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VOLUME 36 | NO. 1 | SUMMER 2017

### COVER FEATURE: #TALKJUSTICE SUMMER READING SPECIAL

Essays, poems and reflections inspired by #TalkJustice

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- [on the web at talkjustice.ca](https://talkjustice.ca)

Find our Legal Services Regulation Updates at [nsbs.org/legal-services-regulation-update](https://nsbs.org/legal-services-regulation-update)
The power and potential of ‘finding voice’ and listening

This #TalkJustice issue of The Society Record magazine represents something rare and important. When I was approached to help edit an issue with a special focus on incarcerated voices, we knew that people in prison had to be centred in the work, and we asked them to take a lead role not only in writing the material, but in shaping its direction.

Anyone who has been in prison or has loved ones inside knows the difficulty of communicating through prison walls. When people are incarcerated, they are removed from their communities and families, and hidden away from us. Communication is difficult, phones are expensive (an issue addressed within this publication), and phone access can be unreliable. In an age of instantaneous communication, we have to depend on “snail mail” to share material. People wrote essays and poems in the midst of incredibly stressful life events and in difficult conditions. Their words represent resilience and a commitment to having their stories heard.

When people felt heard and that their voices were respected, it changed the way they felt about themselves and their ability to be valued and listened to inside.

This issue would not exist without the incredible editing work of R. When I approached him to help spread the word and gather material from inside, I told him this issue would go to lawyers and judges across the province. On his own, he approached people, asking them the question, “What would you say if you could have your voice heard?” From that powerful question came essays that feature incredibly insightful writing on a range of issues faced by incarcerated people, from culture and race to mental health, addictions, Indigenous programming, legal costs, rehabilitation and more.

The women’s poems come from workshops inside Nova Institution initiated by the women themselves. Some of the pieces were written inside the secure unit. One poem was written on the whiteboard in the program room by one of the women, and with her permission copied down by me – in it, she shares her experience of being trafficked. The women produced many more poems; these represent mostly the poems I was able to take away with me. The brilliance, honesty, and depth of personal insight and courage these women possess in sharing their vulnerability and thoughts is extremely powerful, and I honour them for sharing.

The power and potential of ‘finding voice’ and listening

When people felt heard and that their voices were respected, it changed the way they felt about themselves and their ability to be valued and listened to inside.

This first-person material provides powerful testimony to the conditions inside our jails but more than that, it also shifts our ideas of what people in prison are capable of – when I shared some of these essays with my classes, students were frequently surprised at the eloquence and insight of this writing. Too often, we label people with the word “criminal” and believe that defines everything about them. The words in these essays push back on that view and ask us to see the people inside as complex human beings, whose experiences of the justice system offer important knowledge and solutions.

The process of “finding voice” also had effects in other ways. In the act of expressing themselves and thinking about solutions, people also gained confidence in their ability to advocate for themselves and to present issues to staff. When people felt heard and that their voices were respected, it changed the way they felt about themselves and their ability to be valued and listened to inside. Many people shared that this feeling allowed them to successfully help other people, helped them communicate with staff, and made them feel more human.
Gathering this work also required cooperation from the institutions. Whether it was allowing educational mail into the men’s side and supporting the materials being sent back and forth to help shape the essays you are reading, or escorting me onto the secure unit at Nova to sit with the women and write together, putting this issue together meant that many staff members had to support the voices of incarcerated people and believe in their creativity and their power of expression.

I truly believe that when we support people in telling their stories and sharing their voices, we are not just gathering words. We are learning how to see each other in new ways, how to come to shared solutions, and how to be accountable for ourselves. People hearing that this issue features the voices of people who are incarcerated may think this allows people to make excuses for themselves – in fact, my experience writing with people in prison has consistently been that people take the space to reflect honestly on themselves, to take responsibility, and also to heal. The emphasis on conversation and dialogue in the name “#TalkJustice” is appropriate here: when we begin to talk and listen to each other, we help build the conditions where we can work together to address issues of criminalization, violence, and the social issues in our communities.

As you read these pieces, you also become part of this conversation. Some may challenge you. You may disagree with some of the experiences shared or the opinions given.

You may have your own perspective. The writers of these pieces have also said they are interested in these responses – because it is through the process of challenging each other, disagreeing, and sharing our own experiences that we come to an understanding of each other.

Thank you for taking the time to read these pieces. When we think about justice we often think about courts, sentencing, policing and other elements of the system. Justice also begins with seeing each other’s humanity, and I believe these pieces demand that of us, and ask us to open ourselves to new perspectives.

Thank you to the Barristers’ Society for its incredible work making space, to all the writers, to the BPH crew Todd McCallum, iZrEAL Jones and Ntombi Nkiwane, to LaMeia Reddick for her incredible work gathering stories since the inception of #TalkJustice, to the artists and photographers, to Chief Justice MacDonald and former Justice Minister Whalen for making the #TalkJustice project’s expansion possible, and to everyone else who has brought these voices to these pages.

El Jones
Guest Editor

These excerpts are from real people with real stories, a side of justice that is rarely seen, coming from those on the inside.

My participation in this project is encouraged by the slight chance of inspiring or broadening a reader’s insight into the lives of those on the other side of the law, which is the side that should be considered a little more thoroughly so that changes and improvements hit the right mark and achieve the right aim. We must all agree that the carriage of justice is not as good as it can be, or should be for that matter, which is why we all have a job to do to continue to implement, improve and maintain fair and just tools that will better our justice system and strengthen our role in rehabilitating our citizens for reintegration back into society.

We must all agree that the carriage of justice is not as good as it can be…

Much thanks to the Barristers’ Society and those who played a part in making this opportunity possible. I would also like to give a special thanks to my team at Black Power Hour — Reed Jones, El Jones, Ntombi Nkiwane and Todd McCallum.

Also, thanks to the participants who submitted their work; they provided thoughtful material that will hopefully improve some readers’ perspective on the current system in place.

Thank you.

“R.”
Guest editor
Issues of Criminalization and Imprisonment

A workshop with Senator Kim Pate

Michael Lightstone
Freelancer

Before her appointment to the Senate of Canada last fall, the Honourable Kim Pate spent 35 years advocating for women prisoners’ rights. She continues to do so and shared many insights and ideas during a two-day workshop hosted in January by the Nova Scotia Barristers’ Society.

A former executive director of the Canadian Association of Elizabeth Fry Societies, Senator Pate said more and more female inmates are from Indigenous and other racialized communities.

“The overrepresentation of our indigenous peoples is painfully obvious,” she told the workshop. “By the time we’re finished this year, it’s estimated that one in two women in federal custody will be a racialized woman.”

Senator Pate reviewed relevant case law, including the groundbreaking Gladue decision in 1999 from the Supreme Court of Canada that advised lower courts to consider an Indigenous offender’s background as part of sentencing decisions. She also introduced the screening of a National Film Board documentary about Diane Charron, an Indigenous woman who began a life sentence in prison in 1981. A troubled young woman with severe psychiatric problems, Charron was eventually reintegrated into society with much help and support and now lives on her own in a semi-independent living situation.

In addition to inmates’ mental health issues, Correctional Service Canada says research shows about two thirds of federally sentenced women in provincial jails are mothers, and about two thirds of those prisoners were the primary and sole caregiver in their household. In March 2016, the Office of the Correctional Investigator recommended increasing participation in mother-child programs in federal prisons – particularly in minimum- to medium-security prisons, where 70 per cent of inmates are moms to children under age 18, The Canadian Press reported last year.

Attendees also heard about the absence of plain English with respect to words many government officials and employees use when talking about prison life. The frequent use of jargon, acronyms and euphemisms is counterproductive, participants were told.

Even the term “corrections” presents a problem, said Darlene MacEachern, Executive Director of the Elizabeth Fry Society of Cape Breton: “You don’t become corrected in prison. You don’t become reformed in prison. You become angry and institutionalized.”

Senator Pate concluded her talk by encouraging participants who are advocating for women in the penal system to use the resources available to them, including on-the-record reports filed in case histories. “So, if you’ve got a client (who’s alleging things), bring their story that they’ve told, but also back it up with those documents,” she said.

Held January 12 and 13 in the Society’s classroom, the course was partly professional development for lawyers, an access to legal services tutorial, an examination of racism in the justice system and a class on improving the administration of justice in Canada. Along with lawyers and advocates for women in prison, participants included a former prisoner, a provincial court judge, a provincial politician and a documentary filmmaker.

This is a summary of a longer piece on the Society’s “In the Public Interest” blog. Follow this link to read the full article: nsbs.org/public-interest.
The sad fact is that I ended up with a nine-month sentence in the system, while in society, it took me six to seven months to get an appointment with a psychologist. Once it was finally scheduled, I was unable to attend, since the appointment was 17 days after my sentencing.

Upon admission to the facility, I voiced the need for an appointment for my mental health. After approximately one month, I was told there are no mental health services here. It’s hard to believe, because this facility is so new. I was also told that the only way to receive mental health services was to be transferred to the correctional centre in Burnside, which wasn’t accepting people at that time due to remodelling. In spite of this, I requested a federal remand for the purposes of accessing these services, but was told only a judge could authorize this. Legal aid sent me a letter, stating that it was not possible, but I have witnessed such a transfer before.

It’s a known fact that a high percentage of inmates have mental health problems, and here we are in a state-of-the-art facility with no mental health services. It’s no secret that the town where the facility is located is lacking mental health professionals. I’m sure the government could arrange for them to be brought in from other areas, even only once a month. So much for rehabilitation.

If one is desperately stupid and admits they are contemplating suicide, they are placed in segregation in a suicide dress. It is widely known that segregating persons with mental health issues usually makes the issue worse. The government states that if one has to be segregated due to mental health issues, the period should not exceed 30 days, and the person should be assessed on a daily basis.

This treatment of the individual should be a last resort. Our system seems to be going backwards in time, instead of evolving with comprehensive solutions to help troubled offenders with their rehabilitation.

The growing number of involuntary transfers of inmates is at an all-time high, affecting individuals in more ways than one.

In the last three years, Nova Scotia’s provincial institutions have partnered with the phone company Synergy, having converted over from the previous company, Bell Alliant. This new system comes with some benefits but a lot more difficulties. For starters, before the conversion, when family and friends contributed funds into an individual’s personal account, that individual received these funds tax free; we were taxed only on our purchases. Now, we are being taxed 15% to have money dropped off at the institution, and 22% to have it deposited online.

On top of that, we’re also being taxed on our purchases, which is totally unreasonable given the fact that we’re not offered considerable job opportunities to afford this tax hike. How is it plausible that we’re taxed more while incarcerated than while in society? We haven’t gone up a wage bracket, we’ve gone down! Consider us homeless with, as they say, “three hots and a cot.” Here in (name of facility), they have only three jobs to offer people in protective custody, with pay of about $10 every two weeks for eight or nine hours of work per week.

Let’s get back to the matter at hand. Because of this new phone system, inmates who are involuntarily transferred out of their locality are forced to pay $10.00 per call for what used to cost them $1.35 in their home institution. From these other institutions it costs $7.00 a call, but in order to get $7.00 in your account, you need to pay $10.00 because of the tax. This tax separates people from their families. A lot of us are low income as it is, because of these transfer and phone costs. Many of us are already unable to have visitors because they are hours away; now, we are unable to call because it costs $10.00 for a 20-minute call, creating more stress and worry for individuals in this so-called rehabilitative process.

As a collective group, we need this issue (along with others) to be addressed from the outside, in all forms, because our voices only reach as far as these confined walls. We need to know that there are groups in government who care considerably about the rehabilitative process, and want it to work. The Barristers’ Society has given us an opportunity to have our voices heard, for which we are thankful. We hope that our issues are not taken lightly and are thoughtfully considered, for many of these are daily occurrences to those on the inside.
“You have the right to remain silent. You have the right to a lawyer. If you cannot afford a lawyer, one will be appointed for you.”

Do these words sound familiar to you? The problem with this “slogan” is that the majority of those subject to these very words while having the cuffs slammed on cannot afford a lawyer, and why is that ...? Because there’s been a drastic spike in lawyer rates over the past 20 or so years. The spike has driven the rates so high that it is now to the point where only the top echelons of society can afford private counsel for a lot of the more serious charges.

To me, this is ironic for the simple fact that the majority of folks charged with serious offences come from low income, marginalized communities. On top of that, reasonable bail is being denied to a lot of people, putting them in a position where jobs are lost and the ability to afford counsel along with it. As people, we all make choices in life, and must all live with the consequences. I am not saying we should sympathize with these individuals, but we should understand and acknowledge the necessity for proper representation in such a situation.

The Charter of Rights and Freedoms states that all citizens have a right to a fair trial, but one would question that fair trial on the grounds of proper representation, seeing as the majority cannot afford this representation on some of the more serious charges. Fees for lawyers on some of these charges seem to be set at corporate rates, unaffordable even for most middle class families. The mass incarceration rates of the 1990s seem to have set a precedent for lawyers to cash in off of others’ sweat and tears. You’ll notice prices have skyrocketed, costing a lot of people their life savings and some their lives behind bars, a proportion of them innocent.

To have a lawyer appointed a lot of the time means to take representation that is sometimes ill-experienced or bogged down with work so deep that it is unlikely they’ll be able to properly, effectively prepare for the case. To have a private lawyer on certificate means the lawyers will be working for less than their regular rates, which will make them feel less motivated to put as much effort into their work. This is not to say that there aren’t lawyers out there who passionately care about their work, and who give the utmost to their client’s defence. But on subsidized rates, there is only so much one can do in one’s defence until you reach that cap. Nova Scotia has one of, if not the lowest legal aid rates in the country, putting good-hearted lawyers in a predicament where they have to lose out to help the disenfranchised members of society. This [and other reasons] are why some have dubbed Nova Scotia “the Mississippi of Canada.”

In today’s monetary motivated society, lack of effort is almost inevitable when it comes to hard work and dedication. Even in the smallest way, this can be crucial to the defence of a client. Being that I’m currently on remand awaiting trial, I speak from the heart on this topic. My words may not tread lightly, but consider my current circumstances and you may just see the reality in these words.

**Affordable lawyers**

**There [are Lawyers] who passionately care about their work, and who give the utmost to their client’s defence. But on subsidized rates, there is only so much one can do…**

**ON THE COVER: “Internal Liberation”**

BRIA MILLER created “Internal Liberation”, the striking artwork on the cover of this special #TalkJustice edition of The Society Record. Born in Yarmouth and now living in the North End of Halifax, Bria describes herself as a Queer, Black, Indigenous mixed media visual artist, activist and musician. She also works as a graphic facilitator and as an arts educator who leads workshops across Nova Scotia.

Bria believes in the importance of spaces where racialized and LGBTQ* artists can create together, find support and access to explore, and have their individual voices heard. She is working to organize a shared artspace “to center these beautiful and crucially important voices that are often silenced or outright neglected by our institutions and therefore society”. Find more of Bria’s work on Instagram at @encouraginghonesty.
My voice

I was asked, if my voice could be heard, what would I want heard? I figured I would voice my opinion on a personal experience I suffered while incarcerated.

I served an intermittent sentence of 90 days on weekends, from Friday to Sunday. At the time, I was being medicated with a controlled substance that had to be taken as directed; if not, I would experience withdrawal symptoms and become ill. For six months, which works out to 24 weekends, I was placed in solitary confinement in a suicide “dress” (which I did not need). Not only had I been humiliated every weekend, but I also went without my prescribed medication, which made me sick and unable to return to work on Mondays. I ended up losing my job due to this terrible situation.

This was nothing short of torture, unbelievable in today’s world but unfortunately true. I’ve been told that other people serving intermittent sentences have been refused their medication. These people are not housed with the general population, but kept in solitary confinement. What gives an institution the right to make people suffer in this way? It’s bad enough that one has to go to jail, but this is far beyond the scope of fairness. Some of the longest sleepless days and nights are spent serving an intermittent sentence.

On another note, I was placed on remand, and when I was arrested and held for 24 hours, I missed my methadone. Police refused to provide transportation to the clinic or to arrange for a doctor to see me. This was the first time I had missed my dose since I began the program three-and-a-half months before.

To make a long story short, police informed me that I would either be released and able to go to the clinic myself, or remanded, meaning I would receive it at the facility. Once there, I had a piss test that came back negative for methadone, a clearly inaccurate result. Because of this, I didn’t receive my methadone, and received no help with my withdrawal symptoms. So much for innocent until proven guilty.

When judges are sentencing people, the court should inform the correctional facilities of the medications being taken by those sentenced. If a person has been prescribed a controlled substance, they’re more than likely not going to receive it initially. If a person is on an opiate medication, they will be treated as though stripped of the prescription. If they are lucky, they may receive some Tylenol! The court should ensure that these individuals are gradually weaned off of their medication.

This is unconstitutional and it is torture for some chronic pain sufferers. Just because one who goes to jail has been prescribed a controlled substance, they shouldn’t be subjected to this type of mistreatment. These individuals are not only made sick in the process, but their withdrawal symptoms are not treated.

What it comes down to is that under the current system, people prescribed controlled substances who are sent to jail are being unnecessarily subjected to cruel and unusual punishment.

Trades

At one point in the past, trades were offered in the pen, giving offenders hands-on experience in certain types of work environments. Today, there are none. Such programs have been brought to an end, replaced with programs that don’t accomplish nearly as much as the trades did.

The trades not only give offenders experience, they also help individuals contemplate what they want to do when they get out. I’m sure it gave individuals a drive to become productive in their lives. Knowing, especially while incarcerated, that one is gaining experience in the workplace brings structure to one’s life, giving an opportunity that most might not have while in society. These certified trades also partnered with companies, and guaranteed jobs for those who excelled, once they reintegrated into society. Replacing trades with programs gives the impression that making productive citizens for reintegration is not a priority of our penitentiaries.

It’s rumoured that these trades were removed due to low numbers. A lot of offenders found that trades provided the foundation and structure they needed to live a productive life. This in turn counts for a lower prison population, which also means smaller profit margins in the pockets of corporations. One well known example south of the border is the Corrections Corporation of America, which is paid per prisoner. As Angela Davis explains, for CCA, longer prison terms mean greater profits, but the larger point is that the profit motive promotes the expansion of imprisonment.

Implementing trade opportunities actually has a concrete, lasting effect on the rehabilitation process. Things of this nature need to be addressed, in order that offenders can productively reintegrate into society.
YOU HAVE NO RIGHT TO JUDGE ME
cause you really don’t know my past, walk a mile in my shoes and see how long you would last.

you don’t laugh or cry like me
your body isn’t shaped the same as mine,
what you don’t realize is that words hurt
but after while, I’ll be fine.

it’s okay to be different, to voice my opinions, to be unique, after all, it’s not your approval that I seek.

walk a mile in my shoes then when you have lived my life, you’ll understand why I am the way I am and my strife.

C

REINTEGRATION
“They” say that is the goal.
Minimum, Medium and Maximum Security …

“They” will make you into a Regular, Normal Citizen
What does that mean?

Corruption. Who is worse, Guards, Police, Sheriffs, inmates, thieves, killers
Criminals, Who?
It could be me or it could be you!

It’s all about who can get away with the most. They teach you to lie, cheat, steal & hide, differently than you’ve already known.

They will corrupt you, so you’ll never make it home.

“Look” fresh meat!
“Give the dog a bone.”

KA

WHY IS IT YOU ALWAYS USE SEGREGATION
Based on how we feel, not contemplation?
Why is there no hesitation when punishing us instead of Restoration?
Why is there no appreciation, when we change from negative to positive come on isn’t that sayin’ something?

Those who don’t believe It’s time for Resignation.

All the girls come together and unite as one nation.

KM

I FEEL SO FAT
This little human is sucking the life out of me
Can’t wait to meet her though I hope she is cute, I wonder what she will look like
She better like sports or I’m screwed
Maybe she will actually come out and be a boy
Wouldn’t that be crazy? I’m really looking forward to being a mom.
I hope I’m good at it.
It will be a change that’s for sure. So excited to leave this place, I’ll never be back!

CD
A CHILD’S INNOCENCE STOLEN
Be the one there to protect her
Passed around and sold
Sex and money the only factor
Fuel by drugs and alcohol
Keep your mouth shut
Tell no one at all
As you get older
The men get much bolder
Cry alone in the night
With no comfort of a shoulder
Five years have gone by
Eight years old try to tell
All your fault they say
Now he suffers in hell
Why did you do it?
Don’t you love me at all?
Only answer the bullet
As I watched him fall

Anonymous

HUMAN TRAFFICKING
It’s always young girls
Who are vulnerable
Not your average bimbos
Just simple and gullible
They use drugs to keep the girls quiet
Lock them into hotel rooms day and night
No showers, no food, only violence to keep their control.
Reprogramming and rewiring is their goal
Breaking their bodies and breaking their soul.
Dissociate in my head just to survive
Go in my special place to stay alive
Waiting for the moment when the coast is clear
I can get out
Running and running I will scream and shout
Got myself away, ran through the cold
Whatever they did to me, I can still remain whole.

El & K

DETERMINATION TO NEVER QUIT
Getting out soon, filled with determination.
Looking forward to the fall, getting my education.
Can’t wait to see my kids so I can have communication,
Clock ticking down, feeling the impatience.
Success is the only option, failure is not
I don’t want to get stuck in a rut or get caught
Caught up in the struggle, caught up in the drugs
hanging out with the criminals, hanging with the thugs.
When all I’m trying to do is wipe my past under rugs.
Feeling determination, never gonna quit wanting to go legit,
Freedom and me are the best fit. :)

AS

ONLY GOD KNOWS THAT I PRAY
To him oh Lord each and every day
To be set free from this prison hell
It’s lonely in a cold prison cell
They take everything from you but your mind
Never knowing that you can be kind
You’re always judged based on your crime
Never getting to know you over time
They don’t know you and they don’t care
The worst things are the feelings they bear
Of this world of being locked away
All they want is for you to stay

Anonymous
Rehabilitation: A misconception

The ideological sense of incarceration is widely viewed as an institution of “rehabilitation.” Yet, for generations, this has been the misconception fed to the general public.

The definition for rehabilitation is this: The act of reinstating to a former rank or capacity; restoration to former rights, privileges, esteem or the like. To restore to public respect. This very definition is what gives my argument such validity.

From the definition above, what tools would be necessary to “restore to public respect” or reinstate the former rights and “privileges” (very controversial term) to a man? To begin, we must first look at the very essential fundamental foundation of society, the very “base” of function. At the age of 18, you qualify to be housed in an adult facility, so the question is, what are the essential necessities needed to productively succeed in society from this age forward?

I would say social skills, education, employment and family. Family is essential to the individual mentally as well as emotionally when it comes to support through all the obstacles life may throw in one’s direction. Without a strong family support system in life, one may take setbacks and failures as defeat, which in turn may cause resentment and low self-esteem, which ultimately become avenues to the bottom of society. With a strong system of support, the other elements of life are more achievable, therefore setting one on the right path to a successful life. Social skills, education, employment and family are the ingredients to a sustainable and productive life. These should be a priority to the facilitators of the prison system, giving those incarcerated the tools needed to successfully reintegrate into society.

Society views incarceration as a place of punishment, a form of chastisement for the individual’s violation of his/her “privileges” (very controversial term) to function in society. Society’s role in the penalization of its members is strong right up until the individual is placed and housed in an institution. Once this takes place, society puts all “faith” in the institution to “rehabilitate” the individual and prepare him for reintegration back into the community.

What society fails to acknowledge, or for that matter fails to know because of lack of transparency, is that the individual will in all forms not be “rehabilitated” but habituated to conditioning and conforming to this side of society, based on the things he will experience during incarceration.

Although society means well in its process of rehabilitation, people do not do well, simply because they have no say in the rehabilitation process. This is why the general public cannot comprehend the statistics of reoffending and career criminals. In response to this, they put more unconscious pressure on the system to toughen up on crime, thinking this is the solution.

“Rehabilitation” is not a main focus in correctional facilities. If it was, the statistics of reoffenders would not be so high. When any individual (or institution for that matter) has total control over the well-being of others for a certain period of time, whatever is done with that individual in that time is influential to the future of that individual. Productivity produces productive traits in an individual over time; confidence and education produce knowledge and self-esteem over time, etc.

For example, when you take a dog into your care, whatever is done with that dog while in your care will be influential to the potential of that dog. What I’m saying is however you care, treat and teach that dog (or an individual for that matter) will be crucial to his later years in life.

Without internal investigation and community participation, things cannot be what they are perceived to be. In other

Social skills, education, employment and family ... should be a priority to the facilitators of the prison system, giving those incarcerated the tools needed to successfully reintegrate into society.
Indigenous population

I'm writing this on behalf of the “Native population” here and at all provincial correctional facilities.

For quite some time now, multiple training opportunities have helped others better understand our (Aboriginal) way of thinking and dealing with life, and how it differs from the non-Native way of life. Some such training has included awareness classes, sensitivity classes and cultural and spirituality classes on Native culture.

Too often, the offenders are “out of sight, out of mind.”

Aboriginal communities and organizations assisting with these programs have put a lot of thought, work and effort into different ways of presenting and delivering these classes. It is of the utmost importance to create and establish “culturally relevant” programming for men and women in the provincial correctional system. They will not only learn from “Aboriginal programming”; my knowledge and life experience, my own and other offenders’ experiences can be invaluable in helping to get these programs developed. Although the non-Native culture is starting to explore different ways of looking at egotistical, self-centred instigative people, and they will all continue to apply and work in every occupation in the world.

The only way to curb this would be to implement programming and training to cure these diseases first, before being brought on the job. Every man (or institution, for that matter) will have problems when his authority overpowers his frame of common sense, for this is when stupidity sets in. In provincial institutions, this is very true. Before management thinks sense, it thinks rules/guidelines. It’s as if at times that the ones who set the guidelines had no sense, with all due respect.

The values of this essay (if taken seriously) have the power to transform not only the justice system, but society as a whole, for the simple fact of producing positive, educated, healthy, employment-ready citizens that have been properly “rehabilitated.” But this seems to be a figment of imagination. The term “rehabilitation” needs to either be revised and implemented or reversed out from this misconception.

Words, the well-being of those incarcerated is bubble-wrapped, so to say, and not fully disclosed to the public. If rehabilitation was the objective, the main focuses would be quality of food, air, water, exercise, programs and education. These are essential to the well-being of the individual; a lack of any of these things can result to an unhealthy environment, making it unhealthy for the individual, making it unhealthy for the process of rehabilitation.

What correctional institutions fail to acknowledge is that a relationship between two people can only exist when both have dignity. If one is without, then the relationship is something else. Human dignity is the very ground that a man stands on, if he stands on any, especially in circumstances like incarceration, when he has nothing but that.

Abuse of authority is as old and just as relevant today as it was since this form of penalization began, and will always exist because of the human nature of people. The world includes
Justice is not justice when it’s just us who suffer
When you need to fit yourself into a box,
White, Black or Other
And then you still argue about the existence of race as if it’s not
a real thing,
As if you forget all about these boxes you keep putting us in
But what happens when that box is made of wood,
It’s a coffin.

Or when that box we check off is captioned
“MISSING”
“MURDERED”
“FORGOTTEN”

When the amount of melanin in my skin,
Determines the life I’m forced to live,
Well tell me, what happens then?

Is it justice when it’s just us who need to justify our reactions?
When you eat from the buffed hands of the rich
And all we’re left with are rations?

When you kill unarmed people do your fears justify your actions?
Our system is flawed…
“Not guilty,”
“Not guilty,”
“NO repercussions”

I’m so sick of the news these days,
Black boys getting bullets in their bodies and it’s okay.
Muslims getting bullied because of the way that they pray
Native children getting put in white homes and they got no say.

Why is it that when a white guy shoots up a theatre he gets apprehended?
But when Trayvon walks home with a bag of skittles his life gets ended?

And then you still have the audacity to say that “race is not a thing”
Well then why am I 3 times more likely to go missing,
5 times more likely to have my body bloodied and found in a ditch?
More likely to become someone’s bitch so they sell my body to the hungry.

We all bleed the same blood.
But that “flesh” coloured band-aid that’s meant to “conceal as we heal”
Is as effective as those temporary government fixes,
Trickier than a turn on a rigged roulette wheel

But these issues need surgery,
Not a mere band-aid fix.
Because they hit my home harder than a downpour of bricks,
And only when all of our homes start to crumble at their core
You’ll hear our loud voice, like wild lions … We’ll roar.

It’s called privilege when you’ve got the right complexion for protection.
In this struggle for survival, we’re still fighting the wars of natural selection
You treated us like rodents.
You tried to exterminate us,
You thought we would disappear.
Well guess what?
We are STILL here.

But we’re still dressed in this cloak that you use to oppress us.
It’s heavy, it’s dark, and it weighs down as a means to distress us.

Instead of our DREAMS
Your invest in our NIGHTMARES
And tell us that our worries … are not yours.

RACISM … that bite that some people can’t seem to swallow.
But for us it’s like a tapeworm that eats us raw from the inside
Until it leaves us hollow.

The distrust of the system is rampant.
Why wouldn’t it be?
And after all of the years we’ve fought it
It still hasn’t broke me.

Sure I’m cracking, a little
Banged up and bruised
But all that pain and trauma is only the match to my fuse.

Right now we live in this land of IMPUNITY.
But I want to live in a world that revels in the idea of SOLIDARITY.

I grew from the seeds of a radical story.
We’ve been rewriting “His-story” and all of its “glory”
Living through over 500 years of resistance
Like my father would say,
“We’re fighting the longest war of existence”

We can’t be a society that only comes together in the midst of catastrophe.
When we hear those voices shake …
“No Don’t Shoot” and “I Can’t Breathe”

We must continue to assert that we are ALL Idle No More
And then like never before
We can RISE up from the ashes from all the times we’ve been burned.
The heat from those flames will bond us together like jail bars.
The ones that they throw us in where our unlit faces don’t match those of the guards.

We say “United we must stand, because divided we’ll fall”
Well then let’s stand up against injustice once and for all.

But we can’t shoulder this burden and dismantle the system alone
All we have are our guts, our voice, our hearts and our backbone.

What we NEED are your blood, sweat and tears
To soften the blow …
To soften the fears …

Don’t be afraid to have your back against the wall.
You can choose to tower over us with the oppressor
Or stand in the corner with us

And believe in Justice For All.
And I WON’T dilute my words,
So don’t tell me to hush down.
Because when you’re living knee-deep in SHIT
“SHIT” isn’t something you can tiptoe around.

MY life matters,
YOUR life matters,
MY life matters,
YOUR life matters

No we can’t close this book,
No we can’t.
But we CAN write the next chapter.

Poetry with impact

Killa Atencio shares her voice and culture in many ways – as a poet and spoken word artist, as a visual artist and entrepreneur, and as a youth worker and program coordinator at LOVE Nova Scotia (Leave Out Violence), to name a few.

Originally from Listuguj First Nation in Quebec, she is proud of her Mi’kmaq and Quechua ancestry. Along with her artistic expression, Killa enjoys work that contributes to youth and community development, Indigenous relations and education. She graduated from Dalhousie University with a degree in international development.

Her business, Moonlight Works (MoonlightWorks.ca), was featured as an Aboriginal business case study at Cape Breton University’s Shannon School of Business, and her artworks have appeared in a number of exhibitions throughout the Maritimes.

Through her spoken word performances, Killa delves into the heart of social justice issues, hoping her poetic perspectives can open eyes and help to make the world a better place. She performed “50 Shades of Brown” at the release event for the Society’s initial #TalkJustice report, held May 22, 2015 at the Mi’kmaq Native Friendship Centre. To hear Killa performing this piece, see her video at www.youtube.com/watch?v=8FJw0M_L1ow.
National recognition for “Untitled: The Legacy of Land in North Preston”

Student journalists at the Nova Scotia Community College received two national awards this spring for their digital documentary series, “Untitled: The Legacy of Land in North Preston” (northprestonland.ca).

On April 5 in Toronto, Amnesty International Canada presented its 2016 Youth Media Award to students in Erin Moore’s 2016 and 2017 classes. The award honours the best human rights journalism from a Canadian post-secondary institution. Then on April 29 in Ottawa, the project received the Canadian Association of Journalists’ Group Student Award of Excellence, which recognizes outstanding journalism that creates change and impacts society.

The web series focuses on some residents’ struggles to gain legal title to land their families have lived on for generations. The idea for the series was inspired by a class visit from the Society’s #TalkJustice team. The Society continues working with pro bono lawyers and the North Preston Land Recovery Initiative to assist in resolving the land title issues.

Violet and Flemming Downey have lived in their house for more than 50 years and the land has been in their family for generations, yet they can’t legally sell it or pass it on to their children. Last summer, they filed a new land title application and are hopeful a pro bono lawyer will be able to assist.

“All the time I keep thinking about it,” Violet Downey says in the video. “Go to sleep, wake up thinking about it. And it’s a bothering thing, because our home is here and this is where I enjoyed myself all of my life and that’s why I want to get our land in our own name.” See northprestonland.ca/update.html to view The Downey’s Story, among others.
In our first #TalkJustice report, published in May 2015 by the Nova Scotia Barristers’ Society, we called on ourselves and our partners in the system to think differently:

- about justice;
- about “the system”;
- about what it means to put the public first.

We’re not alone in our efforts. Most reports about improving access to justice in Canada include calls to better engage the public in this work and for the various players in the justice system to do a better job of working together. The calls are so frequent that new “public engagement” campaigns are often met with cynicism, if not outright scorn: Why do we spend so much time conducting studies and writing reports? When will we start taking action?

“Taking action” is difficult. Legal problems seldom occur in isolation: they typically involve multiple organizations and intersect with other problems of everyday life such as food and housing insecurity, health issues and unemployment. Effectively improving outcomes for Nova Scotians with legal problems requires all of us to communicate and collaborate. It also requires us to include the insights of people who are using legal services and participating in ‘the system’.

Traditional research and public engagement methods limit our ability to do this well. Opinion research is difficult to act on because it’s hard to translate an opinion into a concrete step to take. Opinions are also really difficult to change – as anyone who’s tried to talk politics around the dinner table knows! Public engagement campaigns that centre on citizens sharing their ideas run into similar difficulties: the person hearing the idea often doesn’t have the capacity to implement it. Even if an idea is good, the feasibility of it is often divorced from the reality of how change actually happens, either in the system or in the community.

We realized that our first action had to be to this: to change what we asked of the public when we sought their input, and to better channel the information they share.

This is why #TalkJustice now centres on gathering stories: descriptions of actual experience with the justice system. We can’t change people’s opinions. It’s hard to talk someone down from an idea but we can try to change and improve their experiences.
The trouble with gathering stories is it’s very resource intensive. It requires sitting and listening and then recording, summarizing and communicating the story to whomever needs to hear it. We needed a technological solution to collect stories on a provincewide level.

Since February, we have been gathering stories from Nova Scotians about their experiences with legal services and the justice system via SenseMaker® research software. SenseMaker® allows participants to tell their stories anonymously in their own words and provides them with the tools to explain their story’s meaning. As people across the province continue sharing their stories with us, we are building a central database of experiences that the Access to Justice Coordinating Committee (A2JCC) member organizations can use as a basis for considering changes.

This, we hope, will change the nature of our approach to justice system reform. Rather than each member organization continuing to ask itself, “How do we improve our programs?”, the members of the A2JCC will study the SenseMaker® input together. We will ask ourselves collectively, “How do we improve these experiences?”

Two years ago, we promised to continue showing you what the public shares with us. A selection of the stories we’ve received via Sensemaker® are republished here. As you read them, we encourage you to think about what these stories tell us about how our justice system works, and what we can all do collectively to ensure that it truly puts the public first.

Find the May 2015 #TalkJustice report online at nsbs.org/reports-studies, and follow ongoing #TalkJustice updates at talkjustice.ca. If you haven’t yet, please share your story at talkjustice.tumblr.com/yourstory, to help ‘the system’ improve how justice and legal services are delivered in Nova Scotia.

#TalkJustice: We’re listening!

HELP US IMPROVE HOW JUSTICE AND LEGAL SERVICES ARE DELIVERED IN NOVA SCOTIA.

We want to know what’s working well and what we could be doing better. Tell us about your own experiences – these are just a few examples:

• Have you ever appeared in court?
• Tried to hire a lawyer?
• Started a business?
• Prepared a will?
• Gotten a divorce?
• Had a landlord/tenant dispute?
• Helped out a friend with a legal problem?

Visit talkjustice.ca to share your thoughts and stories — anonymously. Your input will help us shape the changes ahead.

Led by the Justice Minister and Chief Justice of Nova Scotia, the Access to Justice Coordinating Committee (A2JCC) is responsible for this project. The A2JCC also includes a public representative and leaders from the Nova Scotia Barristers’ Society, the Nova Scotia Legal Aid Commission, the Schulich School of Law and the Canadian Bar Association’s Nova Scotia Branch.

www.talkjustice.ca
I am a Black woman and a third-year law student. Upon admittance to law school I thought I would be in the company of individuals who embodied what society should be, not what it is. I moved to Nova Scotia for school. The first Black lawyer I ever laid eyes on was here in NS. I am one of three in my family to obtain a university degree and the first to go to law school. Attending law school was a long-term goal of mine. When I was accepted to Schulich School of Law at Dalhousie University, I thought I would be surrounded by others who shared the same aspirations as me. Those who wanted to make a positive difference, activists and the culturally competent. My first day of law school, the first day of orientation, proved all of my expectations horribly wrong.

As all the new students gathered in a large room to mingle, I was asked by another student, “What do you have in you?” They were referring to my race, my ethnicity, my cultural heritage. They began with a quizzical look at my features. Studying my face and hair, puzzled and confused. “What do you have in you?” “I’m Black,” I answered. They replied: “Oh, that’s what it is.” The conversation ended there, but many similar ones would pervade my law school experience. That same day I was approached by an older man, a member of the legal community. We engaged in an introductory conversation, exchanging names and hometowns, the usual. As the conversation ended he leaned in, placed his hand on the lowest part of my back, brought his face close to mine and said: “I would like to give you my card, we are going to be keeping our eye on you.” I froze, nodded, took his card and rushed out of the building. This was my first experience as a racialized woman in law school.

I would continue to endure discrimination from fellow students and lawyers. I have been the bad guy for standing up for myself when interrupted by white students while answering questions about my people and other radicalized groups. I have been inappropriate when using body language to make it clear that a comment by a partner in a well-established firm, “Black people are not as successful as white people,” was discriminatory. The rest of the individuals in the room sought to comfort them and ostracize me after my reaction.

I came to law school in part because my cousin, a young Black man freshly accepted into the RCMP, was charged with a criminal offence. While out celebrating his acceptance with friends, he witnessed a white male, unknown to him, trying to get a very incapacitated young woman into a cab. Knowing the young woman, my cousin approached the white male in an attempt to defuse the situation. Words were exchanged, and the white male initiated a physical altercation. When my cousin hit him back, the white male hit the pavement and went into a coma. My cousin was charged and his acceptance into the RCMP revoked. His case was the first case I looked up after learning how to conduct legal research.

I thought law school would teach cases like my cousin’s. I thought law school would address, in depth, the injustice faced by Indigenous and Black people and communities and give me the tools to help my people and brethren cultures.

So far in law school I have received an education on the injustice of racialized people. This education has been more first-hand than curriculum based.
My friend was indirectly the victim of a crime and had to testify in court. She knew nothing about how the system worked, had no idea why the Crown wanted her to appear in court or what kind of questions she would be asked. I went with her and while we waited, she introduced herself to the Crown and tried to ask him some questions but he paid little attention to her. As the day went on, we were in and out of the courtroom several times and a journalist told us that the accused person may be working with the Crown to plead guilty. But no one from the court ever told my friend what was going on. At the end, the accused pled guilty and court was adjourned. Again, no one told my friend that she was no longer required to testify. She was not sure she could even leave or really what had happened.

Restorative justice involves people directly involved in a criminal incident

This is an excerpt from a #TalkJustice story submitted by a person who took part in a restorative justice (RJ) session many years ago, relating to a break, enter and theft at a church. The session took place in the same rural church and included three youth, their supporters, a church elder and minister. A Brownie group was meeting in another room, and the organist was practising at the time.

The church elder spoke at the RJ session about the fears that both the Brownie group and organist felt. The offence had happened in the evening by youth who resided in the area. What impressed me most about this session was that the elder spoke to each youth directly, and designed a very appropriate community service for each of them – all different. He said “for you, I think that community service should be…” for each one of them. Tears were shed and guardians were very supportive of each of the youth present. Co-chairs were a staff member and volunteer from the community who was able to direct the conversation from victim to each youth. She did an excellent job. Very appropriate agreement and successful conclusion.

As a newly handicapped person, I am adjusting to the challenges of being able to continue to work. The biggest challenge has been parking to get to my job. There are minimal spots in downtown Halifax for parking in general but for handicapped persons, there are extremely few options. The options that are available typically have a time limit (i.e., 3 hours handicapped parking). Considering that the person using it has some type of disability, the difficulty in returning to that spot to move your car is extremely challenging.

I have had a couple of occurrences where I returned to my car literally 2 minutes late, and received a parking ticket. I have even watched the person put the ticket on my car but because I can’t ‘run’ to get to them, I can’t do anything about it. I am handicapped! Can there not be a small amount of extra time provided for someone in my situation?

To add insult to injury, when I contacted the Parking Ticket Enforcement Office to try to dispute these tickets, I was told there was nothing that could be done – except I could go to court to dispute it. There should be a different process in place for handicapped persons to appeal a parking ticket.

There should be a different process in place for handicapped persons to appeal a parking ticket.
Stuck between the gaps: the long road from criminal to family court

A little over 2 years ago, I escaped my abusive spouse that I share children with. The children and I moved into Bryony House to seek safety and the support services. The road to justice has been wearing and far too long. First, I had to wait over a year after he assaulted me to get to court — enough time for my ex to bully and scare me back into silence so he did not see jail time (he ended up with 4 months of house arrest). A slap on the wrist compared to the two black eyes, cracked ribs, abrasions around my neck and head to toe bruising, along with the ongoing emotional toll. Below is a list of some of the red tape barriers I faced and continue to face as a working single parent just above the poverty line, and simply as someone who has gone through the grueling process of seeking protection for herself and children long term.

1. The PIP program (Parent Information Program) currently in the Family Supreme Court needs to address how to parent when the other parent is violent and a drug addict.

2. Faster turnaround to get to criminal court when IPV is involved and (especially) if it is known that the victim/survivor is in a domestic violence shelter and/or has children with the accused. Once a survivor leaves the shelter, the support services no longer protect victim or children. The police only intervene when there is immediate threat, "not possibility" or in other words "when it's too late".

3. When a person has been charged with violence where children are involved, the school board does not have protections in place to stop the violent offender from picking his/her children up from school until court documents are finalized – again, a huge safety risk to the children and survivor. Yet, if a person keeps their children from school they could lose them to Child Protection Services.

4. Criminal cases where family safety is an issue need to follow to the Family Court. My offender is labelled a high risk to reoffend. I should not be subjected to his ongoing abuse (financial and psychological) now through the Family Court system.

5. As a single working parent who earns more than the Legal Aid service requirements, I do not qualify for legal financial assistance. The cost for me to protect my children is costing more than my current take-home pay. More abuse: now that my abuser no longer has power over me, he is using every method to seek unsupervised access, draining my finances and further triggering the trauma I have worked very hard to overcome. I am an educated person who is full-time employed in the corporate world and I am having a hard time. I cannot imagine what this is doing to victims who do not have supports or are unemployed.

6. Child Protection will not provide supervised access because I, “the stable parent,” am “following the proper steps” yet now in Family Court I don’t have their recommendation to support me. Leaving me in a vulnerable state of being accused of parent alienation for seeking to protect the children.

Respectfully submitted,

The voice of one IPV survivor who is seeking to seal the gaps between the criminal and family court system

Tragedy averted due to officer’s calm, professional nature

I was stopped for speeding along the Bedford Highway late one night. I was treated very respectfully by the officer, despite the fact that I technically could have been given a reckless driving ticket due to my excessive speed.

The calmness and professionalism of the officer allowed me to fully realize how careless and dangerous I had been, and to focus on how incredibly lucky I was not to have hit anyone. It fostered a positive view of the justice system in that his intervention that night protected the public, and has since kept me from further reckless driving behaviour.

SHARE YOUR STORY

These are excerpts from recent #TalkJustice submissions. If you have a story or experience to share about legal services or the justice system in Nova Scotia, please share it with us anonymously at talkjustice.tumblr.com/yourstory.
Using someone’s medical condition as a means of punishment has no place in our civilized society.
Our most vulnerable

My name is Paul Vienneau. I am a portrait photographer and I had a music career performing, recording and teaching, for over 30 years. Twenty-six of those were in a wheelchair.

Over the years I learned how to navigate my world. It was a game of logistics to figure out how to fly across the country, rent a car with hand controls, find a hotel that worked for me, and then to drag myself up steps to the bar and then onto the stage. Here and there over the years I would talk with business owners to assert my rights, but generally I accepted the world wasn’t made for me, so I made do.

Two years ago, in the winter of 2015, I missed eight weeks of work before resorting to shovelling the corners and crosswalks near my home on Spring Garden Road. I had a shovel, a clever nickname (the Asshole With A Shovel), and met with and developed relationships with politicians and business owners to try and get them to see how accessibility and inclusion works for everyone, not just the disabled. And I had a platform to speak publicly about accessibility and inclusiveness.

Over the years I had developed a kind of personal advocacy for myself, to help me navigate my world where someone with a disability is often an afterthought. Historically we have been treated paternalistically by the system, as if we are children to be seen occasionally and heard less often, because “Don’t worry. We’ll do this for you. Just be patient.”

I always go into something being open to being wrong, and to learning. I have come to see my life as one of a series of lessons. I am always striving to be wide and inclusive with my advocacy.

I was a member of the Bill 59 Community Coalition that spoke to the Law Amendments Committee first in November about Bill 59 The Accessibility Bill, and then in March. I have learned that gatherings need (among a great many other things) accommodations such as sign language interpreters, the CART system (a realtime translation service projected onto a screen in the room), among other things.

The legislation of Bill 59 is supposed to identify and remove barriers in society that would keep someone with a disability from living the full life they deserve to live. It is also a protection for the “most vulnerable among us,” who are often minimized and invisible, shunted off to care homes and sheltered workshops, or unable to rely on the simplest things like public transportation or being able to use a washroom in a restaurant.

A few nights ago, a young man came into a restaurant where I hang out in the evenings with some other locals. One of them is a retired teacher. As two adult men, we often take on a soft mentoring role for some of the at-risk youth who come to the neighbourhood. A young Native man had come in with a broken orbital bone and scratches on his face. He is hard of hearing, has PTSD and other issues affecting his mental health.

He told myself and the ex teacher about the incident that caused his injuries. It’s in the media, and for this story the specifics aren’t important.

What is important is the thing that came to mind when he told us about the incident: Do the police in HRM have accommodations and training to deal with disabled suspects? They have language interpreters but do they also have sign language interpreters, easily accessed? Are they aware that different disabilities have specific symptoms and can give the appearance (to the non-educated viewer) of being non-compliant?

Going a step further, what are the training and procedures for dealing with inmates with a disability in jail? El Jones has been reporting and advocating on this issue admirably for a long while. I read it first thing every Saturday in the Halifax Examiner and on her Facebook page. I learned through her that a person in a wheelchair in jail had his chair taken away, allegedly, as punishment and was made to crawl. I read about medication being withheld from inmates as a means of control/punishment.

If these are true, I believe these are acts of incredibly cruel and unusual punishment. Using someone’s medical condition as a means of punishment has no place in our civilized society. The judge gives the sentence, prison is the punishment. It is not up to guards or anyone else to continue to exact their own personal pound of flesh. Those who do have no place working with people in such tenuous circumstances. They are bullies.

With Bill 59 being drafted, I am saying for us all to hear – people with disabilities “out here” may be vulnerable but unless we extend the protections to people within the justice system as well, then we aren’t protecting the most weak and vulnerable, and only serve to make them even more invisible.

There is no justice in using someone’s disability to impose these extra punishments, and it’s time we extend the protections of this legislation to ALL disabled. Even those who have broken the law.

From my American brothers and sisters, I have the phrase “Nothing about us, without us.” This legislation and the public conversation arising from it is a unique opportunity to do it with ALL OF US. Especially the very most vulnerable and invisible.

The #TalkJustice section in the next edition of The Society Record will put the spotlight on accessibility issues relating to legal services and the province’s justice system. If you have had an experience relating to accessibility, please share your story via our #TalkJustice input tool at talkjustice.tumblr.com/yourstory. To request a print copy, contact Jane Willwerth at jwillwerth@nsbs.org or (902) 422 1491.
A key aspect of the #TalkJustice program is ongoing community outreach and engagement, both online and in person. The #TalkJustice team facilitates workshops and discussions with a variety of legal and community organizations, from Bridgewater’s Be the Peace Institute to the Nova Scotia Mental Health Court. The CBA-NS Law Day events this spring included a #TalkJustice display at The Law Courts, with representatives on hand to answer questions – and to ask a few as well during the Courts of Nova Scotia’s first interactive Twitter town hall meeting.

A brief summary of observations by Dalhousie student Charlotte Sullivan, during her practicum with the Society’s Equity & Access Office. Read her complete piece at talkjustice.ca.

On January 26, community leaders and members of the legal profession gathered to discuss the #TalkJustice project. This initiative is designed to identify and amend problems in our justice system by gathering the stories of Nova Scotians who have interacted with it in some way.

“Eighty-five per cent of Canadians with legal needs do not interact with the justice system in a formal manner,” said Darrel Pink, the Society’s executive director.

This statistic is staggering. Why does this massive majority of individuals who require legal services avoid resorting to our judicial system? For many, unfortunately, it all boils down to a lack of accessibility. Our legal system is convoluted and bureaucratic, not to mention financially inaccessible for the average Canadian. For someone without a legal education, it can seem daunting and sometimes even impossible to seek out legal assistance.

Rodney Small (at left) was a featured speaker at the Jan. 26 workshop presented by the Society and United Way Halifax. As a teenager growing up in Uniacke Square, he was at the centre of a groundbreaking court case. A positive experience with his lawyer made a real impact at the time, he told the session. In 2015, Small graduated with a management degree from the Dalhousie University Rowe School of Business, and is now a social enterprise development manager with Common Good Solutions.
I was particularly struck by Rodney Small’s personal story of growing up in Uniacke Square. His own run-in with the law happened when he was 15 years old. (Read about it in this article: “How a landmark case heard 20 years ago shaped a black teen at the centre of it,” CBC News, March 10, 2017.) Small recalls a good experience with the justice system because he had an excellent lawyer (the late Burnley Allan “Rocky” Jones), one who genuinely cared about him and involved him in the process.

As someone who aspires to work in law, this story moved me. It’s a reminder of how one person can have an enormous impact on how people interact with justice, and a reminder of just how far compassion can go.

#TalkJustice media panel

Media coverage of justice issues and crime can erode public confidence in the courts and the administration of justice in Nova Scotia. A #TalkJustice panel discussion explored this topic on January 27 at the University of King’s College, with media professionals and journalism students from King’s and NSCC.

The idea for the event arose from results of the first phase of #TalkJustice in 2015, when a number of respondents expressed frustration with how equity-seeking communities are represented (and not represented) in media coverage of justice and crime issues.

The panellists discussed the media’s role in access to justice, providing ideas and tips to ensure more balanced and conscientious media coverage. A video of the panel discussion is available for viewing on the Courts of Nova Scotia website: www.courts.ns.ca/Webcasts/webcasts_archive_events.htm.

A few recommendations from the first phase of #TalkJustice:
• invite the media to participate in conversations and consultations about justice;
• consider the role media can play in enhancing access to justice; and
• provide a platform for diverse voices on justice issues.

“The Power of our Voices: Survivors and Justice Professionals Together” was a #TalkJustice workshop held last summer in Bridgewater with the Be the Peace Institute. Denise John (centre), a victim support navigator with the Mi’kmaw Native Friendship Centre, talked about how those in the justice system must understand the legacy of residential schools and intergenerational trauma.

The Society is collaborating with other law societies in the Atlantic region to develop a three-year implementation responding to the Truth and Reconciliation Commission’s calls to action. Partnership with Be the Peace also continues its 2017-2019 initiative addressing the roots and consequences of violence against women and girls in Nova Scotia. Ongoing work continues in researching and collecting best practices and other resources for lawyers assisting domestic violence and sexual assault victim/survivors, to enhance knowledge, skills and capacities to respond and provide support.
Ammy Purcell (foreground) and Andrew Abraham in 2005, members of the team that collaborated on the creation of the first UnCommon Law event.
When I was around 13 years old, I was taken from my home and placed into the foster care system. Scary, right? Moving in with people you don’t know is terrifying alone. But the scariest part for me was not knowing what was going to happen next. I was old enough to know that the courts were involved, that my father had to go to court, that my social worker had to go to court, even my foster mother had to go to court. But where was my invitation to all this?

After all, this is my life they are making decisions on. I felt I had the right to be there and be involved in these decisions. But every time I asked to be involved, I got the same answer, “We will do what is in your best interest.” I had a guardian ad litem and my social worker explained that she would be there to represent my best interest, but I had only met her once, how could she know what my best interest was? I was angry and I felt left in the dark. I held on to this feeling for a long time. I didn’t trust the system at all, I felt like they had failed me by not listening to what I had to say in matters that affected my life.

I moved back home at 16 and my life was starting to get back to normal. But I still held this grudge against the system. I wasn’t even involved in the decision to move back home. I was 16 and my temporary care had “expired.” That’s it. See ya later. No more social worker, no more counselling, nothing. I didn’t feel I was ready. I was doing well where I was. I knew I needed structure and I was getting that. The only thing I did get to hold on to was The Voice of Youth in Care newsletter project, and thank goodness for that. In fact, I owe every success I have in life to that program. I am even still with them today, 16 years later as program director.

It was through The Voice that I got involved with the Society’s UnCommon Law project in 2005 and that is where I met Justice Gerald Moir. I don’t think I realized I was talking to a judge at the time but I was telling my story of being in care and my distrust with the legal system to a group of people sitting at my table. I remember getting emotional talking about not having a say in what happens with my own life. I also remember him listening very intently. He almost seemed shocked by what I was telling him. But the day moved on and I didn’t think much else about it.

Awhile later, I received a letter in the mail from the Supreme Court of Nova Scotia. Very official looking. (My father was upset because he thought I was in trouble.) It was an invitation for myself and the rest of the newsletter group to meet with Justice Moir in his chambers to tell our stories and experiences with the legal system, and being in care of the province.

What an honour! He remembered my story. He listened. And he wanted to do something to help. I couldn’t believe that someone in his position was genuinely interested in what a bunch of kids had to say about the problems they face with the legal system.

After meeting with Justice Moir and really expressing all the negative feelings I had towards the system, I started to realize that instead of holding a grudge, I wanted to do something about it to help others who may be in the same situation. Shortly after that, myself and a few other people from The Voice started a project with the students at Dal Law called
“The Law and You,” a guide to the rights of youth in care. This was designed to answer all the questions a young person coming into care might have.

As an adult, I still feel there are some things being overlooked when it comes to youth and the legal system. There needs to be more resources and accessible information when it comes to youth in care. Maybe there is a young person out there now who wants to tell their story at a table where there just happens to be a judge listening, who knows what may come out of it? All it takes is someone to just listen.

Find The Voice of Youth in Care Newsletter online at www.youthnewsletter.net.

Community conversations inform justice improvements

Emma Halpern, NSBS Equity & Access Officer

In 2005 while in my second year of law school, I attended the Society’s first ever UnCommon Law event, held that year in downtown Halifax. As a former youth worker and community organizer, I was excited by the opportunity to spend a day with young people whose lives were impacted by the justice system and to do so in a setting that was designed to put youth voices at the centre of the dialogue. The day itself exceeded my expectations and in many ways laid the foundation for the work we are doing at the Equity & Access office today.

The concept of UnCommon Law is to bring together lawyers, judges, police, community organizations and those with lived experience in the justice system to share insights and work together to build relationships and brainstorm solutions to challenging problems. Through the act of listening to actual stories and experiences, those of us who work in the justice system can better understand the challenges and barriers that impact access to justice.

Many young people who go through our criminal, family, human rights and health systems struggle with a lack of opportunity to be heard. UnCommon Law offered a new way to talk about justice and to empower young people to share their stories and feel valued for their experiences.

It was at this first UnCommon Law that I met Ammy Purcell and the young people involved in The Voice of Youth in Care Newsletter project. Their stories and experiences profoundly impacted me and the following year, through Pro Bono Students Canada, we started a “know your rights” workshop series designed by Ammy and other youth. Developed in partnership with the newsletter project, Phoenix House and Laing House, this workshop series educated young people about laws that affected their lives and supported them to provide training and education to other young people with similar life experiences.

This work deeply impacted my own life decisions and also my understanding of some of the gaps in our justice system. I continued to be actively involved with UnCommon Law while with Nova Scotia Legal Aid in Yarmouth, and the stories and experiences of the young people I met prompted my interest in and commitment to restorative and relational models of justice.

UnCommon Law was also the precursor to #TalkJustice, which is fundamentally about listening to the experiences of the public and putting those voices at the centre of justice system reform. #TalkJustice is enhancing our understanding of the value of story and has helped us to see stories as the starting point to begin systems-level change.

Like UnCommon Law, this issue of The Society Record is centred around the voices and experiences of those whose lives have been impacted by our justice system and as such, it is a departure from our usual publication. We hope this edition provides an opportunity to think a little differently about our work, to listen, to hear and to ask: “How can we improve these stories going forward?”
Black Power Hour is a radio collective founded together with incarcerated people. The show was requested as a place to spread knowledge about culture and history, to educate, and to build relationships with the community. The show is a place to build connection and accountability between communities and people who are incarcerated. You can listen Fridays at 1:30 pm on CKDU 88.1 FM and online at ckdu.ca.

Top photo L-R: Ifo Ikede, host Ntombi Nkiwane, co-founder El Jones

Second photo L-R: Ntombi Nkiwane, co-founder Reed “iZrEAL” Jones, El Jones

This image of 2Pac is inspirational to Babou because his life reflects the struggles and resilience of Black men in society. 2Pac’s image asks us to think beyond the stereotypes of Black men. What do you see? An artist or criminal? A thug or role model? A threat or a human being?

M’bai Babou Jobe of Halifax and his drawing of 2Pac for this edition of the Society Record.
Masuma Khan of Halifax is an International Development student at Dalhousie University. She shared her story with #TalkJustice during Access to Justice week on campus in October 2016.

Even as a young child, Masuma’s feelings toward the justice system were fear and distrust. Masuma recounts a memory from childhood: her mother was in a courtroom, explaining her reasoning to the judge. No matter what her mother said, no matter how sound the reasoning behind the argument, the judge brushed her off. Masuma describes her mother as a strong, formidable woman who commands respect, and the way her mother was invalidated by the judge was seared into her memory.

The stories Masuma would hear about the justice system from family and friends, and her own experiences as a child, have coloured the way she feels about justice in Canada. Describing the overarching trend of these experiences as “white people telling you you’re wrong,” she feels disillusioned by the system.

However, when she speaks of her family’s lawyer, who helped her with legal proceedings after she was in a car accident, it is in positive terms. She attributes the difference being that her lawyer has known her all her life, that she feels comfortable with him.

Jessica Dempsey is completing a management degree at Dalhousie University. She is a transgender rights advocate and an advocate for people with permanent disabilities. She also holds a B.A. in sociology and hopes to continue on to law school. She spoke to #TalkJustice during Access to Justice Week, in October 2016.

Jessica’s experience with the justice system lies mostly in the realm of human rights. For Jessica, the chance to present her case in a courtroom, with time and space to air her frustrations to an attentive judge, was incredibly empowering. Although the judge ultimately dismissed her application at Nova Scotia Supreme Court, Jessica was able to tell her story. The judge listened to her and carefully considered her version of events, and she felt the court treated her as a person.

“We are long past the time for reinventing wheels. We can no longer afford to ignore what is going on in different regions and sectors and miss opportunities for sharing and collaboration. Openness, proactivity, collaboration and coordination must animate how we approach improving access to justice at all levels and across all sectors of the system. In sum, we all — those who use the justice system and those who work within the justice community — are in this project together.”

“Technically, everyone is equal before the law but on the ground, there is different access. For example, anyone can file a complaint to the Residential Tenancy Board. However, it is far easier for a landlord to hop in their car and file for an eviction than for a working single mother to take the day off work, secure childcare or take children for a half-hour bus ride across town to file a complaint … If your material needs are secure, you are in a better position to seek justice for yourself.”

– Evan Coole, formerly with Dalhousie Legal Aid Service

Legal problems seldom occur in isolation; they often arise in conjunction with other problems of everyday life, including food and housing insecurity, health trouble or unemployment.

Many of the stories we’ve heard through #TalkJustice, like Evan’s above, reflect this reality. It’s part of what motivates us to ensure that access to justice activities across Nova Scotia focus on helping organizations across our system to collaborate better.
Jim helps people, businesses and organizations successfully resolve conflict themselves, making for better outcomes, saving time, money and relationships, and avoiding the risks and costs of litigation.

If you are looking for a different path to dispute resolution, contact:

Jim Musgrave, Q.C.
Chartered Mediator
Qualified Arbitrator
Workplace Investigator

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The year ahead

The following is excerpted from the inaugural speech by President Julia Cornish QC at the 2017 NSBS Annual Meeting on June 17. Find the full speech online in text and video at nsbs.org/julia-cornish-qc-president.

My favourite moment of the annual meetings of the past few years has been the incoming president telling the story about how they became a lawyer. My story begins in the early months of the Second World War. A 15-year-old boy (my father), having left his parents and sisters behind in their home near London, England, is about to board a ship that will eventually dock at Pier 21. With him are hundreds of Guest Children, as they become known, being evacuated from the areas of England most likely to be bombed.

He will tell his own children stories of the family he left behind. One is about his father, who spent his life working as a managing clerk at a law firm in London. He’ll say, “My father always wanted to be a lawyer but in those days you needed money to be an apprentice. He could never afford it.” My father would have (also) made a very good lawyer. But thanks to him, and to a very clever mother, I got to be the family’s first.

I joined this profession 33 years ago, right around the time women were entering private practice in any kind of numbers. I became the second female associate at my firm; the first to take parental leave and the first to negotiate working part-time. We continue to lose women from the profession in disproportionate numbers (and) we are struggling to retain lawyers from diverse backgrounds. As a profession, our challenge is to make legal services available to every facet of our community; new Canadians, people from a variety of races, religions and backgrounds.

The three-year strategic plan Council adopted last June requires us to be mindful of equity and access to justice in all our work. We recognize it takes a diverse profession to serve a diverse community. We know there is still a lot of work to do. Many Society initiatives provide lawyers with the opportunity to participate: #TalkJustice and the Prestons Land Recovery Initiative to name just two. Please get engaged in this work whenever and however you can.

The (Society’s new) Triple P approach is regulation that is intended to be principled, proportionate and proactive. At the beginning of the last Council term (in 2015), this work was very much at the theoretical stage. Thanks to the hard work of the outgoing Council, Darrel and Society staff, we have adopted the principles and proposed the legislation that will put all of this in place. The foundation is there; we must build on it and infuse the new approach into all our work. Take, for example, the area of professional responsibility, where we increasingly seek a rehabilitative and restorative justice approach.

Regulatory reform is a multifaceted undertaking. We are bound to get things wrong. Be sure to let us know when we do, or even if you think we are getting it right. Bear in mind that Council is open to the public; read the materials online (nsbs.org/council-materials) and come to our meetings.

The goal is making continuous improvement of practice management part of the DNA of all lawyers. To assist lawyers in building systems that will ensure healthy practices and healthy lives.

Moving this work forward is our challenge for the coming year. We will continue our voyage into unfamiliar waters with a destination we don’t yet fully comprehend. But we accept that this is necessary and I welcome all of you along on the journey.

Julia Cornish QC
President
The Indigenous Blacks & Mi’kmaq Initiative is now in its 27th year. The Justice Minister’s annual reception for Black and Indigenous students and alumni of the Schulich School of Law took place on January 18 in the Province House Red Chamber.

1. *Left to right:* Lindsay Silliker, Department of Justice, articling committee member; Jennifer Crewe, DOJ; Maria Dugas, called to the Nova Scotia Bar in Oct. 2016; Samantha Parris, DOJ; and Robin Thompson, called to the NS Bar in April 2017.

2. The Honourable Judge Michael Sherar of the Nova Scotia Provincial Court; the Hon. Tony Ince, MLA for Cole Harbour-Portland Valley and Minister of Communities, Culture and Heritage, also African Nova Scotian Affairs.

3. The Hon. Judge Corrine Sparks of the Nova Scotia Family Court; the Hon. Judge Anne S. Derrick of the Nova Scotia Provincial and Family Courts.

ACCESS TO LEGAL INFO: LISNS AND AJEFNE JOIN FORCES

The Legal Information Society of Nova Scotia (LISNS) is now co-located with L’Association des juristes d’expression française de la Nouvelle-Écosse (AJEFNE). In January, LISNS moved from its previous home in the Hydrostone Market to join AJEFNE in the Accès Justice Access Centre at 1663 Brunswick Street, Halifax, across from Citadel Hill.

The organizations maintain their autonomy but collaborate and combine strengths to better deliver legal information services to Nova Scotians. LISNS is currently focused on IT advancements such as an online chat function for its website and an online wills app now in the beta testing stage. Developed in partnership with technology students at SMU, the free wills app takes users through a 12-step process to gather information needed to prepare a will. The online platform will allow them to share information with lawyers to create a will, even at a distance in isolated rural communities. See https://wills.legalinfo.org.

PRIDE WEEK HIGHLIGHTS WITH NSBS AND CBA-NS – JULY 20 AND 22

The Honourable Judge Kael McKenzie will be guest speaker at the 15th Annual Pride Reception on July 20, co-presented by the Society and the SOGI (Sexual Orientation & Gender Identity) Section of CBA-NS. Judge McKenzie is Canada’s first self-identified transgender judge. A member of the Manitoba Métis Nation, he was appointed to the Manitoba Provincial Court in December 2015.

The Society will also host a July 20 workshop for lawyers on supporting trans* and gender-variant clients and colleagues, led by community educator Maddox Greene from The Youth Project. During the workshop, the Society will launch its new Guidelines to Support Trans and Gender Variant Clients, Colleagues and Employees.

Then on July 22, join the Society and CBA-NS at the 30th annual Halifax Pride Parade. We’re teaming up for the second year in a row to walk in the parade as a profession. For more details on all three events, see nsbs.org/events.
“BLOODLINES” AT DOJ: NEW ARTWORK FROM YOUTH ON THE RADAR

The talented student artists at J.L. Ilsley High School and its feeder schools have done it again. On April 12, they unveiled their latest artwork “Bloodlines” in the lobby of the Nova Scotia Department of Justice on Hollis Street.

The collaborative multimedia piece was created over a three-year period under the artistic guidance of Miro Davis. It was coordinated by the Halifax Regional School Board’s ArtsExpress Program for its Youth on the Radar series, with support from the DOJ and United Way Halifax.

Student Alyssa Saulnier said the extracurricular artmaking served as a real anchor for her throughout high school. She had just moved to Spryfield at the start of Grade 10 and didn’t know anyone at first, plus she was drawn to the project’s themes of family connections and personal storytelling.

“My mother passed away when I was young, and a lot of who I am I get from her,” said Saulnier. “Working on this kind of pulled out something from me that I’d never seen before. To me, art has more impact than words on paper. I hope it brightens someone’s day.”

Diana Whalen, Justice Minister at the time of the unveiling, commended the students on the “breathtaking” artwork and said it’s a fitting new addition to the series at The Law Courts, Halifax Provincial Court, NSBS, Nova Scotia Legal Aid and other locations.

“They are eye catching and thought provoking,” Whalen told the students. “Having them in public spaces gives them added meaning …. You’ve brought a dimension to us about your hopes and dreams, and how you see justice in our society.”

Since 2009 via its Lighthouses Grants, DOJ has supported the creation of artwork centering on the theme of justice, truth finding and the law. Students work on the art during lunch hours and after school, learning new artistic and critical thinking skills while gaining valuable life experience in teamwork and collaboration.

The core of “Bloodlines” addresses the geological formation of Nova Scotia, with local materials such as clay from the Bay of Fundy and copper gathered on a field trip to Cape D’Or. Student Aaron Stevens, during a co-op placement with Ms. Davis, created the stunning centre section from chainmail and a laser-cut copper ring to raise issues of the impact of colonization on the Indigenous population inhabiting the Atlantic region. He designed the centre ring in reference to the ancient double curve motif of the Mi’kmaq, Algonquian and Iroquois, thought to symbolize connectedness, kinship and family, and rejuvenation. Radiating outward from the centre are dozens of ruby glass tiles telling individual stories and family histories. These are surrounded by tangles of plants and small animals embossed in copper, reflecting the interplay of nature and human settlement and how we are all interconnected.
At left: Associate Professor Elaine Craig; left to right: Prof. Richard Devlin, Assistant Prof. Jamie Baxter, Associate Prof. Craig, then President R. Daren Baxter QC, TEP, Dean Camille Cameron & Prof. Jocelyn Downie, Schulich School of Law

What are the professional responsibilities of defence lawyers and Crown attorneys in sexual assault cases? What are their ethical obligations?

According to legal scholar Elaine Craig, these queries are relatively simple to answer: lawyers must work within the framework of the law and not overstep boundaries that shouldn’t be crossed. But her research has shown that some lawyers use courtroom tactics that are inappropriate and outside the bounds of law.

“We have lots of sexual assault complainants, lots of women who are traumatized by our state’s process, and . . . the legal profession is contributing to that trauma in ways that I think are unnecessary — and that’s a problem,” Craig said December 1 at the Schulich School of Law at Dalhousie University.

The associate professor was the featured speaker at the 26th annual F.B. Wickwire Memorial Lecture in Professional Responsibility and Legal Ethics, co-hosted by the law school and the Society. Her lecture focused on the conduct of some defence lawyers, but a book she’s writing addresses the work of Crown attorneys and judges, too.

Defence lawyers do have a professional duty “to raise every argument and ask every question, no matter how distasteful” but this duty “to advocate resolutely” is limited by law, she told the packed lecture hall. Research shows that behaviour exhibited in court by some defence lawyers includes unnecessarily aggressive cross-examination and other line-crossing strategies that are abusive toward complainants, who are often women from disenfranchised communities in society, she said. “Defence lawyers have an ethical obligation not to engage in such strategies.”

She added “it’s hopeful” the inappropriate tactics she described aren’t as entrenched in the legal profession as people might think. “I think all of our (law) students, regardless of the area they practice in, are going to be faced with these kinds of ethical challenges,” Craig said.

Trauma-informed lawyering

The Society is developing resources and training to assist lawyers in addressing the needs of survivors of domestic violence and sexual assault, in partnership with such community organizations as Avalon Sexual Assault Centre and YWCA Canada. Among other projects, we’re designing an education seminar and building a section of trauma-informed education resources in our online Equity Portal, with articles, best practices and short educational videos. A partnership with Be the Peace Institute is examining the roots and consequences of violence against women and girls in Nova Scotia.

Also see Supporting Survivors of Sexual Violence: A Nova Scotia Resource, a training program created as part of the province’s Sexual Violence Strategy, breakthesilencens.ca/training

This is a summary of a longer digital piece on the Society’s “In the Public Interest” blog. Read the full article by Michael Lightstone at nsbs.org/public-interest.
The Society welcomes its new leadership for the next Council year. President for 2017-2018 is Julia Cornish QC of Bedford (centre), a Partner at the Dartmouth firm Sealy Cornish Coulthard. Frank E. DeMont QC (at left), of DeMont Law in New Glasgow, is First Vice-President. Halifax lawyer Christa Brothers QC (at right), a Partner at Stewart McKelvey, serves as the Society’s Second Vice-President, as the acclaimed candidate in the March nomination process for the position.

Newly elected members of Council are Deanna Frappier for Halifax District, who practises with Department of Justice Canada; and two new Members at Large, Brian Awad of McInnes Cooper, and Cheryl A. Canning of Burchells LLP, former Chair of the LIANS Board. Sydney’s Tuma T.W. Young, sole practitioner and Assistant Professor of Indigenous Studies at Cape Breton University, was reelected as a Member at Large.

The following lawyers were acclaimed in the recent elections and have returned to Council for another two-year term: Jillian MacNeil and Diane L. McGrath QC, Cape Breton District; Ellen R. Burke and Kelly R. Mittelstadt, Central District; John Bodurtha, Sheree L. Conlon QC and Loretta Manning QC, Halifax District; and Andrew S. Nickerson QC, Southwestern District.

A byelection is underway to fill the remaining vacant seat in Southwestern District. Recruitment efforts are in progress to fill two newly created seats for public representatives, who will join current public reps Mike Baker, Natalie Borden and Peggy Gates-Hammond CPA, CA, CFP, TEP, for a total of five public seats on Council.

Visit nsbs.org/council-materials for Council updates, agendas and meeting documents throughout the year. The new Council members commenced their duties on June 17, 2017, following the NSBS 2017 Annual Meeting.

The Society is moving toward a new model of regulating legal services, in a manner that is risk focused, proactive, principled and proportionate. The goals of this approach include enhancing the quality of legal services and encouraging ethical legal practice.

Recent changes to the Code of Professional Conduct add value and useful guidance for both lawyers and members of the public.

Contextual links now provide ethics information and digests of Hearing Panel and Complaints Investigation Committee decisions. Each link relates to the rule the user is currently viewing, providing immediate guidance on the application and interpretation of that particular rule in Nova Scotia. Bookmarks on the left side ensure easier navigation through the Code. Further resources will be added as they become available.
SOCIETY NEWS

Education & Credentials: New developments

As part of its work to implement the new model for regulating legal services, the Society is proactively identifying ways to support lawyers in fulfilling their education and credentialing requirements. Some new developments following from this approach:

Opening a new practice — This new section of the Society’s website includes an outline of the steps to opening a practice in Nova Scotia and a new practice checklist to assist with the process. See nsbs.org/opening-new-practice.

Trust account assessment — The Society requires lawyers wishing to open a new trust account to complete a trust account assessment. The assessment was recently revised to add a focus on the mechanics of maintaining a trust account. This will confirm not only an individual’s understanding of the trust regulations but also their basic knowledge of legal accounting in practice. See nsbs.org/regulation/trust-accounts.

Land Registration Qualification Assessment — With the assistance of numerous member volunteers and a psychometrician, the Society has created a new LRA assessment. It replaces previous assessments, which were focused on each of the modules of the LRA certification training, with a single assessment covering competencies from all the modules. In conjunction with the new assessment, the LRA review materials were revised and posted on the LIANS website. See lians.ca/resources/real-estate.

Articling — The Society has created two new online booklets to assist in the articling process. The handbook for articled clerks covers requirements for the articling year (including the articling application), information on the Skills Course and preparing for the Call to the Bar. The Principal’s Manual provides information about who qualifies to act as a principal, the responsibilities of a principal, how to create an education plan, and information on the Skills Course and interactions with the Society. See nsbs.org/become_a_lawyer/articling.

In addition, the need for reference letters has been removed from the articling application requirements. This change was made to remove barriers for those applying for articles.

Applicants with foreign law degrees — In conjunction with the Society’s obligations under the Fair Practices Act, Education & Credentials reviewed and revised membership information for individuals with foreign law degrees. A new online Guide for Applicants with Foreign Law Degrees was created to assist these applicants in navigating the admission process.

Guide for newly called lawyers — Education & Credentials is currently working on a guide for newly called lawyers. It will be a resource manual to assist new admits in finding information about such topics as annual regulatory requirements, complaints, insurance claims, professional standards and Society governance.

New LIANS Director: Lawrence Rubin

Lawrence Rubin began his duties on January 3 as the new Director of Insurance at the Lawyers’ Insurance Association of Nova Scotia (LIANS), bringing 25 years of private practice and in-house experience within the insurance industry.

LIANS will benefit significantly from Lawrence’s experience and commitment to ensuring the best possible program to fulfill the Society’s mandate of public protection by adequate liability insurance for practising lawyers.

Born and raised in Moncton, Lawrence received his LL.B. from the University of New Brunswick Faculty of Law. He was called to the Nova Scotia Bar in January and has been a member of the Law Society of Upper Canada since 1991. Prior to joining LIANS, he had worked since 2014 as Legal Counsel for Desjardins General Insurance Group, Inc.’s property and casualty insurance companies. He previously served with DAS Canada, Premiere Insurance, Royal & Sun Alliance and London Guarantee Insurance Company.

Lawrence can be reached at 902 423 1300 and lrubin@lians.ca.

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BOYNECLARKE
LAWYERS LLP
The Society has concluded its Pilot Project to test a self-assessment tool and process designed to support law firms in evaluating and improving their practice management infrastructures. A preliminary report was presented to Council in February 2017, providing an overview of the Pilot’s feedback and findings to date.

This work follows Council’s approval of 10 elements that comprise a firm’s Management System for Ethical Legal Practice (MSELP). Lawyers and legal service providers are required to have in place all of the elements that apply to the specific provider, in order to have an effective practice management system. The 10 elements:

1. Maintaining appropriate file and records management systems;
2. Communicating in an effective, timely and civil manner;
3. Ensuring confidentiality;
4. Avoiding conflicts of interest;
5. Developing competent practices;
6. Ensuring effective management of the legal entity and staff;
7. Charging appropriate fees and disbursements;
8. Sustaining effective and respectful relationships with clients, colleagues, courts, regulators and the community;
9. Working to improve diversity, inclusion and substantive equality; and
10. Working to improve the administration of justice and access to legal services.

Firms will use these as principles for creating and maintaining an effective ethical infrastructure that fits the nature, scope and characteristics of their practice. The 10 elements describe ‘what’ legal service providers are asked to achieve but not ‘how’ to get there – it is for law firms to determine what processes and systems best fit their unique practice and client needs.

A broad range of lawyers and firms in private practice across the province tested the self-assessment process, resulting in robust feedback. Some of the core findings:

- Firms expressed wide acknowledgment that strengthening the robustness of practice infrastructures would likely result in improved legal services access and delivery, and lawyers’ improved wellness and success in practice.
- Strong support was voiced for the implementation of a self-assessment process that helps lawyers prioritize and execute self-identified improvements in their practice infrastructures, but does not mandate them to implement specific systems or improvements.
- Lawyers are particularly enthusiastic about the proposed ‘Resource Portal’ – providing access to quality practice management tools and resources through a centralized resource database – and for the Society taking on a more active role in identifying and filling resource ‘gaps’.

- There is healthy skepticism about the Society’s new regulatory approach (to be addressed through open communication and proven results); but overall, there is strong support for an ‘aspirational’ self-assessment process and a supportive, resource-led response.

The Pilot enabled many discussions between practising lawyers and Society staff, providing a deeper understanding of the current ‘pressure points’ for lawyers in practice and an opportunity for the Society to respond. The need for guidance around practice succession was heard and is being addressed through a new Task Force that aims to create succession planning guidelines. Responding to feedback around the lack of resources for lawyers opening new practices, the Society developed a “New Practice Checklist”.

The Pilot marks the start of a different dialogue with lawyers and firms – one that will continue to provide law firms with quality advice, tools and resources. Through the new regulatory model, the Society aims to encourage delivery of consistently high quality legal services, minimize exposure to risk, and improve overall wellness and success in practice. In doing so, this also fulfills the Society’s mandate to uphold and protect the public interest in the delivery of legal services. ♣
For many Canadians, the cost of a full scope legal retainer is economically prohibitive. Legal services can be expensive, leaving many with the only option available: to do it themselves. But an emerging trend may offer another option to those who would otherwise proceed without any legal assistance whatsoever: limited scope retainers, or unbundling.

Limited scope retainers allow lawyers to assist some clients with specific aspects of a matter, such as drafting legal documents, providing legal advice regarding a certain aspect of their matter, or providing specific information that will assist their clients when representing themselves in court. When lawyers are able to assist clients with the more complex aspects of their matters, it has the added benefit of lessening the burden on the legal system.

While a limited scope retainer is certainly a viable option in certain circumstances, it is not without its risks. In a recent Court of Appeal for Ontario legal malpractice case, Meehan v. Good, 2017 ONCA 103, the plaintiffs, Anne and Michael Meehan, had retained counsel, John Cardill, to conduct an assessment of the accounts of their former lawyer, Good, who had represented them in an action resulting from a motor vehicle accident. They then brought an action against Cardill, saying he owed a duty of care to advise them on the limitation period regarding a possible negligence claim against Good. Cardill was successful in bringing a summary judgement, with the motions judge agreeing that Cardill did not owe the Meehans a duty of care to provide legal advice regarding a possible negligence claim.

The Meehans launched a successful appeal. In its decision, the Court of Appeal stated that in order to determine whether there was a duty of care owed to the appellants, the Court must examine “all of the surrounding circumstances that define the relationship between the lawyer and the person to whom the duty of care may be owed.” (Meehan v. Good, supra, at paragraph 5)

The Court stated the motions judge had failed to conduct this assessment but rather focused solely on the wording of the limited scope retainer and did not consider the advice Cardill had given the Meehans regarding the limitation issue. Some of the relevant surrounding circumstances included:

- Cardill providing his opinion regarding the competency of Good’s representation;
- Cardill advising the clients they ought to allege negligence during the course of the assessment proceeding; and
- Cardill suggesting there might be a negligence claim and the Meehans ought to seek other counsel in this regard.

In the matter above, Cardill appears to have gone beyond the limited scope retainer by not only providing advice to the Meehans regarding a possible negligence claim but the evidence suggests that in all likelihood, Cardill advised the clients about the limitation period. Had Cardill stayed within the confines of the limited scope retainer, the Court’s conclusion may have been different.

The “all or nothing” approach precludes a swath of Canadians from obtaining legal services. While limited scope retainers are a viable part of the solution, a client may still be under the erroneous assumption that the lawyer will assist in all aspects of their case.

Managing client expectations is paramount, as well as staying within the parameters of the retainer. Before agreeing to assist a client in a limited capacity, we recommend confirming that not only it is an appropriate matter for a limited scope retainer but the retainer is well crafted so the client understands and agrees to the nature and extent of the representation.

We will continue to monitor these trends of decisions that appear to expand the liability of lawyers at a time when unbundling and limited scope retainers appear to be on the rise.

If you have any questions on these, or any other risk- or practice-related matters, do not hesitate to contact the Risk and Practice Management Program at sgerrard@lians.ca or call the Lawyers’ Insurance Association of Nova Scotia at 902 423 1300.
As Canadians, we are all richer because of our differences. The same goes for our institutions, including the judiciary. The more inclusive we are, the broader our perspectives and the more informed our decisions.

Furthermore, when citizens see themselves reflected at the highest levels of the legal system, they are likely to have more confidence in that system. Such representation can hold even more weight in racialized communities that for decades have been underrepresented in the legal profession and overrepresented in the criminal justice system.

In this regard, Nova Scotians now have reason for optimism.

The Provincial and Family Courts recently welcomed African Nova Scotian judges Ronda van der Hoek, Rickcola Brinton and Samuel Moreau, as well as Judge Catherine Benton, the province’s first Mi’kmaw woman on the bench, and Judge Amy Sakalauskas, a gay woman. In the last year or so, the Nova Scotia Supreme Court was pleased to welcome Aboriginal judge Timothy Gabriel, formerly of the Provincial Court, and Lester Jesudason, a Sri Lankan Canadian who presides in the Family Division.

Both the provincial and federal governments have expressed a commitment to continue these efforts to enhance diversity on our benches.

Nova Scotia’s Chief Justices and Judges have made a similar commitment. In January 2016, we considered whether the judiciary had a role to play in enhancing diversity on our benches, recognizing of course that the actual appointments are made by government.

To this end, we asked Justice Linda Lee Oland of the Nova Scotia Court of Appeal to investigate and develop potential recommendations. This builds on the judiciary’s work with Professor Michelle Williams, Director of the Indigenous Blacks and Mi’kmaw Initiative at the Schulich School of Law.

After an enormous amount of work, including many interviews with equity-seeking leaders in the legal community and beyond, Justice Oland provided us with a list of recommendations. All of them are thoughtful and practical, and all have been wholeheartedly endorsed by the Nova Scotia Chiefs.
Implementation of these initiatives is well underway. To help with that, we have enlisted an array of judges, lawyers, academics, and community leaders who will ensure the judiciary and its staff maintain diversity as a primary consideration in all its work.

More than 25 years after the Royal Commission on the Donald Marshall Jr. Prosecution identified the need for increased Aboriginal and racialized representation in the system, we are starting to see real progress.

The judicial appointments in recent years have made us richer as a judiciary. I am not simply uttering platitudes — I am talking about real, tangible benefits.

In the past, decisions in the justice system have generally been made by people with relatively similar backgrounds and world views. Emma Halpern, Equity Officer with the Nova Scotia Barristers’ Society, has noted, and I agree, that this approach can be limiting.

“Ultimately, we cannot escape our experiences and the world views that are born from those experiences,” she wrote in a 2009 article on the legacy of Donald Marshall Jr. “Our past experiences play a major role in how we view the world and therefore impact our decision making. It follows, then, that a crucial aspect of building an equitable legal profession is ensuring that decision-making roles are filled by people with a diversity of life experiences and viewpoints.”

One need only look to the Marshall Inquiry report, or the stories of Grand Chief Sylliboy and Viola Desmond, to know that African Nova Scotians and the Mi’kmaq have had a difficult history in Nova Scotia. It is important to have their perspectives on the bench, and I hope that our new judicial mentorship initiative will encourage more lawyers from these communities to apply to the judiciary.

Of course, our individual perspectives, however unique, cannot be the only consideration. Like our new judges, every judicial candidate must demonstrate experience, legal knowledge, intelligence, wisdom, fairness, patience, and courage. These criteria ensure the best and brightest make the cut.

There has been a lot of discussion about the need for a rich and diverse legal profession. But it is not enough to simply talk about it — it is crucial that our actions support our words. I believe the judiciary, with this initiative, is taking an important first step.

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1 Equity and diversity in the legal profession: The legacy of Donald Marshall Junior, The Society Record, Volume 27, No. 4, October 2009

The Honourable Michael MacDonald, Chief Justice of Nova Scotia, presided at the recent robing ceremonies for Judges Rickola Brinton (previous page), Catherine Benton and Sam Moreau.

Photos by Darren Pittman, Images East Photography/Executive Office of the Nova Scotia Judiciary
Recommendations for the Chief Justices & Chief Judge:

#1 – Encourage diversity in the Chambers Clerk Program and the Pro Bono Provincial Court Placement and Pro Bono Family Court Placement by, for example, having the applications include statements welcoming applications from racialized backgrounds and seeking self-identification, and by further encouraging application through the IB&M Program.

#2 – Discuss with their judges whether there are any other opportunities at their courts for law students.

#3 – With the assistance of the Communications Director, identify opportunities to proactively engage and work collaboratively with schools, the law school, the practising bar, organizations that represent lawyers or visible minority lawyers, and the community at large towards increasing knowledge of the role of the Judiciary and how one becomes a judge.

#4 – As appropriate and possible, consider appointing judges from racialized groups as their nominees on the Committees.

#5 – If appropriate, encourage the Ministers of Justice and other nominating bodies to include persons from visible minorities in their appointments to the Committees.

#6 – Through their nominees, encourage the Committees to receive periodic cultural competency training.

#7 – (Or, if more appropriate, the Chief Judge only), discuss the 15-year requirement for appointment to the Provincial Court and the Family Court and its impact on the inclusion of racialized persons on the Bench, with the Minister of Justice of Nova Scotia.

#8 – Consider whether judicial work shadowing by, and judicial mentoring for, racialized lawyers ought to be instituted. If so, they should consider how formal or informal, what criteria, material, format, and so on would be most appropriate.

#9 – Suggest to their judges that whenever they identify lawyers who would be suitable candidates for appointment to the Bench, they encourage those lawyers to do so.

#10 – Add a cultural competency component, whether regularly or periodically, to one or more of the conferences for their respective or combined courts. In doing so, they might call on organizations for judicial education, such as the National Judicial Institute, and consult with law professors, local community groups and leaders, and the organizations representing visible minority lawyers for suggestions, recommendations and advice.

#11 – Continue to promote the inclusion of visible minority persons on the Bench and, together with their judges, to welcome and support them following their appointments.
Justice Oland on leadership: Lifelong learning

In the year 2000, the Honourable Justice Linda Lee Oland was appointed to the Nova Scotia Court of Appeal – and made history as the first Chinese Canadian appointed to an appellate court in Canada. Last year at the request of Chief Justice Michael MacDonald, she completed an assessment and report on how the judiciary could encourage more diversity on the Bench.

The report generated much interest at several speaking engagements through the winter – first at the CBA-NS mid-winter conference in February, where Justice Oland joined a panel discussion on diversity on the bench. Then on March 30, she was keynote speaker at the Society’s fifth annual Women – Strength in Leadership: Remembering Dara Gordon QC event, held at the new Discovery Centre.

Justice Oland said she knew Ms. Gordon from law school days in the 1970s. They both went on to practise at McInnes Cooper & Robertson (now McInnes Cooper), where Justice Oland became the firm’s first female partner.

“I admit I did some stupid things ... early on, I had no photos of my husband or children in my office. I just wanted ‘lawyer’ stamped on my forehead. It’s no wonder that we were a little hyper-conscious of our position,” she said, adding, “I was probably a good example of women not giving ourselves enough credit. A lot of men had a lot more confidence than I did at that stage of my career.”

Justice Oland shared a number of leadership nuggets, such as the importance of teamwork and mentors. Be decisive. Work hard. Listen hard. Don’t assume anything. There’s always another side of the story, so wait for it.

“Being a student of something outside the law is a good thing because you can learn a lot,” said Justice Oland, who recently took a class in Mandarin. She now has supernumerary status with the courts, “so I have a little more time than I’m used to,” she said. “You get very used to being in charge and not being charge can be a good thing. When I’m at my African drum class, it’s a totally different world. Nobody cares who I am and nobody even asks. It’s part of my strategy to stay away from The Law Courts, otherwise I just keep volunteering to do things!”

Remembering Dara L. Gordon QC
This annual event is sponsored by McInnes Cooper in memory of Dara Gordon QC, a highly regarded lawyer, entrepreneur and leader. Ms. Gordon advised government bodies and corporations on major financing and infrastructure projects, such as the Confederation Bridge and complex federal negotiations on the sharing of offshore resource revenues. With her family, she launched the acclaimed Benjamin Bridge winery in the Annapolis Valley. ☎
When he was a young articled clerk in Toronto, the Honourable Justice Michael Tulloch had the good fortune of a chance meeting with Charles Archibald, one of the first Black lawyers on Bay Street.

“Charles saw me one day, waited for me and introduced himself,” said Justice Tulloch, who in 2003 became the first Black lawyer appointed to the Ontario Court of Appeal. “We exchanged numbers and kept in touch. I was 20 and he was 60. It meant so much to have someone like him mentor me. We had to prove Black lawyers are as good as other lawyers; there is still that perception.”

The Canadian Association of Black Lawyers Nova Scotia Chapter (CABL-NS) invited Justice Tulloch to be guest speaker at its Black History Month event February 16 at Stewart McKelvey in Halifax, which also included a spoken word performance by El Jones.

“It’s encouraging to see law firms showing a commitment to inclusiveness and diversity. We cannot have a just society unless law firms are inclusive and representative of the society,” said Justice Tulloch, who also stressed the vital role of groups like CABL in moving things forward.

Prior to joining the Bench, Justice Tulloch was CABL’s president and one of its founding members. He also mentored students across Ontario, including at underprivileged schools, and founded the Second Chance Scholarship Foundation, a charity for at-risk youth.

“There those of us who are learned in the law have a social justice conscience, a privileged view and a responsibility ... If every one of us is an example to a young person, it will multiply and have a ripple effect,” he said. 

Find out more about CABL at cabl.ca; follow CABL-NS at facebook.com/cablns.
Over the last few years, the Nova Scotia Legal Aid Commission (NSLA) has been actively engaged in finding ways to improve access to justice through the expansion of our eligibility and range of services provided. We’ve been expanding summary advice services, outreach in communities, legal information content on our website, and the role of our support staff in serving clients.

Moving forward within existing fiscal restraints requires us to be more collaborative and innovative in our approaches across the province. Here’s a brief snapshot:

WINDSOR

In our Windsor office, NSLA has been providing a form-filling clinic for over a year on the last Wednesday of each month from 1-4 pm. Appointments are not necessary. People may show up needing help with passport applications, CPP applications, pardon applications, senior pharmacare and supplement applications, and Consent to Travel forms. Support staff provide assistance with form filling and a lawyer is available if needed. Community feedback has so far been very positive. The office sees this service as a natural extension of what they do every day to help people in their community.

Brian Stephens, the managing lawyer of the Windsor office, has been providing appointments to Sipekne’katik, on close to a monthly basis for the last several years. At a basic level, he says it improves attendance for appointments and preparation for cases. It also helps shift perceptions for the client:

“It helps to shift perceptions of my just being part of the system, which in turn leads to a better understanding of the process to which they are being subjected. Yes, it can improve results, but at the very least it fosters understanding and a sense of participating in the process, which itself is a rudimentary form of access to justice.”

ANTIGONISH

In our Antigonish office, NSLA provides outreach services at the Paq’inkek Health Center every three weeks. Nicole Rovers, staff lawyer, describes her experience with the outreach:

“... I think I have come to appreciate how nervous people are to meet with lawyers, to come to our offices and to address their problems. By meeting people in the community, in places where they are comfortable, we are able to take away one barrier to accessing justice, simply getting people in the door…. By going out into the community, by working with other community-based organizations, we are able to reach more people and hopefully achieve better outcomes. The hope is always that we break down the fear of actively participating in the system, that we build a reputation as trustworthy advocates and that by reaching out, people are more comfortable coming in to meet with us. ”

DARTMOUTH

Twice a month, Andrew Kirk in the Dartmouth Family office attends Family Night at the Mi’kmaq Child Development Centre, which features a guest speaker, a language lesson and dinner for parents. Parents and children are encouraged to attend and leave the children upstairs for playtime. Andrew’s attendance provides an opportunity to speak to people who may wish to get a little informal information about legal aid from him as a lawyer and to build trust. From his experience, he has learned:

“One thing I have come to understand is the great number of non-Mi’kmaq Indigenous people there are in HRM. I have met
Haudenosaunee, Maliseet, Cree, Passamaquoddy and Innu people. It has been eye opening to see the same problems faced by families from all over Canada. I really enjoy these sessions. Many existing clients are there and it helps build trust with other and new families.”

“The importance of [NSLA’s outreach] was easily validated through the response by residents coming forward with questions regarding social justice, youth or family priorities.”

HALIFAX
To provide legal services for newcomers, the Halifax North office collaborates with the Immigrant Services Association of Nova Scotia (ISANS). Mira Musanovic, crisis intervention counsellor with ISANS, states:

“Oftentimes, immigrants for many different reasons may be intimidated and mistrustful towards the legal system in general. Immigrants who assess ISANS services may feel safer and more at ease when they are able to meet with a lawyer at our location, especially if it is their first time. Access to legal services at ISANS makes it much easier for those immigrants who are at early stages of their settlement process and have difficulties going to new locations on their own. The collaboration between ISANS and NS Legal Aid ensures removal of two major barriers to immigrants’ access to justice: interpretation and child care. ISANS provided both during the meeting with the lawyer .... The majority of immigrants are not familiar with the legal system. Having relatively quick access to legal information ensures that the decisions they need to make are informed and timely.”

The Halifax North office also provides outreach to Spryfield and the surrounding area using a hub model for the facilitation of social justice work and summary family advice. A full range of services are provided at a satellite office at Chebucto Connections two to three times a month through appointments and drop-ins. The social justice lawyer regularly attends the multiservice roundtables hosted by Chebucto Connections, for the opportunity to explain more about legal aid services and to learn more about what other organizations/service providers in the community are offering.

NSLA is also a member of ECHO (Eastern Chebucto Hub Organization), working in partnership with other social, health, legal, child, youth, adult, senior and family organizations to make it easier for community members to find the services, programs and information they need. Bonnie Ste. Croix, executive director of Chebucto Connections, offered the following reflection:

“Through its membership in Spryfield’s ECHO Hub, an 18-agency partnership, Nova Scotia Legal Aid has been instrumental in bridging a significant gap in service in the area. As part of this comprehensive network of community agencies, NSLA’s outreach – based out of the 500 Block of Herring Cove Road at Chebucto Connections’ storefront office – has provided local residents with legal services they can walk to, or quickly access, through public transit. The importance of this service was easily validated through the response by residents coming forward with questions regarding social justice, youth or family priorities. The accessibility, guidance and advice by NSLA has incontrovertibly served Spryfield residents and contributed toward community well-being.”

TRURO
The Truro office has developed two innovative programs recently. It provides routine summary advice in criminal court and during family court group intake days. In neither case is income a factor. The criminal lawyers provide summary advice to accused individuals prior to them entering a guilty plea. The family lawyers provide summary advice to litigants before they finalize their documentation, which allows them to better frame the issues.

The other program is an after-hours walk-in clinic held on the second Monday evening of every month. Two lawyers are always present, a criminal lawyer and a family lawyer. The impetus was to reach those who could not afford to take time off work to get simple legal advice, or who would not qualify for full service. There is no financial qualification.

Robert Moores, managing lawyer for the Truro office, says the clinic serves a triage function for assessing what services NSLA may be able to offer. He adds:

“(The clinic) has also served to make counsel more aware of the vast array of legal issues facing our clientele. In these ways, it encourages us to recognize the need for solutions to problems not normally in our field of vision, and to consider the impact of the things we do on the lives of our clients.”

ANnapolis ROYAL
Our Annapolis Royal office covers two geographically large counties (Annapolis and Digby). It has always been proactive in promoting access to justice by providing some level of outreach to assist clients who often live in remote areas far away from the office or any courthouse.

Over the years, the office had used the Comeauville courthouse in the Acadian Region of Digby County (Clare) for outreach purposes primarily after court on court days, as most of the people
living in that region have approximately an hour’s drive to come to our office and this area of Nova Scotia has no access to public transportation. With the closure of the courthouse, many clients living in that area found it difficult to attend our offices. The NSLA office contacted the Municipality of Clare in Little Brook and made arrangements to use office space in their building to better service these clients. A service that is much appreciated by the clients and the employees of the Municipality.

In addition to Little Brook (and other outreach initiatives), the Annapolis Royal office provides regular service on the Bear River First Nation in Digby County. Similarly to the outreach in the Acadian region of Digby County, the outreach in Bear River focuses on meeting clients and prospective clients in their communities. Again, appointments are scheduled with existing clients at the Band Office in Bear River and the community is made aware that NSLA will be in the area on a certain date. The Band Office has been proactive in contacting the office should someone require legal service and is very appreciative and helpful in making this a success. In thinking about the outreach provided, Darren MacLeod, managing lawyer, offered the following reflection:

“Both Bear River and Clare are distinct Nova Scotia communities with difficulties accessing our office and local Justice Centres. Our experience in providing outreach to these communities has been very positive. Both communities now “know” Legal Aid better and are able to put faces to the service. Many times clients and perspective clients are more comfortable meeting with Legal Aid staff in their own communities. It also helps us understand the communities better by being there and talking about the service we offer and can offer in the future with community leaders.”

The experience of expanding our outreach into communities – and working more intentionally with community partners to provide more meaningful services – has benefited our clients and enriched our understanding of the barriers our clients experience in accessing justice. The approaches we’re taking reflect that there is no one way to increase access to justice, as long as it is responsive to the barriers many Nova Scotians face including language, culture, diversity, distance, skill level and confidence. 

Find out more about Nova Scotia Legal Aid online at www.nslegalaid.ca and on Twitter @NSLegalAid.
Informal ADR reduces appeals and builds greater understanding

Appeals at any level can be time consuming and costly. An informal process put in place by the Property Valuation Services Corporation (PVSC) to help resolve disputes before they escalate is helping to trim hours and dollars from the formal appeals process – and more. The alternative dispute resolution model is also increasing awareness about the assessment process in Nova Scotia and building bridges with property owners, especially residential homeowners.

“It’s about providing the space and time to get to the root of the issues,” says Russ Adams, the PVSC’s vice president of compliance and enterprise risk services. “It’s also about relationships. We have to give people a chance to be heard.”

The traditional appeal process for residential and commercial property owners starts counting down when they receive their assessment notice. They have 31 days to object, or appeal. At this stage, explains Adams, an assessor will review the file and speak with the property owner. The assessment may or may not be amended accordingly.

If property owners are not satisfied with the outcome of the assessor review, they can take their case to the Nova Scotia Assessment Appeal Tribunal (NSAAT), an independent third-party body that can rule on such issues as the assessment itself, the classification and the name of person assessed. The tribunal is administered by the province and its members are appointed, trained and paid by government.

“It is a more formal process,” notes Adams, “but the onus is still on the property owner to say why the assessment is not valid.”

Once the NSAAT has ruled, which must happen within 60 days, one step remains in the appeals process: the Nova Scotia Utility and Review Board (UARB).

“We are the final court of fact,” says Executive Director Paul Allen. “Any appeals from Board Orders must be based on matters of law or jurisdiction. Clearly it would be difficult to argue that the Board has no jurisdiction.”

This final step in the appeals process is the most formal. Indeed, it starts with the filing of a notice of appeal, which must be received within 30 days from the date the NSAAT decision was mailed to the taxpayer. That notice must set out “the specific matters that are the subject of the appeal,” the “component of the assessment” under appeal and “the specific reason for the appeal.”
In 2010, the PVSC introduced a new and informal step within the appeals process. Before property owners head to the UARB, they will be contacted by the corporation. “This is not a formal ADR process, but we do have conversations with property owners,” says Adams. “We spend time talking with the property owner to understand the issue.”

“**It’s about providing the space and time to get to the root of the issues. It’s also about relationships. We have to give people a chance to be heard.**”

That often involves ensuring the property owners, especially residential owners, understand the valuation process and how an assessment is derived. “Often we find there is an education that has to happen about what an assessment is and what can be done,” notes Adams.

Emotions can also run high, and potentially cloud judgment. “A lot of the time the people that come here are angry about the valuation even if the PVSC has done it correctly. That doesn’t benefit anyone,” says Allen. He recalls one case before the UARB where the difference being disputed was $25 a year.

“For businesses, the valuation is often just a number,” notes Adams. “For residential owners, it is more personal.”

Adams points out that there is also an onus on the PVSC to be flexible. “There are areas where we can look at things differently. An assessment is not an exact science. It is based on comparators and rarely do you have properties that are exactly the same.”

Access to justice can also be enhanced through the PVSC’s alternative dispute resolution process. “If a property owner’s question or concern is answered quickly and effectively, that is, in my opinion, improved access to justice,” notes Allen.

The informal ADR process is paying off. “The ADR process has reduced the number of appeals that come before the UARB and fewer are withdrawn,” says Allen. In fiscal 2016, there were 45 appeals to the review board, of which eight were discontinued. In fiscal 2017 (as of mid-March), there were 31 appeals with four discontinuations. This compares with 2013, for example, when there were 82 appeals.

An effective solution, and a very personal one, the PVSC’s informal ADR process is also an expensive one. “The ADR process is labour intensive for the relatively small number of properties involved,” says Adams. “However, it can save time on the other end. It takes a lot of time and resources to prepare formal reports, especially when we have confidence in the outcome. Also, the PVSC has to pay a proportionate amount for the use of the UARB hearing process.”

The Property Valuation Services Corporation has also put in place an online approach to help identify and address issues before property owners receive their official assessment. A preliminary assessment is posted on the PVSC website with a draft value of the property. “The intent here is one of communication,” says Adams. “It is the perfect time to let the PVSC know if there has been a change to the property. It means we are able to adapt and change.”

The Nova Scotia Utility and Review Board is also working to make the appeals process more simple, straightforward and understandable for property owners and others. It has made a commitment to use plain language in decisions, on its website and in all its communications. It has equally committed to making information easily accessible. Visitors to the site can do everything from file a complaint to listen to live hearings to send files directly to the board.

A public documents database is also available at the click of a mouse. Users can search for a specific case or browse through similar cases, look at cases over time, seek out specific matters and more. “We have taken the open courts concept to heart,” says Allen. “We push to get the information into the public domain, as appropriate and respectful of privacy.”


**APPEALS FILED PER FISCAL YEAR**

(All types – residential and commercial; fiscal year is April 1 to March 31)

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Nova Scotia’s restorative justice program is maturing. The government has expanded the program to include adults throughout the province. Until recently, the program was available only to youth aged 12 to 17.

“Restorative justice has proven to be a good option for communities, victims and offenders,” former Justice Minister Diana Whalen told *The Society Record* prior to stepping down from political life. “I am so pleased that we expanded this important program to offer it to youth and adults across the province.”

The provincewide expansion stems from successful pilot projects that launched six years ago in the Cape Breton Regional Municipality, the Municipality of East Hants and Colchester County. According to the Department of Justice, restitution rates from the pilots have been very successful, with strong support from criminal justice partners and a high satisfaction rate among victims.

The restorative justice expansion has replaced the Adult Diversion Program, which offered a post-charge alternative to a court proceeding. Restorative justice, on the other hand, takes a more inclusive approach that has shown better outcomes for everyone involved. Offenders, it has been found, are far less likely to come into conflict with the law again. Victims also benefit. Indeed, the United Nations Working Group on Restorative Justice defines it as “a process whereby parties with a stake in a particular offence resolve collectively how to deal with the aftermath of the offence and its implications for the future.”

“Restorative justice requires offenders to take responsibility for their actions and holds them accountable to the community and their victims,” said Ms. Whalen. “This helps victims and their families get the closure and support they need to heal.”

That was certainly the case for Meghan Peters, co-owner of the Tall and Small Café in Antigonish. “Through restorative justice, we met the person who broke into the café, we saw their remorse and how much they wanted to make things right,” she says. “I want people to know that something positive can come from negative actions thanks to the restorative justice program.”

These four pillars are the foundation for restorative justice programs around the world and here in Nova Scotia:

- holding the offender accountable in a more meaningful way;
- repairing the harm caused by the offence;
- achieving a sense of healing for the victim and the community; and
- reintegrating the offender back into the community.

Referrals to Nova Scotia’s program come at one of four stages along the continuum of the criminal justice process: referral by a police officer before a charge is laid; referral by a Crown attorney after a charge is laid, referral by a judge after a conviction and before a sentence is imposed; and referral by staff of Correctional Services or Victim Services after a sentence has been handed down.

Various practices are associated with restorative justice, such as victim-offender mediation, family group conferences and sentencing circles, but they are all working toward the same goals. These include helping to repair the harm to the victim, where possible; assisting the offender to lead a law-abiding life; and restoring any damage sustained in the community.

It’s working – and in ways the traditional court system can’t possibly. Not surprisingly, interest in restorative justice is growing. The oldest practice of restorative justice, victim-offender mediation, had its roots in Kitchener-Waterloo, Ontario, almost 50 years ago. Then NATO coordinated a conference to explore the practice. In 1996, New Zealand adopted legislation mandating the use of restorative practices in young offender cases.

Today many countries, including Canada, the United States, Australia and Japan, have adopted some form of restorative justice programs. In 2012, the Nova Scotia Human Rights Commission held its first restorative board of inquiry and made the national history books. It was the first time restorative justice principles have been used in this country for a human rights board of inquiry.

Find out more about the Nova Scotia Restorative Justice Program at [novascotia.ca/just/rj/](http://novascotia.ca/just/rj/).
VIDEO CONFERENCING ON THE RISE IN NOVA SCOTIA

Video conferencing is now common practice in many Provincial Courts throughout Nova Scotia. It is possible for witnesses, defendants, counsel and even judges to appear and participate in the court process by video. For example, a witness in a correctional facility may now give evidence via a video link.

Video conferencing is one of many initiatives by the Province and its justice partners to improve access, increase safety and reduce delays in our criminal justice system.

A few benefits of video court appearances:

- reduce the number of people in custody in courthouse holding cells;
- avoid dangerous transportation in storms or extreme weather events;
- decrease the potential for altercations and/or escape attempts during transportation;
- save time and expenses for counsel and clients.

In 2015-2016, almost 690 hearings occurred and 3,500 charges were addressed by way of video conferencing in Nova Scotia. Charges commonly heard through video conferencing include those under the Criminal Code, Youth Criminal Justice Act, Motor Vehicle Act and the Controlled Drug and Substances Act.

See the video conferencing section of the Courts of Nova Scotia website for more information including request forms; details about procedures; a new video conference protocol; and a list of Justice Centres, correctional facilities and youth facilities with video conferencing equipment. courts.ns.ca/Provincial_Court/NSPC_criminal_rules_forms.htm#VideoAppear

Enhancing video conferencing capability across the province is a project of the Criminal Justice Transformation Group of Nova Scotia. The Group’s goal is to modernize the province’s justice system and make it more efficient and effective through consultation and collaboration.
Let’s think big together about access to justice

The Honourable Thomas Cromwell
Chair, Action Committee on Access to Justice in Civil and Family Matters

Let’s start with what we mean by “access to justice”. I’m concerned that it can have so many meanings that it loses its meaning entirely. For sure it is a phrase that is banded around to mean a lot of very different things. What I mean by “access to justice” is that people have the knowledge, skills, resources and services to meaningfully address their civil and family legal issues.

In order to meaningfully address their problems, people do not necessarily need to have their “day in court” (let alone their month in court!). Access to justice needs to be understood much more broadly than that. I will never forget the women at one of the many access to justice events that I’ve attended over the past eight years who said that sometimes access to justice is more about a bus pass or a babysitter than it is about getting into court. So access to justice must be understood in broad terms: do people have what is required to meaningfully address their problem?

This broad understanding of access to justice means that we have to keep fair process and practical outcomes in some reasonable balance. Many would say – and I am one of them – that we in the justice system have tended to be process heavy and outcomes light. We all know that too often a judgment is a meaningless piece of paper; too often, what we call fair process provides a means by which moneyed might can wear down the right. Of course, fair process is important. But so are practical outcomes. How often does our current approach provide both?

Once we understand that access to justice must be understood broadly, we quickly see that the problem is both complex and systemic. Everything in our system is related to everything else and so a “solution” adopted by one part of the system can quickly become a “problem” for another part. We have generally been unwilling or unable to take a tough-minded, systemic view of access to justice. And too rarely have been able to articulate the specific goals of reform or measure or meaningfully evaluate the effects of particular reforms.

Remember when, in the 1970s and early ’80s, broader rights of discovery were thought to be the cure- all for what ailed the civil justice system? Broader rights of discovery would make for fairer trials and encourage settlement. Fast forward 30 years, and what became enemy number one in civil proceedings? Excessive discovery. The discovery saga is typical. Significant procedural reforms are introduced based on anecdotal evidence (sometimes called “anecdatal data”) and effects are “monitored” in the same way. We simply do not take account of foreseeable systemic effects of the changes or bother to measure these effects once the reforms are put in place.

What I hope to do in this series of columns is invite a broader understanding of what access to justice means, and to advocate for a fundamental rethink of what our system of civil and family justice needs to look like to achieve practical outcomes by means of fair process for the people who bring us their legal problems. And I hope to celebrate some of the wonderful work that is being done every day across Canada to improve access to justice. In short, I want to invite readers to think big together about how we can bring about major and beneficial change for the people who look to us for help in addressing their civil and family justice issues. Fasten your seat belts.

This column was republished with permission from the author and The Lawyer’s Daily. It originally appeared on March 3, 2017. The Honourable Thomas Cromwell served as an appellate judge for 19 years, retiring from the Supreme Court of Canada in September 2016. He is counsel to the national litigation practice of Borden Ladner Gervais LLP and chairs the Chief Justice’s national Action Committee on Access to Justice in Civil and Family Matters. His columns appear in The Lawyer’s Daily at thelawyersdaily.ca.

SUMMATION

Access to justice is the biggest challenge facing our legal system. And just about every lawyer I know cares deeply about the health of that system and many are trying to help. But do we understand the problem and are we making progress? Those questions will be the jumping off spot for my column dedicated to access to civil and family justice in the coming months.

The national Action Committee on Access to Justice in Civil and Family Law Matters has just launched a public engagement campaign, with support from the Law Foundation of Ontario. The campaign is focusing on the following messages:

• There is a legal dimension to everyday life.
• You can plan ahead for legal issues.
• We know that legal problems can be intimidating, time-consuming or expensive.
• We are working together to make the legal system work better.
• The legal system is critical to a healthy democracy and strong communities.

See the Action Committee’s goals at JusticeDevelopmentGoals.ca. For ongoing updates, follow the Action Committee online at cfcl-fiej.org/action-committee, on Facebook at ActionCommA2J and on Twitter at @ActionCommA2J and the hashtag #justiceforall. To share ideas and materials from the campaign, see calibratesolutions.ca/actioncommitteecampaign.

CONNECT WITH THE ACTION COMMITTEE

The Honourable Thomas Cromwell, Chair, Action Committee on Access to Justice in Civil and Family Matters

The Honourable Thomas Cromwell
Chair, Action Committee on Access to Justice in Civil and Family Matters

Let’s think big together about access to justice

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