



The Institute  
of Law Clerks  
of Ontario

# LAW CLERKS' REVIEW

## ILCO'S STUDENTS TRIUMPH

### This issue:

#### Page 3

Message from  
New President

#### Page 4, 6 to 9

Student Awards

#### Page 5

ILCO's 22<sup>nd</sup> Annual  
Conference

#### Page 10

Litigation: E-Discovery  
*U.S. Judge Approves Use of  
Predictive Coding  
But Plaintiffs' Objections  
Put Decision on Hold*  
by Sam Hill

#### Page 12

Litigation: E-Discovery  
*Early Case  
Assessment Tools &  
the Empowerment of  
Law Clerks*  
by Jennifer Johnson

#### Page 14

Commercial Leases:  
*the Gross Lease vs  
the Net Lease*  
by Amanda McMullan

#### Page 18

Winter Social 2012

#### Page 20

Litigation: E-Discovery  
Fellowship Course  
by Susan Nickle

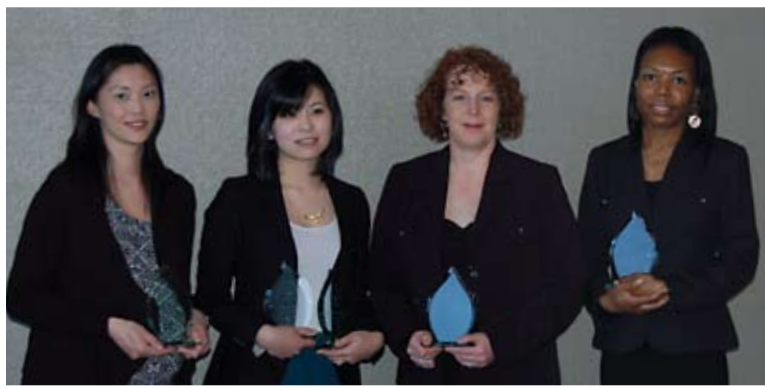
Getting involved in a new career or going back to school for further development is no easy task. However, year after year ILCO has the pleasure of meeting its students that accomplish just that.

Currently, there are two levels of education offered by ILCO, Associate and Fellowship.

On an annual basis, ILCO acknowledges students from across the country that have attained the highest marks in each of ILCO's provincial associate courses (Real Estate, Estates, Corporate and Litigation) and the ILCO fellowship courses. We also take the opportunity to recognize students throughout the academic year who achieved an honors standing of 80% or higher in each of the 4 associate courses.

This year's Annual Education Awards ceremony was held on February 25, 2012, at the world renowned Park Hyatt Hotel, Toronto. The ceremony focused on each student's achievements in the 2010-2011 academic year.

The event was attended by an enthusiastic group of scholars who during the presentations reminded us of their commitment to moving forward in their legal career through higher education. Suzanne Van Slightenhorst, ILCO Director, was the keynote speaker at the event, who presented the group with an insightful



From left to right: Donna Cho, Victor Award for Excellence in Corporate Law; May Ng, Balfour Award for Excellence in Real Estate Law and James Bristow Award for Excellence in Litigation Law; Kathy Freure, David Boakes Award for Excellence in Estates Law; Sancia Thompson, Torys LLP Fellowship Award (Absent: Sangeeta Madan, David Boakes Award for Excellence in Estates Law)

presentation on the "Roles and Responsibilities of Law Clerks in Today's Office".

Following the presentation, the group dined in style to a lavish lunch generously sponsored by Emond Montgomery, Publisher of textbooks used in ILCO courses, and Cartel Inc., Legal Recruiter.

As ILCO continues to commemorate the award recipients each year, we understand the importance of higher education and training. We recognize that each student registered in an ILCO program creates momentum for themselves, reaching one milestone cycles into fueling energy to reach another milestone, these milestones cycle

to create an occasion to celebrate personal success!

On behalf of ILCO we applaud the 2010-2011 award recipients and wish you all the best in your future endeavors.

We would like to express our gratitude to our sponsors, Emond Montgomery, and Cartel Inc., who contributed in making this event a success.

We look forward to commemorating next year's event.

Michele Mendes  
Co-Chair Education

Jacqueline Cummins  
Co-Chair Education

Student Awards continued on pages 4, 6 to 9

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## MESSAGE FROM NEW PRESIDENT



From left: Lisa Matchim, ILCO Past President; Rose Kottis, ILCO President

It is an honour to be elected as President of ILCO. One of my objectives for 2012 as your President is to work with our Board of Directors to provide you, the members of ILCO, with excellent educational programs addressing the topics of importance to you, and offer you opportunities to further develop your personal network of esteemed colleagues. In order for law clerks to continue making significant contributions to our law firms, the onus is on us to ensure our knowledge and skills are as current as possible. ILCO strives to provide you the networking and educational sessions to assist you in this regard. In order for you to make this a successful year, I encourage you to attend as many sessions and networking opportunities as possible.

To our outgoing President, Lisa Matchim, I would like to thank you for your hard work and dedication to ILCO over the past 10 years. Your dedication is to be admired, and it was a privilege to work with you.

**Rose Kottis**  
ILCO President

## MESSAGE FROM PAST PRESIDENT

After having been on the board of directors for over ten years and President for the past three years, the decision to step down was a difficult one only because I enjoyed my time assisting with helping ILCO to grow while still maintaining the integrity of the association for our members.

I have had the privilege of volunteering on the board of directors with many other members over the years and have enjoyed working with them.

Being involved with ILCO has also helped me to grow as well. Before I was on the board of directors, I was reluctant to speak in front of more than two people. I now have the

confidence to speak to a large room of people and not want to run away. The networking opportunities available to me over the years has also been invaluable in both my personal life and in my profession as a law clerk. I will continue to be involved with ILCO even though I am no longer on the board of directors.

Thank you to all of the directors, staff of ILCO and members of ILCO for your support during the time I was President and on the board of directors.

**Lisa Matchim**  
ILCO Past President

## FOLLOW ILCO ON SOCIAL NETWORK

ILCO now has a company profile page on **LinkedIn**. Simply click on "Search Companies" under the "Companies" tab and search for "Institute of Law Clerks of Ontario".

**Follow ILCO to connect with fellow law clerks!**



ILCO now has a page on **Facebook**. Search for the Official Facebook page "The Institute of Law Clerks of Ontario".

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## ILCO WEBCAST

**OUR FIRST WEBCAST!** A full day Advanced Corporate Law program was simultaneously webcast from ILCO's education centre on March 7th. Of the more than 120 attendees, nearly half participated by webcast. The feedback

has been wonderfully supportive and enthusiastic. The next simultaneous webcast session is a full day Family Law program on June 6, 2012 - have a look at [www.ilco.on.ca](http://www.ilco.on.ca).

# STUDENT AWARDS

## ASSOCIATE AWARDS

### REAL ESTATE **Balfour Award** Excellence in Real Estate (ILCO Member)

In 1971 David Boakes (founding member of ILCO) expressed a wish to donate an award for excellence in Real Estate. In honour of his father Balfour Boakes, it is given to the student (member of ILCO) who attains the highest mark on the Real Estate Provincial Examination.

**2011 Recipient:** **May Ng** (Self Study)



Balfour Award and  
James Bristow Award  
May Ng

### ESTATES **David Boakes Award** Excellence in Estates (ILCO Member)

Since 1995 ILCO donates an award for excellence in Estates. It is presented to the student (member of ILCO) who attains the highest mark on the Estates Provincial Examination. It is in recognition of David Boakes and all his dedication, hard work and assistance to ILCO.

**2011 Recipients (two):** **Kathy Freure** (Conestoga College), **Sangeeta Madan** (Sheridan College)



David Boakes Award  
Kathy Freure

### CORPORATE **Victor Award** Excellence in Corporate (ILCO Member)

In 1971 James Bristow (founding member of ILCO) expressed a wish to donate an award for excellence in Corporate. It is given to the student (member of ILCO) who attains the highest mark on the Corporate Provincial Examination and is given by James Bristow in honour of his father Victor Bristow.

**2011 Recipient:** **Donna Cho** (Seneca College)



Victor Award  
Donna Cho

### LITIGATION **James Bristow Award** Excellence in Litigation (ILCO Member)

ILCO has been donating an award for Excellence in Litigation since 1995. It is given to the student (member of ILCO) who attains the highest mark on the Litigation Provincial Examination. It is given in recognition of James V. Bristow and all his dedication, hard work and assistance to ILCO.

**2011 Recipients (two):** **May Ng** (Seneca College)

## FELLOWSHIP AWARD

### Tory LLP Fellowship Award Fellowship (ILCO Member)

Torys LLP has been donating this award since 1995 and it is presented to a member of ILCO who attains the highest mark in a Fellowship Examination.

**2011 Recipient:** **Sancia Thompson**



Tory LLP Fellowship Award  
Sancia Thompson

## HONOURS CERTIFICATES

These are presented to the students that achieve an honours standing (80% or higher) on each of the four (4) Provincial Examinations (Litigation, Corporate, Real Estate and Estates).

ILCO has been presenting the Honours Certificates since 2002.

**2011 Recipients (eight):**

**Donna Cho** (Seneca College)

**Wen Yan Li** (Humber College)

**Jinky Dominguez** (George Brown College)

**Kinnie Mok** (Seneca College)

**Juliet Fernandes** (Seneca College and Humber College)

**Lorraine Seale** (Sheridan College)

**Patricia Figliano** (Sheridan College)

**Debbie Taruffi-Nievera** (Durham College)



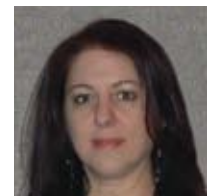
Donna Cho



Jinky Dominguez



Juliet Fernandes



Patricia Figliano



Wen Yan Li



Lorraine Seale



Debbie Taruffi-Nievera

## SEEING THE FOREST THROUGH THE TREES



### SEEING THE FOREST THROUGH THE TREES ILCO'S 22<sup>ND</sup> ANNUAL CONFERENCE

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This year's conference is in London, Ontario. We have engaged 3 keynote speakers to inspire and motivate you and 28 speakers in the various areas of law. As well, we have our annual golf tournament for those that want to start the conference playing on one of the best courses in Canada.

The ILCO annual conference is one of the only educational and networking event organized for law clerks in Ontario. Please visit our website at [www.ilco.on.ca](http://www.ilco.on.ca) to look at the conference brochure and print out the registration forms.

Hope to see all of you there this year!!

**Lisa Matchim**  
Conference Committee Chair

# STUDENT AWARDS

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## Balfour Award for Excellence in Real Estate Law and James Bristow Award for Excellence in Litigation Law

by May Ng, 2011 Recipient

*May Ng received 2 awards: the Balfour Award for Excellence in Real Estate Law through Self Study; and the James Bristow Award for Excellence in Litigation through studies at Seneca College. May's comments are below.*

### REAL ESTATE

To say I self-studied for the Real Estate exam is not quite the truth. I have been fortunate to have had a host of teachers and mentors who imparted knowledge, wisdom, and insight on the subject matter long before I undertook to study for the exam. Accordingly, I take this opportunity to express my thanks to Larry H. Ross, Yaosca Navas, and Alison J. Berne for having prepared me well for the exam and for a career in real estate law.

### LITIGATION

In preparation for the Litigation Exam, I took the opportunity to sharpen and perfect some very crucial skills needed to succeed in a career in law – it was not easy. The exam was a veritable test of how quickly and how accurately one could apply their research, analytical thinking, and problem-solving skills. These, I realize now more than ever, are the key ingredients to building a successful career in law. I am glad I took the course and wrote the exam for I know I will now have all the right tools to take on any challenge in my career.

---

## Victor Award for Excellence in Corporate Law and Honours Certificate

by Donna Cho, 2011 Recipient

I encourage everyone to set goals and achieve them. After obtaining my degree at U of T, I worked with the Ministry of the Environment for a few years before I decided to make a career change. I always had an interest in the legal field, so I pursued the Legal Assistant Certificate at Humber College and completed it with honours. My first experience in the legal field was at a small firm. I was taught a lot about the industry, which fostered my interest in continuing to improve myself in this field. When I later moved to a mid-size firm, I set my sights on completing my Associate level courses with ILCO. Returning to school again was not easy. I knew it was going to be a challenge, but I also saw the reward.

Completing the Associate level courses with honours was the goal I set for myself. There was such a tremendous sense of pride and accomplishment when I achieved that goal. When I found out that I also won the Victor Award for excellence in Corporate Law, I was so pleasantly surprised. It was nice to be recognized for my efforts. My goals, of course, were not achieved on my own. I would like to thank all my mentors, who believed in me, provided me with guidance, and gave me great learning opportunities over the years. I also wish to thank my husband for his ongoing support every step of way.

---

## David Boakes Award for Excellence in Estates Law

by Kathy Freure, 2011 Recipient

For many years I contemplated taking the ILCO associate level courses to refresh and update my skills and am so happy that I finally decided to seize the opportunity. With the support of my family and employer the countless hours of classes and studying have paid off. I was surprised and delighted to receive the David Boakes Award for Excellence in Estates Law. The estates course was my final of the four

associate level courses. It is gratifying and rewarding to know that I have successfully achieved the ILCO Associate Level Certificate as well as the David Boakes Award. Although it has been many years since I have worked in estates it is an area of law that I thoroughly enjoy. I look forward to continuing my legal career as a Law Clerk and my membership with The Institute of Law Clerks.

---

## Torys LLP Fellowship Award

by Sancia Thompson, 2011 Recipient

Over the years I've attended various seminars and conferences that either touched on electronic discovery or focused entirely on electronic discovery and litigation support, but I knew of nothing that was as comprehensive as this course. So when I learned in early 2010 that this course existed I watched like a hawk for an offering that September. When I learned there'd be no offering for 2010 I was disappointed, but when I discovered it would be available in 2011 I knew I couldn't let it pass me!

I found taking the course to be a worthwhile experience. I'd just finished my first full-fledged e-discovery project and

was eager to confirm what I'd done right and learn what I could have done differently. I learned about resources and approaches and techniques I hadn't to that point even heard of. I took a keen interest in the course, particularly because it was relevant to what I do from day-to-day and I knew it would prepare me for even more challenging projects that would be coming my way. I'd highly recommend taking this course. The major assignments in particular were great practice and I think reinforced all that we were learning very effectively."



From left to right, Honours Certificate Recipients: Donna Cho, Jinky Dominguez, Debbie Taruffi-Nievera, Lorraine Seale, Patricia Figliano, Juliet Fernandes and Wen Yan Li

## Honours Certificate

by Wen Yan Li, 2011 Recipient

The world has changed in many ways. For better or worse, the practice of law has not been excluded. In addition to the general tasks traditionally undertaken by law clerks, they are now expected to contribute their study and research ability to address the plethora of issues raised in the course of practice. They must possess advanced organizational and analytical skills, as well as good judgement and technical, legal knowledge, in order to support the lawyers for whom they work and, ultimately, their clients. To add value to the firm, a law clerk must also continuously update and expand her knowledge.

Let's be candid. It is not easy to juggle a busy work schedule, heavy workload, responsibility to my family, and the demands of studying the Law Clerk Program. I am pleased and relieved to have succeeded in balancing these demanding challenges. It gives me great intellectual, professional and spiritual satisfaction to have managed all of this and to have been recognized by the ILCO with the Certificate of Honours. Hard work does pay off!

However, it is not only I that has made this happen.

I would like to thank my employer Tanzola & Sorbara Professional Corporation who provides me with the opportunity to grow professionally and make possible the work I am doing.

I would also like to thank my mentor and boss, Gordon R. McClellan, a veteran lawyer who has been practising law for more than 30 years. Not only does he support and encourage me to expand and deepen my knowledge, he himself sets a good example by never ceasing to learn. This has helped inspire me to overcome the doubts and obstacles which I've encountered in the journey that has brought me to this award.

Finally, I would like to thank ILCO for providing the Law Clerk Program. It is a program that demands great effort and total commitment. The achievement of having passed and exceeded the expectation of the program makes all the hard-work worthwhile.

## Honours Certificate

by Lorraine Seale, 2011 Recipient

As the recipient of a 2011 Honours Certificate from the Institute of Law Clerks of Ontario for achieving Honours Standing on each of the four associate courses, I would like everyone to know how proud I was to receive such an honour at the Awards Ceremony held on February 25, 2012 at the Park Hyatt Hotel, Toronto, Ontario.

After spending more than thirty years in the legal field in the Province of Quebec, my family and I moved to the

Toronto area in 2006. Before we moved, however, I investigated how I could improve my legal skills for use in Ontario, knowing full well that Quebec and Ontario were different in terms of their laws. I googled "law courses in Ontario" and that is how I found the Institute of Law Clerks of Ontario. I decided that I wanted to pursue further education to perfect my skills in common law and I enrolled in the ILCO Law Clerk Certification program at Sheridan College. The ILCO program has been an extremely good program for me.

*Continued on page 8*

# STUDENT AWARDS

In Quebec, legal processes are based on the Civil Code of Quebec (derived from France's Napoleonic Code) as opposed to Ontario's Rules of Civil Procedure. Although some processes are fairly similar enough, there are significant differences, especially in the litigation and real estate processes.

The knowledge and skills that I came away with at the end of the four courses in the ILCO program have given me a greater confidence in my role as a law clerk. It gives me great satisfaction and a personal joy to go to work knowing without a doubt that I am fully comfortable with the provisions of common law. Of course, even though I have completed the ILCO associate program, learning never stops and I grow in my career every day.

I would like to thank my wonderful husband and two children for their never wavering support while I took the

ILCO courses. They were always patient and understanding with the time I spent away from them to concentrate on my studies. They encouraged me and gave me confidence. I would also like to thank all the instructors for their diligence in answering all my questions, for listening to my comments, for their work in preparing the respective course materials and for their unwavering guidance. Lastly, but certainly not least in any way, I would like to thank the ILCO individuals and the Board of Directors. At the Awards Ceremony, I could clearly see that they are an amazing and dedicated group of people who endlessly give their time and energy to legal education. I will always hold each of them in the highest esteem. I am very pleased to tell people (in Ontario and in Quebec) that I am a graduate of the Institute of Law Clerks of Ontario associate program.

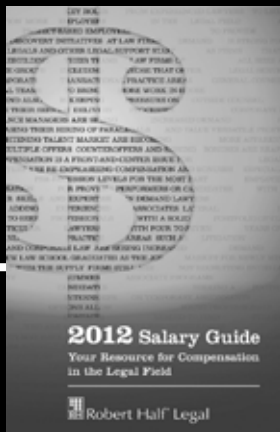
## Honours Certificate

by Debbie Taruffi-Nievera, 2011 Recipient

When the thought of going back to school first entered my mind, I gave a great amount of thought to what program I wanted to take. Being a stay at home mom meant that whatever I decided would not only impact me, but the lives of my family as well. The four Associate Level ILCO

courses provided the best option I could ever have hoped for. The fact that these courses were provided in an online environment meant that I could do my reading and assignments when I wanted to. I could still learn and not leave my family for hours at a time every week to attend a

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physical classroom. Although I was nervous about the lack of learning in a traditional classroom, I soon realized that learning online is great and convenient.

My reasons for taking the ILCO courses were simply to stay current in a field that I have always loved. The courses provided me with a thorough knowledge and detailed understanding of the laws, rules and procedures associated

with the four legal areas that ILCO focuses on. I look forward to taking what I have learned and putting it into practice as I prepare to re-enter the workforce. Not only did I succeed in completing the ILCO courses, but I also taught my children an invaluable lesson – that learning never ends. Not only does it never end, but in the end it can be quite gratifying!

## Honours Certificate

by Jinky Dominguez, 2011 Recipient

A few years ago, I became interested in taking my first ILCO course with a simple goal of increasing my knowledge of the four core areas of law. After many months spent attending night classes, studying lecture notes, grasping pertinent information and procedures from legal textbooks and four provincial exams later, I have acquired not only knowledge but also made new friends and met course instructors who generously shared helpful insights and their own practical experience in the legal field. It is a learning experience that is rewarding and has equipped me with skills that are valuable in the legal profession. Receiving an honours certificate gives me a great sense of achievement and reinforces my belief that real and perceived challenges can be overcome by a good strategy anchored on hard work and meticulous time management.

... and a few words from Jinky Dominguez' teenage daughter, Georgia Dominguez:

I am extremely proud of how much my mother has accomplished. I, as a spectator and a daughter, find the experience as very inspiring. I became part of her support system and watched the time and effort that were devoted towards an important goal. It is a truly moving experience that allowed me to look up to such kind of commitment. There is nothing more thrilling than watching the expression of success light up the mood of those receiving the awards like my mother. It speaks of the hard work and dedication they put into their learning and the wonderful opportunities the future holds for them."



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## U.S. JUDGE APPROVES USE OF PREDICTIVE CODING BUT PLAINTIFFS' OBJECTIONS PUT DECISION ON HOLD

by Sam Hill

E-discovery software vendors breathed a huge sigh of relief last month when Magistrate Judge Andrew Peck, in *Da Silva Moore v. Publicis Groupe*, No. 11 Civ. 1279, 2012 U.S. Dist. LEXIS 23350 (S.D.N.Y. Feb. 24, 2012), expressly approved the use of predictive coding in connection with ESI review and production.

The endorsement, while a major event, was inevitable. That it would be rendered by Judge Peck was serendipity. He has been an active proponent of the use of technology in e-discovery and already had endorsed predictive coding in an article he wrote last October. He even told defense counsel: "You must have died and thought you went to Heaven when this case was referred to me."

Although Judge Peck ruled that predictive coding is a reasonable and defensible alternative to human linear review, he was careful to note that he had not ordered its use; rather, the parties had approved it but simply could not agree on appropriate review and production protocols.

Judge Peck acknowledged that "the tougher question" is whether a party should be ordered to use predictive coding. He appears ready to issue that order, however, as he established several factors relevant to whether its use should be endorsed in a given case: (1) Whether the parties agree to use it; (2) the amount of ESI at issue (in *Da Silva*, three million emails, making it far too expensive to require that lawyers do the initial culling); (3) its superiority to available alternatives; (4) the need for cost effectiveness and proportionality; and, (5) a transparent review and production process.

So how will *Da Silva* impact the e-discovery landscape?

First, obviously, advocates of predictive coding can now promote a judicially-approved technology.

Second, it provides a template for reasonable and defensible search and review protocols, which was the primary issue at bar.

Third, the opinion reflects the e-discovery community's desire to streamline a cumbersome and expensive process while recognizing you can't throw out the baby with the bathwater. As Judge Peck cautioned, predictive coding is no "magic, Staples-Easy-Button, solution appropriate for all cases." Rather:

[C]omputer-assisted review is an available tool and should be seriously considered for use in large-data-volume cases where it may save the producing party (or both parties) significant amounts of legal fees in document review. ...As with keywords or any other technological solution to ediscovery, counsel must design an appropriate process, including use of available technology, with appropriate quality control testing[.]

*Da Silva* does not address the reluctance of many lawyers to embrace the technology. Some want human accountability; others aren't convinced the overall process is efficient or cost-effective, as review projects using predictive coding still require human linear review. Further, while humans may misinterpret as many or more documents as the software, their mistakes can be remedied to a large degree with a disciplined review process, focused reviewers and strict quality control.

The influence of Judge Peck's decision on Canadian judges and practitioners won't be known immediately. His decision isn't binding on Canadian courts, of course, but will carry significant persuasive weight as he's a recognized e-discovery authority and well known through his writing, speaking and involvement in organizations like the Sedona Conference. Moreover, e-discovery matters often are cross-jurisdictional in scope and courts here and elsewhere haven't hesitated to consider and even apply e-discovery principles from other countries. Given the fast-evolving e-discovery jurisprudence and the current integrated efforts of North American e-discovery experts, we could see reliance on *Da Silva* in every Canadian e-discovery opinion involving predictive coding for years to come.

*Continued on page 11*

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Continued from page 10

It should be noted, however, that Judge Peck's e-discovery rulings in *Da Silva* are up in the air for the moment. Presiding District Judge Andrew Carter recently granted the plaintiffs' request to file objections to Judge Peck's written opinion, which they claim "expanded on the reasoning for the ESI rulings he had made from the bench" on February 8, including by citing articles the parties had not addressed previously and making "observations" about the plaintiffs' objections to the bench opinion (in which they complain that Judge Peck ordered predictive coding to be "the sole determinate" of what e-discovery should be produced, adopted without modification the defendants' e-discovery protocol, condoned the use of a specific vendor's software without establishing its reliability and failed to address the lack of evidence supporting the defendants' review methodology).

At the end of the day, containing e-discovery costs and simplifying review and production projects requires advance planning, including establishing documented and judicially defensible ESI preservation and retention policies, identification and collection strategies and review and production processes. Whatever the outcome of the plaintiffs' objections in *Da Silva*, it seems clear that predictive coding, when employed as part of such an integrated plan, could be a valuable tool in reducing the economic pain of e-discovery.

Sam Hill is Managing Director of CounselQuest, a Toronto-based company that staffs and manages document collection and review projects and provides related services in connection with e-discovery and due diligence.

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## EARLY CASE ASSESSMENT TOOLS & THE EMPOWERMENT OF LAW CLERKS

Traditional approaches to eDiscovery are being eclipsed by Early Case Assessment (ECA) tools which empower legal teams to quickly process, access and assess targeted case data. ECA tools provide more timely access to key information while eliminating irrelevant and redundant data, thereby enhancing the expediency and quality of the review process. ECA tools are helping to make document-by-document review a thing of the past and, at the same time, shifting the focus of clerks from an administrative function to more of a strategic one.

Strategic use of ECA tools can help validate case strategy and, if it doesn't locate the smoking gun, will at least help you prioritize key documents for review, map out realistic timelines and determine the resources required. In addition, many corporations are investing in ECA tools to help assess the potential costs of a case and to reduce the subsequent costs of the review process.

TOOLS	DESCRIPTION	BENEFIT
FILE PROPERTY ANALYSIS	Highlights key information related to document properties such as: date range, file type and file size	Enables you to quarantine files that are e.g., too large to review in a standard way, funnel specific document types (e.g., xls) into separate buckets for special review, etc.
FILTERS	Zooms in on and/or eliminate groups of documents by clicking on auto-populated "filters", e.g., domain name, date, custodian, doctype, etc.	Allows you to zero in on key "categories" of evidence, remove "junk" from the review process and instills confidence in the key custodians, terms and date ranges being used in the Discovery Plan
DE-DUPLICATION	Enables you to identify and/or remove exact duplicates from review	Streamlines process for more cost-effective and consistent results
DUPLICATION	Built-in "grouping" of similar documents	Expedites review of similar documents and promotes consistent treatment by reviewers
DISCUSSION THREADS	Groups emails by discussion thread rather than treating each email segment as a separate document	Expedites review of email correspondence and promotes consistent treatment by reviewers
CORRESPONDENCE PATTERNS	Identifies key participants of correspondence.	Enables you to zoom in on key individuals to quarantine potentially privileged information, zone in on key players - and perhaps detect someone who would have gone undetected, otherwise.
TRANSPARENT SEARCH CAPABILITIES	Allows you to view the "index" of document content	Provides a method for "informed searching" rather than shooting arrows in the dark
ANALYTICAL TOOLS	Detects predominant concepts/topics that show up within a database or subset of data.	Determining who knew what and when in the early stages of a case can be a game changer

*Continued on page 13*

Continued from page 12

In some cases, ECA processing fees can seem cost-prohibitive at first glance. It is important to weigh out the value of any ingestion fees and to calculate the impact on overall review costs, while weighing out the benefits of almost immediate insight into your data. Furthermore, any preliminary review that can be performed by a law clerk is going to save the client costs while helping the firm maintain control over the review process.

There are a number of technology options (and price points) available in the marketplace, and, as usual, there is no one-size-fits-all solution. Some are hefty investments to purchase in the hundreds of thousands, others are free. If you are considering using ECA on your next case, it is best to customize a solution that is in line with your evidence and budget requirements. And, whatever investment you make, whether it be time, money or your reputation, it is usually best to choose a state-of-the-art tool and to engage professional expertise as there are a number of nuances to the application of technology to a case, workflows being a key consideration.

Having said that, one of the key benefits of ECA technology is its intuitive nature. End users can be up and running in a matter of minutes and those who thrive as “power users” on the team are well-positioned to master the key elements, thereby enabling them to play a “case management” role on the team.

In some applications, it is possible to perform a complete review and produce directly from the ECA platform. It is also common practice for key data sets to be exported – either to a more robust review platform or to the preferred in-house application. One of the key benefits is the ability to seamlessly preserve any work product from the ECA stage and carry it forward through the discovery process.

Technology is having a tremendous impact on the discovery process and is empowering law clerks by automating routine tasks and freeing them up to contribute on a more strategic level. The impact of ECA tools on how legal teams operate provides us a glimpse of how the law clerk role will continue to evolve in the decade to come.

Jennifer Johnson, M.A.  
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## COMMERCIAL LEASES: THE GROSS LEASE vs THE NET LEASE

by Amanda McMullan

Understanding the difference between a gross lease and a net lease is crucial and particularly imperative when negotiating rent and comparing multiple premises. Yet, sometimes it seems like the terminology of “gross, net, net net, triple net”, can’t get any more confusing.

To help you out, here is a general guide to the difference between the gross lease and the net lease, including some variations in between.

First, in order to understand the difference between gross and net leases, it is important to know what common area maintenance (“CAM”) charges are. CAM charges are costs and fees incurred by the landlord to operate and maintain common areas shared by all the tenants, including lobbies, hallways, restrooms, and grounds. CAM will include, among other things, the tenant’s proportionate share of taxes, insurance, utilities, janitorial services, maintenance and repairs, snow removal, landscaping, and occasionally administrative charges, which can be as high as 15% of the CAM charges. Proportionate share is calculated by taking the square footage of the premises and dividing it by the square footage of the entire building.

### GROSS LEASE

A gross lease is the simplest kind of lease, as the rent quoted covers everything. It includes a base rent, taxes, insurance, and CAM charges. The Tenant will pay the same rent every month for the full term of the lease, and any increase in rates throughout the term will be absorbed by the landlord.

A common practice with a gross lease is for the tenant to pay a base rent plus the utilities (electricity, gas, sewer/water) for which it specifically consumes. This type of lease is typically referred to as a “semi@gross” lease.

### NET LEASE

At Net leases are basically the opposite of gross leases, and there are three different kinds of net leases: net, net net, and triple net.

Ordinarily, in a net lease the tenant will pay a base rent, plus taxes; a net net lease is a base rent, plus taxes, and insurance; and a triple net lease means the tenant pays a base rent, plus taxes, insurance, and its proportionate share of CAM. In essence, the tenant pays for all costs associated with the premises. Additional rent for a triple net lease can sometimes run almost as much per square foot as base rent, so it is critical to ensure you know what you are agreeing to when negotiating a lease.

Of course, there are always many different adaptations on a net lease, each including a number of variations of the charges included or excluded.

It is essential to ensure you review what expenditures are covered by the additional rent, and confirm that all operating costs are clearly listed in the lease.

Your knowledge ahead of time about the differences between gross and net leases and a clear understanding of their distinctness may help you to negotiate a better rate for the space you have chosen.

Remember, it is always a good idea to review any contract with an experienced attorney to avoid surprises and feel confident in signing the lease.

Amanda McMullan is a Law Clerk graduate from Seneca College. She has negotiated over 6,000,000 sf of office, retail and industrial space for a total value of approximately \$120,000,000 and has assisted in the disposition of over \$200,000,000 in sales, including in the \$150,000,000 sale of a national retailer’s former distribution centre. She currently manages over 240 facilities nationwide with more than 10,500,000 sf of leased space for Purolator Inc. Amanda can be reached at [amcmullan@hotmail.ca](mailto:amcmullan@hotmail.ca).



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A lovely evening was had by all who attended the recent ILCO Winter Social at Brassaii. Delicious treats to please the palate, cocktails and wine flowing to take the edge off our day at the office, the ambience was warm and comfortable and all of our "Friends" both new and old, as always, wonderful.

An absolute pleasure for ESC to be sponsoring alongside ILCO, DoProcess and Title Plus, we were delighted to make our 4<sup>th</sup> annual appearance on this fine evening.

Thank you to all who attended and as always we look forward to seeing you again.

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## DO PROCESS SOFTWARE

Do Process has been a supporter of ILCO for many years and we always jump at the chance to participate in the events they host.

This past

February we were fortunate to attend the ILCO Winter Social for the second time.

It was an amazing evening that gave attendee's the

chance to relax and mingle with other professionals in their industry. It was clear everyone was eager to get to know their colleagues and learn more about one another's day to day. Since Do Process has been in the legal real estate industry for almost 24 yrs we are grateful to see continued enthusiasm among law clerks and lawyers who are eager to learn and continue improving their businesses. We appreciate the opportunity ILCO's events provide us to speak with users of our products, such as The Conveyancer, to gain a better understanding of how our software has benefited their practice. There is nothing more valuable then being able to meet our supporters and offer our thanks face to face! We sincerely look forward to the next ILCO event!



## PROPORTIONALITY AND LEGAL CULTURE: A VIEW FROM THE BENCH AN UPDATE FROM THE E-DISCOVERY FELLOWSHIP COURSE

On March 21, 2012, ILCO's "e-Discovery Legal and Practical Principles" Fellowship Course welcomed a series of guest speakers to provide "A View From the Bench". Speakers included Mr. Justice Colin Campbell, Judge of the Superior Court of Justice Master Donald Short, Master of the Superior Court of Justice, Ms. Kelly Friedman, Chair of Sedona Canada Working Group 7, and Mr. Fraser Mann, technology lawyer from Miller Thomson. The session was open to all ILCO Fellowship students, past and present.

Structured as an interactive panel discussion, the session gave the clerks an opportunity to hear what is occurring in court and arbitration rooms with respect to e-discovery and technology issues.

The presentations were lively and provocative and often focused on proportionality, particularly in the context of "the standard case". The clerks benefitted from the panel's suggestions about developing proportionate, scalable discovery plans, and how to deal with opposing counsel reluctant to engage in "meet and confer" sessions. In 2012, it is not possible to avoid a consideration of potential sources of electronic information, no matter how small the case!

The strong theme of legal culture quickly emerged, specifically, the need for the legal culture to adapt to the new world of escalating legal fees in general and discovery costs in particular. Some of the cultural changes are reflected in new(er) guidelines and rules: narrowed tests for relevance, mandated discovery plans, meet and confer sessions, and expedited oral discoveries. The panelists agreed on a very interesting point: the overriding legal culture should be based on collaboration and cooperation. Simply put, the rules should be a last resort, not the starting point.

The need for alternate fees arrangements (flat or project-based fees versus the traditional hourly rate model) to ensure value for clients was also explored by several panel members. It is clear that legal culture must change to enable litigation to remain cost-effective and viable.

We sincerely thank the speakers for their significant and thought-provoking contributions to our Fellowship course.

Susan Nickle  
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*It is with deep sadness and sorrow that ILCO announces the sudden passing of Tracey Deley on January 24, 2012. Tracey is remembered by many colleagues in corporate law when she worked at Aikins McAulay & Thorvaldson in Winnipeg, Manitoba and from having attended many ILCO conferences. Below is a special tribute to Tracey.*

In the corporate law world, we have the privilege of working with many law clerks and paralegals across Canada. We value these opportunities to build business relationships and, at the same time, form friendships with our counterparts. The frequency of our interactions allows us to feel like we are speaking with old friends when we call each other on the phone or send emails. When we greet each other at conferences, it's often with hugs usually reserved for family. It's one of the benefits I personally take great pleasure in when it comes to my career.

To learn of Tracey's sudden passing was very shocking. As I write this, I am looking at a letter from her on my desk, dated just January 17th. I am tracing her signature with my finger and I can't believe she's gone. To me, Tracey was Manitoba. Period. In the beginning of our careers 20 years ago, I would remember her name before I remembered which firm she was with. Even now, she was simply "Tracey in Manitoba". Not Tracey at Aikins. Throughout the years, she was my "go to" person for anything in that province and I know many corporate paralegals across Canada would echo that sentiment. Indeed, in viewing the on-line condolences (website reference below), the tributes have been pouring in from across our nation from colleagues both near and far, current and retired and it fortifies what a tight community our paralegal world is.

Tracey attended several ILCO conferences and many of us had the pleasure of meeting her in person. She could be

described in countless ways – efficient, reliable, personable, dedicated, a pillar in the paralegal community, always a pleasure to deal with and a consummate professional, just to name a few. I know I speak for many when I say she will be deeply missed and Manitoba will never be the same without her.



Rest in peace Tracey, my colleague, my friend.

#### **Kim McCurdy**

Corporate Services Manager  
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*Upon receiving notice, ILCO would be pleased to publish a member tribute.*

## VOLUNTEER WITH ILCO

by Dina Diab

Volunteering with The Institute of Law Clerks of Ontario (ILCO) continues to provide me with opportunities for participation and access to the operations that produce meaningful events and sources of information for law clerks.

In October of last year, I joined the Institute as a member, and was welcomed into the Continuing Legal Education (CLE) committee, just one of the volunteer-based groups that helps breathe life into ILCO. Last week, on March 7th, the CLE committee hosted the Advanced Corporate Law Program. I had the pleasure of seeing, and actively being a part of, the result of committed individuals investing their time to instill growth in their professional community. After months of meetings, the hard work, and diligent planning of the CLE committee members had a chance to surface and shine. Ah, satisfaction. The event was an absolute success:

the speakers were informative, and the attendees were engaged; plus, the food was great.

The value, for me, was in witnessing the sense of community that is ILCO, giving me an opportunity to meet and mingle with like minded, goal oriented professionals. I have absolutely no reservations about encouraging other professionals in the field to commit their time for the same. Whether you are a senior law clerk looking to give back, or a clerk seeking mentorship, the Institute of Law Clerks fosters a sense of community that will inspire and develop.

As the CLE committee continues to meet and plan future events, I can be proud knowing I am contributing my skills, and offering my time to a community that successfully develops its members and encourages participation.

## CALENDAR OF EVENTS

DATE	EVENT
Wednesday, April 11 – Wednesday, June 27, 2012	eDiscovery – Advanced Theory & Practices for Litigation Support Professionals Fellowship Course
Monday, April 23, 2012	Estates & Corporate Exam Prep Session
Wednesday, May 9 – Saturday, May 12, 2012	ILCO's 22 <sup>nd</sup> Annual Conference – London, ON
Monday, May 14, 2012	Estates Exam Registration Deadline
Monday, June 4, 2012	Corporate Exam Registration Deadline
Tuesday, June 5, 2012	Provincial Estates Exam
Wednesday, June 6, 2012	Advanced Family Law Full Day Program
Thursday, June 14, 2012	ILCO's Open Door Session
Friday, June 15, 2012	Real Estate Exam Registration Deadline
Friday, June 22, 2012	Litigation Exam Registration Deadline
Tuesday, June 26, 2012	Provincial Corporate Exam
Saturday, July 7, 2012	Provincial Real Estate Exam
Saturday, July 14, 2012	Provincial Litigation Exam
Monday, October 15, 2012	Advanced Real Estate Full Day Program

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Information on current employment opportunities is available at the ILCO website ([www.ilco.on.ca](http://www.ilco.on.ca)) For information on placing an advertisement please contact Kerry Johnson at 416.214.6252 or by email to [kerry\\_johnson@ilco.on.ca](mailto:kerry_johnson@ilco.on.ca).

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