

The MONTREAL LAWYER



« THE VOICE OF MONTREAL ENGLISH-SPEAKING LAWYERS »

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\$4

Meet business lawyer Vincent Chiara

**Montreal and
Québec's most
prominent
privately-owned
real-estate
entrepreneur**

- **Cross-examining an expert**
by Richard M. Wise, FCPA, FCA, IFA, FCBV, FASA, MCBA, C.Arb
- **Ian M. Solloway honored by the Lord Reading Law Society**
- **Detection of deception**
by Vincent Denault





A salute to business lawyer
Vincent Chiara, president of
Group Mach, a leader in the
real-estate sector of Montreal
and Québec, a fantastic partner!



Rudy Nassri with Vincent Chiara



Vincent Chiara with Marty and Ben Lieberman



The most important privately-owned real-estate entrepreneur and industry leader of Montreal and Québec

By André Gagnon

Art collector and art buff, Vincent Chiara owns a rare large painting of Pierre Elliott Trudeau wearing poet's cape and hat which is displayed on his conference room wall adjacent to his office as well as several other sculptures and paintings sort of a gallery-like reception . The PET painting is a collective artwork only a handful of close friends of the iconic Prime Minister of Canada possess as part of a very rare collection.

Vincent Chiara is the president of Groupe Mach, a real estate company that started in the nineties, which owns some of Montreal's largest office buildings representing 10-million square feet of rental space. A lawyer born in Montreal from an Italian family who came to Canada from Sicily seeking a better life.

Vince, as his friends and associates call him, worked at his dad's grocery store in St. Michel during his spare time while going to school. He played hockey and other sports. His father Angelo, a strong and rugged man who worked in the uranium mines of Elliott Lake, Ont., long 16-hour-a-day shifts in order to save enough money to buy a house. He returned to Montreal with his wife, where he settled, from their village of Ipsopoolo and Aragona in

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Hats off to one of Montreal's
and Quebec's most successful
business lawyer,
Me Vincent Chiara,
president of Groupe Mach.



MAGIL LAURENTIENNE



Woods

The MONTREAL LAWYER

LE MONDE
J U R A T I Q U E



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Sicily, famous for their Greek temples, to establish their own business in an Italian borough of Montreal.

Vince went to McGill University to get a degree in commerce. But then went on to get his degree in law from the Sherbrooke University Law faculty.

With other law students, he chipped in to buy a piece of land near Lake Magog from a farmer who for years was desperate to sell. The partners one of whom is lawyer Bolduc from the Townships who practices in Sherbrooke, got a sweet deal that allowed the trio to pay off the farmer rapidly and to sell piece by piece their land netting a nice profit. That experience inspired Vincent Chiara who decided to go into private practice in Montreal.

He articulated with a small firm where a few Italian lawyers practiced. The firm was well established in the community and represented businessmen as well as individuals. But Vince wanted to be his own boss. He set up his own firm. Some of his former partners became judges, justices and even members of the National Assembly of Québec. After a while, and with good advice from clients in the real-estate sector, he had been representing, he decided to start a real-estate company. It grew slowly but surely until the 90s hit hard some of his commercial tenants. They went belly-up and almost dragged him with them. But he resisted, changed his way of doing business, looked for good and long-term tenants who could pay their rent and make sure his business would grow soundly and he could develop major real-estate projects. So he did and saw the light when an important client became his mentor and then eventually a partner.

Groupe Mach has evolved from a small real-estate company to a mid-sized venture. Projects involving important developers, major investors who trusted Vincent Chiara then allowed him to get to the top in that industry. Major acquisitions of land and large office buildings with the right partners (Magil Laurentienne, Saputo and others) drove Vincent Chiara to the pinnacle in the real-estate world.

After years as a genuine real-estate projects leader, Vince became one of only a few major developers and his reputation as a shrewd investment and office building managers grew. He became an accomplished developer with his team of architects, engineers, urbanists and other highly trained specialists he formed at Groupe Mach.

That group owns and operates some of the largest buildings of Montreal : the CIBC tower, Place Victoria and a host of other Montreal icons. He recently bought seven buildings in the Quebec City area from the Fonds de Solidarité FTQ, a major local 10-billion investment fund, among which the Telus building on St.Paul's street in the Old Capital as she is often referred to. Though the amount of the transaction was not publicly disclosed, said a major business publication, the mortgage loan financed by a Vancouver investment company, CMLS, was quoted to have reached the 764.4 \$ million mark. The historic deal added close to 650,000 square feet of rental space to Groupe Mach. Groupe Mach also owns space rented to the Quebec government with long-term leases.

Groupe Mach also owns and developed industrial facilities in the Montreal industrial area as well as in towns like Hawkesbury for large food chains and suppliers with very large warehouses intended to supply the province of Québec from Ontario.

Lawyer Vincent Chiara has become the most important privately-owned office building developer and a business manager in the rental office space industry. He is constantly examining business development with his expert team who are always on the lookout for opportunities. They are known to «simulate» and track down deals and evaluate risks.

Groupe Mach with business lawyer Vincent Chiara will make every effort to expand their space rental business projects to keep on remaining the largest coowner of office building in Quebec and also in Canada where growth may lie.

No real-estate summit is held here without the presence of that business lawyer. No real-estate publication is printed, circulated on various web sites and blogs without quotes from Groupe Mach president Vincent Chiara on several issues. He has made and carved his mark on the



rental space industry that everyone acknowledges, feels and notices.

Vincent Chiara now and for sometime rimes with office space like a golden trophy on a precious wooden desk. It shines from all directions . It spells hard work, shrewd deals and an eye on competitors to remain on top at all times.

But long-hours' work without good food and a little Sicilian wine at the end of the day is a reward for hard work. Pleasure is definitely Sicilian. Joie de vivre an inspiration from the Greek gods.



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LAWYER AND LE MONDE JURIDIQUE



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Ian M. Solloway

2014 recipient of The Lord Reading Law Society Past Presidents' Medal

By Suzanne Costom*



The last time that I stood up to address a Lord Reading Law Society audience about Ian Solloway was in June 2003 as I took on the Presidency, after having served as Ian's Vice-President during his presidency of the society in the 2002-2003 season.

At that time I talked about what big shoes I had to fill, coming on the heels of Ian's phenomenal tenure. However, I also said that I felt ready, because I had such an incredible model to emulate, and because I knew that Ian would always be there for me, and for the society. It is 11 years later, and this is as true today as it was when I said it.

The Lord Reading Law Society Past Presidents' medal is the highest award given by the Lord Reading Law Society. Established and funded by past presidents, the medal is, according to our bylaws (which Ian wrote in 2009!!!) to be awarded from time to time to a worthy recipient who is a member or former member of the society, who has achieved excellence in the legal profession, who has made a significant contribution of service to the community, and who embodies the highest standards of integrity. There have been only five recipients of this medal to date, some of whom are in the room – Senator Yoine Goldstein, the Hon. Herbert Marx, the Hon. Irving Helprin, Me Casper Bloom, and Me Manny Schachter. (PLEASE RISE) Ian will be the sixth.

Ian has had and continues to have a most distinguished career. After graduating from McGill University in 1973 he has gone on to a career focused mainly on family Law, where he enjoys the respect and esteem of his colleagues. In fact in 1992, he was elected a fellow of the prestigious International Academy of Matrimonial Lawyers, which is an international association of leading family law lawyers around the world who are recognized by their peers as being the most experienced and skilled family law specialists in their respective countries. He is one of only a few members from Montréal.

Ian is an active participant in the family law section of the Barreau du Québec, the Canadian Bar Association and the American Bar Association, and has sat on too many committees to list. On each one he contributed in a meaningful and significant way.

He is the author of various publications, has taught and designed university level courses relating to family law, and has spoken on family law related issues at over 75 different venues.

I truly don't know how he has found the time...

And if this weren't enough, he has given tirelessly of himself to countless community organizations, including but certainly not limited to JPPS-Bialik, Jewish Family Services, Canadian Jewish Congress, the Shaar Zion Congregation and our very own Lord Reading Law Society, which I will come back to shortly.

It is one thing to list a person's accomplishments, their

" Tonight, we honour a true gentleman who has served this Society as well as the broader legal community in so many positive ways. Me Solloway is the go-to-person for all things Lord Reading. He has a wealth of knowledge about the Society and its administration, and he leaps at the chance to help each incoming President, and we are all truly grateful. Ian – congratulations on this achievement, and thank you for the countless hours you have devoted to the Society. " – *Me Heather Michelin, president of the Lord Reading Law Society*

professional memberships, the names of the committees upon which they have served, and other résumé type information, and it is another to hear his colleagues refer to him with so much fondness and respect. Casper Bloom, Steven Kaitkin, Michael Levinson and Teddy Goloff were some of the people who were most active during the time when Ian and I were also executive members of the Board. All of us recall Ian's incredible dedication to, and respect for the organization. He always took his position seriously, and the organization seriously, and this in turn elevated the standing of the Lord Reading Law Society in the greater legal community.

To this day, Ian remains loyal and devoted to the Society. His presence at Board meetings and his involvement in important decisions affecting the life of the society is invaluable. His institutional memory is second to none. He's been a member of the Society for 37 years. He has served in every capacity at the Lord Reading Law Society including Bar liaison, Program Chair, Member of the 50th anniversary committee, Second



Ian M. Solloway

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vice-president, First Vice-President and President. He created the archives of the Lord Reading Law Society, he chaired the Lord Reading Law Society 60th anniversary committee and in that capacity raised over

\$40,000 in sponsorships which funded the creation of Lord Reading Law Society website.

And here's a fun fact - until this year when he was

Former Quebec Premier Pierre-Marc Johnson discusses mandate as Québec chief negotiator at the Canada-EU talks

Mr. Johnson was guest of honor at the Lord Reading Law Society's annual dinner April 29 explaining his role briefly as trade negotiator since May 2009 when then Premier Jean Charest appointed him to represent Quebec in the trade talks between Canada and the EU.

Talks are stepping-up in high gear as Canada will adopt legislation sealing deals with the EU in the coming months, suggested Mr. Johnson, an experienced international negotiator in complex matters.

Cheese was the main focus of at least one person, lawyer Eric Maldoff, a former colleague of Mr. Johnson at the now defunct law firm of Heenan Blaikie. The speaker was cautious in his tight-lipped reply as no definitive agreement has been worked out at this time.

With his seasoned approach as a speaker, he simply outlined his mandate. Quebec intended to «take a strong leadership role to emphasize the opportunities stemming from the conclusion of specific cooperation partnerships. Cooperation with the EU and its member states which should ideally be as broad-based as possible, could extend to areas ranging from culture, health, education and environmental protection to youth mobility, sustainable development and immigration, as well as science and technology ...»

Mr. Johnson was expected to organize various consultations with the help of the Quebec government delegation in Brussels, Belgium, where the EU's offices are located, as well as trade and industry associations in Québec in order to voice their viewpoints in the present international trade talks and present a single common view vis-à-vis the EU. Me Heather Michelin, president of the Lord Reading Law Society introduced the speaker.



Me Heather Michelin introduced Me Pierre-Marc Johnson, former Premier of Québec.

literally tackled by one of the true loves of his life – his 104 pound golden retriever, Eddie (who was simply over enthused with his love for Ian,) Ian had not missed a single meeting of the Lord Reading Law Society. Talk about loyalty, commitment, consistency and true love, for there is no question that The Lord Reading Law Society is another one of the loves of Ian's life. And we as an organization have benefited so much on account of this.

As many of you know, Ian has been the chair of the English-speaking section of the Bar of Montréal for the past six years. He was recently re-elected to an unprecedented sixth consecutive term. While this is extraordinary, it is not surprising; since this is Ian we are talking about here. He is an incredibly hard worker, meticulous, diligent and a true champion for everything that he believes to be important. As chair of the English-speaking bar he created the annual CLE given by the English-speaking section of the bar ("Trial practices do's and don'ts"), he created the lifetime achievement award of the Montréal section of the bar and more generally has ensured that the voice of English speaking jurists continue to be heard, always in the context of a true respect for, and partnership with, the Barreau du Québec.

Ian's role as an ambassador for the English-speaking community transcends his work at the Bar of Montréal. In 1992 Federation CJA and the Jewish Education Council nominated Ian to the Commission d'appel sur la langue de l'enseignement. (The CALE) Following this recommendation he was appointed to the CALE by the Minister of Education, and he sat for three mandates. The CALE was a three-member administrative tribunal, hearing appeals of refusals of admission to English-language instruction under the Charter of the French Language. He was the first Anglophone and the only Jew who ever sat on that tribunal.

I could talk to you about the 650 judgment that he wrote or co-wrote during that time, and about the number of decisions that were upheld by the TAQ or even the Court of Appeal and the Supreme Court of Canada.

But what really stand out are the friendships that he developed with the other members of the tribunal, including the head of the Catholic School Board who, along with others, attended his daughter Heather's Bat Mitzvah. We are indebted to Ian for presenting

such a wonderful image of the Jewish community to people who had not had the opportunity to interact with that many Jews until that time.

I talked about some of the loves of Ian's life and anyone who knows him knows how much he values and adores his wife Louise and their children. In all the years that I have spent chatting with Ian, I definitely heard more about the accomplishments of his two children Heather along with her husband Adam, and his son Bryan, then I did about his own personal accomplishments. And I know that Louise is his true partner who he always consults prior to taking on new challenges. She in turn has always been there to support him (you know what they say: behind every man...)

Heather and Adam and Bryan and Louise are all here tonight and you all share in your father's incredible honor. Welcome and mazel tov.

In preparing for tonight, I spoke with Louise and Heather and Bryan. I was hoping they would give me some funny tidbits. They all spoke about his smile, his work ethic, his dedication, his patience. Bryan said that he and his dad are friends, that they joke around and can say anything to each other. Heather recalls coloring with her dad when she was a kid, and when she was a bit older, the road trips they took together when she was auditioning for theater programs. The whole family feels that Ian would drop anything, and do anything for them if they needed him.

Isn't this what we would hope that all of our families would say of us? And Ian has achieved it.

But in case you thought that it was always serious in the Solloway household, rumor has it he makes a mean Bloody Mary!!

Ian Solloway – a man of integrity, a man of action, a man who has given of himself to his clients, to the profession, to the community, and to his family.

It is with great pleasure that I present you, Ian, with the Past Presidents' Medal of the Lord Reading Law Society.

**Me Suzanne Costom, partner of the firm Shadley, Battista, Costom of Montreal.*

« An award from the Lord Reading Law Society is truly to be cherished »

By Ian M. Solloway

As Mark Twain once said: " After an introduction like that, I can hardly wait to hear myself speak."

Honorables juges de toutes juridictions, Me Pierre – Marc Johnson, ancien Premier Ministre du Québec , et notre conférencier distingué ce soir, Madame la présidente de l'association de droit Lord Reading, distinguée table d'honneur, distingués invitées, chère famille, collègues et amis.

Let me first say that it was an honour to have been introduced by former President and my Vice-President during my presidency of this Society, Suzanne Costom. I have had the pleasure of working with many people in this Society and in other organisations over the years, but I can truly say that working with Suzanne, a colleague and friend, was one of the most enjoyable experiences I have had in any organisation I have been associated with during my career. Suzanne, you are a lady in every sense of the word , and a credit to the Society and to our profession.

I wish to acknowledge and express my sincerest thanks to the Past-Presidents of the Lord Reading Law Society, not only for the honour that you are bestowing upon me tonight, which I accept with great pride and humility, but also for your continuing commitment to and support of the Lord Reading Law Society over the years.



Ian M. Solloway

"C'est grâce à votre dévouement que notre association est si florissante aujourd'hui."

Thank you and "Yasher Koach"

Ladies and gentlemen, to be mentioned in the same circle as the five (5) honorees who have preceeded me in receiving this distinguished award is truly an honour: My friend, Senator Yoine Goldstein, Ad.E., whose contributions to commercial law, bankruptcy and insolvency in Canada are legendary;



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The Honourable Herbert Marks, whom I have had the pleasure of pleading before on various occasions during my career. I was not always successful, but I was always treated with fairness, courtesy and respect;

The late Honourable Irving Halperin, whom I always refer to

Seven new hires bring their Real Estate and Financial Services expertise to Dentons Canada's Montreal office

Dentons Canada LLP is pleased to announce the addition of five new lawyers to its Montreal Real Estate practice and two new lawyers to its Montreal Financial Services practice. The arrival of these lawyers, all recognized for their expertise in their respective fields, will further bolster the high quality service Dentons offers clients in Canada and around the world.

Chantal Sylvestre will join Dentons Canada as partner and lead Dentons' Real Estate team in Montreal. Chantal has been practising in this field since 1996 and is recognized as a leader in Quebec real estate law. She will be joined by Michel Poirier (counsel) who boasts almost 40 years of experience in matters of land use planning and real estate development. Sara Reid and Jonathan Nuss, both associates, and Marjolaine Arès, a notary, will also bring their expertise to the Montreal Real Estate group.

Joel Cabelli will join Dentons Canada as partner in the Montreal Financial Services group. Joel specializes in Canadian and cross-border financing, with a focus on commercial credit transactions, syndicated loans, factoring transactions, real estate lending, asset-based lending, equipment financing and leasing as well as inter-creditor relations. Joel will be joined by Marie-Josée Couture (associate) in the Financial Services group.

"Our firm is recognized for the quality of its services and these lawyers bring great advantages for our clients," says Claude Morency, Managing Partner of Dentons' Montreal office. "The arrival of Chantal Sylvestre and her team brings leading expertise to our office in matters involving real estate law. Our Financial Services group is now stronger than ever with the addition of Joel and Marie-Josée."

as a "Judge's Judge", and who, during my Presidency, I had the honour of introducing when he was presented with the Past-President's Medal in 2003.

Et 5. Former Bâtonniers, Manny Schacter and Casper Bloom, both of whom I have had the privilege of knowing and working with over a number of years now and whose reservoir of wise counsel, I have always welcomed and derived great benefit.

All of you who know me, also know how much the Lord Reading Law Society, or as my wife Louise calls the Society, "the other woman", has meant to me during my professional career. As President and now Past-President of this Society, I have been asked on several occasions what words come to mind that best describe what this Society is all about. The answer, at least for me, is an easy one. The Lord Reading Law Society embodies "TRADITION, COMMUNITY and VALUES" – all of which are intertwined.

Depuis sa création en 1947, l'association de droit Lord Reading a contribué d'une façon dynamique non seulement à l'évolution de la communauté juridique québécoise, mais également à l'épanouissement d'un système de justice respectueux des droits et libertés de l'ensemble de notre société.

L'association de droit Lord Reading a participé à l'essor du Québec et du Canada, pour soixante-six (66) ans, notamment dans le biais d'éminents juristes, professeurs et excellents juges. Je me réjouis d'une telle participation des membres de l'association de droit Lord Reading et j'encourage nos membres et les prochains leaders de cette association à poursuivre dans la même voie.

Founded for the purpose of ensuring the respect of the fundamental right, not to suffer discrimination on account of one's religion, the Society has been living proof that all fundamental rights are inter-dependent. The tradition of Human Rights, through the biblical injunction of "Tsedk, tsedk, tirdoff"/"Justice, justice, shall thou pursue" is an integral part of the values which the Lord Reading Law Society holds dear.

I do not think it would be immodest of me to state that the Lord Reading Law Society is one of a kind. Nowhere else that I know of will you find any legal forum with the excellence of programming and quality of guest speakers that we have been privileged to have address our Society over the last 66 years. Our speakers' roster over the years reads

like a whose who of great jurists of provincial, national, and international reputation. Indeed, the Society has been providing its members with "continuing legal education", long before the term "CLE" was ever part of the legal lexicon, let alone known. The tradition of legal excellence of which this Society is so justly proud, our contribution to the Montreal Bar and to the judiciary at all levels, are all part of the legacy which has been and remains a hallmark of the Lord Reading Law Society. Moreover, nowhere will you find the unique fellowship and congeniality that is immediately apparent at any Lord Reading event, where members of the bar and bench can mingle with colleagues, young and old, and can share their professional concerns in a warm and relaxed atmosphere and environment.

Je remercie nos membres d'hier et d'aujourd'hui qui ont joué et jouent encore, un grand rôle pour créer une association ou le mot "excellent" décrit tout ce que nous faisons.

I have been privileged during my life to be a member of a wonderful profession which I love, and to enjoy, at least most of the time, the practice of family law, as well as to have had the opportunity to give back to my profession and community at large. It may sound trite and clichéd, but I cannot say it any other way, that if I have made some small contribution to our profession and to the community over the years, I absolutely could not have done so without the enthusiasm, commitment, support and assistance of so many of you. Whether it was the Lord Reading Law Society, the English Speaking Section of the Montreal Bar which I have had the privilege of leading for the past 5 and now going on 6 years, or the community at large, I thank all of my colleagues who have supported and worked with me.

I have also been blessed with a wonderful, loving family. At this point, I want to salute and thank my family – my ex-

traordinary wife, Louise, and my terrific children, Heather, Bryan and my son-law Adam, all of whom are making their own individual and distinct marks in their chosen fields of endeavour. Thank you so very much for your love, patience and understanding and for allowing me whatever "time and space" I needed for fulfill my various professional and community responsibilities and commitments.

Permit me as a father to give a special recognition tonight to my son Bryan. Bryan who will be receiving his Masters Degree next week from Sage College in upstate New York in ABA (applied behavioural analysis) in Autism. He will be one of only a handful of people in this province who has the skill and training to work with children and their families who struggle day to day with Autism spectrum disorder. Watching Bryan over the past few years, I can tell you that the work we do as lawyers pales in comparison to what he does.

Lastly, I have always tried to live and guide myself by Winston Churchill's mantra: "We make a living by what we get; we make a life by what we give";

So, once again, my abiding thanks to the Past-Presidents and members of the Lord Reading Law Society for this distinguished Award. As I accept this Medal, for which I am humbled and deeply honoured, I am reminded of the words of the great English playwright, Ben Jonson who wrote: "Nothing so much the spirits raise

As praise from those Whom all men praise"

An award from the Lord Reading Law Society is truly to be cherished.

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False beliefs about the detection of deception

By Vincent Denault*



Since the 60s, scientists studied extensively the detection of deception. Still, false beliefs about this fascinating subject are numerous; pseudosciences easily catch the attention of lawyers who are looking for simple ways to detect lies. Unfortunately, there is not a non-verbal behavior similar to Pinocchio's nose.

In the 2008 peer-reviewed paper *Science and Pseudoscience in Law Enforcement: A User-Friendly Primer* published in the scientific journal *Criminal Justice and Behavior*, Scott O. Lilienfeld and Kristin Landfield defined pseudosciences as "imposters of science"; pseudosciences are disciplines that imitate outward features of science but lack the scientifically supported substance. In other words, pseudosciences can easily mislead lawyers who do not possess an adequate scientific background. Using a highly technical language, so-called body language experts may appear convincing. Lilienfeld and Landfield suggest key warning signs to distinguish pseudosciences from science; the more a discipline exhibits these signs, the more one should be skeptical about its claims.

For example, the use of extravagant claims, the evasion of peer-review and the reversal of burden of proof should raise red flags. In short, pseudosciences can promote pretentious claims that surpass scientific research, such claims may not be reviewed by outside experts but rather by other proponents of the pseudoscience and, contrary to science where a scientist almost always has the burden to prove his claim, proponents of the pseudoscience often demand that skeptics prove the falsity of their extravagant claims.

The false beliefs promoted by pseudosciences, such as liars avoid eye contact and display more body movements than truth tellers, can have disastrous effects on the assessment of a witness' credibility. Early in his testimony, if a witness exhibits what the judge thinks is a reliable indicator of a lie, when in fact it is not, the impact of false beliefs is of particular concern; a judge could consciously – or unconsciously – evaluate other parts of the testimony in accordance with his first wrong impression. It is therefore important to debunk the myths and misconceptions about the silent aspect of communication that spread among police officers, prosecutors and judges. Moreover, this highly difficult debunking task is even more necessary knowing professionals involved in the judicial process seem to have little to no knowledge about the science behind the detection of deception.

In 2003, Leif Strömwall and Pär Anders Granhag published *How to Detect Deception? Arresting the Beliefs of Police Officers, Prosecutors and Judges* in the peer-reviewed journal *Psychology, Crime & Law*; they reported the results of their investigation on the beliefs of legal professionals about the detection of deception. The authors surveyed 104 police officers, 158 prosecutors and 251 judges from Sweden; their answers highlighted various contradictions between the participants' beliefs and the results of scientific studies.

For example, most police officers expressed the belief that liars avoid eye contact and display more body movements than truth tellers. However, gaze aversion is not a reliable indicator of a lie – scientific research is unambiguous – and both studies of real-life interrogations and experimentally-based research shows that liars generally display less body movements than truth tellers. Even more astonishing is the fact that police officers, as well as prosecutors and judges, admitted they were not up to date regarding the scientific literature about the detection of deception. Considering all three groups assess the credibility of witnesses on a daily basis, this raises serious questions. If police officers, lawyers and judges are not up to date regarding the scientific

literature about the detection of deception, it is then of no surprise that pseudosciences are popular amongst legal professionals and that it is hard to debunk false beliefs; as the old saying goes: it is easier to fool a man than to convince him that he was fooled.

However, one should not conclude that because of the popularity of myths and misconceptions, the study of body language is useless. This is definitely not the case. In other words, police, lawyers and judges should not put aside more than 50 years of science because a few so-called body language experts frivolously claim they can transform anyone into human polygraphs.

Even if there is not a non-verbal behavior similar to Pinocchio's nose, there are significant demeanors that should draw the attention of clever observers. For example, during an examination on discovery, behavioral changes induced by emotions and mental effort can highlight answers that may need further investigations. The same goes during a

negotiation or a cross examination, depending on the circumstances. Knowing what to observe, how to interpret and adapt to it becomes an additional tool, a highly valuable asset but not a silver bullet to read minds.

It is of particular concern, perhaps even disturbing, how many legal professionals do not receive basic training in communication and psychology. How to negotiate effectively, how to convince a judge and how to create rapport with new clients are some of the various situations where a better understanding of non-verbal communication, as well as the human nature in general, offers opportunities to improve the judicial process. While an hour of such training does not result in an immediate increase in billable hours, if clients and justice are better served, that should not be overlooked.

* Vincent Denault is a Montreal-based lawyer and non-verbal communication advisor. For more information: <http://www.vincentdenault.ca/>

CASL Survival Guide Released to Help Businesses Prepare for Canada's Anti-Spam Law Coming July 2014

Elite Email, a world leader in digital marketing based in Canada, released its CASL Survival Guide today, an online guide designed to help businesses worldwide prepare for Canada's anti-spam legislation (CASL) taking effect July 1, 2014.

"Marketers and business owners in Canada, the United States and abroad, have four months to get their mailing lists and other databases in shape to ensure compliance with CASL," says Robert Burko, President of Elite Email, Canada's leading email and mobile marketing provider.

One of the most aggressive anti-spam laws in the world, CASL means businesses cannot send commercial electronic messages (emails or texts) to Canadians after July 1, 2014, without proper consent. The penalties for violations can be up to a million dollars for an individual, and as high as ten million for companies.

"Businesses must adapt now and many organizations are

not ready. They simply don't know how to prepare," says Burko, who is also an authorized speaker for the Email Experience Council. "Our CASL Survival Guide provides them with comprehensive steps to help navigate the path to compliance."

The free online guide outlines in layman's terms: the regulations, timing, requirements, penalties and exemptions (different for certain American and Canadian companies) surrounding CASL. Consent is at the heart of the new law. The guide helps organizations identify whether or not they have proper consent, and if not, how to secure it prior to the imminent deadline via a step-by-step action plan.

Compliance planning must go into high gear now. Elite Email's CASL Survival Guide, also available in pdf and eBook formats, is a helpful tool in understanding this new rule book, impacting the digital marketing landscape in Canada.

Cross-examining an expert – Part II

by Richard M. Wise, FCPA, FCA, IFA, FCBV, FASA, MCBA, C.Arb
Partner, Valuation and Litigation Support
MNP LLP

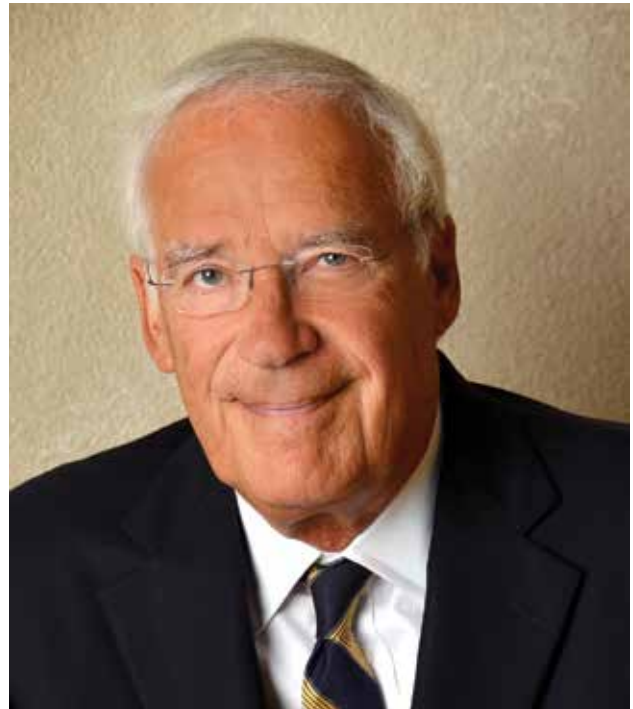
Part I of my article summarized various rules for the cross-examiner that I had culled from the writings of John Sopinka, Roger Salhany, Francis Wellman and Peter Brown. Part II provides more rules.

7. Show that the expert's conclusion is erroneous not because the expert is not qualified but because the facts relied upon are inadequate to draw such a conclusion.

Wellman says that it is generally unwise for the cross-examiner to attempt to cope with an expert in the latter's own field of inquiry. Lengthy cross-examinations along the lines of the expert's theory are usually disastrous and should rarely be attempted and that "[w]hen the cross-examiner has totally failed to shake the testimony of an able and honest expert, he should be very wary of attempting to discredit him by any slurring allusions to his professional ability ...".

Attacking the witness' expertise will force the cross-examiner to deal in areas where the expert clearly has the edge. But by simply sticking to the facts, the cross-examiner may attempt to neutralize it and retain control of the cross-examination.

Salhany states that the foundation for an expert's opinion and its subsequent validity will depend entirely upon the establishment of the underlying facts. If those facts have been misstated by counsel or it turns out they are not proved or not accepted by the judge, then the entire



opinion will crumble. It is crucial, therefore, that an attack be made on the proof of the underlying facts. . Salhany gives an example of how cross-examination might proceed in this respect:

"COUNSEL: If I understand your opinion correctly, it was your opinion that ... (the opinion is stated).

"WITNESS: Yes.

"COUNSEL: That opinion, of course, depends en-

tirely upon your assumption of the truth of the facts that my learned friend has related to you.

"WITNESS: Yes.

"COUNSEL: And those facts are (each underlying factual assumption is listed).

"WITNESS: Yes.

"COUNSEL: So it is fair to say then that if it turns out that any one of those factual assumptions is not correct, then your opinion might be different?"

Judge Salhany continues:

"This question puts the witness in a dilemma. It may be that his opinion is not dependent upon every one of those facts. The question, however, is only designed to establish that the opinion might be different. If counsel asked if his opinion would be different, then the witness could properly say in response 'not necessarily so'. This would place the examiner in the position of having to ask 'Why do you say that?'. This would leave the witness in a position of having the opportunity of expanding his answer much more fully.

"On the other hand, by asking simply whether his opinion 'might be different', leaves it open for counsel in re-examination to ask the following question:

"COUNSEL: In response to my learned friend's question as to whether your opinion might be the same if all of the assumed facts did not exist, you answered 'no'. Would it necessarily be different?

"This would give the witness the opportunity to expand fully on his answer.

"The cross-examiner who is secure in his position should pursue the issue and determine what assumed facts are essential to the opinion. He can ask the expert to state what facts he relies upon to support his position. Once he does so then counsel is able to ask the question:

"COUNSEL: Is it fair to say then that if any one of those facts is not true, then your opinion would not be the same?



"WITNESS: Yes.

"What the cross-examiner must then do is attack the evidence in proof of one of those facts. He will then be able to go to the judge ... and argue that [the judge] should reject the testimony of the expert because it was dependent upon proof of certain facts which were not established."

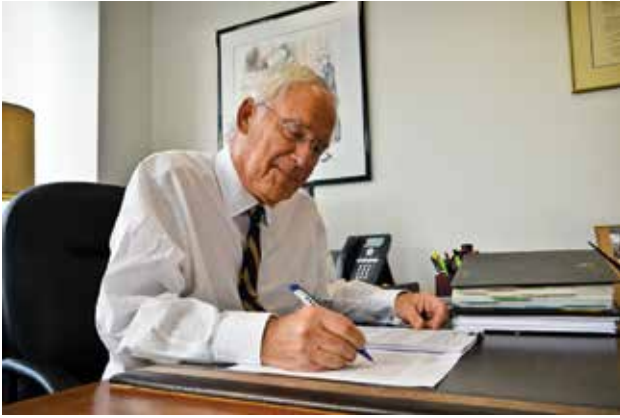
8. Use the opposing expert to help your own cause.

Wellman suggests that the cross-examination should be directed to bring out such scientific facts from the knowledge of the opposing expert as will help his or her own case, and thus tend to destroy the weight of the expert's opinion.

No question should be put to an expert which is in any way so broad as to give the expert a platform to expatiate on his own views, and thus afford him an opportunity in his answer to give his reasons for his opinions in his own way, which counsel calling him as an expert might not have fully brought out in direct examination.

Wellman warns that:

"The professional witness is always partisan, ready and eager to serve the party calling him. This fact should be ever present in the mind of the cross-examiner. Encourage the witness to betray his partisanship; encourage him to volunteer statements and opinions, and to give unresponsive answers. Jurors always look with suspicion upon such testimony. Assume that an expert witness called against you has come prepared to do you all the harm he can, and will avail himself of every opportunity to do so which you may inadvertently give him. Such witnesses



are usually shrewd and cunning ... , and come into court well prepared on the subject concerning which they are to testify."

9. Exercise self-control when you have elicited a damaging answer to your cause.

Both Brown and Wellman say that rather than showing surprise, the cross-examiner (not to be pulverized by a damaging answer) should appear to take the answer as a matter of course, let it fall perfectly flat and proceed with the next question as though nothing had occurred, or simply say "uhm-mm". Again, the essential thing is not to lose control of the witness.

Sopinka gives the following advice:

"Develop a stoical attitude to bad answers. Go on to something else without apparent emotion. If you think of something to dilute the bad answer, come back to it. Avoid long awkward pauses. ... try to finish on a positive note."

10. Don't be indignant.

The late British barrister, Clifford Mortimer, stated that "the secret of cross-examination is not to examine crossly".

The advice to trial lawyers is that indignation can destroy one's objectivity and judgment. (This rule applies no less importantly to expert witnesses, whose objectivity and credibility are at stake.)

11. Make the point with silence.

Brown suggests that when the opposing witness during cross has finally been "coaxed or coerced" into making a material admission important to the cross-examiner's case, it is often effective to pause for a moment and allow the response sink in with the court. "A moment of

quiet in the courtroom can be startling, ... "

As Wellman puts it: "It cannot be too often repeated ... that saying nothing will frequently have a better result than hours of questioning. It is experience alone that can teach us which method to adopt." He refers to the story of John Philpot Curran, known as the most popular advocate of his time, who once indulged himself in the silent mode of cross-examination but who had made the mistake of speaking his thoughts aloud before he sat down:

"There is no use asking you questions, for I see the villain in your face." The witness replied with a smile: "Do you, Sir? I never knew before that my face was a looking-glass."

12. Avoid petty points.

Brown suggests that when a witness in direct examination has scored a direct hit on the cross-examiner's case, and the cross-examiner knows that the witness cannot effectively be turned around, counsel should resist the temptation of bringing out trivial inconsistencies in the direct testimony in the hope that they would discredit the witness and his evidence.

Counsel should avoid descending to the use of petty points in questioning instead of foregoing cross-examination unless there is something of substance to cross-examine on.

13. Consider timing.

Brown suggests that, during cross-examination, counsel should look for a high peak (if there is one) upon which to terminate and sit down. "Keep an eye on the clock, because it is always best to finish a session strong and, in some cases, to have overnight for honing of further cross-examination. Try to have your best thought come just before you finish the day's session".

Conclusion

While counsel should try to be familiar as necessary with the opposing expert's educational background, professional credentials, experience and the nature of the technical expert evidence that will be adduced at trial, there can be no substitute for thorough and careful preparation. This will entail having a good grasp of the technical issues in dispute and a proper understanding of the differences in the experts' respective opinions and underlying reasoning and methodologies.

New Approach to Interpreting Fourth Amendment Protection Bolsters «Mosaic Theory» Says UM Carey Law Professor

Computer science could provide solution to clarify search and seizure warrants;
long-term surveillance



Renée Hutchins

Researchers at the University of Maryland Francis King Carey School of Law and Columbia Engineering recently published a study in the *New York University Journal of Law & Liberty* that examines how advances in machine learning technology may change the way courts treat searches, warrants, and privacy issues.

One of the big questions under debate is whether police should be required to get a search warrant before tracking someone's location. The traditional answer has been «no»: you have no expectation of privacy in public movements. Thirty years ago, the Supreme Court upheld use of a tracking device without a search warrant, but in that case, the device was used for only three days. Would a longer period be different?

To help answer this question, legal academ-

ics have developed the «mosaic theory» of the Fourth Amendment, which holds that a large enough collection of data is vastly more revealing than the individual points. The Court of Appeals for the DC Circuit accepted this theory in *Maynard v. United States* (2010), holding that long-term surveillance four weeks, in this case was a search protected under the Fourth Amendment, that it exposed an "intimate picture of the subject's life that he expects no one to have short perhaps of his spouse" and therefore should have had a warrant. One objection to this theory is very practical: how can police draw the line? Why is three days acceptable while four weeks is not?

«Computer science can provide an answer. The basic idea is very simple: when machine learning techniques the same sorts of tools that let companies like Amazon and Netflix make accurate recommendations, based on your past history can make accurate enough predictions, you have a mosaic,» says Steven M. Bellovin, Computer Science (CS) Professor at Columbia

Engineering, who co-authored the paper with Renée Hutchins (pictured), professor of law at the University of Maryland Carey School of Law, CS Associate Professor Tony Jebara and PhD candidate Sebastian Zimmeck, both at Columbia Engineering.

«This has been a controversial subject,» says Hutchins, «especially in this new age of big data, and the courts don't agree about what constitutes a search that requires a warrant. There still are a lot of open questions in the courts about all this. We wanted to combine the lessons of machine learning with the «mosaic theory» and apply the pairing to the Fourth Amendment, and see what we came up with.»

Their study focuses on how technology in particular, understanding the data compilation and analysis revealed by machine learning can provide important Fourth Amendment insights, especially when it comes to long-term surveillance and whether a search warrant is necessary.

«One of the things we discovered,» says Bellovin, who was also chief technology officer of the Federal Trade Commission from 2012 to 2013, «is that the threshold is at most a week, probably less. You can now get predications of startling accuracy with remarkably few data points. The scientific literature shows that the intuitive answer is correct. Most people have reasonably consistent movements during the workweek. As it turns out, weekend movements are pretty regular, too. An observer can get a remarkably full picture of someone's life in just seven days.»

Bellovin met Hutchins, an expert on the Fourth Amendment, when he gave a talk at Maryland Carey Law three years ago on online anonymity and privacy. They discussed location tracking and its ramifications in the legal system, and decided to work together to examine these issues in a collaboration that brings together expertise in computer science, policy, and the law. Bellovin enlisted his colleague, Jebara, who is an expert in machine learning

and in making predictions based on location data, and his PhD student Zimmeck, who is also a lawyer.

Machine learning is the branch of computer science that studies systems that can draw inferences from collections of data, usually through mathematical algorithms. «We found that machine learning makes it clear that mosaics can be created, and that the duration of investigations is relevant to their substantive Fourth Amendment treatment because duration has a large impact on the accuracy of the predictions,» notes Jebara, who chairs the Institute for Data Sciences and Engineering's Foundations of Data Sciences Center.

«We now have a better understanding of the value of aggregated data when viewed through a machine learning lens,» adds Bellovin, who chairs the Institute's Cybersecurity Center. «While reasonable minds may dispute the most suitable minimum accuracy threshold, it's clear that the collection of data points allowing predictions that exceed selected thresholds should be generally deemed unreasonable searches in the absence of a warrant.»

The researchers also note that any new rules should take into account not only the data being collected but also foreseeable improvements in machine learning technology that will ultimately be brought to bear on it. This includes using future algorithms on older data.

«Certainly in principle, machine learning can tell us if a mosaic exists,» Bellovin observes. «It can also help us draw lines beyond which a mosaic definitely exists, for instance, measuring the degree of intrusiveness, or loss of privacy, for any given set of location points.»

«The development of a legal doctrine for location tracking is in its infancy,» adds Hutchins. «It's essential that the legal and computer science communities work together, and that the law on location tracking continues to keep step with the current state of scientific discovery.»

Marcel Aubut joins BCF

Over Thirty Colleagues from Montreal and Quebec City Follow Him

Mario Charpentier, the Managing Partner of the law firm BCF LLP, is proud to announce that Mr. Marcel Aubut, one of Canada's most-renowned lawyers, along with some thirty members from his team in Montreal and Quebec City, have decided to join the firm. Mr. Aubut will become Vice-Chairman of the Board, as well as a Partner.

"We are pleased to welcome someone of Mr. Aubut's caliber. During his entire career and wherever he has worked, Marcel has combined his skills as an entrepreneur and as a builder. His vast knowledge and experience in business law will be strong assets for our growth. His relational network on five continents, his sense of innovation and his natural leadership will be invaluable resources for our office. He has a rare combination of legal knowledge and diversified business experience. He has been very dedicated to the Canadian and Québec communities for many years. He is one of the best lawyers in Canada, and we are really proud to have him on our team," said Mario Charpentier.

"I have thought very carefully about this decision and the many opportunities presented to me. Today, I decided to join BCF, a well-established firm which has been making tremendous progress in Quebec for several years. My team and I are joining an entrepreneurial and forward-thinking company, two important criteria that reflect my values. Together, we will commit ourselves to reach a new summit of excellence for the company. I am particularly pleased to undertake this new challenge and have a highly-skilled team joining me at BCF. It is the absolute best choice for the future," he added.

President of the Canadian Olympic Committee, Marcel Aubut has been working in business law for more

than thirty years while sitting of many boards. He was the CEO of the Quebec Nordiques and a Governor of the National Hockey League. He also spearheaded the merger which allowed the Nordiques, as well as the Winnipeg Jets, the Edmonton Oilers and the Hartford Whalers, to join the National Hockey League in 1979. He founded the firm Aubut Chabot in 1983, which then merged in 1998 with the Pan-Canadian firm Heenan Blaikie. He was President and CEO of Productions Trans-Amérique and President and Founder of the Parc Technologique du Québec Métropolitain. Mr. Aubut was recently recognized as one of the top Canadian lawyers in sports law by the publication *The Best Lawyers in Canada*. A renowned philanthropist, Mr. Aubut is an Officer of the Order of Canada and the Ordre national du Québec. Among his other distinctions, he is:



Marcel Aubut

- Member of the International Relations Commission of the IOC (International Olympic Committee)
- Member of the Canada and Quebec Sports Pantheons
- Recipient of the Quebec National Assembly Medal
- Recipient of the Queen Elizabeth II Diamond Jubilee Medal, 2012
- Recipient of the Quebec Bar Medal, 2009
- Queen's Counsel, 1986
- Nominated 3rd most influential personality in the Canadian sports industry according to *The Globe's* 2013 Power list
- Recipient of the honorary title of Emeritus Lawyer by

the Quebec Bar, 2008

- Nominated Grand Québécois by the Chambre de Commerce de Québec, 2010

Mr. Aubut and his team will join BCF during the weeks of February 10 and 17, 2014. <http://www.bcf.ca/en/people/marcel-aubut>

BCF has more than 200 lawyers and other professionals whose legal practice adapts to fit the changing needs of the business community. Its unique multidisciplinary team approach is designed to meet specific needs of

companies. Being a member of Meritas International Network, a group of 7,000 professionals in more than 80 countries, BCF has a much sought-after expertise in the fields of mergers and acquisitions, Canadian and international tax systems, securities, venture capital, banking law, intellectual property, commercial litigation and insolvency, as well as real estate law, labour law, business immigration, international arbitration and entertainment, sports and media. BCF is a leader of business law in Quebec and, since 2007, has been an annual winner of the Canada's 50 Best Managed Companies program.

Dentons Canada LLP confirms 46 new lawyers in total

Dentons Canada LLP is pleased to announce that a total of 46 lawyers have joined the firm's offices in Montreal, Toronto and Calgary this month from Heenan Blaikie LLP, including a further five partners and 11 associates who have joined since previous announcements. These lawyers are joining key practice areas at Dentons, complementing and building on the strength of the firm's current groups. For previous related announcements, please click [here](#), [here](#), [here](#) and [here](#).

"The dissolution of a respected firm like Heenan Blaikie is a sobering event for all of us in the Canadian legal community" said Chris Pinnington, Dentons' Canada Chief Executive Officer. "However, we are pleased that our new colleagues have chosen Dentons as the firm best suited to meet the needs and expectations of their clients and to enable them to continue to build their successful practices. They enhance our strength in a number of our key practices and sectors, in strategic alignment with our Canadian and global platform."

"These lawyers are highly sought-after professionals and it is a testament to our business vision and strategy that they are choosing Dentons as their new firm," said Elliott Portnoy, Dentons' Global Chief Executive Officer. "Our clients in Africa, Asia, Europe, the Middle East, UK and US - and, of course, Canada - will greatly benefit from the wealth

of experience and legal talent these 46 lawyers add to our strong and dynamic team."

Our newly announced partners and counsel are:

- Wendy Del Mul (counsel) and Allen Garson (partner) are joining Dentons' Corporate group in Toronto;
- Kenneth Kraft (partner) and John Salmas (partner) are joining Dentons' Insolvency group in Toronto; and
- Tommaso Nanci (counsel) joins Dentons' Infrastructure/P3 group in Montreal.

An additional 11 associates are now confirmed to join Dentons Canada. In Montreal, Audrey Myette (Tax) and Lampros Stougiannos (Infrastructure/P3); in Toronto, Jayme Alter (Entertainment), Andrew Bourns (Business Law), Liane Fong (Business Law); Radha Kholsa (Financial Services), Michael Shedletsky (Entertainment), Larry Nevsky (Tax) and Rahim Suleiman (Business Law); and in Calgary, Darryl Douglas (Energy Transactions) and Danielle Mayhew (Corporate Securities).

Dentons Canada has also hired a number of Heenan Blaikie's current articling, incoming summer and incoming articling students, and staff. Since Dentons' global combination became effective in March 2013, Dentons Canada has engaged in a targeted strategic recruitment campaign to grow key practices and further enhance the firm's client services.

QUEBEC JUDICIAL APPOINTMENTS

The Honourable Peter MacKay, P.C., Q.C., M.P. for Central Nova, Minister of Justice and Attorney General of Canada, today announced the following appointments:

The Honourable Geneviève Marcotte, a puisne judge of the Superior Court of Quebec in Montreal, is appointed a puisne judge of the Court of Appeal of Quebec to replace Mr. Justice J.R. Fournier (Montreal), who was appointed Associate Chief Justice of the Superior Court on December 17, 2013.

Madam Justice Marcotte was appointed to the Superior Court of Quebec in 2008. She completed a Bachelor of Laws at McGill University in 1986 and was admitted to the Barreau du Québec in 1987. She practised with Lavery, de Billy from 1987 to 1998 and with Heenan Blaikie in Montreal until her appointment. Her area of practice was civil and commercial litigation.

Madam Justice Marcotte was active with the Canadian Bar Association and Barreau du Québec, notably the Civil Litigation and Insurance Section (1994-1998) and the Liaison Committee with the Court of Appeal. She has authored various legal articles.

The Honourable Daniel Dumais, a lawyer with Norton Rose Fulbright in Quebec, is appointed a

puisne judge of the Superior Court of Quebec to replace Mr. Justice C.C. Gagnon (Québec), who was appointed to the Court of Appeal on November 7, 2013.

Mr. Justice Dumais obtained a Bachelor of Laws from l'Université de Laval in 1981 and was called to the Barreau du Québec in 1982. He completed a Masters of Laws at Osgoode Hall Law School in 1987 and received the Emeritus Lawyer distinction from the Barreau du Québec in 2012.

Justice Dumais practised with Heenan Blaikie (formerly Aubut Chabot) from 1992 to 2012 and then joined Norton Rose Fulbright. His practice areas were civil litigation, commercial law, insurance law, and arbitration.

Mr. Justice Dumais was recognized in the legal directory Best Lawyers in Canada in the area of sports law in 2011 and 2012. He was a lecturer for the Bar Admission Court from 1995 to 2003 and an instructor at l'Université Laval from 1987 to 1994. He was a member of the Canadian Bar Association and the Sports Lawyers Association.

The Honourable Guy de Blois, a lawyer with Langlois, Kronström, Desjardins in Quebec, is appointed a puisne judge of the Quebec Superior Court to replace Mr. Justice M. Lesage (Quebec), who

elected to become a supernumerary judge as of November 18, 2013.

Mr. Justice de Blois received a Bachelor of Laws from l'Université Laval in 1984 and a Master of Business Law from the London School of Economics, University College, London (England), in 1987. He was admitted to the Barreau du Québec in 1985.

Mr. Justice de Blois practised with Langlois, Kronström, Desjardins and predecessor firms from 1999. Prior to that, he had practised with Hickson Martin Blanchard (1991-1999), Kronström Desjardins (1988-1991) and St-Hilaire de Blois (1985-1986). His main areas of practice were bankruptcy, insolvency and restructuring, including banking litigation and commercial litigation.

Mr. Justice de Blois was a member of the Canadian Bar Association from 1999 and a member of the Superintendent of Bankruptcy's Oral Examination Committee for the licensing of trustees-in-bankruptcy. He was recognized in the Canadian Legal Lexpert Directory in the areas of insolvency and financial restructuring.

The Honourable Chantal Lamarche, a lawyer with Borden Ladner Gervais, is appointed a puisne judge of the Quebec Superior Court to replace Madam Justice M.-F. Courville, who elected to become a supernumerary judge as of October 20, 2013.

Madam Justice Lamarche received a Bachelor of Laws from l'Université de Montréal in 1988 and was admitted to the Barreau du Québec in 1989. She practised with Heenan Blaikie from 1989 to 2014 before joining the Labour and Employment Law Group Borden Ladner Gervais. Her main areas of practice were labour law, employment law, and human rights.

She served as a professor at l'École Polytechnique de l'Université de Montréal. Since 2000, she has revised and updated the publication *Le Congédiement en droit Québécois*. She has been a frequent conference speaker on employment law issues.

The Honourable Donald Bisson, a lawyer with McCarthy Tétrault in Montreal, is appointed a puisne

judge of the Quebec Superior Court to replace Mr. Justice R. Nadeau, who elected to become a supernumerary judge as of November 20, 2013.

Mr. Justice Bisson received a Bachelor of Laws from l'Université de Montréal in 1992 and a Master of Laws from King's College in London, England in 1995. He was admitted to the Barreau du Québec in 1993.

Mr. Justice Bisson served as a law clerk for the Honourable Justice Claire L'Heureux-Dubé of the Supreme Court of Canada. From 1995, he practised with McCarthy Tétrault and served as Chair of their Litigation Group and Class Actions Group. His areas of practice included civil and commercial litigation.

Mr. Justice Bisson's expertise in class actions and commercial litigation has been recognized by various publications, including *The Canadian Legal Lexpert*, *Lexpert Guide to the Leading US/Canada Cross-Border Litigation Lawyers in Canada* and the *Best Lawyers in Canada*. He was a contributing author of the first, second and third editions of *McCarthy Tétrault Defending Class Actions in Canada*, published by CCH.

The Honourable Marie-Claude Armstrong, a lawyer with Lavery, de Billy in Montreal, is appointed a puisne judge of the Quebec Superior Court to replace Madam Justice G. Marcotte (Montreal), who was appointed to the Quebec Court of Appeal.

Madam Justice Armstrong received a Bachelor of Laws from l'Université de Montréal in 1992 and was admitted to the Barreau du Québec in 1993. She joined Lavery, de Billy and practised as a member of their Family, Personal and Estate Law Practice Group.

Madam Justice Armstrong has been Chair of the Liaison Committee for the Quebec Superior Court on family matters and a member of the Liaison Committee on the administration of civil justice of the Barreau de Montréal since 2013. She was recognized in the 2014 edition of *Best Lawyers in Canada* for her expertise in family law.

These appointments are effective immediately.

The Honourable Mr. Justice Clément Gascon

Mr. Justice Clément Gascon graduated from Collège Jean-de-Brébeuf (DEC, 1978) and McGill University with a Bachelor of Civil Law (B.C.L. 1981). He was called to the Barreau du Québec in 1982.

Mr. Justice Gascon is currently a judge of the Quebec Court of Appeal, on which he has served since 2012.

During his career as a lawyer, he spent 21 years with the Montreal-based law firm Heenan Blaikie, specializing in civil and commercial litigation. He was also a lecturer in business law, in labour law and in construction law at the Cégep Saint-Jean-sur-Richelieu, at l'Université du Québec à Montréal, at McGill University and for the Barreau du Québec.

Mr. Justice Gascon has co-authored books, publications and articles on the individual contract of employment, restrictive covenants, fiduciary duty and unfair competition.

Mr. Justice Gascon was appointed to the Quebec Superior Court in October 2002. He was a member of that court's Commercial Division in Montreal, which is responsible for commercial matters cases, ranging from Companies' Creditors Arrangement Act proceedings to insolvency proceedings and shareholders' disputes. From September 2008 to September 2011, Mr. Justice Gascon assumed the role of coordinating judge of that Division. From 2007 to 2010, he was also the representative of the Superior Court on the Canadian Bar Association, Québec Division, committee on class actions. He assumed a similar role on the working group created to study the U.S.-Canada Cross-Border Class Action Protocols.

Since 2008, Mr. Justice Gascon has been the co-chair of the annual Canadian Institute for the Administration of Justice Judgment Writing Seminar for newly-appointed

federal judges. He frequently participates as a speaker in continuing legal education seminars on commercial matters, judgment writing and class actions.

Note on the Supreme Court case of Union Carbide vs. Bombardier

The general rule is that negotiations and mediations are covered by the privilege which defines the confidentiality, the common law privilege.

The general rule has an exception, the privilege does not cover proof being made of the existence or scope of a settlement.

In this case, one party alleged that the settlement covered only matters arising out of claims in the District of Montreal, the other party insisted that the settlement covered all of Canada.

The core question is can you contest homologation and claim the exception to the common law rule and make proof of what happened in the mediation to prove the existence or the scope of a settlement.

Justice Wagner held that a classic clause of confidentiality did not waive the exception.

It would take a specific renunciation to the exception.

I would submit that the exception could come to the aid of either party and therefore it should not be waived by either party without some specific justification.

Me Richard McConomy
Lawyer/Mediator

United Nations Honors Family of Parker Ibrahim & Berg Partner Joe Lemkin

The family of Joseph H. Lemkin, partner at the New Jersey law firm of Parker Ibrahim & Berg, was honored last month at the United Nations during the commemoration of the 65th Anniversary of the Genocide Convention that paid tribute to Raphael Lemkin, an international attorney who coined the word "genocide" and who has been recognized as being primarily responsible for the creation of the UN Convention for the Prevention and Punishment of the Crime of Genocide.

"What Raphael Lemkin did was incredible — to persevere until genocide was made into a palpable crime that can be prosecuted," said Joseph Lemkin, who is second cousin to Raphael. "For the family, it was deeply meaningful to witness this event led by United Nations Secretary-General Ban Ki-moon, who was represented by Deputy Secretary-General Jan Eliasson."

Raphael Lemkin was born in Poland and escaped to the U.S. ahead of the Nazi occupation. His cousin Daniel, Joseph's father, was conscripted into the Russian army and survived World War II, but the rest of the Lemkin family in Poland perished in the Nazi concentration camps or died in the resistance movement.

"My father told me of Raphael's trips to Washington, D.C., having spent all of his money and being shunned by many," said Joseph. "But his legacy lives on, as one of the initial acts of the first-ever United Nations General Assembly was to adopt the convention that Raphael Lemkin had been promoting."

Joseph Lemkin currently serves as chairman of Parker Ibrahim & Berg's bankruptcy practice group. He is admitted to practice in New Jersey and New York and is a member of the New Jersey State Bar Association, the New York State Bar Association and the American Bankruptcy Institute. Lemkin is a graduate of Hofstra University School of Law, where he was awarded the Charles Falabella Labor Studies Award, and received his BA degree from Rutgers College.

Parker Ibrahim & Berg represents a wide array of corporate clients, including Fortune 500 companies, national banks, retailers, reinsurers, mortgage lenders and financial services companies. Its practice areas include mortgage banking, bankruptcy, commercial litigation, reinsurance/insurance, regulatory consulting, regulatory enforcement, consumer finance, fair lending, and corporate transactional matters.

Government Successfully Settles Large Qui Tam Suit

By Natalie Khawam

Whistleblower Law Firm, P.L. is pleased to announce that the qui tam lawsuit originally brought and filed by its managing member, Natalie Khawam, Esq., MBA, MS, in the matter of United States ex rel Fuentes et.al. v. Genzyme Corporation, No. 8:09-cv-1245-T-23-EAJ, U.S. District Court for the Middle District of Florida, was settled on December 20, 2013 for \$22.28 million.

"I am pleased to see the case I developed come to a successful conclusion," said Natalie Khawam, Managing Member of Whistleblower Law Firm, P.L.

Attorney Natalie Khawam identified, prepared and filed this qui tam suit, while associated with the law firm of Cohen, Foster & Romine, in 2009, on behalf of two sales representatives of Genzyme who alleged that Genzyme encouraged them to market a surgical substance called Septrafilm for uses not approved by the FDA. The suit alleged that false claims were made for such uses under Medicare and Medicaid. On December 20, 2013, the Department of Justice announced that the suit has been settled with Genzyme agreeing to pay a total of \$22.28 million to the United States and a group of states in settlement of the claims.

About Natalie Khawam and the Whistleblower Law Firm

Attorney Natalie Khawam is a graduate of Georgetown University Law Center, and earned an MBA degree and an M.S. degree in healthcare prior to her achieving her law degree. Ms. Khawam has significant experience in healthcare law, including having worked in the Office of the General Counsel, at the U.S. Department of Health & Human Services, for the Centers for Medicare and Medicaid Services (CMS) division.

The Whistleblower Law Firm, P.L. is located in downtown Tampa, FL, in the BB&T building. For more information about the firm, please call (813) WHISTLE.

Ian M. Solloway re-elected Chair for a 6th consecutive term



Ian M. Solloway

Ian M. Solloway was re-elected by acclamation to a sixth consecutive term as Chair of the English-speaking section of the Bar of Montreal at its annual general meeting on March 11th at the Salon des Avocats at the Montreal Courthouse.

Three other candidates were nominated to fill the three English-speaking councillor positions open this year on the 2014-15 Montreal Bar Council : two former Bar of Montreal bâtonniers, Alan Stein and Richard McConomy, and Stephen Schenke.

Me Greg Moore has is also slated d as incoming Bâtonnier of the Montreal Bar.

According to a scientific pool by the Quebec Bar in 2008, 25% of (then) 23,500 members used a language other than French in their practice. More so for the close to 15,000 members of the Bar of Montreal.

Blind Chinese Dissident Wins Courage Award at Geneva Summit for Human Rights and Democracy

Champions of Human Rights Assemble Ahead of UN Human Rights Council

Chen Guangcheng, the blind Chinese activist, received the 2014 Geneva Summit Courage Award yesterday from an international assembly of human rights groups, where dissidents shared harrowing testimonies of human rights abuses ahead of Monday's gathering of foreign ministers at the United Nations Human Rights Council.

Hundreds of dissidents, activists, diplomats and journalists gathered from around the world yesterday for the 2014 Geneva Summit for Human Rights and Democracy, the annual civil society forum that works to place urgent situations on the UN agenda.

The summit was organized by the Geneva-based human rights group UN Watch, supported by a cross-regional coalition of 20 NGO co-sponsors.

UN Watch chairman Alfred H. Moses presented the award to Chen, a former political prisoner who escaped house arrest in 2012, "for inspiring the world with his extraordinary courage in the defense of truth, justice and human rights."

Chen, who has been blind since childhood, taught himself law and exposed forced abortions and sterilizations in his native Shandong Province before his imprisonment by local authorities.

In a drama covered on front pages worldwide, Chen escaped house arrest in China in May 2012 and sought refuge at the U.S. embassy in Beijing before moving to the United States.

"People who live in democracy and freedom don't realize how important they are to them, but people who are oppressed understand that democracy and freedom are very important," he said.

Dissidents or members of their families from countries including Syria, Iran and Cuba were present at Tuesday's conference.

With the world's spotlight trained on North Korea following a stinging UN report into the regime's mass atrocities, prison camp guard turned human rights activist Ahn Myong Chul explained that 90 percent of inmates don't even know

the reason for their incarceration, punished for "crimes of their grandfathers."

Also in attendance was the aunt of Venezuelan opposition leader Leopoldo Lopez, arrested by security forces on February 18 after a series of protests brought tens of thousands onto the streets of

Julieta Lopez read out a statement from her nephew. "Only dictatorships send dissidents to prison and if the government puts dissidents in prison, they accept openly that Venezuela is a dictatorship. The emperor has no clothes," she said.

Naghmeh Abedini (left), wife of jailed Iranian-American pastor Saeed Abedini, says she believes now is a good time for the United States to pressure Iran to release her husband, who was arrested for teaching Christianity.

"At present my husband is suffering from internal injuries that resulted from beatings, but the Iranian government is denying him the necessary medical care needed to treat those injuries," Abedini told the conference.

"Freedom of religion, including the right to change one's religion, is a God-given right of all people, including the Iranian people. No human law should infringe upon that right."

"We must make sure China remains accountable for its actions. They sit proudly on the UN Human Rights Council, on the Security Council, and dictate how Syria should deal with its situation," said Tenzin Dhardon Sharling, the youngest member of Tibet's parliament in exile.

She also criticized the UN High Commissioner for Human Rights, saying, "Navi Pillay ends her second term in September and still has not visited Tibet."

"During Mubarak's time women were only mentioned to decorate the regime, said Egyptian women's rights activist Dalia Ziada, who heads Cairo's Ibn Khaldun Center for Development Studies..

"Under the Muslim Brotherhood, laws were made for early marriage for girls and genital mutilation."

The MONTREAL LAWYER

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