

LIVE FOR GREATNESS
THE DATEJUST LADY 31



Alteen
THE DIAMOND PEOPLE
74 BROADWAY, CORNER BROOK
639-9286; 1-800-563-7747

DIAMOND DESIGN
Terrace on the Square, Churchill Square
St. John's, 709 754-9497

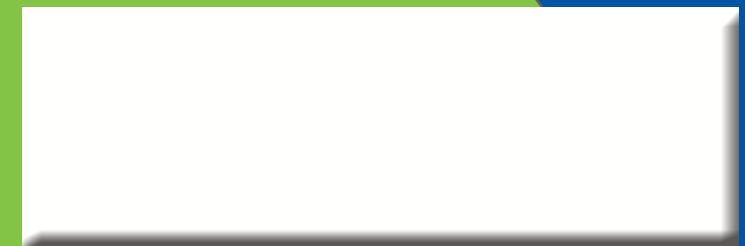
ROLEX

SQUID PRO QUO

THE VOICE OF THE LEGAL PROFESSION

CANADIAN BAR ASSOCIATION - NEWFOUNDLAND & LABRADOR BRANCH

SPRING 2011



Squid pro quo

Published by the Canadian Bar Association
Newfoundland & Labrador Branch

Box 16, Suite 107
49-55 Elizabeth Avenue
St. John's, NL A1A 1W9
cba-nl@cba.org
www.cba.org/newfoundland

SQUID PRO QUO EDITORIAL BOARD

Janet Grant, Editor

Meredith Baker, David Coffin, Daniel Furey, Daniel Glover, Sarah
Learmonth, Jeff MacDonald, Suzanne Orsborn, Sharyl Rowsell,
Alex Templeton

2010-2011 EXECUTIVE COMMITTEE

President
Janie Bussey

Vice President
Susan Gover

Treasurer
Isobel O'Shea

Secretary
Cheryl Mullett

Past President
Sheri Wicks

Membership Chair
Susan LeDrew

Young Lawyers Conference Chair
Beth McGrath

Communications Chair
Janet Grant

Professional Development Chair
Steve Scruton

Central Regional Chair
Renee L.T. Moore

Labrador Regional Chair
Kelly Hynes

Executive Director
Ashley Woodford

Opinions expressed herein are not necessarily those held by the Newfoundland & Labrador Branch of the Canadian Bar Association *Squid pro quo* is a publication of CBA-NL Branch and is intended to provide a service to members by informing them of Branch Activities and matters of general interest.

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

Squid pro quo will accept advertising, though space for this purpose is limited. Advertisers or CBA Members wishing to purchase advertising space should contact the Branch Office (709) 579-5783 for information regarding advertising rates and policies. *Squid pro quo* can also be found on the CBA Newfoundland & Labrador Branch website at <http://www.cba.org/newfoundland>

Letter from the Editor



Janet Grant

Mark Twain is credited with the following quote: In the Spring, I have counted 136 different kinds of weather inside of 24 hours. In Newfoundland and Labrador, the weather is quite often a topic of spirited conversation. While I don't think that I can say that I have counted 136 different kinds of weather in one day, I think I can fairly say that I have at least experienced all four seasons in one day!

The weather certainly impacts our way of life in Newfoundland and Labrador, and in turn, can have a variety of influences on our practice. In this edition of *Squid pro quo*, you will read about, and see the evidence of, the impact of weather on a legal practice in Labrador. We are delighted to share with you a collection of short stories from lawyers who have worked, or are working, in Labrador. In addition to dealing with the weather, their stories describe the wonderful experience of living and working in Labrador.

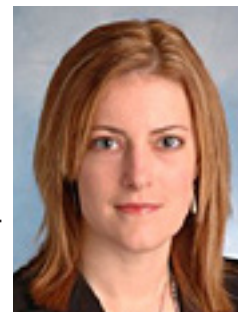
This edition highlights several key CBA Annual events. During our Mid Winter Meeting the Award for Excellence in Journalism was awarded to Pam Frampton. Pam has provided us with a synopsis of her story regarding Canada's open court system. Law Day 2011 was celebrated on April 14th and we have a report from the Law Day Committee which outlines the numerous projects that were undertaken to promote this important annual event. Of course, the spring edition of *Squid pro quo* is not complete without a few pictures of the CBIA sponsored children's Easter Egg Hunt. As you can tell from the photos, the event was enjoyed by all!

Regular features in *Squid pro quo* include the President's Report, Section Update, Case Digest and CBIA Update. Both the President's Report and the Section Update highlight the work that the CBA is doing on your behalf. The CBA welcomes and encourages input from members in order to meet the needs of its members, as well as, to address important public issues. In that respect, please do not hesitate to contact either the Branch office, a member of the Executive or your Section Chair should you have any issues or concerns that you feel could be addressed by the CBA.

The production of *Squid pro quo* is a team effort. In that respect, I would like to thank the individuals who contributed articles for this edition and the members of the Editorial Board for their time, energy and enthusiasm. As well, a special thanks to our Executive Director, Ashley Woodford, who dedicates a tremendous amount of time, initiative and creativity to *Squid pro quo*.

President's Report

By Janie Bussey



It has been a busy time, both personally and professionally, since my last report to the membership. On February 21, 2011, my husband, Robin Fowler, and I welcomed our second child, Logan, into our family. I would like to extend my sincere thanks to the entire Executive Committee and our amazing Executive Director, Ashley Woodford, for pitching in to ensure that the Mid-Winter Meeting program ran smoothly. It has also been a busy and interesting time for the Branch since my report in the fall edition of *Squid pro quo*.

Socials

In December the Branch hosted two very successful social events. The first was the President's Reception, which took place on Thursday, December 16th at the Sheraton Hotel, St. John's. Over 60 members attended the event, which is enjoyed by our members every holiday season.

The Young Lawyers Holiday Social took place on Monday, December 20th at Bianca's Bar, St. John's. Approximately 40 Young Lawyer Members and law school students were in attendance, including students from Newfoundland and Labrador attending Dalhousie and the University of New Brunswick. As usual, the students were delighted to attend and to meet and mingle with CBA-NL Branch Young Lawyers.

2011 Mid-Winter Meeting

The Branch 2011 Mid-Winter Meeting was held in St. John's on March 3-5th. The meeting of Council was held on Thursday, March 3rd, where among other things, the Branch's financial statements for 2009-10 were presented and approved by Council. Thank you to all of those who attended the Council meeting.

On Friday, March 4th, there was a Professional Development session entitled ADR & Experts - Views from the Bench and Bar. The Professional Development session featured two panels, the first on Effective Advocacy in ADR, with speakers Justice Deborah Fry, Craig Garson, Q.C. and Glen Noel. During the panel the speakers

provided their views on how to effectively use ADR to resolve legal disputes and how to move them forward towards resolution. We also heard the speakers "best practice" tips on preparing for and participating in ADR processes, as well their suggestions on when ADR will be useful, and what ADR form may be most appropriate.

The second panel was titled, Expert Witnesses – The "Dos" and "Don'ts" with speakers Chief Justice David Orsborn, Ian Kelly, Q.C. and Robert Simmonds, Q.C. The session saw the speakers provide their perspectives on how (and how not to) present expert evidence, including views from both the Bench and Bar on the effective use of experts, as well as advice on cross-examination of the opposing party's experts.

I would like to thank the speakers for taking the time out of their busy schedules to participate in the session and to the Branch Professional Development Committee: Steven Scruton, Chair, Richard Collins, Brenda Grimes, Susan Gover, Tracy Pasley and Sheri Wicks for their hard work in putting this session together.

The second event of the day was a luncheon with the Honourable Felix Collins, Minister of Justice and Attorney General. The Minister spoke to a full house on current issues and provided an update to our membership on government initiatives in the Justice system.

On the evening of Friday, March 4th the Branch hosted our annual Dinner and Presentation of the Excellence in Journalism Award at Bianca's. The Award for Excellence in Journalism recognizes outstanding journalism in either print or broadcast media that fosters public awareness and understanding of the Canadian Justice system. The criteria for judging entries are accuracy, originality, effectiveness in explaining issues to the

President's Report

public, informational value and insight.

This year's award recipient was Pam Frampton of *The Telegram*. Ms. Frampton prepared a piece entitled "Naming Names," and "And Justice for Some," which ran on consecutive Saturdays in *The Telegram*, on February 20 and 27, 2010. Congratulations to Pam and thank you to the members of the Excellence in Journalism Award Committee who took the time to assess the many nominations received for this year's award.

During the Mid-Winter Meeting the Branch also welcomed CBA President Rod Snow to St. John's. During Rod's visit he and I had the opportunity to have a courtesy call with Chief Judge Pike and Associate Chief Judge Hyslop to discuss the opportunities and issues that our members have identified. These meetings have lead to very fruitful discussions and we plan to continue this dialogue over the coming months.

Again this year as part of the Mid-Winter Meeting, CBIA sponsored a family event for members and their families. The event was held at the Fluvarium and consisted of a lunch and activities led by the Fluvarium staff for the children in attendance. Thank you to CBIA for sponsoring a wonderful afternoon and as always for the continued support of the Branch.

This year's Mid-Winter Meeting was a great success, thank you to all the members who attended and to the Branch committees who make such events possible.

Pro Bono

Recently, all members have received a letter regarding the initiatives of the Branch Pro Bono Committee lead by Chair, Christina Kennedy and Committee members Dan Boone and Alex Templeton.

The Branch Pro Bono Committee has been meeting over the last number of months to develop a plan for a pro bono initiative in this province. In consultation with the Judiciary of Newfoundland and Labrador, as well as with CBA Pro Bono Committees across Canada, the CBA is commencing a pilot project for pro bono services which is anticipated to begin in September 2011.

The pilot project will involve pro bono lawyers providing legal advice to self-represented litigants who have already appeared in court and have been referred to the CBA-NL pro bono service for legal advice by the presiding justice. As such, the justice would adjourn the matter for a short period so that the self-represented litigant could obtain pro bono legal advice on a specific issue before returning to court. A court appearance by the pro bono lawyer will not be expected or required. It is anticipated that the pro bono service associated with each self-represented litigant



2011 CBA-NL Mid Winter Meeting Luncheon with Guest Speaker The Honourable Felix Collins, Minister of Justice and Attorney General

President's Report

would be 2-4 hours in length.

If you wish to take part in this initiative, please contact the Branch office at (709) 579-5783, email: cba-nl@cba.org.

Thank you to Christina, Alex and Dan for putting forward such an important initiative and I hope that you will consider volunteering some of your time to the program.

Nationally

Since the last publication of *Squid pro quo*, there have been two CBA National Board of Directors' meetings. The first at the end of November in Ottawa, and the second in February in Charlevoix, Quebec.

During these meetings a number of important issues were discussed, including the Canadian Corporate Council Association (CCCCA), an ongoing review of CBA membership fees and access to justice issues.

At the February meeting, a number of important resolutions were passed, and during the meeting Council also heard speeches from the National Second Vice-President candidates. The successful candidate Fred Headon, Air Canada, Montreal, was announced on March 25th.

Easter Egg Hunt and Brunch

The Easter Egg Hunt and Brunch took place on Sunday, April 17th at the Geo Centre in St. John's. The now annual event once again saw a great turnout of members and their families.

Thank you very much to CBIA, our generous sponsor of the Easter Egg Hunt and Brunch.

Annual General Meeting

Be sure to mark your Calendar for July 14-15th, 2011 for the Branch Annual General Meeting in St. John's. Events will include a professional development session and

luncheon with guest speaker at Clovelly Golf Course, and a dinner and presentation of the Distinguished Public Service Award on Friday, July 15th. We look forward to seeing you there.

2011 Canadian Legal Conference and Expo

The CBA 2011 Canadian Legal Conference and Expo will be taking place this year in Halifax, NS from August 14-16th. This year's conference features a full slate of professional development sessions and topnotch entertainment. It also includes renowned keynote speakers including Canada's Governor General, His Excellency the Right Honourable David Johnston; motivational speaker and bestselling author of Start With Why, Simon Sinek; Dragon's Den star and entrepreneur Arlene Dickinson; and Arianna Huffington, co-founder and editor-in-chief of The Huffington Post.

If you have not attended a CLC I would highly encourage you to do so as it is a world class conference and opportunity to meet CBA members from across the country.

The Branch is also happy to announce that St. John's will be the host to the CBA Canadian Legal Conference and Expo in 2014. St. John's last played host to the conference in 2006 and was one of the most successful Canadian Legal Conferences with over 1100 delegates.

We are excited to once again welcome our fellow members from across the country to such a world class event and to display our Newfoundland & Labrador hospitality.

In the months to come we will be looking for members to participate on the local organizing committee for the 2014 conference and we certainly hope that you will consider getting involved.

Award Spotlight

By Daniel Furey



2011 Award for Excellence in Journalism: Pam Frampton, *The Telegram*

At the CBA-NL Branch's recent Mid Winter Meeting, Pam Frampton of *The Telegram* was awarded the 2011 Award for Excellence in Journalism. The Award for Excellence in Journalism recognizes outstanding journalism that fosters public awareness and understanding of the Canadian justice system. It is awarded for stories in either print or broadcast media that meet the criteria based on accuracy, originality, insight and effectiveness in explaining issues to the public. Ms. Frampton prepared two columns for *The Telegram* in February 2010 that explored Canada's open court system.

Ms. Frampton is a columnist and editor with *The Telegram* with more than 20 years of experience as a journalist. She has a deep interest in justice and social justice issues and feels privileged to have a forum for igniting discussions of public interest. She lives in St. John's.

The *Squid pro quo* magazine committee would like to congratulate Ms. Frampton as the deserving recipient of this year's Award for Excellence in Journalism. Ms. Frampton has generously provided a short synopsis of her articles so that we may share it with our readers:

On Feb. 10, 2010, some *Telegram* readers were outraged when the paper published a front-page story about a well-known hockey coach who was being charged with sex crimes that had allegedly occurred nearly 40 years prior.

The coach was well-known and respected, and some people felt *The Telegram* and other media outlets were unfairly stigmatizing him by reporting on the charges. The charges were later withdrawn.

"The innocent and the guilty should have a right to be

protected from this kind of media until all the facts are in and the system speaks for the truth," one reader commented.

"I think that in all honesty, regardless of the crime, names should not be released if it could hurt the rest of an innocent family," said another.

The impassioned reaction to the story, and some readers' assertions that charges should not be reported unless they result in convictions, made me realize there was an information gap in the public about how and why Canada's open court system functions the way it does, and why it is important that we champion that system.

In trying to write persuasively about the open court system, I wanted an alternate model to compare it to, to bolster my argument that openness is key to accountability and transparency and public confidence.

I found that alternative in New Zealand, where the inconsistent application of a name suppression policy has undermined public perception of the justice system and has resulted in criticism that it promotes a two-tier system of justice, where the well-heeled can be granted anonymity while less prominent people are denied it.

As well, the name suppression policy in New Zealand has led to virtual vigilantism, where people granted name suppression are sometimes "outed" on the web.

My series of two columns, "Naming names," and "And justice for some," published in February 2010, explored those topics and used the flawed New Zealand model as ammunition in arguing that our open court system — while not perfect — is the better approach.

For a copy of Ms Frampton's submission, please contact the branch office or visit <http://www.cba.org/newfoundland/main/resources/awards.aspx>

In Personam

By Dan Glover



Associate Chief Judge Robert B. Hyslop

Judge Hyslop was appointed Associate Chief Judge of the Provincial Court of Newfoundland and Labrador on March 31, 2010. Since the 2004 In Personam written by Pamela Taylor, he obtained a Master of Laws from the University of London in Criminal Justice in 2006. The program involved challenging reading regarding legal principles and policies, particularly for youth justice and criminal procedure. He recommended the program for anyone interested in continuing legal education.

From 2007 to 2010 Judge Hyslop served with the International Association for Court Administration ("IACA"), an international non-profit association that promotes the rule of law by working with justice system officials to develop the institutional framework of courts. During his time with the IACA he travelled to Mexico five times and worked with judges and court administrators from Canada and the United States. He was involved in consulting with representatives of the Mexican justice system which is moving from an inquisitorial system, based on continental European (Spanish) influence, to an adversarial system. He saw the fourth oral trial in Mexican history; previous trials were conducted entirely through depositions and documents. Given the completely different legal culture, training for lawyers and judges to assist with the transition is needed.

After Judge Woodrow retired in January 2009, Judge Hyslop became the Coordinating Judge of the Provincial Court which included keeping the St. John's, Harbour Grace and Placentia Circuit Court coordinated. The Associate Chief Judge position was created in 2008 with the current Chief Judge Pike as the first appointee. The Associate Chief Judge fills in for the Chief Judge where necessary and has duties under the Complaints Panel. Judge Brown is now the Coordinating Judge.

One major challenge Judge Hyslop has had to face as Associate Chief Judge is the implementation of the Task

Force on Criminal Justice Efficiencies. Newfoundland and Labrador now has among the best charge to trial time rates in the country. He thanked his colleagues on the Bench who have worked hard to effect changes, including faster appearances from arrest. A half- day to two- day trial for relatively simple matters can typically be scheduled within two months. As well, counsel are utilizing designations more frequently and are appearing without their clients for summary conviction matters.

Other court efficiencies have been achieved through the use of telephone appearances by counsel via Court Call and the use of videoconferencing. To date, there have been 992 calls since the implementation of Court Call. Videoconferencing from the Penitentiary has been implemented on matters where no evidence is required which reduces cost and risk of transportation. In order to deal with a high "collapse rate" the Court

CALLS TO BAR

FEBRUARY 2011

Stephen Paul Orr*

Aimee Nichole Rowe*

David Gordon Rodgers

Christopher James Payne*

Andrew Jonathan Collins*

Kelly Erin Hynes*

Richard Leonard Deveau

Karen Elizabeth Rehner

Gregory James Neal Jarvis*

Avril Margot Furlong Dymond

Jude William Hall*

Nicole Jennifer Templeman

*Denotes CBA Member

In Personam

has begun to more frequently double and triple book matters. A per diem judge is available to deal with the possibility of a double booked courtroom. An electronic scheduling system, once implemented, will also assist with ensuring efficient use of courtrooms. The judges of the Provincial Court also regularly meet to discuss such items as court efficiencies and court circuits.

Judge Hyslop regularly attends the Canadian Council of Chief Justices where legal initiatives and briefings from the Federal Government are discussed. There is also a regular judicial education program every year. Judge Hyslop noted that a common code of ethics for judges is being developed.

Judge Hyslop commented that he felt the most rewarding time in his career was his experience with Youth Court. He acted on a Youth Criminal Justice Concerns Committee reviewing the *Young Offenders Act* which brought together educators, mental health specialists and addictions counselors to deal with young offender problems in a holistic rather than a piecemeal fashion.

After speaking to me, Judge Hyslop was gracious enough to show me around the “other side” of the Court where the judges emerge at the beginning of a session. It was interesting! It was a pleasure to speak to Judge Hyslop. His genuine desire to educate and inform is inspiring. I wish to thank him for taking the time to speak to me.

Distinguished Public Service Award

Members and the public are invited
to nominate lawyers in the Province for the

2011 Canadian Bar Association's Distinguished Public Service Award

recognizing a lawyer's contribution to community service.

The award will be presented during the
Newfoundland & Labrador Branch's Annual General Meeting on Friday, July
15th in St. John's. Please contact the Branch Office at (709) 579-5783 or
email cba-nl@cba.org to obtain a nomination form.

All submissions must be received by Monday, June 13th, 2011.

In Personam

By J. Alex Templeton

Honourable Judge Michael A. Madden

Former Major League Baseball pitcher Nolan Ryan is quoted as having said that enjoying success requires the ability to adapt, and that only by being open to change can you have a true opportunity to get the most from your talent. Ryan, who played a record 27 seasons for the New York Mets, California Angels, Houston Astros and Texas Rangers, and who was inducted into the Baseball Hall of Fame in 1999 boasting all-time records in career no-hitters and strikeouts, was certainly no stranger to change or success.

Like many in the legal profession, recently appointed Provincial Court Judge Michael Madden has lived Ryan's adage. Surveying Judge Madden's road to the Bench, one is presented with a variety of twists and turns, but throughout there is a constant openness to change and a tremendous ability to adapt.

Having graduated from Dalhousie Law School in 1985 and been called to the Bar in 1986, Judge Madden began his legal career in the private sector at the law firm Fowler Rose in St. John's. He became a partner of that firm, which subsequently merged with others to become the current law firm Benson Myles. While at Benson Myles, Judge Madden worked as a prosecutor, holding agency contracts with both the Federal and Provincial Departments of Justice. That work led him to a position with the Federal Department of Justice's newly formed Integrative Proceeds of Crime Unit in 1998, requiring him to move back to Halifax. Three years later, the Federal Department of Justice decided to open an office in Newfoundland and Labrador, an initiative which Judge Madden was asked to spearhead and which required him to move back to St. John's in 2001. Judge Madden remained as senior counsel with the Public Prosecution Service of Canada until his appointment to the Provincial Court in Gander on February 3, 2010.

Judge Madden admits that changing to a judicial role has had its challenges. "The biggest challenge for me has been adapting to areas of law that I wouldn't necessarily have spent a lot of time practicing," he says. "I think people have this idea that the Provincial Court is mainly criminal, and in a lot of areas in the province that's true. But there's also small claims, and now that the jurisdiction of Small Claims Court has expanded there is going to be more civil work for Provincial Court Judges. There are also many family law matters which are heard in Provincial Court – custody, access, maintenance. Gander is not in a judicial area that is included in the exclusive jurisdiction of the Supreme Court of Newfoundland and Labrador Family Division. It's been a few years since I've done any family, so there's a learning curve for me."

As with Nolan Ryan's ability to throw 100 mph fastballs regardless of the jersey on his back, Judge Madden's ability to adapt has brought expectations. "I think people assume that with my background, I could just waltz into this position and be fairly comfortable with it," he says. While such an assumption is certainly valid with regards to his grasp of criminal procedure, Judge Madden recognizes the challenges of meeting those expectations with regards to family and civil matters. "It's not that I'm uncomfortable with those matters," he explains. "But I do have to spend a fair bit of time sitting in my office reading up on these issues and making sure that I understand counsels' positions and arguments." Judge Madden also finds a great degree of comfort in the assistance offered by other members of the judiciary. "The decision is always for the individual judge to make, but we do call each other from time to time for help."

Judge Madden has also had to adapt to the challenge of dealing with self-represented litigants. "In non-criminal matters, you very often get two self represented litigants. As a lawyer I would have dealt with co-counsel, or I would have dealt with opposing counsel, or I would have dealt with a judge, of course. Now there's sometimes just me and the litigants, with no counsel at all and very

In Personam

often the litigants have very little legal knowledge.” Being confronted with such a situation requires him to adapt yet again. “When there’s no counsel in the room at all then there’s a different duty on the judge.”

Judge Madden notes that the challenge posed by dealing with self-represented litigants is intertwined with that of increasing access to justice. In speaking of the newly increased jurisdiction under the *Small Claims Act*, he says: “I think that the increase will make justice more accessible to a lot of people that felt they couldn’t afford to go to Supreme Court. We’ll probably have more people willing to bring civil actions now who are unrepresented and that’s not a bad thing. It’s accessibility to justice for a greater segment of the population.” He also points to the newly adopted e-filing at the Provincial Court as perhaps leading towards greater accessibility.

While adapting to his new role as Provincial Court Judge is far from complete, Judge Madden is already recognizing the enjoyment gained from sitting on the Bench. “This is the best job in the world,” he says with a chuckle. “I loved my old job, but I love this job more.”

To the reader, remember Ryan’s adage: “Only by being open to change can you have a true opportunity to get the most from your talent.” Ryan has also been quoted as saying “it helps if the batter thinks you’re a little crazy,” but we’ll leave that for another article.

We at *Squid pro quo* hope that Judge Maddens’ enjoyment only grows as he continues to serve the people of Newfoundland and Labrador. We would like to thank him for taking the time to share his thoughts with us.



2011 Easter Egg Hunt and Brunch at the Geo Centre



2011 CBA-NL Mid Winter Meeting
Bianca's Restaurant

In Personam

By Jeff MacDonald

Madam Justice Deborah Paquette

One of the most attractive aspects of a life in the legal profession is that one can find themselves having many different careers and experiences, which can allow lawyers to bring different perspectives to whatever role they may find themselves in. Madam Justice Deborah Paquette is one such individual. After spending time in both private practice and the public service, Justice Paquette was appointed as a judge to the Trial Division of the Supreme Court of Newfoundland and Labrador on June 18, 2010. Currently sitting at the Family Division of the Supreme Court in St. John's, Justice Paquette was gracious enough to take some time out of her busy schedule to reflect on her varied career for *Squid pro quo*.

Justice Paquette was born into a military family in Ottawa. Due to her father's career in the Army, the family moved around quite a bit, spending time in Germany, New Brunswick, Ontario and Newfoundland and Labrador. After the passing of her father, her mother moved the family back to St. John's, where Justice Paquette has lived ever since.

Justice Paquette completed her undergraduate degree in Canadian Economic History at Memorial University in St. John's; it was not until her senior year that she began to seriously consider a career in the law. She decided to attend McGill University as she wanted to further her French language skills and interest in the civil law. Upon graduating from McGill, Justice Paquette returned to Newfoundland and Labrador, where she articulated with Wells, O'Dea, Halley, Earle, Shortall & Burke. After being admitted to the Bar in 1981, Justice Paquette practiced in the areas of constitutional law, natural resources law, access to information and statutory interpretation. In 1987, Justice Paquette joined the Provincial Department of Justice as a lawyer in the Civil Division. During her time in the Civil Division, Justice Paquette was able to participate in many important projects, such as aboriginal land claims and oil and gas law. While at the Department of Justice, Justice

Paquette took on many roles, eventually culminating in being appointed as the Assistant Deputy Minister of the Department of Justice. As the ADM of the Civil Division, Justice Paquette had many roles in managing a department that focused on a broad range of legal issues. In addition to her administrative and mentoring duties, Justice Paquette also served as the lawyer for the Cabinet Secretariat, where she was responsible for advancing the legislative goals of the Government. Due to an increasing interest in mediation and dispute resolution, Justice Paquette began to consider a career in the judiciary and on June 18, 2010, she was appointed as a judge of the Trial Division of the Supreme Court of Newfoundland and Labrador. Justice Paquette enjoyed the training she received from the Canadian Institute for the Administration of Justice; she was able to hear many excellent expert lectures on the judiciary as well as engage in many classroom exercises. Justice Paquette notes that the training never stops and that other judges are extremely helpful in their assistance with respect to the procedures and practices. On reflecting between her transition from public practice to the Bench, Justice Paquette noted that she enjoyed the exposure to the

2011 CANADIAN LEGAL CONFERENCE & EXPO

**August 14-16, 2011
Halifax, NS**

**For more information and to
register visit:**

<http://www.cba.org/halifax2011/>

In Personam

public that being a member of the judiciary entailed. In addition to the courtroom work, another aspect of her work that she enjoys is legal writing, something she was able to continue from her days spent in public practice.

When she is not busy behind the Bench, Justice Paquette enjoys spending time with her family. With her husband, Carl Sullivan, Justice Paquette has three teenage sons, Andrew, Michael and Keir, all of whom manage to keep her busy.

It has been a busy nine months for Justice Paquette, but she has not regretted her decision to join the judiciary. She is extremely grateful to her fellow judges for their assistance and guidance, as well as to the members of the Bar who appear before her for their preparedness. She looks forward to many successful years in her new position. *Squid pro quo* would like to thank her for her time and wish her continued success in all of her endeavours.

MOVE NOTICE

**The CBA-NL Branch office has moved to Suite 107,
49-55 Elizabeth Avenue.**

**Mailing address:
Suite 107, 49-55 Elizabeth Avenue
Box 16
St. John's, NL A1A 1W9**

Our phone, fax and email remain the same.

Stories from Labrador

Labrador, known for its rugged beauty and picturesque coastline, provides unique life and work experiences. Through a collection of short stories, four lawyers who have worked or are working in Labrador offer a glimpse of what life is like in Labrador.

On a provincial court circuit in Davis Inlet **By: H. Wayne Burden, Department of Justice**

On a provincial court circuit in Davis Inlet, I was serving as Legal Aid duty counsel. Court was being held in the R.C. Mission Building and Judge James Igloliorte, since retired, was presiding. A young man was brought into court accompanied by several police officers. He was barefoot and clad in gym shorts having been arrested the previous night and having refused to get dressed in the morning. He was obviously distraught. He was being quite verbally abusive of the police officers who happened to be female and between curses he was spitting constantly. Once he had calmed a little, Judge Igloliorte asked him if he wanted to speak to a lawyer. He readily agreed and with that all eyes turned to me. The young man was seated in the middle of the room in shackles and handcuffs and probably would have been wearing a “Hannibal Lector” mask if the police had such a device available. One of the police officers offered to stay in the room with us. I thanked her for the offer but explained that the presence of a police officer during a conversation between lawyer and client would not be appropriate.

When everyone had left, I introduced myself to the young man and suggested to him that as he seemed to be so upset, it might be a good thing for him to see a doctor. He looked at me and said “Waterford Hospital?” The Waterford Hospital is the province’s primary psychiatric facility and he had been there previously. I agreed with his suggestion and when court re-convened, he was remanded for a psychiatric assessment. I had also learned that the reason for his spitting was that upon exiting the police vehicle he had taken a nose dive and had “bitten the dirt”

resulting in sand in his mouth. As it happened I was also on the circuit when he returned. He was neatly dressed, well-groomed and quite coherent having been detoxified of whatever substances he may have ingested. He pleaded guilty and received a very short jail sentence to be served in Happy Valley-Goose Bay. On that particular trip, the court party hitched a ride back to Happy Valley-Goose Bay on the RCMP Twin Otter. My seatmate was the young man who happily spoke of his plans for addictions treatment.

On another circuit to Davis Inlet, the court was sitting in a room located in the community hall. For some reason the furnishing consisted mainly of a living room ensemble. There were a couple of very small tables for counsel but Judge Igloliorte was seated on one end of a sofa with the court reporter on the other end. As each accused entered the “courtroom” he or she was invited to sit on a loveseat positioned directly in front of the judge. The door to this room was larger than the door opening and was not hinged or mounted in any way. It was just leaning against the wall and very roughly covering the opening. To enter or leave required picking the door up and moving it to the side.

In the Inuit community of Hopedale, as in many communities on the coast, court is held in bars, which gives a new meaning to “being called to the Bar.” Sometimes court is held at the same place where the alleged offense occurred, making reenactments very easy. The bar at the Amaguk Inn in Hopedale has large windows overlooking the harbour. I remember one beautiful June day when the harbour contained at least twelve small whales happily feeding. I wonder where else one could engage in whale watching from the “courthouse” windows.

**By: Jennifer L. Mercer, Crown Attorney's Office,
Wabush**

Labrador West consists of small towns with incredible natural resources and lots of heart. The economy of the area is booming: young families are moving in; retirees are staying; and there are incredible employment opportunities. There is a strong sense of community here yet people maintain close ties to their Island roots and we often ask each other where we're from, even if we've been living and working here for years. We have developed expressions perhaps unused elsewhere: we describe leaving the area on a trip as "going outside"; we give people our phone numbers using the last four digits, followed by our town name. The sense of community is also present in the practice of law in Labrador West. Stakeholders in the

justice system here work well together while maintaining their respective roles. The small Bar means we work together regularly and we each have respect for the job others must do in our adversarial system.

I have practiced law in Labrador for 13 years and have enjoyed the challenges that have come with it, as well as the fascinating experiences. I've had the opportunity to travel on small planes (which sometimes approach the dirt airstrips flying sideways) to most of the communities in Labrador and to attend court being held in a hotel lounge and had to stop myself from referring to an alleged incident having happened "over there." I've celebrated birthdays in Port Hope Simpson and Cartwright; been so cold that I've worn a Canada Goose jacket while conducting a prosecution and regularly had to stop the examination of a witness while a chopper takes off or lands just outside. All of these things make practice in Labrador interesting but the best part has been the opportunity I have had to meet the warm, welcoming and helpful people who make our communities their home.

MARK YOUR CALENDAR!

CBA-NL ANNUAL GENERAL MEETING JULY 14-15, 2011 ST. JOHN'S

Council Meeting

Thursday, July 14, 5:30 - 7:30pm
Branch Office, Suite 107, 49-55 Elizabeth Avenue

Professional Development Session

Friday, July 15, 8:45 - 12:30pm
Clovelly

Luncheon with Guest Speaker

Friday, July 15, 12:30-2:30pm
Clovelly

Golf

Friday, July 15, 2:30pm
Clovelly, Black Duck Golf Course

Distinguished Public Service Award Dinner

Friday, July 15, 7:00pm
Gypsea Tea Room

Visit <http://www.cba.org/newfoundland>
for further details as they become available.



*Hopedale, Labrador
Photo by Phyllis Harris*

By: Phyllis Harris, Department of Justice

When I decided to move to Labrador as a Crown attorney, I had high expectations around the challenges surrounding work – travel, cultural differences, language issues, extreme weather and the like. My expectations for shopping opportunities, in contrast, were extraordinarily low.

Work was everything I had anticipated and more. Labrador was full of surprises, and that included in the shopping arena. There are no malls in Happy Valley-Goose Bay or on the coast. In fact, Happy Valley-Goose Bay boasts a single Reitmans. How then, you ask, did I manage to spend as much money on shopping in Labrador as I did in St. John's?

In Nain, I was tempted by the Labradorite carvings of Gilbert Haye, a well known Inuk carver. Natuashish brought beaded hide slippers made by the Innu women of the town. In Rigolet, I was able to choose sealskins to be made into a pair of traditional Inuit boots, for which I was measured by having my feet outlined on a piece of paper. Theresa Andrew of Sheshashui makes incredible Innu tea dolls that smell of tea for months. Postville brought the opportunity to buy a polar bear pelt (which opportunity I did not take). On the south coast, there were bakeapples and red berries (partridgeberries if you live on the Island). Caribou and smoked char also became staples. Anyone who visited my office in Labrador would know that I developed a bit of an obsession with Dale Ford's serpentine carvings of animals, hunters and fisherman. Inukshuk earrings made of antler, bone or porcupine quills and other jewelry replete with Labradorite were happy discoveries.

These are but a small sampling of the delightful discoveries made while traveling on circuit in Labrador. The diversity and rich culture were evident in the artistic and culinary finds. And, for the record, I shared my discoveries with family and friends as they had been shared with me.

The Wilds of Labrador

**By: John Noseworthy, Crown Attorney's Office,
Happy Valley-Goose Bay**

One of the most interesting things about Labrador is the abundance of wildlife that can be encountered. While on a court circuit, we had the opportunity to see the Nain muskox. A few years ago, a lone male muskox got separated from its herd and, sometime during the



winter months, crossed over the ice to a small island near Nain. He has been there several years now and has decided to stay, probably because of the ample food supply. Apparently, the area is prime muskox habitat!

With the assistance of local residents, we made the trek to the small island where the muskox has taken up residence. Once on the island, we followed the trail of muskox fur clinging to the bushes. Then as we came upon a clearing, we saw the muskox perched on a rocky ridge. We made our way towards him, careful not to disturb his routine. After getting close enough to take some good photos, we gradually made our way back to our boat. Then after a "boil up" on the beach, we made the return trip back to Nain. Quite the adventure!



*Right: Snowed in at the Cartwright Hotel
Photo by Phyllis Harris*



LAW OFFICE
ÉTUDE DE NOTAIRES

[Keeping real estate transactions
where they belong—in your office.

Gardez les transactions immobilières
là où elles doivent être—dans vos bureaux.]

At Stewart Title, it's how we work that sets us apart. We deal in title insurance and related products, undertaking no part of the transaction that has traditionally fallen to lawyers/notaries.

Since our inception into the Canadian market, you will find that we have consistently combined comprehensive coverage with unparalleled support for lawyers/notaries. We are dedicated to streamlining your practice and increasing your revenue through our programs and innovative technology solutions.

At Stewart Title, we know it's our relationship with our customers that determines our success. That's why service is the foundation of our business and integrity, the keystone in all our dealings.

Chez Stewart, c'est notre façon de travailler qui nous démarque des autres. Nous offrons de l'assurance titres en ne nous accaparant aucune partie des tâches traditionnellement réservées aux notaires.

Si vous regardez notre historique, vous constaterez que nous avons toujours fourni des couvertures inégalées, et ce, tout en respectant la communauté notariale. Nous ne désirons qu'aider les notaires en leur offrant des outils de travail aussi faciles à utiliser qu'efficaces.

Chez Stewart, nous savons que c'est notre relation avec nos clients qui fait notre succès. Voilà pourquoi le service est la fondation même de notre entreprise et l'intégrité, la pierre angulaire de chacun de nos dossiers.

Call us today or visit www.stewart.ca. | Contactez-nous dès maintenant ou visitez www.stewart.ca.

Atlantic Canada | Maritimes: (888) 757-0078 • Québec: (866) 235-9152

Canadian Head Office (Toronto) | Siège social canadien (Toronto): (888) 667-5151 • Western Canada | Ouest du Canada: (866) 515-8401

 **stewart**
title guaranty company

Case Digest

By David Coffin

Interaction between *Bank Act* and *PPSA*

The Supreme Court of Canada has released a recent decision, *Bank of Montreal v. Innovation Credit Union*,¹ which clarifies the interaction between *Bank Act* security interests and security interests created under provincial *Personal Property Security Act* legislation. This case involved a priority dispute between a prior unregistered security interest under the *Saskatchewan Personal Property Security Act* (the “PPSA”) and a subsequent security interest in the same collateral registered under the federal *Bank Act* legislation.²

James Buist (the “Debtor”) obtained loans from Innovation Credit Union (the “Respondent”). As security for the loans, the Respondent was granted a security interest in all of the Debtor’s present and after acquired personal property pursuant to a security agreement. This interest was not registered in the *PPSA* registry. Subsequently, Bank of Montreal (the “Appellant”) also lent the Debtor money. To secure its loan, the Appellant entered into a security agreement with the Debtor and obtained *Bank Act* security over much of the same property covered by the earlier security interest obtained by the Respondent. However, the Debtor did not disclose the previous loans and security interest to the Appellant and the Appellant did not discover the security interest when it performed its due diligence searches of the *PPSA* and *Bank Act* registries.

The Debtor defaulted on his loans and the Appellant seized some of the Debtor’s property which was covered under the *Bank Act* security. The Respondent brought an application before the Court of Queens Bench (Saskatchewan) claiming that it had a priority claim over the proceeds of the disposition of the property. The applications judge ruled in favour of the Appellant, holding that the Respondent’s unregistered *PPSA* security interest was subordinate to the Appellant’s registered *Bank Act* interest.

The Saskatchewan Court of Appeal overturned this decision, holding that when the Appellant obtained its *Bank Act* security, it only acquired the title that the Debtor had to give at that time. In this case, the Debtor had already given the Respondent a security interest in his property and the Appellant’s security interest was therefore subject to the Respondent’s prior interest. The Appellant appealed and the Supreme Court of Canada dismissed the appeal.

Charron J. for the Court reviewed the relevant provisions of the *Bank Act* and the *PPSA* as well as the interaction between security provisions under federal and provincial legislation. Charron J. stated that provinces cannot enact provisions that would affect the priority of validly created federal security interests. However while provinces cannot legislate to remove the Appellant’s rights, provinces can change the law as it relates to property and civil rights in the province. Therefore, when reviewing competing provincial and federal security interests, it is necessary to look at the relevant provincial law, either at common law or under statute. As the priority issues could not be

¹ 2010 SCC 47, [2010] 3 S.C.R. 3.

² The Supreme Court of Canada also released a companion case, *Royal Bank of Canada v. Radius Credit Union Ltd.*, 2010 SCC 48

determined in this case by the provisions of the *Bank Act*, it was necessary to apply provincial property law to determine the effect of a prior security interest. Since the *PPSA*'s provisions do not apply to *Bank Act* security and because the *Bank Act* regime is property based, Charron J. found it necessary to characterize the *PPSA* security interest as a matter of property law for the purposes of resolving this priority dispute.

This dispute is between two competing legal interests in the same collateral and under the common law, a priority dispute between two such interests is determined in accordance with the *nemo dat quod non habet* rule (often abbreviated as simply *nemo dat*). The *nemo dat* rule can be summarized as basically first in time, first in right. Charron J. applied this rule to the case at hand and concluded that this rule gives the Respondent a priority interest. She concluded that based upon the provisions of the *Bank Act*, the Appellant could acquire no greater interest in the collateral than the Debtor had at the time it granted security to the Appellant. At the time that the Appellant took security in the Debtor's collateral, the Respondent already had a statutory interest in the same collateral. Therefore, the interest obtained by the Appellant was subject to the Respondent's prior, albeit unregistered interest.

Among other things, the Appellant argued that the *nemo dat* rule applied in this case leads to commercially unreasonable results, as banks taking *Bank Act* security have no way of discovering undisclosed and unregistered *PPSA* interests. This exposes banks to unreasonable commercial risk. Instead, the Appellant argued that the first to register its interest should get priority. Charron J. acknowledged that this argument mirrored the view of other commentators that legislative reform is necessary, but stated that the adoption of a first to register rule

would run contrary to the *Bank Act*. The *PPSA* (and the Newfoundland and Labrador *PPSA*) has a provision that excludes *Bank Act* security from the scope of its legislation. A first to register rule would allow the Appellant to gain the benefit of the *PPSA* priority rules contrary to the intent of the Saskatchewan legislature.

At paragraph 70, Charron J. summarized her findings as follows: "... a proper interpretation of the *Bank Act* gives an earlier unperfected *PPSA* interest priority over a subsequent *Bank Act* interest, and there is no provision in the *PPSA* which subordinates an unperfected *PPSA* interest to a *Bank Act* interest."³

It should be noted that there is an important distinction between the Saskatchewan *PPSA* and the Newfoundland and Labrador *PPSA*. The Saskatchewan *PPSA* contains a provision that prevents a creditor from taking *PPSA* security and *Bank Act* security in the same collateral. There is no such provision in the Newfoundland and Labrador *PPSA* and it is therefore possible to take both *PPSA* and *Bank Act* security over the same collateral in Newfoundland and Labrador. In light of the *Montreal v. Innovation Credit Union* decision, it may be prudent for lenders to take both *Bank Act* and *PPSA* security in the same collateral, where applicable. This will help ensure that a bank's security will not be subordinate to an unregistered *PPSA* interest as the bank's registered *PPSA* interest will take priority over a previous, unregistered *PPSA* interest. As well, it is important for banks to take steps to obtain full disclosure from debtors in relation to previously existing security interests granted over a debtor's property, especially those that are not uncovered by due diligence searches.

³ Supra note 1 at para. 70.

UPCOMING ONLINE PROFESSIONAL DEVELOPMENT

CBA SKILLED LAWYERS SERIES LITIGATION STREAM

Retaining and Presenting Experts at Trial

Date: June 14, 2011

Online

Time: 1:30PM-3:00PM (NL)

CBA SKILLED LAWYERS SERIES CORPORATE STREAM

Running an M & A Deal

Date: May 31, 2011

Online

Time: 1:30PM-3:00PM (NL)

Please note that if you missed a Skilled Lawyers Series online session, recordings are now available for purchase online at www.cba.org/pd.

CBA ONLINE PD

The Impact of Trade Treaties on Municipal Procurement

June 9, 2011

Online

Time: 1:30 - 3:00 (NL)

For more information on any of the CBA online PD sessions, please visit www.cba.org/pd or email pd@cba.org.

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

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

Please note the following:

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

Key Advantages



The power of many

When you join the CBIA Bar Group Employee Benefits program, your firm becomes part of a single large insurance plan comprised entirely of small law firms like yours. This provides us with the significant buying power needed to negotiate contractual advantages that are normally reserved for very large employers. This includes more generous benefits like an **enhanced Long Term Disability definition** for lawyers or the availability of **Major** and **Orthodontic** dental care. It also helps to significantly reduce internal expenses which allows our insurer to pay a much higher percentage of each premium dollar back in claims without negatively impacting rates.

Affordable pricing now and for the future

Our break-even pricing helps us offer your firm **low rates** without risking the financial stability of the plan. This sensible long-term approach can save you money by reducing the possibility of significant rate increases at future renewals.

While our past performance does not guarantee future results, our rates have remained very stable over the past decade. Most insured firms have had **little to no increases in costs** due to better than anticipated experience. Where rate increases have been required, most have been below normal levels of inflation. As of our December 1st 2009 renewal, there was no change in any of our rates for all clients.

Your claims are not directly reflected in your rates.

For most small employers, the total of all claims paid to just one employee with an unexpected serious illness can significantly exceed the total premiums paid to the insurer. With many insurance providers, this can eventually lead to very significant rate increases or even a loss of benefits.

As a single large plan, the CBIA Bar Group Employee Benefit program offers you greater stability of rates at renewal by combining the total claims from all firms and weighing this against the total premiums collected. This sharing of risk means that **your firm will not see a direct impact on insurance costs** should an employee unexpectedly become seriously ill.

To learn more about the CBIA and the many other affordable benefits we offer,
please talk to your CBIA Authorized Representative:

Hughie Shea, B.Comm, CFP at (709)726-6570, ext. 226 or visit
www.barinsurance.com

Law Day 2011

By Robynn Arnold and Elyse Bruce, Co- Chairs, Law Day 2011

Law Day – Law Week in many jurisdictions – offers the public an opportunity to learn about the law and the legal system. It is a national event originated by the Canadian Bar Association to celebrate the signing of the Canadian *Charter of Rights and Freedoms* in 1982. Since then, it has grown into a celebration of the law and the legal system as a whole, and is aimed at educating and informing the public about the role and importance of the law.

Locally organized by the Newfoundland and Labrador branch of the CBA with assistance from the Law Foundation of Newfoundland and Labrador, Law Day gives the profession an opportunity to inform the public about how our judicial system works, those who work within this system and the vital role that these people serve in facilitating an open, independent and unbiased judicial system.

Law Day is made possible through the efforts of lawyers who donate countless hours of volunteer time to the various activities associated with this event and through the support of the Law Foundation of Newfoundland and Labrador. The 2011 Law Day Committee extends sincere thanks to all who contribute to the ongoing success of this event – including court staff, judges, sheriffs and the RNC.

Law Day 2011 was celebrated on Thursday, April 14th, with additional activities on Saturday, April 16th. The provincial theme for Law Day 2011 was, “Access to Justice: Protecting Your Right to Privacy.” The legal profession, and particularly the dedicated members of the local Law Day Committee, celebrated Law Day 2011 through numerous

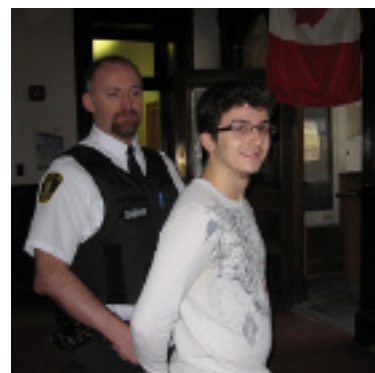
activities during the month of April, including:

Legal Information Fair

On Thursday, April 14th, the Law Day Committee hosted a Public Legal Information Fair between 11:00 am and 2:00 pm at the Avalon Mall. Representatives from a number of community organizations with ties to the legal system and the law participated in the fair, including: the Office of the Information and Privacy Commissioner; RNC Public Complaints Commission; Public Legal Information Association of Newfoundland and Labrador; Newfoundland and Labrador Sexual Assault Crisis and Prevention Centre; Newfoundland and Labrador Youth Centre; RCMP; Office of the High Sheriff; and the Human Rights Commission.

Mock Trials

The Law Day Committee, in conjunction with the Supreme and Provincial Courts of Newfoundland and Labrador, hosted a Mock Trial Competition on Saturday, April 16th at the Supreme Court. Participating in this years competition was Holy Heart of Mary High School in St. John's.



Law Day Mock Trials

In addition to the Mock Trials, the RNC was on hand to conduct a demonstration of canine searching and detection for those in attendance.



Poster Contest

This year marks the 11th annual Law Day Poster Contest, and was organized for the participation of elementary school students. Students in grades 4-6 were asked to submit a drawing reflecting their perception of this year's theme, "Protecting Your Right to Privacy."

First, second and third place prizes were awarded in the competition. The three winners and their respective schools will receive prize money in recognition of their accomplishments, with the first place winner receiving a plaque-mounted copy of the winning poster. A similar plaque will be displayed at the Branch office.

Photography Contest

In addition to the Poster Contest, a Law Day Photography Contest was organized for the participation of junior high students across Newfoundland and Labrador. Students in grades 7-9 were asked to submit a photograph depicting their interpretation of this year's theme, along with supporting commentary.

The contest garnered tremendous response and, after careful consideration, resulted in the selection of first, second and third place winners Savannah Bennett, Jennee

Brennan, and Nicole Skinner, all students at Stephenville High.

The Law Day Committee wishes to thank all participating schools, students and teachers for their creativity and enthusiasm in this year's poster and photo contests.

High School Visitations

High schools from across the province were invited to have lawyers visit their schools to speak on legal topics of particular interest to students and teachers. Local lawyers volunteered their time and expertise to this excellent program.

Law Firm Food Drive

The Law Day Committee also organized a food drive as a part of Law Day 2011. During the week of April 14th, CBA members collected food items and monetary donations from local law firms, with proceeds going to the Community Food Sharing Network.

CALLS TO BAR

APRIL 2011

Kristen Aneita Penney*
Jaclyn Margaret Whelan*
Meghan Ghleanna Felt*
Terri Charlene Higdon*
Timothy Patrick O'Brien
Cletus Edward Flaherty*
Reginald Mark Butt*
Kevin Henry O'Shea*
Susan Dee Coen

*Denotes CBA Member

CANADIAN BAR ASSOCIATION CALL FOR NOMINATIONS

RAMON JOHN HNATYSHYN AWARD FOR LAW

The Canadian Bar Association is seeking nominations for the 2011 Ramon John Hnatyshyn Award for Law. **The deadline for applications is May 31, 2011.**

Established by the Governor General in 1993 and entrusted to the Canadian Bar Association, the medal recognizes outstanding contribution to the law or legal scholarship in Canada.

The medal will be presented at the Canadian Legal Conference in August. The selection committee is seeking nominations from Law Schools, Law Societies and Chief Justices. **Details, including the formal nomination form, are available online at www.cba.org/CBA/Awards/hnatyshyn.**

LOUIS ST. LAURENT AWARD OF EXCELLENCE

The CBA Awards Committee is seeking nominations for the 2011 Louis St-Laurent Award, which recognizes distinguished or exceptional service towards the goals of our Association. Our Committee is particularly interested in obtaining nominees from our Branches who have made an outstanding “grass roots” contribution to the benefit of the Association.

The Award recognizes an individual who has shown accomplishment in CBA work, in one or all of the following four categories:

- Improvement in the law;
- Improvement in the administration of justice;
- Individual lawyer training; and
- Advocacy in the public interest.

The award, a bronze casting of the former CBA President and Prime Minister, was established in 1992. **Further information can be found online at http://cba.org/CBA/Awards/st_laurent/. The deadline for applications is May 31, 2011. For a listing of past award recipients, please visit: <http://www.cba.org/CBA/Awards/Main/>**

THE EDWARD K. ROWAN-LEGG AWARD

The Canadian Bar Association is seeking nominations for the 2011 Edward K. Rowan-Legg Award. **Nominations should be submitted prior to June 10, 2011.**

Established by Judi Rowan-Legg in honour of her husband, Edward K. Rowan-Legg of Ontario and Nova Scotia, the Award is designed to recognize a dedicated contribution to the CBA by a student member and encourage student member participation in the Canadian Legal Conference. Ted was a dedicated and active member of the CBA, who served as CBA National Treasurer from 1999 until his death in 2001.

The 2011 award will be presented at the CBA Canadian Legal Conference Awards Luncheon, Saturday August 13th in Halifax, Nova Scotia. **For more details on this award, please visit: www.cba.org/CBA/Awards/rowan_legg.**

Section Update

By Dan Glover, Chair, CBA-NL Civil Litigation Section

Civil Litigation Section

The fall meeting of the National Civil Litigation Section was held at the Sheraton in Ottawa. There were some familiar faces and some new faces from across the country. After introductions, the agenda and minutes from the last meeting in Banff were approved. The Chairman of the Section then reported generally on the structure of the Section and that the CLC in Niagara regarding Supreme Court of Canada applications for leave had been well received.

Kerri Froc, a staff lawyer with the CBA, updated the meeting on the National Class Action Task Force. The Task Force was established by, and reports to, the national CBA Executive. The issue they have primarily focused on is how to deal with class action lawsuits that are multi-jurisdictional in scope and may be commenced in different provinces. The challenge for the Task Force is to put forward draft legislation on multi-jurisdictional class actions that all jurisdictions will accept. The legislative subcommittee has requested a constitutional opinion as to the viability of involving the Federal Court. A CLC on the work of this Task Force will be held at the Canadian Legal Conference in Halifax in August, 2011.

Section Chairs from around the country in attendance then reported on activities and developments in their respective jurisdictions.

Alberta is focusing on new Rules of Court soon scheduled to come into force and which, according to

the Section Chair, have been totally rewritten. One big change is mandatory ADR. Trial dates cannot be obtained without showing ADR has been attempted. There is also more active case management and an effort to move to plain language like replacing the word “discovery” with “questioning.” A “minor injuries” cap has also been recently reinstated by the Court of Appeal, the Supreme Court of Canada refusing leave to appeal.

British Columbia is also focusing on new Civil Rules that came into force July 1st. The rules make proportionality a factor in rule interpretation and limit the time (7 hours typically) and scope of examinations for discovery. Expert witnesses now have to certify they are acting independently. The British Columbia government is also proposing reforming limitations law from 6 to 2 years.

In New Brunswick, the focus has been on changes to the *Limitations of Actions Act*. The CBA has also been pressing government to reconsider the minor injury cap. One issue raised is that the definition of minor injury may be too broad leading to many more serious injuries being subjected to the cap. New Brunswick also recently moved to mandatory professional development requirements which has resulted in increased attendance at CBA events.

I reported on the recent changes to the Small Claims Court jurisdiction, including the increase to \$25,000 and the ability to grant specific performance, my national article about Rules changes in Atlantic Canada, including the renaming of our Courts in Newfoundland and Labrador, the ongoing Scale of Costs revision discussions by the

Section Update

Rules committee and the lunch and learns held at our branch, including the April meeting regarding electronic discovery.

The Saskatchewan Section Chair reported that the Sedona principles for electronic discovery have recently been adopted there. A practice directive has been issued narrowing the test for documentary discovery. Revised rules of civil procedure are also expected in the near future. New procedures for very small claims (under \$5,000) are being tried by judges who question parties in order to ascertain the facts. Saskatchewan is also developing a mandatory professional development system.

The Ontario Section Chair reported that they have a 24 member executive for their OBA Civil Litigation Section. One of the challenges they face is involving more lawyers from outside of Toronto. They publish their own newsletter four times a year and conduct several CLE programs. They have a class actions subcommittee which is very active. Some recent issues on their agenda include the possibility of anti-SLAPP¹ legislation and requests from specific groups, such as accountants and municipalities, seeking changes to the law of joint and several liability to proportional liability.

There was also discussion of upcoming meetings, events and conference calls for the Section, the possibility of coordinating with CLC and Mid Winter Meetings, the publication of another newsletter for 2011 and a call for articles. I agreed to submit an article. I have since written the article, regarding a recent Supreme Court of Canada

case on a multi-jurisdictional class action settlement.

Other items to report include the lunch and learn held on November 25, 2010 which was well attended and very informative. Sean Conners from Provincial Investigative Services gave a talk on the private investigation work that his company does for lawyers in this province to help them prove their cases. For more information or if you have questions about the content of the presentation please contact me.

On January 6, 2011 I had a meeting with Jim Oakley and Christian Hurley, the ADR Section Chair regarding input the Rules Committee is seeking with respect to their consideration of the mandatory mediation rule. We discussed the reported case on this rule, pros and cons of the rule and the possibility of a joint meeting with both Sections to discuss the rule and any potential input to be submitted to the Rules Committee.

Mr. Oakley has also reported that the new Scale of Costs was approved on January 25, 2011 at a meeting of both the Trial Division and the Court of Appeal Rules Committees. There are some issues of drafting to be finalized but a tentative implementation date of July 1, 2011 has been set. He thanked the Civil Litigation Section for the input provided into drafting the new Scale.

¹ Strategic lawsuit against public participation

CBIA MOVES TO NEW INSURER FOR HOME AND AUTO PROGRAM

Effective Jan. 1, 2011, The Personal General Insurance Company (The Personal) will replace TD Insurance Meloche Monnex (Meloche Monnex) as the insurer of The Canadian Bar Insurance Association (CBIA) sponsored Home & Auto Insurance program.

CBIA believes that members could pay substantially less for home or auto insurance because of its negotiated rate discounts. Members can also benefit from exceptional customer service, CBIA's involvement if assistance is ever required, and the ability to share in positive financial results that exceed the requirements of the program.

Members with insurance under the old program with Meloche Monnex or through a different insurer are encouraged to contact The Personal for a comparison quote on any policies renewing on or after Jan. 1, 2011. Members who want to wait can give The Personal their current policy expiry date and they'll be contacted 60 days prior to their 2011 renewal with a reminder that it's time to get a quote. Members who obtain a quote or provide their expiry date before June 30, 2011, will be entered into a draw for a deluxe trip for two to see the 2012 Olympics in London, England.

For more information, call 1-877-314-6274 or visit <http://www.barinsurance.com/html/plans/home-and-auto/introduction.html>

CANADIAN BAR ASSOCIATION – NEWFOUNDLAND & LABRADOR BRANCH AND PROVINCIAL AIRLINES LIMITED

EXCLUSIVE PROVINCIAL PREFERRED SUPPLIER PARTNERSHIP

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

The Canadian Bar Association – Newfoundland & Labrador Branch is pleased to announce our partnership with Provincial Airlines Limited (PAL) as the official Exclusive Provincial Preferred Supplier for air travel within Newfoundland and Labrador. The CBA-NL Branch is confident that this new membership benefit will be of value to you and your practice.

As part of the new partnership, Provincial Airlines Limited will be offering CBA-NL Branch members preferential discount rates. The Branch has developed this Exclusive Provincial Preferred Supplier agreement with tailored savings to enhance members' professional and personal bottom lines.

To find out how to obtain CBA-NL Branch member discounts with Provincial Airlines, please contact the CBA Branch office at 709-579-5783 or email cba-nl@cba.org.

Section Update

By Andrea Murphy, Chair, CBA-NL Women Lawyers Forum

Women Lawyers Forum

Executive Meeting

The National Executive of the Canadian Bar Association's Women Lawyers Forum (the "WLF") met in Toronto on Thursday, January 27, 2011. The meeting was attended by the current Newfoundland and Labrador Conference Chair, Andrea Murphy. Also in attendance were National Officers: Chair, Patricia Lane; Vice-Chair, Pascale Pageau; Secretary-Treasurer, Judith Huddart; Past Chair, Veronica Jackson; as well as Members-at-Large: Jennifer Goldenberg and M. Sandra Appel. Conference Chairs and Representatives were also in attendance from: Alberta; British Columbia; Manitoba; Nova Scotia; Ontario; Quebec; the Northwest Territories; and the Yukon. CBA Staff Liaison, Jennifer Lalonde, was in attendance, as was former British Columbia Conference Chair, Linda Robertson.

Branch Reports

The meeting began with an official welcome to all attendees from the National Forum Chair, Patricia Lane, followed by a round table introduction of all attendees. Reports were presented by each of the attending Branch representatives outlining WLF events and initiatives occurring in their respective regions. Such events and initiatives included: signature dinners honouring local women professionals; informal member luncheons; wine tasting sessions; physical defence training courses; pot luck dinners; mentorship programs; panel discussions entitled "So You Want to be a Judge"; as well as lunch and learns sessions entitled: "Women and Money";

"Partnership – Getting In and Getting Out"; and "Young Lawyers with Young Children – What to Expect".

American Bar Association

The association recently struck between the CBA's WLF and its equivalent section of the American Bar Association (the "ABA") continues. Currently, the WLF is the only non-American liaison to the ABA. Those WLF members interested in attending ABA functions are encouraged to take advantage of the available ABA associate membership as it considerably reduces ABA conference and event costs.

Sub-Committees

Several sub-committees of the WLF Executive have been created, including a Newsletter Committee; Webpage Committee; International Equity Initiatives Committee; and Gender Neutral Language Protocol Committee. WLF members interested in participating in any of these Committees are encouraged to contact Branch Chair, Andrea Murphy, for further information on how to become involved. In particular, submissions are always welcome (and in fact encouraged!) from WLF members in this province for the WLF on-line Newsletter "The Common Room" on various topics of general interest to female professionals.

Cecilia I. Johnstone Award

The 2011 Cecilia I. Johnstone Award will be presented at the WLF Reception held during the CBA Canadian Legal Conference in Halifax, Nova Scotia from August 12-16, 2011 (the "CLC"). In addition to the reception, the WLF will also be holding a Continuing Legal Education

Section Update

seminar at the CLC regarding alternative working models. For more information regarding the Cecilia I. Johnstone Award or its nomination process, please visit: www.cba.org/CBA/Awards/women/default.aspx. For further information regarding the CLC 2011 please visit: <http://www.cba.org/CBA/annualmeeting/main/default.aspx>.

Leadership Conference for Professional Women: Skills for Success

Finally, much discussion was held with respect to the WLF's first Conference entitled "Leadership Conference for Professional Women: Skills for Success". The Conference was held from January 28 – 29, 2011 in the days following the Executive meeting and featured three workshops and presentations. On the first day of the Conference, attendees participated in a workshop entitled "Innovative Strategies for Effective Communication" given by Sharon Ellison, M.S. of The Institute for Powerful Non-Defensive Communication. The following day, the Conference featured two workshops and presentations, the first of which was entitled "Imperatives for Success: Projecting Personal Leadership" and featured Roz Usheroff of The Usheroff Institute. The second workshop entitled "Develop Your Professional Strategic Plan" featured Lawyer Coach and Practice Consultant, Linda Robertson, B.A. LL.B of the Women's Strategies Group. For more information regarding these remarkable women and the services that they offer, please visit their respective websites:

Sharon Ellison, M.S. of The Institute for Powerful Non- Defensive Communication - <http://www.pndc.com/>

Roz Usheroff of The Usheroff Institute - <http://www.usheroff.com/index.php>

www.usheroff.com/index.php

Linda Robertson, B.A. LL.B - <http://www.wstrategies.com/>

The Conference was, by all accounts, a huge success. All seats were sold and participants reported thoroughly enjoying the entire event. Due to its success, the WLF is considering holding a similar Conference again in the future.

Conclusion

For further information regarding the foregoing or the WLF in general, please contact the Newfoundland and Labrador Conference Chair, Andrea Murphy, by telephone at (709) 754-1800, or by e-mail at amurphy@frenchnoseworthy.com. Further information is also available on the WLF website at: www.cba.org/CBA/conf_women/Women_Lawyers/default.aspx

New CBA Members

John Crosbie, Morrow & Morrow

Jude Hall, Benson Myles

Stephen Penney, McInnes Cooper

Jaclyn Whelan, Martin Whalen Hennebury Stamp

Andrew Woodland, Benson Myles

Canadian Bar Insurance Association Update

By Hughie Shea



Disability Insurance through the CBIA

The nice thing about being a broker is that I get to see, review and represent all of the available products in the marketplace. If it is licensed to be sold in Canada I have access to the product. Disability Insurance is sometimes daunting to our clients, a mass of information which is then layered on top of competitive options and usually illustrated through competing professional opinions on what best suits you, the end user.

There are several unique and valuable features to our disability coverage:

1. Cost is always important. We cost less because of our structure. Not for profit means that we do not need to create a return to shareholders. If you look at any insurance business in Canada they are profit driven, they require a return on investment to keep their financial health and stock price growing. CBIA is not driven by that motive. Our goal is simply to provide cost effective, high quality and stable insurance products to Canada's legal community. We ensure that adequate reserves are maintained to pay claims and then any surplus is given back to the insureds' through returned premiums, rate reductions and improved benefits. To date we have returned over \$37,000,000 to you, our clients.

2. Our plan is portable. If you decide at a later date to become the premier, minister of health, minister of finance, or CEO of a large company then your coverage goes with you.

3. Cost of living increases are included in the contract. When you are on claim, your benefit payments are indexed by the annual CPI (Consumers Price Index) without placing a cap on the increase. Whatever CPI is, your benefit will increase by that percentage. Other companies include this benefit as a rider, something that you need to purchase in addition to the primary

policy and pay an additional premium for. We include this benefit in your coverage because we believe that you shouldn't be without it.

4. Our coverage can be layered over the top of existing Group Long Term Disability coverage to ensure that your income is adequately protected.

5. We have an integration feature with our Bar Group Employer Benefit plan so that you will not be paying twice for disability coverage when you have both Bar Group benefits and a CBIA Disability Plan. Integrating the two plans ensures that you have the full benefit of a robust and comprehensive disability contract. This also eliminates the "any occupation" worries you may have. Any occupation is, "any gainful occupation for which you are reasonably suited, taking into consideration your education and experience." If you are paying for coverage, make it good coverage.

6. We have coverage available to age 71. In the event of accident the coverage is for life.

We know your practice and we know your business model. There is no guessing on how your coverage will protect you whether you are a sole practitioner, an associate, a partner or a shareholder in a Professional Law Corporation. We can get you the right benefit and the right coverage.

Last note, by now most that have their group insurance outside CBIA's Bar Group plan will have received a rather unpleasant surprise of yet another significant price increase to your group benefits cost for your firm. We have excellent solutions available. Have your benefits coordinator call, we can help.

The annual Easter Egg Hunt was a great success. Thanks again for letting us sponsor this wonderful family event.



THE CANADIAN
BAR ASSOCIATION
L'ASSOCIATION DU
BARREAU CANADIEN

INFLUENCE. LEADERSHIP. PROTECTION.

***Come to the 2011 CBA
Canadian Legal Conference
for the inside track on new
developments in the law!***

The 2011 CBA Canadian Legal Conference (CLC) will deliver quality speakers and concrete ideas for navigating the changing legal landscape, with interactive professional development sessions designed to provide thoughtful answers to difficult questions.

Professional development (PD) features prominently on the CLC agenda with 12 hours of accredited PD over two days for lawyers of all backgrounds, including programs on:

- Current privacy issues
- Multi-jurisdictional class actions
- Advocacy before administrative tribunals
- The art of settling disputes
- Renegotiating underfunded pension plans
- The new Canadian securities regulator

A full stream of dedicated Canadian Corporate Counsel Association programming is planned.

Register for Canada's premier legal conference before June 30 to qualify for early bird discounts. Details and registration available online.

www.cba.org/halifax2011



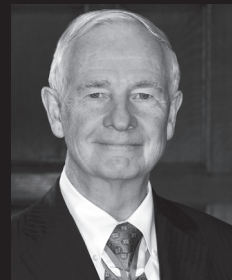
Canada's Premier Legal Conference

HALIFAX 2011

CBA Canadian Legal Conference & Expo

August 14-16, 2011

**World Trade & Convention Centre
Halifax**



**The Right Hon.
David Johnston**



**Arianna
Huffington**



**Arlene
Dickinson**



**Simon
Sinek**

People and Places

Jeremy Andrews is now with the Department of Justice, Stephenville

Greg Dickie, formerly of Ottenheimer Baker is now with Baine Johnston Corporation

John Ennis, formerly of Parsons, Ennis, is now with Roebothan, McKay & Marshall

Chris Forbes, formerly of McInnes Cooper is now with Memorial University

John Mate, formerly of Cox & Palmer is now with Nauticor Legal

Jonathan Noonan, formerly of O'Dea, Earle, is now with Noonan Law

Paul Scott, formerly Assistant Deputy Minister with the Department of Natural Resources has been appointed Assistant Deputy Minister with the Department of Intergovernmental Affairs

Colin Sullivan is now with William O'Keefe Law Office

Janet Tucker has taken non practicing status

Roebothan, McKay & Marshall has move to 34 Harvey Road, 5th Floor, Paramount Building, St. John's

Moving?

Let us know, by email at cba-nl@cba.org and we will publish in the next edition of *Squid pro quo*



**Swearing in of the new Masters of the Supreme Court
As sworn in by Chief Justice Green, Court of Appeal,
January 11, 2011**

First row: Sandra R. Chaytor, Q.C., Christopher D. G. Pike

Second row: Chief Justice J. Derek Green, Christopher Curran, Q.C., Karl R. S. Inder, Q.C., James Oakley, Chief Justice David Orsborn

Missing from photo: Mr. David C. Day, Q.C.