

NOVA VOCE



Volume 35, No. 3, SPRING 2017

The Voice of the Legal Profession in Nova Scotia



SPRING INTO RUNNING

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PRESIDENT'S MESSAGE

RE-THINK, HAPPICO AND NOW THERE ARE 3



DENNIS
JAMES, QC

Patterson Law

The CBA's Re-Think will bookend my time on the CBANS executive. The decision to enter into the process had been made by the first time I attended an executive meeting, so the issue of the day was the engagement of consultants. Happico was hired to create the process for member engagement that went on for almost two years, leading to the resolutions that were passed by National Council in August 2016. As an observer, I can attest to the long hours, many debates and considerable passion by people who hold the CBA close to their professional hearts.

This year the process turned from direction to implementation. The first and most visible testament of that is the new national board. August 31, 2017 will end the time when branch presidents serve on the board. Starting September 1, the board will be comprised of the CBA President and one individual from each province and territory, but not in a provincial or territorial representative capacity. Rather the board will be comprised of people whose mandate is very much national in scope. On deadline day, February 17, three good-hearted souls submitted applications to fill the role designated for a person

from Nova Scotia. The list of three is not known outside the nomination and selection process. Eventually one Nova Scotian will be elected and start to serve September 1. I congratulate each person who chose to put their name forward.

Much is being readied by working groups to revise CBA's complex committee structure, review by-laws, and define mandates for the three working board committees. Simultaneously, a management working group comprised of CBA staff and the executive directors from across the country is trying to normalize financial information, review program offerings, establish value propositions, and achieve efficiencies in delivery. Our own ED, Tina Tucker, has been fully engaged in that process while carrying out her CBANS responsibilities.

So what is this all about? This is a strategic response to ensure the future relevance of the CBA and its position as the leading legal professional organization in Canada. It will do that by ensuring it is truly focused on member needs, whether in advocacy, professional development or innovation in legal services. Without doubt that there are parts of our country where the CBA faces membership challenges, some caused by fees, some caused by questioned relevance, and often both. In August 2018, as I finish my full cycle on the CBANS executive, it will be the end of year one under our new regime. My hope and belief is that it will be a bookend to a process that secures the CBA.

EDITORIAL BOARD

Theresa Graham
Heidi Schedler
Candee McCarthy

Charlene Moore
Jennifer Keliher

COVER PHOTO: Christine Pound at Point Pleasant Park.

Photographer: Bruce Jollimore.



Jean Beeler, QC,
Weldon McInnis

VICE PRESIDENT The professional development committee has been hard at work. The Mid-Winter attracted 198 registrants, and the the Bench and Bar Reception and Dinner, 302. Our next annual conference is scheduled for November 30 and December 1, 2017 at the Lord Nelson Hotel. We are planning many great topics and interesting speakers, so stay tuned. We are confident that the change in season and venue will be received with excitement and enthusiasm, with an added bonus of giving our members around the province an opportunity get some Holiday shopping done. Sections continue to be active, with 22 future meetings on the calendar, at last count.



Heidi Schedler,
Nova Scotia
Securities
Commission

COMMUNICATIONS & PUBLIC RELATIONS

This will be my last issue of Nova Voce as your Chair of Communications and Public Relations. I hope you continue to enjoy the electronic format of the magazine - with the ease of reading it wherever you might be, and of accessing linked information directly. We will continue to build upon and improve all resources that our members find useful and valuable. If there

is an issue that you think CBANS needs to know about and/or speak about, please [get in touch](#).



Gail Gatchalian,
Pink Larkin

TREASURER CBANS made a modest amount of money on the Bench and Bar this year, typically a break-even event, which was achieved through cost controls. Although attendance numbers were down somewhat, revenue was up for the Mid-Winter year-over-year. Overall, we are on track and holding to our budget,

including costs for Re-Think. Under Re-Think, CBANS staff and volunteers are working towards common reporting across the country with a view to having a consolidated statement of finances for all of the CBA. This will help members have a better understanding of how the organization operates.



Annette Boucher,
QC, Legislative
Counsel Office

MEMBERSHIP Recently our recruitment efforts focused on articulated clerks, so I take this opportunity to ask you to consider offering your current and future articling clerks CBA memberships as part of their remuneration package. With your support, keen and eager individuals will become engaged and will strengthen and enhance the CBA. Great return for a \$200 investment!



Jack Townsend,
Cox & Palmer

EQUITY The Equity Committee will be meeting in April with Emma Halpern, the NSBS Equity and Access Officer, to discuss our various initiatives and potential areas for collaboration. We are also exploring opportunities to participate in the current dialogue regarding reform in the areas of sexual assault and gendered violence. We will be participating in a meeting with Be the Peace Institute to discuss how we might contribute to a project they are undertaking on this issue.



Ryan Brothers,
Department of
Justice

YOUNG LAWYERS The Young Lawyers Section has been very active since the Fall. So far this year, we have co-hosted a session about lawyers on not-for-profit boards; held our annual Bench and Bar reception at the Art Gallery Nova Scotia; had a panel presentation on "Planning for your Financial Future;" on International Women's Day, we had a panel discussion at the law school on "Pay Equity

and the Legal Profession;" and a cultural competence session at the NSBS with Emma Halpern. This Spring we will host a meeting on Indigenous justice systems with the Aboriginal Law Section, and work with other sections and CBANS to explore ways to address and improve how the justice system treats sexual assault.

EDITOR'S NOTE: Amy Sakalauskas was appointed to the Nova Scotia Provincial Court on March 31. This report was written prior to her appointment. To ensure CBANS members are kept informed of our work and initiatives, we have opted to include the report. CBANS wishes Judge Sakalauskas, as well as all other recent appointments, all the best.



Amy Sakalauskas,
Department of
Justice

PAST PRESIDENT Our Nominations Committee continues to be impressed by the response to our calls for volunteers for internal Branch positions, as well as for external appointments. Thank you for making our job in selecting our representatives so difficult! Remember to get your nominations ready for the Excellence in Equity and Diversity Award and the Sections Excellence Award, both of which will be awarded at our AGM on June 14.



Jason Cooke,
Burchells LLP

LLRC CBANS Fall Council meeting included a round-table discussion on improving diversity in judicial appointments. This resulted in a letter to the AGNS, which we hope will spur further action in that regard. At the Winter Council meeting, our round-table discussion revolved around the legislative process, and how CBANS can become more involved, specifically CBANS Sections. The results of that dialogue will be used to engage government in deeper discussion. The fall sitting of the Legislature passed bills amending the Maintenance Enforcement Act, the Halifax Regional Municipality Charter, Municipal Government Act, the Residential Tenancies Act, and the Gaming Control Act.

OPEN DOORS AND MINDS: *FEEDBACK FROM RURAL PRACTICES ON THE NSBS LEGAL SERVICES SUPPORT PILOT PROJECT*

JENNIFER
PINK

Nova Scotia
Barristers' Society

Since Fall 2016, NSBS has been rolling out a pilot project to test a new 'Triple P' (proactive, principled, proportionate) approach to the way it supports practicing lawyers in their delivery of legal services. Core to this is the "Management System for Ethical Legal Practice," which is comprised of ten elements and represents an ethical infrastructure underlying all legal practices, regardless of size and shape.

The project is testing tools to enable firms to self assess their MSEL, through reflection on a range of considerations and resources relating to each of the ten elements. Beyond feedback being collected on the tools and resources, the project is facilitating meaningful and broad conversations about practicing law in Nova Scotia today and how NSBS can provide support.

Rural lawyers are demonstrating strong voices in these discussions. Many rural practitioners accepted the invitation to take part early on and were open and frank in providing feedback. Sixteen out of the fifty sole practitioners and law firms taking part in the pilot project practice outside of HRM. Many more have contributed through county Bar

meetings and informal discussions.

Here are just a few of the themes emerging from these conversations:

- Provide us with practical tools and resources: Lawyers in rural practices – not unlike many urban counterparts – are frequently overwhelmed with the demands of running a business. They welcome any and all tools and resources that save time and help avoid reinventing the wheel. Strong support was voiced for the notion of a centralized online space for practice resources (checklists, templates, etc.), which we are currently developing through the NSBS website. This Resource Portal will draw from the best practice tools available from various sources: law firms, LIANS, CBA, provincial Societies, and beyond.
- Help us stay connected: A surprising number of rural lawyers talked openly about a growing sense of isolation in legal practice. They recalled at one time having a roster of senior lawyers to call upon for guidance or camaraderie, noting a dilution of those networks. Specific suggestions for support included: creation of online and in-person spaces for lawyers to share ideas / best practices; mentorship arrangements that connect lawyers working alone; and, enabling shared workspace / resources among legal practices.
- Understand access to justice beyond *pro bono*: Flexible fee structures and rates are the norm in rural law practices. Rural lawyers in Nova Scotia provide free legal services regularly; meet with clients at their homes, hospitals and elsewhere; and provide extra services to clients who lack adequate support structures. Rural lawyers demonstrate their commitment to access to justice in these ways, as well as others.

The concept of a proactive, firm self assessment – aimed at identifying and enabling practice systems improvements – marks a departure from the historic and largely reactive regulatory approach. Rural lawyers acknowledge that it will take time to adjust perceptions of the NSBS role to include a legal services support function.

NSBS is mindful that in order to engage meaningfully with rural lawyers about their practice support needs, many more conversations need to happen. As this work moves further along, NSBS hopes that lawyers across the province continue to keep their minds (and doors) open.

Please contact the author, Jennifer Pink, Legal Services Support Officer, Nova Scotia Barristers' Society, with your thoughts and comments at mselp@nsbs.org.

Nova Voices features the perspectives, experiences and viewpoints of CBANS members around Nova Scotia.

DIVERSITY IS NOT A BUZZWORD



JENNIFER
TAYLOR

Stewart McKelvey

Chief Justice MacDonald spoke about diversity at the Young Lawyers Section Bench and Bar Social on February 23, 2017. Three themes stood out.

One was that diversity is not a buzzword. The Chief did not want his remarks to be interpreted as platitudes, and emphasized how humbling it is, by virtue of his leadership role, to be a spokesperson for diversity on the Bench.

True diversity of Bar and Bench can only be achieved with action, and with the Chief's leadership, the Courts of Nova Scotia have been taking action. A key example is Justice Oland's recent report on diversity on the Bench, which has been accepted by the Chief Justices and Judges of the province. Justice Oland's 11 recommendations are on the Courts' website, [here](#).

Her recommendations range from working with the Indigenous Blacks & Mi'maq Initiative at the Schulich School of Law to encourage applications for clerkships and student positions; nominating Judges from racialized groups to sit on judicial appointments committees; adding cultural competency training to their judicial education conferences; and doing more community engagement to promote the role of the Judiciary and the judicial appointments process.

These recommendations are being implemented. Action is happening.

The second theme of Chief Justice MacDonald's speech was "enrichment." He acknowledged how important it is for racialized people; Aboriginal people;



women; members of the LGBTQ+ communities; and people with disabilities to see themselves reflected in their institutions, including the Bench. But not only are visibility and representation worthy goals, the enrichment that diverse members of the Bar and Bench provide to their organizations is also invaluable. Legal and judicial institutions are more effective at serving justice the more diverse perspectives they have.

It sounds at once so simple, and so profound.

Finally, the third (and related) theme is that we can all do more to enhance, promote, and entrench diversity and inclusion in the legal profession.

Section Chair Ryan Brothers and I have worked hard to keep diversity and equity front of mind as we've planned topics and speakers for our 2016/2017 sessions. This winter and spring, we partnered with the Dalhousie Feminist Legal Association



to host an International Women's Day event on pay equity; we held a session on March 20 called "Cultural Competence is Not Optional" (sensing a theme here?) led by Emma Halpern, Equity Officer, NSBS; and we look forward to a joint session with the Aboriginal Law Section on Indigenous Justice on May 25, featuring Prof. Naomi Metallic and Prof. Tuma Young.

We hope to reach more law students and lawyers, whatever their age and stage of practice, with this kind of programming. We encourage you to send feedback and suggestions for next year to Ryan.Brothers@novascotia.ca and jennifertaylor@stewartmckelvey.com.

If we all take action, diversity won't be a buzzword – it will be built into the legal profession in Nova Scotia. And the profession will be stronger for it.

Sections Spotlight features a recent meeting or initiative of a CBANS section.



JENNIFER CREWE

Articled Clerk, Nova Scotia Department of Justice

Expected Call to Bar: June 2017

Describe your professional experience to date: Prior to law school, I obtained a social work degree, and worked as a social worker in St. John's, NL. I summered at the Nova Scotia Department of Justice, where I subsequently returned to complete my articles. During law school, I also completed a semester with Dalhousie Legal Aid Service.

Describe your current practice: My articles have allowed me the opportunity to complete rotations within four different areas: civil litigation; solicitor services; child protection; and the Public Prosecution Service.

Describe the unique qualities you bring to your practice: I believe my social work background provides me with a unique perspective and experience. My time as a social worker provided me with skills such as interviewing, listening, assessing, and issue identification. I think that social work and law complement each other well.

What other activities and volunteer

pursuits occupy your time: Outside of articling, my favourite activities include anything that allows me to spend time with family and friends, with skating and board game nights topping the list. I also love to cook, and love trying new recipes and techniques. Beyond that, I adore my two dogs and enjoy any opportunity to be outside with them. In terms of volunteer pursuits, I have been involved with Pro Bono Students Canada and Dalhousie Student Advocacy Service. My husband and I have also been a "foster home" for pets, and beagle rescue is a passion of mine.

What do you consider to be the greatest challenges facing young lawyers: The struggle to find and maintain work-life balance. I think striking the balance between hard work and making time for other priorities like family, friends, hobbies, interests and self-care can be quite difficult at times, especially for young lawyers.

What words of wisdom do you have for new lawyers: Be reliable - if you commit to doing something, ensure that you follow through by sticking to deadlines and completing



quality work. Also, actively pursue your goals – leaving my previous career to attend law school was not an easy decision but is one that I am incredibly happy that I made. I would encourage others to keep sight of their goals, and seek out ways to make them happen.

What are your goals for your career as you become a more seasoned lawyer: I have had a fantastic experience working with the Nova Scotia Department of Justice. I enjoy coming to work every day, as my work is always challenging and interesting. I especially enjoy litigation work, so I do hope to continue in that area. Additionally, I have had the opportunity to learn from exceptional mentors. As I become a more seasoned lawyer, I hope to one day be able to provide the same support to young lawyers that I have been given.



EQUITY AND DIVERSITY AS ETHICAL ISSUES



**JACK
TOWNSEND**
Cox & Palmer

Lawyers in Nova Scotia are entering a brave new world.

As outlined in its regulatory objectives, the Nova Scotia Barristers' Society is moving towards a new model of regulation – one which is proactive, principled, and

proportionate. Under this model, lawyers and legal entities are to proactively implement management systems for ethical legal practice. The idea is to ensure that lawyers have sufficient ethical infrastructure in place at the "front end," before problems arise.

The NSBS has identified ten core elements as being essential to creating and maintaining this ethical infrastructure. It has developed a self-assessment tool, providing indicators on how well the various elements are being achieved, to help firms and sole practitioners

reflect upon their own infrastructure and to identify areas for improvement. The ultimate decision as to how each element will be implemented going forward will not be mandated by NSBS, but rather will rest with the individual lawyers and firms.

One of the ten elements is a demonstrated commitment to achieving NSBS's regulatory objective to promote diversity, inclusion, substantive equality, and freedom from discrimination in the delivery of legal services

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INTERNATIONAL WOMEN'S DAY - CBANS FOCUSES ON COMMUNITY



JENNIFER
REID

Casey Rodgers
Chisholm Penny
Duggan LLP



AGNES
MACNEIL

Nova Scotia
Department of
Justice

International Women's Day is celebrated annually on March 8th. The first, held on February 28, 1909 in New York, was organized by the Socialist Party of America. The concept has since spread around the world to become the international initiative it is today. While for some it has become a day of appreciation of women, for many others it has retained its political and socialist roots, calling attention to the struggles of women and human rights issues.

For many years, an official theme has been declared for International Women's Day. This year the theme is [#BeBoldForChange](#). Phumzile Mlambo-Ngcuka, Executive Director of [UN Women](#) says "achieving gender equality in the world of work is imperative for sustainable development." Mlambo-Ngcuka points out that women and girls typically spend twice as many hours on household responsibilities than men and boys. She calls for a change in culture – more fairly dividing unpaid work supporting the household, and creating

an environment where girls grow up having and knowing they have, the same opportunities as boys. Mlambo-Ngcuka also calls to remove the discrimination women face on many fronts, [including wage discrimination](#).

Here in Nova Scotia, the CBANS Women's Forum also marks International Women's Day. Started by Annette Boucher, former chair, the Women's Forum has organized the 5th International Women's Day drive to support women's shelters around the province. Lawyers and law firms in each region volunteer to be a drop-off location for gift cards, cash and other items. It has grown in momentum each year with more firms and shelters participating throughout the province and raising more donations every year.

The donations of cash or gift cards are distributed equitably amongst participating shelters from Yarmouth to Sydney. In 2016, more than \$9,000 in gift cards and cash donations was collected, as well as various household items.

Last year in Halifax, representatives from Adsum House, Bryony House and Alice Housing were present to thank people dropping off donations. They spoke about the difference the donations made to their organizations and to the women who received them. These shelters run their organizations on a shoe-string budget, and their needs far exceed their resources.

Donations of gift cards are particularly, and perhaps surprisingly empowering. The donated gift cards are used by the women accessing the shelters to purchase some of the basics they need for themselves, and in some cases for their children's needs as well. Something so small as being able to choose for themselves how they spend the money provides empowerment to women who have had little control over so much of their lives.

We are grateful to all who have participated. Such small acts of kindness have positive and noticeable ripple effects across Nova Scotia. Once again, CBANS joins the millions across the world in honouring the value of each and every woman, and supporting those in need.

Giving Back brings attention to the pro bono work and volunteerism of CBANS members.



EMBRACING E-DISCOVERY: PROCESS MAKES PERFECT



DANIELA
BASSAN

Stewart McKelvey

To embrace e-discovery in our Big Data world – in the most professional, efficient, and ethical way – means learning and understanding as much as possible about the process of e-discovery.

Traditionally, we have focused on *practising* a legal discipline in order to excel at it. However the nature of e-discovery requires a new focus on the *process* of how we do our work and the manner in which that process will dictate outcomes. This starts with having access to fundamental tools and resources and understanding the bedrock principles underlying e-discovery regardless of the scale, size, or significance of the project at hand.

Fortunately, any e-discovery rookie is just a few clicks away from getting started.

TAKE NOTICE

The Annual General Meeting of the Canadian Bar Association–Nova Scotia Branch will take place on **WEDNESDAY, JUNE 14TH, 2017.**

Business will begin at **5 pm** at the Casino Nova Scotia Compass Room, 1983 Upper Water St, Halifax, NS.

The President's Reception will immediately follow the meeting at **6:15 pm.**

- A recommended first click would be the updated [Sedona Canada Principles Addressing E-Discovery \(2015\)](#). As an annotated guide to the 12 Principles of E-discovery, it provides sample cases, legal analysis of core concepts, and technical guidance in an easy-to-understand format. Based on the original Sedona Principles (2008), Nova Scotia was the first province to amend its Civil Procedure Rules to address e-discovery (Rule 16).
- A recommended second click would be the [model e-discovery precedents of the Ontario Bar Association](#). These templates – which include annotations on legal and technical points – can be readily adapted to the Nova Scotia context. Specifically, the templates can be modified to take into account the definitions, standards, and requirements set out in Nova Scotia Civil Procedure Rules.

As familiarity with the process of e-discovery improves, one should expect the levels of engagement and transparency among parties, counsel, and the courts to also increase. Along the continuum of the e-discovery process, there are a number of recurring themes that are typically associated with successful outcomes:

1. **Key Parameters** – Establish key parameters at the outset – namely: a list of key custodians of relevant electronic information; the relevant time period(s) for searches and discussions with key custodians; the categories of documents and types of files likely to be relevant; the most common authors and recipients of relevant communications; the network location of shared files or folders likely to be relevant; and the IT personnel with knowledge of the client's e-systems.
2. **Custodian Interviews** – Meet key

custodians in person with physical access to their laptop, desktop, or other device used to create, store, and file relevant electronic information. Bring a custodian questionnaire to guide the on-site interview. Create action lists to ensure proper follow-up.

3. **Data Tracking** – Be systematic about tracking all aspects of the electronic information involved in the case. Keep rigorous records detailing: custodians and related data sources (including secondary custodians); the date and manner in which electronic information is received (including supplemental data); the date and format in which electronic information is transferred; the storage location and setup for transferred electronic information; the methodology for reviewing and reporting on electronic information; and the protocols for indexing and disclosing relevant electronic information.
4. **Prioritization** – Prioritize the collection, review, and production of the most relevant and accessible data. Identify common sources, categories, or types of electronic information that all parties will be interested in producing early in the process. Allow the e-discovery process to get underway while attention is still paid to secondary information.
5. **External Assistance** – There are e-vendors and IT consultants available to assist with the technology aspects of e-discovery, especially in complex or large-scale litigation. If an impasse is reached, consider retaining an e-discovery specialist to mediate the dispute, or to assist with a motion or case management appearance.

Trending focuses on a new development in the law or the legal profession.

CLERKING: A GLIMPSE INTO THE JUDICIARY



JENNIFER
KELIHER

Burchells LLP

Many CBANS members have had the privilege of working as Law Clerks at courts throughout the country, gaining an invaluable behind the scenes glance into the judicial process. It is an experience that can help shape one's career and the skills they bring to legal practice.

Andrea Isabelle was called to the Nova Scotia Bar in 2013. While working as an associate at Cox & Palmer, she temporarily shifted gears and clerked at the Nova Scotia Supreme Court from August 2015 to July 2016.

As a clerk, Isabelle was tasked with a variety

of pre and post-hearing duties, such as reviewing, researching and summarizing briefs and legal issues, as well as assisting with editing and fine-tuning decisions.

"I love legal research and I was looking to see things from the other side, see the process that judges follow when they're making decisions. I felt that would be really valuable to my career as a litigator," said Isabelle.

Isabelle finished clerking and returned to Cox & Palmer with a number of insights. First and foremost, a well-written brief is crucial to winning your case.

"Briefs are so important!" she exclaimed. "If you're not giving judges anything to go off of, they will not be able to give the decision you're looking for."

Second is the role of oral argument: a chance for judges to ask questions and

clarify unclear issues in written arguments. Oral argument is not an opportunity to read a 'script' and simply recite entire written submissions. The most effective advocates use oral argument as a time to pay attention to a judge's verbal and non-verbal reactions and respond directly.

Last but not least, Isabelle noted a shift in her way of thinking. With clerking under her belt, she now approaches files from a more objective perspective, strategically assessing what will be important to the judge. This allows her to more easily identify any potential holes in a client's case and have a better idea of the likely outcome.

Heidi Schedler, Senior Enforcement Counsel with the Nova Scotia Securities Commission, clerked with the Nova

Continued on next page 11

EQUITY – *Continued from page 6*

and in the justice system. Indicators of this include:

- having a workplace equity policy that encourages equality and respect for diversity, prohibits harassment and discriminatory practices, and addresses accommodation for persons with disabilities;
- having a process to enforce that policy; and
- having training in issues of cultural competence.

These first two indicators are also reflected in the current LIANS law office management standard regarding equity and diversity.

So, what's the long and short of all of this? In my view, it's a clear statement by our regulator and our liability insurer that paying lip service

to equity and diversity is not enough, and that concrete measures to promote these objectives are required to ensure that we practice in a respectful and appropriate manner.

How can lawyers and law firms achieve this objective?

A great place to start is by drafting and implementing an equity policy, and by considering cultural competence.

The Equity Portal on the NSBS website has reams of resources (model policies, guides, best practices, etc.) regarding workplace equity policies generally, as well as more focused resources regarding accommodation, disability, pregnancy and parental leave, recruitment and retention, and sexual orientation and gender identity. The portal also has a section devoted to cultural

competency resources, including web-based guides and foundational and subject-specific videos. Emma Halpern, the NSBS Equity and Access Officer, can guide you through these materials and answer any questions.

There is no "one size fits all" approach that can be used by every lawyer and legal workplace across the province to achieve equity and diversity. It is, however, incumbent on each of us to review and analyze these resources, determine what will work in each of our workplaces, and take the appropriate steps to implement and monitor those measures. Equity and diversity aren't just buzz words anymore; they are ethical requirements.

Now if you'll excuse me, I've got some reading to do. We all do.

TERM LIFE INSURANCE

You choose the amount of coverage and you are the owner of the policy.



Coverage remains the same unless you request a reduction.



Beneficiary is anyone you choose.



Insurance remains in effect as long as you pay the premiums or decide to cancel.



Fully portable even if you move your mortgage.



Unique rates based on gender, age, health and smoking status. Lower premiums for healthy clients.



Protects whatever you want: family, education costs, debt repayment, etc.



TYPICAL LENDER'S MORTGAGE INSURANCE

Amount of coverage is dictated by amount of mortgage and lender is the owner of the policy.



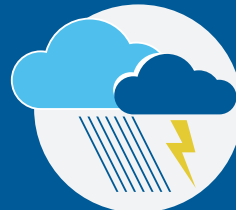
Coverage reduces as mortgage reduces.



Beneficiary is the financial institution.



You lose coverage when mortgage is repaid, assumed or in default.



You will have to re-qualify if you change or move your mortgage.



Rates the same for all clients of the same age.



Protects the lender.





REACTIVATING CULTURAL COMPETENCE



JENNIFER
TAYLOR

Stewart McKelvey

Cultural competence is not a resting state: it requires constant action.

This was one of the many stand-out messages during an engaging and informative session called “Cultural Competence is Not Optional” that Emma Halpern, Director of Access and Equity for the Nova Scotia Barristers’ Society, conducted for the Young Lawyers Section on March 20, 2017.

Five key takeaways from the session include:

- **The definition of cultural competence requires recognizing and understanding cultural differences, and committing to take action against injustice.** Emma began the session by asking everyone to share three ways they define their identity (mine were: lawyer; Nova Scotian; and feminist). The point was simple: the way you self-identify, and what you value, will be different from the person sitting across the table, and the person next to them. Appreciating, understanding, and welcoming these differences are crucial to cultural competence.

Robert Wright, social worker and expert on cultural competence, has developed a [detailed definition](#) of what the term means. A fundamental component is “the ability to interact effectively with people of different cultures” and to understand how our own cultural positions differ from others’. But the definition needs to be more active, which is why Emma and Robert say cultural competence also includes identifying structural barriers to accessing the justice system, and working to break them down.

- **Our ethical rules are changing to more formally incorporate cultural competence.** There is an ongoing effort to reform the national Model Code of Professional Conduct in a way that embeds cultural competence into the ethical standards for individual lawyers. Here in Nova Scotia there’s a move towards ‘Entity Regulation’ as the professional responsibility model for law firms and other legal organizations. One of the [regulatory objectives for legal entities](#) will be to “promote diversity, inclusion, substantive equality and freedom from discrimination in the delivery of legal services and the justice system.”

- **We all have unconscious biases.** As Emma said, it’s “part of living in the world.” What’s important is recognizing your unconscious biases and mitigating them. Emma recommends taking [Harvard’s Implicit Association](#) tests online to become aware of your own biases.

- **Cultural competence requires understanding the historical and social context of local communities, especially historically marginalized communities.** This is the only way we can truly relate to our clients and each other, and also ensure we are taking the appropriate access to address systemic barriers to justice.

Taking the history of residential schools for Indigenous children as a powerful example, Emma asked, “Where were the lawyers?” Meaning, how could they have let residential schools happen?

The answer? They were working for the government and the churches, putting in place the very policies that established and maintained the residential school system. That example was a sobering reminder that lawyers cannot be passive in their legal work, but must take a more active role in standing up against oppression.

- **You will never be fully “culturally competent.”** And that’s ok! Instead, as Emma says, you should be in “constant pursuit of knowledge, learning, and skill-building.” And to continue activating your cultural competence, remember that the NSBS has an online Equity Portal with loads of [freely available and easily accessible resources](#).

CAREER COMPASS

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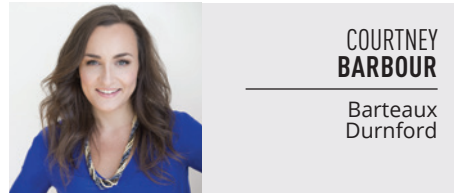
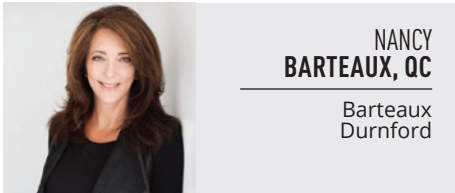
Scotia Court of Appeal in 2003-2004.

“Beyond the invaluable insights into effective written and oral advocacy, clerking is an opportunity to truly appreciate that judges are, well, human,” says Schedler. “It may seem foolish, but in a system where judges are literally elevated above everyone else in the room, it is a good thing to be reminded that no one is perfect, that perfection is not the goal. The goal is to ultimately make the right decision. To use the law and the facts to come to a conclusion that is just and right.”

Clerking is a unique and truly valuable career opportunity. One that no lawyer should overlook.

The [Nova Scotia Supreme Court](#) typically employs two Law Clerks each year while the [Nova Scotia Court of Appeal](#) typically employs three Law Clerks and will usually fill one to three open positions each year. Clerkships at both levels of court are open to law graduates or practising lawyers.

NSTU'S THREAT OF LEGAL ACTION FOLLOWING BILL 75



Bill 75 may signal the bell lap, rather than the finish line, in the protracted strife between the provincial government and Nova Scotia teachers. Bill 75 passed the *Teachers' Professional Agreement and Classroom Improvements (2017) Act* on February 21, after 15 months of negotiations resulted in an impasse between the Nova Scotia Teachers' Union and the Liberal-majority government.

The Bill imposed a contract on teachers and marked an end to the teachers' work-to-rule action. It established working groups for classroom conditions and inclusion issues. To prevent work-to-rule from happening again, the Bill legislated that teachers must meet a variety of *Education Act* requirements in any future labour dispute.

Right to collective bargaining

NSTU maintains that the Bill was not in the best interests of teachers, alleging that it strips them of their collective bargaining rights. NSTU plans to challenge the constitutional validity of Bill 75.

Unions in both British Columbia and Ontario have previously fought legislatively-imposed contracts, with the courts siding in their favour.

In *British Columbia Teachers' Federation v. British Columbia*, the SCC ended a six-year battle over the right to negotiate on classroom conditions, confirming that legislation passed by the provincial government prohibiting bargaining on class size and composition was unconstitutional as it infringed section 2(d) of the *Charter* and could not be justified under section 1.

In *OPSEU v. Ontario*, the Ontario Superior Court of Justice recognized the power imbalance between employers and unionized employees, holding that the government violated teachers' *Charter* rights when it temporarily suspended the right to strike and imposed contracts on teachers' unions.

Duty to bargain in good faith

While the decisions in Ontario and BC recognize that collective bargaining demands protection under the *Charter*, they are not fatal to the Nova Scotia government's position. The government will likely draw on an important SCC decision from 2007 to counter arguments brought by the NSTU.

The SCC addressed the issue of collective bargaining and the duty to bargain in good faith in *Health Services and Support – Facilities Subsector Bargaining Assn v. British Columbia*. The Court ruled that section 2(d) gives employees the right to unite, present demands to employers collectively, and engage in discussions in an attempt to achieve workplace-related goals. It also imposes corresponding duties on employers to agree to meet and discuss these goals with the union. However, section 2(d) only protects against "substantial interference" with collective bargaining, which requires the intent or effect of seriously undermining employees' efforts to join together in the pursuit of negotiating workplace conditions and terms of employment.

A basic element of the duty to bargain in good faith is the obligation to actually engage in meaningful dialogue and make a reasonable effort to arrive at an acceptable contract.

The duty does not impose an obligation to arrive at a collective agreement, or accept any particular contractual provisions. The Court was clear that urgency may affect the content and modalities of the duty to bargain in good faith.

The Battle Continues

The bell lap in Nova Scotia may be fueled by section 14 of the new *Act*. Section 14 provides that no arbitrator, board, or tribunal has jurisdiction to determine the constitutional validity or applicability of the *Act*, or whether a constitutional (i.e. *Charter*) right is infringed by the *Act*.

If the NSTU forges ahead with legal action, the government's response will likely centre on efforts to meet its obligations under section 2(d) and its duty to bargain in good faith. Over 15 months of negotiations, three tentative agreements were reached. While the NSTU's leadership recommended acceptance, the Union's membership rejected the government's offers. As work-to-rule continued, the government faced increasing public demand to end the dispute over fears of its impact on students. Facing an impasse, the government will likely argue that teachers' demands remained unreasonable.

The dispute between teachers and the provincial government reminds us that collective bargaining can be long and exhausting for everyone involved. Negotiations often test the endurance of both parties. Counsel for both sides must be prepared to exhaust the duties and obligations that stem from section 2(d) in order for collective bargaining to succeed.

Viewpoint is a feature that gives our members the opportunity to share their thoughts and opinions on legislation, decisions, and legal issues making headlines.



THE EARLY RESOLUTION INITIATIVE

CRIMINAL JUSTICE TRANSFORMATION GROUP

Timely justice is one of the hallmarks of a free and democratic society.

Under the Charter, anyone accused of a crime has the right to be tried within a reasonable period. The Supreme Court of Canada has further defined those timelines in what has come to be known simply as the '*Jordan* decision.'

In *R. v. Jordan*, Canada's top court ruled that in Provincial Court matters, an accused should be tried within 18 months of being charged, and within 30 months for Supreme Court cases. Anything longer might be considered

an unreasonable delay and the charges could be stayed.

Even before the release of *Jordan*, those involved in the criminal justice system here were already working to improve efficiency.

In 2014, the Criminal Justice Transformation Group was formed. The group is chaired by the Deputy Minister of Justice and includes high-level decision-makers from the judiciary, the federal and provincial prosecution services, police, Nova Scotia Legal Aid, the Nova Scotia Criminal Lawyers' Association, and the Nova Scotia Barristers' Society.

The group works together on ideas to make the criminal justice system more effective, efficient and accessible. Since *Jordan*, that focus has narrowed to deal primarily with issues

affecting delays.

There is no single issue contributing to this pervasive problem. Likewise, any solutions will require a comprehensive plan and collaboration at all levels of the justice system.

One initiative seeks to address early resolution of some cases. Provincial prosecutors in Halifax and Dartmouth have launched an 'early resolution initiative' they expect will free up time for the Provincial Court to hear more complex and serious matters, and encourage the speedy and appropriate resolution of less serious ones.

Crown attorneys in those offices will, where appropriate, prepare early resolution positions in matters like breaches and low-level assaults. An initial sentencing position form is

Continued on page 15



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RUNNING

Regular exercise keeps the body and mind sharp, and can be a great way for lawyers to de-stress before or after a long day at work. As the days get longer and the temperature starts warming, many CBANS members will be pounding the pavement to train for a new race and to stay active and healthy.



Christine Pound, Stewart McKelvey: I have always played sports, but only really got into running while studying law at Dalhousie. I ran my first full marathon in May 2003 and have since run 8 more marathons, most recently the Boston marathon in April 2016. I am fortunate to run with some of my closest friends and we run all year round – rain or shine. Running is the best way to start my day and helps me be a better lawyer, and a better person!

Judy Schoen, Burchell MacDougall: I enjoy outdoor running in all seasons and most weather. Although being outside and getting exercise is great, the absolute best part of running is the company of my friends. Having their undivided attention for sometimes literally hours on end is truly priceless.



Gus Richardson, Q.C. AD+REM Alternative Dispute Resolution Services Inc.: I started running in 2006 at age 54 to relieve the stress of a busy litigation practice and lose a few pounds. I worked my way up to running a half marathon, and from there, with the encouragement of friends, graduated to a full. Since then I have run innumerable half marathons, and 5 marathons, including Boston and Blue Nose. I've signed up with my son to run the Prague marathon this May. The great thing about running for me is that it's simple, requires no equipment beyond a good pair of running shoes, and can be done anywhere at any time. I usually run early in the mornings along the waterfront and, when it's open, the Macdonald bridge. Seeing the sun breaking over the horizon is always a glorious sight.



Meaghan Strum, Burchells LLP For me, running is the perfect outlet. It's an opportunity to turn off my computer, put down my phone, and take the time to think about either personal or work issues without distraction. It also gives me a huge sense of accomplishment and a chance to work towards concrete goals that aren't law related. This year I was thrilled to achieve my dream of qualifying for the Boston Marathon, which I am looking forward to running in the spring of 2018.



Charlene Moore, Nova Scotia Legal Aid Commission: I started running in the winter of 2012. It was something I always wanted to do. Once I got going, I realized how good I felt after a run and it fit with my schedule. I could go for a 5-8k run anytime of the day. My family and I always sign up for the Blue Nose, the EPIC and the Navy 10K. This summer my goal is to run various 5k races offered around the province. There are a lot of great running routes in Dartmouth, but my favorites are along the waterfront and Lake Banook.

Outside the Office highlights a lifestyle issue of interest to CBANS members.



LAW DAY EVENTS AT THE LAW COURTS

Law Day is a national event to mark the signing of the Canadian Charter of Rights and Freedoms. It is an occasion for the public to learn about the law, the legal profession, and the legal institutions that form the cornerstones of Canadian democracy.

On Wednesday, April 19th, 2017, members of the public and media were invited to attend all the activities, including an interactive Q&A session with The Honourable Michael MacDonald, Chief Justice of Nova Scotia, The Honourable Diana Whalen, Minister of Justice, and Dennis James, QC, President of CBA-NS. The session provided visitors an opportunity to ask questions in person. The guest speakers also answered questions that were previously gathered via Twitter.

The entire program was webcast live on the Courts of Nova Scotia website at www.courts.ns.ca and people also followed the conversation on Twitter.

The 2017 Law Day Award recipient was the Halifax firm **Nijhawan McMillan Barristers**. Kelly McMillan of the law firm Nijhawan McMillan Barristers accepted the award presented by CBA-NS President Dennis James, QC.

This year's Law Day program also included displays by Halifax Regional Police, Dalhousie Legal Aid, Nova Scotia's Mental Health Court Program, #TalkJustice, the Nova Scotia Labour Board, and the Legal Information Society of Nova Scotia (LISNS). Representatives were on hand to answer questions about their programs and services.

The CBA-NS Law Day events actually spread out over several weeks. This year, the Out-Reach to Schools program will involve 24 schools and require commitment from many volunteers. These volunteers work with teachers in schools around the province to put on moot trials and/or provide presentations about the justice system.

Many thanks to our Law Day Co-chairs, Johanthan Hooper and Gail Gatchalian, and Law Day Committee members Doug Lloy, Dana McSween, Morgan Hicks, Jaimie Tax, Katherine Willyard, and Gary Richard.

Also, a special thank you to Jennifer Stairs, Communications Director, Nova Scotia Judiciary for all her help with planning and logistics.



FROM THE BENCH – Continued from page 13

provided to defence counsel as the basis for an early agreement on disposition. The initiative is based upon the well-recognized principle that an early resolution is a mitigating factor appropriately considered by the sentencing judge.

The offers made are time sensitive and will not normally be repeated or revisited later in the proceedings, except where circumstances provide a rational basis for doing so. Ultimately, it is up to the accused and their lawyer to determine if this resolution at the initial stage is acceptable.

This approach could potentially be used in other cases — charges such as breaking and

entering and more serious assaults — but it is not intended for matters like sexual assault, sexual offences against children, crimes resulting in significant property loss, or seriously violent attacks.

The pilot officially launched in February; more time will be needed to measure its success, but those who have experienced early resolution know the approach can work.

This is about prioritizing cases and putting a framework in place so that eligible matters can get to the right outcome at the right time, which is better for everyone involved.

Each member institution on the Criminal

Justice Transformation Group plays an important part in the justice system; they also have a responsibility to do what they can to make the system more efficient.

That could mean diversion through early resolution or restorative justice approaches, handling more appearances through video conferencing, tracking and prioritizing cases using electronic aging reports, or championing other technological advances that save time and money.

By working together on these and other initiatives, a more effective and efficient criminal justice system is possible.

Life Insurance *or* Mortgage Insurance

by Dawn Marchand, VP Canadian Bar Insurance Association

Your \$1 million offer for a house in a great neighborhood has just been accepted. Together, both you and your partner earn a good living and have qualified for an \$800,000 mortgage. But if one of you dies, an important part of the financial equation disappears.

So, before you go to the bank to sign on the dotted line, do a bit of homework and check out your options for insuring the amount of your mortgage. The bank will offer you mortgage insurance but as a member of the legal community, you have exclusive access to term life insurance through the Canadian Bar Insurance Association (CBIA).

Consider this example: for a 41-year-old male non-smoker, the bank will charge \$232.00 per month* for \$800,000 of mortgage insurance. CBIA term life would only cost \$45.34 per month. Savings for women are even greater; for the same coverage, a 41-year-old female non-smoker will also pay the bank \$232.00 per month but her CBIA term life premium is only \$33.73 per month.

The significant savings is likely reason enough, but wait — there are even more reasons to at least consider term life insurance before signing on for mortgage insurance.

Ownership & Control

Unlike mortgage insurance where the bank is the policy owner, with term life insurance, you are the policy owner. When you die, mortgage insurance is paid directly to the financial institution and is used only to pay off the mortgage balance. Insurance benefits are paid directly to your designated beneficiary (i.e. spouse) and they are able to determine how best to use the funds (for example, paying the mortgage and/or covering other expenses such as education, debt or to supplement a loss of income).

Decreasing vs. Level Coverage

With mortgage insurance, the amount of overall coverage decreases with each mortgage payment made. As your mortgage reduces, your coverage goes down but your premiums do not. With a term life insurance policy, the benefit amount is guaranteed for the life of your policy. Premium rates will likely increase at regular intervals but at any point, you can choose to reduce your coverage amount and, if you do, your premiums would also be reduced.

“I like my bank, but I’ve never liked mortgage insurance, it just doesn’t make sense: the beneficiary is the bank, not your family; it’s usually more expensive than other types of insurance; the bank owns the policy and is in control; and the insurance declines with the mortgage balance. I think the only reasons people buy it are the convenience, or perhaps they feel it may affect their eligibility for the loan, but that’s impossible — you can’t be denied a mortgage because you refuse mortgage insurance.”

Izhak Goldhaber, SVP Business Development and Customer Experience, CBIA





Underwriting

Typically there is very little pre-purchase underwriting required for mortgage life insurance; usually just a few simple questions. This is one of the reasons why premiums are typically higher than for term life insurance. Life insurance typically requires a comprehensive underwriting process prior to purchase. CBIA's Term 80 product was designed to provide a positive client experience with minimal intrusiveness. The degree of underwriting required is dependent on the amount of life insurance applied for.

Portability

If you move your mortgage to another financial institution, or if you buy a new house and need a new mortgage, or if you simply renew your mortgage for a longer term, you may have to requalify for mortgage insurance coverage. You could be considered uninsurable, and would not be able to get mortgage insurance. In contrast, CBIA's term life insurance stays intact as long as you continue to pay premiums, even if you move your mortgage or buy a new home.

So caveat emptor! Remember, mortgage insurance is typically sold by bank employees who may not be trained to explain the benefits of different insurance options. With CBIA, you receive quality advice from advisors familiar with the many product options available. Working together, you are assured of determining the coverage that is best for your specific situation.

*all rates quoted are as at January 2017 and do not include PST (where applicable).

Canadian Bar Insurance Association (CBIA) is committed to being the trusted provider of choice for insurance and financial solutions to the legal community, their families and employees in Canada. Our products and services are planned and designed to meet the needs and reflect the unique characteristics of the legal community at a cost that provides both superior value and stability. It's all we do!

Find your local Authorized Independent Advisor at:
barinsurance.com

2017/18 EXECUTIVE COMMITTEE/ BRANCH COUNCIL/ CONFERENCE SCHEDULE

EXECUTIVE COMMITTEE:

Wednesday, September 13th, 2017
3:30 – 6 pm (includes Orientation for new members)

Wednesday, October 11th, 2017
4:30 – 6 pm

Wednesday, November 15th, 2017
4:30 – 6 pm

Wednesday, December 13th, 2017
Pre-Council Executive Meeting, 3:30 – 4:15 pm

Wednesday, January 10th, 2018
4:30 – 6 pm

Wednesday, February 14th, 2018
4:30 – 6 pm

Wednesday, March 21st, 2018
Pre-Council Executive Meeting, 3:30 – 4:15 pm

Wednesday, April 11th, 2018
4:30 – 6 pm

Wednesday, May 9th, 2018
4:30 – 6 pm

Wednesday, June 13th, 2018
Pre-AGM Executive Meeting, 4 – 4:45 pm

COUNCIL:

Wednesday, December 13th, 2017
4:30 – 6:30 pm

Wednesday, March 21st, 2018
4:30 – 6:30 pm

AGM:

Wednesday, June 13th, 2018
5 – 6:15 pm; immediately followed by the President's Reception



2016-17 SECTIONS MEETINGS SCHEDULE



Remember the NSBS CPD Requirement

The Nova Scotia Barristers' Society requires all practising lawyers to create an annual professional development plan and commit it to writing (see Regulation 8.3.6). Each year, lawyers will be asked to indicate on their Annual Lawyer Report whether they have prepared and written their CPD Plan and implemented their plan from the previous year.

- For current information on CPD please go to [FAQs: NSBS CPD Requirement](#) (posted April 11, 2016)

Rounding out the program year, below are some Section meetings not to be missed. Please watch your inbox for other meetings not yet advertised.

REAL PROPERTY

Date & Time: Wednesday, May 17, 2017, 12:00 noon – 1:00pm
Location: Stewart McKelvey, 1959 Upper Water St., Suite 900, Halifax, NS
Topic: Condo Transactions
Speaker: Ian Sutherland, Stewart McKelvey

CIVIL LITIGATION/ADR & GOVERNMENT & PUBLIC SECTOR LAWYERS

Date & Time: Thursday, May 18, 2017, 12:00 noon-1:00 pm
Location: Michael Baker Boardroom, Joseph Howe Building
Topic: Judicial Review of Non-Adjudicative Administrative Action
Speaker: Sean Foremen, NS Department of Justice

ABORIGINAL LAW/YOUNG LAWYERS

Date & Time: Thursday, May 25, 2017,
Location: Stewart McKelvey, 1959 Upper Water St., Suite 900, Halifax, NS
Topic: Indigenous Justice Systems
Speakers: Professor Naomi Metallic, Schulich School of Law and Professor Tuma Young, Cape Breton University

ABORIGINAL LAW/BUSINESS LAW

Date & Time: Tuesday, June 6, 2017, 12:00 noon – 1:00 pm
Location: Patterson Law, 1801 Hollis St., Suite 2100, Halifax, NS
Topic: Structuring Aboriginal Businesses
Speaker: Patrick Lahey, Grant Thornton

LABOUR & EMPLOYMENT LAW

Date & Time: Thursday, June 15, 2017, 5:30 pm – 8:00 pm
Location: Prince George Hotel, 1725 Market St, Halifax, NS
Topic: Dinner Meeting with the Labour Board of Nova Scotia



2017-18 CONFERENCE DATES TWO-DAY ANNUAL CONFERENCE

*Note: This conference was formerly known
as the Mid-Winter Conference*

NEW DATES!

**Thursday, November 30th - Friday,
December 1st, 2017**

Lord Nelson Hotel, Halifax NS

**To our 2016-17 Section Chair & Vice-Chairs,
a huge thank you for a great program year!**

Aboriginal Law

Bryna Fraser
To Be Announced

Administrative Law

Amy Bradbury
Kathryn Raymond, QC

Bankruptcy Law

Ben Durnford
Pamela Branton

Business Law

Jennifer Hamilton Upham
Matthew Moir

Canadian Corporate Counsel

James Spurr
M. Patricia Towler

Charities & Not-for-Profit

Dary Jessome
Selina Bath

Citizenship & Immigration Law

David Nurse
Sarah McInnes

Civil Litigation / ADR

Gary Richard
Donn Fraser

Constitutional and Human Rights

Ian McIsaac
Kelly McMillan

Construction Law

Peter Rumscheidt
Kevin Gibson

Criminal Justice

Brian Bailey
Douglas Lloyd, QC

Elder Law

Jessica Lyle
Peter Rumscheidt

Environmental, Energy & Resources

Trevor MacDonald
Matthew Clarke

Family Law

Krista Forbes
Jennifer Kooren

General Practice, Solo & Small Firm

Laurie LaViolette
Jennifer Schofield

Government & Public Sector Lawyers

Karen Kinley
Katherine Carrigan

Health Law

Kimberley Pochini
Mary Anne Persaud

Insurance Law

Stacey England
Philip Chapman

Intellectual Property

Heather Oke
Keith Lehwald

Labour and Employment Law

Andrew Nielsen
Bradley Proctor

Law Students

Iain Macdonald
Melissa Pike

Military Law

Brian Bailey
Lt. Derek Schroeder

Municipal Law

Heidi Walsh-Sampson
Jack Townsend

Privacy and Access Law

Alayna Kolodziechuk
Derek Brett

Real Property

Maureen Ryan
Jane Gourley-Davis

Securities Law

Garnet Brooks
Claire Milton, QC

Sexual Orientation & Gender Identity

Jack Townsend
M. Ann Levangie

Taxation Law

C. Jennifer Campbell
Karen Stilwell

Wills, Estates and Trusts

Tanya Butler
Allen Fownes

Women's Forum

Jennifer Knebel Reid
Agnes MacNeil

Young Lawyers

Ryan Brothers
Jennifer Taylor

LAWYERS FINANCIAL

Be ready.



Thank-You

The Canadian Bar Insurance Association (CBIA) thanks John and Bea Bardsley for over 20 years of providing exceptional service while looking after the insurance and investment needs of the legal community in Nova Scotia.

Welcome

CBIA welcomes **The MacLellan & Moffat Group** as CBIA's authorized independent advisors for lawyers, their families and employees in Nova Scotia.

Contact **Dan MacLellan** at **1.800.710.2586** or **novascotia@barinsurance.com**.