

SUDBURY
DISTRICT LAW
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LEGAL BRIEFS NEWSLETTER

MESSAGE FROM THE SDLA PRESIDENT

As we reach the end of another beautiful summer in the Northeast and the real estate season starts to cool and the litigation season starts to heat up, I have the distinct pleasure to highlight some of the goings-on in our Association.

Looking back, I would like to highlight:

The SDLA Golf Tournament at Cedar Green.

I would like to take a moment to thank Michael O'Hara and Miller Maki for all their hard work, year-on-year, to ensure that the golf tournament remains a staple of our calendar. On behalf of our Association I applaud your dedication and the effort you put into organizing the event, the trophies, and the prizes each year, although, admittedly, your Memos are perhaps not to everyone's taste.

The Law Library (Practice Resource Centre) Survey:

I would like to thank all the members, who took the time to fill out the survey which arrived in each of our e-mails late last month. As many of you know, Sudbury (and in particular Michael Hennessy) has a proud tradition of being staunch advocates of the law library system, the levy, and a law library's importance to practicing law in smaller centres. It is imperative that we do not lose, in this time of

budget cuts and fiscal constraints, the lifeblood of successful barrister practice, for between the books and the learned friends more is learned in the law library than on anything that an online publisher could hope to provide, and, I thank the members of our Association, who took the time to highlight the myriad of benefits a vibrant law library brings and hope that it is enough to stave off any ill-considered budget cuts.

Looking forward, I would ask that members of the Association add several save the dates to their tickler systems:

2nd Annual Trivia Challenge – Thursday, September 15, 2016 – 5:30 – 8:00 Wacky Wings

Our Association is proud to once again be a sponsor of this event and we encourage all members with an interest in trifles, which of course the law does not deal with leaving you unfulfilled no doubt, to attend the event, meet our new articling students, and dethrone the Unbillables (who I am informed have lost their MVP and added a poor substitute and are now looking entirely beatable). Please read on for more details from

Meaghan Boisvert, who is organizing this year's event.

Northeast Region Colloquium – Thursday, October 20 and Friday, October 21, 2016 – Radisson Hotel We are blessed (by virtue of the hard work of many of our members, members of other associations in the Northeast, and the judiciary of the Northeast) to have one of (if not) the best law conferences in Ontario.

Please do read on for more details on this year's Colloquium or visit Colloquium's website to review the program and register for this year's event.

SDLA Law Ball – Saturday, November 19th, 2016 – the Hellenic Centre

I hope that everyone can attend this year to celebrate our colleagues and enjoy the comraderie of the local Bench and Bar.

I would like to thank Stephanie Baker in advance for all of the hard-work that she has done and will continue to do to make this event a rousing success. Wishing you all the best as we fall back into our ordinary routine,

James

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COLLOQUIUM 2016

Registration for Colloquium 2016 has opened! We are now in the final stages of preparation for what may yet be the best conference to date. Each year we think it cannot improve but it does. Much of our success is the result of the work of the session leaders who have been working since January organizing the educational component of the program. The sessions being offered this year include the following:

- Advocacy
- Real Estate
- Droit de la Famille
- Family
- Estates
- Criminal Law
- Aboriginal Law
- Business Law
- Civil Litigation
- Droit Penal
- Young Lawyer Mentoring
- Evidence

The goal of Colloquium is that lawyers from Northern Ontario plan, create, implement and deliver the content of the program. We believe that this helps develop the capacity and skills of members of our bar. We then supplement the program by reaching out to members of the bench and bar from outside this region. Some of the keynote speakers this year include the Hon. Paul Perell, the Hon. Greg Ellies, Scott Hutchison, the Hon. Patrick Boucher, Steven Grant, Brian Greenspan, the Hon. Gladys Pardu, the Hon. Robbie Gordon, the Hon. Michelle Fuerst, Michael Lacy, Paul Pedersen, Chief of Police and the Hon. George Strathy. We have also included a number of receptions during Colloquium as we believe that mentoring and fostering collegiality are important to the success of the conference. Colloquium officially commences Wednesday

evening at Fromagerie Elgin with a reception we have named Fromage et Reseautage. All are welcome to attend this event which has been generously sponsored by Paquette and Paquette.

McKellar Structure Settlements is sponsoring a reception to be held in the CTV Atrium at Science North on Thursday evening. The reception will be followed by the Gala which is being generously sponsored by Girones Lawyers.

Approximately seven years ago when we were planning the first conference, we thought, “wouldn’t it be great if the Chief Justice of the Supreme Court of Canada was invited to speak?” In those early days, most, but not all of us, at the planning table never thought that was possible. Now, as many of you know, that aspirational goal has in fact become reality. Chief Justice McLachlin accepted our invitation and will be the keynote speaker Thursday evening.

To help us celebrate, this year’s Gala will include entertainment reflecting the cultural diversity of Northern Ontario. The Hon. Justice Strathy, C.J. of the O.C.A. and the Hon. Justice Smith, C.J. of the S.C.J. will also be attending. Both will also be participating in the conference.

Chief Justice Smith will be the keynote speaker at lunch on Thursday. Chief Justice Maisonneuve, C.J. of the O.C.J. will be the keynote speaker at lunch on Friday. Yes, we have the Chief Justices from every level of court attending Colloquium. I am not sure how we will improve upon that next year but we are already working on some exciting speakers for 2017.

The Gala will be followed by a Hospitality Suite which is being spon-

sored by Do Process. We expect a good turnout again for this post-Gala event. It is a great opportunity to network and mingle with lawyers from throughout Northern Ontario.

Friday morning will commence bright and early with a Women’s Networking Breakfast sponsored by Wallbridge Wallbridge.

Each year, our goal is to ensure that we have a quality program that is accessible to lawyers from throughout Northeastern Ontario. For that reason, we have worked to develop relationships with sponsors over the years. Some of our sponsors including McKellar Structured Settlements, The Advocates’ Society, the Sudbury, Cochrane and North Bay law associations and a number of law firms have been supporting our work since the first conference. We cannot thank them enough as their support is critical to the success of Colloquium.

Please note that there is a change in location for the conference. This year, Colloquium is being held at the Radisson Hotel.

For those of you who did not notice the email that was sent earlier, you can go to the Sudbury SDLA website where you will be redirected to the Colloquium registration page. The full brochure with the details of each session and who will be speaking will be distributed very shortly.

This year, the event coordinator is Noémi Paquette and you can reach her at sudburycolloquium@gmail.com if you have any specific questions or concerns.

We are looking forward to a great Colloquium!

Lucille Shaw

Steering Committee

The Superior Court of Justice introduces a new publication ban notification system.

Introduction

The Ontario Superior Court of Justice has introduced a new publication ban notification system to provide an easy way to give notice to the media. This new system aims to enhance access to justice and the transparency of court proceedings. It applies to motions for discretionary [publication bans](#) in civil, criminal, and family proceedings before the Superior Court of Justice and the Divisional Court.

The new notification system

What is it?

There is a new online system to provide notice to all registered media of requests for discretionary publication bans. Effective July 1st, 2016, the [Consolidated Provincial Practice Direction](#) sets out details of the new notification system. In addition to serving and filing a notice of motion or application in accordance with the applicable procedural rules, counsel who seeks a *discretionary* publication ban must also provide notice to the media by submitting a [Notice of Request for Publication Ban](#) form through the Superior Court of Justice's website. Lawyers can

complete the form in [English](#) or in [French](#).

Members of the media who wish to be added to the distribution list must [submit a request](#) through the Superior Court of Justice website.

For lawyers...

The notice period required for submitting the Notice of Request for Publication Ban is the same as the notice required under the *Rules of Civil Procedure* for serving and filing of Notice of Application or Notice of Motion. In order to establish that the notice was provided in accordance with section F under Part V of the [Consolidated Provincial Practice Direction](#), the party requesting a discretionary publication ban must produce a copy of the Notice to the court at the hearing of the application/motion.

Counsel should note that a request for publication ban is an issue which must be identified at Question 16 in the [Pre-trial Confer-](#)

[ence Report](#).

It is important for lawyers to remember that the Court's policy remains subject to discretion of the judge in an individual case. Although the new notification system only applies to discretionary publication bans, it is open to the judge, should (s)he deem it appropriate in a particular proceeding, to direct a party to provide notice to the media of other types of requests or hearing using the Court's notification service.

For more information, please visit <http://www.ontariocourts.ca/scj/publication-ban-requests/>.

Andréanne Dubé,

Student at Law

July 29, 2016

CRIMINAL CODE VS CRIMINAL CODE

The Anecdotal Evidence

What do subscribers really think about *Martin's* and *Tremear's*? For that matter, what do they think about *Gold's*? The essence of some of the anecdotes that I have heard over the years are set out below. The list is not complete but does

give the reader the flavour of what some users have said: *"Martin's has been around forever (actually since 1955). I use it because I have always used it."* *"Tremear's is preferred by judges who don't know much about criminal law because of the clear statements of the elements of the offence in the commentary. It is reliable."* *"If a corporate law library has*

only one Criminal Code, it is usually Martin's. It is the best known Criminal Code and is on standing order." *"Prosecutors favour Tremear's because it was originally written by a former crown attorney. If it has any bias, it would favour the Crown."* *"Defence counsel prefer Martin's because it has been edited over the years by prominent defence counsel. If it has any bias, it would favour the defence."*

"I use it because it is the Criminal Code I am familiar with. It is too much trouble to change now." *"I am looking for a Criminal Code with a point of view – Gold's Practitioners Criminal Code was written for the defence counsel. The other Codes are prepared by judges who need to remain neutral."* *"I respect the views of author A (or B or C depending upon the Code selected)"*.

In fact both Tremear's and Martin's cover the same ground in the same manner. Each is portable, annual and annotated, intended for daily use by practitioners of criminal law. Each is or has been prepared in whole or in part by present and former leading members of the Bar, many of whom were appointed to the Bench.

Continued on next page

BULLEN & LEAKE & JACOB'S CANADIAN PRECEDENTS OF PLEADINGS

Now in your law library.
2nd Canadian edition.

Based on the long-published British book of similar name (*Bullen & Leake & Jacob's Precedents of Pleadings*, currently in its 18th edition), this book offers a huge selection of sample pleadings in a wide variety of legal areas.

If you'd like to look through this excellent resource yourself, you can find it on law library shelves at KF 8868.1 B85 2013.



CODE VS CODE

What are the differences between Martin's and Tremear's

Given the strong similarities of *Tremear's* and *Martin's*, are there any substantive differences between them? Not in substance, but very definitely in the mind of the user who for whatever reason believes there are differences, usually based on a preference of one author over another, and the personal familiarity with a Code that comes from long standing use.

Years ago, there were some real differences between the two publications. When *Tremears* was re-launched as an annual, the lead author was a well known criminal prosecutor, who introduced new features that set *Tremears* apart from *Martin's* including most notably the clear statements of the elements of each offence contained in the "Commentary". Over time, *Martin's* matched this feature with a "Synopsis". *Tremear's* then added the Offences Table to match the Offences Grid in *Martin's*, and so on.

The pattern was the same with the format. The paper stock of both Codes became thinner and thinner, and the books heavier and heavier, as more and more cases summaries were added to publication. It was as if they were a race to match and then surpass each other in the amount of information that could be included in a single volume. Focus

was lost. At this point, they have become so similar that a strong case could be made for merging them.

What comes next?

As Carswell publishes both *Martin's* and *Tremear's* will they opt to merge the two? Or will they seek to identify and strengthen the real or imagined differences between them?

Alan Gold's Practitioner's Criminal Code was developed to fill the niche for a new criminal code expressly written by and for defence counsel, that blends commentary with case summaries in a manner that enables defence counsel to pursue new lines of argument on behalf of the accused.

Will another publisher identify an opportunity to publish an annotated Code by a leading Crown prosecutor, to fill the niche that exists for crown attorneys—The Crown Attorney's Criminal Code? Will there be one for Judges that could include Jury Charges? Will there be a Criminal Code for Police Officers? For that matter, will another defence counsel challenge Gold's? At one point, I would have said no but now I am not sure. Annotated Criminal Codes are relatively easy to develop and make so much money that even a relatively small share of the market

would make the effort worthwhile.

Gary P. Rodriguzes was with Carswell at the time the annual edition of Tremear's was launched and with Lexis Nexis at the time Alan Gold's Practitioner's Criminal Code was published.

Originally posted August 2012 online @ www.slaw.ca

Introduction of the Eagle Feather

Wachay, my name is Tamara Moore and I am a staff lawyer with Legal Aid Ontario. I am First Nation and a member of the Mushkego Cree from the James Bay area.

The city of Sudbury has a large First Nation population. Most Sudbury lawyers also know that unfortunately, there is an over representation of First Nation people involved with the criminal justice system. First Nation traditions and culture are too often ignored when a First Nation person walks into the courtroom.

On May 16, 2016, Perry Mcleod-Shabogesic, Director of Traditional Programming at Shkagamik-Kwe Health Centre, presented Superior Court Justice Patricia Hennessy with an Eagle feather. The ceremony took place on a beautiful sunny afternoon in front of the courthouse at 155 Elm Street. A number of people attended the ceremony, including, Angela Recollet, Executive Director of Shkagamik-Kwe Health Centre, Elder, Hilda Nadjiwan, Norm Beauvais

of the Native Friendship Centre and James Ross, president of the Sudbury District Law Association.

The feather is now available to a First Nation person having to testify or give evidence in court. Justice Hennessy will be the caretaker of the Eagle feather, which will be kept in a case at 155 Elm Street. The Eagle feather is highly respected and is sacred to First Nation people. It signifies truth, honesty, humility, love, respect, strength, and wisdom. It is a direct connection to the Creator and can offer support to one holding the feather.

It is important for lawyers working with First Nation clients to be aware that the Eagle feather is available to them. Lawyers representing First Nation clients may want to ask them if they are interested in holding the feather as opposed to swearing on the bible or affirming that the evidence they will be giving is true. It is important to recognize that the decision to hold the Eagle feather is a personal choice and one should not assume that because one is First Nation that he or she will want to testify with the Eagle feather.

The Eagle Feather is a much needed and important addition to the court house at 155 Elm Street.

Tamara Moore

SDLA GOLF 2016

The SDLA annual golf tournament was held this year on Friday, August 19th, 2016 again at Cedar Green golf course. After last year's excellent turn-out to honour Leo Arseneau, this year's numbers were down, although once again those who were in attendance certainly appeared to enjoy themselves, with more and more of the participants availing themselves of the scramble/best ball format.

Of those who did contest the medal play this year's winner took home the first prize trophy for the first time, this being Richard Huneault whose winning score was 78.

Richard was closely followed by George Fournier, who shot a 36 on the front nine, but ballooned to a 44 on the back, to lose just by 2 strokes. This unfortunately was not the first time that George had suffered this fate, and his ongoing fitness routine will need to focus more on staying power down the stretch.

A new scramble team winner also prevailed this year, with team "R", Robbie Gordon, Randy Lalonde and Richard Humphrey, joined by Robert Del Frate after a furious ride back from Manitoulin Island, edging out Mike Carre's foursome by just one stroke, 68 vs. 69. The other members of the Carre team were Matt Ansell, Jennifer Dowdall and J.M. Bray. Two of the three "R's" assured the organizers that theirs' was a significant contribution to the success of the team, but inquiring and knowledgeable minds suspect otherwise.

Whether or not this may signal a "changing of the guard", the tournament's perennial contender and many time winner, Berk Keaney submitted an inflated score of 90. He blamed it on the slowness of the greens at this golf course, as opposed to the lightning fast putting surfaces at the Idylwyld. However others speculated that he missed his usual support group, Brian Montgomery (out of commission with a knee injury trying to show off waterskiing) and Roy Sullivan (sojourning on the east coast due to family obligations). However further investigation revealed that it may have been due to the psychological stress created in France by the banning and prohibiting of the "berkkeaney." With his fine-tuned sense of social justice, Mr. Keaney was seen leafing through many legal texts (or at least instructing his students to do so) to see whether or not he could mount a charter challenge to have the prohibition reversed.

This year's most honest golfer turned out to be Terry Waltenbury, who was actually in the same foursome as the winning golfer. It must have been difficult for Richard to concentrate and maintain his composure with the carnage going on around him and that was before the beer cart had even reached Mr. Waltenbury. I was advised that the score which he turned in, 120, could not be verified, because the battery on Ed Paquette's cell phone ran out mid-way through the match, so he no longer had the calculator function available to keep track.

I would once again like to thank several of the associates at Miller Maki who helped out in making phone calls and gathering prizes and in particular Rebecca Ducharme who did the lion's share of that work.

Again, thank you to all who participated in this year's event. Talk to your peers and explain how much fun you had and how the tournament is certainly able to accommodate many more golfers and or participants. At this point in time it is anticipated that the 2017 tournament will be held on Friday, August 18th, 2017, so again those of you who are booking into 2017, mark that day off in your diary to ensure your availability to attend next year's event.

Michael O'Hara
August 2016



We're on the web!
www.sdla.ca

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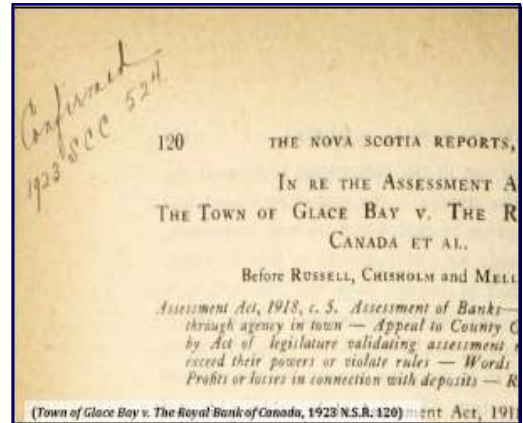
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A SHORT HISTORY OF "NOTING UP"

WARNING: may contain disturbing content for those with deep anti-marking-up-of-library-book sensitivities!

Back in ye olden days, law clerks and law librarians used to write in the margins of case reporters, literally "noting up" the pages with citations for subsequent appellate decisions (thanks, Lynne McNeill and also Nikki Tanner, in particular for the image of an old noted-up page): image and excerpt from Canadian Association of Law Libraries blog

References to the practice of "noting up" can be traced back to at least the 19th century, when legal textbook volumes were bound with blank leaves specifically for noting up so that the textbooks could contain the latest law (from (1844) 3 *The Law Times* 275).



NOTICE TO THE PROFESSION:

Please be advised that effective September 1st, 2016, Tanya Farkouh Martin will be carrying on business as Tanya Farkouh Martin Professional Corporation. Please use the following contact information for any future correspondence or court documents:

Tanya Farkouh Martin Professional Corporation

125 Durham Street

Sudbury, Ontario

P3E 3M9

Tel: (705) 674-0010

Fax: (705) 677-0045.

Thank you Trent Falldien!

Trent donated a HP Laser Jet 1536 MFP for your use in the lounge at 159 Cedar Street

The law library will assist with toner and paper.

2ND ANNUAL SUDBURY TRIVIA CHALLENGE

Due to the overwhelming success of last year's event, The Advocates' Society and the Sudbury and District Law Association are happy to announce that the 2nd Annual Sudbury Trivia Challenge will be taking place this September. The event was very well attended and I would encourage all those whom are interested to register as soon as possible.

Here is what you need to know:

What: Teams of 4 battle it out for Trivia Supremacy

When : Thursday, September 15th, 2016

Where: Wacky Wings, 187 Shaughnessy Street (Upstairs)

Time: 5:30 p.m. to 8 p.m.

Cost: \$15/lawyer & students are free

RSVP : Please contact Meaghan Boisvert at boisvertm@millermaki.com for more information.