

# Squid pro quo

Newfoundland and Labrador Branch

Spring 2007

Canadian Bar Association



Canadian Bar Association  
Branch  
Mid-Winter Meeting  
February 2-3, 2007



## Squid pro quo

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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 31<sup>st</sup>, February 28<sup>th</sup> and June 30<sup>th</sup>.

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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



Pamela Taylor  
Editor

It seems like it was only a few weeks ago that we celebrated the beginning of a new year and yet we are all ready one quarter of the way through 2007! There are two inserts in this edition of *Squid pro quo*. Volunteers are needed for Law Day.

Please review the form and consider volunteering your time to this worthy event. You also find out more about the many activities planned for Law Day by reading the Law Day Committee report in this edition of the magazine. The second insert is the latest publication from the *Canadian Bar Advocacy* which I hope you enjoy.

Much has happened since the Fall edition of the magazine was published. The Mid-Winter Meeting of Council was held in Steady Brook in February. The Honourable Tom Marshall, Minister of Finance, spoke at the Luncheon and provided all those in attendance with an informative overview of developments within our provincial justice system. He was kind enough to allow us to reprint an excerpt of his speech which can be found at page 22. I would also like to extend a personal thank you to Sheri Wicks. I had never skied prior to the Mid-Winter Meeting in February. Sheri was kind enough to stay with me and ensure that I made it down the ski slope with my body and at least some of my pride intact.

Inside *Squid pro quo* you will find several Section Updates. Judy Manning has written an interesting In Personam on Barry Fleming, the Citizen's Representative for Newfoundland and Labrador. Geoff Aylward, as always, has provided us with another informative case digest to ponder. Peter Shea has provided an Awards Report on Glenn Payette, recipient of the 2007 Award for Excellence in Journalism. We also have all of our regular features including our President's Report, Young Lawyers-CBA, and of course the ever popular People and Places.

You will also find a moving tribute to Reginald Brown, QC, written by his colleagues and friends at Cox & Palmer. As you all know, Reg passed away suddenly in January. He was an extremely well liked and well respected member of our profession. The tribute clearly demonstrates the contribution Reg made to both our legal community and the community at large.

As we get closer to Summer, don't forget to mark your calendars for the Branch Annual General Meeting to be held in July at the Wilds. As well, mark you calendars for the 2007 Canadian Legal Conference to be held in Calgary in August. Check out the conference advertisement in this edition for additional information. ■



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# President's Report

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by Sheilagh M. Murphy



It has been my pleasure to continue to represent the membership as President of this Branch. I hope that all members continue to find value in the Canadian Bar Association (CBA) and enjoy the many benefits membership has to offer you. The following is a brief summary of my activities since our last publication.

## Meetings of Council and Annual Meetings

The Mid-Winter Meeting of Council in Steady Brook on February 2-3 was a success. On behalf of the Branch, I extend many thanks to Sheri Wicks and her committee for their labours in organizing it. I would like to also thank the Honourable Thomas Marshall, Minister of Finance for speaking at our luncheon, and Fred Stagg, Q.C. for his address to council. I would again like to congratulate Glenn Payette of CBC - *Here & Now*, who won the CBA's Award for Excellence in Journalism for his piece on explaining how courts calculate and apply time an accused has spent in remand when applying it to a sentence. Finally, I thank our Mid-Winter meeting sponsors, especially Mr. Hughie Shea of CBIA, who not only provided sponsorship funds, but participated wholeheartedly in all our events. Hughie, I hope you did not break anything during that spectacular wipe out.

Our Annual Meeting of Council has been scheduled for July 13-14, 2007 at the Wilds Golf Resort in Salmonier, Newfoundland & Labrador. I look forward to seeing you all there.

## Special Events

**November 10, 2006** - The Branch made its presentation at the Bar Admission Course. Our Young Lawyers Chair, Membership Chair, CBIA representative and I attended the Bar Admission Course. Although the timing of the event

was last minute, we were very well received by the Law Society's Director of Education, who gave us, as well as the CBIA and CBAF, a ringing endorsement in his introduction and closing remarks. Our CBIA/CBAF representative, Hughie Shea, was outstanding in his commitment to the presentation and we received much positive feedback from the students following our visit.

**November 17, 2006** - Young Lawyers - CBA Wine and Cheese Reception proceeded as scheduled and it also was very successful. Many judges attended and met with the bar admission course students and their principals.

**December 7, 2006** - The President's Reception was an overwhelming success and we experienced record attendance. We are considering increasing the budget for this event in the future, given the increasing attendance levels over the past few years.

## Special Projects

This year, the Branch is considering hosting a President's Dinner. Details will be forthcoming. We intend to have a formal dinner at the Fairmont Newfoundland and invite all former Branch Presidents. It is our hope that this will become a regular event on our calendar. We are tentatively planning the event for May, 2007.

On a more substantive note, the Branch Executive Committee has been considering the findings of Right Honourable Antonio Lamer, former Chief Justice of the Supreme Court of Canada, in his inquiry into the convictions of Gregory Parsons, Jody Druken, and Ronald Dalton. The report is a substantive one and makes a



plethora of recommendations on how we, as a Province, can ensure that such injustices do not occur in the future. The CBA - NL Branch has struck a committee to plan a series of seminars to disseminate the information and work with our membership to help get the message to the membership and to help implement some of the report's recommendations. The committee is comprised of our Vice President, who oversees sections, our Criminal Law Section Chair, a representative of our CLE committee, and a representative of the criminal defence and prosecution bars. It is the Executive's hope that the first of these seminars will be ready to present at or near our Annual Meeting in July 2007, if not sooner.

### National Meetings

**November 18, 2006** - I attended the national CBA Board of Directors' meeting in Ottawa on your behalf. My report to the board contained much of what has been covered herein.

**February 16, 2006** - I attended the Board of Directors Meeting and the Council Meeting in Mont Tremblant, Quebec. For the record, the snow was significantly better in Steady Brook.

### Resolutions

The 2007 resolutions adopted by Council during the Mid-Winter meeting in Mont Tremblant can be found at [www.cba.org/CBA/resolutions/2007res/](http://www.cba.org/CBA/resolutions/2007res/).

Of particular significance for all at the Mont Tremblant meeting was the First Canadian Title resolution 07-01-M on advertising. This had been tabled from the August meeting in St. John's. As most of you are aware, the CBA has had a ban on advertising by First Canadian Title since 2002. Since 2002, other title insurers have entered the marketplace and have been permitted to advertise with the CBA

and sponsor CBA events. At Mont Tremblant, First Canadian was lobbying to have the ban against it lifted.

Following the Canadian Legal Conference (CLC) in St. John's in August, 2006, this Branch received a complaint from a local member of the CBA that title insurers acting on real estate refinancings were not being required to charge a \$50.00 transaction fee levy on those refinancings in this Province, but real estate lawyers not using a title insurance policy were required to charge the levy. As a result of that complaint, our Real Estate Section made a presentation to the Law Society's Insurance Committee in the fall of 2006. At that time, the matter was sent to Benchers, as in addition to the levy issue, there was a larger issue of whether what First Canadian Title was doing on refinancings was outside the scope of our *Law Society Act* and/or *Conveyancing Act*. Benchers are currently in the process of investigating this matter.

In bringing forward this resolution, First Canadian Title pointed out that their practices do not materially differ from those of other title insurers and, as a consequence, singling them out for a ban on advertising was discriminatory. There was wide support for this view in Council. However, with the review pending before Benchers, our Newfoundland and Labrador council members did not feel that they could support the resolution to lift the ban without more information. Prior to the meeting on First Canadian Title practices in this Province, our Branch Council members requested, but did not receive, new documentation from First Canadian to inform ourselves on the issue before the vote.

During debate on the resolution, it came to light that there is an outstanding decision of the Court of Appeal in New Brunswick between the Law Society of New Brunswick and First Canadian Title on a similar issue. The majority



of the Newfoundland & Labrador Branch voting members of Council felt that we could not vote in favour of lifting a ban on advertising when there was an outstanding question as to whether the company seeking to advertise and sponsor CBA events might be seen as engaging in the practice of law. As a consequence, and after much debate on the council floor, the majority of our Newfoundland & Labrador voting members of Council, in collaboration with representatives from New Brunswick and British Columbia, convinced the majority of the members of the National Council to table this resolution to the August, 2007 meeting in Calgary.

In the meantime, our Branch Legislation & Law Reform Committee is conducting a comparative analysis of practices of title insurers in the Province, as well as a review of our *Law Society Act* and *Conveyancing Act* so that we can independently confirm whether it is appropriate to vote in favour of this resolution in August in Calgary.

Following that meeting, I asked a representative of First Canadian Title to provide us with documentation to help members of this Branch inform themselves on how to proceed in August. I continue to wait for that information.

The Branch has also offered its assistance to the Law Society of Newfoundland and Labrador in its investigation. We hope this matter can be resolved quickly. We will keep you informed on the progress of this matter. ■

## Canadian Bar Association Newfoundland & Labrador Branch

### Distinguished Public Service Award

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

#### **2007 Distinguished Public Service Award**

to recognize a lawyer's contribution to community service.

The award will be presented during the Newfoundland & Labrador Branch's Annual Meeting. Please contact Roxane Dean, Executive Director by **April 30, 2007** to obtain a nomination form.



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## Section Update

### Administrative Law

by Donna Strong, Chair



On Thursday, March 15, 2007, the Administrative Law Section hosted a Lunch and Learn Session with guest speaker, Barry Fleming, Citizen's Representative for the Province. Mr. Fleming gave a talk on the Office's mandate, procedures and accomplishments. He also discussed how the office may be able to assist clients when all other avenues of redress have been exhausted. The session was informative and beneficial to those in attendance.

I would welcome any suggestions about topics, speakers or other activities from members. Please feel free to contact me at 777-7777, ext. 3171 or email: [donna.strong@eastern-health.ca](mailto:donna.strong@eastern-health.ca). ■



## *Criminal Law*

*by D. Mark Pike, Chair*



The Criminal Law Section has been quite active in addressing the concerns of members and stimulating the interest of others in the Section. The following significant events involving the Section have taken place this year.

### **1. Offer of Assistance to the Public Prosecutions Review**

Following a recommendation of the Report of the Lamer Commission of Inquiry, the Provincial Government mandated retired Court of Appeal Justice, William Marshall, to conduct an independent review of the Office of the Director of Public Prosecutions (DPP) with a view to ensuring that steps have been taken or will be taken to eliminate the "Crown culture" that contributed to wrongful convictions and other injustices. The mandate also included identifying the ongoing needs of the DPP office including: adequate personnel; continuing education for Crown Attorneys; electronic access to statutes, legal precedents and other resources; and a modernization of the DPP's office according to such identified needs. The Criminal Law Section of the Newfoundland and Labrador Branch of the Canadian Bar Association (CBA) have contacted Counsel to the review indicating its desire to assist and have input into the review process. All Section members have been contacted and their input solicited for this purpose.

### **2. Lunch and Learn - Mental Health Court Pilot Project**

The funding for a Mental Health Court Pilot Project as part of the Provincial Court of Newfoundland and Labrador has been maintained. This project continues to work well and it is the consensus of all involved that this project has succeeded in providing an alternative to criminal prosecution for those in society who suffer from mental illness and have found themselves in the criminal justice system as a direct result. Overtures have been made in an effort to extend the jurisdiction of the Court to areas outside St. John's to benefit rural Newfoundland and Labrador. On December 12, 2006, the Criminal Law Section conducted a Lunch and Learn Session to familiarize its members with the operations of the Mental Health Court and advise them how best to ensure that their clients have access to this innovative process. Mr. Peter Ralph, Legal Aid Counsel to the Court, and Ms. Cindy Elgar, Social Worker, presented those in attendance with valuable information concerning the Court, its mandate, processes and support services.

### **3. National Criminal Justice Section Meeting**

On Saturday, December 9, 2006, the National Criminal Justice Section meeting was held at the Delta Bow Valley Hotel in Calgary, Alberta. On behalf of the Newfoundland and Labrador Section, I presented our Section's activity report which summarized four significant developments during the last six months in Newfoundland and Labrador.

Once again, the primary focus of the national meeting was the significant criminal law reforms initiated by the current government in Parliament including:

Bill C-22, Age of Consent  
Bill C-35, Reverse Onus and Bail Hearings  
Identity Theft  
Bill C-21, Gun Control  
Lawful Access  
Bill C-23, Criminal Procedure Reform  
Sentencing Issues  
Bill C-19, Street Racing  
Bill C-32, Impaired Driving  
Bill C-27, "Three Strikes"  
Bill C-25, Proceed of Crime  
Bill C-18, DNA  
Bill C-9, Conditional Sentencing  
The Air India Intervention  
Bill C-10, Mandatory Minimum for Gun Crimes

There can be no question that the interests of the CBA are being well-served by the intensive efforts of the many talented people speaking on its behalf and the concomitant lobbying efforts in Ottawa. The CBA has always taken a reasoned and balanced approach to legislative reform and implementation of public concerns raised through its elected representatives to all levels of government. There continues to be a cooperative effort between the Federal Department of Justice officials and the CBA regarding the implementation of legislative changes, often well in advance of the presentation of the Bills for first reading in the House of Commons. Many new ideas, both procedural and substantive, find their genesis in the consultation papers and consulting process which takes place at the early stages.

One of the concerns at the national meeting related to the reform of the preliminary inquiry. This initiative arose as a result of requests from some quarters for further reforms to the preliminary inquiry procedure. The Federal Department of Justice has undertaken a two-phase research study to assess the continuing role of the preliminary inquiry in the criminal justice system and is studying as well the impact of the amendments related to the preliminary inquiry which came into force in June, 2004. The National Criminal Justice Section used the national meeting as an opportunity to formulate a response to the questionnaire which had been circulated to the CBA by research officers in the Department. The CBA has taken the position that the preliminary inquiry is a suitable and effective manner of ensuring that justice is done and performs a critical function in the process. The response to this latest initiative is in accord with this position.

It is quite evident that the law and order agenda of the current federal government and the resulting aggressive legislative program is creating a great deal of work and effort for the CBA Criminal Justice Section. There will certainly be many more developments in the coming months.

#### 4. Section Meetings - Election of Officers, New Initiatives and Legislative Reform

At the last meeting of the Section held on January 12, 2007 at the offices of Benson Myles, in addition to the ordinary business of the Section, the following took place:

- Pamela Goulding was elected as Vice-Chair;
- Rosellen Sullivan was elected as Secretary;
- The opportunity for Section input into the Lamer Report initiatives was discussed;
- Input was solicited from members interested in assisting the review of criminal law legislative initiatives recently undertaken by the new government; and
- The next meeting was scheduled to take place on March 30, 2007.

I would welcome any suggestions about topics, speakers or other activities from members. Please feel free to contact me at any time at 570-7244 or email: [mpike@bensonmyles.com](mailto:mpike@bensonmyles.com). ■

## Section Update

### *Natural Resources and Energy*


*by Greg Moores, Chair*

Recently, a notice was circulated to section members regarding a business meeting for the Section, which was to be held jointly with the Environmental Law Section on March 29, 2007. The purpose of our business meeting was to provide an opportunity for section members to get together and, with any luck, exchange ideas for a Spring Lunch & Learn Session. While I have several ideas of my

own, I am always interested in suggestions from section members. To that end, please contact me, whether by phone at 570-5797 or email: [gmoores@smss.com](mailto:gmoores@smss.com) to discuss any ideas which may be of interest to members of the Natural Resources and Energy section.

Due to unforeseen circumstances, the meeting had to be cancelled. ■



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## *Environmental Law*

by Tracey Pennell, Chair



There has been much to talk about in the field of environmental law as the environment seems to be on the minds of many Canadians lately. On October 6, 2006 the Standing Senate Committee on Energy, the Environment and Natural Resources met to review the *Canadian Environmental Protection Act (CEPA)*. The intention of the Senate Committee was to use a "case study" report to undertake a review of the *CEPA*. The Committee's plan is to deal with the operation of the *CEPA* relating to three particular substances: mercury, PFCs and smog. These case studies could determine whether, and to what extent, the *CEPA* has been able to deal with these substances and whether a problem still exists. The objective of the Committee is to establish the strengths and weakness of the *CEPA*, to determine caus-

es of those weaknesses and decide whether they can be fixed under the existing statute. If not, the goal would be to decide what changes would be required to make the *CEPA* effective.

On October 18, 2006 the Executive of the Canadian Bar Association (CBA) National Environmental Energy and Resources Law Section (NEERLS), chaired by Tony Crossman, held a conference. The current priorities of the National Section include strengthening and building the CBA-NEERLS relationship with the American Bar Association's Section on Environment, Energy and Resources (SEER) and producing a "Year in Review" publication which would provide a summary of legal changes that have occurred in the environment, energy and resource sectors. These are exciting goals to which we look forward to contributing.

On October 19, 2006 The Honourable Rona Ambrose, Minister of the Environment, introduced Canada's *Clean Air Act*. According to the Minister, the Act is intended to demonstrate a clear commitment to the establishment of short-term, medium-term and long-term industrial air pollution targets, which would compel polluters to respect emissions limits. Short-term intensity based greenhouse gas reduction targets are to be set in consultation with provinces, territories and all affected industry sectors. However, the *Clean Air Act* has been highly criticized by environmental groups. Therefore, this is another issue that is important to monitor as we see whether the *Clean Air Act* will come into effect and what other issues will arise from its introduction.

### **Upcoming Events**

On March 29, 2007, the Natural Resources and Energy Section along with the Environmental Law Section planned to hold a joint business meeting. Due to unforeseen circumstances, the meeting was cancelled.

The CBA National Environmental, Energy and Resources Law Summit will be taking place from April 27-28, 2007 at the Inter-Continental Montreal Hotel. The theme for this year is *Energy and the Environment*. Please visit the CBA website at [www.cba.org](http://www.cba.org) for the conference brochure and registration form. ■

## **VACANCIES !**

### **CBA YOUNG PROFESSIONALS INTERNATIONAL LEGAL INTERNSHIP PROGRAM**

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**AUGUST 2007 - MARCH 2008**

The CBA announces placements available in Africa and South East Asia from August 1, 2007 to March 31, 2008 for young qualified Canadian lawyers interested in getting international experience. Successful applicants would need to attend a briefing and orientation in Ottawa in June, 2007. Airfares, accommodation and expenses paid, nationally and internationally.

For further information about the program please see the CBA's web site at <http://www.cba.org/CBA/IDP/YIIP/>

Application by letter and c.v., e-mail to Al Cook, Director, YPIP, at [alc@cba.org](mailto:alc@cba.org) no later than Monday, April 9th, 2007.



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## Section Update

### *Real Property*

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One of my first orders of business having returned as Chair of this Section was attending the National Real Property meeting in Ottawa on November 19, 2006. Nationally, a lot of attention has been focused on the ban on advertising which has been in place against First Canadian Title for the past several years. The ban was effected as the membership felt that First Canadian Title was essentially practicing law and/or competing with lawyers. This issue was hotly debated again at the Real Property CLE session during the CBA Canadian Legal Conference in St. John's last August.

The Resolution made on behalf of First Canadian Title to lift the ban was not decided at the Council meetings in St. John's, but put forward to the 2007 Mid-Winter meeting held in Mont Tremblant. Although I was not present, I understand that both the Resolution by First Canadian Title and the Resolution put forward by the National Real Property Section dealing with this issue were set over again to be dealt with at the Council Meeting during the 2007 Canadian Legal Conference in Calgary, Alberta.

by Susan LeDrew, Chair



On a provincial level, we have been dealing with the implementation of the Transaction Levy on legal services, including the sale, purchase and refinance of real property. The issue of whether or not the transaction levy should be charged on title-insured refinances has been raised with the Law Society, however no decision has yet been made.

We have yet to schedule a Lunch and Learn session in 2007, but several topics are being considered, including the possibility of an update of the earlier "What is Good Title" seminar. If there are any topics that you would like to see addressed at an upcoming Lunch and Learn Session, please feel free to contact the branch office at 579-5783 or my office directly at 754-4845. You can also email me at [smledrew@swd-law.nf.net](mailto:smledrew@swd-law.nf.net). ■

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## Section Update

### *Wills and Estates*

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I attended the Wills & Estates Section conference in Toronto on February 2 and 3, 2007. A representative from the federal government spoke to us regarding a number of international conventions relating to wills, estates, trusts and elder law. Canada has become a signatory to the Uniform Law on the Form on an International Will and Newfoundland and Labrador has enacted legislation to implement the *International Wills Act*. The purpose of the convention is to establish an international form of a will which will be valid in all countries that are signatories to the convention. In a time where our clients often travel and own property in other parts of the world, an international will can be recognized in all contracting states without reference to conflict of law issues. In Canada, all jurisdictions except Quebec, British Columbia and the Territories have enacted the required legislation to implement the convention. Currently, only Belgium, France, Portugal, Slovenia and Italy have adopted the convention so the usefulness of international wills may be limited at this time. If the United States adopts the convention, an

by Kerry Hatfield, Chair



international will could save testators the requirement of several wills in different jurisdictions. An international will has specific rules regarding execution including the requirement for three witnesses and the completion of a specific certificate. For more information please refer to the *Wills Act*, R.S.N.L. 1990 c. W-10 at Part III.

There were two other conventions of interest, one being the International Convention on Trusts which would make trusts properly drafted and executed in Newfoundland and Labrador valid in other provinces and signatory countries. To date, all jurisdictions except Quebec, Ontario and the Territories have enacted legislation to implement the Convention on Trusts. While the United States has not yet adopted the convention, countries such as Australia, Italy, China, the Netherlands and the United Kingdom have done so. Further information can be found in the *International Trusts Act*, R.S.N.L. 1990 c I-17. The second

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*Wills and Estates (continued from page 9)*

convention that the group discussed was the International Protection of Adults which would establish rules for international situations to protect adults, who by reason of incompetency, cannot make decisions regarding their person or property. To date, Newfoundland and Labrador has not enacted legislation to confirm the implementation of this convention in this Province.

The President of the Wills and Estates Section reported that excellent progress was being made on the National Concordance of Succession Law. Tables for all provinces are almost complete and will be made available on the Canadian Bar Association website in the near future. The

tables will be a quick reference guide for all lawyers working in the wills, estates and trusts area.

As a last note, I want to bring to the provincial section's attention new legislation passed in December, 2006 wherein the *Judgment Enforcement Act* was amended to allow for the exemption of registered plans from seizure. Section 131.1 provides that registered plans, being deferred profit sharing plans, registered retirement income funds, and registered retirement savings plans are now exempt from the enforcement process. The exemption also extends to a direct transfer of property from one registered plan to another registered plan. ■

## *Mark Your Calendars !*

April 4, 2007

### **Law Practice**

### **Management & Technology Section**

Lunch and Learn Session

CBA Boardroom, Suite 304, Atlantic Place  
St. John's, NL

April 16, 2007

### **Deadline - Call for Nominations 2007-2008 National Standing Committees**

April 19, 2007

### **Law Day Event**

### **Public Legal Information Fair**

Avalon Mall, St. John's, NL

April 21, 2007

### **Law Day Event**

### **Mock Trials**

The Supreme Court of Newfoundland and Labrador  
287 Duckworth Street, St. John's, NL

April 22-24, 2007

### **Canadian Corporate Counsel Association National Spring Conference**

Toronto, ON

April 30, 2007

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

June 1, 2007

### **Deadline - Young Lawyers - CBA 2007 National Pro Bono Award**

July 13-14, 2007

### **Branch Annual General Meeting** The Wilds, Salmonier Line

August 12-14, 2007

### **CBA**

### **Canadian Legal Conference and Expo** Calgary, AB





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# Somewhere Between *The Apprentice* and *The View*

by Christine Healy,  
Chair, Women Lawyers Forum



In an article published in the Canadian Bar Association, Nova Scotia Branch newsletter *Ad Hoc*, Pamela Wickwire Holm did a wonderful job describing the CBA's new initiative - the Women Lawyers Forum. Pamela wrote:

"I was fascinated with the first 2 seasons of *The Apprentice*, Donald Trump's "reality" show in which he took a group of talented and diverse young professionals and pitted them against each other for the ultimate prize of being his employee, each week telling at least one fresh-faced young aspirant, "You're fired". Donald Trump must have been a partner in a law firm at some point in his career. How else could he have nailed so perfectly the ability to assign tasks that, while outwardly appearing meaningless and inane, determined the future of young hopefuls? Did you ever feel some spark of recognition when you looked at those eager, bright young people, falling all over themselves to impress the "big cheese", while at the same time succumbing to the pressures of competition? Sometimes it brought out something ugly, sometimes it allowed a winner to shine through. Sometimes the person who looked like they should win turned out to be the weak link. Sounds like being a young lawyer, doesn't it?

I grew weary of *The Apprentice* after season 2, though. The novelty, for me, had worn off. Now, *The View* - that's a dif-

ferent matter. Barbara Walters put together a group of women who, on the surface, may not seem that compatible; they represented (purposefully) the young and the "more mature", the professional woman and the mom, the "serious newswoman" and the stand up comic, and so on. A show for everywoman. The topics of their conversations ranged widely, from the completely frivolous to the intensely profound. They talked about fashion and husbands, legal affairs and celebrity love affairs. Sometimes they disagreed. And did you notice that the designated "young woman" has dropped out and been replaced a couple of times? I bet you can relate to that show too in the context of being a woman in the legal profession.

Most of us can empathize with both the contestants on *The Apprentice* and the hosts of *The View*. We've competed (against ourselves and others), been evaluated, reaped some rewards and suffered some failures. And, if we've been fortunate, we've had good friends who have been our confidantes and our sounding boards. And we've likely seen our fair share of young women fall out of the race.

Why am I mulling over any of this? Because there's a new *The View* in town. The Canadian Bar Association has created a new section called The Women's Forum. It is a place where we can gather, tell our stories, share our trials (figurative and literal) and tribulations, and nurture each other. A place where we can celebrate our (and each other's) strengths and accomplishments, where we can mentor and be mentored, where we can give back to the younger female lawyers or (if you ARE a younger female lawyer) take advantage of the experience and wisdom of "more mature" women in the profession. A place where we can have a beer and laugh at the day's events, or share a cup of coffee and seek the advice of other women who can perhaps offer a different perspective on things. A place where we can learn and where we can just enjoy each other's company. Welcome to the Women's Forum."

Well put, Pamela! The Women Lawyers Forum is happening all across the country, and this Province is no exception. The Newfoundland and Labrador Branch is planning a launch event for the Women Lawyers Forum in May, 2007. Details will be available in the coming weeks, so stay tuned. We want to make the forum into an opportunity for Newfoundland and Labrador women in law to learn from and support one another. We hope to see you there! ■

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*2006 CBA National Mid-Winter Meeting  
Mont Tremblant, Quebec  
February 15-18, 2007*



# In Personam

by Judy Manning



## Barry Fleming

Many people are drawn to the legal profession due to a desire to help others in times of need. Barry Fleming's career epitomizes a life of service to others. For almost twelve years, Barry acted as Legal Counsel and Executive Director of the Human Rights Commission for the Province of Newfoundland and Labrador. On December 6, 2006, Barry was appointed to the Office of the Citizens' Representative for the Province of Newfoundland and Labrador, a seemingly natural evolution for a person dedicated to addressing the injustices that befall some of society's most vulnerable citizens.

The Office of the Citizens' Representative accepts complaints from people who feel that they have been treated unfairly in their contact with the provincial government bureaucracy. The Citizens' Representative will conduct an unbiased investigation to determine whether there is any merit to a particular complaint. The Office responds to approximately 250 complaints each year. For example, a citizen who feels that he is being treated unfairly in being denied a building permit for a residential property might bring his problem to the Office of the Citizens' Representative. The Citizens' Representative would then investigate to determine whether the criteria being applied for permission to build has been applied consistently and fairly. In addition to responding to citizens' complaints, in his capacity as Citizens' Representative, Barry also intends to undertake two to three intensive investigations into specific areas of the public service each year.

Barry is aware that there is an inherent problem with the title, Office of the Citizens' Representative. Judging from the name, one might expect that such an office would advocate on the citizen's behalf. However, the Citizens' Representative does not initially assume the role of advocate. The role of the Office is to be impartial and unbiased in conducting investigations of complaints. If the Office determines that a citizen has been treated unfairly, the Citizens' Representative will then advocate for rectification of the problem - the advocacy role occurs subsequent to the investigation. Owing to the confusion arising from the name of the office, Barry prefers the title of Ombudsman and intends to recommend such a change to the legislation,

so that the name of the office will appropriately reflect its actual role.

Born and raised in St. John's, Newfoundland and Labrador, Barry Fleming is the fourth of five brothers. Following his completion of high school, Barry attended Memorial University of Newfoundland, where he obtained a Bachelor of Arts in Economics and Political Science. Upon graduation from Memorial, Barry then proceeded to Dalhousie University. In 1986, Barry graduated from Dalhousie with a Joint Masters of Business Administration and Bachelor of Laws Degree. Barry was called to the Bar in 1987.

Barry always had a passion for a career in the law, which he attributes to his desire to pursue a career which facilitates respectful, thoughtful debate. He enjoyed debating in high school and at Memorial University, within the Political Science Society and the Economics Society.

Reflecting on his time at the Human Rights Commission, Barry maintains that the work at the Commission was extremely rewarding for him and notes that, until he responded to the advertisement for the position that

he currently occupies, he had not applied for a job in twelve years. Barry believes that everyone should periodically take the opportunity to assess whether he or she wants to take the necessary steps to achieve growth and a new perspective. It was Barry's evaluation of his own career and his desire for a fresh perspective that prompted his application for the Role of Citizens' Representative.

Barry has no regrets about choosing to pursue a career in the legal profession. He highly recommends the profession to family and friends, including nieces and nephews, reminding them to keep their minds open as to the wide spectrum of careers that are available to those with a law degree. Barry has found that one of his greatest challenges has been accepting the fact that there are numerous ways to practice law, in addition to traditional private practice, that are quite rewarding. Having articulated with Curtis Dawe, Barry spent eight years in private practice with Puddister,

*(continued on page 18)*



Barry Fleming



# A Tribute

*by his colleagues and friends at Cox & Palmer*

## **Reginald H. Brown, Q.C. (1951 - 2007)**

The sudden passing of Reginald H. Brown, Q.C., on January 15, 2007, shocked and saddened the legal community of Newfoundland and Labrador. Reg was truly a lawyer's lawyer and a loyal friend. He combined a very challenging and successful litigation practice with the leadership of his firm as managing partner of the St. John's office of the newly established Cox & Palmer. A leader and example to his colleagues, he balanced his very demanding professional life with the philosophy that his family always came first. His loving wife, Pam, son, Daniel, and daughter, Johanna, were truly his best friends, but many others are proud to count themselves in the ranks of his family, friends and colleagues.

As members of his firm, we were family and we all feel this loss very deeply and very personally. His sudden passing has left an incredible void and a legacy that colleagues and friends will strive to meet.

One of the best regarded litigators in the Province, Reg was known for being tough but fair. Condolences and words of sympathy came in from far and wide, including from those who were consistently on the other side of his files. One only had to witness the crowds who lined up at Carnell's to pay their respects and the packed St. Thomas' Church at his funeral to appreciate the high esteem in which he was held. More than one person has related a personal story of his generosity to junior counsel. This would be demonstrated when a young lawyer would be thrown into a file with little or no knowledge of the trial process. Rather than seize upon the opportunity for his own client's advantage, Reg would take the inexperienced opposing counsel step by step through the trial process, teaching valuable lessons, both procedural and personal, that would never be forgotten.

Some of us at Cox & Palmer had the privilege of practicing with Reg for 30 years; for others it was only two weeks. But listening to the stories related by staff members on the Monday of his passing about the great fun that they had with him at the internal firm launch the Friday before, you quickly realized what a profound influence Reg could have in even a very short time.

Travelling, skiing, golfing and generally enjoying good times with family and friends were among the passions Reg enjoyed. His social circle was broad, but began with Pam and his children. Given his generosity of time and spirit, it is not surprising that his friendships went back a long time.

Reg Brown graduated with a Bachelor of Arts Degree from Memorial University of Newfoundland in 1974, receiving the gold medal for academic excellence in economics. Upon graduation from Memorial, he entered Queen's University Law School, graduating in 1977, and was admitted to the Bar of Newfoundland & Labrador later that year. In 1995, he was appointed Queen's Counsel.



**Reginald H. Brown, Q.C.**

Reg was dedicated not only to his family and firm, but also to the community at large. The St. John Ambulance was especially important to him. He devoted countless hours to the furtherance of its important goals. In particular, he served as Registrar of the Order, St. John Ambulance Priory of Canada from 1998 to 2004, Deputy Legal Counsel, St. John Ambulance Priory of Canada from 1995-1998 and President of Newfoundland and Labrador Council, The Order of St. John from 1988-1993. In recognition of his selfless service, the Newfoundland and Labrador Council has named its boardroom after him, and, in 2000, Reg was appointed Knight of the Order of St. John by the Governor General of Canada, both rare and prestigious honours. In 2002, Reg received the Queen's Golden Jubilee Medal on nomination by the St. John Ambulance.

Reg also dedicated himself tirelessly to his profession and was President of the Newfoundland & Labrador Branch of the Canadian Bar Association in 1988-89, and Treasurer (President) of the Law Society of Newfoundland & Labrador in 1995-96. These were the culminations of his service to the CBA and the Law Society; Reg also provided assistance by serving on many other committees and taking on countless other tasks, including as a Lecturer of Civil Procedure and Practice for the Bar Admissions Course in Newfoundland and Labrador. He was also a past member of the Legal Appointments Board.

*(continued on page 19)*



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## Barry Fleming

(continued from page 16)

Orsborne, followed by four years in his own practice. Based on his varied experiences, he wryly observes that private practice sometimes lacks the structure required for a healthy lifestyle.

Reflecting on how his career choice has changed him as a person, Barry recalls giving a recent presentation to a Social Work class at Memorial University of Newfoundland, wherein he advised the students that, after twenty years of practicing in any field, the specialized knowledge that one acquires in that field becomes one's "default position". To illustrate this phenomenon, Barry provided a very pertinent example, given our recent weather woes, contrasting how the thoughts of a lawyer and a social worker would differ with respect to the common task of shoveling snow from steps. Barry relates how, when he thinks about shoveling steps, he considers the legal liabilities associated with that task. In contrast, social workers would be more inclined to think about how the cleared steps would be welcoming to family and friends and would facilitate interaction with family and friends. According to Barry, one's education and training inevitably permeates all facets of one's life.

Given the path that his career has taken, Barry's personal motto of "Patience and Perseverance" is one that undoubtedly serves him well in his capacity as the Citizens' Representative. He is most inspired by ordinary citizens he has encountered, both at the Human Rights Commission and most recently at the Citizens' Representative Office, particularly their tenacity, perseverance and ingenuity in dealing with challenging problems.

As for the attributes that he deems most advantageous for a successful legal career, Barry maintains that hard work

and a courteous and civil disposition are certainly necessary, but insufficient, in and of themselves. In order to have a truly successful legal career, Barry believes that one must have a well-developed sense of empathy, not only in the context of dispute negotiation and/or mediation, but also in the context of litigation.

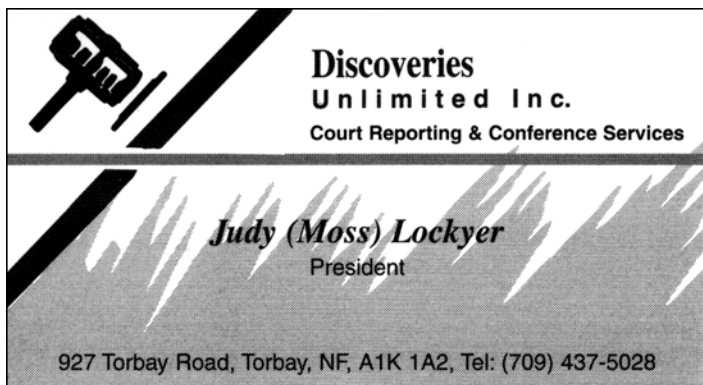
In endeavouring to provide quality service to the clients of the Office of the Citizens' Representative, Barry is cognizant that clients desire effective communication. Barry believes that effective communication entails three things:

1. Understanding the client's problem;
2. Developing a plan to address the problem and communicating that plan effectively; and
3. Being forthright about the range of possibilities that may occur once the plan is executed.

As for the positive aspects of working in the legal field, Barry says that, although perhaps not widely known amongst the general public, the sense of camaraderie and congeniality between members of the profession in Newfoundland and Labrador remains remarkable. Barry acknowledges that having a relatively small Bar likely helps to promote that positive environment. He readily avails of the expertise of colleagues practicing in a particular field, should the need arise, and likewise, is quite willing to help others who seek assistance from him in the area of administrative law. Notably, Barry is also an instructor for the Bar Admissions Course for the Law Society of Newfoundland and Labrador, lecturing on the subject of Administrative Law.

Another major advantage to working in this field, according to Barry, is the interpersonal contact that he has with clients on a daily basis. Barry acknowledges that although a file may seem rather dull and uninspiring upon initial review, once he meets the person who has generated the file, it suddenly gains life, bringing importance and vitality to the work that he does.

On behalf of the *Squid pro quo* committee, I would like to thank Barry for taking the time to share his thoughts with me, and certainly, for helping to shed some light on the role of the Office of the Citizens' Representative. I wish him well in his new role and feel confident that Barry's enthusiasm and commitment to the objectives of the Office of the Citizens' Representative will serve our Province well. ■



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## ***Reginald H. Brown, Q.C.***

*(continued from page 17)*

Reg had been an Adjudicator for the Police Complaints Commission since 1994, and most recently had dedicated his considerable energy and talents as a member of the Board of Directors of the Janeway Children's Hospital Foundation.

Reg was a superb lawyer, a generous and supportive law partner, a dedicated and loving husband and father and a contributor to society at large. These qualities were summarized simply but elegantly by his daughter Johanna in her moving eulogy to her father.

Reg Brown lived his life with honour and joy and left this world a better place.

A scholarship in memory of Reg is being established at Memorial University of Newfoundland for a deserving graduate embarking on a career in law. To make a contribution, please contact Dr. Penny Blackwood, Director of Alumni Affairs (737-4044) or Rick Robbins of Cox & Palmer (570-5325). ■

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## ***Branch Days Gone Bye. . .***

Can you identify all twenty-three members in this photo?

This photo was taken at the Newfoundland Hotel (*Fairmont Newfoundland*) on November 22, 1996. The occasion was the Centennial Dinner.

*Answer on page 24*



# Futures Committee Report

by Peter Shea, Branch Futures Representative



Branch Representatives of the CBA Futures Committee recently met as a group at the National Mid-Winter Meeting in Mont Tremblant on February 18, 2007. This session looked at the current CBA Strategic Planning process, the role of the Futures Committee in that process, and planned "next steps" for the Futures Committee. The Committee discussed the importance of aligning Branch and National strategic planning, and enhancement of initiatives by active and effective communication between Branch and National offices.

The work of the Futures Committee is an on-going consultative process with the goal of assisting you as a CBA member. The goals of the Committee include: (1) building CBA

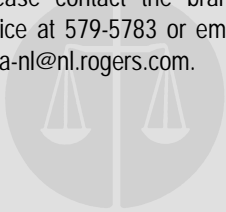
membership; (2) enhancing and segmenting core programs and services; (3) promoting equity and accommodating differences; (4) developing an integrated organizational structure; (5) assisting members with law practice economics; (6) creating a centre of expertise and information on the legal profession in Canada; (7) maximizing dialogue with members; (8) promoting the brand of our organization; (9) improving the image of lawyers; (10) entering into strategic partnerships and alliances; and (11) strategic planning. We welcome you to provide feedback to our Branch on these goals so that we can continue to develop a Branch perspective for this process. ■

## Branch Days Gone Bye...

### Request for Submissions from the Membership

The *Squid pro quo* Committee is in the process of building a database of old photographs taken over the years at various CBA events. Besides allowing us to build an archival photo record of the Branch, we intend to use the photographs in future editions of *Squid pro quo* magazine under the feature - Branch Days Gone Bye.

If you have a submission, please contact the branch office at 579-5783 or email: [cba-nl@nl.rogers.com](mailto:cba-nl@nl.rogers.com).



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# Young Lawyers - CBA Report

by Janie Bussey, Chair



On Thursday, March 15, 2007, the Young Lawyers - CBA (YLC-CBA) hosted a Pre-St. Patrick's Day Social sponsored by the Canadian Bar Insurance Association (CBIA). The event was held at Robin's Nest on George Street, St. John's. Drinks and snacks were enjoyed by those of Irish and non-Irish heritage. We would like to thank the CBIA and everyone for coming out to this event and

encourage you to attend future YLC-CBA social events. We are planning to hold a barbeque social this summer.

The YLC-CBA planned to hold a Lunch and Learn Session on Friday, March 30, 2007, at the CBA boardroom in our new office space at Atlantic Place. Due to a conflict with our presenter's schedule, the event had to be postponed. Our speaker, David Jones, Q.C., Acting Registrar of the

Supreme Court of Newfoundland and Labrador, planned to speak on the topic: "Judgment Enforcement - You've got an Order, so what's next". Watch for rescheduling details.

The YLC-CBA 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 or Roxane Dean at the CBA Branch office. ■



## CALL FOR NOMINATIONS

### FOR CBA NATIONAL STANDING COMMITTEES

The CBA is currently seeking candidates for its National Standing Committees for 2007-2008. All CBA members are eligible to apply for positions on the following Standing Committees:

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

All applications must be submitted to your local Branch office.

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](mailto:cba-nl@nl.rogers.com).

The deadline for applications is noon on Monday, April 16, 2007.

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## The Honourable Thomas Marshall

### Branch Mid-Winter Meeting Address

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Minister Tom Marshall

**The Honourable Tom Marshall was the luncheon speaker during the Branch Mid-Winter Meeting held on February 2, 2007. The following is an excerpt from his remarks:**

*President Sheilagh Murphy, fellow CBA members, ladies and gentlemen.*

*It is, once again, a pleasure to address the Canadian Bar Association - Newfoundland and Labrador Branch Mid-Winter Meeting, especially on my home turf; western Newfoundland and Labrador. I would like to welcome you all to the breath-taking Humber Valley and Marble Mountain and thank you for this opportunity.*

*I have had the honour of serving over 3 years as Justice Minister and Attorney General and working with you to improve the delivery of justice services throughout the province and now, as Minister of Finance and President of Treasury Board, I find myself with responsibility over the public treasury of Newfoundland and Labrador. It is an appointment that I am honoured to accept; a challenge that I welcome; and a responsibility I take very seriously.*

*It was indeed a privilege to serve as the province's Justice Minister and Attorney General. I am proud of our record of achievement and I am hopeful the strategic investments and new policies and initiatives brought forward during my tenure serve to enhance confidence in our justice system; advance public safety; create greater access to justice and protect those most vulnerable in society.*

*Upon taking office in 2003, we inherited two resource depleted police forces, suffering from low morale as a result of a decade or more of cutbacks. In three years we hired approximately 114 police officers and we have 30 recruits currently in training that will be hired upon graduation in September from the Royal Newfoundland Constabulary (RNC) recruit training program.*

*Developed in partnership with the RNC and Memorial University, the recruit training program was initiated to ensure more highly trained RNC officers are available to patrol our streets and protect our families and communities. Announced in Budget 2004, the program will train a minimum of seventy five (75) police officers over a three year period. We have in fact surpassed the projected recruitment level by hiring all 28 graduates in the inaugural year; some 26 cadets in year two and we have another 30 recruits currently enrolled in the program. This program has been described as 'excellent' by Commissioner Antonio Lamer in his inquiry report into the Administration of Justice in Newfoundland and Labrador; it is offering the highest standard of modern training in Law Enforcement right here in Newfoundland and Labrador.*

*The Williams government has made unprecedented investments to increase police presence in our communities and to ensure our officers are using new equip-*

*ment and are receiving advanced training opportunities.*

*We have addressed RNC management challenges by re-organizing the management structure of the RNC. We have appointed a new chief and two new deputy chiefs from within the ranks, to lead this positive change in direction; appointed new superintendents and inspectors including a new Superintendent in Corner Brook; created new senior executive management positions as well as additional civilian clerical personnel to fill a number of administrative positions thus allowing uniformed officers to concentrate on core policing.*

*Government has also made major investments in the RCMP who serve and protect our rural regions. Along with creating 36 new RCMP positions, we have invested in much needed resources including improvements in the RCMP radio telecommunications system and funding to satisfy operational pressures.*

*Along with promoting safe and secure communities, over the past three and a half years, government has brought forth a number of progressive initiatives aimed at helping those who are unable to help themselves.*

*It has been said the test of a just society is how it treats its most vulnerable citizens; the economically disadvantaged, people living with mental health challenges, children, women, aboriginals and other minorities.*

*We have expanded victim services to include all victims of crime throughout Newfoundland and Labrador, including those under the age of 16. Previously, Newfoundland and Labrador was the only jurisdiction in the country that did not provide victim services to children. The Victim Services program assists victims*

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with court preparation and provides information services regarding the criminal justice system, pre-court preparation, and short-term counseling. Our province now has a solid program in place that will ensure both adults and children who testify in criminal proceedings can benefit from a positive support system.

To further protect society's most vulnerable citizens, government passed the Family Violence Protection Act. Family violence legislation provides immediate responses for victims of family violence in emergency situations. It fills a void in the justice process for victims by providing a broader range of remedies than those available through the Criminal Code. When police respond to a family violence call, often it is the victim and children who must leave the home in a police car to be transported to a safe shelter. Through Emergency Protection Orders, this legislation would provide, among other things, for the victim to remain in the family home where they can have uninterrupted access to school, family, employment and community support. We are expanding access to justice for people residing in areas where there is no court. Orders can be obtained by phone 24 hours a day, 7 days a week without the need of a lawyer.

To further protect our most vulnerable citizens, we amended the Human Rights Code to prohibit discrimination based on age, family status, and source of income and extend the limitation period for bringing a complaint from six months to one year. These amendments constitute the most substantive series of reforms since the present Human Rights Code was proclaimed in 1988 and will truly benefit our senior citizens, single parent families and persons who rely income support.

We have also passed a new Support Orders Enforcement Act that will crack down on deadbeat dads and moms. The Act contains stronger enforcement measures that will help put more money into the hands of parents and children who are entitled to receive family support.

Creating greater access to justice has and remains a number one priority for this government. We have brought forward a number of initiatives aimed at improving access to justice, including improvements to legal aid. Following recommendations of the Legal Aid Commission and the Jenny Reid report on Aboriginal Justice, government made an additional \$1.1 Million investment in the provincial legal aid system; increasing the number of lawyers and administrative support positions throughout the province. What is the point of having the greatest justice system in the world if a substantial proportion of the province cannot access it?

A strong legal aid system is one of the pillars supporting Canada's system of justice with the responsibility for funding being divided between the federal and provincial governments. As I have stated on numerous occasions, Legal Aid is a high priority of the Newfoundland and Labrador government and is an essential component to an effective justice system. At the most recent Federal-Provincial Territorial (FPT) meetings of Ministers Responsible for Justice and Public Safety, which I had the honour of hosting, in Little Rapids, NL, in October 2006, all Provincial and Territorial Ministers identified to our federal counterparts that our key priority concerns were: the need for greater collaboration, greater federal investment to support the effective implementation of criminal justice reforms; and legal aid.

Many of the proposed federal conservative legislative and operational initiatives will increase costs for the justice system in our province, including the legal aid system. To date, the federal priority on legal aid funding is unclear. Legal aid funding is a priority nationally and is of great concern for our province. Up to the mid-1980s, the federal government contributed 90% to criminal legal aid. Two decades ago, the federal contribution slumped to 50%. Currently, the federal contribution in this province is 31%. In dollar amounts, this equals 3.5 million in contributions from

our provincial government and 1.6 million from the federal government.

As the Minister of Justice and Attorney General, I stressed to both former Federal Ministers of Justice, Vic Toews and Irwin Cotler, the need for longer term, increased funding on legal aid, both criminal and civil, as well as a return to the 50-50 cost sharing formula. At the FPT meetings, then federal Minister of Justice, the Honourable Vic Toews, agreed to bring the request for additional legal aid funding to his cabinet colleagues, in particular, the federal Minister of Finance, before the next budget. While I am confident the new Minister of Justice and Attorney General will follow up on this commitment, I, too, will be following up with my counterpart, the federal Minister of Finance, the Honourable Jim Flaherty.

The federal government's share of cost of delivering legal aid is inadequate. Provinces are reporting an increased number of unrepresented litigants who are trying to navigate their way through complex legal proceedings. This is overloading the court system.

There is a dire need for national standards. There is a need to enhance legal aid services, broaden the types of cases covered by legal aid programs and a need to raise the eligibility standards making it easier to qualify for legal aid coverage. I encourage the Canadian Bar Association in collaboration with the federal, provincial and territorial governments, to continue to partner and strategize to find competent solutions.

Government remains focused on the provision of family law services in Newfoundland and Labrador. As you know, these services are currently not uniform across the province; they can be best described as a patchwork quilt. The ideal situation would be to have judges who are specialists in family law working together with professional staff in an environment that is non-threatening to litigants and secure to all participants all across the



Province. This is the objective we want to reach and we believe it is attainable through cooperative efforts with the Federal Government. Family matters are among the most sensitive ones that the Court is involved with, day in, day out. I am pleased to say that we have created this year 11 new positions in the Family Justice Service Division to ensure more children and families in more regions of the province receive timely and effective mediation, counseling and education services for children and families who are facing disputes over custody, access support and property division.

Inadequate translation services are making it difficult for our aboriginal peoples to access the justice system. To address this problem we have hired a Senior Policy and Planning Analyst to develop a translation/interpretation strategy and a cultural training strategy for justice officials involved in aboriginal justice services.

#### **Access through Legislation**

All of us, the Government, the Courts and the legal profession, have a shared responsibility to ensure that the law and its processes and practices are responsive to changing societal needs. From experience, I am pleased that the CBA - Newfoundland and Labrador Branch is actively involved in collaborating with the

government and the courts in order to ensure the laws of this province (and its processes) are evolving accordingly.

With this objective in mind, this past year, the province introduced new legislative initiatives such as a new Public Inquiries Act. The former Public Inquiries Act had not been changed for over 35 years. There was an identified need to update the legislation to ensure stronger and more effective mechanisms for public inquiries which coincide with administrative law principles, allow for greater efficiency and flexibility, and include enhanced advisory and investigatory powers.

The province also introduced amendments to the Notaries Public Act; Judgment Enforcement Act; and Human Rights Code and the Provincial Court Act, 1991.

The Law Society of Newfoundland and Labrador advocated for the amendment to the Notaries Public Act allows for the automatic revocation of an appointment of notary public of a barrister and solicitor who is disbarred or suspended under the Law Society Act, 1999. This legislation has been passed.

The CBA was instrumental in encouraging government to introduce the amendments to the Judgment Enforcement Act which now exempt future income plans (i.e. RRSPs, RRIAs, and DPSPs) from the

remedies of creditors, as is the case with pension plans as well as retirement income products offered by insurance companies. This amendment provides the same level of protection from creditors for retirement savings in these registered plans.

Finally, provincial court judges requested an amendment to the Provincial Court Act, 1991, such that mandatory age of retirement of a provincial court judge was increased from 65 to 70 years of age. In increasing the mandatory retirement age for provincial court judges, government is aware that retaining a mandatory retirement age must be done in a manner that will not contravene the province's human rights legislation, the Human Rights Code. This Act was also amended.

It is important that governments throughout the country continue to work with organizations such as the CBA and other stakeholders to ensure the law and its processes and practices remain responsive to the changing needs of society.

Ladies and gentlemen, I have thoroughly enjoyed my time as Justice Minister and Attorney General and I am proud of our achievements. However, believe me when I say the administration of justice is in good hands under the stewardship of Minister Tom Osborne and Attorney General Tom Rideout. ■

## **Branch Days Gone Bye . . .**

*(Photo on page 19)*

Shown in the photograph are:

**Standing (l-r):** Norman Whalen, Q.C., The Hon. Mr. Justice Robert Wells, David Baird, Q.C., Raymond Whalen, Denis Barry, Q.C., the late Reginald Brown, Q.C., David Hurley, Q.C., Robert Pittman, The Hon. Mr. Justice William Goodridge, Kevin Stamp, Q.C., Paul McDonald, Lois Skanes, Q.C., Robert Stack, Paul Burgess

**Seated (l-r):** The Hon. T. Alex Hickman, The late Hon. Fabian O'Dea, The Hon. Mr. Justice John O'Neill, The late Hon. Mr. Justice Noel Goodridge, The Hon. Mr. Justice Geoffrey Steele, Thomas O'Reilly, Q.C., Ernest Reid, Q.C., Barry Sparkes, Q.C., The Hon. Mr. Justice Raymond Halley

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# Continuing Legal Education Report

by Bernadette Cole Gendron, CLE Co-Chair

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The CLE Committee has been busy since the Annual General Meeting, with four CLE offerings since September covering a variety of topics. These were:

- *The "Nuts and Bolts" of Motor Vehicle Accident Reconstruction: Using Engineering Technology in Settlement or Litigation*

This session took place on September 12, 2006 and was a big success. The speaker, Mr. Patrick Ryan, P. Eng., of Graham Ryan Consulting Ltd., provided an overview of motor vehicle accident reconstruction and the use of reconstructions in litigation.

- *Effective Cross-Examination*

This was held on October 23, 2006. This session was delivered by the Advocate's Society and was designed to help new litigators and experienced advocates develop their cross-examination skills.

- *New Developments in Family Law 2006*

This session took place on November 30, 2006 and covered a number of new developments within the area of support. Professor Rollie Thompson of Dalhousie Law School provided an update on the Spousal Support

Advisory Guidelines and other developments in the areas of child and spousal support relating to retroactive support, shared custody and imputing income. The Honourable Mr. Justice Richard D. Leblanc, the Honourable Judge Kymil Howe and Ms. Jill Brown, Family Justice Services Coordinator, spoke about: the new process in family matters involving Family Justice Services; the expansion of the Unified Family Court and the new court process, and the expansion of automatic recalculation of child support in the Province. Ms. Gerrie Smith, Department of Justice, Government of Newfoundland and Labrador, spoke on the new *Support Orders Enforcement Act*, 2006 and the new enforcement tools available to the director.

- *What is it Worth? Proving damages in loss of income, employability and future claims: A primer on medical and vocational assessments*

This session was offered on February 2, 2007 as part of our Mid-Winter Meeting in Steady Brook. The topics covered included: Independent Medical Examination (IME): Role of an IME in determining Employability and Residual Earning Capacity, presenter Dr. Eric Fonberg, MD, CCFP (EM), D-ABDA, MPH, MBA; Using the Functional Capacity Evaluation in Assessing Damages, presenter Dr. Camille Hadida, DC, F.C.C.S (c), CLCP (c); and "The Life Care Plan", presenter April Belbeck, B.Sc.O.T., OT Reg. (Ont.), CCRC, CLCP.

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

We are always developing the CLE calendar and will continue to work hard to deliver the quality CLEs that you have come to expect from the CLE Committee.

This is my last report as co-chair of the CLE committee, as I will be leaving my position on the Executive Committee to embark on my own CLE, or 'continuing "life" education', with the birth of my first child!

Chris Pike, Treasurer (and the immediate past CLE Co-Chair) will serve in the position of CLE Co-Chair for the remainder of the year. Please contact Chris at 570-7228 or by email: [cpike@bensonmyles.com](mailto:cpike@bensonmyles.com) at any time with ideas for CLE sessions. ■

## **CBA - NL Branch**

### ***Distinguished Public Service Award***

The Distinguished Public Service Award is given in recognition of extraordinary contribution to the community.

Nominations for 2007 are due on April 30, 2007. The award will be presented during the Branch's Annual General Meeting on July 13, 2007, at The Wilds.

The members of the Distinguished Public Service Award Committee are Doug Moores, John Roil, George Murphy, Janie Bussey, Sheilagh Murphy, Roxane Dean and Peter Shea. Information on the nomination process as well as nomination forms can be obtained from the Branch office.

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Age 35	\$173	\$310	\$546
Age 40	\$183	\$327	\$576
Age 45	\$219	\$426	\$827
Age 50	\$298	\$580	\$1127

### Male, smoker, regular health\*


	<b>\$ 250,000</b>	<b>\$500,000</b>	<b>\$1,000,000</b>
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\*

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

### Female, smoker, regular health\*

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

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\*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.



# Bonds as part of your investment: Do they make sense?

by Hughie Shea



Bonds are part of the investments available to any investor either directly or through mutual funds. Many of us have at some point owned Canada Savings Bonds so you may have some familiarity with how they work. Bonds are by definition debt, but not our debt. In the case of bonds we are lending money to someone to get a return in the form of an interest payment. Governments, municipalities and companies use bonds to raise money for continuing operations, new expenditures and new capital projects. Rather than go to the bank for a loan a company or government will go directly to the source of the money, you. When you buy a bond you are lending money. That money can be secured by equipment or capital property but most times your money is secured by the ability of the company or government to repay. The more risk of default the more money you demand as interest. Since the Government of Canada controls the money supply, they actually print the stuff, its bonds have the least amount of default risk. Therefore they pay the least amount of interest.

That's the easy part. What is not well understood is how bonds change in value. Bonds are interest rate sensitive. When interest rates change the price of bonds change. The reason for this is that the interest rate on most bonds is fixed. It will not change for the duration of the bond.

As a simple example, let's look at a theoretical bond which matures in one year. After that year is over, the bond pays out the principal plus the last interest payment. Our bond will have the following characteristics:

Issuer	Coupon	Maturity Date
SPQ	5.00	2008-April-01

If the current interest rates are for 5.00% then you would be willing to pay \$100 for a \$100 5% bond.

Issuer	Coupon	Maturity Date
SPQ	5.00	2008-April-01

If the current interest rates are for 8.00% then you would be willing to pay \$97.22 for a \$100 5% bond. The reason is that you can invest \$100 into a risk free GIC and make \$8 interest. In order to sell your bond you would have to offer it at a discount. Interest rates went up and the price of your bond went down.

Issuer	Coupon	Maturity Date
SPQ	5.00	2008-April-01

If the current interest rates were for 3.00% then you would be willing to pay \$101.94 for our \$100 5% bond. The reason is that you can invest \$100 into a risk free GIC and make \$3 interest. In order to sell your bond you could sell it at a premium. Interest rates went down and the price of your bond went up.

When you look at today's interest rate environment it is easy to see that there is not a lot of room for interest rates to move down. However, there is a lot of room for interest rates to move up. Governments affect interest rates by trying to moderate or stimulate growth in an economy and by trying to control inflation. They have been known to use interest rates to control the value of the Canadian dollar valuations in a global market.

In 1981, the Bank of Canada interest rate was 17.93%. If this was the rate at which the Bank of Canada lent money to other Canadian banks, you can be sure that other Canadian banks were charging clients more than 17.93%. In 2005, the Bank of Canada rate was 2.92%. During that 24-year period, in a declining interest rate environment, bonds provided clients with outstanding low volatility returns. The main point of this article is that it is not 1981 and when deciding whether bonds make a good investment you need to be aware of how the pricing for bonds work.

Bonds still have merit as investments, but make sure they fit and that you know the risks. Bonds are not risk free. As always if you have any questions or if you would like additional detail or information please contact me at 709-726-6570, ext 226 or email: [hughieshea@financialanswers.ca](mailto:hughieshea@financialanswers.ca). ■

Check us out on the Web!

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# Law Day Committee Report

by Isobel O'Shea and Suzanne Orsborn, Co-Chairs

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Law Day 2007 will be celebrated across Canada on Tuesday, April 17, 2007 with a national focus on the theme of "Access to Justice". In keeping with the celebration this year of the 25th anniversary of the introduction of the *Canadian Charter of Rights and Freedoms*, the Newfoundland and Labrador Branch of the Law Day Committee has chosen the theme of "Canada's Rights and Freedoms: Our Place in the World" as its guiding principle in carrying out its Law Day 2007 activities and events.

One of the most anticipated events sponsored by the Law Day Committee are the mock trials, to be held on April 21.

## *Squid pro quo* *Letters to the Editor*

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

Please note the following:

1. Your letter must be single spaced, Times New Roman font, point size - 11, with one inch margins.
2. Letters must not exceed 250 words in length. Published letters will be edited for clarity and length without the prior approval of the author. Unpublished letters will not be returned.
3. Signatures of all authors are required (by fax will be acceptable, together with the author's full mailing address and daytime telephone number. Pen names and anonymous letters will not be published.
4. Letters referring to a recent *Squid pro quo* article must be received within one month of its publication.
5. *Squid pro quo* will not accept responsibility for statements made by contributors.



The mock trials provide an opportunity for high-school students from across the Province to argue a case in front of a Supreme Court judge. The committee gratefully acknowledges the participation of members of the judiciary, court staff, and the Sheriff's Office in this activity and welcomes participation from members of the bar who are interested in coaching a high-school team or simply to come to the court to watch the trials and support the participants. An added highlight this year is the anticipated presentation by the RNC and its drug-sniffing dog at the Supreme Court in St. John's during the mock trials.

Along with the mock trials, the Law Day Committee is also sponsoring photography and poster contests which encourage elementary and junior high school students to express their take on the Law Day theme. High schools have also been invited to have members of the legal community go into classes and present on legal topics of interests to their students.

The other major event organized by the Law Day Committee is the Legal Information Fair to be held at the Avalon Mall. Previous participants in the Legal Information Fair have included, among others, the Public Legal Information Association of Newfoundland, the Better Business Bureau, the RNC, the RCMP, and the Canadian Bar Association. Estate Planning presentations are also planned as part of the Fair. In addition, entries from the poster and photography contests will be displayed.

The Law Day Committee, comprised primarily of junior members of the Bar, has met regularly since December, 2006 to plan this year's events. Subcommittees have been arranged to put the various event plans into action and the Committee looks forward to another successful year. All members of the CBA are invited and encouraged to participate in this year's activities and may contact the Committee at [ioshea@smss.com](mailto:ioshea@smss.com) or [sorsborn@bensonmyles.com](mailto:sorsborn@bensonmyles.com) for more information. ■



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# Case Digest

## Are Fishing Licenses Property?

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by F. Geoffrey Aylward



This article addresses the issue of the nature of the interest of a fisher in a fishing license or, more generally, the nature of the interest that arises under a discretionary license. A license permits an activity that would otherwise be unlawful; therefore, licenses do not fit easily into traditional conceptions of property rights.

Considerable sums have exchanged hands under agreements for the 'purchase and sale' or transfer of fishing licenses.<sup>1</sup> Fishing licenses are issued at the discretion of the Federal Department of Fisheries and Oceans (DFO). The actual 'transfer' of a license occurs when the Department decides to issue a license to the 'transferee'. Fishing licenses can be held in the name of one individual.

As early as 1999, the Supreme Court ruled that a license could nonetheless be held as an asset of a partnership and that a license could be impressed with a constructive trust.<sup>2</sup> The express regulatory requirement that a license be held by only one person was treated as a matter of mere formality. The Court ordered the sale of the license and the division of the proceeds between the partners.<sup>3</sup>

In *Harnum v. Green*<sup>4</sup> the Court of Appeal upheld the decision at trial that Harnum and Green had worked together as fishers. The Court held that Harnum was accountable to Green for Green's interest in the licenses that had been issued in Harnum's name. The matter was referred back to the Trial Division for ultimate resolution. Handrigan, J. stated "courts have had to be creative in dealing with disputes over fishing licenses. In doing so, they have kept the law relevant to what is happening in the commercial world."<sup>5</sup> The Court ordered that the licenses be sold through a broker and further granted the broker a power of attorney to sign documents to effect the transfer of the licenses.

Handrigan, J. referred to decisions of the Nova Scotia Supreme Court and Court of Appeal in *Saulnier* (Receiver of) *v. Saulnier*.<sup>6</sup> Saulnier, a fisherman, and his company

were placed into receivership under a general security agreement. He made an assignment in bankruptcy. The receiver and trustee entered into an agreement with a third party for the purchase of the licenses. When the receiver asked DFO to reissue the license for the purpose of effecting the transfer, it responded that it would not consider the request 'absent the signature of the existing license holder'. The trial judge acceded to an application by the receiver and trustee, reasoning:

To accept the argument of the respondent that there can be no property in these licenses in the hands of the holder, because of ministerial control would, I conclude, foster an unrealistic legal condition based on an historic definition of property that ignores what is actually happening in the commercial world that the law must serve. . .

The Court of Appeal rejected the 'commercial reality' approach of the trial judge. It decided the case on the narrower ground that the licenses were 'property' and 'personal property' as defined under the *Bankruptcy and Insolvency Act* and the *Personal Property Security Act*. The license was the property of the Crown; Saulnier, had a property right in that he could apply for reissuance of the licenses, especially since he had the right to apply for judicial review of an arbitrary refusal to reissue the licenses.

On February 8, 2007, the Supreme Court of Canada allowed Mr. Saulnier's application for leave to appeal.<sup>7</sup> The Court will probably squarely address the issue as stated at the commencement of this article, i.e. the nature of the interest in a discretionary license in the fisheries context. It could limit itself to the narrow question of whether a security interest can be created in such a license. However, to decide the case without speaking to the broader issue would arguably have the effect of creating an unacceptable level of uncertainty in this area. ■

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<sup>1</sup> In *Harnum v. Green*, 2006 CarswellNfld 246, the value of the licenses was between \$400,000 to \$500,000.

<sup>2</sup> *Cabot v. Hicks*, 1999 CarswellNfld 62 (Wells, J.).

<sup>3</sup> Despite the Courts' liberal circumvention of the requirement that a license be in the name of only one person, the Court will not a trust that is made to circumvent other regulatory requirements limiting licenses based upon residency or other factors related to one's involvement in the fishery: *Loder v. Citifinancial Canada*, 2005 CarswellNfld 361 (Orsborn, J.)

<sup>4</sup> The panel was comprised of Wells, C.J.N.L., Cameron, Roberts, J.J.A.. Harnum was represented on the appeal by Genevieve Dawson and Stacey O'Dea. In subsequent proceedings in the Trial Division he was self-represented. Green was represented by Corwin Mills, Q.C. and Joseph Twyne.

<sup>5</sup> 2007 CarswellNfld 44

<sup>6</sup> 2006 CarswellNS 41 and 2006 CarswellNS 323 respectively.

<sup>7</sup> 2007 CarswellNS 59

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# Awards Report

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by Peter Shea, Chair



## Award for Excellence in Journalism



Glenn Payette

The Award for Excellence in Journalism recognizes outstanding journalism that fosters public awareness and understanding of the Canadian Justice System, including the roles played by institutions and participants in the legal system. The criteria for judging entries are accuracy, originality, effectiveness in explanation of issues, informational value and insight.

The recipient for 2007 is Glenn Payette of CBC - *Here & Now*. The Award for Excellence in Journalism was presented to Mr. Payette during the Branch's Mid-Winter Meeting on February 2, 2007, at Marble Mountain.

Mr. Payette prepared a piece entitled "Double Time", which aired on October 27, 2006 on CBC's *Here & Now*. This piece explored how time spent by offenders in remand, or pre-trial detention, is accounted for in the sentencing process.

The piece began with a factual example of the concept of "Double Time", with Mr. Payette interviewing a local businessperson who was dissatisfied with the sentence handed down to a person who had held up his store. The robber was sentenced to 3 years in prison, and was given credit for 23 months time served although he had been in remand for only half of that time. Mr. Payette went on to state the principle of double credit for time spent in pre-trial detention as set out by the sentencing judge in that case. He then proceeded to discuss the theory behind this principle through an interview with his Honour Reginald Reid, Chief Judge of the Provincial Court of Newfoundland and Labrador. In Mr. Payette's interview with Chief Judge Reid, the basis for the principle of "double time" was explored and explained.

This piece was succinct, well-executed, accurate and effective. The Awards Committee was of the opinion that the piece fit very well within the award criteria in that it

fostered public awareness and understanding of the concept of "double time" in the justice system. This concept, although certainly well known to Crown prosecutors and the criminal defence bar, as well as those people who spend a fair amount of time in remand, is likely foreign to the majority of the general public, as well as a sizable population of the legal profession. As the sentencing process is an integral part of our justice system, it was certainly laudable for Mr. Payette to seek to explain the principle of "double time", the basis for which is not clear on its face. Mr. Payette, by showing the operation of this principle in a practical setting, and discussing the theory behind the practice through his interview with Chief Judge Reid, utilized an excellent method of promoting understanding of this aspect of our justice system.

The Committee in making this award also wished to acknowledge the ongoing excellence in journalism consistently displayed by Mr. Payette in his coverage of the courts in our province.

Glenn Payette holds a degree in radio and television arts from Ryerson University in Toronto, as well a degree in Journalism from King's College in Halifax. He has worked as a writer, editor and producer for CBC Television News. Glenn is currently a video-journalist with CBC's *Here & Now* in St. John's, where his primary responsibility is covering the Province's courts.

I would like to thank the members of the Media Awards Committee who took the time to assess the nominations and determine the winner. The members of the Committee are Justice Seamus O'Regan, who brought extensive experience from the judiciary's perspective to the committee, and Greg Stamp, a former journalist, now working with ACOA, who provided the committee with an excellent assessment of the journalistic quality of the submissions, as well as Roxane Dean, our Branch's Executive Director, who brought her CBA experience and terrific insight to the committee.

In receiving the award, Mr. Payette spoke very graciously about the accessibility of the judiciary in this jurisdiction and the co-operation he generally receives from the local bar. ■

# People and Places

by Keri-Lynn Power

**O. Noel Clarke\*** is now with *McInnes Cooper*.

**Bernadette Cole Gendron\*** has taken non practising status.

**John Cook\***, has taken non-practising status and leave of absence from *Stewart McKelvey* and will be joining the London, UK office of *Herbert Smith LLP*.

**Michelle Cooze**, formerly with *Martin Whalen Hennebury Stamp*, is now with *Blake Cassels & Graydon LLP* in Calgary, AB.

**Darrell Drover** has taken non-practising status.

**Erin Drover** has taken non-practising status.

**Jane Fitzpatrick**, formerly of the *Legal Aid Commission*, has been appointed Executive Director of *The Human Rights Commission*.

**Meg Gillies**, formerly of *Stewart McKelvey*, is now with the *Department of Justice, Civil Division, Government of Newfoundland and Labrador*.

**Sandra Gogal\*** is now with *Miller Thomson LLP* in Toronto, ON.

**Kenneth Hollett**, formerly of *Duffy & Associates*, is now with *Budden, Morris*.

**Reg Locke**, a solicitor with the *Department of Justice - Civil Division*, has been appointed Senior Solicitor with the *Department of Justice - Civil Division*.

**Liam P. M. O'Brien\***, formerly of *White Ottenheimer & Baker*, is now with *Poole Althouse* in Corner Brook.

**Edward Ring\***, formerly of *Roebathan McKay and Marshall*, is now Corporate Counsel with *Provincial Aerospace*.

**Ann Marie Rose**, a solicitor with the *Department of Justice - Civil Division*, has been appointed Manager of the *Central Agencies/Constitutional Unit, Civil Division, Department of Justice*.

**Todd Stanley\***, a solicitor with the *Department of Justice - Civil Division*, has been appointed Manager of the *Corporate Commercial Unit, Department of Justice*.

**Raylene Stokes**, formerly of *Patterson Palmer*, is now with the *Department of Justice, Civil Division*.

**Nancy Warford** has taken non-practising status.

**Raymond Whalen**, formerly of *Guigne Technologies* is now with *Smith Coffey Whalen*.

**Kendra Wright** has taken non-practising status.

\*denotes CBA member

The photographs reproduced in this edition of *Squid pro quo* have been provided to us by :

- Jared Adams
- Sheri Wicks
- Judge Sean Dunnigan
- Hughie Shea

## Call to Bar February 16, 2007



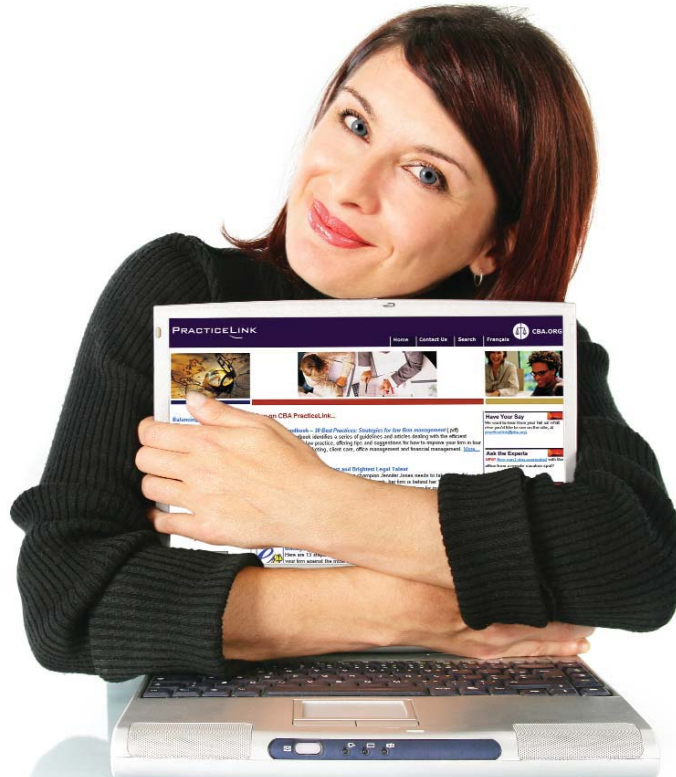
Six lawyers were Called to Bar in St. John's on February 16, 2007. They are (*in the order of call*):

Roll Number	Name	Roll Number	Name
1349	Amanda L Hewitt*	1352	Derek P L Ford
1350	Mandy L Woodland*	1353	Katrina E Warren*
1351	Adrienne L W Mercer*	1354	Margaret V Blackmore

\*denotes CBA member



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