Harold G. Fox Education Fund Scholarship Report 2006-2007
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Introduction

My first day as a Fox Scholar began unremarkably enough on a typically blustery, overcast London day. It was not long before my day took a turn for the remarkable, when the other Fox Scholar, David Rosner, and I attended that most historic of ceremonies (at least as far as members of the Bar are concerned): the official opening of the legal year at Westminster Abbey. David and I had been fortunate enough to be given tickets to the ceremony by Carolyn McCombe, who in addition to being the chief administrator and head clerk of 4 Pump Court Chambers (known colloquially as "4 PC"), is fantastically well connected as far as legal London is concerned. Tickets in hand, we turned up early and were rewarded with an experience that I can only imagine is had by only a precious few these days. That is to say, for at least a short while, we had Westminster Abbey all to ourselves and were free to roam its vast expanse with few others for company but the ghost of Lord Byron.

The opening ceremony dates back to the Middle Ages, when judges would attend at Westminster Abbey to pray for guidance at the start of the legal year and has not changed much since then. The service itself is conducted by the Dean of Westminster and includes hymns, psalms, prayers and anthems, with the Lord Chancellor, Secretary of State for Justice and Lord Chief Justice all reading lessons. The event is an extremely grand affair and is attended by approximately 1,000 people, including judges, Queen's Counsel, government ministers, members of the European Court and overseas judges, lawyers and dignitaries. The attendees wear full ceremonial dress, including luxurious velvet robes, full-bottom wigs and ornate, bejeweled medallions. While we were unfortunately seated behind rather a large post and did not have much of a view of the service, the entire front gallery passed us by following the service and we had an excellent view of the judges, QCs and others in their fancy dress. After the service, invited guests (Fox Scholars not included) attend at the Royal Gallery for lunch.

4 Pump Court

The term began in earnest when I attended at 4 PC following the ceremony and was directed to the room of Anthony Temple, QC. A quintessential English barrister, Tony was both the picture of grace under pressure and chock full of cheeky tales from his many years at the bar. A passion for the law seemingly runs in the Temple family, as Tony's father was also a highly esteemed barrister and former treasure of Inner Temple, while his brother, Victor, is a prominent criminal barrister.

4 PC itself has been in existence in more or less its current form for approximately forty years and Tony has been a member of chambers for most of that time, having also done a stint as head of chambers. Like many sets, 4 PC has changed considerably over time with the comings and goings of its members. 4 PC was described to me once by someone as having once been "rather a knockabout kind of place" whose members spent a

considerable amount of time doing a mix of common law and crime on the Western Circuit. Translated into Canadian English, the speaker meant that the members of 4 PC were not afraid to roll up their sleeves and get their hands dirty in the rough and tumble world of litigation.

While 4 PC may have had humble origins, it is now anything but. Members of chambers include some of the most highly respected silks and juniors at the bar and 4 PC boasts an impressive breadth of practice areas, with a focus on commercial, construction, professional negligence and information technology. Notwithstanding its impressive reputation, the members of 4 PC were always extremely friendly, collegial and engaging.

Tony was no exception to this and was extremely gracious, notwithstanding that my timing could certainly have been better, as the day I turned up was also the day that Tony began a trial that was surely on par with the biggest of the big commercial cases passing through the Toronto Commercial List. The trial concerned two banks that had been joint lenders to a company in financial difficulty. During the restructuring process, one bank had agreed to take out the interest of the other such that it became the sole lender to the company. The company met with financial ruin and the bank that remained ended up losing vast sums of money. The disintegration of the company generated numerous lawsuits, in multiple jurisdictions, in England and the United States. In this particular action, the remaining lender was suing the former lender for fraudulent misrepresentation.

In addition to Tony, the team included a co-leader, Philip Marshall QC, and two juniors, Jeffrey Chapman and Simon Attrill, in addition to a number of solicitors. Laura Crowley, a junior tenant at 4 PC with whom I became good friends, also joined us from time to time. All of the members of the team were extremely kind and took the time to explain to me the various aspects of the trial process with which I was unfamiliar, and to answer my seemingly never-ending questions. In addition to our professional interactions, Tony and his wife, Susie, also invited David, his wife and me to their house for dinner on several occasions and I attended his daughter's 21st birthday celebration.

While it was clear that many months of preparation had gone into preparing for the trial, by numerous barristers, solicitors and pupils, Tony succeeded in making the process look entirely effortless before the court. Indeed, one of the great lessons I learned from Tony was the importance of maintaining one's composure under pressure. Tony's opposite number, a highly-regarded silk from another top commercial set, often came across in his submissions as pompous and shrill. In stark contrast, Tony was the voice of reason and made his points with understated grace.

One of the more significant differences between the English and Canadian systems that I observed was the use of witness statements. In civil cases in England, it is extremely rare for witnesses to give viva voce evidence in chief. Instead, evidence goes in by way of sworn witness statements and witnesses are subject to cross-examination. Views on witness statements varied and many of the more senior barristers I met were of the view that witness statements were expensive, unduly lengthy and did not produce the best, or

most relevant, evidence and preferred the days of live evidence in chief. However, the reaction of many juniors upon learning that we do not use witness statements in Canada was one of genuine dismay.

A second major difference between the two systems is the way in which conflicts are dealt with at the bar. While members of the bar may practice together in chambers, each barrister in chambers is truly independent from all the others. As a result, it is not uncommon for barristers from the same set to be on opposite sides of a case, which often has the effect of encouraging an extra healthy dose of competitiveness. This was the case in a number of the proceedings I attended.

The Old Bailey

In the middle of our trial, I had the very good fortune of being offered the opportunity to sit as marshal to the Honourable Mr. Justice Richard Aikens, a highly regarded judge of the Commercial Court. While Mr. Justice Aikens had a background as a commercial barrister, as a judge he was often brought in to the Old Bailey to preside over particularly high-profile or difficult cases. As marshal to Mr. Justice Aikens, I had the opportunity to see from beginning to end the murder trial of two young men from North London who were accused of killing a young solicitor on his way home from work late one evening. The case had been in the news for months leading up to the trial and was a tragic story of a robbery gone wrong in which the deceased had been killed just metres from his front door. The two accused were convicted and each was sentenced to lengthy prison terms. Sitting on the bench with Mr. Justice Aikens was an amazing experience which, among other things, gave me a unique appreciation for the difficulty had by triers of fact in deciding who and what to believe.

Mr. Justice Aikens was a superb host who involved me in every phase of the process and from whom I learned a great deal, not least about the history of the Bailey itself. For example, there is a sword that is kept at the Bailey that dates back to Victorian times. The sword is placed in a special place on the wall of the courtroom of the most senior justice each morning and removed each evening by a white-gloved attendant. As Mr. Justice Aikens was the highest-ranking judge at the Bailey, he had the sword for the duration of our time at the Bailey.

As well, the Sheriff and the Alderman of the City of London treat the judges of the Bailey to lunch every day. The lunch is a formal affair, with the judges attending in their robes and wigs. Each day a paper is delivered to each of the judges' rooms, with a menu for that day's lunch and a list of invited guests. When we began the trial, Mr. Justice Aikens enquired whether he would be permitted to bring me along to lunch. We were informed that guests dined at the pleasure of the Sheriff and Alderman and as such, I was not permitted to attend. Rather than leaving me to eat alone, I was surprised when Mr. Justice Aikens asked that the Sheriff be advised that he would not be attending lunch either. As a result, we took our lunch alone in his chambers for the next several weeks. This arrangement suited us rather well, as there was always plenty of work to be done over the lunch adjournment. However, on our last week at the Bailey, we received a

message that I could attend lunch that Friday. I completed a bio, put on my best suit and along to lunch we went. Upon our arrival, I was formally presented to the Sheriff, the Alderman, the judges of the Bailey and other invited guests before being escorted in for lunch.

Essex Court Chambers

Essex Court Chambers was one described to me as being home to "the brains of Britain" and is among the top sets in London. In addition to leading barristers, Essex Court also has a unique presence in the international law field and boasts a number of prominent professors, practitioners, judges and arbitrators.

At Essex Court I had the pleasure of sitting with Paul Key, who like some barristers, had been a solicitor before coming to the bar. Exceptionally bright, Paul had also previously completed a doctorate in law at Cambridge prior to becoming a barrister. Instead of working on one large case as I had with Tony, I was exposed to a wide variety of matters at Essex Court and Paul had a mixed practice, with a particular focus on tax and international commercial arbitration.

One of the highlights of my time with Paul was a two-week long commercial arbitration I attended between two long-distance hauliers on the continent. The case involved serious allegations of fraud, bribery and influence peddling and the witness list was full of colourful characters. The proceedings were conducted in English, Italian and Dutch and the panel consisted of an American lawyer, a barrister from Fountain Court Chambers and Yves Fortier, QC, a prominent Canadian lawyer. While Paul made his work seem effortless in front of the panel, I knew that he prepared tirelessly behind the scenes.

In addition to my time with Paul, I had the benefit of spending short periods with two other barristers at Essex Court, Philippa Hopkins and Tim Eicke.

With Philippa, I gained insight into the world of so-called "vulture fund" litigation. Vulture funds, as they are pejoratively called, buy distressed debt on the international market at a very high discount then attempt to collect on it through extremely aggressive means. Such funds are particularly infamous for attempting to collect on the developing world debt by, among other things, seizing state-owned assets and aid budgets. Given London's status as a global financial hub, there is a considerable amount of this type of litigation that takes place there. In the particular case I became involved in, Philippa was acting for a state-owned bank attempting to ward off the advances of one particular fund.

I was also fortunate to have spent a period of time with Tim, who specializes in public and human rights law. Among Tim's numerous high-profile briefs is his standing appointment to the Attorney General's A-Panel, meaning that he is among a select group of barristers who have been granted clearance to conduct extremely sensitive, top-secret proceedings on behalf of the government. During my time with Tim, I was able to assist with and attend an appeal by an accused terrorist, Mr. X, who was appealing the conditions placed upon him pursuant to a security certificate. The appellant's case raised

comparative points and I found it particularly rewarding to be able to provide Tim with research on the Canadian system for use in his submissions.

Fountain Court Chambers

Prior to commencing my time at Fountain Court, I returned to the Old Bailey to spend another few weeks with Mr. Justice Aikens, who had been called back to preside over a particularly high-profile case. The case involved a political staffer and bureaucrat who had been accused of disclosing a secret memorandum documenting high-level discussions between Prime Minister Blair, President Bush and their staffers with respect to the Iraq war, contrary to the *Official Secrets Act*. I was fortunate enough to be granted clearance to be present for the entire proceeding, which was truly fascinating.

Upon my arrival at Fountain Court, I was initially placed with Craig Orr, QC. In a twist of fate, Craig had previously been a "reverse" Fox Scholar who in his junior years had come over to Canada and spent time with a number of the partners at Lenczner Slaght, when they had still been at McCarthy Tetrault. As I had heard a lot about Craig, I was very much looking forward to working with him and was not disappointed. Craig was extremely welcoming, kind and generous with his time, which was very short indeed as he is very much in demand.

As Craig was in the midst of preparing for a large case and did not have many hearings scheduled, Craig arranged for me to attend a trial with Charles Bear, QC, a leading employment barrister at Fountain Court. The trial concerned the enforcement of a restrictive covenant against a departing employee, who went to work for a competitor of her former employer. Charles' client, the new employer, was a US-based firm that had sent its corporate counsel over to London for the trial. I found the interaction between the American and English counsel particularly interesting. Traditionally, barristers had little, if any, interaction with clients and many continue to adhere to this approach. While this attitude seems sensible in a divided profession, where solicitors handle clients and barristers handle advocacy, such an approach can seem bewildering to American-trained lawyers. This divide was brought home to me when, at the end of the trial, the American counsel asked that Charles participate in a tele-conference with the CEO in order to give the CEO his view of how the case had went. Charles paused for a moment, then frowned and said that he "couldn't possibly dream of such a thing!" The American counsel was momentarily rendered speechless and I suspect was left feeling rather a bit put out. While learning about different styles of practice is an incredible learning experience, I came to recognize the importance of explaining our differences to one another with care.

While at Fountain Court, I also had the opportunity to work briefly with Richard Handyside, whose practice is largely focused on banking law. I had never had an interest in banking law and was admittedly somewhat reluctant upon learning that I would be sitting with Richard. As it turned out, I became involved in an extremely interesting case with respect to the legality of late charges and overdraft fees levied by banks, at common law and under legislation prohibiting unfair credit bargains. The outcome of the case could spell a fundamental change in the English banking market and its policy

implications were significant. Despite his monumental workload, Richard always took the time to involve me in whatever he was doing and to answer even my most mundane questions with genuine attention. Richard was also extremely well traveled and gave me some great tips for a trip to Lebanon and Syria I was planning.

I ended my time at Fountain Court by sitting with Andrew Mitchell, which I enjoyed immensely. Andrew was both terribly bright and terribly funny, and brought a down-to-earth sensibility to even the most esoteric matters. Andrew's wife was also a barrister at 4 PC and I had a great time trading stories with Andrew about the various barristers in chambers. Like Richard, Andrew had been retained to work on bank charges, although by a different bank. As a result, having worked with Richard I was unable to participate in much of the work that Andrew was doing. Nonetheless, Andrew made efforts to find interesting things for me to do and arranged for me to go along with other barristers on short hearings and the like during my time with him. He also went out of his way to arrange a well-attended drinks party with the barristers at Fountain Court for David and myself at the end of the year.

The Middle Temple

Another highlight of my year was my involvement in the Middle Temple, which led to many memorable experiences. I would often go to "hall" for lunch, alone or with other pupils and barristers. Middle Temple Hall is a fantastic place that is steeped in history, parts of which date back hundreds of years. During term time, there are many events that take place in hall, including dinners, music nights and talks. I was lucky enough to be able to attend several traditional dinners in hall, which were truly memorable experiences. On the last dinner I attended, the keynote address was given by the former Prime Minister, Sir John Major, KG, CH and I had the good fortune to be seated at the head table with Sir John, several members of the House of Lords, the England and Wales Court of Appeal and the former Attorney-General of Hong Kong!

In addition to dining, the Middle Temple also has an excellent advocacy program, and my time as a Fox Scholar included two advocacy courses through the Middle Temple. In December, I was lucky enough to be able to attend a pupils' advocacy weekend at Cumberland Lodge. The course was both a fantastic learning experience and a great deal of fun. Attendees had the chance to practice their trial advocacy skills in front of senior barristers and judges, who were rigorous but fair. Cumberland Lodge is also located on the Windsor Estate, which is a divine place that we had the opportunity to explore at our leisure.

My time as a Fox Scholar was capped off at the end with a one-week advocacy course, which was both challenging and enjoyable. The program was mainly intended for pupils in their "second sixth", which is the latter half of their pupilage. Many of the pupils had by then already spent some time in court and were becoming seasoned advocates in their own right. The course was led by Bernard Richmon, QC, a leading criminal barrister with a no-nonsense approach. Each of the pupils had the opportunity to test out their advocacy skills in front of senior barristers. One of the best parts of the program was the

final day, when we had the opportunity to attend at magistrates' court and practice our submissions before criminal court judges, who were helpful and encouraging.

Goodenough College

A report on the Fox Scholar experience would not be complete without a few words about Goodenough College. Notwithstanding my eight-plus years of university education, I had never lived in residence prior to going to England and was more than a bit apprehensive at the prospect of living in halls at this stage in my life. I was pleasantly surprised and am extremely grateful for the chance to have lived at Goodenough College. While the College originally housed postgraduate students from the Commonwealth who had come to London to study, residents of more than 30 countries now call the College home. Admission to the College is extremely competitive and the calibre of residents exceptionally high, which is reflected in the rich cultural and social life of the College. From plays and port talks to sport, music and dance, there is something for everyone to enjoy. In addition to making many friends who I hope to have in my life for many years to come, I also met my fiancé, a fellow Canadian at Goodenough College.

Conclusion

It is difficult to distill a year's worth of adventures into a short report and I feel as though I have only scratched the surface. I can nonetheless unequivocally say that I am truly grateful to have had the opportunity to spend a year in London as a Fox Scholar and would recommend it without question to anyone with an interest and a passion for advocacy. Simply put, my year as a Fox Scholar was "brilliant, indeed!"