlanta's John Marshall Law School, Atlanta, GA
Boston University, Boston, MA
California Southern University School of Law, Irvine, CA
California University of Pennsylvania, California, PA
Champlain University, Burlington, VT
Concord Law School, Davenport, IA
Drexel University, Philadelphia, PA
Florida Coastal College of Law, Jacksonville, FL
George Washington University, Washington, D.C.
Grand Canyon University, Phoenix, AZ
Hofstra University, Hempstead, NY
Loyola University Chicago, Chicago, IL
Michigan State University, East Lansing, MI
New York University, New York, NY
Nova Southeastern University, Ft. Lauderdale, FL
Ohio University, Athens, OH
Regent University, Virginia Beach, VA
Saint Leo University, Saint Leo, FL
Seton Hall, South Orange, NJ
St. Francis Law School, Newport Beach, CA
University of Alabama, Tuscaloosa, AL
University of Arkansas, Fayetteville, AK
University of Florida, Gainesville, FL
University of Hawaii, Honolulu, HI
University of Illinois at Springfield, Springfield, Illinois

University of Massachusetts, North Dartmouth, MA
University of Nebraska—Lincoln, Lincoln, NE
University of Pittsburgh, Pittsburgh, PA
University of Southern California, Los Angeles, CA
University of Tulsa, Tulsa, OK
Vermont Law School, South Royalton, VT
Villanova University, Villanova, PA
Washington University, St. Louis, MO

College Choice is the leading authority in college and university rankings, searches and resources dedicated to helping students and their families find the right college. The site publishes rankings and reviews that make finding the best colleges for different interests easier and more fun, as well as resources to help students get into, pay for, and thrive at the college of their choice.

The Prime Minister, Justin Trudeau, today announced the nomination of Mr. Justice Malcolm Rowe for the Supreme Court of Canada.

Justice Rowe was born in 1953 in St. John's, Newfoundland and Labrador, to parents from small fishing communities.

He attended Memorial University from 1970 to 1975 where he earned a B.Sc., B.A. in political science. He then attended Osgoode Hall Law School from 1975 to 1978, where he earned his LL.B. He was called to the Bar of Newfoundland and Labrador in 1978 and became a member of the Law Society of Upper Canada in 1986.

Justice Rowe first worked as Clerk Assistant in the House of Assembly of Newfoundland and Labrador, where he served as procedural advisor to the Speaker. In 1980, he joined the Department of External Affairs as a Foreign Service Officer. In 1984, he joined the Ottawa office of Gowling and Henderson, first as an associate and then as a partner. While in private practice, he was part of the teams that handled disputes over the determination of Canada's Atlantic maritime boundaries and overfishing on the Grand Banks of Newfoundland. He was also involved in the negotiation of a new United Nations convention on high seas fisheries, in initiatives of the UN Food and Agriculture Organization -- as well as in negotiations with the European Union. He was appointed Queen's Counsel in 1992. In 1996, he became Clerk of the Executive Council and Secretary to Cabinet in the Government of Newfoundland and Labrador. He continued to advise Canada's litigation team in regards to the fisheries case initiated by Spain before the International Court of Jus-



New Supreme Court of Canada Justice Malcolm Rowe of Newfoundland, first ever nomination from this province.

tice. He was also instrumental in securing a constitutional amendment to replace Newfoundland and Labrador's denominational school system in favour of a secular one. Justice Rowe was appointed to the Newfoundland and Labrador Supreme Court, Trial Division in 1999 and was elevated to the Court of Appeal of Newfoundland and Labrador in 2001.

Justice Rowe was a lecturer in public and constitutional law at the University of Ottawa, Faculty of Law, for two years in the early 1990's. He has served as a member of the Council of the Canadian Superior Courts Judges' Association since 2005. He was Chair of the Advisory Committee on Federal Judicial Appointments for Newfoundland and Labrador from 2006 to 2012. He is the author of "What is the Constitution of a Province", a chapter in *Provinces*, edited by Prof. C. Dunn and published in 2015. From 2002 to 2016, he was involved with Action Canada, a youth leadership development program, as an advisor, mentor and member of the National Selection Committee.

Prime Minister announces new Supreme Court of Canada judicial appointments process

The Prime Minister, Justin Trudeau, announced a new process for appointing Supreme Court of Canada Justices that is open, transparent, and sets a higher standard for accountability.

Under the new process, an independent and non-partisan Advisory Board has been given the task of identifying suitable candidates who are jurists of the highest caliber, functionally bilingual, and representative of the diversity of our great country.

For the first time, any qualified Canadian lawyer or judge may apply for appointment to the Supreme Court of Canada through the Office of the Commissioner for Federal Judicial Affairs.

The seven-member Advisory Board, chaired by former Prime Minister Kim Campbell, includes four members nominated by independent professional organizations. The Advisory Board will review candidates who apply and will submit a shortlist of three to five individuals for consideration by the Prime Minister.

To enhance transparency, the assessment criteria guiding the Advisory Board, the questionnaire that all applicants must answer, and certain answers provided to the questionnaire by the Prime Minister's eventual nominee, will all be made public.

The Minister of Justice and the chair of the Advisory Board will appear before Parliament to discuss the selection process. A number of Members of Parliament and Senators – from all parties – will also have the oppor-

tunity to take part in a Q&A session with the eventual nominee, before she or he is appointed to the Supreme Court of Canada.

Fundamentally, this process will demonstrate a degree of rigor and responsibility that Canadians expect from their government.

Quote

"The Supreme Court of Canada is respected nationally and internationally for its excellence—it is recognized as a model of a strong, independent judicial institution. This is due in no small part to a tradition of appointing only the most exceptional and impressive individuals to the court. We are committed to maintaining this tradition—and improving on it—by introducing an open, transparent and non-partisan process that will help ensure that the best, most well-qualified people reflective of Canadian society are named to Canada's top court."

– Rt. Hon. Justin Trudeau, Prime Minister of Canada

Quick Facts

- The following members have been named to the Independent Advisory Board for Supreme Court of Canada Judicial Appointments:
 - The Right Honourable Kim Campbell – Chairperson – former Prime Minister of Canada and Canadian Consul General, and currently the Founding Principal of the Peter Lougheed Leadership College at the University of Alberta
 - Camille Cameron – member – Dean of the Schul-

ich School of Law at Dalhousie University, and Chair of the Canadian Council of Law Deans

- Jeff Hirsch – member – President of the Federation of Law Societies of Canada, and partner with a Winnipeg law firm
- Stephen Kakfwi – member – former Premier of the Northwest Territories and President of the Dene Nation, and currently working to improve the recognition and realities of Aboriginal peoples within Canada
- Lili-Anna Pereša – member – President and Executive Director of Centraide of Greater Montreal
- Richard J. Scott – member – former Chief Justice of the Manitoba Court of Appeal, and current counsel, arbitrator and mediator in a Winnipeg

law firm

- Susan Ursel – member – currently a senior partner with a Toronto firm, and Chair of the Canadian component of the African Legal Research Team which provides legal research support to Envisioning Global LGBT Rights
- The application period ends on Wednesday, August 24.
- Qualified lawyers and persons holding judicial office from across Canada who wish to be considered for the upcoming vacancy must complete and submit an application package no later than 23:59 Pacific daylight time on August 24, 2016.
- Applications are now being accepted for the position that will become vacant in September with the retirement of the Honourable Justice Cromwell.

Appointed next secretary-general of the United Nations

(january 2017 – december 2021)



Secretary-General-designate, António Guterres, addresses the General Assembly on the occasion of his appointment as the next Secretary-General of the United Nations. *UN Photo/Amanda Voisard*

Payam Akhavan named Member of the Permanent Court of Arbitration



appointed members are potential arbitrators named by member states.

Interestingly, Akhavan was appointed by Sheikh Hasina, the Prime Minister of Bangladesh, in appreciation for his arbitration work. In 2008, Akhavan was part of a successful campaign to release Sheikh Hasina when she was a political prisoner, who then went on to become PM of Bangladesh in a democratic election.

Hasina asked Akhavan to help solve a sensitive boundary issue in the Bay of Bengal with neighbouring Myanmar and India. Akhavan helped arbitrate this dispute at The Hague and to resolve a long-standing source of tension between these countries. In light of these contributions to Bangladesh, Prime Minister Hasina took the unusual step of appointing a foreign national as Bangladesh's member to the Permanent Court of Arbitration.

Professor Akhavan continues his human rights work on the international stage. This summer, he was in Iraq at the invitation of the Kurdistan Regional Government to

In June 2016, Professor Payam Akhavan was appointed as a Member of the Permanent Court of Arbitration (PCA) in The Hague. Established in 1899, the PCA is an intergovernmental organization that provides dispute resolution services to the international community, and its ap-

pointed members are potential arbitrators named by member states.

assist with accountability for the atrocities committed by Daesh against the Yazidi people.

In 2017, he will deliver the Massey Lectures, widely regarded as one of the most important public lectures in Canada.

Source : McGill Law faculty web site.



Me Denis Roy, former president of Quebec Legal Aid society with Me Yvan Niquette, the new president, at a cocktail party in Montreal September 13th 2016 marking the annual meeting of Quebec legal aid branches attended by legal personalities gathered to pay tribute to Denis Roy, a prominent lawyer who presided over legal aid for 12 years.

The MONTREAL LAWYER

THE VOICE OF ENGLISH-SPEAKING LAWYERS WHEREVER,WHOEVER THEY ARE

Many, many thanks to readers and advertisers

The Montreal Lawyer has completed its first three years as a quarterly magazine.

The Publisher and Editor wishes to thank all those who have helped to make it a viable publication responding to the needs of its audience : first and foremost, Me Ian M. Solloway, president of the English-speaking section of the Bar of Montreal who has announced he will not seek another mandate.

Many thanks to former Bâtonniers, private practice lawyers women and men who have contributed to The Montreal Lawyer as their special link to other law and other professionals. contributors frequent or less frequent have carved a special path designed to help their colleagues or offer them information about current trends and issues, products or services available to them.

The Publisher and Editor,
André Gagnon

www.themontreallawyer.com

and Facebook

agmonde@videotron.ca

514-353-3549



Réservez dès maintenant pour vos parties de bureau

Reserve Now For Your Office Parties

Lunch @ \$25.00

Souper/Dinner @ \$50.00

**RESTAURANT
SINCLAIR**

**DEC
2016**

414 Rue St. Sulpice
Montréal, Quebec
H2Y 2V5

RSVP

debbie@restaurant-sinclair.com | 514.350.1150 | www.restaurant-sinclair.com