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SDLA Legal Briefs Newsletter

Sudbury's Newest OCJ Judge

On September 29, 2014, Karen Lische was sworn in as a Justice of the Ontario Court of Justice, to preside in Sudbury. On that occasion, Alex Kurke, the President of the Association, spoke the following on behalf of the SDLA:

Chief Justice Bonkalo, Regional Senior Justice Lambert, Justice Lische, Justices of the Ontario Court of Justice and the Superior Court, Justices of the Peace, Family, and honoured guests, I stand before you doubly privileged: first to have been able to take part in the farewell celebration of Justice William Fitzgerald, Sudbury's longest serving judge, and also to be able to take part in this ceremony, welcoming Sudbury's newest judge, Karen Lische, who by the way, also served admirably as President of this very Association I now have the honour to represent.

On behalf of the members of the Sudbury District Law Association I extend our warmest welcome to Justice Lische as she enters the next phase of her career, as a judge of the Ontario Court of Justice. I know she will perform her role by exercising the same qualities we saw in her as a lawyer.

Karen Lische as a lawyer was like the eye of the hurricane: when everything around her as a mad vortex of competing interests and issues, she was a mote of calm. She always kept a cool head and worked to find a safe middle ground for everyone. I never saw her lose her self-possession. That is not to say it did not

happen – just that she never let anyone know it if it did – and that is a rare gift indeed.

I really only got to know Karen once she came to the Sudbury Crown's office, but what I saw there gives me no qualms that her new position will go to her head. Karen Lische has thrived on work, and did marvelously well without ever letting success change her. Now that she has gone, the Crown Attorney's office is going to have a difficult task filling those shoes. I am confident that judicial e-inboxes will soon be the lucky recipients of reminders about impending birthdays of colleagues and staff. That kind of kindness and consideration is only part of Karen Lische's arsenal of graciousness; truly, I have not known another person to constantly exhibit such a positive outlook. Karen even volunteered to do a long stint in Youth Court. To us doubters about her sanity in such a choice, she responded that she believed she could really help people there, and accomplish something. And I understand from Alex Toffoli, Sudbury's best known defender in the youth court on Cedar Street, that she was as good as her word.

This event today, however, is bittersweet for me, as it is for many others. It foreshadows Karen entering the building through a different door and disappearing from public access. True, the rest of us will enter the building, but only into the open, unsecure corridors.

We will see her in the same courtrooms that we frequent, but not at counsel table with us.

For us, her friends and former colleagues at the Bar, she will no longer be our Karen Lische.

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Through Manidobawitigong and the Lake of the Everything



– A Feather’s Journey to a Court of Justice

The early evening sun of August 9th remained stubbornly bright, 40 km downstream from Fort Frances in northwestern Ontario. We stood with him and watched the Manitou Rapids as they boiled through the centre of the wide river. This was the end of day one of our six day, 240 km canoe trip down the Rainy River and through Lake of the Woods and the Devil’s Gap to the Kenora Courthouse.

Marcel, a member of the Rainy River First Nation, pointed out to me and my paddling partner the safe channel through the rapids, which we would negotiate at 8:00 am the next morning. He explained his peoples’ long connection to Manidobawiti-

gong, and their harvesting of the Nah May (Sturgeon) for many hundreds of years at this very special place. We were quick to tell him that we had seen many white sturgeon jumping from the waters throughout our first paddling day. Hundreds of feet overhead, we had also seen several bald eagles, as our tried and tested canoe coursed down the river to this place.

When we left Manidobawitigong, Marcel was overjoyed to provide us with a tour of his community. He introduced us to his wife and children, and showed us around the family home that he had finished building only a few years earlier. But he also showed us something else.

Reaching into the front area of his truck, he took out an eagle feather, which he presented to me with dignity. He had carried it with him for a year, waiting for the right time and place to gift it. He explained the meaning and purpose of the gift.

I thought often of the eagle feather as we paddled down the Rainy River to and through the Lake of the Woods, a great lake containing “everything” from crystal clear waters, to more than 14,500 islands, multiple species of fish, high winds and white pelicans. A powerful lake also surrounded by distinct and varied Aboriginal and non-Aboriginal communities.

Through Manidobawitigong and the Lake of the Everything

As we paddled through strong northwest winds, I thought about barriers to reconciliation caused by distrust and misunderstanding. I recalled that in the summer of 2000, then Globe and Mail columnist, John Stackhouse, had hitchhiked from the East Coast to the West Coast, across Canada. He had written a series of articles about his trip, describing the people he had met and the places he visited along the way. On September 13, 2000, when he was halfway across the country he wrote:

“I was just beginning to discover how much resentment and distrust they (natives) also face. As the nightly news showed more scenes from Burnt Church, N.B., I found that among non-natives there was a disgust that cannot be underestimated. My first taste of Canada’s hidden anger had come in Saint John, the day I started the trip.”

Having reached the West Coast, he wrote in his summary or focus article as follows:

“... and everywhere I heard anger about native Canadians.”

I reflected that what John Stackhouse had heard and observed a mere fourteen years ago mirrored, to some extent, what I had heard and experienced, paddling westward between Montreal and Kenora during each of

the past six summers. Along the rivers, lakes and waterways, and through numerous communities, I listened as Canadians from all walks of life, lawyers and judiciary included, explained their views in relation to Aboriginal peoples and Aboriginal legal issues.

Justice Binnie best described the reconciliation of Aboriginal peoples and non-Aboriginal peoples, when in the Mikisew Cree case in 2005, he wrote:

“The fundamental objective of the modern law of Aboriginal and treaty rights is the reconciliation of Aboriginal peoples and non-Aboriginal peoples and their respective claims, interests and ambitions. The management of these relationships takes place in the shadow of a long history of grievances and misunderstanding.”

Later, in the same decision, he wrote:

“Treaty making is an important stage in the long process of reconciliation, but it is only a stage. What occurred at Fort Chipewyan in 1899 was not the complete discharge of the duty arising from the honour of the Crown, but a rededication of it. ... the honour of the Crown infuses every treaty and the performance of every treaty obligation.”

For some people, the constitutional legal rights of Canada’s Aboriginal peoples, rights that are to be construed in a liberal and purposive manner, could best be categorized or described by the following questions or assertions, under a heading that might read: Reckon? – Silly Nation:

- This is all in the past. Why should we have to pay for it now?
- Treaty rights are so vague as to be meaningless. Why should Aboriginal peoples have such rights anyway?
- Wasn’t this all settled in the Indian wars, and as a result of the Seven Years’ War?
- Why should there be two sets of laws? One for us and one for them?
- What’s so special about the Royal Proclamation of 1763 and the Treaty of Niagara, 1764? Why honour the treaties anyway?
- Why can’t they just learn to adapt and assimilate, as all newcomers to Canada must do?

Through Manidobawitigong and the Lake of the Everything

There can be no doubt what “reckon” ciliation camp the Chief Justice of Canada belongs to. In the *Tsilhqot’in Nation v. British Columbia* decision, released on June 26, 2014, a unanimous Supreme Court of Canada granted a declaration of Aboriginal title over a defined area, marking the first such declaration in the court’s history. In penning her decision, Chief Justice McLachlin repeated the phrase “reconciliation” thirteen times. And at paragraph 142 of the decision, she wrote:

“The guarantee of Aboriginal Rights in s. 35 of the *Constitution Act*, 1982, like the Canadian Charter of Rights and Freedoms, operates as a limit on federal and provincial legislative powers. The Charter forms Part I of the *Constitution Act*, 1982, and the guarantee of Aboriginal Rights forms Part II... Part II Aboriginal Rights, like Part I Charter Rights, are held against government – they operate to prohibit certain types of regulations which governments could otherwise impose.”

As our canoe drew further and further towards the lake’s north end, I reflected that if the legal mandate is reconciliation, as it is, and if we are to move past misunderstandings and distrust, we must then come to know one another. And so to that list of earlier questions and statements set out above, I thought that perhaps there could be added the following, under the heading: Reconciliation:

- Have we visited First Nation communities, other than for court purposes?
- Can we count as among our friends, some Aboriginal peoples?
- Have we tried to understand their laws, their beliefs and their deep connection to their traditional lands and waters?
- Have we educated ourselves about their treaty history, and the solemnity of their relationship with the Crown?
- Do we respect them?
- Do we trust them?
- Can we do more?

Ruth Ann Onley, in a *Globe and Mail* article dated September 22, 2014, entitled : How we build a new relationship with Ontario’s First Nations, described the work of reconciliation as follows:

“A word that came up many times, before, during and after our stay in KI, was Reconciliation. In the context of our visit, rather than a transaction or a process, reconciliation meant dissolving a relationship that no longer works and building a new one, by watching, listening and learning.”

As my partner and I hauled our faded red 17 foot Nova Craft canoe onto the waterfront landing beside the beautiful Kenora Courthouse, I reached into my day sack and took out the gift of the eagle feather. Looking at both the courthouse and the feather, I couldn’t help but conclude that reconciliation is work that belongs to all those who honour Canada’s justice system.

Stephen O’Neill, SCJ

Reprinted from the Ontario Superior Court Judges’ Fall 2014 Newsletter.

NEWS AND EVENTS

Municipal Law Departments Fall Conference in Sudbury

In September, City of Greater Sudbury Legal Services was host, along with the legal departments of the City of North Bay, City of Thunder Bay and the City of Sault Ste. Marie, to the Municipal Law Departments Association of Ontario Fall Conference. Forty eight people attended the conference, a record number in comparison to recent years. The 1.5 day conference was hosted at the Hampton Inn during which speakers from municipal law departments across Ontario presented on a broad range of topics affecting municipalities. To complete their northern experience conference attendees toured Science North's Arctic Voices exhibit, sampled the wares of Stack Brewery, enjoyed dinner by Bryston's on the Park and previewed a City's voter experience by riding the City's election bus.

The event was thoroughly enjoyed by many and several attendees expressed their delight about returning to the home of the Big Nickel to see how much it has changed over the years.

KRISTEN NEWMAN

ASSISTANT CITY SOLICITOR

CITY OF GREATER SUDBURY

Sudbury Young Lawyers!

The Sudbury Young Lawyers Organization (SYLO) teamed up with the SDLA to host a meet and greet with the SDLA and Sudbury Bench on Friday, September 26, 2014, at Oscar's Grill. The event was a great success and was very well attended, with approximately 35 young lawyers in attendance and with judges from both the Ontario Court of Justice and Superior Court of Justice. The young lawyers appreciated getting a chance to meet and chat with the local Bench in a casual environment, and numerous judges have expressed that they enjoyed the evening and meeting those who will be appearing before them shortly. All of the feedback received afterwards was positive, which is very encouraging for future events. The SYLO executive would like to thank the SDLA for their generous support and funding, without which the event would not have been possible.

We would also like to thank the Bench for their strong attendance and support.

Adam Kosnick

Miller, Maki LLP

Holiday Gathering

Dec. 10 2014

**THE SDLA EXTENDS THIS
INVITATION:**

**THE SDLA WILL HOST A
HOLIDAY GATHERING AT
OSCAR'S for members of the
Association, Judges, and Justices
of the Peace**

**Wednesday December 10, 2014,
from 5:00—6:30 p.m.**

**OSCAR'S GRILL, 86 DURHAM
STREET**

**COME OUT AND HAVE A
DRINK AND SOME TASTY
MUNCHIES—COMPLIMENTS
OF THE SUDBURY DISTRICT
LAW ASSOCIATION**

RSVP before November 26,

sdlaw@vianet.ca

TAPAS WITH THE TREASURER

OCTOBER 15TH 2014 SUDBURY



TAPAS WITH THE TREASURER

On the eve of this year's Colloquium, Sudbury's women lawyers under ten years of call and women articling students, were invited to the home of Carol Hartman, Benchler of the Law Society, along with Treasurer Janet Minor and former Treasurer Laurie Pawlitza for an evening entitled Tapas with the Treasurer. The premise of the evening was to allow young women still navigating their first few months and years in our profession an opportunity to network over fine

food and wine.

This event comes at the suggestion of Justice Patricia Hennessy, who along with Lucille Shaw attended in their capacity as co-chairs of Colloquium 2014 and contributed their own experiences with their less seasoned colleagues.

The turnout was incredible with over 20 young women from all areas and stages of practice, from both the public and private sectors alike, enjoying the oppor-

tunity to socialize with more experienced professionals, who know all too well the struggles being faced by young women in the law.

A special thank you to all of those who were involved, but especially to all those who attended and made both our past and present Treasurer feel so welcomed.

Submitted by Meghan Boisvert and Carol Hartman.

LAW BALL 2014

Word is attendees at the 2014 Law Ball, held at the Idylwylde on Saturday November 8, had a wonderful evening.

Feedback here at the law library has been very positive: “the food was plentiful & excellent”; “Toe Jam Tequila played some great music”; “a wonderful party” “happy that I attended my first, but not last law ball”; “the emcee (Sophie Mageau) was instrumental in the evening going smoothly”; “in the future it would be nice to have more ambience, such as table centre pieces, flowers, candles” “shuttle service was an added bonus to a great evening”

Results from the referendum question - Should the Law Ball date be moved from the fall to the spring?

Results are as follows:

Votes: Not to move the date39

Votes: to move the date..... 10

Thank you to all who attended and who took the time to vote on this question.

35 year Honourees:

Leo P. Arseneau; Douglas J. Bamberger; Boris J. Fesyk; T. Michael Hennessy; Gerard McAndrew; Matti E. Mottonen; Tomm Orendorff; Rejéan R. Parisé; Leighton Rosylyn; and Ron Swiddle.

This year, the SDLA executive felt it was important to recognize those who have been practicing for over fifty years. In an effort to do this, the Executive will hang a wall plaque on the wall of the Court House with the names of those outstanding individuals engraved.

In recognition of 2014 being his 50 year call —Mr. N. Paquette has joined other members who continue to practice law at and past the 50 year call mark!

Congratulations to all!

Rannah

SUDBURY'S NEWEST OCJ JUDGE

Continued from page 1



**Retired OCJ Justice William Fitzgerald and
OCJ Justice Karen Lische**

We can no longer simply stop into her office, when we have a vexing issue in a file, to ask for her advice. I do not expect that she and I will walk together very often any more to pick up the lunch special at the Independent Grocer.

I doubt that I will have the opportunity to hear her use the curious expression “self-obvious”, though I have heard her say it many times.

Justices of the Ontario Court of Justice, our loss is now your great good fortune, in having Karen Lische in your ranks. Guide her well, and also respect what she tells you. She will never let you down in her judgment, her humanity, her integrity, her work ethic, and her search for the truth. Ralph Waldo Emerson tells us that “God offers to every mind its choice

between truth and repose. Take which you please – you can never have both.” Well, Karen Lische’s mind certainly does not look for repose.

Justice Lische, we of the Sudbury District Law Association wish you all the best in your new role on the Ontario Court of Justice, and we are sure you will perform your duties with wisdom and distinction. Your Honour, we look forward to appearing before you.

COLLOQUIUM 2014

Colloquium 2014 has come and gone. Before work starts on planning for Colloquium 2015, we should take some time to reflect upon this year's conference.

The organizing committee is pleased to report that there was an increase this year in the number of attendees and presenters. We have also continued to attract lawyers from throughout the Northeast Region, which has been one of our goals since the first conference four years ago.

Another one of our goals has been to develop the capacity in this region for local lawyers to organize, develop and deliver quality education programs. Once again this year, the session leaders, from throughout the Northeast, worked diligently at preparing programs that were designed to respond to the needs of lawyers practicing in this region. We encouraged our session leaders to draw upon the skill and talent of both "imported" and local lawyers. We extend our thanks to the following session leaders:

Tomm Orendorff (Sudbury)
Bob Yu (Timmins)
Erin Cullin (Timmins)
Jay Meunier (Timmins)
Lisa Barazzutti (Timmins)
Claude Lacroix (Sudbury)
Terry Waltenbury (Sudbury)
Phillip Zylberberg (Sudbury)
Guy Desmarais (Sudbury)
Emily Graham (Toronto)
Kathleen Stokes (Sudbury)
Wayne Stickland (North Bay)
Geoffrey Larmer (North Bay)
James Ross (Sudbury)

We continue to ask for feedback from those who attended the conference. We also are interested in any new ideas in planning for Colloquium 2015. This could include ideas regarding format, sessions or speakers. Please email your ideas and/or comments etc. to Lucille Shaw at shawl@millermaki.com.

We also attracted a number of new sponsors this year. In fact, we have already received inquiries from sponsors with respect to Colloquium 2015. It is safe to say that this program is now "on the legal education map" in the province. We are told that next to the Ottawa conference, it is the second largest conference in Ontario that is organized by a local law association. This is something for which we should be collectively very proud.

We were very pleased that our new Treasurer, Janet Minor, attended the conference and was a panel member at the lunch discussion on Thursday regarding the future of articling. We also had representatives from The Bora Laskin Faculty of Law (Lakehead University) and the LPP Program at Ryerson. It appears that the future of articling is one that is still in flux and it will be interesting to see how things develop over the next five years. At this time, Lakehead seems to have an advantage as its students graduate in three years with their articles completed. Given the shortage of articling positions, it seems reasonable to assume that more law schools may be looking to the LSUC for a similar accreditation.

The Honorable Bob Rae spoke at dinner on Thursday evening about Canada's "unfinished business" with respect to a number of aboriginal issues. He spoke with passion and commitment and his work and efforts are to be commended and admired.

The Honorable George Strathy, Chief Justice of Ontario accepted our invitation to speak at lunch on Friday. In fact, he went further and volunteered to participate in the written advocacy program as well as attending the mentoring session late Friday afternoon which is sponsored by The Advocates' Society. Chief Justice Strathy has a personal connection to Sudbury, of which we are always happy to take advantage. It was a real pleasure to also have in attendance at the mentoring session Mr. Justice Code from Toronto. He also asked to participate in the program. All mentors who attended the young lawyer program seemed to be invigorated by the end of the session. It is a rare opportunity where junior lawyers can speak candidly with more senior counsel and members from the Bench. In fact, it is rare that we all can sit together and have any type of candid discussion.

Colloquium is about more than legal education. It is one of those rare opportunities we have as lawyers to gather and get to know each other as more than just the lawyer on the other side of the file. For some of us, we get to put faces to names. Colloquium has become known as a very collegial and entertaining conference. The hospitality suite on Thursday evening once again was a huge success. Thanks to the sponsorship of the Sudbury District Law Association, we were able to stock the bar

COLLOQUIUM 2014

with top quality libations which were enjoyed by many including those of us who think we are still much younger than we are. In fact the party continued after the hospitality suite closed. We are told that a group of intrepid individuals headed off to one of our fine establishments downtown before returning to the hotel where festivities continued. (Unfortunately, that may have had an impact on the attendance at some of the early morning programs on Friday.)

The initial planning for Colloquium contemplated a one day conference.

It is now a full two-day conference with three key note speaking events. Many lawyers rely on the program for CPD hours. Colloquium is a far better forum for education, and far more cost effective, than either sitting in front of your computer watching someone speak from Toronto or incurring the cost of travelling and staying overnight in Toronto. As a result of support from our sponsors, Colloquium offers an extremely cost effective means of accessing quality education and, at the same time, provides mentoring and collegiality in a friendly and social atmosphere.

The Chair of the program next year will be Erin Cullin. She has been involved with organizing Colloquium for a number of years. The program is in very capable hands. In addition, the program coordinator, Carrie Regenstreif will be with us again next year and will continue on with her hard work and efforts.

Thank you to one and all for another great conference.

LSUC CONSULTATION ON RACIALIZED LICENSEES

As part of its ongoing efforts to promote equity, diversity and inclusiveness in Ontario's legal profession, The Law Society of Upper Canada created the [Challenges Faced by Racialized Licensees Working Group](#) in 2012 to investigate the challenges faced by racialized lawyers and paralegals and consider strategies for enhanced inclusion at all career stages.

After completing [informal and formal engagement processes](#), the Working Group prepared the consultation paper, [Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees](#), for dissemination to the professions and the public - and for further consultation. The paper is being presented to Convocation on October 30, 2014.

The consultation paper includes a se-

ries of questions for the professions to consider and comment upon. Additional ideas are also welcome.

Consultation meetings will also be held in key cities during the fall 2014 and the winter 2015 and a schedule will be available soon.

Input received during the consultation process will help the Working Group determine its next steps, as well as its final recommendations to Convocation.

Written submissions should be submitted to the Law Society by **March 1, 2015** to:

Josée Bouchard, Director, Equity
The Law Society of Upper Canada
Osgoode Hall, 130 Queen Street West
Toronto, ON M5H 2N6

jbouchar@lsuc.on.ca
416-947-3984
or 1-800-668-7380 ext. 3984

[Developing Strategies for Change: Addressing Challenges Faced by Racialized Licensees](#)

[Consultation Paper](#)

[Challenges for Racialized Licensees - Stratcom Final Report](#)

[Equity Advisory Committee Submission in Response to Stratcom Report](#)

[Law Society Studies and Scan of Best Practices](#)

[Results from Informal Engagements](#)

[Community Liaison Report](#)

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