

**Bora Laskin Award
Luncheon
December 14, 2022
Vancouver, B.C.**

[John Hall, Arbitrator](#)

I have been told to “keep it light” (the direction coming from our honouree himself) so I will begin with a gentle “ribbing”.

Delayne Sartison contacted me a few weeks back to advise that Tom was a co-recipient of this year’s Bora Laskin Award. My first reaction was “Ho, hum – Thomas Roper wins another award. Is there any space left for it on his trophy wall?”

But, of course, this is not simply “another award”. That is readily evident when one scans the distinguished list of past recipients – some of whom have been mentioned already today.

I could likely spend the rest of this luncheon recounting why I believe Tom richly deserves to be included on that list – but I only have about 10 minutes. Given that limited window, I want to highlight three attributes which come to mind immediately:

- Tom’s dedication to mentoring and supporting other lawyers,
- the respect and confidence he earns from clients, and
- his outstanding legal skills both as counsel in a hearing and when providing strategic advice.

These themes have been interwoven throughout Tom’s remarkable career as the few examples I will mention hopefully illustrate.

So, where to begin? Well, at the beginning (at least for me), although time forces me to leave out most of what has transpired since, and Tom’s many achievements over the years which would otherwise warrant explicit recognition.

In May of 1980, I walked through the doors of Alexander Guest Holburn and Beaudin (as the firm was then called) to begin my articles . . . Tom, or perhaps more correctly given my then lowly status, “Mr. Roper”, was my principal. I didn’t appreciate at first that I had just won the biggest lottery of my life!

I spent almost all my articles in the Labour Department – although that is something of a misnomer because, at the time, “the Department” consisted of Tom; one associate lawyer; and me. Not long before I had arrived, several notable names had left the firm for other opportunities (they included Don Munroe and Stephen Kelleher). Tom successfully maintained the client base, and the practice grew from there.

As that practice thrived, Tom enthusiastically supported the development of countless other lawyers, taking a detour through Ogilvie Renault before ultimately founding Roper Greyell – along with Bruce Greyell who is here today. At last count, the firm’s website lists over 50 lawyers. Additionally, Tom has unselfishly supported many others (like me) and prepared them to pursue their aspirations in other settings.

Looking back, what I find most remarkable is that, when I started my articles, Tom had only been practicing for five years and he had not yet turned 30! However, he was already recognized as one of the Province’s leading employer-side labour lawyers. In addition to persuading the firm’s “blue chip” clients to remain, notable new clients were knocking on the door in order to retain his services.

In the summer of 1980, one of those new clients was the Provincial Liquor Distribution Branch. The three major BC breweries had locked out their employees. This, of course, drastically curtailed the supply of beer at a critical time of the year. In order to meet the demand of a “thirsty public”, the LDB started bringing in up to 300,000 cases of American beer each week. The LDB correctly anticipated that this rather dramatic increase might draw the attention (and ire) of the picketing Brewery Workers Union.

Tom was retained before the LDB had actually been impacted and promptly went on vacation. He left me in charge of the file but checked in once a day. This, of course, was well before cell phones and, to maintain confidentiality, Tom had to call in from a very noisy phone booth on the side of the highway – with predictable complications.

When the Brewery Workers started picketing at LDB outlets (arguing that the LDB had become an “ally” by importing the US beer), Tom returned from vacation, and we were off to the Labour Relations Board on an expedited Part 5 application.

It was one of my first opportunities to watch a Tom Roper cross-examination. The Union’s only witness was its Business Agent, John Langley¹. Part of the cross went something like this:

TR: My client, the LDB, normally purchases beer from the breweries where you have a labour dispute. That usual source is not available, so my client is bringing in American beer to meet customer demand – and that’s why you’re picketing its outlets?

JL: Yes.

TR: So, tell me Mr Langley . . . Suppose you represented bus drivers and the bus company locked out your members. Suppose also that because people can’t take the bus to work they start riding their bicycles. Would you picket the people riding their bicycles?

¹ I later sat on panels with John Langley when he was a valued part-time member of the B.C. Labour Relations Board.

JL: (pauses, looks at his counsel and is obviously challenged for an answer, before finally saying) “I’d guess I’d *have* to, wouldn’t I?”

Needless to say, the case was effectively over at that point, and the Board issued a cease and desist order later the same evening.

Let’s fast forward to 1991 . . . The NDP government of Mike Harcourt has been elected and it was well understood that there would be substantial amendments to the *Industrial Relations Act* (otherwise known as the infamous Bill 19 brought in by the former Social Credit government and boycotted by trade unions). This was decidedly not going to be “good news” for employers in the Province.

Tom called me into his office one day and confided that he had been asked to be part of a Sub-Committee of Special Advisors who would carry out the legislative review. I had some definite trepidation over how the firm’s clients might react if Tom accepted the role.

Tom, however, was completely sanguine . . . He had already spoken to some of the key clients and they unanimously wanted him to accept the assignment. WHY? Because they knew their interests would be far better served if Tom was directly involved and could ensure their views were fully considered when drafting what would hopefully be balanced legislation.

And the touchstone of both the resulting Report and the 1992 *Labour Relations Code* revisions was indeed *balance*.

The Report was authored not only by Tom, but also Vince Ready (who is seated beside Tom today) and the late John Baigent. It is a remarkable work and should be read by anyone in the labour relations field. Even if you have read it previously, it is probably time for a refresher. The Report is on the Labour Board’s website and includes an excellent summary of the often contentious history of BC labour legislation. After commenting diplomatically on that history, the authors continued:

It is against that background that this Sub-Committee began the task of searching for the balance – for a statutory framework that would foster a different relationship and facilitate the achievement of common goals while acknowledging the different interests of labour and management.

We recognize, immediately, that there is no such thing as an absolute balance or fulcrum in labour legislation. In labour relations, balance is determined by perception, not objective calculation. Whether balance has been achieved depends entirely on the perspective of the evaluator. *The best one can hope to accomplish in recommending labour law reform is that the legislation will be seen as being generally fair, promoting the legitimate goals and protecting the legitimate interests, from a societal perspective, of those it seeks to regulate.*

When the new *Code* was proclaimed in early 1993, I was appointed to head the Adjudication Division at the Board and worked with then Chair Stan Lanyon. I can assure you that the Sub-Committee's objective was attained: the legislation was widely perceived as balanced by both sides of the labour relations community. That assisted us greatly in applying the revised statute to what were, at times, some very challenging disputes.

So, I come lastly to Tom's skills as counsel . . . I have been exceedingly fortunate to serve as a neutral for the past 30 years or so – and I have never regretted that career choice for an instant. However, I do sincerely miss working in partnership with Tom.

The consolation is that he has appeared before me over the years in dozens of hearings at both the LRB and at arbitration. Put simply, *it's an absolute treat*. On occasion, I have thought that I should be paying for a seat in the room simply to watch him perform. I use the word "perform" in the absolute best sense of the word because he is a legal maestro. And it is absolutely no secret that my high esteem for Tom is shared by other arbitrators in the Province and anywhere else in Canada where he has appeared. He is similarly held in high regard by our judiciary.

Tom is universally respected not just for his counsel skills, but also for his ethics, integrity, fairness and (here is that word again) his balanced approach – all qualities which other counsel might sometimes forget in the heat of the moment.

Tom, it has been a genuine privilege to speak at today's luncheon in your honour. You have my heartiest congratulations!

Delayne Sartison, K.C.

Tom and I have been colleagues for more than 30 years (32 years in January) and now that Tom has finally been selected for the Bora Laskin award I am delighted to finally have the opportunity to speak about Tom in public, in front of all of you. I could wait to make remarks at Tom's retirement party someday but have concluded that my retirement party will likely precede his by many years.

I first joined Tom in the labour group – which he was already heading up at a very young age – at Alexander Holburn Beaudin and Lang here in Vancouver. We then moved with the rest of our growing group to start the Vancouver office of what was then Ogilvy Renault (now the international firm Norton Rose) in 1999, until we finally found what I like to call our "forever home" at our firm Roper Greyell here in Vancouver. Roper Greyell was launched in 2006 with 19 lawyers and we are now a firm of over 50 lawyers with a practice addressing every conceivable facet of workplace law.

Tom's work and mentorship have been central to the success and reputation of our firm and to the career development of so many of us privileged enough to practice alongside him. Tom leads us through example, and through generously sharing with us his knowledge and the opportunities that flow from his undeniable talent and incredible reputation across Canada and internationally.

One of the key behaviours that Tom consistently models in our firm is what I often describe as his "pathological" commitment to client service. Though I have to say that there are times

when Tom's generous mentorship, including the encouragement of young lawyers to try new things, on the one hand, and his endless enthusiasm about the client's case on the other, can sometimes clash or come into conflict.

I have a lived example to share with you. It has been a very long time since I have worked directly with Tom as his junior or co-counsel but I will never forget when I was finally ready to take on some of the cross-examination in a case that Tom and I were working on together in the mid-1990's.

It was a case about the bargaining unit placement of a group of employees called biomedical engineering technologists (or "biomeds"), and it was my job to cross-examine the biomeds called by the union about their duties and how they compared to criteria that defined certain health sector bargaining units.

For the first cross-examination I was tasked with, Tom was sitting next to me – as co-counsel do – and it... was... pretty rough. I could barely get through my questions due to Tom's constant whispering in my ear and tugging at my sleeve about whether I was going to ask this or that or the other thing. I knew Tom was confident in my skills – he just could not contain his energy for the client's cause long enough for me to get the questions out of my mouth!

I had more of these cross-examinations to get through and, thankfully, the rest ran much more smoothly due to Tom's agreement to certain "terms of engagement" that I insisted upon. First, I gave Tom a copy of the notes I had prepared in advance and instructed him to read them so that he could take comfort that I did intend to ask relevant questions.

Second, and perhaps most importantly, Tom was required to sit as far down our side of the table as was possible (well away from my ear and sleeve), and he was only permitted to interrupt if I was making a catastrophic error, in which case he could pop up and tell the Vice-Chair that we needed a brief caucus.

The client thankfully knew us both well and was quite amused at these arrangements and as far as I can recall there were no calls for caucuses in the middle of the rest of the cross-examinations. We went on to win the case. I am not sure how central my cross was to that victory but at least I gained valuable experience with both cross-examination and how to work effectively as co-counsel with Tom Roper!

Anyone who has worked with Tom or seen him in action knows what a brilliant and creative lawyer he is. People often quip that particularly knowledgeable people have forgotten more knowledge in their area of expertise than others will ever learn or know, but that does not apply to Tom's knowledge of labour law, because he has not forgotten anything, ever, as far as I can tell. Tom has a data-base-like record in his brain of every key labour law case decided since at least the mid 70's. Tom remembers the name of the case, the principles decided, the adjudicator, the rough vintage, who argued it, the weather that day.... it's actually quite scary.

I have concluded that Tom has managed to remember so many of those cases because he acted as counsel on so many of them. Tom has been at the vanguard of key developments in labour law since his call to the bar back in in 1975. I know time is tight today but I have

to share with you some of the highlights:

- the first B.C. case addressing the consolidation of bargaining units;
- one of the first multi-employer certification applications;
- the liquor distribution branch case that established key principles concerning ally status during a strike;
- a series of cases that established that log hauling truckers were dependent contractors of non-union logging contractors vs. mills;
- a case concerning the proper scope of hot declarations in the construction industry;
- the LRB's first articulation of the test for entitlement of laid off employees to participate in representation votes;
- the LRB's articulation of the test for determining common employer status in the construction industry;
- cases establishing the extent to which nurse managers are excluded from bargaining units;
- The seminal LRB case establishing the test for "true employer" for labour relations purposes in the province;
- various decisions addressing the provincial statutory bargaining unit structure in health care;
- cases concerning the constitutionality of provincial statutory secondary picketing restrictions;
- cases establishing the limited jurisdiction of a labour arbitrator to fetter decisions of a university senate; and
- the LRB's test for application of s. 54 to layoffs in the forest industry.

These are just some of the highlights.

In addition to all of this impressive advocacy work, Tom has, for decades, been a trusted advisor to employers and employer associations with respect to key strategic decisions, from major corporate reorganizations and policy development, to the design of bargaining structures for major infrastructure projects, to careful planning for bargaining and strike preparedness. Tom has and continues to work collaboratively with so many of our firm's clients – and many of those clients are here today to celebrate with him.

Tom has accomplished all of this while maintaining the respect and admiration of peers and parties on both sides of the labour relations community and bar. Tom practices at the highest level of both skill and integrity and I know that he has said a kind farewell to more than one client over the years that has sought a "different" approach to the one Tom was prepared to provide.

Tom, we are so proud of you and all that you have achieved, and we are so grateful for the opportunity to work with you each day. All of us at Roper Greyell celebrate with you and with your beautiful family, here with you today, and we heartily congratulate you on your selection for the 2022 Bora Laskin Award.

But Tom, your partners also want you to remember that now is not the time to “rest on your laurels” – while you are free to enjoy the rest of the day with your family, we do hope to see you back in the office tomorrow!

Thomas Roper, K.C.

First I would like to say how honoured I am to receive this award.

Thank you to those who nominated me and to the selection committee for choosing me to be a recipient of the Bora Laskin award this year.

And I would particularly like to thank Professor Gomez for travelling to BC to make this presentation.

Thank you to John Hall and Delayne Sartison for your kind words.

John was destined to be a terrific adjudicator. He had amazing analytical skills and writing skills even as an articled student. He went to the Labour Relations Board as a Vice-Chair in 1985, then back to the firm, then to the LRB as Associate Chair in 1992. It was pretty clear that he didn't want to practice labour law with me!

Delayne was articling at Campbell Godfrey Lewtas in Toronto, with George Adams (the author of “Canadian Labour Law”). She gave his name as a reference when she was coming to Vancouver, so I called him. He said “You would be an idiot not to hire her”. And because I fancied myself as something other than an idiot, we hired her. Not a bad recommendation from one of the leading practitioners and jurists in labour relations.

My practice has been almost exclusively labour law since I was called to the bar in 1975. This has allowed me to deal with social issues of the day playing out in the workplace. It's the work that many of you here today do as a union representative or a labour relations manager.

The labour practice also gave me the opportunity to understand how different businesses worked: sawmills and pulp mills, Hydro generation, hospitals, universities. What I quickly realized is that while businesses are different, the workplaces are fundamentally the same. People seeking to fulfill their aspirations in their employment no matter what the nature of the work is.

We all strive to work in a respectful environment that fosters collegiality, cooperation and fair treatment. Working in human resources as a supervisor or a union rep is, or at least should be, more than transactional; it's finding ways to resolve disputes in a way that ensures that the relationship endures.

I followed two of the best in the labour law business; Don Munroe and the Hon Steve Kelleher who practiced management-side Labour law with integrity and civility. It was a small boutique firm called Robson Alexander & Guest. When I completed law school the firm had merged to what is now Alexander Holburn Beaudin and Lang.

Getting started in any career is a struggle. I empathize with those starting out. You have the technical tools, but have little idea about how to use them.

At some of my first hearings I recall Allan Hope (a leading arbitrator) greeting me as I walked in the hearing room door with "Hello Youngster". I thought this was a term of endearment. I was 24 years old when I started practicing and probably still had acne. In retrospect I realized that he just didn't know my name. It took years to move beyond that.

The definition of a "career" is "an occupation undertaken for a significant period of a person's life and with opportunities for progress". And that's what it is: lots of ups and lots of downs.

I have had winning cases and I have lost important cases: the Honourable Mary Southin (lawyer, labour arbitrator, and Court of Appeal justice) once said: "I've never lost a case that was properly decided"; and I have adopted that motto ever since.

Gradually over your career you start to lose the imposter syndrome and realize that you actually do know something and you can make a difference. Leaving aside the technical knowledge, the best assets you have are good judgment, empathy, integrity and your reputation.

I have been privileged in my career. Not privileged in the sense of coming from a moneyed background; that was not the case. But privileged, because I am a white straight male who was born in Vancouver in 1950. I recognize that, and it underscores the work we all need to do to ensure diversity, equity and inclusion in every workplace. Opportunities were presented to me that would not have been available to others but we need to make sure that opportunities are available to everyone to achieve their goals.

I had terrific experiences along the way. Early cases with Paul Weiler such as one involving Pacific Press freelance reporters. When I was called into his office before the hearing to discuss witnesses and length of hearing, I saw an accordion file on his shelf with "Dependent Contractors" written on it. I knew it was sitting there waiting for the facts of my case.

I had a case in 1979 dealing with a new thing called a "computer", the first ones installed in the editorial room at Pacific Press. The issue was whether it was just a better typewriter or added more responsibility to reporters and editors at Pacific Press.

I worked with pilot groups in the late 1980 airline mergers, to integrate seniority, with arbitrations in Ontario and judicial reviews in Nova Scotia.

And then I had the opportunity to work with Vince Ready and John Baigent in 1992 to rebalance the *Labour Relations Code*.

I have worked with some of the largest employers in sectors ranging from pulp mills, sawmills, construction, mining companies, health care, to universities. Earlier in my career when I had a suitcase packed for business my three young daughters would ask if I was going to a “Kuh” city: Kamloops, Kelowna, Kitimat, Cranbrook, Castlegar, Creston, Campbell River. Seemed like every client I had was in a “Kuh” town.

Aside from employer clients I had the privilege of working with Crown Counsel in B.C. to help them form an association to represent them in their dealings with government. Following a two-day withdrawal of services in 2002 the Association was recognized as the exclusive bargaining agent for all Crown Counsel, under the *Crown Counsel Act*.

I was asked by the Telecommunications Workers Union to represent them in their merger negotiations with the United Steelworkers Union.

And I was blessed when our group at Ogilvy Renault merged with Greyell McPhail in 2006 where I get to work with very talented lawyers. Thank you to the Honourable Bruce Greyell for being here today.

I was lucky to have these opportunities. But for me, being in a position to be lucky meant putting my practice first. At least that’s what I thought. I took to heart the quote from an MIT professor who said “the harder I work the luckier I get”. I don’t think work-life balance was a thing when I started, but if it was I didn’t get the memo.

Today I want to put my family first. They supported me all the way knowing that I was incapable of practicing any other way. My wife Kris, and my daughters Jenny, Megan and Carolyn.

My sister Jane Wagner is also here as is my father-in-law Bob Black (who is a youthful 97 years old).

And thank you to all my colleagues and former colleagues with whom I collaborated, and to whom I am totally grateful. I have had the pleasure of practicing with amazing lawyers (on both sides of the labour bar) and am blessed to be in a firm that holds true to the values that have enabled me to succeed.

Our achievements in our working lives or our personal lives are not individual achievements. They are team achievements shared by family, friends and colleagues, those who support you and help you along the way.

I am honoured to have been selected for this award and thank you all for making this possible.