

## Fox Scholarship Report

### Gord McGuire, Fox Scholar 2010-2011

Even after a year working alongside some of London's sharpest legal minds, and all the instruction and practice in written advocacy that came with it, I struggle to summarize my experience any more articulately than this: the Fox Scholarship is a really sweet deal. It is unlike any other legal training opportunity that exists in Canada, and provides a more varied and enriched experience than even the most coveted pupillage in the English system.

It is difficult to do justice to my year in London in a few short pages because the high points are many: the historic charm of the Temple area, my workplace for a year; the opportunity to work alongside the elite of the English Bar; the sheer number of trials, hearings, appeals, and arbitrations I participated in; front-row seats to masterful cross-examination; the ability to put my legal writing skills – and legal thinking skills – to the test on so many occasions; the enduring personal bonds formed with barristers and my co-Fox Scholar; the opportunity to live in one of the world's great cities; the list goes on. Below I present but a few of the highlights of this formative, if not transformative, experience.

### What the heck is a pupillage anyway?

When I applied for this scholarship, the only thing I knew about pupillage was that Microsoft Word's spellchecker was convinced it wasn't a word. I was similarly clueless as to what exactly a set of barristers' chambers was. So, for the uninitiated, here are a few terms that might help:

- *A split profession:* in Ontario the legal profession is 'fused', in that every lawyer qualifies as both a barrister and a solicitor. In England, however, the profession is split, such that those aspiring for a career in law have to make a choice before their career starts to seek to become a barrister or a solicitor. Speaking in extreme generality, solicitors deal with clients and do the prep work for court, while barristers deal with solicitors and do the actual advocacy before the courts.
- *A set of barristers' chambers:* while solicitors commonly work in large partnerships similar to the big Canadian law firms, barristers usually work in an association of barristers called a set of chambers. Each barrister is self-employed but contributes a percentage of his or her fees to chambers to cover overhead, and often works on cases with other barristers in the set. Unlike the modern office complex of the typical solicitors' firm, chambers tend to be housed in historic buildings concentrated around the Temple area.

- *Pupillage*: a pupillage is a year-long training contract in a set of chambers that all aspiring barristers in England must complete after finishing the Bar course. The odds of securing a pupillage are long, especially at a prestigious commercial set, as these sets only take on about two dozen pupils each year – in all of London. Pupils sit in various barristers’ rooms, shadowing them in their practice and doing whatever research, drafting or other tasks need doing. It is essentially an extremely long job interview, and in the end only the most impressive pupils are taken on as barristers.

## **Essex Court Chambers**

Fox Scholars usually divide their time between three sets of commercial chambers – Essex Court, Fountain Court and 4 Pump Court (they’re named after where they are situated, or were once situated, in the Temple). Judging by the way that other pupils’ eyes lit up when I mentioned the chambers I was rotating through, these are very highly regarded sets.

Owing to the schedule of Tony Temple, the Queen’s Counsel at 4 Pump Court with whom Fox Scholars are often privileged to sit, my stay at 4PC was limited to a couple of weeks in January. As a result, I was able to extend my stay at Essex to a span of six months between October and April. Though I was sad not to have more time with Tony (particularly in light of the rave reviews of past Fox Scholars), the change of plans enabled me to see several of the files I had been working on at Essex through to their conclusion.

Iain Quirk was assigned as my pupil supervisor at Essex, which meant that I would ultimately spend six months sitting in his room. As I sat down to review Iain’s CV before my first day, I was struck by the extent of his experience. Though only three years older than me, Iain was in his eighth year of call, and had appeared as counsel in dozens upon dozens of cases of all sizes, often by himself. His practice is a mix of large complex commercial work, typically with international elements and often resolved through arbitration, smaller employment cases and some interesting work in sports and media.

The cases I worked on with Iain reflected the diversity of his practice. They ranged from a sprawling international arbitration involving geopolitics and hundreds of millions of pounds, to tiny employment files, including one in which a semi-intoxicated employee violated his non-solicitation covenants the night before resigning (thereby disintitling him, we said, to a £12,000 bonus).

The highlight reel of these six months includes:

### *Getting a shout out in the U.K. Supreme Court*

Fittingly enough, in one of the first cases I worked on upon arriving in England Essex Court barristers were representing the government agency responsible for awarding the national “Fish and Chip Shop of the Year” award. This agency also imposed a levy on sea fish, the validity of which, as applied to imported fish, was challenged in court by a group of fish importers. The statute in question permitted a levy on sea fish “first landed” in the United Kingdom and the case turned on an issue of statutory interpretation: did sea fish “first landed” in the U.K. include imports, or only those sea fish brought to land *for the first time* in the U.K.?

The lower courts had divided over the issue, and so we headed to the U.K. Supreme Court to resolve the matter (the U.K.S.C. assumed the judicial functions of the House of Lords in late 2009). My role involved tracing the history of previous statutory amendments and doing legal research as to the admissibility of Hansard materials, which were decidedly favourable to our side.

Attending the two-day hearing in the Supreme Court was undoubtedly a highlight of the year. The silk on our team, Hugh Mercer, Q.C., delivered oral submission so persuasive that the unanimous decision in our favour handed down a few months later came as no surprise. When Hugh came to his arguments regarding Hansard he told the Lords he was grateful to “Gordon McGuire, a young Canadian lawyer on our team” and I couldn’t keep an ear-to-ear grin from taking over my face for the rest of the day. Obviously, a phone call home to mum was in order shortly thereafter.

### *Riding the rails to Employment Tribunals*

The U.K. has specialized employment tribunals similar to Canada’s human rights tribunals, meant to relieve the burden on the court system and involve lay members in the adjudication of employment disputes. Though less glamorous than the Supreme Court, and involving far less money than most of Iain’s cases, I found these files very rewarding, as I was able to be much more involved with them.

My first ET case took us to the bright lights of Bedford (population 80,000), where Iain convinced the adjudicator that the aforementioned semi-intoxicated employee had indeed disentitled himself to his bonus.

The second case involved a woman whom the ET had earlier concluded was wrongfully dismissed from her government job. The only issue now was whether she was entitled to recover money for loss of pension rights. What made the case unusual was that she had obtained a comparatively lucrative private sector job within a month of termination. My role was to help develop arguments from precedent, Employment Tribunal policy, and principle that the employee should not be compensated for a loss not actually suffered. With some persuasive oral submissions and careful cross-examination, Iain was able to convince the panel of exactly that.

### *Edge-of-your-seat cross-examination at an international arbitration*

This massive arbitration involved oil, a foreign government, and many zeroes after the £ symbol. While I found the subject matter of the dispute interesting reading, cases such as this one were not quite as much fun as the smaller ones, as my role was necessarily limited to tasks like document review and minor legal research and drafting.

That being said, attending the 10-day arbitration at the International Dispute Resolution Centre was both memorable and entertaining. The most dramatic moment came in the cross-examination of an opposing expert by the silk on our team, Graham Dunning, Q.C.. In my brief career I had never seen anything like it. Over a span of about ten minutes, I sat on the edge of my seat as Graham put his questions to the expert in a surprisingly hushed voice, in tones ranging from deference to irritation. The solicitors on the other side looked on in barely concealed horror as Graham deftly painted the expert into a logical corner, and forced him to recant the central conclusion of his lengthy report. It was an experience not soon forgotten.

### *Being humbled in Commercial Court*

In this case Iain represented an insurance broker that had brought a suit against one company, and then another, and then sought a stay of proceedings in the second action, as the legal fees had come to surpass the modest amount in issue. I helped draft the stay application and became so confident in its merits that I boldly pronounced to Iain the day before the hearing that I 'guaranteed' a favourable outcome.

I hardly need report how this turned out. The next morning, with the oak-paneled ceiling of the RCJ courtroom looming 30 feet over him, Iain delivered his oral submissions as I looked on from the creaking wooden seats two rows back. When Iain was done, the learned judge praised the quality of our written submissions, and then proceeded to outline the myriad reasons they did not come close to convincing him to grant the application. I don't think I'll be guaranteeing victory in my Canadian practice anytime soon.

### *Work v. Life*

While countless LSUC videos and Bay Street seminars extol the virtues of work-life balance, Iain gave me a crash course on work-life domination. This is a man (with the fitting initials IQ) who, by all appearances, is entirely impervious to stress. He is somehow able to balance his extremely demanding practice with more than ample leisure time, and a notoriously generous vacation schedule. I recall at one point he had lengthy closing submissions due on Monday, and had not had a chance to start them by Thursday. For most of us, this would be daunting enough in itself. Yet in

the intervening three days, Iain also had longstanding plans to attend a snowboarding trip/music festival with friends in the Alps. While most mortals would have unquestionably cancelled the trip, Iain's solution was simple: check an extra suitcase full of documents and get up a bit earlier each day.

I can also speak from personal experience about some of Iain's other talents, which include lighting up a dance floor, owning the squash court, and putting this seasoned drinker to shame with his seemingly boundless tolerance for English lagers. Future Scholars be warned: match Iain pint for pint at your peril.

#### **4 Pump Court**

As mentioned, my time with Tony at 4 Pump Court was rather unfortunately limited to about two weeks. It was certainly two weeks well spent, however, as Tony was scheduled to sit as the arbitrator in a 7-day hearing at the International Dispute Resolution Centre. After spending a few days getting up to speed on the case, we headed down Fleet Street to the IDRC, where I literally got to sit beside Tony as he heard the case between a financial institution and a hedge fund.

Tony is an impressive arbitrator. I was struck in particular by how closely he followed each word of the parties' oral submissions and witness evidence. Perhaps unlike some judges or arbitrators, it was evident that Tony's practice was to keep an open mind for as long as possible, until every word of argument and evidence had been heard and mentally digested. Interestingly, the barrister on one side of the case was Tony's former pupil. That there wasn't the faintest whiff of bias, real or apprehended, nor any mention of the issue from the other side, spoke to the level of professionalism customary of the English Bar.

I enjoyed working with Tony very much. As Fox Scholars the opportunity to sit with a Queen's Counsel such as Tony is unique, since QC's are not usually permitted to take on pupils. With his 40+ years of experience at the Bar, Tony was always ready with a pithy pearl of wisdom for young advocates, or a war story from the days of trials past. He was also a rich source of travel advice of any kind, whether it was what riad to stay in when in Marrakech, or what to read when riding the Trans-Siberian express.

What I liked most about working with Tony, however, was that for all his decades of experience and erudition, he actually listened to what I had to say about the case. Perhaps it was his penchant for keeping an open mind, or perhaps he was just humouring me, but Tony would encourage me to share my view on points of fact or law, and many a spirited debate ensued. In a profession that places so much emphasis on seniority, I found Tony's approach both refreshing and empowering.

## **Fountain Court Chambers**

*David Murray*

My first stint at Fountain Court was with David Murray, a young barrister with a broad commercial practice and a particular focus on banking. I worked with David on a rather sad case involving husband and wife business owners who had taken a large loan from a bank and signed personal guarantees to the tune of £400,000. Their business subsequently went under, and David represented the bank as they sought to enforce the guarantees and recoup the loan. While it could have been a run of the mill matter of enforcing a guarantee, the plot thickened when the defendants made far-flung allegations of document forgery on the part of the bank.

I got to take the first crack at the written submissions and travelled with David to Birmingham to observe what proved to be a very interesting two-day trial. The highlights included a witness who was demonstrably lying under oath and a world-class handwriting expert who had just flown back from giving testimony in a Canadian extradition appeal. With characteristic aplomb, David achieved total victory in the case.

In addition to being an expectant father, David is potentially the nicest guy in the British Isles. I should note, however, that his courtroom persona stands in stark contrast to his otherwise amicable demeanour and, indeed, when it comes to slaying bogus legal arguments before a judge the man is a ruthless killer. I once saw him go head to head with a woefully under-prepared small town barrister in a motion for summary dismissal, and it didn't turn out well for her. I guess that's what you should expect when you're up against the smartest guy in his Oxford law class.

*Marianne Butler*

I spent my last two months at Fountain Court with Marianne Butler, another young barrister with a broad commercial and civil practice. My timing joining Marianne could not have been better, as she was poised to begin what would turn out to be a six-week trial with another Fountain Court barrister, Adam Tolley. Our team represented a financial advisory company in an action against some of its former advisers involving, among other things, breach of their non-solicitation covenants. As there were eight defendants and hundreds upon hundreds of clients at issue, the documentary evidence could fill a small U-Haul truck.

The case took over my life for a month and a half, an experience as rewarding as it was plain fun. In addition to attending trial every day at the Royal Courts of Justice and reviewing the transcript afterward, I helped with legal research, drafting submissions and poring over the documents in support of cross-examination and closing submissions. Being so involved in such a long trial was both exhausting and exhilarating, and sparked an interest for trial advocacy I didn't know I had in me.

Marianne was described in a major legal publication as “*extremely hardworking, but fun and sassy, too,*” and one is hard pressed to find better words to describe her. In addition to being a whip-smart workhorse with charm to spare, Marianne was piles of fun to work with. She is instantly likeable, has an infectious (if disruptive!) cackle, and is the type of person with whom, within a few weeks of knowing her, I already shared countless inside jokes. It’s not every barrister who causes you to, literally, roll on the ground laughing, and the fun we had made the long hours and late nights thoroughly enjoyable.

### **Middle Temple Advocacy Course**

In addition to a two-day advocacy retreat at Cumberland Lodge (which featured an unexpected cameo from Her Majesty Queen Elizabeth II), I attended the two-week advocacy course offered by Middle Temple. I highly recommend it to future Fox Scholars. During the day we received lectures on various aspects of written and oral advocacy from leading barristers, and every night we were on our feet making submissions or mock cross-examining witnesses in front of instructors. The specific, individualized feedback on my performance each night was invaluable. For example, my habit of saying “thank you” each and every time a witness answered my question was not tolerated by my instructor for long, and is a tick I won’t soon repeat.

### **The Old Bailey**

I spent a week marshalling at the Old Bailey with His Honour Judge Gerald Gordon in April, and I couldn’t ask for a more gracious host. Though the Judge was originally scheduled to begin a murder trial while I was there, it was unfortunately (in some senses) delayed. Instead I sat on the bench during the trial of a young, illegal Sri Lankan immigrant who, while working at a gas station, aided an acquaintance in inserting card-cloning equipment into debit machines after hours. The accused wept on the stand and, through his Tamil interpreter, pleaded duress – an excuse the jury found sufficiently credible to acquit him after minimal deliberation.

Though a decidedly un-sexy case as far as criminal law goes, I found virtually every moment of the trial gripping, and was reminded of the human drama absent from so many civil cases. I was also reminded how high the stakes are in even the most basic criminal case, and how much directly turns on the quality of the oral submissions and cross-examination. Had the prosecutor been savvier, or defendant’s counsel less able, the young man could very well have been behind bars by now – if not deported.

### **Bloomsbury and Goodenough College**

Like most past scholars, I chose to take advantage of our guaranteed admission at Goodenough College, the residence whose dorm-style rooms are highly coveted by

international grad students looking for an affordable yet central place to call home. My experience at Goodenough was not without its trying moments, as I definitely underestimated how difficult it would be to adjust to dormitory living. Grumbings about my not-so-modern single room notwithstanding, the College was a great place to hang my hat for a year. It provided an instant network of friends, a full social calendar and an unbeatable location in central London.

The College is located in Bloomsbury, a neighbourhood Lonely Planet describes as the leafy, intellectual heart of London. Amidst the frenetic bustle of London's 8,000,000 residents, Bloomsbury was an island of calm. I was taken by its charms immediately, and particularly enjoyed living steps from the British Museum, and being a 10-15 minute stroll to chambers. And where else can you walk by Charles Dickens' old house on your way to work every morning?

### **Working in Legal London**

This report wouldn't be complete without mentioning the magic of London's legal district, particularly the area surrounding Middle Temple. When recalling my time in London in the years to come, my mental montage will certainly include the narrow alleyways and cobblestone streets of Middle Temple Lane, the 12<sup>th</sup> century Temple Church built by the Knights Templar, the forbidding Gothic spires of the Royal Courts of Justice, and the hammerbeam ceiling of Middle Temple Hall that has famously withstood 400 years of London's weather, and direct hits from German bombs. Walking to work every day felt like stepping back in time, further enriching what would have been an incredibly rewarding professional experience even in the most charmless of settings.

### **Conclusion**

My time as a Fox Scholar was everything I had hoped it would be, and entirely in keeping with the enthusiastic accounts of previous Scholars. My year in chambers has given me a much richer understanding of what it is to be a barrister (and solicitor!), and an excitement for the many courtroom dramas to come. I am forever grateful to the barristers who took in this over-educated and under-experienced Upper Canadian advocate, and in particular to the generosity of the Fox Fund, for this once-in-a-lifetime experience.