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# SQUID PRO QUO

THE VOICE OF THE LEGAL PROFESSION

CANADIAN BAR ASSOCIATION - NEWFOUNDLAND & LABRADOR BRANCH

FALL 2009





# Squid pro quo

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Newfoundland & Labrador Branch

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## SQUID PRO QUO EDITORIAL BOARD

Janet Grant, Editor

Daniel Glover, David Coffin, Kim MacKay, Suzanne Orsborn, J. Alex Templeton, Keri-Lynn Power, Meredith Baker, Sharyl Rowsell, Christina Kennedy, Tracey Pennell, John Hurley, Renee L.T. Moore, Rebecca Maclean and Micheal Noseworthy

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Squid pro quo is a publication of CBA-NL Branch and is intended to provide a service to members by informing them of Branch Activities and matters of general interest.

Members are encouraged to submit articles for publication, though articles submitted may, at the discretion of the Editorial Board, be edited for brevity and clarity, in which case the author will be consulted prior to publication.

Squid pro quo will accept advertising, though space for this purpose is limited. Advertisers or CBA Members wishing to purchase advertising space should contact the Branch Office (709) 579-5783 for information regarding advertising rates and policies.

Squid pro quo can also be found on the CBA Newfoundland & Labrador Branch home page on the World Wide Web <http://www.cba.org>.

# Letter from the Editor



Janet Grant

I hope you all enjoy this edition of *Squid pro quo*. This is my first edition as Editor and I have been fortunate to work with a great group of people in getting this edition off the ground. I am pleased to say that a number of the Editorial Board members from last year have again agreed to give their time and energy to assist with the Magazine's production. The returning committee members include Daniel Glover, Suzanne Orsborn, J. Alex Templeton, Keri-Lynn Power, Meredith Baker, Sharyl Rowsell and Tracey Pennell. I am also pleased to welcome a number of new committee members including David Coffin, Kim MacKay, Christina Kennedy, John Hurley, Renee Moore, Rebecca Maclean and Michael Noseworthy. Of course, the Magazine would not at all be possible without the input and attention to detail of our Executive Director, Laura Churchill. Finally, I would like to extend my thanks to Pam Taylor, the former Editor of *Squid pro quo*. Pam has very graciously spent some time with me over the past couple of months sharing with me her knowledge and experience from her many years as Editor of the Magazine.

I have long associated the fall with the start of a new year. As such, I think that it is fitting that in this edition of the Magazine you are introduced to the new executive of the Canadian Bar Association (CBA) Newfoundland and Labrador Branch, as well as, the new Section Chairs. You will see that the Section Chairs are seeking input as to how best to serve the membership. In that respect, I would encourage you all to provide your thoughts and ideas.

This edition of the Magazine has several interesting In Personams. Renee Moore had the opportunity to speak with National CBA President D. Kevin Carroll about his legal career and his plans for the CBA. Keri-Lynn Power spoke with former Chief Judge Ried about how he ended up in the legal field and his experiences on the bench. Lastly, Suzanne Orsborn was able to take a somewhat different approach to her In Personam article when she interviewed her father Chief Justice Orsborn. While addressing Chief Justice Orsborn's education and career path, her article also provides us with a glimpse into what childhood is like when a parent is a lawyer.

Since the last edition of the Magazine, the 2009 Canadian Legal Conference was held in Dublin, Ireland. Chris Pike attended this exciting event and provides us with an overview of the Dublin experience. This edition also includes our regular features such as Case Digest, the Benefits of CBA Membership and an article from Hugie Shea from the CBIA perspective.

As the Christmas season is quickly approaching, I would invite you all to mark your calendars for the Annual President's Reception at the Sheraton Hotel on December 15, 2009. Also, do not forget to mark your calendars for the upcoming Mid-Winter meeting which will be held in St. John's on February 25-27, 2010. I hope you all enjoy the holidays and I extend best wishes for a safe and prosperous New Year!•

# President's Report

by Sheri Wicks



A lawyer older and wiser than me once said that the secret of a rewarding career is to say yes to whatever opportunities come your way, especially those volunteer and charitable opportunities that can be so personally rewarding. It has been a while now since I wrote an article for *Squid pro quo*, though for many years I was the regular author of "Letter from the Editor". Sometimes the smallest beginnings, like being a member of the editing committee for the magazine, can lead to even larger roles. In my case, I went from being Editor to now serving as your President of the Canadian Bar Association (CBA) Newfoundland and Labrador Branch.

The CBA has been a large part of my legal career ever since I joined in law school, and I hope it will become a large part of your legal career as well. An organization that is truly the voice of the legal profession, the CBA provides, amongst other things, professional development opportunities that are relevant to members, advocates for the protection of the rule of law both at home and abroad, and negotiates valuable member savings with preferred supplier. The CBA is very much the sum of its parts. It has over 35,000 members, so get involved and make sure that the CBA is the organization that you want it to be.

It has been a busy year already at the Branch. The

Branch has a new executive with several new faces, including Susan Gover (Treasurer), Isobel O'Shea (Secretary), Janet Grant (Communications Chair) and Renee L.T. Moore (Central Representative). I am looking forward to working with these new faces and all of the other members of the Branch Executive to help bring members programming that improve the quality of the practice of law in meaningful ways – won't you help too?

In September, the Branch Executive held its strategic planning meeting to organize its activities for the upcoming year, and what a busy year it is going to be! In October we hosted a luncheon with guest speaker with the Honourable Chief Justice Derek Green, and the Young Lawyers Conference hosted its first of many Friday socials. The Branch also hosted its annual reception with the Bar Admission Course students this month and planning is well underway for the Branch's Mid-Winter Meeting in St. John's this February.

I look forward to meeting many of you in the coming year and encourage you to share your thoughts on how we can make the CBA meet the needs of our members each and every day.•



## 2009-2010 CBA-NL EXECUTIVE COMMITTEE

FROM LEFT TO RIGHT:

CHRISTOPHER PIKE  
JANIE BUSSEY  
LAURA CHURCHILL  
SUSAN GOVER  
BETH MCGRATH  
ISOBEL O'SHEA  
JANET GRANT  
SHERI WICKS  
CHERYL MULLETT

MISSING:

DAVID MOORES  
RENEE L.T. MOORE



# Past President's Report

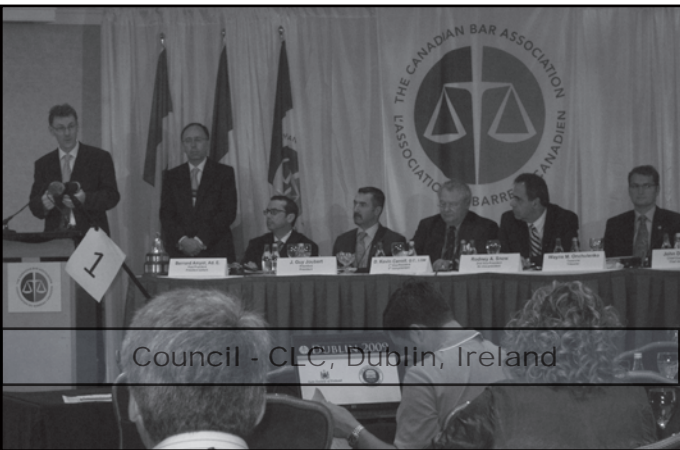
By Christopher Pike



In August, I represented the Branch at the Canadian Legal Conference in Dublin. At Council, members debated some governance issues and carried a resolution urging the federal government to restore its policy of seeking clemency for Canadian citizens facing the death penalty in other countries. Council also heard a panel discussion led by John Murray, the Chief Justice of Ireland on the administrative structure of the Irish courts. Reforms undertaken since the mid-1990s have seen the creation of a Courts Service Board which independently administers the courts, provides the support infrastructure for judges and carries out a public information function. In essence, the courts in Ireland are now operated by an independent body, at arms length from government. This model will likely strike a chord with the court administration reform initiatives now underway in several Canadian jurisdictions.

This year, the Continuing Legal Education streams were highlighted by a presentations respecting innovation in the legal profession, counterterrorism and human rights and anticorruption compliance. Dr. Richard Susskind made a presentation drawing from his book *The End of Lawyers?* in which he spoke of the transformation technology is bringing to the profession. In particular, he spoke of trends in automation and collaboration which will bring about changes in the delivery of legal services. A panel discussion on counterterrorism and human rights saw analysts raise concerns about what constitutes torture and the need to ensure an absolute prohibition against it. At a CCCA seminar, a panel of experts briefed their audience on international efforts to eliminate bribery of foreign public officials.

Our presence in Dublin offered several unique networking opportunities. I was privileged to attend receptions at the home of the Law Society of Ireland and the residence of Canada's ambassador to Ireland, Pat Binns. The closing social event, at the Guinness Storehouse was especially memorable, because this year marks Guinness's 250th anniversary.



# The Benefits of Membership

By Sharyl Rowsell



The Canadian Bar Association (CBA) provides a number of helpful resources for the practicing and non-practicing lawyer, from materials on recent legislation and trends in specific areas of law, to hints about the general practice of law. Unfortunately, many of us do not take the time in our busy schedules to even make ourselves aware of what is offered. A review of the CBA website at [www.cba.org](http://www.cba.org) provides information on the resources which are available.

## Canadian Bar Review

The *Canadian Bar Review* (*the Review*) is published by the Canadian Bar Foundation with the editorial and administrative support of the College of Law, University of Saskatchewan. It is frequently cited by the Supreme Court of Canada.

Found under the "Publications" link on the CBA website, this official, bilingual legal journal is published online three times a year. Online access to *the Review* is included with your CBA membership – all you need is your CBA membership number to take advantage of the fully searchable archives, which are dated back to 1923.

*The Review* includes articles, biographies, book reviews, case comments, legislation and reports. Its contents can be searched online using the alphabetical subject index, keyword, article type, author, title and date. A search by keyword searches all text within articles. A complimentary soft cover copy of the Review can be ordered by CBA members.

## Continuing Legal Education

The CBA offers a variety of Continuing Legal Education (CLE) opportunities, including CLE conferences and online CLEs. These CLE sessions give insight into today's issues in specific areas of law, with presentations and information from top legal experts in each field. The conferences also provide networking and social opportunities.

Upcoming CLE conferences include:

- National Citizenship and Immigration Law Conference, May 13-15, 2010, Halifax, Nova Scotia

- Tax Law for Lawyers Conference, May 30-June 4, 2010, Niagara-on-the-Lake, Ontario
- CBA / International Pension and Employee Benefits Lawyers Association (IPEBLA): Pensions and Benefits Law Conference, June 20-22, 2010, Quebec City, Quebec

Upcoming live, online CLE sessions include:

- Making the Most of Your Support Staff  
Wednesday, December 9, 2009, 12:30 – 2:00 p.m. (NL Time)  
Offered at a reduced rate for CBA members.

## CBA Store

If you are unable to attend a CLE conference or an online CLE session, the CBA Store may be able to provide you with the information you missed. The CBA Store is found under the "Publications" link on the CBA website. There, past sessions of online CLEs can be purchased from the CBA Store, at a reduced price for CBA members.

CLE publications, general publications, and Canadian Bar Review publications can all be found online at the CBA Store. These publications can be searched by type, keyword, author, title, and date, as well as by International Standard Book Number (ISBN)/International Standard Serial Number (ISSN). CLEs can also be searched by subject. Older materials not currently available in the CBA Store can be ordered, including CLE publications dated since 1993. Publication lists are available online.

## CBA Practice Link

The CBA Practice Link is also found under the "Publications" link on the CBA website. This link provides articles and information on the practice of law, as opposed to more substantive legal issues. Topics include client service, finances, leadership, marketing, productivity, technology and work-life balance.

I encourage everyone to visit [www.cba.org](http://www.cba.org) to find additional information on these and other resources that are currently offered by the CBA.

## Canadian Bar Association - Newfoundland & Labrador Branch

### Section Chairs - 2009/2010



#### Aboriginal Law

Steven Scruton  
Stewart McKelvey  
Tel: (709) 570-8837  
E-mail: sscruton@smss.com

Last year was the first time in a number of years that the Aboriginal Law Section had been active in Newfoundland and Labrador. With that in mind, my goals for this year include the following:

- To continue to build the section's membership and develop an interest in and an understanding of aboriginal law as it applies in our province;
- To keep section members apprised of recent updates in aboriginal law issues at both the provincial and national level;
- To help organize and participate in the National Aboriginal Law Section in order to encourage participation from this part of the country and to provide provincial views on their initiatives, and to keep members informed of same;
- To work with other sections that have overlapping interests; and
- To organize at least one Lunch and Learn Session or an other engagement on topics of interest to section members.

I would be happy to hear from anyone interested in joining the Section as we continue to develop it in this province, and would welcome any questions or suggestions that members may have. Please feel free to contact me at your convenience.



#### Administrative Law

Jamie Martin  
Roebathan McKay Marshall  
Tel: (709) 753-5805  
E-mail: jmartin@wrmmlaw.com

My plans for the Section this year include:

- To inform Section members of developments at National meeting(s);
- To hold Lunch and Learn Sessions in conjunction with other Sections where appropriate; and
- To receive input from members and initiate new activities on behalf of the Section and the Branch.



#### Alternative Dispute Resolution (ADR)

Andrew Wadden  
Unifund Assurance  
Tel: (709) 738-7938  
E-mail: awadden@unifund.ca

My plans for the Section this year include:

- To keep section members apprised of recent updates both locally and nationally in the area of ADR To hold at least one Lunch and Learn Session with a guest speaker who is experienced in the ADR field; and
- To keep section members up to date on significant case law and new legislation in Newfoundland and Labrador, in particular, updates with respect to the Adult Alternative Justice Program.

Ideas, suggestions and input from Section members are always welcome. Please contact me at your convenience.



#### Bankruptcy and Insolvency

Stacey O'Dea  
McInnes Cooper  
Tel: (709) 724-8231  
E-mail: stacey.odea@mcinnescooper.com  
*Goals not received.*



#### Business Law

Beth McGrath  
Ottenheimer & Baker  
Tel: (709) 722-7584  
E-mail: bmcgrath@ottenheimerbaker.com

My plans for the Section this year include:

- To keep section members up to date on recent legal developments in Business Law, both provincially and federally;
- To support and promote the continuation of online CLE seminars from our National Section and the Business Law Boot Camp initiative;
- To work with other sections with similar interests;
- To continue our Branch's national presence and keep members informed on the National Business Law Section initiatives and developments; and

### Section Chairs - 2009/2010

- To attend the National Business Law Meeting and bring our provincial views to the table.
- To discuss joint Lunch and Learn Sessions or CLE opportunities with other section chairs.

I encourage all members to contact me with any questions, concerns or suggestions for Lunch and Learn Session topics.

Please contact me to discuss any ideas for future meetings, lunch and learn possibilities and other topics that may be of interest to section members.



#### Canadian Corporate Council Association

Christine Healy  
Department of Natural Resources  
Tel: (709) 689-6279  
E-mail: christinehealy@gov.nl.ca

My plans for the Section this year include:

- Host at least one lunch and learn on a topic relevant to in-house counsel;
- Hold a social event for members of the section;
- Maintain and strengthen relations with the national CCCA organization and the other provincial branches of CCCA; and
- Make a contribution to the National publication.

If section members have ideas for events they want to see, please feel free to contact me.



#### Civil Litigation

Daniel Glover  
Curtis Dawe  
Tel: (709) 722-5181  
E-mail: daniel@curtisdawe.nf.ca

My plans for the Section this year include:

- To conduct at least two Lunch and Learn Sessions of interest to section members;
- To attend the national Civil Litigation Section meeting in Banff in October, 2009 and participate in discussions there;
- To participate in conference calls with other Civil Litigation Section leaders;
- To discuss topics of interest to Civil Litigation section members with other section leaders and other interested parties;
- To follow up on the report submitted to the Rules Subcommittee concerning the proposed amendment to the scale of costs and hold a meeting with section members concerning this proposed rule change and the rules change process generally; and



#### Constitutional and Human Rights Law

Farrah Carrim  
Cox & Palmer  
Tel: (709) 570-5543  
E-mail: fcarrim@coxandpalmer.com

The goals and objectives for 2009-2010 include the following:

- To keep section members up to date on developments in constitutional and Human Rights Law;
- To increase membership participation in section activities;
- To hold one or more sessions with a guest speaker, as either Lunch and Learn Sessions or in an alternative format;
- To work with other sections with overlapping interests; and
- To support and promote the activities of the national section.

Ideas, suggestions and input from section members are most welcome. Please contact me at your convenience.



#### Construction Law

Jennifer Newbury  
Martin Whalen Hennebury Stamp  
Tel: (709) 754-1400  
E-mail: jnewbury@mwlaw.com

My plans for the Section this year include:

- Organize two or three Lunch and Learn Sessions;
- Seek input from section members regarding activities for the construction law section; and
- Monitor and inform members of any significant developments in construction law, including activities of the national section.



## Section Chairs - 2009/2010



### Criminal Law

Robin Fowler  
Crown Attorney's Office  
Tel: (709) 729-2897  
E-mail: robinfowler@govnl.ca  
*Goals not received.*

- To represent the Section in meetings with the Federal Department of Justice in Ottawa;
- To communicate with and educate the Section on ongoing issues in Family Law; and
- To hold at least one Lunch and Learn session on a topic of interest to the membership.

As a new Section Chair, I welcome all input from members on current issues, as well as any suggestions for Lunch and Learn Session topics.



### Energy and Resources Law

Gregory Moores  
Stewart McKelvey  
Tel: (709) 570-5797  
E-mail: gmoores@smms.com

This year, the local Branch has returned to its prior status of having separate sections for Energy and Resources Law and Environmental Law. As one of the smaller sections, a fundamental goal of the Energy and Resources Law Section is to maintain a reasonable level of activity. That being said, combined interest in both this section and the Environmental Law section should present opportunities for joint presentations or sessions of interest to members. Plans for this section include:

- An initial business meeting of section members; and
- At least one session with a guest speaker, preferably in the form of a Lunch & Learn Session or in combination with a more social setting or context.

I am very interested in hearing from any section member who is inclined to offer suggestions. Please do not hesitate to give me a call or send me an e-mail at your convenience.



### Environmental Law

Antoinette Fekete  
Rogers Bussey Lawyers  
Tel: (709) 738-8533  
E-mail: afekete@rogersbussey.com  
*Goals not received.*

- To help build and strengthen the support system for general practitioners, in particular sole practitioners, to enhance or facilitate their practice;
- To act as a sounding board for general practitioners who may have suggestions or concerns with the Branch's General Practice Group so that we can strive to improve upon general practitioners' access to research and assistance as required and facilitate their access to the services that the CBA provides;
- To strengthen and enhance general practitioners experience with the CBA in order to increase interest and enrolment for the general practice section; and finally,
- To act as a messenger for general practitioners who seek an avenue to communicate particular concerns and complaints of theirs to the Law Society or such other entity to whom the complaint is to be directed.



### Family Law

Melanie Del Rizzo  
Smyth Woodland Del Rizzo & LeDrew  
Tel: (709) 754-4845  
E-mail: mdlrizzo@swd-law.nf.net

My plans for the Section this year include:



### Firm Management and Technology

Christopher Pike  
Benson Myles  
Tel: (709) 570-7228  
E-mail: cpike@bensohmyles.com

The Section's mandate is about more than technology and includes marketing and firm management. This year I plan to focus on those areas and plan to offer 2 lunch and learn sessions. One will have a marketing focus and the other a general management focus.



### General Practice, Solo and Small Firm

Bradley Savoury  
Rogers Bussey Lawyers  
Tel: (709) 738-8533  
E-mail: bsavoury@rogersbussey.com

My plans for the Section this year include:



### Government and Public Sector

Tracey Pennell  
Department of Natural Resources  
Tel: (709) 737-4258  
E-mail: traceypennell@nlh.nl.ca

My plans for the Section for this year include:

- To discuss with the Government of Newfoundland and Labrador options for increasing the support for CBA membership for public sector lawyers;
- To hold one or more sessions with a guest speaker, as either Lunch and Learn Sessions or in an alternative format; and
- To work with other sections with shared interests.

I look forward to working with all members of the Section and welcome your ideas and thoughts for the upcoming year.



### Health Law

Richard Rogers  
Rogers Bussey Lawyers  
Tel: (709) 738-8533  
E-mail: rrogers@nflid.net

My plans for the Section this year include:

- Provide story and update information to the *Squid pro quo* as necessary;
- Meet with other Section Chairs with similar areas of interest;
- Attend the annual general meeting in Ottawa to discuss national issues; and
- Make myself available to any lawyers wishing to discuss Health Law issues.



### Insurance Law

Peter Shea  
Cox & Palmer  
Tel: (709) 570-5334  
E-mail: pshea@coxandpalmer.com

My plans for the Section for this year include:

- To hold at least two lunch and learn sessions on topics of interest to Section members;
- To work co-operatively with other Sections, particularly

## Section Chairs - 2009/2010

the Civil Litigation Section, on topics in which we have a shared interest; and

- To keep members apprised of local and National developments in the field of Insurance Law.

I look forward to working with Section members, and encourage members to contact me with any ideas they may have for Section initiatives for the upcoming year.

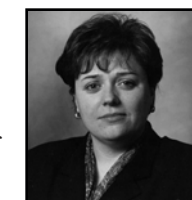


### Intellectual Property Law

Erin Best  
Cox & Palmer  
Tel: (709) 738-7800  
E-mail: ebest@coxandpalmer.com

My plans for the Section this year include:

- Two winter Lunch and Learn Sessions;
- Liaise with Canadian Intellectual Property Office and Intellectual Property Institute of Canada and report to the section;
- Attend national meeting if possible; and
- Report crucial developments in Intellectual Property Law to the Section.



### Maritime and Admiralty Law

Kim Walsh  
Stewart McKelvey  
Tel: (709) 722-4270  
E-mail: kwash@smss.com

My plans for the section this year include:

- To organize at least one lunch and learn session with a guest speaker on a topic of interest to section members;
- To keep section members apprised of developments in marine law at the national and international level; and
- To increase membership participation in section activities.

I look forward to meeting and working with section members and welcome suggestions on how we might develop and improve this practice area for the benefit of all members.

## Section Chairs - 2009/2010



### Privacy and Access Law

Mandy Woodland  
Cox & Palmer  
Tel: (709) 738-7800  
E-mail: mwoodland@coxandpalmer.com

Section priorities for this year are:

- To keep section members current on developments in privacy and access law, particularly legislation and law reform;
- To increase membership participation in section activities;
- To hold one or more sessions with a guest speaker, as either Lunch and Learn Sessions or in an alternative format;
- To work with other sections with shared interests;
- To participate in National Section Chair meetings and provide regular feedback to the section membership on our discussions and any issues arising from these meetings;
- To support and promote activities of our national section, including online CLE seminars and to co-chair a 2010 National CLE to be held in Ottawa; and
- To attend the National Privacy and Access Law Section meeting in 2010.

I am very interested in hearing from section members and I welcome ideas, suggestions, and input on section activities.



### Real Property Law

Susan LeDrew  
Smyth Woodland Del Rizzo & LeDrew  
Tel: (709) 754-4845  
E-mail: smledrew@swd-law.nf.net  
*Goals not received.*



### Sexual Orientation Gender Identity Conference (SOGIC)

Micheál Noseworthy  
Gittens & Associates  
Tel: (709) 579-8424  
E-mail: mnoseworthy@gittenslaw.com

My plans for the Section this year include:

- To develop and facilitate the growth of a SOGIC group in Newfoundland & Labrador;

- To facilitate an interest in and discussion of sexual orientation and gender identity issues as they apply to different practice areas;
- To co-ordinate and work with other sections where there are overlapping issues;
- To keep section members up to date on recent case law concerning sexual orientation and gender identity issues; and
- To organize at least one Lunch and Learn Session or CLE, possibly jointly with another section to get the Branch SOGIC Section up and running and to increase awareness and membership of the Section.

At this early stage in the development of the section, I would like to hear from any members who might have an interest in this area of law, and would welcome any ideas, input and or suggestions.



### Taxation Law

Michael Drover  
Michael Drover, Attorney at Law  
Tel: (709) 722-9177  
E-mail: mdrover@michaeldrover.com  
*Goals not received.*



### Wills and Estates Law

David Moores  
Wells & Company  
Tel: (709) 739-7768  
E-mail: dc.moores@wellsandcompany.ca

This is my first formal foray into the world of Wills and Estates for the Canadian Bar Association. My prime objective for this year is to continue to provide input on the Supreme Court's project regarding the upcoming electronic filing of Probate and Administration applications, and to bring relevant information to our membership as the project approaches roll-out. I also would like to hear from interested members with respect to their needs and interests, in hopes of addressing them.



## Section Chairs - 2009/2010



### Women Lawyers Forum (WLF)

Andrea Murphy  
French Noseworthy and Associates  
Tel: (709) 754-2701  
E-mail: amurphy@nf.aibn.com

My plans and goals for the Section this year include:

- To officially launch the Newfoundland and Labrador Section of the WLF;
- To increase interest and membership in the WLF in this Province;
- To keep Section members up to date on developments and issues of interest/concern to female practitioners;
- To create a volunteer mentorship program whereby senior female practitioners are paired with junior female members of the profession;
- To hold at least one Lunch and Learn Session or Section meeting on a topic of interest to female members of the profession and to offer an opportunity for discussion and networking amongst the female members of the profession; and
- To organize at least one community service initiative for the benefit of women within the Province of Newfoundland and Labrador.

I look forward to serving as Chair of this Section for the 2009-2010 year and would welcome any expressions of interest for involvement in the Section and suggestions for possible Section events.



### Young Lawyer's Conference (YLC)

Beth McGrath  
Ottenheimer & Baker  
Tel: (709) 722-7584  
E-mail: bmcgrath@ottenheimerbaker.com

My plans for the Section this year include:

- To keep our section members informed on issues facing young lawyers of our Bar;
- To work with other sections with similar interests;
- To work with our provincial government to address the student debt issue and the inequities that face law students who return to Newfoundland and Labrador to practice; and
- To continue our Branch's national involvement and learn from representatives across Canada.

Activities:

- To hold at least three social events for our members;
- Christmas Social for Law Students;
- Bar Admission Course Wine & Cheese;
- To hold at least five YLC Friday Networking Sessions;
- To hold two educational sessions, one as a joint session with another section and the second as part of our Mid-Winter Meeting or Annual General Meeting; and
- To attend the National Young Lawyer's Meeting.

Please contact me with any issues or ideas for the upcoming year.

## Mark Your Calendars

### President's Reception

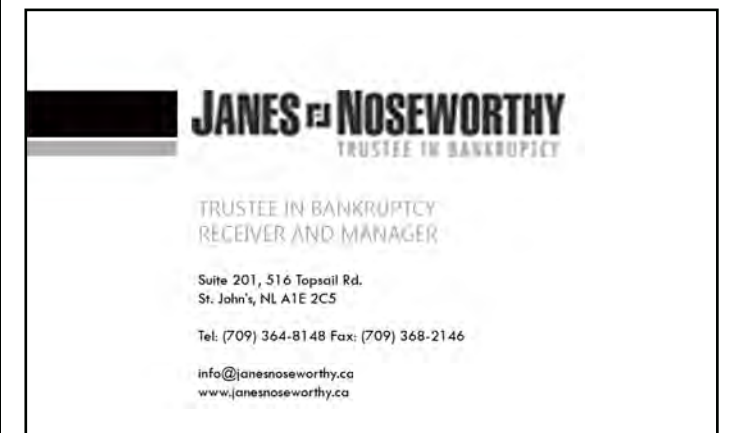
December 15, 2009  
Sheraton Newfoundland  
St. John's, NL

### Mid-Winter Meeting

February 25-27, 2010  
St. John's, NL

### Easter Egg Hunt and Brunch

March 28, 2010  
Geo Centre, St. John's NL





# Award Spotlight

By Janet Grant



## Distinguished Public Service Award Winner The Honourable Justice Lois Hoegg

The 2009 Award for Distinguished Public Service was presented to the Honourable Justice Lois Hoegg at the Canadian Bar Association – Newfoundland and Labrador Branch Annual General Meeting on July 3<sup>rd</sup>, 2009. This award recognizes a lawyer’s contribution to community service.

Residing in St. John’s Newfoundland the Honourable Justice Lois Hoegg is a proud Canadian Bar Association (CBA) member who has both excelled in her profession and has greatly contributed to her community.

Justice Hoegg has served as a member of the CBA since 1982. Throughout this time she has been a strong supporter of the CBA and has served on the Newfoundland & Labrador Executive Committee. Justice Hoegg is also a Board member of the Law for the Future Fund and has chaired the National Ethics and Professional Issues Committee.

Justice Hoegg has a strong commitment to legal education and her pioneer efforts in establishing the Newfoundland and Labrador Scholarship at Dalhousie Law School continues to ensure that persons from our province will be able to avail of a legal education close to home. She has also been involved in the broader community with a number of organizations such as the Memorial University Botanical Gardens, Planned Parenthood, the Art Gallery

of Newfoundland & Labrador, the Resource Centre for the Arts and Shallaway Inc. – Newfoundland & Labrador Youth Chorus.

It is widely recognized that Justice Hoegg has made a long, consistent and exemplary contribution to many areas of public service at local and national levels. She has brought to the table a deep commitment to the future success of many community organizations and is a respected professional and a dedicated volunteer.

Justice Hoegg was recently profiled in the Fall 2007 edition of *Squid pro quo* in an In Personam article written by *Squid pro quo* Editor Pamela Taylor. We would invite our readers to refer to this article to learn more about Justice Hoegg’s interesting and distinguished career. •



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# In Personam

By Renee L.T. Moore



## D. Kevin Carroll, Q.C., L.S.M CBA National President

In Dublin, Ireland on August 18, 2009, then Canadian Bar Association (CBA) National President Guy Joubert handed over the reins of the CBA to Kevin Carroll to guide our national law body during the next year. With great personal honour and member respect, he launched into the next phase of his career as the CBA National President.

Mr. Carroll’s focus and priority is aligned behind the importance of the rule of law. He is most inspired by *A Man For All Seasons*, the true story of Sir Thomas More, former Chancellor of England. This film provided guidance to Mr. Carroll in the midst of second year law school finals; he took the afternoon off to see it and came out with a renewed sense of the legal profession and the importance of the rule of law. He expressed the encompassing rule of law spreads beyond borders, and our efforts here have effect beyond Canadian boundaries.



**Kevin Carroll, Q.C., L.S.M.**

Mr. Carroll believes that as Canadians, we have a system of democracy that can and should be shared with others around the world. He has seen first-hand how other countries are struggling to establish the same democratic government that many Canadians take for granted. Mr. Carroll has been fortunate to befriend lawyers Mr. Joseph Tshuma from Zimbabwe and Mr. Ali Hird from Pakistan. Both Joseph and Ali have struggled for years for fundamental rights in their countries, in the face of ridicule and jail; these two heroes provided Mr. Carroll with insight and confirmation that Canada must continue to be a world leader during the changing legal landscape across the globe. With Mr. Carroll at the helm, the CBA will continue to be a supporter and advocate for the profession to enhance the international legal community.

Mr. Carroll’s sojourn to the CBA helm grew from solid roots in Atlantic Canadian soil. He was born in Saint John, New Brunswick, moved to Halifax, Nova Scotia for his early steps, but called Chester, Nova Scotia home during his formative years. In grade four he met the wonderful woman who would later become his wife, the Honourable M. Aileen Carroll, P.C., M.P.P. Over the years, he has lived or visited every Canadian province and territory with the exception of Nunavut; as a true national President, he plans to complete that and visit Nunavut this year.

Newfoundland and Labrador has always held a special meaning for Mr. Carroll. As a high school student, he spent his first trip away from home working as a Special Constable on an RCMP ship. Sailing from the south coast of the province north along the Labrador coast to Hopedale it was a true exercise of survival for a young man, but the beauty and spirit called to him. Newfoundland and Labrador also holds a long history in his blood; he’s the great-grandson of Ellen Carroll, who passed away at the age of 117 as Newfoundland and Labrador’s oldest resident. Mr. Carroll recalls many cheerful occasions spent in Newfoundland and Labrador from his regular visits and still considers it a second home.

After graduating as school president from St. Patrick’s High School in Halifax, Nova Scotia, Mr. Carroll pursued further educational opportunities at St. Mary’s University, where he completed his Bachelor of Arts in Political Science and Philosophy in 1965. He went on to earn his Bachelor of Laws Degree from Dalhousie in 1968. In 1970 he was admitted to the Ontario Bar. Mr. Carroll’s Queen’s Counsel designation came in 1981.

(Continued on page 18)



# In Personam

By Keri-Lynn Power



## Former Chief Judge Milton Reginald Reid

Being a Judge was not something Former Chief Judge Reid articulated to me as being a childhood dream. However, what did become apparent during this interview is his natural disposition to helping people, mentoring those in need, or impacting their lives in a positive manner. It is evident in looking back on his career that these worthy characteristics guided him to a very notable career on the bench.

Former Chief Judge Reid was the fifth of thirteen children born to a traditional family of the time, in Norris Point, Newfoundland and Labrador. His parents are now deceased and his siblings are spread out all across the country. Upon graduation from high school, Former Chief Judge Reid gravitated towards being a teacher. He taught in the traditional one room school in various communities on the Northern Peninsula. To this day he believes that teaching is one of the most important professions in society because it gives you the opportunity to help mould the minds of our future leaders. Although he liked teaching, it was not a long term career; hence, after two and a half years, in 1965 he took an appointment as a welfare officer, in rural Newfoundland.

Former Chief Judge Reid found this work extremely interesting and challenging for there were only 40 welfare officers in the whole province. Those were the days prior to people having social services. As such, a welfare officer was a pillar in the smaller communities. The role of welfare officer included assisting and advising people on their rights as there were very few legal practitioners in rural areas. This was his first exposure to the legal system, in assisting with corrections issues and delinquent youth.

In approximately 1967, Former Chief Judge Reid entered the newly created Bachelor of Arts (major in Social

Welfare) and Bachelor of Social Work program at Memorial University while continuing to work as a welfare officer. At that time he had been married for a couple of years. As such, it was a lesson in learning to balance school, with work and family but Former Chief Judge Reid says many people were in the same situation.

Upon graduation from Memorial University, he worked as a parole officer for five years. The job involved a lot of corrections work and was his first real exposure to magisterial work. At that time the Family Court, with its first Family Court Judge, Sadie Butt, was an adjunct of the social system. Coupled with his former employment and his education, the position of parole officer was a natural fit for him.

In 1973, Raymond Gushue and David Day, Q.C., as the members of a provincially appointed Commission published the recommendations titled, "Family Law in Newfoundland". Former Chief Judge Reid saw this as very important for those in the welfare field. The recommendations suggested that the Family Court would administer child welfare laws. That same year, a lawyer, who later became

known as Justice G.L. Steele, produced the *Report of the Royal Commission to Enquire into the Magistracy of Newfoundland*. Former Chief Judge Reid saw this as a watershed report for it was the beginning of the modern Provincial Court. As a result of the report, the *Provincial Court Act* was created and Family Court was made a part of the magistracy.

Shortly thereafter, an advertisement appeared in the Evening Telegram stating there was to be an expansion to the Family Court. It invited interested parties to become magistrates and judges but made no guarantee that appointees would be assigned to Family Court.

(Continued on page 17)



Hon. Chief Judge Reid

# In Personam

By Suzanne Orsborn



## The Honourable Chief Justice David B. Orsborn

In the mid-1990s, a young student attended her first high school dance with her friends. It was a night of promise and expectations; a night that the young student believed (as only a young student could) would shape her high-school years, and indeed, her future. Our student had made arrangements with her father to get picked up after the dance at 11 p.m. At the designated hour, she was still inside gossiping with her friends about the night that was and already dreaming about all the other social events to come. Sadly, at approximately 11:05 p.m., any hope she had for an exciting high-school life as one of the cool kids was dealt a fatal blow as she looked up and saw her father entering the still-dark gym to look for her. As Kurtz so eloquently stated as he took his last breath in Joseph Conrad's *Heart of Darkness*: "The horror! The horror!"

The young student learned an important lesson that night: Showing up late when expected by her father brings with it very serious consequences. At subsequent dances, arrangements were made for pick-up at 11:10 p.m.

Almost a decade and a half later, the young student (now a lawyer) has been tasked with the role of interviewing her father, who in April of this year was appointed Chief Justice of the Supreme Court (Trial Division) of Newfoundland and Labrador. This responsibility has been assumed with a view not only providing readers with a biographical background of the Chief Justice, but also providing some insight and information from the Chief Justice's experience that may assist readers with their own practices and with future appearances before the court, (the first bit of insight of course being not to show up late).

Born on July 19, 1945 in London, England, Chief Justice David Berry Orsborn spent his youth on opposite ends of the world before settling in Newfoundland and Labrador.

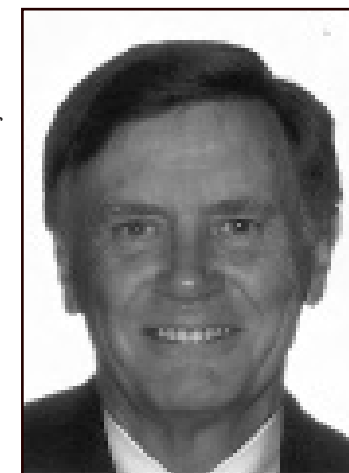
After living two years in London, he moved with his family to New Zealand where it was not unheard of to find the young boy spending his time doing math puzzles for fun. In 1962, the Orsborn family moved once again, this time to Toronto, Ontario where Chief Justice Orsborn attended high school and, in arguably one of his few lapses of good judgment, became a Leafs fan, attending many games with his father and mother (who would often occupy herself at the arena with her knitting).

After completing grade 12 in Toronto, a year shy of graduating from high-school, Chief Justice Orsborn and his family moved once more, this time to St. John's. As the Newfoundland and Labrador school system at the time only went to grade 11, Chief Justice Orsborn found himself eligible to attend Memorial University without having earned his high-school diploma.

Chief Justice Orsborn completed his Bachelor of Commerce degree in 1966 with first-class honours, and began work towards his Chartered Accountant (CA) designation with Lee and Martin Chartered Accountants. In 1968 Chief Justice Orsborn earned his CA, placing

first in the Uniform Evaluation examinations in the Atlantic Provinces, and in the top 20 in Canada. He then went on to work as Comptroller and Assistant Administrator at the former Grace General Hospital.

After a number of years at the Grace, Chief Justice Orsborn decided it was time to go back to school, and in 1976, with wife and Doberman in tow, he moved to Halifax, Nova Scotia to begin his first year at Dalhousie Law School. Despite falling victim at one point to the perils of reading exam questions too quickly (with the result that he advised the wrong client on a contracts exam), Chief Justice Orsborn had an exemplary academic



Hon. Chief Justice Orsborn



record during his time at Dalhousie, graduating in 1979 with (among other awards), the University Medal in Law. He returned to St. John's and after articling with Fabian O'Dea, Q.C., began a partnership with Jamie Puddester in 1981.

Early on in his legal career, Chief Justice Orsborn gained significant experience on a number of high-profile matters. He was appointed Associate Counsel to the Royal Commission on the Ocean Ranger Marine Disaster in 1982 and Chairman of the Royal Commission on Hospital and Nursing Home Costs in 1983. In the mid-1980s, he acted as co-counsel on the Royal Commission on the Donald Marshall, Jr. Prosecution. In 1985 he was appointed to the Commission of Inquiry into Provincial Court Judges' Salaries and Benefits and four years later to the Triennial Commission on Judges' Salaries and Benefits (Courtois Commission).

Chief Justice Orsborn's busy practice brought with it many of the same challenges faced by lawyers today in balancing work and family. On the occasional Saturday afternoon when duty called, Chief Justice Orsborn often took his three young children on an excursion to his office in Atlantic Place, where they were treated to unlimited access to the office's stash of candy and to art supplies (which included his notarial seal), along with binoculars to spy out his office window. Perhaps the biggest highlight of these trips to the office for his three children was getting to yell the magic word "abracadabra" to get the parking lot gate at Atlantic Place to rise as the car exited.

After a little over a decade in private practice, Chief Justice Orsborn was appointed to the Supreme Court, Trial Division in February of 1993. He was initially posted to the judicial centre of Happy Valley-Goose Bay, and then transferred to St. John's in August of the same year. In April 2009, he replaced Chief Justice Derek Green as Chief Justice of the Supreme Court (Trial Division) after Chief Justice Green was appointed Chief Justice of the Court of Appeal of Newfoundland and Labrador.

Perhaps much in the same way that he enjoyed working through math puzzles as a child, Chief Justice Orsborn clearly enjoys his work as a judge. When asked what part he enjoys most about his position, he replied that it is preparing for argument and reviewing the submissions of counsel, which at times requires him to familiarize

himself with new issues in law, and then discussing and exploring the legal issues with the parties in court. He also noted the importance he places on his own preparation for court matters in ensuring that the time of the parties and of the Court is effectively used.

As for the part that he enjoys the least about his position, Chief Justice Orsborn explained that he has observed a relatively frequent lack of professional courtesy shown between opposing counsel when in court. He noted that there is an obligation upon counsel not only to advance their client's case, but to also assist the court in working through the various legal arguments at issue, and that this requires counsel to be sufficiently objective as advocates.

Chief Justice Orsborn's strong work ethic is also evident in his non-work activities. While in private practice, for example, Chief Justice Orsborn literally "took one for the team" during a firm softball tournament when he slid into first base and dislocating his shoulder in the process. He is an avid golfer, and has been nicknamed the "Mystery Man" by the staff of Clovelly Golf Course for skulking about the golf course in the early morning hours. Chief Justice Orsborn also enjoys salmon fishing and spends time doing so in Central Newfoundland each summer. A talented singer and musician, Chief Justice Orsborn has on occasion sung a song or two for his colleagues at judges' gatherings. In the mornings before the day gets started, he also enjoys keeping the local Tim Hortons in business and can be found there regularly with coffee and newspaper (in the company on occasion of one or two of his children who may show up to be treated to a tea and bagel, despite now being gainfully employed themselves).

When asked what changes he has seen or experienced since his time on the bench, Chief Justice Orsborn observed that there are many more younger counsel now present in court (though the writer did note that the young lawyers now appearing before him have about as much time at the bar as he did when he first began doing Commission work) as well as more women lawyers.

Chief Justice Orsborn also expressed that as the years go on, he finds himself less annoyed at things that used to bother him. This may in part be explained by one of Chief Justice Orsborn's newer roles as grandfather to a three-year old granddaughter who has an uncanny ability to get her granddad to do just about anything, no

matter how silly, and a five-month old grandson who will undoubtedly have the same power. Will the day come when the Chief Justice is asked to pick his granddaughter up after her first high-school dance, and then waits in the car until she comes out a few minutes past the arranged time? Only time will tell. Until then, counsel are advised to attend at court promptly at the scheduled hour. •

**Former Chief Judge Reid** *(Continued from page 14)*

Former Chief Judge Reid decided to take a gamble, applied for the position, was interviewed and appointed as a magistrate in 1975. While awaiting the Family Court expansion, he enjoyed his work as a magistrate. In 1978 there were no further expansions of the Provincial Family Court and the Unified Family Court was created, which resulted in a drawback of the family law area in the Provincial Court System. Ironically, Former Chief Jude Reid never did get to be a Family Court Judge although that was main reason he sought out the magistracy appointment.

Former Chief Judge Reid spent the first five years of his appointment working in St. John's, Grand Falls, and Goose Bay. In September, 1980, he, his wife and daughter relocated to Halifax, Nova Scotia to commence law school. He found that his maturity, as well as, his previous experience in balancing work, school and family, helped him to succeed in law school. When asked about the experience of attending law school as a magistrate, with other "regular" students and their attitude toward him, he replied that there were different attitudes. Some students could not understand how their peers were judges but did not have law degrees. However, by the third year, he was just another classmate, with the exception that while other students spent their summers clerking in a firm, he and his fellow magistrates spent their summers sitting on the bench. Upon graduation from law school he completed his articles under the Deputy Minister and Assistant Deputy Minister of Justice with a short tenure in the private firm of what was Mercer, Spracklin.

Former Chief Judge Reid returned to full time duty as a magistrate with the Provincial Court in 1983, shortly after the adoption of the *Canadian Charter of Rights and Freedoms*. When asked about how that affected his job, he said considering the enormity of the change, it was not

too bad. He noted that they adapted fairly quickly and many people in the legal profession were ready for the *Charter*. Former Chief Judge Reid explained that prior to the Charter, the *Bill of Rights*, expressed similar principles. However, the *Bill of Rights* was not effective because it was a federal statute, was amendable by Parliament, and was not applicable to provincial law. The *Charter*, on the other hand, was part of the Constitution and had the authority that was lacking in the *Bill of Rights*.

In 1992, Former Chief Judge Reid took over the position of Coordinating Judge. In this position, his responsibilities included directing other judges, setting times for sitting, coordinating the Provincial Court activities for all of the Avalon Peninsula and disciplining judges as necessary. He described it as an Associate Chief Judge position without the title. In 2001, he was appointed Chief Judge and lobbied for a statutory amendment to bring back the position of Associate Chief Judge.

In trying to understand the role more than the title, I asked Former Chief Judge Reid about his routine duties as Chief Judge. He explained that it included being a judicial officer, a sitting judge, and an administrator. However, by the time he retired, the administrative part of the position took up most of his time. The position also involved liaising with other judges across the province, responding to media inquiries and addressing complaints. He explained that a component of the job, which most people do not see, is public relations with other courts, law enforcement agencies and government bodies. In conducting these duties, Former Chief Judge Reid emphasized the importance of judicial independence and that an appearance of bias or conflict of interest had to be avoided.

In 2005, Former Chief Judge Reid also took over the responsibility for the Mental Disorder Review Board which reviewed the disposition of matters of those not criminally responsible or unfit to stand trial by virtue of mental illness. He continues to hold this responsibility.

When asked about retirement, Former Chief Judge Reid explained that in terms of service, he had been eligible for many years. His wife had retired and was badgering him about it. He always wanted to finish the new



courthouse in Corner Brook However, as that was delayed, he realized there would always be another project he wanted to finish. At the age of 65 and on the 33rd anniversary of his appointment to the bench, he made the decision to retire at the end of April.

Retirement is still relatively new to Former Chief Judge Reid. He says he is adjusting, but is still busy. Aside from continuing to review cases under the Mental Disorder Review Board, he is the Administrator of the Condominium Association where he lives. He has been spending more time at his summer home on Salmonier Line, doing a little bit of fishing and is back curling after a few years' hiatus.

I initially found the idea of interviewing a former chief judge, whose career on the bench spanned four decades and involved so many phenomenal legal changes, daunting. However, I thoroughly enjoyed every moment of our interview and found it to be entertaining and educational. On behalf of *Squid pro quo* I would like to thank Former Chief Judge Reid for speaking to me. I also take the liberty of speaking on behalf of my peers in thanking him for such devotion and service to our legal community.

**Kevin Carroll, Q.C.** (Continued from page 13)

In 2004, he was awarded the Law Society Medal that bestowed the L.S.M. designation - only five awards were given that year for the contribution of volunteerism over the years. Mr. Carroll's humility is apparent as he expresses that what he did was in fact ordinary. As a member of the community, he felt a corresponding obligation to give back to the community as other lawyers do.

As part of Mr. Carroll's busy and well-rounded lifestyle, he has enjoyed skiing and sailing since childhood. He also takes part in community theatre and film events. He has been involved in the Scouting movement for 15 years as a Leader and found it a rewarding experience. Mr. Carroll has further been involved in pro bono work for many years and finds pleasure giving back to the community year-round.

The CBA has played a key role in Mr. Carroll's career dating back to law school. He joined the CBA as a law student to be part of the professional organization. As time passed, he became increasingly active in the association, and a decade later he was involved in the Ontario and National Councils. Interest led to involvement in, and a greater awareness of the issues facing our profession. In the early 1990s, he

served as the President of the Ontario Branch, and then later became part of the National Executive.

Mr. Carroll believes the CBA provides its members with three main benefits:

1. As a collegial organization to share resources and develop friends over the years;
2. As a network to draw upon to derive an array of benefits, including referrals from other provinces and practitioners; and
3. As an opportunity to exercise guidance to give back to the community through professional development and continuing legal education.

The question with any new leader is the same - Where do we go from here? Mr. Carroll's CBA National President roadmap is in place. First, his plan involves dealing with the changing legal landscape, including such things as assisting senior partners in educating associates on how to be a partner in the evolving practice of law. Second, he is working to increase skill levels - from busy urban centres to remote areas of the country - by having legal education delivered online through web casts and other electronic workplace development. Third, he is committed to working internationally in areas where democracy is emerging, especially via the Canadian International Development Agency, which has connections in nearly thirty countries.

Nearly into his fifth decade of CBA involvement, Mr. Carroll has learned lawyer mentorship from the late Jim Sawers, Q.C., the late Bill Rogers, Q.C., Doug Goudie, Q.C., and Ken Howie, Q.C. He expressed these four lawyers had different litigation styles, but a shared common generosity to nourish the growth of new members of the bar. All four gentlemen believed that encouragement and support are a life-long processes, and Mr. Carroll has embraced that view. As senior partner with Carroll Heyd Chown, he returns the wisdom that was imparted to him to provide support to young lawyers at his firm. He brings to all of us an extensive insight into insurance-related litigation, as well as many first-hand life experiences to enrich his post as CBA National President in the coming year.

On behalf of the *Squid pro quo* (SPQ) Committee, I would like to thank Mr. Kevin Carroll for sharing his story. SPQ truly appreciates the opportunity to gain a glimpse into your life and your vision for the CBA. You exemplify what the Association embodies today and in the future. •



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# Case Digest

By Daniel M. Glover



## Duty of Good Faith in Contract Performance

*McDonald and Clarenville Ice and Refrigeration Ltd. v Sea Crest Holdings Ltd.*<sup>1</sup> was an action for breach of a share purchase agreement which included a clause to “maintain normal business and dealings” with Clarenville Ice, an ice and cold storage corporation that was not a party to the agreement. Justice Dymond for the Supreme Court held that the reasonable expectations of the Plaintiffs, who included the clause in order to continue to receive an income from the continuing business with Clarenville Ice, were breached.

The good faith duty to perform a contract according to its terms was discussed. Justice Dymond cited a recent article<sup>2</sup> that discusses the implied term of good faith in the performance of contracts and sets out two categories of contracts in which a party to a contract may be liable for acting in bad faith. The first category of contracts includes good faith obligations by operation of law. For instance, in construction law an owner has a duty to conduct the bidding process between contractors submitting tenders for construction in good faith.

The second category of contracts includes good faith obligations based on the intentions of the parties. In this the intention of the parties at the formation of the agreement is imperative. Bad faith may be found in this second category of contracts where one of the contracting parties acts in a way that “substantially nullifies the contractual objectives or causes significant harm to the other, contrary to the original purposes or expectations of the parties.”<sup>3</sup>

Bad faith in the first sense was not found in this case; however Justice Dymond found:

...the good faith referred to as it relates to the facts of this case would be a category number two scenario where the intention of the parties at the formation of the Agreement is imperative.

He concluded:

...in the present case, I do not find that there was an exercise of bad faith or anything as strong as wrongdoing on the part of Sea Crest, so much as an indifference to the terms of clause 5.01 and its impact on McDonald (i.e., lack of good faith).<sup>4</sup>

Third party beneficiary principles based on the intentions of the parties<sup>5</sup> and the meaning of “maintain normal dealings and business” were also discussed in the decision. The defendants argued that the context of the fishing industry should be taken into account in interpreting these words and that market conditions might necessitate a reduction in the use of cold storage. The Plaintiffs argued that the plain meaning of the words required the Defendants to maintain on average a similar level of business with Clarenville Ice as in years prior to the agreement. Because the defendants’ interpretation of the clause in question would not make commercial sense and would render it unenforceable and meaningless, the Plaintiffs’ interpretation was adopted. Justice Dymond also found it significant that the clause contained the proviso that Clarenville Ice’s prices should remain competitive and the evidence indicated they had. Solicitor-client costs were awarded. •

1. 2009 NLTD 101. Ian Kelly, Q.C. and Sheilagh Murphy acted for the Plaintiffs and Gregory Anthony acted for the Defendants.  
2. Shannon Kathleen O’Byrne, *The Implied Term of Good Faith and Fair Dealing: Recent Developments* (2007) 86 No. 2 Can. Bar Review 193.  
3. 2009 NLTD 101, supra, note at paragraph 73, citing Mesa Operating Ltd. Partnership v. Amoco Canada Resources Ltd., [1994] A.J. No. 201 (Alta. C.A.).  
4. *Ibid.*, paragraph 76.  
5. *Ibid.*, paragraphs 78.



# Branch Section Registration Form

Newfoundland & Labrador Sections represent 30 groups of CBA-NL Branch members, organized according to specific areas of law. Sections are the CBA’s greatest resource for:

- Expertise in specific areas of law and matters relating to the objects of the Association;
- CBA initiatives addressing matters of concern to the legal profession; and
- Professional development services, including Lunch and Learn Sessions.

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- You must be a CBA member in good standing to become a Section members and attend meetings and Lunch and Learn Sessions;
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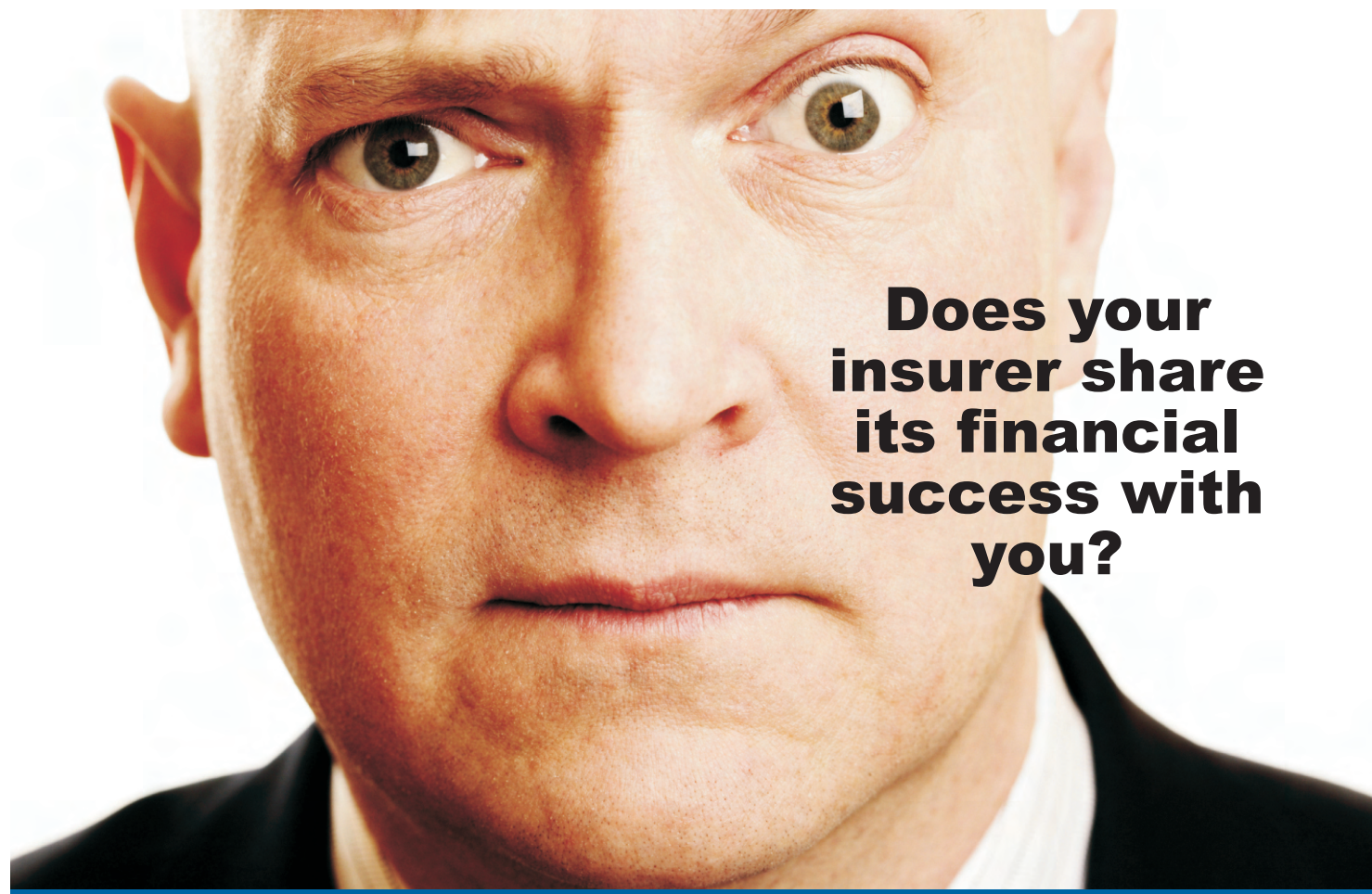
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| <input type="checkbox"/> Citizenship & Immigration Law      | <input type="checkbox"/> Media & Communications Law             |
| <input type="checkbox"/> Commodity Tax, Customs & Trade Law | <input type="checkbox"/> Military Law                           |
| <input type="checkbox"/> Competition Law                    | <input type="checkbox"/> Municipal Law                          |
| <input type="checkbox"/> Equity                             | <input type="checkbox"/> Pensions & Benefits Law                |
| <input type="checkbox"/> French Speaking Members            |   |

If you have any questions with regard to any of the Sections or Special Committees of the Branch of National CBA, please contact Laura Churchill, Executive Director, CBA-NL Branch at (709) 579-5783 or e-mail cba-nl@cba.org or Holly Doerksen, Director, National Sections, at 1-800-267-8860 or email hollyd@cba.org.





**Does your  
insurer share  
its financial  
success with  
you?**

Not only does our break-even pricing goal **provide you with insurance at a cost that's much lower**, it makes it possible for you to benefit from those occasions when our financial results exceed our long-term requirements.

This year is one such occasion as two of our most popular and lowest cost plans have had financial performance that exceeds our long term requirements. As a result, most **Term Life** insurance clients qualified for a **15% refund** of their paid 2008 premiums, and most of our **Business Expense Disability** insurance clients qualified for a **45% refund** of their paid 2008 premiums.

Over the last decade, better than anticipated plan performance has allowed us to return approximately \$30 million to our clients through rate reductions, benefit improvements and refunds. Does your insurer share its financial success with you?

Consider joining the more than 30,000 members of the legal profession that choose the CBIA for their insurance protection. Please contact **your local CBIA Authorized Sales Representative by calling 1-888-873-2986 or visit [www.barinsurance.com](http://www.barinsurance.com)**.



**CBIA**

THE CANADIAN BAR INSURANCE ASSOCIATION

For lawyers, by lawyers

## Canadian Bar Insurance Association Update

By Hughie Shea



### It's Not a Budget, It's a Business Plan!

Part of being not-for-profit means that we have a mandate at the Canadian Bar Insurance Association (CBIA) to return excess money not required to maintain the health and strength of our plans to the people who put it there in the first place, our insureds. This initiative is not new for the folks who have maintained our insurance products for an extended period. Our Business Expense clients received a 45% refund of their 2008 premiums and our Term Life clients received a refund of up to 15% of their 2008 premiums. As our fall client newsletter states: "While we cannot guarantee future results, over the last 12 years, most clients have shared in approximately \$30 million through a combination of rate reductions, contractual improvements and refunded premiums" (*CBIA Client Newsletter Fall 2009*).

Running any business should involve creating a dynamic business plan because things change. However, that does not mitigate the fact that without a business plan it becomes very difficult to communicate an organization's goals, marketing strategy, revenue projections or expense projections for the New Year. My plan involves two separate business plans. The first for activities and goals for the Canadian Bar Association (CBA), CBIA and CBA Financial and the second for the other business activities involved in my brokerage work in insurance, group benefits and money management. Both have identical features such as:

- Revenue Targets: How is this revenue going to be generated?
- Expense Controls: Any new major expenses on the horizon?
- Office Organization Structure: Is there a need for increased staffing or support?
- Marketing Activities and Initiatives: Is money spent being used effectively?

- Client Service Standards: Where can improvements be generated?
- Longer Term Strategic Plans: How short-term initiatives fit into reaching those plans.
- Human Resource Activities: Recruitment, retention and training.

The central focus of a business plan is to create *realistic goals* and an action plan of how to meet those goals. *Unrealistic goals* can be included in a business plan under the heading of "stretch goals". A stretch goal is a term coined by Jack Welch, retired General Electric CEO. They are objectives which are seemingly unobtainable with present resources and require what I refer to as "blue sky" thinking. I'm not sure who to credit with that phrase, but it means "thinking" that is not grounded in the realities of the present and is open-minded.

A business plan should be reviewed quarterly. In my opinion, the main reason to develop a business plan is to determine your success or lack thereof on a quarterly basis. You can then make a decision on whether to devote more time and resources to the goal. Here is the really easy part of any business plan; once done it becomes very easy to modify for the following year. While your goals, and the dynamics to reach those goals, may change, the critical components will be very similar. The main reason it would make sense for you, me or anyone else to develop a business plan and annual goals is to save time, money or resources. Focus resources on what you want to achieve and you will inevitably achieve more.

One of the goals I always have is to spend more time with my kids. So far so good. Your goals, whether personal or business, have a greater chance of success if they are planned, coordinated and communicated. Thank you for allowing me to be of service to you, your families and your staff.●



# Canadian Bar Association National News

## New Media Marketing: Update to Code of Professional Conduct Interventions at the Supreme Court of Canada

In the past, your shingle on Main Street let passersby know you were available to take on their legal work. Today, millions of potential clients can find you with the click of a mouse. What rules apply to lawyers who use the Internet to seek out clients?

The CBA's Ethics and Professional Responsibility Committee presents a new report interpreting the CBA's Code of Professional Conduct in the context of new media. The report covers everything from e-mail tag lines to blog etiquette to web-based lawyer referral services.

Read the guidelines: <http://www.cba.org/CBA/activities/pdf/ethicsguidelines-eng.pdf>

## CBA Welcomes Extension of EI Benefits to Self-employed Persons

The Canadian Bar Association commends the federal government for introducing Bill C-56, *Fairness for the Self-Employed Act*, that would extend Employment Insurance (EI) special benefits, including maternity and parental leave benefits to the self-employed.

"The CBA wholeheartedly welcomes a system of special benefits that treats all families equally regardless of whether parents are employed or self-employed," says CBA President Kevin Carroll of Barrie, Ontario. "The new program will also enhance the contribution of women professionals and entrepreneurs to the Canadian economy."

Self-employed parents will now be entitled to the same special benefits as employed persons, based on their net self-employment income as shown on their past year's tax return, if they opt in and pay EI premiums for a year. The CBA has advocated for the extension of EI maternity and parental benefits for the self-employed since 1995, stressing the negative effect the absence of such provisions has on women.

[http://www.cba.org/cba/news/2009\\_Releases/2009-11-05-EI.aspx](http://www.cba.org/cba/news/2009_Releases/2009-11-05-EI.aspx)

The CBA intervened at the Supreme Court of Canada in two cases in November. *R v. Cunningham* looks at a number of important and at times conflicting rules, which guide counsel's right to withdraw from a criminal case. The requirement that counsel explain why they must withdraw inevitably touches upon matters protected by solicitor-client privilege. The CBA argued that courts should sparingly use their power to compel lawyers to act and should generally presume that counsel adhere to rules of professional conduct.

In *Prime Minister v. Khadr*, the CBA said that the refusal to request Khadr's repatriation is a continuation of the government's conduct, which began when Canadian officials gained access to interrogate him in circumstances that violated his international human rights. The CBA has a long-standing interest in ensuring due process under law. Given the circumstances of the Khadr case, the CBA has argued that can best be accomplished by repatriating him to Canada.

[http://www.cba.org/CBA/news/2009\\_releases/2009-10-28\\_SCC\\_Interventions.aspx](http://www.cba.org/CBA/news/2009_releases/2009-10-28_SCC_Interventions.aspx)

## Laptop Searches at the Border

Anyone who regularly travels to the U.S. on business should be aware of the U.S. Department of Homeland Security (DHS) guidelines announced on August 27, 2009, which detail what constitutes a lawful search and the process governing devices that are searched and/or detained at the border. Canadian law firms should also consider adopting some standard procedures for how sensitive data, if any, should be stored on electronic devices used on business trips.

<http://www.cba.org/CBA/PracticeLink/TAYP/laptopborderupdate.aspx>



## Squid pro quo Letters to the Editor

Squid Pro quo welcomes letters to the editor from members of the Canadian Bar Association wishing to express observations, opinions, corrections, very brief reports, or comments on previously published articles.

Please note the following:

1. Your letter must be single spaced, Times New Roman font, point size - 12 with one inch margins.
2. Letters must not exceed 250 words in length; Published letters will be edited for clarity and length without the prior approval of the author. Unpublished letters will not be returned.
3. Signatures of all authors are required (by fax will be acceptable), together with the author's full mailing address and daytime telephone number. Pen names and anonymous letters will not be published
4. Letters referring to a recent Squid pro quo article must be received within one month of its publication
5. Squid pro quo will not accept responsibility for statements made by contributors.



### CBA Mid-Winter 2010



## A Capital Experience Awaits You

Plan to attend the 2010 CBA Mid-Winter Meeting of Council\* in Ottawa, Feb. 12-14, at Ottawa's historic Fairmont Château Laurier.

**Business**  
\*Resolutions, panel discussions, reports (details online as they become available)

**Social**  
\*Receptions, Winterlude Evening, President's Dinner, and more!

**Indoor/Outdoor Activities**  
\*World-class museums and galleries, skating, skiing, ice sculptures

**Register now!**

**Details, Registration**  
[www.cba.org/midwinter2010](http://www.cba.org/midwinter2010)

\*If you are not a voting member of Council, please check with Executive Director Laura Churchill ([cba-nl@cba.org](mailto:cba-nl@cba.org)) for accreditation.



Moya Greene Luncheon



# People and Places

**White, Ottenheimer and Baker** is now *Ottenheimer and Baker*.

**Isobel O'Shea**, formerly with *Stewart McKelvey* has joined the *Labour Relations Agency*.

**John Whelan**, formerly with *Stewart McKelvey* has joined *Harmony Holdings*.

**Legal Aid** offices have moved from *2 Steers Cove, St John's, NL* to *251 Empire Ave., St. John's, NL*.

**Robynn Arnold**, formerly with *Curtis Dawe* has joined the *Office of the Information and Privacy Commissioner*.

**Patricia Beh**, formerly with *Legal Aid* has joined the *Office of the Judge Advocate General*.

**Jeremy Andrews** formerly with *Benson Myles* has taken non practicing status.

**Scott Worsford**, formerly with *Wal Mart Canada* has joined the *Eastern Regional Integrated Health Authority*.

**Vanessa McCarthy**, formerly with *Stewart McKelvey* is now with *Brown & Burns* in Toronto, ON.



## New CBA Members

**Tanya Bath** -McInnes Copper

**Michael Ladha** - Curtis Dawe

**Peter Ralph** - Simmonds Breen Sullivan

**Rebecca Marshall** - Ottenheimer & Baker

**Matthew Walsh** - Ottenheimer & Baker





**Enjoy an exclusive discount every time you travel with Provincial Airlines Limited.**

The Canadian Bar Association (CBA), Newfoundland and Labrador Branch would like to remind members of our partnership with Provincial Airlines Limited (PAL) as the official Exclusive Provincial Preferred Supplier for air travel within Newfoundland and Labrador. This membership benefit is of value to you and your practice.

**What does this mean for you as a member of the CBA – NL Branch?**

As part of the new partnership, PAL will be offering CBA members of the Newfoundland and Labrador Branch preferential corporate discount. These rates are only available to CBA members when you specifically identify yourself as a CBA member of the Newfoundland & Labrador Branch and provide the corporate contract number **08CBA341**.

PAL is the largest independent regional carrier in Eastern Canada and is fully committed to providing a superior level of service to Newfoundland and Labrador as well as Quebec. To learn more about Provincial Airlines' wide range of services, please visit their website at [www.provincialairlines.ca](http://www.provincialairlines.ca).

If you have any questions about this preferred supplier agreement, please contact Laura Churchill, Executive Director at the CBA-NL Branch office at (709) 579-5783 or e-mail [cba-nl@cba.org](mailto:cba-nl@cba.org).



Bankruptcy & Insolvency Lunch and Learn



Chief Justice Green Luncheon