

# PRESIDENT'S REPORT



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2018-2019

AMERICAN COLLEGE OF TRIAL LAWYERS

## **President's Year End Report American College of Trial Lawyers 2018-2019**

As a child, my parents gave me a plaque that was hung on my wall. It said, "Today is the tomorrow you worried about yesterday". I am not sure I ever understood what it meant back then. More recently, I came across a quote from no less than Albert Einstein: "I never think of the future – it comes soon enough." I guess it is not rocket science. It does seem like only yesterday that we were in New Orleans for the 2018 Annual Meeting and I faced the daunting task of being the 69<sup>th</sup> President (and the 2<sup>nd</sup> Canadian President) of this storied College. It has been an amazing year in so many ways. Carol and I have had the wonderful opportunity to travel across our two great countries to meet old friends and make new friends with so many colleagues. I personally learned a great deal. And I am grateful.

Over the course of more than 70 events, we will have travelled some 175,000 miles. My simple math tells me that is the equivalent of going around the world 3 ½ times "in 365 days". These travels included all but one of the Canadian Provinces (Prince Edward Island does not have any fellows yet) and, if we include the events covered by other members of the Executive when I had a conflict, all but a few of the American States. And to use "point first advocacy", the College remains a vibrant and strong organization with so many Fellows dedicated to keeping it that way. My second and final lofty quotation will be from Aristotle: "We are what we repeatedly do. Excellence, therefore, is not an act, but a habit." To me, that describes the state of our College.

Carol and I have been blessed with so many wonderful friends, including Past Presidents, Executive Committee members, former and current Regents, Province and State Chairs, General Committee Chairs and other Fellows, many of whom are shown in the pictures that accompany this report. I am sorry I could not include y'all (I have learned my "southern"), but I had to at least pay lip service to space limitations. Y'all have contributed to making this year the highlight of my career. I thank you for putting your confidence in me as your President. I have done my best to follow in the footsteps of my predecessors, to honour our traditions, to inch us forward in making changes to maintain the College's relevance and to follow the advice of several Past Presidents, "don't mess it up".

While all of this made for a happy and exciting year, it was not without its challenges and sorrows. In particular, we lost our beloved Past Presidents, Ralph Lancaster and David Scott. These two gentlemen helped guide the College for so many years and made lasting contributions that have been instrumental in bringing us to where we are today. I have been quick to point out that Ralph, with his summer home in Nova Scotia, considered himself an honorary Canadian. And I cannot say enough about David, my good friend and mentor, who did so much to weave Canada into the fabric of the College. We will miss them both.

I want to thank my partner in love and in life, Carol Best, for accompanying me on much of this journey. As I have been told (as if I already didn't know), Carol's honesty, enthusiasm, empathy and the ability to have fun has not only been invaluable to me, but has been appreciated by so many of you. This year was not always easy. As many of you know, we have faced some significant personal and family health issues. Being a First Lady can be a tough job and Carol did her best in that job, not only for me, but also for the College.



I also want to thank my excellent Executive Committee who worked so hard to help make this year a successful one for the College. With Doug and Terry Young as your new President and First Lady, there is no doubt in my mind that the College will continue to prosper and make progress. We are so lucky to have them. I would also like to give a special thank you to our very good friends Sam and Betty Franklin. Sam and Betty have served as “consiglieres” to Carol and me. They have been generous with their advice and their friendship and have kept us on track and moving forward in so many ways.

Finally, my thanks goes to the College staff: Dennis Maggi (Executive Director), Amy Mrugalski (Board/Executive Administrator), Suzanne Alsnauer (Senior Meetings and Conference Manager), Katrina Goddard (Meetings and Conference Coordinator), Eliza Gano (Communications Manager), Gerri Frankenstein (Sr. Manager, Membership), and Cheryl Castillo (Office Administrator). We are indeed lucky to have them. Under their watchful direction, we have again had a strong financial year, with our expenses significantly below budget; our Committees have been provided the resources and guidance to allow them to do their excellent work; our Spring Meeting and Annual Meeting (along with several other Regional Meetings), have been so successful; our membership numbers remain on track; our website, *e-Bulletin* and *Journal* have

kept our members fully up-to-date (and entertained); and, speaking personally, they facilitated me doing my job and allowing me to be in the right place, at the right time, and generally doing the right things.



This year was not without its challenges for the College. The transition from having an in-house controller to outsourcing our bookkeeping to OneOC did not go as smoothly as we had anticipated. This put a significant extra burden on Dennis, other staff and members of the Executive Committee. Dennis accepted this burden without complaint and he worked hard successfully to smooth out the bumps and to bring us to our current position where our financial and control systems are functioning well, with significant cost savings. We certainly missed Amy while she was off on maternity leave (once again, mazel tov, Amy). But again, the other members of our staff, with some temporary assistance, rose to the occasion and things continued to function well and the trains ran on time.



One of the best parts of being President of the College is to have the opportunity to see up close and first-hand the future of our profession – the next generation of trial lawyers who, as law students, have already developed the knowledge, skills and common sense that should give us confidence that the trial process, and the College itself, will remain vibrant and strong. Having the opportunity to meet these students and witness them in action at the two moot court competitions and the two trial competitions in the United States and Canada, was a highlight of the year.

I also had the opportunity as your President to attend many “special events”: the Leadership Workshop in Nashville, where we kicked off our Mentoring and Civility initiatives; a Canadian National Pro Bono Conference in Vancouver; a Teaching Program on Civility organized through our International Committee in Tortola, British Virgin Islands; The Advocates’ Society Fall Convention in Laguna Beach where I delivered a keynote address on “Becoming a Trial Lawyer” and was able to visit our National Office and meet individually with almost all of the staff members; the Special Induction Ceremony for Judicial Fellow Maria Davila before she assumed her new role as a Judge in Tucson; the Spring Symposium sponsored by The Advocates’ Society and the College in Toronto, where I had the privilege of introducing our Griffin Bell Award recipient Andy Savage, who gave the keynote address and presenting the Emil Gumpert Award to representatives of Pro Bono Students Canada to support the creation of specialized Legal Clinics as part of a Human Rights Program that will promote legal advice in a culturally sensitive environment; a special ceremony to present awards to the student/winners of the National Moot Court Competition at the University of Alabama in Tuscaloosa; an Executive Retreat in Arizona where we made progress in furthering the College’s mission; an Executive Meeting in Washington, D.C., where we also attended the Annual Dinner of the Supreme Court Historical Society; and our very successful Spring Meeting with a most well-received program organized by President-Elect Doug Young and the great social events, appreciated by all, organized by our staff. And now there is our Annual Meeting in the beautiful Canadian city of Vancouver, Canada.



In addition to attending over 50 State and Province Meetings and Dinners, I had the opportunity to attend several successful Regional Meetings. It takes a considerable amount of work, and sometimes, the willingness to accept some financial risk, to plan a Regional Meeting. Our National Office staff provides significant assistance in that regard, but the lion’s share of the work is done by our dedicated Fellows. Without exception, I came away from each of those Meetings convinced of the importance of Regional Meetings to our Fellows. While sometimes these Meetings are not

as well attended as they should be, my experience, without exception, was that the quality of the programming was first rate and the opportunity to socialize with colleagues is greatly appreciated. The enthusiasm from those in attendance was palpable. I believe Regional Meetings are important to the College and in part, give an opportunity to Fellows to attend a more significant College event (particularly if they do not have the opportunity to attend a National Meeting). I **recommend** that we continue to promote these events on a regular basis and do even more to encourage attendance and to find additional ways to provide financial assistance to fellows who require it.

Similarly, the number of State and Province events held this year was remarkable. At the outset of the year and following, I encouraged all State and Province Chairs directly (and through the Regents) to hold an event. I was so pleased that many did just that, either for the first time or at least for the first time in a long time. Again, the importance of these events in giving an opportunity to all Fellows to attend and celebrate the collegiality of our organization cannot be over-emphasized. For many Fellows, this is the only contact that they have with the College and the Fellows of the College. I strongly **recommend** that we have as a goal that **every** State and Province hold an annual event. I hope that our Regents will assume the responsibility for ensuring this happens.



When I attended these events, in addition to attempting to display my knowledge (sometimes faulty) of the locale, identifying notable personalities from the area, paying tribute to local sports teams by my ever expanding hat collection and speaking about the strong relationship between Canada and the United States (a subject near and dear to my heart), I took the opportunity to review the progress we are making with the College Agenda. Indeed, we have made significant progress over the past year and I am pleased to be able to report on that progress:

1. **Diversity** – Under the direction of Regents Rick Deane and Joe Caldwell, a Report has been submitted to the Board, outlining the progress that we have made on making our organization more diverse and setting out recommendations on what more can be done to increase our diversity and to make diverse Fellows feel more welcome in the College. These recommendations will provide guidance for the Board in moving forward to come closer to achieving our diversity goals. Of particular note is the need to do a better job in integrating diverse fellows into the College. I also continued the recent tradition of holding a series of telephone calls with State and Province diversity liaisons so that they could report on their work and challenges in increasing our diversity. Along with Rick and Joe, I found this to be a helpful exercise in increasing understanding and sharing ideas. I **recommend** that this practice continue.

2. **Mentoring** – The Task Force on Mentoring, under the leadership of Regents John Day and Kathleen Flynn Peterson, has submitted a Report to the Board, entitled “Mentoring the Next Generation of Trial Lawyers – Developing Excellent Trial Lawyers in an Era of Diminishing Trials”. We are all indebted to John and Kathleen and the members of the Task Force for preparing this excellent White Paper and making over 35 recommendations on what law firms, bar-sponsored trial academies, the Judiciary, corporate counsel and all of us as trial lawyers can and should do to mentor and provide opportunities to younger lawyers in relation to trial practice, professionalism and civility. Going forward, it is important that we not only publish and widely disseminate this White Paper, but I **recommend** that we assign responsibility to one of our General Committees to do ongoing monitoring and follow-up of the efforts and success achieved in implementing these recommendations. We should not allow this excellent work simply to sit on the shelf. It is a call to action and as a College, we must answer that call.
  
3. **Task Force on Boot Camp Trial Training Programs** – In my view, this Task Force under the leadership of Paul Mark Sandler and Paul Bekman has been a tremendous success. It takes almost six months to plan one of these Programs. Since the creation of the Task Force, there have been over 10 Boot Camps held, scheduled or in the planning stage, including for the first time, one in Canada. I **recommend** that the Task Force become a General Committee so that it can continue to focus on providing trial skills training to particularly younger trial lawyers.



4. **Judicial Independence** – At the Spring Meeting, the Board approved the White Paper of the Task Force on Judicial Independence under the leadership of former Regent Kathleen Trafford, entitled “The Need to Promote and Defend Fair and Impartial Courts”. The Task Force also provided five comprehensive recommendations for how the College should

move forward to fulfill its Mission. On that basis, we struck a General Committee on Judicial Independence, chaired by John (Buddy) Wester of North Carolina, and Kent Thomson of Ontario. That Committee has already held meetings and was of assistance to the Alaska Fellows in issuing a statement responding to the actions of the Governor of Alaska, who decreased the Court's budget because he disagreed with a recent decision of the Court. The Committee is well positioned to assist other Provinces and States if and when issues arise on which it is appropriate for the College to speak. This will facilitate an effective and timely process for the College.

5. **Access to Justice** – The Beverley McLachlin Access to Justice Award will be awarded to Chief Judge Lippman of New York State at the Annual Meeting. Under the leadership of Mark Surprenant and our Access to Justice Committee, our Access to Justice Distinguished Pro Bono Fellows Program has had significant success in creating access to justice through our partner/host organizations. Mark will make a presentation at the Annual Meeting on the achievements of the initial eight Distinguished Fellows. He also has been successful in recruiting additional Fellows who will now become part of the Program. In my view, this Program has been a great success and I **recommend** that it move from a pilot project to an ongoing program under the auspices of the Access to Justice Committee.



6. **Civility** – Our Legal Ethics and Professionalism Committee and Teaching of Trial and Appellate Advocacy Committees have succeeded in moving forward with our Civility initiative. Working Groups have been established in Toronto and Philadelphia, as pilot projects, to implement proposals put forward by Judicial Fellow The Honourable Eleonore Cronk, formerly of the Ontario Court of Appeal, at the National Leadership Workshop last October, including recommendations for: leading by example; educational and skills training programs; calling out incivility; in-firm presentations and adoption by law firms

of appropriate policies on civility; involvement by judges; annual symposiums on professionalism, including civility; and other activities. There is also a plan to create short videos of Fellows describing situations where civility was either honoured or lacking, a statement of what element of civility was either present or absent and a statement of what lessons were learned from the experiences. These video clips will begin being filmed during the Annual Meeting in Vancouver and form the basis of educational materials that Fellows and others can use in continuing educational programs promoting civility.



7. **Public Statements** – In my Report for the Spring Meeting, I reviewed the two public statements that were approved by the Executive Committee and issued on behalf of the College in accordance with our established policies and guidelines. One dealt with judicial independence and the other dealt with funding of pro bono help centres. In response to the controversy at Harvard surrounding the decision not to renew the contract of a faculty member that was, at least in part said to be in response to complaints by students regarding his involvement on the defence counsel team of an alleged sex offender, Regent Larry Krantz and I prepared an Op-Ed on “Defence Counsel’s Role in a Democracy – Representing those Accused of Heinous Crimes”, which was published online by Bloomberg. I received significant positive responses from numerous Fellows, who were grateful that the College spoke publicly about this issue that goes to the core of our Mission. I **recommend** that the College continue to speak, where necessary and appropriate within our processes for approval, on issues that fall within our Mission. I believe that our Fellows take great pride in the College doing so.

8. **Other Publications** – The College has also published a White Paper from the Jury Committee on “Improving Jury Deliberations Through Jury Instructions Based on Cognitive Science” and a White Paper from the Federal Criminal Procedure Committee on “Statement on Criminal Justice Reform”. Both have been well received. Our new College brochure has been printed and is available for circulation. The revised “Canadian Codes of Trial and Pre-Trial Conduct” should be published and available for distribution in the fall of 2019. It is also noteworthy that the College’s publication “Working Smarter but Not Harder in Canada: The Development of a Unified Approach to Case Management in Civil Litigation” resulted in the creation of a pilot project in Ontario, which acknowledged the impetus for this reform was the report of the College. Also, a Practice Direction has been issued by the Court of Queen’s Bench of Manitoba implementing single-judge case management and acknowledging again the work of the College as the impetus for this change.



9. **Communications** – The *e-Bulletin* under the guidance of former Regents Paul Fortino and Paul Meyer, with the great assistance of Eliza Gano, has continued to keep our Fellows apprised on a current basis of what is happening in the College. *The Journal*, under the editorship of Fellow Stephen Grant, has continued to function as the feature publication of the College and is widely read and appreciated by our Fellows. As of the Annual Meeting, Stephen Grant will be resigning as Editor. We owe Stephen a significant debt of gratitude

for his hard work, creativity and journalistic excellence in guiding this publication to continued great success. Past President Bob Byman will be taking over the role as Editor and we know he will continue the high standards achieved by his predecessors. Past President Ozzie Ayscue has indicated his desire to transition his role as the author of the *In Memoriam* section of *The Journal*. He is seeking Fellows who might be interested in continuing with this important part of *The Journal*. We also owe Ozzie a significant debt of gratitude for his many years of hard work as Editor of *The Journal* and his ongoing preparation of the *In Memoriam* section. Finally, in the area of communications, we have established ACTL Connected, a Fellows community page on our website that will allow for Fellows to connect, engage and share information in real time with other Fellows.



10. **Miscellaneous** – Among other things that have happened over the past year, amendments proposed by our Task Force on Advertising were adopted and implemented. Under the ongoing guidance of Fellows Denny Shupe, John Chandler, Steve Raber and Beth Tanis, the College’s work on behalf of Veterans has continued. Recently, a panel of the U.S. Court of Appeals for Veterans Claims certified a claim for those who waited over eighteen months for their cases to be sent to the Board of Veterans Appeals and issued mandamus requiring the Board of Veterans’ Appeals to act within 18 months, relying on the *Martin* decision.

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As the College moves forward into the year 2020, I **recommend** that we continue to place increased emphasis on identifying younger trial lawyers as potential candidates for fellowship. We have to invest in our future and the time to do so is now. As set out in the table below, our membership continues to age. While our total number of Fellows remains constant, the number of full-time members is trending downwards. We need to re-double our efforts to identify appropriate younger candidates for fellowship (of course without in any way altering our standards). This must be a priority.

	2017	2018	2019
<b>Full</b>	1879	1785	1743
<b>Part</b>	151	165	184
<b>Judicial</b>	301	296	301
<b>Emeritus Age</b>	100	126	160
<b>Emeritus Retired</b>	1310	1345	1361
<b>Honorary</b>	45	46	48
<b>Total</b>	<b>5803</b>	<b>5781</b>	<b>5816</b>

I also **recommend** that we become more proactive in honouring and recognizing “our heroes” through the good work of our Heritage Committee. As we seek to “become younger”, it is important that our fellowship understand and appreciate our roots and traditions and pay tribute to those who have guided the College and the trial bar over the decades.



Finally, I **recommend** that we put renewed emphasis on activities that can take place at the local level through our State and Province Committees. We need to do more to connect our Fellows

with the College and to get Fellows involved in the College. It is through such involvement that Fellows will maintain their appreciation of their fellowship in the College and develop enthusiasm for what we do. The Outreach Committee has put together a comprehensive list of activities that have been undertaken across Canada and the United States over the past several years. I **recommend** that a process be implemented to facilitate the increased sharing of ideas and that our Regents undertake to review that list with their State and Province Committees with a view towards encouraging those Committees to undertake new projects.

I want to thank you, the Fellows, whose dedication and hard work have made this year a success for the College in furthering our Mission of maintaining and improving the standards of trial practice, professionalism, ethics and the administration of justice. Thank you for your friendship. Thank you for the fun. “Long and happy may be our years together.” Let us continue to celebrate the great future of our justice systems, our trial processes and the traditions of civility and collegiality that makes the College and our countries great. And let the good times continue to roll.

For after all,

This land is your land, this land is my land  
From California to the New York Island  
From the Redwood Forests, to the Gulf Stream waters [OR]  
From Bonavista to Vancouver Island  
From the Arctic Circle to the Great Lakes Waters  
This land was made for you and me!



And to my American friends, in the words of George Gershwin:

Shining star and inspiration,  
Worthy of a mighty nation.

