

# NEXUS

UNB LAW ALUMNI MAGAZINE

A close-up portrait of Chief Patricia Bernard. She has long, straight black hair and is smiling warmly at the camera. She is wearing a black turtleneck sweater and a patterned scarf with red, white, and black elements. The background is a blurred natural setting with green and brown tones.

**CHIEF PATRICIA BERNARD**  
*secures a historic settlement for the  
Madawaska Maliseet First Nation*

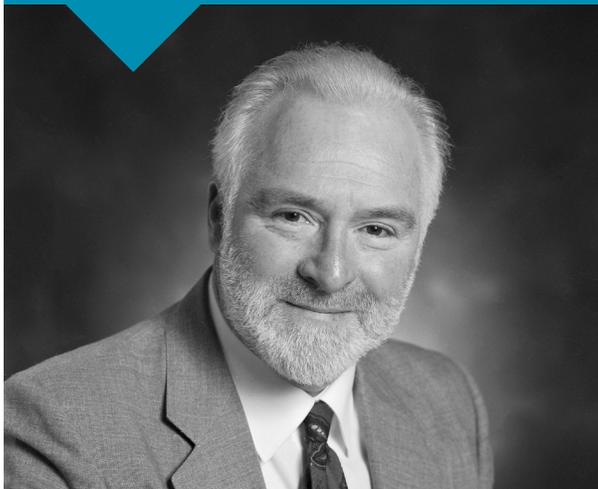
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# Dean's Message



A handwritten signature in black ink, appearing to read 'Michael Marin'.

Michael Marin  
Dean & Associate Professor

## *Perseverance and progress in the face of the pandemic*

The past sixteen months have been unlike any other in the history of UNB Law. Like virtually every organization, we've experienced the disruption and disappointment of the pandemic. But we've also seen perseverance and progress. As strange as this may seem, I'm confident in saying that UNB Law will emerge from the pandemic a much improved law school. The facts speak for themselves.

As I wrote in the last edition of Nexus, the pandemic gave us an opportunity to reach out to you, our alumni, and involve you in sustaining UNB Law's unique sense of community. Through new initiatives like the Alumni Mentorship Program and the UNB Law Podcast, you helped us give our students hope during a trying and uncertain time. My sense is that these initiatives also reconnected many of you with UNB Law. One of the great privileges of my job is hearing from alumni who are proud of their law school and eager to help shape its future.

A very tangible result of this engagement is the remarkable support we received from you for the student lounge renovation. When we embarked on this campaign, I must admit that I was nervous. We were still very much in the middle of the pandemic, donor resources hadn't fully recovered, and my team and I had never done anything like this before. We were advised not to get our hopes up. But to our great surprise, we raised \$85,000 in just six weeks through an entirely passive campaign driven by email and social media.

In the process, many of you made your first donation to UNB Law. Some of you reached out to us for the first time in many years. The classes of 1969 and 2003 organized class gifts. You shared stories about your time in the student lounge. It was energizing and inspiring for us to see this groundswell of support. As you'll read in more detail later in this issue, thanks to your quick contributions, construction has already begun and our students will have a new space to enjoy this fall.

In addition to upgrading our facilities, we're working hard on maintaining the quality and relevance of our academic program. Over the years, the thing I've heard most often from alumni is their appreciation for our well-rounded, generalist curriculum. Last fall, we made important updates to our curriculum that stay true to this defining feature of UNB Law.

Specifically, we created a new “Core Competencies” compulsory area of study – a category of courses that includes those subjects most frequently recommended and examined by provincial law societies. Students will have to take two courses from the new Core Competencies category, along with one course from the existing Perspectives and Theories category. This is in addition to the seven compulsory upper-year courses. With this change, we’re confident that our curriculum is truly career-ready. By focusing on the fundamentals, we’re ensuring that our graduates will be able to tackle the challenges of the future, not just the demands of the moment.

A critical aspect of staying relevant is playing a meaningful role in advancing the project of reconciliation. Doing so is imperative, both in terms of providing a relevant legal education and promoting public confidence in the administration of justice. In this issue, you will read the remarkable story of Chief Patricia Bernard, ONB (LLB ’99) and her tireless advocacy in securing the largest land claim settlement in the history of the Maritimes.

In May, our Faculty Council unanimously adopted a series of ten recommendations that will allow us to make important progress in responding to the Truth and Reconciliation Commission’s Calls to Action as they pertain to legal education and the administration of justice.

Specifically, we will focus on incorporating Indigenous perspectives into our mandatory curriculum, particularly in first year, by making sure that students understand the colonial context of Canada’s legal system. This can only be achieved by welcoming Indigenous jurists, scholars, and elders to be part of our teaching staff, something that will start with an important appointment this fall.

We will also focus on recruiting more Indigenous students from Atlantic Canada and providing them with the support they need to succeed at UNB Law. I firmly believe that when a group is disproportionately and adversely affected by the justice system, as is the case with Indigenous Peoples, a critical ingredient to positive change is for them to have greater access to legal education.

More Indigenous law students and law teachers will not only result in more Indigenous lawyers advocating for the interests of their people, but will also open the hearts and minds of non-Indigenous students and faculty, fostering the deeper change that reconciliation and decolonization require.

Reconciliation with Indigenous Peoples is one of the central challenges facing our country. As a law school that aspires to be a national leader, we must and we will do our part.

Speaking of our national ambition, last month we lost one of its early champions, Prof. Ed Veitch. In Prof. Bell’s article, you will learn about Ed’s important place in the history of UNB Law. To me, he advanced a big dream for a small law school, one that combines the highest quality teaching with influential scholarship that shapes legal thinking across Canada. This national ambition is still part of UNB Law’s DNA and is reflected in our Strategic Plan. We will forever be grateful for Prof. Veitch’s passionate service to our Faculty.

Fortunately, alumni, faculty, and current students aren’t the only ones who see UNB Law’s remarkable potential. This year, our applications increased by 17%, as did the quality of our applicant pool. The average entering GPA of students admitted in our regular admissions category is now 3.9. In addition, as you will read later in this issue, for the second year in a row, a UNB Law student was hired to clerk at the Supreme Court of Canada. And our students continue to excel in competitive mootings.

These successes are not an accident. They’re attributable to the dedication and tenacity of our faculty and staff, who are united in this project of making UNB Law one of Canada’s top law schools. But we must acknowledge that this year tested the limits of this devotion. The separation and isolation caused by the pandemic took a toll on morale; how could it not?

I want to pay special tribute to all of our full- and part-time professors, librarians, and administrative staff who made many sacrifices this year. They not only kept the basic academic program running, but also stayed focused on our future by moving important aspects of our Strategic Plan forward.

As I write this message, life is starting to return to normal. Vaccination rates are climbing, travel restrictions are easing, and directional signs are slowly disappearing from stores. The pandemic taught me how important being together is for the UNB Law community. So, when things finally return to normal, we will be inviting you, our alumni, to come visit your law school much more often. Whether it’s for a class reunion or one of our annual lectures, your presence is especially meaningful and important now. I can’t wait to see you all in person.



# *Remembering Ed Veitch*

*by David Bell*

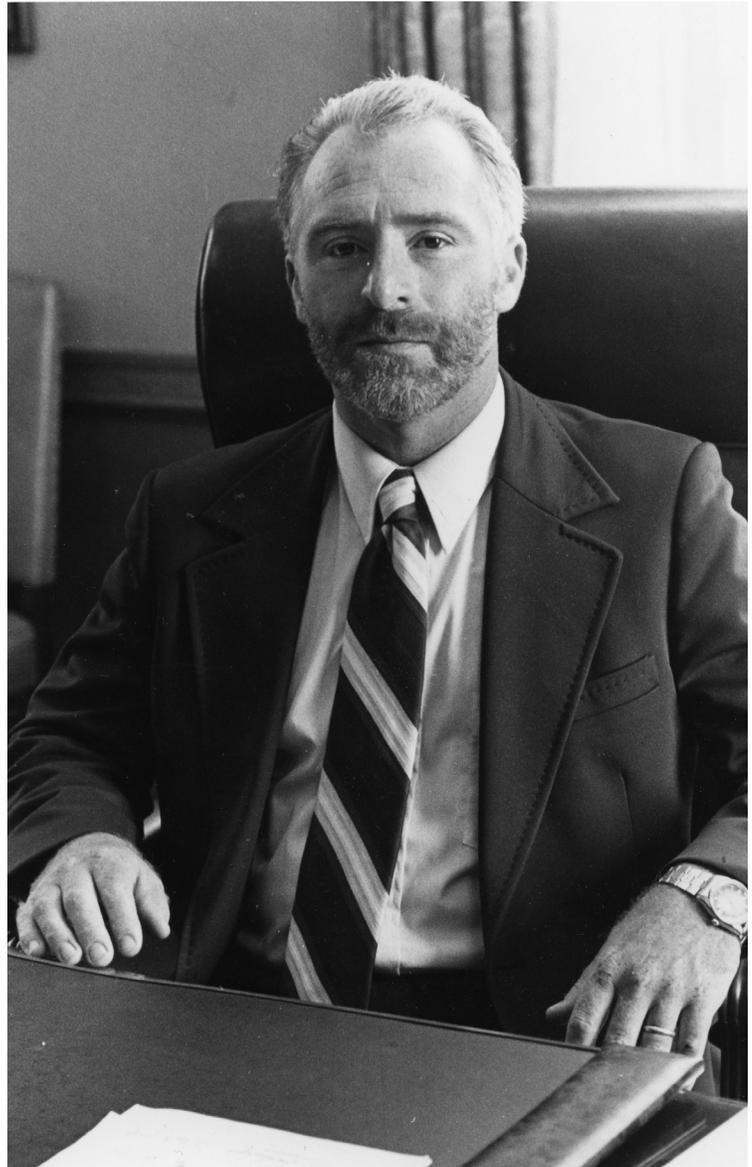
*Emeritus Professor Edward Veitch died recently at Fredericton. For 38 years he served the Law School as dean (1979-84), professor (1979-2006) and lecturer (2006-17). He was editor of the Canadian Bar Review (1994-2004) and of the Solicitor's Journal (1997-2007). NEXUS asked David Bell for some thoughts on Veitch's significance. Among Bell's books is Legal Education in New Brunswick: A History (1992).*

One of a kind" runs the newspaper headline announcing the death of Ed Veitch (1941-2021). It's a fondly ambiguous assessment, one with which no one acquainted with EV could possibly disagree.

Ed was formed at the Bell-Baxter school at Cupar (its website shows two photographs of young "Ted" from the late 1950s) and took an MA and LLB at the University of Edinburgh. A restless intelligence, he was conspicuously well educated in the humanities, with a life-long appreciation for the 19th-century piano repertoire. In 1979 he arrived in New Brunswick as one of several candidates for the law school deanship. Already he had taught on three continents and published more than the entire UNB Law faculty put together. His final cv would list more than 60 articles, not counting the book chapters and the reports.

During EV's round of interviews in 1979 I was among the students engaging with him. Months later he called me to the dean's office and announced exactly where I must go for graduate study (in those distant days a UNB student would hardly have known Harvard from Suggs Hall). On my return to NB, it was Dean Veitch who gave me a start in part-time teaching. This became my excuse for quitting a law firm and sitting down to write my first book. In these ways EV did for me what Law professors want to do for their students: by opening doors he changed the course of a life.

My purpose is not to show how Ed Veitch was important to this particular student but to



### ***Memories from Prof. Karl Dore***

*I am not alone when I say Ed Veitch was one of a kind. If you were to see him arrive in his half-ton truck, with his dog sitting beside him in the cab, you'd never guess he was a distinguished law professor with a national reputation. Even if it was the UNB Law parking lot, because he'd be most likely to emerge wearing a heavy-knit sweater, thick pants and, quite often, knee-high rubber boots. At heart he was a country boy. But Ed was at home in many places inside and outside the academy. Every lawyer has heard of "the man on the Clapham omnibus," that fictional reasonable man. Ed actually was a bus driver when he was getting his legal education at Edinburgh. Every lawyer reads the Canadian Bar Review, but Ed was its editor-in-chief.*

*Photo courtesy of UNB Archives & Special Collections. Public Relations Department Photograph Collection, Series 2, Sub-series 4, File 964, no. 2*

*He was extremely generous. I well remember, during my stint in the Dean's Office, whenever I was doing the teaching assignments, Ed would cheerfully volunteer to teach any course I needed covered. ANY course. That was extremely unusual...He was an engaging teacher who made things both interesting and real. He brought a unique style and perspective to the classroom. Students remember him with gratitude and affection. They kept their class notes, along with happy memories of his great stories. Fearless in attitude, and by no means politically correct, he loved to poke good-natured fun at good friend Richard (Dick) Bird and me in lectures and hypotheticals. (I was Old Grump.) Sometimes his dog would be there, sleeping in the corner.*

affirm that his appointment as dean in 1979 was one of the critical junctures in the entire history of UNB Law School. It was the watershed moment when the School finally moved beyond the lengthened legacy of the 1950s to become a recognizable version of the institution that exists today.

The mid-20th century, and particularly the 1950s, was the transformational era for Canadian common law education generally. In half a dozen important ways this was so at UNB. They culminated in the School's relocation from Saint John to the university campus in Fredericton and the opening of the purpose-built Ludlow Hall in 1968. But by the mid-1970s the advances of the previous two decades had run out of steam. Symbolic of the problem was the lack of stable decanal leadership. When appointed, Veitch was the fourth Law dean in seven years. It is true that the faculty had already moved to broaden horizons by appointing a number of non-UNB graduates as professors—including the first two women—but the experiment was a failure. They kept resigning. One of these arrivals, in announcing his own departure, claimed that of 14 faculty members teaching in 1975 only four remained in 1978. A candid feature article in UNB's 1978 *Alumni News* captured the general feeling: "Law faculty faces middle-life crisis".

It was in this context of discontent and perceived crisis that UNB short-listed three "outsiders" in that 1979 decanal search. By giving the appointment to the globe-trotting, scholarly Ed Veitch, it selected the candidate thought to be the most transformational of the lot. Thereby university administrators and the teaching faculty signalled that we were to become a Faculty of broadened intellectual horizons in which the full-

time professoriate were expected to be productive as scholars. The very appointment of an Ed Veitch represented a break with the past.

How much personal credit EV deserves for occupying the dean's office during a watershed moment in the School's history will be for historians to judge. I see his time as dean, like the symbolism of his appointment, as transformational. His tenure was fortunate in two respects. In the space of just a few years, he was able to make an unusually large number of faculty appointments. He could attract them because UNB professors and librarians had just unionized and won a collective agreement that raised junior salaries out of the level of genteel poverty. Moreover, the recession of 1981-82—then the worst since the 1930s—helped stabilize the teaching faculty by removing opportunities to leave. A decade down the road, these Veitch appointees were among the teachers who were making UNB renowned for the quality of its instruction.

At a time of severe economic hardship Veitch also accomplished a major expansion of the Law building. It created the "new" library space as it remains today. But these were unpropitious times to be a free-spending academic administrator, and the result was that Ed was allowed to serve as dean for only a single five-year term.

Judged at the time, Veitch's record as dean was evidently found wanting. But history's judgment may prove different. With the benefit of three decades of hindsight, I see Ed Veitch's decanal appointment and accomplishments as the crucial opening act in the modern history of the UNB Law School.



## Chief Patricia Bernard *secures a historic settlement for the Madawaska Maliseet First Nation*

**I**n April 2021, the Madawaska Maliseet First Nation in northwestern New Brunswick was awarded the largest federal land claim settlement in Maritime history—\$145 million. At the heart of this historic settlement is Chief Patricia Bernard (LLB '99), who submitted the original claim while in her second year at UNB Law, and spent the next 23 years fighting for justice for her community.

## *The story of Louis Bernard and the origin of the claim*

Chief Bernard's work on the land claim started with an undergraduate independent study examining the history of her community at Madawaska. Her paper focused on the provincial government's favouring of aboriginal people who relinquished their traditional way of life and conformed to the stationary farmer lifestyle.

"Traditionally, our people were very migratory," said Bernard. "We traveled up and down the river system hunting, fishing and not really having any major permanent settlements. The government encouraged our people to abandon this way of life."

Bernard spent countless hours researching at the provincial archives, where she came across documents particular to her community that contained some inconsistencies and errors.

"I realized that some of the maps were way off in size. I dug a bit deeper and realized that these lands, that were reserved lands, were alienated without lawful authority, without using the right legal process that was in place which would have been the royal proclamation at the time."

Chief Bernard had uncovered several maps depicting the size of the reserve and its boundaries. A 1787 map showing the boundaries at approximately 4000 acres, an 1845 map at approximately 1600 acres, and an 1860 map at approximately 700 to 800 acres. Bernard found no documentation demonstrating that the reserve was legally reduced in size from 1787, nor was any compensation

paid to the reserve inhabitants. This discovery would be the basis of the claim.

While researching the project, she came across the story of her great-great-great-grandfather, Louis Bernard, a farmer favoured by the government because of his assimilation—though he did continue to practice his traditional lifestyle.

According to Chief Bernard, in 1844, New Brunswick passed an act to remove the status of all the reserve land in the province for the better settlement of the colony, *An Act to regulate the management and disposal of the Indian Reserves in this Province*. By 1861, the reserve had already been diminished by over three thousand acres. An Indian agent met with Louis Bernard, informing him that he would need to start planning to move his family and community because the government would be selling the rest of the reserve land.

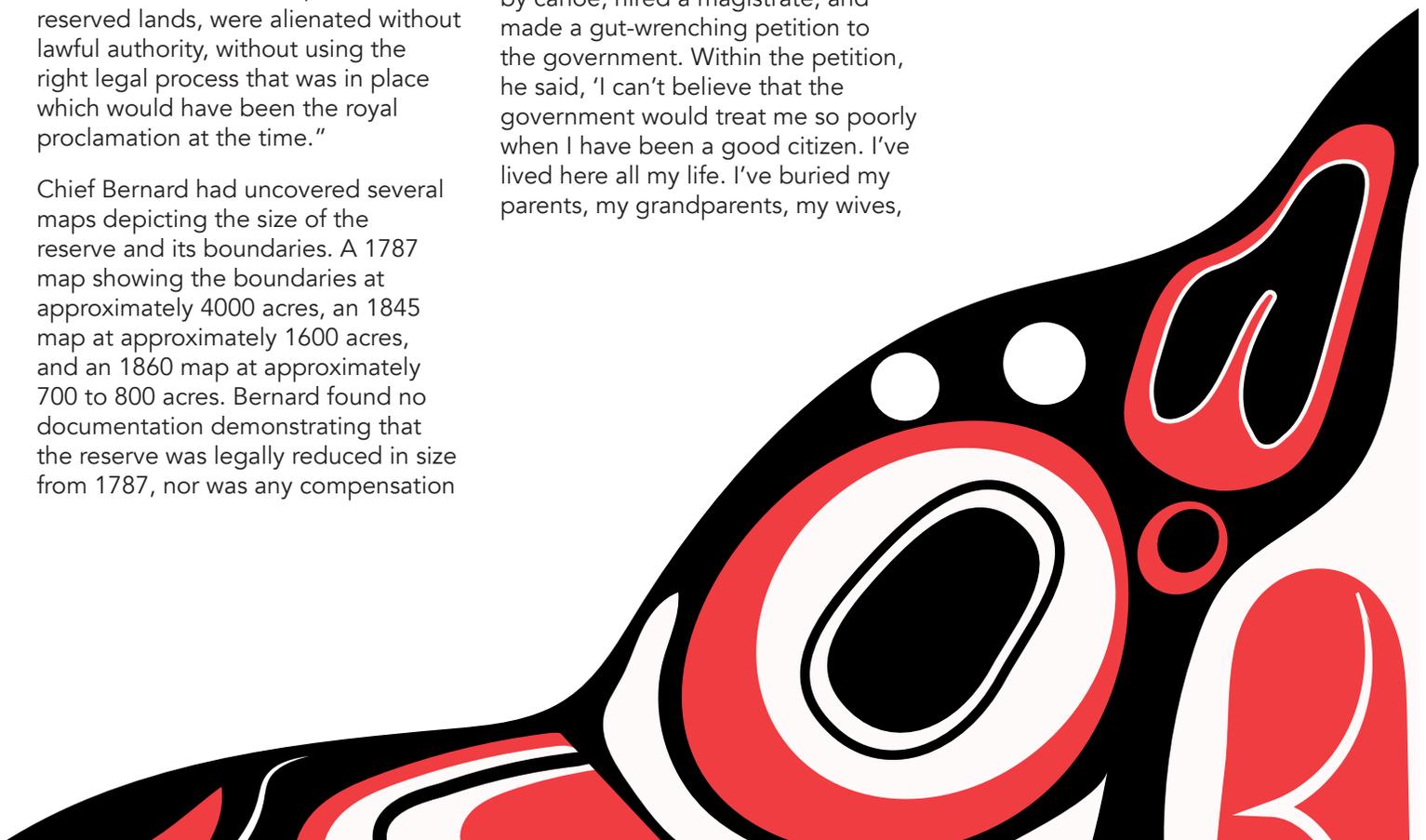
"He was devastated," recounts Bernard. "He traveled, at 90 years old, from Madawaska to Fredericton by canoe, hired a magistrate, and made a gut-wrenching petition to the government. Within the petition, he said, 'I can't believe that the government would treat me so poorly when I have been a good citizen. I've lived here all my life. I've buried my parents, my grandparents, my wives,

my brothers and sisters, my children, and even some of my grandchildren along the banks of the river and you want me to move my family.' Clearly, it struck a chord because the reserve was never further diminished after that point. If it wasn't for his petition, there would be no reserve here today."

Shortly after beginning her studies at UNB Law, Chief Bernard, along with classmate, Mary Caldbick, submitted the land claim to the Government of Canada. The pair drafted the document with the relevant facts and law to claim an alienation or illegal dispossession of reserve land. This was submitted to the Specific Claims Branch at the Department of Indian and Northern Affairs Canada in April 1998.

The claim relied heavily on the 1787 survey by New Brunswick Surveyor-General, George Sproule, which established that the reserve was nearly 4000 acres in size.

"The survey was completed under the authority of Lieutenant Governor Thomas Carleton," said Bernard.



“He instructed Sproule to survey the area and had the proper authority to set aside the land. The Canadian government would later argue that the survey was never meant to recognize the reserve and that we are a *de facto* reserve, being that no real instrument created it. This was our main argument, that this particular survey created our reserve and detailed its boundaries.”

### ***The response to over a decade of silence***

The Government of Canada sat on the claim for the next 11 years, formally rejecting the claim in 2009 on the grounds that the land was not alienated because it was not officially a reserve.

“At that time, I was a councillor in the community, and I said to myself, ‘no this is not right, I know it’s not right,’ so we immediately sent it off to the Indian Specific Claims Commission (ISCC), which was the predecessor to the Specific Claims Tribunal (SCT).”

The documents were quickly returned as the ISCC was being dismantled.

“Unfortunately, but possibly, fortunately, we ended up going to the SCT. I say fortunately because the ISCC had no real teeth, they could only recommend that Canada reconsider their position, but the tribunal was able to make a binding decision.”

While the *Specific Claims Tribunal Act* was passed in 2008, judges were not appointed until 2011. Bernard, as the lead counsel, submitted the claim to the tribunal in 2012. The next five years consisted of drafting pleadings, applications, responses to expert reports, completing additional research, and uncovering new supporting documentation.

Chief Bernard and her team faced several legal hurdles during this time. First, a motion to remove Bernard as lead counsel citing her previous employment for the Specific Claims Branch as a conflict of interest.

“Right off the bat, they tried to remove me by saying I was in a conflict because I had worked for specific claims and I would have had access to their DOJ legal opinions. We went before the judge and I said, ‘look Canada wants to remove me because I might know what legal arguments they’re going to use against me in this file, but aren’t they going to express those legal opinions at a hearing and I’ll know anyway?’”

The application was withdrawn. Next, came an attempt to deny up-to-date legal arguments of the now 16-year-old claim. This application was also withdrawn. Finally, came an attempt to deny the First Nation the opportunity to expand the scope of the claim.

“They didn’t want me to expand the scope or research of the claim. We had done additional research, a deeper verification. We got better copies of the documents and I had significantly more experience than I did as a student. They were claiming that the minister didn’t have the advantage of seeing new research to make a decision. This was also withdrawn.”

The legal team relied on a series of 10 expert reports outlining the history of the reserve land and the events surrounding the creation of the reserve. From May through July of 2017, three hearings were conducted in front of the judge.

From May 15 to May 18 in Edmundston, experts were called upon to deliver their testimony. They included Maliseet expert Andrea Bear Nicholas, who discussed the history of Maliseet Treaties and the relationship with the Crown, Dr. Elizabeth Mancke, who provided an analysis of 18th-century land grants and Crown-Indigenous relations in British North America during the 18th and 19th centuries, and Dr. Brian Cuthbertson, who focused on the 1844 Act and the government’s administration of Indian Reserves



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*It's a huge amount of money. In addition to the trust, the money also provided a lot of assistance to our band members, helping them get back on their feet. We provided a large per capita distribution and that's really helped a lot of people.*

”

in New Brunswick during the early nineteenth century.

From June 19 to the 22 in Halifax, Canada's experts testified as to its version of events surrounding the same period.

### ***The decision & negotiation of the claim***

In November of 2017, the judge came to the decision that Canada had breached its lawful obligation, alienating large portions of reserve land without lawful authority. Over 3000 acres had been lost, 1000 of which are on the US side in Madawaska, Maine. It was determined that 1787 was the date the reserve was created. Chief Bernard and her team agreed that the US portion of the land loss was not going to form part of this claim.

“We negotiated very aggressively over the first year. Within a year and a half, we had an agreement in principle. In order for the agreement in principle to reach the level where they could send us a letter of offer, they needed treasury board approval.”

The Department of Indian Affairs, as it was then called, has the authority to settle a claim for up to \$50 million. Claims of \$50-150 million must be approved by the treasury board. Anything over \$150 million would have had to go to cabinet.

“An important aspect of the negotiation was the addition of reserve land. Canada agreed to add 1935 acres to expand our reserve boundaries. There's no time limit for that the land just has to meet the requirements under the additions to reserve policy. It doesn't have to be connected to our existing reserve it could be anywhere in the province.”



### ***A victory for the Madawaska Maliseet First Nation***

The Madawaska Maliseet First Nation has created a legacy trust named after Louis Bernard that will provide future income for the community.

“It's a huge amount of money. In addition to the trust, the money also provided a lot of assistance to our band members, helping them get back on their feet. We provided a large per capita distribution and that's really helped a lot of people.”

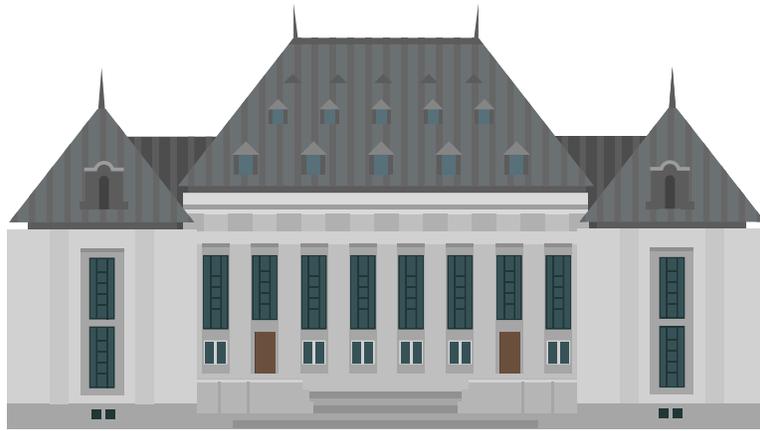
As the funds were distributed throughout the community, Chief and counsel called every band member, explained the history behind the settlement.

“Not only is this money going to improve the lives of our community members, but it will help the local economy as well. Driveways are being paved, garages are being built, vehicles are being purchased. This is

a huge boost to the economy in this region.”

For Chief Bernard, this settlement provides hope to First Nations communities across the country, hope that justice can be served.

“The tribunal was put in place for a reason and this settlement is proof that it is working. It allows for more unbiased input, even though it's still a colonial system, it's still the federal government system, it does provide a more at arm's length review. The fact that you can actually continue to battle and win provides hope that all these injustices can be resolved. Although the journey to finally reach justice for our community was a rollercoaster ride, it was certainly well worth the effort. I am proud that my ancestors, particularly Louis Bernard, passed down his genes of justice-seeking, determination and perseverance.”



# FOR A SECOND STRAIGHT YEAR

## *a UNB Law grad lands an SCC clerkship*

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**T**hird-year student Erik Arsenault has been selected to clerk for The Hon. Justice Andromache Karakatsanis at the Supreme Court of Canada. Erik will begin his one-year term in August of 2022 following the completion of a clerkship at the Ontario Court of Appeal.

“I know it’s a little cliché, but surreal is the only way I can describe it,” said Arsenault. “I have loved my time at UNB Law because it allowed me to engage with difficult, thorny legal issues. The clerkship will give me the chance to engage with those types of questions in real cases—and I get to work on those issues with very bright and dedicated people. Of course,

I am a little nervous; there’s a big difference between swinging wide on a federalism question in Dr. Froc’s 1L constitutional class and at the Supreme Court.”

As a clerk, Erik will be responsible for assisting Justice Karakatsanis in several of her functions, such as researching points of law, writing bench memos, editing and translating drafts for speeches and decisions, and attending hearings.

“I love the academic side of the law, so the opportunity to read and write on novel and unconventional legal issues is something that I really look

forward to. I plan on litigating after my clerkships, so watching people litigate before the Court and learn through osmosis is also something I am very excited about.”

This marks the second year in a row that a UNB Law student has secured a clerkship at Canada’s top court. These coveted positions are highly competitive, requiring academic excellence and a robust application process. Candidates compete for one of 36 positions against hundreds of applicants from law schools across the country. Erik joins the company of Curtis Doyle (JD ’20), who is set to begin his SCC clerkship this summer.

"I worked extremely hard to get here; harder than I ever thought I could," said Arsenault. "I wanted to clerk at the Supreme Court as soon as I learned that it was an option. I am very proud and grateful to finally see all that work pay off. I am relieved that all those nights in the McKay room and room 2A weren't for nothing."

Erik received the call from Justice Karakatsanis while away for the weekend in St. Andrews.

"I spent that whole Friday turning notifications off and on my phone. Eventually, I convinced myself that it was not going to happen. My girlfriend had just convinced me that the process might take longer when my phone rang."

He immediately called his parents at home in Mundleville, New Brunswick (near Richibucto) to share the good news.

"When I finally got through, my mom immediately started to cry. I also called Dean Marin and Professor Thomson, who made this entire process possible. Their encouragement and guidance are invaluable, and I cannot thank them enough for all they have done."

## **Students heading to the FCA and NBCA**

Third-year student Lori Wareham will clerk at the Federal Court of Appeal in Ottawa (2022-23) for The Hon. J.D. Denis Pelletier. Lori is a first-generation university graduate from Mount Pearl, Newfoundland. She came to law school with an engineering background and had no knowledge of the clerkship process.

"Clerking wasn't a concept I was even familiar with until attending a speaker series in 1L. I hadn't considered it as something that would be realistic

for me until I took my first paper course with Prof. Thomson—she really encouraged me to apply. Once I looked into the clerkship program and the different courts, I realized pretty quickly the FCA would be my 'shoot for the stars' application."

Wareham is thankful for the encouragement of her professors, and their help throughout the intensive—and at times stressful—application process.

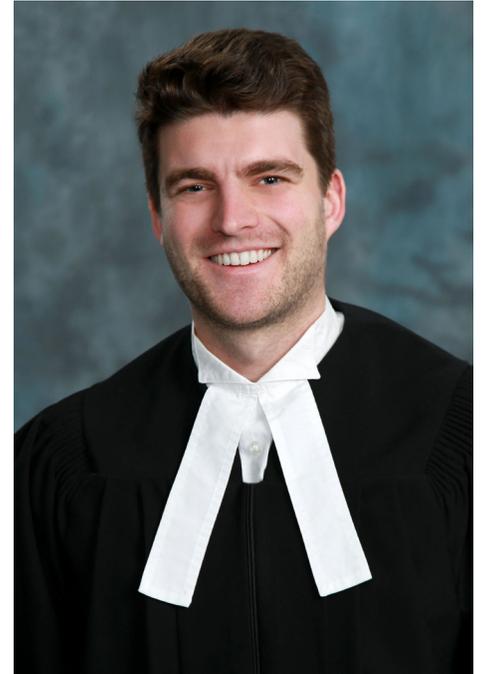
"Knowing those mentors took the time from their busy schedules to write recommendation letters, or to meet and discuss interviews, was really moving and made me feel so lucky as a student to have those connections."

Lori plans to complete her articles with McInnes Cooper in Halifax before heading to Ottawa. As for her plans after her clerkship, Lori hopes to pursue an LLM.

"I hope to complete an LLM, either immediately afterward or return to practice for a bit before. I'm not fully sure where my path will lead me, but I hope to keep some sort of balance between practice and academics. The FCA will be such an important experience in applying for an LLM and helping me on my career trajectory."

Second-year student, Alden Spencer, a Creston, Newfoundland native, will be one of two clerks working for the Justices of the New Brunswick Court of Appeal. Alden got a taste of the clerkship role as she completed an internship with the Court this past semester. She is honoured to have been selected and looks forward to continuing her work with the NBCA.

"I still suffer from imposter syndrome at the best of times, so this position really reminds me that I am where I am supposed to be! I will be working



*"I wanted to clerk at the Supreme Court as soon as I learned that it was an option. I am very proud and grateful to finally see all that work pay off. I am relieved that all those nights in the McKay room and room 2A weren't for nothing."*



*“Knowing those mentors took the time from their busy schedules to write recommendation letters, or to meet and discuss interviews, was really moving and made me feel so lucky as a student to have those connections.”*

on many of the appeals that the court hears and will discuss cases with the justices before and after the hearings. I am most looking forward to hearing both sides of the appeal and getting to learn not only from the excellent justices on the panel, but also the wonderful lawyers that will argue in front of them!”

Upon completion of her clerkship, Alden plans to return to Newfoundland and Labrador to practice.

“Ideally, I would like to work with the Newfoundland and Labrador Legal Aid Commission, but I have not ruled out private practice—especially private criminal defence! I think this clerkship will give me a unique perspective for my clients. I will have insight into how judges make their decisions, what results in appeals, and what makes a convincing argument.”

For Dean Michael Marin, these remarkable students continue to represent the recent success of the UNB Law clerkship program.

“Our students are competitive not only in Atlantic Canada but nationally. These clerkships are a testament to this, and speak to the hard work of our students and the dedication of our faculty members.”

UNB Law would also like to wish the best of luck to students who will begin their 2021 clerkships this August; Curtis Doyle, Supreme Court of Canada; Erik Arseneault, Ontario Court of Appeal; Caitlin Gallant, Ontario Superior Court of Justice; Dominique Goguen, Ontario Superior Court of Justice; Shayna Levine-Poch, Federal Court of Canada; Charles White, Ontario Superior Court of Justice; and Sonny Xue, Tax Court of Canada.



*“I still suffer from imposter syndrome at the best of times, so this position really reminds me that I am where I am supposed to be! I will be working on many of the appeals that the court hears and will discuss cases with the justices before and after the hearings.”*



## ***Benjamin Perryman*** *represents CCLA at Nova Scotia Supreme Court*

On June 30, Prof. Benjamin Perryman served as pro bono counsel representing the Canadian Civil Liberties Association (CCLA) in their challenge of an injunction order obtained by the province of Nova Scotia in the context of COVID-19. The injunction order banned all political protests and peaceful assembly that violated gathering limits—including outdoor socially distanced and masked gatherings—as well as the sharing of information about such protests online. The injunction order was granted on May 14, during the height of the third wave of COVID-19, and applied to all Nova Scotians.

The CCLA argued that the injunction order was overly broad, lacked legal authority, was not evidence-based, and infringed the *Charter*, including the rights to freedom of expression, freedom of peaceful assembly, and liberty. The association has been litigating COVID-related restrictions across the country since the beginning of the pandemic. These challenges have included the Newfoundland travel ban, which is now before the Newfoundland Court of



Appeal, and cases in Ontario concerning detention conditions in jails during the pandemic. They have also taken on letter writing and advocacy campaigns that have stopped short of litigation, looking to try to help governments strike the right balance between public safety and civil liberties in the middle of this public health emergency.

According to Perryman, the experience across Canada has been similar; most provinces—along with the federal government—have emergency legislation, in some cases public health-related and, in others, a separate emergency statute. Most provinces give their chief medical officer the authority to pass public health orders in the middle of a pandemic; this has been the case in New Brunswick and Nova Scotia.

“It’s these public health orders that have allowed provincial governments to impose limitations,” said Perryman. “These limitations concern things like gathering size, permissible and prohibited activities, what stores can be open—all of the things we’ve become quite accustomed to being part of our daily lives. The fact that the university had to close, that we had to switch to online learning, this all extends out of these public health orders.”

Many of these public health orders include a fine or ticketing regime. Some jurisdictions have gone further, asking the courts to issue injunctions in response to particular activities, for example, a church that continues to operate indoors in violation of gathering limits. In this case, the injunction was sought following several outdoor protests against the public health orders and restrictions.

“This injunction, known as a *quia timet* injunction, was brought forward in advance of perceived harm occurring. Normally these injunctions will be issued in an intellectual property case where one party believes that the other party is going to steal their IP rights. If they wait until after that happens, it will be too late. In this case, the perceived harm was the spread of COVID-19.”

The injunction order was also sought on an *ex parte* basis; notice of the court proceeding was not made public. The only people present at the hearing were the judge and the government lawyer. No one was allowed to test the government’s evidence or to make arguments regarding how public health should be balanced against the constitution in the middle of a pandemic.

When the injunction order first became public, the CCLA engaged the province, asking if it would consider redrafting the order to make it less problematic in constitutional terms. The CCLA was granted public interest standing, and the hearing was set for June 30. One week before the hearing, the province asked the Court to discharge the injunction order on the grounds that it was no longer necessary. This request was granted. The province then asked that the June 30 hearing be vacated because the matter was now moot. Arguments about mootness were left for the June 30 hearing date.



*“This injunction, known as a quia timet injunction, was brought forward in advance of perceived harm occurring. Normally these injunctions will be issued in an intellectual property case where one party believes that the other party is going to steal their IP rights. If they wait until after that happens, it will be too late. In this case, the perceived harm was the spread of COVID-19.”*

## *The CCLA’s day in court*

On June 30, Perryman, along with co-counsel Nasha Nijhawan from Nijhawan McMillan Petrunia LLP, appeared before the Nova Scotia Supreme Court. On behalf of the CCLA, the pair argued that the matter was not moot and that it raised issues of public importance that should get a proper hearing in open court.

Perryman and Nijhawan questioned when this type of closed-door approach is appropriate, and what types of remedies can be given when nobody’s there to argue the other side. Their goal was to determine, in the context of a public health emergency or otherwise, what is the proper process for a government seeking a judicial order to enforce a statutory power. This framework, they argued, must be determined before an emergency happens, not after the fact, and should include consideration of Charter rights that are engaged.

The Court, however, found that the matter was moot and refused to exercise its discretion to rehear the case in open court. Justice James L. Chipman held: “The CCLA’s issues, while interesting and thought-provoking, do not necessitate a lengthy hearing (or rehearing) at this time.” The CCLA is now considering its options in light of the Court’s decision.

Reflecting on his involvement with the case, Perryman says “Even though the CCLA did not get the result it had hoped for, I am still happy to have provided pro bono counsel in this case. One of the roles of lawyers is to challenge government conduct that is arguably without legal authority. This promotes the rule of law, even where a Court upholds government conduct. Canada does not have extensive case law on emergencies, so this type of litigation helps to develop the parameters of how injunctions and the *Charter* apply in that context. While we all hope that the worst of the COVID-19 pandemic is over, there are fourth waves emerging elsewhere in the world, so there is a real possibility that these types of issues may arise again.”



## CHELSEY BUGGIE

### *named a 2020-21 Runnymede Fellow*

**C**helsey Buggie was named a 2020-21 Runnymede Fellow after her paper, *Talking to Strangers: A Critical Analysis of the Supreme Court of Canada's Decision in R v Mills*, was chosen as one of two winning submissions by the Runnymede Society.

The society is a national student membership organization dedicated to the ideas and ideals of constitutionalism, liberty and the rule of law. The Runnymede Fellows Program seeks papers relating to themes of the rule of law, constitutionalism, and individual liberty, and is open to Canadian undergraduate law students and articling/clerking students. In addition to a cash prize of \$4000, Chelsey has a chance to

have her paper published in the *Supreme Court Law Review* and the *Dacey Law Review*.

Her winning submission examines the Charter implications of *R v Mills, 2019 SCC 22*. In *Mills*, an undercover officer acting without a warrant posed as a fourteen-year-old girl online and communicated with Mr. Mills through Facebook messages. The officer eventually arranged a meeting with, and arrested Mr. Mills who sought to have the message evidence excluded.

"The Supreme Court unanimously ruled to allow the evidence," said Buggie. "However, only Justice Martin agreed that Mr. Mills' s. 8 rights were engaged and infringed. I take the position

“ ***Constitutional Law in 1L was one of my worst marks. I think this award shows others the opportunity we all have to grow; it’s proof that your 1L marks are not everything, they’re just letters on a transcript and do not speak to your academic potential.*** ”

that the *Mills* decision is inconsistent with prior s. 8 jurisprudence regarding content neutrality and expectation of privacy in digital conversations. The type of sting operation used in *Mills* should have been classified as participant surveillance requiring a warrant.”

According to Buggie, the Supreme Court unduly adjusted the balance of power to favour law enforcement. The result of the *Mills* decision is that law enforcement may continue to use this investigative technique unregulated, and unencumbered. In her view, such an adjustment in favour of law enforcement is not justified. She argued that other investigative techniques are available to law enforcement and obtaining a warrant would not unduly hinder child luring investigations. Buggie says that failure to oversee these operations could have a potential chilling effect on legitimate online relationships and reinforce stereotypes about hypersexualized youth online.

***A lesson in determination***

Graduating on the dean’s list and being recognized as a national constitutional law scholar has special meaning for Buggie. During her time at UNB Law, Chelsey was diagnosed with Ehlers Danlos, a rare genetic connective tissue disorder that causes joint pain and instability, nervous system dysfunction, and frequent allergic reactions. After working collaboratively with her health team to manage the condition, she managed

to turn a C+ in first-year Constitutional Law into an A+ in third-year Advanced Constitutional Law.

“Constitutional Law in 1L was one of my worst marks. I think this award shows others the opportunity we all have to grow; it’s proof that your 1L marks are not everything, they’re just letters on a transcript and do not speak to your academic potential.”

Buggie attributes much of her success to the guidance of Professor Kerri Froc.

“I am so lucky to have had the guidance of Prof. Froc throughout

law school. She helped me to expand on my writing skills, challenged me to learn more about the constitution, and has been a support system through difficult times. Her help and encouragement have been invaluable.”

Chelsey will begin her articles this summer with the Newfoundland and Labrador Government’s Civil Division focussing on constitutional law and policy. She will also be pursuing a Master’s in Technology Management at Memorial University where she is excited to continue to study the intersections of technology and the law.



*A meeting of the UNB Chapter of the Runnymede Society.*

# CELEBRATING TEACHING EXCELLENCE DURING THE PANDEMIC

Professor Basil Alexander is the 2020-21 recipient of the Faculty of Law Teaching Excellence Award. Prof. Alexander was recognized for his commitment to student learning and innovative teaching practices.

“My style is very much practice informed,” said Alexander. “I focus on helping students develop the tools to think, read, research, write, analyze and communicate in a way that reflects ‘what you ought to know’ for practice. This is demonstrated in the courses I teach, Foundations, Legal Research and Advocacy, and Legal Ethics and Professional Responsibility—they’re all at the core of how you practice.”

Prof. Alexander implemented flexible and diverse approaches in response to the virtual landscape brought about by the pandemic. He incorporated both real-time online lectures and pre-recorded “guidance” lectures outlining how to apply legal principles and skills to real-world scenarios. He consistently sought feedback on his teaching methods while providing a steady range of learning opportunities to students.

“It’s been difficult for both the students and teachers. When you’re in person, you enjoy instantaneous feedback, which is much more difficult to get from a Zoom screen or on Teams. So, I checked in regularly with my students to see what was and wasn’t working, and modified on the fly.”

In his 3L Ethics class, students completed live in-class video exercises. They watched a short video portraying sample ethical issues and worked through issue-spotting and initial solutions both in small groups and together as a class. After class,

Prof. Alexander provided further videos detailing the potential issues and legal considerations to help understand the implications for both practice and grading scenarios. If students wished, these could also be completed after they tried a detailed analysis on their own.

In addition to focusing on case law and the relevant rules in the *Model Code*, Prof. Alexander also included scholarly articles in the course to highlight key considerations and approaches for future ethical and practice issues. This provided students the opportunity to critically analyze the professional responsibilities they will assume upon graduation. It also turned their minds to the complexities of practicing law in Canada and of the role of the lawyer in Canadian society. Prof. Alexander made an effort to include sources from a diverse selection of authors and topics, which contributed to a better overall understanding of relevant perspectives on the issues.

***“Throughout the pandemic, it was important to be flexible and to not overwhelm the students,” said Alexander. “Much of the literature and recommendations regarding online teaching previously said move to smaller assignments—and a lot of them. But it turns out that when every course does this, students can become quickly overwhelmed. That was the clear feedback we got from the students.”***

Prof. Alexander modified his evaluation scheme to accommodate for this by considering the overall student workload and providing adjustable alternatives. He assigned certain required materials but allowed students the option of completing



other assignments and activities to alleviate up to 25% of the weight from the required assessments, which also assisted with ongoing learning.

"This was valuable as he provided options that focused on written materials or participation, as a means to evaluate our knowledge," said 3L, Kathryn Power. "Students could write reflections on a certain area of the professional code of conduct or could choose to participate in a live in-class exercise. This allowed a greater number of students access to alternative evaluation methods as it did not solely provide an opportunity for written assignments, which are more time-consuming."

For Prof. Alexander, communication was an important tool in diminishing student stress and alleviating as much anxiety and uncertainty as possible.

"Prof. Alexander checked in with us on weeks when we completed asynchronous learning," said Power, "to ensure we knew the plan for that week, when we would meet next,

and what our objectives for the week should be. This displayed a constant commitment to student learning and ensured that the teaching methods he utilized were effective in conveying the material being taught."

For Prof. Alexander, an important moment comes at the end of his Legal Research and Advocacy course—watching the 1Ls compete in their very first moot.

"The 1L moots are always a highlight," said Prof. Alexander, "it's one of the first times the students start applying a lot of the skills and material they learned over the first 6 months in a major experiential way. They're always nervous before they start, and then they get through it, and it becomes part of a shared experience for the class. It's a special moment; there is a certain amount of relief and pride that comes each time someone gets through it."

Seventy-five percent of Prof. Alexander's teaching load is first-year students, with the other 25% being

3L. He enjoys the unique opportunity of being one of the first faces the students see when they enter law school and one of the last as they graduate.

"After their welcome, and starting them down the road, I get to see their first and last milestones: during the 1L moot, when things are starting to click and they actually act like lawyers for the first time; then when I get half of the 3Ls in their final term, ready to start their careers, and I get that moment at the end to say 'with that, you're done law school – congratulations!'"

The 2021-22 academic year will mark Prof. Alexander's third year with the faculty. He looks forward to watching his first 1L class walk across the stage at graduation.

"It will be their third year and my third year; I am looking forward to seeing how far we both have come. It will be a memorable bookend to my first full cycle at the law school."

# Facilitating healing, rehabilitation & reintegration:

*A conversation with the restorative justice society*

**N**exus sat down with the executive members of the UNB Law Restorative Justice Society to discuss their important work in the community and their vision of becoming the most effective, action-based non-profit restorative justice organization in New Brunswick.

**Can you begin by describing what restorative justice is?**

Restorative justice (RJ) is an alternative way of handling a dispute between parties, outside of the traditional, more punitive, criminal system. RJ is all about bringing the offender and the victim together, allowing everyone to have a voice, and working to repair the harm not only to the victim but to the community as well.

**Have RJ practices been around for a long time?**

It is thousands of years old; anywhere where community is important, they're likely using or have used restorative methods. Modern RJ is based on the cultural practices of Indigenous peoples from Canada, and the Indigenous populations of New Zealand and Australia. In the non-Indigenous setting, it was introduced in Canada in the 1980s. The RCMP went to New Zealand, observed, and brought back these ideas.

**What is the mission of the RJ Society?**

Our mission is to support the New Brunswick community and criminal justice system by establishing an action-based support system



**Catherine Sinclair**  
President



**Patrick Leger**  
Vice President



**Daniel Vlitos**  
Director of Activities



**Gabriel Laidlaw-Bale**  
Director of Records



**Frank Gillies**  
Director of Communications



**Alexandra Faye Steinberg**  
Director of Finance

that acknowledges criminal justice goals, the offenders' systematic disadvantages, and the potential for healing, reparation, rehabilitation and reintegration. We coordinate with local organizations to provide RJ circle training and services.

**What types of situations or disputes are best suited for RJ?**

RJ can really be altered to fit almost any situation. Our focus right now is primarily on criminal law, but we are branching out into employment and contract law as well. There is a big benefit with alternative dispute resolution; companies are implementing these measures more often to avoid the expense of going to court, but the true benefit of RJ is that it brings victims into the process, allowing them to have a voice. This is especially true in the criminal context, which is the most prevalent for RJ. In the criminal justice system, you won't necessarily have the victim be a part of the process. They might give a statement, but they're not going to be a leading member of the process. In RJ, they are given this opportunity.

It tends to work best for victims and offenders who show remorse, are invested in and want the process to work. When an offender wants to be there and legitimately wants to change

and better their life, that's where you're going to see the best results—regardless of what the crime might be. It tends to be truly rehabilitative when dealing with first-time offenders and youth. Young people have difficulty recognizing how their actions affect others, as that part of their brain isn't fully developed. RJ is an easy sell for youth because it allows them to better understand the consequences of their actions.

**How did the UNB Law RJ Society come into existence?**

The society was founded during the 2019-20 academic year by 1Ls Catherine Sinclair, Patrick Leger, Daniel Vlitos, and Alexandra Faye Steinberg. Catherine had been a restorative justice volunteer in Halifax, and after seeing a lack of RJ practices in New Brunswick, spearheaded the creation of the society. In its first year, the society's activities mainly consisted of Catherine teaching restorative practices to the other members. Her teachings included books, videos, practice circles, and reaching out to community organizations. During the summer, five members were trained as restorative justice facilitators. Accordingly, this year, we were focused on organizing circles through the RCMP and making connections in the community.

**You mentioned "circles," can you explain what this is?**

A circle is what we call the restorative setting. It's everyone, literally sitting in a circle, being given the opportunity to speak. The circle usually includes the victim, the offender, their support persons, police officers, and community members; however, anyone who brings something to the circle is welcome. Trained facilitators lead the dialogue, asking questions that allow everyone to tell their story and share their thoughts and feelings. We go around again and talk to everyone about what they'd like to see from the circle. Once we achieve a consensus, the facilitator formalizes the agreement through a contract. Usually, this is a formal contract stating what the offender has agreed to do as far as a remedy, and dates are set.

**So, the society is actually out in the community facilitating circles?**

Yes, we have nine trained facilitators who are leading circles in the greater Fredericton area. We have done two so far this year, and have a third on the way. Patrick, Frank, and Alexandra actually conducted the first restorative justice circle to happen during the COVID-19 pandemic in New Brunswick. Frank organized a COVID-19 implementation plan



that included finding a venue that would safely accommodate a large group as we had multiple offenders and multiple support people. We had posters, directional arrows, and hand sanitizer. While it was logistically challenging, it was important to hold the circle in-person to ensure that the participants truly connected with one another.

### **How does the society arrange its work facilitating circles, and how does the process work?**

Currently, we get our files from the Youth Diversion Team, a group mandated to divert youth aged 12–17 away from the criminal justice system. The team is run through Allison Palmer, a Community Officer in the police detachment of Oromocto, who handles all of the outer Fredericton youth files. She determines whether it is appropriate to divert a file to youth diversion and whether RJ is appropriate. Patrick, Catherine and Daniel are on the Youth Diversion Team for the greater Fredericton area and also advise on a candidate's suitability. Once it's decided that a file is suitable for RJ, the Community Officer will send our team the file which includes a description of each person that she thinks would be included in the circle, and a background of the situation or event, mostly from the police officer's point of view. This package may also include a statement from the offender and the victim. The next step is individual intake. The lead and co-facilitator will explain to each participant the process, go through their questions, and decide on a time for the circle that works for everyone involved.

At the circle, the lead facilitator will explain the process, ensuring everyone understands their roles and responsibilities. First, the facilitator introduces everyone. Then, the facilitator will ask each person the questions, as provided to them during intake. In this way, each person has a chance to describe, in their own words, the event, their feelings before and after the event, and who the incident impacted. Sometimes the conversations escalate and it is up to the facilitator to foster a discussion based on respect and open-mindedness. We continue systematically going around the circle until the participants feel they have nothing left to contribute. Finally, the co-facilitator asks each

person what they would like to see the offender do to repair the harm caused to the victim and the community. At this stage, it is important to create SMART goals (Specific, Measurable, Attainable, Relevant, Time-based) that not only consider the needs of the victim and the community members, but also whether the offender can realistically complete the contractual obligations. Once we have achieved a consensus, we write up a contract. Everyone signs the contract and receives a copy for their own records. The circle is now complete. The facilitators keep in touch with the Community Officer and the participants to ensure that the contract is being fulfilled in a timely manner. If the contract is not completed, then the matter is referred back to the police.

### **Can you discuss the societies' structure and some of the other work you do?**

This year we went from five members to twenty-five, and due to this growth, we divided into subcommittees to better delegate our tasks. Our event planning group organized several social events to bring everyone together; this sense of community has been particularly important during the pandemic. Our speaker's subcommittee arranged a talk by former SCC Judge, The Hon. Thomas Cromwell on access to justice, a speaker's event led by Justice Palmer on the Saint John Mental Health Court, a panel for the Queen's Human Rights Conference that included Dr. Nicole O'Byrne, family law and criminal defence lawyer LA Henry, and Gavin Kotze, from the Office of the Child and Youth Advocate. Our fundraising subcommittee approaches internal and external sponsors to support our activities. Our education subcommittee researches RJ best practices and the benefits of RJ on victim satisfaction, as well as offender recidivism rates and reintegration. Our marketing team manages our Instagram, Facebook and website. They ensure that our stakeholders and community members-at-large are up-to-date on our activities and educational content. It is a challenge getting people to wrap their heads around the concept of RJ; most people think in a punitive way because that's how it's always been. Our marketing team works hard to help the public understand that disputes can be resolved in a more restorative way.



We also have two subcommittees dedicated to running circles. The circle subcommittee organizes and runs the circles. These are the trained facilitators. Finally, we have the programming group, which organizes initiatives to reintegrate people back into society and provide assistance with their community work as per the contract that was decided in the circle.

#### **What is next for the society?**

In September, we incorporated as a not-for-profit. This was largely to ensure that our restorative justice practices would not be solely tied to student interest. Accordingly, we are able to preserve our longevity, expand, and gather financial support. For example, TakingItGlobal and the Crime Prevention Association of New Brunswick (CPANB) financially supported us this year and allowed us to pay for student training. We are hoping to transition to charitable status by the end of our fiscal year to attract further funding. We are working with a public accountant to make this happen.

Consequently, our membership has expanded well beyond just UNB Law students. We have other UNB students, professors, and alumni. Our goal is not just to be a resume-builder, it's really to make a difference in the community. We're involved in a restorative justice working group, which is a project through the New Brunswick Department of Public Safety that is working to get RJ implemented throughout the province. We have partnered with

the Office of the Child Youth and Senior Advocate. We are managing social work students from STU, who are researching how to best implement restorative practices and a restorative mindset into different settings such as group homes, high schools, and the work of social workers. This is all working toward our long-term vision for the society to get permanent funding and potentially become a part of how the government provides these services to the community. We're working to get enough data regarding the benefits of restorative justice to persuade the government into providing permanent funding to continue our work and make RJ a staple of the criminal justice system in New Brunswick.

#### **How can students, alumni, and members of the community get involved in the society?**

The RJ society is open to all UNB students, faculty, and alumni. Visit our website for more information on how to get involved. We are always looking for new members and for alumni and other members of the legal community to speak at our events, and share their insight and experience with restorative practices. Not just on the criminal side; we are also exploring learning opportunities relating to employment law and other developing RJ areas. We have an upcoming training session scheduled for September open to anyone who would like to work towards becoming a facilitator of RJ circles.

# The student lounge transformation has begun

**T**hanks to the generosity of our alumni, we have raised \$85,000 for our student lounge renovation project. As promised, the Faculty of Law has matched these donations, giving us the \$170,000 we need to get this important project completed. We're excited to tell you that we have officially started construction; the transformation of this vital space at UNB Law is happening!

The renovation has started with the removal of the existing ceiling and floor, including asbestos abatement. A new ceiling will be installed along with energy-efficient LED lighting. High-traffic, durable flooring with a beautiful—and modern—light wood tone finish will be laid throughout the space. Thanks to the overwhelming response to the campaign, we are happy to announce that we are also extending the new ceiling, flooring and paint to the LSS office—located just off the lounge.

The lounge will be rewired for the three large microwaves, a wall-mounted 65" LED TV, and for the new task lighting in the study, meal prep, and gaming spaces. The full kitchen will then be installed. This will include new plumbing for the dishwasher and sink, the installation of the two-tone cabinetry, a chic laminate backsplash, the large island, and countertops. The existing entry doors will be stained to match the aesthetic of the design and the entire space will be painted an elegant off-white.

Finally, appliances and furnishings will be moved into the space. This will include stools for the

island, six table and chair sets for the main eating/working area, modular furniture for the lounging/meeting/TV areas, the foosball table, and a modern pool table that can convert into a multipurpose table. Artwork and plants will complete the space. The finishing touch will be a large plaque recognizing all of those who donated.

We are very proud of the fact that our new student lounge will be an accessible space. The microwave and tables will be wheelchair-height, and we're installing an automatic door. In addition to the student lounge, we're also making long-overdue changes to our front entrance by installing a ramp on the outside and a wheelchair lift inside. It's very important for us that UNB Law be an inclusive community, where everyone feels welcome. With these changes to our building, we're making meaningful progress.

"I am so impressed by the passion that our alumni have shown for this project," said Dean Marin. "We raised these funds in just six weeks—which is incredible. I thank all of those who donated—without you, we would not be able to provide this wonderful and useful space that will serve law students for years to come."

We will keep you updated on the progress of the renovations. Follow our social media accounts for construction videos and photos, and for the big reveal coming this fall! We also look forward to welcoming you back to UNB Law in person when the circumstances allow.



*“I am so impressed by the passion that our alumni have shown for this project,” said Dean Marin. “We raised these funds in just six weeks— which is incredible.”*

# HERE IS WHAT SOME OF

# *Our Law Alumni*

## HAVE BEEN UP TO SINCE OUR LAST ISSUE

### 2020-21 Queen's Counsel

#### British Columbia appointments

- John Landry, QC (LLB '80)
- John D. Jevning, QC (BA '82)

#### New Brunswick appointments

- Steven R. Barnett, QC (LLB '95)
- Hugh J. Cameron, QC (LLB '89)
- Shawn Robert Dempsey, QC (LLB '94)
- Catherine A. Fawcett, QC (LLB '97)
- Andrea M. Folster, QC (LLB '94)
- Marta Anna Shannon, QC (LLB '80)

#### Prince Edward Island appointments

- Gary Demeulenaere, QC (LLB '04)

#### Nova Scotia appointments

- Michelle M. Kelly, QC (LLB '03)
- Donald A. MacLeod, QC (LLB '83)

#### Newfoundland & Labrador appointments

- Erin Breen, QC (LLB '02)
- Chris E. King, QC (LLB '03)
- Kenneth I. Moyse, QC (LLB '00)
- The Hon. Stacy C. Ryan, QC (LLB '99)

### '70

**RICHARD G. BRABANDER** (LLB) was reappointed to the Canada Industrial Relations Board. Brabander specializes in labour matters and administrative law including labour relations, human rights, employment and pay equity, and privacy and policy issues.

### '71

**THE HON. GRAYDON NICHOLAS, CM, ONB** (LLB) was named Chancellor of St. Thomas University. As Chancellor, Dr. Nicholas is an ex-officio member of the Board, presides at Convocations, and assists in the development of the university and its mission.

### '75

**THOMAS G. O'NEIL, QC** (LLB) was appointed senior litigator with Pink Larkin's Saint John office. O'Neil's practice focuses on civil litigation pertaining to commercial and construction disputes and product liability.

### '80

**THE HON. MARY JANE RICHARDS** (LLB) was appointed acting chief judge of New Brunswick's provincial court. Judge Richards is a former Chief Sheriff and former Assistant Deputy Minister of Court Services. She was appointed to the provincial court bench in 2005.

### '87

**THE HON. JEFFREY E. LANTZ** (LLB) was appointed chief judge of the Provincial Court of Prince Edward Island. Judge Lantz served as provincial court judge since 2005. He has served as Education Minister, Tourism Minister, and Attorney General of Prince Edward Island.

### THE HON. IRENE S. MUZYCHKA, QC (LLB)

was appointed a Judge of the Supreme Court of Newfoundland and Labrador. Prior to this appointment, Justice Muzychka was managing partner at Curtis Dawe, where she had practised for 33 years.

### '88

**THE HON. LLOYD I. BERLINER** (LLB) was appointed a Judge of the Supreme Court of Nova Scotia, Family Division. Prior to this appointment, Justice Berliner spent nearly 31 years with Patterson Law in Truro, NS, where he built an extensive family law practice.

### '89

### THE HON. PETER A. O'FLAHERTY, QC (LLB)

was appointed a Judge of the Supreme Court of Newfoundland and Labrador. Justice O'Flaherty co-founded O'Flaherty Wells Law in 2016 and established the firm O'Flaherty Legal Services in 2019.

### THE HON. LAUREL J. HALFPENNY-MACQUARRIE

(LLB) was presented with a Doctorate of Laws from St. FX. Judge Halfpenny-MacQuarrie was instrumental in setting up the Wellness Court in Port Hawkesbury, NS, and the Aboriginal Wellness and Gladue Court in Wagmatcook First Nation, presiding over both courts.

'90

**EDWARD W. KEYES, QC** (LLB) was recognized by The Best Lawyers™ in Canada 2021 for Administrative and Public Law, and Construction Law. Keyes is the New Brunswick Managing Partner and also the Saint John office Managing Partner with Cox & Palmer.

**ALEX J. SCHOLTEN** (LLB) has become a co-owner and President & CEO of Victory Meat Market, a historic downtown Fredericton grocery store originally opened in 1939.

**PAUL HARQUAIL, ACI Arb** (LLB) was elected President of the Canadian Maritime Law Association. Paul is a longstanding member of the CMLA, and has previously held the role of national, and eastern, vice-president, as well as chair of the Federal Court Act and Rules Committee.

'91

**LYDIA BUGDEN, QC** (LLB) was named an Atlantic Business 2021 Top 50 CEO Award Winner. She is CEO & Managing Partner at Stewart McKelvey in Halifax, NS.

'93

**KEVIN J. KILEY** (LLB) was named an Atlantic Business 2021 Top 50 CEO Award Winner. Kiley is the Managing Partner at McInnes Cooper and serves in executive positions with the Canadian Bar Association at both the provincial and national levels.

'94

**JAMES PETRIE** (LLB) was appointed Chief Legal Officer for the New Brunswick Power Corporation, following a 16-year career at Plaza Retail REIT, a publicly-traded real estate owner, developer and manager of retail properties across Canada.

'99

**THE HON. STACY C. RYAN** (LLB) was appointed a Judge of the Supreme Court of Newfoundland and Labrador. She was also recently appointed to the Labrador-Grenfell Health Board of Trustees.

'00

**RAJ SHOAN** (LLB) was appointed the new general counsel for the Alliance of Canadian Cinema, Television and Radio Artists (ACTRA). Prior to this appointment, Shoan served as legal counsel for the CRTC and acted as their regional commissioner for Ontario.

'01

**ANDREW R. DAWSON** (LLB) was appointed Vice President, Government Affairs & Public Relations for ARC Canada, a clean energy technology company developing the ARC-100, an advanced small modular reactor (SMR).

'02

**ANDREA F. BALDWIN** (LLB) has joined Barteaux Labour and Employment Lawyers Inc. as Immigration Law Practice Leader. Prior to joining Barteaux, Baldwin led the establishment and growth of Ernst and Young Law's Immigration Practice in Atlantic Canada.

'04

**ROBIN K. AITKEN** (LLB) was named a finalist/ Excellence awardee for the Canadian Law Awards' Female Trailblazer category. Robin is the Managing Partner for Cox & Palmer's four Prince Edward Island offices.

**LIZA ANNE ROBICHAUD** (LLB) was named a member of the New Brunswick regional health authority, Vitalité Health Network.

'05

**PATRICK YOUNG** (LLB) was recognized with the Nova Scotia Criminal Justice Association's John Dunlop Memorial Award. The annual award recognizes outstanding contributions to the Nova Scotia justice system and the community.

**WILLIAM BOYTE** (LLB) was appointed General Counsel and University Secretary at Vancouver Island University. In this role, Boyte will act as the Senior Policy Advisor and Privacy Officer.

'08

**LAURA BROCKLEHURST** (LLB) joined the St. John's partnership of Cox & Palmer. Brocklehurst is a civil litigator with over 12 years' experience in personal injury and defence law.

**ALLISON M. WHELAN** (LLB) was appointed Commissioner of Lobbyists for the Government of Newfoundland and Labrador. Whelan is a partner in the St. John's office of Stewart McKelvey, where she primarily practices in the area of tax litigation and tax planning.

'12

**ANDREA L. PIERCE** (JD) was named partner at the Halifax office of Cox & Palmer. Andrea practices health law and family law, and also advises on commercial law matters.

'13

**ADAM M. KING** (JD) was named partner at the Fredericton office of Cox & Palmer. King's legal practice includes corporate & commercial law, estates & trusts, and real estate.

# UNB LAW STUDENTS

## *win big at the McKelvey Cup*

**C**ongratulations to team UNB Law that took home 6 of 8 awards at the 20<sup>th</sup> annual McKelvey Cup Moot. The McKelvey Cup is a trial-level moot which sees mooters deliver direct and cross-examinations of witnesses (played by professional actors) as well as an opening or closing statement.

The defense team of Erik Arsenault (3L) and James Pinchak (2L) won second place overall, while the Crown representatives Chris Arisz (3L) and Navy Vezina (3L) placed third. Individually, Erik won best closing, James won best opening, and Chris won best direct and best overall advocate.

The group met weekly for practice sessions running between 3 and 5 hours, doubling their efforts as the moot drew closer.

“The preparation for the moot was rigorous,” noted Pinchak. “Our preparation began in the fall, but it really picked up in the weeks leading up to the competition as we were running full trials every week.”

Arsenault worked on 12 versions of his closing, averaging one a day in the weeks leading up to the competition.

“I was pretty far afield at first but, thanks to Prof. Thomson’s patience and devotion, we finally got the closing where it needed to be. Of course, there were some days where I was pretty frustrated with it and thought about just

doing Atticus Finch’s speech. But every draft got a little better, and getting the chance to do it at practice and feel like the fate of the accused was tied to this closing made it worth it. Then I won best closing. That made it so much more worthwhile!”

Navy Vezina considers the McKelvey Cup to be one of the most interesting and rewarding experiences of her time in law school.

*“It is so unique from the other Moots offered. Preparing was tricky because trials are all about presenting evidence and testimony in the most clear and obvious way. The reality is that your case is never clear or obvious and you want to hit your head against the wall over the things your client has done. I made timeline charts of when the events happened to create a thread that I communicated to the jury. I feel confident about my ability to conduct a trial from start to finish; leaving law school with that feeling is invaluable.”*

“This is a huge accomplishment, and I am so proud of them,” said Prof. Jane Thomson, the team’s coach. “These students practiced extremely hard. Some of them even getting up in the middle of the night and practicing their openings, closings, or crosses. They never complained and took criticism really well. Whatever the guest judges asked of them, they did. On the day of the moot, all of them demonstrated how an effective trial advocate represents their clients.”



*“Law school doesn’t often give students the chance to examine or cross-examine witnesses,” said Arsenault. “We got to practice real trial skills on witnesses brought to life by our colleagues. We got the chance to object to each other and run our respective theories of the case through the gauntlet.”*

## Thanking an army of supporters

Alumnus Jim Lockyer (LLB ’75) assisted the team in the fall with intensive sessions in trial advocacy. Lockyer is a former Attorney General of New Brunswick, law professor, and renowned trial advocacy lawyer. Prof. Lockyer drove to Fredericton every Friday to teach UNB’s McKelvey team a condensed trial advocacy course.

*“Working with Jim was a real treat,” said Arisz. “It’s clear that his wisdom put us all years ahead of where we would have been without it. This kind of mooting did not always come naturally, so it really made the difference having an examination-toolbelt to rely upon.”*

Prof. Thomson and her mooters would like to thank their all-star team of volunteer witnesses—students Raylene MacKey (2L), Benjamin Roizes (2L), Abigail Smith (3L), and Nicholas Stewart (3L)—who acted as the trial witnesses and attended every practice leading up to the moot.

“Law school doesn’t often give students the chance to examine or cross-examine witnesses,” said Arsenault. “We got to practice real trial skills on witnesses brought to life by our colleagues. We got the chance to object to each other and run our respective theories of the case through the gauntlet.”

Finally, the McKelvey team would like to thank the panel of guest judges who helped the students prepare for the competition, Judge Cameron Gunn (LLB ’93), of the New Brunswick Provincial Court, Solomon Friedman, Criminal Lawyer and Partner at Friedman Mansour LLP in Ottawa, and Rebecca Law, Crown Counsel with the Crown Law Office in Toronto.

## Virtual mooting across the country

### **The Donald G.H. Bowman National Tax Moot**

Blaine Cowan (3L), Joshua Merrigan (3L), Lucas Savini (2L) and Stuart Wallace (2L) competed in the Donald G.H. Bowman National Tax Moot. The team of Joshua and Stuart won the prize for Best Respondent Factum at the competition.

“We were absolutely thrilled to win, happy to see our hard work pay off,” said Wallace. “It was great to be able to represent UNB Law and show that we can compete with any school. Josh and I will both be starting articles this summer with Stewart McKelvey, so we are pleased to establish a strong working relationship early on. Hopefully, it will not be the last time Josh and I get to pair up to tackle a legal issue.”

The team was coached by Jack Blackier (Cox & Palmer), Kathryn Leblanc (3L) and Prof. Vokhid Urinov.

### **The Gale Cup**

Sean Corscadden (2L), Kaitlan Huckabone (2L), Jake Humphrey (3L) and Alden Spencer (2L) represented UNB Law at the 2021 Gale Cup. The team was coached by Prof. Greg Bowley and assisted by Alexandra Dejong (3L). Kaitlan and Alden’s respondent’s factum tied for second best written submission of the competition.

“The mooting problem was really interesting,” said Huckabone. “It was an appeal of the SCC decision, *R. v. Ahmad, 2020 SCC 11*, that saw the Court determining when a phone conversation during a dial-a-dope investigation becomes entrapment. The actual SCC decision was very close with a strong dissent, so there was a lot for both sides to work with.”



The Wilson Moot Team

### The Jessup International Law Moot

Alexander Carleton (3L), Caitlin Gallant (3L), Kathryn Power (3L) and Erik Stiller (2L) examined international responsibility for a state's response to a pandemic at the 2021 Jessup. The team was coached by Dean Marin and Erik Arsenault (3L). UNB Law competed in both the Canadian and international rounds of the competition.

"My experience with the Jessup was a source of connection during the virtual school year," said Power. "We were lucky to have all team members and coaches in Fredericton, which allowed for in-person socially distanced practices. I enjoyed the process of working in an entirely new area of law while trying to solve a complex problem."

### The Kawaskimhon Aboriginal Moot

Jennifer Bueno (2L), Graeme Hiebert (2L), Jeremy MacDonald (3L) and Alexandra Youssef (2L) participated in the 2021 edition of the Kawaskimhon Aboriginal Moot. The team was coached by Dr. Nicole O'Byrne, Gillian Paul (JD '12), Legal and Governance Advisor at the Wolastoqey Nation in New Brunswick, and Michiko Merasty-Gartshore (3L).

"Unlike traditional moots, the Kawaskimhon focuses on negotiation and consensus-building," said Hiebert. "I would make the argument that it sharpens skills that are far more relevant to the modern practice of law than the other, purely advocacy-based moots. In an era where very few cases actually go to trial, the ability to listen to the other side while concurrently making decisions on where to be flexible and where to push for your positions are skills that will benefit lawyers once they get out into the real world and settlement becomes the *de facto* goal."

### The Wilson Moot

Sarah MacCallum (3L), Edouard McIntyre (3L), Julia O'Hanley (2L), Nicole Pelletier (3L) and researcher Margaret Rondot (3L) competed in the 2021 Wilson Moot. The team was coached by Prof. Kerri Froc and student co-coaches Caitlin Gallant (3L) and Dominique Goguen (3L).

"Although I think I speak for all of us when I say that we would rather have mooted in person," said O'Hanley, "virtual mooting did provide us with unique skills—which was an unexpected benefit of the experience. As our judges told us during the competition, it is possible—and perhaps likely—that virtual court might outlast the COVID-19 pandemic. Learning to litigate in a virtual context might have provided us with a practical advantage for appearing in virtual hearings in our future legal practice."



# UNB Law Tax Clinic: Experiential learning that makes a difference

**F**or the third straight year, the UNB Law Tax Clinic opened its doors to the UNB community, educating students on aspects of the Canadian personal income tax system and helping file income tax returns, free of charge, for students and their families.

## *The founding of the clinic*

Samer Alam (JD '20) was one of the driving forces behind the establishment of the clinic, discussing the idea with Prof. Vokhid Urinov—the law school's resident taxation expert—during the 2018-19 academic year.

"Samer was very enthusiastic about the project," said Urinov. "I said 'sure let's do it.' We tested the idea informally that year and discovered a huge demand for this service among the UNB student community. They just wanted help understanding their rights and obligations as a taxpayer and the importance of filing their returns as a student."

Much of the demand came from international students. In its first year, the clinic collaborated closely with the International Students Advisor's Office, organizing educational workshops on personal taxation in Canada.

"Initially, the law students were volunteering their time," said Urinov. "After seeing the permanent need and demand for these services, we decided to formalize the tax clinic, to create a mutually beneficial project helping the UNB community while offering UNB Law students an experiential learning opportunity for academic credit."

Prof. Urinov, along with Samer and classmate Justin Pyke (JD '20), developed the program and syllabus for the tax clinic, giving it a structure. The group designed it to be a largely student-run experiential learning program, with Prof. Urinov as the coordinator. For the past two years, the program has become a permanent part of

UNB Law's curriculum, attracting some of the best and most enthusiastic students each year.

### ***Providing research support for the NB community***

The 2020-21 team included Patrick Delaney (3L), Brean Marshall (3L), Meghan Murphy (3L) and Alexandra Faye Steinberg (2L). This year, the clinic expanded its mandate beyond tax education and filings to include researching practical tax problems to support the community. The team partnered with the NB Coalition for Tenants Rights (NBCTR), a non-profit group of academics, lawyers, advocates, and activists working to ensure safe, affordable, and adequate housing for New Brunswickers.

"The coalition asked us to examine rising rent prices and their connection to property taxes," said Steinberg, "to answer the question, are commercial landlords justified in raising rent

prices when citing the New Brunswick taxation policy as a pretext?"

The students examined the history and evolution of the property tax regime in New Brunswick, dissecting the policy and comparing it to that of the other provinces. They met with the coalition three times; first to clarify their questions, then to discuss their initial findings, and finally to present the team's forty-seven-page report, which challenges several assumptions about the connection between property tax and rental rates.

In particular, the students' report takes on the argument that NB imposes a "double tax," that this so-called "double taxation" is unique to the province, and that the elimination of this tax scheme will result in more affordable housing. Their research has contributed to an op-ed published by the NBCTR outlining these myths and will be cited in a forthcoming peer-reviewed article.

"The tax clinic is different from a purely academic course," said Prof. Urinov, "where we create hypothetical problems, test students, and grade them. What students experienced in the tax clinic was true experiential learning. They worked on an actual problem for real clients, developing skills in teamwork, legal research, client communication. They also faced some real challenges that served to improve their technology, teamwork, time-management and communication skills."

### ***Operating during a pandemic***

In addition to their community partnership, the students operate a tax filing clinic that begins with a series of self-training sessions covering aspects of the Canadian income tax law pertaining to students, such as claiming deductions for moving expenses, the tax treatment of scholarships and grants, and claiming tax credits for study expenses such



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**Patrick Delaney**



**Brean Marshall**



**Meghan Murphy**



**Alexandra Steinberg**

as tuition fees. The team then holds info sessions for the UNB community explaining the student's rights and obligations as a taxpayer, answering their questions, and introducing them to the services of the clinic.

"Before beginning to file taxes, the clinic organizes several information sessions," said Marshall. "It is through these sessions that I first began to see the impact. We met individuals from outside of Canada, unfamiliar with the Canadian tax system, or who have never filed for themselves before. These students were often unsure why, when or how to file taxes or simply wanted to prevent making mistakes."

Normally, following the information sessions, students begin to book in-person filing appointments at the clinic office in The Gérard V. La Forest Law Library. However, this year, due to the pandemic, the clinic went virtual.

"The pandemic definitely proved challenging," said Marshall. "A big portion of the clinic is helping clients to file. With this comes a certain amount of sensitive information and so the first hurdle was finding ways to make the process as secure as possible. We relied heavily on MS Teams meetings and email to communicate with clients and to fulfill the other commitments of our clinic.

We were able to meet face-to-face with clients, answering questions in real-time."

The four law students each provided four hours of availability per week, coordinating to ensure there was always at least one member of the team available for bookings. Each tax season, the clinic can accommodate a limited amount of bookings, and these spots fill up incredibly fast.

In order to meet the demand for tax information, the clinic created a YouTube instructional video which they share with students who cannot book an appointment. The video explains the step-by-step process of how to file electronically, ensuring nobody is left out of the process. From mid-March to mid-April, the clinic served over fifty students in either an advisory role or by filing their taxes for them, teaching them the necessary steps to remain tax compliant on their own in the future.

"Understanding how to be tax compliant is necessary for all adults earning income," said Murphy. "Many

students are just starting to earn an income for the first time, so learning about tax compliance at that stage is very helpful. Not only because failing to be tax compliant can lead to adverse effects, but also because students who earn low incomes may be missing out on potential tax refunds or credits if they fail to file their taxes."

Prof. Urinov is thankful to the clinic's partners, the CRA Community Volunteer Income Tax Program, and the UNB International Students Advisor's Office. He looks forward to returning to in-person services for the clinic for the 2021-22 academic year, serving as many students as possible, and has plans to further expand the mandate of the program to include a partnership with anti-poverty groups and to support persons with disabilities.



# Alumni meet at the SCC on *City of Corner Brook v. Mary Bailey*



In March of 2021, UNB Law alumni Alex Templeton (LLB '06, partner at McInnes Cooper) and Erin Best (LLB '08, partner at Stewart McKelvey) appeared as opposing counsel at the Supreme Court of Canada, arguing the special interpretation rules of releases and the general principles of contract interpretation in *City of Corner Brook v. Mary Bailey*.

Very few cases are granted leave at the SCC, and this is especially true for civil matters. Best, despite knowing it might be a long shot, felt she had a strong argument for leave and decided to look into the process. This was her first time applying to Canada's top court, a process that she found to be both interesting and challenging.

"A leave application is a mysterious thing," said Best, "the SCC does not issue reasons for leave; nobody really knows exactly

why the court grants leave, which makes applying quite difficult. We understand the basic ideas, an issue of national importance, a dispute between provincial courts of appeal, a public policy issue, these are the types of things that will help to get leave, but it's not an exact science."

Best and her team spent a great deal of time preparing the application, running it past colleagues and making countless revisions. Once submitted, came the waiting game. Best recalls the morning she got the news, anxiously refreshing the SCC Twitter feed.

"Finally, it was announced. I really couldn't believe it. I was bombarded immediately—in a nice way—by my colleagues and friends in the legal community."

"Erin did a great job of outlining the nature of the national concern," said Templeton.

*“You have to be ready to answer every question. We focused on getting the bench to ask as many questions as possible. That experience was eye-opening—and humbling. I was asked some hard-hitting questions that rang around in my head for months afterward.”*



“We certainly saw the angle, its importance, and, if nothing else, we could see the SCC wanting to use the opportunity to confirm what the NLCA had said about what has happened to the *Blackmore* rule, and its usefulness given the *Sattva* rules of general contract interpretation.”

Best, along with co-counsel Giles Ayers, set out preparing their factum, a process that saw between 20 and 30 drafts, including full rewrites. Their preparation also included two mock benches, one with lawyers from across Canada sitting in as judges, and the second facilitated through the Supreme Court Advocacy Institute, which offers mock hearings in advance of actual SCC hearings. The experience shaped much of their oral submissions.

“You have to be ready to answer every question,” said Best. “We focused on getting our mock bench to ask as many questions as possible. That experience was eye-opening—and humbling. I was asked some hard-hitting questions that rang around in my head for months afterward.”

Templeton secured the assistance of co-counsel, Tom Curry and Scott Rollwagen, of Lenczner Slaght in Toronto.

“Having Tom and Scott join the team was really helpful in terms of our preparation, particularly on our written brief and guidance on what to expect at the hearing. This being my first time arguing before the SCC, it was important to have people with that depth of experience and knowledge

about the nuances of the Court to consult and learn from. Also, in their office as counsel is the Honourable Ian Binnie, QC, who served as a Justice of the SCC for nearly 14 years. It was particularly valuable to have the opportunity to pick his brain, and have his insights on what would be of interest to different members on the bench.”

### **An unconventional SCC experience**

The factums were submitted. Best and Templeton prepared their oral submissions while waiting anxiously to hear whether they would be allowed to travel to Ottawa to present in person. Ultimately, the pair were forced to appear remotely due to the travel restrictions of the pandemic. Best and Templeton agree that



although their experience may not have been the “classic SCC experience,” there were silver linings.

“People have said to me ‘oh it’s too bad you didn’t get to fly to Ottawa to give your submissions,’ but I never felt that way,” recounted Best. “I was able to make the best submissions possible. I thought how interesting it is to appear at the SCC at this point in history, during a pandemic. I was proud to participate in that—plus I got to wear my sneakers.”

Templeton echoed this sentiment saying, “everybody would like to have the opportunity to trot up to Parliament Hill and have their day in that court, but there’s something to be said for having the ability to sleep in your own bed the night before as well.”

As expected, the pair were bombarded with questions from the panel of nine as their allotted 60 minutes ticked by.

“Our team had researched the split of the court, said Best. “We studied quite closely the court’s previous decisions on contractual interpretation, so we knew the direction the justices would lean towards. Our research didn’t let us down, we got certain questions from certain justices as we predicted.”

Templeton took the same approach, studying the justices’ divergent opinions on comparable decisions in the past. “At the SCC, you’re given the nod and green means go,” laughed Templeton. “Within a couple of seconds of speaking you get a question from the bench, and then it doesn’t stop. You try to answer the questions as clearly as you can, and anchor back to your key points wherever the opportunity allows. The old adage about advocacy of ‘be clear, be brief and be gone’ comes to mind. When you only have that hour, you have no choice on ‘being brief and being gone’. The focus is being clear.”

Both Best and Templeton are pleased with their performances.

“I feel very happy with my performance,” said Best, “not to say that it was anywhere near perfect, it certainly was not. Someday soon I will work up the courage to watch it.”

They agree it was a valuable learning experience—made particularly special between



*“At the SCC, you’re given the nod and green means go. “Within a couple of seconds of speaking you get a question from the bench, and then it doesn’t stop. You try to answer the questions as clearly as you can, and anchor back to your key points wherever the opportunity allows. The old adage about advocacy of ‘be clear, be brief and be gone’ comes to mind. When you only have that hour, you have no choice on ‘being brief and being gone’. The focus is being clear.”*

friends—and are thankful to their clients for trusting them to advocate on their behalf at all levels of court.

“We’re friends outside the courtroom,” said Templeton. “We have a lot of respect for each other; I certainly have a lot of respect for Erin’s abilities and her character. It was really nice that we had this shared experience and opportunity; that both of us were involved at each level of court, and that our clients stuck with us throughout the process.”

“It was a pleasure to argue this case with Alex on the other side.” said Best. “He is a lawyer with a lot of integrity and his advocacy skills really shine at the appellate level. He is just a topnotch litigator.”

Best and Templeton know each other well, having practiced together at Cox & Palmer before finding their “homes” at Stewart McKelvey and McInnes Cooper respectively. Newfoundland is known for its friendly bar, and the pair are an excellent example of

this east coast collegiality. After the hearing, they shared a phone call to congratulate each other on a hard-fought battle.

“It’s just fortuitous when these opportunities arise,” said Templeton. “In this case, you’ve got a good set of facts—really interesting law; you’ve got this evolution of the common law going on. To me, it’s a massive learning experience, but it’s also a tremendous privilege to be involved in any case when you feel like you’re actually having some kind of impact on the refining process of the common law.”

We congratulate Best and Templeton on this significant career milestone and thank them for sharing their unique experience. The Court will likely release its decision in the coming weeks. It is safe to assume these two UNB Law alumni will be refreshing their Twitter feeds furiously until that time.

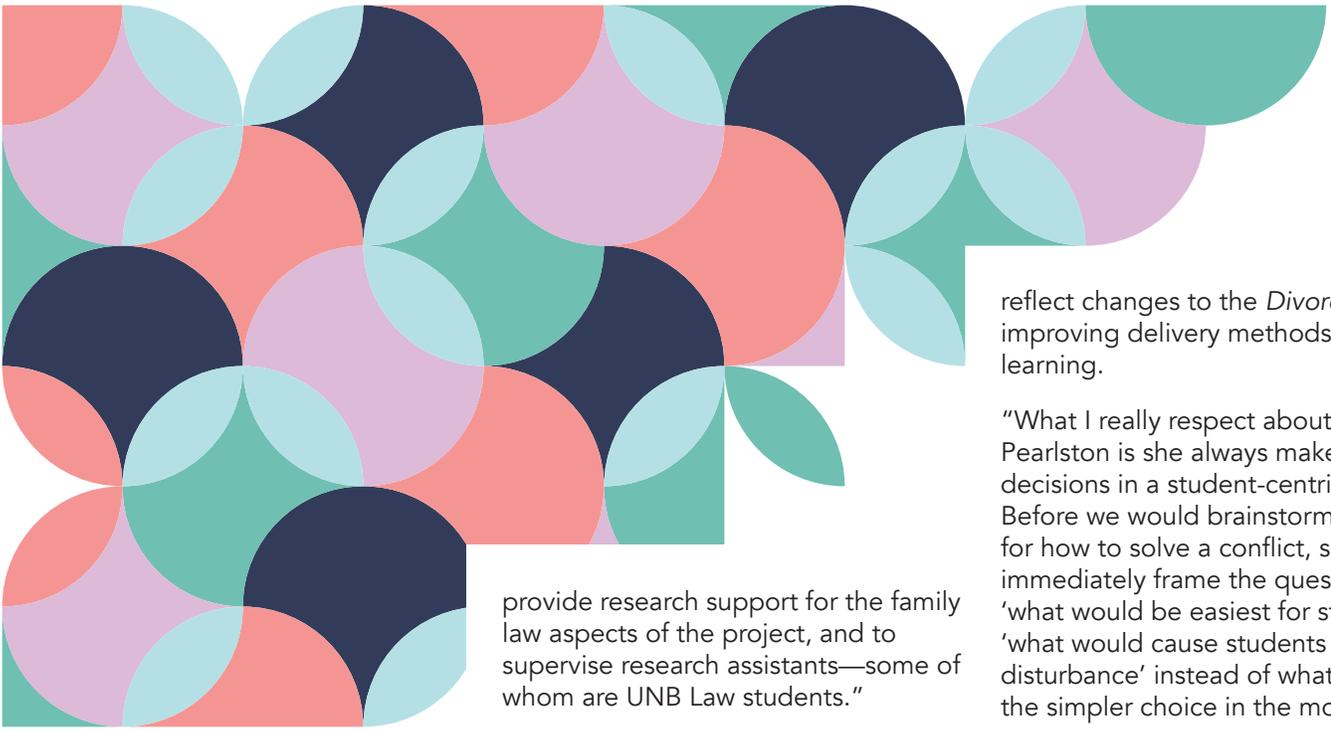
# Karen Pearlston

*recognized for championing  
gender equality*

Professor Karen Pearlston has been honoured with the inaugural Minister's Award for Excellence in Championing Gender Equality, the VIVE Awards—Visionary, Inspirational, Vibrant, Empowered.

"I am honoured to have been nominated by my community and I accept this award in acknowledgement of the many activists who work to counter the harm done by governmental and social neglect of poor and marginalized people—who are disproportionately women—by advocating for protection from evictions, for paid sick days during the pandemic, and for a right to timely, responsive, and accessible mental health care—all of these are gendered issues."

The VIVE awards were created to promote gender equality in all facets of society, recognizing and celebrating those who are forging paths and advancing gender equality. Prof. Pearlston was recognized with the Everyday Champion Award for her long history of social justice activism, countless volunteer hours working to advance women's equality, and her commitment to the fight for reproductive justice and abortion access in New Brunswick.



Prof. Pearlston, in collaboration with Reproductive Justice New Brunswick, coordinates reproductive justice activist and education campaigns, including online during COVID-19, and has been a strong advocate for the movement to save Clinic 554.

"I have been privileged to work with a great group of activists working towards the repeal of Reg 84-20 and to keep Clinic 554 open for the thousands of women, queer and trans people who need safe and appropriate health care."

Prof. Pearlston has recently been elected a member of the Fredericton Pride Board, a non-profit that strives to promote inclusion and intersectionality in celebrating and advocating for 2SLGBTQ+ individuals and communities. She also works with the Looking Out for Each Other (LOFEO) Project, an initiative developed through the New Brunswick Aboriginal People's Council. LOFEO assists the families of missing and murdered indigenous women and girls.

"I was honored to be asked to join the project. It was developed by a former colleague, Jula Hughes. When she left UNB Law to become Dean at Lakehead, I stepped up to

provide research support for the family law aspects of the project, and to supervise research assistants—some of whom are UNB Law students."

Prof. Pearlston has researched and written on the legal history of women, gender, and the family. More recently, she has published articles on lesbian legal history and is currently working on a historiographic assessment of that field. She was a member of the national organizing committee for the scholar/activist project *Anti-69: Against the Mythologies of the 1969 Criminal Code Reforms* and, as an outgrowth of that work, is preparing an article examining the relationship between queer activism and law reform.

"I was excited but not surprised to see Prof. Pearlston receive this award," said third-year student Lori Wareham. "There's no one more deserving; it's fitting that her hard work and activism be recognized at such a high level."

Wareham has taken several courses with Prof. Pearlston and was her research assistant in her final year of law school. The pair collaborated on several projects, including updating course materials for family law to

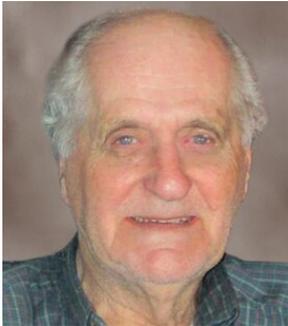
reflect changes to the *Divorce Act* and improving delivery methods for virtual learning.

"What I really respect about Prof. Pearlston is she always makes her decisions in a student-centric way. Before we would brainstorm ideas for how to solve a conflict, she would immediately frame the question as a 'what would be easiest for students' or 'what would cause students the least disturbance' instead of what might be the simpler choice in the moment."

Prof. Pearlston's commitment to promoting and protecting equality is evident in her research, teaching and community involvement. This award recognizes a life's work devoted to anti-oppression and liberation.

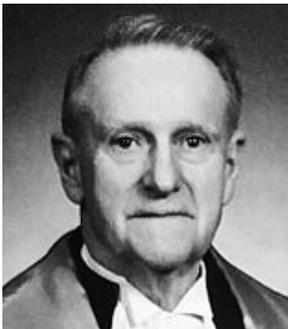
"I am grateful for the opportunity to add my voice to the unified voices of First Nations in New Brunswick," said Pearlston, "who have called for an inquiry into systemic racism in the criminal justice system and I stand in solidarity with BIPOC (Black, Indigenous, People of Colour) activists and communities, with reproductive justice, disability justice, anti-poverty, and queer and trans activists, all of whom devote countless unpaid hours in search of justice for their communities."

# *In Memoriam*



***Charles Dionne (BCL '51)***  
***1927 - 2021***

Judge Dionne was born in Edmundston, New Brunswick, into a large family which included five sisters and two brothers. He lived a life surrounded by loved ones, raising his own family of six children who would in turn give him 15 grandchildren and six great-grandchildren. In his obituary, his family fondly recalls “a life of yearly vacations at the yellow cottage at the Fond d’la Baie...a life filled with weekends on the slopes of Mont Farlagne...a life sprinkled with many spring trips across Europe.” Judge Dionne is remembered by his family for his photographic memory, artistic sensibility, athletic prowess, musical flair on the violin, love of reading, academic excellence, and his commitment to justice, exemplified by his career as a Judge on the New Brunswick Provincial Court.



***The Hon. Patrick A.A. Ryan, QC (BCL '56)***  
***1930 - 2021***

Born in Fredericton, New Brunswick, Justice Ryan graduated from UNB Law in 1956. He served as Deputy Magistrate of the Counties of York, Sunbury, and Queens from 1958 to 1960, after which he became a senior partner at the law firm of Ryan, Graser and Smith. He received his Queen’s Counsel in 1973, and in the early 1980s, served as a member of the committee to update and revise the New Brunswick Rules of Court. He was appointed a Judge of the Court of Queen’s Bench of New Brunswick, Trial Division, in February 1986, and that same year was appointed a Judge of the Court of Appeal of New Brunswick. In 2002, he was named a recipient of the Golden Jubilee Medal in recognition of his commitment to his community. Justice Ryan completed his exemplary legal career as the Province of New Brunswick’s Conflict of Interest Commissioner, retiring in 2014.



***Charles Emery Brison (BCL '66)***  
***1937 - 2021***

Born in Moncton, New Brunswick, Charles Emery Brison graduated from Université de Moncton (Université Saint-Joseph at the time) and studied at Université d’Ottawa before graduating from UNB Law in 1966. He returned home to Moncton, where he practiced law for the next 35 years. A staunch supporter of his alma mater, he was an active member of the Alumni of Université de Moncton and was the founding president of the U de M Club des Aigles Bleus. He was heavily involved in the local community, volunteering with Food Depot Alimentaire, Habitat for Humanity, Maison Nazareth, and Cathédrale Notre-Dame-de-l’Assomption.



***Patricia Fradsham (retired staff member)***  
***1939 - 2001***

After growing up in Marysville on Duke Street, Patricia (Pat) worked for the department of agriculture and then the faculty of law at UNB as a secretary until she retired in 2000. Pat was the past president of both the local chapters of Professional Secretaries International and the Kinettes, as well as a member of the Red Hat Society. She ran a busy ceramics shop in her basement, teaching many neighbourhood kids arts and crafts. Pat also enjoyed gardening and spending time with friends at Everett’s campground.



***The Hon. Peter M. Clark, QC (LLB '70)***  
***1942 - 2021***

Born in High River, Alberta, Justice Clark graduated from the University of Alberta with a Bachelor of Arts in 1966. Upon graduation, he worked briefly as a social worker, where much of his time was spent working with young offenders; an experience that led to his interest in pursuing a career in law. After graduating from UNB Law in 1970, Justice Clark articulated at what would become Burnett, Duckworth and Palmer in Calgary, eventually becoming a partner with the firm. In 1985, he joined the partnership at Atkinson McMahon and in 1995 was appointed a Justice of the Court of Queen's Bench of Alberta. In 2007, he was appointed a Deputy Justice of the North West Territories, and in 2010, was appointed a Deputy Justice of Nunavut.



***Justice John (Jack) Walsh, QC (LLB '77)***  
***1953 - 2021***

Born in Newcastle, New Brunswick, Justice Walsh graduated from St. Thomas University with a Bachelor of Arts in 1975. Upon graduation from UNB Law in 1977, he moved back to Miramichi where he would spend the next 10 years in private practice. In 1987, he became a Crown Prosecutor with the province. During his work on the trial of serial killer Allan Legere, Justice Walsh became nationally-known as one of the first lawyers in the country to introduce DNA evidence against the accused. He would establish himself as one of Canada's leading experts on DNA evidence. He was seconded to the Federal Department of Justice in Ottawa to assist in the development of the Federal DNA legislation and has contributed articles and book chapters to both legal and scientific publications on the topic of DNA. He received his Queen's Counsel in 2001 and was appointed Regional Crown Counsel in 2003. He was appointed a Judge of the Provincial Court of NB in 2008 and a Justice of the Court of Queen's Bench of NB one year later.



***Dianne Fraser Smith, QC (LLB '80)***  
***1955 - 2021***

Born in St. John's, Newfoundland, Dianne graduated from UNB Law in 1980. She was one of only five female lawyers in her bar admissions class that year. She began her career in private practice with O'Dea, Greene. She would move to the public sector, joining the Newfoundland and Labrador Department of Justice, where she served for 25 years. During her time at the DOJ, Dianne mentored many young lawyers. She received her Queen's Counsel in 2004. Dianne gave back to her community; she was Girl Guide Leader and a member of the Board of the Botanical Gardens. She is remembered for her love of travel, scrapbooking, gardening, scrabble, and most of all, for the love she had for her family and friends.



***Christopher E. Lewis (LLB '00)***  
***1967 - 2021***

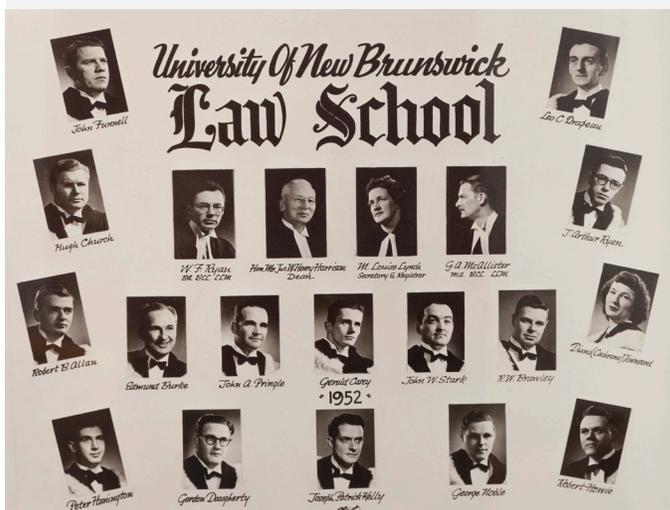
Born in Mount Pearl, Newfoundland, Christopher graduated from UNB Law in 2000. He joined the St. John's office of Stewart McKelvey in 1999 as a summer student, eventually becoming a partner with the firm, where he spent over 20 years of his career. In 2016, he was elected to the board of the Newfoundland and Labrador division of the Canadian Cancer Society. He was a founding member of Beagle Paws Rescue, Canada's largest beagle rescue group. He is remembered by his colleagues for his easy-going nature, his work ethic, and the high level of care he gave to his clients.

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