

## INDEX

1. Standards of Professional Practice
2. Committee News
3. Chair's Message
4. CAIRP News
5. CAIRP Events
6. Crossword
7. Education Update
8. CAIRP People

## CAIRP Standards of Professional Practice

By Paul M. Casey, CPA, CA, CIRP ('93)



Paul Casey

“The Association is committed to quality and professionalism in the practice of insolvency and expresses that commitment through the adoption of the Rules of Professional Conduct and these Standards of Professional Practice.”  
[Source: Introduction to Standards of Professional Practice, October 31, 1999]

In our second year, 1980-81, under the leadership of **President Keith Collins**, a Professional Conduct Committee was established and charged with developing a code of professional conduct and Standards of Practice. Our body of Standards has evolved to the current portfolio of 22, many with accompanying explanatory notes and templates. While our Standards have assisted our members in carrying out their responsibilities under both formal and advisory assignments for almost 30 years, the time has come to review and refresh them.

With the assistance of **Guylaine Houle, Jean-Daniel Breton, Yoine Goldstein, Stefano Damiani, Adam Fisher, Kim Burke,**

**Jennifer McCracken**, and additional contributors from the **New Members Committee** (apologies that I don't have room to name everyone), we have now developed a new set of Standards which will update and streamline these tools with the goals of making them more usable and consistent. Further, it is our intention to make the new Standards, once approved by members, available to the public.

In drafting the proposed Standards, we followed six general principles:

- » The previous convention for guidance for the exercise of professional judgement of “May”, “Should” and “Shall” has been simplified to “May” and “Should”. This amended guidance has been added to the Introduction to the Standards which eliminates the need to duplicate this methodology at the beginning of each Standard
- » Definitions for all Standards have been consolidated into a new Standard - Definitions. This avoids the duplication of definitions and ensures consistency throughout the Standards
- » Text and sections which simply repeated Bankruptcy and Insolvency Act or Companies' Creditors Arrangement Act statutory requirements and Rules, and Office of the Superintendent of Bankruptcy Directives have been removed
- » Similar Standards which were previously separated into BIA and CCAA documents, have been merged into a single Standard
- » Sample communication templates have been moved from specific Standards to a new standalone Section
- » Other amendments required to update specific Standards to current practice.

Following a final review by the Board and translation, it is our intention to make the proposed Standards available for member



review and consultation this spring. Subject to comments from members and articling associates, our goal is to present our new Standards, which will replace the existing Standards in their entirety, for approval at our Annual General Meeting in Whistler, B.C. on August 20, 2015.

Our Standards are important and relevant guidelines for us in meeting our statutory and other professional obligations. In a November 2014 decision of the Supreme Court of Nova Scotia (sent to me by one

of the above-named volunteers), the judge repeatedly referenced a CAIRP Standard in deciding on the “reasonableness” of a trustee’s disallowance of a pre-filing proof of claim. Both parties referred to the Standard in their submissions, which was described by the Judge as an industry “best practice”. This is a testament to the importance of our Standards.

I urge you to take the time to review the proposed Standards when they are released for consultation, and

especially those Standards that are most relevant to your practice. We need to hear from you to make these guidelines a relevant and helpful professional resource, and to ensure that CAIRP and its members continue to earn the highest degree of public trust.

Look for more on the new Standards at our cross-country Forums this spring.



## COMMITTEE NEWS

### New Members Committee Update

By Jennifer McCracken, New Members Committee Chair

The New Members Committee (NMC) convened a face-to-face meeting in October 2014 to discuss the committee’s objectives and action plan. Here are some of the initiatives planned by the committee:

- » Promote brand awareness and recognition through improved website content and provide support to CAIRP’s social media campaign and communications plan
- » Implement a Mentorship Program for articling students and oral board candidates
- » Organize a marketing event for new members who attend CAIRP’s 2015 Annual Conference

- » Promote the profession at insolvency and restructuring industry events
- » Ensure new member representation on CAIRP committees and task forces.

The NMC is currently developing a **Mentorship Program** for articling students and oral board candidates that will be administered by the committee. Stay tuned for further information about this exciting new program.

#### Professional Recognition

NMC representative **Allen Yao** attended a networking session at the **Chartered for Finance** conference in January, 2015, to

discuss CAIRP and the profession. The NMC is actively searching for similar opportunities to promote brand awareness and professional recognition at other similar types of events. We welcome suggestions from all members for events where the NMC could promote CAIRP.

In order for the NMC to keep achieving its objectives, assistance from new members that have joined the Association during the past five years would be greatly appreciated. If you are interested in getting involved with the NMC, please contact NMC’s Chair, Jennifer McCracken at [jmccracken@cvan.com](mailto:jmccracken@cvan.com).



### Intervention Committee Update

By Jean-Daniel Breton

The Intervention Committee usually meets through e-mail exchanges or conference calls, on an “as needed” basis. Since the Annual General Meeting, the Intervention Committee had exchanges on the 407 ETR case, for which the Committee had recommended intervention.

Unfortunately CAIRP’s request to be granted status as a participant in the proceedings before the Supreme Court of Canada was denied (As you will read on page 4 of this newsletter).

The Intervention Committee also had exchanges in connection with

intervention requests in two other cases. After review of the facts of the cases and the decisions, the Intervention Committee did not recommend an intervention in these two cases.



# CHAIR'S MESSAGE

By Paul Casey, CPA, CA, CIRP



Paul Casey

In 1985, Steven Spielberg and Robert Zemeckis took us on a big-screen adventure that saw teenager Marty McFly sent back 30 years in time. In the film, Marty (Canadian actor Michael J. Fox) must take critical steps to avoid getting trapped in the past.

As CAIRP begins 2015, our 36<sup>th</sup> (!) year, there is a strong parallel between our journey and young Marty's; our actions today will be critical to avoid getting trapped in our own past. Unlike Marty, we don't have access to a time-travelling, stainless steel DeLorean DMC-12 to facilitate our journey forward.

Fortunately, we do have some very far-sighted volunteers and staff who are looking to our future with the same vigor and sense of purpose as our predecessors. Our world changes daily and we are embracing this change. In our own "Future of the Industry" Panel at the 2013 Annual Conference, panelists gave examples of the changing nature of the Canadian business landscape, and commented on the need to differentiate ourselves.

CAIRP has a long and proud history. In 1979, sixteen concerned and forward-looking insolvency practitioners got together to create a new professional body, the Canadian Insolvency Association.

From our 1979 Letters Patent, the objective of this "new and progressive" body corporate was to:

- » Associate trustees licensed to practice under the Bankruptcy Act of Canada, and other persons involved in the practice of insolvency administration
- » To advance the practice of insolvency administration and the public interest related to it
- » To represent the views and common interests of members
- » To establish and promote professional standards of practice for members
- » To affiliate, associate or co-operate with any other body concerned with any aspect of insolvency administration.

Starting with a blank workbook, our founders immediately set to work on education, membership and standards.

At that time, there were no specialized courses on the practice of insolvency administration offered by the Institute of Chartered Accountants or the Provincial Law Societies to educate prospective members or provide continuing education opportunities for existing practitioners.

In our very first year as an association, seminars were organized and delivered to 585 attendees in five cities. In 1982, the Professional Development Committee was succeeded by the Continuing Education Committee which has continued to provide our excellent programming to members, students and the public through our cross-country Forums, Commercial Seminar, and Annual Conference. I encourage you to access [www.cairp.ca/events/cairp](http://www.cairp.ca/events/cairp) for dates and details for our 2015 offerings.

The inaugural Education Committee immediately established a three-year course of study and set examinations for articling members, with the first final examinations held in the summer of 1983.

Such was the credibility established by the fledgling CIA's education program that the Superintendent of Bankruptcy adopted our examination as a prerequisite to obtaining a trustee license.

Today's CIRP Qualification Program Committee has now successfully implemented new programming, training tools and our competency-based National Insolvency Examination. Later in this Newsletter, our CQP Chair and Director of Education report on recent efforts by the CQP Committee and related Committees and Board to continuously improve our qualification program and the resources available to candidates.

Fiscal 1981 also witnessed the establishment of our Professional Conduct Committee which, among other tasks, developed our code of conduct. Our CAIRP Rules of Professional Conduct and Interpretations were first enacted in 1981 and were last amended in 1997. These six principles and sixteen Rules have stood the test of time and continue to serve us well.

In addition to establishing our education and examination process to educate and admit new members, the CIA created a task force to develop our first practice standards in 1986, with the first four Standards being approved by members the following year. Our body of Standards has now evolved to 22 in number providing guidance to consumer and corporate practitioners in BIA, CCAA and other insolvency and restructuring mandates.

As you have just read, I am pleased to announce that this year, you will be introduced to an omnibus 'refresh' of our standards which will serve to update and streamline these tools, provide practice templates, and make our standards more user-friendly to members and the public. We look forward to hearing from you during our consultations, and at our Annual General Meeting in Whistler, BC this August to approve and adopt our new Standards.

Regular readers, or at least my mother, will have observed my propensity for quotes - I close my Message herein with two.

Firstly, English physicist Isaac Newton expresses academic modesty with his statement, "If I have seen farther than others, it is because I was standing on the shoulders of giants".

Our success as a recognized, influential, self-regulating professional body for over 35 years is due to the passion, commitment and foresight of our founders, and the thousands of volunteers who have given their time and energy over the years. Current and future members are indebted to them.

My second finishing quote is from Marty McFly himself and shares my confidence in our success for the coming year: "Time circuits on ... Flux Capacitor fluxing ...engine running ... All Right!"

Paul M. Casey, CPA, CA, CIRP ('93)

# The Canadian Insolvency Foundation: The Final Chapter

By Mark Yakabuski, CAIRP President and Chief Operating Officer



At the Special General Meeting of the **Canadian Insolvency Foundation (CIF)** held on November 11, 2014, members passed a special resolution to dissolve the Foundation. Industry Canada accepted the application to dissolve the Corporation and issued a Certificate of Dissolution for the CIF on November 28, 2014.

Pursuant to the dissolution plan, the CIF's assets have been transferred to a special reserve to be administered by CAIRP. The funds transferred

to CAIRP are earmarked for the exclusive purpose of supporting the *Lloyd Houlden Memorial Research Fellowship*. CAIRP is in the process of establishing an Advisory Committee, which will include practitioners from diverse backgrounds in the insolvency community, to guide future development of the fellowship program.

This important and difficult decision was the result of much deliberation, and included establishing a Task Force on the Future of the

CIF made up of prominent members of the trustee and legal community with a mandate to identify the best path forward for continuing the core activities of the CIF.

Under the new arrangement, the future of the CIF's most recognized asset, the *Lloyd Houlden Memorial Research Fellowship*, has been assured. We look forward to having many more academics and practitioners benefit from this continuing fellowship in the future.

We are confident that CAIRP is best-positioned to develop and promote the fellowship and ensure that the core activities of the CIF are continued in a sustainable form. Thank you to all CIF members and to the CIF Patrons' Circle for your generous support over the years.

## Supreme Court of Canada Denies CAIRP's Bid to Intervene

By Dennis Kish, BA, JD, CIRP, Farber Financial Group, Toronto, ON



The Supreme Court of Canada heard arguments in this matter in January 2015. Previously, the high Court denied motions by CAIRP to intervene in two appeals both related to the hot-button issue of whether government agencies may continue to refuse to issue licences to discharged bankrupts as a result of a dischargeable debt.

CAIRP was not a party to either appeal, but wished to intervene on behalf of its members and to support the OSB. The Supreme Court does not make public its reasons for dismissing motions to intervene, however, counsel to CAIRP surmised that the motions were dismissed because CAIRP's position was closely

aligned with that of the OSB, which is already a party in the Moore appeal and was a successful intervener in the Moloney appeal.

Motions to intervene in the Supreme Court are often made by outside parties who wish to provide information or arguments to the court that could be useful in making its decision.

The two appeals in question were made to the Supreme Court in 2014 and decisions are expected later this year.

The first is 407 ETR's appeal of a decision of the Ontario Court of Appeal (OCA), which ordered the Ministry of Transportation to issue licence plates to Matthew Moore, a discharged bankrupt, and declared his 407 ETR debt discharged.

The Ministry had previously refused to issue licence plates to debtors with 407 ETR debts, even after discharge. The OCA determined that the sole purpose behind denying the plates is to collect a

debt, which conflicts with the fresh start purpose of the *Bankruptcy and Insolvency Act* ("BIA").

The second appeal is the Attorney General's appeal of a decision by the Alberta Court of Appeal, which held that the province may not deny the issuance of a driver's licence to Joseph Moloney, a discharged bankrupt, as a result of a debt arising from a motor vehicle accident.

The court said the denial of driver's licences is not related to traffic safety and focused directly on debt recovery, which again is in conflict with the fresh start principle of the BIA.

Among the arguments that CAIRP had intended to make had we been permitted to intervene were that section 178(1) of the BIA is the exhaustive list of claims that Parliament intended to survive bankruptcy and that denial of licence plates and driver's licences

over dischargeable debts effectively frustrates the fresh start purpose of the BIA and prevents Parliament from fulfilling its intended policy.

The association also submitted that the Supreme Court's eventual decision will impact CAIRP members and their ability to adequately discharge some of their statutory obligations, including advising on the options available to financially distressed individuals with a reasonable degree of certainty of which debts will be discharged and which will not.

Mark Yakabuski, President and COO of CAIRP, suggested that this case could have far reaching effects beyond the issuance of drivers licences. It may also allow other professional associations and regulatory bodies to use the decision in the attempt to have fines, penalties and so forth, survive a bankruptcy.

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Rebuilding Success • Rétablir le succès

Canadian Association  
of Insolvency and  
Restructuring  
Professionals

Join us at CAIRP's 2015 events!

LEARN

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## STAYING THE COURSE

MARCH 31, 2015

Toronto

NETWORK

## WHAT YOU **NEED** TO **KNOW**

MAY 4-JUNE 15, 2015

Halifax • Vancouver  
Edmonton • Winnipeg  
Montreal • Toronto

## ANNUAL COMMERCIAL PROGRAM

LISTEN

## ANNUAL CONFERENCE

## ANNUAL INSOLVENCY FORUMS

## SOARING TO **NEW** HEIGHTS

AUGUST 20-22, 2015

Whistler

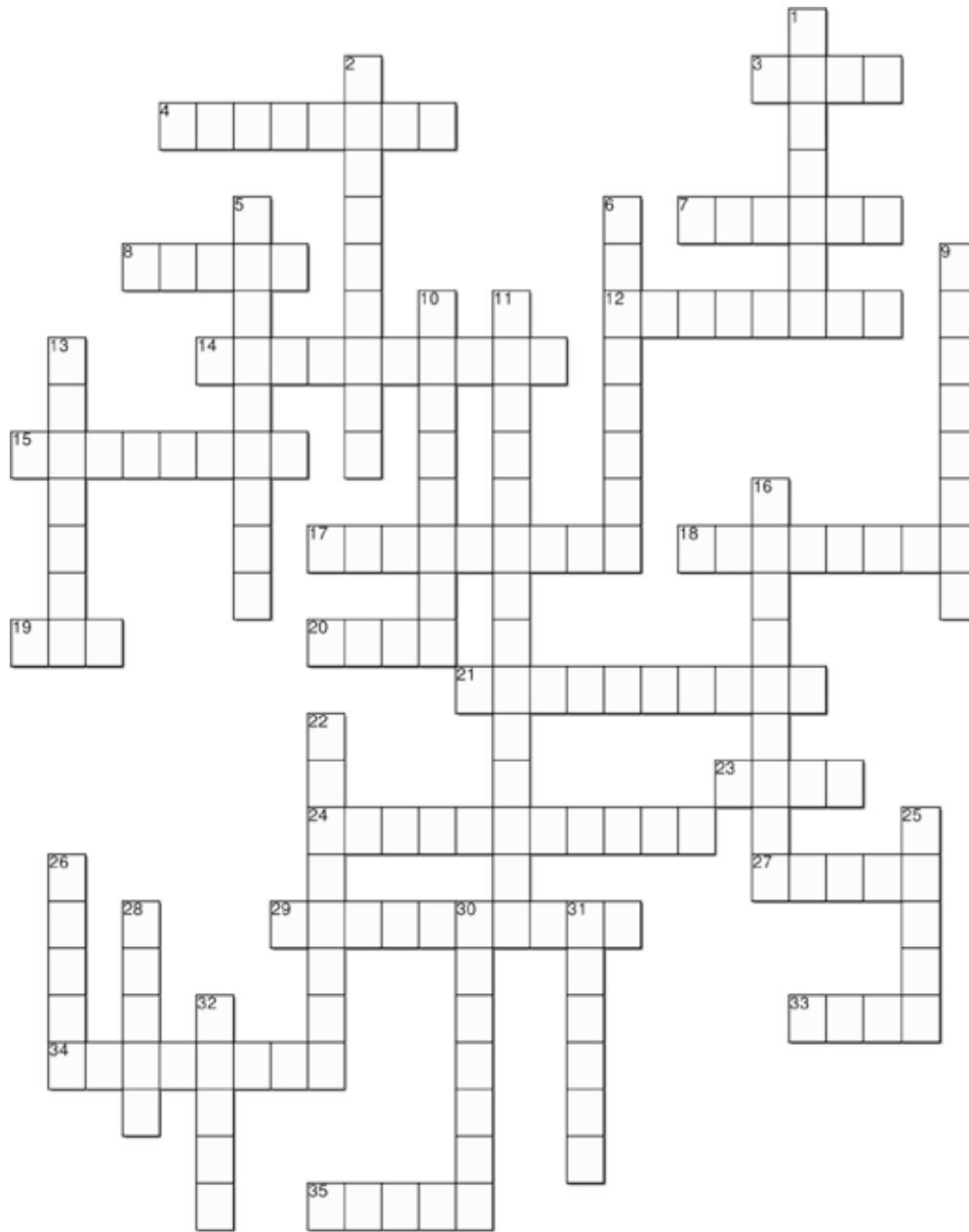
DEVELOP

CONNECT

VISIT [WWW.CAIRP.CA](http://WWW.CAIRP.CA) FOR MORE INFORMATION.



# CROSSWORD



## Across

3. Licensed Trustee in Insolvency and Restructuring's raison d'être
4. Court-ordered documentation for 28 Down
7. Expressing ones democratic right
8. Resources sacrificed; fixed or variable
12. Distribution to creditor or shareholder
14. S.96 transfers; also the current Rule 128
15. An alternative to bankruptcy; may include bending down on one knee.
17. Member of a Law Society
18. Implied covenant of honesty, fairness, proper intention (Latin, 2 wds)
19. Provincial statute to prevent disposition of assets to defeat creditors
20. Builders love having one
21. These transactions were replaced by 14 Across in 2009 BIA
23. Payment to 11 Down per Rule 123
24. Assisting and educating bankrupts
27. A right of ownership; vests in trustee per S.71; author's pride
29. A purpose of bankruptcy legislation (2 wds)
33. Used to fix banks, insurance and sometimes railway companies
34. An enhanced kind of 28 Down; sometimes super
35. Right to use without owning; often bi-weekly for 48 months

## Down

1. Our members provide the highest level of this
2. An official keeper of records
5. Critical professional reference; CAIRP has 22 of these
6. The disinterested settler of quarrels; 11 Down's Rule 105 designate
9. Purchaser of goods and services for own use
10. First introduced in 3000BC in Egypt; costs are subject to this
11. Our favourite regulator; also Principal Seymour's boss on the Simpsons
13. Debt owing after missing payments; S.136(1)(f) for landlords
16. Abolishment, cancellation of an event
22. Creditors holding this will use Part C of Form 31; Bieber employs a different kind
25. Employees may be partly protected by this
26. Committed to professionalism, trustworthiness and objectivity
28. Demand against the assets of a company
30. Law passed by legislative body; not a sculptured figure
31. A third graders' worst nightmare, to do with a book
32. Court-approved DIP Loans often do this to existing 22 Down

You can find the answers at [www.cairp.ca](http://www.cairp.ca)

# CAIRP Education Update

By Bea Casey, B.Sc., M.B.A., Director CAIRP Education Programs



The CQP Committee is continuing to deliver on all matters relating to the CAIRP competency-based CIRP Qualification Program.

Major projects that have occupied the Committee since the last Chair's Newsletter include:

- » Organising the 2014 CNIE Tutorial to prepare candidates for the CNIE
- » Administering the CNIE; managing the CNIE assessment process
- » Administering the fall CKE and the CKE assessment process
- » Continuing the work relating to the five-year review of the Memorandum of Understanding with the Office of the Superintendent of Bankruptcy
- » Continuing the review and development of course material, which is an ongoing, continuous project that aims to keep our material relevant and up to date.

The Committee works in collaboration with various subcommittees and task forces that contribute so significantly to the program. These groups include the Course Material Review Committee, the Core Knowledge Exam (CKE) Board, The Competency-based National Insolvency Exam (CNIE) Board, the Exam Oversight Committee, the Assignment Revision Task Force and the MOU Revision Task Force. As you can well imagine, this process takes an enormous amount of resources and volunteer time to keep all of the material relevant.

We would like to take this opportunity to thank all of the amazing volunteers who contribute hundreds of hours to these committees and task forces and whose work supports the high standards expected of CIRPs.

We would also like to extend a special word of thanks to the more than 40 assessors, including members of the CNIE Board and Exam Oversight Committee, who donated four intensive days to the assessment of the 2014 CNIE examinations. These individuals deserve commendation for the time and effort they devoted to ensuring a diligent, thorough and fair assessment process.

We sometimes overlook the significant contribution of employers to the CQP and to CAIRP. We express our gratitude to them for allowing and encouraging their staff to participate in the important work of the association. Without such support, the work of the CQP would certainly suffer.

## Continuing Education Programs



Since the fall of 2014, the CAIRP Continuing Education Program Committees, comprised of the Commercial Program Committee, the Insolvency and Restructuring Forums Committee and the Annual Conference Committee, have swung into action. This is an intense time of planning and organizing to make sure that everything is ready to provide high quality, high value-added sessions for members, articling associates and other insolvency professionals. Highlights for each of the programs follow.

The current credit environment and risk management will be in focus at the **Annual Commercial Insolvency and Restructuring Program**, to be held in Toronto on March 31. Stephen Hart, Chief Risk Officer at Scotiabank, and a diverse panel of lenders will

comment on the present health of credit markets and anticipated future challenges. The judiciary will also be well represented, with a panel session representing views from across the country. Our keynote speaker will be the **Hon. James M. Peck**, a former United States Bankruptcy Court Judge for the Southern District of New York who presided over the Lehman Chapter 11 case. Judge Peck will focus on cross-border issues.

In addition to the invaluable technical update and regional hot topic sessions, there will be diverse panel offerings at the May (and this year June) **Insolvency and Restructuring Forums**. Presenters will discuss insolvency from a lending perspective, retail insolvencies, key impacts on proofs of claims and disallowances arising out of recent court decisions, and the effect when a debtor dies in the middle of the administration of his insolvency. Participants will also be able to get an introduction to the proposed changes to the CAIRP Standards of Professional Practice.

The **2015 CAIRP Annual Conference**, CAIRP's flagship continuing education event, will be held in beautiful Whistler, B.C. Whistler's outstanding surroundings are a perfect spot to bring the family. Two fascinating keynote speakers will appeal to all attendees. In addition, the Committee is developing a number of other exciting sessions, notably on the City of Detroit bankruptcy, "Thoughts from the Bench," and updates on sales processes and consumer proposals, to name just a few.

We are excited about this year's continuing education events and look forward to the networking, professional development and discussions that they will encourage.

# CAIRP PEOPLE

## In Memoriam

**B**laine Hudson, a retired bankruptcy trustee, passed away on Monday, September 22, 2014.

Blaine took on many roles during his lifetime. He was a Chartered Accountant and a Trustee in Bankruptcy. He spent many years as an insolvency practitioner.

A Court of Queen's Bench Justice, upon learning of Mr. Hudson's passing stated: "He was a gentleman as well as a gentle man."

This description is a good summary of a man who mentored many in the profession in Alberta.

We have attached the link to the obituary the family published in the Calgary Herald.

<http://www.legacy.co/obituaries/calgaryherald>

## On the Move

- » **John Athanasiou:** Formerly with **KPMG**, now with **De Lage Landen Financial Services Canada Inc.**
- » **S. R. Stack & Company Ltd.** is a new trustee practice in Newfoundland & Labrador. The member is **Sean R. Stack**.
- » **Lisa K. Breault:** Formerly with **L. W. Murphy Ltd.**, now with **Boale, Wood & Company Ltd.**
- » **Robert Link:** Formerly with **Schonfeld Inc.**, now with **Link & Associates Inc.**
- » **Arif Dhanani:** Formerly with **MNP Ltd.**, now with **Collins Barrow Toronto Ltd.**
- » **Rob Smith:** Formerly with **BDO**, now with **MNP Ltd.**
- » **Stephen Moore:** Formerly with **Alvarez & Marsal**, now with **Re:Capital Canada**.
- » Company **Irving A Burton Ltd.** is now called **Burton, Dey & Associates Ltd.**
- » **Pierre Marchand:** formerly with **Richter**, now with **MNP Ltd.**

## Dawn Walby-Parchoma wins Gold!

**P**lease join us in congratulating Dawn Walby-Parchoma, CPA, CA, CIRP, Vice-President at PricewaterhouseCoopers in Calgary Alberta. Dawn is the **2014 Jack Biddell Gold Medal Winner** after achieving the highest score on our 2014 Competency-Based National Insolvency Examination.

Dawn will receive CAIRP's complementary invitation to join us at the Annual Conference to receive her award.



## CAIRP at the 10th Annual Pan-Canadian Insolvency and Restructuring Law Conference October 23-24, 2014 Quebec City, Quebec

**C**AIRP board and executive members **Ian Penney** (St. John's, N.L.) and **Chantal Gingras** (Ottawa/Gatineau) were on hand at the **Canadian Bar Association's** 10th annual Pan-Canadian Insolvency and Restructuring Law Conference in Quebec City this past October to lend their expertise on timely consumer insolvency issues. CAIRP had been invited to convene this panel by the CBA.

Penney and Gingras, along with Andréi Pascu and Sidney Elbaz from McMillan LLP in Montreal, participated in a panel that explored various aspects of the Fresh Start principle.

The panel discussed the premise that the Bankruptcy and Insolvency Act contemplates that debts existing prior to an assignment in bankruptcy are released upon a debtor's discharge, except for those covered in Section 178 of the Act.

However, in recent years, CAIRP members have seen an increase in situations where the debtor's fresh start has been threatened or diminished either by case law or creditors actions and their interpretations of the BIA.

These situations have made it increasingly difficult for trustees to advise debtors appropriately. The challenge is further compounded by inconsistent treatment of the same issue within the same jurisdiction and across Canada.

The panel focused its discussion on the reaffirmation of debt, licence denial regimes, discharge of student loans and the treatment of bank (non-government) student loans.

Penney and Gingras spoke about the real-life problems of debtors created in these situations and discussed CAIRP's recommendations for change as submitted in the *Report on the Statutory Review of the Bankruptcy and Insolvency Act (BIA)* and the *Companies' Creditors Arrangement Act (CCAA)* submitted to Industry Canada on July 15, 2014.

Pascu and Elbaz reviewed and discussed relevant case law, providing multiple examples of consumer insolvency cases from across Canada.

CAIRP thanks Ian and Chantal for their fine representation of the Association at this prominent legal conference.