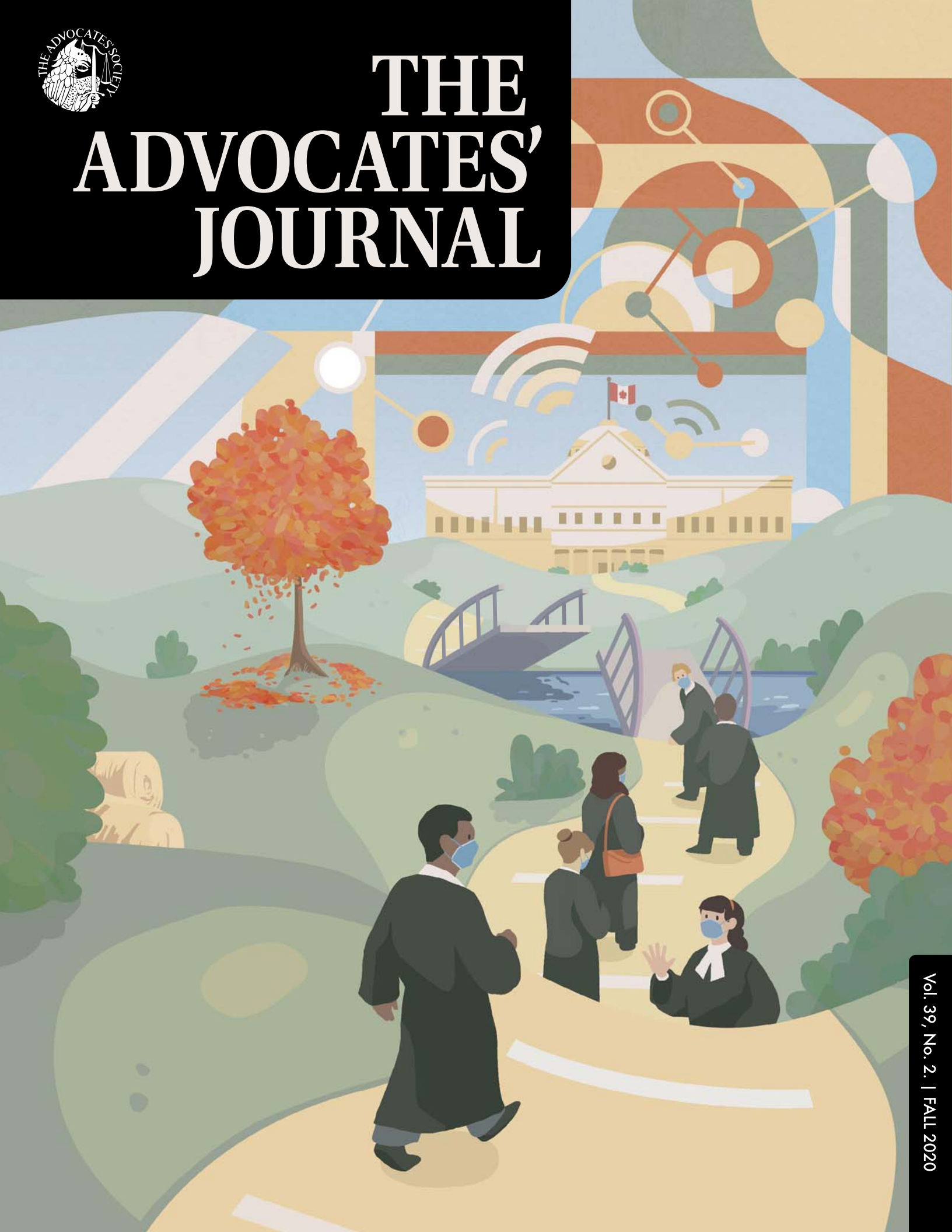




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Peter Hogg: The complete professional


The Honourable Justice Paul Schabas

“Paul, I’ve had quite a day,” Peter Hogg said to me with a slightly mischievous smile. He was sitting on a sofa outside a banquet room where Blake, Cassels and Graydon LLP was holding its annual Christmas party in 2008.

“I’m sure you have,” I said. I knew that Peter had just returned from Ottawa, where he had been advising Governor General Michaëlle Jean on Stephen Harper’s request to prorogue Parliament. Discreet as always, Peter would say little more to me than to confirm Ms. Jean had indeed taken her time getting advice and making her decision, keeping the prime minister waiting for two hours.

Peter Hogg, who died in February at age 80, was a great scholar. But Peter was also a great lawyer. He advised provincial and federal governments, governors general, First Nations and many others. He also appeared as counsel in many cases before the Supreme Court of Canada and other courts across the country. As Robert Sharpe, recently retired Justice of the Court of Appeal for Ontario, said, if you asked Peter his occupation he would have responded, “I’m a lawyer.” Harry Glasbeek, a long-time friend and colleague, described Peter as the “incarnation of the academic lawyer” who did not see a divide between practice and academic work.

And indeed he was. Canada lost a great constitutional thinker, but the legal profession lost one of us when Peter died. Peter’s high points came from his work as a lawyer, his son David Hogg, a professor of physics at New York University, said in recalling how much Peter enjoyed being in court, and especially in the Supreme Court. Every time he went “he loved it,” David said, and he relished the interaction and lively debate he would have with the judges. His cases were big ones, starting with the *Anti-Inflation Reference* in 1978 and including *Manitoba Language Rights* (1985), *Hill v. Church of Scientology* (1995) and *Re Same Sex Marriage* (2004), to name a few.

And the court loved having Peter appear before it. In *Hill v. Church of Scientology*, a defamation case, Peter acted for intervener media organizations. There were other interveners with great counsel, including then Professors Robert Sharpe (later of the Court of Appeal for Ontario) and Ed Morgan (now of the Ontario Superior Court of Justice). In those days, interveners’ counsel were granted 15 minutes for oral submissions, which is what Sharpe and Morgan got. But the media group was given 30 minutes. As Peter’s co-counsel Brian MacLeod Rogers recalls, when Peter stood up and the chief justice mentioned that he had 30 minutes, Justice Claire L’Heureux-Dubé referred to it as “the Peter Hogg rule.”

Peter Wardell Hogg was born and grew up in New Zealand. He joined his father’s blue chip corporate law firm in Wellington after his call to the bar in 1962. But to his father’s disappointment he didn’t



stay long, Peter received a scholarship to enroll in a master’s degree program at Harvard, which he attended in 1962–63. While there he met and married Frances Benson, a brilliant and charming Harvard student from Baltimore.

After a brief stint back in Wellington, Peter joined the faculty of the new law school at Monash University in Melbourne, Australia, where he taught and obtained a PhD. At Monash, he met Glasbeek, who then moved to Toronto to join Osgoode Hall Law School. Glasbeek urged Peter to spend a study leave in Toronto, rather than at Columbia University. And we should all be thankful for that, as Fran and Peter liked Toronto and Peter returned to join the faculty at Osgoode in 1970.

Not long after, as Peter told it, the dean at the time, Gerald Le Dain (later of the Supreme Court) needed a professor to teach constitutional law and approached Peter. In those pre-Charter days, constitutional

law was not the hot topic it has become, and professors weren't clamouring to teach classes on division of powers. Although he knew nothing about the subject, Peter agreed. (He found it hard to say no, Glasbeek reports.) Quickly spotting a need for a text on the subject, Peter's lecture notes formed the basis for the first edition of his great book, *Constitutional Law of Canada*, published in 1977. And so, remarkably, an academic from New Zealand soon became Canada's leading scholar on constitutional law.

As is well known, his constitutional law text has been cited by the Supreme Court more frequently than any other work, by far. But it has also been influential well beyond Canada. When South Africa adopted a new constitution with similarities to the Canadian Charter, it became an important resource for the judges of that country's Constitutional Court.

Since the book's initial publication, all Canadian law students have been in Peter's debt. Who among us didn't get through our constitutional law course without the help of Peter's text? I still have my copy, the first edition, which was quite a bit thinner than with 440 pages of text and just two chapters on civil liberties. How times have changed, as the book, now in loose-leaf, is well over two thousand pages long.

In his writing and his advocacy Peter "made very complicated things sound very simple," said Sharpe. As Glasbeek remembered, because "Peter could see all the things that could intrude" in analyzing a case or principle, he would "cut it all away." But that didn't mean he oversimplified. As his successor as dean, Justice Patrick Monahan, recalled, Peter "always had a response if you asked 'what about this or that?'" He had considered everything and simply got to the essence of the issue.

Peter was extremely popular with students. As Glasbeek observed, Peter's straightforward approach to the law made his classes a safe haven for anxious law students craving certainty in an environment where many of his colleagues fostered the opposite. "Students always felt he was on their side," commented John Evans, a former colleague and retired Justice of the Federal Court of Appeal. His classes were always oversubscribed, including his course in tax law – another area in need of clarity for struggling law students. Peter carefully allotted time within lectures for each topic. He was known to sometimes receive applause at the conclusion of a class, not just at the end of a course.

Peter believed his role as a professor was to train students to be lawyers, of all kinds.

"He wanted to help them practise law, whatever their goals were," said his son, David. He also loved working with and helping junior lawyers. In his later years at Blakes, Peter would often make notes of his conversations with students and associates so he could help them in subsequent conversations. "Every litigation associate at Blakes would have a beautiful story" about working with Peter, said Blakes partner Cathy Beagan Flood, who worked on many cases with him.

Peter's equanimity – Glasbeek described him as "innately courteous" – likely led to his being drafted as dean at Osgoode, a job he didn't seek or want but which he did not refuse when asked to take it on. And he performed outstandingly. As one of his successors, now Justice Lorne Sossin, said, Peter was seen as an "honest broker" able to work with all his colleagues.

When Peter retired from Osgoode in 2003, he rejoined Blakes as its scholar-in-residence, a position he had held several years earlier on a sabbatical leave when he first expanded his book to include the Charter. As Peter told me, he enjoyed being in the lively environment of a law firm, discussing all kinds of legal and practical problems, as well as the social aspects – the chats up and down the halls and at the coffeemaker, the dinners after a case was over, or events such as The Advocates' Society End of Term Dinner. For years, Peter was a regular attendee of the Canadian Media Lawyers Association's annual conference, made up of a small but rambunctious group of free-expression advocates whose views and values Peter shared. "He felt strongly about free expression," Brian Rogers recalls.

It was perhaps an indication of his commitment to mentoring that Peter did not continue to teach after reaching retirement age, making room for new blood on the faculty. Wade Wright, a law professor at Western and co-author with Hogg and Monahan of the latest edition of *Liability of the Crown*, said that Peter felt strongly about supporting younger academics and was an extremely generous mentor to him and others. He would make the extra effort to co-author papers and books and give a helping hand.

Blakes provided Peter with the opportunity to continue his research and writing, updating *Constitutional Law of Canada* annually, and it gave him a platform on which to expand his work as counsel. But Peter gave Blakes, and the profession, so much more. He advised firm clients and worked as co-counsel on cases that raised constitutional issues, and often non-constitutional issues as well. He was a sounding board of

good judgment, and his door was open to everyone. Peter frequently presented seminars at the firm's offices across the country, usually sharing the platform with younger lawyers with whom he had worked, to give them an opportunity to speak, and shine. He continued to advise and represent governments, First Nations and others who sought him out. As recently as last spring, Peter appeared before the Federal Court of Appeal on a case involving constitutional issues regarding ferry service to Newfoundland.

Jeff Galway, a Blakes partner who worked with Peter on the Newfoundland ferry case, recalls the enormous respect Peter was shown by the courts. Yet Peter was never boastful or arrogant. "He was always self-effacing," recalls Beagan Flood, "humble" and "disarming." Monahan recalled how Peter wouldn't directly disagree with someone's view, but instead listened and then politely asked, "have you thought about this point?" or "considered putting it this way?" as he gently steered you to the better approach. And he was always right.

Peter wasn't shy about criticizing decisions he disagreed with, but often did it subtly or with good humour. I recall Peter coming by my office after the Supreme Court's decision in *Wholesale Travel* in 1991, which held that the misleading advertising offences in the *Competition Act* were regulatory offences, not crimes, even though they could result in a jail term of up to five years. Knowing I was defending a large case on that issue, Peter told me that I could comfort my clients as they went off to the penitentiary, assuring them they weren't criminals "but had only committed regulatory offences."

Peter Hogg saw a lot of Canada's constitutional history over the last 50 years, from the Anti-Inflation case, to the patriation of the Constitution, to Meech Lake and Charlottetown, and the extraordinary changes brought about by the Charter. But the issues that meant the most to him, I think, were his work with First Nations and on same-sex marriage.

Peter's work as counsel to the Council of Yukon Indians (now the Council of Yukon First Nations) in negotiating their agreements with Canada was particularly important to him. Perhaps influenced by the treatment of the Maori in New Zealand, Peter felt deeply about how Canada has mistreated Indigenous peoples. He loved his work in Yukon, David recalled, especially being with lawyers driving pickup trucks who hunted moose. Peter hoped his work there would create a governance model for Indigenous peoples elsewhere in Canada

and beyond. "He was very excited about something that really would make a difference" and loved being part of the team.

Peter was also very proud of being involved in the same-sex marriage case, representing the federal government in support of it. He saw Canada as a leader on this issue, with the opportunity to set a precedent around the world for unrestricted equality, but was disappointed when Spain got there first, David said.

Peter Hogg loved to have lunch – not to eat (he rarely finished his food), but to chat, on just about anything. As Justice Sossin recalled, "There was never any agenda beyond a chat about whatever was top of mind. The discussion ranged seamlessly from scholarship, to gossip, to family challenges, to how to improve the law school, to music and movies. There was literally no topic I found Peter uninterested in, or on which he did not have something interesting to add."

I lunched with Peter regularly, though it was often difficult to schedule, as his lunch card was always full. Peter never, ever, ate lunch at his desk. Lunch was "like a religion to him," David recalls, as Peter firmly believed one would accomplish more by taking a break for lunch than working through it. If we talked law, it might have been about a decision of the Supreme Court, or some professional gossip, but mostly we talked about other things. He read a lot of history and autobiographies.

Peter and Fran loved music, art and the theatre and took full advantage of Toronto's cultural life. My wife and I would sometimes meet them, often with their daughter, Anne, at concerts or the theatre. Fran always had an opinion on the performance, given firmly but with a laugh, and Peter would, invariably, quietly agree with her, with a warm smile. And she was usually right, too. Sadly, Fran died just a few weeks after Peter, some 57 years after they met at Harvard.

Lunch with Peter was always accompanied by a glass of Sauvignon blanc, preferably from New Zealand. But only one glass, mind you, as his assistant at Blakes, Marilyn Godfrey, pointed out. For Peter was a disciplined and organized person whose life was very structured. He kept a list of restaurants he liked and notes of whether someone had paid for lunch so he could get the bill the next time. He arrived at the office every day a little after 9 and was invariably gone by around 5 o'clock. He made a point of meeting new litigation associates and taking each of them for lunch. When he visited a law school, he would ask Marilyn to print off photographs and biographies of the faculty to review in advance.

Peter's connection to New Zealand remained strong all his life. He visited regularly with his family and was an avid rugby fan, supporting the All Blacks whenever he could. David recalls him flying to cities in the United States to see the team play matches. Will McDowell, a partner at Lenczner Slaght, once invited Peter to watch the All Blacks play in the Rugby World Cup final, live at 3 in the morning. New Zealand lost, and McDowell said it was the only time he heard Peter utter an expletive.

David describes his father as "one of the most optimistic people" he has ever known, who always saw the good in people. He loved the phrase "the sum total of human happiness," and he worked to enhance it.

As lawyers, we know we lost a great legal scholar and a great lawyer when Peter died. He was, as John Evans said, the "complete professional." But Canada, New Zealand and the world lost a great human being.

So, the next time you have a glass of New Zealand Sauvignon blanc, toast Peter Hogg. And maybe do it over lunch. Peter's lessons on life and law are timeless, and for all of us. ■

Arbitration Place Welcomes
Niels Ortved

We proudly announce that Niels Ortved has joined Arbitration Place and will work as an arbitrator and mediator in Canada and internationally. Niels brings to his mediation and arbitration practice a wealth of traditional and alternative dispute resolution experience. As a member of the Litigation Group at McCarthy Tétrault for 40 years, he provided advice, strategic analysis, and advocacy in relation to contract interpretation, tort claims, insolvency, civil and criminal fraud, intellectual property and employment disputes. For six years of his tenure, he also served as the full-time managing partner of McCarthy Tétrault's Toronto office where he managed a professional partnership of over 400 lawyers.

In 1997, Niels was elected as a Fellow of the American College of Trial Lawyers. He has been consistently recognized as a leading practitioner in the fields of litigation and dispute resolution in legal publications, including Chambers Canada and The Canadian Legal Expert Directory. He is also a member of the ADR Institute of Canada.

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