With thanks ...

2016 MidWinter Committee

Scott A. Brittain, Chairman of the organizing committee

Justice M. Deborah Hackett  Judge Andrew Palmer  Lauren A. Cicin
Patrick J. O. Dunn  Douglas A. M. Evans, Q.C.  Terrence Hutchinson, Q.C.
Lisa A. Keenan  Jill M. Kneeh  Matthew R. Letson
Brenda J. Lutz, Q.C.  Nadia M. MacPhee  Brian E. Maude
Carley J. Parish  Robert G. Vincent, Q.C.  James A. Whelly

In appreciation of the participation of PD speakers and chairs, the CBA NB will make a donation to the Law for the Future Fund.
Social Program

Please indicate your attendance on the registration form.

The Annual MidWinter Meeting is recognized as a great opportunity to network while enjoying a wide variety of educational, cultural and social activities. Here are just a few of the scheduled events:

**Thursday, February 4th, 2016**

3:30 pm  *Sections, Conferences & Forums Meeting*
Some sections, conferences and forums will be hosting business meetings. These meetings will provide an opportunity for section members to come together, share ideas and collaborate for the coming year. The particulars will be made available when details are confirmed.

5:00 pm – 7:00 pm  *Opening Reception*
The Opening Reception will be held at the Saint John Ale House. Attorney General, Serge Roussel, will bring greetings. Enjoy some of New Brunswick’s finest delicacies and spirits.

**Friday, February 5th, 2016**

6:30 pm  *President’s Reception*
Meet with your colleagues over a drink and hors d’oeuvres while enjoying the smooth sounds of Phil Dwyer. Phil Dwyer is a 2nd year law student at UNB (and CBA member). Prior to embarking upon the study of law he enjoyed a successful 30 year career in the music world. For his achievements in music he has been recognized with many industry awards (i.e. multiple Juno awards) and was recently appointed an Honorary Fellow of the Royal Conservatory of Music, and a Member of the Order of Canada.

*Admission is by ticket.*

7:00 pm  *President’s Dinner*
Join your host, President Ann Whiteway Brown, Q.C., for a special evening in the Marco Polo Room at the Saint John Trade & Convention Center. After dinner, laugh along with British comedian and now New Brunswick’s own James Mullinger. We are delighted to present this hilarious British funnyman to hear him talk about why he left England, how he is adapting to life in Atlantic Canada and why he loves it here so much. Since moving to Canada last year James Mullinger has been nominated for a Canadian Comedy Award for Best Live Solo Show and a Just For Laughs Award for Best Comedy Show.

*Admission is by ticket.*

9:30 pm  *Late Night Party*
Don’t want the night to end? Then keep it going by attending the Late Night Party at the York Bistro & Pub in the Hilton Hotel. Enjoy a dynamic live performance from John and Lisa McLaggan of Tomato/Tomato. This quirky twosome features John on vocals and guitar and Lisa on vocals, washboard, bass drum, and tambourine. It’s not unusual for her to be doing all four things at once!

**BUSINESS MEETINGS**
Thursday February 4, 2016

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<tr>
<th>Time</th>
<th>Meeting Type</th>
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<td>1:00 – 5:00</td>
<td>Insurance Management Committee</td>
<td>Admiral’s Landing Boardroom</td>
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<td>10:00 – 3:00</td>
<td>CBANB Branch Council Meeting</td>
<td>Kennebecasis 1 &amp; 2</td>
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<td>1:00 – 5:00</td>
<td>Registration Opens</td>
<td>Saint John Trade &amp; Convention Centre</td>
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<td>3:00 - 5:00</td>
<td>PD Committee Meeting</td>
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<td>12:00 – 5:00</td>
<td>Law Society of NB Council Meeting</td>
<td>Saint John Public Library, Multifunctional Room</td>
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PROGRAM AT A GLANCE

Friday February 5, 2016

7:30  BREAKFAST
Marco Polo Room

Sponsored by: Brenton-Kean

9:00  Professional Development
(FRENCH)
Incivility and Overzealousness in Dealings with the Court and Between Lawyers

The New Landscape for Searches, Cell Phones, Electronic Data and How to Structure a Challenge

E-Discovery Essentials

(SIMULTANEOUS INTERPRETATION)
Aboriginal Law: Historical Perspective

10:15 HEALTH BREAK
Marco Polo Room

10:30  Professional Development
(FRENCH)
The New Landscape for Searches, Cell Phones, Electronic Data and How to Structure a Challenge

Court Appointed Expert Witnesses

Changes to Financial and Consumer Services Legislation

(SIMULTANEOUS INTERPRETATION)
Working for and with First Nations on business and commercial endeavours; Getting to know what you don’t know

12:00  LUNCH & AGM
Marco Polo Room

Sponsored by: canty lutz delaquis grant

1:30  Professional Development
(FRENCH)
Labour & Employment: Absenteeism

Trusts & Tax Tips

Disclosure of Documents in Civil Proceedings

(SIMULTANEOUS INTERPRETATION)
Youth Criminal Justice

2:45  HEALTH BREAK
Marco Polo Room

3:00  Professional Development
(FRENCH)
Establishing Work-life Integration

Judicial intervention in the context of Wills & Estate Law

Establishing Work-life Integration

(SIMULTANEOUS INTERPRETATION)
Practical Administrative Law

6:30  PRESIDENT’S RECEPTION
Trade & Convention Centre
Marco Polo Room

Sponsored by: McInnes Cooper

7:00  PRESIDENT’S DINNER
Marco Polo Room
Trade & Convention Centre

Sponsored by: Cox & Palmer

The difference is a great relationship

coxandpalmerlaw.com @coxandpalmer
## PROGRAM AT A GLANCE

**Saturday February 6, 2016**

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<th>Session</th>
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<td>Mergers and Acquisition Transactions</td>
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*This does NOT qualify for MCPD credits*
### EDUCATION SESSIONS

**9:00 - 10:15**

**FRENCH**

**In civility and Overzealousness in Dealings with the Court and Between Lawyers**

The duty of civility in the practice of law can conflict with the duty of zealous representation of clients. Therefore, it can be a challenge to distinguish acceptable passionate representation from behaviours that would bring the administration of justice into dispute. The Groia matter recently established criteria to determine when overzealousness in advocacy and incivility rises to the level of professional misconduct. This session will focus on the Groia case as well as other examples of hostile courtroom behaviour and behaviour between lawyers that can lead to disciplinary sanctions.

**Chair:** Marylène Pilote, Q.C., Pilote Morin & Moreau, Edmundston

**Speaker:** Lucie LaBoissonnière, McInnes Cooper, Moncton

**The New Landscape for Searches: Cell Phones, Electronic Data and How to Structure a Challenge**

This session will survey the recent changes under Bill C-13, *R v. Spencer, R v. Vu and R v. Fearon*, how to properly structure a Garofoli application and disclosure requests.

**Chair:** Jill M. Knee, Office of the Attorney General, Saint John

**Speakers:** The Honourable Andrew Palmer, Judge of the Provincial Court of New Brunswick, Saint John; Jill M. Knee, Office of the Attorney General, Saint John; Karen Lee, Office of the Attorney General, Fredericton

**E-Discovery Essentials**

This panel will discuss the various stages of e-discovery, practice tips, relevant case law, and the applicable *Rules of Court*. Whether you are asking: “what is e-discovery” or you’re an experienced litigator, this program has something for you.

**Chair:** Ryan Burgoyne, Cox & Palmer, Fredericton

**Speakers:** Ryan Burgoyne, Cox & Palmer, Fredericton; Philippe M. Frenette, Law Society of New Brunswick, Fredericton; Mathieu Picard, Fidelis Law Droit Inc., Dieppe; Sirpal K. Randhawa, Day & Ross Inc, Hartland

**SI**

**Aboriginal Law: Historical Perspective**

This session will focus on the history of the development of the law with respect to Aboriginal title. It will follow the relationship between the arrival of the first Europeans to the present and compare/contrast the nature of Aboriginal title between western and eastern Canada. This session is intended to give attendees a historical overview which should assist in understanding the current issues which have been the focus of significant litigation.

**Chair:** Catherine A. Lahey Q.C., Stewart McKelvey, Saint John

**Speakers:** William E. Gould, Office of the Attorney General, Fredericton; The Honourable Graydon A. Nicholas, Chair in Native Studies, St. Thomas University, former Lieutenant Governor of New Brunswick and retired Judge of the Provincial Court of New Brunswick, Fredericton

### Health Break

**10:30 - 12:00**

**FRENCH**

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**Chair:** Karen Lee, Office of the Attorney General, Fredericton

**Speakers:** Karen Lee, Office of the Attorney General, Fredericton; Lucie N. Mathurin, Office of the Attorney General, Saint John

**Court Appointed Expert Witnesses**

This two-part session will commence with a presentation from Glenn Anderson, Q.C. respecting the growing movement toward court-appointed expert witnesses and the pros and cons of this shift in direction. The second part will focus on the basis upon which a court may, within the existing framework, appoint an expert. The discussion will centre on a business dispute involving the appointment of a forensic investigator and a business valuator, which will highlight and contrast the methodologies to be used by each expert and will include an overview of the applicable professional and ethical standards for each said expert.

**Chair:** The Honourable William T. Grant, Court of Queen’s Bench of New Brunswick, Saint John

**Speakers:** Glenn R. Anderson, Q.C., Nova Scotia Department of Justice, Halifax and author of Expert Evidence; Jack M. Blackier, FCA, Partner, Cox & Palmer, Saint John; Paul Bradley, CA, CBV, Partner, Deloitte, Halifax

**Changes to Financial and Consumer Services Legislation**

A New Sheriff in Town: this session will survey the changes to the compliance, investigation and enforcement regime respecting financial and consumer services legislation.

**Chair:** Erin M. Toole, Financial and Consumer Services Commission, Saint John

**Speaker:** Brian E. Maude, Financial and Consumer Services Commission, Saint John

**SI**

**Working for and with First Nations on Business and Commercial Endeavours; Getting to Know What You Don’t Know.**

This session will provide practical advice with respect to advising and working with First Nation communities and entities on business and commercial matters. Topics will include the perspectives of First Nations in working with and negotiating with third party lenders and developers; Authority of Band Councils to execute agreements; Employment and human resource considerations for First Nation employers; Challenges and opportunities in reaching and implementing joint-venture and benefit agreements between First Nation communities and resource developers; And mechanisms and issues relating to obtaining and perfecting security interests from First Nation borrowers.

**Chair:** Jeffery Callaghan, McInnes Cooper, Fredericton

**Speakers:** Julie A. Abouchar, Wilms & Shier, Toronto; Chief Patricia Bernard, Madawaska Maliseet First Nation; Michael J. Connors, McInnes Cooper, Fredericton; Brian Hebert, McKiggan Hebert Lawyers, Halifax
### EDUCATION SESSIONS 1:30 - 2:45

**(FRENCH)**

**Absenteeism in the Workplace**  
Ten Rules to Follow when considering the duty to accommodate absenteeism.  
**Chair:** Brian E. Maude, Financial and Consumer Services Commission, Saint John  
**Speaker:** Timothy R. Bell, Stewart McKelvey, Moncton

**Trusts & Tax Tips**  
Trusts – What use are they now? Tax tips everyone should know.  
**Chair:** James A. Whelly, Whelly & Company Barristers & Solicitors, Saint John  
**Speakers:** Glenn Beers, CA, Beers Neal LLP, Saint John; Christopher C. Neal, CA, Beers Neal LLP, Saint John

**Disclosure of Documents in Civil Proceedings**  
This session will cover the following topics: Fishing Expedition or Related to a Matter in Issue? When will Bifurcation be Required and Liability Established Prior to Production of Certain Documents?, The Concept of Proportionality in Disclosure of Documents  
**Chair:** Nadia MacPhee, Brenton Kean, Saint John  
**Speakers:** George A. McAllister, Q.C., George A. McAllister, P.C., Fredericton; Justin Robichaud, Fidelis Law Droit Inc., Dieppe; Matthew R. Letson, Lawson Creamer, Saint John

**(SI)**  
**Youth Criminal Justice**  
This session will survey the implications of incarceration for young offenders under the Youth Criminal Justice Act and provide insight into the principles of sentencing and the ramifications it has for young offenders.  
**Chair:** Lisa A. Keenan, Brenton Kean, Saint John  
**Speakers:** The Honourable Alfred Brien, Judge of the Provincial Court of New Brunswick, Saint John; Normand J. Bossé, Q.C., Child and Youth Advocate for New Brunswick, Fredericton; Chris Ryan, Office of the Attorney General, Saint John

### Health Break

### EDUCATION SESSIONS 3:00 - 4:30

**(FRENCH)**

**Establishing Work-life Integration for Lawyers**  
Many of us feel overwhelmed by competing work and family demands. This session helps participants identify their key work-life stressors, clarify their values and develop skills and strategies to effectively prioritize their time and energy.  
**Chair:** Member of the Lawyer’s Assistance Program  
**Speaker:** To be confirmed

**Judicial Intervention in the Context of Wills & Estate Law**  
This session will provide an overview of recent examples of judicial intervention in the wills and estate law context and the practical ramifications of such decisions on wills and estate law practitioners and litigators.  
**Chair:** Lauren A. Cicin, Canty Lutz Delaquis Grant, Saint John  
**Speakers:** The Honourable William T. Grant, Justice of the Court of Queen’s Bench of New Brunswick, Saint John; Adel Gönczi, McInnes Cooper, Moncton; Matthew M. Tweedie, Cox & Palmer, Fredericton

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**Chair:** Member of the Lawyer’s Assistance Program  
**Speaker:** To be confirmed

**(SI)**

**Practical Administrative Law**  
Chair: Matthew R. Letson, Lawson Creamer, Saint John

**Judicial Review Toolkit:** This presentation will take you through the entire judicial review process, from analyzing the tribunal decision for error, to effectively drafting the application and brief, to making effective oral arguments.  
**Speaker:** Sara Blake, Counsel, Crown Law Office - Civil, Ministry of the Attorney General, Toronto

**Deference in a Nutshell:** This presentation by-passes the formal tenets of the deference doctrine and focuses on the practical realities of deciding whether review of an administrative decision must be conducted on the deferential standard of reasonableness, including addressing what moves a tribunal decision from the category of reasonableness to unreasonableness and how a reasonableness review differs from a correctness review.  
**Speaker:** The Honourable Joseph T. Robertson, Q.C., Jurist-in-Residence, UNB Law School, retired Justice of the Federal Court of Appeal and Court of Appeal of New Brunswick, Fredericton
### EDUCATION SESSIONS  
9:00 - 10:15

**NB Family Law; The Various Practices (Rule 81, Triage in Moncton)**

This session will provide an overview of family law procedures in various jurisdictions throughout the Province and will also explore the topic of retiring from family law practice.  
**Chair:** J. Nathalie Thibault, KV Collaborative Law, Quispamsis  
**Speakers:** The Honourable Marie-Claude Blais, Justice of the Court of Queen’s Bench of New Brunswick, Saint John; Marie-Claude Bélanger-Richard, Q.C., Stewart McKelvey, Moncton


This presentation addresses the practical implications of a Supreme Court decision that Professor John McCamus described as marking an “important milestone in the development of the Canadian common law of contract.” The presentation will explain why the Supreme Court’s decision is as important for what was not formally decided and that the concept of “good faith performance” has modest role to play in contract law: filling in contractual gaps.  
**Chair:** Scott A. Brittain, City Solicitor’s Office, Saint John  
**Speakers:** The Honourable Joseph T. Robertson, Q.C., Jurist-in-Residence, UNB Law School, retired Justice of the Federal Court of Appeal and Court of Appeal of New Brunswick, Fredericton

**Dealing with Social Media in a Unionized Workplace**

The pervasiveness of social media presents many issues in unionized workplaces, from inappropriate posts by unionized employees to using social media for union organizing to the impact of social media on the collective bargaining process. The speakers will explore these and other topics in this area, touching on disciplinary issues, social media policies and best management and union practices.  
**Chair:** George P.L. Filliter, Q.C., Chairman, New Brunswick Labour and Employment Board, Fredericton  
**Speakers:** Jamie C. Eddy, Cox & Palmer, Fredericton; James F. LeMesurier, Q.C., Stewart McKelvey, Saint John; David A. Mombourquette, Pink Larkin, Fredericton

**Emerging Civil Litigation Topics**

This session will address a number of topics of interest to litigators, including Summary Judgment in New Brunswick post - *Hryniak v Mauldin*, [2014] 1 SCR 98, converting actions to and from Small Claims and Rule 79, provisions that extend the limitation period under the *Limitation of Actions Act*, settlement privilege and tips for dealing with self-represented litigants.  
**Chair:** Nadia MacPhee, Brenton Kean, Saint John  
**Speakers:** The Honourable J.-C. Marc Richard, Justice of the Court of Appeal of New Brunswick, Fredericton; Nathalie Bourque, Bingham Law, Moncton; Shivani Chopra, McInnes Cooper, Fredericton; Brian P. Perry, McInnes Cooper, Fredericton; Donald V. Keenan, Brenton Kean, Saint John

**The Injunction: Current Status**

The injunction proceeding is an extraordinary remedy emanating from the Equity Courts. It is particularly malleable and can be adapted to a host of situations. This remedy, framed by the Judicature Act and the Rules of Procedure, bolstered by copious jurisprudence, is due for a stock-taking. What can it be combined with, what conditions must be in place to obtain it, and what future does it have in law given the reform of the Rules of Procedure? A broad overview is on the agenda for this French-language session.  
**Chair:** Michel Boudreau, Carlyt Lutz Delaquis Grant, Saint John  
**Speaker:** Basile Chiasson, Q.C., Chiasson & Roy, Bathurst

**Hot Topics in Employment Law**

This session will cover a wide-range of hot topics in employment law, including the following:  
- Reflections on the law of constructive dismissal following the Supreme Court’s decision in *Potter v. NBLASC*  
- Enforceability of Termination Provisions and Restrictive Covenants  
- The WHSCC Appeals Tribunal – legislative changes and new structure  
**Chair:** Scott A. Brittain, City Solicitor’s Office, Saint John  
**Speakers:** Trisha Gallant, Cox & Palmer, Saint John; Jane E. MacEachern, Cox & Palmer, Saint John; Kelly T. VanBuskirk, Q.C., Lawson Creamer, Saint John

**The Recent BCA Amendments**

This session provides an overview of proposed amendments to the Business Corporations Act, discusses the rationale for the key changes to the Act, and provides insight into the practical impact on corporate law practice associated with the proposed amendments.  
**Chair:** Terrence W. Hutchinson, Q.C., McInnes Cooper, Saint John  
**Speakers:** Jeffrey A. Hoyt, McInnes Cooper, Saint John; Paul Smith, Stewart McKelvey, Saint John

**Settlement Conferences in Family Law and the Division of Pensions**

This session will offer an in-depth look at the advantages and disadvantages of having Settlement Conferences and what is needed to have a successful Settlement Conference, including a look at the division of pensions in the family law context.  
**Chair:** David M. Lutz, Q.C., Lutz Longstaff Parish, Hampton  
**Speakers:** The Honourable M. Deborah Hackett, Justice of the Court of Queen's Bench of New Brunswick, Saint John; Carley J. Parish, Lutz Longstaff Parish, Hampton

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**Settlement Conferences in Family Law and the Division of Pensions**

This session will offer an in-depth look at the advantages and disadvantages of having Settlement Conferences and what is needed to have a successful Settlement Conference, including a look at the division of pensions in the family law context.  
**Chair:** David M. Lutz, Q.C., Lutz Longstaff Parish, Hampton  
**Speakers:** The Honourable M. Deborah Hackett, Justice of the Court of Queen’s Bench of New Brunswick, Saint John; Carley J. Parish, Lutz Longstaff Parish, Hampton
**EDUCATION SESSIONS**

### (FRENCH)
#### Mergers and Acquisition Transactions
This session offers everything you need to know about mergers and acquisition transactions, including: Preparing for the Deal, Confidentiality Agreements and Letters of Intent, structuring the Deal, and Closing and Post Closing Logistics
**Chair:** Denise LeBlanc, Q.C., McInnes Cooper, Moncton  
**Speakers:** Denise LeBlanc, Q.C., McInnes Cooper, Moncton; Kelsey D. Bingham, Bingham Law, Moncton; Luc Esliger, Stewart McKelvey, Moncton; Isabelle Moreau, Cox & Palmer, Moncton

#### Debt, Bankruptcy and Family Law
This session addresses the role that debt plays in family law, primarily in the settling of a separation and ensuing matrimonial dispute.
**Chair:** Jacqueline M. Boucher, Mosher Chedore, Saint John  
**Speakers:** Robert A. (Bob) Klotz, Klotz Associates, Toronto

#### Small Claims not Small Law
A discussion of the scope and complexity of cases seen under the Small Claims Act as well as best practices and tips from an Adjudicator  
**Chair:** Brian E. Maude, Financial and Consumer Services Commission, Saint John  
**Speaker:** To be confirmed

#### (SI) PUBLIC FORUM
##### Reforming the Red Chamber - the Constitutional, Policy and Political Dimensions of Senate Reform in Canada
For years, the topic of Senate Reform has generated considerable constitutional, policy and political debate across Canada. The institution, however, remains largely unchanged and calls for reform have continued to grow in light of recent controversies and challenges. This session will explore the constitutional parameters for reforming the chamber of "sober second thought", including the 2014 decision of the Supreme Court of Canada in *Reference re Senate Reform*, which will form the basis for a discussion on reworking the Red Chamber (or dismantling it altogether). What can be done to reform the Senate within the existing constitutional framework? What other options exist and how might they be brought forward to achieve Senate Reform?  
**Chair:** Lisa A. Keenan, Brenton Kean, Saint John  
**Speakers:** The Honourable Dr. Noël A. Kinsella, PC, retired Senator (1990-2014) and longest serving Speaker of the Senate of Canada (2006-2014), Fredericton; Dr. Donald Desserud, Professor, Faculty of Arts, University of Prince Edward Island, Charlottetown; Dr. Kate Glover, Assistant Professor, Faculty of Law, University of Western Ontario, London; Dr. Howard A. Kislowicz, Assistant Professor, Faculty of Law, University of New Brunswick, Fredericton; Aaron Wudrick, Federal Director, Canadian Taxpayers Federation, Ottawa

### Health Break

**EDUCATION SESSIONS**

### (FRENCH)
#### Damage Awards and Managing Client Expectations
Recent damage awards from a plaintiff and defendant’s perspective and tips on how to manage client’s expectations  
**Chair:** Nathalie L. Godbout, Lawson Creamer, Saint John  
**Speakers:** Jean-Pierre G. LeBlanc, Bossé Viola LeBlanc, Moncton; Charles A. LeBlond, Q.C., Stewart McKelvey, Moncton; J. Marc Richard, Cox Palmer, Fredericton

#### Mediation in the Human Rights Context and Beyond
A look at mediation and ADR dealing with children, Human Rights Commission, and Family Law in general.  
**Chair:** Carley J. Parish, Lutz Longstaff Parish, Saint John  
**Speakers:** Sheila J. Cameron, Q.C., Actus Law, Moncton; Sarina McKinnon, NB Human Rights Commission, Fredericton; Brenda G. Noble, Q.C., Cox & Palmer, Saint John

#### Crowdfunding
Is your client’s company ready to be kick-started? How to best advise clients on preparing for equity crowdfunding.  
**Chair:** Christopher J. Marr, Stewart McKelvey, Saint John  
**Speakers:** Jeffrey A. Hoyt, McInnes Cooper, Saint John; Neal L. D. Leard, Stewart McKelvey, Saint John

### (SI) PUBLIC FORUM
##### Reforming the Red Chamber - the Constitutional, Policy and Political Dimensions of Senate Reform in Canada
Continued...