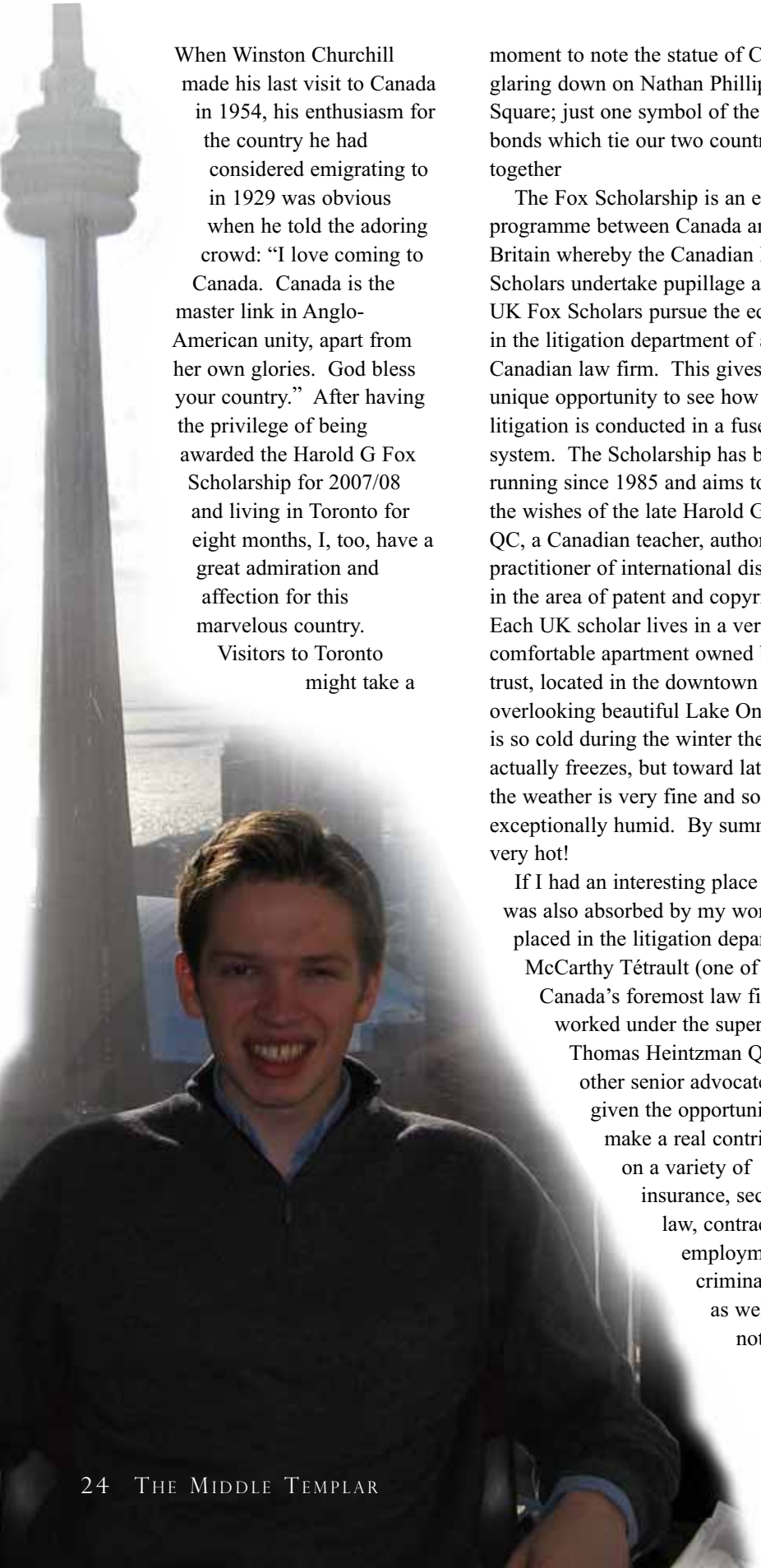
A Canadian Exchange

by Paul Wilmshurst



When Winston Churchill made his last visit to Canada in 1954, his enthusiasm for the country he had considered emigrating to in 1929 was obvious when he told the adoring crowd: "I love coming to Canada. Canada is the master link in Anglo-American unity, apart from her own glories. God bless your country." After having the privilege of being awarded the Harold G Fox Scholarship for 2007/08 and living in Toronto for eight months, I, too, have a great admiration and affection for this marvelous country.

Visitors to Toronto might take a moment to note the statue of Churchill glaring down on Nathan Phillips Square; just one symbol of the common bonds which tie our two countries together

The Fox Scholarship is an exchange programme between Canada and Britain whereby the Canadian Fox Scholars undertake pupillage and the UK Fox Scholars pursue the equivalent in the litigation department of a leading Canadian law firm. This gives a unique opportunity to see how litigation is conducted in a fused system. The Scholarship has been running since 1985 and aims to fulfill the wishes of the late Harold G Fox QC, a Canadian teacher, author and practitioner of international distinction in the area of patent and copyright law. Each UK scholar lives in a very comfortable apartment owned by the trust, located in the downtown area, overlooking beautiful Lake Ontario. It is so cold during the winter the lake actually freezes, but toward late spring the weather is very fine and sometimes exceptionally humid. By summer it is very hot!

If I had an interesting place to live, I was also absorbed by my work. I was placed in the litigation department of McCarthy Tétrault (one of Canada's foremost law firms) and worked under the supervision of Thomas Heintzman QC and other senior advocates. I was given the opportunity to make a real contribution on a variety of insurance, securities law, contractual, employment and criminal matters as well as one notable competition law class action. My role involved research, opinion writing, drafting, fact management and assisting at court. The cases were very often amongst the most high profile in Canada and involved complex legal points. The work was challenging but completely enjoyable. My fellow scholar, Kerry-Anne Curry, was placed at WeirFoulds LLP and had a similarly outstanding experience.

The Canadian legal system is an interesting environment within which to work. While American cases from some states, such as Delaware, are of course persuasive, there are stronger ties to the English common law. I often found myself writing research opinions based on Canadian, American, English, as well as New Zealand and Australian jurisprudence. Canadian cases and textbooks often contain very useful critiques of the English law, as a starting point for discussing why it is the same in Canada, or why they have decided to differ. There are some interesting differences in procedure: for example, there are oral examinations for discovery as a prelude to trial (and answers given can be used at trial). In the criminal sphere, a defendant to a criminal indictment can elect between trial by jury or by judge alone.

I also spent two weeks with the judges of the Ontario Court of Appeal, which allowed me to discuss the cases with them and observe advocates in court; however, my time at the court did not pass without incident. Invited "out the back" for tea and biscuits during the afternoon break, I returned to the court ahead of the judges back through the door I had arrived through and out on to the raised platform to the abrupt cry of, "All rise!" The packed court duly obliged, swiftly followed by a look of bemusement and confusion. I did not anticipate such a literal insight into the life of an appellate judge! An

understanding of the difficulties judges face can only make someone a better lawyer and advocate. In Canada this is given recognition in that the equivalent to pupillage can be served by marshalling or "clerking" with a judge. These clerks are then highly sought after by law firms as litigators in their own right.

One major difference between England and Canada is the process of qualifying to become a litigator and advocate. Law is not available as an undergraduate degree and all must study another subject for four years and then complete their three-year law degree. After graduation from law they pass an intensive three-month Bar Admission Course (which teaches all the procedure and advocacy they need to know) and then begin an eight-month period of paid traineeship as an "articling student."

Many articling students became good friends. Much time was happily spent touring round Toronto's main attractions. The firm also organized a number of events, such as a ski day, and I participated in a number of charity events, including beach volleyball and a "ball hockey" (ice hockey sticks but played on concrete) competition.

The Fox Scholarship is one of the best things I have ever done. I would recommend it to anyone as a stimulating and fulfilling experience. I would like to thank David Fuller (and all the trustees) for his generosity and hospitality; Associate Chief Justice O'Connor QC and Justice Sharpe who enlightened me during my marshalling; everyone at McCarthy Tétrault and, in particular, Thomas Heintzman QC, Helen Salihagic, Junior Sirvar, Sarah Corman, Brian Wasyliw, Ari Blicker, Michael Barrack and the ever helpful librarian Barbara Fingerote who always found the obscure texts I was looking for. Together they gave me an outstanding training and introduction to life as a lawyer.

Allocating Scholarships

by Master Andrew Hochhauser, Chairman of the Scholarships & Prizes Committee

The Middle Temple has long taken pride in interviewing every student who applies for a scholarship, as long as he or she has been offered a place on the BVC or the conversion course. The rationale behind this is that if we are trying to select the most promising future advocates, it makes sense for students to be given a chance to perform some advocacy on their own behalf, regardless of whether or not their application looks persuasive on paper.

In practice this means that, for the BVC scholarships, six panels of practitioners and judges will spend three days during the Easter week interviewing approximately 350 candidates between them. This is a formidable task, which depends on the goodwill and generosity of 18 members of the Inn who expend time and considerable effort to make this process run smoothly and fairly.

Panels decide who should receive an award on merit, and merit alone. This is assessed on the basis of four criteria, namely intellectual ability, motivation to succeed at the Bar, potential as an advocate, and personal qualities. The size of the award will then be determined by individual need. Of course this is not an exact science, but panels endeavour to take all material circumstances into account. These can often be explored more fully in interview than they could on paper.

It is worth noting that the sum of approximately £800,000 allocated for BVC scholarships cannot begin to cover the entirety of successful applicants' financial needs. In most cases, an award will ease the burden, but there will still be a gap which has to be bridged by other means. The Inn's policy of supporting and encouraging a broad range of students, rather than concentrating resources on a comparatively small number, tends to be met with approval by scholars who appreciate the award not only as a financial benefit, but also as a "seal of approval" which will stand them in good stead when applying for pupillages.