

Rebecca Studin's Fox Scholarship Report 2009-2010

Being a Fox Scholar in London was the best professional experience I have had to date. As a Fox Scholar I had the unique and privileged opportunity to be a pupil in three top barristers' chambers at the Inns of Court, where I became immersed in the traditions, history, professionalism, prestige and grandeur of the English Bar, and accessed a world to which few of my Canadian contemporaries have been privy.

4 Pump Court

My Fox Scholarship experience began earlier than expected. Fox Scholars typically begin working in chambers at the beginning of October in time with the start of the autumn legal term in England, and so tend to arrive in London a week or so earlier in order to get settled in and acquainted with the city. In my case, in early July 2009, Anthony Temple Q.C. of 4 Pump Court Chambers, one of the UK trustees of the Scholarship, contacted me and Fredrick Schumann, my co-Fox Scholar, to invite one of us to assist him and his junior, James Purchas, in Sofia, Bulgaria on a week-long arbitration in early September. I leapt at the opportunity to assist Tony and James during the arbitration and obtain first hand exposure to the advocacy skills for which English barristers are renowned.

As it was ultimately decided that I would attend the arbitration in Sofia, during the month of August I began to familiarise myself with the case by proofreading the extensive pleadings and opening submissions. The case consisted of two parallel arbitrations between two multinational pharmaceutical companies and a Bulgarian pharmaceutical company, involving allegations of corruption and bribery, employing the procedural rules of the Bulgarian Chamber of Commerce and Industry, English substantive law, and arbitrated by Swiss and French Canadian arbitrators.

Within two days of arriving in London at the start of September, I began working at 4 Pump Court with Tony and James. I recall the intensity of this experience: arriving in a new city far from home, moving into my room at Goodenough College (more on which below) and beginning pupillage, all in the span of two days. Initially I was quite disoriented, and just as I began to get my bearings it was time to leave for Sofia.

The highlight of the arbitration in Bulgaria was watching Tony in action cross-examining witnesses, from whom he skilfully extracted the answers he sought. I was also impressed by the efficiency and energy with which Tony ran the case and dealt with his challenging clients, in the absence of a team of instructing solicitors who are usually responsible for managing the case and client relations.

Back in London, once closing submissions were submitted, I finally had the chance to become acquainted with 4 Pump Court, where I would be a pupil until mid-December. Tony encouraged me to spend as much time in court as possible. As he had no other hearings looming (his practice consisted of large corporate fraud cases and he was not in court on a regular basis), I was sent to work with other barristers preparing for trials or attend hearings that were of interest

to me. Spending so much time in court, I became impressed by the eloquence and erudition with which many barristers argued their cases.

During my time at 4 Pump Court I also had the privilege of assisting Tony in the early stages of an inquest into the death of a British soldier in Afghanistan. My legal experience thus far had been in corporate commercial and professional negligence matters and I was pleased to be involved in a file which was of social and political interest. The merits of continuing British military involvement in Afghanistan in the face of the mounting death toll of British soldiers was and remains a controversial issue in the UK. Working on the inquest permitted me to be more immersed in the debate.

Another highlight of my time at 4 Pump Court was working with Tony. Being Tony's pupil is an opportunity unique to Fox Scholars. In the English pupillage system, pupils can only sit with junior counsel. Once a junior barrister is appointed Queen's Counsel (euphemistically referred to as "taking silk"), that barrister can no longer supervise a pupil. However, Tony has always taken Fox Scholars as pupils. I feel privileged to have sat in Tony's room, watched him conduct his practice, and listened to his war stories and anecdotes. Tony is of a generation of barristers who were true generalists. Nowadays barristers tend to specialise immediately upon coming to the Bar, and their practices are largely defined by the nature of the work done by the chambers where they become tenants. Although his practice is now quite specialised, Tony used to do it all, from criminal, to family, to commercial law. I was especially moved by his stories of prosecuting IRA bombers in Northern Ireland.

By mid-December, just as I was beginning to feel at ease at 4 Pump Court, my time there drew to a close. Though I was sad to leave, such is the nature of the Fox Scholarship experience: to rotate through three chambers over the course of a year, to get a taste of the practice, culture and atmosphere of each, and to move on. I realised that although my time in each chambers was temporary and no matter how immersed I became in a case I would ultimately have to leave, it was a privilege have been able to work in three chambers, an opportunity unavailable to traditional English pupils.

Fountain Court

In January I began my pupillage at Fountain Court Chambers, a "Magic Circle" set in the heart of the Temple. In contrast to my experience at 4 Pump Court, where I sat with a silk, at Fountain Court I was placed with a junior barrister called Marianne Butler. I was pleased to work with a more junior barrister and take on work at a level that corresponded with what I could expect to do when I myself began practice.

Fountain Court is primarily a banking law set and at the time, junior tenants were being inundated with County Court claims against banks brought by claim farm solicitors on behalf of consumer debtors seeking to have consolidation loan or credit card agreements deemed invalid for non-compliance with British fair banking practices legislation. Britain was in the midst of the credit crunch and bank practices and their fairness toward consumers were topical issues. I assisted Marianne with legal research, drafting defences and skeleton arguments (or *facta* as they are called in Canada).

One of the advantages of working with a young junior woman barrister was the friendly rapport between us. I found the working environment to be more collaborative than hierarchical; we would often discuss files at length, considering the position of the parties, the legal issues involved and what strategies to implement. Marianne was also my gateway to the culture and practices at the Bar. We discussed life at the English commercial Bar and the process of becoming a barrister, how one could complete any undergraduate degree and pass a law conversion course (the year long equivalent to North America's three years of law school), followed by the Bar Vocational Course (BVC). We also discussed the challenges BVC students faced in finding pupillages, which were in short supply. I was surprised to learn that most law students enrolled in the BVC do not have a pupillage secured upon completing the course, nor have they much hope of ever obtaining one. The competition for pupillages is fierce and a first class degree from Oxbridge is practically a prerequisite to even be considered for an interview in many chambers. My law school experience and job search seemed effortless in comparison. I thus felt even luckier to have the opportunities the Fox Scholarship provided.

Essex Court

Essex Court Chambers, where I began working in April, was my third and final chambers. Another "Magic Circle" set, Essex Court is known as a leading arbitration set and counts some of the most prominent barristers in England amongst its tenants. At Essex Court I sat with Edmund King, also a junior barrister with about ten years' experience at the Bar. During my time at Essex Court, I attended a number of hearings, including one at the Court of Appeal. Edmund's practice consisted of, *inter alia*, shipping and VAT law, of which I had no previous experience and about which I was keen to learn.

At Essex Court, I was struck by the international focus of the barristers' practice. As London is such an international commercial hub, and its courts are reputed for dispensing commercially minded decisions, many foreign parties, attracted by the quality of justice and certainty they expect to obtain in its courts and dispute resolution centres, agree to have their disputes tried or arbitrated in London under English law. Thus many Essex Court barristers have foreign entities as clients, and often travel abroad to meet their clients or act as counsel or arbitrators in arbitral proceedings.

Marshalling

On three occasions during the Fox Scholarship, I had the opportunity to marshal with a judge. Unlike clerking for a judge in Canada, a marshal in England effectively shadows a judge for a period of time, usually a week, as that judge's guest at court.

My first marshalling experience was at the Old Bailey, where only those accused of the most serious violent crimes are put on trial. I sat with his Honour Judge Stevens as he presided over a murder trial, and it was my first experience of a trial by jury. The man on trial was accused of bludgeoning his roommate to death before setting his body alight on the motorway. The defendant was convicted by the jury after less than two hours of deliberation.

Fredrick and I also had the privilege of marshalling for a day with Lord Saville of Newdigate at the new Supreme Court during a Privy Council Appeal from Belize. Marshalling with Lord Saville at that time was special because he had just rendered his much anticipated report in the Bloody Sunday Inquiry. Following the hearing, Fredrick and I toured the Supreme Court and had lunch with Lord Saville. I was impressed with his description of the painstaking undertaking of conducting the Inquiry, which he did while under intense criticism for the ever increasing costs and delays associated with the task.

My final marshalling experience was with Lord Justice Aikens at the Court of Appeal Criminal Division, where he heard appeals of criminal sentences and convictions.

Marshalling permitted me to see the courts from the judge's eye view, to speak with judges about cases which they decided and how they perceived the quality of the advocates before them.

Barristers, Solicitors and Clerks

In London, it was most interesting for me to observe the relationship between barristers, solicitors and clerks. In Canada lawyers are qualified as both barristers and solicitors. In England, lawyers are either one or the other (although solicitors are increasingly obtaining rights of appearance before certain courts). In Canada, a litigation lawyer controls all aspects of a case, from the initial meeting with the client to the ultimate resolution of the dispute, be it by settlement or trial. In England, litigation solicitors are responsible for managing a case and client relations. Solicitors instruct barristers to provide opinions and conduct advocacy. Thus, the barrister's client is the solicitor and not the lay client. In order to retain a barrister, a solicitor must deal with the barrister's clerk (pronounced "clark"). The clerk is employed by chambers and yields much power: the clerk is effectively the barrister's agent, and is responsible for the barrister's diary, the allocation of work between the tenants in chambers, and the negotiations of the barrister's fees. A good relationship between a barrister and his or her clerk is vital to the success of the barrister's practice.

I often found myself comparing the barrister/solicitor/clerk system with that in Canada, where the Bar is fused and the clerk in this capacity does not exist. Was it better to conduct the entire litigation within a firm as is done in Canada, or to have file management remain with a solicitor who retains a barrister on a case when necessary? The English barristers I asked always preferred their system, as it permitted them to be detached from the lay client, removed from the "drudgery" of legal paperwork such as court filings and party correspondence and therefore focussed on the advocacy. Indeed, the average English commercial barrister enjoys far more time on his or her feet in court than his or her Canadian counterpart, whose practice may bear a greater resemblance to that of a litigation solicitor than it does to that of a barrister. When I countered this argument by suggesting that the Canadian system was more economical for the lay client as all the work was done by one type of legal professional, instead of two as in England, barristers insisted that their overhead was far lower than that of solicitors, and so their services were more cost effective for lay clients.

Another notable difference between barristers and Canadian firm lawyers is the daily solitariness of life at the Bar versus the communality of firm life. Although barristers work in chambers with their barrister colleagues, barristers do not operate in a partnership but are each sole practitioners sharing space and resources. Although there is collegiality amongst barristers in a set, a barrister typically spends the day alone in his or her room (usually behind a closed door) toiling away at his or her trade. I found there to be more human interaction and support mechanisms in place between Canadian lawyers in a firm than between barristers in chambers. However, each barrister is her or her own boss, and benefits from the flexibility and freedom (but also the stress) of self-employment.

I have yet to decide which system I prefer; rather I appreciate the advantages and disadvantages that each presents, from the perspectives of both lawyer and client.

Goodenough College

Goodenough College, the international graduate student residence which most Fox Scholars have called home, was an excellent base from which to live and work in London. From Goodenough College, one could walk most anywhere in London, including chambers, and explore the city without the need to rely on public transit. Goodenough College is a diverse, vital and lively place, teeming with student activity and culture, where physicists and chemists mingle with pianists and opera singers (and of course Fox Scholars!). This diversity creates a unique living environment and culture within the College. I personally was a member of the cooking and flamenco clubs, and attended several concerts at the Royal Albert Hall in Goodenough College's box seats.

The Inns of Court

The Inns of Court are special places. Whilst solicitors mostly work in the glass towers of the City, barristers ply their trade in historic chambers in the heart of legal London. Walking through the courtyards and passageways of the Inns of Court, secluded cobblestone enclaves within bustling central London, is like stepping back in time. At the Inns one truly feels the history and tradition of the Bar. Fox Scholars become honorary members of Middle Temple, and are invited to participate in the cultural and social events organised by the Inn, such as dining in at Middle Temple Hall (famously featured in Harry Potter).

London

Although a paragraph is not nearly sufficient to express my impressions on living in London for a year, I feel it necessary to end this report with a comment in this regard. The professional experience of being a Fox Scholar was enhanced by the excitement and energy of living in London - the centre of the world, as some would call it. I relished the experience of working in chambers by day, and exploring London's theatrical, culinary, cultural, artistic and social offerings on evenings and weekends when possible. Indeed, Fox Scholars are encouraged by their supervisors to take in as much of this fantastic city as they can.

Conclusion

My year as a Fox Scholar went by quickly. As I write these words it is hard to imagine that a year ago I was anxiously packing my suitcases and preparing to embark on a great professional and personal journey. As I reflect upon my experience, I feel that the knowledge I have gained during my time in chambers and in London will benefit my future litigation practice, and my life in general. The Fox Scholarship was a gift that I shall cherish for years to come.

Rebecca Studin
August 2010