

Squid pro quo

Newfoundland and Labrador Branch

Spring 2006

Canadian Bar Association



Canadian Bar Association
Branch Mid-Winter Meeting
February 2 - 4, 2006



Squid pro quo

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Canadian Bar Association
Fortis Building
Suite 402, 139 Water Street
St. John's, NL A1C 1B2
Tel.: 579-5783 Fax: 726-4166
e-mail: cba-nl@nl.rogers.com
website: www.cba.org

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Squid pro quo is a publication of the Newfoundland and Labrador Branch of the Canadian Bar Association 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. Articles must be submitted no later than October 31st, February 28th and June 30th.

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

Letter from the Editor



Sheri Wicks
Editor

As the pages of this edition of *Squid Pro Quo* will attest, our membership has been very busy since the last edition of the Magazine was released in November, and I would like to thank the members of the Magazine Committee, who, as always, have given 100% to make this publication a success. There are also three inserts in this edition of the Magazine, two of which request your time and assistance to make Law Day and the 2006 Canadian Legal Conference ("CLC") a success. Please review the volunteer forms and give consideration to filling out both of them!! The third insert in this edition brings to you the CBA's newest publication the *Canadian Bar Advocacy* which I hope you will enjoy reading.

At the local level we are always trying to find new and innovative ways to add value to membership in the CBA, and this edition of the Magazine adds a little more. Members of the CBA can now purchase classified ads in *Squid pro quo* for a nominal fee. We ask for your assistance in using this new service to ensure that it remains relevant for both the individuals placing the ads and the membership who will read them.

This edition contains has a slightly unplanned political theme with an In Personam by Pamela Taylor on the newly acclaimed provincial Liberal Party Leader, Jim Bennett, and a second In Personam by Judy Manning, on this province's newest Cabinet Minister, the Honourable Loyola Hearn. Both men face many challenges in the coming years, and we thank them both for taking the time to talk to us. You may have noticed that you are discovering a little more about the CBA National Office in the past few editions of the Magazine. We thought you might be interested in finding out more about the many men and women who work so hard to make the CBA the well oiled machine it is today, which brings me to our third In Personam on Joan Bercovitch. Joan is the Senior Director of Legal and Governmental Affairs, and is part of the essential glue that keeps the CBA together, find out more about Joan's role with the CBA in Nancy Furlong's article.

It isn't just the Magazine Committee who has been very busy since, November; our many other local volunteers also have much to report in this edition of *Squid pro quo*. Inside you will find many Section Chair updates, as well as reports from other CBA Committees including Law Day, Young Lawyers-CBA and the CLC Steering Committee. There is also our President's Report, a case digest from Geoff Aylward, an article from our Awards Committee, and of course People and Places, which I think has reached a new record for length thanks to the tireless efforts of Cindy Starkes. Ensure you "Mark Your Calendars!" and take part in the many local activities of the CBA taking place in the coming months including the Children's Easter Egg Hunt, our Annual General Meeting, and the 2006 Canadian Legal Conference just to name a few.

It is going to be a very busy spring and summer for the CBA in Newfoundland and Labrador. There is much to do, but I am confident that we will get it all done. If you have been thinking about getting more involved in the CBA, now is the time to do it. With so many volunteer opportunities available in the coming months, you can choose how little, or great, a time commitment you can afford. There is something for everyone as we get ready to host the country!

President's Report

by Jennifer Newbury



NL Branch Mid-Winter Meeting: February 2-4, 2006

The 2006 Mid-Winter Meeting, held in St. John's, was a grand success. One social highlight was the curling funspiel held at Bally Haly, in which Raelene Lee, Bob Hickey, Mark Andrews and Rod Zdebiak emerged victorious - look out Brad Gushue & company!

Given the weather that coincided with this year's events, the meeting might more appropriately have been called the "Mid-Blizzard Meeting". Susan McGrath, Past-President of the National CBA, spent a day lounging in close proximity to Pearson International Airport in Toronto, as the weather played havoc with her plans to join us in St. John's. Guy Joubert of Winnipeg, candidate for the position of Second Vice-President, National CBA, also had to alter his plans to join us at the 2006 "Mid-Blizzard Meeting". Guy was quick to say that, as a Winnipegger, it was not the 40 plus centimeters of snow and high winds, but rather Air Canada, that kept him away.

The CLE "Issues in Personal Injury - Trends, Tips and Traps", was also postponed due to inclement weather, and ultimately proceeded on February 20, 2006, with over 100 registrants.

The Friday night festivities, held at the Bally Haly Curling Club, featured a dinner and dance with music by The Insiders. During the dinner, Brian Callahan of *The Telegram* was presented with the 2006 CBA "Award for Excellence in Journalism" for his article entitled "The Proper Channels - Judges and the Complaint Process". Mr. Justice Seamus O'Regan, Anne Fagan, Roxane Dean and Greg Stamp are members of the committee, and while speaking of Mr. Callahan's winning article, Anne stated, "It was a well-balanced article which tied four earlier reports on the complaint against Jerome Kennedy together and explained the limitations on judges, the complaint process, the law soci-

ety's role, avenues open to lawyers and the public, fair and appropriate criticism, and confidence in the independence of the judiciary." In preparation for his article, Mr. Callahan interviewed Chief Justice Clyde Wells. Little did the Awards Committee know, Mr. Callahan's talents also extend to the field of music and CBA members were delighted to listen to our award winner belt out a couple of tunes with the Insiders later in the evening.

The Mid-Winter Meeting was capped off with a family skate bright and early 9:00 a.m. Saturday, at Mile One Stadium. This fairly recent event is becoming more popular each year, despite it's early hour, though it is noted that most who attend do not quite arrive at the appointed start time.

November 23, 2005 - Special Meeting of Council

As many of our CBA members know, a Special Meeting of Council was held with two items on the agenda.

The first item was to discuss a resolution for the creation of the Legislation and Law Reform Committee. The resolution was unanimously carried and efforts are ongoing by members of this committee - Chris Pike, Sheilagh Murphy, Christine Healy and Stephen Willar, to spearhead appropriate activities.

With regard to the second agenda item, the Branch was very pleased to welcome Joan Bercovitch of the CBA National Office to our province, to join Robert Stack in a presentation by the Futures Committee to CBA members from this Branch. This was a consultative presentation and similar presentations have been held across the country over the past few months. This Branch was one of the first to hold such a session and the turnout and quality of the comments from those in attendance were impressive.

Futures Committee

The Futures Committee was formed in March 2003 to study the challenges facing lawyers and the legal profession and to make recommendations about the kind of organization the CBA will need to be and what it will need to offer lawyers and the legal profession in order to be relevant and vibrant.

In the current stage of the Committee's work, the Branch has been asked by the National CBA to (1) appoint a "Futures Champion" to represent this Branch; and (2) to rank, by priority, the recommendations outlined in the





Futures Report. Peter Shea has been appointed to the Futures Champion position and is presently overseeing a ranking by the NL Branch Executive of the various recommendations of the Futures Committee. In addition to the results of the November 2005 council meeting's consultation and the Executive's ranking, input from all CBA members is welcomed. If you or your colleagues wish to contribute additional comments or insight, please visit the CBA website www.cba.org under "CBA Futures".

December 9, 2005: A letter was sent to (former) Ministers Goodale and Cotler, on behalf of the NL Branch President and the CBA National President, advocating continued funding for legal aid in this jurisdiction. A copy of this letter has been forwarded to Branch Presidents across the country, encouraging them to consider similar initiatives in their own jurisdictions. Copies of the letter have also been forwarded to other members of Minister Marshall's ad hoc legal aid committee: Minister Marshall Q.C., Nicholas Avis, Q.C., Newman Petten, Chris Curran, John Cummings, Q.C. Sheila Greene, Joyce Hancock and Jerome Kennedy, Q.C. Efforts will be renewed with the appropriate new federal Ministers of Justice and Finance under the newly formed government.

December 15, 2005: The President's Reception was held at the Fairmont Hotel, with a very good turnout. The enthusiasm of the members exhibited at this reception bodes well for a successful and lively CLC in August 2006.

Canadian Legal Aid Test Case

The CBA on June 20, 2005, announced that it had launched a legal aid "test case", to establish a constitutional right to legal aid in British Columbia. The CBA has for many years called for improvements to the legal aid system and favours a federal transfer earmarked for civil legal aid as well as minimum national standards. The CBA has adopted a broad approach with this litigation, focusing on the right to equal access to justice for lower-income people. The existing legal jurisprudence has more narrowly focused on the right to a fair hearing or an injustice in an



individual's case. Interesting and novel legal arguments are anticipated as the litigation evolves, headed by the CBA team of J.J. Camp, Q.C., Sharon Matthews, Melina Buckley and Gwen Brodsky, of Vancouver. More information regarding this test case can be viewed at www.cba.org, under "Activities", then "Legal Aid" on the menu bar.

National Mid-Winter Meeting Cancun, February 16-19, 2006

One of my colleagues wryly commented on my "impeccable sense of timing", referencing the location of this year's National Mid-Winter Meeting held in Cancun, Mexico. I have to agree that the timing of the CBA meetings worked in my favour - notwithstanding that Hurricane Wilma lead to a last minute hotel change and that I arrived back in St. John's at 4:00 am just as this winter's worst blizzard was beginning, not to mention the notorious criminal investigation which has captivated the Canadian media since mid-February.

Even in Cancun, the business of the CBA must continue. Highlights of the meeting included: council's consideration of resolutions; speeches by candidates Jim Lebo, Q.C. and Guy Joubert, who are vying for the position of Second Vice-President of the CBA; a report from the Treasurer of the CBA; presentation by (then) acting President of the Federation of Law Societies, Bill Goodridge, Q.C.; presentation by Lois Hoegg, Q.C. and myself on the 2006 Canadian Legal Conference being held in St. John's in August; and unveiling of the newest publication of the CBA, "Canadian Bar Advocacy".

Resolutions which may be of particular interest to members of this province include the resolutions pertaining to the Uniform [International] Commercial Mediation Act, the CBA Code of Professional Conduct - prohibited conduct on cross-examination, and temporary resident permits. The resolutions adopted by Council can be viewed on the CBA website at the following link: <http://www.cba.org/CBA/resolutions/2006res/Default.aspx>

Aboriginal Law Section Report

by Sheri Wicks



On March 11, 2006, I attended the Aboriginal Law Section meeting in Calgary on behalf of John Joy, the Newfoundland and Labrador Section Chair, who was unable to attend. This meeting was held immediately following the 2006 Aboriginal Law Conference.

Immediately prior to the Section meeting there was a meeting of the Federal Court Liaison Committee, who reported on the issues they are currently working on including: (1) finding a better way to present expert evidence to the court and defining the role of Aboriginal Elders in the courtroom; (2) the development of a list of commonly cited cases or "Bench Books" for the Federal Court, so that copies of those

cases would no longer have to be provided to the court; and, (3) the re-enactment of the representative action rule for aboriginal claims, which rule was rescinded when the class action rule was enacted.

During the Section Meeting there was discussion surrounding the success of the 2006 Aboriginal CLE Conference. While attendance was modest, everyone agreed that the organization and quality of the conference was excellent. It was noted that there is a lot of competition for Aboriginal conferences, and that we should try to ensure that there is a practice element to our conferences so that they offer something the other conferences do not. Discussion then turned to next year's conference, which is scheduled to be held in June, 2006 in Goose Bay, NL, subject to budgetary constraints. If Goose Bay proves unfeasible, then the conference will be held in Winnipeg, Manitoba. The 2007 conference will be held in Yellowknife in conjunction with the CBA's Mid-Winter Meeting. The Section is also planning to have a CLE component in the CBA's Canadian Legal Conference in Calgary in 2007.

With respect to legislative reform, there was a general consensus that the Section will likely be very active in the next year as the new government looks at initiatives shelved by the former Liberal government.

The annual meeting with the Department of Justice will be taking place in November, 2006, and anyone presenting an agenda item are encouraged to attend the meeting to ensure a meaningful discussion takes place.

Last but not least, the Section received greetings (and a great deal of levity!) from Jeffery Hewitt with the Indigenous Bar Association (IBA). Jeff thanked the Section for its support over the past year as they advocated for a requirement that there be an indigenous element to Federal and Supreme Court appointments. Jeff also noted that there is a continuing problem with indigenous students being unable to secure articling positions, a serious issue given it represents a bar to the profession. Jeff also requested, and the Section agreed, that the next Federal Court Liaison Committee meeting will be held in conjunction with the IBA meeting in October.



CALL FOR NOMINATIONS ❖ DEMANDE DE CANDIDATURES

The Ramon John Hnatyshyn Award for Law

The Ramon John Hnatyshyn Award for Law recognizes outstanding contribution to the law or legal scholarship in Canada. Administered by the Canadian Bar Association's Awards Committee, The award is open to Canadian citizens and is presented annually at the CBA's Canadian Legal Conference. Written nominations must be accompanied by a formal nomination form, three letters of support stating the candidate's suitability and a brief curriculum vitae of the nominee.

Le Prix pour le Droit Ramon John Hnatyshyn

Le prix Ramon John Hnatyshyn récompense une contribution exceptionnelle au droit ou au savoir juridique au Canada. Administré par le Comité des prix et récompenses de l'Association du Barreau canadien, un seul prix par année est décerné lors de la Conférence juridique canadienne de l'ABC. Ce prix est ouvert aux citoyennes et citoyens canadiens dont la candidature est soumise par des particuliers. Les nominations doivent être accompagnées d'un formulaire officiel de nomination, de trois lettres d'appui énumérant les qualifications du candidat ou de la candidate et d'un bref curriculum vitae du candidat ou de la candidate.

The deadline for submissions is
April 30, 2006.

Toute candidature doit être soumise
au plus tard le **30 avril 2006.**

More information is available on the CBA web site:

www.cba.org/CBA/Awards/hnatyshyn

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www.cba.org/ABC/Prix/prix_hnatyshyn

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Administrative Law Section Update

by Donna Strong, Chair



Report - National Administrative Law Section Meeting November 18 & 19, 2005

Updates: Updates were received from all Section Chairs on the activities in their Section concerning past and upcoming CLE's and lunch time sessions. There was also some discussion on relevant new case law.

Budget: Discussion occurred around the budget spending and confirmation that the current operating budget for 2005-2006 is in the amount of \$26,000 for the Section.

Translation of Cases: The Quebec Section Chair informed the meeting that there has been a free website created by the government of Quebec and a link provided to an "unofficial version" of French cases law translated into English. It includes most of the Court of Appeal and Superior Court cases since 1996. There was a suggestion that this message should be brought back by the Section Chairs to their respective branches. The website is: www.jugements.qc.ca

Federal Court Liason: There is an effort underway to try to improve the understanding of the Federal Court processes by the practicing Bar. Except for those practitioners who do a lot of Federal Court work, there is a general feeling that there is not a good understanding of the Federal Court system. To improve this situation, a Federal Court judge may be invited to the Administrative Law meeting in June, 2006, to open up communication in this area.

Communications: Communications formerly through the Newsletter will now be through the CBA website. It was felt that this format of communication is more timely and more in line with current methods of communication used by lawyers.

National Section Liason: The incoming National Chair will make contact with the Section Chairs in December to ask them what CLE sessions and other activities they have planned for 2006. He will also be asking for case law updates. This information will be shared with the other Section Chairs to keep everyone updated on activities in the different jurisdictions.

2006 CBA Canadian Legal Conference in St. John's, NL: The Administrative Law National section has a CLE scheduled for August 14, 2006, between 10am - 12pm. The National Chair is suggesting that this time be used to host a presentation/panel on a topic that would be of interest to Administrative Law practitioners. I have been asked to coordinate this and to come up with a topic and panel. This has to be finalized very quickly.

Pension & Benefits Section: There was discussion around whether there is a need for a separate Pension and Benefits section of the CBA. Generally the consensus was that this is a very specialized area of the law and the numbers who practice in this area would not likely support a separate section for this area alone.

CBA Survey Results: Results were discussed with an 80% satisfaction rate reported for both members and non-members. The Section meetings and the CLE's were rated as the most relevant to members.

Privacy and Access: The question was raised as to how privacy is dealt with in the different administrative and court processes. A survey will be conducted on these privacy issues in the different jurisdictions.

Recap of Conference: Discussion took place regarding the high points and low points of the CLE conference in Employment and Administrative Law which had just concluded. There was also discussion regarding improvements/suggestions for next year's conference.

Next Year's Meeting: Dates were set for the National meeting next year as November 24 & 25, 2006.

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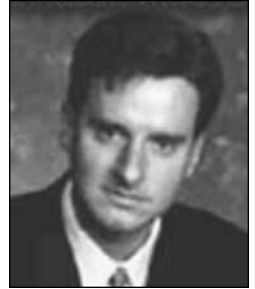
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Trustee in Bankruptcy

Bankruptcy and Insolvency Section Report

by Geoffrey Spencer, Chair



Insolvency reform remains high on the agenda of the National Bankruptcy and Insolvency Section, as it submitted a detailed response to Industry Canada with respect to Bill C-55 - *"An Act to Establish the Wage Earner Protection Program Act, to amend the Bankruptcy and Insolvency Act and the Companies Creditors Arrangement Act and to make consequential amendments to other Acts"*.

Bill C-55 was passed by the House of Commons on November 21, 2005, and passed by the Senate on November 25, 2005, receiving Royal Assent the same day. It is currently cited as S.C. 2005, c. C-47.

As a result of the pending federal election, the Bill was pushed through Parliament without providing the Senate Banking Committee with a full opportunity to review and/or amend some of its provisions. Proclamation of the Bill was therefore deferred for at least six months, until no earlier than June 30, 2006. The deferral of the proclamation was intended to provide the Senate with further time to study the Bill and propose any necessary reforms or corrections. In addition, the deferral also provides the Office of the Superintendent of Bankruptcy with time to draft the necessary regulations and directives that are required for the implementation of Bill C-55.

Some of the amendments contained in Bill C-55 are merely codifications of the existing common law, however, other amendments represent more substantial changes. Our section shall be holding a Lunch and Learn on Tuesday, April 25, 2006, from 12:30 - 2:00pm at the Atlantic Place Conference Room, 6th Floor, Atlantic Place, wherein guest speaker Ian Penney, C.A., CIRP, of Deloitte & Touche Inc., shall be discussing the changes to the insolvency legislation and the impact on creditors/debtors from a trustees' point of view. All section members are encouraged to attend this important Lunch and Learn Session.

On another matter, the National CBA Bankruptcy and Insolvency Section will be conducting a continuing legal education program at the CBA Canadian Legal Conference to be held in St. John's from August 13-15, 2006. The panel is entitled "Fighting Fraud through the Courts" and will involve a discussion of the judicial and investigative techniques utilized in setting aside fraudulent transactions and recovering proceeds. The CLE program is currently scheduled for August 14, 2006, from 2:30 - 4:30pm.

If any section members have any questions regarding either of these CLE programs, please feel free to contact me at 570-7263 or email: gspencer@bensonmyles.com.

Canadian Bar Association Newfoundland and Labrador Branch

Distinguished Public Service Award

The public is invited to nominate lawyers in the province
for the Canadian Bar Association's

2006 Distinguished Public Service Award

which recognizes a lawyer's contribution to community service.

The award will be presented during the

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Please contact Roxane Dean, Executive Director, by

May 31, 2006, to obtain a nomination form.



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Canadian Bar Association
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St. John's, NL A1C 1B2
Tel: (709) 579-5783
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Branch Days Gone Bye...

Here's a "snap" from the late 60's or early 70's.
Can you identify all three members?

Answer on page 20



Business Law Section Report

by Mark Andrews, Chair



On Saturday, November 12, 2005, I attended the National Business Law Section Meeting in Toronto. As with last year, the meeting was chaired by Catherine Wade of British Columbia.

The first points of business were issues related to the election process and succession planning for the National Section. The Section was in need of atlantic Canadian representation within the executive. After a meeting of the atlantic Section Chairs, we unanimously nominated and elected Jeffery A. Hoyt of the Halifax office of Cox Hanson O'Reilly Matheson to the Executive. Further general business included a National Section Membership count of over 4500 lawyers and discussion of last years newsletter project that has come to fruition and is available on the CBA website.

The second matter discussed was the creation of a National Pensions Section. Practitioners in the area are requesting their own national section. As the creation of a new section requires the consent of the current sections, a debate ensued concerning the need for such a specialized section. The creation of a new section, it was argued would mean less money in the budget for current sections. It was pointed out that this could bring new membership to the CBA and furthermore, that with Canada's aging population this section's creation is timely. The other option was a cross-sectional committee being created by various current national sections, including Business Law. In the end, it was decided that the practice was highly specialized and timely and that the Business Law section would endorse the creation of the new section. The other national sections must now reach their own conclusion before the section can start taking members.

Much of the meeting was spent discussing law reform and the Uniform Law Conference of Canada. Earlier in 2005, the National Business Law Section drafted letters to the Federal government together with all provincial and territorial governments to discuss the number one corporate law reform required in Canada; securities law reform. Canada is in great need of one national system for securities regulation as is the case in the United States and virtually every other industrialized nation. Quite simply, the CBA is pushing for one national system in order to maximize Canada's competitive role in the global economy and further simplify corporate governance for those companies with shareholders in two or more jurisdictions. This process has been a long time coming and may take a while yet to be realized. It has been long believed that Ontario and Alberta could never agree on where to locate the national office and more importantly

whose conflicting regulations should prevail. The National Section expressed hope to all governments that soon we will all be working under the same rules.

The National Section has also been involved in discussions with the federal department of Justice concerning the illegal interest rate amendments currently planned for 2006. The Department understood the concerns of the CBA and intended to take them into consideration when finalizing the amendment. The CBA feared that the amended section, as drafted, left otherwise innocent parties subject to charge and conviction because of the vague wording used therein. Furthermore, the CBA was successful in ensuring that complex commercial transactions were exempt from the new legislation. The Department indicated that federal not-for-profit legislation is fairly high on the Government's agenda and has continued to progress towards becoming legislation. Finally, the Federal Government, is planning a review of its privacy legislation, *Bank Act*, money laundering legislation and the *Canadian Business Corporation Act* in the short term. It should be noted that with a new Government in Ottawa these priorities are no doubt in flux.

Finally, at a local level, Anna Cook, Privacy Law Section Chair, and I are trying to finalize a Lunch and Learn Session or perhaps even a CLE on privacy issues in the commercial context. This would include customer and employee information being transferred as part of a commercial transaction as well as video surveillance and other privacy concerns. Hopefully there will be more to come very soon!

In closing, if members have any questions or suggestions, please feel free to contact me directly at 570-7341 or by email at mandrews@wob.nf.ca.



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Section Update

Civil Litigation Section Report

by David C. Moores, Chair



I have been working with Sheri Wicks of the Insurance Law Section to arrange a number of events this year. Our first effort was a successful visit from Darlene Wells and Margaret Williams of the Registry of the Supreme Court Trial Division on February 9, 2006. We all know it is best to get things right the first time, and avoid unnecessary work for all involved - especially the Court Clerks. Ms. Wells and Ms. Williams pointed out some of the more recent pro-

cedural changes, and where we seem to slip up most often. We did not get through their entire lists, so you can watch for an encore presentation in the fall.

On the following page you will find information on the upcoming National Civil Litigation and Insurance Sections' CLE in Toronto, April 28 and 29. Several of us attended last year, and I can attest to the high quality, in-depth presentations made by some very senior and knowledgeable practitioners from every segment of civil practice. The biggest problem I had last year was choosing amongst various concurrent sessions, as I wanted to attend everything! This year's presentations look equally appealing, and I highly commend the event for your consideration.

I would welcome any suggestions about topics, speakers or other activities from members. Please feel free to contact me at any time at 722-5100 or email: dcmoores@parsons-law.com.



Section Update

Law Practice Management & Technology Section Report

by Christopher Pike, Chair



On March 10, the Section hosted a Lunch & Learn Session jointly with the Privacy Law Section. Lois Hoegg, Q.C. and Anna Cook, Privacy Law Section Chair, discussed lawyers' obligations to hold client information confidential in the

context of privacy legislation and the Code of Professional Conduct. One member was heard to say after their presentation that this was the best Lunch and Learn she had attended. Many thanks to Lois and Anna.

The Section will host another Lunch and Learn Session during May at which time Liam O'Brien of White, Ottenheimer & Baker will talk about "blogging". Liam is an experienced blogger, having provided commentary to the CBC website during the last federal election. What's blogging? Blogging is the act of posting information to a web log on topics of interest. Plan to come to Liam's presentation for a far more satisfying answer.

I would welcome any suggestions about topics, speakers or other activities from section members of the Branch. Please feel free to contact me at any time at 570-7228 or email: cpike@bensoymyles.com.



CBA National Civil Litigation and Insurance Law CLE Conference

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Don't miss the second Annual National Civil Litigation and Insurance Law CLE Conference. If you practice in the area of Civil Litigation and/or Insurance Law at any level, then this is the event you can not afford to miss in order to stay on top of the trends. Last years program was a huge success and this years program looks even better!

Topics are focused and pointed with the most recent developments only. Specialists will discuss the most recent case law arising out of the Supreme Court of Canada. Top quality speakers will present topics and provide written papers on their subjects for the attendees to read and use later in their practices.

Program at a Glance

Friday, April 28, 2006

8:00 - 8:45 Registration
 8:45 - 9:00 Welcome & Introduction

Concurrent Sessions

9:00 - 9:45 What's New in Litigating Brain Injury Cases
 9:00 - 9:45 Cross-Border Dilemmas: Multi-Jurisdictional Class Actions
 9:50 - 10:35 The AMA Guides (5th Edition) Explained
 9:50 - 10:35 Part II of Class Actions Panel Discussion
 10:35 - 10:50 *Refreshment Break*
 10:50 - 11:35 The Bio-Psycho-Social Approach to Medicine
 What you need to know
 10:50 - 11:35 The Growth of Pharmaceutical Litigation in Canada
 11:40 - 12:25 Joint and Several Liability - What's the Difference and Why Does it Matter?
 11:40 - 12:25 Pre-Trial Remedies - Mareva Injunctions, Anton Pillar Orders and Norwich Orders
 12:30 - 2:15 *Lunch - Keynote Speaker:*
The Hon. Mr. Justice Peter A. Cumming,
Ontario Superior Court of Justice, Toronto, ON
 2:30 - 3:15 Disorder in the Courts: The Duty of Care after Cooper
 2:30 - 3:15 Managing Mega Litigation - The Giant Mine Case - The judicial perspective
 3:20 - 4:05 Mitigation - Traps and Remedies
 3:20 - 4:05 Managing Mega Litigation - The Giant Mine Case - How technology was useful to Counsel
 4:10 - 4:55 Bad Faith and the Courts
 4:10 - 4:55 Managing Mega Litigation - The Digital Management of Documents - How it is accomplished
 5:00 - 7:00 *Networking Reception - Le Royal Meridien King Edward Hotel, 37 King St., East*

Saturday, April 28, 2006

Concurrent Sessions

9:00 - 9:45 Relief from the unjust or unreasonable application of statutory conditions in insurance policies after *Marche v. Halifax Insurance Co.*
 9:00 - 9:45 Demonstrative Evidence in the Courtroom
 9:50 - 10:35 The Impact of *Athey v. Leonatti* on First Party Claims
 9:50 - 10:35 The Use and Abuse of Surveillance
 10:35 - 10:50 *Refreshment Break*
 10:50 - 11:35 Loss of Future Earnings and Causation
 10:50 - 11:35 Using Event Data Recorders in Your Case
 11:40 - 12:25 Vicarious Liability of Non-Profit Organizations for Sexual Abuse and Non-Delegable Duty - A First Hand View
 11:40 - 12:25 Expert Witness - From the Expert's Point of View
 12:30 - 1:15 Invisible Injuries and Discrimination
 12:30 - 1:15 Insurance Law Recap of Supreme Court of Canada Cases
 1:15 *Closing Remarks*

The brochure and registration form are available at
http://www.cba.org/cba/cle/pdf/civil_2006.pdf.

Check us out on the Web!

http://www

cba.org/newfoundland/gate.asp

General Practice, Solo and Small Firm Conference

by Bob Buckingham

Fall 2005 Meeting

The fall meeting of the General Practice, Solo and Small Firm Conference (GPSSC) was held October 9th, 2005, in Halifax, Nova Scotia. I attended on behalf of Gillian Butler, Q.C. who was unable to attend the meeting.

The GPSSC addresses the needs of lawyers and notaries in general practice, ranging from solo and small firm practitioners in both rural and urban settings, to those practicing law in medium and large firms. The GPSSC represents approximately 10,500 of the 35,000 members of the CBA.

Colleagues attending from across the country brought a wide and rich array of experiences and issues, not surprisingly, many of them very similar. The meeting discussions, for the most part, focused on the technologies and the ongoing efforts of the conference to address members' needs. An action plan comprising short-term and long-term goals was set out at the end of the day.

A. Short-term goals include:

- (i) Preparation for the Continuing Legal Education Conference at the next meeting of the GPSSC;
- (ii) More effective promotion and use of the practicelink site (<http://www.cba.org/cba/PracticeLink/Home/default.aspx>);
- (iii) Publish two newsletters for the conference members;
- (iv) Two conference calls amongst the branch representatives and conference executive members;
- (v) Online continuing legal education work;
- (vi) Preparing topic agendas for the 2007 CBA Canadian Legal Conference in Calgary;
- (vii) Finalize 2006 CBA Canadian Legal Conference topics;
- (viii) Liaison with the Legal Profession Assistance Conference (LPAC) for a presentation at the 2006 CBA Canadian Legal Conference in St. John's; and,
- (ix) Liaison with the Law Practice Management and

Technology section for a National Continuing Legal Education Conference in the Spring for GPSSC members.

B. Long-term goals include:

- (i) Ensure the GPSSC has a branch in every jurisdiction;
- (ii) GPSSC updates and maintain ongoing and continuing legal education courses;
- (iii) Investigation into publishing online precedents and issues surrounding same;
- (iv) Set-up online links with the Law Societies;
- (v) Track GPSSC issues and member participation in other sections and conferences; and,
- (vi) Discussions with the Canadian Bar Insurance Association to expand the products and services to GPSSC firms and staff.

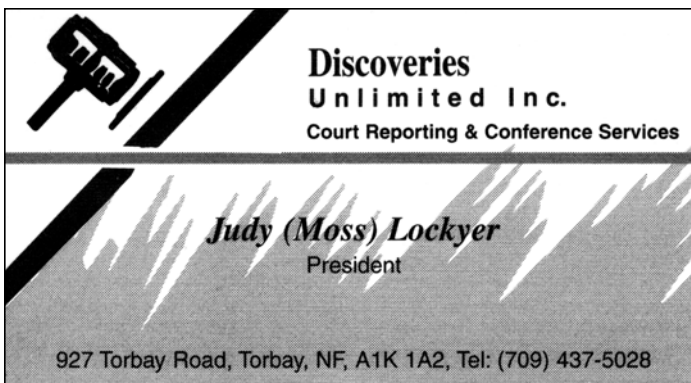
C. Some highlights:

- (i) Branding - There was general consensus that a Membership "Certificate of Recognition" should be developed. This could include a seal of the GPSSC to be stamped on the Certificate to distinguish the GPSSC within the CBA. The matter is being looked into;
- (ii) Insurance Services - There was a general consensus that effort should be made to make insurance products and services more accessible and affordable to small firm members. One suggestion was made for the CBIA to consider GPSSC members as one group for the purpose of offering products and services;
- (iii) Lawyer Referrals - The CBA offers a lawyer referral service. However, only 500 or so members are signed up. There was general consensus we should be referring clients or other lawyers to CBA members when we make referrals. Therefore, we should be encouraging more members to sign up with the CBA Lawyer Referral Network. Are you signed up? and,
- (iv) GPSSC Website - A subcommittee, comprising of Victoria Lahman (Manitoba) and Mary Mesiner (Nova Scotia), was set up to review the GPSSC web page and request members to view the site and provide comments to improve it.

D. GPSSC-CBA AGM Reception:

The AGM is being held in August in St. John's. The GPSSC is looking for co-sponsors for the GPSSC reception. Mr. Norm Simms (Manitoba) will be one of the reception sponsors.

Comments on the GPSSC and its work within the CBA may be forwarded to our representative, Ms. Gillian Butler, Q.C.



Section Update

General Practice, Solo & Small Firm

by Gillian D. Butler, Q.C., Chair



On March 21, 2006, I participated on a conference call with my Provincial/Territorial counterparts to discuss issues of interest to our Section and will be able to provide a report to members.

The General Practice, Solo and Small Firm Section will hold the first of its Lunch and Learn Sessions on April 20, 2006. The guest speaker for this session will be Mr. Charlie Pope Jr. of Investors Group Limited who will address financial issues of interest to our section membership and whose firm has agreed to provide lunch for our attending members. At a later date to be announced, the guest speaker for our second Lunch and Learn Session will be

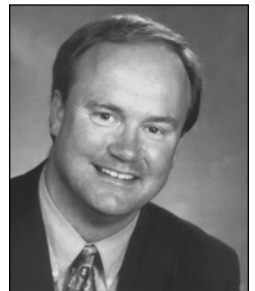
Mr. Peter Winters of NKHK Chartered Accountants, the local representatives for the PC Law Program, utilized by most small law practices in the Province. This session will be generously provided by NKHK Chartered Accountants.

Since both Lunch and Learn Sessions are sponsored, it is important that we know how many of our members plan to attend. Formal notice of each session will be forwarded by the CBA Branch office as the respective dates approach. I look forward to seeing you there!!!

Section Update

Labour & Employment Section Report

by Jamie Martin, Chair



National Meeting - November 19, 2005

On November 19, 2005, I attended the Labour and Employment Section Meeting for the Canadian Bar Association in Ottawa. The Section will be offering a CLE Program at the Canadian Legal Conference scheduled for St. John's in August. The details are being finalized, however, it is expected that the topics will address criminal issues in the workplace, in particular issues raised under Bill C-45, including the right to counsel for individuals who are compelled to give statements under that Act. There may also be a session offered on pension issues.

Our Section heard an interesting presentation from Kevin Banks, the Director of Research with the Department of Human Resources and Skills Development Canada, on *Canada Labour Code* reform. Then Minister of that Department, Joseph Fontana, through his Commissioner Harry Arthurs, was currently in the process of hearing submissions from interested parties concerning reforms to part III of the *Canada Labour Code*. The issues under consideration include wrongful dismissal, severance, compensation issues and sick leave affecting some 1.3 million employees and some 15,000 employers across the country who are under federal jurisdiction. The report of the Commission is expected to be released in June of 2006.

Our section also endorsed a proposal to create a new section on pensions and benefits. This will likely be established in 2006. The section also endorsed a proposal to

hold a seminar in conjunction with the Elder Law Section on employment issues facing elderly workers. This will likely be held in 2007. The section also intends to avail of resources available from National to produce at least two newsletters a year starting in 2006.

Our section is very active at the national level. At the Branch level, I will be convening a Lunch and Learn Session with a guest speaker to provide information on the services available to clients when they are terminated from their employment. I also intend to discuss with Donna Strong, the Chair of the Administrative Law section topics for Lunch and Learn Sessions that are of mutual interest to both sections.

On a final note, I have again written representatives of the Law Society and CBA locally to consider holding a CLE on disability issues in the workplace. There is a considerable amount of confusion in the law on some of the issues in this area. I also proposed to our national section that a CLE take place at the national level and they have agreed to do so as part of their annual CLE to be held in Ottawa in November, 2006. I ask that all members contact me directly if they wish to discuss topics for a Lunch and Learn Session or for a CLE. I can be reached at 753-5805, 1-800-563-5563 or by e-mail: jmartin@wrmmmlaw.com. I look forward to hearing from you.

Real Property Section Update

by Susan M. LeDrew, Chair



I assumed responsibilities for the role of Chair of the Real Property Section in August, 2005 and since that time it has become clear that on a national level, one of the most pressing issues continues to be title insurance and the proposed CMHC requirement that all high-ratio mortgages be title insured. This also presents concerns for our local bar, along with other pressing issues relating to the new "two-cheque" rule, the Law Society Transaction Levy and the reduced legal fees practitioners are charging for standard residential conveyances.

I attended the National Real Property Section meeting in Ottawa, on November 10, 2005. The meeting was chaired by National Section Chair Richard Wenner and the issues of title insurance and the future of real estate conveyancing generally were discussed. I can report that at present, legal fees in relation to standard purchase and sales appear to be on the rise throughout the country, including this province, and that though lobbying hard, CMHC has not yet received the approval it is seeking to require title insurance on all of its high-ratio mortgages. Nationally, the CBA is opposed to this, due to the obvious fear that it will not offer clients all the protection they are accustomed to and require, and that it

will basically eliminate the requirement of most of the real estate bar.

Locally, we've had the implementation of the Transaction Levy as of October 1, 2005, and members are reporting that generally it has not been well received by clients. The reporting period concluded as of December 31, 2005; and reports were to be filed by January 31, 2006. This calendar year also saw the implementation of the "two-cheque" rule in real estate conveyancing, which has raised privacy issues for the local bar, but has otherwise not yet presented any insurmountable issues.

A Lunch and Learn Session is planned for the spring where the issues of mandatory title insurance and perhaps the issue of how far back in time one needs to carry out Sheriff's searches on the acquisition of property are to be discussed. I invite suggestions from members of the section for future topics.

I would welcome any suggestions about topics, speakers or other activities from members. Please feel free to contact me at any time at 754-4845 or email: sml Drew@swd-law.nf.net.

Young Lawyers - CBA

by John L.D. Cook



The annual Young Lawyers - Canadian Bar Association ("YL-CBA") Directorate Meeting took place in Toronto on November 5 and 6, 2005. I appeared on behalf of Janie Bussey, Chair of the YL-CBA, Newfoundland and Labrador Branch, who was unable to attend the meeting.

The meeting provided an opportunity to meet with colleagues from across the country to discuss issues of mutual concern to young lawyers. In addition to presentations from the CBA International Development Program and the Legal Professional Assistance Conference Program, the meeting involved breakout sessions where attendees addressed upcoming events and current matters relevant to YL-CBA members.

One focus of discussion centered on the recently released report of the CBA Futures Committee. Although rankings differed slightly among the various breakout groups, there appeared to be a general consensus that priority should be given to the Futures Committee's recommendations concerning building CBA membership, law practice economics and improving the image of lawyers.

Debate was also engaged over the issue of student loan repayment for law school graduates. It was unanimously agreed that the YL-CBA National Executive should advocate that all provinces adopt schemes whereby such loan repayment is not required to commence until six months following completion of articles.

In regard to upcoming events, among other things, we discussed possible topics for the CLE to be hosted by YL-CBA during the 2006 Canadian Legal Conference in St. John's. Most attendees suggested that it should deal with civil advocacy skills similar to last year's CLE which was well attended by meeting delegates, particularly those with less practice experience. We also discussed the YL-CBA Newsletter which comes as an occasional insert in the CBA National Magazine. Members of the YL-CBA, Newfoundland and Labrador Branch, are encouraged to submit articles to the CBA Branch office that are of interest to young lawyers for publication in the National YL-CBA newsletter.

Continuing Legal Education Report

by Bernadette Cole, CLE Co-Chair



Since the last report to you, the CLE Committee has offered the following sessions:

- **Training in Interdisciplinary Collaborative Family Law Practice**, was an intensive two day training course held on November 28 and 29, 2005. The course attracted lawyers, financial planners, social workers, psychologist as well as two members of the Unified Family Court counseling staff. Participants were trained in the interdisciplinary model of practice in the family law area. This is the first time this training was offered in the province and there was much positive feedback from the attendees.
- **Revising the Rules: New Developments in the Rules of Supreme Court, 1986**, was held on December 2, 2005. This session was presented by the Honourable J. Derek Green, the Honourable David B. Orsborn, Christopher P. Curran, James C. Oakley, and John V. O'Dea. Attendees were taken through some new rules that have recently been adopted by the Rules Committee and discussed other proposed revisions to the Rules that were being considered by the Committee.

- **Issues in Personal Injury Practice: Trends, Tips and Traps**, was offered as part of our Mid-Winter Meeting. While initially scheduled to kick off our Mid-Winter Meeting, the CLE had to be re-scheduled due to weather. The CLE was finally held on February 20, and was a big success, attracting more than 100 attendees. The topic covered a broad range of current issues in personal injury practice and was delivered by individual presenters followed with a panel discussion. The presenters included Daniel M. Boone, Reginald H. Brown Q.C., Peter N. Browne, Gillian D. Butler, Q.C., W. John Clarke, Chesley F. Crosbie, Q.C., Jamie P. Martin, Glen L.C. Noel, and Lois J. Skanes, Q.C.
- **Update on the Law of Competitive Bidding and Procurement** was held on March 23, 2006. This was an interactive lecture, presented by Robert C. Worthington, L.L.B., covering a detailed examination on the latest cases on competitive bidding law across Canada, including the laws of competitive bidding, the latest rules on disqualifying bidders, requests for proposals and the duty of fairness, when and why most requests for proposals are legally binding on both the owner and the bidders, the new legal obligations of contractors to sub-contractors on competitive bidding, the effective use of exclusion of liability clauses in competitive bidding, potential methods of waiving strict compliance - when they work and when they don't, what a competitive bid invitation involves and much more.

The following CLE session is scheduled to take place on April, 5, 2006:

- **Effective Legal Research Techniques: A Demonstration of the CanLII Legal Research Website**

The delivery of CLE outside of St. John's remains a challenge and we will continue to explore means to deliver CLE to members outside of St. John's.

We are still developing the CLE calendar for the rest of this year and will continue to work hard to deliver the quality CLEs that you have come to expect from the CLE Committee.

I invite members to contact me at 570-7243 or email: bcole@bensonmyles.com, at any time with ideas for CLE sessions.

CALL FOR NOMINATIONS / APPEL DE CANDIDATURES

Prix d'excellence **Louis St-Laurent** Award of Excellence

The Louis St-Laurent Award, in memory of the former Prime Minister and Canadian Bar Association President, recognizes distinguished or exceptional service to the goals of the CBA.

Any CBA member in good standing is eligible for the award, except current Executive members, Finance and Planning Directorate members and past Table Officers. Candidates require endorsement of five CBA members, two of whom must reside outside the nominee's province. Written nominations must include the candidate's curriculum vitae, home and business address, and a brief submission outlining the candidate's suitability for the award.

The award, a bronze statue of Louis St-Laurent, will be presented at the CBA's Canadian Legal Conference.

Deadline for submissions is:
April 30, 2006.



For more information, contact /
Pour plus de renseignements, communiquez avec:

Senior Director of Communications / Directeur principal des Communications
The Canadian Bar Association / L'Association du Barreau canadien
865 Carling Avenue, Suite 500, Ottawa, ON K1S 5S8
Tel. / Tél.: (613) 237-2925 / 1-800-267-8860 Fax / Télécop.: (613) 237-0185
E-mail / Courriel: info@cba.org



Le Prix d'excellence Louis St-Laurent, à la mémoire de l'ancien premier ministre et président de l'Association du Barreau canadien, est attribué à une personne ayant contribué de façon exceptionnelle à la réalisation des objectifs de l'Association.

Tout membre en règle de l'ABC y est admissible, à l'exception des membres actuels de l'Exécutif, des membres de la Direction des finances et de la planification et des ancien(ne)s administrateur(trice)s dirigeant(e)s. Chaque candidature doit être parrainée par cinq membres de l'ABC, dont deux en provenance d'une province autre que celle du candidat ou de la candidate. Les mises en candidatures doivent être soumises par écrit et accompagnées du curriculum vitae du candidat ou de la candidate, de son adresse à domicile et au travail, et d'une courte présentation des motifs de la mise en candidature.

Une statue de bronze de Louis St-Laurent sera remise au candidat ou à la candidate retenue à l'occasion du Congrès annuel de l'ABC.

Toute candidature doit être soumise au plus tard le 30 avril 2006.



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In Personam

by Pamela L. Taylor



Jim Bennett

On February 6, 2006, Mr. Jim Bennett, a Daniel's Harbour lawyer, was declared the new leader of the provincial liberal party. I recently had the pleasure of speaking with Mr. Bennett about his life, his legal career, and the path that has led him to the political arena.

Mr. Bennett was born in Daniel's Harbour in 1953, son of Trevor and Mildred Bennett. His secondary schooling was completed in his hometown and in Corner Brook. In 1976, he graduated from Memorial University with a Bachelor of Arts degree in Sociology.

He applied to law school but, as is the case for a number of first time applicants, was unsuccessful in his bid for admission. Mr. Bennett then began working in the insurance industry. He worked in that industry and as a financial consultant for the next 14 years. His career took him to Nova Scotia and to Alberta where he ultimately opened his own independent brokerage firm. Mr. Bennett added to his expertise by completing course work as Chartered Financial Consultant, Agency Management and obtaining the Chartered Life Underwriters designation.

The lure of law, however, continued to beckon for Mr. Bennett. In 1990, he reapplied and was accepted into several law schools, ultimately choosing the University of Windsor because of its joint LLB/JD program with the University of Detroit Mercy Law School. When asked what originally made him want to attend law school, he related a story from his childhood. When Mr. Bennett was nine years old, his father, a seal buyer, was involved in a lawsuit over a commercial dispute. Mr. Bennett remembers it as being a very traumatic time for his family. Mr. Bennett recalls traveling to Corner Brook with his father during the litigation process and finding out that the matter had been resolved in his father's favour. Even though he was only nine years old, he can still recall the relief his family felt at the outcome. From that moment on, he associated law and being a lawyer with the ability to effect change and make a difference in peoples lives.

Upon completion of his law degree in 1994, Mr. Bennett articulated in Windsor and was later called to the Bar of Ontario in 1996. He began practicing as a sole practitioner in Windsor, Ontario. He describes his practice as "street level" in that he represented many people who had been regarded as quite disadvantaged. His focus was mainly litigation although he was also involved in public interest and administrative law.

Mr. Bennett states that it was always part of his plan to return home to Newfoundland and Labrador. Originally he thought he would remain away from home for about ten years. This plan changed when

he decided to pursue law school in 1990. In 2001, he began making plans to wind down his practice so that he could return home to practice. He knew the process of winding down a litigation practice would take two to three years.

In 2002, he met his wife, Sandra Papatello, who was his Ontario Member of Provincial Parliament at the time. They were both working on a colleague's political campaign. Mr. Bennett remembers informing her from the beginning of his intention to return to his home province. Mr. Bennett returned to Newfoundland and Labrador in 2002 and was called to the Bar in February 2003. Mr.

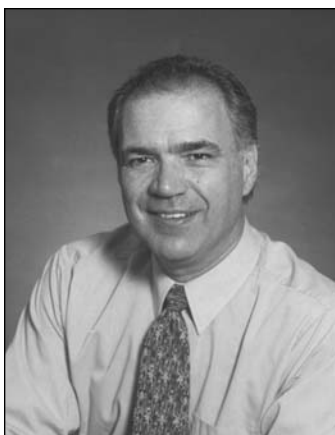
Bennett and Ms. Papatello maintained their long distance relationship and eventually married in August, 2003. Ms. Papatello has remained in Ontario where she is the Provincial Minister for Community and Social Services and the Minister responsible for Women's Issues. They both travel to see each other as often as they can.

Throughout his career, Mr. Bennett has remained active in the Liberal Party and has been a communications chair, a federal liberal candidate and a dedicated volunteer. Mr. Bennett recalls from a young age being interested in politics, as a teenager he had the opportunity to accompany his father to the federal liberal leadership convention in 1968. Mr. Bennett can still recall the excitement he felt at being able to observe first hand the democratic process in action. Mr. Bennett's father, Trevor Bennett, was the

MHA for St. Barbe South from 1979 to 1982. Growing up in a political family helped pique Mr. Bennett's interest and provided him with opportunities to be involved in the political process. Last summer Mr. Bennett was asked to run for the leadership of the Provincial Liberal Party and was eventually declared leader. He is excited about this new challenge and is looking forward to rebuilding the Liberal Party and taking it forward into the future.

Mr. Bennett has also managed to find the time to remain involved in his local community contributing to organizations such as the Jaycees, Toastmasters, and Junior Achievement. He has served as President of the Life Underwriters of Western Newfoundland, has co-founded the Association of Canadian Fishers and owns and continues to run Bennett Lodge, a bed and breakfast located in Daniel's Harbour. In Jim's spare time, of which he now seems to have very little, he enjoys hunting, fishing, snowmobiling and golfing.

On behalf of myself and the *Squid pro quo* Magazine and staff, I thank Mr. Bennett for taking the time to speak with me. We wish him the best of luck in all his future endeavors. ■



Jim Bennett

In Personam

by Nancy Furlong



Joan Bercovitch

"Representation, education and innovation" is how Joan Bercovitch, Senior Director of Legal and Governmental Affairs with the Canadian Bar Association succinctly describes her mandate with the National CBA's department of Legal and Governmental Affairs - a mandate which she works very hard to fulfill. I recently had the pleasure of speaking with Joan about her present position with the CBA and the path that guided her there.

Joan was born and raised in Montreal. She obtained an undergraduate degree in women's studies and political science from Concordia University. Joan wanted to become a member of a profession whose goal is to make the world a better place so then she enrolled in the Civil Law Program at the University of Ottawa where she completed her law degree in French. While in law school, Joan worked with the Canadian Advisory Council on the Status of Women as a legal policy analyst and also at the Law Reform Commission of Canada as a policy researcher. Joan completed her articles with the federal Department of Justice in two branches, Constitutional and International Law and Criminal Prosecutions. She was called to the Quebec Bar in 1987.

Joan was attracted to the policy area of law and knew it. Once she finished her articles she began working as a legal policy analyst with the federal government department, Status of Women Canada. During this time she took a break for a year to work as an advisor to the federal cabinet minister responsible for the Status of Women. She started her present position with the CBA as the Senior Director of Legal and Governmental Affairs in 1994.

In 1994 while working with the federal government, Joan received a telephone call from a friend telling her that there was an ad in the newspaper for a job which was perfect for her - Senior Director of the Legal and Governmental Affairs Department of the CBA. Joan was excited at the potential opportunity of taking the skills she had learned in government and using them in a different context. Despite this, the decision to apply for the job was difficult for her because she enjoyed her job at the time as well as the balance she had in her life. Joan decided to take the position with the CBA because she felt it was a move toward a job which allowed for more creativity and growth. She believes the CBA is a place that welcomes, encourages and appreciates ideas that will positively benefit its members and the community. She feels "free" at the CBA, a place which she describes as having more opportunity for "blue sky" and for participating in a process where real things happen.



Joan Bercovitch

Describing Joan's present job as the Senior Director of Legal and Governmental Affairs with the CBA is no easy task, as she has many responsibilities. Her Department is responsible for executing the substantive mandate of the CBA at the national level. Their mandate is the CBA's goals as expressed by National Council, the Board of Directors and the membership at large. Joan explains this mandate as "everything that touches on the law and lawyers' experience in the profession". Her Department works in very close collaboration with the Communications Department and numerous volunteers in executing this mandate. Joan breaks down her work into five main areas, all of which she oversees: (1) Legislation and Law Reform; (2) Emerging Professional Issues; (3) Continuing Legal Education; (4) National Sections and Conferences; and (5) Task Forces and Council Priorities.

Joan oversees the Department of Legislation and Law Reform which normally produces 60-65 submissions to Parliamentary and Senate committees, federal ministers and departmental officials each year. This past year, the Department was responsible for over 70 submissions. The Department is also responsible for interventions at the Supreme Court of Canada. Most legislation and law reform work is done through the National Sections and Conferences Department of the CBA, which also reports to Joan.

Joan also oversees the CBA's Emerging Professional Issues Initiative which focuses on issues that affect the business and practice of law. Examples of such issues are money laundering, international trade in legal services, and work lifestyle. The Emerging Profession Issues Initiative publishes an electronic newsletter every month called EPIIgram which can be accessed at: www.cba.org/CBA/advocacy/epii/epiigrams.aspx.

The Continuing Legal Education (CLE) Department of the CBA, organizes many CLEs every spring and fall on specific areas of law as well as CLEs at the CBA's annual conference, CLEs online and many CLE print publications. Joan works with the CLE Department and its many volunteers to make these CLEs not only available but valuable to the profession. Most CLE work, like the legislation and law reform work, is done through the National Sections and Conferences Department.

(continued on page 20, left column)

In Personam

by Judy Manning



The Honourable Loyola Hearn

Long before my entry into the legal profession, long before the obligations of the Code of Professional Conduct applied to me, my father's oft-repeated sage advice "You're only as good as your word" echoed in my mind; those words turned out to be somewhat prophetic... after all, a lawyer's most important asset is his/her reputation. Likewise, a politician's integrity is the fundamental characteristic upon which he/she is judged by colleagues and constituents alike.

Having been raised on the Cape Shore, in the former provincial district of St. Mary's - The Capes, I can attest to the high esteem in which William Loyola Hearn ["Loyola"] is held by residents of that area. Today, some thirteen years after he last served as Member of the House of Assembly for St. Mary's - The Capes, the unwavering support for Loyola on the Cape Shore has not dissipated. It is not uncommon to hear him spoken of as "an honest politician", a remarkable compliment for any politician, particularly one who has been involved in politics for as long as Loyola - his integrity has clearly withstood the test of time. Now that he has assumed the seemingly daunting role of Minister of the Federal Department of Fisheries and Oceans (DFO), all Canadians will benefit from his stellar representation as he strives to protect and manage the precious natural resource with which he has been entrusted.

Born and raised in Renews, Loyola continues to cling to his strong Irish roots. He resides in the Southern Shore community with his wife, Maureen, and makes a weekly commute to our nation's capital to serve as the newest federal Minister from our Province.

The youngest of four children, Loyola grew up in a fishing family. Following his graduation from high school, he attended Memorial University of Newfoundland where he completed his Bachelor of Arts in Education and subsequently attended the University of New Brunswick to complete additional courses in physical education. Loyola commenced his career as a teacher in Renews, and later assumed the role of Principal.

He was first motivated to become involved in politics when Frank Moores returned to Newfoundland as leader of the Progressive Conservative Party to challenge then Premier Joseph R. Smallwood. At that time, Loyola organized the campaign in Ferryland for Tom Doyle, who won that seat in 1970. A subsequent election in 1971, in which Loyola also played a pivotal role, also saw Mr. Doyle victorious.

Loyola made his debut as a Member of the House of Assembly in 1982, when he was elected by the people of St. Mary's - The Capes. Loyola was inspired by Brian Peckford, a "boy from the bay", who demonstrated that one could, in fact, step out of the boat or out of the classroom, as the case may be, and into the House of Assembly. Prior to that time, according to Loyola, rural constituents had largely become accustomed to being represented by lawyers, doctors and businesspeople from St. John's. Loyola was frustrated with the lack of attention being given to his area, and he desired the opportunity to focus Government's attention on local needs.



The Honourable Loyola Hearn

After been elected in 1982, Loyola continued in provincial politics for three terms, until he stepped down in 1993, having spent five years during that time as Minister of Education.

Loyola still had much to accomplish; in 2000, he returned to politics as a Member of Parliament for the riding then known as St. John's West. He was re-elected in 2004 and 2006, and currently represents St. John's South - Mount Pearl. Loyola now faces his greatest challenge at the helm of DFO. Some supporters have openly questioned his wisdom in accepting this role during what will undoubtedly be a tumultuous time to hold the portfolio. Loyola is aware that it will be a tremendous challenge, but in his opinion, one

who is serving as a government representative has the obligation to help the people wherever they need that help. Loyola candidly asserts that one who is not willing to take that challenge ought not be in the position.

The greatest satisfaction of Loyola's political career arose from his involvement in uniting Canadian conservatives in the new Conservative Party of Canada. His work toward that initiative commenced merely days after his arrival in Ottawa in 2000. After a couple of years, he and his peers had built a strong base of support and set the framework for the creation of a united national Conservative Party, which came to fruition in the fall of 2003. The realization of that goal has been a source of tremendous pride for Loyola, particularly in light of the success achieved by the Conservative Party in the most recent federal election.

Beyond the political sphere, Loyola has diverse interests. He is an avid sports fan, as well as an enthusiastic participant. Citing both the physical and mental benefits as his reasons for staying active,

(continued on page 20, right column)

Joan Bercovitch
(continued from page 18)

Joan is also responsible for CBA Task Forces and Council Priorities. The main task force which Joan is currently working on is the CBA Futures initiative. A committee was assembled to examine challenges facing lawyers and the legal profession and to make recommendations on the kind of organization the CBA needs to be in 2015 to remain relevant and meaningful to its members. The Futures Committee published a report to Council this past August which outlined 11 major recommendations for the future of the CBA. Since that time, the Committee has held a series of consultations across Canada to obtain feedback on the recommendations from its members. At the same time the Committee organized a series of focus groups to gain feedback from specific demographics, including groups of women and groups of young lawyers. The next step for this Committee is a Futures Summit which is being held this June and will bring together the major decision-makers of the CBA from across Canada. The purpose of this Summit will be to receive the results of the consultations and focus groups and turn them into recommendations for what the CBA needs to do to prepare for the future. These recommendations will be presented to Council this coming August in Newfoundland and Labrador during the CBA Canadian Legal Conference & EXPO. In addition to overseeing the CBA's many task forces, several council priorities exist for which Joan is responsible. The CBA's legal aid test case and its work on equity issues are two examples of such priorities.

Joan believes what is most difficult about her job as Senior Director of Legal and Governmental Affairs is making all of the great ideas from the CBA and its membership a reality. She believes that there is no lack of ideas, enthusiasm and energy at the CBA. She told me that the CBA has an enormous volume of really good ideas for the benefit of its membership, as well as the broader Canadian and international communities. Putting all these great ideas into action is her biggest challenge. At the same time, Joan finds her job at the CBA invigorating and energizing. She enjoys working with so many creative people and seeing how much the members care about the CBA. She finds the "life force" at the CBA "addictive".

When not working, Joan enjoys and values the time she spends with her family.

As I summed up my interview with Joan, she told me that she thought she had the "best law job in the country"; but she didn't need to tell me this because anyone who has a chance to talk to Joan about her job can hear it in her voice. On behalf of myself and *Squid pro quo* Magazine, I would like to thank Joan for taking the time to speak with me. ■

The Honourable Loyola Hearn
(continued from page 19)

Loyola plays basketball, soccer, hockey and lacrosse. Loyola has also dedicated countless hours to coaching sports. He proudly acknowledges that two of his teams were successful in the All Newfoundland Senior Lady Basketball Championships. He also continued to coach minor hockey until his re-entry into politics in 2000.

Loyola also has a passion for the arts. He is an accomplished songwriter, with almost thirty songs in his repertoire, a few of which have been recorded, including the popular "From an Island to an Island", recorded by Kevin Collins. For many years, he was also the driving organizational force behind annual fundraising concerts on the Southern Shore. Loyola casually mentions that whenever there was a shortage of material for the productions, he would write skits and songs to fill the void.

Today, Loyola's most cherished role is that of a doting grandfather. He and his wife, Maureen, frequently visit their three grandchildren in Paradise, along with their daughter, Laurita, and her husband, Jonathon. Loyola and Maureen also have a son, David, who is currently attending law school at the University of Windsor.

Loyola finds special meaning in the words of poet, Robert Frost, in his renowned work, "The Road Not Taken". According to Loyola, that poem describes the choices that we encounter in life... either to continue on the route that others have traveled, which oftentimes may seem to be the easiest choice, or, to embrace the opportunity to create our own direction and forge ahead into unknown territory, setting the direction for others. As Loyola points out, having the courage to take "the road less traveled" may ultimately allow one to reap huge rewards that would have otherwise been missed.

On behalf of the *Squid pro quo* Committee, I would like to thank Loyola for taking the time to share a little about himself for the benefit of our readership. I wish him well in his new capacity as Minister of Fisheries and Oceans; the tenacity and vigour with which he has assumed this portfolio assures me that the interests of all industry stakeholders will be amply represented. ■

Branch Days Gone Bye . . .
(Photo on page 8)

Shown in the photograph are:

Justice Leo Barry, Chief Justice Clyde Wells
and Tom O'Reilly, Q.C.

Young Lawyers - CBA Chair Report

by Janie Bussey, Chair



On Thursday, March 16, 2006, the Young Lawyers - Canadian Bar Association (YLCBA) hosted a Pre-St. Patrick's Day Social sponsored by the Canadian Bar Insurance Association (CBIA). The event was held at the Robin's Nest (above Greensleeves) on George Street, St. John's. We would like to thank the CBIA and everyone for coming out to this event and encourage you to attend all future YLCBA events. We are planning to hold another social this summer.

Due to inclement weather, the YLCBA Lunch and Learn Session scheduled for Monday, March 27 at Atlantic Place with guest speakers Chief Justice Derek Green and other puisne judges was cancelled and will be rescheduled at a later date. The topic will be "Tips for Young Lawyers appearing at the Supreme Court of Newfoundland and Labrador", and will provide attendees with some helpful tips on preparing for, and appearing on, chambers applica-

tions. We would like to thank Chief Justice Green and our guest speakers for volunteering their time to speak at this luncheon.



On Monday, May 1, 2006, the YLCBA will be organizing a Casual Day in support of the Mental Health Court Pilot Project. We encourage everyone to participate in this fundraising effort. The proceeds from this event will go to provide emergency assistance in the form of food and clothing to participants in the program. Please watch for a notice in this edition regarding further details of this event.

The YLCBA strives to offer Lunch and Learn Sessions on topics that are of interest to young lawyers. If there are any topics that you would like to see addressed at a Lunch and Learn Session, please feel free to contact either myself at 722-4270 or Roxane Dean at 579-5783.





**CBA Casual Day
Fundraiser**
A "Young Lawyers" Initiative

When: Monday, May 1st, 2006
Participation: \$ 2.00 Donation
Participants are to adorn casual attire.



This year all proceeds will be donated to the
Mental Health Court Pilot Project
to provide emergency assistance in the form of
food and clothing to participants in the program

The Young Lawyers—CBA NL Branch
wish to thank all participants for supporting this fundraiser!



*Donations will be collected
by your law firms
"Casual Day" Representative*

Canadian Bar Association
Newfoundland & Labrador Branch
Suite 402, 139 Water St.
St. John's, NL A1C 1B2
Phone: 579-5783
Fax: 726-4166
Email: cba-nl@nl.rogers.com

Canadian Bar Insurance Association

Directors Report - February 2006

Newfoundland and Labrador Directors:

Robert P. Stack

Anne M. Fagan

National Director:

Janis Byrne

The Canadian Bar Insurance Association ("CBIA") is a not-for-profit corporation that is wholly owned by the CBA, providing insurance products "for lawyers by lawyers". CBIA offers a broad range of insurance coverage including: Term Life, Permanent Life, Disability Income, Individual Health and Dental, Business Expense, Travel Medical, Accident, Employee Benefits, Home & Auto, Outside Directors' Liability, Critical Illness, Retiree Health and Dental Plan.

To highlight some of the current news from the Board of Directors:

- **CBA User Fee** paid by CBIA to the CBA for 2005 was an incredible \$757,035.95.
 - **Disability Insurance Plan** - The Board of Directors with its consultants are currently working on an improved disability insurance plan for launch in 2006.
 - **Director of Marketing** - CBIA has expanded the senior staff with the hiring of Peter Kent as Director of Sales. This provides additional resources to work more closely with the CBA Branches.
 - **Appointments** - Greg Harding, Q.C., of Edmonton, Alberta, became President of the CBIA effective December 1, 2005, for a two-year term; Elizabeth Lyall, of Vancouver, B.C., became Vice-President and in two years she will become the 1st female President of CBIA; local Board member, Robert Stack, was named to the Management Board; Janis Byrne was named to the Board by the National CBA; and Anne Fagan continues to serve on the Board and has been named chair of the Audit Committee.
 - **The Local Sales Representative** - Hughie Shea, has taken steps to improve service, and sales in Newfoundland & Labrador showed excellent growth over 2005.
 - **New Level 80 Term Life Plan** - Effective June 1, 2005, the Board approved the launch of the Level 80 Term Life plan. Key plan features are:
 - ♦ *Extremely competitive rates that are lower than most level 10 year term life insurance products;*
 - ♦ *A level face amount to age 80 (old plan ended at age 75);*
 - ♦ *10 year options to be re-underwritten for lower rates; and,*
 - ♦ *Preferred rates now available for applicants in above average health.*
- All existing clients, under age 65, were converted to the new plan effective July 1, 2005. Any clients eligible for a reduction were provided with extra protection, without underwriting, in an amount equal to any premium differences. Clients age 65 or older were offered the option of remaining under the old program or converting to the new plan.
- **The Home/Auto Program** - Provided by Meloche Monnex, has performed extremely well. The program continues to see strong growth and high levels of client satisfaction. Auto rates through CBIA are now highly competitive; recent experience shows that the CBIA rates through Meloche Monnex are among the best available in this market. It is worthwhile obtaining a quote from www.barinsurance.com or by calling 1-877- 995-9906.
 - **Manulife Financial** - Administers our life and disability programs. Tele-underwriting (also known as a Paradex) was introduced to the CBIA June, 2005. This replaces the health questions on the new coverage application with a telephone interview by an underwriter. Paradex is expected to improve underwriting time by reducing errors and incomplete application information. It also eliminates the discomfort some clients may have with disclosing personal medical details to a sales representative.
 - **Financial Results** - All plans continue to experience satisfactory financial results.
 - **Critical Illness Coverage** - This coverage has been introduced as a rider to the current disability and/or term life products. It provides a defined benefit upon the insured being diagnosed with one of several, very specific, critical illnesses.

Law Day 2006 Report

by Tammy Drover & Crystal Critch, Co-Chairs

Law Day 2006 will be celebrated on Thursday, April 6. Although the national theme for Law Day is "Access to Justice" the Newfoundland and Labrador Branch of the Law Day Committee has decided upon the sub-theme of "Celebrating your Rights and Freedoms" in carrying out its various activities and events.

The Supreme Court of Newfoundland and Labrador, Trial Division will be the site of mock trials for local area high schools in St. John's and the surrounding areas on Saturday, April 8, 2006. In addition, Mock Trials are planned for various other judicial centres throughout the province. Supreme Court Justices, Provincial Court Judges, court clerks and Sheriff's Officers will be on hand to guide the students through their mock trials and to help make the experience as realistic and

rewarding as possible for our participants.

In addition, the Law Day Committee will host a Legal Information Fair on Wednesday, April 5. This event is traditionally held at the Avalon Mall and preparation for this year's Fair is ongoing. Among the booths that participated last year were PLIAN, CBA, Residential Tenancies Board and Crime Stoppers and we hope this year will see an even larger participation level. In addition, we also plan to hold estate planning information sessions during the Legal Information Fair.

We are again asking that members of the Bar volunteer to visit local area high schools to speak with students about legal topics of interest, and to visit with seniors at various long-term care facilities to make presentations on a variety of topics. In addition, we plan to have members of the bar visit Memorial University of Newfoundland to present information regarding law as a career. Finally, a poster contest is planned for elementary students throughout the province as well as a photography contest for junior high school students.

To date, the committee has met on three occasions, December 1, 2005, January 19, 2006 and most recently on March 7, 2006. We are in the final planning stages of *Law Day 2006* and look forward to another successful event.

On behalf of the Law Day Committee, we encourage all members of the Bar to volunteer your time and we look forward to your support and participation in the many activities planned for *Law Day 2006*.

We welcome your suggestions and would be happy to address any questions you might have regarding *Law Day 2006*. Please contact us at tammydrover@gov.nl.ca or ccritch@wrmlaw.com.



Queen's Counsel Appointed

On March 16, 2006, the Honourable Tom Marshall, Justice Minister & Attorney General for Newfoundland & Labrador, announced that the Lieutenant-Governor in Council had appointed eight lawyers as Queen's Counsel.

The new Queen's Counsel are:

Stephanie Lynn Newell*
O'Dea Earle Law Offices

Brian V. Murphy
Monaghan, Murphy and Watton

Glenda Cynthia Best*
Roebothan McKay and Marshall

Edward Joseph Cardwell
Senior Crown Attorney

Stephen D. Marshall*
Roebothan McKay and Marshall

Thomas W. Fraize*
Fraize Law Offices

Thomas E. Williams*
O'Dea Earle Law Offices

Valerie Lynn Marshall
sole practitioner

* Denotes CBA Membership

DOES THE NL BRANCH HAVE YOUR CORRECT EMAIL ADDRESS?

Branch notices for Lunch and Learn Sessions, CBA Luncheons, Annual General Meeting etc. along with other items of interest to members are distributed electronically. Therefore, it is extremely important that the branch has your up-to-date information on our database. Current CBA members can update their profile, including address and practice information by going online at:
www.cba.org/CBA_memberUpdate/Login.aspx?Page=Update

Owning the Right Amount of Life Insurance Has Never Been So Affordable!

Check out the Canadian Bar Insurance Association's Level 80 Term Life Rates!

Male, non-smoker, regular health*

	\$ 250,000	\$500,000	\$1,000,000
Age 35	\$173	\$310	\$546
Age 40	\$183	\$327	\$576
Age 45	\$219	\$426	\$827
Age 50	\$298	\$580	\$1127

Male, smoker, regular health*

	\$ 250,000	\$500,000	\$1,000,000
Age 35	\$241	\$431	\$761
Age 40	\$319	\$571	\$1008
Age 45	\$415	\$808	\$1569
Age 50	\$657	\$1277	\$2481

Female, non-smoker, regular health*

	\$ 250,000	\$500,000	\$1,000,000
Age 35	\$132	\$236	\$417
Age 40	\$136	\$243	\$429
Age 45	\$163	\$317	\$616
Age 50	\$211	\$410	\$797

Female, smoker, regular health*

	\$ 250,000	\$500,000	\$1,000,000
Age 35	\$176	\$315	\$556
Age 40	\$226	\$405	\$715
Age 45	\$299	\$582	\$1131
Age 50	\$434	\$843	\$1639

☛ **CBIA Level 80 Term Life rates include a Waiver of Premium Benefit which will pay premiums in the event of a serious disability. For more information, or a free, no obligations quote via email within one business day, please contact your Newfoundland CBIA Authorized Representative:**

Hughie J. Shea B. Comm., CFP
709-726-6570 Ext. 226
or via email at
hughieshea@financialanswers.ca
or visit www.barinsurance.com



CBIA

THE CANADIAN BAR INSURANCE ASSOCIATION

*Cost of ownership for the first year, rounded to the nearest dollar. Rates are for illustration purposes only, actual policy provisions will apply, E&OE.

Reduce Risk with the Possibility of Increasing Returns

by Hughie Shea



The message from the latest RRSP season was simple. Diversify.

For the last three years investors in the Canadian stock market have been handsomely rewarded. Very good returns in the oil and gas sectors and metals let the TSX to an exceptional 24.1% gain for 2005. The gains have not been limited to just this narrow section of the market, insurance companies, banks, and materials all contributed to produce an outstanding return for Canadian investors. But a stock market is just like any other market activity. As the price goes up so does the probability that the price will fall. Or to put that in market parlance; we can expect a market correction.

We should see a Canadian stock market correction if one of the following happens:

- 1) The supply for oil becomes stable and increases. This would happen if the geopolitical risks abated and weather patterns normalized;
- 2) The Canadian dollar continues to appreciate against its US counterpart;
- 3) Interest rates rise faster than anticipated in order to protect against inflationary pressure; or,
- 4) Canadian and international money invested in the Canadian market move to markets with more attractive prices.

Any market activity is a factor of supply and demand, which ultimately will set the price. If I can buy a bank stock in the UK with exactly the same earnings capacity as a bank stock in Canada but at a 40% discount then why wouldn't I?

Are there additional risks to international investing? Yes, over the short term there can be significant additional risks. The major ones remain:

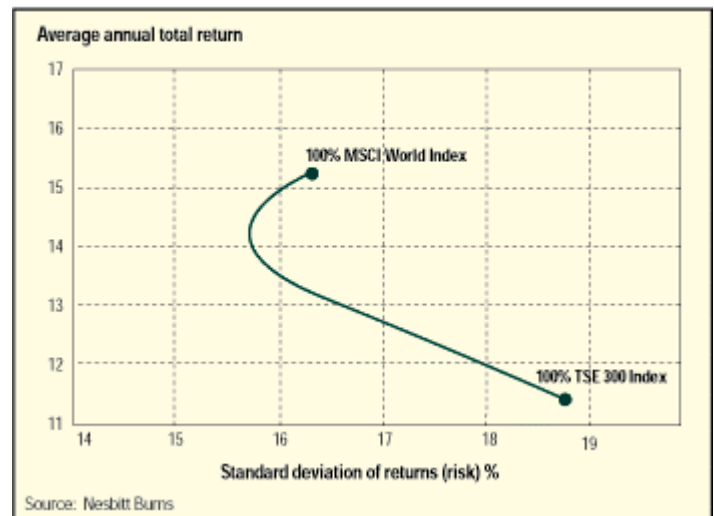
- Currency risk: If you buy a stock in the US that has gone up by 8% but the Canadian dollar went from \$0.81 - \$0.88 US then you actually lost money.
- Political Risk: If you invest money in a country, which then undergoes political turmoil then their stock markets predominately, go down.

Isn't the goal of prudent investing to minimize risk where possible? The answer to this question is a resounding yes. However, it is possible to eliminate risk. A GIC investment is considered risk free so if we need to create a risk free

investment then a GIC at 4.0% will do nicely. If you are in the process of building your retirement assets then 4.0% may not be enough return to reach your goals. That is where market exposure is necessary. Good market exposure should include good international diversification. Over time the addition of well-chosen international equities will reduce risk and enhance return.

The chart below reads fairly simply, historically international markets yield better returns with less volatility than pure exposure to a Canadian alternative. In the last three years the Canadian market has outperformed the international markets, but now may be the time to look at your gains and put some of that profit into areas with good growth potential.

**Benefit from International Diversification -
20 Year Period from April 1979 to May 1999**



For a breakdown on the investment alternatives available through CBA Financial you can visit www.barfinancial.com, or you may contact me directly at 726-6570, ext. 226.

At CBIA, we have made some significant changes to our term life insurance. The costs when compared to any other product in the market-place are exceptional. For more information please call, email, or you can visit us online at: www.barinsurance.com.

Legislation & Law Reform Committee

by Sheilagh Murphy, Chair



The CBA is frequently asked to review proposed amendments to legislation. Nationally, a Legislation and Law Reform (L&LR) Committee exists as a committee of the National Sections Council. The Executive Committee and Council discussed the lack of an organized L&LR Committee in this province and the L&LR Committee was born. Members of the committee are the Branch Vice President (to ensure a close relationship with sections) the Branch Treasurer (to ensure continuity from year-to-year) the Branch Secretary (non-voting) and one volunteer. The committee this year is composed of Sheilagh Murphy, Christine Healy, Christopher Pike, and Stephen Willar. Our first committee meeting took place on January 24, 2006, and following that meeting, I wrote various members of government and all section leaders to make them aware of the committee's existence and to invite them to discuss any L&LR matters with us.

The L&LR Committee's mandate is to promote consideration by the CBA of legal and policy issues that are of interest or concern to the legal community, or to which the legal profession

has a social or moral obligation to respond, so that the CBA Association can inform public debate. As well, the committee will promote and facilitate adoption by the CBA of principled positions based on sound, comprehensive analysis of legal and policy issues, and to ensure that the positions adopted by the CBA are clearly and accurately presented to government and other stakeholders. Its other goal is to promote and implement the CBA policy on substantive issues.

From time-to-time, sub-committees will be recruited by polling Sections for members with substantive expertise in the area to be examined. The number of sub-committee members will vary depending on the tasks required, deadlines for submission and interest in participation. Currently, the L&LR Committee is considering proposed amendments to the Mechanics Lien legislation and the proposed Whistleblower legislation.

AWARD FOR EXCELLENCE IN JOURNALISM

by Anne Fagan, Chair

The Newfoundland and Labrador Branch of the Canadian Bar Association recently awarded the 2006 Award for Excellence in Journalism to Brian Callahan of *The Telegram* at the Branch's Mid-Winter Meeting. The Award for Excellence in Journalism recognizes outstanding journalism that fosters public awareness and understanding of the Canadian Justice system.

Mr. Callahan was responsible for an article entitled "The Proper Channels - Judges and the Complaint Process" which was part of

a series of articles in connection with this issue. Mr. Callahan's report explained the process for complaints against judges and why judges cannot speak out in public on their rulings.

The article included a rare interview with Chief Justice Clyde Wells after a complaint to the Law Society against Jerome Kennedy, Q.C. for criticizing the judiciary was resolved and dropped. This was a well-balanced article which tied four earlier reports on the complaint against Jerome Kennedy together and explained the limitations on judges, the complaint process, the Law Society's role, avenues open to lawyers and the public, fair and appropriate criticism, and confidence in the independence of the judiciary.

Brian Callahan is a senior reporter with *The Telegram* in St. John's. He studied Political Science and English at Memorial University. Brian started in the media at the former Q-93 radio station on Duckworth Street, St. John's in 1988. After a year he was assigned to cover the court beat. A year later Brian was hired by *The Evening Telegram* - now *The Telegram*. Brian held various reporting and editorial positions at *The Telegram* until May 2005 when he became the full time court/justice reporter.

On behalf of the *Squid pro quo* Magazine Committee we would like to congratulate Mr. Callahan as the deserving recipient of this year's Award for Excellence in Journalism.



Mark Your Calendars !

Public Legal Information Fair

April 5, 2006
Avalon Mall, St. John's, NL

Mock Trials - Law Day Events

April 8, 2006
The Supreme Court of Newfoundland & Labrador
287 Duckworth Street, St. John's, NL

CBA - NL Branch Children's Easter Egg Hunt

April 9, 2006
The Fluvarium, St. John's, NL

Deadline - Call for Nominations '06-'07 National Standing Committees

April 17, 2006

General Practice, Solo & Small Firm Section *Lunch and Learn Session*

April 20, 2006
Atlantic Place Conference Room
St. John's, NL

Bankruptcy & Insolvency Section *Lunch and Learn Session*

April 25, 2006
Atlantic Place Conference Room
St. John's, NL

Maritime Law Section *Lunch and Learn Session*

May 8, 2006
Atlantic Place Conference Room
St. John's, NL

Law Practice Management & Technology Section *Lunch and Learn Session*

May 2006, TBC
Atlantic Place Conference Room
St. John's, NL

Deadline - Call for Nominations Young Lawyers - CBA 2006 National Pro Bono Award

May 13, 2006

CBA Luncheon Speaker: The Hon. Alex Hickman

May 25, 2006
Fairmont Newfoundland
St. John's, NL

Deadline - Call for Nominations CBA - NL Branch Distinguished Public Service Award

May 31, 2006

Branch Annual General Meeting

July 14-15, 2006
St. John's, NL

CBA Canadian Legal Conference & Expo

August 13-15, 2006
St. John's, NL





**Canadian Bar Association
National Mid-Winter Meeting
Cancun, Mexico
February 16 - 19, 2006**



Mental Health Court Pilot Project/ Court Support Services (MHC)

by Janie Bussey



On March 13, 2006, I had the pleasure of interviewing Mr. Peter Ralph, duty counsel for the Mental Health Court Pilot Project/Court Support Services (MHC). The MHC is a pilot project of the Provincial Court of Newfoundland and Labrador, the Public Prosecutions Division of the Department of Justice, the Canadian Mental Health Association, Eastern Health, the Mental Health Project of Newfoundland and Labrador Legal Aid Commission, and Victim Services. Newfoundland and Labrador is one of only three provinces to establish a Mental Health Court.

Historically, a disproportionate number of people with mental illnesses have contact with the criminal justice system. Unfortunately, the criminal justice system has generally been ill-equipped to address mental illness issues. The MHC provides community support and linkage between the health and criminal justice systems to create options not historically available.

The focus of the MHC is to address the needs of persons with mental illness in their dealings with the criminal justice system in Newfoundland and Labrador. The project

entails educating those within the criminal justice system, enhancing service delivery to persons with mental illness who have contact with the law and linking those individuals with community support.

The target population is individuals aged 18 or older with persistent and recurring mental illness where the criminal behaviour complained of has its origins in the mental disorder and related issues. Other individuals who may be considered are those with acquired brain injuries who have been charged with a criminal offence.

Individuals can be referred to the MHC by a variety of sources, including self-referral, and participation is voluntary.

To date, 48 people have been interviewed for the MHC. Of those 48 individuals 29 have gone through the MHC for offences including theft, uttering threats, and indecent exposure. Medical diagnoses include depression, bipolar disorder and schizophrenia.

CALL FOR NOMINATIONS FOR CBA NATIONAL STANDING COMMITTEES

The CBA is currently seeking candidates for its National Standing Committees for 2006-2007.
All CBA members are eligible to apply for positions on the following committees:

Standing Committees

- | | |
|----------------------------------|--|
| • Awards | • Judicial Compensation & Benefits |
| • Communications | • Legal Aid Liaison |
| • Continuing Legal Education | • Legislation and Law Reform |
| • Equity | • Pro Bono |
| • Ethics and Professional Issues | • Resolutions, Constitution and Bylaws |
| • International Development | • Supreme Court of Canada Liaison |

For information and an application form,
please contact Roxane Dean, Executive Director,
at the branch office at 579-5783
or email: cba-nl@nl.rogers.com.

The deadline for applications is
Noon on Monday, April 17, 2006.



St. John's 2006

CBA Canadian Legal Conference 2006

A GREAT TIME - COME ENJOY THE EXPERIENCE

by Lois Hoegg, Q.C., and Jamie Martin, Co-Chairs



Our Branch is proud to be hosting the 2006 Canadian Legal Conference from August 13 -15, 2006. As Co-Chairs, we encourage all members, especially those who have not yet experienced the benefits of the Canadian Bar Association, to participate. The conference will be held in conjunction with The Canadian Judges Forum and The Canadian Corporate Counsel Association Conference. We expect over 1,000 delegates and guests to attend the event.

The highlights are too numerous to mention but they include:

- Opening Ceremonies & Plenary with keynote speaker, U.S. Special Counsel Patrick J. Fitzgerald, and remarks from The Right Honourable Beverley McLachlin, Chief Justice of Canada;
- Opening Night Festivities at the Johnson Geo Centre showcasing local musicians Fergus O'Bryne and Jim Payne, a Newfoundland Cuisine buffet, the Signal Hill Tattoo and the world's famous and heroic Newfoundland Dog;
- A Great Big Sea concert following Opening Night Festivities;
- Leading edge Continuing Legal Education seminars on such topics as Energy Resources, New Tort Law, Religion and the State, Winning Advocacy Skills, Equality and the Military, Dealing with the Media, and many more;
- Networking opportunities with leading members of the profession from across Canada and beyond;
- Young Lawyers Closing Luncheon with Newfoundland satirist Rick Mercer; and,

- A Closing Gala at the Fairmont Newfoundland with Newfoundland comedian Cathy Jones and the music of New Found Sound.

What Can You Do?

- Become a volunteer! We have dedicated volunteers working all aspects of the conference;
- Host an at-home dinner for the "Come From Aways";
- Sponsor a law firm reception - eight firms are committed to date;
- Attend the conference and avail of the great educational and networking opportunities and social events; and,
- Encourage your partners, associates and staff to attend the conference.

As host of this conference in 1998, our Branch received numerous compliments on our excellent program and wonderful hospitality. By all accounts it had been the best conference ever. Indications are that August's conference will be an even bigger success. We ask for your participation and support, and guarantee that you will enjoy the experience.

A conference brochure was included as part of the March edition of *The National*, and is currently available online at www.cba.org. Please do not hesitate to contact either of us or Roxane Dean, our dedicated Executive Director, who can be contacted at the branch office at 579-5783 or by email: cba-nl@nl.rogers.com.

Case Digest

by F. Geoffrey Aylward



Benchmark Personal Injury Assessment for Professional

Dymond, J. in *Williams v. Thomas Development Corp. and Modern Paving Ltd.* resolved complex issues of liability and damages in favour of the Plaintiff. The decision, 2006 NLTD 44, was released on March 9, 2006. Damages were assessed at over \$4.5 million. This case is instructive on liability questions pertaining to developers and contractors and the assessment of damages where the injured party is a high income earner with a high residual earning capacity.

The Pippy Park Golf Course was operated by Thomas Development. The road and parking lot had been laid out by Thomas Development. Thomas Development roughed out the road and parking lot. Modern Paving was a contractor which had done some work on the parking lot and access road including the laying of pavement.

Dr. Williams was a 37 year old cardiologist, and on September 8, 1993, she drove her car into a ditch. She had left the Pippy Park Golf Course parking lot and was driving out the access road. It was misty and darkness was starting to set in. She was traveling about 15 kmph. Her headlights were activated.

Liability:

The layout of the road induced Dr. Williams to mistake the direction of the road as leading into a turn; instead of following the actual roadway, she made a right hand turn into the ditch. The ditch was at least four ½ feet deep. Her vehicle struck and split a large rock at the bottom of the ditch. She struck the windshield. Dr. Williams was able to drive the vehicle out of the ditch.

Dymond, J. stated:

The evidence is clear that the whole area around the parking lot was dark. The soil to the right of Dr. Williams as she left the parking lot was dark earthen soil. There were no markings, signs and barriers on the west parking lot along the ditch side. Had there been some markings or barrier along the west ditch, it could have been something which could have been used as a guide that this is not a place to turn. The lack of lighting, signage or any markings whatsoever created foreseeable risk and an unusual danger to patrons. I have found as a fact that the deepest part of the ditch was the area adjacent to the north/south and east/west intersection of the ditch, which is adjacent to the pavement coming into the parking lot.

To allow patrons to play so late into the evening where there is no lighting in the parking lot and where there is a ditch, which the court found to be no less than four to four and a half feet deep at the point of entry of the William's vehicle, under all of these circumstances created an unreasonable hazard to the traveling public. Thomas Development Corporation should have foreseen the risk and done something about it.

Although the Board of Pippy Park had requested the First Defendant to obtain municipal approval for the site plan, it did not do so. Had it done so, the City may have required precautionary measures to be taken.

Modern Paving were upgrading the road. It had to be aware of the ditch. The creation or filling in of the ditch were not within the scope of the contract between Modern Paving and Thomas Development but:

... they were the engineers on site and should have at the very least warned Thomas Development Corporation of the open ditch in the area adjacent to the top of the parking lot, adjacent to the entrance and exit.

The Second Defendant could have notified Thomas Development Corporation that some type of marker or guardrail should have been placed near the area where the Williams' vehicle entered the ditch. Had they done so and Thomas Development Corporation refused to act, it would relieve some of the responsibility for Modern Paving. Mr. Williams and Mr. Bennett say there was no need to notify Thomas Development Corporation because it was within an acceptable construction standard. I find this not to be the case upon review of all of the evidence.

Thomas Development Corporation, to some extent, relied on Modern Paving's expertise. There is very little by way of parking lot regulations as it relates to ditching. Much of the evidence referred to in the present case talks about specs for ditches along highways and roadways.

Modern Paving, by extending the paved portion into the parking lot and flaring the left side coming up the road, may have been using standards acceptable by contactors. It directed traffic, however, coming

up the road into the middle of the lot, yet traffic leaving in the evening was not contemplated by the contractors. This strip of pavement, with a slight curvature and with no markings or warnings that a deep ditch was adjacent to it, was a combination of factors which directly contributed to the accident. If Modern Paving Limited had somehow outlined by markings in yellow or white paint the edge of the driving surface, it may have prevented the accident. As such, the extension into the lot, with the curvature unmarked, was a contributing factor to this accident and I so find. Modern Paving Limited should have discussed the issue of lighting with Thomas Development Corporation of the parking lot, knowing there was open ditching around the perimeter of the parking lot.

The plaintiff was unable to explain how she mistook the turn. Her failure to judge the edge of the road was a contributing factor to the accident. Thomas Development as the owner and occupier was held 50% at fault, Modern Paving 30% and the Plaintiff 20%.

Damages:

General: In 1996, the plaintiff required corrective surgery, the surgery stabilized but did not reverse the injury. The prognosis for future surgery was 50%. Such surgery was high risk. One consequence could be paralysis. Williams' very robust lifestyle and work had been dramatically altered. General damages for pain and suffering were set at \$175,000.

Past earnings: But for the injury, Dr. Williams would have continued to perform intervention cardiological procedures. From the date of her accident, using the gross average income of intervention cardiologists, she had lost \$1,967,389 in past earnings (inclusive of judgment interest).

Past care: was allowed at \$94,927 (inclusive of interest). This expense related to travel to Toronto for treatment by Dr. Fehlings. The Hospital Services Account was allowed at \$91,786.

Future loss of income: was set at \$2,262,500. Dr. Williams was restricted in the type of work which she could perform as a cardiologist. In particular, she could not continue to work as an interventional cardiologist. This substantially limited her earnings. There were a number of other well-paid sources of income available to her.

Dr. Williams probably would not have worked beyond age 62. She had pre-existing medical conditions that would have had an effect upon her ability to continue. There were a number of pursuits that she was interested in pursuing. She could easily afford to retire at that age. Her capacity to work to this age while earning a reduced income was limited by further 40% because of the prospect of further decline in her condition, the types of activities she could perform and the likelihood of an earlier retirement. (This in addition to a condition of 10% that had been applied by an actuary who testified on behalf of the plaintiff.)

Management fee: Dr. Williams was very intelligent. She had a professional accountant. The Court allowed a lump sum of \$10,000 "to be used to assist in setting up a retirement investment package for Dr. Williams from the proceeds of this action."

Future care: was allowed at \$51,000 based on a \$100 per week from the age of 60 and a multiplier of 9.8.

Future medical expenses: were allowed at \$35,000 based upon the projected need for future travel to Toronto.

Total: The total damage assessment was \$4,698,100.

Call to Bar

February 24, 2006



Sixteen lawyers were Called to Bar in St. John's on February 24, 2006. They are (*in the order of call*):

Roll Number

1312 Howard C. G. Pitts
1313 Christopher D. Hickey *
1314 Brian D. Bennett *
1315 Beth M. Whalen *
1316 Jamie M. Luscombe *
1317 David S. Williams *
1318 Stacy G. MacDonald
1319 J. John Noseworthy *

Roll Number

1320 Michael C. Reddy *
1321 Jeffery W. Miller *
1322 Liam P. M. O'Brien *
1323 Blair J. Rogers *
1324 Sean W. Montague
1325 Andrew J. Martin
1326 E. K. Roxanne Pike
1327 Raymond W. Kuszelewski

* CBA member

People and Places

Donald E. Anthony*, previously with *Roebothan McKay & Marshall*, is now the Director of Legal Affairs for *Humber Valley Resort Corporation*.

Nicholas J. G. Avis, Q.C., of *Browne Fitzgerald Morgan & Avis* has been re-appointed as Chairperson of the *Newfoundland and Labrador Legal Aid Commission* for a 2-year term.

T. James Bennett, of *Bennett Law Firm*, has been declared the new leader of the *Liberal Party of Newfoundland and Labrador*.

Shelley L. Bryant, is now a sole practitioner at *Bryant Law Office*.

Lauren J. Chafe, previously with *O'Brien & Associates*, is now with the *Legal Aid Commission* in St. John's.

Felix J. Collins, of *O'Brien & Associates* has been elected as the MHA for the electoral district of Placentia & St. Mary's.

Gladys H. Dunne, formerly with *Smith Coffey*, is now a sole practitioner at *Gladys Dunne Law*.

Patrick O. Duff, has joined *Gittens & Associates*.

John L. Ennis, previously with *Parsons Ennis Scott Moores*, is now with *Parsons Ennis Moores & McCarthy*.

Christopher J. Fox, formerly of *Goodland O'Flaherty*, has taken non-practicing status.

Krista L. Gillam, of *Collins & Associates* has been appointed as a member of the *Newfoundland and Labrador Legal Aid Commission* for a 2-year term.

Phyllis A. Harris, formerly with the *Crown Attorney's Office* in Clarenville, is now with the *Crown Attorney's Office* in Happy Valley-Goose Bay.

Nadine C. Hodder, previously with *Burgess Law Office*, has taken non-practicing status.

Jacquelyn Jenkins, of *Jacqueline Jenkins Law Office* has been appointed as a board member of the *Provincial Advisory Council on the Status of Women*.

Christina R. Kennedy*, formerly with *Scarfone Hawkins LLP* in Hamilton, has joined *Rogers Bussey*.

Michael N. R. King, previously with *Les Thistle Law Office*, has joined *Collins & Associates*.

Heidi C. Marshall, has joined the *Legal Aid Commission* in St. John's.

Andrew W. May*, formerly with *Mills, Hussey & Pittman*, is now with *Brothers & Burden*.

Michael J. McCarthy, previously with *Parsons Ennis Scott Moores*, is now with *Parsons Ennis Moores & McCarthy*.

Robyn J. Montague, formerly with the *Public Service Commission*, is now with the *Department of Natural Resources*.

David C. Moores*, previously with *Parsons Ennis Scott Moores*, is now with *Parsons Ennis Moores & McCarthy*.

Gregory A. C. Moores*, previously with *Moores, Collins, Andrews*, is now with *Stewart McKelvey Stirling Scales* in St. John's.

NEW CBA MEMBERSHIP BENEFIT

In this and subsequent editions of *Squid pro quo*, a new benefit is available to CBA members in good standing, in the form of classified ad placements for items of interest to the profession. The cost per ad is \$25.00 including HST, with a maximum word count of 25 words.

Ads must be received by the Branch Office, via e-mail, no later than October 31 for the fall edition, February 28 for the spring edition, and June 30 for the summer edition, and payment must be received contemporaneously with receipt of the ad.

To book your classified advertisement in *Squid pro quo*, please contact the Branch office at 579-5783 or email: cba-nl@nl.rogers.com.

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Veva B. Moulton, formerly with the *Department of Health and Community Services* has taken non-practising status.

Joan F. Myles*, previously with *Benson Myles*, has taken non-practicing status.

Aaron B. Newell, previously with *Gillian D. Butler, Q.C., Mediation & Litigation*, has taken non-practicing status.

Karen J. O'Reilly, formerly with the *Crown Attorney's Office* in Gander, is now with the *Crown Attorney's Office* in Grand Falls-Windsor.

Ronald D. Parsons, previously with *Parsons Ennis Scott Moores*, is now with *Parsons Ennis Moores & McCarthy*.

Marilee I. Pittman, previously with the *Legal Aid Commission* in Corner Brook, has taken non-practising status.

Jennifer M. Reid, formerly with the *Legal Aid Commission*, has taken non-practising status.

Linda M. Rose, Q.C.*, previously with *Linda Rose Law*, is now with *Rose Van Driel Scott*.

Annette E. Scott, formerly with *Parsons Ennis Scott Moores*, is now with *Rose Van Driel Scott*.

Lois Skanes, Q.C.*, of *Roebathan, McKay & Marshall* has been appointed to the Board of Directors of *The Rooms Corporation of Newfoundland and Labrador*.

Cindy G. Starkes*, previously with *Linda Rose Law*, is now with *Rose Van Driel Scott*.

Karen M. Stone, formerly with the *Department of Justice*, is now with the *Department of Health and Community Services*.

Rosellen Sullivan*, formerly with the *Department of Justice*, is now with *Simmonds, Kennedy*.

Ian J. Tucker*, previously with *Roebathan, McKay & Marshall*, is now a clerk at the *Supreme Court of Newfoundland and Labrador, Court of Appeal*.

Gerlinde van Driel, Q.C.*, formerly with *Van Driel Law*, is now with *Rose Van Driel Scott*.

Heidi A. Wells, previously with the *Department of Justice, Crown Attorney's Office* in St. John's, has taken non-practising status.

William E. Wells*, of *Cox Hanson O'Reilly Matheson* has been appointed as a member of the *Standing Fish Price Setting Panel*.

Marina C. Whitten*, of *Aylward, Chislett, Whitten* has been appointed as a member of the *Newfoundland and Labrador Legal Aid Commission* for a 2-year term.

*denotes CBA member

New CBA Members

Joined since November 2005



Tina Baker	Law Student
Patricia Beh	Law Student
Mark Gillette	Jeffrey Keefe Law Office
Natalie O'Donnell	Roebathan, McKay & Marshall
Matthew Rowe	Law Student
Todd Stanley	Department of Justice
Rosellen Sullivan	Simmonds Kennedy Law Firm
Edward Ring	Roebathan, McKay & Marshall
Kenneth Young	Derrick White Law



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