

Law and the Media Workshop

MORE THAN 50 members of the media attended the annual Law and the Media Workshop on April 28. The Law Society partners with the Jack Webster Foundation each year to put on the workshop to refresh and enhance reporters' knowledge of the law as it relates to journalism.

This year's workshop focused on an unfolding fictional scenario of reporting on a high-profile scientist suspected of misusing public funding and manipulating results of her scientific research. The workshop touched on topics related to FOI requests, the open-source whistleblower submission system SecureDrop and the "reportage" defence.

The audience heard from panellists David Beers, founding editor of the *Tyee*, leading media lawyers Dan Burnett, QC and David Sutherland, and Kathy Tomlinson, investigative journalist at the *Globe*



Panellists (l-r): Dan Burnett, QC, Kathy Tomlinson, David Sutherland and David Beers.

and *Mail*. An impressive 100 per cent of attendees surveyed said the panellists were excellent or good and 97 per cent

said they had improved their understanding of the legal issues around reporting and journalism. ❖

FROM THE LAW FOUNDATION OF BC

Respected poverty law lawyer retires



DAVID MOSSOP, QC has retired. Over the course of a career that spanned more than 40 years, he contributed much to improving access to justice for all people in BC. His commitment to this issue

served his clients well and has had a lasting impact on the law that affects low-income people in BC.

Since his call to the bar in 1971, David has worked on poverty law and social justice issues. Until recently, he was a staff lawyer at the Community Legal Assistance Society, a legal organization funded by the Law Foundation of BC, the Legal Services Society and the Ministry of Justice, that assists disadvantaged clients throughout the province. David practised in the areas

of poverty, administrative, human rights and constitutional law. He represented public interest litigants in numerous tribunals, and in courts up to the Supreme Court of Canada. David also worked with many low-income groups, including the Federated Anti-Poverty Groups of BC and the Front Line Advocacy Workers. He was appointed Queen's Counsel in 1999.

David was an elected Bencher from 2008 through 2015. During this time, he served as chair of the Credentials Committee and the Access to Legal Services Advisory Committee. He was also a member of the Ethics Committee, the Task Force on Unbundling Legal Services, the Tribunal Program Review Task Force and the Delivery of Legal Services Task Force. In 2016, David became a Life Bencher.

David has also served as a member of the Canadian Bar Association's Provincial

Council and National Legislative Review Committee. He chaired the CBA's Administrative Law Section and its Public Legal Education and Information Committee. He has presented at many continuing legal education programs, has been an adjunct professor at UBC law school, and has served as a member of the BC Marketing Board and the UBC Sexual Harassment Tribunal.

David was awarded the Social Justice Award in 1990, the Special Award of the Federated Anti-Poverty Groups of BC in 1996, and the Special Recognition Award of the Regional Immigrant and Visible Minority Women of BC in 1998.

We thank David for his untiring work over many years, and wish him the best in what we expect will be an active retirement. ❖



The Law Society congratulates winner and runner-up of the secondary school Magna Carta essay contest

THE LAW SOCIETY congratulates essay contest winner Han Wei (Helen) Luo, Law 12 student from Hugh McRoberts Secondary School in Richmond, and runner-up Anushka Kurian, Law 12 student from Hugh Boyd Secondary School in Richmond, for their exemplary essays on the topic of “Magna Carta and its relevance to Canada in the 21st century.” The Law Society is pleased to publish their essays in this issue of *Benchers’ Bulletin*.

At the Bencher meeting on May 6, 2016, Luo and Kurian were introduced to the Benchers, and President David Crossin, QC presented them with their respective awards. The Law Society launched the essay contest in March 2015 to acknowledge the 800th anniversary of Magna Carta and to support the goal of raising public awareness of the importance of the rule of law and the proper administration of justice.



Photo: Alistair for Ron Sangha Productions Ltd.

Han Wei (Helen) Luo (left), President David Crossin, QC and Anushka Kurian

The Journey of the Magna Carta

by Han Wei (Helen) Luo, Law 12 student, Hugh McRoberts Secondary School in Richmond
Winner of the 2015 secondary school Magna Carta essay contest

When the indignant English barons met with King John in 1215, little did they know that the aftermath of their Runnymede gathering would carry overseas, inspiring countless other movements across the centuries. The Magna Carta has long since been an emblem of equality and unconditional justice, having sought to establish governance not by man and his folly but by an indiscriminate law. Fragments of its legacy still carry into Canada’s legal system, and yet, how deserving is the archaic document of its symbolic value? Did its existence serve to further humanity’s pursuit of impartial rights and freedoms, or is it merely an oversimplified historical happening? It seems only appropriate to discuss the Magna Carta within its proper historical context. By deciphering the motives and nuances in its creation and usage,

we can begin to understand the prevalence of the Magna Carta in the contemporary world as well as its place in the bedrock of Canada’s democratic principles.

King John was by no means a benign ruler, and after 16 years of his reign, his tyrannical grasp of England prompted the noblemen to rebel against his lawlessness. The sealing of the Magna Carta in the meadow of Runnymede signified a momentous reduction of the monarchy’s power — or so the myth claims. What is little known of this historical moment is that within 10 weeks of its conception, the Magna Carta was declared “null and void of all validity forever” by Pope Innocent III at the request of the king, and only an altered version was reinstated by King John’s successor, which was an ineffective political manoeuvre.

Contrary to common belief, the contents of the Magna Carta were not revolutionary. It did not forge the rule of law. It couldn’t even uphold the rule of law. The concept that kings were not above the law was not a novelty — King Henry had sworn to observe the laws of England upon his coronation in 1100. The Magna Carta also has no claims in the origin of the Great Writ, or habeas corpus, which was first documented in 1119, making it a predecessor of the Magna Carta by 16 years. And yet, we remember the Magna Carta as a hallmark in the progress of equality and justice.

The original Magna Carta was short-lived and insignificant, and soon faded into obscurity. It makes no appearance in Shakespeare’s *King John*, nor does it ever grace the pages of other notable writers

from the 15th and 16th centuries. Only by the 17th century did it experience an upsurge of popularity as Edward Coke, an English judge, distorted its earliest intent into a rallying cry against yet another disliked monarch. Coke transformed the Magna Carta, which was at its core a petition of England's upper class to free themselves of the reins of their ruler, into an anthem of freedom for all the people. Article 29, which granted that "no free man is to be arrested, or imprisoned ... save by the lawful judgment of his peers or by the law of the land," is perhaps wrongly praised. Arguably, *free men* in this context did not refer to all citizens, but rather, was analogous with *noblemen*.

Despite its ornate Latin name and its existence in history textbooks, the existing conception of the Magna Carta is nothing more than a myth, a small lie to simplify the past. Nevertheless, its legacy and symbol as an advocate for freedom persists. When the Universal Declaration of Human Rights was unveiled in 1948, it called from the Magna Carta as source of inspiration. Eleanor Roosevelt described it as "the international Magna Carta of all men everywhere." In 1957, the American Bar Association built a memorial at Runnymede to commemorate the sealing of the Magna Carta. English historian William Stubbs stated, "The whole constitutional history of England is little more than a commentary on the Magna Carta." The document remains a silent supporter of the rule of law, human rights, and a harmonious relationship between the government and the people throughout the ages.

In Canada, though it has done little to change our constitutional landscape, the Magna Carta has doubtlessly influenced the opinions of our lawmakers, politicians, judges and others that serve to uphold Canada's longstanding reputation as a nation of peace and equality. When considering a Canadian Bill of Rights, Prime Minister John Diefenbaker stated in the House of Commons, "I believe the time has come for a declaration of liberties to be made by this Parliament. Magna Carta

is part of our birthright. Habeas corpus, the bill of rights, the petition of right, all are part of our traditions...freedom from capricious arrest and freedoms under the rule of law, should be made part and parcel of the law of the country." It is arguable that without Diefenbaker's lifelong dedication to human rights, the later and current Canadian Charter of Rights and Freedoms would have never been implemented.

The Magna Carta also furthered another decisive document and for this, the 1763 Royal Proclamation has come to be known as the "Indian Magna Carta." This document outlined and laid groundwork for future treaties between the Crown and the First Nations peoples in Canada. It also acknowledged "the great frauds and abuses that have been committed in the purchasing of the lands of the Indians, to the great prejudice of our interests, and to the great dissatisfaction of the said Indians." Although the results of this proclamation are contestable, the "Indian Magna Carta" has been a guide in all treaty-making since its creation. The Magna Carta was also referenced in 2000 during a case before the Supreme Court of Canada, whereupon Justice Louis LeBel cited clause 40, "To none will we sell, to none will we deny, or delay, right or justice."

Though not formally part of our constitution, the Magna Carta has had its role in the formation of Canada's image and legacy. It is entwined in our rights and freedoms, our courts, and our democracy. Though the rule of law today seems inseparable from the very definition of law itself, we must remember that history has no lack of rulers who deemed lawfulness a virtue for only his subjects, and not to himself.

The Magna Carta served to mandate the law not as the word of a capricious or cruel dictator, but as an established system that all Canadians must abide to and can therefore be trusting in its stability. Law, if not given the rule of law, is nothing more than impalpability and the fickle whims of the few. If justice, rights or freedoms are applied to a mere few, then they are merely

luxuries in a society built on corruption. Law is the same. It must be applied to all and equally so, or else forfeit the people's trust and the nation's prosperity.

Of the original 63 clauses in the Magna Carta, most address the ailments of a feudal system and hence are not pertinent in the 21st century and certainly not to Canada. Even so, politicians today often refer to the Magna Carta as a beacon of light for the rights of the people, though this symbolism is not corroborated by the judgment of history. In its foremost and earnest intent, the sheepskin document was nothing more than a gathering of noblemen's interests and did little to support the freedom of the common people. Passion for the Magna Carta has faded and been rekindled whenever it was deemed beneficial for some cause or the other, and it cannot be truthfully stated that the Magna Carta has withstood the ravages of time. Rather, it has been transformed, altered to suit the current challenges to the rule of law, human rights, or democratic principles. Though the general perception of the Magna Carta is not accurate, the upkeep and remembrance of equality and the toils humanity has endured to achieve it is of paramount importance. In Canada, any electoral candidate who suggests contrary to key elements in the Magna Carta would be massacred on the poll — this would not be the case in other countries, in other centuries. Citizens of the world should pride themselves in the knowledge of the immense collective progress we have made since the Magna Carta.

And yet, the Magna Carta's journey does not end at present. Two thousand fifteen marks merely the 800th birthday, and still we have much to strive for in the upcoming centuries. Doubtlessly, it will continue to serve as a symbol of mankind's everlasting pursuit of justice and equality, and it will be many years before we look upon the wrongs that the Magna Carta sought to eradicate as pages uniquely of the past.

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The Ripple Effect of the Magna Carta

by Anushka Kurian, Law 12 student from Hugh Boyd Secondary School in Richmond
Runner-up of the 2015 secondary school Magna Carta essay contest

Human history has a tendency to rely on itself in order to create itself. Thus it can easily be asserted that without its intricate and often trudging past, our modern Canadian legal system would be simply a shadow of what it has truly become. Although far from perfect, our law and government seek to value the lives of its citizens in upholding equality, justice and the protection of every Canadian. This is the product of centuries' worth of democratic evolution, war, inequality, bloodshed, and a thirst to right the many wrongs our race has done unto itself; it was birthed from a need for justice. Its genesis lies in what has grown to become an unassuming part of our high school curriculum: the Magna Carta of 1215. According to an article by United for Human Rights Foundation, "The Magna Carta ... was arguably the most significant early influence on the extensive historical process that led to the rule of constitutional law today in the English-speaking world." This being said, one can discern: the signing of the Magna Carta signifies the very foundation on which our modern legal system not only is built, but actively thrives. This is because its fundamental framework laid out the rule of law, human rights and democratic principles that our free society revels in. In observing the rule of law the "Great Charter" enacted, the progression of human rights and its connection to the rule of law, and finally the democratic principles that govern our society as a result, one may discern that which essentially comprises our Canadian legal system in the 21st century.

The Magna Carta primarily established what we can recognize as the irrevocably pivotal rule of law. At the crux of an effective modern legal system is the universal accountability of all those who exist within it. As the "first document in English history to limit the powers of the monarch," the Magna Carta of King John's nobles proposed the virtuous and contextually daring idea of the law being the absolute ruler as opposed to the monarch. Acknowledging that this was simply a preliminary step,

the nobles included the writ of habeas corpus, seeking to prevent unlawful detention. Eight hundred years of legal evolution later, section 10(c) of the Canadian *Charter of Rights and Freedoms* addresses the same writ. Our 21st-century legal system flourishes on the basis that no single person is above the law. This type of all-encompassing governing serves to eliminate the hierarchy of an absolute monarch and empower the people and, in doing so, concurrently empowers the nation itself. While classism is to a degree unavoidable, it is by all means preventable. In limiting the powers of those who hold power, power itself is not something one can obtain, and instead must be something a preconceived system enacts. A shift in the attitudes of how citizens are viewed is the root of shifting attitudes in the type of legislature that is written. Creating a certain element of equality in all who are accountable of the law was the beginning of this phenomenon, spurring a chain of events that sought to improve upon the Magna Carta's fundamental ideology: the rule of law.

Wars and revolutions have been waged and won to obtain even the most basic rights throughout human history. The ideology of every citizen deserving equal treatment in the eyes of the law and concurrently being protected by that law is a wholly new one. Our modern Canadian legal system and government includes measures that ensure such rights be upheld to the highest degree in recognizing their importance. These measures include the creation of statute law such as the Canadian Bill of Rights, and later, the *Charter of Rights and Freedoms*, both which sought to ensure fairness, protection, etc. to all Canadian citizens. Such statutes were an enormous evolution from unwritten common and case law that governed Britain before the Magna Carta. In King John's signing the "great charter," the legislature was able to extrapolate a sense of justice to include a sphere of human rights that was entirely non-existent before. It created a framework to address not only accountability in

who is subject to the law, but how the law is equally enforced and upheld. The latter is fundamental. To whatever degree Canada's law may have been effective before 1982, human rights were not legitimately ensured in a definitive and lasting way until the Charter became constitutional. What is relevant to note is that this could never have occurred if not for a series of preceding events. The Charter would not have been implemented if not for Diefenbaker's 1960 Bill of Rights, which in turn would not have been significant if not for the UN Universal Declaration of Human Rights of 1948, following the Second World War. These events trace back through history, circulating a chronological increasing of political awareness regarding human rights, until eventually finding their origin in the Magna Carta's framework. The idea of all being accountable was fundamental in establishing the idea of all being equal. Today, the Canadian Charter of Rights and Freedoms governs a fair and equal sense of justice applicable to all of Canadian society that would have been entirely impossible without the groundwork set out by King John's nobles.

In a fair and equal society, democracy must follow clear principles in order to effectively function. The origin of such modern principles can be found in Runnymede, England in 1215. Beyond the concrete products that were the ripple effect of the Magna Carta (including but not limited to the Bill of Rights and the *Charter of Rights and Freedoms*), social and political ideologies that grew to encompass equality and justice in a far more intimate way were made possible in lieu of its signing. Democracy as a principle was created when a monarch signed away its right to be as such. Not immediately, but eventually, the end of absolute monarchy as an institution was promised. Despite our world struggling with obtaining democracy to a large degree (25 per cent of the world is classified as "partly free" and 35 per cent as "not free" according to 2014 findings from the organization Freedom House), Canadians