

PAULA KNOPF'S BORA LASKIN AWARD CEREMONY SPEECH
DECEMBER 4, 2023

I'm told I should be witty. I will try.

However, let me start by sincerely thanking the Committee , Lancaster House, and the University of Toronto for this tremendous honour.

Jeffrey has told me that this Award will help my reputation! That is an added bonus!

Before I go further, I want to make it clear that in my heart, I am sharing this Award with Jane Devlin.



Jane Devlin - 2012



Our 'ups and downs' in Thailand - 2017

Jane and I grew up in the arbitration profession together. Our friendship began when we were being trained by the Education Relations Committee in the late 1970s as factfinders and mediators. We were then among the first interns in the Ministry of Labour's Arbitrator Development Programs in the early 1980s.

We went through the ups and downs of our personal and professional lives together – including the challenges of our work, raising children, and eventually sharing wonderful experiences travelling with friends.

We ran education programs together, including Co-Chairing the National Academy of Arbitrators' "educational" meetings in Denver about the legalization of marijuana and leading a parade in New Orleans.

What many people did not realize was how much fun Jane could be:



Denver - 2015



New Orleans -2016

Every one of Jane’s decisions was thoughtful and right. If I got any of my decisions right, it was probably because I’d first vetted them with Jane. She would either agree, or set me straight. I’ll now confess – she agreed with me about my *Parry Sound*¹ decision – even though Rick MacDowell still thinks that the Supreme Court and I were wrong!

Jane was the epitome of integrity. Jane also knew when to retire - before her ‘best before’ date. We lost her too soon. There is a phrase that Jewish people say to mourners when a person dies: “May her memory be a blessing”. It is an expression of hope. That is the way the blessing can be fulfilled. Keeping her memory alive is the way for her example to live on.

I am honoured to dedicate this address to Jane Devlin.

Let me also pay tribute to the Laskin Award winners before me who are here tonight – many of whom have inspired my career:

¹ *Parry Sound (District) Social Services Administration Board v. O.P.S.E.U., Local 324*, 2003 SCC 42 (CanLII), [2003] 2 SCR 157, <<https://canlii.ca/t/51pb>>

Harry Arthurs
Michel Picher, and his amazing wife Pamela
Andy Sims
Allen Ponak
Ken Swan
Jeffrey Sack

I am very proud to be an arbitrator and extremely proud of our profession. Arbitration plays a very important role in our society. The Supreme Court of Canada has enshrined collective bargaining as a constitutional right. Our profession's *raison d'être* is to uphold the collective bargains.

I am particularly proud of how arbitrators have fulfilled that role:

- Arbitrators' skills at resolving problems led to the to the legitimization and statutory endorsement of med/arb.
- Arbitrators' decisions have defined just cause, privacy rights, harassment, and established the tests for determining other complex issues related to the Human Rights Code.
- Most recently, within weeks of the province shutting down because of Covid, arbitrators pivoted to virtual hearings and kept the dispute resolution system running.
- When new issues arose in workplaces because of Covid, arbitral decisions quickly emerged that mapped out what needed to happen with regard to vaccination policies, return to work protocols and religious exemptions.
- When Bill 124 came into effect in Ontario and was then struck down, arbitrators shouldered much of the responsibility for navigating the 'in and outs' of the 1% cap on compensation.
- Arbitrators' different styles, personalities, and our quiver full of skill sets have given the parties a wide range of choices to address their disputes.

So, I am extremely proud of my profession and the effectiveness of our work. I am also proud of the fact that arbitrators offer the parties a variety of approaches. You all know that there is a huge difference between how Bill Kaplan and I work. Bill gets spectacular results through his brilliance and effective use of creative solutions, plus his unlimited vocabulary of swear words. I've been accused of singing "cum-by-ahh" and asking the parties to play nice in the sand box! The beauty of the system is the variety of choices available to the parties.

People often ask me how and why I became an arbitrator. As it takes a village to raise a child, it took the help of many good souls for me to get to this podium tonight.

When I was five, my grandmother told me not to go to university. She told me that if I got an education, no man would want to marry me. But I was blessed with parents who valued education. Mom believed that a woman should have financial independence. She told me that I would be a happier person and be a better wife and mother if I had an education and career. Fortunately, I listened to my mother.

When I decided to go to law school, I had visions of saving the world. Many of you will not be surprised to hear that I did not even know what a union was.

The path from there to here began with Harry Arthurs when he was the young and dynamic Dean of Osgoode Hall Law School. He stopped me in the hall one day and told me I should article for Ian Scott who was then, unbeknownst to me, the leading union advocate in the province.



Osgood Hall Law School – 1975 Graduation Ceremony
A young Dean Harry Arthurs and a very young Paula Knopf

When I applied to Ian Scott's firm, then known as Cameron Brewin and Scott, I received no reply. So, I called to ask for an interview time. A young Chris Paliare politely told me that since I had taken no labour courses or shown any interest in labour law, there would be no interview. But with a combination of chutzpah and naivety, I blurted, "But Harry said I should article with Ian Scott". Chris sighed and said I could come in for a chat, and that he may be able to give me some advice. That "chat" resulted in a job offer.

Chris must have regretted that decision the first day I went to work at that firm. As we were waiting to meet my first client, Chris asked me what sports I played. I could see he was an athlete. I knew I couldn't tell him that because I am Jewish, I was raised in a home where I was told to read books and not to play sports because only "dummies" played sports. So, I told him the other truth – that I hated conflict and competition. I'd

had my fill of competition from music festivals when I was a kid and from the 'alphas' at law school. When I told Chris that, he looked aghast and said; "Why the hell did you become a lawyer and why the hell did I hire you!" Nevertheless, the articling year was a success and was formative for me.

While I attended my first arbitration, I had several epiphanies that made me decide - that very same day - to become an arbitrator.

- I hated the fact that as an advocate you gave over your case to a judge who might make a wrong decision. Seeing an arbitrator in action, I began to think, or wanted to believe, that as an adjudicator I would have the opportunity to ensure the right result.
- I saw arbitration as a way to resolve disputes, rather perpetuate strife.
- I also realized that I was neutral – I could not see myself fighting for either labour or management – knowing that each case had to be addressed on its own merits.
- Finally, I hoped that being an arbitrator would give me more time be a mother than if I was a litigator

Those are only a few reasons that made me want to become an arbitrator. The next step was figure out how to do that. We all know it takes a village to raise a child. It then took a "village" to raise me as an arbitrator!

I cannot name all the people who helped me get from there to here tonight – the list is too long, and my gratitude is immense. I only have time to mention a very few:

- Owen Shime– The first Chair of the Education and Colleges Relations Commissions. He recruited and trained young men and women, like Jane Devlin and I, promising to make us "arbitrators of men"! He began the tradition of ensuring our profession would fulfill its purpose.
- The late Clarice James, followed by Linda Kotopoulis and now Melanie Jackson – my invaluable Assistants and Friends – who managed the Parties' needs, kept me sane and corrected all my spelling and grammatical mistakes
- Andy Sims and Rodrigue Blouin – who I had the privilege to work with for the Part I Review of the Canada Labour Code in 1995. That collaboration, the process, and all the groups that made submissions to us, gave me a greater appreciation for the work we all do.

But most importantly, let me pay tribute to my family and friends.

My friends, many of whom are here tonight and others too numerous to mention, have helped me weather personal challenges, have always been there for my daughters and I, during celebrations and when we needed help. Those relationships sustain me. If one can be judged by the quality of one's friends, I am very rich indeed.

Last but not least, may I praise my daughters Rachel, Rebecca, and Sarah along with Becca's husband Josh. I am very proud of them. They are my sharpest critics and my most loyal supporters. I love them with all my heart.

My children have taught me an invaluable lesson about the labour law. For example, when they were little and squabbling, I tried to use "Getting to Yes" and mediation techniques with them. I tried to teach them to listen to each other respectfully and to develop ways to cooperate, rather than fight. This worked sometimes – until one of them said, with disdain; "We know what's going on. You want us to figure out what to do ourselves because you're too lazy to think of the solution yourself". Therein, my friends, from the mouth of babes, I learned the parties' perception of mediators!

Let me now focus on what it means to be an arbitrator. Think about the enormous power given to arbitrators by legislation and under Collective Agreements. For example;

- The power to reinstate, interpret and apply statutes, and the Charter.
- The power to uphold, modify or void workplace policies.
- The power to set terms and conditions of employment for an entire workforce, against the will of management and against the needs of the employees!

The list goes on and on. This daunting power cannot be taken lightly.

Yet who are we?

- Arbitration is a completely unregulated profession – my manicurist is regulated, I am not!
- There is no governing body to sanction arbitrators when our decisions are late, or not even issued. The only real sanction is that the word spreads fast and you stop appointing us.
- Our decisions are final and binding and therefore very hard to overturn.

This huge amount of autonomy and authority comes from appointments based on your TRUST that we will approach your disputes with integrity, honesty and understanding of your issues and we offer unique perspective and skills.

That was recognized by the Supreme Court in The Retired Judges case²:

RETIRED JUDGES

V,

LABOUR ARBITRATORS

² C.U.P.E. v. Ontario (Minister of Labour), 2003 SCC 29 (CanLII), [2003] 1 SCR 539, <<https://canlii.ca/t/1g5m4>>.



The Supreme Court ordered that the Minister of Labour could only appointment people for public sector interest disputes who were on the list of approved arbitrators. The Court said that the “***integrity of the labour relations system***” is based on arbitrators’ ability to be:

**Independent,
Impartial,
Have labour relations expertise, and
Maintain recognized acceptability to both management and labour.**

Those are the foundations of an arbitrator’s career and the key factors that the parties have a right to expect of an arbitrator,

INDEPENDENCE

It means having no dependence on labour, management, or any government. If we feel any pressure to conform to a government’s political whims, how can we possibly be trusted to adjudicate in the public sector – where most of our work currently arises?

Independence also means that each case must be decided on the basis of the evidence, the collective agreement, and the law - nothing else – not the name of the law firm, not the lawyer, not the union or the size of the employer, or whether they might be able offer more work.

IMPARTIALITY

My father taught me that it takes a lifetime to build a reputation and a moment to lose it.

Impartiality has to be proven and maintained - for each case, each time we start a hearing and during every minute of every hearing or mediation and throughout our professional life. Even to this day, I take a big breath before every hearing and remind myself that I have to gain and maintain the trust of everyone involved if I have a hope of doing my job properly.

LABOUR RELATIONS EXPERTISE

Few arbitrators have actually walked in the shoes of the parties.

I think of Francis Bairstow who was one of Canada's first female labour arbitrators. During her career she took time out to take a job on an aircraft factory floor in order to understand workplace realities, from a first-hand perspective. I'm not suggesting that all arbitrators have to do that. But successful arbitrators must understand the realities of a unionized workplace.

John West keeps trying to tell me that "management have feelings". Howard Goldblatt keeps telling me that unions really want to help employers succeed. I take both of their claims with a grain of salt. But I do keep them in mind because "labour relations expertise" means being able to understand what triggers a dispute and the ability to be sensitive to the implications of what each decision might be. It also includes knowing both **how** and **when** to mediate.

GENERAL ACCEPTABILITY BY BOTH LABOUR AND MANAGEMENT

Arbitrators have to recognize that "acceptance" is fragile. An arbitrator can be "in vogue" one year with some clients, and on their 'veto list' in other years. So "general acceptance" is all we can hope to expect.

So here we are in 2023.

Some people are saying that Artificial Intelligence (AI) will soon put arbitrators out of business and that I should retire before it is too late. I don't believe AI can replace us. While it is often easy to figure out the "right" or "legal" answer to a grievance, there is no formula for resolving labour disputes when personalities, internal politics and interpersonal/political interests are in play or at stake.

However, now that Artificial Intelligence and computer-generated imagery have merged to create Avatars, I'm considering creating a Paula Knopf Avatar that is programmed to deliver all my phrases, and/or regular words of wisdom and directions that I use to mediate or run a hearing. I would program my Avatar to know how to ask the right questions to begin each session and deal with any eventualities. I could program my Avatar to use my voice and make me look taller and younger! I could program my Avatar to play calming music when counsel get out of control! If I could produce and market this Paula Knopf Avatar, it could fund my retirement!

However, what my Avatar could NOT do is understand the subtleties of a workplace or allow for the parties to resolve disputes in ways that will be accepted and endure. For

example, I once settled a case by asking management counsel who clearly had a winning case, the simple question, 'What happens if you win?' He thought for a moment and said; "Oh Shit". That changed the arbitration into a mediation that solved the problem rather than created a winner. Winning a case may cause more problems in the workplace than it may solve. So, Avatars are not the answer to my retirement funding or for your labour relations problems.

This leads me to the fact that you need more arbitrators. You should not be waiting months or even years to start hearings with people like me. Our profession does not reflect the constituencies we serve. This is a problem. I have perceived the frustrations of grievors and witnesses who feel that they are not being understood. It is important that the pool of arbitrators becomes more reflective of society and more in tune with the people who we adjudicate. So, it is important to give new people a chance. Otherwise, this excellent system and the profession will falter.

We now have a new Arbitrator Development Program in progress in Ontario. I urge you to support it. There are six fine professionals, some of whom are giving up their successful and secure careers to serve you:

Buky Adeoye, Sarah Atkinson, Kumail Karimjee, Archana Mathew, Heather Ann McConnell and Sara Slinn

Give them a chance, just like you gave to Jane Devlin and me. As they prove their worth, spread the news. That is how an arbitration career evolves! A good reputation can spread quickly when it is earned!

Please now allow me to take this opportunity to talk to you about what it means to embark on this profession. While people think being an arbitrator is an ideal job, and I am one of them, there are also some significantly difficult aspects to being an arbitrator. My mother was right about the fact that a career would make my life more fulfilled. But make no mistake, being an arbitrator is not easy. Kermit the Frog sang "It's not easy being Green". It's not easy being neutral. It is also not an easy retirement scheme – as many of you have discovered.



- Being an arbitrator can be lonely
- There is absolutely no security
- It can be Dangerous – I've received threats to my family and myself – I had to have the Emergency Task Force at one hearing and police protection around my home. I am not the only arbitrator to have experienced that.
- Making and writing decisions can be painstaking and sometimes painful.
- The disputes are often emotionally draining – peoples' livelihoods and reputations are at stake. Traumas are laid bare. The financial viability of an enterprise may be jeopardized by our decisions.
- Since we are sometimes the last beacon of hope for a discharged employees, they and their families can be devastated by our decisions.
- Your children and partners may rightfully wonder why you spend too much time with other peoples' problems, instead of paying enough attention to them.
- Given our power and the stakes involved, the Parties have every right to judge our judgement, so we are being judged by you constantly.
- Some mistakes cannot be forgiven or forgotten, such as being overly late or long in issuing decisions or even failing to issue awards.
- Some awards will be perceived as wrong and won't be forgiven, but may be forgotten. I've often been vetoed by firms or clients, but after enough time, the parties returned to me
- Some things won't be forgiven and should not be forgiven, such as embarrassing your clients. For example, I issued a decision involving Port Weller Dry Docks in the early 1980s and spelled their name on the cover page as "Port Weller Dry Cocks". I do not expect forgiveness. I am sure that company did not come here tonight to applaud me!

So, to the new crop of arbitrators, embark on this career, being brave and being aware of what awaits you. And always get a good proof-reader!

Now , let me talk about my passion for being a mentor.



Life has taught me that everything we do is like a kiss. You only get out of a kiss what you put into it. The same is true of our profession.

I love teaching and take a selfish pride in seeing the successes of people I've mentored, taught or who simply asked for help. I have not done this alone. Numerous advocates and arbitrators have assisted me in my teaching and the programs I have run. I am grateful to you all.

I am particularly proud of the Arbitrator Development Programs I had the honour to direct. The hallmark of those programs was that while the Ministry of Labour supported those Programs and placed those who completed them on the Minister's List of approved arbitrators, there was never any interference about who was selected to participate. That is a model that must be protected.

I've been praised for mentoring women. I've always promoted women with talent and their successes have proven that they make an invaluable contribution to labour law in this country. They could do a lot more if the Parties would start agreeing to appoint more women to hear interest disputes – that would be a positive development!

I have never thought of myself as mentoring women more than men. Perhaps it appears that way because women have reached out to me more often than the men. Men rarely do ask for directions, whether driving or during the development of their careers!

To be honest, it has been a challenge to be busy professional and a good mother. My work has taken time out of my family life. One of my girls may tell you that because of my work, I was never at home. Another may tell you that I was home too much. The third may tell you that even when I was at home, I was too busy writing or on the phone to be of much use to them. It broke my heart when one of my daughters who had chicken pox told me that when she grew up, she wanted to be someone who could stay home with her children when they were sick.

Yet, despite of my shortcomings and life's challenges, my daughters survived, and my family has thrived! In the grand scheme of things, *Parry Sound* and my arbitration decisions are not my legacy. My children and the people who I've mentored will be my proud legacy!

People keep asking me when I'm going to retire. I'm not there yet. However, I'm beginning to see retirement on the horizon – as I am now realizing there is joy to be found outside of work. So, I want to share my retirement fantasy with you.

Since I believe that the parties never read anything more than the first and last pages of our awards, (unless you are junior counsel or articling students), I have considered the possibility of writing my final decision as follows:

Page One: This is a discharge/job posting/contract interpretation/ case – etc etc.

Last Page: Having considered the evidence, the arbitral law, the applicable statutes, and the able submissions that were made on behalf of the Parties, I must conclude that the grievance is allowed/dismissed

Pages between One and the End: This will be science fiction or politically correct soft porn!

I will do this to see if anyone even notices. If you see or notice this kind of an award from me, you will know it was my last one. In the meantime, I am still working. But please start using the new arbitrators so that they can take my place!

Finally, let me give a profound thank you to everyone in this room for coming here tonight, for your friendship, support and for trusting me for all these years.

- Thank you