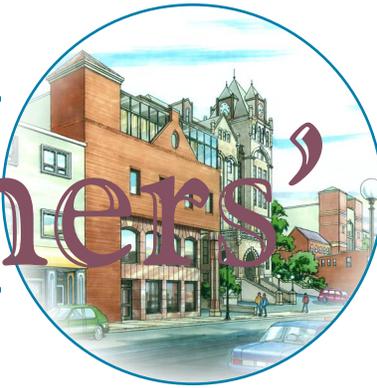


Benchers' Notes



February 2003

Volume 9, Number 1

These Benchers' Notes cover the Special Term Convocation of December 9, 2002, the Adjourned Fall Term Convocation, Call to Bar of October 11, 2002, the Fall Term Convocation of October 7, 2002, and the Spring Term Convocation of June 7, 2002. The Notes provide discussion of selected topics considered by the Benchers and other items of interest to the Bar. This and previous editions of Benchers' Notes, beginning December, 1999, are available at www.lawsociety.nf.ca

Editor: Peter Ringrose

New Year Levy at the Law Society's Offices

Six weeks before Benchers' traditional New Year's Eve Levy, Law Society staff, Janice Whitman, planned the festivities as she had done many times before. She spoke to the caterer. She reviewed menus and selected food items of interest and variety. She spoke, as she always did, with Peter about desserts. She spoke to wine and liquor wholesalers, she debated the year-to-year changes in consumption preferences between red wines and white, and between light rum and dark. This year, white would be favoured. She attended to details of tablecloths and napkins and flowers and coat racks and hangers and ice. In making these arrangements, she knew this year's event would be different. She would have to allow for some increase in attendance.

As the weeks passed and New Year's Eve approached, Janice had to rethink her plans a second time. And then a third. Normally, no more than one third the members who receive a Levy invitation will confirm attendance. This year, the number doubled. And then increased again in the days before Christmas. Food counts and wine and beer and liquor quantities were increased several times. A second bar was added to her plan. Catering staff was increased from six to eight, and then finally to 13. It was evident very late in planning that a second kitchen was needed to handle



The Law Society of Newfoundland

196-198 Water Street
PO Box 1028

St John's, Newfoundland
Canada A1C 5M3

Tel (709) 722-4740 Fax (709) 722-8902

Benchers' Notes



the quantities of food required for the crowd. The large photocopy room on the fourth floor was cleared for this purpose. Paper and Trust Forms were removed from shelving to make room for exotic and tasty ingredients.

At 10:00am New Year's Eve, with a storm gathering outside, Ava Hawkins' catering crew arrived to prepare food and set up the bars. By noon, they were ready. Was the building?

Twenty-four hours earlier, scaffolding was taken down from the Library foyer for the last time and scraps of steel and debris removed. Cleaners worked through the night. The morning of New Year's Eve Day, workers cleared debris from several rooms and removed last pieces of scaffolding from the front exterior. Cleaners worked quietly against a noon deadline. Elevator technicians adjusted the hydraulic fluids a final time. Not more than 40 minutes before the Lieutenant Governor was scheduled to arrive, carpenters working in the main stairwell put down their tools. The stairwell was vacuumed, carpenters and cleaners departed. The building was ready.

The Lieutenant Governor, His Honour Edward M Roberts, QC, arrived at 12:20 to a welcoming crowd. Hundreds of members and guests were already on site. The occasion, of course, was not only the New Year's Eve Levy, but the Official Opening at 12:30 of the Law Society's new offices.

The President of the Law Society, William H N Goodridge, QC, acted as Master of Ceremonies in Convocation Hall and was first to speak. He mentioned at the outset the sense of accomplishment that recent Presidents and one Bencher in particular, Toby McDonald, and the Executive Director, Peter Ringrose, must share with him. Plans for the building have been underway for several years; recent months have been particularly intense. Once a building was selected and purchased, Toby chaired the Building Committee and directed the planning through its various stages to completion. During the final months of construction, Toby's involvement required two or three hours per day. Working closely with Redwood Construction's site superintendent, Remy Vidal, and their Project Engineer, Gordon Jones, and with Jim Case of Sheppard Case Architects, Toby and Peter helped guide the project to an on-time and on-budget completion.

Benchers' Notes

Others mentioned by the President include Dave Clarke and Randy Hiscock of Island Office Furniture. They helped the committee conceptualize office interiors and the Library design. Their assembly crew worked long hours on weekends against tough deadlines to ensure the building was usable quickly following the move and that Library stacks were erected and ready for books with minimal downtime. And our movers, Bob LeDrew and Sons, managed a complex move of offices and Library over several days without difficulty. They worked with a high degree of professionalism and patience. Moving is stressful. Bob LeDrew and Sons made it easier.

The President's address completed, the Lieutenant Governor offered kind remarks and congratulations. All that remained was to cut the red and gold ribbon that divided the Hall. The ceremonial cutting evidenced the respect and cooperation between the Building Committee and Redwood Construction. At the President's request, Toby McDonald, Chair of the Committee, and Remy Vidal, Redwood's site superintendent, together cut the ribbon. Five hundred members and guests applauded and offered their own congratulations, and then stayed to enjoy food, drink, and companionship, and to tour the building. Convocation Hall was so crowded that it was too difficult to take photographs until the crowd dispersed for tours with Anne or Regina or Tanya.

At day's end, the inclement weather remained inclement but failed to dampen spirits or deter visitors. Members and guests arrived throughout the afternoon, filled Convocation Hall and corridors, enjoyed carollers in period costume, spoke to friends, ate well and enjoyed the wine. Almost all food was eaten and wine drunk, the latter in the proportions Janice predicted. She was wrong about the rum.

The small quantity of leftover wine and beer and spirits was added to the inventory needed two weeks later when the Society hosted a second party, a Thank You Party in Convocation Hall, for all the tradesmen who took such pride and care in meeting the exacting standards set by Sheppard Case Architects for construction and finish. The second party delighted in Celtic fiddlers and traditional Newfoundland folk singing, and concluded at 2:00am in the nearby Rose & Thistle. But that's a story best told by Toby.



Winter Term Convocation, December 9, 2002

President's Report

The President, William H N Goodridge, QC, was pleased to inform Benchers that he attended ceremonies at the Law Society of Upper Canada on December 7 and there signed the National Mobility Protocol on behalf of the Law Society. Most other law societies in Canada were represented at the ceremonies and signed as well. The National Protocol was prepared following resolutions taken at the August meetings of the Federation of Law Societies held at Niagara-on-the-Lake. The Protocol expands the national mobility of lawyers across Canada, excepting the Territories, to 100 days a year from the current 20. Benchers approved the Law Society's participation in the Protocol during the Fall

Term Convocation, subject to further discussion whether there should be a check-in system for incoming lawyers.

While the Law Society is now a signatory to the Protocol, approximately one year will be needed to develop national rules that make it work across all participating Canadian jurisdictions. The Federation of Law Societies has a Committee working to develop the rules, and this Law Society has begun a close examination of its own rules to ensure they comply with the intentions of the Protocol. Some changes to the *Law Society Act* will be necessary also to conform to national standards. Full text of the National Mobility Protocol may be viewed at the Federation of Law Societies' website, www.flsc.ca

2003 Budget

The Executive Director presented a balanced Budget for 2003. The Budget included several fee increases, including an increased annual Certificate Fee and Bar Admission Course Fee. While these fees are increased, the Law Society of Newfoundland fee structure remains close to most other law societies in Canada. Errors and Omissions Insurance is the one area where fees increased significantly and where this Law Society imposes fees higher than most other jurisdictions in the country. Factors influencing insurance program costs were discussed in the mid-December *LPIC News* mailed earlier to members.

Fall Term Convocation, October 7, 2002

President's Report

The President, William H N Goodridge, QC, reported that one of the most pleasant tasks he has performed as President was the recent award of a 75th Anniversary Certificate of Membership to Mr Edmund Phelan, QC. He attended at the home of Phelan, QC, with the Past President and the Executive Director, to present the Certificate.

Law Library Committee

Sheila Greene, Chair, reviewed the Law Library Report. She commented that Library revenues from copiers were down significantly this year and the Committee was attempting to respond

to Benchers' earlier request that alternate sources of revenue be explored. The Committee intends to explore revenue generation and perhaps fee-for-service proposals for future consideration by Benchers.

Financial Statements

The Executive Director presented Benchers with Financial Statements projecting expenditures to year-end. He forecast a deficit of approximately \$220,000, this resulting from a number of declining revenues, increased costs, and unanticipated expenses incurred during the year, including the Gerard

Gushue Custodianship in Happy Valley-Goose Bay. The deficit draws down some of the accumulated surplus funds held by the Law Society from previous budgetary surpluses. The Society retains a comfortable cash reserve from previous surpluses.

Advertising Committee

The Chair of the Committee, Dennis MacKay, QC, presented the Committee's Final Report to Benchers and responded to questions. Benchers accepted the Report and discussed it at some length. The Report sets out the Committee's belief that Advertising Rules of the Society are breached frequently by members' television and internet advertising. The Report recommends that Benchers establish a Standing Committee on Advertising, and Benchers agreed. Implementation of the Report is to be under the supervision of the Executive Committee. The full Advertising Committee Report is posted on the Society's website at www.lawsociety.nf.ca and listed under the heading *Benchers' Notes and Reports*.

IN MEMORIAM

ISAAC MERCER, QC, ROLL #192, CALLED TO BAR APRIL 9, 1938.
BENCHERS NOTE WITH REGRET THE DEATH OF ISAAC MERCER, QC,
WHO DIED ON MONDAY, AUGUST 5, 2002, AT THE AGE OF 89 YEARS.

CONDOLENCES WERE EXTENDED TO HIS FAMILY
BY THE PRESIDENT AND BENCHERS.

Summer Term Convocation, June 7, 2002



BENCHERS 2002-2003 - This photograph was taken following the June 7 election. Benchers of the Law Society are:

- (front, l-r) Edward Hearn, QC, Marina Whitten, Jeffrey Benson, QC, Stephanie Newell, *Vice-President*, William Goodridge, QC, *President*, Paul McDonald, Beverley Marks, QC;
- (standing, l-r) Barry Sparkes, John Brooks, QC, John Greene, *lay Bencher*, Glen Noel, Bert Riggs, *lay Bencher*, Brian Furey, Wayne Burden, Aidan Beresford, Tobias McDonald.
- Missing from photo: William Cadigan, Sheila Greene, Irene Muzychka, Terry Rowe, Ted Janes and Dr Bernice Morgan, *lay Bencher*.

Awards Presented at the Annual Dinner and Dance

Two years ago the Law Society began formally to recognize lawyers and members of the community for significant contributions to law and the legal system during their careers. To be considered, nominees must be of the highest integrity and personal achievement. This year, awards were presented to four persons at the Annual Dinner and Dance of the Law Society.



(l-r): John Roil, QC, Jeffrey Benson, QC, and William Goodridge, QC

Gordon M Stirling, QC, Distinguished Service Award

Named in honour of the late Gordon M Stirling, QC, the Distinguished Service Award can be granted to a lawyer, judge, or member of the public. Stirling, QC, was a fine lawyer and remarkable contributor to the community during his many years of practice.

The Recipient for 2002 is **John F Roil, QC**. Roil, QC, is an Honourary Bencher of the Law Society and Corporate Solicitor for Marine Atlantic. Until 2001, he was in private practice in St John's. He holds the degree of Master of Laws and is well known for his contributions to arbitration and employment law in Newfoundland and Labrador. Roil, QC, was granted the Distinguished Service Award for his valuable service as a volunteer to the community and to the Law Society over a number of years, including a year as Treasurer of the Society.

Certificate of Merit

The Certificate of Merit is granted to lawyers and non-lawyers with a strong history of contribution to the law through community service. This contribution can arise out of volunteer service or a career directly related to the law. This year, two persons were granted the Certificate, **Charles Lesley Roberts** and **Henry Thorne**.

Charles Lesley Roberts was Called to the Bar on October 14, 1950. Almost immediately he was commissioned by the Government of Newfoundland to study and report on the possible establishment of a Family Court in the new Province. In 1951, he was the first appointee as Judge of the Family Court of Newfoundland, remaining in that capacity for an initial term of six years. After this term, he served for ten years as Superintendent of Education for

the United Church of Canada in Newfoundland, following which he was reappointed as Judge of the Family Court, remaining in that capacity until his retirement in 1984.

Henry Thorne is the retired Deputy Registrar of the Supreme Court of Newfoundland and Labrador. He served the Court in a number of capacities, rising through promotions to the position of Deputy Registrar. He assisted with the merger of the District Court of Newfoundland with the Supreme Court and then during the expansion of that Court to a number of judicial centres. Mr Thorne is warmly remembered by lawyers for good advice, good counsel, and generous co-operation in making Court services accessible to the bar and the public.



Jeffrey Benson, QC, William Goodridge, QC with Award Recipients Charles Roberts (top photo) and Henry Thorne (bottom photo).

Student Awards

The **Hunt Award**, in honour of the late Charles E Hunt and The Honourable Mr Justice Douglas C Hunt, was presented to the student achieving the highest average grade in the Bar Admission Course. The recipient of the Fall 2001 Hunt Award was **Andrea Channing**. The Honourable T Alex Hickman presented the Hunt Award.



Mrs Hunt, Andrea Channing, and The Honourable T Alex Hickman

The **Penney Award**, in honour of the late Edward J Penney, was presented to the student achieving the highest mark in the Family Law Section of the Bar Admission Course. The recipient of the Fall, 2001 Penney Award was also

Andrea Channing. Mr and Mrs Penney, parents of the late Edward J Penney, presented the Penney Award.



Mrs Penney, Andrea Channing, Mr Penney

Ms Channing is the daughter of Robert and Linda Channing of St John's. She received the Degree Bachelor of Arts (Honours) from Memorial University in 1998 and the Degree Bachelor of Laws from the University of Toronto in June, 2001. She served Articles of Clerkship at the law firm Cox Hanson O'Reilly Matheson and her principal was Reginald Brown, QC. Ms Channing was called to the Newfoundland Bar on April 12, 2002, at which time she began practising with the firm of Cox Hanson O'Reilly Matheson.

The **Browne Scholarship**, in honour of the late William J Browne, PC, QC, LLD, is presented to a Student-at-Law who submit a research essay on a legal issue of current public concern. The recipient of the 2002 William J Browne Scholarship was **Shirley Walsh** for her paper entitled "Subject Matter Patentability of Medical Treatment Methods".



Shirley Walsh and Dr Norah Browne

Ms Walsh is the daughter of Lawrence and the late Catherine Walsh of St Mary's Bay, Newfoundland. She received the Degree Bachelor of Commerce from Memorial University in 1999 and the Degree Bachelor of Laws from the University of New Brunswick in May, 2002.

She served articles under Michael Duffy at the law firm Duffy & Associates and was called to the Bar on Feb 5, 2003. Dr Norah Browne, widow of the late William J Browne, presented the Award.

The **Pratt Award**, in honour of the late Maxwell J Pratt, was presented on the basis of academic merit to a student member of the Law Society of Newfoundland, who is a graduate of Memorial University of Newfoundland and has studied at Dalhousie Law School. The recipient of the Pratt Award was **Edward Mark Rogers**.



Mark Rogers and
The Honourable James Puddester

Mr Rogers is the son of Edward and Bernadette Rogers of St John's. He received the Degree Bachelor of Science from Memorial University in 1999 and the Degree Bachelor of Laws from the Dalhousie University in May, 2002. He is presently serving articles under Richard Rogers at the law firm, Williams, Roebothan, McKay & Marshall. The nephew of Maxwell J Pratt, The Honourable James Puddester, presented the award.

75 Year Membership Certificate

During a recent ceremony at his home, **Mr Edmund Phelan, QC, KSG, LLD**, was presented a 75 Year Membership Certificate by the President of the Law Society, William Goodridge, QC. Mr Phelan, QC, KSG, LLD, was called to the Bar by Benchers on February 1, 1926. Also attending the presentation were Jeffrey P Benson, QC, Past President of the Law Society, and Peter Ringrose, the Executive Director.



(standing l-r): Jeffrey Benson, QC, Peter Ringrose
(seated l-r): Edmund Phelan, QC, KSG, LLD, William Goodridge, QC

UNIQUE OPPORTUNITY

TO PURCHASE AN EXCEPTIONAL COLLECTION OF 7 ANTIQUARIAN MAPS

The collection, mounted on acid free mats and exquisitely framed, originated from the estate of prominent Newfoundland lawyer and politician, Senator Jack Higgins. The maps date from 1660-1851. This collection will complement the decor of a legal office, corporate boardroom, private home. Such collections are rarely available in the local market.

The collection can be viewed at www.odea.ca.

Simply open the site, scroll to the bottom of the page, and click on the O'Dea's Auction Room logo. Then open "upcoming auctions private sales" in the left margin and then open the page that references the collection.

Readers are asked to note that O'Dea's Auction Room Ltd now trades under the name of O'Dea's Realty & Auction Room Ltd. As a licensed real estate brokerage firm, O'Dea's Realty & Auction Room Ltd will offer a full suite of real estate and auctioneering services. In fact we can offer services as it relates to handling estates that involves real estate, furnishings, antiques, art, and so on.

For further information, please call

Chris O'Dea at 685-6559

or check the web site at

www.odea.ca

Educational Notes

Bar Admission Course

The Bar Admission Course for Newfoundland and Labrador began on October 8, 2002 and continued until November 22, 2002. This year 33 students took the Course. The Bar Course is a seven week intensive educational experience which runs 9:00 - 5:00 daily and covers a tremendous amount of information on provincial and federal law.

The goal of the Course is simple: to give new lawyers a comprehensive overview of Newfoundland and Labrador law and procedure and provide them with the necessary information to ensure entry level competence in the profession. The Course is intensive, practical and relevant to what a new lawyer will see in practice. We endeavour to make the Course an enjoyable experience for the students and the approximately 70 volunteer judges, lawyers and other professionals whose contributions make the Course a success.

Members sometimes enquire about the topics covered in the Course. The following is an overview:

Week 1

Family Law. Topics include divorce proceedings, custody and access, child and spousal support, matrimonial property, provincial family legislation, pensions, UFC procedure, child protection and support enforcement.

Week 2

Corporate/Commercial Law. Topics include incorporation and organizing a business, corporate procedures, corporate finance, the *Personal Property Security Act*, security opinions, purchase and sale of a business/shares and commercial insolvency.

Week 3

Civil Procedure. Topics include limitations of actions, commencing proceedings, service, defences, counterclaims and 3rd party proceedings, summary trial, expedited trial, discovery and disclosure of evidence, setting down for trial, the *Judgment Enforcement Act*, civil appeals, costs and alternative dispute resolution.

Week 4

Lawyering-skills. Workshops are conducted in which students receive instruction in direct examination, cross-examination, negotiating settlements, interviewing clients, examination for discovery, risk management and how to avoid professional negligence claims. As well, there is a session on maintaining a balance between professional and personal lives and a separate section on ethics and the Code of Professional Conduct, in which students complete a written assignment.

Week 5

Criminal Law and Procedure. Topics include the court structure, presumptions and burdens, classification of offences, pre-arrest, arrest, charge, first appearances, judicial interim release, disclosure, elections and re-elections, solicitor/client matters, preliminary inquiries, pre-trial matters, Charter applications, trials by judge alone, jury trials, the sentencing process, types of sentences, criminal appeals, young offenders, evidentiary matters, *voir dire*s, search and seizure and defences. As well, in this section, students receive instruction on advocacy skills, there is a panel discussion among judges with respect to advocacy and students prepare for and participate in a mock trial.

Week 6

Administrative Law. Topics include the Labour Relations Board, labor and commercial arbitration, municipal law, the Human Rights Commission, the Workplace Health, Safety and Compensation Commission, administrative law in the Federal Court, the Law Society discipline process, statutory appeals, judicial review of arbitration and prerogative orders.

Week 7

Real Estate and Wills. Topics include the registry system and land tenure, the real estate transaction, the mortgage, disabilities and title insurance, survey/location certificates, taxation issues, crown lands, quieting of titles,

BAR ADMISSION STUDENTS - Class of 2002



Continuing Legal Education

possessory title, landlord/tenant, title searches, a real estate transaction workshop and a separate section on wills, estates and probate.

To pass the Bar Course, students must pass examinations in Family Law, Commercial Law, Civil Procedure, Criminal Law, Administrative Law and Real Estate/Wills. Each exam is 3½ hours long and focuses on the lecture presentations, the Bar Admission Course materials and the approximately 80 provincial and federal statutes and regulations covered in the Course. The required pass mark is 65%. The Bar Admission Course materials comprise 11 volumes and cover thousands of pages of text and forms.

The Bar Admission Course Committee and the Law Society is grateful for the generous contributions made by members of the profession in ensuring the Course remains vibrant and beneficial to our new lawyers. As future Bar Admission Courses will be held in the Law Society building, members will have an increased opportunity to audit any section(s) of the Course which may be of interest.



Adrian Zahl, Marcus Gallie and Frank O'Brien at the Intellectual Property Seminar.

The Joint Committee on Continuing Legal Education is continuing its programming for 2003.

Several successful seminars were held throughout the Spring and Fall 2002. These included:

1. **Wills, Estate Planning and Probate Practice.** The Committee sincerely thanks the Hon Chief Justice J Derek Green and Ms Elaine Burke of the Supreme Court of Newfoundland and Labrador, Trial Division, Mr William O'Keefe, Mr William Budgell, CA of Grant Thornton, Ms Judy Paul of the St John's Nursing Home Board, Mr Geoffrey Aylward of Aylward, Chislett, Whitten and Ms Bernadette Dietrich of McCarthy, Tetreault, Toronto for their excellent presentations at this well-attended and practical seminar on Wills and Probate Practice.

This seminar was also offered by way of a video telecast to members in Corner Brook.

2. We offered a seminar on **Orientation to Intellectual Property for Lawyers**, which was presented by Mr Adrian Zahl and Mr Marcus Gallie of Ridout & Maybee, Barristers & Solicitors, Patent & Trademark Agents, Ottawa. The seminar provided an excellent practical introduction to intellectual property and we thank the presenters.

3. In conjunction with the Advocates' Society of Toronto, Ontario, we offered a seminar in **Expert Evidence**. This sem-

inar was the third offered by Newfoundland Continuing Legal Education in conjunction with the Advocates' Society, as part of the Advocates' Society Advanced Litigation Skills program. An excellent mix of junior and senior practitioners attended and participated in the hands-on Advocacy exercises. Our thanks to Mr Scott Maidment, Ms Laura Stewart and Mr Paul Schabas, Ontario lawyers who instruct for the Advocates' Society, for making this presentation interesting and engaging.

New programming is being planned for the coming year. On February 7, 2003 there was a seminar dealing with new rules for Family Law Proceedings in the Supreme Court of Newfoundland and Labrador and the new *Interjurisdictional Support Orders Act*. This seminar was presented by The Hon Chief Justice J Derek Green and the Hon Justice Richard LeBlanc of the Supreme Court of Newfoundland and Labrador, Trial Division, and Mr Brian Furey, Department of Justice, Government of Newfoundland and Labrador. This seminar addressed substantial changes in family law practice. A seminar on this topic is also being planned for practitioners in Corner Brook, and a video repeat for practitioners in Labrador. Future topics for seminars include new rules on mediation, a seminar on commercial law, civil litigation and personal injury, negotiation strategies, and criminal law issues. Details of future seminars will be provided to members.



Rules and Estate Seminar: (l-r): Frank O'Brien, Christine Healy, Bill O'Keefe, Bill Budgell, Bernadette Dietrich and Geoffrey Aylward.
Missing from photo: Elaine Burke and Chief Justice Green



Expert Evidence Seminar:
Scott Maidment (*standing*) leads the discussion with a group of practitioners.

Child & Youth Advocate Appointed

We draw your attention to the important letter to practitioners accompanying this newsletter from the Province's first Child and Youth Advocate, retired Judge, Lloyd L W Wicks. Without question, the establishment of this Office, which will be a special place to deal with concerns and problems of our children and youth, is an important event in the social affairs of Newfoundland and Labrador.

The Advocate is most anxious to assist practitioners wherever possible and invites both their input and cooperation. The Advocate expressed his sincere thanks for the cooperation of the Law Society in providing an opportunity for his letter to accompany *Benchers' Notes* to all members.

Adjudication Panel Decision

An Adjudication Panel of the Discipline Committee, in a Decision dated November 13, 2002, and pursuant to section 48(3) of the *Law Society Act, 1999*, found a member guilty of conduct deserving of sanction because the member failed to fulfill the responsibility owed to another lawyer as prescribed by the Code of Professional Conduct, chapter XVI. The Adjudication Panel found the Complaint to be substantiated in relation only to one of the four Rules allegedly breached. The Adjudication Panel determined that the evidence presented did not support the allegations that the member failed to act with integrity contrary to the Code of Professional Conduct, chapter I; failed in the member's duty when advising a client contrary to the Code of Professional Conduct, chapter III; or failed to avoid questionable conduct contrary to the Code of Professional Conduct, chapter XIX.

The Adjudication Panel Ordered that the member provide a full and complete apology to the other lawyer; that the member pay one-quarter of the costs incurred by the Law Society in the investigation and hearing of the Complaint; and that the member's name not be published. The panel deemed that publication would compound the degree of sanction and detract from the appropriate level of sanction required in addressing this particular Complaint.

Card Access to the Law Library

Members are reminded that access to the Law Library during luncheon, between 1:00 pm and 2:00 pm, will be by card access only. Access cards used at the previous Law Library will work at the new Library. Generally, it is best to carry your access card with you when visiting the Law Society building. Members without an access card can contact Tanya Barrington at Law Society offices and one will be issued.

APPOINTMENT

The Honourable Catherine Allen-Westby, called to the Bar July 3, 1986, Roll #677, was sworn in as a Judge of the Provincial Court at ceremonies in Corner Brook, NL, on Friday, November 27, 2002. The President spoke at the swearing-in and extended the good wishes of Benchers and members. Judge Allen-Westby will sit in Happy Valley-Goose Bay. A reception was hosted by the Law Society at the Provincial Court following the Ceremony.

Commercial Litigation

Lawyer

Our rapidly growing commercial law practice requires a lawyer with a demonstrated competence in commercial litigation to join our team of dedicated professionals in providing quality legal advice to the business community.

If you are talented, hard-working, and want to be a member of a team committed to meeting the needs of our clients, this position offers opportunity and challenge.

Boyne Clarke is a firm of thirty-one lawyers, each with specialized talents and experience. services meet the particular needs of our clients. This firm philosophy has helped to establish within the Nova Scotia legal community.

If you have a minimum of four year's solid commercial litigation experience and are interested in taking on this challenge, we would like to hear from you.

We offer a competitive compensation package and a comprehensive benefits plan. Please reply in confidence to:

Diane C. Norris BOYNE CLARKE Barristers & Solicitors
 Director of Administration P.O. Box 876, Dartmouth, NS B2Y 3Z5
 Or by e-mail: dnorris@boyneclarke.ns.ca
 Telephone: (902) 460-3432



www.boyneclarke.ns.ca

ADVANCING a tradition of EXCELLENCE

Complaints Authorization Committee

The Complaints Authorization Committee (CAC) is a statutory committee of Benchers mandated to address the first phase of the regulatory process for discipline as prescribed by Part II of the *Law Society Act, 1999* (the Act). The process commences with an "allegation" filed with the Vice-President (s. 43). An allegation is a statutorily defined term that means "a written document alleging that a respondent has engaged in conduct deserving of sanction" (s.41(a)). "Conduct deserving of sanction" is also a defined term that includes professional misconduct, conduct unbecoming, violation of the Act or the Law Society Rules, and failure to adhere to the Code of Professional Conduct (s. 41(c)).

The Vice-President may refer the allegation to consensual mediation or may conduct an investigation (s. 44(1)). If mediation is unsuccessful, the Vice-President will conduct an investigation and will submit the allegation to the CAC upon completion of the investigation (s. 4(3)).

Once the allegation has been submitted to it, the CAC may require further investigation or require the respondent to appear (ss. 45(1)(b), (c) and (d)). The Committee may then make recommendations to the Executive Committee concerning a respondent's practice (s. 45 (1)(e), (f) and (g)). It may dismiss an allegation (s. 45(1)(a)), counsel or caution a respondent (s. 45(2)(a)), or instruct the Vice-President to file the complaint and refer it to the Discipline Committee for hearing (s. 45(2)(b)). There is no appeal from the CAC's decision (s. 45(3)).

The decision of the CAC to issue a letter of counsel or caution is not a disciplinary action. There is no finding of guilt from which discipline can flow. Counsel is advice; caution is a warning. Both are intended to assist the member in his or her future conduct.

Letters of Counsel have been issued by the CAC because of the following complaints.

Complaint of failing to advise a client that the member would be delayed in providing an opinion.

Code of Professional Conduct, chapter II, commentary 8

Complaint of failing to get instructions and appearing in Court without having consulted the client.

Code of Professional Conduct chapter II, Rule b

Complaint of failing to respond to a client's request for information in a timely fashion and a four month delay in forwarding the file to the succeeding solicitor.

Code of Professional Conduct chapter II, Rule b commentaries 7(a) and (b); chapter XII, commentaries 8(a) and (b)

Complaint of acting for the lender, the vendor and the purchaser of properties for which there were no title deeds registered and continuing to act after conflicts arose.

Code of Professional Conduct chapter V, commentary 6

Complaint of referencing contentious and extraneous issues that are unrelated to the litigation ongoing between the parties in correspondence to another solicitor.

Code of Professional Conduct chapter XV, commentary 3

Letters of Caution have been issued by the CAC because of the following complaints.

Complaint of failing to follow a client's instructions.

Code of Professional Conduct chapter III, commentary 4

Complaint of failing to fulfill an undertaking to provide documentation within a thirty-three month period following the closing of a real estate transaction.

Code of Professional Conduct chapter XVI, commentary 7

The information above is provided to inform members as required by Law Society Rule 9.06(5).

Property Transactions - Outstanding Documentation

The CAC reminds members that the Law Society, through the investigative process, does not have authority to compel a member, against whom an allegation may be made, to deliver documentation, or fulfil undertakings given, to other members or financial institutions or others.

The focus of the Law Society's investigation is the respondent member's professional conduct. Complainants, including financial institutions, who seek a remedy the Law Society does not have the authority to provide, are informed they may wish to obtain independent legal advice concerning other avenues available to protect their interests. Therefore, members who write the Law Society concerning outstanding documentation and unfulfilled undertakings may also wish to consider other avenues that are available to protect interests.

Discipline Committee

The role of the Discipline Committee is separate entirely from the Complaints Authorization Committee. This Committee's Chair is responsible to ensure that complaints referred from the CAC are heard before panels comprised as required under the Act. The *Law Society Act, 1999*, prescribes that an Adjudication Panel must comprise three members of the Discipline Committee, that is, two Law Society members and one lay member. The panel may make findings and prescribe sanctions. Recent Discipline Committee appointments are listed on page 13.

Judgement Interest Order

The Law Society has been notified that Newfoundland and Labrador Regulation 91/02 provides that, effective January 1, 2003, the pre-judgement and post-judgement interest rate shall be 2%.

LOST WILL

Anyone having knowledge
of a lost Will of
PHILLIP CLARENCE ALPORT,
late of Winnipeg, Manitoba
(formerly of
the Province of Newfoundland),
please contact

Valerie Smith
Office of the Public Trustee
13th Floor, 405 Broadway
Winnipeg, Manitoba R3C 3L6

Telephone: (204) 945-2724.

FOR LEASE

DUCKWORTH STREET OFFICE SPACE

Now available 1,681 sq. ft.
of second floor office space
in renovated building
located at 186 Duckworth Street
near the War Memorial.

Layout comprises five offices,
reception, board or activity room,
kitchenette and storage.
Parking available for one car.

Enquiries call
753-9000 or 726-4059.



ADR

presented by the



and the



to be held in St. John's on February 25-28, 2003

AT THE ADR WORKSHOP LEARN HOW TO:

- get a good deal for your client at mediation
- negotiate effectively
- overcome obstacles in mediation
- know when to say "no" in negotiations and mediations
- find creative solutions in mediation
- mediate disputes

NEGOTIATION AND MEDIATION 4 DAY CERTIFICATE WORKSHOP

"I have attended all three ADR workshops (Basic, Advanced and Applied) and found them very helpful for negotiations and mediation. All workshops were comprehensive and presented in a professional manner. They were also a great opportunity to meet and work with people from a variety of professions."

John Neville, P.Eng, Neville & Butler Inc., St. John's

"I was a registrant for this workshop in 1996 and endorse it wholeheartedly as the best seminar I have ever attended."

Gillian D. Butler, Q.C., Litigation and Mediation/
Neville & Butler Inc., St. John's

"I have done over 100 arbitrations and 300 mediations. I wanted to take a course to enhance my skills and learn more about theory to become even better at settling cases. I heard that this course was the best one and I agree."

Anne Sone, Financial Services Commission of Ontario, Willowdale

Local registration for this workshop may be arranged through Gillian D. Butler, Q.C. Litigation and Mediation / Neville & Butler Inc. by contacting Ruth or Debbie at: phone - 738-3250, fax 738-3211, e-mail info@gillianbutler.com

Discipline Committee Appointments

The following appointments to the Discipline Committee were approved by the Executive Committee on November 18, 2002.

Eastern

V Randell J Earle, QC
John W McGrath, QC
George P Horan, QC
James E Vavasour, QC
Reginald H Brown, QC

Jean V Dawe
James C Oakley
John V O'Dea, QC
W A Brock Myles
Lois R Hoegg, QC
Lois J Skanes, QC
Mary J McCarthy Mandville
S Bruce Chislett
William J Parsons
Paul L Coxworthy
Deborah L J Hutchings
Mary C O'Brien
Rosemary Dawson
Jacqueline M Brazil

Central

Barbara A MacAdam, QC
Gerard G Griffin, QC
Karl R S Inder

Western

Brenda P Duffy
David A King

Labrador

Elaine C Wychreschuk

The work of the Discipline Committee is important because its mandate is derived from the Law Society's right to be a self-governing body. Discipline Committee members are requested to act as members of Adjudication Panels empowered by the *Law Society Act, 1999*, to hear Complaints, and to take disciplinary action when warranted. The Executive Committee thanks the more than 50 members who offered to serve on the Discipline Committee.

Changes In Status

Benchers approved the following applications for change in status:

Special Term Convocation - December 9, 2002

Applications to Elect Non-Practising Status

George Cummins	Roll #417	January 28, 1977
F Greig Crockett	Roll #506	July 4, 1980
Michael N Jones	Roll #867	October 5, 1992
Edward M Roberts, QC	Roll #263	February 23, 1965

Notice of Resumption of Practising Status

Tina M Walsh,	Roll #978	June 20, 1995
---------------	-----------	---------------

Fall Term Convocation - October 7, 2002

Applications to Elect Non-Practising Status:

Vivian Arenillas	Roll #1084	June 23, 1998
Rory M Barnable	Roll # 1195	April 12, 2002
Tracy Bastow	Roll #1039	April 14, 1997
Jennifer D Blackmore	Roll #1116	October 19, 1999
Jason F Bourgeois	Roll #1172	April 6, 2001
Margaret C Hepditch	Roll #1030	April 14, 1997
Kathleen M O'Neill	Roll #1162	April 6, 2001
Rebecca Redmond-Maclean	Roll #1000	April 15, 1996
Elaine M Reid	Roll #1095	April 20, 1999
Lisa D Strickland	Roll #1040	April 14, 1997
Tina M Walsh	Roll #978	June 20, 1995

Notice of Resumption of Practising Status:

Rosemary Dawson	Roll #800	April 8, 1991
Brenda P Duffy	Roll #814	July 2, 1991
Karen J O'Reilly	Roll #1105	April 20, 1999

Application to Resign Membership:

Sarah Mills	Roll #963	April 17, 1995
-------------	-----------	----------------

Summer Term Convocation - June 7, 2002

Applications to Elect Non-Practising Status

David R Power	Roll #699	June 30, 1987
---------------	-----------	---------------

Applications to Resume Practising Status:

Eric R Hutton	Roll # 909	July 9, 1993
Justin S C Mellor	Roll #1173	April 6, 2001
R Neil Smith	Roll # 1121	April 25, 2000

Application to Resign Membership:

Mark A Crosbie	Roll #974	June 20, 1995
James A Kean	Roll #610	December 15, 1983

Members are reminded that any time there is a change in your practising status, you must notify the Law Society in writing. Those members who have held non-practising status for twelve months or longer require the approval of the Education Committee to reacquire practicing status. Under the Rules of the Law Society changes in practice include: change from practising to non-practising; change from non-practising to practising; change of employment from one firm to another or to or from sole practice; commencement of practise; and departure from the province to pursue a career elsewhere. Appropriate Forms to accommodate the notice requirements are available by contacting Janice Whitman at Law Society offices. These forms are also available on the Law Society's website at www.lawsociety.nf.ca

The Building in Transition: Then . . . and Now



Benchers' Notes





Call to Bar October 11, 2002

Front (l-r): Blair Downey, Eli Baker
Back (l-r): Jeff Cutler, Andrew May



The Law Society of Newfoundland

